*Public Law 100-203
100th Congress

An Act

Dec. 22, 1987
[H.R. 3545]

To provide for reconciliation pursuant to section 4 of the concurrent resolution on the budget for the fiscal year 1988.

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

Omnibus Budget Reconciliation Act of 1987.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Omnibus Budget Reconciliation Act of 1987".

SEC. 2. TABLE OF CONTENTS.

Agricultural Reconciliation Act of 1987.

TITLE I—AGRICULTURE AND RELATED PROGRAMS

SEC. 1001. SHORT TITLE; TABLE OF CONTENTS.

7 USC 1421 note.

(a) SHORT TITLE.—This title may be cited as the "Agricultural Reconciliation Act of 1987".

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

TABLE OF CONTENTS

ENROLLMENT ERRATA

Pursuant to the provisions of section 8004 of this Act (appearing on 101 Stat. 1330-282), changes made are indicated by footnote.

*Note: For information on the printing of this law and a related Presidential memorandum, see the editorial note at the end.

Subtitle A—Adjustments to Agricultural Commodity Programs

SEC. 1101. TARGET PRICE REDUCTIONS.

(a) WHEAT.—Effective only for the 1988 and 1989 crops of wheat, section 107D(c)(1)(G) of the Agricultural Act of 1949 (7 U.S.C. 1445b-3(c)(1)(G)) is amended by striking out "$4.29 per bushel for the 1988 crop, $4.16 per bushel for the 1989 crop" and inserting in lieu thereof "$4.23 per bushel for the 1988 crop, $4.10 per bushel for the 1989 crop".

(b) FEED GRAINS.—Effective only for the 1988 and 1989 crops of feed grains, section 105C(c)(1)(E) of such Act (7 U.S.C. 1444e(c)(1)(E)) is amended by striking out "$2.97 per bushel for the 1988 crop, $2.88 per bushel for the 1989 crop" and inserting in lieu thereof "$2.93 per bushel for the 1988 crop, $2.84 per bushel for the 1989 crop".

(c) COTTON.—Effective only for the 1988 and 1989 crops of upland cotton, section 103A(c)(1)(D) of such Act (7 U.S.C. 1444-1(c)(1)(D)) is amended by striking out "$0.77 per pound for the 1988 crop, $0.745

[1] Copy read "loans".

per pound for the 1989 crop" and inserting in lieu thereof "$0.759 per pound for the 1988 crop, $0.734 per pound for the 1989 crop".

(d) EXTRA LONG STAPLE COTTON.—Effective only for the 1988 and 1989 crops of extra long staple cotton, section 103(h)(3)(B) of such Act (7 U.S.C. 1444(h)(3)(B)) is amended—

(1) by striking out "The" and inserting in lieu thereof "Except as provided in clause (ii), the"; and

(2) by adding at the end thereof the following new clause:

"(ii) In the case of each of the 1988 and 1989 crops of extra long staple cotton, the established price for each such crop shall be 118.3 percent of the loan level determined for such crop under paragraph (2).".

(e) RICE.—Effective only for the 1988 and 1989 crops of rice, section 101A(c)(1)(D) of such Act (7 U.S.C. 1441-1(c)(1)(D)) is amended by striking out "$11.30 per hundredweight for the 1988 crop, $10.95 per hundredweight for the 1989 crop" and inserting in lieu thereof "$11.15 per hundredweight for the 1988 crop, $10.80 per hundredweight for the 1989 crop".

SEC. 1102. LOAN RATES.

(a) WHEAT.—Effective only for the 1988 through 1990 crops of wheat, section 107D(a)(3)(B) of the Agricultural Act of 1949 (7 U.S.C. 1445b-3(a)(3)(B)) is amended by striking out "not be reduced by more than 5 percent from the level determined for the preceding crop." and inserting in lieu thereof the following: "not be reduced by more than—

"(i) in the case of the 1987 crop, 5 percent from the level determined for the preceding crop;

"(ii) in the case of the 1988 crop, 3 percent from the level determined for the preceding crop;

"(iii) in the case of the 1989 crop, 5 percent from the level determined for the preceding crop, plus an additional 2 percent from the level determined for the preceding crop if the Secretary, after taking into account any reduction that is provided for under paragraph (4)(A)(ii), determines that such additional percentage reduction is necessary to maintain a competitive market position for wheat; and

"(iv) in the case of the 1990 crop, 5 percent from the level determined for the preceding crop.".

(b) FEED GRAINS.—Effective only for the 1988 through 1990 crops of feed grains, section 105C(a)(2)(B) of such Act (7 U.S.C. 1444e(a)(2)(B)) is amended by striking out "not be reduced by more than 5 percent from the level determined for the preceding crop." and inserting in lieu thereof the following: "not be reduced by more than—

"(i) in the case of the 1987 crop, 5 percent from the level determined for the preceding crop;

"(ii) in the case of the 1988 crop, 3 percent from the level determined for the preceding crop;

"(iii) in the case of the 1989 crop, 5 percent from the level determined for the preceding crop, plus an additional 2 percent from the level determined for the preceding crop if the Secretary, after taking into account any reduction that is provided for under paragraph (3)(A)(ii), determines that such additional percentage reduction is necessary to maintain a competitive market position for feed grains; and

"(iv) in the case of the 1990 crop, 5 percent from the level determined for the preceding crop.".

(c) COTTON.—Effective only for the 1988 through 1990 crops of upland cotton, subparagraph (A) of section 103A(a)(2) of such Act (7 U.S.C. 1444-1(a)(2)(A)) is amended to read as follows:

"(A) The loan level for any crop determined under paragraph (1)(B) may not be reduced below 50 cents per pound nor more than—

"(i) in the case of the 1987 crop, 5 percent from the level determined for the preceding crop;

"(ii) in the case of the 1988 crop, 3 percent from the level determined for the preceding crop;

"(iii) in the case of the 1989 crop, 5 percent from the level determined for the preceding crop, plus an additional 2 percent from the level determined for the preceding crop if the Secretary determines that such additional percentage reduction is necessary to maintain a competitive market position for upland cotton; and

"(iv) in the case of the 1990 crop, 5 percent from the level determined for the preceding crop.".

(d) RICE.—Effective only for the 1988 through 1990 crops of rice, paragraph (2) of section 101A(a) of such Act (7 U.S.C. 1441-1(a)(2)) is amended to read as follows:

"(2) The loan level for any crop determined under paragraph (1)(B) may not be reduced by more than—

"(A) in the case of the 1987 crop, 5 percent from the level determined for the preceding crop;

"(B) in the case of the 1988 crop, 3 percent from the level determined for the preceding crop;

"(C) in the case of the 1989 crop, 5 percent from the level determined for the preceding crop, plus an additional 2 percent from the level determined for the preceding crop if the Secretary determines that such additional percentage reduction is necessary to maintain a competitive market position for rice; and

"(D) in the case of the 1990 crop, 5 percent from the level determined for the preceding crop.".

SEC. 1103. FEED GRAIN DIVERSION PROGRAM.

Effective only for the 1988 and 1989 crops of feed grains, section 105C(f)(5) of the Agricultural Act of 1949 (7 U.S.C. 1444e(f)(5)) is amended by adding at the end thereof the following new subparagraph:

"(D)(i) In the case of the 1988 and 1989 crops of corn, grain sorghums, and barley, except as provided in clause (ii), the Secretary shall make land diversion payments to producers of corn, grain sorghums, and barley, in accordance with this paragraph, under which the required reduction in the crop acreage base shall be 10 percent and the diversion payment rate shall be $1.75 per bushel for corn. The Secretary shall establish the diversion payment rate for grain sorghums and barley at such level as the Secretary determines is fair and reasonable in relation to the rate established for corn.

"(ii) In the case of the 1989 crop of corn, grain sorghums, or barley, the Secretary may waive the application of clause (i) if the Secretary determines that it is necessary to maintain an adequate supply of corn, grain sorghums, or barley.".

SEC. 1104. PRICE SUPPORT REDUCTION FOR NONTARGET PRICE COMMODITIES.

(a) TOBACCO.—Effective only for the 1988 and 1989 crops of tobacco, section 106(f) of the Agricultural Act of 1949 (7 U.S.C. 1445(f)) is amended by adding at the end thereof the following new paragraph:

"(8)(A) Notwithstanding any other provision of this subsection, in the case of each of the 1988 and 1989 crops of any kind of tobacco, the Secretary shall reduce the support level for such crop by an amount equal to 1.4 percent of the level otherwise established under this subsection. Any such reduction shall not be taken into consideration in determining the support level for a subsequent crop of tobacco.

"(B) In lieu of making any such reduction, the Secretary may impose assessments on the producers and purchasers in an amount sufficient to realize a reduction in outlays equal to the amount that would have been achieved as a result of the reduction required under subparagraph (A). Such assessments shall not apply to purchasers if it is judicially determined that the imposition of the purchaser assessment will adversely affect the contracts entered into under section 1109 of the Consolidated Omnibus Budget Reconciliation Act of 1986 (7 U.S.C. 1445-3).".

(b) PEANUTS.—Effective only for the 1988 and 1989 crops of peanuts, section 108B of such Act (7 U.S.C. 1445c-2) is amended by adding at the end thereof the following new paragraph:

"(6) Notwithstanding any other provision of this section, in the case of each of the 1988 and 1989 crops of peanuts, the Secretary shall reduce outlays under the program provided for under this subsection by an amount equal to 1.4 percent of the amount of outlays that would otherwise be incurred in the absence of the reduction required by this paragraph.".

(c) HONEY.—Effective only for the 1987 through 1990 crops of honey, section 201(b)(1) of such Act (7 U.S.C. 1446(b)(1)) is amended by adding at the end thereof the following new subparagraph:

"(D) Notwithstanding the foregoing provisions of this paragraph, effective for each of the 1987 through 1990 crops, the loan and purchase level for honey that would otherwise apply under subparagraphs (B) and (C), without regard to this subparagraph, shall be reduced for loans and purchases made after the date of the enactment of this subparagraph by 2 cents per pound for the 1987 crop, ¾ cents per pound for the 1988 crop, ½ cent per pound for the 1989 crop, and ¼ cent per pound for the 1990 crop.".

(d) MILK.—Section 201(d)(2) of such Act (7 U.S.C. 1446(d)) is amended—

(1) in subparagraph (C), by striking out "subparagraph (A)" and inserting in lieu thereof "this paragraph"; and

(2) by adding at the end thereof the following new subparagraph:

"(F) During calendar year 1988, the Secretary shall provide for a reduction of 2½ cents per hundredweight to be made in the price received by producers for all milk produced in the United States and marketed by producers for commercial use.".

(e) SUGAR.—Section 201(j) of such Act (7 U.S.C. 1446(j)) is amended by adding at the end thereof the following new paragraph:

"(7) Notwithstanding any other provision of this section, in the case of each of the 1988 and 1989 crops of sugar beets and sugarcane, the Secretary shall reduce outlays under the program provided for under this subsection by an amount equal to 1.4 percent of the amount of outlays that would otherwise be incurred in the absence of the reduction required by this paragraph.".

(f) WOOL AND MOHAIR.—Section 703(b) of the National Wool Act of 1954 (7 U.S.C. 1782) is amended—

(1) by striking out "The" and inserting in lieu thereof "(1) Except as provided in paragraphs (2) and (3), the";

(2) by striking out ": *Provided,*" and all that follows through the period and inserting in lieu thereof a period; and

(3) by adding at the end thereof the following new paragraphs:

"(2) Except as provided in paragraph (3), for the marketing years beginning January 1, 1982, and ending December 31, 1990, the support price for shorn wool shall be 77.5 percent (rounded to the nearest full cent) of the amount calculated according to paragraph (1).

"(3) For the marketing years beginning January 1, 1988, and ending December 31, 1989, the support price for shorn wool shall be 76.4 percent (rounded to the nearest full cent) of the amount calculated according to paragraph (1).".

SEC. 1105. LOAN RATE DIFFERENTIALS.

Section 403 of the Agricultural Act of 1949 (7 U.S.C. 1423) is amended by adding at the end thereof the following new sentence: "Notwithstanding the preceding provisions of this section, for each of the 1988 through 1990 crops of wheat and feed grains, no adjustment in the loan rate applicable to a particular region, State, or county for the purpose of reflecting transportation differentials may increase or decrease such regional, State, or county loan rate from the level established for the previous year by more than the percentage change in the national average loan rate plus or minus 2 percent.".

SEC. 1106. STORAGE COST ADJUSTMENT.

15 USC 714b note.

For the fiscal years 1988 and 1989, the Secretary of Agriculture shall ensure that expenditures of the Commodity Credit Corporation for commercial storage, transportation, and handling of commodities owned by the Corporation (excluding storage payments made in accordance with section 110 of the Agricultural Act of 1949 (7 U.S.C. 1445e)) are reduced by $230,000,000 in such fiscal years from the amount of funds otherwise projected to be expended in fiscal years 1988 and 1989 under the budget base determined under section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901) for commercial storage, transportation, and handling of such commodities. In order to achieve the savings required by this section, the Secretary shall adjust storage, handling, or transportation expenditures paid by the Corporation or take other appropriate actions.

SEC. 1107. ACREAGE LIMITATION PROGRAM FOR OATS.

Effective only for the 1988 through 1990 crops of feed grains, section 105C(f)(2) of the Agricultural Act of 1949 (7 U.S.C. 1444e(f)(2)) is amended by adding at the end thereof the following new subparagraph:

"(G) In the case of the 1988 through 1990 crops of oats, the Secretary shall not establish a percentage reduction in accordance with paragraph (1) in excess of 5 percent. In implementing this subparagraph, the Secretary shall issue regulations that provide for the fair and equitable treatment of producers on a farm for which an oat and barley crop acreage base has been established. To ensure the efficient and fair implementation of this subparagraph, the Secretary shall announce revisions of the acreage limitation program for the 1988 crop of feed grains that implement this subparagraph as soon as practicable after the date of enactment of the Agricultural Reconciliation Act of 1987. In the case of the 1990 crop of oats, the Secretary may waive the application of this subparagraph if the Secretary determines that the supply of oats will be excessive.".

Regulations.

SEC. 1108. PRODUCER RESERVE PROGRAM.

Subparagraph (A) of the fourth sentence of section 110(b) of the Agricultural Act of 1949 (7 U.S.C. 1445e(b)) is amended—

(1) in clause (i), by striking out "17 percent of the estimated total domestic and export usage of wheat during the then current marketing year for wheat, as determined by the Secretary" and inserting in lieu thereof "300 million bushels"; and

(2) in clause (ii), by striking out "7 percent of the estimated total domestic and export usage of feed grains during the then current marketing year for feed grains, as determined by the Secretary" and inserting in lieu thereof "450 million bushels".

SEC. 1109. YIELD ADJUSTMENTS.

Effective only for the 1988 through 1990 crops of wheat, feed grains, upland cotton, and rice, section 506(b)(2) of the Agricultural Act of 1949 (7 U.S.C. 1466(b)(2)) is amended by adding at the end thereof the following new subparagraph:

"(C) In the case of each of the 1988 through 1990 crop years for a commodity, if the farm program payment yield for a farm is reduced more than 10 percent below the farm program payment yield for the 1985 crop year, the Secretary shall make available to producers established price payments for the commodity in such amount as the Secretary determines is necessary to provide the same total return to producers as if the farm program payment yield had not been reduced more than 10 percent below the farm program payment yield for the 1985 crop year. Such payments shall be made available to producers at the time final deficiency payments are made available.".

SEC. 1110. ADVANCE PAYMENTS.

Effective only for the 1988 through 1990 crops of wheat, feed grains, upland cotton, and rice, section 107C(a) of the Agricultural Act of 1949 (7 U.S.C. 1445b-2(a)) is amended—

(1) by striking out paragraph (1) and inserting in lieu thereof the following new paragraph:

"(1) If the Secretary establishes an acreage limitation or set-aside program for any of the 1988 through 1990 crops of wheat, feed grains, upland cotton, or rice under this Act and determines that deficiency payments will likely be made for such commodity for such crop, the Secretary shall make advance deficiency payments available to producers for each of such crops."; and

(2) in paragraph (2)(F), by striking out clause (iii) and inserting in lieu thereof the following new clause:

"(iii)(I) in the case of wheat and feed grains, not less than 40 percent, nor more than 50 percent, of the projected payment rate; and

"(II) in the case of rice and upland cotton, not less than 30 percent, nor more than 50 percent, of the projected payment rate,".

SEC. 1111. ADVANCED EMERGENCY COMPENSATION PAYMENTS FOR WHEAT.

Effective only for the 1987 through 1990 crops of wheat, section 107D(c)(1)(E) of the Agricultural Act of 1949 (7 U.S.C. 1445b-3(c)(1)(E)) is amended by adding at the end thereof the following new clauses:

"(iii) Notwithstanding any other provision of this Act, in the case of each of the 1987 through 1990 crops of wheat, the Secretary shall—

"(I) by December 1 of each of the marketing years for such crops (or, in the case of the 1987 crop, as soon as practicable after the date of enactment of the Agricultural Reconciliation Act of 1987), estimate the national weighted average market price, per bushel of wheat, received by producers during such marketing year;

"(II) by December 15 of such marketing year (or, in the case of the 1987 crop, as soon as practicable, but not later than 75 days, after the date of enactment of such Act), use the estimate to make available to producers who have elected the payment option authorized by this clause not less than 75 percent of the increase in established price payments estimated to be payable with respect to such crop under this subparagraph; and

"(III) adjust the amount of each final established price payment for wheat to reflect any difference between the amount of any estimated payment made under this clause and the amount of actual payment due under this subparagraph.

"(iv) Producers shall elect the payment option authorized by clause (iii)—

"(I) in the case of the 1987 crop of wheat, not later than 45 days after the date of the enactment of this clause; and

"(II) in the case of each of the 1988 through 1990 crops of wheat, at the time of entering into a contract to participate in the program established by this section for the crop.". Contracts.

SEC. 1112. TOBACCO PROVISIONS.

(a) TRANSFER AUTHORITY.—Section 316 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 316(h)) is amended by adding at the end thereof the following new subsection: 7 USC 1314b.

"(h)(1) Notwithstanding any other provision of this section, the Secretary may permit, after June 30 of any crop year, the lease and transfer of flue-cured tobacco quota assigned to a farm if—

"(A) the planted acreage of flue-cured tobacco on the farm to which the quota is assigned is determined by the Secretary to be equal to or greater than 90 percent of the farm's acreage allotment, or the planted acreage is determined to be sufficient to produce the farm marketing quota under average conditions; and

"(B) the farm's expected production of flue-cured tobacco is less than 80 percent of the farm's effective marketing quota as a result of a natural disaster condition.

"(2) Any lease and transfer of quota under this paragraph may be made to any other farm within the same State in accordance with regulations issued by the Secretary.".

(b) PERIODIC ADJUSTMENT OF YIELD FACTOR FOR [2] FLUE-CURED TOBACCO ACREAGE-POUNDAGE QUOTAS.—Section 317(a) of such Act (7 U.S.C. 1314c(a)) is amended by striking out "and at five year intervals thereafter" each place it appears in paragraphs (2), (4), and (6)(A).

(c) IMPROVED TOBACCO FIELD MEASUREMENT.—It is the sense of Congress that the Secretary of Agriculture should review current compliance procedures for acreage or poundage quotas with respect to cigar and dark-air and fire-cured tobaccos under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) to determine means of improving such procedures. The Secretary shall recommend to Congress changes in existing law that would be necessary to implement any such improvements.

SEC. 1113. HAYING AND GRAZING.

(a) WHEAT.—Effective only for the 1988 through 1990 crops of wheat, section 107D of the Agricultural Act of 1949 (7 U.S.C. 1445b-3) is amended—

(1) in subsection (c)(1)(K)—

(A) in clause (i)—

(i) by striking out "(i)"; and

(ii) by redesignating subclauses (I) and (II) as clauses (i) and (ii), respectively; and

(B) by striking out clause (ii);

(2) in subsection (f)(4)—

(A) in subparagraph (B)—

(i) by striking out "Subject to subparagraph (C), the" and inserting in lieu thereof "The"; and

(ii) by striking out "hay and grazing,"; and

(B) by striking out subparagraph (C) and inserting in lieu thereof the following new subparagraph:

"(C)(i) Except as provided in clauses (ii) and (iii), haying and grazing of acreage designated as conservation use acreage for the purpose of meeting any requirements established under an acreage limitation program (including a program conducted under subsection (c)(1)(C)), set-aside program, or land diversion program established under this section shall be permitted, except during any consecutive 5-month period that is established by the State committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) for a State. Such 5-month period shall be established during the period beginning April 1, and ending October 31, of a year.

"(ii) In the case of a natural disaster, the Secretary may permit unlimited haying and grazing on such acreage.

"(iii) Haying and grazing shall not be permitted for any crop under clause (i) if the Secretary determines that haying and grazing would have an adverse economic effect.".

[2] Copy read "FOR".

(b) FEED GRAINS.—Effective only for the 1988 through 1990 crops of feed grains, section 105C of such Act (7 U.S.C. 1445b-3) is amended— 7 USC 1444e.

(1) in subsection (c)(1)(I)—

(A) in clause (i)—

(i) by striking out "(i)"; and

(ii) by redesignating subclauses (I) and (II) as clauses (i) and (ii), respectively; and

(B) by striking out clause (ii);

(2) in subsection (f)(4)—

(A) in subparagraph (B)—

(i) by striking out "Subject to subparagraph (C), the" and inserting in lieu thereof "The"; and

(ii) by striking out "hay and grazing,"; and

(B) by striking out subparagraph (C) and inserting in lieu thereof the following new subparagraph:

"(C)(i) Except as provided in clauses (ii) and (iii), haying and grazing of acreage designated as conservation use acreage for the purpose of meeting any requirements established under an acreage limitation program (including a program conducted under subsection (c)(1)(B)), set-aside program, or land diversion program established under this section shall be permitted, except during any consecutive 5-month period that is established by the State committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) for a State. Such 5-month period shall be established during the period beginning April 1, and ending October 31, of a year.

"(ii) In the case of a natural disaster, the Secretary may permit unlimited haying and grazing on such acreage.

"(iii) Haying and grazing shall not be permitted for any crop under clause (i) if the Secretary determines that haying and grazing would have an adverse economic effect.".

(c) COTTON.—Effective only for the 1988 through 1990 crops of upland cotton, section 103A of such Act (7 U.S.C. 1444-1) is amended—

(1) in subsection (c)(1)(G)—

(A) in clause (i)—

(i) by striking out "(i)"; and

(ii) by redesignating subclauses (I) and (II) as clauses (i) and (ii), respectively; and

(B) by striking out clause (ii);

(2) in subsection (f)(3)—

(A) in subparagraph (B)—

(i) by striking out "Subject to subparagraph (C), the" and inserting in lieu thereof "The"; and

(ii) by striking out "hay and grazing,"; and

(B) by striking out subparagraph (C) and inserting in lieu thereof the following new subparagraph:

"(C)(i) Except as provided in clauses (ii) and (iii), haying and grazing of acreage designated as conservation use acreage for the purpose of meeting any requirements established under an acreage limitation program (including a program conducted under subsection (c)(1)(C)), set-aside program, or land diversion program established under this section shall be permitted, except during any consecutive 5-month period that is established by the State committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) for a State. Such 5-

month period shall be established during the period beginning April 1, and ending October 31, of a year.

"(ii) In the case of a natural disaster, the Secretary may permit unlimited haying and grazing on such acreage.

"(iii) Haying and grazing shall not be permitted for any crop under clause (i) if the Secretary determines that haying and grazing would have an adverse economic effect.".

(d) RICE.—Effective only for the 1988 through 1990 crops of rice, section 101A of such Act (7 U.S.C. 1441-1) is amended—

(1) in subsection (c)(1)(G)—

(A) in clause (i)—

(i) by striking out "(i)"; and

(ii) by redesignating subclauses (I) and (II) as clauses (i) and (ii), respectively; and

(B) by striking out clause (ii);

(2) in subsection (f)(3)—

(A) in subparagraph (B)—

(i) by striking out "Subject to subparagraph (C), the" and inserting in lieu thereof "The"; and

(ii) by striking out "hay and grazing,"; and

(B) by striking out subparagraph (C) and inserting in lieu thereof the following new subparagraph:

"(C)(i) Except as provided in clauses (ii) and (iii), haying and grazing of acreage designated as conservation use acreage for the purpose of meeting any requirements established under an acreage limitation program (including a program conducted under subsection (c)(1)(B)), set-aside program, or land diversion program established under this section shall be permitted, except during any consecutive 5-month period that is established by the State committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) for a State. Such 5-month period shall be established during the period beginning April 1, and ending October 31, of a year.

"(ii) In the case of a natural disaster, the Secretary may permit unlimited haying and grazing on such acreage.

"(iii) Haying and grazing shall not be permitted for any crop under clause (i) if the Secretary determines that haying and grazing would have an adverse economic effect.".

Subtitle B—Optional Acreage Diversion

SEC. 1201. WHEAT OPTIONAL ACREAGE DIVERSION PROGRAM.

Effective only for the 1988 through 1990 crops of wheat, section 107D(c)(1)(C) of the Agricultural Act of 1949 (7 U.S.C. 1445b-3(c)(1)(C)) is amended—

(1) in clause (i)(II), by striking out ", subject to the compliance of the producers with clause (ii)";

(2) by striking out clauses (ii) and (iii) and inserting in lieu thereof the following new clauses:

"(ii) Notwithstanding any other provision of this section, any producer who elects to devote all or a portion of the permitted wheat acreage of the farm to conservation uses (or other uses as provided in subparagraph (K)) under this subparagraph shall receive deficiency payments on the acreage that is considered to be planted to wheat and eligible for payments under this subparagraph for such crop at a per-bushel rate established by the Secretary, except that

such rate may not be established at less than the projected deficiency payment rate for the crop, as determined by the Secretary. Such projected payment rate for the crop shall be announced by the Secretary prior to the period during which wheat producers may agree to participate in the program for such crop.

"(iii) The Secretary shall implement this subparagraph in such a manner as to minimize the adverse effect on agribusiness and other agriculturally related economic interests within any county, State, or region. In carrying out this subparagraph, the Secretary is authorized to restrict the total amount of wheat acreage that may be taken out of production under this subparagraph, taking into consideration the total amount of wheat acreage that has or will be removed from production under other price support, production adjustment, or conservation program activities. No restrictions on the amount of acreage that may be taken out of production in accordance with this subparagraph in a crop year shall be imposed in the case of a county in which producers were eligible to receive disaster emergency loans under section 321 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961) as a result of a disaster that occurred during such crop year."; and

(3) in clause (iv)—

(A) by inserting "(or all)" after "such portion"; and

(B) by inserting "under this subparagraph" after "subparagraph (K))".

SEC. 1202. FEED GRAINS OPTIONAL ACREAGE DIVERSION PROGRAM.

Effective only for the 1988 through 1990 crops of feed grains, section 105C(c)(1)(B) of the Agricultural Act of 1949 (7 U.S.C. 1444e(c)(1)(B)) is amended—

(1) in clause (i)(II), by striking out ", subject to the compliance of the producers with clause (ii)";

(2) by striking out clauses (ii) and (iii) and inserting in lieu thereof the following new clauses:

"(ii) Notwithstanding any other provision of this section, any producer who elects to devote all or a portion of the permitted feed grain acreage of the farm to conservation uses (or other uses as provided in subparagraph (I)) under this subparagraph shall receive deficiency payments on the acreage that is considered to be planted to feed grains and eligible for payments under this subparagraph for such crop at a per-bushel rate established by the Secretary, except that such rate may not be established at less than the projected deficiency payment rate for the crop, as determined by the Secretary. Such projected payment rate for the crop shall be announced by the Secretary prior to the period during which feed grain producers may agree to participate in the program for such crop.

"(iii) The Secretary shall implement this subparagraph in such a manner as to minimize the adverse effect on agribusiness and other agriculturally related economic interests within any county, State, or region. In carrying out this subparagraph, the Secretary is authorized to restrict the total amount of feed grain acreage that may be taken out of production under this subparagraph, taking into consideration the total amount of feed grain acreage that has or will be removed from production under other price support, production adjustment, or conservation program activities. No restrictions on the amount of acreage that may be taken out of production in accordance with this subparagraph in a crop year shall be imposed in the case of a county in which producers were eligible to receive

disaster emergency loans under section 321 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961) as a result of a disaster that occurred during such crop year."; and

(3) in clause (iv)—

(A) by inserting "(or all)" after "such portion"; and

(B) by inserting "under this subparagraph" after "subparagraph (I))".

7 USC 1444e note.

SEC. 1203. REGULATIONS.

(a) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Secretary of Agriculture shall issue regulations implementing the amendments made to sections 107D(c)(1)(C) and 105C(c)(1)(B) of the Agricultural Act of 1949 (7 U.S.C. 1445b-3(c)(1)(C) and 1444e(c)(1)(B)) by sections 1201 and 1202, respectively.

(b) NONREDUCTION OF BASES AND YIELDS.—Such regulations shall include provisions that ensure that the wheat or feed grain crop acreage base and farm program payment yield for any farm will not be reduced if the producers on the farm set aside from production all, or a portion, of the producer's permitted acreage under the acreage diversion program under section 107D(c)(1)(C) or 105C(c)(1)(B) as amended by section 1201 or 1202, respectively.

(c) EFFECT ON LANDLORD-TENANT RELATIONS.—Such regulations shall ensure, to the maximum extent practicable, that the programs authorized under this subtitle will not adversely affect the relationships between landlords and tenants, regarding any crop acreage base entered into such programs, in existence on the date of enactment of this Act.

Subtitle C—Farm Program Payments

SEC. 1301. PREVENTION OF THE CREATION OF ENTITIES TO QUALIFY AS SEPARATE PERSONS.

(a) IN GENERAL.—Effective beginning with the 1989 crops, the Food Security Act of 1985 is amended—

(1) in section 1001(1) (7 U.S.C. 1308), by striking out "For each" and inserting in lieu thereof "Subject to sections 1001A through 1001C, for each";

(2) in section 1001(2)—

(A) in subparagraph (A), by striking out "For each" and inserting in lieu thereof "Subject to sections 1001A through 1001C, for each"; and

(B) in subparagraph (C), by striking out "The total" and inserting in lieu thereof "Subject to sections 1001A through 1001C, the total"; and

(3) by inserting after section 1001 the following new section:

7 USC 1308-1.

"SEC. 1001A. PREVENTION OF CREATION OF ENTITIES TO QUALIFY AS SEPARATE PERSONS; PAYMENTS LIMITED TO ACTIVE FARMERS.

"(a) PREVENTION OF CREATION OF ENTITIES TO QUALIFY AS SEPARATE PERSONS.—For the purposes of preventing the use of multiple legal entities to avoid the effective application of the payment limitations under section 1001:

"(1) IN GENERAL.—A person (as defined in section 1001(5)(B)(i)) that receives farm program payments (as described in paragraphs (1) and (2) of this section as being subject to limitation)

for a crop year under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) may not also hold, directly or indirectly, substantial beneficial interests in more than two entities (as defined in section 1001(5)(B)(i)(II)) engaged in farm operations that also receive such payments as separate persons, for the purposes of the application of the limitations under section 1001. A person that does not receive such payments for a crop year may not hold, directly or indirectly, substantial beneficial interests in more than three entities that receive such payments as separate persons, for the purposes of the application of the limitations under section 1001.

"(2) MINIMAL BENEFICIAL INTERESTS.—For the purpose of this subsection, a beneficial interest in any entity that is less than 10 percent of all beneficial interests in such entity combined shall not be considered a substantial beneficial interest, unless the Secretary determines, on a case-by-case basis, that a smaller percentage should apply to one or more beneficial interests to ensure that the purpose of this subsection is achieved.

"(3) NOTIFICATION BY ENTITIES.—To facilitate administration of this subsection, each entity receiving such payments as a separate person shall notify each individual or other entity that acquires or holds a substantial beneficial interest in it of the requirements and limitations under this subsection. Each such entity receiving payments shall provide to the Secretary of Agriculture, at such times and in such manner as prescribed by the Secretary, the name and social security number of each individual, or the name and taxpayer identification number of each entity, that holds or acquires a substantial beneficial interest.

"(4) NOTIFICATION OF INTEREST.—

"(A) IN GENERAL.—If a person is notified that the person holds substantial beneficial interests in more than the number of entities receiving payments that is permitted under this subsection for the purposes of the application of the limitations under section 1001, the person immediately shall notify the Secretary, designating those entities that should be considered as permitted entities for the person for purposes of applying the limitations. Each remaining entity in which the person holds a substantial beneficial interest shall be subject to reductions in the payments to the entity subject to limitation under section 1001 in accordance with this subparagraph. Each such payment applicable to the entity shall be reduced by an amount that bears the same relation to the full payment that the person's beneficial interest in the entity bears to all beneficial interests in the entity combined. Before making such reductions, the Secretary shall notify all individuals or entities affected thereby and permit them to adjust among themselves their interests in the designated entity or entities.

"(B) NOTICE NOT PROVIDED.—If the person does not so notify the Secretary, all entities in which the person holds substantial beneficial interests shall be subject to reductions in the per person limitations under section 1001 in the manner described in subparagraph (A). Before making such reductions, the Secretary shall notify all individuals or entities affected thereby and permit them to adjust among

themselves their interests in the designated entity or entities.".

SEC. 1302. PAYMENTS LIMITED TO ACTIVE FARMERS.

Effective beginning with the 1989 crops, section 1001A of the Food Security Act of 1985, as added by section 1301, is amended by adding at the end the following:

"(b) PAYMENTS LIMITED TO ACTIVE FARMERS.—

"(1) IN GENERAL.—To be separately eligible for farm program payments (as described in paragraphs (1) and (2) of section 1001 as being subject to limitation) under the Agricultural Act of 1949 with respect to a particular farming operation (whether in the person's own right or as a partner in a general partnership, a grantor of a revocable trust, a participant in a joint venture, or a participant in a similar entity (as determined by the Secretary) that is the producer of the crops involved), a person must be an individual or entity described in section 1001(5)(B)(i) and actively engaged in farming with respect to such operation, as provided under paragraphs (2), (3), and (4).

"(2) GENERAL CLASSES ACTIVELY ENGAGED IN FARMING.[3]—For the purposes of paragraph (1), except as otherwise provided in paragraph (3):

"(A) INDIVIDUALS.—An individual shall be considered to be actively engaged in farming with respect to a farm operation if—

"(i) the individual makes a significant contribution (based on the total value of the farming operation) of—

"(I) capital, equipment, or land; and

"(II) personal labor or active personal management;

to the farming operation; and

"(ii) the individual's share of the profits or losses from the farming operation is commensurate with the individual's contributions to the operation; and

"(iii) the individual's contributions are at risk.

"(B) CORPORATIONS OR OTHER ENTITIES.—A corporation or other entity described in section 1001(5)(B)(i)(II) shall be considered as actively engaged in farming with respect to a farming operation if—

"(i) the entity separately makes a significant contribution (based on the total value of the farming operation) of capital, equipment, or land;

"(ii) the stockholders or members collectively make a significant contribution of personal labor or active personal management to the operation; and

"(iii) the standards provided in clauses (ii) and (iii) of paragraph (A), as applied to the entity, are met by the entity.

"(C) ENTITIES MAKING SIGNIFICANT CONTRIBUTIONS.—If a general partnership, joint venture, or similar entity (as determined by the Secretary) separately makes a significant contribution (based on the total value of the farming operation involved) of capital, equipment, or land, and the standards provided in clauses (ii) and (iii) of paragraph (A), as applied to the entity, are met by the entity, the partners

[3] Copy read "CLASSES ACTIVELY ENGAGED IN FARMING".

or members making a significant contribution of personal labor or active personal management shall be considered to be actively engaged in farming with respect to the farming operation involved.

"(D) EQUIPMENT AND PERSONAL LABOR.—In making determinations under this subsection regarding equipment and personal labor, the Secretary shall take into consideration the equipment and personal labor normally and customarily provided by farm operators in the area involved to produce program crops.

"(3) SPECIAL CLASSES ACTIVELY ENGAGED IN FARMING.—Notwithstanding paragraph (2), the following persons shall be considered to be actively engaged in farming with respect to a farm operation:

"(A) LANDOWNERS.—A person that is a landowner contributing the owned land to the farming operation if the landowner receives rent or income for such use of the land based on the land's production or the operation's operating results, and the person meets the standard provided in clauses (ii) and (iii) of paragraph (2)(A).

"(B) FAMILY MEMBERS.—With respect to a farming operation conducted by persons, a majority of whom are individuals who are family members, an adult family member who makes a significant contribution (based on the total value of the farming operation) of active personal management or personal labor and, with respect to such contribution, who meets the standards provided in clauses (ii) and (iii) of paragraph (2)(A). For the purposes of the preceding sentence, the term 'family member' means an individual to whom another family member in the farming operation is related as lineal ancestor, lineal descendant, or sibling (including the spouses of those family members who do not make a significant contribution themselves).

"(C) SHARECROPPERS.—A sharecropper who makes a significant contribution of personal labor to the farming operation and, with respect to such contribution, who meets the standards provided in clauses (ii) and (iii) of paragraph (2)(A).

"(4) PERSONS NOT ACTIVELY ENGAGED IN FARMING.—For the purposes of paragraph (1), except as provided in paragraph (3), the following persons shall not be considered to be actively engaged in farming with respect to a farm operation:

"(A) LANDLORDS.—A landlord contributing land to the farming operation if the landlord receives cash rent, or a crop share guaranteed as to the amount of the commodity to be paid in rent, for such use of the land.

"(B) OTHER PERSONS.—Any other person, or class of persons, determined by the Secretary as failing to meet the standards set out in paragraphs (2) and (3).

"(5) CUSTOM FARMING SERVICES.—A person receiving custom farming services will be considered separately eligible for payment limitation purposes if such person is actively engaged in farming based on paragraphs (1) through (3). No other rules with respect to custom farming shall apply.".

SEC. 1303. DEFINITION OF PERSON: ELIGIBLE INDIVIDUALS AND ENTITIES; RESTRICTIONS APPLICABLE TO CASH-RENT TENANTS.

7 USC 1308 note.

Effective beginning with the 1989 crops:

(a) IN GENERAL.—Section 1001(5) of the Food Security Act of 1985 (7 U.S.C. 1308(5)) is amended—

Regulations.

(1) by inserting after the first sentence of subparagraph (A) the following new sentence: "Such regulations shall incorporate the provisions in subparagraphs (B) through (E) of this paragraph, paragraphs (6) and (7), and sections 1001A through 1001C.";

(2) by striking out the second sentence of subparagraph (A) and inserting in lieu thereof the following new subparagraph:

"(B)(i) For the purposes of the regulations issued under subparagraph (A), subject to clause (ii), the term 'person' means—

"(I) an individual, including any individual participating in a farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or a participant in a similar entity (as determined by the Secretary);

"(II) a corporation, joint stock company, association, limited partnership, charitable organization, or other similar entity (as determined by the Secretary), including any such entity or organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar entity (as determined by the Secretary); and

"(III) a State, political subdivision, or agency thereof.

"(ii)(I) Such regulations shall provide that the term 'person' does not include any cooperative association of producers that markets commodities for producers with respect to the commodities so marketed for producers.

"(II) In defining the term 'person' as it will apply to irrevocable trusts and estates, the Secretary shall ensure that fair and equitable treatment is given to trusts and estates and the beneficiaries thereof.

"(iii) Such regulations shall provide that, with respect to any married couple, the husband and wife shall be considered to be one person, except that any married couple consisting of spouses who, prior to their marriage, were separately engaged in unrelated farming operations, each spouse shall be treated as a separate person with respect to the farming operation brought into the marriage by such spouse so long as such operation remains as a separate farming operation, for the purposes of the application of the limitations under this section.";

(3) by redesignating subparagraph (B) as subparagraph (C); and

(4) by adding at the end thereof the following new subparagraphs:

"(D) Any person that conducts a farming operation to produce a crop subject to limitations under this section as a tenant that rents the land for cash (or a crop share guaranteed as to the amount of the commodity to be paid in rent) and that makes a significant contribution of active personal management but not of personal labor shall be considered the same person as the landlord unless the tenant makes a significant contribution of equipment used in the farming operation.

"(E) The Secretary may not approve (for purposes of the application of the limitations under this section) any change in a farming operation that otherwise will increase the number of persons to which the limitations under this section are applied unless the Secretary determines that the change is bona fide and substantive. In the implementation of the preceding sentence, the addition of a family member to a farming operation under the criteria set out in section 1001A(b)(1)(B) shall be considered a bona fide and substantive change in the farming operation.".

(b) LANDS OWNED BY STATES, POLITICAL SUBDIVISIONS, AND PUBLIC SCHOOLS.—Paragraph (6) of section 1001 of the Food Security Act of 1985 (7 U.S.C. 1308(6)) is amended to read as follows:

"(6) The provisions of this section that limit payments to any person shall not be applicable to land owned by a public school district or land owned by a State that is used to maintain a public school.".

SEC. 1304. MORE EFFECTIVE AND UNIFORM APPLICATION OF PAYMENT LIMITATIONS.

7 USC 1308 note.

(a) EDUCATION PROGRAM.

(1) IN GENERAL.—The Secretary of Agriculture shall implement a payment provisions education program for appropriate personnel of the Department of Agriculture and members and other personnel of local, county, and State committees established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)), for the purpose of fostering more effective and uniform application of the payment limitations and restrictions under sections 1001 through 1001C of the Food Security Act of 1985.

(2) TRAINING.—The education program shall provide training to such personnel in the fair, accurate, and uniform application to individual farming operations of the provisions of law and regulation relating to the payment provisions of sections 1001 through 1001C of the Food Security Act of 1985. Particular emphasis shall be given to the changes in the law made by sections 1301, 1302, and 1303 of this Act.

(3) IMPLEMENTATION.—The education program shall be fully implemented, and the training completed, not later than 30 days after the date final regulations are issued to carry out the amendments made by this subtitle.

(4) COMMODITY CREDIT CORPORATION.—The Secretary shall carry out the program provided under this subsection through the Commodity Credit Corporation.

(b) SCHEMES OR DEVICES.—Effective beginning with the 1989 crops, the Food Security Act of 1985 is amended by inserting after section 1001A, as added by sections 1301 and 1302 of this Act, the following new section:

"SEC. 1001B. SCHEMES OR DEVICES.

7 USC 1308-2.

"If the Secretary of Agriculture determines that any person has adopted a scheme or device to evade, or that has the purpose of evading, section 1001, 1001A, or 1001C, such person shall be ineligible to receive farm program payments (as described in paragraphs (1) and (2) of section 1001 as being subject to limitation) applicable to the crop year for which such scheme or device was adopted and the succeeding crop year.".

SEC. 1305. REGULATIONS; TRANSITION RULES; EQUITABLE ADJUSTMENTS.

7 USC 1308 note.

(a) REGULATIONS.—

(1) ISSUANCE.—The Secretary of Agriculture shall issue—

(A) proposed regulations to carry out the amendments made by this subtitle not later than April 1, 1988; and

(B) final regulations to carry out such amendments not later than August 1, 1988.

(2) FIELD INSTRUCTIONS.—Any field instructions relating to, or other supplemental clarifications of, the regulations issued under sections 1001 through 1001C of the Food Security Act of 1985 shall not be used in resolving issues involved in the application of the payment limitations or restrictions under such sections or regulations to individuals, other entities, or farming operations until copies of the publication are made available to the public.

(b) ALLOWANCE FOR EQUITABLE REORGANIZATIONS.—To allow for the equitable reorganization of farming operations to conform to the limitations and restrictions contained in the amendments made to the Food Security Act of 1985 by this subtitle in cases in which the application of such limitations and restrictions will reduce payments to the farming operation (as determined by the Secretary), the Secretary may waive the application of the substantive change rule under section 1001(5)(E), as added by section 1303 of this Act, or any regulation of the Secretary containing a comparable rule, to any reorganization applied for prior to the final date when producers are eligible to enter into contracts to participate in the commodity programs established for the 1989 crop year, to the extent the Secretary determines appropriate to facilitate any such equitable reorganizations that does not increase such payments.

(c) GOOD FAITH RELIANCE ON OFFICIAL ADVICE.—Section 1001 of the Food Security Act of 1985 (7 U.S.C. 1308) is amended by adding at the end thereof the following new paragraph:

"(7) Regulations of the Secretary shall establish time limits for the various steps involved with notice, hearing, decision, and the appeals procedure in order to ensure expeditious handling and settlement of payment limitation disputes. Notwithstanding any other provision of law, actions taken by an individual or other entity in good faith on action or advice of an authorized representative of the Secretary may be accepted as meeting the requirement under this section or section 1001A, to the extent the Secretary deems it desirable in order to provide fair and equitable treatment.".

Contracts.
7 USC 1308 note.

(d) CONSERVATION RESERVE APPLICATION.—Notwithstanding section 1234(f)(2) of the Food Security Act of 1985 (16 U.S.C. 3834(f)), paragraphs (5) through (7) of section 1001, as amended by this subtitle, and sections 1001A through 1001C, of the Food Security Act of 1985 shall apply to the conservation reserve program under subtitle D of title XII of such Act (16 U.S.C. 3831 et seq.) with respect to rental payments to persons under contracts entered into after the date of the enactment of this Act, except with respect to landlords that receive cash rent, or a crop share guaranteed as to the amount of the commodity to be paid in rent, for the use of the land.

SEC. 1306. FOREIGN PERSONS MADE INELIGIBLE FOR PROGRAM BENEFITS.

Effective beginning with the 1989 crops, the Food Security Act of 1985 is amended by inserting after section 1001B, as added by section 1304 of this Act, the following new section:

"SEC. 1001C. FOREIGN PERSONS MADE INELIGIBLE FOR PROGRAM BENEFITS. 7 USC 1308-3.

"Notwithstanding any other provision of law:

"(a) IN GENERAL.—For each of the 1989 and 1990 crops, any person who is not a citizen of the United States or an alien lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) shall be ineligible to receive any type of production adjustment payments, price support program loans, payments, or benefits made available under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.), the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.), or subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.) with respect to any commodity produced, or land set aside from production, on a farm that is owned or operated by such person, unless such person is an individual who is providing land, capital, and a substantial amount of personal labor in the production of crops on such farm.

"(b) CORPORATIONS OR OTHER ENTITIES.—For purposes of subsection (a), a corporation or other entity shall be considered a person that is ineligible for production adjustment payments, price support program loans, payments, or benefits if more than 10 percent of the beneficial ownership of the entity is held by persons who are not citizens of the United States or aliens lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act, unless such persons provide a substantial amount of personal labor in the production of crops on such farm. Notwithstanding the foregoing provisions of this subsection, with respect to an entity that is determined to be ineligible to receive such payments, loans, or other benefits, the Secretary may make payments, loans, and other benefits in an amount determined by the Secretary to be representative of the percentage interests of the entity that is owned by citizens of the United States and aliens lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act.

"(c) PROSPECTIVE APPLICATION.—No person shall become ineligible under this section for production adjustment payments, price support program loans, payments or benefits as the result of the production of a crop of an agricultural commodity planted, or commodity program or conservation reserve contract entered into, before the date of the enactment of this section.". Contracts.

SEC. 1307. HONEY LOAN LIMITATION.

Section 1001(2)(C) of the Food Security Act of 1985 (7 U.S.C. 1308(2)(C)) is amended—

(1) by striking out clause (i); and

(2) in clause (ii), by striking out "(ii)".

Subtitle D—Rural Electrification Administration Programs

CHAPTER 1—PREPAYMENT OF RURAL ELECTRIFICATION LOANS

7 USC 936a note.

SEC. 1401. PREPAYMENT OF LOANS.

(a) ELIGIBILITY TO PREPAY.—Notwithstanding subsections (c), (d), and (e) of section 306A of the Rural Electrification Act of 1936 (7 U.S.C. 936a (c), (d), and (e)), during fiscal year 1988, a borrower of a loan made by the Federal Financing Bank and guaranteed under section 306 of such Act (7 U.S.C. 936) may, at the option of the borrower, prepay such loan (or any loan advance thereunder) in accordance with subsections (a) and (b) of section 306A of such Act, except that any prepayment that would cause the total amount of such prepayments during fiscal year 1988 to exceed $2,000,000,000 shall be subject solely to the approval of the Secretary of the Treasury.

(b) PRIORITY FOR APPROVAL.—In determining which borrowers shall be permitted to prepay loans under subsection (a):

(1) The Administrator of the Rural Electrification Administration shall give priority to those 8 borrowers that were determined by the Administrator, prior to the date of the enactment of this Act, to be eligible to prepay, or that prepaid, an advance under section 306A of such Act (as in effect prior to the date of the enactment of this Act), except that to retain such priority a borrower shall—

Regulations.

(A) notify the Administrator in writing, within 30 days after the issuance of regulations to carry out this section, of the intent of the borrower to prepay; and

(B) complete such prepayment by disbursing funds to the Federal Financing Bank to prepay loan advances within 120 days after the issuance of such regulations.

(2) In considering requests for prepayment under subsection (a) by borrowers not described in paragraph (1), the Administrator shall permit prepayment based on the order in which borrowers are prepared to disburse funds to the Federal Financing Bank to complete such prepayments. If more than 1 borrower is so prepared at the same time, and if the combined amount of such prepayments would cause the total amount of prepayments during fiscal year 1988, under this section, to exceed $2,000,000,000, the Administrator shall—

(A) base the determination on the date on which prepayment applications have been submitted; or

(B) permit partial prepayment by two or more borrowers.

(c) REGULATIONS.—Not later than 30 days after the date of enactment of this Act, the Administrator of the Rural Electrification Administration shall issue such regulations as are necessary to carry at this section.

(d) STUDY.—Not later than January 1, 1989, the Comptroller General of the United States shall—

(1) study—

(A) all benefits provided by Federal Financing Bank lending and the procedures and conditions for the prepayment of current Federal Financing Bank loans;

(B) the benefits and costs to Federal Financing Bank borrowers of making prepayments; and

(C) alternative conditions and procedures for prepayment of all Federal Financing Bank loans to balance Federal benefits with Federal costs; and

(2) submit to Congress a report describing the results of such study, together with any appropriate recommendations. Reports.

SEC. 1402. USE OF FUNDS.

The Rural Electrification Act of 1936 is amended by inserting after section 311 (7 U.S.C. 940a) the following new section:

"SEC. 312. USE OF FUNDS. 7 USC 940b.

"A borrower of an insured or guaranteed electric loan under this Act may, without restriction or prior approval of the Administrator, invest its own funds or make loans or guarantees, not in excess of 15 percent of its total utility plant.".

SEC. 1403. CUSHION OF CREDIT PAYMENTS PROGRAM.

Title III of the Rural Electrification Act of 1936 (as amended by section 1402 of this Act) is amended by adding at the end thereof the following new section:

"SEC. 313. CUSHION OF CREDIT PAYMENTS PROGRAM. 7 USC 940c.

"(a) ESTABLISHMENT.—

"(1) IN GENERAL.—The Administrator shall develop and promote a program to encourage borrowers to voluntarily make deposits into cushion of credit accounts established within the Rural Electrification and Telephone Revolving Fund.

"(2) INTEREST.—Amounts in each cushion of credit account shall accrue interest to the borrower at a rate of 5 percent per annum.

"(3) BALANCE.—A borrower may reduce the balance of its cushion of credit account only if the amount obtained from the reduction is used to make scheduled payments on loans made or guaranteed under this Act.

"(b) USES OF CUSHION OF CREDIT PAYMENTS.—

"(1) IN GENERAL.—

"(A) CASH BALANCE.—Cushion of credit payments shall be held in the Rural Electrification and Telephone Revolving Fund as a cash balance in the cushion of credit accounts of borrowers.

"(B) INTEREST.—All cash balance amounts (obtained from cushion of credit payments, loan payments, and other sources) held by the Fund shall bear interest to the Fund at a rate equal to the weighted average rate on outstanding certificates of beneficial ownership issued by the Fund.

"(C) CREDITS.—The amount of interest accrued on the cash balances shall be credited to the Fund as an offsetting reduction to the amount of interest paid by the Fund on its certificates of beneficial ownership.

"(2) RURAL ECONOMIC DEVELOPMENT SUBACCOUNT.—

"(A) MAINTENANCE OF ACCOUNT.—The Administrator shall maintain a subaccount within the Rural Electrification and Telephone Revolving Fund to which shall be credited, on a monthly basis, a sum determined by multiplying the outstanding cushion of credit payments made after

October 1, 1987, by the difference (converted to a monthly basis) between the average weighted interest rate paid on outstanding certificates of beneficial ownership issued by the Fund and the 5 percent rate of interest provided to borrowers on cushion of credit payments.

"(B) GRANTS.—The Administrator is authorized, from the interest differential sums credited this subaccount and from any other funds made available thereto, to provide grants or zero interest loans to borrowers under this Act for the purpose of promoting rural economic development and job creation projects, including funding for project feasibility studies, start-up costs, incubator projects, and other reasonable expenses for the purpose of fostering rural development.

"(C) REPAYMENTS.—In the case of zero interest loans, the Administrator shall establish such reasonable repayment terms as will ensure borrower participation.

"(D) PROCEEDS.—All proceeds from the repayment of such loans shall be returned to the subaccount.

"(E) NUMBER OF GRANTS.—Such loans and grants shall be made during each fiscal year to the full extent of the amounts held by the rural economic development subaccount, subject only to limitations as may be from time-to-time imposed by law.".

CHAPTER 2—RURAL TELEPHONE BANK BORROWERS

SEC. 1411. RURAL TELEPHONE BANK INTEREST RATES AND LOAN PREPAYMENTS.

7 USC 948 note.

(a) FINDINGS.—Congress finds that—

(1) overcharging of Rural Telephone Bank borrowers has resulted in $179,000,000 in excess profits and has imperiled borrowers by raising costs to ratepayers;

(2) borrowers will be able to seek redress under section 408(b)(3)(G) of the Rural Electrification Act of 1936, as added by subsection (c), or may leave the Rural Telephone Bank, but in no case may the Governor of the Bank issue regulations requiring any penalty from borrowers seeking to retire debt prior to maturity; and

(3) any reduction in Federal Government [4] expenditures in the operation of the Rural Telephone Bank, from borrowers' conduct resulting from the implementation of the amendments made by subsections (b) and (c), should be included in all calculations of the budget of the United States Government, authorized under the [4a] Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987.

(b) RURAL TELEPHONE BANK LOAN PREPAYMENTS.— [5]

(1) PREPAYMENTS AUTHORIZED.—Section 408(b) of the Rural Electrification Act of 1936 (7 U.S.C. 948(b)) is amended by adding at the end the following new paragraph:

"(8) A borrower with a loan from the Rural Telephone Bank may prepay such loan (or any part thereof) by paying the face amount thereof without being required to pay the prepayment

[4] Copy read "government".
[4a] Copy read "under of the".
[5] Copy read "PREPAYMENTS.".

penalty set forth in the note covering such loan, if such prepayment is not made later than September 30, 1988.".

(2) PREPAYMENT REGULATIONS.—The Governor of the Rural Telephone Bank shall issue regulations to carry out the amendment made by paragraph (1) within 30 days after the date of enactment of this Act. Such regulations shall implement the amendment made by paragraph (1) without the addition of any restrictions not set forth in such amendment. 7 USC 948 note.

(c) DETERMINATION OF INTEREST RATES ON RURAL TELEPHONE BANK LOANS.—Paragraph (3) of section 408(b) of the Rural Electrification Act of 1936 (7 U.S.C. 948(b)(3)) is amended—

(1) by inserting "(A)" after the paragraph designation; and

(2) by adding at the end thereof the following new subparagraphs:

"(B) On and after the date of the enactment of this paragraph, advances made on or after such date of enactment under loan commitments made on or after October 1, 1987, shall bear interest at the rate determined under subparagraph (C), but in no event at a rate that is less than 5 percent per annum.

"(C) The rate determined under this subparagraph shall be—

"(i) for the period beginning on the date the advance is made and ending at the close of the fiscal year in which the advance is made, the average yield (on the date of the advance) on outstanding marketable obligations of the United States having a final maturity comparable to the final maturity of the advance; and

"(ii) after the fiscal year in which the advance is made, the cost of money rate for such fiscal year, as determined under subparagraph (D).

"(D) Within 30 days after the end of each fiscal year, the Governor shall determine to the nearest 0.01 percent the cost of money rate for the fiscal year, by calculating the sum of the results of the following calculations:

"(i) The aggregate of all amounts received by the telephone bank during the fiscal year from the issuance of class A stock, multiplied by the rate of return payable by the telephone bank during the fiscal year, as specified in section 406(c), to holders of class A stock, which product is divided by the aggregate of the amounts advanced by the telephone bank during the fiscal year.

"(ii) The aggregate of all amounts received by the telephone bank during the fiscal year from the issuance of class B stock, multiplied by the rate at which dividends are payable by the telephone bank during the fiscal year, as specified in section 406(d), to holders of class B stock, which product is divided by the aggregate of the amounts advanced by the telephone bank during the fiscal year.

"(iii) The aggregate of all amounts received by the telephone bank during the fiscal year from the issuance of class C stock, multiplied by the rate at which dividends are payable by the telephone bank during the fiscal year, under section 406(e), to holders of class C stock, which product is divided by the aggregate of the amounts advanced by the telephone bank during the fiscal year.

"(iv)(I) The sum of the results of the calculations described in subclause (II).

"(II) The amounts received by the telephone bank during the fiscal year from each issue of telephone debentures and other obligations of the telephone bank, multiplied, respectively, by the rates at which interest is payable during the fiscal year by the telephone bank to holders of each issue, each of which products is divided, respectively, by the aggregate of the amounts advanced by the telephone bank during the fiscal year.

"(v)(I) The amount by which the aggregate of the amounts advanced by the telephone bank during the fiscal year exceeds the aggregate of the amounts received by the telephone bank from the issuance of class A stock, class B stock, class C stock, and telephone debentures and other obligations of the telephone bank during the fiscal year, multiplied by the historic cost of money rate as of the close of the fiscal year immediately preceding the fiscal year, which product is divided by the aggregate of the amounts advanced by the telephone bank during the fiscal year.

"(II) For purposes of this clause, the term 'historic cost of money rate', with respect to the close of a preceding fiscal year, means the sum of the results of the following calculations: The amounts advanced by the telephone bank in each fiscal year during the period beginning with fiscal year 1974 and ending with the preceding fiscal year, multiplied, respectively, by the cost of money rate for the fiscal year (as set forth in the table in subparagraph (E)) for fiscal years 1974 through 1987, and as determined by the Governor under this subparagraph for fiscal years after fiscal year 1987), each of which products is divided, respectively, by the aggregate of the amounts advanced by the telephone bank during the period.

"(E) For purposes of subparagraph (D)(II), the cost of money rate for the fiscal years in which each advance was made shall be as set forth in the following table:

"For advances made in—	The cost of money rate shall be—
Fiscal year 1974	5.01 percent
Fiscal year 1975	5.85 percent
Fiscal year 1976	5.33 percent
Fiscal year 1977	5.00 percent
Fiscal year 1978	5.87 percent
Fiscal year 1979	5.93 percent
Fiscal year 1980	8.10 percent
Fiscal year 1981	9.46 percent
Fiscal year 1982	8.39 percent
Fiscal year 1983	6.99 percent
Fiscal year 1984	6.55 percent
Fiscal year 1985	5.00 percent
Fiscal year 1986	5.00 percent
Fiscal year 1987	5.00 percent.

For purposes of this subparagraph, the term 'fiscal year' means the 12-month period ending on September 30 of the designated year.

"(F)(i) Notwithstanding subparagraph (B), if a borrower holds a commitment for a loan under this section made on or after October 1, 1987, and before the date of the enactment of this paragraph, part or all of the proceeds of which have not been advanced as of such date of enactment, the borrower may, until the later of the date the next advance under the loan commit-

ment is made or 90 days after such date of enactment, elect to have the interest rate specified in the loan commitment apply to the unadvanced portion of the loan in lieu of the rate which (but for this clause) would apply to the unadvanced portion under this paragraph. If any borrower makes an election under this clause with respect to a loan, the Governor shall adjust the interest rate which applies to the unadvanced portion of the loan accordingly.

"(ii)(I) If the telephone bank, pursuant to section 407(b), issues telephone debentures on any date to refinance telephone debentures or other obligations of the telephone bank, the telephone bank shall, in addition to any interest rate reduction required by any other provision of this paragraph, for the period applicable to the advance, reduce the interest rate charged on each advance made under this section during the fiscal year in which the refinanced debentures or other obligations were originally issued by the amount applicable to the advance.

"(II) For purposes of subclause (I), the term 'the period applicable to the advance' means the period beginning on the issue date described in subclause (I) and ending on the earlier of the date the advance matures or is completely prepaid.

"(III) For purposes of subclause (I), the term 'the amount applicable to the advance' means an amount which fully reflects that percentage of the funds saved by the telephone bank as a result of the refinancing which is equal to the percentage representation of the advance in all advances described in subclause (I).

"(IV) Within 60 days after any issue date described in subclause (I), the Governor shall amend the loan documentation for each advance described in subclause (I), as necessary, to reflect any interest rate reduction applicable to the advance by reason of this clause, and shall notify each affected borrower of the reduction.

"(G) Within 30 days after the publication of any determination made under subparagraph (D), any affected borrower may obtain review of the determination, or any other equitable relief as may be determined appropriate, by the United States court of appeals for the judicial circuit in which the borrower does business by filing a written petition requesting the court to set aside or modify such determination. On receipt of such a petition, the clerk of the court shall transmit a copy of the petition to the Governor. On receipt of a copy of such a petition from the clerk of the court, the Governor shall file with the court the record on which the determination is based. The court shall have jurisdiction to affirm, set aside, or modify the determination.

"(H) Within 5 days after determining the cost of money rate for a fiscal year, the Governor shall—

"(i) cause the determination to be published in the Federal Register in accordance with section 552 of title 5, United States Code; and

Federal Register, publication.

"(ii) furnish a copy of the determination to the Comptroller General of the United States.

"(I) The Comptroller General shall review, on an expedited basis, each determination a copy of which is received from the Governor and, within 15 days after the date of such receipt, furnish Congress a report on the accuracy of the determination.

Reports.

"(J) The telephone bank shall not sell or otherwise dispose of any loan made under this section, except as provided in this paragraph.".

SEC. 1412. INTEREST RATE TO BE CONSIDERED FOR PURPOSES OF ASSESSING ELIGIBILITY FOR LOANS.

Paragraph (4) of section 408(b) of the Rural Electrification Act of 1936 (7 U.S.C. 948(b)(4)) is amended by inserting at the end the following: "For purposes of determining the creditworthiness of a borrower for a loan under this paragraph, the Governor shall assume that the loan, if made, would bear interest at a rate equal to the average yield (on the date of the determination) on outstanding marketable obligations of the United States having a final maturity comparable to the final maturity of the loan.".

SEC. 1413. ESTABLISHMENT OF RESERVE FOR LOSSES DUE TO INTEREST RATE FLUCTUATIONS.

7 USC 946.

(a) ESTABLISHMENT OF RESERVE; FUNDING.—Section 406 of the Rural Electrification Act of 1936 (7 U.S.C. 947) is amended by adding at the end the following:

"(h) There is hereby established in the telephone bank a reserve for losses due to interest rate fluctuations. Within 30 days after the date of the enactment of this subsection, the Governor of the telephone bank shall transfer to the reserve for losses due to interest rate fluctuations all amounts in the reserve for contingencies as of the date of the enactment of this subsection. Amounts in the reserve for interest rate fluctuations may be expended only to cover operating losses of the telephone bank (other than losses attributable to loan defaults) and only after taking into consideration any recommendations made by the General Accounting Office under section 1413(b) of the Rural Telephone Bank Borrowers Fairness Act of 1987.".

Reports.

(b) STUDY BY GENERAL ACCOUNTING OFFICE.—Within 180 days after the date of the enactment of this Act, the General Accounting Office shall complete a study of operations of the telephone bank and report its recommendations to the Committees on Agriculture and Government Operations of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate with respect to—

(1) the appropriate level of funding for the reserve for losses due to interest rate fluctuations established in section 406(h) of the Rural Electrification Act of 1936 (7 U.S.C. 947(h)) (as added by subsection (a));

(2) the circumstances under which amounts in the reserve for losses due to interest rate fluctuations should be expended;

(3) the circumstances under which amounts should be added to the reserve for losses due to interest rate fluctuations; and

(4) the disposition of excess reserves.

In such study, the General Accounting Office shall consider the effects of such recommendations on telephone bank borrowers, the subscribers of such borrowers, and the United States Government.

7 USC 946.

(c) LIMITATION ON ESTABLISHMENT OF NEW RESERVES.—Subsection (g) of section 406 of the Rural Electrification Act of 1936 (7 U.S.C. 947(g)) is amended—

(1) by striking out "reserves for losses," and inserting in lieu thereof "the reserve for loan losses,"; and

(2) by adding at the end the following: "The telephone bank may not establish any reserve other than the reserves referred to in this subsection and in subsection (h).".

SEC. 1414. PUBLICATION OF RURAL TELEPHONE BANK POLICIES AND REGULATIONS.

Federal Register, publication. Grants. Contracts. 7 USC 944a.

Notwithstanding the exemption contained in section 553(a)(2) of title 5, United States Code, the Governor of the telephone bank shall cause to be published in the Federal Register, in accordance with section 553 of title 5, United States Code, all rules, regulations, bulletins, and other written policy standards governing the operation of the telephone bank's programs relating to public property, loans, grants, benefits, or contracts. After September 30, 1988, the telephone bank may not deny a loan or advance to, or take any other adverse action against, any applicant or borrower for any reason which is based upon a rule, regulation, bulletin, or other written policy standard which has not been published pursuant to such section.

Subtitle E—Miscellaneous

SEC. 1501. MARKETING ORDER PENALTIES.

Section 8c(14) of the Agricultural Adjustment Act of 1933 (7 U.S.C. 608c(14)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended—

(1) by inserting "(A)" before "Any"; and

(2) by adding at the end thereof the following new subparagraph:

"(B) Any handler subject to an order issued under this section, or any officer, director, agent, or employee of such handler, who violates any provision of such order (other than a provision calling for payment of a pro rata share of expenses) may be assessed a civil penalty by the Secretary not exceeding $1,000 for each such violation. Each day during which such violation continues shall be deemed a separate violation, except that if the Secretary finds that a petition pursuant to paragraph (15) was filed and prosecuted by the handler in good faith and not for delay, no civil penalty may be assessed under this paragraph for such violations as occurred between the date on which the handler's petition was filed with the Secretary, and the date on which notice of the Secretary's ruling thereon was given to the handler in accordance with regulations prescribed pursuant to paragraph (15). The Secretary may issue an order assessing a civil penalty under this paragraph only after notice and an opportunity for an agency hearing on the record. Such order shall be treated as a final order reviewable in the district courts of the United States in any district in which the handler subject to the order is an inhabitant, or has the handler's principal place of business. The validity of such order may not be reviewed in an action to collect such civil penalty.".

SEC. 1502. STUDY OF USE OF AGRICULTURAL COMMODITY FUTURES AND OPTIONS MARKETS.

The last sentence of section 1742 of the Food Security Act of 1985 (7 U.S.C. 1421 note) is amended by striking out "1988" and inserting in lieu thereof "1989".

SEC. 1503. AUTHORIZATION OF APPROPRIATIONS FOR PHILIPPINE FOOD AID INITIATIVE.

Section 416(b) of the Agricultural Act of 1949 (7 U.S.C. 1431(b)) is amended by adding at the end thereof the following new paragraph:

"(12) There is authorized to be appropriated for fiscal year 1988, in addition to any other funds authorized to be appropriated, $1,000,000 for technical assistance for the sale or barter of commodities under paragraph (7) to strengthen nonprofit private organizations and cooperatives in the Philippines.".

SEC. 1504. RURAL INDUSTRIALIZATION ASSISTANCE.

Section 310B(c) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932(c)) is amended—

(1) by inserting "and private nonprofit corporations" after "public bodies"; and

(2) by striking out "to facilitate development of" and inserting in lieu thereof "to finance and facilitate development of small and emerging".

SEC. 1505. PLANT VARIETY PROTECTION FEES.

Section 31 of the Plant Variety Protection Act (7 U.S.C. 2371) is amended to read as follows:

"SEC. 31. PLANT VARIETY PROTECTION FEES.

"(a) IN GENERAL.—The Secretary shall, under such regulations as the Secretary may prescribe, charge and collect reasonable fees for services performed under this Act.

"(b) LATE PAYMENT PENALTY.—On failure to pay such fees, the Secretary shall assess a late payment penalty. Such overdue fees shall accrue interest as required by section 3717 of title 31, United States Code.

"(c) DISPOSITION OF FUNDS.—Such fees, late payment penalties, and accrued interest collected shall be credited to the account that incurs the cost and shall remain available without fiscal year limitation to pay the expenses incurred by the Secretary in carrying out this Act. Such funds collected (including late payment penalties and any interest earned) may be invested by the Secretary in insured or fully collateralized, interest-bearing accounts or, at the discretion of the Secretary, by the Secretary of the Treasury in United States Government debt instruments.

"(d) ACTIONS FOR NONPAYMENT.—The Attorney General may bring an action for the recovery of charges that have not been paid in accordance with this Act against any person obligated for payment of such charges under this Act in any United States district court or other United States court for any territory or possession in any jurisdiction in which the person is found, resides, or transacts business. The court shall have jurisdiction to hear and decide the action.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this Act.".

SEC. 1506. ANNUAL APPROPRIATIONS TO REIMBURSE THE COMMODITY CREDIT CORPORATION FOR NET REALIZED LOSSES.

(a) IN GENERAL.—The first sentence of section 2 of Public Law 87-155 (15 U.S.C. 713a-11) is amended by striking out ", commencing with the fiscal year ending June 30, 1961" and inserting in lieu thereof "by means of a current, indefinite appropriation".

(b) OPERATING EXPENSES.—No funds may be appropriated for operating expenses of the Commodity Credit Corporation except as authorized under section 2 of Public Law 87-155 to reimburse the Corporation for net realized losses. 15 USC 713a-11 note.

(c) EFFECTIVE DATE.—This section and the amendment made by this section shall apply beginning with fiscal year 1988. 15 USC 713a-11 note.

SEC. 1507. FEDERAL CROP INSURANCE. 7 USC 1508 note.

It is the sense of Congress that, in carrying out the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation—

(1) should not be required to assume 100 percent of all loss adjustments in the Federal crop insurance program; and

(2) should assume and perform the loss adjustment obligations of a reinsured company if the Corporation determines that such company's loss adjustment performance and practices are not carried out in accordance with the applicable reinsurance agreement.

SEC. 1508. ETHANOL USAGE. 42 USC 7545 note.

(a) FINDINGS.—Congress finds that—

(1) the United States is dependent for a large and growing share of its energy needs on the Middle East at a time when world petroleum reserves are declining;

(2) the burning of gasoline causes pollution;

(3) ethanol can be blended with gasoline to produce a cleaner source of fuel;

(4) ethanol can be produced from grain, a renewable resource that is in considerable surplus in the United States;

(5) the conversion of grain into ethanol would reduce farm program costs and grain surpluses; and

(6) increasing the quantity of motor fuels that contain at least 10 percent ethanol from current levels to 50 percent by 1992 would create thousands of new jobs in ethanol production facilities.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the Administrator of the Environmental Protection Agency should use authority provided under the Clean Air Act (42 U.S.C. 7401 et seq.) to require greater use of ethanol as motor fuel.

SEC. 1509. DEMONSTRATION OF FAMILY INDEPENDENCE PROGRAM.

The Food Stamp Act of 1977 is amended by adding after section 20 (7 U.S.C. 2029) the following new section:

"SEC. 21. DEMONSTRATION OF FAMILY INDEPENDENCE PROGRAM. 7 USC 2030.

"(a) IN GENERAL.—Upon written application of the State of Washington (in this section referred to as the 'State') and after the approval of such application by the Secretary, the State may conduct a Family Independence Demonstration Project (in this section referred to as the 'Project') in all or in part of the State in accordance with this section to determine whether the Project, as an alternative to providing benefits under the food stamp program, would more effectively break the cycle of poverty and would provide families with opportunities for economic independence and strengthened family functioning.

"(b) NATURE OF PROJECT.—In an application submitted under subsection (a), the State shall provide the following:

"(1) Except as provided in this section, the provisions of chapter 434 of the 1987 Washington Laws, as enacted in May 1987, shall apply to the operation of the Project.

"(2) All of the following terms and conditions shall be in effect under the Project:

"(A)(i) Except as provided in clause (ii), individuals with respect to whom benefits may be paid under part A of title IV of the Social Security Act, and such other individuals as are included in the Project pursuant to chapter 434 of the 1987 Washington Laws, as enacted in May 1987, shall be eligible to participate in the Project in lieu of receiving benefits under the food stamp program and cash assistance under any other Federal program covered by the Project.

"(ii) Individuals who receive only child care or medical benefits under the Project shall not be eligible to receive food assistance under the Project. Such individuals may receive coupons under the food stamp program if eligible.

"(B) Individuals who participate in the Project shall receive for each month an amount of cash assistance that is not less than the total value of the assistance such individuals would otherwise receive, in the aggregate, under the food stamp program and any cash-assistance Federal program covered by the Project for such month, including income and resource exclusions and deductions, and benefit levels.

"(C)(i) The State may provide a standard benefit for food assistance under the Project, except that individuals who participate in the Project shall receive as food assistance for a month an amount of cash that is not less than the value of the assistance such individuals would otherwise receive under the food stamp program.

"(ii) The State may provide a cash benefit for food assistance equal to the value of the thrifty food plan.

"(D) Each month participants in the Project shall be notified by the State of the amount of Project assistance that is provided as food assistance for such month.

"(E) The State shall have a program to require participants to engage in employment and training activities carried out under chapter 434 of the 1987 Washington Laws, as enacted in May 1987.[6]

"(F) Food assistance shall be provided under the Project—

"(i) to any individual who is accepted for participation in the Project, not later than 30 days after such individual applies to participate in the Project;

"(ii) to any participant for the period that begins on the date such participant applies to participate in the Project, except that the amount of such assistance shall be reduced to reflect the pro rata value of any coupons received under the food stamp program for such period for the benefit of such participant; and

"(iii) until—

"(I) the participant's cash assistance under the Project is terminated;

[6] Copy read "May, 1987.".

"(II) such participant is informed of such termination and is advised of the eligibility requirements for participation in the food stamp program;

"(III) the State determines whether such participant will be eligible to receive coupons as a member of a household under the food stamp program; and

"(IV) coupons under the food stamp program are received by such participant if such participant will be eligible to receive coupons as a member of a household under the food stamp program.

"(G)(i) [7] Paragraphs (1)(B), (8), (10), and (19) of section 11(e) shall apply with respect to the participants in the Project in the same manner as such paragraphs apply with respect to participants in the food stamp program.

"(ii) Each individual who contacts the State in person during office hours to make what may reasonably be interpreted as an oral or written request to participate in the Project shall receive and shall be permitted to file on the same day that such contact is first made, an application form to participate in the Project.

"(iii) The Project shall provide for telephone contact by, mail delivery of forms to and mail return of forms by, and subsequent home or telephone interview with, the elderly persons, physically or mentally handicapped, and persons otherwise unable, solely because of transportation difficulties and similar hardships, to appear in person.

"(iv) An individual who applies to participate in the Project may be represented by another person in the review process if the other person has been clearly designated as the representative of such individual for that purpose, by such individual or the spouse of such individual, and, in the case of the review process, the representative is an adult who is sufficiently aware of relevant circumstances, except that the State may—

"(I) restrict the number of individuals who may be represented by such person; and

"(II) otherwise establish criteria and verification standards for representation under this clause.

"(v) The State shall provide a method for reviewing applications to participate in the Project submitted by, and distributing food assistance under the Project to, individuals who do not reside in permanent dwellings or who have no fixed mailing address. In carrying out the preceding sentence, the State shall take such steps as are necessary to ensure that participation in the Project is limited to eligible individuals.

"(3) An assurance that the State will allow any individual to apply to participate in the food stamp program without applying to participate in the Project.

"(4) An assurance that the cost of food assistance provided under the Project will not be such that the aggregate amount of payments made under this section by the Secretary to the State over the period of the Project will exceed the sum of—

[7] Copy read "(H)(i)".

"(A) the anticipated aggregate value of the coupons that would have been distributed under the food stamp program if the individuals who participate in the Project had participated instead in the food stamp program; and

"(B) the portion of the administrative costs for which the State would have received reimbursement under—

"(i) subsections (a) and (g) of section 16 (without regard to the first proviso to such subsection (g)) if the individuals who participated in the Project had participated instead in the food stamp program; and

"(ii) section 16(h) if the individuals who participated in the Project had participated in an employment and training program under section 6(d)(4);

except that this paragraph shall not be construed to prevent the State from claiming payments for additional households that would qualify for benefits under the food stamp program in the absence of a cash out of such benefits as a result of changes in economic, demographic, and other conditions in the State or a subsequent change in the benefit levels approved by the State legislature.

"(5) An assurance that the State will continue to carry out the food stamp program while the State carries out the Project.

"(6) If there is a change in existing State law that would eliminate guaranteed benefits or reduce the rights of applicants or participants under this section during, or as a result of participation in, the Project, the Project shall be terminated.

"(7) An assurance that the Project shall include procedures and due process guarantees no less beneficial than those which are available under Federal law and under State law to participants in the food stamp program.

"(8)(A) An assurance that, except as provided in subparagraph (B), the State will carry out the Project during a 5-year period beginning on the date the first individual is approved for participation in the Project.

Termination date.

"(B) The Project may be terminated 180 days after—

"(i) the State gives notice to the Secretary that it intends to terminate the Project; or

"(ii) the Secretary, after notice and an opportunity for a hearing, determines that the State materially failed to comply with this section.

"(c) FUNDING.—If an application submitted under subsection (a) by the State complies with the requirements specified in subsection (b), then the Secretary shall—

"(1) approve such application; and

"(2) from funds appropriated under this Act, pay the State for—

"(A) the actual cost of the food assistance provided under the Project; and

"(B) the percentage of the administrative costs incurred by the State to provide food assistance under the Project that is equal to the percentage of the State's aggregate administrative costs incurred in operating the food stamp program in the most recent fiscal year for which data are available, that was paid under subsections (a), (g), and (h) of section 16 of this Act.

"(d)(1) PROJECT APPLICATION.—Unless and until an application to participate in the Project is approved, and food assistance under the Project is made available to the applicant—

"(A) such application shall also be treated as an application to participate in the food stamp program; and

"(B) section 11(e)(9) shall apply with respect to such application.

"(2) Coupons provided under the food stamp program with respect to an individual who—

"(A) is participating in such program; and

"(B) applies to participate in the Project;

may not be reduced or terminated because such individual applies to participate in the Project.

"(3) For purposes of the food stamp program, individuals who participate in the Project shall not be considered to be members of a household during the period of such participation.

"(e) WAIVER.—The Secretary shall (with respect to the Project) waive compliance with any requirement contained in this Act (other than this section) that (if applied) would prevent the State from carrying out the Project or effectively achieving its purpose.

"(f) CONSTRUCTION.—For purposes of any other Federal, State or local law—

"(1) cash assistance provided under the Project that represents food assistance shall be treated in the same manner as coupons provided under the food stamp program are treated; and

[8] "(2) participants in the program who receive food assistance under the Project shall be treated in the same manner as recipients of coupons under the food stamp program are treated.

"(g) PROJECT AUDITS.—The Comptroller General of the United States shall—

"(1) conduct periodic audits of the operation of the Project to verify the amounts payable to the State from time to time under subsection (b)(4); and

"(2) submit to the Secretary of Agriculture, the Secretary of Health and Human Services, the Committee on Agriculture of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of each such audit.

"(h) EVALUATION.—With funds appropriated under section 18(a)(1), the Secretary shall conduct, in consultation with the Secretary of Health and Human Services, an evaluation of the Project.".

TITLE II—NATIONAL ECONOMIC COMMISSION

SEC. 2101. ESTABLISHMENT OF COMMISSION. 2 USC 901 note.

There is established a commission to be known as the National Economic Commission (in this subtitle referred to as the "Commission").

[8] Copy had wrong indention for paragraph "(2)".

2 USC 901 note.

SEC. 2102. MEMBERSHIP OF COMMISSION.

(a) APPOINTMENT.—The Commission shall be initially composed of 12 members, appointed not later than March 1, 1988. After the meeting of the Presidential Electors in December 1988, the Commission shall be expanded to 14 members. The members shall be as follows:

President of U.S.

(1) 2 citizens of the United States, appointed by the President.

(2) 1 Senator and 2 citizens of the United States, appointed by the President pro tempore of the Senate upon the recommendations of the Majority Leader of the Senate.

(3) 1 Senator and 1 citizen of the United States, appointed by the President pro tempore of the Senate upon the recommendation of the Minority Leader of the Senate.

(4) 1 Member of the House of Representatives and 2 citizens of the United States, appointed by the Speaker of the House of Representatives.

(5) 1 Member of the House of Representatives and 1 citizen of the United States, appointed by the Minority Leader of the House of Representatives.

President of U.S.

(6) 2 citizens of the United States, 1 of whom is a Democrat and 1 of whom is a Republican, appointed by the President-elect as established by the allocation of electoral college votes in the Presidential election of November 8, 1988.

(b) ADDITIONAL QUALIFICATIONS.—

(1) Individuals appointed under subsection (a)(1) may be officers or employees of the Executive Branch or may be private citizens.

(2) Individuals who are not Members of the Congress, and are appointed under paragraphs (2) through (6) of subsection (a) shall be individuals who—

(A) are leaders of business or labor, distinguished academics, State or local government officials, or other individuals with distinctive qualifications or experience; and

(B) are not officers or employees of the United States.

(c) CHAIRPERSON.—The Commission shall elect a Chairperson from among the members of the Commission.

(d) QUORUM.—A majority of the members of the Commission shall constitute a quorum for the transaction of business.

(e) VOTING.—Each member of the Commission shall be entitled to 1 vote, which shall be equal to the vote of every other member of the Commission.

(f) VACANCIES.—Any vacancy on the Commission shall not affect its powers, but shall be filled in the manner in which the original appointment was made.

(g) PROHIBITION OF ADDITIONAL PAY.—Members of the Commission shall receive no additional pay, allowances, or benefits by reason of their service on the Commission. Members appointed from among private citizens of the United States may be allowed travel expenses, including per diem, in lieu of subsistence, as authorized by law for persons serving intermittently in the government service to the extent funds are available for such expenses.

2 USC 901 note.

SEC. 2103. FUNCTIONS OF COMMISSION.

(a) SPECIFIC RECOMMENDATIONS.—The Commission shall make specific recommendations regarding the following:

(1) Methods to reduce the Federal budget deficit while promoting economic growth and encouraging saving and capital formation.

(2) A means of ensuring that the burden of achieving the Federal budget deficit reduction goals of the United States does not undermine economic growth and is equitably distributed and not borne disproportionately by any one economic group, social group, region or State.

(b) FINAL REPORT.—

(1) Subject to section 2103(b)(3), the Commission shall submit to the President and to the Congress on March 1, 1989, a final report which shall contain a detailed statement of the findings and conclusions of the Commission, including its recommendations for administrative and legislative action that the Commission considers advisable.

(2) Any recommendation may be made by the Commission to the President and to the Congress only if adopted by a majority vote of the members of the Commission who are present and voting.

(3) On February 1, 1989, the President may issue an order extending the date for submission of the final report to September 1, 1989.

SEC. 2104. POWERS OF COMMISSION. 2 USC 901 note.

(a) HEARINGS.—The Commission may, for the purpose of carrying out this subtitle, hold such hearings and sit and act at such times and places, as the Commission may find advisable.

(b) RULES AND REGULATIONS.—The Commission may adopt such rules and regulations as may be necessary to establish its procedures and to govern the manner of its operations, organization, and personnel.

(c) ASSISTANCE FROM FEDERAL AGENCIES.—

(1) The Commission may request from the head of any Federal agency or instrumentality such information as the Commission may require for the purpose of this subtitle. Each such agency or instrumentality shall, to the extent permitted by law and subject to the exceptions set forth in section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), furnish such information to the Commission, upon request made by the Chairperson of the Commission.

(2) Upon request of the Chairperson of the Commission, the head of any Federal agency or instrumentality shall, to the extent possible and subject to the discretion of such head—

(A) make any of the facilities and services of such agency or instrumentality available to the Commission; and

(B) detail any of the personnel of such agency or instrumentality to the Commission, on a non-reimburseable basis, to assist the Commission in carrying out its duties under this subtitle, except that any expenses of the Commission incurred under this subparagraph shall be subject to the limitation on total expenses set forth in section 2105(b).

(c) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other Federal agencies.

(d) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into

contracts with State agencies, private firms, institutions, and individuals for the purpose of conducting research or surveys necessary to enable the Commission to discharge its duties under this subtitle, subject to the limitation on total expenses set forth in section 2105(b).

(e) STAFF.—Subject to such rules and regulations as may be adopted by the Commission, the Chairperson of the Commission (subject to the limitation on total expenses set forth in section 2105(b)) shall have the power to appoint, terminate, and fix the compensation (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, or of any other provision, or of any other provision of law, relating to the number, classification, and General Schedule rates) of an Executive Director, and of such additional staff as the Chairperson deems advisable to assist the Commission, at rates not to exceed a rate equal to the maximum rate for GS-18 of the General Schedule under section 5332 of such title.

(f) ADVISORY COMMITTEE.—The Commission shall be considered an advisory committee within the meaning of the Federal Advisory Committee Act (5 U.S.C. App.).

2 USC 901 note.

SEC. 2105. EXPENSES OF COMMISSION.

(a) IN GENERAL.—Any expenses of the Commission shall be paid from such funds as may be available to the Secretary of the Treasury.

(b) LIMITATION.—The total expenses of the Commission shall not exceed $1,000,000.

(c) GAO AUDIT.—Prior to the termination of the Commission, pursuant to section 2106, the Comptroller General of the United States shall conduct an audit of the financial books and records of the Commission to determine that the limitation on expenses has been met, and shall include its determination in an opinion to be included in the report of the Commission.

2 USC 901 note.

SEC. 2106. TERMINATION OF COMMISSION.

The Commission shall cease to exist on the date that is 30 days after the date on which the Commission submits its report.

TITLE III—EDUCATION PROGRAMS

Subtitle A—Guaranteed Student Loan Program Savings

SEC. 3001. RECOVERY OF EXCESS CASH RESERVES ACCUMULATED UNDER THE GUARANTEED STUDENT LOAN PROGRAM.

(a) IN GENERAL.—Section 422 of the Higher Education Act of 1965 (20 U.S.C. 1072) is amended by adding at the end thereof the following new subsection:

"(e) REDUCTION OF EXCESS CASH RESERVES.—

"(1) LIMITATION ON MAXIMUM CASH RESERVES.—A guaranty agency shall not accumulate cash reserves in excess of the greater of—

"(A) 40 percent of the total amount paid by that agency on insurance claims during the preceding fiscal year;

"(B) 0.3 percent of original principal amount of loans that are insured by that agency and that are outstanding at the end of such preceding fiscal year;

"(C) an amount which, when combined with all other parts of total agency reserves, equals 0.4 percent of such original principal amount;

"(D) $500,000; or

"(E) the amount required to comply with the reserve requirements of a State law as in effect on October 17, 1986.

"(2) RECOVERY OF EXCESS CASH RESERVES.—The Secretary shall, not later than March 31, 1988, determine for each guaranty agency the maximum cash reserve permitted under paragraph (1) for fiscal year 1986. Subject to paragraphs (3) and (4), if the Secretary determines that any guaranty agency had, at the end of fiscal year 1986, a cash reserve that exceeded such maximum, the Secretary shall direct the agency to eliminate such excess by any one or more of the following methods, as selected by the guaranty agency:

"(A) by repaying any advances to such agency made by the Secretary under this section that are not required to be repaid under subsection (d);

"(B) by withholding and canceling claims for reimbursement otherwise payable under section 428(c)(1);

"(C) by reducing the amount of payments for which application will be made by such agency under section 428(f); or

"(D) by any other method of reducing payments from or increasing payments to the Federal Government, including payment of additional reinsurance fees in addition to the fees required by section 428(c)(9), as proposed by the agency and agreed to by the Secretary.

"(3) APPEALS BASED ON SPECIAL CIRCUMSTANCES.—(A) If the Secretary determines, on the basis of an application from a guaranty agency, that—

"(i) the agency's financial position has deteriorated significantly since the end of the preceding fiscal year;

"(ii) significant changes in the economic circumstances (such as a change in agency current cash reserves) or the loan insurance program render the limitations of paragraph (1) inadequate for the continued functioning of the agency; or

"(iii) in recovering funds as required by this subsection, a guaranty agency would be compelled to violate contractual obligations existing on the date of enactment of this subsection that require a specified level of reserve funds to be maintained by such agency;

the Secretary may waive, in whole or in part, the imposition of the remedies required by paragraph (2) for such agency.

"(B) The Secretary shall respond to request for waivers from guaranty agencies in an expedited manner and, except for unusual circumstances or with the consent of the guaranty agency, shall resolve such request within 6 weeks of submission.

"(4) RECOVERY LIMITS.—The Secretary shall not require a total reduction of cash reserves for all guaranty agencies in excess of $250,000,000 during fiscal year 1988. If the total of cash reserves of all guaranty agencies exceeds the maximum amounts permitted under paragraph (1) by more than $250,000,000, the

Secretary shall ratably reduce the amounts that guaranty agencies are directed to eliminate under paragraph (2), so that the total excess cash reserves to be eliminated equals $250,000,000.

"(5) DEFINITIONS.—As used in this subsection—

"(A) the 'cash reserves' for any guaranty agency for any fiscal year are equal to the agency's cumulative cash receipts less the agency's cumulative cash disbursements at the end of such fiscal year;

"(B) the 'total reserves' for any guaranty agency for any fiscal year are equal to the agency's cash reserves plus the agency's cumulative accounts receivable less the agency's accounts payable, as of the end of such fiscal year;

"(C) the term 'cumulative cash receipts' includes such receipts as insurance premiums, Federal reinsurance payments, and collections on defaulted loans;

"(D) the term 'cumulative cash disbursements' includes such disbursements as payments for default claims, repayment of Federal advances, transfers to other State activities, and payment of collection costs and other operating costs;

"(E) the term 'accounts receivable' includes Federal reinsurance payments and administrative cost allowances owed but not yet paid to the guaranty agency, as of the end of a fiscal year; and

"(F) the term 'accounts payable' includes collections and reinsurance fees due (but not paid) to the Department of Education, as of the end of a fiscal year.".

(b) CONFORMING AMENDMENTS.—

(1) The second sentence of section 428(c)(1)(A) of such Act (20 U.S.C. 1078(c)(1)(A)) is amended by striking out "shall be deemed" and inserting "shall, subject to section 422(e), be deemed".

(2) Section 428(c)(9)(A) of such Act is amended by striking out "an amount equal to" and inserting "an amount, subject to section 422(e), equal to".

(3) The second sentence of section 428(f)(1)(B) of such Act is amended by striking out "shall be deemed" and inserting "shall, subject to section 422(e), be deemed".

SEC. 3002. REPEAL.

(a) IN GENERAL.—Subsection (e) of section 422 of the Higher Education Act of 1965 (20 U.S.C. 1072) is repealed on September 30, 1989.

(b) CONFORMING AMENDMENTS.—

(1) Effective September 30, 1989, the second sentence of section 428(c)(1)(A) of such Act (20 U.S.C. 1078(c)(1)(A)) is amended by striking out "shall, subject to section 422(e), be deemed" and inserting "shall be deemed".

(2) Effective September 30, 1989, section 428(c)(9)(A) of such Act is amended by striking out "an amount, subject to section 422(e), equal to" and inserting "an amount equal to".

(3) Effective September 30, 1989, the second sentence of section 428(f)(1)(B) of such Act is amended by striking out "shall, subject to section 422(e), be deemed" and inserting "shall be deemed".

SEC. 3003. INFORMATION ON DEFAULTS REQUIRED.

(a) GENERAL RULE.—The first sentence of section 428(k)(1) of the Higher Education Act of 1965 (20 U.S.C. 1078(k)(1)) is amended—

(1) by striking out "In" and inserting in lieu thereof "Notwithstanding any other provision of law, in"; and

(2) by striking out "may" and inserting in lieu thereof "shall".

(b) CONFORMING AMENDMENT.—The second sentence of section 428(k)(1) of such Act is amended by striking out "may" and inserting in lieu thereof "shall".

Subtitle B—Sale of College Facilities and Housing Loans

SEC. 3101. SALE OF COLLEGE FACILITIES AND HOUSING LOANS.

Section 783 of the Higher Education Act of 1965 (20 U.S.C. 1132i-2) is amended by adding at the end thereof the following: "Notwithstanding any other provision of this title, after September 30, 1988, the Secretary shall not sell any of such obligations. Any agreement providing for delaying payment (with respect to obligations sold) until after September 30, 1988, or for delaying delivery of such obligations or delaying taking other actions in furtherance of such a sale until after such date, shall be considered to be a violation of the preceding sentence.".

TITLE IV—MEDICARE, MEDICAID, AND OTHER HEALTH-RELATED PROGRAMS

TABLE OF CONTENTS OF TITLE

[9] Copy read "Sec. 4052.".
[10] Copy read "Sec. 4053.".
[11] Copy read "Sec. 4054.".
[12] Copy read "Sec. 4055.".

[13] Copy read "reer".
[14] Copy read "states", and "state", respectively.
[15] Copy read "california.".
[16] Copy read "northern mariana islands.".

PART 1—RELATING ONLY TO PART A

2 USC 902 note.

President of U.S.

SEC. 4001. EXTENSION OF REDUCTIONS UNDER SEQUESTER ORDER.

Notwithstanding any other provision of law (including any other provision of this Act), the reductions in the amount of payments required under title XVIII of the Social Security Act made by the final sequester order issued by the President on November 20, 1987, pursuant to section 252(b) of the Balanced Budget Emergency Deficit Control Act of 1985 shall continue to be effective (as provided by sections 252(a)(4)(B) and 256(d)(2) of such Act) through—

(1) March 31, 1988, with respect to payments for inpatient hospital services under such title (including payments under section 1886 of such title attributable or allocated to part A of such title); and

(2) December 31, 1987, with respect to payments for other items and services under part A of such title.

SEC. 4002. BASIC HOSPITAL PROSPECTIVE PAYMENT RATES.

(a) BASIC UPDATE FACTOR FOR PPS HOSPITALS.—Clause (i) of section 1886(b)(3)(B) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)) is amended by striking "and for fiscal year 1988" in subclause (II) and all that follows through the end of such clause and inserting after such subclause the following:

"(III) for fiscal year 1988, 3.0 percent for hospitals located in a rural area, 1.5 percent for hospitals located in a large urban area (as defined in subsection (d)(2)(D)), and 1.0 percent for other hospitals,

"(IV) for fiscal year 1989, the market basket percentage increase minus 1.5 percent for hospitals located in a rural area, the market basket percentage increase minus 2.0 percent for hospitals located in a large urban area, and the market basket percentage increase minus 2.5 percent for other hospitals, and

"(V) for fiscal year 1990 and each subsequent fiscal year, the market basket percentage for hospitals in all areas.".

[16a] Copy read "Vacine".

(b) LARGE URBAN AREA DEFINED.—The second sentence of section 1886(d)(2)(D) of such Act (42 U.S.C. 1395ww(d)(2)(D)) [16b] is amended by inserting after "under subsection (a) by regulation;" the following: "the term 'large urban area' means, with respect to a fiscal year, such an urban area which the Secretary determines (in the publication described in subsection (e)(5)(B) before the fiscal year) has a population of more than 1,000,000 (as determined by the Secretary based on the most recent available population data published by the Bureau of the Census);".

(c) ADJUSTMENT FOR HOSPITALS IN LARGE URBAN AREAS OR IN RURAL AREAS.—

(1) IN GENERAL.—Section 1886(d)(3) of such Act (42 U.S.C. 1395ww(d)(3)) is amended—

(A) in the matter before subparagraph (A), by striking "urban or rural areas" and inserting "large urban, other urban, or rural areas";

(B) in first sentence of subparagraph (A)—

(i) by striking "The Secretary" and inserting "(i) For discharges occuring in a fiscal year beginning before October 1, 1987, the Secretary",

(ii) by striking "each of fiscal years 1985, 1986, 1987, and 1988" and inserting "the fiscal year involved", and

(iii) by striking ", and adjusted for subsequent fiscal years in accordance with the final determination of the Secretary under subsection (e)(4), and adjusted to reflect the most recent case-mix data available,";

(C) by adding at the end of subparagraph (A) the following new clauses:

"(ii) For discharges occurring in a fiscal year beginning on or after October 1, 1987, the Secretary shall compute an average standardized amount for hospitals located in a large urban area, for hospitals located in a rural area, and for hospitals located in urban areas, within the United States and within each region, equal to the respective average standardized amount computed for the previous fiscal year under this subparagraph increased by the applicable percentage increase under subsection (b)(3)(B)(i) with respect to hospitals located in the respective areas for the fiscal year involved.

"(iii) Average standardized amounts computed under this paragraph shall be adjusted to reflect the most recent case-mix data available."; and

(D) in subparagraph (D)—

(i) by striking "URBAN AND RURAL HOSPITALS" in the heading and inserting "HOSPITALS IN DIFFERENT AREAS",

(ii) in clause (i), by inserting "(or, for discharges occurring on or after April 1, 1988, in a large urban area or other urban area)" after "urban area" the first place it appears, and

(iii) in clause (i), by inserting "such" before "an urban area" the second place it appears.

(2) CONFORMING AMENDMENTS.—Section 1886(d)(9)(A) of such Act (42 U.S.C. 1395ww(d)(9)(A)) is amended—

(A) in clause (ii)(I), by striking "an urban area, and" and inserting "a large urban area,";

[16b] Copy read "(42 U.S.C. 1395www(d)(2)(D))".

(B) by redesignating subclause (II) of clause (ii) as subclause (III); and

(C) by inserting after subclause (I) of clause (ii) the following new subclause:

"(II) such rate for hospitals located in other urban areas, and".

(d) ESTABLISHMENT OF REGIONAL FLOOR.—Section 1886(d)(1)(A)(iii) of such Act (42 U.S.C. 1395ww(d)(1)(A)(iii)) is amended by inserting before the period at the end the following: ", or, if greater for discharges occurring during the period beginning on April 1, 1988, and ending on September 30, 1990, the sum of (I) 85 percent of the national adjusted DRG prospective payment rate determined under paragraph (3) for such discharges, and (II) 15 percent of the regional adjusted DRG prospective payment rate determined under such paragraph".

(e) UPDATE FOR PPS-EXEMPT HOSPITALS.—Section 1886(b)(3)(B) of such Act (42 U.S.C. 1395ww(b)(3)(B)) is amended—

(1) in clause (i), by striking "subparagraph (A) for 12-month cost reporting periods beginning during a fiscal year and for purposes of",

(2) in clause (ii), by striking "(ii) For purposes of clause (i)" and inserting "(iii) For purposes of this subparagraph", and

(3) by inserting after clause (i) the following new clause:

"(ii) For purposes of subparagraph (A), the 'applicable percentage increase' for 12-month cost reporting periods beginning during—

"(I) fiscal year 1986, is 0.5 percent,

"(II) fiscal year 1987, is 1.15 percent,

"(III) fiscal year 1988, is the market basket percentage increase minus 2.0 percentage points, and

"(IV) subsequent fiscal years is the market basket percentage increase.".

(f) RELATED CONFORMING AND TECHNICAL AMENDMENTS.—

(1) Section 1886 of such Act (42 U.S.C. 1395ww) is further amended—

(A) by adding at the end of subsection (d)(2)(D) the following new sentence: "For purposes of payment under this subsection, a hospital is considered to be located in an urban area or large urban area, respectively, if the hospital is paid under this subsection at the rate for hospitals located in such an area.";

(B) in subsection (e)(3)(B), by striking "or determine";

(C) in subsection (e)(4)—

(i) by striking "for fiscal year 1988" and inserting "for each fiscal year (beginning with fiscal year 1988)",

(ii) by striking "and shall determine for each subsequent fiscal year" and all that follows through "fiscal year, and", and

(iii) by amending the last sentence to read as follows: "The appropriate change factor may be different for all large urban subsection (d) hospitals, other urban subsection (d) hospitals, urban subsection (d) Puerto Rico hospitals, rural subsection (d) hospitals, and rural subsection (d) Puerto Rico hospitals, and all other hospitals and units not paid under subsection (d), and may vary among such other hospitals and units."; and

(D) in paragraph (5), by striking "or determination" each place it appears.

(2) Subsection (a)(1)(B)(ii) of section 107 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100-119) is amended, effective as of the date of the enactment of such Act, by inserting ", the target percentage and DRG percentage shall be those specified in subsection (d)(1)(C)(iv) of such section, and the applicable percentage increase in a hospital's target amount shall be deemed to be 0 percent" before the period at the end. 42 USC 1395ww note.

(g) EFFECTIVE DATES.— 42 USC 1395ww note.

(1) PPS HOSPITALS, DRG PORTION OF PAYMENT.—In the case of a subsection (d) hospital (as defined in paragraph (6))—

(A) the amendments made by subsections (a) and (c) shall apply to payments made under section 1886(a)(1)(A)(iii) of the Social Security Act on the basis of discharges occurring on or after April 1, 1988, and

(B) for discharges occurring on or after October 1, 1988, the applicable percentage increase (described in section 1886(d)(3)(B) of such Act) [17] for discharges occurring during fiscal year 1987 is deemed to have been such percentage increase as amended by subsection (a).

(2) PPS SOLE COMMUNITY HOSPITALS, HOSPITAL SPECIFIC PORTION OF PAYMENT.—In the case of a subsection (d) hospital which receives payments made under section 1886(d)(1)(A) of the Social Security Act because it is a sole community hospital—

(A) the amendment made by subsections (a) and (c) shall apply to payments under section 1886(d)(1)(A)(ii)(I) of the Social Security Act made on the basis of discharges occurring during a cost reporting period of a hospital, for the hospital's cost reporting period beginning on or after October 1, 1987;

(B) notwithstanding subparagraph (A), for cost reporting period beginning during fiscal year 1988, the applicable percentage increase (as defined in section 1886(d)(3)(B) of such Act) for the—

(i) first 51 days of the cost reporting period shall be 0 percent,

(ii) next 132 days of such period shall be 2.7 percent, and

(iii) remainder of such period of the cost reporting period shall be the applicable percentage increase (as so defined, as amended by subsection (a)); and

(C) for cost reporting periods beginning on or after October 1, 1988, the applicable percentage increase (as so defined) with respect to the previous cost reporting period shall be deemed to have been the applicable percentage increase (as so defined, as amended by subsection (a)).

(3) PPS-EXEMPT HOSPITALS.—In the case of a hospital that is not a subsection (d) hospital—

(A) the amendments made by subsection (e) shall apply to cost reporting periods beginning on or after October 1, 1987;

(B) notwithstanding subparagraph (A), for the hospital's cost reporting period beginning during fiscal year 1988, payment under title XVIII of the Social Security Act shall be made as though the applicable percentage increase de-

[17] Copy read "Act))".

scribed in section 1886(b)(3)(B) of such Act were equal to the product of 2.7 percent and the ratio of 315 to 366; and

(C) for cost reporting periods beginning on or after October 1, 1988, the applicable percentage increase (as so defined) with respect to the cost reporting period beginning during fiscal year 1988 shall be deemed to have been 2.7 percent.

Effective date.

(4) DEFINITION, REGIONAL FLOOR, AND TECHNICAL AND CONFORMING AMENDMENTS.—The amendments made by subsections (b) and (d) and paragraphs (1) and (2) of subsection (f) shall take effect on the date of the enactment of this Act.

(5) TRANSITION FOR LARGE URBAN AREA RATES.—In computing the average standardized amount for hospitals located in a large urban area or other urban area under section 1886(d)(3)(A)(ii) of the Social Security Act (as amended by subsection (c)) for fiscal year 1988, the reference to "the respective average standardized amount computed for the previous fiscal year under this subparagraph" is deemed a reference to the average standardized amount computed for hospitals located in an urban area for the 51-day period beginning on October 1, 1987.

(6) DEFINITION.—In this subsection, the term "subsection (d) hospital" has the meaning given such term in section 1886(d)(10)(B) of the Social Security Act.

SEC. 4003. INCREASE IN DISPROPORTIONATE SHARE ADJUSTMENT AND REDUCTION IN INDIRECT MEDICAL EDUCATION PAYMENTS.

(a) REDUCTION IN INDIRECT MEDICAL EDUCATION PAYMENTS.—

(1) Section 1886(d)(5)(B)(ii) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(B)(ii)) is amended—

(A) in subclause (I), by striking "2" and inserting in lieu thereof "1.89"; and

(B) in subclause (II), by striking "1.5" and inserting in lieu thereof "1.43".

(2) Section 1886(d)(3)(C)(ii) of such Act (42 U.S.C. 1395ww(d)(3)(C)(ii)) is amended by inserting "and by section 4003(a)(1) of the Omnibus Budget Reconciliation Act of 1987" after "1985" each place it appears in subclauses (I) and (II).

(b) INCREASE IN DISPROPORTIONATE SHARE ADJUSTMENT.—Section 1886(d)(5)(F) of such Act (42 U.S.C. 1395ww(d)(5)(B))—

(1) in clause (iii), by striking "15 percent" and inserting "25 percent", and

(2) in clause (iv)(I), by striking "the lesser of 15 percent, or".

(c) EXTENSION OF DISPROPORTIONATE SHARE ADJUSTMENT.—Sections 1886(d)(2)(C)(iv) (42 U.S.C. 1395ww(d)(2)(C)(iv)), 1886(d)(3)(C)(ii)(I) (42 U.S.C. 1395ww(d)(3)(C)(ii)(I)), 1886(d)(3)(C)(ii)(II) (42 U.S.C. 1395ww(d)(3)(C)(ii)(II)), 1886(d)(5)(B)(ii)(I) (42 U.S.C. 1395ww(d)(5)(B)(ii)(I)), 1886(d)(5)(B)(ii)(II) (42 U.S.C. 1395ww(d)(5)(B)(ii)(II)), and 1886(d)(5)(F)(i) (42 U.S.C. 1395ww(d)(5)(F)(i)) of the Social Security Act are each amended by striking "1989" and inserting in lieu thereof "1990".

(d) SPECIAL RULE.—In the case of a hospital which—

(1) consists of 2 inpatient hospital facilities which are more than 4 miles apart and each of which is in a separate political jurisdiction within the same State and one of which meets the criteria under section 1886(d)(5)(F) of the Social Security Act for serving a significantly disproportionate number of low-income patients as if that facility were a separate hospital; and

(2) receives payments for inpatient hospital services under title XVIII of the Social Security Act which are less than the hospital's reasonable costs,

the Secretary of Health and Human Services, upon application by the hospital, may treat each of the facilities of hospital as separate hospitals for purposes of applying section 1886(d)(5)(F) of the Social Security Act, for discharges occurring on or after October 1, 1988.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to payments for discharges occurring on or after October 1, 1988. 42 USC 1395ww note.

SEC. 4004. PROVISIONS RELATING TO WAGE INDEX.

(a) SURVEY.—Section 1886(d)(3)(E) of the Social Security Act (42 U.S.C. 1395ww(d)(3)(E)) is amended by adding at the end the following: "Not later than October 1, 1990 (and at least every 36 months thereafter), the Secretary shall update the factor under the preceding sentence on the basis of a survey conducted by the Secretary (and updated as appropriate) of the wages and wage-related costs of subsection (d) hospitals in the United States. To the extent determined feasible by the Secretary, such survey shall measure the earnings and paid hours of employment by occupational category and shall exclude data with respect to the wages and wage-related costs incurred in furnishing skilled nursing facility services.".

(b) CLINIC HOSPITAL WAGE INDICES.—In calculating the wage index under section 1886(d) of the Social Security Act for purposes of making payment adjustments after September 30, 1988, as required under paragraphs (2)(H) and (3)(E) of such section, in the case of any institution which received the waiver specified in section 602(k) of the Social Security Amendments of 1983, the Secretary of Health and Human Services shall include wage costs paid to related organization employees directly involved in the delivery and administration of care provided by the related organization to hospital inpatients. For purposes of the preceding sentence, the term "wage costs" does not include costs of overhead or home office administrative salaries or any costs that are not incurred in the hospital's Metropolitan Statistical Area. 42 USC 1395ww note.

SEC. 4005. RURAL HOSPITALS.

(a) REVISION OF STANDARDS FOR INCLUDING A RURAL COUNTY IN AN URBAN AREA.—

(1) TREATING CERTAIN RURAL HOSPITALS ADJACENT TO URBAN AREAS AS URBAN HOSPITALS.—Section 1886(d)(8) of the Social Security Act (42 U.S.C. 1395ww(d)(8))—

(A) by redesignating clauses (i) and (ii) of subparagraphs (A) and (B) as subclauses (I) and (II), respectively,

(B) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively,

(C) by inserting "(A)" after "(8)", and

(D) by adding at the end the following new subparagraph:

"(B) The Secretary shall treat a hospital located in a rural county adjacent to one or more urban areas as being located in the urban metropolitan statistical area to which the greatest number of workers in the county commute, if—

"(i) the rural county would otherwise be considered part of an urban area but for the fact that the rural county does not meet the standard relating to the rate of commutation between the

rural county and the central county or counties of any adjacent urban area; and

"(ii) either (I) the number of residents of the rural county who commute for employment to the central county or counties of any adjacent urban area is equal to at least 15 percent of the number of residents of the rural county who are employed, or (II) the sum of the number of residents of the rural county who commute for employment to the central county or counties of any adjacent urban area and the number of residents of any adjacent urban area who commute for employment to the rural county is at least equal to 20 percent of the number of residents of the rural county who are employed.

"(C) The Secretary shall make a proportional adjustment in the standardized amount determined under paragraph (3) for hospitals located in an urban area to assure that the provisions of subparagraph (B) do not result in aggregate payments under this section that are greater or less than those that would otherwise be made. The Secretary shall make such adjustment in payments under this section to hospitals located in rural areas as are necessary to assure that the aggregate of payments to rural hospitals not affected by subparagraph (B) are not changed as a result of the application of subparagraph (B).".

(2) LOCATION OF HOSPITAL.—For purposes of section 1886 of the Social Security Act, Watertown Memorial Hospital in Watertown, Wisconsin is deemed to be located in Jefferson County, Wisconsin.

42 USC 1395ww note.

(3) EFFECTIVE DATE.—This section, and the amendments made by paragraph (1), shall apply to discharges occurring on or after October 1, 1988.

(b) EXPANSION OF SWING-BED PROGRAM.—

(1) EXPANSION TO HOSPITALS WITH FEWER THAN 100 BEDS.—Section 1883(b)(1) of the Social Security Act (42 U.S.C. 1395tt(b)(1)) is amended by striking "50 beds" and inserting "100 beds".

(2) REQUIREMENTS FOR HOSPITALS WITH MORE THAN 49 BEDS.—

42 USC 1395tt.

Section 1883(d) of such Act (42 U.S.C. 1395dd(d)) is amended—

(A) by inserting "(1)" after "(d)", and

(B) by adding at the end the following new paragraphs:

"(2)(A) Any agreement under this section with a hospital with more than 49 beds shall provide that no payment may be made for extended care services which are furnished to an extended care patient after the end of the 5-day period (excluding weekends and holidays) beginning on an availability date for a skilled nursing facility, unless the patient's physician certifies, within such 5-day period, that the transfer of that patient to that facility is not medically appropriate on the availability date. The Secretary shall prescribe regulations to provide for notice by skilled nursing facilities of availability dates to hospitals which have agreements under this section and which are located within the same geographic region (as defined by the Secretary).

Regulations.

"(B) In this paragraph:

"(i) The term 'availability date' means, with respect to an extended care patient at a hospital, any date on which a bed is available for the patient in a skilled nursing facility located within the geographic region in which the hospital is located.

"(ii) The term 'extended care patient' means an individual being furnished extended care services at a hospital pursuant to an agreement with the Secretary under this section.

"(3) In the case of an agreement for a cost reporting period under this section with a hospital that has more than 49 beds, payment may not be made in the period for patient-days of extended care services that exceed 15 percent of the product of the number of days in the period and the average number of licensed beds in the hospital in the period.".

(3) REPORT.—The Secretary of Health and Human Services shall report to Congress, not later than February 1, 1989, concerning— 42 USC 1395tt note.

(A) the proportion of admissions to hospitals for extended care services under section 1883 of the Social Security Act which are denied or approved by a peer review organization under section 1154(a)(1) of such Act, and

(B) on recommendations for methods of encouraging hospitals that—

(i) have a low occupancy rate,

(ii) are eligible to enter (but have not entered) into an agreement under section 1883 of such Act, and

(iii) are located in areas with a need for additional providers of extended care services,

to enter into such agreements.

(4) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) shall apply to agreements under section 1883 of the Social Security Act entered into after March 31, 1988. 42 USC 1395tt note.

(c) PAYMENTS TO SOLE COMMUNITY HOSPITALS.—

(1) Section 1886(d)(5)(C)(ii) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(C)(ii)) is amended—

(A) by striking "1988" in the second sentence and inserting "1990", and

(B) by inserting after the second sentence the following: "A subsection (d) hospital that meets the criteria for classification as a sole community hospital and otherwise qualifies for the adjustment authorized by the preceding sentence may qualify for such an adjustment without regard to the formula by which payments are determined for the hospital under paragraph (1)(A).".

(2)(A) The amendments made by paragraph (1) shall apply to cost reporting periods beginning on or after October 1, 1987 42 USC 1395ww note.

(B) The Secretary of Health and Human Services shall take appropriate steps to ensure that the total amount paid in a fiscal year under title XVIII of the Social Security Act by reason of the amendment made by paragraph (1)(B) does not exceed $5,000,000 in the case of fiscal year 1988 and $10,000,000 for fiscal year 1989.

(d) MEDICARE CLASSIFICATION OF RURAL REFERRAL CENTERS.—

(1) EXTENSION OF CLASSIFICATION.—

(A) IN GENERAL.—The first sentence of section 1886(d)(5)(C)(i)(I) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(C)(i)(I)) is amended by striking "500" and inserting "275".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to discharges occurring on or after April 1, 1988. 42 USC 1395ww note.

(2) STUDY.— 42 USC 1395ww note.

(A) IN GENERAL.—The Secretary of Health and Human Services shall provide for a study of the criteria used for the classification of hospitals as rural referral centers under section 1886(d)(5)(C)(i) of the Social Security Act. The study shall include an examination of—

(i) the extent that hospitals classified as rural referral centers receive more or less than their actual costs of providing inpatient hospital services, and

(ii) the appropriateness of providing for payment for such centers at a rate other than the rate for a hospital located in an other urban area.

(B) REPORT.—The Secretary shall report to Congress, by not later than March 1, 1989, on the study conducted under subparagraph (A) and on recommendations for the criteria that should be applied under section 1886(d)(5)(C)(i) of the Social Security Act for the classification of hospitals as rural referral centers for cost reporting periods beginning on or after October 1, 1989.

42 USC 1395ww note.

(e) GRANT PROGRAM FOR RURAL HEALTH CARE TRANSITION.—

(1) The Administrator of the Health Care Financing Administration, in consultation with the Assistant Secretary for Health (or a designee), shall establish a program of grants to assist eligible small rural hospitals and their communities in the planning and implementation of projects to modify the type and extent of services such hospitals provide in order to adjust for one or more of the following factors:

(A) Changes in clinical practice patterns.

(B) Changes in service populations.

(C) Declining demand for acute-care inpatient hospital capacity.

(D) Declining ability to provide appropriate staffing for inpatient hospitals.

(E) Increasing demand for ambulatory and emergency services.

(F) Increasing demand for appropriate integration of community health services.

(G) The need for adequate access (including appropriate transportation) to emergency care and inpatient care in areas in which a significant number of underutilized hospital beds are being eliminated.

(H) The Administrator shall submit a final report on the program to the Congress not later than 180 days after all projects receiving a grant under the program are completed.

Each demonstration project under this subsection shall demonstrate methods of strengthening the financial and managerial capability of the hospital involved to provide necessary services. Such methods may include programs of cooperation with other health care providers, of diversification in services furnished (including the provision of home health services), of physician recruitment, and of improved management systems.

(2) For purposes of this subsection, the term "eligible small rural hospital" [18] means any non-Federal, short-term general acute care hospital that—

[18] Copy read " 'eligible small rural hospital' ".

(A) is located in a rural area (as determined in accordance with subsection (d)),

(B) has less than 100 beds, and

(C) is not for profit.

(3)(A) Any eligible small rural hospital that desires to modify the type or extent of health care services that it provides in order to adjust for one or more of the factors specified in paragraph (1) may submit an application to the Governor of the State in which it is located. The application shall specify the nature of the project proposed by the hospital, the data and information on which the project is based, and a timetable (of not more than 24 months) for completion of the project. The application shall be submitted on or before a date specified by the Administrator and shall be in such form as the Administrator may require.

(B) The Governor shall transmit any application submitted pursuant to subparagraph (A) to the Secretary not later than 30 days after it is received by the Governor, accompanied by any comments with respect to the application that the Governor deems appropriate.

(C) The Governor of a State may designate an appropriate State agency to receive and comment on applications submitted under subparagraph (A).

(4) A hospital shall be considered to be located in a rural area for purposes of this subsection if it is treated as being located in a rural area for purposes of section 1886(d)(3)(D) of the Social Security Act.

(5) In determining which hospitals making application under paragraph (3) will receive grants under this subsection, the Administrator shall take into account—

(A) any comments received under paragraph (3)(B) with respect to a proposed project;

(B) the effect that the project will have on—

(i) reducing expenditures from the Federal Hospital Insurance Trust Fund,

(ii) improving the access of medicare beneficiaries to health care of a reasonable quality;

(C) the extent to which the proposal of the hospital, using appropriate data, demonstrates an understanding of—

(i) the primary market or service area of the hospital, and

(ii) the health care needs of the elderly and disabled that are not currently being met by providers in such market or area, and

(D) the degree of coordination that may be expected between the proposed project and—

(i) other local or regional health care providers, and

(ii) community and government leaders,

as evidenced by the availability of support for the project (in cash or in kind) and other relevant factors.

(6) A grant to a hospital under this subsection may not exceed $50,000 a year and may not exceed a term of 2 years.

(7)(A) Except as provided in subparagraphs (D) and (C), a hospital receiving a grant under this subsection may use the grant for any of expenses incurred in planning and implementing the project with respect to which the grant is made.

(B) A hospital receiving a grant under this subsection for a project may not use the grant to retire debt incurred with respect to any capital expenditure made prior to the date on which the project is initiated.

(C) Not more than one-third of any grant made under this subsection may be expended for capital-related costs (as defined by the Secretary for purposes of section 1886(a)(4) of the Social Security Act) of the project.

(8)(A) A hospital receiving a grant under this section shall furnish the Administrator with such information as the Administrator may require to evaluate the project with respect to which the grant is made and to ensure that the grant is expended for the purposes for which it was made.

Reports.

(B) The Administrator shall report to the Congress at least once every 6 months on the program of grants established under this subsection. The report shall assess the functioning and status of the program, shall evaluate the progress made toward achieving the purposes of the program, and shall include any recommendations the Secretary may deem appropriate with respect to the program. In preparing the report, the Secretary shall solicit and include the comments and recommendations of private and public entities with an interest in rural health care.

Reports.

(C) The Administrator shall submit a final report on the program to the Congress not later than 180 days after all projects receiving a grant under the program are completed.

(9) For purposes of carrying out the program of grants under this subsection, there are authorized to be appropriated from the Federal Hospital Insurance Trust Fund $15,000,000 for each of the fiscal years 1989 and 1990.

SEC. 4006. PAYMENTS FOR HOSPITAL CAPITAL.

(a) REDUCTIONS IN PAYMENTS FOR CAPITAL.—Section 1886(g)(3)(A) of the Social Security Act (42 U.S.C. 1395ww(g)(3)(A)) is amended—

(A) in clause (ii), by striking ", and" and inserting "on or after October 1, 1987, and before January 1, 1988,",

(B) by striking clause (iii) and inserting the following:

"(iii) 12 percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) in fiscal year 1988, occurring on or after January 1, 1988, and

"(iv) 15 percent to portions of cost reporting periods or discharges (as the case may) be occurring during fiscal year 1989.".

(b) PROSPECTIVE PAYMENT FOR CAPITAL-RELATED COSTS.—

(1) IN GENERAL.—Paragraph (1) of section 1886(g) of such Act (42 U.S.C. 1395ww(g)) is amended to read as follows:

"(g)(1)(A) Notwithstanding section 1861(v), instead of any amounts that are otherwise payable under this title with respect to the reasonable costs of subsection (d) hospitals and subsection (d) Puerto Rico hospitals for capital-related costs of inpatient hospital services, the Secretary shall, for hospital cost reporting periods beginning on or after October 1, 1991, provide for payments for such costs in accordance with a prospective payment system established by the Secretary.

"(B) Such system—

"(i) shall provide for (I) a payment on a per discharge basis, and (II) an appropriate weighting of such payment amount as relates to the classification of the discharge;

"(ii) may provide for an adjustment to take into account variations in the relative costs of capital and construction for the different types of facilities or areas in which they are located;

"(iii) may provide for such exceptions (including appropriate exceptions to reflect capital obligations) as the Secretary determines to be appropriate, and

"(iv) may provide for suitable adjustment to reflect hospital occupancy rate.

"(C) In this paragraph, the term 'capital-related costs' has the meaning given such term by the Secretary under subsection (a)(4) as of September 30, 1987, and does not include a return on equity capital.".

(2) CONFORMING AMENDMENT.—Section 1886 of such Act is amended— 42 USC 1395ww.

(A) in subsection (a)(4), by striking "with respect to costs incurred in cost reporting periods beginning prior to October 1 of 1987 (or of such later year as the Secretary may, in his discretion, select), other capital-related costs, as defined by the Secretary" and inserting "other capital-related costs (as defined by the Secretary for periods before October 1, 1987)", and

(B) by striking subparagraph (C) of subsection (g)(3).

(3) EFFECTIVE DATES.—The amendment made by paragraph (1) shall take effect on October 1, 1987. The amendments made by paragraph (2) shall apply to cost reporting periods beginning on or after October 1, 1987. 42 USC 1395ww note.

(c) PROPAC REPORT ON ADJUSTMENT FOR HOSPITAL OCCUPANCY.—The Prospective Payment Assessment Commission shall study and report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, by not later than May 1, 1988, on the suitability and feasibility of linking payment for capital-related costs under part A of title XVIII of the Social Security Act to hospital occupancy rates.

SEC. 4007. REPORTING HOSPITAL INFORMATION. 42 USC 1395ww note.

(a) DEVELOPMENT OF DATA BASE.—The Secretary of Health and Human Services (in [19] this section referred to as the "Secretary") shall develop and place into effect not later than June 1, 1989, a data base of the operating costs of inpatient hospital services with respect to all hospitals under title XVIII of the Social Security Act, which data base shall be updated at least once every quarter (and maintained for the 12-month period preceding any such update). The data base under this subsection may include data from preliminary cost reports (but the Secretary shall make available an updata analysis of the differences between preliminary and settled cost reports).

(b) REPORTING OF INFORMATION ELECTRONICALLY.—

[20] (1) Subject to paragraph (2), with respect to hospital cost reporting periods beginning on or after October 1, 1989, the Secretary shall place into effect a standardized electronic cost reporting format for hospitals under the medicare program.

(2) The Secretary may delay or waive the implementation of such format in particular instances where such implementation

[19] Copy read "Services, (in".
[20] Copy read "ELECTRONICALLY.—Subject"

would result in financial hardship (in particular with respect to a small percentage of medicare volume).

(c) DEMONSTRATION PROJECT.—

(1) The Secretary of Health and Human Services shall provide for a 3-year demonstration project to develop, and determine the costs and benefits of establishing a uniform system for the reporting by medicare participating hospitals of balance sheet and information described in paragraph (2). In contracting the project, the Secretary shall require hospitals in at least 2 States, one of which maintains a uniform hospital reporting system, to report such information based on standard information established by the Secretary.

Contracts.

(2) The information described in this paragraph is as follows:

(A) Hospital discharges (classified by category of service and by class of primary payer).

(B) Patient days (classified by category of service and by class of primary payer).

(C) Licensed beds, staffed beds, and occupancy (by category of service).

(D) Outpatient visits (classified by class of primary payer).

(E) Inpatient charges and revenues (classified by class of primary payer).

(F) Outpatient charges and revenues (classified by class of primary payer).

(G) Inpatient and outpatient hospital expenses (by cost-center classified for operating and capital).

(H) Reasonable costs.

(I) Other income.

(J) Uncompensated care (classified by bad debt and charity care).

(K) Capital acquisitions.

(L) Capital assets.

(3) The Secretary shall develop the system under subsection (c) in a manner so as—

(A) to facilitate the submittal of the information in the report in an electronic form, and

(B) to be compatible with the needs of the medicare prospective payment system.

(4) The Secretary shall prepare and submit, to the Prospective Payment Assessment Commission, the Comptroller General, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, by not later than 45 days after the end of each calendar quarter, data collected under the system.

(5) In paragraph (3):

(A) The terms "bad debt" and "charity care" have such meanings as the Secretary establishes.

(B) The term "class" means, with respect to payers, the programs under this title VIII of the Social Security Act, a State plan approved under title XIX of such Act, other third party-payers, and self-paying individuals.

(6) [21] The Secretary shall set aside at least $1,000,000 for each of fiscal years 1988, 1989, and 1990 from existing research funds

[21] Copy read "(7)"

to develop the format, according to paragraph (1), and at least $2,000,000 from program operations funds for data collection and analysis, but total funds shall not exceed $15,000,000 over 3 years.

(7) [22] The Comptroller General shall analyze the adequacy of the existing system for reporting of hospital information and the costs and benefits of data reporting under the demonstration system and will recommend improvements in hospital data collection and in analysis and display of data in support of policy making.

[23] (d) CONSULTATION.—The Secretary shall consult representatives of the hospital industry in carrying out the provisions of this section.

SEC. 4008. OTHER PROVISIONS RELATING TO PAYMENT FOR INPATIENT HOSPITAL SERVICES.

(a) MASSACHUSETTS MEDICARE REPAYMENT.—The Secretary of Health and Human Services shall not, on or after the date of the enactment of this Act, and before January 1, 1989, recoup from, or otherwise reduce payments to, hospitals in the State of Massachusetts because of alleged overpayments to such hospitals under part A of title XVIII of the Social Security Act which occurred during the period of the statewide hospital reimbursement demonstration project conducted in that State, between October 1, 1982, and June 30, 1986, under section 402 of the Social Security Amendments of 1967 and section 222 of the Social Security Amendments of 1972.

(b) CLARIFICATION OF SECTION 1814(b) STATE WAIVER AUTHORITY.—

(1) APPLICATION OF AGGREGATE TEST.—Section 1814(b)(3)(B) of the Social Security Act (42 U.S.C. 1395f(b)(3)(B)) is amended by striking "rate of increase for the previous three-year period" and inserting "aggregate rate of increase from October 1, 1983, to the most recent date for which annual data are available".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act. 42 USC 1395f note.

(c) CONTINUATION OF BAD DEBT RECOGNITION FOR HOSPITAL SERVICES.—In making payments to hospitals under title XVIII of the Social Security Act, the Secretary of Health and Human Services shall not make any change in the policy in effect on August 1, 1987, with respect to payment under title XVIII of the Social Security Act to providers of service for reasonable costs relating to unrecovered costs associated with unpaid deductible and coinsurance amounts incurred under such title (including criteria for what constitutes a reasonable collection effort). 42 USC 1395f note.

(d) HOSPITAL OUTLIER PAYMENTS AND POLICY.— 42 USC 1395ww note.

(1) INCREASE IN OUTLIER PAYMENTS FOR BURN CENTER DRGS.—

(A) IN GENERAL.—For discharges classified in diagnosis-related groups relating to burn cases and occurring on or after April 1, 1988, and before October 1, 1989, the marginal cost of care permitted by the Secretary of Health and Human Services under section 1886(d)(5)(A)(iii) of the Social Security Act shall be 90 percent of the appropriate per diem cost of care or 90 percent of the cost for cost outliers.

(B) BUDGET NEUTRALITY.—Subparagraph (A) shall be implemented in a manner that ensures that total payments under section 1886 of the Social Security Act are not in-

[22] Copy read "(8)".
[23] "(d)" Paragraph had wrong indention.

creased or decreased by reason of the adjustments required by such subparagraph.

(2) LIMITATION ON CHANGES IN OUTLIER REGULATIONS.—

(A) IN GENERAL.—Notwithstanding any other provision of law, except as required to implement specific provisions required under statute, the Secretary of Health and Human Services is not authorized to issue in final form, after the date of the enactment of this Act and before September 1, 1988, any final regulation which changes the method of payment for outlier cases under section 1886(d)(5)(A) of the Social Security Act.

(B) PROPAC [24] REPORT.—The chairman of the Prospective Payment Assessment Commission shall report to the Congress and the Secretary of Health and Human Services, by not later than June 1, 1988, on the method of payment for outlier cases under such section and providing more adequate and appropriate payments with respect to burn outlier cases.

(3) REPORT ON OUTLIER PAYMENTS.—The Secretary of Health and Human Services shall include in the annual report submitted to the Congress pursuant to section 1875(b) of the Social Security Act a comparison with respect to hospitals located in an urban area and hospitals located in a rural area in the amount of reductions under section 1886(d)(3)(B) of the Social Security Act and additional payments under section 1886(d)(5)(A) of such Act.

(e) MISCELLANEOUS ACCOUNTING PROVISION.—Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986, subsection (d) of section 9307 of such Act is amended to read as follows:

42 USC 1395ww note.

"(d) MISCELLANEOUS ACCOUNTING PROVISION.—Notwithstanding any other provision of law, for purposes of section 1886(d)(1)(A) of the Social Security Act, in the case of a hospital that—

"(1) had a cost reporting period beginning on September 28, 29, or 30 of 1985,

"(2) is located in a State in which inpatient hospital services were paid in fiscal year 1985 pursuant to a Statewide demonstration project under section 402 of the Social Security Amendments of 1967 and section 222 of the Social Security Amendments of 1972, and

"(3) elects, by notice to the Secretary of Health and Human Services by not later than April 1, 1988, to have this subsection apply,

during the first 7 months of such cost reporting period the 'target percentage' shall be 75 percent and the 'DRG percentage' shall be 25 percent, and during the remaining 5 months of such period the 'target percentage' and the 'DRG percentage' shall each be 50 percent.".

SEC. 4009. MISCELLANEOUS PROVISIONS.

(a) RESPONSIBILITIES OF MEDICARE HOSPITALS IN EMERGENCY CASES.—

(1) INCREASE IN CIVIL MONETARY PENALTY.—Section 1867(d)(2) of the Social Security Act (42 U.S.C. 1395dd(d)(2)) is amended by striking "$25,000" and inserting "$50,000".

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[24] "Copy read "PROPAC".

(2) EXCLUSION FROM MEDICARE PROGRAM FOR VIOLATIONS.—Section 1867(d)(1) of such Act is amended by adding at the end the following new sentence:

"If a civil money penalty is imposed on a responsible physician under paragraph (2), the Secretary may impose the sanction described in section 1842(j)(2)(A) (relating to barring from participation in the medicare program) in the same manner as it is imposed under section 1842(j).".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to actions occurring on or after the date of the enactment of this Act. 42 USC 1395dd note.

(b) DESIGNATION OF PEDIATRIC HOSPITALS AS MEETING CERTIFICATION AS HEART TRANSPLANT FACILITY.—For purposes of determining whether a pediatric hospital that performs pediatric heart transplants meets the criteria established by the Secretary of Health and Human Services for facilities in which the heart transplants performed will be considered to meet the requirement of section 1862(a)(1)(A) of the Social Security Act, the Secretary shall treat such a hospital as meeting such criteria if— 42 USC 1395y note.

(1) the hospital's pediatric heart transplant program is operated jointly by the hospital and another facility that meets such criteria,

(2) the unified program shares the same transplant surgeons and quality assurance program (including oversight committee, patient protocol, and patient selection criteria), and

(3) the hospital demonstrates to the satisfaction of the Secretary that it is able to provide the specialized facilities, services, and personnel that are required by pediatric heart transplant patients.

(c) WAIVER OF INPATIENT LIMITATIONS FOR THE CONNECTICUT HOSPICE.[25]—Subsection (a) of section 9307 of the Omnibus Budget Reconciliation Act of 1986 is amended— 100 Stat. 1995.

(1) by striking "TEMPORARY" in the heading, and

(2) by striking "for hospice care provided before October 1, 1988,".

(d) REVISION OF APPOINTMENT PROCESS FOR PROSPECTIVE PAYMENT ASSESSMENT COMMISSION.—

(1) IN GENERAL.—Section 1886(e)(6)(B) of the Social Security Act (42 U.S.C. 1395ww(e)(6)(B)) is amended—

(A) in the first sentence, by striking "provide expertise and experience in the provision and financing of health care" and inserting "include individuals with national recognition for their expertise in health economics, hospital reimbursement, hospital financial management, and other related fields, who provide a mix of different professionals, broad geographic representation, and a balance between urban and rural representatives,"; and

(B) by striking the last sentence.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to appointments made after the date of the enactment of this Act. 42 USC 1395ww note.

(e) PSYCHOLOGISTS' SERVICES FURNISHED TO HOSPITAL INPATIENTS.—

[25] Copy read "LIMITATIONS FOR THE CONNECTICUT HOSPICE.".

(1) IN GENERAL.—Section 1861(b)(3) of such Act (42 U.S.C. 1395x(b)(3)) is amended by inserting "(including clinical psychologist (as defined by the Secretary))" after "others" the first place it appears.

42 USC 1395x note.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to services furnished on or after April 1, 1988.

(f) HOSPITAL CONDITION OF PARTICIPATION RELATED TO INDIVIDUAL RESPONSIBLE FOR CARE OF PATIENT.—Section 1861(e)(4) of such Act (42 U.S.C. 1395x(e)(4)) is amended by inserting "with respect to whom payment may be made under this title" after "patient".

42 USC 1320b-8 note.

(g) DELAY IN REQUIREMENTS RELATING TO HOSPITAL STANDARDS FOR ORGAN TRANSPLANTS AND STANDARDS FOR ORGAN PROCUREMENT AGENCIES.—

(1) Section 9318(b)(2) of the Omnibus Budget Reconciliation Act of 1986, as amended by section 107(c) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, is amended by striking "November 21, 1987" and inserting "March 31, 1988".

Effective date. 42 USC 1320b-8 note.

(2) The amendment made by paragraph (1) shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986.

42 USC 1395ww note.

(h) PROPAC STUDIES AND REPORTS.—

(1) PROPAC REPORTS ON STUDY OF DRG RATES FOR HOSPITALS IN RURAL AND URBAN AREAS.—The Prospective Payment Assessment Commission shall evaluate the study conducted by the Secretary of Health and Human Services pursuant to section 603(a)(2)(C)(i) of the Social Security Amendments of 1983 (relating to the feasibility, impact, and desirability of eliminating or phasing out separate urban and rural DRG prospective payment rates) and report its conclusions and recommendations to the Congress not later than March 1, 1988.

(2) PROPAC REPORT ON SEPARATE URBAN PAYMENT RATES.—The Prospective Payment Assessment Commission shall evaluate the desirability of maintaining separate DRG prospective payment rates for hospitals located in large urban areas (as defined in section 1886(d)(2)(D)) of the Social Security Act) and in other urban areas, and shall report to Congress on such evaluation not later than January 1, 1989.

(3) REPORT ON ADJUSTMENT FOR NON-LABOR COSTS.—The Prospective Payment Assessment Commission shall perform an analysis to determine the feasibility and appropriateness of adjusting the non-wage-related portion of the adjusted average standardized amounts under section 1886(d)(3) of the Social Security Act based on area differences in hospitals' costs (other than wage-related costs) and input prices. The Commission shall report to the Congress on such analysis by not later than October 1, 1989.

42 USC 1395ww note.

(i) SPECIAL RULE.—In the case of New England county metropolitan areas, the Secretary of Health and Human Services shall apply the second sentence of section 1886(d)(2)(D) of the Social Security Act, as amended by section 4001(b) of this subtitle, as though 970,000 were substituted for 1,000,000.

(j) TECHNICAL CORRECTIONS.—

(1) Section 1886(a)(4) of the Social Security Act (42 U.S.C. 1395ww(a)(4)) is amended by inserting a comma after "educational activities".

(2) Section 1886(d)(5)(C)(i)(II) of such Act (42 U.S.C. 1395ww(d)(5)(C)(i)(II)) is amended by inserting "index" after "case mix" both places it appears.

(3) Section 1886(d)(5)(F) of such Act (42 U.S.C. 1395ww(d)(5)(F)) is amended—

(A) in clause (i)(II), by striking "such revenues" the second place it appears and inserting "such net inpatient care revenues", and

(B) in clause (iv)(I), by striking "subclause (III)" and inserting "clause (v)".

(4) Section 1886(d)(9) of such Act (42 U.S.C. 1395ww(d)(9)) is amended by moving the matter in subparagraph (B) before clause (i) 2 ems to the left so the left margin of such matter is aligned with the left margin of the matter in subparagraph (A) before clause (i).

(5) Section 1886(h)(4)(C) of such Act (42 U.S.C. 1395ww(h)(4)(C)) is amended by striking "subparagraph (E)" and inserting "subparagraph (D)".

(6) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986—

(A) subparagraph (B) of section 9307(c)(1) of such Act is amended to read as follows: 42 USC 1395ww.

"(B) in paragraph (2)—

"(i) by striking subparagraphs (A) and (B),

"(ii) in subparagraph (C), by striking 'such subsection' and inserting 'of section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)' and by redesignating such subparagraph as subparagraph (A), and

"(iii) by amending subparagraph (D) to read as follows:

" '(B) The amendments made by subparagraph (A) apply to discharges occurring on or after May 1, 1986.' "; 42 USC 1395ww note.

(B) section 9302(a)(2)(C) of such Act is amended by striking "1866(e)(5)" and inserting "1886(e)(5)"; 42 USC 1395ww.

(C) section 9320(h)(1) of such Act is amended by striking "before the period" and inserting "before the semicolon"; 42 USC 1395y.

(D) section 9321(c)(4) of such Act is amended by striking "second sentence" and all that follows through "operating costs" and inserting "second sentence of section 1886(a)(4) of the Social Security Act, from the term 'operating costs'"; 42 USC 1395ww note.

(E) the second sentence of section 9335(d)(2) of such Act is amended by striking "establish" and inserting "designate"; and 42 USC 1395rr note.

(F) section 9321(c)(3) of such Act is amended by inserting "section 1861(v)(1)(O) and 1886(g)(2) of the Social Security Act and" after "implementing". 42 USC 1395ww note.

(7) Section 218(v) of the Social Security Act (42 U.S.C. 418(v)) is amended by striking paragraph (3).

(8) Effective as if included in the Tax Reform Act of 1986, section 1895(d)(6)(C) of such Act is amended by striking "603" and inserting "2203". 42 USC 300bb-6.

PART 2—PROVISIONS RELATING TO PARTS A AND B

Subpart A—Health Maintenance Organization Reforms

SEC. 4011. BENEFICIARY PROTECTION.

(a) POST-CONTRACT PROTECTION FOR ENROLLEES WITH ELIGIBLE ORGANIZATIONS UNDER [26] THE MEDICARE PROGRAM.—

(1) Section 1876(c)(3) of such Act (42 U.S.C. 1395mm(b)(2)) is amended by adding at the end the following new subparagraph:

"(F) Each eligible organization that provides items and services pursuant to a contract under this section shall provide assurances to the Secretary that in the event the organization ceases to provide such items and services, the organization shall provide or arrange for supplemental coverage of benefits under this title related to a pre-existing condition with respect to any exclusion period, to all individuals enrolled with the entity who receive benefits under this title, for the lesser of six months or the duration of such period.".

42 USC 1395mm note.

(2) The amendment made by paragraph (1) shall apply with respect to contracts entered into or renewed on or after the date of enactment of this Act.

(b) NOTIFICATION OF TERMINATION OF RISK-SHARING CONTRACT.—

(1) Section 1876(c)(3) of such Act, as amended by subsection (a)(1), is further amended by adding at the end the following new subparagraph:

"(G)(i) Each eligible organization having a risk-sharing contract under this section shall notify individuals eligible to enroll with the organization under this section and individuals enrolled with the organization under this section that—

"(I) the organization is authorized by law to terminate or refuse to renew the contract, and

"(II) termination or nonrenewal of the contract may result in termination of the enrollments of individuals enrolled with the organization under this section.

"(ii) The notice required by clause (i) shall be included in—

"(I) any marketing materials described in subparagraph (C) that are distributed by an eligible organization to individuals eligible to enroll under this section with the organization, and

"(II) any explanation provided to enrollees by the organization pursuant to subparagraph (E).".

42 USC 1395mm note.

(2) The amendment made by paragraph (1) shall apply to contracts entered into or renewed on or after the date of the enactment of this Act.

SEC. 4012. PAYMENTS FOR HOSPITAL SERVICES.

(a) IN GENERAL.—Section 1866(a)(1) of such Act (42 U.S.C. 1395cc(a)(1)) is amended by inserting immediately after subparagraph (N) the following new subparagraph:

Contracts.

"(O) in the case of hospitals and skilled nursing facilities, to accept as payment in full for inpatient hospital and extended

[26] Copy read "UNDER".

care services that are covered under this title and are furnished to any individual enrolled with an eligible organization with a risk-sharing contract under section 1876 the amounts (in the case of hospitals) or limits (in the case of skilled nursing facilities) that would be made as a payment in full under this title if the individuals were not so enrolled.".

(b) REPEAL.—Section 1876(g)(4) of the Social Security Act (42 U.S.C. 1395mm(g)(4)) is repealed.

(c) IMPLEMENTATION.—The Secretary of Health and Human Services shall provide (in machine readable form) to eligible organizations under section 1876 of the Social Security Act medicare DRG rates for payments required by the amendment made by paragraph (2) and data on cost pass-through items for all inpatient services provided to medicare beneficiaries enrolled with such organizations. 42 USC 1395mm note.

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply to admissions occurring on or after April 1, 1988, or, if later, the earliest date the Secretary can provide the information required under subsection (c) in machine readable form. 42 USC 1395mm note.

SEC. 4013. TWO-YEAR EXTENSION ON PERIOD FOR BENEFIT STABILIZATION.

(a) IN GENERAL.—Section 1876(g)(5) of the Social Security Act (42 U.S.C. 1395mm(g)(5)), as added by the amendment made by section 2350(a)(2) of the Deficit Reduction Act of 1984, is amended by striking "four" and inserting "six".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective as if included in the enactment of the amendment made by section 2350(a)(2) of the Deficit Reduction Act of 1984. 42 USC 1395mm note.

SEC. 4014. CIVIL MONEY PENALTIES AND INTERMEDIATE SANCTIONS AGAINST HMOS/CMPS.

Section 1876(i)(6) of the Social Security Act (42 U.S.C. 1395mm) is amended to read as follows:

"(6)(A) If the Secretary determines that an eligible organization with a contract under this section— Contracts.

"(i) fails substantially to provide medically necessary items and services that are required (under law or under the contract) to be provided to an individual covered under the contract, if the failure has adversely affected (or has substantial likelihood of adversely affecting) the individual;

"(ii) imposes premiums on individuals enrolled under this section in excess of the premiums permitted;

"(iii) acts to expel or to refuse to re-enroll an individual in violation of the provisions of this section;

"(iv) engages in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by this section) by eligible individuals with the organization whose medical condition or history indicates a need for substantial future medical services;

"(v) misrepresents or falsifies information that is furnished—

"(I) to the Secretary under this section, or

"(II) to an individual or to any other entity under this section; or

"(vi) fails to comply with the requirements of subsection (g)(6)(A);

the Secretary may provide for any of the remedies described in subparagraph (B).

"(B) The remedies described in this subparagraph are—

"(i) civil money penalties of not more than $25,000 for each determination under subparagraph (A) or, with respect to a determination under clause (iv) or (v)(I), of not more than $100,000 for each such determination,

"(ii) suspension of enrollment of individuals under this section after the date the Secretary notifies the organization of a determination under subparagraph (A) and until the Secretary is satisfied that the basis for such determination has been corrected and is not likely to recur, or

"(iii) suspension of payment to the organization under this section for individuals enrolled after the date the Secretary notifies the organization of a determination under subparagraph (A) and until the Secretary is satisfied that the basis for such determination has been corrected and is not likely to recur.

The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under clause (i) in the same manner as they apply to a civil money penalty under that section.".

42 USC 1395mm note.

SEC. 4015. MEDICARE PAYMENT DEMONSTRATION PROJECTS.

(a) MEDICARE INSURED GROUP DEMONSTRATION PROJECTS.—

Contracts.

(1) The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") may provide for capitation demonstration projects (in this subsection referred to as "projects") with an entity which is an eligible organization with a contract with the Secretary under section 1876 of the Social Security Act or which meets the restrictions and requirements of this subsection. The Secretary may not approve a project unless it meets the requirements of this subsection.

(2) The Secretary may not conduct more than 3 projects and may not expend, from funds under title XVIII of the Social Security Act, more than $600,000,000 in any fiscal year for all such projects.

(3) The per capita rate of payment under a project—

(A) may be based on the adjusted average per capita cost (as defined in section 1876(a)(4) of the Social Security Act) determined only with respect to the group of individuals involved (rather than with respect to medicare beneficiaries generally), but

(B) the rate of payment may not exceed the lesser of—

(i) 95 percent of the adjusted average per capita cost described in subparagraph (A), or

(ii)(I) in the 4th year or 5th year of a project, 115 percent of the adjusted average per capita cost (as defined in section 1876(a)(4) of such Act) for classes of individuals described in section 1876(a)(1)(B) of that Act, or

(II) in any subsequent year of a project, 95 percent of the adjusted average per capita cost (as defined in section 1876(a)(4)) for such classes.

(4) If the payment amounts made to a project are greater than the costs of the project (as determined by the Secretary or, if applicable, on the basis of adjusted community rates described in section 1876(e)(3) of the Social Security Act), the project—

(A) may retain the surplus, but not to exceed 5 percent of the average adjusted per capita cost determined in accordance with paragraph (3)(A), and

(B) with respect to any additional surplus not retained by the project, shall apply such surplus to additional benefits for individuals served by the project or return such surplus to the Secretary.

(5) Enrollment under the project shall be voluntary. Individuals enrolled with the project may terminate such enrollment as of the beginning of the first calendar month following the date on which the request is made for such termination. Upon such termination, such individuals shall retain the same rights to other health benefits that such individuals would have had if they had never enrolled with the project without any exclusion or waiting period for pre-existing conditions.

(6) The requirements of—

(A) subsection (c)(3)(C) (relating to dissemination of information),

(B) subsection (c)(3)(E) (annual statement of rights),

(C) subsection (c)(5) (grievance procedures),

(D) subsection (c)(6) (on-going quality),

(E) subsection (g)(6) (relating to prompt payment of claims),

(F) subsection (i)(3)(A) and (B) (relating to access to information and termination notices),

(G) subsection (i)(6) (relating to providing necessary services), and

(H) subsection (i)(7) (relating to agreements with peer review organizations), Contracts.

of section 1876 of the Social Security Act shall apply to a project in the same manner as they apply to eligible organizations with risk-sharing contracts under such section.

(7) The benefits provided under a project must be at least actuarially equivalent to the combination of the benefits available under title XVIII of the Social Security Act and the benefits available through any alternative plans in which the individual can enroll through the the employer. The project shall guarantee the actuarial value of benefits available under the employer plan for the duration of the project.

(8) A project shall comply with all applicable State laws.

(9) The Secretary may not authorize a project unless the entity offering the project demonstrates to the satisfaction of the Secretary that it has the necessary financial reserves to pay for any liability for benefits under the project (including those liabilities for health benefits under medicare and any supplemental benefits).

(10) The Comptroller General shall monitor projects under this subsection and shall report periodically (not less often than once every year) to the Committee on Finance of the Senate and the Committee on Energy and Commerce and Committee on Ways and Means of the House of Representatives on the status of such projects and the affect on such projects of the requirements of this section and shall submit a final report to each such committee on the results of such projects. Reports.

(b) PAYMENT METHODOLOGY REFORM DEMONSTRATIONS PROJECTS.—

(1) The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") is specifically au-

thorized to conduct demonstration projects under this subsection for the purpose of testing alternative payment methodologies pertaining to capitation payments under title XVIII of the Social Security Act, including—

(A) computing adjustments to the average per capita cost under section 1876 of such Act on the basis of health status or prior utilization of services, and

(B) accounting for geographic variations in cost in the adjusted average per capita costs applicable to an eligible organization under such section which differs from payments currently provided on a county-by-county basis.

(2) No project may be conducted under this subsection—

(A) with an entity which is not an eligible organization (as defined in section 1876(b) of the Social Security Act), and

(B) unless the project meets all the requirements of subsections (c) and (i)(3) of section 1876 of such Act.

Appropriation authorization.

(3) There are authorized to be appropriated to carry out projects under this subsection $5,000,000 in each of fiscal years 1989 and 1990.

(c) APPLICATION OF PROVISIONS.—The provisions of subsection (a)(2) and the first sentence of subsection (b) of section 402 of the Social Security Amendments of 1967 shall apply to the demonstration projects under this section in the same manner as they apply to experiments under subsection (a)(1) of that section.

42 USC 1320a-7a note.

SEC. 4016. DELAY IN EFFECTIVE DATE IN PHYSICIAN INCENTIVE RULES FOR HEALTH MAINTENANCE ORGANIZATIONS.

100 Stat. 2002.

Section 9313(c)(2)(B) of the Omnibus Budget Reconciliation Act of 1986 is amended by striking "April 1, 1989" and inserting "April 1, 1990".

42 USC 1395mm note.

SEC. 4017. GAO STUDY AND REPORTS ON MEDICARE CAPITATION.

(a) STUDY.—The Comptroller General shall conduct a study on medicare capitation rates that shall include an analysis and assessment of—

(1) the current method for computing per capita rates of payment under section 1876 of the Social Security Act (including the method for determining the United States per capita cost);

(2) the method for establishing relative costs for geographic areas and the data used to establish age, sex, and other weighting factors;

(3) ways to refine the calculation of adjusted average per capita costs under section 1876 of such Act (including making adjustments for health status or prior utilization of services and improvements in the definition of geographic areas);

Contracts.

(4) the extent to which individuals enrolled with organizations with a risk-sharing contract with the Secretary under section 1876 of such Act differ in utilization and cost from fee-for-service beneficiaries and ways for modifying enrollment patterns through program changes or for reflecting the differences in rates through group experience rating or other means;

(5) approaches for limiting the liability of the contracting organization under section 1876 of such Act in catastrophic cases;

(6) ways of establishing capitation rates on a basis other than fee-for-service experience in areas with high prepaid market penetration; and

(7) methods for providing the rate levels necessary to maintain access to quality prepaid services in rural or medically underserved areas (while maintaining cost savings).

(b) REPORTS.—

(1) Not later than January 1 of 1989 and 1990, the Comptroller General shall submit to the Committee on Finance of the Senate and the Committee on Energy and Commerce and Committee on Ways and Means of the House of Representatives interim reports on the progress of the study conducted under subsection (a).

(2) Not later than January 1, 1991, the Comptroller General shall submit to each such committee a final report on the results of such study.

SEC. 4018. SPECIAL RULES.

(a) ASSIGNMENT OF MEMBERS FOR HIP HEALTH MAINTENANCE ORGANIZATION.—Section 1876(f) of such Act (42 U.S.C. 1395mm(f)) is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3)(A) An eligible organization described in subparagraph (B) may elect, for purposes of determining the compliance of a subdivision, subsidiary, or affiliate described in subparagraph (B)(iii) with the requirement of paragraph (1) for the period before October 1, 1992, to have members of the subdivision, subsidiary, or affiliate considered to be members of the parent organization.

"(B) An eligible organization described in this subparagraph is an eligible organization which—

"(i) is described in section 1903(m)(2)(B)(iii);

"(ii) has members who have a collectively bargained contractual right to obtain health benefits from the organization;

"(iii) elects to provide benefits under a risk-sharing contract to individuals residing in a service area, who have a collectively bargained contractual right to obtain benefits from the organization, through a subdivision, subsidiary, or affiliate which itself is an eligible organization serving the area and which is owned or controlled by the parent eligible organization; and Contracts.

"(iv) has assumed any risk of insolvency and quality assurance with respect to individuals receiving benefits through such a subdivision, subsidiary, or affiliate.".

(b) EXTENSION OF WAIVERS FOR SOCIAL HEALTH MAINTENANCE ORGANIZATIONS.—

(1) The Secretary of Health and Human Services shall extend without interruption, through September 30, 1992, the approval of waivers granted under subsection (a) of section 2355 of the Deficit Reduction Act of 1984 for the demonstration project described in subsection (b) of that section, subject to the terms and conditions (other than duration of the project) established under that section (as amended by paragraph (2) of this subsection).

(2) Section 2355(b)(5) of the Deficit Reduction Act of 1984 is amended by inserting "and in succeeding years" after "third year". 98 Stat. 1103.

98 Stat. 1103.

(3) Section 2355(d)(2) of the Deficit Reduction Act of 1984 is amended by striking "final" and inserting "interim".

Reports.

(4) The Secretary of Health and Human Services shall submit a final report to the Congress on the project referred to in paragraph (1) not later than March 31, 1993.

(c) TREATMENT OF MICHIGAN BLUE CARE HMO NETWORK UNDER [27] 50 PERCENT RULE.—Blue Care, Inc., a nonprofit corporation which is indirectly owned and operated by Blue Cross and Blue Shield of Michigan, Inc. and which enrolls individuals for the purpose of providing them with health care services through assignment to health maintenance organizations which are indirectly or wholly owned and operated by Blue Cross and Blue Shield of Michigan, Inc., is deemed to meet the requirement of section 1876(f)(1) of the Social Security Act (relating to limitation on enrollment of medicare and medicaid beneficiaries with an eligible organization) if—

(1) such requirement would be met if applied to all individuals enrolled with (or otherwise assigned to) each of such health maintenance organizations, and

(2) not more than 20 percent of the number of individuals who are members of (or otherwise assigned to) each such organization consists of individuals who are entitled to benefits under title XVIII of the Social Security Act.

(d) TEMPORARY WAIVER FOR WATTS HEALTH FOUNDATION.—Section 9312(c)(3) of the Omnibus Budget Reconciliation Act of 1986 is amended by adding at the end the following new subparagraph:

42 USC 1395mm note.

Grants.

"(D) TREATMENT OF CERTAIN WAIVERS.—In the case of an eligible organization (or successor organization) that is described in clauses (i) and (ii) of subparagraph (C) and that received a grant or grants totaling at least $3,000,000 in fiscal year 1987 under section 329(d)(1)(A) or 330(d)(1) of the Public Health Service Act—

"(i) before January 1, 1990, section 1876(f) of the Social Security Act shall not apply to the organization;

"(ii) beginning on January 1, 1990, the Secretary of Health and Human Services shall waive the requirement of such section with respect to the organization if—

"(I) before such date, the organization has submitted to the Secretary a schedule for the organization to comply with the requirement of section 1876(f)(1) of such Act, and the Secretary has found such schedule to be reasonable and has approved such schedule; and

"(II) periodically after such date, the Secretary reviews the organization's compliance with such schedule and determines that the organization has complied, or made significant progress towards compliance, with such schedule; and

"(iii) after January 1, 1990, if the Secretary has approved a schedule under clause (ii)(I) and has determined, in a periodic review under clause (ii)(II), that the organization has not complied, or made significant progress towards compliance, with such schedule, the Secretary may provide for a sanction described in sec-

[27] Copy read "UNDER".

tion 1876(f)(3) of the Social Security Act effective with respect to individuals enrolling with the organization after the date the Secretary notifies the organization of such noncompliance.".

Subpart B—Home Health Quality

SEC. 4021. CONDITIONS OF PARTICIPATION FOR HOME HEALTH AGENCIES.

(a) DEFINITION OF HOME HEALTH AGENCY.—Section 1861(o)(6) of the Social Security Act (42 U.S.C. 1395x(o)(6)) is amended by inserting "the conditions of participation specified in section 1891(a) and" after "meets".

(b) CONDITIONS OF PARTICIPATION.—Title XVIII of such Act is amended by adding at the end the following new section:

"CONDITIONS OF PARTICIPATION FOR HOME HEALTH AGENCIES; HOME HEALTH QUALITY

"SEC. 1891. (a) The conditions of participation that a home health agency is required to meet under this subsection are as follows: 42 USC 1395bbb.

"(1) The agency protects and promotes the rights of each individual under its care, including each of the following rights:

"(A) The right to be fully informed in advance about the care and treatment to be provided by the agency, to be fully informed in advance of any changes in the care or treatment to be provided by the agency that may affect the individual's well-being, and (except with respect to an individual adjudged incompetent) to participate in planning care and treatment or changes in care or treatment.

"(B) The right to voice grievances with respect to treatment or care that is (or fails to be) furnished without discrimination or reprisal for voicing grievances.

"(C) The right to confidentiality of the clinical records described in section 1861(o)(3).

"(D) The right to have one's property treated with respect.

"(E) The right to be fully informed orally and in writing (in advance of coming under the care of the agency) of—

"(i) all items and services furnished by (or under arrangements with) the agency for which payment may be made under this title,

"(ii) the coverage available for such items and services under this title, title XIX, and any other Federal program of which the agency is reasonably aware,

"(iii) any charges for items and services not covered under this title and any charges the individual may have to pay with respect to items and services furnished by (or under arrangements with) the agency, and

"(iv) any changes in the charges or items and services described in clause (i), (ii), or (iii).

"(F) The right to be fully informed in writing (in advance of coming under the care of the agency) of the individual's rights and obligations under this title.

"(G) The right to be informed of the availability of the State home health agency hot-line established under section 1864(a).

"(2) The agency notifies the State entity responsible for the licensing or certification of the agency of a change in—

"(A) the persons with an ownership or control interest (as defined in section 1124(a)(3)) in the agency,

"(B) the persons who are officers, directors, agents, or managing employees (as defined in section 1126(b)) of the agency, and

"(C) the corporation, association, or other company responsible for the management of the agency.

Such notice shall be given at the time of the change and shall include the identity of each new person or company described in the previous sentence.

"(3)(A) The agency must not use as a home health aide (on a full-time, temporary, per diem, or other basis), any individual who is not a licensed health care professional (as defined in subparagraph (F)) to provide items or services described in section 1861(m) on or after January 1, 1990, unless the individual—

"(i) has completed a training and competency evaluation program, or a competency evaluation program, that meets the minimum standards established by the Secretary under subparagraph (D), and

"(ii) is competent to provide such items and services.

For purposes of clause (i), an individual is not considered to have completed a training and competency evaluation program, or a competency evaluation program if, since the individual's most recent completion of such a program, there has been a continuous period of 24 consecutive months during none of which the individual provided items and services described in section 1861(m) for compensation.

"(B)(i) The agency must provide, with respect to individuals used as a home health aide by the agency as of July 1, 1989, for a competency evaluation program (as described in subparagraph (A)(i)) and such preparation as may be necessary for the individual to complete such a program by January 1, 1990.

"(ii) The agency must provide such regular performance review and regular in-service education as assures that individuals used to provide items and services described in section 1861(m) are competent to provide those items and services.

"(C) The agency must not permit an individual, other than in a training and competency evaluation program that meets the minimum standards established by the Secretary under subparagraph (D), to provide items or services of a type for which the individual has not demonstrated competency.

"(D)(i) The Secretary shall establish minimum standards for the programs described in subparagraph (A) by not later than October 1, 1988.

"(ii) Such standards shall include the content of the curriculum, minimum hours of training, qualification of instructors, and procedures for determination of competency.

"(iii) Such standards may permit approval of programs offered by or in home health agencies, as well as outside agencies (including employee organizations), and of programs in effect on the date of the enactment of this section; except that they may

not provide for the approval of a program offered by or in a home health agency which has been determined to be out of compliance with the requirements specified in or pursuant to section 1861(o) or subsection (a) within the previous 2 years.

"(iv) Such standards shall permit a determination that an individual who has completed (before July 1, 1989) a training and competency evaluation program or a competency evaluation program shall be deemed for purposes of subparagraph (A) to have completed a program that is approved by the Secretary under the standards established under this subparagraph if the Secretary determines that, at the time the program was offered, the program met such standards.

"(E) In this paragraph, the term 'home health aide' means any individual who provides the items and services described in section 1861(m), but does not include an individual—

"(i) who is a licensed health professional (as defined in subparagraph (F)), or

"(ii) who volunteers to provide such services without monetary compensation.

"(F) In this paragraph, the term 'licensed health professional' means a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, registered professional nurse, licensed practical nurse, or licensed or certified social worker.

"(4) With respect to durable medical equipment furnished to individuals for whom the agency provides items and services, suppliers of such equipment do not use (on a full-time, temporary, per diem, or other basis) any individual who does not meet minimum training standards (established by the Secretary by October 1, 1988) for the demonstration and use of any such equipment furnished to individuals with respect to whom payments may be made under this title.

"(5) The agency includes an individual's plan of care required under section 1861(m) as part of the clinical records described in section 1861(o)(3).

"(6) The agency operates and provides services in compliance with all applicable Federal, State, and local laws and regulations (including the requirements of section 1124) and with accepted professional standards and principles which apply to professionals providing items and services in such an agency.

"(b) It is the duty and responsibility of the Secretary to assure that the conditions of participation and requirements specified in or pursuant to section 1861(o) and subsection (a) of this section and the enforcement of such conditions and requirements are adequate to protect the health and safety of individuals under the care of a home health agency and to promote the effective and efficient use of public moneys.".

(c) EFFECTIVE DATE.—Except as otherwise provided, the amendments made by subsections (a) and (b) shall apply to home health agencies as of the first day of the 18th calendar month that begins after the date of the enactment of this Act. 42 USC 1395x note.

SEC. 4022. STANDARD AND EXTENDED SURVEY.

(a) IN GENERAL.—Section 1891 of the Social Security Act (as added by section 4021) is amended by adding at the end the following new subsections:

"(c)(1) Any agreement entered into or renewed by the Secretary pursuant to section 1864 relating to home health agencies shall provide that the appropriate State or local agency shall conduct, without any prior notice, a standard survey of each home health agency. Any individual who notifies (or causes to be notified) a home health agency of the time or date on which such a survey is scheduled to be conducted is subject to a civil money penalty of not to exceed $2,000. The Secretary shall provide for imposition of civil money penalties under this clause in a manner similar to that for the imposition of civil money penalties under section 1128A. The Secretary shall review each State's or local agency's procedures for scheduling and conduct of standard surveys to assure that the State or agency has taken all reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

"(2)(A) Except as provided in subparagraph (B), each home health agency shall be subject to a standard survey not later than 15 months after the date of the previous standard survey conducted under this paragraph. The statewide[27a] average interval between standard surveys of any home health agency shall not exceed 12 months.

"(B) If not otherwise conducted under subparagraph (A), a standard survey (or an abbreviated standard survey) of an agency—

"(i) may be conducted within 2 months of any change of ownership, administration, or management of the agency to determine whether the change has resulted in any decline in the quality of care furnished by the agency, and

"(ii) shall be conducted within 2 months of when a significant number of complaints have been reported with respect to the agency to the Secretary, the State, the entity responsible for the licensing of the agency, the State or local agency responsible for maintaining a toll-free hotline and investigative unit (under section 1864(a)), or any other appropriate Federal, State, or local agency.

"(C) A standard survey conducted under this paragraph with respect to a home health agency—

"(i) shall include (to the extent practicable), for a case-mix stratified sample of individuals furnished items or services by the agency—

"(I) visits to the homes of such individuals, but only with the consent of such individuals, for the purpose of evaluating (in accordance with a standardized reproducible assessment instrument (or instruments) approved by the Secretary under subsection (d)) the extent to which the quality and scope of items and services furnished by the agency attained and maintained the highest practicable functional capacity of each such individual as reflected in such individual's written plan of care required under section 1861(m) and clinical records required under section 1861(o)(3); and

"(II) a survey of the quality of care and services furnished by the agency as measured by indicators of medical, nursing, and rehabilitative care;

"(ii) shall be based upon a protocol that is developed, tested, and validated by the Secretary not later than January 1, 1989; and

"(iii) shall be conducted by an individual—

[27a] Copy read "Statewide".

"(I) who meets minimum qualifications established by the Secretary not later than July 1, 1989,

"(II) who is not serving (or has not served within the previous 2 years) as a member of the staff of, or as a consultant to, the home health agency surveyed respecting compliance with the conditions of participation specified in or pursuant to section 1861(o) or subsection (a) of this section, and

"(III) who has no personal or familial financial interest in the home health agency surveyed.

"(D) Each home health agency that is found, under a standard survey, to have provided substandard care shall be subject to an extended survey to review and identify the policies and procedures which produced such substandard care and to determine whether the agency has complied with the conditions of participation specified in or pursuant to section 1861(o) or subsection (a) of this section. Any other agency may, at the Secretary's or State's discretion, be subject to such an extended survey (or a partial extended survey). The extended survey shall be conducted immediately after the standard survey (or, if not practical, not later than 2 weeks after the date of completion of the standard survey).

"(E) Nothing in this paragraph shall be construed as requiring an extended (or partial extended) survey as a prerequisite to imposing a sanction against an agency under subsection (e) on the basis of the findings of a standard survey.

"(d)(1) Not later than January 1, 1989, the Secretary shall designate an assessment instrument (or instruments) for use by an agency in complying with subsection (c)(2)(C)(I).

"(2)(A) Not later than January 1, 1991, the Secretary shall—

"(i) evaluate the assessment process,

"(ii) report to Congress on the results of such evaluation, and

"(iii) based on such evaluation, make such modifications in the assessment process as the Secretary determines are appropriate.

Reports.

"(B) The Secretary shall periodically update the evaluation conducted under subparagraph (A), report the results of such update to Congress, and, based on such update, make such modifications in the assessment process as the Secretary determines are appropriate.

Reports.

"(3) The Secretary shall provide for the comprehensive training of State and Federal surveyors in matters relating to the performance of standard and extended surveys under this section, including the use of any assessment instrument (or instruments) designated under paragraph (1).".

(b) EFFECTIVE DATE.—Except as otherwise specifically provided in section 1891(d) of the Social Security Act (as added by subsection (a)), the amendment made by subsection (a) shall become effective on the first day of the 18th calendar month to begin after the date of the enactment of this Act.

42 USC 1395bbb note.

SEC. 4023. ENFORCEMENT.

Section 1891 of the Social Security Act (as added by section 4021 and amended by section 4022) is further amended by adding at the end the following new subsections:

"(e)(1) If the Secretary determines on the basis of a standard, extended, or partial extended survey or otherwise, that a home health agency that is certified for participation under this title is no longer in compliance with the requirements specified in or pursuant

to section 1861(o) or subsection (a) and determines that the deficiencies involved immediately jeopardize the health and safety of the individuals to whom the agency furnishes items and services, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in subsection (f)(2)(A)(iii) or terminate the certification of the agency, and may provide, in addition, for 1 or more of the other remedies described in subsection (f)(2)(A).

"(2) If the Secretary determines on the basis of a standard, extended, or partial extended survey or otherwise, that a home health agency that is certified for participation under this title is no longer in compliance with the requirements specified in or pursuant to section 1861(o) or subsection (a) and determines that the deficiencies involved do not immediately jeopardize the health and safety of the individuals to whom the agency furnishes items and services, the Secretary may (for a period not to exceed 6 months) impose intermediate sanctions developed pursuant to subsection (f), in lieu of terminating the certification of the agency. If, after such a period of intermediate sanctions, the agency is still no longer in compliance with the requirements specified in or pursuant to section 1861(o) or subsection (a), the Secretary shall terminate the certification of the agency.

"(3) If the Secretary determines that a home health agency that is certified for participation under this title is in compliance with the requirements specified in or pursuant to section 1861(o) or subsection (a) but, as of a previous period, did not meet such requirements, the Secretary may provide for a civil money penalty under subsection (f)(2)(A)(i) for the days in which it finds that the agency was not in compliance with such requirements.

"(4) The Secretary may continue payments under this title with respect to a home health agency not in compliance with the requirements specified in or pursuant to section 1861(o) or subsection (a) over a period of not longer than 6 months, if—

"(A) the State or local survey agency finds that it is more appropriate to take alternative action to assure compliance of the agency with the requirements than to terminate the certification of the agency,

"(B) the agency has submitted a plan and timetable for corrective action to the Secretary for approval and the Secretary approves the plan of corrective action, and

"(C) the agency agrees to repay to the Federal Government payments received under this subparagraph if the corrective action is not taken in accordance with the approved plan and timetable.

The Secretary shall establish guidelines for approval of corrective actions requested by home health agencies under this subparagraph.

"(f)(1) The Secretary shall develop and implement, by not later than April 1, 1989—

"(A) a range of intermediate sanctions to apply to home health agencies under the conditions described in subsection (e), and

"(B) appropriate procedures for appealing determinations relating to the imposition of such sanctions.

"(2)(A) The intermediate sanctions developed under paragraph (1) shall include—

"(i) civil money penalties for each day of noncompliance,

"(ii) suspension of all or part of the payments to which a home health agency would otherwise be entitled under this title with respect to items and services furnished by a home health agency on or after the date on which the Secretary determines that intermediate sanctions should be imposed pursuant to subsection (e)(2), and

"(iii) the appointment of temporary management to oversee the operation of the home health agency and to protect and assure the health and safety of the individuals under the care of the agency while improvements are made in order to bring the agency into compliance with all the requirements specified in or pursuant to section 1861(o) or subsection (a).

The temporary management under clause (iii) shall not be terminated until the Secretary has determined that the agency has the management capability to ensure continued compliance with all the requirements referred to in that clause.

"(B) The sanctions specified in subparagraph (A) are in addition to sanctions otherwise available under State or Federal law and shall not be construed as limiting other remedies, including any remedy available to an individual at common law.

"(C) A finding to suspend payment under subparagraph (A)(ii) shall terminate when the Secretary finds that the home health agency is in substantial compliance with all the requirements specified in or pursuant to section 1861(o) and subsection (a).

"(3) The Secretary shall develop and implement, by not later than April 1, 1989, specific procedures with respect to the conditions under which each of the intermediate sanctions developed under paragraph (1) is to be applied, including the amount of any fines and the severity of each of these sanctions. Such procedures shall be designed so as to minimize the time between identification of deficiencies and imposition of these sanctions and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies.".

(b) EFFECTIVE DATE.—Except as otherwise specifically provided in subsections (e) and (f) of section 1891 of the Social Security Act (as added by subsection (a)), the amendment made by subsection (a) shall become effective on the first day of the 18th calendar month to begin after the date of the enactment of this Act. 42 USC 1395bbb note.

SEC. 4024. REQUIREMENT THAT INDIVIDUAL BE CONFINED TO HOME.

(a) PART A.—Section 1814(a) of the Social Security Act (42 U.S.C. 1395f(a)) is amended by adding at the end the following: "For purposes of paragraph (2)(C), an individual shall be considered to be 'confined to his home' if the individual has a condition, due to an illness or injury, that restricts the ability of the individual to leave his or her home except with the assistance of another individual or the aid of a supportive device (such as crutches, a cane, a wheelchair, or a walker), or if the individual has a condition such that leaving his or her home is medically contraindicated. While an individual does not have to be bedridden to be considered 'confined to his home', the condition of the individual should be such that there exists a normal inability to leave home, that leaving home requires a considerable and taxing effort by the individual, and that absences of the individual from home are infrequent or of relatively short duration, or are attributable to the need to receive medical treatment.".

(b) PART B.—Section 1835(a) of such Act (42 U.S.C. 1395n(a)) is amended by adding at the end the following: "For purposes of paragraph (2)(A), an individual shall be considered to be 'confined to his home' if the individual has a condition, due to an illness or injury, that restricts the ability of the individual to leave his or her home except with the assistance of another individual or the aid of a supportive device (such as crutches, a cane, a wheelchair, or a walker), or if the individual has a condition such that leaving his or her home is medically contraindicated. While an individual does not have to be bedridden to be considered 'confined to his home', the condition of the individual should be such that there exists a normal inability to leave home, that leaving home requires a considerable and taxing effort by the individual, and that absences of the individual from home are infrequent or of relatively short duration, or are attributable to the need to receive medical treatment.".

42 USC 1395f note.

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply to items and services provided on or after January 1, 1988.

SEC. 4025. HOME HEALTH TOLL-FREE HOTLINE AND INVESTIGATIVE UNIT.

(a) IN GENERAL.—Section 1864(a) of the Social Security Act (42 U.S.C. 1395aa(a)) is amended by adding at the end the following: "Any agreement under this subsection shall provide for the appropriate State or local agency to maintain a toll-free hotline (1) to collect, maintain, and continually update information on home health agencies located in the State or locality that are certified to participate in the program established under this title (which information shall include any significant deficiencies found with respect to patient care in the most recent certification survey conducted with respect to the agency, when that survey was completed, whether corrective actions have been taken or are planned, and the sanctions, if any, imposed under this title with respect to the agency) and (2) to receive complaints (and answer questions) with respect to home health agencies in the State or locality. Any such agreement shall provide for such agency to maintain a unit for investigating such complaints that possesses enforcement authority and has access to survey and certification reports, information gathered by any private accreditation agency pursuant to an agreement with the Secretary under section 1864, and consumer medical records (but only with the consent of the consumer or his or her legal representative).".

42 USC 1395aa note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to agreements entered into or renewed on or after the date of enactment of this Act.

SEC. 4026. HOME HEALTH AGENCY COST LIMITS.

(a) DATA USED TO DETERMINE LIMITS.—

(1) Section 1861(v)(1)(L) of the Social Security Act (42 U.S.C. 1395x(v)(1)(L)) is amended by adding at the end the following new clause:

"(iii) In establishing limits under this subparagraph, the Secretary shall—

"(I) utilize a wage index that is based on audited wage data obtained from home health agencies, and

"(II) base such limits on the most recent audited wage data available, which data may be for cost reporting periods beginning no earlier than July 1, 1985.".

(2) The amendment made by paragraph (1) shall apply to cost reporting periods beginning on or after July 1, 1988. 42 USC 1395x note.

(b) STUDY OF LIMITS.—The Secretary of Health and Human Services shall study and report to the Congress, not later than June 1, 1988, on— Reports.

(1) whether the separate schedules of cost limits currently applied to home health agencies under title XVIII of the Social Security Act located in urban and rural areas accurately reflect differences in the costs of urban and rural home health agencies, and

(2) the appropriateness of modifying such limits to take into account the proportion of agency patients who are from urban and rural areas.

SEC. 4027. HOME HEALTH PROSPECTIVE PAYMENT DEMONSTRATION PROJECT. 42 USC 1395n note.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall provide for a demonstration project to develop and test alternative methods of paying home health agencies on a prospective basis for services furnished under the medicare and medicaid programs. The project shall be designed in a manner to enable the Secretary to evaluate the effects of various methods of prospective payment (including payments on a per-visit, per-case, and per-episode basis) on program expenditures, access to, and quality of, home health care, and home health agency operations. The Secretary shall assure that services are first furnished under the project not later than July 1, 1988, and, for this purpose, the Secretary may reinstate a previously awarded contract, or award a sole source contract, to carry out the project. Contracts.

(b) FUNDING.—The provisions of subsection (a)(2) and the first sentence of subsection (b) of section 402 of the Social Security Amendments of 1967 shall apply to the demonstration project under subsection (a) of this section as they apply to experiments under subsection (a)(1) of that section.

(c) REPORT.—The Secretary shall submit to Congress, not later than one year after the date of the enactment of this Act, an interim report on the demonstration project and, not later than four years after the date of the enactment of this Act, a final report on the results of the project.

Subpart C—Other Provisions

SEC. 4031. PAYMENT CYCLE STANDARDS.

(a) PAYMENT FLOOR STANDARDS.—

(1) Section 1816(c) of the Social Security Act (42 U.S.C. 1395h(c)) is amended by adding at the end the following new paragraph:

"(3)(A) Each agreement under this section shall provide that no payment shall be issued, mailed, or otherwise transmitted with respect to any claim submitted under this title within the applicable number of calendar days after the date on which the claim is received.

"(B) In this paragraph, the term 'applicable number of calendar days' means—

"(i) with respect to claims received in the 3-month period beginning July 1, 1988, 10 days, and

"(ii) with respect to claims received in the 12-month period beginning October 1, 1988, 14 days.".[27b]

(2) Section 1842(c) of such Act (42 U.S.C. 1395u(c)) is amended by adding at the end the following new paragraph:

Contracts.

"(3)(A) Each contract under this section which provides for the disbursement of funds, as described in subsection (a)(1)(B), shall provide that no payment shall be issued, mailed, or otherwise transmitted with respect to any claim submitted under this title within the applicable number of calendar days after the date on which the claim is received.

"(B) In this paragraph, the term 'applicable number of calendar days' means—

"(i) with respect to claims received in the 3-month period beginning July 1, 1988, 10 days, and

"(ii) with respect to claims received in the 12-month period beginning October 1, 1988, 14 days.".[27b]

42 USC 1395h note.

(3)(A) The amendments made by paragraphs (1) and (2) shall apply to claims received on or after July 1, 1988.

Contracts. Regulations.

(B) The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 of the Social Security Act and contracts under section 1842 of such Act, and regulations, to such extent as may be necessary to implement the provisions of this subsection on a timely basis.

42 USC 1395h note.

(b) PROHIBITION OF OTHER POLICIES INTENDED TO SLOW DOWN MEDICARE PAYMENTS.—Notwithstanding any other provision of law, except as specifically provided in this section, the Secretary of Health and Human Services is not authorized to issue, after the date of the enactment of this Act, and before October 1, 1990, any final regulation, instruction, or other policy change which is primarily intended to have the effect of slowing down claims processing, or delaying payment of claims, under title XVIII of the Social Security Act.

42 USC 1395h note.

(c) BUDGET CONSIDERATIONS.—For purposes of section 202 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, this section is a necessary (but secondary) result of a significant policy change.

SEC. 4032. DENIALS AND RECONSIDERATIONS OF CLAIMS FOR HOME HEALTH SERVICES, EXTENDED CARE SERVICES, AND POST-HOSPITAL EXTENDED CARE SERVICES.

(a) NOTIFICATION AND PHYSICIAN REVIEW.—Section 1816 of the Social Security Act (42 U.S.C. 1395h) is amended by adding at the end the following new subsection:

"(j) An agreement with an agency or organization under this section shall require that, with respect to a claim for home health services, extended care services, or post-hospital extended care services submitted by a provider to such agency or organization that is denied, such agency or organization—

"(1) furnish the provider and the individual with respect to whom the claim is made with a written explanation of the denial and of the statutory or regulatory basis for the denial; and

"(2) promptly notify such individual and the provider of disposition of such reconsideration.".

[27b] Copy read "days.".

(b) PERFORMANCE STANDARDS FOR FISCAL INTERMEDIARIES AND CARRIERS.—Section 1816(f) of such Act (42 U.S.C. 1395h(f)) is amended by adding at the end the following: "Such standards and criteria shall include with respect to claims for services furnished under this part by any provider of services other than a hospital whether such agency or organization is able to process 75 percent of reconsiderations within 60 days (except in the case of the fiscal year 1989, 66 percent of reconsiderations) and 90 percent of reconsiderations within 90 days and the extent to which its determinations are reversed on appeal.".

(c) EFFECTIVE DATE.— 42 USC 1395h note.

(1)(A) The amendment made by subsection (a) shall apply with respect to claims received on or after January 1, 1988.

(B) The amendment made by subsection (b) shall apply with respect to claims filed on or after October 1, 1988.

(2) The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 and contracts under section 1842 of the Social Security Act, and regulations, to such extent as may be necessary to implement the amendments made by subsections (a) and (b) on a timely basis. Contracts. Regulations.

SEC. 4033. PERMITTING DISABLED INDIVIDUALS TO RENEW ENTITLEMENT TO MEDICARE AFTER GAINFUL EMPLOYMENT WITHOUT A 2-YEAR WAITING PERIOD.

(a) IN GENERAL.—

(1) Section 226(f) of the Social Security Act (42 U.S.C. 426(f)) is amended by inserting before the period at the end the following: ", unless the physical or mental impairment which is the basis for disability is the same as (or directly related to) the physical or mental impairment which served as the basis for disability in such previous period".

(2)(A) The amendment made by subsection (a) shall apply to months beginning after the end of the 60-day period beginning on the date of enactment of this Act. 42 USC 426 note.

(B) The amendment made by subsection (a) shall not apply so as to include (for the purposes described in section 226(f) of the Social Security Act) monthly benefits paid for any month in a previous period (described in that section) that terminated before the end of the 60-day period described in paragraph (1).

SEC. 4034. APPLICATION OF SECONDARY PAYER PROVISIONS TO GOVERNMENTAL ENTITIES.

(a) IN GENERAL.—Section 1862(b)(4)(B)(i) of the Social Security Act (42 U.S.C. 1395y(b)(4)(B)(i)), as added by the amendment made by section 9319(a) of the Omnibus Budget Reconciliation Act of 1986, is amended by striking "section 5000(b) of the Internal Revenue Code of 1986" and inserting "subsection (b) of section 5000 of the Internal Revenue Code of 1986 without regard to subsection (d) of such section".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective as if included in the enactment of section 9319(a) of the Omnibus Budget Reconciliation Act of 1986. 42 USC 1395y note.

SEC. 4035. PUBLICATION AND NOTIFICATION OF POLICIES.

(a) REQUIRING PUBLICATION OF INTERMEDIARY AND CARRIER BUDGET METHODOLOGY.— Federal Register, publication.

(1) Section 1816(c)(1) of the Social Security Act (42 U.S.C. 1395h(c)(1)) is amended by adding at the end the following sentence: "The Secretary shall cause to have published in the Federal Register, by not later than September 1 before each fiscal year, data, standards, and methodology to be used to establish budgets for fiscal intermediaries under this section for that fiscal year, and shall cause to be published in the Federal Register for public comment, at least 90 days before such data, standards, and methodology are published, the data, standards, and methodology proposed to be used.".

(2) Section 1842(c)(1) of such Act (42 U.S.C. 1395u(c)(1)) is amended by adding at the end the following sentence: "The Secretary shall cause to have published in the Federal Register, by not later than September 1 before each fiscal year, data, standards, and methodology to be used to establish budgets for carriers under this section for that fiscal year, and shall cause to be published in the Federal Register for public comment, at least 90 days before such data, standards, and methodology are published, the data, standards, and methodology proposed to be used.".

Effective date. 42 USC 1395h note.

(3) The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to budgets for fiscal years beginning with fiscal year 1989.

(b) PUBLICATION AS REGULATIONS OF SIGNIFICANT POLICIES.—Section 1871(a) of such Act (42 U.S.C. 1395hh(a)) is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by adding at the end the following new paragraph:

"(2) No rule, requirement, or other statement of policy (other than a national coverage determination) that establishes or changes a substantive legal standard governing the scope of benefits, the payment for services, or the eligibility of individuals, entities, or organizations to furnish or receive services or benefits under this title shall take effect unless it is promulgated by the Secretary by regulation under paragraph (1).".

(c) MISCELLANEOUS PUBLICATION AND INFORMATION ACCESS PROVISIONS.—Section 1871 of such Act (42 U.S.C. 1395hh) is amended by adding at the end the following new subsection:

"(c)(1) The Secretary shall publish in the Federal Register, not less frequently than every 3 months, a list of all manual instructions, interpretative rules, statements of policy, and guidelines of general applicability which—

"(A) are promulgated to carry out this title, but

"(B) are not published pursuant to subsection (a)(1) and have not been previously published in a list under this subsection.

Effective date.

"(2) Effective June 1, 1988, each fiscal intermediary and carrier administering claims for extended care, post-hospital extended care, home health care, and durable medical equipment benefits under this title shall make available to the public all interpretative materials, guidelines, and clarifications of policies which relate to payments for such benefits.

"(3) The Secretary shall to the extent feasible make such changes in automated data collection and retrieval by the Secretary and fiscal intermediaries with agreements under section 1816 as are necessary to make easily accessible for the Secretary and other appropriate parties a data base which fairly and accurately reflects the provision of extended care, post-hospital extended care and home health care benefits pursuant to this title, including such

categories as benefit denials, results of appeals, and other relevant factors, and selectable by such categories and by fiscal intermediary, service provider, and region.".

SEC. 4036. END-STAGE RENAL DISEASE AMENDMENTS.

(a) IMPLEMENTATION OF PRIMARY PAYER REQUIREMENTS FOR END-STAGE RENAL DISEASE PROGRAM.—

(1) Section 1862(b)(2)(A) of the Social Security Act (42 U.S.C. 1395y(b)(2)(A)) is amended by striking "(ii)" and all that follows through "under this title" and inserting "(ii) can reasonably be expected to be made under such a plan".

(2) The amendment made by paragraph (1) shall apply with respect to items and services furnished on or after 30 days after the date of the enactment of this Act. Effective date. 42 USC 1395y note.

(b) LIMITATION OF MINIMUM UTILIZATION RATE REQUIREMENT FOR END-STAGE RENAL DISEASE TRANSPLANTATIONS.—The last sentence of section 1881(b)(1) of such Act (42 U.S.C. 1395rr(b)(1)) is amended by striking "covered procedures and for self-dialysis training programs" and inserting "transplantations".

(c) EXTENSION OF DEADLINE FOR ESTABLISHING PROTOCOLS ON REUSE OF DIALYSIS FILTERS AND OTHER DIALYSIS SUPPLIES AS IT RELATES TO THE REUSE OF BLOODLINES.—

(1)(A) Section 9335(k)(2) of the Omnibus Budget Reconciliation Act of 1986 is amended by inserting "(or July 1, 1988, with respect to protocols that relate to the reuse of bloodlines)" after "October 1, 1987". 42 USC 1395rr note.

(B) The amendment made by subparagraph (A) shall be effective as if included in the enactment of section 9335(k)(2) of the Omnibus Budget Reconciliation Act of 1986. 42 USC 1395rr note.

(2) Section 1881(f)(7)(B) of the Social Security Act (42 U.S.C. 1395rr(f)(7)(B)) is amended by inserting "(or July 1, 1988, with respect to protocols that relate to the reuse of bloodlines)" after "January 1, 1988".

(d) STUDIES OF END-STAGE RENAL DISEASE PROGRAM.— 42 USC 1395rr note.

(1) The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall arrange for a study of the end-stage renal disease program within the medicare program.

(2) Among other items, the study shall address—

(A) access to treatment by both individuals eligible for medicare benefits and those not eligible for such benefits;

(B) the quality of care provided to end-stage renal disease beneficiaries, as measured by clinical indicators, functional status of patients, and patient satisfaction;

(C) the effect of reimbursement on quality of treatment;

(D) major epidemiological and demographic changes in the end-stage renal disease population that may affect access to treatment, the quality of care, or the resource requirements of the program; and

(E) the adequacy of existing data systems to monitor these matters on a continuing basis.

(3) The Secretary shall submit to Congress, not later than 3 years after the date of the enactment of this Act, a report on the study. Reports.

(4) The Secretary shall request the National Academy of Sciences, acting through the Institute of Medicine, to submit an application to conduct the study described in this section. If the

Academy submits an acceptable application, the Secretary shall enter into an appropriate arrangement with the Academy for the conduct of the study. If the Academy does not submit an acceptable application to conduct the study, the Secretary may request one or more appropriate nonprofit private entities to submit an application to conduct the study and may enter into an appropriate arrangement for the conduct of the study by the entity which submits the best acceptable application.

(5) Section 1881 of the Social Security Act (42 U.S.C. 1395rr) is amended—

(A) in subsection (c)(2)(F), by striking "and subsection (g)",

(B) by striking the last sentence of subsection (c)(6),

(C) by striking subsection (g), and

(D) by redesignating subsection (h), as added by section 20 of the Medicare and Medicaid Patient and Program Protection Act of 1987 (Public Law 100-93), as subsection (g).

42 USC 1395ff note.

SEC. 4037. MEDICARE HEARINGS AND APPEALS.

(a) MAINTAINING CURRENT SYSTEM FOR HEARINGS AND APPEALS.—Any hearing conducted under section 1869(b)(1) of the Social Security Act prior to the earliest of the date on which the Secretary of Health and Human Services submits the report required to be submitted by the Secretary under subsection (b)(1) or September 1 shall be conducted by Administrative Law Judges of the Office of Hearings and Appeals of the Social Security Administration in the same manner as are hearings conducted under section 205(b)(1) of such Act.

(b) STUDY AND REPORT ON USE OF TELEPHONE HEARINGS.—

(1) The Secretary of Health and Human Services and the Comptroller General of the United States shall each conduct a study on holding hearings under section 1869(b)(1) of the Social Security Act by telephone and shall each report the results of the study not later than 6 months after the date of enactment of this Act.

(2) The studies under paragraph (1) shall focus on whether telephone hearings allow for a full and fair evidentiary hearing, in general, or with respect to any particular category of claims and shall examine the possible improvements to the hearing process (such as cost-effectiveness, convenience to the claimant, and reduction in time under the process) resulting from the use of such hearings as compared to the adoption of other changes to the process (such as expansions in staff and resources).

42 USC 1395ww note.

SEC. 4038. RURAL HEALTH MEDICAL EDUCATION DEMONSTRATION PROJECT.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall enter into agreements with four sponsoring hospitals submitting applications under this subsection to conduct demonstration projects to assist resident physicians in developing field clinical experience in rural areas.

(b) NATURE OF PROJECT.—Under a demonstration project conducted under subsection (a), a sponsoring hospital entering into an agreement with the Secretary under such subsection shall enter into arrangements with a small rural hospital to provide to such rural hospital, for a period of one to three months of training, physicians (in such number as the agreement under subsection (a) may provide) who have completed one year of residency training.

(c) SELECTION.—In selecting from among applications submitted under subsection (a), the Secretary shall ensure that four small rural hospitals located in different counties participate in the demonstration project and that—

(1) two of such hospitals are located in rural counties of more than 2,700 square miles (one of which is east of the Mississippi River and one of which is west of such river); and

(2) two of such hospitals are located in rural counties with (as determined by the Secretary) a severe shortage of physicians (one of which is east of the Mississippi River and one of which is west of such river).

(d) CLARIFICATION OF PAYMENT.—For purposes of section 1886 of the Social Security Act—

(1) with respect to subsection (d)(5)(B) of such section, any resident physician participating in the project under subsection (a) for any part of a year shall be treated as if he or she were working at the appropriate sponsoring hospital with an agreement under subsection (a) on September 1 of such year (and shall not be treated as if working at the small rural hospital); and

(2) with respect to subsection (h) of such section, the payment amount permitted under such subsection for a sponsoring hospital with an agreement under subsection (a) shall be increased (for the duration of the project only) by an amount equal to the amount of any direct graduate medical education costs (as defined in paragraph (5) of such subsection (h)) incurred by such hospital in supervising the education and training activities under a project under subsection (a).

(e) DURATION OF PROJECT.—Each demonstration project under subsection (a) shall be commenced not later than six months after the date of enactment of this Act and shall be conducted for a period of three years.

(f) DEFINITION.—In this section, the term "sponsoring hospital" means a hospital that receives payments under sections 1886(d)(5)(B) and 1886(h) of the Social Security Act.

SEC. 4039. MISCELLANEOUS AND TECHNICAL PROVISIONS.

(a) CLARIFICATION OF CRIMINAL PENALTIES FOR WILLFUL MISREPRESENTATIONS.—Subsection (c) of section 1128B of the Social Security Act (42 U.S.C. 1320a-7(b)), [28] as redesignated by section 4(d) of the Medicare and Medicaid Patient and Program Protection Act of 1987 (Public Law 100-93), is amended— 42 USC 1320a-7b.

(1) by striking "institution or facility" each place it appears and inserting "institution, facility, or entity", and

(2) by inserting "(including an eligible organization under section 1876(b))" after "other entity".

(b) PODIATRISTS.—

(1) Section 1861(r)(3) of the Social Security Act (42 U.S.C. 1395x(r)(3)) is amended—

(A) by striking "subsection (s) of this section" and inserting "subsections (k), (m), (p)(1), and (s) of this section and sections 1814(a), 1832(a)(2)(F)(ii), and 1835", and

(B) by striking "; and for the purposes" and all that follows through "which he is legally authorized to perform".

[28] Copy read "1320a-7b)),".

(2) Section 1861(b)(6) of such Act (42 U.S.C. 1395x(b)(6)) is amended by striking "Council on Podiatry Education of the American Podiatry Association" and inserting "Council on Podiatric Medical Education of the American Podiatric Medical Association".

(c) RECOVERY OF PAYMENTS FOR CERTAIN PACEMAKER DEVICES.—

(1) Section 1862(h) of such Act (42 U.S.C. 1395y(h)) is amended—

(A) in paragraph (1)(B), by striking "law," and inserting "law (and any amount paid to a provider under any such warranty),";

(B) in paragraph (1)(D), by striking "(3)," and inserting "(3), in determining the amount subject to repayment under paragraph (2)(C),";

(C) in paragraph (2)—

(i) by striking "and" at the end of subparagraph (A),

(ii) by striking the period at the end of subparagraph (B) and inserting ", and", and

(iii) by adding at the end the following new subparagraph:

"(C) to make repayment to the Secretary of amounts paid under this title to the provider with respect to any cardiac pacemaker device or lead which has been replaced by the manufacturer, or for which the manufacturer has made payment to the provider, under an express or implied warranty."; and

(D) in paragraph (4)(B)—

(i) by striking "or has" and inserting ", has", and

(ii) by striking "(2)(B)," and inserting "(2)(B), or has failed to make repayment to the Secretary as required under paragraph (2)(C),".

Effective date. 42 USC 1395y note.

(2) The amendments made by paragraph (1) shall become effective on January 1, 1988.

42 USC 1395ww note.

(d) EXTEND AND CLARIFY PROHIBITION ON COST SAVINGS POLICIES BEFORE BEGINNING OF FISCAL YEAR.—Notwithstanding any other provision of law, except as required to implement specific provisions required under statute, the Secretary of Health and Human Services is not authorized to issue in final form, after the date of the enactment of this Act and before October 15, 1988, any regulation, instruction, or other policy which is estimated by the Secretary to result in a net reduction in expenditures under title XVIII of the Social Security Act in fiscal year 1989 of more than $50,000,000.

42 USC 1395x note.

(e) MORATORIUM ON PRIOR AUTHORIZATION FOR HOME HEALTH AND POST-HOSPITAL EXTENDED CARE SERVICES.—The Secretary of Health and Human Services shall not implement any voluntary or mandatory program of prior authorization for home health services, extended care services, or post-hospital extended care services under part A or B of title XVIII of the Social Security Act at any time prior to six months after the date on which the Congress receives the report required under section 9305(k)(4) of the Omnibus Budget Reconciliation Act of 1986.

Federal Register, publication. 42 USC 1395x note.

(f) DELAY IN PUBLISHING REGULATIONS WITH RESPECT TO DEEMING THE STATUS OF ENTITIES.—The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall not deem any entity to be a provider of services (as defined in section 1861(u) of the Social Security Act) for purposes of title XVIII of such Act—

(1) on any date prior to 6 months after the date on which the Secretary has published a proposed rule with respect to the deeming of the entity, and

(2) until the Secretary publishes a final rule with respect to the deeming of the entity.

(g) USE OF INTERIM FINAL REGULATIONS.—The Secretary of Health and Human Services shall issue such regulations (on an interim or other basis) as may be necessary to implement this subtitle and the amendments made by this subtitle. 42 USC 1395hh note.

PART 3—RELATING TO PART B

Subpart A—Provisions Relating to Payments for Physicians' Services

SEC. 4041. FREEZE IN PAYMENTS FOR PHYSICIANS' SERVICES; EXTENSION OF SEQUESTER ORDER.

(a) THREE-MONTH FREEZE ON INCREASES IN PHYSICIAN PAYMENTS.—

(1) IN GENERAL.—Section 1842 of the Social Security Act (42 U.S.C. 1395u) is amended—

(A) in subsection (b)(4)—

(i) in subparagraph (A), by redesignating clause (v) as clause (vi) and by inserting after clause (iv) the following new clause:

"(v) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during the 3-month period beginning January 1, 1988, the Secretary shall not set any level higher than the same level as was set for the 12-month period beginning January 1, 1987.", and

(ii) in subparagraph (B), by adding at the end the following new clause:

"(iii) In determining the reasonable charge under paragraph (3) for physicians' services furnished during the 3-month period beginning January 1, 1988, the customary charges shall be the same customary charges as were recognized under this section for the 12-month period beginning January 1, 1987."; and

(B) in subsection (j)(1)(C), by adding at the end thereof the following new clause:

"(vii) Notwithstanding any other provision of this subparagraph, the maximum allowable actual charge for a particular physician's service furnished by a nonparticipating physician to individuals enrolled under this part during the 3-month period beginning on January 1, 1988, shall be the amount determined under this subparagraph for 1987. The maximum allowable actual charge for any such service otherwise determined under this subparagraph for 1988 shall take effect on April 1, 1988.". Effective date.

(2) EXTENSION OF PHYSICIAN PARTICIPATION AGREEMENTS AND RELATED PROVISIONS.—Notwithstanding any other provision of law— 42 USC 1395u note.

(A) subject to the last sentence of this paragraph, each agreement with a participating physician in effect on December 31, 1987, under section 1842(h)(1) of the Social Security Act shall remain in effect for the 3-month period beginning on January 1, 1988;

(B) the effective period for agreements under such section entered into for 1988 shall be the nine-month period beginning on April 1, 1988, and the Secretary shall provide an opportunity for physicians to enroll as participating physicians prior to April 1, 1988;

(C) instead of publishing, under section 1842(h)(4) of the Social Security Act at the beginning of 1988, directories of participating physicians for 1988, the Secretary shall provide for such publication, at the beginning of the 9-month period beginning on April 1, 1988, of such directories of participating physicians for such period; and

(D) instead of providing to nonparticipating physicians, under section 1842(b)(3)(G) of the Social Security Act at the beginning of 1988, a list of maximum allowable actual charges for 1988, the Secretary shall provide, at the beginning of the 9-month period beginning on April 1, 1988, to such physicians such a list for such 9-month period.

An agreement with a participating physician in effect on December 31, 1987, under section 1842(h)(1) of the Social Security Act shall not remain in effect for the period described in subparagraph (A) if the participating physician requests on or before December 31, 1987, that the agreement be terminated.

(3)(A) Section 1842 of the Social Security Act (42 U.S.C. 1395u) is amended—

(i) in subsection (b)(2), by adding at the end the following: "In establishing such standards and criteria, the Secretary shall provide a system to measure a carrier's performance of responsibilities described in paragraph (3)(H) and subsection (h)."; and

(ii) in subsection (c)(1), by inserting "(A)" after "(c)(1)" and by adding at the end the following new subparagraph:

"(B) Of the amounts appropriated for administrative activities to carry out this part, the Secretary shall provide payments, totaling 1 percent of the total payments to carriers for claims processing in any fiscal year, to carriers under this section, to reward carriers for their success in increasing the proportion of physicians in the carrier's service area who are participating physicians or in increasing the proportion of total payments for physicians' services which are payments for such services rendered by participating physicians.".

(B) Section 9332(a) of the Omnibus Budget Reconciliation Act of 1986 is amended—

42 USC 1395u notes.

(i) by striking paragraphs (2) and (3),

42 USC 1395u note.

(ii) in paragraph (4)(B), by striking "under paragraph (2)" and inserting "under the last sentence of section 1842(b)(2) of the Social Security Act", and

42 USC 1395u note.

(iii) in paragraph (4)(C)—

(I) by striking "under paragraph (3)" and inserting "under section 1842(c)(1)(B) of the Social Security Act",

(II) by striking "April" and inserting "July", and

(III) by striking "at the end of 1987" and inserting "before April 1, 1988".

President of U.S. 2 USC 902 note.

(b) EXTENSION OF REDUCTION UNDER SEQUESTER ORDER.—Notwithstanding any other provision of law (including any other provision of this Act), the reductions in the amount of payments required under title XVIII of the Social Security Act made by the final sequester order issued by the President on November 20, 1987, pursuant to

section 252(b) of the Balanced Budget Emergency Deficit Control Act of 1985 shall continue to be effective (as provided by sections 252(a)(4)(B) and 256(d)(2) of such Act) through March 31, 1988, with respect to payments for physicians' services under part B of such title.

SEC. 4042. GENERAL UPDATE IN PAYMENTS FOR PHYSICIANS' SERVICES.

(a) INCREASE IN MEI FOR 1988 AND 1989.—Section 1842(b)(4) of the Social Security Act (42 U.S.C. 1395u(b)(4)) is amended by adding at the end the following new subparagraph:

"(F)(i) For purposes of this part for physicians' services furnished in 1987, the percentage increase in the MEI is 3.2 percent.

"(ii) For purposes of this part for physicians' services furnished in 1988, on or after April 1, the percentage increase in the MEI is—

"(I) 3.6 percent for primary care services (as defined in subparagraph (E)(iii)), and

"(II) 1 percent for other physicians' services.

"(iii) For purposes of this part for physicians' services furnished in 1989, the percentage increase in the MEI is—

"(I) 3.0 percent for primary care services; and

"(II) 1 percent for other physician's services.".

(b) PRIMARY CARE SERVICES DEFINED.—Section 1842(b)(4)(E) of such Act (42 U.S.C. 1395u(b)(4)(E)) is amended by adding at the end thereof the following new clause:

"(iii) The term 'primary care services' means physicians' services which constitute office medical services, emergency department services, home medical services, skilled nursing, intermediate care, and long-term care medical services, or nursing home, boarding home, domiciliary, or custodial care medical services.".

(c) PARTICIPATING PHYSICIAN DIFFERENTIAL.—Section 1842(b)(4)(A)(iv) of such Act (42 U.S.C. 1395u(b)(4)(A)(iv)) is amended—

(1) by striking "96 percent" and inserting "applicable percent", and

(2) by adding at the end the following: "In the previous sentence, the term 'applicable percent' means for services furnished (I) on or after January 1, 1987, and before April 1, 1988, 96 percent, (II) on or after April 1, 1988, and before January 1, 1988, 95.5 percent, and (III) on or after January 1, 1989, 95 percent.".

SEC. 4043. INCENTIVE PAYMENTS FOR PHYSICIANS' SERVICES FURNISHED IN UNDERSERVED AREAS.

(a) IN GENERAL.—Section 1833 of the Social Security Act (42 U.S.C. 1395l) is amended by adding at the end the following new subsection:

"(m) In the case of physicians' services furnished to an individual, who is covered under the insurance program established by this part and who incurs expenses for such services, in an area that is designated (under section 332(a)(1)(A) of the Public Health Service Act) as a class 1 or class 2 health manpower shortage area, in addition to the amount otherwise paid under this part, there also shall be paid to the physician (or to an employer or facility in the cases described in clause (A) of section 1842(b)(6)) (on a monthly or quarterly basis) from the Federal Supplementary Medical Insurance Trust Fund an amount equal to 5 percent of the payment amount for the service under this part.".

Reports.
42 USC 1395*l* note.

(b) STUDY.—The Secretary of Health and Human Services shall study and report to Congress, by not later than January 1, 1990, on the feasibility of making additional payments described in section 1833(m) of the Social Security Act with respect to physician services which are performed in health manpower shortage areas located in urban areas.

42 USC 1395*l* note.

(c) EFFECTIVE DATE.—The amendments made by this subsection (a) shall apply with respect to services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Social Security Act) [29] on or after January 1, 1989, and to other services furnished on or after January 1, 1991.

SEC. 4044. ADJUSTMENT IN PREVAILING CHARGE LEVEL FOR PRIMARY CARE SERVICES.

(a) INCREASE IN PREVAILING CHARGES FOR PRIMARY CARE SERVICES.—Section 1842(b)(4)(A) of the Social Security Act (42 U.S.C. 1395u(b)(4)(A)), as amended by section 4041(a)(1) of this subtitle, is further amended by redesignating clause (vi) as clause (vii) and by inserting after clause (v) the following new clause:

"(vi) Before each year (beginning with 1989), the Secretary shall establish a prevailing charge floor for primary care services (as defined in subparagraph (E)(iii)) equal to 50 percent of the average of the prevailing charge levels (determined, for participating physicians under the third and fourth sentences of paragraph (3) and under paragraph (4), without regard to this clause and without regard to physician specialty) for such service for all localities in the United States (weighted by the relative frequency of the service in each locality) for the year.".

42 USC 1395u note.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to payment for physicians' services furnished on or after January 1, 1989.

SEC. 4045. REDUCTION IN PREVAILING CHARGE LEVEL FOR OVERPRICED PROCEDURES.

(a) IN GENERAL.—Paragraph (10) of section 1842(b) of the Social Security Act (42 U.S.C. 1395u(b)) is amended to read as follows:

"(10)(A)(i) In determining the reasonable charge under paragraph (3) for procedures described in subparagraph (C) and performed during the 9-month period beginning on April 1, 1988, the prevailing charge for such procedure for participating and nonparticipating physicians shall be the prevailing charge otherwise recognized for such procedure for 1987—

"(I) subject to clause (iii), reduced by 2.0 percent, and

"(II) further reduced by the applicable percentage specified in clause (ii).

"(ii) For purposes of clause (i), the applicable percentage specified in this clause is—

"(I) 15 percent, in the case of a prevailing charge otherwise recognized (without regard to this paragraph and determined without regard to physician specialty) that is at least 150 percent of the weighted national average (as determined by the Secretary) of such prevailing charges for such procedure for all localities in the United States for 1987;

"(II) 0 percent, in the case of a prevailing charge that does not exceed 85 percent of such weighted national average; and

[29] Copy read "Act))".

"(III) in the case of any other prevailing charge, a percent determined on the basis of a straight-line sliding scale, equal to 3/13 of a percentage point for each percent by which the prevailing charge exceeds 85 percent of such weighted national average.

"(iii) In no case shall the reduction under clause (i) for a procedure result in a prevailing charge in a locality for 1988 which is less than 85 percent of the Secretary's estimate of the weighted national average of such prevailing charges for such procedure for all localities in the United States for 1987 (based upon the best available data and determined without regard to physician specialty) after making the reduction described in clause (i)(II).

"(B) The procedures described in this subparagraph are as follows: bronchoscopy,[29a] carpal tunnel repair, cataract surgery, coronary artery bypass surgery, diagnostic and/or therapeutic dilation and curettage, knee arthroscopy, knee arthroplasty, pacemaker implantation surgery, total hip replacement, suprapubic prostatectomy, transurethral resection of the prostate, and upper gastrointestinal endoscopy.

"(C) In the case of a reduction in the reasonable charge for a physicians' service under subparagraph (A), if a nonparticipating physician furnishes the service to an individual entitled to benefits under this part, after the effective date of such reduction, the physician's actual charge is subject to a limit under subsection (j)(1)(D).

"(D) There shall be no administrative or judicial review section 1869 or otherwise of any determination under subparagraph (A) or under[29b] paragraph (11)(B)(ii).".

(b) MODIFICATION OF GEOGRAPHIC INDEX.—Section 1845(e)(4)(A)(i) of such Act (42 U.S.C. 1395w-1(e)(4)(A)(i)) is amended by inserting "and costs of living" after "costs of practice".

(c) CONSOLIDATED CHARGE LIMITATION PROVISIONS.—

(1) PENALTIES FOR EXCESS CHARGES.—Section 1842 of such Act is further amended—

(A) in subsection (b)(11)(C)—

(i) in clause (i), by striking "(subject to clause (iv))" and all that follows through the end and inserting the following: ", the physician's actual charge is subject to a limit under subsection (j)(1)(D).";

(ii) in clause (i), by striking "(i)" after "(C)"; and

(iii) by striking clauses (ii) through (iv); and

(B) in subsection (j)(1), by adding at the end the following new subparagraph:

"(D)(i) If an action described in clause (ii) results in a reduction in a reasonable charge for a physicians' service or item and a nonparticipating physician furnishes the service or item to an individual entitled to benefits under this part after the effective date of such action, the physician may not charge the individual more than 125 percent of the reduced payment allowance (as defined in clause (iii)) plus (for services or items furnished during the 12-month period (or 9-month period in the case of an action described in clause (ii)(II)) beginning on the effective date of the action) ½ of the amount by which the physician's maximum allowable actual charge for the service or item for the previous 12-month period exceeds such 125 percent level.

"(ii) The first sentence of clause (i) shall apply to—

[29a] Copy read "bronschoscopy,".
[29b] Copy read "under under".

"(I) an adjustment under subsection (b)(8)(B) (relating to inherent reasonableness),

"(II) a reduction under subsection (b)(10)(A) (relating to certain overpriced procedures),

"(III) a reduction under subsection (b)(11)(B) (relating to certain cataract procedures), and

"(IV) an adjustment under section 1833(l)(3)(B) (relating to physician supervision of certified registered nurse anesthetists).

"(iii) In clause (i), the term 'reduced payment allowance' means, with respect to an action—

"(I) under subsection (b)(8)(B), the inherently reasonable charge established under subsection (b)(8); or

"(II) under subsection (b)(10)(A) or (b)(11)(B) or under section 1833(l)(3)(B), the prevailing charge for the service after the action.

"(iv) If a physician knowingly and willfully imposes a charge in violation of clause (i) (whether or not such charge violates subparagraph (B)), the Secretary may apply sanctions against such physician in accordance with paragraph (2).

"(v) Clause (i) shall not apply to items and services furnished after the earlier of (I) December 31, 1990, or (II) one-year after the date the Secretary reports to Congress, under section 1845(e)(3), on the development of the relative value scale under section 1845.".

(2) CONFORMING AMENDMENTS.—(A) Section 1833(l)(6) of such Act (42 U.S.C. 1395l(l)(6)) is amended—

(i) in subparagraph (A), by striking "(subject to subparagraph (D))" and all that follows through the end and inserting the following: "after the effective date of the reduction, the physician's actual charge is subject to a limit under section 1842(j)(1)(D).";

(ii) in subparagraph (A), by striking "(A)" after "(6)"; and

(iii) by striking subparagraphs (B) through (D).

(B) Section 1842(b)(11)(B)(i) of such Act (42 U.S.C. 1395u(b)(11)(B)(i)) is amended by striking "and shall be further reduced" and all that follows through "1988".

(C) Section 9334(b)(2) of the Omnibus Budget Reconciliation Act of 1986 is amended by striking "1842(b)(10)" and inserting "1842(j)(1)(D)".

42 USC 1395u note.

42 USC 1395u note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to items and services furnished on or after April 1, 1988, except the amendment made by subsection (c)(2)(B) shall apply to services furnished on or after January 1, 1988.

SEC. 4046. LIMITS ON PAYMENT FOR OPHTHALMIC ULTRASOUND.

(a) IN GENERAL.—Section 1842 of the Social Security Act (42 U.S.C. 1395u), as previously amended by this subpart is amended—

(1) in subsection (b)(11)—

(A) in subparagraph (C), as redesignated under section 4045(c)(1)(A)(ii) of this title, by inserting "or (C)" after "subparagraph (B)";

(B) by redesignating subparagraph (C) as subparagraph (D); and

(C) by inserting after subparagraph (B) the following new subparagraph:

"(C) The prevailing charge level determined with respect to A-mode ophthalmic ultrasound procedures may not exceed 5 percent

of the prevailing charge level established with respect to extracapsular cataract removal with lens implantation."; and

(2) in subparagraph (D) of subsection (j)(1), as added by section 4045(c)(1)(B) of this subtitle—

(A) in clause (ii), by striking "and" at the end of subclause (III), by redesignating subclause (IV) as subclause (V) and by inserting before such subclause the following new subclause:

"(IV) a prevailing charge limit is estabiished under subsection (b)(11)(C)(i), and"; and

(B) in clause (iii)(II), by striking "or (b)(11)(B)" and inserting ", (b)(11)(B), or (b)(11)(C)(i)".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to services furnished on or after April 1, 1988. 42 USC 1395u note.

SEC. 4047. CUSTOMARY CHARGES FOR PRIMARY CARE SERVICES OF NEW PHYSICIANS.

(a) IN GENERAL.—Section 1842(b)(4) of the Social Security Act, as amended by section 4042(a), is further amended by adding at the end thereof the following new subparagraph:

"(G) In determining the customary charges for physicians' services (other primary care services and other than services furnished in a rural area (as defined in section 1886(d)(2)(D)) that is designated, under section 332(a)(1)(A) of the Public Health Service Act, as a health manpower shortage area) for which adequate actual charge data are not available because a physician has not yet been in practice for a sufficient period of time, the Secretary shall set a customary charge at a level no higher than 80 percent of the prevailing charge (as determined under the third and fourth sentences of paragraph (3) and under paragraph (4)) for a service.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to physicians who first furnish services to medicare beneficiaries after April 1, 1988. 42 USC 1395u note.

SEC. 4048. PAYMENT FOR PHYSICIAN ANESTHESIA SERVICES.

(a) IN GENERAL.—Section 1842(b) of the Social Security Act (42 U.S.C. 1395u(b)) is further amended by adding at the end the following new paragraph:

"(14)(A) In determining the reasonable charge under paragraph (3) of a physician for medical direction of two or more nurse anesthetists performing, on or after April 1, 1988, and before January 1, 1991, anesthesia services in whole or in part concurrently, the number of base units which may be recognized with respect to such medical direction for each concurrent procedure (other than cataract surgery or an iridectomy) shall be reduced by—

"(i) 10 percent, in the case of medical direction of 2 nurse anesthetists concurrently,

"(ii) 25 percent, in the case of medical direction of 3 nurse anesthetists concurrently, and

"(iii) 40 percent, in the case of medical direction of 4 nurse anesthetists concurrently.

"(B) In determining the reasonable charge under paragraph (3) of a physician for medical direction of two or more nurse anesthetists performing, on or after January 1, 1989, and before January 1, 1991, anesthesia services in whole or in part concurrently, the number of base units which may be recognized with respect to such medical

direction for each concurrent cataract surgery or iridectomy procedure shall be reduced by 10 percent.

"(C) The Secretary shall require claims for physicians' services for medical direction of nurse anesthetists during the periods in which the provisions of subparagraph (A) or (B) apply to indicate the number of such anesthetists being medically directed concurrently at any time during the procedure, the name of each nurse anesthetist being directed, and the type of procedure for which the services are provided.".

Regulations. 42 USC 1395u note.

(b) DEVELOPMENT OF UNIFORM RELATIVE VALUE GUIDE.—The Secretary of Health and Human Services, in consultation with groups representing physicians who furnish anesthesia services, shall establish by regulation a relative value guide for use in all carrier localities in making payment for physician anesthesia services furnished under part B of title XVIII of the Social Security Act on and after January 1, 1989. Such guide shall be designed so as to result in expenditures under such title for such services in an amount that would not exceed the amount of such expenditures which would otherwise occur.

Reports. 42 USC 1395u note.

(c) STUDY OF PREVAILING CHARGES FOR ANESTHESIA SERVICES.—The Secretary of Health and Human Services shall conduct a study of the variations in conversion factors used by carriers under section 1842(b) of the Social Security Act to determine the prevailing charge for anesthesia services and shall report the results of the study and make recommendations for appropriate adjustments in such factors not later than January 1, 1989.

42 USC 1395u note.

(d) GAO STUDIES.—(1) The Comptroller General shall conduct a study—

(A) to determine the average anesthesia times reported for medicare reimbursement purposes,

(B) to verify those times from patient medical records,

(C) to compare anesthesia times to average surgical times, and

(D) to determine whether the current payments for physician supervision of nurse anesthetists are excessive.

Reports.

The Comptroller General shall report to Congress, by not later than January 1, 1989, on such study and in the report include recommendations regarding the appropriateness of the anesthesia times recognized by medicare for reimbursement purposes and recommendations regarding adjustments of payments for physician supervision of nurse anesthetists.

Reports.

(2) The Comptroller General shall conduct a study on the impact of the amendment made by subsection (a), and shall report to Congress on the results of such study by April 1, 1990.

SEC. 4049. FEE SCHEDULES FOR RADIOLOGIST SERVICES.

(a) IN GENERAL.—Part B of title XVIII of the Social Security Act is amended—

(1) in section 1833(a)(1) (42 U.S.C. 1395l(a)(1)), as amended by section 4062(c)(3) of this subtitle by striking "and" before "(I)", and by adding at the end the following new clause: "and (J) with respect to expenses incurred for radiologist services (as defined in section 1834(b)(5)), the amounts paid shall be 80 percent of the lesser of the actual charge for the services or the amount provided under the fee schedule established under section 1834(b),"; and

(2) by adding at the end of section 1834, as subsequently inserted by section 4062(a) of this subtitle, the following new subsection:

"(b) FEE SCHEDULES FOR RADIOLOGIST SERVICES.— 42 USC 1395m.

"(1) DEVELOPMENT.—The Secretary shall develop—

"(A) a relative value scale to serve as the basis for the payment for radiologist services under this part, and

"(B) using such scale and appropriate conversion factors, fee schedules (on a regional, statewide, or carrier service area basis) for payment for radiologist services under this part, to be implemented for such services furnished during 1989.

"(2) CONSULTATION.—In carrying out paragraph (1), the Secretary shall regularly consult closely with the Physician Payment Review Commission, the American College of Radiology, and other organizations representing physicians or suppliers who furnish radiologist services and shall share with them the data and data analysis being used to make the determinations under paragraph (1), including data on variations in current medicare payments by geographic area, and by service and physician specialty.

"(3) CONSIDERATIONS.—In developing the relative value scale and fee schedules under paragraph (1), the Secretary—

"(A) shall take into consideration variations in the cost of furnishing such services among geographic areas and among different sites where services are furnished, and

"(B) may also take into consideration such other factors respecting the manner in which physicians in different specialties furnish such services as may be appropriate to assure that payment amounts are equitable and designed to promote effective and efficient provision of radiologist services by physicians in the different specialties.

"(4) SAVINGS.—

"(A) BUDGET NEUTRAL FEE SCHEDULES.—The Secretary shall develop preliminary fee schedules for 1989, which are designed to result in the same amount of aggregate payments (net of any insurance and deductibles under section 1835(a)(1)(I) and 1833(b)) for radiologist services furnished in 1989 as would have been made if this subsection had not been enacted.

"(B) INITIAL SAVINGS.—The fee schedules established for payment purposes under this subsection for services furnished in 1989 shall be 97 percent of the amounts permitted under these [30] preliminary fee schedules developed under subparagraph (A).

"(C) SUBSEQUENT UPDATING.—Radiologist services furnished in subsequent years, the fee schedules shall be the schedules for the previous year updated by the percentage increase in the MEI (as defined in section 1842(b)(4)(E)(ii)) for the year.

"(D) [31] NONPARTICIPATING PHYSICIANS.—Each fee schedule so established shall provide that the payment rate

[30] Copy read "this".
[31] Copy read "(C)".

recognized for nonparticipating physicians and suppliers is equal to the appropriate percent (as defined in section 1842(b)(4)(A)(iv)) of the payment rate recognized for participating physicians and suppliers.

"(5) LIMITING CHARGES OF NONPARTICIPATING PHYSICIANS.—

"(A) IN GENERAL.—In the case of radiologist services furnished after January 1, 1989, for which payment is made under a fee schedule under this subsection, if a nonparticipating physician or supplier furnishes the service to an individual entitled to benefits under this part, the physician or supplier may not charge the individual more than the limiting charge (as defined in subparagraph (B)).

"(B) LIMITING CHARGE DEFINED.—In subparagraph (A), the term 'limiting charge' means, with respect to a service furnished—

"(i) in 1989, 125 percent of the amount specified for the service in the appropriate fee schedule established under paragraph (1),

"(ii) in 1990, 120 percent of the amount specified for the service in the appropriate fee schedule established under paragraph (1), and

"(iii) after 1990, 115 percent of the amount specified for the service in the appropriate fee schedule established under paragraph (1).

"(C) ENFORCEMENT.—If a physician or supplier knowingly and willfully imposes a charge in violation of subparagraph (A), the Secretary may apply sanctions against such physician or supplier in accordance with section 1842(j)(2).

"(6) [32] RADIOLOGIST SERVICES DEFINED.—For the purposes of this subsection, section 1833(a)(1)(I), and section 1842(h)(1)(B), the term 'radiologist services' only includes radiologic services performed by, or under the direction or supervision of, a physician—

"(A) who is certified, or eligible to be certified, by the American Board of Radiology, or

"(B) for whom radiologic services account for at least 50 percent of billings made under this part.".

Reports.
42 USC 1395m note.

(b) DEADLINES AND EFFECTIVE DATE.—

(1) The Secretary of Health and Human Services shall establish the relative value scale and fee schedules for radiologist services (under section 1834(b) of the Social Security Act) by not later than August 1, 1988, and shall report to Congress on the development of such fee schedules not later than August 1, 1988.

(2) The amendments made by this section shall apply to services performed on or after January 1, 1989, and until such time as the Secretary of Health and Human Services implements physician fee schedules based on the relative value scale developed under section 1845(e) of the Social Security Act.

42 USC 1395*l* note.

SEC. 4050. FEE SCHEDULES FOR PHYSICIAN PATHOLOGY SERVICES.

(a) IN GENERAL.—The Secretary of Health and Human Services shall develop—

[32] Copy read " '(5)".

(1) a relative value scale to serve as the basis for the payment for physician pathology services under part B of title XVIII of the Social Security Act,

(2) using such scale and appropriate conversion factors, proposed fee schedules (on a regional, statewide, or carrier service area basis) for payment for physician pathology services under such part, that could be implemented for such services furnished during 1990, and

(3) an appropriate index to be applied to updating such fee schedules annually for physician pathology services furnished in years after 1990.

(b) CONSULTATION.—In carrying out subsection (a), the Secretary shall regularly consult closely with the Physician Payment Review Commission, the College of American Pathologists, and other organizations representing physicians who furnish physician pathology services and shall share with them the data and data analysis being used to make the determinations under subsection (a), including data on variations in current medicare payments by geographic area, and by service and physician specialty.

(c) CONSIDERATION.—In developing the fee schedules under subsection (a), the Secretary shall take into consideration variations in the cost of furnishing physician pathology services among geographic areas.

(d) REPORT.—The Secretary shall report, not later than April 1, 1989, to the Committees on Energy and Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the relative value scale, fee schedules, and the index developed under this section. Such report shall include recommendations on how to protect medicare beneficiaries against excessive charges for physician pathology services above the payment amounts established by the fee schedules.

SEC. 4051. ELIMINATION OF MARKUP FOR CERTAIN PURCHASED SERVICES.

(a) IN GENERAL.—Section 1842 of the Social Security Act (42 U.S.C. 1935u) is amended by adding at the end the following new subsection: 42 USC 1395u.

"(n)(1) If a physician's bill or a request for payment for services billed by a physician includes a charge to a patient for a diagnostic test described in section 1861(s)(3) (other than a clinical diagnostic laboratory test) for which payment does not indicate that the billing physician personally performed or supervised the performance of the test or that another physician with whom the physician who shares his practice personally performed or supervised the test, the amount payable with respect to the test shall be determined as follows:

"(A) If the bill or request for payment indicates that the test was performed by a supplier, identifies the supplier, and indicates the amount the supplier charged the billing physician, payment for the test (less the applicable deductible and coinsurance amounts) shall be the actual acquisition costs (net of any discounts) or, if lower, the [———] [———] [———] [———] [———][32a] enrolled under [———] [———] [———] [———] [———].[32a]

"(B) If the bill or request for payment (i) does not indicate who performed the test, or (ii) indicates that the test was performed by a supplier but does not identify the supplier or include the

[32a] Copy not legible.

amount charged by the supplier, no payment shall be made under this part.

"(2) A physician may not bill an individual enrolled under this part—

"(A) any amount other than any applicable deductible and coinsurance for a diagnostic test for which payment is made pursuant to paragraph (1)(A), or

"(B) any amount for a diagnostic test for which payment may not be made pursuant to paragraph (1)(B).

"(3) If a physician knowingly and willfully in repeated cases bills one or more individuals in violation of paragraph (2), the Secretary may apply sanctions against such physician or supplier in accordance with section 1842(j)(2).".

42 USC 1395u.

(b) ADJUSTMENT IN MEDICARE PREVAILING CHARGES.—

(1) REVIEW.—The Secretary of Health and Human Services shall review payment levels under part B of title XVIII of the Social Security Act for diagnostic tests (described in section 1861(s)(3) of such Act, but excluding clinical diagnostic laboratory tests) which are commonly performed by independent suppliers, sold as a service to physicians, and billed by such physicians, in order to determine the reasonableness of payment amounts for such tests (and for associated professional services component of such tests). The Secretary may require physicians and suppliers to provide such information on the purchase or sale price (net of any discounts) for such tests as is necessary to complete the review and make the adjustments under this subsection. The Secretary shall also review the reasonableness of payment levels for comparable in-office diagnostic tests.

(2) ESTABLISHMENT OF REVISED PAYMENT SCREENS.—If, as a result of such review, the Secretary determines, after notice and opportunity of at least 60 days for public comment, that the current prevailing charge levels (under the third and fourth sentences of section 1842(b) of the Social Security Act) for any such tests or associated professional services are excessive, the Secretary shall establish such charge levels at levels which, consistent with assuring that the test is widely and consistently available to medicare beneficiaries, reflect a reasonable price for the test without any markup. Alternatively, the Secretary, pursuant to guidelines published after notice and opportunity of at least 60 days for public comment, may delegate to carriers with contracts under section 1842 of the Social Security Act the establishment of new prevailing charge levels under this paragraph. When such charge levels are established, the provisions of section 1842(j)(1)(D) of such Act shall apply in the same manner as they apply to a reduction under section 1842(b)(8)(A) of such Act.

Contracts.

42 USC 1395u note.

(c) EFFECTIVE DATES.—

(1) The amendment made by subsection (a) shall apply to diagnostic tests performed on or after April 1, 1988.

(2) The Secretary of Health and Human Services shall complete the review and make an appropriate adjustment of prevailing charge levels under subsection (b) for items and services furnished no later than January 1, 1989.

SEC. 4052. COLLECTION OF PAST-DUE AMOUNTS OWED BY PHYSICIANS WHO BREACHED CONTRACTS UNDER THE NATIONAL HEALTH SERVICE CORPS SCHOLARSHIP PROGRAM.

(a) IN GENERAL.—Title XVIII of the Social Security Act, as previously amended by this subtitle, is amended by adding at the end thereof the following new section:

"OFFSET OF PAYMENTS TO PHYSICIANS TO COLLECT PAST-DUE OBLIGATIONS ARISING FROM BREACH OF SCHOLARSHIP CONTRACT

42 USC 1395ccc.

"SEC. 1892. (a) IN GENERAL.—

"(1)(A) Subject to subparagraph (B), the Secretary shall enter into an agreement under this section with any physician who, by reason of a breach of a contract entered into by such physician pursuant to the National Health Service Corps Scholarship Program, owes a past-due obligation to the United States (as defined in subsection (b)).

"(B) The Secretary shall not enter into an agreement with a physician under this section to the extent—

"(i)(I) the physician has entered into a contract with the Secretary pursuant to section 204(a)(1) of the Public Health Service Amendments of 1987, and

"(II) the physician has fulfilled or (as determined by the Secretary) is fulfilling the terms of such contract; or

"(ii) the liability of the physician under such section 204(a)(1) has otherwise been relieved under such section; or

"(iii) the physician is performing such physician's service obligation under a forbearance agreement entered into with the Secretary under subpart II of part D of title III of the Public Health Service Act.

"(2) The agreement under this section shall provide that—

"(A) deductions shall be made from the amounts otherwise payable to the physician under this title, in accordance with a formula and schedule agreed to by the Secretary and the physician, until such past-due obligation (and accrued interest) have been repaid;

"(B) payment under this title for services provided by such physician shall be made only on an assignment-related basis;

"(C) if the physician does not provide services, for which payment would otherwise be made under this title, of a sufficient quantity to maintain the offset collection according to the agreed upon formula and schedule—

"(i) the Secretary shall immediately inform the Attorney General, and the Attorney General shall immediately commence an action to recover the full amount of the past-due obligation, and

"(ii) subject to paragraph (3), the Secretary shall immediately exclude the physician from the program under this title, until such time as the entire past-due obligation has been repaid.

"(3) If the physician refuses to enter into an agreement or breaches any provision of the agreement—

"(A) the Secretary shall immediately inform the Attorney General, and the Attorney General shall immediately commence an action to recover the full amount of the past-due obligation, and

"(B) subject to paragraph (3), the Secretary shall immediately exclude the physician from the program under this title, until such time as the entire past-due obligation has been repaid.

"(4) The Secretary shall not bar a physician pursuant to paragraph (2)(C)(ii) or paragraph (3)(B) if such physician is a sole community physician or sole source of essential specialized services in a community.

"(b) PAST-DUE OBLIGATION.—For purposes of this section, a past-due obligation is any amount—

"(1) owed by a physician to the United States by reason of a breach of a scholarship contract under section 338E of the Public Health Service Act, and

"(2) which has not been paid by the deadline established by the Secretary pursuant to section 338E of the Public Health Service Act, and has not been canceled, waived, or suspended by the Secretary pursuant to such section.

"(c) COLLECTION UNDER THIS SECTION SHALL NOT BE EXCLUSIVE.—This section shall not preclude the United States from applying other provisions of law otherwise applicable to the collection of obligations owed to the United States, including (but not limited to) the use of tax refund offsets pursuant to section 3720A of title 31, United States Code, and the application of other procedures provided under chapter 37 of title 31, United States Code.

"(d) COLLECTION FROM PROVIDERS AND HEALTH MAINTENANCE ORGANIZATIONS.—

"(1) In the case of a physician who owes a past-due obligation, and who is an employee of, or affiliated by a medical services agreement with, a provider having an agreement under section 1866 or a health maintenance organization or competitive medical plan having a contract under section 1833 or section 1876, the Secretary shall deduct the amounts of such past-due obligation from amounts otherwise payable under this title to such provider, organization, or plan.

"(2) Deductions shall be in accordance with a formula and schedule agreed to by the Secretary, the physician and the provider, organization, or plan. The deductions shall be made from the amounts otherwise payable to the physician under this title as long as the physician continued to be employed or affiliated by a medical services agreement.

"(3) Such deduction shall not be made until 6 months after the Secretary notifies the provider, organization, or plan of the amount to be deducted and the particular physicians to whom the deductions are attributable.

"(4) A deduction made under this subsection shall relieve the physician of the obligation (to the extent of the amount collected) to the United States, but the provider, organization, or plan shall have a right of action to collect from such physician the amount deducted pursuant to this subsection (including accumulated interest).

"(5) No deduction shall be made under this subsection if, within the 6-month period after notice is given to the provider, organization, or plan, the physician pays the past-due obligation, or ceases to be employed by the provider, organization, or plan.

"(6) The Secretary shall also apply the provisions of this subsection in the case of a physician who is a member of a group

practice, if such group practice submits bills under this program as a group, rather than by individual physicians.

"(e) TRANSFER FROM TRUST FUNDS.—Amounts equal to the amounts deducted pursuant to this section shall be transferred from the Trust Fund from which the payment to the physician, provider, or other entity would otherwise have been made, to the general fund in the Treasury, and shall be credited as payment of the past-due obligation of the physician from whom (or with respect to whom) the deduction was made.".

(b) CONFORMING REFERENCE.—Section 338E(b)(1) of the Public Health Service Act (42 U.S.C. 254o(b)(1)) is amended by adding at the end thereof the following new sentence: "Amounts not paid within such period shall be subject to collection through deductions in Medicare payments pursuant to section 1892 of the Social Security Act.".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective on the date of the enactment of this Act. 42 USC 1395ccc note.

SEC. 4052. ELIMINATION OF 1975 FLOOR FOR PREVAILING PHYSICIAN CHARGES.

(a) IN GENERAL.—Section 1842(b)(3) of the Social Security Act (42 U.S.C. 1395u(b)(3)) is amended by striking the next-to-last sentence (which begins "Notwithstanding the provisions of").

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to payment for services furnished on or after January 1, 1988. 42 USC 1395u note.

SEC. 4053. APPLICATION OF MAXIMUM ALLOWABLE ACTUAL CHARGE (MAAC).

(a) APPLICATION ON INDIVIDUAL CHARGE BASIS.—Section 1842(j)(1) of the Social Security Act (42 U.S.C. 1395u(j)(1)) is amended—

(1) in the first sentence of subparagraph (B)(i), by striking "each such physician's actual charges" and inserting "the actual charges of each such physician";

(2) in the second sentence of subparagraph (B)(i), by striking "for such a service a physician's actual charge (as defined in subparagraph (C)(vi)" and inserting "on a repeated basis for such a service an actual charge"; and

(3) in subparagraph (C)(vi), by striking "and subparagraph (B)".

(b) ADJUSTMENT.—In the case of a physician who did not have actual charges under title XVIII of the Social Security Act for a procedure in the calendar quarter beginning on April 1, 1984, but who establishes to the satisfaction of a carrier that he or she had actual charges (whether under such title or otherwise) for the procedure performed prior to June 30, 1984, the carrier shall compute the maximum allowable actual charge under section 1842(j) of the Social Security Act for such procedure performed by such physician in 1988 based on such physician's actual charges for the procedure. 42 USC 1395u note.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to charges imposed for services furnished on or after April 1, 1988. 42 USC 1395u note.

42 USC 1395l note.

SEC. 4054. APPLYING COPAYMENT AND DEDUCTIBLE TO CERTAIN OUTPATIENT PHYSICIANS' SERVICES.

Notwithstanding any other provision of law, payment under part B of title XVIII of the Social Security Act for physicians' services specified in section 1833(i)(1) of such Act and furnished on or after April 1, 1988, in an ambulatory surgical center or hospital outpatient department on an assignment-related basis shall be subject to the deductible under section 1833(b) of such Act and 20 percent coinsurance.

SEC. 4055. PHYSICIAN PAYMENT STUDIES.

42 USC 1395u note.

(a) DEFINITIONS OF MEDICAL AND SURGICAL PROCEDURES.—

(1) REPORT ON VARIATIONS IN CARRIER PAYMENT PRACTICE.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall conduct a study of variations in payment practices for physicians' services among the different carriers under section 1842 of the Social Security Act. Such study shall examine carrier variations in the services included in global fees and pre- and post-operative services included in payment for the operation. The Secretary shall report to Congress on such study by not later than May 1, 1988.

(2) UNIFORM DEFINITIONS OF PROCEDURES FOR PAYMENT PURPOSES.—The Secretary shall develop, in consultation with appropriate national medical specialty societies and by not later than July 1, 1989, uniform definitions of physicians' services (including appropriate classification scheme for procedures) which could serve as the basis for making payments for such services under part B of title XVIII of the Social Security Act. In developing such list, to the extent practicable—

(A) ancillary services commonly performed in conjunction with a major procedure would be included with the major procedure;

(B) pre- and post-procedure services would be included in the procedure; and

(C) similar procedures would be listed together if the procedures are similar in resource requirements.

42 USC 1395w-1 note.

(b) EXPANSION OF RELATIVE VALUE SCALE (RVS) STUDY.—

(1) ADDITIONAL SERVICES.—The Secretary shall expand the study being conducted, under section 1845(e) of the Social Security Act, to develop a relative value scale for physicians' services to include physicians' services in the fields of cardiology, dermatology, emergency medicine, gastroenterology, hematology, infectious disease, nephrology, neurology, neurosurgery, nuclear medicine, oncology, physical medicine and rehabilitation, plastic surgery, pulmonary medicine, and radiation therapy, and for physicians who specialize in osteopathic procedures.

(2) NO DELAY IN CURRENT STUDY.—The expansion under paragraph (1) shall not be conducted in a manner that delays the completion of the current study or the report to Congress required under section 1845(e)(3) of the Social Security Act. The Secretary shall report to Congress on the services described in paragraph (1) by not later than October 1, 1989.

Reports.

Reports.

(3) PROMPT SUBMITTAL OF STUDY RESULTS TO PHYSICIAN PAYMENT REVIEW COMMISSION.—The Secretary shall submit to the Physician Payment Review Commission a copy of any report submitted to the Secretary pursuant to a cooperative agreement in the fulfillment of the requirement of section 1845(e) of such

Act, with all relevant supporting data (including survey data, analytic data files, and file documentation), by no later than 30 days after the date the final report is received by the Secretary.

(c) OTHER PHYSICIAN PAYMENT STUDIES.— 42 USC 1395l note.

(1) FEE SCHEDULE IMPLEMENTATION.—The Secretary shall conduct a study of changes in the payment system for physicians' services, under part B of title XVIII of the Social Security Act, that would be required for the implementation of a national fee schedule for such services furnished on or after January 1, 1990. Such study shall identify any major technical problems related to such implementation and recommendations on ways in which to address such problems. The Secretary shall report to the Congress on such study by not later than July 1, 1989. Reports.

(2) VOLUME AND INTENSITY OF PHYSICIAN SERVICES.—The Secretary shall conduct a study of issues relating to the volume and intensity of physicians' services under part B of title XVIII of the Social Security Act, including—

(A) historical trends with regard to increases in the volume and intensity of physicians' services furnished on a per enrollee basis (with appropriate adjustments to account for changes in the demographic composition of the medicare population);

(B) geographic variations in volume and intensity in physicians' services;

(C) an analysis of the effectiveness of methods currently used under such part to ensure that payments under such part are made only for services which are medically necessary;

(D) the development and analysis of alternative methods to control the volume of services; and

(E) the impact of the implementation of the relative value scale developed under section 1845(e) of such Act on the volume and intensity of physicians' services.

The Secretary shall submit to Congress an interim report on such study not later than May 1, 1988, and a final report on such study not later than May 1, 1989. Reports.

(3) SURVEY OF OUT-OF-POCKET COSTS OF MEDICARE BENEFICIARIES FOR HEALTH CARE SERVICES.—The Secretary shall conduct a survey to determine the distribution of—

(A) the liabilities and expenditures for health care services of individuals entitled to benefits under title XVIII of the Social Security Act, including liabilities for charges (not paid on an assignment-related basis) in excess of the reasonable charge recognized, and

(B) the collection rates among different classes of physicians for such liabilities, including collection rates for required coinsurance and for charges (not paid on an assignment-related basis) in excess of the reasonable charge recognized.

The Secretary shall report to Congress on such study by not later than July 1, 1990. Reports.

(d) STUDY OF PAYMENT FOR CHEMOTHERAPY IN PHYSICIANS' OFFICES.— 42 USC 1395l note.

(1) IN GENERAL.—The Secretary shall study ways of modifying part B of title XVIII of the Social Security Act to permit adequate payment under such part for the costs associated with providing chemotherapy to cancer patients in physicians' of-

fices. The study shall be performed in consultation with physicians and other health care providers who are experts in cancer therapy and with representation of health insurers who have experience in these payment issues.

(2) REPORT.—The Secretary shall report to Congress on the results of the study by not later than April 1, 1989.

Subpart B—Provisions Relating to Payments for Other Services

2 USC 902 note.

SEC. 4061. EXTENSION OF REDUCTION FOR OTHER PART B ITEMS AND SERVICES PAYMENTS UNDER SEQUESTER ORDER.

Notwithstanding any other provision of law (including any other provision of this Act), the reductions in the amount of payments required under title XVIII of the Social Security Act made by the final sequester order issued by the President on November 20, 1987, pursuant to section 252(b) of the Balanced Budget Emergency Deficit Control Act of 1985 shall continue to be effective (as provided by sections 252(a)(4)(B) and 256(d)(2) of such Act) through March 31, 1988, with respect to payments for all items and services (other than physicians' services) under part B of such title.

SEC. 4062. PAYMENTS FOR DURABLE MEDICAL EQUIPMENT, PROSTHETIC DEVICES, ORTHOTICS, AND PROSTHETICS.

42 USC 1395u note.

(a) 1-YEAR FREEZE ON CHARGE LIMITATIONS.—

(1) IN GENERAL.—In imposing limitations on allowable charges for items and services (other than physicians' services) furnished in 1988 under part B of title XVIII of such Act and for which payment is made on the basis of the reasonable charge for the item or service, the Secretary of Health and Human Services shall not impose any limitation at a level higher than the same level as was in effect in December 1987.

(2) TRANSITION.—The provisions of section 4041(a)(2) (other than subparagraph (D) thereof) of this subtitle shall apply to suppliers of items and services described in paragraph (1), and directories of participating suppliers of such items and services, in the same manner as such section applies to physicians furnishing physicians' services, and directories of participating physicians.

(b) AMOUNT AND FREQUENCY OF PAYMENT FOR DURABLE MEDICAL EQUIPMENT, PROSTHETIC DEVICES, ORTHOTICS, AND PROSTHETICS.—Part B of title XVIII of the Social Security Act is amended by inserting after section 1833 the following new section:

"SPECIAL PAYMENT RULES FOR PARTICULAR SERVICES

42 USC 1395m.

"SEC. 1834. (a) PAYMENT FOR DURABLE MEDICAL EQUIPMENT, PROSTHETIC DEVICES, ORTHOTICS, AND PROSTHETICS.—

"(1) GENERAL RULE FOR PAYMENT.—

"(A) IN GENERAL.—With respect to a covered item (as defined in paragraph (13)) for which payment is determined under this subsection, payment shall be made in the frequency specified in paragraphs (2) through (7) and in an amount equal to 80 percent of the payment basis described in subparagraph (B).

"(B) PAYMENT BASIS.—The payment basis described in this subparagraph is the lesser of—

"(i) the actual charge for the item, or

"(ii) the payment amount recognized under paragraphs (2) through (7) of this subsection for the item;

except that clause (i) shall not apply if the covered item is furnished by a public home health agency (or by another home health agency which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low income) free of charge or at nominal charges to the public.

"(C) EXCLUSIVE PAYMENT RULE.—This subsection shall constitute the exclusive provision of this title for payment for covered items under this part.

"(2) PAYMENT FOR INEXPENSIVE AND OTHER ROUTINELY PURCHASED DURABLE MEDICAL EQUIPMENT.—

"(A) IN GENERAL.—Payment for an item of durable medical equipment (as defined in paragraph (13)(A))—

"(i) the purchase price of which does not exceed $150, or

"(ii) which the Secretary determines is acquired at least 75 percent of the time by purchase,

shall be made on a rental basis or in a lump-sum amount for the purchase of the item. The payment amount recognized for purchase or rental of such equipment is the amount specified in subparagraph (B) for purchase or rental, except that the total amount of rental payments with respect to an item may not exceed the payment amount specified in subparagraph (B) with respect to the purchase of the item.

"(B) PAYMENT AMOUNT.—For purposes of subparagraph (A), the amount specified in this subparagraph, with respect to the purchase or rental of an item furnished in a carrier service area—

"(i) in 1989 is the average allowed charge in the area for the purchase or rental, respectively, of the item for the 12-month period ending on June 30, 1987, increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 6-month period ending with December 1987; or

"(ii) in a subsequent year, is the amount specified in this subparagraph for the preceding year increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of that preceding year.

"(3) PAYMENT FOR ITEMS REQUIRING FREQUENT AND SUBSTANTIAL SERVICING.—

"(A) IN GENERAL.—Payment for a covered item (such as ventilators , aspirators, IPPB machines, and nebulizers) for which there must be frequent and substantial servicing in order to avoid risk to the patient's health shall be made on a monthly basis for the rental of the item and the amount recognized is the amount specified in subparagraph (B).

"(B) PAYMENT AMOUNT.—For purposes of subparagraph (A), the amount specified in this subparagraph, with respect to an item or device furnished in a carrier service area—

"(i) in 1989 is the average allowable charge in the area for the rental of the item or device for the 12-

month period ending with June 1987,[33] increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 6-month period ending with December 1987; or

"(ii) in a subsequent year, is the amount specified in this subparagraph for the preceding year increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of that preceding year.

"(4) PAYMENT FOR CERTAIN CUSTOMIZED ITEMS.—Payment with respect to a covered item that is uniquely constructed or substantially modified to meet the specific needs of an individual patient shall be made in a lump-sum [34] amount for the purchase of the item in a payment amount based upon the carrier's individual consideration for that item, and for the reasonable and necessary maintenance and service for parts and labor not covered by the supplier's or manufacturer's warranty, when necessary during the period of medical need, and the amount recognized for such maintenance and service shall be paid on a lump-sum, as needed basis based upon the carrier's individual consideration for that item.

"(5) PAYMENT FOR OXYGEN AND OXYGEN EQUIPMENT.—

"(A) IN GENERAL.—Payment for oxygen and oxygen equipment shall be made on a monthly basis in the monthly payment amount recognized under paragraph (9) for oxygen and oxygen equipment (other than portable oxygen equipment), subject to subparagraphs (B) and (C).

"(B) ADD-ON FOR PORTABLE OXYGEN EQUIPMENT.—When portable oxygen equipment is used, but subject to subparagraph (D), the payment amount recognized under subparagraph (A) shall be increased by the monthly payment amount recognized under paragraph (9) for portable oxygen equipment.

"(C) VOLUME ADJUSTMENT.—When the attending physician prescribes an oxygen flow rate—

"(i) exceeding 4 liters per minute, the payment amount recognized under subparagraph (A), subject to subparagraph (D), shall be increased by 50 percent, or

"(ii) of less than 1 liter per minute, the payment amount recognized under subparagraph (A) shall be decreased by 50 percent.

"(D) LIMIT ON ADJUSTMENT.—When portable oxygen equipment is used and the attending physician prescribes an oxygen flow rate exceeding 4 liters per minute, there shall only be an increase under either subparagraph (B) or (C), whichever increase is larger, and not under both such subparagraphs.

"(6) PAYMENT FOR OTHER COVERED ITEMS (OTHER THAN DURABLE MEDICAL EQUIPMENT).—Payment for other covered items (other than durable medical equipment and other covered items described in paragraph (3), (4), or (5)) shall be made in a lump-sum amount for the purchase of the item in the amount of the purchase price recognized under paragraph (8).

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[33] Copy read "June, 1987,".
[34] Copy read "lump sum".

"(7) PAYMENT FOR OTHER ITEMS OF DURABLE MEDICAL EQUIPMENT.—

"(A) IN GENERAL.—In the case of an item of durable medical equipment not described in paragraphs (2) through (6)—

"(i) payment shall be made on a monthly basis for the rental of such item during the period of medical need (but payments under this subparagraph may not extend over a period of continuous use of longer than 15 months), and, subject to subparagraph (B), the amount recognized for each such month is 10 percent of the purchase price recognized under paragraph (8) with respect to the item;

"(ii) during the succeeding 6-month period of medical need, no payment shall be made for rental or servicing of the item; and

"(iii) during the first month of each succeeding 6-month period of medical need, a service and maintenance payment may be made (for parts and labor not covered by the supplier's or manufacturer's warranty, as determined by the Secretary to be appropriate for the particular type of durable medical equipment) and the amount recognized for each such 6-month period is the lower of (I) a reasonable and necessary maintenance and servicing fee established by the carrier, or (II) 10 percent of the total of the purchase price recognized under paragraph (8) with respect to the item.

The Secretary shall determine the meaning of the term 'continuous' in subparagraph (A).

"(B) RANGE FOR RENTAL AMOUNTS.—

"(i) FOR 1989.—For items furnished during 1989, the payment amount recognized under subparagraph (A)(i) shall not be more than 115 percent, and shall not be less than 85 percent, of the prevailing charge established for rental of the item January 1987, increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 6-month period ending with December [———].[34a]

"(ii) FOR 1990.—For items furnished during 1990, the payment amount recognized under subparagraph (A)(i) shall not be more than the maximum amount established under clause (i), and shall not be less than the minimum amount established under such clause, for 1989, each such amount increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June 1989.

"(8) PURCHASE PRICE RECOGNIZED FOR MISCELLANEOUS DEVICES AND ITEMS.—For purposes of paragraphs (6) and (7), the amount that is recognized under this paragraph as the purchase price for a covered item is the amount described in subparagraph (C) of this paragraph, determined as follows:

"(A) COMPUTATION OF LOCAL PURCHASE PRICE.—Each carrier under section 1842 shall compute a base local purchase price for the item as follows:

"(i) The carrier shall compute a base local purchase price, for each item described—

[34a] Copy not legible.

"(I) in paragraph (6) equal to the average allowable charge in the locality for the purchase of the item for the 12-month period ending with June 1987, or

"(II) in paragraph (7) equal to the average of the purchase prices on the claims submitted on an assignment-related basis for the unused item supplied during the 6-month period ending with December 1986.

"(ii) The carrier shall compute a local purchase price, with respect to the furnishing of each particular item—

"(I) in 1989, equal to the base local purchase price computed under clause (i) increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 6-month period ending with December 1987, or

"(II) in 1990, 1991, or 1992, equal to the local purchase price computed under this clause for the previous year increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year.

"(B) COMPUTATION OF REGIONAL PURCHASE PRICE.—With respect to the furnishing of a particular item in each region (as defined in section 1886(d)(2)(D)), the Secretary shall compute a regional purchase price—

"(i) for 1991, and for 1992, equal to the average (weighted by relative volume of all claims among carriers) of the local purchase prices for the carriers in the region computed under subparagraph (A)(ii)(II) for the year, and

"(ii) for each subsequent year, equal to the regional purchase price computed under this subparagraph for the previous year increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year.

"(C) PURCHASE PRICE RECOGNIZED.—For purposes of paragraphs (6) and (7) and subject to subparagraph (D), the amount that is recognized under this paragraph as the purchase price for each item furnished—

"(i) in 1989 or 1990, is 100 percent of the local purchase price computed under subparagraph (A)(ii)(I);

"(ii) in 1991, is the sum of (I) 75 percent of the local purchase price computed under subparagraph (A)(ii)(II) for 1991, and (II) 25 percent of the regional purchase price computed under subparagraph (B) for 1991;

"(iii) in 1992, is the sum of (I) 50 percent of the local purchase price computed under subparagraph (A)(ii)(II) for 1992, and (II) 50 percent of the regional purchase price computed under subparagraph (B) for 1992; and

"(iv) in 1993 or a subsequent year, is the regional purchase price computed under subparagraph (B) for that year.

"(D) RANGE ON AMOUNT RECOGNIZED.—The amount that is recognized under subparagraph (C) as the purchase price for an item furnished—

"(i) in 1991, may not exceed 130 percent, and may not be lower than 80 percent, of the average of the purchase prices recognized under such subparagraph for all the carrier service areas in the United States in that year; and

"(ii) in a subsequent year, may not exceed 125 percent, and may not be lower than 85 percent, of the average of the purchase prices recognized under such subparagraph for all the carrier service areas in the United States in that year.

"(9) MONTHLY PAYMENT AMOUNT RECOGNIZED WITH RESPECT TO OXYGEN AND OXYGEN EQUIPMENT.—For purposes of paragraph (5), the amount that is recognized under this paragraph for payment for oxygen and oxygen equipment is the monthly payment amount described in subparagraph (C) of this paragraph. Such amount shall be computed separately (i) for all items of oxygen and oxygen equipment (other than portable oxygen equipment) and (ii) for portable oxygen equipment (each such group referred to in this paragraph as an 'item').

"(A) COMPUTATION OF LOCAL MONTHLY PAYMENT RATE.—Each carrier under this section shall compute a base local payment rate for each item as follows:

"(i) The carrier shall compute a base local average monthly payment rate per beneficiary as an amount equal to (I) the total reasonable charges for the item during the 12-month period ending with December 1986, divided by (II) the total number of months for all beneficiaries receiving the item in the area during the 12-month period for which the carrier made payment for the item under this title.

"(ii) The carrier shall compute a local average monthly payment rate for the item applicable—

"(I) to 1989, equal to 95 percent of the base local average monthly payment rate computed under clause (i) for the item increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with December 1987, or

"(II) to 1990 and to 1991, equal to the local average monthly payment rate computed under this clause for the item for the previous year increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year.

"(B) COMPUTATION OF REGIONAL MONTHLY PAYMENT RATE.—With respect to the furnishing of an item in each region (as defined in section 1886(d)(2)(D)), the Secretary shall compute a regional monthly payment rate—

"(i) for 1991, and 1992, equal to the average (weighted by relative volume of all claims among carriers) of the local monthly payment rates for the carriers in the region computed under subparagraph (A)(ii)(II) for the year, and

"(ii) for each subsequent year, equal to the regional monthly payment rates computed under this subparagraph for the previous year increased by the percent-

age increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year.

"(C) MONTHLY PAYMENT AMOUNT RECOGNIZED.—For purposes of paragraph (5), the amount that is recognized under this paragraph as the base monthly payment amount for each item furnished—

"(i) in 1989 and in 1990, is 100 percent of the local average monthly payment rate computed under subparagraph (A)(ii)(I) for the item;

"(ii) in 1991, is the sum of (I) 75 percent of the local average monthly payment rate computed under subparagraph (A)(ii)(II) for the item for 1991, and (II) 25 percent of the regional monthly payment rate computed under subparagraph (B)(i) for the item for 1991;

"(iii) in 1992, is the sum of (I) 50 percent of the local average monthly payment rate computed under subparagraph (A)(ii)(II) for the item for 1992, and (II) 50 percent of the regional monthly payment rate computed under subparagraph (B)(i) for the item for 1992; and

"(iv) in a subsequent year, is the regional monthly payment rate computed under subparagraph (B) for the item for that year.

"(D) RANGE ON AMOUNT RECOGNIZED.—The amount that is recognized under subparagraph (C) as the base monthly payment amount for an item furnished—

"(i) in 1991, may not exceed 130 percent, and may not be lower than 80 percent, of the average of the base monthly payment amounts recognized under such subparagraph for all the carrier service areas in the United States in that year; and

"(ii) in a subsequent year, may not exceed 125 percent, and may not be lower than 85 percent, of the average of the base monthly payment amounts recognized under such subparagraph for all the carrier service areas in the United States in that year.

"(10) EXCEPTIONS AND ADJUSTMENTS.—

"(A) AREAS OUTSIDE CONTINENTAL UNITED STATES.—Exceptions to the amounts recognized under the previous provisions of this subsection shall be made to take into account the unique circumstances of covered items furnished in Alaska, Hawaii, or Puerto Rico.

"(B) ADJUSTMENT FOR INHERENT REASONABLENESS.—For covered items furnished on or after January 1, 1991, the Secretary is authorized to apply the provisions of paragraphs (8) and (9) (other than subparagraph (D)) of section 1842(b) to covered items and suppliers of such items.

"(C) TRANSCUTANEOUS ELECTRICAL NERVE STIMULATOR (TENS).—In order to permit an attending physician time to determine whether the purchase of a transcutaneous electrical nerve stimulator is medically appropriate for a particular patient, the Secretary may determine an appropriate payment amount for the initial rental of such item for a period of not more than 2 months. If such item is subsequently purchased, the payment amount with respect

to such purchase is the payment amount determined under paragraph (2).

"(11) IMPROPER BILLING AND REQUIREMENT OF PHYSICIAN ORDER.—

"(A) IMPROPER BILLING FOR CERTAIN RENTAL ITEMS.—Notwithstanding any other provision of this title, a supplier of a covered item for which payment is made under this subsection and which is furnished on a rental basis shall continue to supply the item without charge (other than a charge provided under this subsection for the servicing of the item) after rental payments may no longer be made under this subsection. If a supplier knowingly and willfully violates the previous sentence, the Secretary may apply sanctions against the supplier under subsection (j)(2) in the same manner such sanctions may apply with respect to a physician.

"(B) REQUIREMENT OF PHYSICIAN ORDER.—The Secretary is authorized to require, for specified covered items, that payment may be made under this subsection with respect to the item only if a physician has communicated to the supplier, before delivery of the item, a written order for the item.

"(12) REGIONAL CARRIERS.—The Secretary may designate, by regulation under section 1842, one carrier for each region (as defined in section 1886(d)(2)(D)) to process all claims within the region for covered items under this section.

"(13) COVERED ITEM.—In this subsection, the term 'covered item' means—

"(A) durable medical equipment (as defined in section 1861(n)), including such equipment described in section 1861(m)(5);

"(B) prosthetic devices (described in section 1861(s)(8)), but not including parenteral and enteral nutrition nutrients, supplies, and equipment; and

"(C) orthotics and prosthetics (described in section 1861(s)(9));

but does not include intraocular lenses.

"(14) CARRIER.—In this subsection, any reference to the term 'carrier' includes a reference, with respect to durable medical equipment furnished by a home health agency as part of home health services, to a fiscal intermediary.".

(c) STUDY AND EVALUATION.—(1) The Secretary of Health and Human Services shall monitor the impact of the amendments made by this section on the availability of covered items and shall evaluate the appropriateness of the volume adjustment for oxygen and oxygen equipment under section 1834(a)(5)(C) of the Social Security Act (as amended by subsection (b) of this section). The Secretary shall report to Congress, by not later than January 1, 1991, on such impact and on the evaluation and shall include in such report recommendations for changes in payment methodology for covered items under section 1834(a) of such Act.

42 USC 1395m note.

Reports.

(2) Before January 1, 1991, the Secretary may not conduct any demonstration project respecting alternative methods of payment for covered items under title XVIII of the Social Security Act.

(3) In this subsection, the term "covered item" has the meaning given such term in section 1834(a)(13) of the Social Security Act (as amended by subsection (b) of this section).

(4) The Secretary shall, upon written request, provide the data and information used in determining the payment amounts for covered items under section 1834(a) of the Social Security Act.

Reports.

(5) The Comptroller General shall conduct a study on the appropriateness of the level of payments allowed for covered items under the medicare program, and shall report to Congress on the results of such study (including recommendations on the transition to regional or national rates) by not later than January 1, 1991. Entities furnishing such items which fail to provide the Comptroller General with reasonable access to necessary records to carry out the study under this paragraph are subject to exclusion from the medicare program under section 1128(a) of the Social Security Act.

(d) CONFORMING AMENDMENTS.—

(1) Section 1814 of such Act (42 U.S.C. 1395f) is amended—

(A) in subsection (j)(2)(B), by amending subparagraph (B) to read as follows:

"(B) Section 1834(a)(1)(B).", and

(B) in subsection (k), by striking all that follows "shall be" and insert "the amount described in section 1834(a)(1).".

(2) Section 1832(a) of such Act (42 U.S.C. 1395k(a)) is amended—

(A) in paragraph (2)(A), by inserting "(other than items described in subparagraph (G))" after "services";

(B) in paragraph (2)(B), by inserting "(other than items described in subparagraph (G))" after "medical and other health services"; and

(C) in paragraph (2)—

(i) by striking "and" at the end of subparagraph (E),

(ii) by striking the period at the end of subparagraph (F) and inserting "; and", and

(iii) by adding at the end the following new subparagraph:

"(G) covered items (described in section 1834(a)(13)) furnished by a provider of services or by others under arrangements with them made by a provider of services.".

42 USC 1395*l*.

(3) Section 1833(a) of such Act (42 U.S.C. 1395l(a)) is amended—

(A) in paragraph (1)—

(i) by striking "; and" at the end of clause (G) and inserting a comma, and

(ii) by adding at the end the following: "and (I) with respect to covered items (described in section 1834(a)(13)), the amounts paid shall be the amounts described in section 1834(a)(1),";

(B) in paragraph (2)—

(i) by striking "and (F)" and inserting "(F), and (G)", and

(ii) in subparagraph (A), by striking "(other than durable medical equipment)";

[34b](C) by striking "and" at the end of paragraph (3);

[34c](D) by striking the period at the end of paragraph (4) and inserting "; and"; and

[34b] Copy read "(B)".
[34c] Copy read "(C)".

[34d](E) by adding at the end the following new paragraph:

"(5) in the case of covered items (described in section 1834(a)(13)) the amounts described in section 1834(a)(1).".

(4) Section 1866(a)(2)(A) of such Act (42 U.S.C. 1395cc(a)(2)(A)) is amended by adding at the end the following new sentence: "Notwithstanding the first sentence of this subparagraph, a home health agency may charge such an individual or person, with respect to covered items subject to payment under section 1834(a), the amount of any deduction imposed under section 1833(b) and 20 percent of the payment basis described in section 1834(a)(2).".

(5) Section 1889 of such Act (42 U.S.C. 1395zz) is repealed. 42 USC 1395zz.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to covered items furnished on or after January 1, 1989. 42 USC 1395f note.

SEC. 4063. PAYMENT FOR INTRAOCULAR LENSES.

(a) PROVIDED IN PHYSICIAN'S OFFICE.—Section 1842 of the Social Security Act (42 U.S.C. 1395u), as previously amended is amended—

(1) in subsection (b)(11)(C), as inserted by section 4046(a)(1)(C) of this subtitle—

(A) by inserting "(i)" after "(C)" and by adding at the end the following new clause:

"(ii) The reasonable charge for an intraocular lens implanted during cataract surgery in a physician's office may not exceed the actual acquisition cost for the lens (taking into account any discount) plus a handling fee (not to exceed 5 percent of such actual acquisition cost).", and

(B)[35] in subparagraph (D), as so redesignated and as amended by section 4046(a)(1) of this subtitle, by inserting "or item" after "service" or "services" each place either appears; and

(2) in subsection (j)(1)(D), as added by section 4045(c)(1)(B) of this subtitle and as amended by 4046(a)(2) of this subtitle—

(A) in clause (ii), by striking "and" at the end of subclause (IV), by redesignating subclause (V) as subclause (VI) and by inserting before such subclause the following new subclause:

"(IV) a reasonable charge limit is established under subsection (b)(11)(C)(ii), and"; and

(B) in clause (iii)—

(i) by striking "or" at the end of subclause (I),

(ii) in subclause (II), by striking "(b)(11)(C)" and inserting "(b)(11)(C)(i)",

(iii) by striking the period at the end of subclause (II) and inserting "; or", and

(iv) by adding at the end the following new subclause:

"(III) under subsection (b)(11)(C)(ii), the payment allowance established under such subsection.".

(b) PROVIDED IN AMBULATORY SURGICAL CENTERS.—Section 1833(i)(2)(A) of such Act (42 U.S.C. 1395l(i)(2)(A)) is amended— 42 USC 1395l.

(1) by striking "and" at the end of clause (i),

(2) by striking the period at the end of clause (ii) and inserting ", and", and

(3) by inserting after clause (ii) the following new clause:

[34d] Copy read "(D)".
[35] Copy read "(C)".

"(iii) in the case of implantation of an intraocular lens during cataract surgery includes payment which is reasonable and related to the cost of acquiring the class of lens involved.".

42 USC 1395l note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to items furnished on or after July 1, 1988.

42 USC 1395u note.

(d) SPECIAL RULE.—With respect to the[35a] establishment of a reasonable charge limit under section 1842(b)(11)(C)(ii) of the Social Security Act, in applying section 1842(j)(1)(D)(i) of such Act, the matter beginning with "plus" shall be considered to have been deleted.

SEC. 4064. CLINICAL DIAGNOSTIC LABORATORY TESTS.

42 USC 1395l note.

(a) LIMITATION ON CHANGES IN FEE SCHEDULES.—

(1) 3-MONTH FREEZE IN FEE SCHEDULES.—Notwithstanding any other provision of law, any change in the fee schedules for clinical laboratory diagnostic laboratory tests under part B of title XVIII of such Act which would have become effective for tests furnished on or after January 1, 1988, shall not be effective for tests furnished during the 3-month period beginning on January 1, 1988.

(2) NO CPI INCREASE IN 1988.—Notwithstanding any other provision of law, the Secretary of Health and Human Services shall not adjust the fee schedules established under section 1833(h) of the Social Security Act for 1988 to take into account any increase in the consumer price index.

(b) FEE SCHEDULES AND PAYMENT LIMITS.—

42 USC 1395l.

(1) REBASING OF FEE SCHEDULES FOR CERTAIN AUTOMATED AND SIMILAR TESTS.—Section 1833(h)(2) of the Social Security Act (42 U.S.C. 1395l(h)(2)) is amended by adding at the end the following: "In establishing fee schedules under the first sentence of this paragraph with respect to automated tests and tests (other than cytopathology tests) which before July 1, 1984, the Secretary made subject to a limit based on lowest charge levels under the sixth sentence of section 1842(b)(3) performed after March 31, 1988, the Secretary shall reduce by 8.3 percent the fee schedules otherwise established for 1988.".

(2) NATIONWIDE PAYMENT LIMITS.—Section 1833(h)(4)(B) of such Act is amended—

(A) in clause (i), by striking "January" and inserting "April", and

(B) by amending clause (ii) to read as follows:

"(ii) March 31, 1988, and so long as a fee schedule for the test has not been established on a nationwide basis, is equal to the median of all the fee schedules established for that test for that laboratory setting under paragraph (1).".

42 USC 1395l note.

(3) EFFECTIVE DATES.—The amendments made by paragraphs (1) and (2) shall apply with respect to services furnished on or after April 1, 1988.

42 USC 1395l note.

(4) GAO STUDY OF FEE SCHEDULES.—The Comptroller General shall conduct a study of the level of the fee schedules established for clinical diagnostic laboratory services under section 1833(h)(2) of the Social Security Act to determine, based on the costs of, and revenues received for, such tests the appropriateness of such schedules. The Comptroller General shall report to the Congress on the results of such study by not later than January 1, 1990. Suppliers of such tests which fail to provide the Comptroller General with reasonable access to necessary records to carry out the study under this paragraph are subject

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[35a] Copy read "the the".

to exclusion from the medicare program under section 1128(a) of the Social Security Act.

(c) LIMITATION ON APPLICATION OF 2 PERCENT HOSPITAL LAB DIFFERENTIAL.—Section 1833(h)(2) of such Act is amended by striking "hospital laboratory" and inserting "laboratory in a sole community hospital". 42 USC 1395*l*.

(d) INTERMEDIATE SANCTIONS.—

(1) Part B of title XVIII of such Act is amended by adding at the end thereof the following new section:

"INTERMEDIATE SANCTIONS FOR PROVIDERS OF CLINICAL DIAGNOSTIC LABORATORY TESTS [35b]

"SEC. 1846. (a) If the Secretary determines that any provider or clinical laboratory certified for participation under this title no longer substantially meets the conditions of participation specified under this title with respect to the provision of clinical diagnostic laboratory tests under this part, the Secretary may (for a period not to exceed one year) impose intermediate sanctions developed pursuant to subsection (b), in lieu of canceling immediately the certification of the provider or clinical laboratory. 42 USC 1395w-2.

"(b)(1) The Secretary shall develop and implement—

"(A) a range of intermediate sanctions to apply to providers or certified clinical laboratories under the conditions described in subsection (a), and

"(B) appropriate procedures for appealing determinations relating to the imposition of such sanctions.

"(2)(A) The intermediate sanctions developed under paragraph (1) shall include—

"(i) directed plans of correction,

"(ii) civil fines and penalties,

"(iii) payment for the costs of onsite monitoring by an agency responsible for conducting certification surveys, and

"(iv) suspension of all or part of the payments to which a provider or certified clinical laboratory would otherwise be entitled under this title with respect to clinical diagnostic laboratory tests provided on or after the date in which the Secretary determines that intermediate sanctions should be imposed pursuant to subsection (a).[36]

"(B) The sanctions specified in subparagraph (A) are in addition to sanctions otherwise available under State or Federal law.

"(3) The Secretary shall develop and implement specific procedures with respect to when and how each of the intermediate sanctions developed under paragraph (1) is to be applied, the amounts of any fines, and the severity of each of these penalties. Such procedures shall be designed so as to minimize the time between identification of violations and imposition of these sanctions and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies.".

(2) The amendment made by paragraph (1) shall become effective on January 1, 1990. Effective date. 42 USC 1395w-2 note.

(e) STATE CERTIFICATION OF HIGH-VOLUME PHYSICIAN OFFICE LABS.—

(1) Section 1861(s) of such Act (42 U.S.C. 1395x(s)) is amended, in the sentence following paragraph (11), by inserting "a labora-

[35b] Copy read "TESTS".

[36] Subparagraphs "'(i)", "'(ii)", "'(iii)", and "'(iv)" indented incorrectly.

tory not independent of a physician's office that has a volume of clinical diagnostic laboratory tests exceeding 5,000 per year" after "physician's office,".

42 USC 1395x note.

(2) The amendment made by paragraph (1) shall apply to diagnostic tests performed on or after January 1, 1990.

SEC. 4065. RETURN ON EQUITY PAYMENTS TO OUTPATIENT DEPARTMENTS.

(a) IN GENERAL.—Section 1861(v)(1) of the Social Security Act (42 U.S.C. 1395x(v)(1)) is amended by adding at the end thereof the following new subparagraph:

"(S) Such regulations shall not include provision for specific recognition of any return on equity capital with respect to hospital outpatient departments.".

(b) CONFORMING AMENDMENT.—Section 1881(b)(2)(C) of such Act (42 U.S.C. 1395rr(b)(2)(C)) is amended by striking "facilities" and inserting "facilities (other than hospital outpatient departments)".

42 USC 1395x note.

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective on January 1, 1988.

SEC. 4066. PAYMENTS TO HOSPITAL OUTPATIENT DEPARTMENTS FOR RADIOLOGY.

(a) AMOUNTS PAYABLE.—Section 1833 of the Social Security Act (42 U.S.C. 1395l) is amended—

(1) in subsection (a)(2)—

(A) by striking "and" in subparagraph (C),

(B) by adding "and" at the end of subparagraph (D), and

(C) by adding at the end thereof the following new subparagraph:

"(E) with respect to—

"(i) outpatient hospital radiology services (including diagnostic and therapeutic radiology, nuclear medicine and CAT scan procedures, magnetic resonance imaging, and ultrasound and other imaging services), and

"(ii) effective for procedures performed on or after October 1, 1989, diagnostic procedures (as defined by the Secretary) described in section 1861(s)(3) (other than diagnostic x-ray tests and diagnostic laboratory tests),

the amount determined under subsection (n);"; and

(2) by adding at the end, as previously amended, the following new subsection:

"(n)(1)(A) The aggregate amount of the payments to be made for all or part of a cost reporting period beginning on or after October 1, 1988 under this part for services described in subsection (a)(2)(E) shall be equal to the lesser of—

"(i) the amount determined with respect to such services under subsection (a)(2)(B), or

"(ii) the blend amount for radiology services and diagnostic procedures determined in accordance with subparagraph (B).

"(B)(i) The blend amount for radiology services and diagnostic procedures for a cost reporting period is the sum of—

"(I) the cost proportion (as defined in clause (ii)) of the amount described in subparagraph (A)(i); and

"(II) the charge proportion (as defined in clause (ii)(II)) of 62 percent (for services described in subsection (a)(2)(E)(i)), or (for procedures described in subsection (a)(2)(E)(ii)), 42 percent or

such other percent established by the Secretary (or carriers acting pursuant to guidelines issued by the Secretary) based on prevailing charges established with actual charge data, of 80 percent of the prevailing charge for participating physicians for the same services as if they were furnished in a physician's office in the same locality as determined under section 1842(b).

"(ii) In this subparagraph:

"(I) The term 'cost proportion' means 65 percent for all or any part of cost reporting periods which occur in fiscal year 1989 and 50 percent for other cost reporting periods.

"(II) The term 'charge proportion' means 35 percent for all or any parts of cost reporting periods which occur in fiscal year 1989 and 50 percent for other cost reporting periods.".

(b) CONFORMING AMENDMENT.—Section 1833(a)(2)(B) of such Act (42 U.S.C. 1395l(a)(2)(B)) is amended in the matter preceding clause (i) by striking "(C) or (D)" and inserting "(C), (D), or (E)".

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to outpatient hospital radiology services furnished on or after October 1, 1988, and other diagnostic procedures performed on or after October 1, 1989. 42 USC 1395*l* note.

SEC. 4067. UPDATING MAXIMUM RATE OF PAYMENT PER VISIT FOR INDEPENDENT RURAL HEALTH CLINICS.

(a) IN GENERAL.—Section 1833 of the Social Security Act (42 U.S.C. 1395l) is further amended by inserting after subsection (e) the following new subsection:

"(f) In establishing limits under subsection (a) on payment for rural health clinic services provided by independent rural health clinics, the Secretary shall establish such limit, for services provided—

"(1) in 1988, after March 31, at $46, and

"(2) in a subsequent year, at the limit established under this subsection for the previous year increased by the percentage increase in the medicare economic index (referred to in the fourth sentence of section 1842(b)(3)) applicable to physicians' services furnished as of the first day of that year.".

(b) REPORT ON RATES.—The Secretary of Health and Human Services shall report to Congress, by not later than March 1, 1989, on the adequacy of the amounts paid under title XVIII of the Social Security Act for rural health clinic services provided by independent rural health clinics. 42 USC 1395*l* note.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after April 1, 1988. 42 USC 1395*l* note.

SEC. 4068. PAYMENT FOR AMBULATORY SURGERY AT EYE, AND EYE AND EAR, SPECIALTY HOSPITALS.

(a) IN GENERAL.—Section 1833(i)(3)(B)(ii) of the Social Security Act (42 U.S.C. 1395l(i)(3)(B)(ii)) is amended—

(1) by striking "In" and inserting "Subject to the last sentence of this clause, in"; and

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

"In the case of a hospital that makes application to the Secretary and demonstrates that it specializes in eye services or eye and ear services (as determined by the Secretary), receives more than 30 percent of its total revenues from outpatient services and was an eye specialty hospital or an eye and ear specialty hospital on October 1, 1987, the cost proportion and ASC proportion in effect under

subclauses (I) and (II) for cost reporting periods beginning in fiscal year 1988 shall remain in effect for cost reporting periods beginning in fiscal year 1989 or fiscal year 1990.".

(b) DEVELOPMENT OF PROSPECTIVE PAYMENT METHODOLOGY FOR OUTPATIENT HOSPITAL SERVICES.—Section 1135(d) of the Social Security Act (42 U.S.C. 1320b-5(d)) is amended—

(1) by adding at the end of paragraph (3) the following: "In establishing such rates, the Secretary shall consider whether a differential payment rate is appropriate for speciality hospitals."; and

(2) by adding at the end the following new paragraph:

"(7) The Secretary shall solicit the views of the Prospective Payment Assessment Commission in developing the systems under paragraphs (1) and (6), and shall include in the Secretary's reports under this subsection any views the Commission may submit with respect to such systems.".

42 USC 1395*l*.

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall be effective as if included in the amendment made by section 9343(a)(1)(B) of the Omnibus Budget Reconciliation Act of 1986.

Subpart C—Eligibility and Benefits Changes

SEC. 4070. COVERAGE OF MENTAL HEALTH SERVICES.

42 USC 1395*l* note.

(a) OUTPATIENT SERVICES UNDER PART B.—Section 1833(c) of the Social Security Act (42 U.S.C. 1395l(c)) is amended—

(1) by striking "$312.50" and inserting "$1375.00"; and

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

"For purposes of this subsection, the term 'treatment' does not include brief office visits (as defined by the Secretary) for the sole purpose of prescribing or monitoring prescription drugs used in the treatment of such disorders.".

(b) PARTIAL HOSPITALIZATION COVERAGE.—

(1) Section 1861(s)(2)(B) of such Act (42 U.S.C. 1395x(s)(2)(B)) is amended by inserting "and partial hospitalization services incident to such services" before the semicolon.

(2) Section 1861 of such Act (42 U.S.C. 1395x) is amended by adding at the end thereof the following new subsection:

"(ff)(1) The term 'partial hospitalization services' means the items and services described in paragraph (2) prescribed by a physician and provided under a program described in paragraph (3) under the supervision of a physician pursuant to an individualized, written plan of treatment established and periodically reviewed by a physician (in consultation with appropriate staff participating in such program), which plan sets forth the physician's diagnosis, the type, amount, frequency, and duration of the items and services provided under the plan, and the goals for treatment under the plan.

"(2) The items and services described in this paragraph are—

"(A) individual and group therapy with physicians or psychologists (or other mental health professionals to the extent authorized under State law),

"(B) occupational therapy requiring the skills of a qualified occupational therapist,

"(C) services of social workers, trained psychiatric nurses, and other staff trained to work with psychiatric patients,

"(D) drugs and biologicals furnished for therapeutic purposes (which cannot, as determined in accordance with regulations, be self-administered),

"(E) individualized activity therapies that are not primarily recreational or diversionary,

"(F) family counseling (the primary purpose of which is treatment of the individual's condition),

"(G) patient training and education (to the extent that training and educational activities are closely and clearly related to individual's care and treatment),

"(H) diagnostic services, and

"(I) such other items and services as the Secretary may provide (but in no event to include meals and transportation);

that are reasonable and necessary for the diagnosis or active treatment of the individual's condition, reasonably expected to improve or maintain the individual's condition and functional level and to prevent relapse or hospitalization, and furnished pursuant to such guidelines relating to frequency and duration of services as the Secretary shall by regulation establish (taking into account accepted norms of medical practice and the reasonable expectation of patient improvement).

"(3) A program described in this paragraph is a program which is hospital-based or hospital-affiliated (as defined by the Secretary) and which is a distinct and organized intensive ambulatory treatment service offering less than 24-hour-daily care.".

(3) Section 1835(a)(2) of such Act (42 U.S.C. 1395n(a)(2)) is amended—

(A) by striking "and" at the end of subparagraph (D);

(B) by striking the period at the end of subparagraph (E) and inserting "; and"; and

(C) by inserting after subparagraph (E) the following new subparagraph:

"(F) in the case of partial hospitalization services, (i) the individual would require inpatient psychiatric care in the absence of such services, (ii) an individualized, written plan for furnishing such services has been established by a physician and is reviewed periodically by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician.".

(4) Section 1833(c) of such Act, as amended by subsection (a), is further amended at the end thereof by inserting "or partial hospitalization services that are not directly provided by a physician" before the period.

(c) EFFECTIVE DATE; IMPLEMENTATION.—

(1) The amendment made by subsection (a)(1) shall apply with respect to calendar years beginning with 1988; except that with respect to 1988, any reference in section 1833(c) of the Social Security Act, as amended by subsection (a), to "$1375.00" is deemed a reference to "$562.50". The amendment made by subsection (a)(2) shall apply to services furnished on or after January 1, 1989. 42 USC 1395*l* note.

(2)(A) The amendments made by subsection (b) shall become effective on the date of enactment of this Act. 42 USC 1395x note.

(B) The Secretary of Health and Human Services shall implement the amendments made by subsection (b) so as to ensure that there is no additional cost to the medicare program by reason of such amendments.

SEC. 4071. COVERAGE OF INFLUENZA VACCINE AND ITS ADMINISTRATION.

(a) IN GENERAL.—Section 1861(s)(10)(A) of the Social Security Act (42 U.S.C. 1395x(a)(10)(A)) is amended by inserting before the semicolon the following: "and influenza vaccine and its administration".

42 USC 1395x note.

(b) CONTINGENT EFFECTIVE DATE; DEMONSTRATION PROJECT.—

(1) The provisions of subsection (e) of section 4072 of this subpart shall apply to this section in the same manner as it applies to section 4072.

(2) In conducting the demonstration project pursuant to paragraph (1), in order to determine the cost effectiveness of including influenza vaccine in the medicare program, the Secretary of Health and Human Services is required to conduct a demonstration of the provision of influenza vaccine as a service for medicare beneficiaries and to expend $25,000,000 each year of the demonstration project for this purpose. In conducting this demonstration, the Secretary is authorized to purchase in bulk influenza vaccine and to distribute it in a manner to make it widely available to medicare beneficiaries, to develop projects to provide vaccine in the same manner as other covered medicare services in large scale demonstration projects, including statewide projects, and to engage in other appropriate use of moneys to provide influenza vaccine to medicare beneficiaries and evaluate the cost effectiveness of its use. In determining cost effectiveness, the Secretary shall consider the direct cost of the vaccine, the utilization of vaccine which might otherwise not have occurred, the costs of illnesses and nursing home days avoided, and other relevant factors, except that extended life for beneficiaries shall not be considered to reduce the cost effectiveness of the vaccine.

SEC. 4072. PAYMENT FOR THERAPEUTIC SHOES FOR INDIVIDUALS WITH SEVERE DIABETIC FOOT DISEASE.

(a) COVERAGE UNDER PART B.—Section 1861(s) of the Social Security Act (42 U.S.C. 1395x(s)) is amended—

(1) by redesignating paragraphs (12) through (15) as paragraphs (13) through (16), respectively,

(2) by striking out "and" at the end of paragraph (10),

(3) by striking out the period at the end of paragraph (11) and inserting "; and", and

(4) by inserting after paragraph (11) the following new paragraph:

"(12) extra-depth shoes with inserts or custom molded shoes for an individual with diabetes, if—

"(A) the physician who is managing the individual's diabetic condition (i) documents that the individual has peripheral neuropathy with evidence of callus formation, a history of pre-ulcerative calluses, a history of previous ulceration, foot deformity, or previous amputation, or poor circulation, and (ii) certifies that the individual needs such shoes under a comprehensive plan of care related to the individual's diabetic condition;

"(B) the particular type of shoes are prescribed by a podiatrist or other qualified physician (as established by the Secretary); and

"(C) the shoes are fitted and furnished by a podiatrist or other qualified individual (such as a pedorthist or orthotist, as established by the Secretary) who is not the physician

described in subparagraph (A) (unless the Secretary finds that the physician is the only such qualified individual in the area).".

(b) LIMITATION ON BENEFIT.—Section 1833 of such Act (42 U.S.C. 1395) is amended by inserting after subsection (e) the following new subsection: 42 USC 1395*l*.

"(f)(1) In the case of shoes described in section 1861(s)(12)—

"(A) no payment may be made under this part for the furnishing of more than one pair of shoes for any individual for any calendar year, and

"(B) with respect to expenses incurred in any calendar year, no more than the limit established under paragraph (2) shall be considered as incurred expenses for purposes of subsections (a) and (b).

Payment for shoes under this part shall be considered to include payment for any expenses for the fitting of such shoes.

"(2)(A) Except as provided by the Secretary under subparagraphs (B) and (C), the limit established under this paragraph—

"(i) for the furnishing of one pair of custom molded shoes is $300;

"(ii) for the furnishing of extra-depth shoes and inserts is—

"(I) $100 for the pair of shoes itself, and

"(II) $50 for inserts for a pair of shoes.

"(B) The Secretary or a carrier may establish limits for shoes that are lower than the limits established under subparagraph (A) if the Secretary finds that shoes and inserts of an appropriate quality are readily available at or below such lower limits.

"(C) For each year after 1988, each dollar amount under subparagraph (A) or (B) (as previously adjusted under this subparagraph) shall be increased by the same percentage increase as the Secretary provides with respect to durable medical equipment for that year, except that if such increase is not a multiple of $1, it shall be rounded to the nearest multiple of $1.

"(3) In this title, the term 'shoes' includes, except for purposes of subparagraphs (A)(ii) and (B) of paragraph (2), inserts for extra-depth shoes.".

(c) MODIFICATION OF EXCLUSION.—Section 1862(a)(8) of such Act (42 U.S.C. 1395y(a)(8)) is amended by inserting ", other than shoes furnished pursuant to section 1861(s)(12)" before the semicolon.

(d) CONFORMING AMENDMENTS.—Sections 1864(a), 1865(a), 1902(a)(9)(C), and 1915(a)(1)(B)(ii)(I) of such Act (42 U.S.C. 1395aa(a), 1395bb(a), 1396a(a)(9)(C), 1396n(a)(1)(B)(ii)(I)) are each amended by striking out "paragraphs (12) and (13)" and inserting "paragraphs (13) and (14)".

(e) CONTINGENT EFFECTIVE DATE; DEMONSTRATION PROJECT.— 42 USC 1395x note.

(1) The amendments made by this section shall become effective (if at all) in accordance with paragraph (2).

(2)(A) The Secretary of Health and Human Services (in this paragraph referred to as the "Secretary"), shall establish a demonstration project to begin on October 1, 1988, to test the cost-effectiveness of furnishing therapeutic shoes under the medicare program to the extent provided under the amendments made by this section to a sample group of medicare beneficiaries.

(B)(i) The demonstration project under subparagraph (A) shall be conducted for an initial period of 24 months. Not later than October 1, 1990, the Secretary shall report to the Congress on Reports.

Effective date.

the results of such project. If the Secretary finds, on the basis of existing data, that furnishing therapeutic shoes under the medicare program to the extent provided under the amendments made by this section is cost-effective, the Secretary shall include such finding in such report, such project shall be discontinued, and the amendments made by this section shall become effective on November 1, 1990.

Reports.

(ii) If the Secretary determines that such finding cannot be made on the basis of existing data, such project shall continue for an additional 24 months. Not later than April 1, 1993, the Secretary shall submit a final report to the Congress on the results of such project. The amendments made by this section shall become effective on the first day of the first month to begin after such report is submitted to the Congress unless the report contains a finding by the Secretary that furnishing therapeutic shoes under the medicare program to the extent provided under the amendments made by this section is not cost-effective (in which case the amendments made by this section shall not become effective).

Effective date.

SEC. 4073. COVERAGE OF CERTIFIED NURSE-MIDWIFE SERVICES.

(a) COVERAGE OF SERVICES.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

(1) by striking "and" at the end of subparagraph (J);

(2) by adding "and" at the end of subparagraph (K); and

(3) by adding at the end thereof the following new subparagraph:

"(L) certified nurse-midwife services;".

(b) PAYMENT OF BENEFITS.—

(1) Section 1832(a)(2)(B) of such Act (42 U.S.C. 1395k(a)(2)(B)) is amended—

(A) by striking "and" at the end of clause (ii);

(B) by striking the semicolon at the end of clause (iii) and inserting a comma; and

(C) by adding at the end thereof the following new clause:

"(iv) certified nurse-midwife services; and".

42 USC 1395*l*.

(2) Section 1833(a)(1) of such Act (42 U.S.C. 1395k(a)(1)) is amended—

(A) by striking "and" at the end of clause (F);

(B) by striking "services; and" in clause (G) and inserting "services,"; and

(C) [37] by adding at the end thereof the following: "and (I) with respect to certified nurse-midwife services under section 1861(s)(2)(L), the amounts paid shall be the amount determined by a fee schedule established by the Secretary for the purposes of this subparagraph (but in no event more than 65 percent of the prevailing charge that would be allowed for the same service performed by a physician);".

(3) Section 1833 of such Act (42 U.S.C. 1395l) is amended by adding at the end the following new subsection:

"(m) In the case of certified nurse-midwife services for which payment may be made under this part only pursuant to section 1861(s)(2)(L), payment may only be made under this part for such services on an assignment-related basis.".

[37] Copy read "(D)".

(c) DEFINITION.—Section 1861 of such Act (42 U.S.C. 1395x) is amended by adding at the end thereof the following new subsection:

"Certified Nurse-Midwife Services

"(ff)(1) The term 'certified nurse-midwife services' means such services furnished by a certified nurse-midwife (as defined in paragraph (2)) and such services and supplies furnished as an incident to his service which the certified nurse-midwife is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) as would otherwise be covered if furnished by a physician or as an incident to a physician's service.

"(2) The term 'certified nurse-midwife' means a registered nurse who has successfully completed a program of study and clinical experience meeting guidelines prescribed by the Secretary, or has been certified by an organization recognized by the Secretary, and performs services in the area of management of the care of mothers and babies throughout the maternity cycle.".

(d) [38] CONFORMING CHANGES.—

(1) Section 1905(a)(17) of such Act (42 U.S.C. 1396d(a)(17)) is amended by striking "as defined in subsection (m)" and inserting "as defined in section 1861(ff)".

(2) Section 1905 of such Act (42 U.S.C. 1396d) is amended by striking subsection (m).

(e) [39] EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to services performed on or after July 1, 1988. 42 USC 1395k note.

SEC. 4074. COVERAGE OF SOCIAL WORKER SERVICES FURNISHED BY A HEALTH MAINTENANCE ORGANIZATION TO ITS MEMBERS.

(a) IN GENERAL.—Section 1861(s)(2)(H)(ii) of the Social Security Act (42 U.S.C. 1395x(s)(2)(H)(ii)) is amended—

(1) by inserting "or by a clinical social worker (as defined in subsection (ff))" after "clinical psychologist (as defined by the Secretary)"; and

(2) by striking "incident to his services" and inserting "incident to such clinical psychologist's services or clinical social worker's services".

(b) CLINICAL SOCIAL WORKER DEFINED.—Section 1861 of such Act (42 U.S.C. 1395x) is amended by adding at the end the following new subsection:

"Clinical Social Worker

"(ff) The term 'clinical social worker' means an individual who—

"(1) possesses a master's or doctor's degree in social work;

"(2) after obtaining such degree has performed at least 2 years of supervised clinical social work; and

"(3)(A) is licensed or certified as a clinical social worker by the State in which the services are performed, or

"(B) in the case of an individual in a State which does not provide for licensure or certification—

"(i) has completed at least 2 years or 3,000 hours of post-master's degree supervised clinical social work practice under the supervision of a master's level social worker in

[38] Copy read "(c)".
[39] Copy read "(d)".

an appropriate setting (as determined by the Secretary), and

"(ii) meets such other criteria as the Secretary establishes.".

42 USC 1395x note.

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to services performed on or after January 1, 1988.

SEC. 4075. CLARIFICATION OF COVERAGE OF DRUGS USED IN IMMUNOSUPPRESSIVE THERAPY.

(a) IN GENERAL.—Section 1861(s)(2)(J) of the Social Security Act (42 U.S.C. 1395x(s)(2)(J)) is amended by striking "immunosuppressive drugs" and inserting "prescription drugs used in immunosuppressive therapy".

42 USC 1395x note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to drugs dispensed on or after the date of the enactment of this Act.

SEC. 4076. SERVICES OF A PHYSICIAN ASSISTANT.

(a) SERVICES COVERED.—Section 1861(s)(2)(K) of the Social Security Act (42 U.S.C. 1395x(s)(2)(K)) is amended by inserting ", in a rural area (as defined in section 1886(d)(2)(D)) that is designated, under section 332(a)(1)(A) of the Public Health Service Act, as a health manpower shortage area," after "1905(c))".

42 USC 1395x note.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to services furnished on or after January 1, 1989.

SEC. 4077. PSYCHOLOGIST SERVICES IN CLINICS.

(a) COVERAGE OF PSYCHOLOGISTS' SERVICES FURNISHED AT RURAL HEALTH CLINICS.—

(1) Section 1861(aa)(1)(B) of the Social Security Act (42 U.S.C. 1395x(aa)(1)(B)) is amended by striking "physician assistant or by a nurse practitioner" and inserting "physician assistant or a nurse practitioner (as defined in paragraph (3)), or by a clinical psychologist (as defined by the Secretary),".

42 USC 1395x note.

(2) The amendment made by paragraph (1) shall be effective with respect to services furnished on or after the date of enactment of this Act.

(b) DIRECT PAYMENT FOR PSYCHOLOGISTS' SERVICES FURNISHED AT A COMMUNITY MENTAL HEALTH CENTER.—

(1) Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)), as amended, is amended—

(A) by striking "and" at the end of subparagraph (K);

(B) by adding "and" at the end of subparagraph (L); and

(C) by adding at the end thereof the following new subparagraph:

"(M) qualified psychologist services;".

(2) Section 1832(a)(2)(B) of such Act (42 U.S.C. 1395k(a)(2)(B)) is amended—

(A) by striking "and" at the end of clause (ii);

(B) by striking the semicolon in clause (iii) and inserting a comma; and

(C) by adding at the end thereof the following new clause:

"(iv) qualified psychologist services; and".

42 USC 1395*l*.

(3) Section 1833(a)(1) of such Act (42 U.S.C. 1395k(a)(1)) is amended—

(A) by striking "and" at the end of subparagraph (G);

(B) by striking "services; and" in subparagraph (H) and inserting "services,";

(C) by adding "and" at the end of subparagraph (I); and

(D) by adding at the end thereof the following new subparagraph: "(J) with respect to qualified psychologist services under section 1861(s)(2)(M), the amounts paid shall be the amount determined by a fee schedule established by the Secretary for the purposes of this subparagraph;".

(4) The subsection added by section 4073(b)(3) of this subpart is amended by inserting "and in the case of qualified psychologists services for which payment may be made under this part only pursuant to section 1861(s)(2)(M)" after "1861(s)(2)(L)". 42 USC 1395*l*.

(5) Section 1861 of such Act (42 U.S.C. 1395x) is amended by adding at the end thereof the following new subsection:

"Qualified Psychologist Services

"(gg) The term 'qualified psychologist services' means such services and such services and supplies furnished as an incident to his service furnished by a clinical psychologist (as defined by the Secretary) at a community mental health center (as such term is used in the Public Health Service Act) which the psychologist is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) as would otherwise be covered if furnished by a physician or as an incident to a physician's service.".[40]

(6)[41] The amendments made by this subsection shall be effective with respect to services performed on or after July 1, 1988. Effective date. 42 USC 1395k note.

SEC. 4078. PROVISION OF OFFSITE COMPREHENSIVE OUTPATIENT REHABILITATION SERVICES.

Section 1861(cc)(1) of the Social Security Act (42 U.S.C. 1395x(cc)(1)) is amended by adding at the end thereof the following: "In the case of physical therapy, occupational therapy, and speech pathology services, there shall be no requirement that the item or service be furnished at any single fixed location if the item or service is furnished pursuant to such plan and payments are not otherwise made for the item or service under this title.".

SEC. 4079. DEMONSTRATION PROJECTS TO PROVIDE PAYMENT ON A PREPAID, CAPITATED BASIS FOR COMMUNITY NURSING AND AMBULATORY CARE FURNISHED TO MEDICARE BENEFICIARIES. 42 USC 1395mm note.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall enter into an agreement with not less than four eligible organizations submitting applications under this section to conduct demonstration projects to provide payment on a prepaid, capitated basis for community nursing and ambulatory care furnished to any individual entitled to benefits under part A and enrolled under part B of title XVIII of the Social Security Act (other than an individual medically determined to have end-stage renal disease) who resides in the geographic area

[40] Copy read "service.".
[41] Copy read "(5)".

served by the organization and enrolls with such organization (in accordance with subsection (c)(2)).

(b) DEFINITIONS OF COMMUNITY NURSING AND AMBULATORY CARE AND ELIGIBLE ORGANIZATION.—As used in this section:

(1) The term "community nursing and ambulatory care" means the following services:

(A) Part-time or intermittent nursing care furnished by or under the supervision of registered professional nurses.

(B) Physical, occupational, or speech therapy.

(C) Social and related services supportive of a plan of ambulatory care.

(D) Part-time or intermittent services of a home health aide.

(E) Medical supplies (other than drugs and biologicals) and durable medical equipment while under a plan of care.

(F) Medical and other health services described in paragraphs (2)(H)(ii) and (5) through (9) of section 1861(s) of the Social Security Act.

(G) Rural health clinic services described in section 1861(aa)(1)(C) of such Act.

(H) Certain other related services listed in section 1915(c)(4)(B) of such Act to the extent the Secretary finds such services are appropriate to prevent the need for institutionalization of a patient.

(2) The term "eligible organization" means a public or private entity, organized under the laws of any State, which meets the following requirements:

(A) The entity (or a division or part of such entity) is primarily engaged in the direct provision of community nursing and ambulatory care.

(B) The entity provides directly, or through arrangements with other qualified personnel, the services described in paragraph (1).

(C) The entity provides that all nursing care (including services of home health aids) is furnished by or under the supervision of a registered nurse.

(D) The entity provides that all services are furnished by qualified staff and are coordinated by a registered professional nurse.

(E) The entity has policies governing the furnishing of community nursing and ambulatory care that are developed by registered professional nurses in cooperation with (as appropriate) other professionals.

(F) The entity maintains clinical records on all patients.

(G) The entity has protocols and procedures to assure, when appropriate, timely referral to or consultation with other health care providers or professionals.

(H) The entity complies with applicable State and local laws governing the provision of community nursing and ambulatory care to patients.

(I) The requirements of subparagraphs (B), (D), and (E) of section 1876(b)(2) of the Social Security Act.

(c) AGREEMENTS WITH ELIGIBLE ORGANIZATIONS TO [42] CONDUCT DEMONSTRATION PROJECTS.—

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[42] Copy read "WITH ELIGIBLE ORGANIZATIONS TO".

(1) The Secretary may not enter into an agreement with an eligible organization to conduct a demonstration project under this section unless the organization meets the requirements of this subsection and subsection (d) with respect to members enrolled with the organization under this section.

(2) The organization shall have an open enrollment period for the enrollment of individuals under this section. The duration of such period of enrollment and any other requirement pertaining to enrollment or termination of enrollment shall be specified in the agreement with the organization.

(3) The organization must provide to members enrolled with the organization under this section, through providers and other persons that meet the applicable requirements of titles XVIII and XIX of the Social Security Act, community nursing and ambulatory care (as defined in subsection (b)(1)) which is generally available to individuals residing in the geographic area served by the organization, except that the organization may provide such members with such additional health care services as the members may elect, at their option, to have covered.

(4) The organization must make community nursing and ambulatory care (and such other health care services as such individuals have contracted for) available and accessible to each individual enrolled with the organization under this section, within the area served by the organization, with reasonable promptness and in a manner which assures continuity.

(5) Section 1876(c)(5) of the Social Security Act shall apply to organizations under this section in the same manner as it applies to organizations under section 1876 of such Act.

(6) The organization must have arrangements, established in accordance with regulations of the Secretary, for an ongoing quality assurance program for health care services it provides to such individuals under the demonstration project conducted under this section, which program (A) stresses health outcomes and (B) provides review by health care professionals of the process followed in the provision of such health care services.

(7) Under a demonstration project under this section—

(A) the Secretary could require the organization to provide financial or other assurances (including financial risk-sharing) that minimize the inappropriate substitution of other services under title XVIII of such Act for community nursing services; and

(B) if the Secretary determines that the organization has failed to perform in accordance with the requirements of the project (including meeting financial responsibility requirements under the project, any pattern of disproportionate or inappropriate institutionalization) the Secretary shall, after notice, terminate the project.

(d) DETERMINATION OF PER CAPITA PAYMENT RATES.—

(1) The Secretary shall determine for each 12-month period in which a demonstration project is conducted under this section, and shall announce (in a manner intended to provide notice to interested parties) not later than three months before the beginning of such period, with respect to each eligible organization conducting a demonstration project under this section, a per capita rate of payment for each class of individuals who are enrolled with such organization who are entitled to benefits

under part A and enrolled under part B of title XVIII of the Social Security Act.

(2)(A) Except as provided in paragraph (3), the per capita rate of payment under paragraph (1) shall be determined in accordance with this paragraph.

(B) The Secretary shall define appropriate classes of members, based on age, disability status, and such other factors as the Secretary determines to be appropriate, so as to ensure actuarial equivalence. The Secretary may add to, modify, or substitute for such classes, if such changes will improve the determination of actuarial equivalence.

(C) The per capita rate of payment under paragraph (1) for each such class shall be equal to 95 percent of the adjusted average per capita cost (as defined in subparagraph (D)) for that class.

(D) For purposes of subparagraph (C), the term 'adjusted average per capita cost' means the average per capita amount that the Secretary estimates in advance (on the basis of actual experience, or retrospective actuarial equivalent based upon an adequate sample and other information and data, in a geographic area served by an eligible organization or in a similar area, with appropriate adjustments to assure actuarial equivalence) would be payable in any contract year for those services covered under parts A and B of title XVIII of the Social Security Act and types of expenses otherwise reimbursable under such parts A and B which are described in subparagraphs (A) through (G) of subsection (b)(1) (including administrative costs incurred by organizations described in sections 1816 and 1842 of such Act), if the services were to be furnished by other than an eligible organization.

(3) The Secretary shall, in consultation with providers, health policy experts, and consumer groups develop capitation-based reimbursement rates for such classes of individuals entitled to benefits under part A and enrolled under part B of the Social Security Act as the Secretary shall determine. Such rates shall be applied in determining per capita rates of payment under paragraph (1) with respect to at least one eligible organization conducting a demonstration project under this section.

(4)(A) In the case of an eligible organization conducting a demonstration project under this section, the Secretary shall make monthly payments in advance and in accordance with the rate determined under paragraph (2) or (3), except as provided in subsection (e)(3)(B), to the organization for each individual enrolled with the organization.

(B) The amount of payment under paragraph (2) or (3) may be retroactively adjusted to take into account any difference between the actual number of individuals enrolled in the plan under this section and the number of such individuals estimated to be so enrolled in determining the amount of the advance payment.

(5) The payment to an eligible organization under this section for individuals enrolled under this section with the organization and entitled to benefits under part A and enrolled under part B of the Social Security Act shall be made from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund established under such Act in such proportions from each such trust fund as the Secretary

deems to be fair and equitable taking into consideration benefits attributable to such parts A and B, respectively.

(6) During any period in which an individual is enrolled with an eligible organization conducting a demonstration project under this section, only the eligible organization (and no other individual or person) shall be entitled to receive payments from the Secretary under this title for community nursing and ambulatory care (as defined in subsection (b)(1)) furnished to the individual.

(e) RESTRICTION ON PREMIUMS, DEDUCTIBLES, COPAYMENTS, AND COINSURANCE.—

(1) In no case may the portion of an eligible organization's premium rate and the actuarial value of its deductibles, coinsurance, and copayments charged (with respect to community nursing and ambulatory care) to individuals who are enrolled under this section with the organization, exceed the actuarial value of the coinsurance and deductibles that would be applicable on the average to individuals enrolled under this section with the organization (or, if the Secretary finds that adequate data are not available to determine that actuarial value, the actuarial value of the coinsurance and deductibles applicable on the average to individuals in the area, in the State, or in the United States, eligible to enroll under this section with the organization, or other appropriate data) and entitled to benefits under part A and enrolled under part B of the Social Security Act, if they were not members of an eligible organization.

(2) If the eligible organization provides to its members enrolled under this section services in addition to community nursing and ambulatory care, election of coverage for such additional services shall be optional for such members and such organization shall furnish such members with information on the portion of its premium rate or other charges applicable to such additional services. In no case may the sum of—

(A) the portion of such organization's premium rate charged, with respect to such additional services, to members enrolled under this section, and

(B) the actuarial value of its deductibles, coinsurance, and copayments charged, with respect to such services to such members

exceed the adjusted community rate for such services (as defined in section 1876(e)(3) of the Social Security Act).

(3)(A) Subject to subparagraphs (B) and (C), each agreement to conduct a demonstration project under this section shall provide that if—

(i) the adjusted community rate, referred to in paragraph (2), for community nursing and ambulatory care covered under parts A and B of title XVIII of the Social Security Act (as reduced for the actuarial value of the coinsurance and deductibles under those parts) for members enrolled under this section with the organization,

is less than

(ii) the average of the per capita rates of payment to be made under subsection (d)(1) at the beginning of the 12-month period (as determined on such basis as the Secretary determines appropriate) described in such subsection for members enrolled under this section with the organization,

the eligible organization shall provide to such members the additional benefits described in section 1876(g)(3) of the Social Security Act which are selected by the eligible organization and which the Secretary finds are at least equal in value to the difference between that average per capita payment and the adjusted community rate (as so reduced).

(B) Subparagraph (A) shall not apply with respect to any organization which elects to receive a lesser payment to the extent that there is no longer a difference between the average per capita payment and adjusted community rate (as so reduced).

(C) An organization conducting a demonstration project under this section may provide (with the approval of the Secretary) that a part of the value of such additional benefits under subparagraph (A) be withheld and reserved by the Secretary as provided in section 1876(g)(5) of the Social Security Act.

Contracts.

(4) The provisions of paragraphs (3), (5), and (6) of section 1876(g) of the Social Security Act shall apply in the same manner to agreements under this section as they apply to risk-sharing contracts under section 1876 of such Act, and, for this purpose, any reference in such paragraphs to paragraph (2) is deemed a reference to paragraph (3) of this subsection.

(5) Section 1876(e)(4) of the Social Security Act shall apply to eligible organizations under this section in the same manner as it applies to eligible organizations under section 1876 of such Act.

(f) COMMENCEMENT AND DURATION OF PROJECTS.—Each demonstration project under this section shall begin not later than July 1, 1989, and shall be conducted for a period of three years.

(g) REPORT.—Not later than January 1, 1992, the Secretary shall submit to the Congress a report on the results of the demonstration projects conducted under this section.

SEC. 4080. PART B PREMIUM.

Section 1839 of the Social Security Act (42 U.S.C. 1395r) is amended—

(1) in subsection (e), by striking "1989" each place it appears and inserting in lieu thereof "1990";

(2) in subsection (f)(1), by striking "or 1987" and inserting in lieu thereof "1987, or 1988"; and

(3) in subsection (f)(2), by striking "or 1988" and inserting in lieu thereof "1988, or 1989".

Subpart D—Other Provisions

SEC. 4081. SUBMISSION OF CLAIMS TO SUPPLEMENTAL INSURANCE CARRIERS.

(a) IN GENERAL.—Section 1842(h)(3) of the Social Security Act (42 U.S.C. 1395u(h)(3)) is amended by inserting "(A)" after "(3)" and by adding at the end the following new subparagraph:

"(B) The Secretary shall establish a procedure whereby an individual enrolled under this part may assign, in an appropriate manner on the form claiming a benefit under this part for an item or service furnished by a participating physician or supplier, the individual's rights of payment under a medicare supplemental policy (described in section 1882(g)(1)) in which the individual is enrolled. In the case such an assignment is properly executed and a claims determination

is made by a carrier with a contract under this section, the carrier shall transmit to the private entity issuing the medicare supplemental policy notice of such fact and including such information as the Secretary determines is generally provided to enable the entity to decide whether (and the amount of) any payment is due under the policy. The Secretary may enter into arrangements for the transmittal of such information to entities electronically. The Secretary shall impose user fees for the transmittal of information under this subparagraph, whether electronically or otherwise.".

(b) MEDIGAP POLICY STANDARDS.—Section 1882 of such Act (42 U.S.C. 1395ss) is amended—

(1) in subsection (b)(1)—

(A) by amending subparagraph (B) to read as follows:

"(B) includes requirements equal to or more stringent than the requirements described in paragraphs (2) and (3) of subsection (c);",

[43] (B) by adding "and" at the end of subparagraph (C), and

[43] (C) by inserting after subparagraph (C) the following new subparagraph:

"(D) provides the Secretary periodically (but at least annually) with a list containing the name and address of the issuer of each such policy and the name and number of each such policy (including an indication of policies that have been previously approved, newly approved, or withdrawn from approval since the previous list was provided),";

(2) in subsection (c)—

(A) by striking "and" at the end of paragraph (1),

(B) by striking the period at the end of paragraph (2) and inserting "; and", and

(C) by inserting after paragraph (2) the following new paragraph:

"(3)(A) accepts a notice under section 1842(h)(3)(B) as a claims form for benefits under such policy in lieu of any claims form otherwise required and agrees to make a payment determination on the basis of the information contained in such claims form;

"(B) where such a notice is received—

"(i) provides notice to such physician or supplier and the beneficiary of the payment determination, and

"(ii) provides any appropriate payment directly to the participating physician or supplier involved;

"(C) provides each enrollee at the time of enrollment a card listing the policy name and number and a single mailing address to which notices under section 1842(h)(3)(B) respecting the policy are to be sent;

"(D) agrees to pay any user fees established under section 1842(h)(3)(B) with respect to information transmitted to the issuer of the policy; and

"(E) provides to the Secretary at least annually, for transmittal to carriers, a single mailing address to which notices under section 1842(h)(3)(B) respecting the policy are to be sent.".

(c) EFFECTIVE DATES.—(1) The amendment made by subsection (a) shall apply to contracts with carriers for claims for items and

Contracts.
42 USC 1395u note.

[43] Paragraphs (B) and (C) were indented wrong.

services furnished by participating physicians and suppliers on or after January 1, 1989.

42 USC 1395ss note.

(2)(A) The amendments made by subsection (b) shall apply to medicare supplemental policies as of January 1, 1989 (or, if applicable, the date established under subparagraph (B)).

(B) In the case of a State which the Secretary of Health and Human Services identifies as—

(i) requiring State legislation (other than legislation appropriating funds) in order for medical supplemental policies to be changed to meet the requirements of section 1882(c)(3) of the Social Security Act, and

(ii) having a legislature which is not scheduled to meet in 1988 in a legislative session in which such legislation may be considered,

the date specified in this subparagraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1989, and in which legislation described in clause (i) may be considered.

SEC. 4082. REVISION OF PART B HEARINGS.

(a) CLARIFICATION OF OBRA AMENDMENT.—Section 1869(b)(3)(B) of the Social Security Act (42 U.S.C. 1395ff(b)(3)(B)) is amended [43a] by striking "chapter 5" and inserting "section 553".

(b) EXPEDITED ADMINISTRATIVE HEARING WHERE ONLY ISSUES OF LAW.—Section 1869(b) of such Act (42 U.S.C. 1395ff(b)) is amended by adding at the end the following new paragraph:

"(5) In an administrative hearing pursuant to paragraph (1), where the moving party alleges that there are no material issues of fact in dispute, the administrative law judge shall make an expedited determination as to whether any such facts are in dispute and, if not, shall determine the case expeditiously.".

(c) TIMELY CARRIER HEARINGS ON PART B APPEALS.—Section 1842(b)(5) of such Act (42 U.S.C. 1395u(b)(5)) is amended—

(1) by inserting "(A)" after "(5)", and

(2) by adding at the end the following new subparagraph:

"(B) The Secretary shall establish standards for evaluating carriers' performance of reviews of initial carrier determinations and of fair hearings under paragraph (3)(C), under which a carrier is expected—

"(i) to complete such reviews, within 45 days after the date of a request by an individual enrolled under this part for such a review, in 95 percent of such requests, and

"(ii) to make a final determination, within 120 days after the date of receipt of a request by an individual enrolled under this part for a fair hearing under paragraph (3)(C), in 90 percent of such cases.".

42 USC 1395u note.

(d) GAO STUDY.—The Comptroller General shall conduct a study concerning the cost effectiveness of requiring hearings with a carrier under part B of title XVIII of the Social Security Act before having a hearing before an administrative law judge respecting carrier determinations under that part. The Comptroller General shall report to the Congress on the results of such study by not later than June 30, 1989.

Reports.

42 USC 1395ff note.

(e) EFFECTIVE DATES.—(1) The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

[43a] Copy read "is amended is amended".

(2) The amendment made by subsection (b) shall apply to requests for hearings filed after the end of the 60-day period beginning on the date of the enactment of this Act.

(3) The amendments made by subsection (c) shall apply to evaluation of performance of carriers under contracts entered into or renewed on or after October 1, 1988. 42 USC 1395u note.

SEC. 4083. PROVISIONS RELATING TO PHYSICIAN PAYMENT REVIEW COMMISSION.

(a) REVISION OF APPOINTMENT PROCESS FOR THE PHYSICIAN PAYMENT REVIEW COMMISSION.—

(1) IN GENERAL.—Section 1845(a) of the Social [43b] Security Act (42 U.S.C. 1395w-1(a)(3)) is amended—

(A) in paragraph (1), by striking "with expertise in the provision and financing of physicians' services" and inserting "with national recognition for their expertise in health economics, physician reimbursement, medical practice, and other related fields"; and

(B) in paragraph (3), by striking the last sentence.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to appointments made after the date of the enactment of this Act. 42 USC 1395w-1 note.

(b) TREATMENT OF EMPLOYEES FOR CERTAIN PURPOSES.—

(1) IN [44] GENERAL.—Section 1886(e)(6)(D) of the Social Security Act (42 U.S.C. 1395ww(e)(6)(D)) is amended by adding at the end the following: "For purposes of pay (other than pay of members of the Commission) and employment benefits, rights, and privileges, all personnel of the Commission shall be treated as if they were employees of the United States Senate.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on the date of the enactment of this Act. 42 USC 1395ww note.

(c) CHANGE IN DATE FOR ANNUAL REPORT OF PHYSICIAN PAYMENT REVIEW COMMISSION.—

(1) Section 1845(b)(1) of such Act (42 U.S.C. 1395w-1(b)(1)) is amended by striking "March 1" and inserting "March 31".

(2) The amendment made by paragraph (1) shall apply with respect to reports for years after 1987. 42 USC 1395w-1 note.

SEC. 4084. TECHNICAL AMENDMENTS RELATED TO CERTIFIED REGISTERED NURSE ANESTHETISTS.

(a) IN GENERAL.—Section 1833(l) of the Social Security Act (42 U.S.C. 1395l(l)), as added by section 9320(e) of the Omnibus Budget Reconciliation Act of 1986, is amended—

(1) in paragraph (2), by striking "1985" and inserting "1985 and such other data as the Secretary determines necessary"; and

(2) in paragraph (5)(A), by striking "or group practice" each place it appears and inserting "group practice, or ambulatory surgical center".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply as if included in the amendment made by section 9320(e)(2) of the Omnibus Budget Reconciliation Act of 1986. 42 USC 1395l note.

[43b] Copy read "of Social".

[44] Copy read "General.".

SEC. 4085. MISCELLANEOUS AND TECHNICAL PROVISIONS.

(a) PROMPT SUBMITTAL OF DATA BY SECRETARY.—Section 1845 of the Social Security Act (42 U.S.C. 1395w-1) is amended by adding at the end the following new subsection:

"(f)(1) Not later than October 1st of each year (beginning with 1988), the Secretary shall transmit to the Physician Payment Review Commission, to the Congressional Budget Office, and to the Congressional Research Service of the Library of Congress national data (known as the Part B Medicare Annual Data System) for the previous year respecting part B of this title.

"(2) In order to ensure that the data are available for transmittal under paragraph (1) on a timely basis, the Secretary shall require, in the standards and criteria established under section 1842(b)(2), that carriers submit data for a year under the system referred to in paragraph (1) not later than July 1st of the following year.

"(3) The Secretary, in consultation with the Physician Payment Review Commission, the Congressional Budget Office, and the Congressional Research Service of the Library of Congress, shall establish and annually revise standards for the data reporting system described in paragraph (1).

"(4) The Secretary shall also provide to the entities described in paragraph (1) additional data respecting the program under this part as may be reasonably requested by them on an agreed-upon schedule.

"(5) The Secretary shall develop, in consultation with the Physician Payment Review Commission, the Congressional Budget Office, and the Congressional Research Service of the Library of Congress, a system for providing to each of such entities on a quarterly basis summary data on aggregate expenditures under this part by type of service and by type of provider. Such data shall be provided not later than 90 days after the end of each quarter (for quarters beginning with the calendar quarter ending on March 31, 1989).".

(b) CLARIFICATION OF PENALTIES FOR UNASSIGNED LABORATORY SERVICES.—

(1) IN GENERAL.—Section 1833(h)(5) of the Social Security Act (42 U.S.C. 1395l(h)(5)) is amended by adding at the end the following new subparagraph:

"(D) If a person knowingly and willfully and on a repeated basis bills an individual enrolled under this part for charges for a clinical diagnostic laboratory test for which payment may only be made on an assignment-related basis under subparagraph (C), the Secretary may apply sanctions against the person in the same manner as the Secretary may apply sanctions against a physician in accordance with section 1842(j)(2).".

42 USC 1395*l* note.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to procedures performed on or after January 1, 1988.

(c) EXTENSION OF MORATORIUM ON LABORATORY PAYMENT DEMONSTRATION.—Section 9204(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended by section 9339(e) of the Omnibus Budget Reconciliation Act of 1986, is amended by striking "January 1, 1988" and inserting "January 1, 1989".

42 USC 1395ww note.

(d) PROMPT PAYMENT FOR COMPREHENSIVE OUTPATIENT REHABILITATION FACILITIES.—

(1) Section 1816(c)(2)(C) of the Social Security Act (42 U.S.C. 1395h(c)(2)(C)) is amended by striking "or hospice program" and

inserting "hospice program, comprehensive outpatient rehabilitation facility, or rehabilitation agency".

(2)(A) The amendment made by paragraph (1) shall apply to claims received on or after the date of enactment of this Act. 42 USC 1395h note.

(B) The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816, and regulations, to such extent as may be necessary to implement the amendment made by paragraph (1).

(e) CAPACITY TO [45] SET GEOGRAPHIC PAYMENT LIMITS.—The Secretary of Health and Human Services shall develop the capability to implement (for services furnished on or after January 1, 1989) geographic limits on charges and payments under part B of title XVIII of the Social Security Act for physicians' services based on statewide, regional, or national average (or percentile in a distribution) of prevailing charges or payment amounts (weighted by frequency of services). Any such limits shall take into account adjustments for geographic differences in cost of practice and cost of living. 42 USC 1395u note.

(f) DELAY IN EFFECTIVE DATE FOR ESTABLISHING PHYSICIAN IDENTIFIER SYSTEM.—Section 9202(g) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by striking "July 1, 1987" and inserting "October 1, 1988". 42 USC 1395ww note.

(g) DATE FOR APPLYING CIVIL PENALITIES FOR IMPROPER USE OF ASSISTANTS IN PERFORMING CATARACT SURGERY.—

(1) Section 1842(k) of the Social Security Act (42 U.S.C. 1395u(k)) is amended in paragraphs (1) and (2) by striking "(j)(2)" each place it appears and inserting "(j)(2) in the case of surgery performed on or after March 1, 1987".

(2) The amendment made by paragraph (1) shall be effective as if included in section 9307(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985. 42 USC 1395u note.

(h) UTILIZATION SCREENS FOR PHYSICIAN SERVICES PROVIDED TO PATIENTS IN REHABILITATION HOSPITALS.— 42 USC 1395u note.

(1) The Secretary of Health and Human Services shall establish (in consultation with appropriate physician groups, including those representing rehabilitative medicine) a separate utilization screen for physician visits to patients in rehabilitation hospitals and rehabilitative units (and patients in long-term care hospitals receiving rehabilitation services) to be used by carriers under section 1842 of the Social Security Act in performing functions under subsection (a) of such section related to the utilization practices of physicians in such hospitals and units.

(2) Not later than 12 months after the date of enactment of this Act, the Secretary of Health and Human Services shall take appropriate steps to implement the utilization screen established under paragraph (1).

(i) TECHNICAL AMENDMENTS.—

(1) Section 1833(a) of the Social Security Act (42 U.S.C. 1395l(a)) is amended—

(A) in paragraphs (1)(D)(i) and (2)(D)(i), by striking, "on the basis of an assignment described in section 1842(b)(3)(B)(ii), under the procedure described in section 1870(f)(1)," and inserting "on an assignment-related basis";

[45] Copy read "TO".

(B) in paragraph (1), by striking "and" before "(G)"; and

(C) in subsection (b)(3)(A), by striking "on the basis of an assignment described in section 1842(b)(3)(B)(ii), under the procedure described in section 1870(f)(1)" and inserting "on an assignment-related basis".

(2) Section 1833(h)(1)(C) of such Act (42 U.S.C. 1395l(h)(1)(C)) is amended by inserting before the period the following: ", and ending on December 31, 1989. For such tests furnished on or after January 1, 1990, the fee schedule shall be established on a nationwide basis".

(3) Section 1833(h)(5)(A) of such Act (42 U.S.C. 1395l(h)(5)(A)) is amended by striking "and" at the end of clause (i), by striking the period at the end of clause (ii) and inserting ", and", and by adding at the end the following new clause:

"(iii) in the case of a clinical diagnostic laboratory test provided under an arrangement (as defined in section 1861(w)(1)) made by a hospital, payment shall be made to the hospital.".

(4) Section 1835(a)(2)(C) of such Act (42 U.S.C. 1395n(a)(2)(C)) is amended by striking the second comma at the end of clause (i).

(5) Section 1842(b)(3)(C) of such Act (42 U.S.C. 1395u(b)(3)(C)) is amended by striking "not more than" and inserting "less than".

(6) Section 1842(h)(5) of such Act (42 U.S.C. 1395u(h)(5)) is amended by striking "the" before "participation".

(7) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986, section 1842(j)(1) of the Social Security Act (42 U.S.C. 1395u(j)(1)) is amended—

(A) in subparagraph (C)(i), by inserting "maximum allowable" after "If the physician's",

(B) in subparagraph (C)(v), by striking "1987" and inserting [46] "1986", and

(C) by adding at the end of subparagraph (C) the following new clause:

"(vii) In the case of a nonparticipating physician who was a participating physician during a previous period, for the purpose of computing the physician's maximum allowable actual charge during the physician's period of nonparticipation, the physician shall be deemed to have had a maximum allowable actual charge during the period of participation, and such deemed maximum allowable actual charge shall be determined accordingly to clauses (i) through (vi).".

(8) Paragraph (4) of section 1845(e) of the Social Security Act (42 U.S.C. 1395w-1(e)) is amended by moving the alignment of each of its provisions (including any clauses therein) 2 ems to the left.

(9) Section 1861(b)(4) of such Act (42 U.S.C. 1395x(b)(4)) is amended by striking the comma before "anesthesia" and inserting "and" and by striking "certified" the second place it appears.

(10) The heading of subsection (g) of section 1861 of such Act (42 U.S.C. 1395x) is amended to read as follows:

"Outpatient Occupational Therapy Services".

(11) Section 1861(s) of such Act (42 U.S.C. 1395x(s)), as amended by section 9367(a) of this Act, is amended by striking "which—" before paragraph (15) and all that follows through

[46] Copy read "insert".

the end of paragraph (16) and inserting the following: "which would not be included under subsection (b) if it were furnished to an inpatient of a hospital.".

(12) Section 1861(v)(5)(A) of such Act (42 U.S.C. 1395x(v)(5)(A)) is amended by striking "section 1861(p)" and "section 1861(g)" and inserting "subsection (p)" and "subsection (g)", respectively.

(13) The heading of subsection (bb) of section 1861 of such Act (42 U.S.C. 1395x) is amended to read as follows:

"Services of a Certified Registered Nurse Anesthetist".

(14) The heading of subsection (ee) of section 1861 of such Act (42 U.S.C. 1395x) is amended to read as follows:

"Discharge Planning Process".

(15) Section 1862(a)(1)(A) of such Act (42 U.S.C. 1395y(a)(1)(A)) is amended by striking "or (D)" and inserting "(D), or (E)".

(16) Section 1862(a)(14) of such Act (42 U.S.C. 1395y(a)(14)) is amended by striking "an patient" and inserting "a patient".

(17) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986, section 1866(g) of the Social Security Act (42 U.S.C. 1395cc(g)) is amended by striking "for a hospital outpatient service" and all that follows through "subsection (a)(1)(H)" and inserting "inconsistent with an arrangement under subsection (a)(1)(H) or in violation of the requirement for such an arrangement".

(18) Section 1869(a) of the Social Security Act (42 U.S.C. 1395ff(a)) is amended by inserting "or a claim for benefits with respect to home health services under part B" before "shall".

(19) Section 1869(b)(2) of such Act (42 U.S.C. 1395ff(b)(2)) is amended by inserting "and (1)(D)" after "paragraph (1)(C)" each place it appears.

(20) Section 1875(c)(3)(B) of such Act (42 U.S.C. 1395ll(c)(3)(B)) is amended by striking "years 1987" and inserting "year 1987".

(21) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986—

(A) section 9313(d)(3) of such Act is amended by striking "2 years after the date of the enactment of this Act" and inserting "January 1, 1990"; 42 USC 1395*ll* note.

(B) section 9332(a)(3) of such Act is amended by inserting before the period at the end the following: "or in increasing the proportion of total payments for physicians' services which are payments for such services rendered by participating physicians"; 42 USC 1395u note.

(C) section 9335(j)(2) of such Act is amended by inserting before the period at the end the following: "except that, until network administrative organizations are established under section 1881(c)(1)(A) of the Social Security Act (as amended by subsection (d)(1) of this section), the distribution of payments described in the last sentence of section 1881(b)(7) of such Act shall be made based on the distribution of payments under section 1881 of such Act to network administrative organizations for fiscal year 1986"; and 42 USC 1395rr note.

(D) section 9343 of such Act is amended— 42 USC 1395*l*.

(i) amending subparagraph (A) of subsection (e)(2) to read as follows:

"(2)(A) Section 1833 (42 U.S.C. 1395l) is amended—

"(i) in subsection (a)(1)(F), by striking '(i)(3)' and inserting '(i)(4)', and

"(ii) in subsection (b)(3), by striking 'or under subsection (i)(2) or (i)(4)'.";

42 USC 1395l note.

(ii) in subsection (h)(2), by striking "(d)" and inserting "(c)" and by adding at the end the following: "The amendments made by subsection (c) shall apply to services furnished after June 30, 1987."; and

42 USC 1395l note.

(iii) in subsection (h)(4), by striking "(c)" and inserting "(d)".

PART 4—PEER REVIEW ORGANIZATIONS

SEC. 4091. CONTRACT PROVISIONS.

(a) EXTENSIONS OF PEER REVIEW CONTRACT PERIOD.—

42 USC 1320c-2 note.

(1) ONE-TIME EXTENSIONS TO PERMIT STAGGERING OF EXPIRATION DATES.—

(A) IN GENERAL.—In order to permit the Secretary of Health and Human Services an adequate time to complete contract renewal negotiations with utilization and quality control peer review organizations under part B of title XI of the Social Security Act and to provide for a staggered period of contract expiration dates, notwithstanding section 1153(c) of such Act, the Secretary may provide for extensions of existing contracts, but the total of such extensions may not exceed 24 months for any contract.

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to renewals occurring on or after the date of the enactment of this Act.

(2) 3-YEAR CONTRACT PERIOD.—

(A) Section 1153(c)(3) of such Act (42 U.S.C. 1320c-2(c)(3)) is amended by striking "two" and "biennial" and inserting "three" and "triennial", respectively.

42 USC 1320c-2 note.

(B) The amendment made by subparagraph (A) shall apply with respect to contracts entered into or renewed on or after the date of the enactment of this Act.

(b) CONTRACT REQUIREMENTS.—

(1) Section 1153 of the Social Security Act (42 U.S.C. 1320c-2) is amended by adding at the end the following new subsection:

Federal Register, publication.

"(h)(1) The Secretary shall publish in the Federal Register any new policy or procedure adopted by the Secretary that affects substantially the performance of contract obligations under this section not less than 30 days before the date on which such policy or procedure is to take effect. This paragraph shall not apply to the extent it is inconsistent with a statutory deadline.

Federal Register, publication.

"(2) The Secretary shall publish in the Federal Register the general criteria and standards used for evaluating the efficient and effective performance of contract obligations under this section and shall provide opportunity for public comment with respect to such criteria and standards.

Reports.

"(3) The Secretary shall regularly furnish each peer review organization with a contract under this section with a report that documents the performance of the organization in relation to the performance of other such organizations.".

(2) Section 1153(e) of such Act (42 U.S.C. 1320c-2(e)) is amended—

(A) by inserting "(1)" after "(e)";

(B) by striking "Contracting" and inserting "Except as provided in paragraph (2), contracting"; and

(C) by adding at the end the following new paragraph:

"(2) If a peer review organization with a contract under this section is required to carry out a review function in addition to any function required to be carried out at the time the Secretary entered into or renewed the contract with the organization, the Secretary shall, before requiring such organization to carry out such additional function, negotiate the necessary contractual modifications, including modifications that provide for an appropriate adjustment (in light of the cost of such additional function) to the amount of reimbursement made to the organization.".

(3) The amendments made by paragraphs (1) and (2) shall become effective on the date of enactment of this Act. 42 USC 1320c-2 note.

SEC. 4092. PREFERENCE IN CONTRACTING WITH IN-STATE ORGANIZATIONS.

(a) IN GENERAL.—Section 1153 of the Social Security Act (42 U.S.C. 1320c-2), as amended by section 4091(b)(1) of this part, is further amended by adding at the end the following new subsection:

"(i)(1) Notwithstanding any other provision of this section, the Secretary shall not renew a contract with any organization that is not an in-State organization (as defined in paragraph (3)) unless the Secretary has first complied with the requirements of paragraph (2).

"(2)(A) Not later than six months before the date on which a contract period ends with respect to an organization that is not an in-State organization, the Secretary shall publish in the Federal Register— Federal Register, publication.

"(i) the date on which such period ends; and

"(ii) the period of time in which an in-State organization may submit a proposal for the contract ending on such date.

"(B) If one or more qualified in-State organizations submits a proposal within the period of time specified under subparagraph (A)(ii), the Secretary shall not automatically renew the current contract on a noncompetitive basis, but shall provide for competition for the contract in the same manner as a new contract under subsection (b).

"(3) For purposes of this subsection, an in-State organization is an organization that has its primary place of business in the State in which review will be conducted (or, which is owned by a parent corporation the headquarters of which is located in such State).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to contracts scheduled to be renewed on or after the first day of the eighth month to begin after the date of enactment of this Act. 42 USC 1320c-2 note.

SEC. 4093. REQUIRING REASONABLE NOTICE AND OPPORTUNITY FOR DISCUSSION PRIOR TO DENIAL OF CLAIM.

(a) IN GENERAL.—Section 1154(a)(3) of the Social Security Act (42 U.S.C. 1320c-3(a)(3)) is amended to read as follows:

"(3)(A) Subject to subparagraph (B), whenever the organization makes a determination that any health care services or items furnished or to be furnished to a patient by any practitioner or provider are disapproved, the organization shall

promptly notify such patient and the agency or organization responsible for the payment of claims under title XVIII of this Act of such determination.

"(B) The notification under subparagraph (A) shall not occur until 20 days after the date that the organization has—

"(i) made a preliminary notification to such practitioner or provider of such proposed determination, and

"(ii) provided such practitioner or provider an opportunity for discussion and review of the proposed determination.

The discussion and review conducted under subparagraph (B)(ii) shall not affect the rights of a practitioner or provider to a formal reconsideration of a determination under this part (as provided under section 1155).".

42 USC 1320c-3 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to determinations made on or after April 1, 1988.

SEC. 4094. PEER REVIEW NORMS AND EDUCATION.

(a) STANDARDS APPLIED BY PROS.—Section 1154(a)(6) of the Social Security Act (42 U.S.C. 1320c-3(a)(6)) is amended by adding after and below subparagraph (B) thereof the following:

"As a component of the norms described in clause (i) or (ii), the organization shall take into account the special problems associated with delivering care in remote rural areas, the availability of service alternatives to inpatient hospitalization, and other appropriate factors (such as the distance from a patient's residence to the site of care, family support, availability of proximate alternative sites of care, and the patient's ability to carry out necessary or prescribed self-care regimens) that could adversely affect the safety or effectiveness of treatment provided on an outpatient basis.".

(b) ON-SITE REVIEW.—Section 1154(a) of such Act (42 U.S.C. 1320c-3(a)) is amended by adding at the end the following new paragraph:

Contracts.

"(15) During each year of the contract entered into under section 1153(b), the organization shall perform significant on-site review activities, including on-site review at at least 20 percent of the rural hospitals in the organization's area.".

(c) REPORTS TO PROVIDERS AND EDUCATIONAL ACTIVITIES.—

(1)(A) Section 1154(a)(6) of such Act[47] (42 U.S.C. 1320c-3(a)(6)) is amended—

(i) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively,

(ii) by inserting "(A)" after "(6)", and

(iii) by adding at the end the following:

"(B) The organization shall—

"(i) offer to provide, several times each year, for a physician representing the organization to meet (at a hospital or at a regional meeting) with medical and administrative staff of each hospital (the services of which are reviewed by the organization) respecting the organization's review of the hospital's services for which payment may be made under title XVIII, and

[47] Copy read "1154(a)(6) such Act".

"(ii) publish (not less often than annually) and distribute to providers and practitioners whose services are subject to review a report that describes the organization's findings with respect to the types of cases in which the organization has frequently determined that (I) inappropriate or unnecessary care has been provided, (II) services were rendered in an inappropriate setting, or (III) services did not meet professionally recognized standards of health care.".

(B) The amendments made by subparagraph (A) shall apply to contracts under part B of title XI of the Social Security Act entered into or renewed more than 6 months after the date of the enactment of this Act. Contracts. 42 USC 1320c-3 note.

(2)(A) Section 1154(a)(4)(B) of the Social Security Act (42 U.S.C. 1320c-3(a)(4)(B)) is amended—

(i) by inserting before the period at the end of the first sentence the following: "and whether individuals enrolled with an eligible organization have adequate access to health care services provided by or through such organization (as determined, in part, by a survey of individuals enrolled with the organization who have not yet used the organization to receive such services). The contract of each organization shall also provide that with respect to health care provided by a health maintenance organization or competitive medical plan under section 1876, the organization shall maintain a beneficiary outreach program designed to apprise individuals receiving care under such section of the role of the peer review system, of the rights of the individual under such system, and of the method and purposes for contacting the organization"; and

(ii) by striking "previous sentence" and inserting "previous two sentences".

(B) Section 1154(a)(7)(A) of such Act (42 U.S.C. 1320c-3(a)(7)(A)) is amended—

(i) by inserting "(i)" after "(A)",

(ii) by striking the semicolon and inserting "; and", and

(iii) by adding at the end thereof the following new clause:

"(ii) in the case of psychiatric and physical rehabilitation services, make arrangements to ensure that (to the extent possible) initial review of such services be made by a physician who is trained in psychiatry or physical rehabilitation (as appropriate).".

(C) The amendments made by this paragraph shall apply with respect to contracts entered into or renewed on or after the date of enactment of this Act. Contracts. 42 USC 1320c-3 note.

(d) PEER REVIEW EMPHASIS ON EDUCATIONAL ACTIVITIES.—

(1) Section 1153(c) of such Act (42 U.S.C. 1320c-2(c)) is amended by adding after and below paragraph (8) the following: "In evaluating the performance of utilization and quality control peer review organizations under contracts under this part, the Secretary shall place emphasis on the performance of such organizations in educating providers and practitioners (particularly those in rural areas) concerning the review process and criteria being applied by the organization.".

(2) The amendment made by paragraph (1) shall apply to contracts under part B of title XI of the Social Security Act as of January 1, 1988. Contracts. 42 USC 1320c-2 note.

Contracts.
42 USC 1320c-5 note.

(e) TELECOMMUNICATIONS DEMONSTRATION PROJECTS.—The Secretary of Health and Human Services shall enter into agreements with entities submitting applications under this subsection (in such form as the Secretary may provide) to establish demonstration projects to examine the feasability of requiring instruction and oversight of rural physicians, in lieu of imposing sanctions, through use of video communication between rural hospitals and teaching hospitals under this title. Under such demonstration projects, the Secretary may provide for payments to physicians consulted via video communication systems. No funds may be expended under the demonstration projects for the acquisition of capital items including computer hardware.

SEC. 4095. PREEXCLUSION HEARINGS.

(a) IN GENERAL.—Section 1156(b) of the Social Security Act (42 U.S.C. 1320c-5(b)) is amended by adding at the end the following new paragraph:

"(5) Before the Secretary may effect an exclusion under paragraph (2) in the case of a provider or practitioner located in a rural health manpower shortage area (HMSA) or in a county with a population of less than 70,000, the provider or practitioner adversely affected by the determination is entitled to a hearing before an administrative law judge (described in section 205(b)) respecting whether the provider or practitioner should be able to continue furnishing services to individuals entitled to benefits under this Act, pending completion of the administrative review procedure under paragraph (4). If the judge does not determine, by a preponderance of the evidence, that the provider or practitioner will pose a serious risk to such individuals if permitted to continue furnishing such services, the Secretary shall not effect the exclusion under paragraph (2) until the provider or practitioner has been provided reasonable notice and opportunity for an administrative hearing thereon under paragraph (4).".

42 USC 1320c-5 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to determinations made by the Secretary of Health and Human Services under section 1156(b) of the Social Security Act on or after the date of the enactment of this Act.

42 USC 1320c-5 note.

(c) TRANSITION FOR CURRENT CASES.—In the case of a practitioner or person—

(1) for whom a notice of determination under section 1156(b) of the Social Security Act has been provided within 365 days before the date of the enactment of this Act,

(2) who has not exhausted the administrative remedies available under section 1156(b)(4) of such Act for review of the determination, and

(3) who requests, within 90 days after the date of the enactment of this Act, a hearing established under this subsection,

the Secretary of Health and Human Services shall provide for a hearing described in section 1156(b)(5) of the Social Security Act (as amended by subsection (a) of this section).

42 USC 1320c-5 note.

(d) REDETERMINATIONS IN CERTAIN CASES.—If, in hearing under subsection (c), the judge does not determine, by a preponderance of the evidence, that the provider or practitioner will pose a serious risk to individuals entitled to benefits under title XVIII of the Social Security Act if permitted to continue or resume furnishing such services, the Secretary shall not effect the exclusion (or shall suspend the exclusion, if previously effected) under paragraph (2) of

section 1156(b) of such Act until the provider or practitioner has been provided an administrative hearing thereon under paragraph (4) of such section, notwithstanding any failure by the provider or practitioner to request the hearing on a timely basis.

(e) REPORT ON IMPROVEMENTS IN PROCEDURES FOR IMPOSING SANCTIONS.—Not later than one year after the date of enactment of this Act, the Secretary of Health and Human Services shall report to Congress on the improved procedures for imposing sanctions against a practitioner or person under section 1156 of the Social Security Act established through agreement by the Health Care Financing Administration, the American Association of Retired Persons, the American Medical Association, and the Office of the Inspector General in the Department of Health and Human Services. The report shall set forth such improved procedures, describe the response of physicians and providers to the procedures, assess whether the procedures effect an appropriate balance between procedural fairness and the need for ensuring quality medical care, comment on the alternative provider-patient notification procedure contained in the agreement, and recommend whether such procedures should apply to institutional providers of health care services.

SEC. 4096. LIMITATION OF BENEFICIARY LIABILITY FOR SERVICES DISALLOWED BY PEER REVIEW ORGANIZATIONS.

(a) PART B SERVICES.—

(1) Section 1842 of the Social Security Act (42 U.S.C 1395u) is amended—

(A) in subsection (b)(3)(ii), by inserting "(and to refund amounts already collected)" after "agrees not to charge", and by striking "and (II)" and inserting ", (II) the physician or other person furnishing such service agrees not to charge (and to refund amounts already collected) for services for which payment under this title is denied under section 1154(a)(2) by reason of a determination under section 1154(a)(1)(B), and (III)";

(B) in subsection (l)(1)(A)(iii), by inserting "(I)" after "(iii)" and by inserting before the comma the following: "or (II) payment under this title for such services is denied under section 1154(a)(2) by reason of a determination under section 1154(a)(1)(B)"; and

(C) in subsection (l)(1)(C), by inserting "in the case described in subparagraph (A)(iii)(I)" after "to an individual".

(2) Section 1870(f) of such Act (42 U.S.C. 1395gg(f)) is amended by striking "that the reasonable charge is the full charge for the services" each place it appears and inserting "to the terms specified in subclauses (I) and (II) of section 1842(b)(3)(B)(ii) with respect to the services".

(b) INDEMNIFICATION.—Section 1879(b) of such Act (42 U.S.C. 1395pp(b)) is amended—

(1) in the first sentence, by striking ", subject to the deductible and coinsurance provisions of this title,", and

(2) by adding at the end the following: "No item or service for which an individual is indemnified under this subsection shall be taken into account in applying any limitation on the amount of items and services for which payment may be made to or on behalf of the individual under this title.".

(c) PATIENT LIABILITY FOR HOSPITAL CHARGES DURING APPEAL OF DISCHARGE NOTICE.—

(1) Section 1154(e)(2) of such Act (42 U.S.C. 1320c-3(e)(2)) is amended by adding at the end thereof the following: "If the hospital requests such a review, it shall also notify the patient that the review has been requested.".

(2) Sections 1154(e)(3)(A)(i) (42 U.S.C. 1320c-3(e)(3)(A)(i)) and 1154(e)(3)(B) (42 U.S.C. 1320c-3(e)(3)(B)) of such Act are each amended by inserting "or (2)" after "paragraph (1)".

42 USC 1320c-3 note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 1988.

SEC. 4097. SEPARATE FUNDING LEVELS.

(a) AGGREGATE FUNDING.—Section 1866(a)(1)(F)(i)(III) of the Social Security Act (42 U.S.C. 1395cc(a)(1)(F)(i)(III)) is amended—

(1) by striking "1986" and inserting "1988"; and

(2) inserting "and for any direct or administrative costs incurred as a result of review functions added with respect to a subsequent fiscal year" after "inflation".

(b) PAYMENT.—Section 1866(a)(4)(C)(ii) of such Act (42 U.S.C. 1395cc(a)(4)(C)(ii)) is amended to read as follows:

"(ii) shall not be less in the aggregate for a fiscal year—

"(I) in the case of hospitals, than the amount specified in paragraph (1)(F)(i)(III), and

"(II) in the case of facilities and agencies, than the amounts the Secretary determines to be sufficient to cover the costs of such organizations' conducting the activities described in subparagraph (A) with respect to such facilities or agencies under part B of title XI.".

42 USC 1395cc note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to fiscal years beginning on or after October 1, 1988.

Subtitle B—Medicaid

PART 1—ELIGIBILITY AND BENEFITS

SEC. 4101. MEDICAID BENEFITS FOR POOR CHILDREN AND PREGNANT WOMEN.

(a) MEDICAID OPTIONAL COVERAGE FOR ADDITIONAL LOW-INCOME PREGNANT WOMEN AND CHILDREN.—

(1) Section 1902(l) of the Social Security Act (42 U.S.C. 1396a(l)) is amended—

(A) in paragraph (2)—

(i) by striking "(2) For purposes of paragraph (1)" and inserting "(2)(A) For purposes of paragraph (1) with respect to individuals described in subparagraph (A) or (B) of that paragraph",

(ii) by striking "100 percent" and inserting "185 percent", and

(iii) by adding at the end the following new subparagraph:

"(B) If a State elects, under subsection (a)(10)(A)(ii)(IX), to cover individuals not described in subparagraph (A) or (B) of paragraph (1), for purposes of that paragraph and with respect to individuals not described in such subparagraphs the State shall establish an income level which is a percentage (not more than 100 percent, or, if

less, the percentage established under subparagraph (A)) of the income official poverty line described in subparagraph (A).''; and

(B) in paragraph (3)(D), by inserting ''appropriate'' after ''applied is the''.

(2) Section 1902(e)(4) of such Act (42 U.S.C. 1396a(e)(4)) is amended by adding at the end the following new sentence: ''During the period in which a child is deemed under the preceding sentence to be eligible for medical assistance, the medical assistance eligibility identification number of the mother shall also serve as the identification number of the child, and all claims shall be submitted and paid under such number (unless the State issues a separate identification number for the child before such period expires).''.

(3) The amendments made by this subsection shall apply to medical assistance furnished on or after July 1, 1988. Effective date. 42 USC 1396a note.

(b) ALLOWING ACCELERATED COVERAGE OF CHILDREN UP[48] TO AGE 5.—

(1) Section 1902(l)(1) of such Act (42 U.S.C. 1396a(l)(1)) is amended—

(A) by inserting ''and'' at the end of subparagraph (B), and

(B) by striking subparagraphs (C) through (F) and inserting the following:

''(C) children born after September 30, 1983, and who have attained one year of age but have not attained 2, 3, 4, or 5 years of age (as selected by the State),''.

(2)(A) Section 1902(l) of such Act is further amended—

(i) in paragraph (3)(C), by striking '', (C), (D), (E), or (F)'' and inserting ''or (C)'', and

(ii) in paragraph (4)(B)(ii), by striking '', (D), (E), or (F)''.

(B) Section 1902(e)(7) of such Act (42 U.S.C. 1396a(e)(7)) is amended by striking '', (C), (D), (E), or (F)'' and inserting ''or (C)''.

(C) Section 9401(f)(2) of the Omnibus Budget Reconciliation Act of 1986 is amended by striking ''(A)'' after ''(2)'' and by striking subparagraphs (B) through (D). 42 USC 1396a note.

(3) The amendments made by this subsection shall apply with respect to medical assistance furnished on or after July 1, 1988. Effective date. 42 USC 1396a note.

(c) COVERAGE OF CHILDREN UP[49] TO AGE 8.—

(1) Section 1905(n)(2) of such Act (42 U.S.C. 1396d(n)(2)) is amended by striking ''is under 5 years of age'' and inserting ''has not attained the age of 7 (or any age designated by the State that exceeds 7 but does not exceed 8)''.

(2) Section 1902(l)(1)(C) of such Act, as amended by subsection (b)(1)(B), is further amended by striking ''or 5 years'' and inserting ''5, 6, 7, or 8 years''.

(3)(A) The amendments made by this subsection shall apply to medical assistance furnished on or after October 1, 1988. Effective date. 42 USC 1396d note.

(B) For purposes of section 1905(n)(2) of the Social Security Act (as amended by subsection (a)) for medical assistance furnished during fiscal year 1989, any reference to ''age of 7'' is deemed to be a reference to ''age of 6''.

(d) PREMIUM.—

[48] Copy read ''UP''.
[49] Copy read ''UP''.

(1) Section 1916 of the Social Security Act (42 U.S.C. 1396o) is amended—

(A) in subsection (a)(1), by inserting "(except for a premium imposed under subsection (c))" before the semicolon;

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

(C) by inserting after subsection (b) the following new subsection:

"(c)(1) The State plan of a State may at the option of the State provide for imposing a monthly premium (in an amount that does not exceed the limit established under paragraph (2)) with respect to an individual described in subparagraph (A) or (B) of section 1902(l)(1) who is receiving medical assistance on the basis of section 1902(a)(10)(A)(ii)(IX) and whose family income (as determined in accordance with the methodology specified in section 1902(l)(3)) equals or exceeds 150 percent of the nonfarm income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

"(2) In no case may the amount of any premium imposed under paragraph (1) exceed 10 percent of the amount by which the family income (less expenses for the care of a dependent child) of an individual exceeds 150 percent of the line described in paragraph (1).

"(3) A State shall not require prepayment of a premium imposed pursuant to paragraph (1) and shall not terminate eligibility of an individual for medical assistance under this title on the basis of failure to pay any such premium until such failure continues for a period of not less than 60 days. The State may waive payment of any such premium in any case where the State determines that requiring such payment would create an undue hardship.

"(4) A State may permit State or local funds available under other programs to be used for payment of a premium imposed under paragraph (1). Payment of a premium with such funds shall not be counted as income to the individual with respect to whom such payment is made.".

Effective date.
42 USC 1396o note.

(2) The amendments made by paragraph (1) shall become effective on July 1, 1988.

(e) MISCELLANEOUS PROVISIONS RELATING TO SERVICES FOR PREGNANT WOMEN AND CHILDREN.—

(1) Section 1902(a)(10) of such Act (42 U.S.C. 1396a(a)(10)) is amended, in subdivision (VII) of the matter following subparagraph (E), by striking "and postpartum" and inserting "postpartum, and family planning".

(2) Section 1902(e)(5) of such Act (42 U.S.C. 1396a(e)(5)) is amended by striking "until the end of the 60-day period beginning on the last day of her pregnancy" and inserting "through the end of the month in which the 60-day period (beginning on the last day of her pregnancy) ends".

(3) Section 1902(l)(3)(E) of such Act (42 U.S.C. 1396a(l)(3)(E)) is amended by inserting after "title IV" the following: "(except to the extent such methodology is inconsistent with clause (D) of subsection (a)(17))".

(4) Section 1902(l)(4)(A) of such Act (42 U.S.C. 1396a(l)(4)(A)) is amended by striking "April 17, 1986" and inserting "July 1, 1987".

(5) Section 1902(l)(4) of such Act (42 U.S.C. 1396a(l)(4)) is amended by adding at the end the following new subparagraph:

"(C) A State plan may not provide, in its election of the option of furnishing medical assistance to individuals described in paragraph (1), that such individuals must apply for benefits under part A of title IV as a condition of applying for, or receiving, medical assistance under this title.".

(6)(A) The amendment made by paragraph [50] (1) shall become effective on the date of enactment of this Act. Effective dates. 42 USC 1396a note.

(B) The amendments made by paragraphs (2) and (3) shall be effective as if they had been included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(C) The amendment made by paragraph (4) shall apply to elections made on or after the enactment of this Act.

(D) The amendment made by paragraph (5) shall apply as if included in the enactment of section 9401 of the Omnibus Budget Reconciliation Act of 1986.

SEC. 4102. HOME AND COMMUNITY-BASED SERVICES FOR THE ELDERLY.

(a) IN GENERAL.—

(1) Section 1915 of the Social Security Act (42 U.S.C. 1396n) is amended—

(A) by transferring subsection (d) to the end of such section and redesignating it as subsection (h), and

(B) by inserting after subsection (c) the following new subsection:

"(d)(1) Subject to paragraph (2), the Secretary shall grant a waiver to provide that a State plan approved under this title shall include as 'medical assistance' under such plan payment for part or all of the cost of home or community-based services (other than room and board) which are provided pursuant to a written plan of care to individuals 65 years of age or older with respect to whom there has been a determination that but for the provision of such services the individuals would be likely to require the level of care provided in a skilled nursing facility or intermediate care facility the cost of which could be reimbursed under the State plan.

"(2) A waiver shall not be granted under this subsection unless the State provides assurances satisfactory to the Secretary that—

"(A) necessary safeguards (including adequate standards for provider participation) have been taken to protect the health and welfare of individuals provided services under the waiver and to assure financial accountability for funds expended with respect to such services;

"(B) with respect to individuals 65 years of age or older who—

"(i) are entitled to medical assistance for skilled nursing or intermediate care facility services under the State plan,

"(ii) may require such services, and

"(iii) may be eligible for such home or community-based services under such waiver,

the State will provide for an evaluation of the need for such skilled nursing facility or intermediate care facility services; and

"(C) such individuals who are determined to be likely to require the level of care provided in a skilled nursing facility or intermediate care facility are informed of the feasible alter-

[50] Copy read "paragraphs".

natives to the provision of skilled nursing facility or intermediate care facility services, which such individuals may choose if available under the waiver.

Each State with a waiver under this subsection shall provide to the Secretary annually, consistent with a reasonable data collection plan designed by the Secretary, information on the impact of the waiver granted under this subsection on the type and amount of medical assistance provided under the State plan and on the health and welfare of recipients.

"(3) A waiver granted under this subsection may include a waiver of the requirements of section 1902(a)(1) (relating to statewideness), section 1902(a)(10)(B) (relating to comparability), and section 1902(a)(10)(C)(i)(III) (relating to income and resource rules applicable in the community). Subject to a termination by the State (with notice to the Secretary) at any time, a waiver under this subsection shall be for an initial term of 3 years and, upon the request of a State, shall be extended for additional 5-year periods unless the Secretary determines that for the previous waiver period the assurances provided under paragraph (2) have not been met. A waiver may provide, with respect to post-eligibility treatment of income of all individuals receiving services under the waiver, that the maximum amount of the individual's income which may be disregarded for any month is equal to the amount that may be allowed for that purpose under a waiver under subsection (c).

"(4) A waiver under this subsection may, consistent with paragraph (2), provide medical assistance to individuals for case management services, homemaker/home health aide services and personal care services, adult day health services, respite care, and other medical and social services that can contribute to the health and well-being of individuals and their ability to reside in a community-based care setting.

"(5)(A) In the case of a State having a waiver approved under this subsection, notwithstanding any other provision of section 1903 to the contrary, the total amount expended by the State for medical assistance with respect to skilled nursing facility services, intermediate care facility services, and home and community-based services under the State plan for individuals 65 years of age or older during a waiver year under this subsection may not exceed the projected amount determined under subparagraph (B).

"(B) For purposes of subparagraph (A), the projected amount under this subparagraph is the sum of the following:

"(i) The aggregate amount of the State's medical assistance under this title for skilled nursing facility services and intermediate care facility services furnished to individuals who have attained the age of 65 for the base year increased by a percentage which is equal to the lesser of 7 percent times the number of years beginning after the base year and ending before the waiver year involved or the sum of—

"(I) the percentage increase (based on an appropriate market-basket index representing the costs of elements of such services) between the base year and the waiver year involved, plus

"(II) the percentage increase between the base year and the waiver year involved in the number of residents in the State who have attained the age of 65, plus

"(III) 2 percent for each year beginning after the base year and ending before the waiver year.

"(ii) The aggregate amount of the State's medical assistance under this title for home and community-based services for individuals who have attained the age of 65 for the base year increased by a percentage which is equal to the lesser of 7 percent times the number of years beginning after the base year and ending before the waiver year involved or the sum of—

"(I) the percentage increase (based on an appropriate market-basket index representing the costs of elements of such services) between the base year and the waiver year involved, plus

"(II) the percentage increase between the base year and the waiver year involved in the number of residents in the State who have attained the age of 65, plus

"(III) 2 percent for each year beginning after the base year and ending before the waiver year.

"(iii) The Secretary shall develop and promulgate by regulation (by not later than October 1, 1989)— Regulations.

"(I) a method, based on an index of appropriately weighted indicators of changes in the wages and prices of the mix of goods and services which comprise both skilled nursing facility services and intermediate care facility services (regardless of the source of payment for such services), for projecting the percentage increase for purposes of clause (i)(I);

"(II) a method, based on an index of appropriately weighted indicators of changes in the wages and prices of the mix of goods and services which comprise home and community-based services (regardless of the source of payment for such services), for projecting the percentage increase for purposes of clause (ii)(I); and

"(III) a method for projecting, on a State specific basis, the percentage increase in the number of residents in each State who are over 75 years of age for any period.

Effective on and after the date the Secretary promulgates the regulation under clause (iii), any reference in this subparagraph to the 'lesser of 7 percent' shall be deemed to be a reference to the 'greater of 7 percent'.

"(C) In this paragraph:

"(i) The term 'home and community-based services' includes services described in sections 1905(a)(7) and 1905(a)(8), services described in subsection (c)(4)(B), services described in paragraph (4)(B), personal care services, and services furnished pursuant to a waiver under subsection (c).

"(ii)(I) Subject to subclause (II), the term 'base year' means the most recent year (ending before the date of the enactment of this subsection) for which actual final expenditures under this title have been reported to, and accepted by, the Secretary.

"(II) For purposes of subparagraph (C), in the case of a State that does not report expenditures on the basis of the age categories described in such subparagraph for a year ending before the date of the enactment of this subsection, the term 'base year' means fiscal year 1989.

"(iii) The term 'intermediate care facility services' does not include services furnished in an institution certified in accordance with section 1905(d).

"(6)(A) A determination by the Secretary to deny a request for a waiver (or extension of waiver) under this subsection shall be subject to review to the extent provided under section 1116(b).

"(B) Notwithstanding any other provision of this Act, if the Secretary denies a request of the State for an extension of a waiver under this subsection, any waiver under this subsection in effect on the date such request is made shall remain in effect for a period of not less than 90 days after the date on which the Secretary denies such request (or, if the State seeks review of such determination in accordance with subparagraph (A), the date on which a final determination is made with respect to such review).".

Effective date.
42 USC 1396n note.

(2) The amendments made by paragraph (1) shall become effective on January 1, 1988.

(b) CONFORMING AMENDMENTS.—

(1) Section 1902(a)(10)(A)(ii)(VI) of such Act (42 U.S.C. 1396a(a)(10)(A)(ii)(VI)) is amended by striking "section 1915(c)" each place it appears and inserting "subsection (c) or (d) of section 1915".

(2) Section 1915(h) of such Act, as redesignated by subsection (a), is amended by striking "(c)" and inserting in lieu thereof "(c) or (d)".

42 USC 1396n note.

(c) EXTENSION OF WAIVER.—In the case of a State which, as of December 1, 1987, has a waiver approved with respect to elderly individuals under section 1915(c) of the Social Security Act, which waiver is scheduled to expire before July 1, 1988, if the State notifies the Secretary of Health and Human Services of the State's intention to file an application for a waiver under section 1915(d) of such Act (as amended by subsection (a) of this section), the Secretary shall extend approval of the State's waiver, under section 1915(c) of such Act, on the same terms and conditions through September 30, 1988.

SEC. 4103. PHYSICIANS' SERVICES FURNISHED BY DENTISTS.

(a) CLARIFYING COVERAGE.—Section 1905(a)(5) of the Social Security Act (42 U.S.C. 1396d(a)(5)) is amended by inserting "(A)" after "(5)" and by inserting before the semicolon at the end the following: ", and (B) medical and surgical services furnished by a dentist (described in section 1861(r)(2)) to the extent such services may be performed under State law either by a doctor of medicine or by a doctor of dental surgery or dental medicine and would be described in subparagraph (A) if furnished by a physician (as defined in section 1861(r)(1))".

42 USC 1396d note.

(b) EFFECTIVE DATE.—

(1) The amendment made by subsection (a) applies (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after January 1, 1988, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirement imposed by the amendment made by subsection (a), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act.

SEC. 4104. OPTIONAL MEDICAID COVERAGE OF INDIVIDUALS IN CERTAIN STATES RECEIVING ONLY OPTIONAL STATE SUPPLEMENTARY PAYMENTS.

Section 1902(a)(10)(A)(ii) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)) is amended—

(1) by striking "or" at the end of subclause (IX) and inserting "or" at the end of subclause (X); and

(2) by adding at the end the following new subclause:

"(XI) who receive only an optional State supplementary payment based on need and paid on a regular basis, equal to the difference between the individual's countable income and the income standard used to determine eligibility for such supplementary payment (with countable income being the income remaining after deductions as established by the State pursuant to standards that are more restrictive than the standards for supplementary security income benefits under title XVI), which are available to all individuals in the State (but which may be based on different income standards by political subdivision according to cost of living differences), and which are paid by a State that does not have an agreement with the Secretary under section 1616 or 1634.".

SEC. 4105. CLARIFICATION OF COVERAGE OF CLINIC SERVICES FURNISHED TO HOMELESS OUTSIDE FACILITY.

(a) IN GENERAL.—Section 1905(a)(9) of the Social Security Act (42 U.S.C. 1396d(a)(9)) is amended by inserting before the semicolon at the end the following: ", including such services furnished outside the clinic by clinic personnel to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after January 1, 1988, without regard to whether regulations to implement such amendment are promulgated by such date. 42 USC 1396d note.

SEC. 4106. MEDICALLY NEEDY INCOME LEVELS FOR CERTAIN 2-MEMBER COUPLES IN CALIFORNIA.

For purposes of section 1903(f)(1)(B) of the Social Security Act, for payments made to California on or after July 1, 1983, in the case of a family consisting only of two individuals both of whom are adults and at least one of whom is aged, blind, or disabled, the "highest amount which would ordinarily be paid to a family of the same size" under the State's plan approved under part A of title IV of such Act shall, at California's option, be the amount determined by the State agency to be the amount of the aid which would ordinarily be payable under such plan to a family which consists of one adult and two children and which is without any income or resources. Section 1902(a)(10)(C)(i)(III) of the Social Security Act shall not prevent California from establishing (under the previous sentence) an applicable income limitation for families described in that sentence which is greater than the income limitation applicable to other families, if California has an applicable income limitation under section 1903(f) of such Act which is equal to the maximum applicable income limitation permitted consistent with paragraph

(1)(B) of such section for families other than those described in the previous sentence.

PART 2—OTHER PROVISIONS

SEC. 4111. INCREASING THE MAXIMUM ANNUAL MEDICAID PAYMENTS THAT MAY BE MADE TO THE COMMONWEALTHS AND TERRITORIES.

(a) IN GENERAL.—Subsection (c) of section 1108 of the Social Security Act (42 U.S.C. 1308) is amended to read as follows:

"(c) The total amount certified by the Secretary under title XIX with respect to a fiscal year for payment to—

"(1) Puerto Rico shall not exceed (A) $73,400,000 for fiscal year 1988, (B) $76,200,000 for fiscal year 1989, and (C) $79,000,000 for fiscal year 1990 (and each succeeding fiscal year);

"(2) the Virgin Islands shall not exceed (A) $2,430,000 for fiscal year 1988, (B) $2,515,000 for fiscal year 1989, and (C) $2,600,000 for fiscal year 1990 (and each succeeding fiscal year);

"(3) Guam shall not exceed (A) $2,320,000 for fiscal year 1988, (B) $2,410,000 for fiscal year 1989, and (C) $2,500,000 for fiscal year 1990 (and each succeeding fiscal year);

"(4) the Northern Mariana Islands shall not exceed (A) $636,700 for fiscal year 1988, (B) $693,350 for fiscal year 1989, and (C) $750,000 for fiscal year 1990 (and each succeeding fiscal year); and

"(5) American Samoa shall not exceed (A) $1,330,000 for fiscal year 1988, (B) $1,390,000 for fiscal year 1989, and (C) $1,450,000 for fiscal year 1990 (and each succeeding fiscal year).".

42 USC 1308 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to payments for fiscal years beginning with fiscal year 1988.

42 USC 1396a note.

SEC. 4112. ADJUSTMENT IN MEDICAID PAYMENT FOR INPATIENT HOSPITAL SERVICES FURNISHED BY DISPROPORTIONATE SHARE HOSPITALS.

(a) IMPLEMENTATION OF REQUIREMENT.—

(1) A State's plan under title XIX of the Social Security Act shall not be considered to meet the requirement of section 1902(a)(13)(A) of such Act (insofar as it requires payments to hospitals to take into account the situation of hospitals which serve a disproportionate number of low income patients with special needs), as of July 1, 1988, unless the State has submitted to the Secretary of Health and Human Services, by not later than such date, an amendment to such plan that—

(A) specifically defines the hospitals so described (and includes in such definition any disproportionate share hospital described in subsection (b)(1) which meets the requirement of subsection (d)), and

(B) provides, effective for inpatient hospital services provided not later than July 1, 1988, for an appropriate increase in the rate or amount of payment for such services provided by such hospitals, consistent with subsection (c).

(2)(A) In order to be considered to have met such requirement of section 1902(a)(13)(A) as of July 1, 1989, the State must submit to the Secretary of Health and Human Services by not later than such date, the State plan amendment described in paragraph (1), consistent with subsection (c).

(B) In order to be considered to have met such requirement of section 1902(a)(13)(A) as of July 1, 1990, the State must submit to the Secretary of Health and Human Services by not later than such date, the State plan amendment described in paragraph (1), consistent with subsection (c).

The Secretary shall, not later than June 30 of each year in which the State is required to submit an amendment under this subsection, review each such amendment for compliance with such requirement and by such date shall approve or disapprove each such amendment. If the Secretary disapproves such an amendment, the State shall immediately submit a revised amendment which meets such requirement. The requirement of this subsection may not be waived under section 1915(b)(4) of the Social Security Act.

(b) HOSPITALS DEEMED DISPROPORTIONATE SHARE.—

(1) For purposes of subsection (a)(1), a hospital which meets the requirement of subsection (d) is deemed to be a disproportionate share hospital if—

(A) the hospital's medicaid inpatient utilization rate (as defined in paragraph (2)) is at least one standard deviation above the mean medicaid inpatient utilization rate for hospitals receiving medicaid payments in the State; or

(B) the hospital's low-income utilization rate (as defined in paragraph (3)) exceeds 25 percent.

(2) For purposes of paragraph (1)(A), the term "medicaid inpatient utilization rate" means, for a hospital, a fraction (expressed as a percentage), the numerator of which is the hospital's number of inpatient days attributable to patients who (for such days) were eligible for medical assistance under the State plan approved under title XIX of the Social Security Act in a period, and the denominator of which is the total number of the hospital's inpatient days in that period.

(3) For purposes of paragraph (1)(B), the term "low-income utilization rate" means, for a hospital, the sum of—

(A) the fraction (expressed as a percentage)—

(i) the numerator of which is the sum (for a period) of (I) the total revenues paid the hospital for patient services under a State plan under title XIX of the Social Security Act and (II) the amount of the cash subsidies for patient services received directly from State and local governments, and

(ii) the denominator of which is the total amount of revenues of the hospital for patient services (including the amount of such cash subsidies) in the period; and

(B) a fraction (expressed as a percentage)—

(i) the numerator of which is the total amount of the hospital's charges for inpatient hospital services which are attributable to charity care in a period, and

(ii) the denominator of which is the total amount of the hospital's charges for inpatient hospital services in the hospital in the period.

The numerator under subparagraph (B)(i) shall not include contractual allowances and discounts (other than for indigent patients not eligible for medical assistance under a State plan approved under title XIX of the Social Security Act).

(c) PAYMENT ADJUSTMENT.—In order to be consistent with this subsection, a payment adjustment for a disproportionate share hospital must either—

(1) be in an amount equal to the product of (A) the amount paid under the State plan to the hospital for operating costs for inpatient hospital services (of the kind described in section 1886(a)(4)), and (B) the hospital's disproportionate share adjustment percentage (established under section 1886(d)(5)(F)(iv)); or

(2) provide for a minimum specified additional payment amount (or increased percentage payment) and for an increase in such a payment amount (or percentage payment) in proportion to the percentage by which the hospital's medicaid utilization rate (as defined in subsection (b)(2)) exceeds one standard deviation above the mean medicaid inpatient utilization rate for hospitals receiving medicaid payments in the State;

except that, for purposes of paragraphs (2)(A) and (2)(B), the payment adjustment for a disproportionate share hospital is consistent with this subsection if the appropriate increase in the rate or amount of payment is equal to one-third of the increase otherwise applicable under subsection (c) (in the case of paragraph (2)(A)) and two-thirds of such increase (in the case of paragraph (2)(B)).

(d) REQUIREMENT TO [51] QUALIFY AS DISPROPORTIONATE SHARE HOSPITAL.—

(1) Except as provided in paragraph (2), no hospital may be defined or deemed as a disproportionate share hospital under a State plan under title XIX of the Social Security Act or under subsection (b) of this section unless the hospital has at least 2 obstetricians who have staff privileges at the hospital and who have agreed to provide obstetric services to individuals who are entitled to medical assistance for such services under such State plan.

(2)(A) Paragraph (1) shall not apply to a hospital—

(i) the inpatients of which are predominantly individuals under 18 years of age; or

(ii) which does not offer nonemergency obstetric services to the general population as of the date of the enactment of this Act.

(B) In the case of a hospital located in a rural area (as defined for purposes of section 1886 of the Social Security Act), in paragraph (1) the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

(e) SPECIAL RULE.—A State plan shall be considered to meet the requirement of section 1902(a)(13)(A) (insofar as it requires payments to hospitals to take into account the situation of hospitals which serve a disproportionate number of low income patients with special needs) without regard to the requirement of subsection (a) if the plan provided for payment adjustments for disproportionate share hospitals as of January 1, 1984, and if the aggregate amount of the payment adjustments under the plan for such hospitals is not less than the aggregate amount of such adjustments otherwise required to be made under such subsection.

SEC. 4113. HMO-RELATED PROVISIONS.

(a) TREATMENT OF GARDEN STATE HEALTH PLAN.—

42 USC 1396b.

(1) Section 1903(m) of the Social Security Act (42 U.S.C. 1396(m)) is amended—

(A) by adding at the end the following new paragraph:

[51] Copy read "TO".

"(6)(A) For purposes of this subsection and section 1902(e)(2)(A), in the case of the State of New Jersey, the term 'contract' shall be deemed to include an undertaking by the State agency, in the State plan under this title, to operate a program meeting all requirements of this subsection. Contracts.

"(B) The undertaking described in subparagraph (A) must provide—

"(i) for the establishment of a separate entity responsible for the operation of a program meeting the requirements of this subsection, which entity may be a subdivision of the State agency administering the State plan under this title;

"(ii) for separate accounting for the funds used to operate such program;

"(iii) for setting the capitation rates and any other payment rates for services provided in accordance with this subsection using a methodology satisfactory to the Secretary designed to ensure that total Federal matching payments under this title for such services will be lower than the matching payments that would be made for the same services, if provided under the State plan on a fee for service basis to an actuarially equivalent population; and

"(iv) that the State agency will contract, for purposes of meeting the requirement under section 1902(a)(30)(C), with an organization or entity that under section 1154 reviews services provided by an eligible organization pursuant to a contract under section 1876 for the purpose of determining whether the quality of services meets professionally recognized standards of health care. Contracts.

"(C) The undertaking described in subparagraph (A) shall be subject to approval (and annual re-approval) by the Secretary in the same manner as a contract under this subsection. Contracts.

"(D) The undertaking described in subparagraph (A) shall not be eligible for a waiver under section 1915(b).''; and

(B) in paragraph (2)(F), by striking all that precedes "a State plan may restrict" and inserting the following:

[52] "(E) In the case of—

[53] "(i) a contract with an entity described in subparagraph (G) or with a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act) which meets the requirement of subparagraph (A)(ii), or Contracts.

"(ii) a program pursuant to an undertaking described in paragraph (6) in which at least 25 percent of the membership enrolled on a prepaid basis are individuals who (I) are not insured for benefits under part B of title XVIII or eligible for benefits under this title, and (II) (in the case of such individuals whose prepayments are made in whole or in part by any government entity) had the opportunity at the time of enrollment in the program to elect other coverage of health care costs that would have been paid in whole or in part by any governmental entity,".

(2) Section 1902(e)(2)(A) of such Act (42 U.S.C. 1396a(e)(2)(A)) is amended by striking "section 1903(m)(2)(G)" and inserting "paragraph (2)(G) or (6) of section 1903(m)".

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[52] Copy read "'(F)".
[53] Copy read "(i)".

(b) MEDICAID MATCHING RATE FOR QUALITY REVIEW OF HMO SERVICES.—

(1) Section 1902(a)(30)(C) of such Act (42 U.S.C. 1396a(a)(30)(C)) is amended by inserting ", an entity which meets the requirements of section 1152, as determined by the Secretary," after "title XI)".

(2) Section 1902(d) of such Act (42 U.S.C. 1396a(d)) is amended—

Contracts.

(i) by inserting after "contracts with" the following: "an entity which meets the requirements of section 1152, as determined by the Secretary, for the performance of the quality review functions described in subsection (a)(30)(C), or", and

(ii) by striking "organization (or organizations)" each place it appears and inserting "such an entity or organization".

(3) Section 1903(a)(3)(C) of such Act (42 U.S.C. 1396b(a)(3)(C)) is amended by inserting "or by an entity which meets the requirements of section 1152, as determined by the Secretary," after "utilization and quality control peer review organization".

(c) FREEDOM OF CHOICE.—

(1) Section 1902(a)(23) of such Act (42 U.S.C. 1396a(a)(23)) is amended—

(A) by inserting "(A)" after "Guam, provide that", and

(B) by inserting before the semicolon at the end the following: ", and (B) an enrollment of an individual eligible for medical assistance in a primary care case-management system (described in section 1915(b)(1)), a health maintenance organization, or a similar entity shall not restrict the choice of the qualified person from whom the individual may receive services under section 1905(a)(4)(C)".

(2) Section 1902(e)(2)(A) of such Act (42 U.S.C. 1396a(e)(2)(A)) is amended by striking "but only" and inserting "but, except for benefits furnished under section 1905(a)(4)(C), only".

Effective date.
42 USC 1396a note.

(3) The amendments made by this subsection shall apply to services furnished on and after July 1, 1988.

(d) TECHNICAL AMENDMENTS.—

(1) Section 1903(m)(2)(F) of such Act (42 U.S.C. 1396b(m)(2)(F)) is amended by striking "subparagraph (G)" and inserting "subparagraphs (E) or (G)".

(2) Section 1902(e)(2)(A) of such Act (42 U.S.C. 1396a(e)(2)(A)) is amended by striking "section 1903(m)(2)(G)" and inserting "subparagraph (B)(iii), (E), or (G) of section 1903(m)(2)".

(e) CONTINUED ELIGIBILITY AND RESTRICTION ON DISENROLLMENT WITHOUT CAUSE FOR METROPOLITAN HEALTH PLAN HMO.—For purposes of sections 1902(e)(2)(A) and 1903(m)(2)(F) of the Social Security Act, the Metropolitan Health Plan HMO operated by the New York City public hospitals shall be treated in the same manner as a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act).

SEC. 4114. MEDICAID WAIVER FOR HOSPICE CARE FOR AIDS PATIENTS.

Section 1905(o)(1) of the Social Security Act (42 U.S.C. 1396d(o)(1)) is amended—

(1) by inserting "(A)" after "(1)";

(2) by striking "The" and inserting "Subject to subparagraph (B), the"; and

(3) by adding at the end the following new subparagraph:

"(B) For purposes of this title only, with respect to the definition of hospice program under section 1861(dd)(2), the Secretary may allow an agency or organization to make the assurance under subparagraph (A)(iii) of such section without taking into account any individual who is afflicted with acquired immunodeficiency syndrome.".

SEC. 4115. STATE DEMONSTRATION PROJECTS.

(a) EXTENSION OF ARIZONA HEALTH CARE DEMONSTRATION PROJECT.—

(1) Notwithstanding any limitations contained in section 1115 of the Social Security Act, but subject to paragraphs (2) and (3) of this subsection, the Secretary of Health and Human Services (in this subsection referred to as the "Secretary") upon application shall renew until September 30, 1989, approval of demonstration project number 11-P-98239/9-05 ("Arizona Health Care Cost Containment System—AHCCCS—A statewide approach to cost effective health care financing"), including all waivers granted by the Secretary under such section 1115 as of September 30, 1987.

(2) The Secretary's renewed approval of the project under paragraph (1) shall—

(A) subject to paragraph (3) be on the same terms and conditions that existed between the applicant and the Secretary as of September 30, 1987; and

(B) remain in effect through September 30, 1989, unless the Secretary finds that the applicant no longer complies with such terms and conditions.

(3) Nothing in this subsection shall be construed to prohibit or require the Secretary from granting additional waivers to the applicant—

(A) for coverage of additional optional groups, and

(B) for coverage of long-term care and other services which were not covered as of September 30, 1987.

(b) NEW YORK STATE PILOT PROGRAM FOR PRENATAL, MATERNITY, AND NEWBORN CARE.—

(1) Upon application by the State of New York and approval by the Secretary of Health and Human Services (in this subsection referred to as the "Secretary"), the State of New York (in this subsection referred to as the "State") may conduct a demonstration project in accordance with this subsection for the purpose of testing its Prenatal/Maternity/Newborn Care Pilot Program (in this subsection referred to as the "Program"), as the Program is set forth in the Prenatal Care Act of 1987 (enacted by the State in February 1987), as an alternative to existing Federal programs.

(2) Under the demonstration project conducted under this subsection—

(A) any individual who receives benefits under the Program shall not receive any of such benefits under the plan of the State under title XIX of the Social Security Act; and

(B) the Secretary shall make payments to the State with respect to individuals receiving benefits under the Program in the same amounts as would be payable for such benefits under title XIX of the Social Security Act if such individ-

uals were receiving such benefits under such title (as determined by the Secretary).

(3) The Secretary may (with respect to the demonstration project under this subsection) waive compliance with any requirement contained in section 1902(a)(1), 1902(a)(10)(B), 1902(a)(17)(D), 1902(a)(23), 1902(a)(30), or 1903(f) of the Social Security Act which (if applied) would prevent the State from carrying out the project, effectively achieving its purpose, or receiving payments in accordance with paragraph (2)(B).

(4) As a condition of approval of the demonstration project under this subsection, the State shall provide assurances satisfactory to the Secretary that—

(A) the State will continue to make benefits available under title XIX of the Social Security Act to all pregnant women entitled to receive benefits under such title to the extent such benefits are not provided under the Program; and

(B) the State has in effect a quality assurance mechanism to ensure the quality and accessibility of the services furnished under the program.

(5)(A) The demonstration project under this subsection shall be conducted for a period not to exceed three years.

Reports.

(B) The Secretary shall conduct an evaluation of the demonstration project under this subsection and shall report the results of such evaluation to the Congress not later than one year after completion of the project.

(c) WAIVERS FOR FAMILY INDEPENDENCE PROGRAM.—Upon approval of the demonstration project relating to the Family Independence Program in the State of Washington and with respect to such project, the Secretary of Health and Human Services shall waive compliance with any requirements of sections 1902(a)(1), 1916, and 1924 of the Social Security Act, but only to the extent necessary to enable the State to carry out the project as enacted by the State of Washington in May 1987.

SEC. 4116. WAIVER AUTHORITY UNDER THE MEDICAID PROGRAM FOR THE NORTHERN MARIANA ISLANDS.

Section 1902(j) of the Social Security Act (42 U.S.C. 1396a(j)) is amended—

(1) by inserting "and the Northern Mariana Islands" after "American Samoa" the first place it appears; and

(2) by inserting "or the Northern Mariana Islands" after "American Samoa" the second place it appears.

42 USC 1396b note.

SEC. 4117. DELAY QUALITY CONTROL SANCTIONS FOR MEDICAID.

The Secretary of Health and Human Services shall not, prior to July 1, 1988, implement any reductions in payments to States pursuant to section 1903(u) of the Social Security Act (or any provision of law described in subsection (c) of section 133 of the Tax Equity and Fiscal Responsibility Act of 1982).

SEC. 4118. TECHNICAL AND MISCELLANEOUS AMENDMENTS.

(a) SECTION 2176 WAIVER TECHNICALS.—

(1) Section 1915(c)(3) of the Social Security Act (42 U.S.C. 1396n(c)(3)) is amended by striking "and section 1902(a)(10)(B) (relating to comparability)" and inserting ", section 1902(a)(10)(B) (relating to comparability), and section

1902(a)(10)(C)(i)(III) (relating to income and resource rules applicable in the community)".

(2) The amendment made by paragraph (1) shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986. 42 USC 1396n note.

(b) INCREASE IN NUMBER OF INDIVIDUALS WHO MAY [54] BE SERVED UNDER MODEL HOME AND COMMUNITY-BASED SERVICES WAIVERS.—Section 1915(c) of the Social Security Act (42 U.S.C. 1396n(c)) is amended by adding at the end the following new paragraph:

"(10) No waiver under this subsection shall limit by an amount less than 200 the number of individuals in the State who may receive home and community-based services under such waiver.".

(c) KATIE BECKETT TECHNICAL.—

(1) Section 1902(e)(3)(C) of such Act (42 U.S.C. 1396a(e)(3)(C)) is amended by striking "to have a supplemental security income (or State supplemental) payment made with respect to him under title XVI" and inserting "for medical assistance under the State plan under this title".

(2) The amendment made by paragraph (1) shall be effective as if it were included in section 134 of the Tax Equity and Fiscal Responsibility Act of 1982. 42 USC 1396a note.

(d) ORGAN TRANSPLANT TECHNICAL.—

(1) Section 1903(i) of the Social Security Act (42 U.S.C. 1396b(i)) is amended—

(A) in paragraph (1), by striking the period at the end and inserting "; or", and

(B) by adding at the end the following new sentence: "Nothing in paragraph (1) shall be construed as permitting a State to provide services under its plan under this title that are not reasonable in amount, duration, and scope to achieve their purpose.".

(2) The amendments made by paragraph (1) shall be effective as if included in the enactment of section 9507 of the Consolidated Omnibus Budget Reconciliation Act of 1985. Effective date. 42 USC 1396b note.

(e) CIVIL MONEY PENALTY AND EXCLUSION CLARIFICATIONS.—

(1) Section 1128A(a)(1) of the Social Security Act (42 U.S.C. 1320a-7(a)(1)), as amended by section 3(a)(1) of the Medicare and Medicaid Patient and Program Protection Act of 1987 (Public Law 100-93), is amended by striking "or has reason to know" each place it appears and inserting "or should know". 42 USC 1320a-7a.

(2) Section 1128(d)(3)(B) of the such Act (42 U.S.C. 1320a-6(d)(3)(B)), as amended by section 2 of the Medicare and Medicaid Patient and Program Protection Act of 1987 (Public Law 100-93), is amended— 42 USC 1320a-7.

(A) by inserting "(i)" after "(B)", and

(B) by adding at the end the following new clause:

"(ii) A State health care program may provide for a period of exclusion which is longer than the period of exclusion under a program under title XVIII.".

(3) The amendment made by paragraph (1) shall apply to activities occurring before, on, or after the date of the enactment of this Act. Effective date. 42 USC 1320a-7a note.

(f) INCORPORATION OF CERTAIN PROVISIONS RELATING TO INDIAN HEALTH SERVICE FACILITIES.—

[54] Copy read "WHO MAY".

(1) Section 1911 of the Social Security Act (42 U.S.C. 1396j), as amended by section 4111(g)(8) of this title, is amended—

(A) by striking "or nursing facility" each place it appears and inserting ", nursing facility, or any other type of facility which provides services of a type otherwise covered under the State plan"; and

(B) by adding at the end the following new subsection:

"(c) The Secretary is authorized to enter into agreements with the State agency for the purpose of reimbursing such agency for health care and services provided in Indian Health Service facilities to Indians who are eligible for medical assistance under the State plan.".[55]

Effective date. 42 USC 1396j note.

(2) The amendments made by paragraph (1) shall apply to health care services performed on or after the date of the enactment of this Act.

(g) FRAIL ELDERLY DEMONSTRATION PROJECT WAIVERS.—

(1) Section 9412(b)(2) of the Omnibus Budget Reconciliation Act of 1986 is amended—

100 Stat. 2063.

(A) in subparagraph (A), by inserting before the period at the end the following: ", including permitting the organization to assume progressively (over the initial 3-year period of the waiver) the full financial risk", and

(B) in subparagraph (B), by striking "be awarded a grant from the Robert Wood Johnson Foundation" and insert "participate in an organized initiative to replicate the findings of the On Lok long-term care demonstration project (described in section 603(c)(1) of the Social Security Amendments of 1983)".

Effective date.

(2) The amendments made by paragraph (1) shall take effect as though it were included in the Omnibus Budget Reconciliation Act of 1986.

(h) MEDICALLY NEEDY INCURRED EXPENSES.

(1) Section 1902(a)(17) of the Social Security Act (42 U.S.C. 1396a(a)(17)) is amended by striking "(whether in the form of insurance premiums or otherwise)" and inserting "(whether in the form of insurance premiums or otherwise and regardless of whether such costs are reimbursed under another public program of the State or political subdivision thereof)".

Effective date. 42 USC 1396a note.

(2) The amendment made by paragraph (1) shall apply to costs incurred after the date of the enactment of this Act.

(i) QUALIFICATIONS FOR CASE MANAGERS FOR INDIVIDUALS WITH DEVELOPMENT DISABILITIES AND CHRONIC MENTAL ILLNESS.—

(1) Section 1915(g)(1) of such Act (42 U.S.C. 1396n(g)(1)) is amended by adding at the end the following new sentence: "The State may limit the case managers available with respect to case management services for eligible individuals with developmental disabilities or with chronic mental illness in order to ensure that the case managers for such individuals are capable of ensuring that such individuals receive needed services.".

Effective date. 42 USC 1396n note.

(2) The amendment made by paragraph (1) shall take effect as though it were included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

42 USC 1396n note.

(j) HABILITATION SERVICES EFFECTIVE DATE.—Effective as if included in the enactment of section 9502 of the Consolidated Omni-

[55] Subparagraph "(c)" indented incorrectly.

bus Budget Reconciliation Act of 1985, subsection (j)(1) of such section is amended by inserting before the period at the end the following: "to individuals eligible for services under a waiver granted under section 1915(c) of the Social Security Act, without regard to whether such individuals were receiving institutional services before their participation in the waiver".

(k) SECTION 2176 WAIVER FOR INSTITUTIONALIZED DEVELOPMENTALLY DISABLED.—Section 1915(c)(7) of the Social Security Act (42 U.S.C. 1396n(c)(7)) is amended by inserting "(A)" after "(7)" and adding at the end the following new subparagraph:

"(B) In making estimates under paragraph (2)(D) in the case of a waiver that applies only to individuals with developmental disabilities who are inpatients in a skilled nursing facility or intermediate care facility and whom the State has determined, on the basis of an evaluation under paragraph (2)(B), to need the level of services provided by an intermediate care facility for the mentally retarded, the State may determine the average per capita expenditures that would have been made in a fiscal year for those individuals under the State plan on the basis of the average per capita expenditures under the State plan for services to individuals who are inpatients in an intermediate care facility for the mentally retarded.".

(l) RENEWAL OF FREEDOM-OF-CHOICE WAIVERS.—

(1) Section 1915(h) of such Act (42 U.S.C. 1396n(h)) is amended by striking "denies such request in writing within 90 days after the date of its submission to the Secretary." and inserting ", within 90 days after the date of its submission to the Secretary, either denies such request in writing or informs the State agency in writing with respect to any additional information which is needed in order to make a final determination with respect to the request. After the date the Secretary receives such additional information, the request shall be deemed granted unless the Secretary, within 90 day of such date, denies such request.".

(2) The amendment made by paragraph (1) shall apply to requests for continuation of waivers received after the date of the enactment of this Act.

Effective date. 42 USC 1396n note.

(m) REPEAL OF COORDINATED AUDIT REQUIREMENT.—

(1)(A) Section 1129 of such Act (42 U.S.C. 1320a-8) is repealed.

(B) Section 1902(a)(42) of such Act (42 U.S.C. 1396a(a)(42)) is amended—

(i) by striking "(A)", and

(ii) by striking ", (B)" and all that follows up to the semicolon at the end.

(2) The amendments made by paragraph (1) shall apply to audits conducted after the date of the enactment of this Act.

Effective date. 42 USC 1396a note. 42 USC 1396b note.

(n) TEMPORARY TECHNICAL ERROR DEFINITION.—For purposes of section 1903(u)(1)(E)(ii) of the Social Security Act, effective for the period beginning on the date of enactment of this Act and ending December 31, 1988, a "technical error" [56] is an error in eligibility condition (such as assignment of social security numbers and assignment of rights to third-party benefits as a condition of eligibility) that, if corrected, would not result in a difference in the amount of medical assistance paid.

[56] Copy read " 'technical error' ".

(o) TECHNICAL AMENDMENTS RELATING TO NEW JERSEY RESPITE CARE PILOT PROJECT.—

(1) Section 9414(b) of the Omnibus Budget Reconciliation Act of 1986 is amended— 100 Stat. 2064.

(A) by redesignating paragraphs (2), (3), and (4), as paragraphs (3), (4), and (5), respectively,

(B) by inserting after paragraph (1) the following new paragraph:

"(2) provide that the State may submit a detailed proposal describing the project (in lieu of a formal request for the waiver of applicable provisions of title XIX of the Social Security Act) and that submission of such a description by the State will be treated as such a request for purposes of subsection (g),", and

(C) in paragraph (3), as redesignated by [56a] paragraph (1) of this subsection, by striking "if the project" and all that follows through "Act" the second place it appears and inserting "the State shall utilize a post-eligibility cost-sharing formula based on the available income of participants with income in excess of the nonfarm income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981)".

(2)(A) Section 9414(a) of the Omnibus Budget Reconciliation Act of 1986 is amended by striking "elderly and disabled individuals" and inserting "eligible individuals".

(B) Section 941(c) of the Omnibus Budget Reconciliation Act of 1986 is amended to read as follows:

"(C) DEFINITIONS.—For purposes of this section—

"(1) the term 'eligible individual' means an individual—

"(A) who is elderly or disabled,

"(B)(i) whose income (not including the income of the spouse or family of the individual) does not exceed 300 percent of the amount in effect under section 1611(a)(1)(A) of the Social Security Act (as increased pursuant to section 1617 of such Act), or

"(ii) in the case of an individual and spouse who are both dependent on a caregiver, whose combined incomes do not exceed such amount,

"(C) whose liquid resources (as declared by the individual) do not exceed $40,000,

"(D) who is at risk of institutionalization unless the individual's caregiver is provided with respite care, and

"(E) who has been determined to meet the requirements of subparagraphs (A) through (D) in accordance with an application process designed by the State; and

"(2) the term 'respite care services' shall include—

"(A) short-term and intermittent—

"(i) companion or sitter services (paid as well as volunteer),

"(ii) homemaker and personal care-services,

"(iii) adult day care, and

"(iv) inpatient care in a hospital, a skilled nursing facility, or an intermediate care facility (not to exceed a total of 14 days for any individual), and

"(B) peer support and training for family caregivers (using informal support groups and organized counseling).".

[56a] Copy read "by by".

(3) Section 9414(g) of the Omnibus Budget Reconciliation Act of 1986 is amended by inserting "section 1902(a)(10)(C)(i)(III)," after "section 1902(a)(10)(B),". 100 Stat. 2064.

(4) The amendments made by this subsection shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986. Effective date.

(p) MISCELLANEOUS TECHNICAL CORRECTIONS.—

(1) Subclause (IX) of section 1902(a)(10)(A)(ii) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)) is amended by moving it 4 ems to the right so as to align its left margin with that of subclause (VIII) of that section.

(2) Subclause (X) of section 1902(a)(10)(A)(ii) of such Act (42 U.S.C. 1396a(a)(10)(A)(ii)) is amended by moving it 2 ems to the right so as to align its left margin with that of subclause (VIII) of that section.

(3) Section 1902(a)(17) of such Act (42 U.S.C. 1396a(a)(17)) is amended by striking "subsection (l)(3)" and inserting "subsections (l)(3), (m)(4), and (m)(5)".

(4) Section 1902(a)(30)(C) of such Act (42 U.S.C. 1396(a)(30)(C)) is amended by striking "provide" and inserting "use". 42 USC 1396a.

(5) Section 1903(f)(4) of such Act (42 U.S.C. 1396b(f)(4)) is amended by inserting ", 1902(a)(10)(A)(ii)(X), or 1905(p)(1)" after "1902(a)(10)(A)(ii)(IX)".

(6) Paragraph (9) of section 1902(e) of such Act (42 U.S.C. 1396a(e)) is amended by moving the paragraph 2 ems to the left so as to align the left margin of subparagraph (A) (before clause (i)) and subparagraphs (B) and (C) with the left margin of paragraph (8).

(7) Section 1902(l)(1) of such Act (42 U.S.C. 1396a(l)(1)) is amended—

(A) by striking "(1)(l) Individuals" and inserting "(l)(1) Individuals",

(B) by moving the matter before subparagraph (A) 2 ems to the left so it is indented only once, and

(C) by striking ", whose" and inserting "and whose".

(8) Sections 1902(l)(2), 1902(m)(2)(A), 1905(p)(2)(A), and 501(b)(2) of such Act (42 U.S.C. 1396a(l)(2), 1396a(m)(2)(A), 1396d(p)(2)(A), 701(b)(2)) are each amended by striking "nonfarm".

(9) Paragraphs (1) and (2) of section 1925(a), as redesignated by section (4111(a)) of this title, are amended to read as follows: 42 USC 1396s.

"(1) AFDC.—(A) Section 402(a)(32) of this Act (relating to individuals who are deemed recipients of aid but for whom a payment is not made).

"(B) Section 402(a)(37) of this Act (relating to individuals who lose AFDC eligibility due to increased earnings).

"(C) Section 406(h) of this Act (relating to individuals who lose AFDC eligibility due to increased collection of child or spousal support).

"(D) Section 414(g) of this Act (relating to certain individuals participating in work supplementation programs).

"(2) SSI.—(A) Section 1611(e) of this Act (relating to treatment of couples sharing an accommodation in a facility).

"(B) Section 1619 of this Act (relating to benefits for individuals who perform substantial gainful activity despite severe medical impairment).

"(C) Section 1634(b) of this Act (relating to preservation of benefit status for disabled widows and widowers who lost SSI

benefits because of 1983 changes in actuarial reduction formula).

"(D) Section 1634(c) of this Act (relating to individuals who lose eligibility for SSI benefits due to entitlement to child's insurance benefits under section 202(d) of this Act).".

Effective date. 42 USC 1396n.

(10) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986, section 9411(a)(2)(B) of such Act is amended by inserting "such" after "need for".

Subtitle C—Nursing Home Reform

PART 1—MEDICARE PROGRAM

SEC. 4201. REQUIREMENTS FOR SKILLED NURSING FACILITIES.

(a) SPECIFICATION OF FACILITY REQUIREMENTS.—Title XVIII of the Social Security Act is amended—

(1) by amending subsection (j) of section 1861 (42 U.S.C. 1395x) to read as follows:

"Skilled Nursing Facility

"(j) The term 'skilled nursing facility' has the meaning given such term in section 1819(a).";

(2) by adding at the end of section 1864 (42 U.S.C. 1395aa) the following new subsection:

Contracts.

"(d) The Secretary may not enter an agreement under this section with a State with respect to determining whether an institution therein is a skilled nursing facility unless the State meets the requirements specified in section 1819(e)."; and

(3) by adding at the end of part A the following new section:

"REQUIREMENTS FOR, AND ASSURING QUALITY OF CARE IN, SKILLED NURSING FACILITIES

42 USC 1395i-3.

"SEC. 1819. (a) SKILLED NURSING FACILITY DEFINED.—In this title, the term 'skilled nursing facility' means an institution (or a distinct part of an institution) which—

"(1) is primarily engaged in providing to residents—

"(A) skilled nursing care and related services for residents who require medical or nursing care, or

"(B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons,

and is not primarily for the care and treatment of mental diseases;

"(2) has in effect a transfer agreement (meeting the requirements of section 1861(l)) with one or more hospitals having agreements in effect under section 1866; and

"(3) meets the requirements for a skilled nursing facility described in subsections (b), (c), and (d) of this section.

"(b) REQUIREMENTS RELATING TO PROVISION OF SERVICES.—

"(1) QUALITY OF LIFE.—

"(A) IN GENERAL.—A skilled nursing facility must care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident.

"(B) QUALITY ASSESSMENT AND ASSURANCE.—A skilled nursing facility must maintain a quality assessment and assurance committee, consisting of the director of nursing services, a physician designated by the facility, and at least 3 other members of the facility's staff, which (i) meets at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary and (ii) develops and implements appropriate plans of action to correct identified quality deficiencies.

"(2) SCOPE OF SERVICES AND ACTIVITIES UNDER PLAN OF CARE.—A skilled nursing facility must provide services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, in accordance with a written plan of care which—

"(A) describes the medical, nursing, and psychosocial needs of the resident and how such needs will be met;

"(B) is initially prepared, with the participation to the extent practicable of the resident or the resident's family or legal representative, by a team which includes the resident's attending physician and a registered professional nurse with responsibility for the resident; and

"(C) is periodically reviewed and revised by such team after each assessment under paragraph (3).

"(3) RESIDENTS' ASSESSMENT.—

"(A) REQUIREMENT.—A skilled nursing facility must conduct a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity, which assessment—

"(i) describes the resident's capability to perform daily life functions and significant impairments in functional capacity;

"(ii) is based on a uniform minimum data set specified by the Secretary under subsection (f)(6)(A);

"(iii) in the case of a resident eligible for benefits under title XIX, uses an instrument which is specified by the State under subsection (e)(5); and

"(iv) in the case of a resident eligible for benefits under part A of this title, includes the identification of medical problems.

"(B) CERTIFICATION.—

"(i) IN GENERAL.—Each such assessment must be conducted or coordinated (with the appropriate participation of health professionals) by a registered professional nurse who signs and certifies the completion of the assessment. Each individual who completes a portion of such an assessment shall sign and certify as to the accuracy of that portion of the assessment.

"(ii) PENALTY FOR FALSIFICATION.—

"(I) An individual who willfully and knowingly certifies under clause (i) a material and false statement in a resident assessment is subject to a civil money penalty of not more than $1,000 with respect to each assessment.

"(II) An individual who willfully and knowingly causes another individual to certify under clause (i) a material and false statement in a resident assess-

ment is subject to a civil money penalty of not more than $5,000 with respect to each assessment.

"(III) The Secretary shall provide for imposition of civil money penalties under this clause in a manner similar to that for the imposition of civil money penalties under section 1128A.

"(iii) USE OF INDEPENDENT ASSESSORS.—If a State determines, under a survey under subsection (g) or otherwise, that there has been a knowing and willful certification of false assessments under this paragraph, the State may require (for a period specified by the State) that resident assessments under this paragraph be conducted and certified by individuals who are independent of the facility and who are approved by the State.

"(C) FREQUENCY.—

"(i) IN GENERAL.—Such an assessment must be conducted—

"(I) promptly upon (but no later than 4 days after the date of) admission for each individual admitted on or after October 1, 1990, and by not later than October 1, 1990, for each resident of the facility on that date;

"(II) promptly after a significant change in the resident's physical or mental condition; and

"(III) in no case less often than once every 12 months.

"(ii) RESIDENT REVIEW.—The skilled nursing facility must examine each resident no less frequently than once every 3 months and, as appropriate, revise the resident's assessment to assure the continuing accuracy of the assessment.

"(D) USE.—The results of such an assessment shall be used in developing, reviewing, and revising the resident's plan of care under paragraph (2).

"(E) COORDINATION.—Such assessments shall be coordinated with any State-required preadmission screening program to the maximum extent practicable in order to avoid duplicative testing and effort.

"(4) PROVISION OF SERVICES AND ACTIVITIES.—

"(A) IN GENERAL.—To the extent needed to fulfill all plans of care described in paragraph (2), a skilled nursing facility must provide, directly or under arrangements (or, with respect to dental services, under agreements) with others for the provision of—

"(i) nursing services and specialized rehabilitative services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

"(ii) medically-related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

"(iii) pharmaceutical services (including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of each resident;

"(iv) dietary services that assure that the meals meet the daily nutritional and special dietary needs of each resident;

"(v) an on-going program, directed by a qualified professional, of activities designed to meet the interests and the physical, mental, and psychosocial well-being of each resident; and

"(vi) routine and emergency dental services to meet the needs of each resident.

The services provided or arranged by the facility must meet professional standards of quality. Nothing in clause (vi) shall be construed as requiring a facility to provide or arrange for dental services described in that clause without additional charge.

"(B) QUALIFIED PERSONS PROVIDING SERVICES.—Services described in clauses (i), (ii), (iii), (iv), and (vi) of subparagraph (A) must be provided by qualified persons in accordance with each resident's written plan of care.

"(C) REQUIRED NURSING CARE.—

"(i) IN GENERAL.—Except as provided in clause (ii), a skilled nursing facility must provide 24-hour nursing service which is sufficient to meet nursing needs of its residents and must employ the services of a registered professional nurse at least during the day tour of duty (of at least 8 hours a day) 7 days a week.

"(ii) EXCEPTION.—To the extent that clause (i) may be deemed to require that a skilled nursing facility engage the services of a registered professional nurse for more than 40 hours a week, the Secretary is authorized to waive such requirement if the Secretary finds that—

"(I) the facility is located in a rural area and the supply of skilled nursing facility services in such area is not sufficient to meet the needs of individuals residing therein,

"(II) the facility has one full-time registered professional nurse who is regularly on duty at such facility 40 hours a week, and

"(III) the facility either has only patients whose physicians have indicated (through physicians' orders or admission notes) that each such patient does not require the services of a registered nurse or a physician for a 48-hour period, or has made arrangements for a registered professional nurse or a physician to spend such time at such facility as may be indicated as necessary by the physician to provide necessary skilled nursing services on days when the regular full-time registered professional nurse is not on duty.

A waiver under this subparagraph shall be subject to annual renewal.

"(5) REQUIRED TRAINING OF NURSE AIDES.—

"(A) IN GENERAL.—A skilled nursing facility must not use (on a full-time, temporary, per diem, or other basis) any individual, who is not a licensed health professional (as defined in subparagraph (E)), as a nurse aide in the facility on or after October 1, 1989, (or January 1, 1990, in the case of an individual used by the facility as a nurse aide before

July 1, 1989) for more than 4 months unless the individual—

"(i) has completed a training and competency evaluation program, or a competency evaluation program, approved by the State under subsection (e)(1)(A), and

"(ii) is competent to provide such services.

"(B) OFFERING COMPETENCY EVALUATION PROGRAMS FOR CURRENT EMPLOYEES.—A skilled nursing facility must provide, for individuals used as a nurse aide by the facility as of July 1, 1989, for a competency evaluation program approved by the State under subsection (e)(1) and such preparation as may be necessary for the individual to complete such a program by January 1, 1990.

"(C) COMPETENCY.—The skilled nursing facility must not permit an individual, other than in a training and competency evaluation program approved by the State, to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competency and must not use such an individual as a nurse aide unless the facility has inquired of the State registry established under subsection (e)(2)(A) as to information in the registry concerning the individual.

"(D) RE-TRAINING REQUIRED.—For purposes of subparagraph (A), if, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual performed nursing or nursing-related services for monetary compensation, such individual shall complete a new training and competency evaluation program.

"(E) REGULAR IN-SERVICE EDUCATION.—The skilled nursing facility must provide such regular performance review and regular in-service education as assures that individuals used as nurse aides are competent to perform services as nurse aides, including training for individuals providing nursing and nursing-related services to residents with cognitive impairments.

"(F) NURSE AIDE DEFINED.—In this paragraph, the term 'nurse aide' means any individual providing nursing or nursing-related services to residents in a skilled nursing facility, but does not include an individual—

"(i) who is a licensed health professional (as defined in subparagraph (G)), or

"(ii) who volunteers to provide such services without monetary compensation.

"(G) LICENSED HEALTH PROFESSIONAL DEFINED.—In this paragraph, the term 'licensed health professional' means a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, registered professional nurse, licensed practical nurse, or licensed or certified social worker.

"(6) PHYSICIAN SUPERVISION AND CLINICAL RECORDS.—A skilled nursing facility must—

"(A) require that the medical care of every resident be provided under the supervision of a physician;

"(B) provide for having a physician available to furnish necessary medical care in case of emergency; and

"(C) maintain clinical records on all residents, which records include the plans of care (described in paragraph (2)) and the residents' assessments (described in paragraph (3)).

"(7) REQUIRED SOCIAL SERVICES.—In the case of a skilled nursing facility with more than 120 beds, the facility must have at least one social worker (with at least a bachelor's degree in social work or similar professional qualifications) employed full-time to provide or assure the provision of social services.

"(c) REQUIREMENTS RELATING TO RESIDENTS' RIGHTS.—

"(1) GENERAL RIGHTS.—

"(A) SPECIFIED RIGHTS.—A skilled nursing facility must protect and promote the rights of each resident, including each of the following rights:

"(i) FREE CHOICE.—The right to choose a personal attending physician, to be fully informed in advance about care and treatment, to be fully informed in advance of any changes in care or treatment that may affect the resident's well-being, and (except with respect to a resident adjudged incompetent) to participate in planning care and treatment or changes in care and treatment.

"(ii) FREE FROM RESTRAINTS.—The right to be free from physical or mental abuse, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms. Restraints may only be imposed—

"(I) to ensure the physical safety of the resident or other residents, and

"(II) only upon the written order of a physician that specifies the duration and circumstances under which the restraints are to be used (except in emergency circumstances specified by the Secretary) until such an order could reasonably be obtained.

"(iii) PRIVACY.—The right to privacy with regard to accommodations, medical treatment, written and telephonic communications, visits, and meetings of family and of resident groups.

"(iv) CONFIDENTIALITY.—The right to confidentiality of personal and clinical records.

"(v) ACCOMMODATION OF NEEDS.—The right—

"(I) to reside and receive services with reasonable accommodations of individual needs and preferences, except where the health or safety of the individual or other residents would be endangered, and

"(II) to receive notice before the room or roommate of the resident in the facility is changed.

"(vi) GRIEVANCES.—The right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances and the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

"(vii) PARTICIPATION IN RESIDENT AND FAMILY GROUPS.—The right of the resident to organize and participate in resident groups in the facility and the right of the resident's family to meet in the facility with the families of other residents in the facility.

[57] "(viii) PARTICIPATION IN OTHER ACTIVITIES.—The right of the resident to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

[58] "(ix) EXAMINATION OF SURVEY RESULTS.—The right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the Secretary or a State with respect to the facility and any plan of correction in effect with respect to the facility.

[59] "(x) OTHER RIGHTS.—Any other right established by the Secretary.

Clause (iii) shall not be construed as requiring the provision of a private room.

"(B) NOTICE OF RIGHTS AND SERVICES.—A skilled nursing facility must—

"(i) inform each resident, orally and in writing at the time of admission to the facility, of the resident's legal rights during the stay at the facility;

"(ii) make available to each resident, upon reasonable request, a written statement of such rights (which statement is updated upon changes in such rights); and

"(iii) inform each other resident, in writing before or at the time of admission and periodically during the resident's stay, of services available in the facility and of related charges for such services, including any charges for services not covered under this title or by the facility's basic per diem charge.

The written description of legal rights under this subparagraph shall include a description of the protection of personal funds under paragraph (6) and a statement that a resident may file a complaint with a State survey and certification agency respecting resident abuse and neglect and misappropriation of resident property in the facility.

"(C) RIGHTS OF INCOMPETENT RESIDENTS.—In the case of a resident adjudged incompetent under the laws of a State, the rights of the resident under this title shall devolve upon, and, to the extent judged necessary by a court of competent jurisdiction, be exercised by, the person appointed under State law to act on the resident's behalf.

"(2) TRANSFER AND DISCHARGE RIGHTS.—

"(A) IN GENERAL.—A skilled nursing facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless—

"(i) the transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the facility;

"(ii) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the

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[57] Copy read " "(ix)".
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resident no longer needs the services provided by the facility;

"(iii) the safety of individuals in the facility is endangered;

"(iv) the health of individuals in the facility would otherwise be endangered;

"(v) the resident has failed, after reasonable and appropriate notice, to pay (or to have paid under this title or title XIX on the resident's behalf) an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with this title and title XIX; or

"(vi) the facility ceases to operate.

In each of the cases described in clauses (i) through (v), the basis for the transfer or discharge must be documented in the resident's clinical record. In the cases described in clauses (i) and (ii), the documentation must be made by the resident's physician, and in the cases described in clauses (iii) and (iv) the documentation must be made by a physician.

"(B) PRE-TRANSFER AND PRE-DISCHARGE NOTICE.—

"(i) IN GENERAL.—Before effecting a transfer or discharge of a resident, a skilled nursing facility must—

"(I) notify the resident (and, if known, a family member of the resident or legal representative) of the transfer or discharge and the reasons therefor,

"(II) record the reasons in the resident's clinical record (including any documentation required under subparagraph (A)), and

"(III) include in the notice the items described in clause (iii).

"(ii) TIMING OF NOTICE.—The notice under clause (i)(I) must be made at least 30 days in advance of the resident's transfer or discharge except—

"(I) in a case described in clause (iii) or (iv) of subparagraph (A);

"(II) in a case described in clause (ii) of subparagraph (A), where the resident's health improves sufficiently to allow a more immediate transfer or discharge;

"(III) in a case described in clause (i) of subparagraph (A), where a more immediate transfer or discharge is necessitated by the resident's urgent medical needs; or

"(IV) in a case where a resident has not resided in the facility for 30 days.

In the case of such exceptions, notice must be given as many days before the date of the transfer or discharge as is practicable.

"(iii) ITEMS INCLUDED IN NOTICE.—Each notice under clause (i) must include—

"(I) for transfers or discharges effected on or after October 1, 1990, notice of the resident's right to appeal the transfer or discharge under the State process established under subsection (e)(3); and

"(II) the name, mailing address, and telephone number of the State long-term care ombudsman

(established under section 307(a)(12) of the Older Americans Act of 1965).

"(C) ORIENTATION.—A skilled nursing facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

"(3) ACCESS AND VISITATION RIGHTS.—A skilled nursing facility must—

"(A) permit immediate access to any resident by any representative of the Secretary, by any representative of the State, by an ombudsman described in paragraph (2)(B)(iii)(II), or by the resident's individual physician;

"(B) permit immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives of the resident;

"(C) permit immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident;

"(D) permit reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time; and

"(E) permit representatives of the State ombudsman (described in paragraph (2)(B)(iii)(II)), with the permission of the resident (or the resident's legal representative) and consistent with State law, to examine a resident's clinical records.

"(4) EQUAL ACCESS TO QUALITY CARE.—A skilled nursing facility must establish and maintain identical policies and practices regarding transfer, discharge, and covered services under this title for all individuals regardless of source of payment.

"(5) ADMISSIONS POLICY.—

"(A) ADMISSIONS.—With respect to admissions practices, a skilled nursing facility must—

"(i)(I) not require individuals applying to reside or residing in the facility to waive their rights to benefits under this title or under a State plan under title XIX, (II) not require oral or written assurance that such individuals are not eligible for, or will not apply for, benefits under this title or such a State plan, and (III) prominently display in the facility and provide to such individuals written information about how to apply for and use such benefits and how to receive refunds for previous payments covered by such benefits; and

"(ii) not require a third party guarantee of payment to the facility as a condition of admission (or expedited admission) to, or continued stay in, the facility.

"(B) CONSTRUCTION.—

"(i) NO PREEMPTION OF STRICTER STANDARDS.—Subparagraph (A) shall not be construed as preventing States or political subdivisions therein from prohibiting, under State or local law, the discrimination against individuals who are entitled to medical assistance under this title with respect to admissions practices of skilled nursing facilities.

"(ii) CONTRACTS WITH LEGAL REPRESENTATIVES.—Subparagraph (A)(ii) shall not be construed as preventing a facility from requiring an individual, who has legal access to a resident's income or resources available to pay for care in the facility, to sign a contract (without incurring personal financial liability) to provide payment from the resident's income or resources for such care.

"(6) PROTECTION OF RESIDENT FUNDS.—

"(A) IN GENERAL.—The skilled nursing facility—

"(i) may not require residents to deposit their personal funds with the facility, and

"(ii) once the facility accepts the written authorization of the resident, must hold, safeguard, and account for such personal funds under a system established and maintained by the facility in accordance with this paragraph.

"(B) MANAGEMENT OF PERSONAL FUNDS.—Upon a facility's acceptance of written authorization of a resident under subparagraph (A)(ii), the facility must manage and account for the personal funds of the resident deposited with the facility as follows:

"(i) DEPOSIT.—The facility must deposit any amount of personal funds in excess of $50 with respect to a resident in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts and credits all interest earned on such separate account to such account. With respect to any other personal funds, the facility must maintain such funds in a non-interest bearing account or petty cash fund.

"(ii) ACCOUNTING AND RECORDS.—The facility must assure a full and complete separate accounting of each such resident's personal funds, maintain a written record of all financial transactions involving the personal funds of a resident deposited with the facility, and afford the resident (or a legal representative of the resident) reasonable access to such record.

"(iii) CONVEYANCE UPON DEATH.—Upon the death of a resident with such an account, the facility must convey promptly the resident's personal funds (and a final accounting of such funds) to the individual administering the resident's estate.

"(C) ASSURANCE OF FINANCIAL SECURITY.—The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the Secretary, to assure the security of all personal funds of residents deposited with the facility.

"(D) LIMITATION ON CHARGES TO PERSONAL FUNDS.—The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under this title or title XIX.

"(d) REQUIREMENTS RELATING TO ADMINISTRATION AND OTHER MATTERS.—

"(1) ADMINISTRATION.—

"(A) IN GENERAL.—A skilled nursing facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical mental, and psychosocial well-

being of each resident (consistent with requirements established under subsection (f)(5)).

"(B) REQUIRED NOTICES.—If a change occurs in—

"(i) the persons with an ownership or control interest (as defined in section 1124(a)(3)) in the facility,

"(ii) the persons who are officers, directors, agents, or managing employees (as defined in section 1126(b)) of the facility,

"(iii) the corporation, association, or other company responsible for the management of the facility, or

"(iv) the individual who is the administrator or director of nursing of the facility,

the skilled nursing facility must provide notice to the State agency responsible for the licensing of the facility, at the time of the change, of the change and of the identity of each new person, company, or individual described in the respective clause.

"(C) SKILLED NURSING FACILITY ADMINISTRATOR.—The administrator of a skilled nursing facility must meet standards established by the Secretary under subsection (f)(4).

"(2) LICENSING AND LIFE SAFETY CODE.—

"(A) LICENSING.—A skilled nursing facility must be licensed under applicable State and local law.

"(B) LIFE SAFETY CODE.—A skilled nursing facility must meet such provisions of such edition (as specified by the Secretary in regulation) of the Life Safety Code of the National Fire Protection Association as are applicable to nursing homes; except that—

"(i) the Secretary may waive, for such periods as he deems appropriate, specific provisions of such Code which if rigidly applied would result in unreasonable hardship upon a facility, but only if such waiver would not adversely affect the health and safety of residents or personnel, and

"(ii) the provisions of such Code shall not apply in any State if the Secretary finds that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects residents of and personnel in skilled nursing facilities.

"(3) SANITARY AND INFECTION CONTROL AND PHYSICAL ENVIRONMENT.—A skilled nursing facility must—

"(A) establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection, and

"(B) be designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents, personnel, and the general public.

"(4) MISCELLANEOUS.—

"(A) COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS AND PROFESSIONAL STANDARDS.—A skilled nursing facility must operate and provide services in compliance with all applicable Federal, State, and local laws and regulations (including the requirements of section [59a] 1124) and with accepted professional standards and principles which apply to professionals providing services in such a facility.

[59a] Copy read "sections".

"(B) OTHER.—A skilled nursing facility must meet such other requirements relating to the health, safety, and well-being of residents or relating to the physical facilities thereof as the Secretary may find necessary.

"(e) STATE REQUIREMENTS RELATING TO SKILLED NURSING FACILITY REQUIREMENTS.—The requirements, referred to in section 1864(d), with respect to a State are as follows:

"(1) SPECIFICATION AND REVIEW OF NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAMS AND OF NURSE AIDE COMPETENCY EVALUATION PROGRAMS.—The State must—

"(A) by not later than March 1, 1989, specify those training and competency evaluation programs, and those competency evaluation programs, that the State approves for purposes of subsection (b)(5) and that meet the requirements established under clause (i) or (ii) of subsection (f)(2)(A), and

"(B) by not later than March 1, 1990, provide for the review and reapproval of such programs, at a frequency and using a methodology consistent with the requirements established under subsection (f)(2)(A)(iii).

The failure of the Secretary to establish requirements under subsection (f)(2) shall not relieve any State of its responsibility under this paragraph.

"(2) NURSE AIDE REGISTRY.—

"(A) IN GENERAL.—By not later than March 1, 1989, the State shall establish and maintain a registry of all individuals who have satisfactorily completed a nurse aide training and competency evaluation program, or a nurse aide competency evaluation program, approved under paragraph (1) in the State.

"(B) INFORMATION IN REGISTRY.—The registry under subparagraph (A) shall provide (in accordance with regulations of the Secretary) for the inclusion of specific documented findings by a State under subsection (g)(1)(C) of resident neglect or abuse or misappropriation of resident property involving an individual listed in the registry, as well as any brief statement of the individual disputing the findings. In the case of inquiries to the registry concerning an individual listed in the registry, any information disclosed concerning such a finding shall also include disclosure of any such statement in the registry relating to the finding or a clear and accurate summary of such a statement.

"(3) STATE APPEALS PROCESS FOR TRANSFERS.—The State, for transfers from skilled nursing facilities effected on or after October 1, 1990, must provide for a fair mechanism for hearing appeals on transfers of residents of such facilities. Such mechanism must meet the guidelines established by the Secretary under subsection (f)(3); but the failure of the Secretary to establish such guidelines shall not relieve any State of its responsibility to provide for such a fair mechanism.

"(4) SKILLED NURSING FACILITY ADMINISTRATOR STANDARDS.—By not later than January 1, 1990, the State must have implemented and enforced the skilled nursing facility administrator standards developed under subsection (f)(4) respecting the qualification of administrators of skilled nursing facilities.

"(5) SPECIFICATION OF RESIDENT ASSESSMENT INSTRUMENT.—Effective July 1, 1989, the State shall specify the instrument to be used by nursing facilities in the State in complying with the requirement of subsection (b)(3)(A)(iii). Such instrument shall be—

"(A) one of the instruments designated under subsection (f)(6)(B), or

"(B) an instrument which the Secretary has approved as being consistent with the minimum data set of core elements, common definitions, and utilization guidelines specified by the Secretary under subsection (f)(6)(A).

"(f) RESPONSIBILITIES OF SECRETARY RELATING TO SKILLED NURSING FACILITY REQUIREMENTS.—

"(1) GENERAL RESPONSIBILITY.—It is the duty and responsibility of the Secretary to assure that requirements which govern the provision of care in skilled nursing facilities under this title, and the enforcement of such requirements, are adequate to protect the health, safety, welfare, and rights of residents and to promote the effective and efficient use of public moneys.

"(2) REQUIREMENTS FOR NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAMS AND FOR NURSE AIDE COMPETENCY EVALUATION PROGRAMS.—

"(A) IN GENERAL.—For purposes of subsections (b)(5) and (e)(1)(A), the Secretary shall establish, by not later than September 1, 1988—

"(i) requirements for the approval of nurse aide training and competency evaluation programs, including requirements relating to (I) the areas to be covered in such a program (including at least basic nursing skills, personal care skills, cognitive, behavioral and social care, basic restorative services, and residents' rights), content of the curriculum, (II) minimum hours of initial and ongoing training and retraining (including not less than 75 hours in the case of initial training), (III) qualifications of instructors, and (IV) procedures for determination of competency;

"(ii) requirements for the approval of nurse aide competency evaluation programs, including requirement relating to the areas to be covered in such a program, including at least basic nursing skills, personal care skills, cognitive, behavioral and social care, basic restorative services, residents' rights, and procedures for determination of competency; and

"(iii) requirements respecting the minimum frequency and methodology to be used by a State in reviewing such programs' compliance with the requirements for such programs.

"(B) APPROVAL OF CERTAIN PROGRAMS.—Such requirements—

"(i) may permit approval of programs offered by or in facilities, as well as outside facilities (including employee organizations), and of programs in effect on the date of the enactment of this section;

"(ii) shall permit a State to find that an individual who has completed (before July 1, 1989) a nurse aide training and competency evaluation program shall be deemed to have completed such a program approved

under subsection (b)(5) if the State determines that, at the time the program was offered, the program met the requirements for approval under such paragraph; and

"(iii) shall prohibit approval of such a program—

"(I) offered by or in a skilled nursing facility which has been determined to be out of compliance with the requirements of subsection (b), (c), or (d), within the previous 2 years, or

"(II) offered by or in a skilled nursing facility unless the State makes the determination, upon an individual's completion of the program, that the individual is competent to provide nursing and nursing-related services in skilled nursing facilities.

A State may not delegate its responsibility under clause (iii)(II) to the skilled nursing facility.

"(3) FEDERAL GUIDELINES FOR STATE APPEALS PROCESS FOR TRANSFERS.—For purposes of subsections (c)(2)(B)(iii)(I) and (e)(3), by not later than October 1, 1989, the Secretary shall establish guidelines for minimum standards which State appeals processes under subsection (e)(3) must meet to provide a fair mechanism for hearing appeals on transfers of residents from skilled nursing facilities.

"(4) SECRETARIAL STANDARDS FOR QUALIFICATION OF ADMINISTRATORS.—For purposes of subsections (d)(1)(C) and (e)(4), the Secretary shall develop, by not later than March 1, 1989, standards to be applied in assuring the qualifications of administrators of skilled nursing facilities.

"(5) CRITERIA FOR ADMINISTRATION.—The Secretary shall establish criteria for assessing a skilled nursing facility's compliance with the requirement of subsection (d)(1) with respect to—

"(A) its governing body and management,

"(B) agreements with hospitals regarding transfers of residents to and from the hospitals and to and from other skilled nursing facilities,

"(C) disaster preparedness,

"(D) direction of medical care by a physician,

"(E) laboratory and radiological services,

"(F) clinical records, and

"(G) resident and advocate participation.

"(6) SPECIFICATION OF RESIDENT ASSESSMENT DATA SET AND INSTRUMENTS.—The Secretary shall—

"(A) not later than July 1, 1989, specify a minimum data set of core elements and common definitions for use by nursing facilities in conducting the assessments required under subsection (b)(3), and establish guidelines for utilization of the data set; and

"(B) by not later than October 1, 1990, designate one or more instruments which are consistent with the specification made under subparagraph (A) and which a State may specify under subsection (e)(5)(A) for use by nursing facilities in complying with the requirements of subsection (b)(3)(A)(iii).

"(7) LIST OF ITEMS AND SERVICES FURNISHED IN SKILLED NURSING FACILITIES NOT CHARGEABLE TO THE PERSONAL FUNDS OF A RESIDENT.—

"(A) REGULATIONS REQUIRED.—Pursuant to the requirement of section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977, the Secretary shall issue regulations, on or before the first day of the seventh month to begin after the date of enactment of this section, that define those costs which may be charged to the personal funds of patients in skilled nursing facilities who are individuals receiving benefits under this part and those costs which are to be included in the reasonable cost (or other payment amount) under this title for extended care services.

"(B) RULE IF FAILURE TO PUBLISH REGULATIONS.—If the Secretary does not issue the regulations under subparagraph (A) on or before the date required in such subparagraph, in the case of a resident of a skilled nursing facility who is eligible to receive benefits under this part, the costs which may not be charged to the personal funds of such resident (and for which payment is considered to be made under this title) shall not include, at a minimum, the costs for routine personal hygiene items and services furnished by the facility.".

(b) COSTS OF MEETING REQUIREMENTS.—

42 USC 1395x.

(1) UNDER REASONABLE COST.—Section 1861(v)(1)(E) of such Act (42 U.S.C. 1395s(v)(1)(E)) is amended by adding at the end the following new sentence: "Notwithstanding the previous sentence, such regulations with respect to skilled nursing facilities shall take into account (in a manner consistent with subparagraph (A) and based on patient-days of services furnished) the costs of such facilities complying with the requirements of subsections (b), (c), and (d) of section 1819 (including the costs of conducting nurse aide training and competency evaluation programs and competency evaluation programs).".

(2) ADJUSTMENT IN PROSPECTIVE PAYMENTS.—Section 1888(d) of such Act (42 U.S.C. 1395yy(d)) is amended by adding at the end the following new paragraph:

"(7) In computing the rates of payment to be made under this subsection, there shall be taken into account the costs described in the last sentence of section 1861(v)(1)(E) (relating to compliance with nursing facility requirements and of conducting nurse aide training and competency evaluation programs and competency evaluation programs).".

Reports.
42 USC 1395i-3 note.

(c) EVALUATION.—The Secretary of Health and Human Services shall evaluate, and report to Congress by not later than January 1, 1992, on the implementation of the resident assessment process for residents of skilled nursing facilities under the amendments made by this section.

(d) CONFORMING AMENDMENT.—Section 1861(a)(2) of the Social Security Act (42 U.S.C. 1395x(a)(2)) is amended by striking "skilled nursing facility" and inserting "facility described in section 1919(a)(2) or subsection (y)(1)".

SEC. 4202. SURVEY AND CERTIFICATION PROCESS.

(a) STATE REQUIREMENT FOR PROCESS.—Title XVIII of the Social Security Act is amended—

(1) in section 1864(d) (42 U.S.C. 1395aa(d)), as added by section 4201(a)(2) of this Act, by inserting before the period "and section 1819(g)", and

(2) in section 1819, as added by section 4201(a)(3) of this Act, by adding at the end the following new subsection:

"(g) SURVEY AND CERTIFICATION PROCESS.—

"(1) STATE AND FEDERAL RESPONSIBILITY.—

"(A) IN GENERAL.—Pursuant to an agreement under section 1864, each State shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of skilled nursing facilities (other than facilities of the State) with the requirements of subsections (b), (c), and (d). The Secretary shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of State skilled nursing facilities with the requirements of such subsections.

"(B) EDUCATIONAL PROGRAM.—Each State shall conduct periodic educational programs for the staff and residents (and their representatives) of skilled nursing facilities in order to present current regulations, procedures, and policies under this section.

"(C) INVESTIGATION OF ALLEGATIONS OF RESIDENT NEGLECT AND ABUSE AND MISAPPROPRIATION OF RESIDENT PROPERTY.—The State shall provide, through the agency responsible for surveys and certification of nursing facilities under this subsection, for a process for the receipt, review, and investigation of allegations of neglect and abuse and misappropriation of resident property by a nurse aide of a resident in a nursing facility. If the State finds, after notice to the nurse aide involved and a reasonable opportunity for a hearing for the nurse aide to rebut allegations, that a nurse aide whose name is contained in a nurse aide registry has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the nurse aide and the registry of such finding.

"(D) CONSTRUCTION.—The failure of the Secretary to establish standards under subsection (f) shall not relieve a State of its responsibility under this subsection.

"(2) SURVEYS.—

"(A) STANDARD SURVEY.—

"(i) IN GENERAL.—Each skilled nursing facility shall be subject to a standard survey, to be conducted without any prior notice to the facility. Any individual who notifies (or causes to be notified) a skilled nursing facility of the time or date on which such a survey is scheduled to be conducted is subject to a civil money penalty of not to exceed $2,000. The Secretary shall provide for imposition of civil money penalties under this clause in a manner similar to that for the imposition of civil money penalties under section 1128A. The Secretary shall review each State's procedures for the scheduling and conduct of standard surveys to assure that the State has taken all reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

"(ii) CONTENTS.—Each standard survey shall include, for a case-mix stratified sample of residents—

"(I) a survey of the quality of care furnished, as measured by indicators of medical, nursing, and rehabilitative care, dietary and nutrition services,

activities and social participation, and sanitation, infection control, and the physical environment,

"(II) written plans of care provided under subsection (b)(2) and an audit of the residents' assessments under subsection (b)(3) to determine the accuracy of such assessments and the adequacy of such plans of care, and

"(III) a review of compliance with residents' rights under subsection (c).

"(iii) FREQUENCY.—

"(I) IN GENERAL.—Each skilled nursing facility shall be subject to a standard survey not later than 15 months after the date of the previous standard survey conducted under this subparagraph. The Statewide average interval between standard surveys of skilled nursing facilities under this subsection shall not exceed 12 months.

"(II) SPECIAL SURVEYS.—If not otherwise conducted under subclause (I), a standard survey (or an abbreviated standard survey) may be conducted within 2 months of any change of ownership, administration, management of a skilled nursing facility, or the director of nursing in order to determine whether the change has resulted in any decline in the quality of care furnished in the facility.

"(B) EXTENDED SURVEYS.—

"(i) IN GENERAL.—Each skilled nursing facility which is found, under a standard survey, to have provided substandard quality of care shall be subject to an extended survey. Any other facility may, at the Secretary's or State's discretion, be subject to such an extended survey (or a partial extended survey).

"(ii) TIMING.—The extended survey shall be conducted immediately after the standard survey (or, if not practical, not later than 2 weeks after the date of completion of the standard survey).

"(iii) CONTENTS.—In such an extended survey, the survey team shall review and identify the policies and procedures which produced such substandard quality of care and shall determine whether the facility has complied with all the requirements described in subsections (b), (c), and (d). Such review shall include an expansion of the size of the sample of residents' assessments reviewed and a review of the staffing, of in-service training, and, if appropriate, of contracts with consultants.

Contracts.

"(iv) CONSTRUCTION.—Nothing in this paragraph shall be construed as requiring an extended or partial extended survey as a prerequisite to imposing a sanction against a facility under subsection (h) on the basis of findings in a standard survey.

"(C) SURVEY PROTOCOL.—Standard and extended surveys shall be conducted—

"(i) based upon a protocol which the Secretary has developed, tested, and validated by not later than October 1, 1990, and

"(ii) by individuals, of a survey team, who meet such minimum qualifications as the Secretary establishes by not later than such date.

The failure of the Secretary to develop, test, or validate such protocols or to establish such minimum qualifications shall not relieve any State of its responsibility (or the Secretary of the Secretary's responsibility) to conduct surveys under this subsection.

"(D) CONSISTENCY OF SURVEYS.—Each State and the Secretary shall implement programs to measure and reduce inconsistency in the application of survey results among surveyors.

"(E) SURVEY TEAMS.—

"(i) IN GENERAL.—Surveys under this subsection shall be conducted by a multidisciplinary team of professionals (including a registered professional nurse).

"(ii) PROHIBITION OF CONFLICTS OF INTEREST.—A State may not use as a member of a survey team under this subsection an individual who is serving (or has served within the previous 2 years) as a member of the staff of, or as a consultant to, the facility surveyed respecting compliance with the requirements of subsections (b), (c), and (d), or who has a personal or familial financial interest in the facility being surveyed.

"(iii) TRAINING.—The Secretary shall provide for the comprehensive training of State and Federal surveyors in the conduct of standard and extended surveys under this subsection, including the auditing of resident assessments and plans of care. No individual shall serve as a member of a survey team unless the individual has successfully completed a training and testing program in survey and certification techniques that has been approved by the Secretary.

"(3) VALIDATION SURVEYS.—

"(A) IN GENERAL.—The Secretary shall conduct onsite surveys of a representative sample of skilled nursing facilities in each State, within 2 months of the date of surveys conducted under paragraph (2) by the State, in a sufficient number to allow inferences about the adequacies of each State's surveys conducted under paragraph (2). In conducting such surveys, the Secretary shall use the same survey protocols as the State is required to use under paragraph (2). If the State has determined that an individual skilled nursing facility meets the requirements of subsections (b), (c), and (d), but the Secretary determines that the facility does not meet such requirements, the Secretary's determination as to the facility's noncompliance with such requirements is binding and supersedes that of the State survey.

"(B) SCOPE.—With respect to each State, the Secretary shall conduct surveys under subparagraph (A) each year with respect to at least 5 percent of the number of skilled nursing facilities surveyed by the State in the year, but in no case less than 5 skilled nursing facilities in the State.

"(C) REMEDIES FOR SUBSTANDARD PERFORMANCE.—If the Secretary finds, on the basis of such surveys, that a State has failed to perform surveys as required under paragraph

(2) or that a State's survey and certification performance otherwise is not adequate, the Secretary shall provide for an appropriate remedy, which may include the training of survey teams in the State.

[60] "(D) SPECIAL SURVEYS OF COMPLIANCE.—Where the Secretary has reason to question the compliance of a skilled nursing facility with any of the requirements of subsections (b), (c), and (d), the Secretary may conduct a survey of the facility and, on that basis, make independent and binding determinations concerning the extent to which the skilled nursing facility meets such requirements.

"(4) INVESTIGATION OF COMPLAINTS AND MONITORING COMPLIANCE.—Each State shall maintain procedures and adequate staff to—

"(A) investigate complaints of violations of requirements by skilled nursing facilities, and

"(B) monitor, on-site, on a regular, as needed basis, a skilled nursing facility's compliance with the requirements of subsections (b), (c), and (d), if—

"(i) the facility has been found not to be in compliance with such requirements and is in the process of correcting deficiencies to achieve such compliance;

"(ii) the facility was previously found not to be in compliance with such requirements, has corrected deficiencies to achieve such compliance, and verification of continued compliance is indicated; or

"(iii) the State has reason to question the compliance of the facility with such requirements.

A State may maintain and utilize a specialized team (including an attorney, an auditor, and appropriate health care professionals) for the purpose of identifying, surveying, gathering and preserving evidence, and carrying out appropriate enforcement actions against chronically substandard skilled nursing facilities.

"(5) DISCLOSURE OF RESULTS OF INSPECTIONS AND ACTIVITIES.—

"(A) PUBLIC INFORMATION.—Each State, and the Secretary, shall make available to the public—

"(i) information respecting all surveys and certifications made respecting skilled nursing facilities, including statements of deficiencies and plans of correction,

Reports.

"(ii) copies of cost reports of such facilities filed under this title or title XIX,

"(iii) copies of statements of ownership under section 1124, and

"(iv) information disclosed under section 1126.

"(B) NOTICE TO OMBUDSMAN.—Each State shall notify the State long-term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965) of the State's findings of noncompliance with any of the requirements of subsections (b), (c), and (d), with respect to a skilled nursing facility in the State.

"(C) NOTICE TO PHYSICIANS AND SKILLED NURSING FACILITY ADMINISTRATOR LICENSING BOARD.—If a State finds that a

[60] Copy read " "(C)".

skilled nursing facility has provided substandard quality of care, the State shall notify—

"(i) the attending physician of each resident with respect to which such finding is made, and

"(ii) the State board responsible for the licensing of the skilled nursing facility administrator at the facility.

"(D)[60a] ACCESS TO FRAUD CONTROL UNITS.—Each State shall provide its State medicaid fraud and abuse control unit (established under section 1903(q)) with access to all information of the State agency responsible for surveys and certifications under this subsection.".

(c) POSTING SURVEY RESULTS.—Section 1864(a) of such Act (42 U.S.C. 1395aa(a)) is amended by inserting, after "readily available form and place" in the fifth sentence, the following: ", and require (in the case of skilled nursing facilities) the posting in a place readily accessible to patients (and patients' representatives),".

SEC. 4203. ENFORCEMENT PROCESS.

(a) STATE REQUIREMENT.—Title XVIII of the Social Security Act is amended—

(1) in section 1864(d) (42 U.S.C. 1395aa(d)), as added by section 4201(a)(2) and as amended by section 4202(a)(1) of this Act, by inserting before the period at the end the following: "and the establishment of remedies under sections 1819(h)(2)(B) and 1819(h)(2)(C) (relating to establishment and application of remedies)"; and

(2) by adding at the end of section 1819 of such Act, as added by section 4201(a)(3) and as amended by section 4202(a)(2), the end the following new subsection:

"(h) ENFORCEMENT PROCESS.—

"(1) IN GENERAL.—If a State finds, on the basis of a standard, extended, or partial extended survey under subsection (g)(2) or otherwise, that a skilled nursing facility no longer meets a requirement of subsection (b), (c), or (d), and further finds that the facility's deficiencies—

"(A) immediately jeopardize the health or safety of its residents, the State shall recommend to the Secretary that the Secretary take such action as described in paragraph (2)(A)(i); or

"(B) do not immediately jeopardize the health or safety of its residents, the State may recommend to the Secretary that the Secretary take such action as described in paragraph (2)(A)(ii).

If a State finds that a skilled nursing facility meets the requirements of subsections (b), (c), and (d), but, as of a previous period, did not meet such requirements, the State may recommend a civil money penalty under paragraph (2)(B)(ii) for the days in which it finds that the facility was not in compliance with such requirements.

"(2) SECRETARIAL AUTHORITY.—

"(A) IN GENERAL.—With respect to any skilled nursing facility in a State, if the Secretary finds, or pursuant to a recommendation of the State under paragraph (1) finds, that a skilled nursing facility no longer meets a requirement of subsection (b), (c), (d), or (e), and further finds that the facility's deficiencies—

[60a] Copy read " "(C)".

"(i) immediately jeopardize the health or safety of its residents, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in subparagraph (B)(iii), or terminate the facility's participation under this title and may provide, in addition, for one or more of the other remedies described in subparagraph (B); or

"(ii) do not immediately jeopardize the health or safety of its residents, the Secretary may impose any of the remedies described in subparagraph (B).

Nothing in this subparagraph shall be construed as restricting the remedies available to the Secretary to remedy a skilled nursing facility's deficiencies. If the Secretary finds, or pursuant to the recommendation of the State under paragraph (1) finds, that a skilled nursing facility meets such requirements but, as of a previous period, did not meet such requirements, the Secretary may provide for a civil money penalty under subparagraph (B)(ii) for the days on which he finds that the facility was not in compliance with such requirements.

"(B) SPECIFIED REMEDIES.—The Secretary may take the following actions with respect to a finding that a facility has not met an applicable requirement:

"(i) DENIAL OF PAYMENT.—The Secretary may deny any further payments under this title with respect to all individuals entitled to benefits under this title in the facility or with respect to such individuals admitted to the facility after the effective date of the finding.

"(ii) AUTHORITY WITH RESPECT TO CIVIL MONEY PENALTIES.—The Secretary may impose a civil money penalty in an amount not to exceed $10,000 for each day of noncompliance and the Secretary shall impose and collect such a penalty in the same manner as civil money penalties are imposed and collected under section 1128A.

"(iii) APPOINTMENT OF TEMPORARY MANAGEMENT.—In consultation with the State, the Secretary may appoint temporary management to oversee the operation of the facility and to assure the health and safety of the facility's residents, where there is a need for temporary management while—

"(I) there is an orderly closure of the facility, or

"(II) improvements are made in order to bring the facility into compliance with all the requirements of subsections (b), (c), and (d).

The temporary management under this clause shall not be terminated under subclause (II) until the Secretary has determined that the facility has the management capability to ensure continued compliance with all the requirements of subsections (b), (c), and (d).

The Secretary shall specify criteria, as to when and how each of such remedies is to be applied, the amounts of any fines, and the severity of each of these remedies, to be used in the imposition of such remedies. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the remedies and shall provide for the imposition of incrementally more

severe fines for repeated or uncorrected deficiencies. In addition, the Secretary may provide for other specified remedies, such as directed plans of correction.

"(C) CONTINUATION OF PAYMENTS PENDING REMEDIATION.—The Secretary may continue payments, over a period of not longer than 6 months, under this title with respect to a skilled nursing facility not in compliance with a requirement of subsection (b), (c), or (d), if—

"(i) the State survey agency finds that it is more appropriate to take alternative action to assure compliance of the facility with the requirements than to terminate the certification of the facility,

"(ii) the State has submitted a plan and timetable for corrective action to the Secretary for approval and the Secretary approves the plan of corrective action, and

"(iii) the facility agrees to repay to the Federal Government payments received under this subparagraph if the corrective action is not taken in accordance with the approved plan and timetable.

The Secretary shall establish guidelines for approval of corrective actions requested by States under this subparagraph.

"(D) ASSURING PROMPT COMPLIANCE.—If a skilled nursing facility has not complied with any of the requirements of subsections (b), (c), and (d), within 3 months after the date the facility is found to be out of compliance with such requirements, the Secretary shall impose the remedy described in subparagraph (B)(i) for all individuals who are admitted to the facility after such date.

"(E) REPEATED NONCOMPLIANCE.—In the case of a skilled nursing facility which, on 3 consecutive standard surveys conducted under subsection (g)(2), has been found to have provided substandard quality of care, the Secretary shall (regardless of what other remedies are provided)—

"(i) impose the remedy described in subparagraph (B)(i), and

"(ii) monitor the facility under subsection (g)(4)(B), until the facility has demonstrated, to the satisfaction of the Secretary, that it is in compliance with the requirements of subsections (b), (c), and (d), and that it will remain in compliance with such requirements.

"(3) EFFECTIVE PERIOD OF DENIAL OF PAYMENT.—A finding to deny payment under this subsection shall terminate when the Secretary finds that the facility is in substantial compliance with all the requirements of subsections (b), (c), and (d).

"(4) IMMEDIATE TERMINATION OF PARTICIPATION FOR FACILITY WHERE SECRETARY FINDS NONCOMPLIANCE AND IMMEDIATE JEOPARDY.—If the Secretary finds that a skilled nursing facility has not met a requirement of subsection (b), (c), or (d), and finds that the failure immediately jeopardizes the health or safety of its residents, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in paragraph (2)(B)(iii), or the Secretary shall terminate the facility's participation under this title. If the facility's participation under this title is terminated, the State shall provide for the safe and orderly transfer of the residents eligible

under this title consistent with the requirements of subsection (c)(2).

"(5) CONSTRUCTION.—The remedies provided under this subsection are in addition to those otherwise available under State or Federal law and shall not be construed as limiting such other remedies, including any remedy available to an individual at common law. The remedies described in clauses (i), (iii), and (iv) of paragraph (2)(A) may be imposed during the pendency of any hearing.

"(6) SHARING OF INFORMATION.—Notwithstanding any other provision of law, all information concerning skilled nursing facilities required by this section to be filed with the Secretary or a State agency shall be made available to Federal or State employees for purposes consistent with the effective administration of programs established under this title and title XIX, including investigations by State medicaid fraud control units.".

42 USC 1395i-3 note.

SEC. 4204. EFFECTIVE DATES.

(a) NEW REQUIREMENTS AND SURVEY AND CERTIFICATION PROCESS.—Except as otherwise specifically provided in section 1819 of the Social Security Act, the amendments made by this part shall apply to extended care services furnished on or after October 1, 1990, without regard to whether regulations to implement such amendments are promulgated by such date.

(b) WAIVER OF PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this part and implementing the amendments made by this part.

42 USC 1395i-3 note.

SEC. 4205. ANNUAL REPORT.

The Secretary of Health and Human Services shall report to the Congress annually on the extent to which skilled nursing facilities are complying with the requirements of subsections (b), (c), and (d) of section 1819 of the Social Security Act (as added by the amendments made by this part) and the number and type of enforcement actions taken by States and the Secretary under section 1819(h) of such Act (as added by section 4203 of this Act).

SEC. 4206. CONSTRUCTION.

42 USC 1395i-3.

Section 1819 of the Social Security Act is amended by adding at the end the following new subsection:

"(i) CONSTRUCTION.—Where requirements or obligations under this section are identical to those provided under section 1919 of this Act, the fulfillment of those requirements or obligations under section 1919 shall be considered to be the fulfillment of the corresponding requirements or obligations under this section.".

PART 2—MEDICAID PROGRAM

SEC. 4211. REQUIREMENTS FOR NURSING FACILITIES.

(a) SPECIFICATION OF FACILITY REQUIREMENTS.—Title XIX of the Social Security Act is amended—

42 USC 1396s.

(1) by redesignating section 1922 as section 1923,

42 USC 1396r, 1396r-3.

(2) by redesignating section 1919 as section 1922 and by transferring and inserting such section after section 1921, and

(3) by inserting after section 1918 the following new section:

"REQUIREMENTS FOR NURSING FACILITIES

"SEC. 1919. (a) NURSING FACILITY DEFINED.—In this title, the term 'nursing facility' means an institution (or a distinct part of an institution) which— 42 USC 1396r.

"(1) is primarily engaged in providing to residents—

"(A) skilled nursing care and related services for residents who require medical or nursing care,

"(B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons, or

"(C) on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities,

and is not primarily for the care and treatment of mental diseases;

"(2) has in effect a transfer agreement (meeting the requirements of section 1861(l)) with one or more hospitals having agreements in effect under section 1866; and

"(3) meets the requirements for a nursing facility described in subsections (b), (c), and (d) of this section.

Such term also includes any facility which is located in a State on an Indian reservation and is certified by the Secretary as meeting the requirements of paragraph (1) and subsections (b), (c), and (d).

"(b) REQUIREMENTS RELATING TO PROVISION OF SERVICES.—

"(1) QUALITY OF LIFE.—

"(A) IN GENERAL.—A nursing facility must care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident.

"(B) QUALITY ASSESSMENT AND ASSURANCE.—A nursing facility must maintain a quality assessment and assurance committee, consisting of the director of nursing services, a physician designated by the facility, and at least 3 other members of the facility's staff, which (i) meets at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary and (ii) develops and implements appropriate plans of action to correct identified quality deficiencies.

"(2) SCOPE OF SERVICES AND ACTIVITIES UNDER PLAN OF CARE.—A nursing facility must provide services and activities to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident in accordance with a written plan of care which—

"(A) describes the medical, nursing, and psychosocial needs of the resident and how such needs will be met;

"(B) is initially prepared, with the participation to the extent practicable of the resident or the resident's family or legal representative, by a team which includes the resident's attending physician and a registered professional nurse with responsibility for the resident; and

"(C) is periodically reviewed and revised by such team after each assessment under paragraph (3).

"(3) RESIDENTS' ASSESSMENT.—

"(A) REQUIREMENT.—A nursing facility must conduct a comprehensive, accurate, standardized, reproducible assess-

ment of each resident's functional capacity, which assessment—

"(i) describes the resident's capability to perform daily life functions and significant impairments in functional capacity;

"(ii) is based on a uniform minimum data set specified by the Secretary under subsection (f)(6)(A);

"(iii) in the case of a resident eligible for benefits under this title, uses an instrument which is specified by the State under subsection (e)(5); and

"(iv) in the case of a resident eligible for benefits under part A of title XVIII, includes the identification of medical problems.

"(B) CERTIFICATION.—

"(i) IN GENERAL.—Each such assessment must be conducted or coordinated (with the appropriate participation of health professionals) by a registered professional nurse who signs and certifies the completion of the assessment. Each individual who completes a portion of such an assessment shall sign and certify as to the accuracy of that portion of the assessment.

"(ii) PENALTY FOR FALSIFICATION.—

"(I) An individual who willfully and knowingly certifies under clause (i) a material and false statement in a resident assessment is subject to a civil money penalty of not more than $1,000 with respect to each assessment.

"(II) An individual who willfully and knowingly causes another individual to certify under clause (i) a material and false statement in a resident assessment is subject to a civil money penalty of not more than $5,000 with respect to each assessment.

"(III) The Secretary shall provide for imposition of civil money penalties under this clause in a manner similar to that for the imposition of civil money penalties under section 1128A.

"(iii) USE OF INDEPENDENT ASSESSORS.—If a State determines, under a survey under subsection (g) or otherwise, that there has been a knowing and willful certification of false assessments under this paragraph, the State may require (for a period specified by the State) that resident assessments under this paragraph be conducted and certified by individuals who are independent of the facility and who are approved by the State.

"(C) FREQUENCY.—

"(i) IN GENERAL.—Such an assessment must be conducted—

"(I) promptly upon (but no later than 4 days after the date of) admission for each individual admitted on or after October 1, 1990, and by not later than October 1, 1991, for each resident of the facility on that date;

"(II) promptly after a significant change in the resident's physical or mental condition; and

"(III) in no case less often than once every 12 months.

"(ii) RESIDENT REVIEW.—The nursing facility must examine each resident no less frequently than once every 3 months and, as appropriate, revise the resident's assessment to assure the continuing accuracy of the assessment.

"(D) USE.—The results of such an assessment shall be used in developing, reviewing, and revising the resident's plan of care under paragraph (2).

"(E) COORDINATION.—Such assessments shall be coordinated with any State-required preadmission screening program to the maximum extent practicable in order to avoid duplicative testing and effort.

"(F) REQUIREMENTS RELATING TO PREADMISSION SCREENING FOR MENTALLY ILL AND MENTALLY RETARDED INDIVIDUALS.—A nursing facility must not admit, on or after January 1, 1989, any new resident who—

"(i) is mentally ill (as defined in subsection (e)(7)(G)(i)) unless the State mental health authority has determined (based on an independent physical and mental evaluation performed by a person or entity other than the State mental health authority) prior to admission that, because of the physical and mental condition of the individual, the individual requires the level of services provided by a nursing facility, and, if the individual requires such level of services, whether the individual requires active treatment for mental illness, or

"(ii) is mentally retarded (as defined in subsection (e)(7)(G)(ii)) unless the State mental retardation or developmental disability authority has determined prior to admission that, because of the physical and mental condition of the individual, the individual requires the level of services provided by a nursing facility, and, if the individual requires such level of services, whether the individual requires active treatment for mental retardation.

"(4) PROVISION OF SERVICES AND ACTIVITIES.—

"(A) IN GENERAL.—To the extent needed to fulfill all plans of care described in paragraph (2), a nursing facility must provide (or arrange for the provision of)—

"(i) nursing and related services and specialized rehabilitative services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

"(ii) medically-related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

"(iii) pharmaceutical services (including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of each resident;

"(iv) dietary services that assure that the meals meet the daily nutritional and special dietary needs of each resident;

"(v) an on-going program, directed by a qualified professional, of activities designed to meet the interests and the physical, mental, and psychosocial well-being of each resident; and

"(vi) routine dental services (to the extent covered under the State plan) and emergency dental services to meet the needs of each resident.

The services provided or arranged by the facility must meet professional standards of quality.

"(B) QUALIFIED PERSONS PROVIDING SERVICES.—Services described in clauses (i), (ii), (iii), (iv), and (vi) of subparagraph (A) must be provided by qualified persons in accordance with each resident's written plan of care.

"(C) REQUIRED NURSING CARE; FACILITY WAIVERS.—

"(i) GENERAL REQUIREMENTS.—With respect to nursing facility services provided on or after October 1, 1990, a nursing facility—

"(I) except as provided in clause (ii), must provide 24-hour licensed nursing services which are sufficient to meet the nursing needs of its residents, and

"(II) except as provided in clause (ii), must use the services of a registered nurse for at least 8 consecutive hours a day, 7 days a week.

"(ii) FACILITY WAIVERS.—

"(i) WAIVER BY STATE.—A State may waive the requirement of subclause (I) or (II) of clause (i) with respect to a facility if—

"(I) the facility demonstrates to the satisfaction of the State that the facility has been unable, despite diligent efforts (including offering wages at the community prevailing rate for nursing facilities), to recruit appropriate personnel,

"(II) the State determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility, and

"(III) the State finds that, for any such periods in which licensed nursing services are not available, a registered nurse or a physician is obligated to respond immediately to telephone calls from the facility.

A waiver under this clause shall be subject to annual review and to the review of the Secretary and subject to clause (ii) shall be accepted by the Secretary for purposes of this title to the same extent as is the State's certification of the facility. In granting or renewing a waiver, a State may require the facility to employ other qualified, licensed personnel.

"(ii) ASSUMPTION OF WAIVER AUTHORITY BY SECRETARY.—If the Secretary determines that a State has shown a clear pattern and practice of allowing waivers in the absence of diligent efforts by facilities to meet the staffing requirements, the Secretary shall assume and excercise the authority of the State to grant waivers.

"(5) REQUIRED TRAINING OF NURSE AIDES.—

"(A) IN GENERAL.—A nursing facility must not use (on a full-time, temporary, per diem, or other basis) any individual, who is not a licensed health professional (as defined in subparagraph (E)), as a nurse aide in the facility on or after

January 1, 1990, for more than 4 months unless the individual—

"(i) has completed a training and competency evaluation program, or a competency evaluation program, approved by the State under subsection (e)(1)(A), and

"(ii) is competent to provide such services.

"(B) OFFERING COMPETENCY EVALUATION PROGRAMS FOR CURRENT EMPLOYEES.—A nursing facility must provide, for individuals used as a nurse aide by the facility as of July 1, 1989, for a competency evaluation program approved by the State under subsection (e)(1) and such preparation as may be necessary for the individual to complete such a program by January 1, 1990.

"(C) COMPETENCY.—The nursing facility must not permit an individual, other than in a training and competency evaluation program approved by the State, to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competency and must not use such an individual as a nurse aide unless the facility has inquired of the State registry established under subsection (e)(2)(A) as to information in the registry concerning the individual.

"(D) RE-TRAINING REQUIRED.—For purposes of subparagraph (A), if, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual performed nursing or nursing-related services for monetary compensation, such individual shall complete a new training and competency evaluation program.

"(E) REGULAR IN-SERVICE EDUCATION.—The nursing facility must provide such regular performance review and regular in-service education as assures that individuals used as nurse aides are competent to perform services as nurse aides, including training for individuals providing nursing and nursing-related services to residents with cognitive impairments.

"(F) NURSE AIDE DEFINED.—In this paragraph, the term 'nurse aide' means any individual providing nursing or nursing-related services to residents in a nursing facility, but does not include an individual—

"(i) who is a licensed health professional (as defined in subparagraph (G)), or

"(ii) who volunteers to provide such services without monetary compensation.

"(G) LICENSED HEALTH PROFESSIONAL DEFINED.—In this paragraph, the term 'licensed health professional' means a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, registered professional nurse, licensed practical nurse, or licensed or certified social worker.

"(6) PHYSICIAN SUPERVISION AND CLINICAL RECORDS.—A nursing facility must—

"(A) require that the health care of every resident be provided under the supervision of a physician;

"(B) provide for having a physician available to furnish necessary medical care in case of emergency; and

"(C) maintain clinical records on all residents, which records include the plans of care (described in paragraph (2)) and the residents' assessments (described in paragraph (3)), as well as the results of any pre-admission screening conducted under subsection (e)(7).

"(7) REQUIRED SOCIAL SERVICES.—In the case of a nursing facility with more than 120 beds, the facility must have at least one social worker (with at least a bachelor's degree in social work or similar professional qualifications) employed full-time to provide or assure the provision of social services.

"(c) REQUIREMENTS RELATING TO RESIDENTS' RIGHTS.—

"(1) GENERAL RIGHTS.—

"(A) SPECIFIED RIGHTS.—A nursing facility must protect and promote the rights of each resident, including each of the following rights:

"(i) FREE CHOICE.—The right to choose a personal attending physician, to be fully informed in advance about care and treatment, to be fully informed in advance of any changes in care or treatment that may affect the resident's well-being, and (except with respect to a resident adjudged incompetent) to participate in planning care and treatment or changes in care and treatment.

"(ii) FREE FROM RESTRAINTS.—The right to be free from physical or mental abuse, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms. Restraints may only be imposed—

"(I) to ensure the physical safety of the resident or other residents, and

"(II) only upon the written order of a physician that specifies the duration and circumstances under which the restraints are to be used (except in emergency circumstances specified by the Secretary) until such an order could reasonably be obtained.

"(iii) PRIVACY.—The right to privacy with regard to accommodations, medical treatment, written and telephonic communications, visits, and meetings of family and of resident groups.

"(iv) CONFIDENTIALITY.—The right to confidentiality of personal and clinical records.

"(v) ACCOMMODATION OF NEEDS.—The right—

"(I) to reside and receive services with reasonable accommodations of individual needs and preferences, except where the health or safety of the individual or other residents would be endangered, and

"(II) to receive notice before the room or roommate of the resident in the facility is changed.

"(vi) GRIEVANCES.—The right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances and the right to prompt efforts by the facility to resolve grievances the resident may

have, including those with respect to the behavior of other residents.

"(vii) PARTICIPATION IN RESIDENT AND FAMILY GROUPS.—The right of the resident to organize and participate in resident groups in the facility and the right of the resident's family to meet in the facility with the families of other residents in the facility.

[61] "(viii) PARTICIPATION IN OTHER ACTIVITIES.—The right of the resident to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

[62] "(ix) EXAMINATION OF SURVEY RESULTS.—The right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the Secretary or a State with respect to the facility and any plan of correction in effect with respect to the facility.

[63] "(x) OTHER RIGHTS.—Any other right established by the Secretary.

Clause (iii) shall not be construed as requiring the provision of a private room.

"(B) NOTICE OF RIGHTS.—A nursing facility must—

"(i) inform each resident, orally and in writing at the time of admission to the facility, of the resident's legal rights during the stay at the facility;

"(ii) make available to each resident, upon reasonable request, a written statement of such rights (which statement is updated upon changes in such rights);

"(iii) inform each resident who is entitled to medical assistance under this title—

"(I) at the time of admission to the facility or, if later, at the time the resident becomes eligible for such assistance, of the items and services (including those specified under section 1902(a)(28)(B)) that are included in nursing facility services under the State plan and for which the resident may not be charged (except as permitted in section 1916), and of those other items and services that the facility offers and for which the resident may be charged and the amount of the charges for such items and services, and

"(II) of changes in the items and services described in subclause (I) and of changes in the charges imposed for items and services described in that subclause; and

"(iv) inform each other resident, in writing before or at the time of admission and periodically during the resident's stay, of services available in the facility and of related charges for such services, including any charges for services not covered under title XVIII or by the facility's basic per diem charge.

The written description of legal rights under this subparagraph shall include a description of the protection of personal funds under paragraph (6) and a statement that a

[61] Copy read " "(ix)".
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resident may file a complaint with a State survey and certification agency respecting resident abuse and neglect and misappropriation of resident property in the facility.

"(C) RIGHTS OF INCOMPETENT RESIDENTS.—In the case of a resident adjudged incompetent under the laws of a State, the rights of the resident under this title shall devolve upon, and, to the extent judged necessary by a court of competent jurisdiction, be exercised by, the person appointed under State law to act on the resident's behalf.

"(D) USE OF PSYCHOPHARMACOLOGIC DRUGS.—Psychopharmacologic drugs may be administered only on the orders of a physician and only as part of a plan (included in the written plan of care described in paragraph (2)) designed to eliminate or modify the symptoms for which the drugs are prescribed and only if, at least annually an independent, external consultant reviews the appropriateness of the drug plan of each resident receiving such drugs.

"(2) TRANSFER AND DISCHARGE RIGHTS.—

"(A) IN GENERAL.—A nursing facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless—

"(i) the transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the facility;

"(ii) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

"(iii) the safety of individuals in the facility is endangered;

"(iv) the health of individuals in the facility would otherwise be endangered;

"(v) the resident has failed, after reasonable and appropriate notice, to pay (or to have paid under this title or title XVIII on the resident's behalf) an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with this title and title XVIII; or

"(vi) the facility ceases to operate.

In each [64] of the cases described in clauses (i) through (iv), the basis for the transfer or discharge must be documented in the resident's clinical record. In the cases described in clauses (i) and (ii), the documentation must be made by the resident's physician, and in the case described in clause (iv) the documentation must be made by a physician. For purposes of clause (v), in the case of a resident who becomes eligible for assistance under this title after admission to the facility, only charges which may be imposed under this title shall be considered to be allowable.

"(B) PRE-TRANSFER AND PRE-DISCHARGE NOTICE.—

"(i) IN GENERAL.—Before effecting a transfer or discharge of a resident, a nursing facility must—

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"(I) notify the resident (and, if known, an immediate family member of the resident or legal representative) of the transfer or discharge and the reasons therefor,

"(II) record the reasons in the resident's clinical record (including any documentation required under subparagraph (A)), and

"(III) include in the notice the items described in clause (iii).

"(ii) TIMING OF NOTICE.—The notice under clause (i)(I) must be made at least 30 days in advance of the resident's transfer or discharge except—

"(I) in a case described in clause (iii) or (iv) of subparagraph (A);

"(II) in a case described in clause (ii) of subparagraph (A), where the resident's health improves sufficiently to allow a more immediate transfer or discharge;

"(III) in a case described in clause (i) of subparagraph (A), where a more immediate transfer or discharge is necessitated by the resident's urgent medical needs; or

"(IV) in a case where a resident has not resided in the facility for 30 days.

In the case of such exceptions, notice must be given as many days before the date of the transfer or discharge as is practicable.

"(iii) ITEMS INCLUDED IN NOTICE.—Each notice under clause (i) must include—

"(I) for transfers or discharges effected on or after October 1, 1989, notice of the resident's right to appeal the transfer or discharge under the State process established under subsection (e)(3);

"(II) the name, mailing address, and telephone number of the State long-term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965);

"(III) in the case of residents with developmental disabilities, the mailing address and telephone number of the agency responsibile for the protection and advocacy system for developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act; and

"(IV) in the case of mentally ill residents (as defined in subsection (e)(7)(G)(i)), the mailing address and telephone number of the agency responsible for the protection and advocacy system for mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

"(C) ORIENTATION.—A nursing facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

"(D) NOTICE ON BED-HOLD POLICY AND READMISSION.—

"(i) NOTICE BEFORE TRANSFER.—Before a resident of a nursing facility is transferred for hospitalization or

therapeutic leave, a nursing facility must provide written information to the resident and an immediate family member or legal representative concerning—

"(I) the provisions of the State plan under this title regarding the period (if any) during which the resident will be permitted under the State plan to return and resume residence in the facility, and

"(II) the policies of the facility regarding such a period, which policies must be consistent with clause (iii).

"(ii) NOTICE UPON TRANSFER.—At the time of transfer of a resident to a hospital or for therapeutic leave, a nursing facility must provide written notice to the resident and an immediate family member or legal representative of the duration of any period described in clause (i).

"(iii) PERMITTING RESIDENT TO RETURN.—A nursing facility must establish and follow a written policy under which a resident—

"(I) who is eligible for medical assistance for nursing facility services under a State plan,

"(II) who is transferred from the facility for hospitalization or therapeutic leave, and

"(III) whose hospitalization or therapeutic leave exceeds a period paid for under the State plan for the holding of a bed in the facility for the resident,

will be permitted to be readmitted to the facility immediately upon the first availability of a bed in a semiprivate room in the facility if, at the time of readmission, the resident requires the services provided by the facility.

"(3) ACCESS AND VISITATION RIGHTS.—A nursing facility must—

"(A) permit immediate access to any resident by any representative of the Secretary, by any representative of the State, by an ombudsman or agency described in subclause (II), (III), or (IV) of paragraph (2)(B)(iii), or by the resident's individual physician;

"(B) permit immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives of the resident;

"(C) permit immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident;

"(D) permit reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time; and

"(E) permit representatives of the State ombudsman (described in paragraph (2)(B)(iii)(II)), with the permission of the resident (or the resident's legal representative) and consistent with State law, to examine a resident's clinical records.

"(4) EQUAL ACCESS TO QUALITY CARE.—

"(A) IN GENERAL.—A nursing facility must establish and maintain identical policies and practices regarding trans-

fer, discharge, and the provision of services required under the State plan for all individuals regardless of source of payment.

"(B) CONSTRUCTION.—

"(i) NOTHING PROHIBITING ANY CHARGES FOR NON-MEDICAID PATIENTS.—Subparagraph (A) shall not be construed as prohibiting a nursing facility from charging any amount for services furnished, consistent with the notice in paragraph (1)(B) describing such charges.

"(ii) NO ADDITIONAL SERVICES REQUIRED.—Subparagraph (A) shall not be construed as requiring a State to offer additional services on behalf of a resident than are otherwise provided under the State plan.

"(5) ADMISSIONS POLICY.—

"(A) ADMISSIONS.—With respect to admissions practices, a nursing facility must—

"(i)(I) not require individuals applying to reside or residing in the facility to waive their rights to benefits under this title or title XVIII, (II) not require oral or written assurance that such individuals are not eligible for, or will not apply for, benefits under this title or title XVIII, and (III) prominently display in the facility written information, and provide to such individuals oral and written information, about how to apply for and use such benefits and how to receive refunds for previous payments covered by such benefits;

"(ii) not require a third party guarantee of payment to the facility as a condition of admission (or expedited admission) to, or continued stay in, the facility; and

"(iii) in the case of an individual who is entitled to medical assistance for nursing facility services, not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the State plan under this title, any gift, money, donation, or other consideration as a precondition of admitting (or expediting the admission of) the individual to the facility or as a requirement for the individual's continued stay in the facility.

"(B) CONSTRUCTION.—

"(i) NO PREEMPTION OF STRICTER STANDARDS.—Subparagraph (A) shall not be construed as preventing States or political subdivisions therein from prohibiting, under State or local law, the discrimination against individuals who are entitled to medical assistance under the State plan with respect to admissions practices of nursing facilities.

"(ii) CONTRACTS WITH LEGAL REPRESENTATIVES.—Subparagraph (A)(ii) shall not be construed as preventing a facility from requiring an individual, who has legal access to a resident's income or resources available to pay for care in the facility, to sign a contract (without incurring personal financial liability) to provide payment from the resident's income or resources for such care.

"(iii) CHARGES FOR ADDITIONAL SERVICES REQUESTED.—Subparagraph (A)(iii) shall not be construed as preventing a facility from charging a resident, eligible for

medical assistance under the State plan, for items or services the resident has requested and received and that are not specified in the State plan as included in the term 'nursing facility services'.

"(iv) BONA FIDE CONTRIBUTIONS.—Subparagraph (A)(iii) shall not be construed as prohibiting a nursing facility from soliciting, accepting, or receiving a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the resident (or potential resident), but only to the extent that such contribution is not a condition of admission, expediting admission, or continued stay in the facility.

"(6) PROTECTION OF RESIDENT FUNDS.—

"(A) IN GENERAL.—The nursing facility—

"(i) may not require residents to deposit their personal funds with the facility, and

"(ii) once the facility accepts the written authorization of the resident, must hold, safeguard, and account for such personal funds under a system established and maintained by the facility in accordance with this paragraph.

"(B) MANAGEMENT OF PERSONAL FUNDS.—Upon a facility's acceptance of written authorization of a resident under subparagraph (A)(ii), the facility must manage and account for the personal funds of the resident deposited with the facility as follows:

"(i) DEPOSIT.—The facility must deposit any amount of personal funds in excess of $50 with respect to a resident in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts and credits all interest earned on such separate account to such account. With respect to any other personal funds, the facility must maintain such funds in a non-interest bearing account or petty cash fund.

"(ii) ACCOUNTING AND RECORDS.—The facility must assure a full and complete separate accounting of each such resident's personal funds, maintain a written record of all financial transactions involving the personal funds of a resident deposited with the facility, and afford the resident (or a legal representative of the resident) reasonable access to such record.

"(iii) NOTICE OF CERTAIN BALANCES.—The facility must notify each resident receiving medical assistance under the State plan under title XIX when the amount in the resident's account reaches $200 less than the dollar amount determined under section 1611(a)(3)(B) and the fact that if the amount in the account (in addition to the value of the resident's other nonexempt resources) reaches the amount determined under such section the resident may lose eligibility for such medical assistance or for benefits under title XVI.

"(iv) CONVEYANCE UPON DEATH.—Upon the death of a resident with such an account, the facility must convey promptly the resident's personal funds (and a final accounting of such funds) to the individual administering the resident's estate.

"(C) ASSURANCE OF FINANCIAL SECURITY.—The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the Secretary, to assure the security of all personal funds of residents deposited with the facility.

"(D) LIMITATION ON CHARGES TO PERSONAL FUNDS.—The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under this title or title XVIII.

"(d) REQUIREMENTS RELATING TO ADMINISTRATION AND OTHER MATTERS.—

"(1) ADMINISTRATION.—

"(A) IN GENERAL.—A nursing facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident (consistent with requirements established under subsection (f)(5)).

"(B) REQUIRED NOTICES.—If a change occurs in—

"(i) the persons with an ownership or control interest (as defined in section 1124(a)(3)) in the facility,

"(ii) the persons who are officers, directors, agents, or managing employees (as defined in section 1126(b)) of the facility,

"(iii) the corporation, association, or other company responsible for the management of the facility, or

"(iv) the individual who is the administrator or director of nursing of the facility,

the nursing facility must provide notice to the State agency responsible for the licensing of the facility, at the time of the change, of the change and of the identity of each new person, company, or individual described in the respective clause.

"(C) NURSING FACILITY ADMINISTRATOR.—The administrator of a nursing facility must meet standards established by the Secretary under subsection (f)(4).

"(2) LICENSING AND LIFE SAFETY CODE.—

"(A) LICENSING.—A nursing facility must be licensed under applicable State and local law.

"(B) LIFE SAFETY CODE.—A nursing facility must meet such provisions of such edition (as specified by the Secretary in regulation) of the Life Safety Code of the National Fire Protection Association as are applicable to nursing homes; except that—

"(i) the Secretary may waive, for such periods as he deems appropriate, specific provisions of such Code which if rigidly applied would result in unreasonable hardship upon a facility, but only if such waiver would not adversely affect the health and safety of residents or personnel, and

"(ii) the provisions of such Code shall not apply in any State if the Secretary finds that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects residents of and personnel in nursing facilities.

"(3) SANITARY AND INFECTION CONTROL AND PHYSICAL ENVIRONMENT.—A nursing facility must—

"(A) establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection, and

"(B) be designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents, personnel, and the general public.

"(4) MISCELLANEOUS.—

"(A) COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS AND PROFESSIONAL STANDARDS.—A nursing facility must operate and provide services in compliance with all applicable Federal, State, and local laws and regulations (including the requirements of section 1124 and with accepted professional standards and principles which apply to professionals providing services in such a facility.

"(B) OTHER.—A nursing facility must meet such other requirements relating to the health and safety of residents or relating to the physical facilities thereof as the Secretary may find necessary.".

(c) STATE REQUIREMENTS RELATING TO NURSING FACILITY REQUIREMENTS.—Section 1919 of such Act is further amended by adding at the end the following new subsection:

42 USC 1396r.

"(e) STATE REQUIREMENTS RELATING TO NURSING FACILITY REQUIREMENTS.—As a condition of approval of [65] its plan under this title, a State must provide for the following:

"(1) SPECIFICATION AND REVIEW OF NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAMS AND OF NURSE AIDE COMPETENCY EVALUATION PROGRAMS.—The State must—

"(A) by not later than September 1, 1988, specify those training and competency evaluation programs, and those competency evaluation programs, that the State approves for purposes of subsection (b)(5) and that meet the requirements established under clause (i) or (ii) of subsection (f)(2)(A), and

"(B) by not later than September 1, 1990, provide for the review and reapproval of such programs, at a frequency and using a methodology consistent with the requirements established under subsection (f)(2)(A)(iii).

The failure of the Secretary to establish requirements under subsection (f)(2) shall not relieve any State of its responsibility under this paragraph.

"(2) NURSE AIDE REGISTRY.—

"(A) IN GENERAL.—By not later than January 1, 1989, the State shall establish and maintain a registry of all individuals who have satisfactorily completed a nurse aide training and competency evaluation program, or a nurse aide competency evaluation program, approved under paragraph (1) in the State.

"(B) INFORMATION IN REGISTRY.—The registry under subparagraph (A) shall provide (in accordance with regulations of the Secretary) for the inclusion of specific documented findings by a State under subsection (g)(1)(C) of resident neglect or abuse or misappropriation of resident

[65] Copy read "approval its".

property involving an individual listed in the registry, as well as any brief statement of the individual disputing the findings. In the case of inquiries to the registry concerning an individual listed in the registry, any information disclosed concerning such a finding shall also include disclosure of any such statement in the registry relating to the finding or a clear and accurate summary of such a statement.

"(3) STATE APPEALS PROCESS FOR TRANSFERS.—The State, for transfers from nursing facilities effected on or after October 1, 1989, must provide for a fair mechanism, meeting the guidelines established under subsection (f)(3), for hearing appeals on transfers of residents of such facilities; but the failure of the Secretary to establish such guidelines under such subsection shall not relieve any State of its responsibility under this paragraph.

"(4) NURSING FACILITY ADMINISTRATOR STANDARDS.—By not later than July 1, 1989, the State must have implemented and enforced the nursing facility administrator standards developed under subsection (f)(4) respecting the qualification of administrators of nursing facilities.

"(5) SPECIFICATION OF RESIDENT ASSESSMENT INSTRUMENT.—Effective July 1, 1990, the State shall specify the instrument to be used by nursing facilities in the State in complying with the requirement of subsection (b)(3)(A)(iii). Such instrument shall be—

"(A) one of the instruments designated under subsection (f)(6)(B), or

"(B) an instrument which the Secretary has approved as being consistent with the minimum data set of core elements, common definitions, and utilization guidelines specified by the Secretary under subsection (f)(6)(A).

"(6) NOTICE OF MEDICAID RIGHTS.—Each State, as a condition of approval of its plan under this title, effective April 1, 1988, must develop (and periodically update) a written notice of the rights and obligations of residents of nursing facilities (and spouses of such residents) under this title.

"(7) STATE REQUIREMENTS FOR PREADMISSION SCREENING AND RESIDENT REVIEW.—

"(A) PREADMISSION SCREENING.—Effective January 1, 1989, the State must have in effect a preadmission screening program, for making determinations (using any criteria developed under subsection (f)(8)) described in subsection (b)(3)(F) for mentally ill and mentally retarded individuals (as defined in subparagraph (G)) who are admitted to nursing facilities on or after January 1, 1989. The failure of the Secretary to develop minimum criteria under subsection (f)(8) shall not relieve any State of its responsibility to have a preadmission screening program under this subparagraph or to perform resident reviews under subparagraph (B).

"(B) STATE REQUIREMENT FOR ANNUAL RESIDENT REVIEW.—

"(i) FOR MENTALLY ILL RESIDENTS.—As of April 1, 1990, in the case of each resident of a nursing facility who is mentally ill, the State mental health authority must review and determine (using any criteria developed under subsection (f)(8) and based on an independent physical and mental evaluation performed bv a

person or entity other than the State mental health authority)—

"(I) whether or not the resident, because of the resident's physical and mental condition, requires the level of services provided by a nursing facility or requires the level of services of an inpatient psychiatric hospital for individuals under age 21 (as described in section 1905(h)) or of an institution for mental diseases providing medical assistance to individuals 65 years of age or older; and

"(II) whether or not the resident requires active treatment for mental illness.

"(ii) FOR MENTALLY RETARDED RESIDENTS.—As of April 1, 1990, in the case of each resident of a nursing facility who is mentally retarded, the State mental retardation or developmental disability authority must review and determine (using any criteria developed under subsection (f)(8))—

"(I) whether or not the resident, because of the resident's physical and mental condition, requires the level of services provided by a nursing facility or requires the level of services of an intermediate care facility described under section 1905(d); and

"(II) whether or not the resident requires active treatment for mental retardation.

"(iii) FREQUENCY OF REVIEWS.—

"(I) ANNUAL.—Except as provided in subclauses (II) and (III), the reviews and determinations under clauses (i) and (ii) must be conducted with respect to each mentally ill or mentally retarded resident not less often than annually.

"(II) PREADMISSION REVIEW CASES.—In the case of a resident subject to a preadmission review under subsection (b)(3)(F), the review and determination under clause (i) or (ii) need not be done until the resident has resided in the nursing facility for 1 year.

"(III) INITIAL REVIEW.—The reviews and determinations under clauses (i) and (ii) must first be conducted (for each resident not subject to preadmission review under subsection (b)(3)(F)) by not later than April 1, 1990.

"(C) RESPONSE TO PREADMISSION SCREENING AND RESIDENT REVIEW.—As of April 1, 1990, the State must meet the following requirements:

"(i) LONG-TERM RESIDENTS NOT REQUIRING NURSING FACILITY SERVICES, BUT REQUIRING ACTIVE TREATMENT.—In the case of a resident who is determined, under subparagraph (B), not to require the level of services provided by a nursing facility, but to require active treatment for mental illness or mental retardation, and who has continuously resided in a nursing facility for at least 30 months before the date of the determination, the State must, in consultation with the resident's family or legal representative and care-givers—

"(I) inform the resident of the institutional and noninstitutional alternatives covered under the State plan for the resident,

"(II) offer the resident the choice of remaining in the facility or of receiving covered services in an alternative appropriate institutional or noninstitutional setting,

"(III) clarify the effect on eligibility for services under the State plan if the resident chooses to leave the facility (including its effect on readmission to the facility), and

"(IV) regardless of the resident's choice, provide for (or arrange for the provision of) such active treatment for the mental illness or mental retardation.

A State shall not be denied payment under this title for nursing facility services for a resident described in this clause because the resident does not require the level of services provided by such a facility, if the resident chooses to remain in such a facility.

"(ii) OTHER RESIDENTS NOT REQUIRING NURSING FACILITY SERVICES, BUT REQUIRING ACTIVE TREATMENT.—In the case of a resident who is determined, under subparagraph (B), not to require the level of services provided by a nursing facility, but to require active treatment for mental illness or mental retardation, and who has not continuously resided in a nursing facility for at least 30 months before the date of the determination, the State must, in consultation with the resident's family or legal representative and care-givers—

"(I) arrange for the safe and orderly discharge of the resident from the facility, consistent with the requirements of subsection (c)(2),

"(II) prepare and orient the resident for such discharge, and

"(III) provide for (or arrange for the provision of) such active treatment for the mental illness or mental retardation.

"(iii) RESIDENTS NOT REQUIRING NURSING FACILITY SERVICES AND NOT REQUIRING ACTIVE TREATMENT.—In the case of a resident who is determined, under subparagraph (B), not to require the level of services provided by a nursing facility and not to require active treatment for mental illness or mental retardation, the State must—

"(I) arrange for the safe and orderly discharge of the resident from the facility, consistent with the requirements of subsection (c)(2), and

"(II) prepare and orient the resident for such discharge.

"(D) DENIAL OF PAYMENT WHERE FAILURE TO CONDUCT PREADMISSION SCREENING.—No payment may be made under section 1903(a) with respect to nursing facility services furnished to an individual for whom a determination is required under subsection (b)(3)(F) or subparagraph (B) but for whom the determination is not made.

Contracts.

"(E) PERMITTING ALTERNATIVE DISPOSITION PLANS.—With respect to residents of a nursing facility who are mentally retarded or mentally ill and who are determined under subparagraph (B) not to require the level of services of such a facility, but who require active treatment for mental illness or mental retardation, a State and the nursing facility shall be considered to be in compliance with the requirement of this paragraph if, before October 1, 1988, the State and the Secretary have entered into an agreement relating to the disposition of such residents of the facility and the State is in compliance with such agreement. Such an agreement may provide for the disposition of the residents after the date specified in subparagraph (C).

"(F) APPEALS PROCEDURES.—Each State, as a condition of approval of its plan under this title, effective January 1, 1989, must have in effect an appeals process for individuals adversely affected by determinations under subparagraph (A) or (B).

"(G) DEFINITIONS.—In this paragraph and in subsection (b)(3)(F):

"(i) An individual is considered to be 'mentally ill' if the individual has a primary or secondary diagnosis of mental disorder (as defined in the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition) and does not have a primary diagnosis of dementia (including Alzheimer's disease or a related disorder).

"(ii) An individual is considered to be 'mentally retarded' if the individual is mentally retarded or a person with a related condition (as described in section 1905(d)).

"(iii) The term 'active treatment' has the meaning given such term by the Secretary in regulations, but does not include, in the case of a resident of a nursing facility, services within the scope of services which the facility must provide or arrange for its residents under subsection (b)(4).

"(f) RESPONSIBILITIES OF SECRETARY RELATING TO NURSING FACILITY REQUIREMENTS.—

"(1) GENERAL RESPONSIBILITY.—It is the duty and responsibility of the Secretary to assure that requirements which govern the provision of care in nursing facilities under State plans approved under this title, and the enforcement of such requirements, are adequate to protect the health, safety, welfare, and rights of residents and to promote the effective and efficient use of public moneys.

"(2) REQUIREMENTS FOR NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAMS AND FOR NURSE AIDE COMPETENCY EVALUATION PROGRAMS.—

"(A) IN GENERAL.—For purposes of subsections (b)(5) and (e)(1)(A), the Secretary shall establish, by not later than July 1, 1988—

"(i) requirements for the approval of nurse aide training and competency evaluation programs, including requirements relating to (I) the areas to be covered in such a program (including at least basic nursing skills, personal care skills, cognitive, behavioral and social care, basic restorative services, and residents'

rights), content of the curriculum, (II) minimum hours of initial and ongoing training and retraining (including not less than 75 hours in the case of initial training), (III) qualifications of instructors, and (IV) procedures for determination of competency;

"(ii) requirements for the approval of nurse aide competency evaluation programs, including requirement relating to the areas to be covered in such a program, including at least basic nursing skills, personal care skills, cognitive, behavioral and social care, basic restorative services, and residents' rights, and procedures for determination of competency;

"(iii) requirements respecting the minimum frequency and methodology to be used by a State in reviewing such programs' compliance with the requirements for such programs.

"(B) APPROVAL OF CERTAIN PROGRAMS.—Such requirements—

"(i) may permit approval of programs offered by or in facilities, as well as outside facilities (including employee organizations), and of programs in effect on the date of the enactment of this section;

"(ii) shall permit a State to find that an individual who has completed (before January 1, 1989) a nurse aide training and competency evaluation program shall be deemed to have completed such a program approved under subsection (b)(5) if the State determines that, at the time the program was offered, the program met the requirements for approval under such paragraph; and

"(iii) shall prohibit approval of such a program—

"(I) offered by or in a nursing facility which has been determined to be out of compliance with the requirements of subsection (b), (c), or (d), within the previous 2 years, or

"(II) offered by or in a nursing facility unless the State makes the determination, upon an individual's completion of the program, that the individual is competent to provide nursing and nursing-related services in nursing facilities.

A State may not delegate its responsibility under clause (iii)(II) to the nursing facility.

"(3) FEDERAL GUIDELINES FOR STATE APPEALS PROCESS FOR TRANSFERS.—For purposes of subsections (c)(2)(B)(iii) and (e)(3), by not later than October 1, 1988, the Secretary shall establish guidelines for minimum standards which State appeals processes under subsection (e)(3) must meet to provide a fair mechanism for hearing appeals on transfers of residents from nursing facilities.

"(4) SECRETARIAL STANDARDS QUALIFICATION OF ADMINISTRATORS.—For purposes of subsections (d)(1)(C) and (e)(4), the Secretary shall develop, by not later than March 1, 1988, standards to be applied in assuring the qualifications of administrators of nursing facilities.

"(5) CRITERIA FOR ADMINISTRATION.—The Secretary shall establish criteria for assessing a nursing facility's compliance with the requirement of subsection (d)(1) with respect to—

"(A) its governing body and management,

"(B) agreements with hospitals regarding transfers of residents to and from the hospitals and to and from other nursing facilities,

"(C) disaster preparedness,

"(D) direction of medical care by a physician,

"(E) laboratory and radiological services,

"(F) clinical records, and

"(G) resident and advocate participation.

"(6) SPECIFICATION OF RESIDENT ASSESSMENT DATA SET AND INSTRUMENTS.—The Secretary shall—

"(A) not later than January 1, 1989, specify a minimum data set of core elements and common definitions for use by nursing facilities in conducting the assessments required under subsection (b)(3), and establish guidelines for utilization of the data set; and

"(B) by not later than April 1, 1990, designate one or more instruments which are consistent with the specification made under subparagraph (A) and which a State may specify under subsection (e)(5)(A) for use by nursing facilities in complying with the requirements of subsection (b)(3)(A)(iii).

"(7) LIST OF ITEMS AND SERVICES FURNISHED IN NURSING FACILITIES NOT CHARGEABLE TO THE PERSONAL FUNDS OF A RESIDENT.—

"(A) REGULATIONS REQUIRED.—Pursuant to the requirement of section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977, the Secretary shall issue regulations, on or before the first day of the seventh month to begin after the date of enactment of this section, that define those costs which may be charged to the personal funds of patients in nursing facilities who are individuals receiving medical assistance with respect to nursing facility services under this title and those costs which are to be included in the payment amount under this title for nursing facility services.

"(B) RULE IF FAILURE TO PUBLISH REGULATIONS.—If the Secretary does not issue the regulations under subparagraph (A) on or before the date required in that subparagraph, in the case of a resident of a nursing facility who is eligible to receive benefits for nursing facility services under this title, for purposes of section 1902(a)(28)(B), the Secretary shall be deemed to have promulgated regulations under this paragraph which provide that the costs which may not be charged to the personal funds of such resident (and for which payment is considered to be made under this title) do not include, at a minimum, the costs for routine personal hygiene items and services furnished by the facility.

"(8) FEDERAL MINIMUM CRITERIA AND MONITORING FOR PREADMISSION SCREENING AND RESIDENT REVIEW.—

"(A) MINIMUM CRITERIA.—The Secretary shall develop, by not later than October 1, 1988, minimum criteria for States to use in making determinations under subsections (b)(3)(F) and (e)(7)(B) and in permitting individuals adversely affected to appeal such determinations, and shall notify the States of such criteria.

"(B) MONITORING COMPLIANCE.—The Secretary shall review, in a sufficient number of cases to allow reasonable

inferences, each State's compliance with the requirements of subsection (e)(7)(C)(ii) (relating to discharge and placement for active treatment of certain residents).

"(9) [66] CRITERIA FOR MONITORING STATE WAIVERS.—The Secretary shall develop, by not later than October 1, 1988, criteria and procedures for monitoring State performances in granting waivers pursuant to subsection (b)(4)(C)(ii).".

(b) INCORPORATING REQUIREMENTS INTO STATE PLAN.—

(1) IN GENERAL.—Section 1902(a) of such Act (42 U.S.C. 1396a(a)) is amended—

(A) in paragraph (13)(A), by inserting "which, in the case of nursing facilities, take into account the costs of complying with subsections (b) (other than paragraph (3)(F) thereof), (c), and (d) of section 1919 and provide (in the case of a nursing facility with a waiver under section 1919(b)(4)(C)(ii)) for an appropriate reduction to take into account the lower costs (if any) of the facility for nursing care," after "State" the second place it appears; and

(B) by amending paragraph (28) to read as follows:

"(28) provide—

"(A) that any nursing facility receiving payments under such plan must satisfy all the requirements of subsections (b) through (d) of section 1919 as they apply to such facilities;

"(B) for including in 'nursing facility services' at least the items and services specified (or deemed to be specified) by the Secretary under section 1919(f)(7) and making available upon request a description of the items and services so included;

"(C) for procedures to make available to the public the data and methodology used in establishing payment rates for nursing facilities under this title; and

"(D) for compliance (by the date specified in the respective sections) with the requirements of—

"(i) section 1919(f) (relating to implementation of nursing facility requirements, including paragraph (6)(B), relating to specification of resident assessment instrument);

"(ii) section 1919(g) (relating to responsibility for survey and certification of nursing facilities); and

"(iii) sections 1919(h)(2)(B) and 1919(h)(2)(D) (relating to establishment and application of remedies);".

(2) STATE PLAN AMENDMENT REQUIRED.—A plan of a State under title XIX of the Social Security Act shall not be considered to have met the requirement of section 1902(a)(13)(A) of the Social Security Act (as amended by paragraph (1)(A) of this subsection), as of the first day of a Federal fiscal year (beginning on or after October 1, 1990), unless the State has submitted to the Secretary of Health and Human Services, as of April 1 before the fiscal year, an amendment to such State plan to provide for an appropriate adjustment in payment amounts for nursing facility services furnished during the Federal fiscal year. The Secretary shall, not later than September 30 before the fiscal year concerned, review each such plan amendment for

42 USC 1396a note.

[66] Copy read " "(8)".

compliance with such requirement and by such date shall approve or disapprove each such amendment. If the Secretary disapproves such an amendment, the State shall immediately submit a revised amendment which meets such requirement. The absence of approval of such a plan amendment does not relieve the State or any nursing facility of any obligation or requirement under title XIX of the Social Security Act (as amended by this Act).

Reports.
42 USC 1396r note.

(c) EVALUATION.—The Secretary of Health and Human Services shall evaluate, and report to Congress by not later than January 1, 1993, on the implementation of the resident assessment process for residents of nursing facilities under the amendments made by this section.

(d) FUNDING.—

(1) IN GENERAL.—Section 1903(a)(2) of such Act (42 U.S.C. 1396b(a)(2)) is amended—

(A) by inserting "(A)" after "(2)", and

(B) by adding at the end the following new subparagraphs:

"(B) notwithstanding paragraph (1) or subparagraph (A), with respect to amounts expended for nursing aide training and competency evaluation programs, and competency evaluation programs, described in section 1919(e)(1), regardless of whether the programs are provided in or outside nursing facilities or of the skill of the personnel involved in such programs, an amount equal to 50 percent of so much of the sums expended during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to such programs; plus

"(C) an amount equal to 75 percent of so much of the sums expended during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to preadmission screening and resident review activities conducted by the State under section 1919(e)(7); plus".

42 USC 1396b note.

(2) ENHANCED FUNDING FOR NURSE AIDE TRAINING.—For calendar quarters during fiscal years 1988 and 1989, with respect to payment under section 1903(a)(2)(B) of the Social Security Act to a State for additional amounts expended by the State under its plan approved under title XIX of such Act for nursing aide training and competency evaluation programs, and competency evaluation programs, described in section 1919(e)(1) of such title, any reference to "50 percent" is deemed a reference to the sum of the Federal medical assistance percentage (determined under section 1905(b) of such Act) plus 25 percentage points, but not to exceed 90 percent.

(e) REVISION OF PREVIOUS DEFINITIONS.—Section 1905 of such Act (42 U.S.C. 1396d) is amended—

(1) by amending subsection (c) to read as follows:

"(c) For definition of the term 'nursing facility', see section 1919(a).";

(2) in subsection (d)—

(A) by striking "intermediate care facility services" and inserting "intermediate care facility for the mentally retarded",

(B) by striking "may include services in a public" and inserting "means an",

(C) in paragraph (3), by inserting "in the case of a public institution," after "(3)";

(3) in subsection (f), by striking "skilled" each place it appears; and

(4) by striking subsection (i).

(f) MAKING COVERAGE OF NURSING FACILITY SERVICES MANDATORY FOR ADULTS.—Section 1905(a)(4)(A) of such Act (42 U.S.C. 1396d(a)(4)(A)) is amended by striking "skilled".

(g) ELIMINATION OF PAYMENT DIFFERENTIAL.—Section 1903 of such Act (42 U.S.C. 1396b) is amended—

(1) by striking subsection (h), and

(2) in subsection (a)(1), by striking ", (h), and" and inserting "and".

(h) CLARIFYING TERMINOLOGY.—(1) Section 1902(a)(10) of such Act (42 U.S.C. 1396a(a)(10)) is amended—

(A) in subparagraph (A)(ii)(VI), by striking "skilled" and by inserting "for the mentally retarded" after "intermediate care facility";

(B) in subparagraph (C)(iv), by striking "intermediate care facility services" and inserting "in an intermediate care facility"; and

(C) in subparagraph (D), by striking "skilled".

(2) Section 1902(a)(13) of such Act (42 U.S.C. 1396a(a)(13)) is amended—

(A) in subparagraph (A), by striking ", skilled nursing facility, and intermediate care facility services" and inserting "services, nursing facility services, and services in an intermediate care facility for the mentally retarded";[67]

(B) in subparagraph (A), by striking ", skilled nursing facility, and intermediate care facility and" and inserting "nursing facility, and intermediate care facility for the mentally retarded and";

(C) in subparagraph (C), by striking "skilled nursing facilities and intermediate care facilities" and inserting "nursing facilities"; and

(D) in subparagraph (D)—

(i) by striking "skilled nursing facility or intermediate care facility" and inserting "nursing facility", and

(ii) by striking "skilled nursing facility services or intermediate care facility services" and inserting "nursing facility services".

(3) Section 1902(a)(30)(B) of such Act (42 U.S.C. 1396a(a)(30)(B)) is amended by striking "skilled nursing facility, intermediate care facility," each place it appears and inserting "intermediate care facility for the mentally retarded,".

(4) Section 1902(e)(3)(B)(i) of such Act (42 U.S.C. 1396a(e)(3)(B)(i)) is amended by striking "skilled nursing facility, or intermediate care facility" and inserting "nursing facility, or intermediate care facility for the mentally retarded".

(5) Section 1902(e)(9) of such Act (42 U.S.C. 1396a(e)(9)) is amended—

(A) in subparagraph (A)(iii), by striking "skilled nursing facility, or intermediate care facility," and inserting "nursing facility, or intermediate care facility for the mentally retarded" and

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[67] Copy read "retarded",".

(B) in subparagraph (B), by striking "skilled nursing facilities, or intermediate care facilities" and inserting "nursing facilities, or intermediate care facilities for the mentally retarded".

(6) Section 1905(a) of such Act (42 U.S.C. 1396d(a)) is amended—

(A) in paragraph (5), by striking "skilled",

(B) in paragraph (14), by striking ", skilled nursing facility services, and intermediate care facility services" and inserting "and nursing facility services", and

(C) in paragraph (15), by striking "intermediate care facility services (other than such services" and inserting "services in an intermediate care facility for the mentally retarded (other than".

(7) Section 1128B of such Act (42 U.S.C. 1320a-7b) is amended—

(A) in subsection (c), by striking "intermediate care facility" and inserting "nursing facility, intermediate care facility for the mentally retarded", and

(B) in subsection (d)(2)(A), by striking "skilled nursing facility, or intermediate care facility" and inserting "nursing facility, or intermediate care facility for the mentally retarded".

(8) Section 1911 of such Act (42 U.S.C. 1396j) is amended by striking ", intermediate care facility, or skilled nursing facility" each place it appears and inserting "or nursing facility".

(9) Section 1913 of such Act (42 U.S.C. 1396l) is amended—

(A) in the heading, by striking "SKILLED NURSING AND INTERMEDIATE CARE SERVICES" and inserting "NURSING FACILITY SERVICES";

(B) in subsection (a)—

(i) by striking "skilled nursing facility services and intermediate care facility services" and inserting "nursing facility services", and

(ii) by inserting before the period at the end the following: "and which, with respect to the provision of such services, meets the requirements of subsections (b) through (d) of section 1919";

(C) in subsection (b)(1)—

(i) by striking "skilled nursing or intermediate care facility services" and inserting "nursing facility services", and

(ii) by striking "skilled nursing and intermediate care facilities" and inserting "nursing facilities"; and

(D) in subsection (b)(3), by striking "skilled nursing or intermediate care facility services" and inserting "nursing facility services".

(10) Section 1915(c) of such Act (42 U.S.C. 1396n(c)) is amended—

(A) in paragraph (1), by striking "skilled nursing facility or intermediate care facility" and inserting "nursing facility or intermediate care facility for the mentally retarded";

(B) in paragraph (2)(B)(i), by striking ", skilled nursing facility, or intermediate care facility services" and inserting "services, nursing facility services, or services in an intermediate care facility for the mentally retarded";

(C) in paragraph (2)(B), by striking "need" and all that follows up to the semicolon and inserting "need for inpatient hospital services, nursing facility services, or services in an intermediate care facility for the mentally retarded";

(D) in paragraph (2)(C), by striking "or skilled nursing facility or intermediate care facility" and inserting ", nursing facility, or intermediate care facility for the mentally retarded";

(E) in paragraph (2)(C), by striking "or skilled nursing facility or intermediate care facility services" and inserting ", nursing facility services, or services in an intermediate care facility for the mentally retarded";

(F) in paragraph (5), by striking "skilled nursing facility or intermediate care facility" and inserting "nursing facility or intermediate care facility for the mentally retarded"; and

(G) in paragraph (7), by striking "or in skilled nursing or intermediate care facilities" and inserting ", nursing facilities, or intermediate care facilities for the mentally retarded".

(11) Section 1916 of such Act (42 U.S.C. 1396m) is amended, in subsections (a)(2)(C) and (b)(2)(C), by striking "skilled nursing facility, intermediate care facility" and inserting "nursing facility, intermediate care facility for the mentally retarded". 42 USC 1396o.

(12) Section 1917 of such Act (42 U.S.C. 1396p), as amended by this title, is further amended—

(A) in subsections (a)(1)(B)(i) and (c)(2)(B)(i), by striking "skilled nursing facility, intermediate care facility" and inserting "nursing facility, intermediate care facility for the mentally retarded", and

(B) in subsection (c)(3)(A), by striking "skilled".

(i) UTILIZATION REVIEW.—Section 1903(i)(4) of such Act (42 U.S.C. 1396b(i)(4)) is amended by striking "or skilled nursing facility" each place it appears.

(j) TECHNICAL ASSISTANCE.—The Secretary of Health and Human Services shall, upon request by a State, furnish technical assistance with respect to the development and implementation of reimbursement methods for nursing facilities that take into account the case mix of residents in the different facilities. 42 USC 1396a note.

(k) REPORT ON STAFFING REQUIREMENTS.—The Secretary of Health and Human Services shall report to Congress, by not later than January 1, 1993, on the progress made in implementing the nursing facility staffing requirements of subparagraph (C) of section 1919(b)(4) of the Social Security Act (as amended by subsection (a) of this section), including the number and types of waivers approved under subparagraph (C)(ii) of such section and the number of facilities which have received waivers. 42 USC 1396r note.

(l) CONFORMING AMENDMENT.—Section 9516(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by striking "section 1919" and inserting "section 1922". 42 USC 1396r-3 note.

SEC. 4212. SURVEY AND CERTIFICATION PROCESS.

(a) IN GENERAL.—Section 1919 of the Social Security Act, as inserted by section 4211, is amended by adding at the end the following new subsection:

"(g) SURVEY AND CERTIFICATION PROCESS.—

"(1) STATE AND FEDERAL RESPONSIBILITY.—

"(A) IN GENERAL.—Under each State plan under this title, the State shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of nursing facilities (other than facilities of the State) with the requirements of subsections (b), (c), and (d). The Secretary shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of State nursing facilities with the requirements of such subsections.

"(B) EDUCATIONAL PROGRAM.—Each State shall conduct periodic educational programs for the staff and residents (and their representatives) of nursing facilities in order to present current regulations, procedures, and policies under this section.

"(C) INVESTIGATION OF ALLEGATIONS OF RESIDENT NEGLECT AND ABUSE AND MISAPPROPRIATION OF RESIDENT PROPERTY.—The State shall provide, through the agency responsible for surveys and certification of nursing facilities under this subsection, for a process for the receipt, review, and investigation of allegations of neglect and abuse and misappropriation of resident property by a nurse aide of a resident in a nursing facility. If the State finds, after notice to the nurse aide involved and a reasonable opportunity for a hearing for the nurse aide to rebut allegations, that a nurse aide whose name is contained in a nurse aide registry has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the nurse aide and the registry of such finding.

"(D) CONSTRUCTION.—The failure of the Secretary to establish standards under subsection (f) shall not relieve a State of its responsibility under this subsection.

"(2) SURVEYS.—

"(A) ANNUAL STANDARD SURVEY.—

"(i) IN GENERAL.—Each nursing facility shall be subject to a [68] standard survey, to be conducted without any prior notice to the facility. Any individual who notifies (or causes to be notified) a nursing facility of the time or date on which such a survey is scheduled to be conducted is subject to a civil money penalty of not to exceed $2,000. The Secretary shall provide for imposition of civil money penalties under this clause in a manner similar to that for the imposition of civil money penalties under section 1128A. The Secretary shall review each State's procedures for scheduling and conduct of standard surveys to assure that the State has taken all reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

"(ii) CONTENTS.—Each standard survey shall include, for a case-mix stratified sample of residents—

"(I) a survey of the quality of care furnished, as measured by indicators of medical, nursing, and rehabilitative care, dietary and nutrition services, activities and social participation, and sanitation, infection control, and the physical environment,

"(II) written plans of care provided under subsection (b)(2) and an audit of the residents' assessments under subsection (b)(3) to determine the accuracy of such assessments and the adequacy of such plans of care, and

"(III) a review of compliance with residents' rights under subsection (c).

"(iii) FREQUENCY.—

[68] Copy read "to an standard".

"(I) IN GENERAL.—Each nursing facility shall be subject to a standard survey not later than 15 months after the date of the previous standard survey conducted under this subparagraph. The statewide [69] average interval between standard surveys of a nursing facility shall not exceed 12 months.

"(II) SPECIAL SURVEYS.—If not otherwise conducted under subclause (I), a standard survey (or an abbreviated standard survey) may be conducted within 2 months of any change of ownership, administration, management of a nursing facility, or director of nursing in order to determine whether the change has resulted in any decline in the quality of care furnished in the facility.

"(B) EXTENDED SURVEYS.—

"(i) IN GENERAL.—Each nursing facility which is found, under a standard survey, to have provided substandard quality of care shall be subject to an extended survey. Any other facility may, at the Secretary's or State's discretion, be subject to such an extended survey (or a partial extended survey).

"(ii) TIMING.—The extended survey shall be conducted immediately after the standard survey (or, if not practical, not later than 2 weeks after the date of completion of the standard survey).

"(iii) CONTENTS.—In such an extended survey, the survey team shall review and identify the policies and procedures which produced such substandard quality of care and shall determine whether the facility has complied with all the requirements described in subsections (b), (c), and (d). Such review shall include an expansion of the size of the sample of residents' assessments reviewed and a review of the staffing, of in-service training, and, if appropriate, of contracts with consultants.

"(iv) CONSTRUCTION.—Nothing in this paragraph shall be construed as requiring an extended or partial extended survey as a prerequisite to imposing a sanction against a facility under subsection (h) on the basis of findings in a standard survey.

"(C) SURVEY PROTOCOL.—Standard and extended surveys shall be conducted—

"(i) based upon a protocol which the Secretary has developed, tested, and validated by not later than January 1, 1990, and

"(ii) by individuals, of a survey team, who meet such minimum qualifications as the Secretary establishes by not later than such date.

The failure of the Secretary to develop, test, or validate such protocols or to establish such minimum qualifications shall not relieve any State of its responsibility (or the Secretary of the Secretary's responsibility) to conduct surveys under this subsection.

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[69] Copy read "Statewide".

"(D) CONSISTENCY OF SURVEYS.—Each State shall implement programs to measure and reduce inconsistency in the application of survey results among surveyors.

"(E) SURVEY TEAMS.—

"(i) IN GENERAL.—Surveys under this subsection shall be conducted by a multidisciplinary team of professionals (including a registered professional nurse).

"(ii) PROHIBITION OF CONFLICTS OF INTEREST.—A State may not use as a member of a survey team under this subsection an individual who is serving (or has served within the previous 2 years) as a member of the staff of, or as a consultant to, the facility surveyed respecting compliance with the requirements of subsections (b), (c), and (d), or who has a personal or familial financial interest in the facility being surveyed.

"(iii) TRAINING.—The Secretary shall provide for the comprehensive training of State and Federal surveyors in the conduct of standard and extended surveys under this subsection, including the auditing of resident assessments and plans of care. No individual shall serve as a member of a survey team unless the individual has successfully completed a training and testing program in survey and certification techniques that has been approved by the Secretary.

"(3) VALIDATION SURVEYS.—

"(A) IN GENERAL.—The Secretary shall conduct onsite surveys of a representative sample of nursing facilities in each State, within 2 months of the date of surveys conducted under paragraph (2) by the State, in a sufficient number to allow inferences about the adequacies of each State's surveys conducted under paragraph (2). In conducting such surveys, the Secretary shall use the same survey protocols as the State is required to use under paragraph (2). If the State has determined that an individual nursing facility meets the requirements of subsections (b), (c), and (d), but the Secretary determines that the facility does not meet such requirements, the Secretary's determination as to the facility's noncompliance with such requirements is binding and supersedes that of the State survey.

"(B) SCOPE.—With respect to each State, the Secretary shall conduct surveys under subparagraph (A) each year with respect to at least 5 percent of the number of nursing facilities surveyed by the State in the year, but in no case less than 5 nursing facilities in the State.

"(C) REDUCTION IN ADMINISTRATIVE COSTS FOR SUBSTANDARD PERFORMANCE.—If the Secretary finds, on the basis of such surveys, that a State has failed to perform surveys as required under paragraph (2) or that a State's survey and certification performance otherwise is not adequate, the Secretary may provide for the training of survey teams in the State and shall provide for a reduction of the payment otherwise made to the State under section 1903(a)(2)(D) with respect to a quarter equal to 33 percent multiplied by a fraction, the denominator of which is equal to the total number of residents in nursing facilities surveyed by the Secretary that quarter and the numerator of which is equal to the total number of residents in nursing

facilities which were found pursuant to such surveys to be not in compliance with any of the requirements of subsections (b), (c), and (d). A State that is dissatisfied with the Secretary's findings under this subparagraph may obtain reconsideration and review of the findings under section 1116 in the same manner as a State may seek reconsideration and review under that section of the Secretary's determination under section 1116(a)(1).

"(C) SPECIAL SURVEYS OF COMPLIANCE.—Where the Secretary has reason to question the compliance of a nursing facility with any of the requirements of subsections (b), (c), and (d), the Secretary may conduct a survey of the facility and, on that basis, make independent and binding determinations concerning the extent to which the nursing facility meets such requirements.

"(4) INVESTIGATION OF COMPLAINTS AND MONITORING NURSING FACILITY COMPLIANCE.—Each State shall maintain procedures and adequate staff to—

"(A) investigate complaints of violations of requirements by nursing facilities, and

"(B) monitor, on-site, on a regular, as needed basis, a nursing facility's compliance with the requirements of subsections (b), (c), and (d), if—

"(i) the facility has been found not to be in compliance with such requirements and is in the process of correcting deficiencies to achieve such compliance;

"(ii) the facility was previously found not to be in compliance with such requirements, has corrected deficiencies to achieve such compliance, and verification of continued compliance is indicated; or

"(iii) the State has reason to question the compliance of the facility with such requirements.

A State may maintain and utilize a specialized team (including an attorney, an auditor, and appropriate health care professionals) for the purpose of identifying, surveying, gathering and preserving evidence, and carrying out appropriate enforcement actions against chronically substandard nursing facilities.

"(5) DISCLOSURE OF RESULTS OF INSPECTIONS AND ACTIVITIES.—

"(A) PUBLIC INFORMATION.—Each State, and the Secretary, shall make available to the public—

"(i) information respecting all surveys and certifications made respecting nursing facilities, including statements of deficiencies and plans of correction,

"(ii) copies of cost reports of such facilities filed under this title or under title XVIII,

"(iii) copies of statements of ownership under section 1124, and

"(iv) information disclosed under section 1126.

"(B) NOTICE TO OMBUDSMAN.— Each State shall notify the State long-term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965) of the State's findings of noncompliance with any of the requirements of subsections (b), (c), and (d), with respect to a nursing facility in the State.

"(C) NOTICE TO PHYSICIANS AND NURSING FACILITY ADMINISTRATOR LICENSING BOARD.—If a State finds that a

nursing facility has provided substandard quality of care, the State shall notify—

"(i) the attending physician of each resident with respect to which such finding is made, and

"(ii) any State board responsible for the licensing of the nursing facility administrator of the facility.

"(D) ACCESS TO FRAUD CONTROL UNITS.—Each State shall provide its State medicaid fraud and abuse control unit (established under section 1903(q)) with access to all information of the State agency responsible for surveys and certifications under this subsection.".

(b) POSTING SURVEY RESULTS.—Section 1864(a) of such Act (42 U.S.C. 1395aa(a)) is amended by inserting, after "readily available form and place" in the fifth sentence, the following: ", and require (in the case of skilled nursing facilities) the posting in a place readily accessible to patients (and patients' representatives),".

(c) INCREASING MATCHING PERCENTAGE FOR NURSING HOME SURVEY AND CERTIFICATION ACTIVITIES.—(1) Section 1903(a)(2) of such Act (42 U.S.C. 1396b(a)(2)), as amended by this title, is further amended by adding at the end the following new subparagraph:

"(D) for each calendar quarter during—

"(i) fiscal year 1991, an amount equal to 90 percent,

"(ii) fiscal year 1992, an amount equal to 85 percent,

"(iii) fiscal year 1993, an amount equal to 80 percent, and

"(iv) fiscal year 1994 and thereafter, an amount equal to 75 percent,

of so much of the sums expended during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to State activities under section 1919(g); plus".

(2) Section 1903(r) of such Act (42 U.S.C. 1396b(r)) is amended by striking "paragraphs (2)" each place it appears and inserting "paragraphs (2)(A)".

42 USC 1396b note.

(3) For purposes of section 1903(a) of the Social Security Act, proper expenses incurred by a State for medical review by independent professionals of the care provided to residents of nursing facilities who are entitled to medical assistance under title XIX of such Act shall be reimbursable as expenses necessary for the proper and efficient administration of the State plan under that title.

(d) REVISION OF PENALTY PROVISIONS.—(1) Section 1903(g) of such Act (42 U.S.C. 1396b(g)) is amended—

(A) in paragraph (1)—

(i) by striking "or intermediate care facility services" the first place it appears and inserting "or services in an intermediate care facility for the mentally retarded",

(ii) by striking ", skilled nursing facility services for 30 days,",

(iii) by striking ", skilled nursing facility services, or intermediate care facility services" and inserting "or services in an intermediate care facility for the mentally retarded",

(iv) by striking ", skilled nursing facilities, and intermediate care facilities" and inserting "and intermediate care facilities for the mentally retarded";

(B) in paragraph (4)(B), by striking ", skilled nursing facilities, and intermediate care facilities" and inserting "and intermediate care facilities for the mentally retarded";

(C) in paragraph (6)—

(i) by striking subparagraph (B),

(ii) in subparagraph (C), by striking "intermediate care facility services" and inserting "services in an intermediate care facility for the mentally retarded", and

(iii) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively; and

(D) by striking paragraph (7).

(2) Section 1902(a)(31) of such Act (42 U.S.C. 1396a(a)(31)) is amended—

(A) in the matter before subparagraph (A), by striking "skilled nursing facility services" and all that follows through "where" and inserting "services in an intermediate care facility for the mentally retarded (where", and

(B) in subparagraph (B), by striking "skilled nursing or intermediate care facility" and inserting "intermediate care facility for the mentally retarded".

(3) Section 1902(a)(33)(B) of such Act (42 U.S.C. 1396a(a)(33)(B)) is amended by inserting ", except as provided in section 1919(d)," after "(B) that".

(4) The amendments made by this subsection shall not apply to a State until such date (not earlier than October 1, 1990) as of which the Secretary determines that— Effective date. 42 USC 1396a note.

(A) the State has specified the resident assessment instrument under section 1919(e)(5) of the Social Security Act, and

(B) the State has begun conducting surveys under section 1919(g)(2) of such Act.

(e) MISCELLANEOUS CONFORMING AMENDMENTS.—(1) Section 1902(a)(44) of such Act (42 U.S.C. 1396a(a)(44)) is amended—

(A) in the matter before subparagraph (A), by striking "skilled nursing facility services, intermediate care facility services" and inserting "services in an intermediate care facility for the mentally retarded", and

(B) in subparagraph (A), by striking "that are intermediate care facility services in an institution for the mentally retarded" and inserting "that are services in an intermediate care facility for the mentally retarded".

(2) Section 1903(a)(7) of such Act (42 U.S.C. 1396b(a)(7)) is amended by inserting "subject to section 1919(g)(3)(B)," after "(7)".

(3) Section 1910 of such Act (42 U.S.C. 1396i) is amended—

(A) by striking "SKILLED NURSING FACILITIES AND" in the heading,

(B) by striking subsection (a), and

(C) by redesignating subsections (b) and (c) as subsections (a) and (b), respectively.

(4) Section 1866(c) of such Act (42 U.S.C. 1395cc(c)) is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

SEC. 4213. ENFORCEMENT PROCESS.

(a) IN GENERAL.—Section 1919 of the Social Security Act, as inserted by section 4201 and amended by section 4202, is further amended by adding at the end the following new subsection:

"(h) ENFORCEMENT PROCESS.—

"(1) IN GENERAL.—If a State finds, on the basis of a standard, extended, or partial extended survey under subsection (g)(2) or otherwise, that a nursing facility no longer meets a requirement

of subsection (b), (c), or (d), and further finds that the facility's deficiencies—

"(A) immediately jeopardize the health or safety of its residents, the State shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in paragraph (2)(A)(iii), or terminate the facility's participation under the State plan and may provide, in addition, for one or more of the other remedies described in paragraph (2); or

"(B) do not immediately jeopardize the health or safety of its residents, the State may—

"(i) terminate the facility's participation under the State plan,

"(ii) provide for one or more of the remedies described in paragraph (2), or

"(iii) do both.

Nothing in this paragraph shall be construed as restricting the remedies available to a State to remedy a nursing facility's deficiencies. If a State finds that a nursing facility meets the requirements of subsections (b), (c), and (d), but, as of a previous period, did not meet such requirements, the State may provide for a civil money penalty under paragraph (2)(A)(i) for the days in which it finds that the facility was not in compliance with such requirements.

Regulations.

"(2) SPECIFIED REMEDIES.—

"(A) LISTING.—Except as provided in subparagraph (B)(ii), each State shall establish by law (whether statute or regulation) at least the following remedies:

"(i) Denial of payment under the State plan with respect to any individual admitted to the nursing facility involved after such notice to the public and to the facility as may be provided for by the State.

"(ii) A civil money penalty assessed and collected, with interest, for each day in which the facility is or was out of compliance with a requirement of subsection (b), (c), or (d). Funds collected by a State as a result of imposition of such a penalty (or as a result of the imposition by the State of a civil money penalty for activities described in subsections (b)(3)(B)(ii)(I), (b)(3)(B)(ii)(II), or (g)(2)(A)(i)) shall be applied to the protection of the health or property of residents of nursing facilities that the State or the Secretary finds deficient, including payment for the costs of relocation of residents to other facilities, maintenance of operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

"(iii) The appointment of temporary management to oversee the operation of the facility and to assure the health and safety of the facility's residents, where there is a need for temporary management while—

"(I) there is an orderly closure of the facility, or

"(II) improvements are made in order to bring the facility into compliance with all the requirements of subsections (b), (c), and (d).

The temporary management under this clause shall not be terminated under subclause (II) until the State

has determined that the facility has the management capability to ensure continued compliance with all the requirements of subsections (b), (c), and (d).

"(iv) The authority, in the case of an emergency, to close the facility, to transfer residents in that facility to other facilities, or both.

The State also shall specify criteria, as to when and how each of such remedies is to be applied, the amounts of any fines, and the severity of each of these remedies, to be used in the imposition of such remedies. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the remedies and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. In addition, the State may provide for other specified remedies, such as directed plans of correction.

"(B) DEADLINE AND GUIDANCE.—(i) Except as provided in clause (ii), as a condition for approval of a State plan for calendar quarters beginning on or after October 1, 1989, each State shall establish the remedies described in clauses (i) through (iv) of subparagraph (A) by not later than October 1, 1989. The Secretary shall provide, through regulations or otherwise by not later than October 1, 1988, guidance to States in establishing such remedies; but the failure of the Secretary to provide such guidance shall not relieve a State of the responsibility for establishing such remedies. Regulations.

"(ii) A State may establish alternative remedies (other than termination of participation) other than those described in clauses (i) through (iv) of subparagraph (A), if the State demonstrates to the Secretary's satisfaction that the alternative remedies are as effective in deterring noncompliance and correcting deficiencies as those described in subparagraph (A).

"(C) ASSURING PROMPT COMPLIANCE.—If a nursing facility has not complied with any of the requirements of subsections (b), (c), and (d), within 3 months after the date the facility is found to be out of compliance with such requirements, the State shall impose the remedy described in subparagraph (A)(i) for all individuals who are admitted to the facility after such date.

"(D) REPEATED NONCOMPLIANCE.—In the case of a nursing facility which, on 3 consecutive standard surveys conducted under subsection (g)(2), has been found to have provided substandard quality of care, the State shall (regardless of what other remedies are provided)—

"(i) impose the remedy described in subparagraph (A)(i), and

"(ii) monitor the facility under subsection (g)(4)(B), until the facility has demonstrated, to the satisfaction of the State, that it is in compliance with the requirements of subsections (b), (c), and (d), and that it will remain in compliance with such requirements.

"(E) FUNDING.—The reasonable expenditures of a State to provide for temporary management and other expenses associated with implementing the remedies described in clauses (iii) and (iv) of subparagraph (A) shall be considered,

for purposes of section 1903(a)(7), to be necessary for the proper and efficient administration of the State plan.

"(F) INCENTIVES FOR HIGH QUALITY CARE.—In addition to the remedies specified in this paragraph, a State may establish a program to reward, through public recognition, incentive payments, or both, nursing facilities that provide the highest quality care to residents who are entitled to medical assistance under this title. For purposes of section 1903(a)(7), proper expenses incurred by a State in carrying out such a program shall be considered to be expenses necessary for the proper and efficient administration of the State plan under this title.

"(3) SECRETARIAL AUTHORITY.—

"(A) FOR STATE NURSING FACILITIES.—With respect to a State nursing facility, the Secretary shall have the authority and duties of a State under this subsection, including the authority to impose remedies described in clauses (i), (ii), and (iii) of paragraph (2)(A).

"(B) OTHER NURSING FACILITIES.—With respect to any other nursing facility in a State, if the Secretary finds that a nursing facility no longer meets a requirement of subsection (b), (c), (d), or (e), and further finds that the facility's deficiencies—

"(i) immediately jeopardize the health or safety of its residents, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in subparagraph (C)(iii), or terminate the facility's participation under the State plan and may provide, in addition, for one or more of the other remedies described in subparagraph (C); or

"(ii) do not immediately jeopardize the health or safety of its residents, the Secretary may impose any of the remedies described in subparagraph (C).

Nothing in this subparagraph shall be construed as restricting the remedies available to the Secretary to remedy a nursing facility's deficiencies. If the Secretary finds that a nursing facility meets such requirements but, as of a previous period, did not meet such requirements, the Secretary may provide for a civil money penalty under subparagraph (C)(ii) for the days on which he finds that the facility was not in compliance with such requirements.

"(C) SPECIFIED REMEDIES.—The Secretary may take the following actions with respect to a finding that a facility has not met an applicable requirement:

"(i) DENIAL OF PAYMENT.—The Secretary may deny any further payments to the State for medical assistance furnished by the facility to all individuals in the facility or to individuals admitted to the facility after the effective date of the finding.

"(ii) AUTHORITY WITH RESPECT TO CIVIL MONEY PENALTIES.—The Secretary may impose a civil money penalty in an amount not to exceed $10,000 for each day of noncompliance and the Secretary shall impose and collect such a penalty in the same manner as civil money penalties are imposed and collected under section 1128A.

"(iii) APPOINTMENT OF TEMPORARY MANAGEMENT.—In consultation with the State, the Secretary may appoint temporary management to oversee the operation of the facility and to assure the health and safety of the facility's residents, where there is a need for temporary management while—

"(I) there is an orderly closure of the facility, or

"(II) improvements are made in order to bring the facility into compliance with all the requirements of subsections (b), (c), and (d).

The temporary management under this clause shall not be terminated under subclause (II) until the Secretary has determined that the facility has the management capability to ensure continued compliance with all the requirements of subsections (b), (c), and (d).

The Secretary shall specify criteria, as to when and how each of such remedies is to be applied, the amounts of any fines, and the severity of each of these remedies, to be used in the imposition of such remedies. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the remedies and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. In addition, the Secretary may provide for other specified remedies, such as directed plans of correction.

"(D) CONTINUATION OF PAYMENTS PENDING REMEDIATION.—The Secretary may continue payments, over a period of not longer than 6 months, under this title with respect to a nursing facility not in compliance with a requirement of subsection (b), (c), or (d), if—

"(i) the State survey agency finds that it is more appropriate to take alternative action to assure compliance of the facility with the requirements than to terminate the certification of the facility,

"(ii) the State has submitted a plan and timetable for corrective action to the Secretary for approval and the Secretary approves the plan of corrective action, and

"(iii) the State agrees to repay to the Federal Government payments received under this subparagraph if the corrective action is not taken in accordance with the approved plan and timetable.

The Secretary shall establish guidelines for approval of corrective actions requested by States under this subparagraph.

"(4) EFFECTIVE PERIOD OF DENIAL OF PAYMENT.—A finding to deny payment under this subsection shall terminate when the State or Secretary (or both, as the case may be) finds that the facility is in substantial compliance with all the requirements of subsections (b), (c), and (d).

"(5) IMMEDIATE TERMINATION OF PARTICIPATION FOR FACILITY WHERE STATE OR SECRETARY FINDS NONCOMPLIANCE AND IMMEDIATE JEOPARDY.—If either the State or the Secretary finds that a nursing facility has not met a requirement of subsection (b), (c), or (d), and finds that the failure immediately jeopardizes the health or safety of its residents, the State and the Secretary shall notify the other of such finding, and the State or the Secretary, respectively, shall take immediate action to remove

the jeopardy and correct the deficiencies through the remedy specified in paragraph (2)(A)(iii) or (3)(C)(iii), or terminate the facility's participation under the State plan. If the facility's participation in the State plan is terminated by either the State or the Secretary, the State shall provide for the safe and orderly transfer of the residents eligible under the State plan consistent with the requirements of subsection (c)(2).

"(6) SPECIAL RULES WHERE STATE AND SECRETARY DO NOT AGREE ON FINDING OF NONCOMPLIANCE.—

"(A) STATE FINDING OF NONCOMPLIANCE AND NO SECRETARIAL FINDING OF NONCOMPLIANCE.—If the Secretary finds that a nursing facility has met all the requirements of subsections (b), (c), and (d), but a State finds that the facility has not met such requirements and the failure does not immediately jeopardize the health or safety of its residents, the State's findings shall control and the remedies imposed by the State shall be applied.

"(B) SECRETARIAL FINDING OF NONCOMPLIANCE AND NO STATE FINDING OF NONCOMPLIANCE.—If the Secretary finds that a nursing facility has not met all the requirements of subsections (b), (c), and (d), and that the failure does not immediately jeopardize the health or safety of its residents, but the State has not made such a finding, the Secretary—

"(i) may impose any remedies specified in paragraph (3)(C) with respect to the facility, and

"(ii) shall (pending any termination by the Secretary) permit continuation of payments in accordance with paragraph (3)(D).

"(7) SPECIAL RULES FOR TIMING OF TERMINATION OF PARTICIPATION WHERE REMEDIES OVERLAP.—If both the Secretary and the State find that a nursing facility has not met all the requirements of subsections (b), (c), and (d), and neither finds that the failure immediately jeopardizes the health or safety of its residents—

"(A)(i) if both find that the facility's participation under the State plan should be terminated, the State's timing of any termination shall control so long as the termination date does not occur later than 6 months after the date of the finding to terminate;

"(ii) if the Secretary, but not the State, finds that the facility's participation under the State plan should be terminated, the Secretary shall (pending any termination by the Secretary) permit continuation of payments in accordance with paragraph (3)(D); or

"(iii) if the State, but not the Secretary, finds that the facility's participation under the State plan should be terminated, the State's decision to terminate, and timing of such termination, shall control; and

"(B)(i) if the Secretary or the State, but not both, establishes one or more remedies which are additional or alternative to the remedy of terminating the facility's participation under the State plan, such additional or alternative remedies shall also be applied, or

"(ii) if both the Secretary and the State establish one or more remedies which are additional or alternative to the remedy of terminating the facility's participation under the

State plan, only the additional or alternative remedies of the Secretary shall apply.

"(8) CONSTRUCTION.—The remedies provided under this subsection are in addition to those otherwise available under State or Federal law and shall not be construed as limiting such other remedies, including any remedy available to an individual at common law. The remedies described in clauses (i), (iii), and (iv) of paragraph (2)(A) may be imposed during the pendency of any hearing.

"(9) SHARING OF INFORMATION.—Notwithstanding any other provision of law, all information concerning nursing facilities required by this section to be filed with the Secretary or a State agency shall be made available to Federal or State employees for purposes consistent with the effective administration of programs established under this title and title XVIII, including investigations by State medicaid fraud control units.".

(b) CONFORMING AMENDMENTS.—(1) Section 1902 of such Act (42 U.S.C. 1396a) is amended by striking subsection (i).

(2) Section 1903(i) of such Act (42 U.S.C. 1396b(i)) is amended by striking the period at the end of paragraph (7) and inserting "; or" and by adding at the end the following new paragraph:

"(8) with respect to any amount expended for medical assistance for nursing facility services to reimburse (or otherwise compensate) a nursing facility for payment of a civil money penalty imposed under section 1919(h).".

SEC. 4214. EFFECTIVE DATES.

42 USC 1396r note.

(a) NEW REQUIREMENTS AND SURVEY AND CERTIFICATION PROCESS.—Except as otherwise specifically provided in section 1919 of the Social Security Act, the amendments made by sections 4211 and 4212 (relating to nursing facility requirements and survey and certification requirements) shall apply to nursing facility services furnished on or after October 1, 1990, without regard to whether regulations to implement such amendments are promulgated by such date; except that section 1902(a)(28)(B) of the Social Security Act (as amended by section 4211(b) of this Act), relating to requiring State medical assistance plans to specify the services included in nursing facility services, shall apply to calendar quarters beginning more than 6 months after the date of the enactment of this Act, without regard to whether regulations to implement such section are promulgated by such date.

(b) ENFORCEMENT.—(1) Except as otherwise specifically provided in section 1919 of the Social Security Act, the amendments made by section 4213 of this Act apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after the date of the enactment of this Act, without regard to whether regulations to implement such amendments are promulgated by such date.

(c) TRANSITIONAL RULE.—In applying the amendments made by this part for services furnished before October 1, 1990—

(A) any reference to a nursing facility is deemed a reference to a skilled nursing facility or intermediate care facility (other than an intermediate care facility for the mentally retarded), and

(B) with respect to such a skilled nursing facility or intermediate care facility, any reference to a requirement of subsection

(b), (c), or (d), is deemed a reference to the provisions of section 1861(j) or section 1905(c), respectively, of the Social Security Act.

(d) WAIVER OF PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this part and implementing the amendments made by this part.

42 USC 1396r note.

SEC. 4215. ANNUAL REPORT.

The Secretary of Health and Human Services shall report to the Congress annually on the extent to which nursing facilities are complying with the requirements of subsections (b), (c), and (d) of section 1919 of the Social Security Act (as added by the amendments made by this part) and the number and type of enforcement actions taken by States and the Secretary under section 1919(h) of such Act (as added by section 4213 of this Act).

42 USC 1396r.

SEC. 4216. CONSTRUCTION.

Section 1919 of the Social Security Act is amended by adding at the end the following new subsection:

"(i) CONSTRUCTION.—Where requirements or obligations under this section are identical to those provided under section 1819 of this Act, the fulfillment of those requirements or obligations under section 1819 shall be considered to be the fulfillment of the corresponding requirements or obligations under this section.".

Effective date. 42 USC 1396r-3 note.

SEC. 4217. FINAL REGULATIONS WITH RESPECT TO PLANS OF CORRECTION OR REDUCTION.

(a) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Secretary of Health and Human Services shall promulgate final regulations to implement the amendments made by section 9516 of the Consolidated Omnibus Budget Reconciliation Act of 1985.

100 Stat. 82.

(b) The regulations promulgated under paragraph (1) shall be effective as if promulgated on the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

SEC. 4218. MEDICAID CERTIFICATIONS AND RECERTIFICATIONS FOR CERTAIN SERVICES.

(a) IN GENERAL.—Section 1902(a)(44) of the Social Security Act (42 U.S.C. 1396a(a)(44)) is amended—

(1) in subparagraph (A)—

(A) by striking "physician certifies" and inserting "physician (or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician) certifies", and

(B) by striking "the physician, or a physician assistant or nurse practitioner under the supervision of a physician," and inserting "a physician, a physician assistant under the supervision of a physician, or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician,"; and

(2) in subparagraph (B), by striking "a physician;" and inserting "a physician, or, in the case of skilled nursing facility

services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician;".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to certifications or recertifications during the period beginning on July 1, 1988, and ending on October 1, 1990. 42 USC 1396a note.

Subtitle D—Vaccine Compensation

Vaccine Compensation Amendments of 1987.

SEC. 4301. SHORT TITLE, REFERENCE.

(a) SHORT TITLE.—This subtitle may be cited as the "Vaccine Compensation Amendments of 1987". 42 USC 201 note.

(b) REFERENCE.—Whenever in this subtitle (other than in section 4302(a)) an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

SEC. 4302. EFFECTIVE DATE.

(a) IN GENERAL.—Section 323(a) of the National Childhood Vaccine Injury Act of 1986 (42 U.S.C. 300aa-1 note) is amended by striking out "Subtitle 2 of such title and this title shall take effect on the effective date of a tax" and all that follows in that section and inserting in lieu thereof "parts A and B of subtitle 2 of such title shall take effect on October 1, 1988 and parts C and D of such title and this title shall take effect on the date of the enactment of the Vaccine Compensation Amendments of 1987.".

(b) REFERENCES.—

(1) Sections 2111, 2115, 2119(a), 2122, 2123, 2125, 2126, 2127, and 2128 (42 U.S.C. 300aa-11, 300aa-15, 300aa-199a), 300aa-22, 300aa-23, 300aa-25, 300aa-26, 300aa-27, 300aa-28) are each amended by striking out "effective date of this subtitle" each place it appears and inserting in lieu thereof "effective date of this part". 42 USC 300aa-19.

(2) Sections 2111(a)(5)(A), 2115(e)(2) and 2116 (42 U.S.C. 300aa-11(a)(5)(A), 300aa-15(e)(2), 300a-16) are each amended by striking out "effective date of this title" each place it appears and inserting in lieu thereof "effective date of this part". 42 USC 300aa-16.

SEC. 4303. COMPENSATION.

(a) SOURCE.—Section 2115 (42 U.S.C. 300aa-15) is amended by adding at the end the following:

"(i) SOURCE OF COMPENSATION.—

"(1) Payment of compensation under the Program to a petitioner for a vaccine-related injury or death associated with the administration of a vaccine before the effective date of this part shall be made from appropriations under subsection (i).

"(2) Payment of compensation under the Program to a petitioner for a vaccine-related injury or death associated with the administration of a vaccine on or after the effective date of this part shall be made from the Vaccine Injury Compensation Trust Fund established under section 9510 of the Internal Revenue Code of 1986.".

(b) AUTHORIZATION.—Section 2115 (42 U.S.C. 300aa-15) (as amended by subsection (a)) is amended by adding at the end the following:

"(j) AUTHORIZATION.—For the payment of compensation under the Program to a petitioner for a vaccine-related injury or death associated with the administration of a vaccine before the effective date of this part there are authorized to be appropriated $80,000,000 for fiscal year 1989, $80,000,000 for fiscal year 1990, $80,000,000 for fiscal year 1991, and $80,000,000 for fiscal year 1992. Amounts appropriated under this subsection shall remain available until expended.".

42 USC 300aa-15.

(c) MINIMUM.—Section 2115(a)(1) (42 U.S.C. 300a-15(a)(1)) is amended by striking out the last sentence of subparagraphs (A) and (B).

(d) LUMP SUM.—

(1) Section 2115 (42 U.S.C. 300aa-15) is amended—

(A) by striking out the last two sentences after paragraph (4) in subsection (a), and

(B) by adding at the end of the first subsection (f) the following:

"(4)(A) Except as provided in subparagraph (B), payment of compensation under the Program shall be made in a lump sum determined on the basis of the net present value of the elements of the compensation.

"(B) In the case of a payment of compensation under the Program to a petitioner for a vaccine-related injury or death associated with the administration of a vaccine before the effective date of this part the compensation shall be paid in 4 equal annual installments. If the appropriations under subsection (i) are insufficient to make a payment of an annual installment, section 2111(a) shall not apply to a civil action for damages brought by the petitioner entitled to the payment.".

42 USC 300aa-12.

(2)(A) Subsections (e) and (f) of section 2112 (42 U.S.C. 300a-12) are repealed and subsection (g) of such section is redesignated as subsection (e).

(B) Section 2118 (42 U.S.C. 300aa-18) is repealed.

(e) LIMIT.—Section 2115(b) (42 U.S.C. 300aa-15(b)) is amended by striking out "shall only include the compensation described in paragraphs (1)(A) and (2) of subsection (a)" and inserting in lieu thereof the following: "may not include the compensation described in paragraph (1)(B) of subsection (a) and may include attorneys' fees and other costs included in a judgment under subsection (e), except that the total amount that may be paid as compensation under paragraphs (3) and (4) of subsection (a) and included as attorneys' fees and other costs under subsection (e) may not exceed $30,000".

(f) TERMINATION OF PROGRAM.—Part D of title XXI is amended by adding at the end the following:

"TERMINATION OF PROGRAM

42 USC 300aa-34.

"SEC. 2134. (a) REVIEWS.—The Secretary shall review the number of awards of compensation made under the program to petitioners under section 2111 for vaccine-related injuries and deaths associated with the administration of vaccines on or after the effective date of this part as follows:

"(1) The Secretary shall review the number of such awards made in the 12-month period beginning on the effective date of this part.

"(2) At the end of each 3-month period beginning after the expiration of the 12-month period referred to in paragraph (1) the Secretary shall review the number of such awards made in the 3-month period.

"(b) REPORT.—

"(1) If in conducting a review under subsection (a) the Secretary determines that at the end of the period reviewed the total number of awards made by the end of that period and accepted under section 2121(a) exceeds the number of awards listed next to the period reviewed in the table in paragraph (2)—

"(A) the Secretary shall notify the Congress of such determination, and

"(B) beginning 180 days after the receipt by Congress of a notification under paragraph (1), no petition for a vaccine-related injury or death associated with the administration of a vaccine on or after the effective date of this part may be filed under section 2111.

Section 2111(a) and part B shall not apply to civil actions for damages for a vaccine-related injury or death for which a petition may not be filed because of subparagraph (B).

"(2) The table referred to in paragraph (1) is as follows:

[70] "Period reviewed:	Total number of awards by the end of the period reviewed
12 months after the effective date of part	150
13th through the 15th month after such date	188
16th through the 18th month after such date	225
19th through the 21st month after such date	263
22nd through the 24th month after such date	300
25th through the 27th month after such date	338
28th through the 30th month after such date	375
31st through the 33rd month after such date	413
34th through the 36th month after such date	450
37th through the 39th month after such date	488
40th through the 42nd month after such date	525
43rd through the 45th month after such date	563
46th through the 48th month after such date	600.".

(g) TECHNICAL.—Section 2115 (42 U.S.C. 300a-15) is amended by redesignating the second subsection (f) and subsection (g) as subsections (g) and (h), respectively. 42 USC 300aa-15.

SEC. 4304. PETITIONS.

(a) APPLICATION OF LIMITS.—Section 2111(a) (42 U.S.C. 300aa-11) is amended by adding at the end the following:

"(8) This subsection applies only to a person who has sustained a vaccine-related injury or death and who is qualified to file a petition for compensation under the Program.".

(b) QUALIFICATION.—

(1) Section 2111(b)(1) (42 U.S.C. 300a-11(b)(1)(A)) is amended by striking out "may file" and inserting in lieu thereof "may, if the person meets the requirements of subsection (c)(1), file". 42 USC 300aa-11.

(2) Section 2111(c)(1)(D) (42 U.S.C. 300a-11(c)(1)(D)) is amended (A) by striking out "for more than 1 year" and inserting in lieu thereof "for more than 6 months", (B) by striking out ", (ii)" and

[70] Copy read "Period reviewed:".

inserting in lieu thereof "and", and (C) by striking out "(iii)" and inserting in lieu thereof "(ii)".

42 USC 300aa-21.

(c) WITHDRAWAL.—Section 2121 (42 U.S.C. 300a-21) is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following:

"(b) WITHDRAWAL OF PETITION.—If the United States Claims Court fails to enter a judgment under section 2112 on a petition filed under section 2111 within 365 days after the date on which the petition was filed, the petitioner may submit to the court a notice in writing withdrawing the petition. Such a notice shall be filed not later than 90 days after the expiration of such 365-day period. A person who has submitted a notice under this subsection may, notwithstanding section 2111(a)(2), thereafter maintain a civil action for damages in a State or Federal court without regard to part B and consistent with otherwise applicable law.".

SEC. 4305. CITIZEN'S ACTIONS.

42 USC 300aa-31.

Section 2131(c) (42 U.S.C. 300a-31(c)) [71] is amended by striking out "to any party, whenever the court determines that such award is appropriate" and inserting in lieu thereof "to any plaintiff who substantially prevails on one or more significant issues in the action".

42 USC 300aa-11.

SEC. 4306. VACCINE ADMINISTRATORS.

Section 2111(a) (42 U.S.C. 300a-11) is amended by striking out "vaccine manufacturer" each place it appears and inserting in lieu thereof "vaccine administrator or manufacturer".

SEC. 4307. COURT JURISDICTION.

Subtitle 2 of title XXI is amended as follows:

(1) Section 2111(a)(1) (42 U.S.C. 300aa-11(a)(1)) is amended by striking out "with the United States district court for the district in which the petitioner resides or the injury or death occurred" and inserting in lieu thereof "with the United States Claims Court".

(2) Section 2111(a)(2)(A)(ii) (42 U.S.C. 300aa-11(a)(2)(A)(ii)) is amended by striking out "a district court of the United States" and inserting in lieu thereof "the United States Claims Court".

(3) Section 2112 (42 U.S.C. 300aa-12) is amended—

(A) in subsection (a), by striking out "district courts of the United States" and inserting in lieu thereof "United States Claims Court" and by striking out "the courts" and inserting in lieu thereof "the court",

(B) in subsection (c)(1), by striking out "the district court of the United States in which the petition is filed" and inserting in lieu thereof "the United States Claims Court", and

(C) in subsection (g), by striking out "a district court of the United States" and inserting in lieu thereof "the United States Claims Court" and by striking out "for the circuit in which the court is located" and inserting in lieu thereof "for the Federal Circuit".

(4) Section 2113(c) (42 U.S.C. 300aa-13(c)) is amended by striking out "a district court of the United States" and inserting in lieu thereof "the United States Claims Court".

[71] Copy read "300a-31(c)".

(5) Section 2115(e)(1) (42 U.S.C. 300aa-15(e)(1)) is amended by striking out "of a court" and inserting in lieu thereof "of the United States Claims Court".

(6) Paragraph (2) of subsection (f) of section 2115 (42 U.S.C. 300aa-15) is amended by striking out "district court of the United States" and inserting in lieu thereof "United States Claims Court".

(7) Section 2117(a) (42 U.S.C. 300aa-17(a)) is amended by striking out "(1)", by running in the text of paragraph (1) into the subsection heading, and by striking out paragraph (2).

(8) Section 2121(a) (42 U.S.C. 300aa-21(a)) is amended by striking out "a district court of the United States" and inserting in lieu thereof "the United States Claims Court" and by striking out "a court" each place it occurs and inserting in lieu thereof "the court".

(9) Section 2123(e) (42 U.S.C. 300aa-23(e)) is amended by striking out "a district court of the United States" and inserting in lieu thereof "the United States Claims Court".

Subtitle E—Rural Health

SEC. 4401. OFFICE OF RURAL HEALTH POLICY.

Title VII of the Social Security Act is amended by adding at the end thereof the following new section:

"OFFICE OF RURAL HEALTH POLICY

Establishment.
42 USC 912.

"SEC. 711. (a) There shall be established in the Department of Health and Human Services (in this section referred to as the 'Department') [72] an Office of Rural Health Policy (in this section referred to as the 'Office'). The Office shall be headed by a Director, who shall advise the Secretary on the effects of current policies and proposed statutory, regulatory, administrative, and budgetary changes in the programs established under titles XVIII and XIX on the financial viability of small rural hospitals, the ability of rural areas (and rural hospitals in particular) to attract and retain physicians and other health professionals, and access to (and the quality of) health care in rural areas.

"(b) In addition to advising the Secretary with respect to the matters specified in subsection (a), the Director, through the Office, shall—

"(1) oversee compliance with the requirements of section 1102(b) of this Act and section 4083 of the Omnibus Budget Reconciliation Act of 1987,

"(2) establish and maintain a clearinghouse for collecting and disseminating information on—

"(A) rural health care issues,

"(B) research findings relating to rural health care, and

"(C) innovative approaches to the delivery of health care in rural areas,

"(3) coordinate the activities within the Department that relate to rural health care, and

[72] Copy read " "Department")".

"(4) provide information to the Secretary and others in the Department with respect to the activities, of other Federal departments and agencies, that relate to rural health care.".

SEC. 4402. IMPACT ANALYSES OF MEDICARE AND MEDICAID RULES AND REGULATIONS ON SMALL RURAL HOSPITALS.

(a) IN GENERAL.—Section 1102 of the Social Security Act (42 U.S.C. 1302) is amended—

(1) by inserting "(a)" after "SEC. 1102.", and

(2) by adding at the end thereof the following new subsection:

"(b)(1) Whenever the Secretary publishes a general notice of proposed rulemaking for any rule or regulation proposed under title XVIII, title XIX, or part B of this title that may have a significant impact on the operations of a substantial number of small rural hospitals, the Secretary shall prepare and make available for public comment an initial regulatory impact analysis. Such analysis shall describe the impact of the proposed rule or regulation on such hospitals and shall set forth, with respect to small rural hospitals, the matters required under section 603 of title 5, United States Code, to be set forth with respect to small entities. The initial regulatory impact analysis (or a summary) shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule or regulation.

Federal Register, publication.

"(2) Whenever the Secretary promulgates a final version of a rule or regulation with respect to which an initial regulatory impact analysis is required by paragraph (1), the Secretary shall prepare a final regulatory impact analysis with respect to the final version of such rule or regulation. Such analysis shall set forth, with respect to small rural hospitals, the matters required under section 604 of title 5, United States Code, to be set forth with respect to small entities. The Secretary shall make copies of the final regulatory impact analysis available to the public and shall publish, in the Federal Register at the time of publication of the final version of the rule or regulation, a statement describing how a member of the public may obtain a copy of such analysis.

Federal Register, publication.

"(3) If a regulatory flexibility analysis is required by chapter 6 of title 5, United States Code, for a rule or regulation to which this subsection applies, such analysis shall specifically address the impact of the rule or regulation on small rural hospitals.".

42 USC 1302 note.

(b) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to regulations proposed more than 30 days after the date of the enactment of this Act.

42 USC 1395b-1 note.

SEC. 4403. SET ASIDE FOR EXPERIMENTS AND DEMONSTRATION PROJECTS RELATING TO RURAL HEALTH CARE ISSUES.

(a) SET ASIDE.—Not less than ten percent of the total amounts expended in each fiscal year by the Secretary of Health and Human Services (in this section referred to as the "Secretary") after October 1, 1988, with respect to experiments and demonstration projects authorized by section 402 of the Social Security Amendments of 1967 and the experiments and demonstration projects authorized by the Social Security Amendments of 1972 shall be expended for experiments and demonstration projects relating exclusively or substantially to rural health issues, including (but not limited to) the impact of the payment methodology under section 1886(d) of the Social Security Act on the financial viability of small rural hospitals, the effect of medicare payment policies on the

ability of rural areas (and rural hospitals in particular) to attract and retain physicians and other health professionals, the appropriateness of medicare conditions of participation and staffing requirements for small rural hospitals, and the impact of medicare policies on access to (and the quality of) health care in rural areas.

(b) AGENDA.—The Secretary of Health and Human Services shall establish an agenda of experiments and demonstration projects, relating exclusively or substantially to rural health issues, that are in progress or have been proposed, and shall include such agenda in the annual report submitted pursuant to section 1875(b) of the Social Security Act. The agenda shall be accompanied by a statement setting forth the amounts that have been obligated and expended with respect to such experiments and projects in the current and most recently completed fiscal years.

TITLE V—ENERGY AND ENVIRONMENT PROGRAMS

Subtitle A—Nuclear Waste Amendments

Nuclear Waste Policy Amendments Act of 1987. 42 USC 10101 note.

SEC. 5001. SHORT TITLE.

This subtitle may be cited as the "Nuclear Waste Policy Amendments Act of 1987".

SEC. 5002. DEFINITIONS.

Section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101) is amended by adding at the end the following new paragraphs:

"(30) The term 'Yucca Mountain site' means the candidate site in the State of Nevada recommended by the Secretary to the President under section 112(b)(1)(B) on May 27, 1986.

"(31) The term 'affected unit of local government' means the unit of local government with jurisdiction over the site of a repository or a monitored retrievable storage facility. Such term may, at the discretion of the Secretary, include units of local government that are contiguous with such unit.

"(32) The term 'Negotiator' means the Nuclear Waste Negotiator.

"(33) As used in title IV, the term 'Office' means the Office of the Nuclear Waste Negotiator established under title IV of this Act.

"(34) The term 'monitored retrievable storage facility' means the storage facility described in section 141(b)(1).".

PART A—REDIRECTION OF THE NUCLEAR WASTE PROGRAM

SEC. 5011. FIRST REPOSITORY.

(a) SITE SPECIFIC ACTIVITIES.—Title I of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10121-10171) is amended by adding at the end the following new subtitle:

"SUBTITLE E—REDIRECTION OF THE NUCLEAR WASTE PROGRAM

"SELECTION OF YUCCA MOUNTAIN SITE

42 USC 10172.

"SEC. 160. (a) IN GENERAL.—(1) The Secretary shall provide for an orderly phase-out of site specific activities at all candidate sites other than the Yucca Mountain site.

"(2) The Secretary shall terminate all site specific activities (other than reclamation activities) at all candidate sites, other than the Yucca Mountain site, within 90 days after the date of enactment of the Nuclear Waste Policy Amendments Act of 1987.

"(b) Effective on the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987, the State of Nevada shall be eligible to enter into a benefits agreement with the Secretary under section 170.".

(b) SITE RECOMMENDATION TO THE PRESIDENT.—Section 112(b) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10132(b)) is amended by—

(1) striking out paragraph (1)(C) and redesignating the subsequent subparagraphs accordingly; and

(2) in subparagraph (C) [73] (as redesignated) by striking "subparagraphs (B) and (C)" and inserting "subparagraph (B)".

(c) TERMINATION OF CANDIDATE SITE SCREENING.—Section 112 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10132) is amended by striking all of subsection (d) and redesignating subsequent subsections accordingly.

(d) TIMELY SITE CHARACTERIZATION.—Section 112 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10132) is amended by striking all of subsection (f) and redesignating subsequent subsections accordingly.

(e) SITE CHARACTERIZATION.—Section 113(a) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10133(a)) is amended—

(1) by striking "State involved" and all that follows through "tribe involved" and inserting "State of Nevada"; and

(2) by striking "beginning" and all that follows through "geological media" and inserting "at the Yucca Mountain site".

(f) COMMISSION AND STATES.—Section 113(b) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10133(b)) is amended—

(1) in paragraph (1)—

(A) by striking "any candidate site" and inserting "the Yucca Mountain site";

(B) by striking "either" and all that follows through "may be" and insert "the Governor or legislature of the State of Nevada";

(2) in paragraph (2), by striking "at any candidate site" and inserting "at the Yucca Mountain site"; and

(3) in paragraph (3)—

(A) by striking "a candidate site" and inserting "the Yucca Mountain site";

(B) by striking "either"; and

(C) by striking "the State" and all that follows through "may be" and inserting "the State of Nevada".

(g) RESTRICTIONS.—Section 113(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10133(c)) is amended—

(1) in paragraph (1)—

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[73] Copy read "(C), (as".

(A) by striking "any candidate site" and inserting "the Yucca Mountain site"; and

(B) by striking "such candidate site" each place it appears and inserting "such site";

(2) in paragraph (2), by striking "candidate" each place it appears; and

(3) by striking paragraphs (3) and (4) and inserting the following:

"(3) If the Secretary at any time determines the Yucca Mountain site to be unsuitable for development as a repository, the Secretary shall—

"(A) terminate all site characterization activities at such site;

"(B) notify the Congress, the Governor and legislature of Nevada of such termination and the reasons for such termination;

"(C) remove any high-level radioactive waste, spent nuclear fuel, or other radioactive materials at or in such site as promptly as practicable;

"(D) take reasonable and necessary steps to reclaim the site and to mitigate any significant adverse environmental impacts caused by site characterization activities at such site;

"(E) suspend all future benefits payments under subtitle F with respect to such site; and

"(F) report to Congress not later than 6 months after such determination the Secretary's recommendations for further action to assure the safe, permanent disposal of spent nuclear fuel and high-level radioactive waste, including the need for new legislative authority.". Reports.

(h) HEARINGS AND PRESIDENTIAL RECOMMENDATION.—Section 114(a) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10134(a)) is amended—

(1) in paragraph (1)—

(A) by striking "each site" through "development of a repository" and inserting "the Yucca Mountain site";

(B) by striking "in which such site is located";

(C) by striking "not less than 3" and all that follows through "subsequent repositories" and inserting "the Yucca Mountain site";

(D) by striking "in which such site" and all that follows through "case may be" and insert "of Nevada";

(E) by striking the sentence beginning with "In making site recommendations";

(F) by amending subparagraph (D) to read as follows:

"(D) a final environmental impact statement prepared for the Yucca Mountain site pursuant to subsection (f) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), together with comments made concerning such environmental impact statement by the Secretary of the Interior, the Council on Environmental Quality, the Administrator, and the Commission, except that the Secretary shall not be required in any such environmental impact statement to consider the need for a repository, the alternatives to geological disposal, or alternative sites to the Yucca Mountain site;"; and

(G) in subparagraph (H), by striking "the State" and all that follows through the end of the sentence and inserting "the State of Nevada";

(2) by striking paragraphs (2) and (3) and inserting the following:

President of U.S.

"(2)(A) If, after recommendation by the Secretary, the President considers the Yucca Mountain site qualified for application for a construction authorization for a repository, the President shall submit a recommendation of such site to Congress.

"(B) The President shall submit with such recommendation a copy of the statement for such site prepared by the Secretary under paragraph (1)."; and

(3) in paragraph (4) by—

(A) striking "(4)(A)" and inserting "(3)(A)";

(B) striking "any site under this subsection" and inserting "the Yucca Mountain site"; and

(C) by striking "report" and inserting "statement".

(i) SUBMISSION OF APPLICATION.—Section 114(b) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10134(b)) is amended—

(1) by striking "a site for a repository" and inserting "the Yucca Mountain site"; and

(2) by striking "in which" and all that follows through "may be," and inserting "of Nevada".

(j) COMMISSION ACTION.—Section 114(d) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10134(d)) is amended in the first sentence—

(1) by striking "than—" and all that follows through "(2) the expiration" and inserting "than the expiration"; and

(2) by striking "(e)(2); whichever occurs later" and inserting "(e)(2)".

(k) PROJECT DECISION SCHEDULE.—Section 114(e) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10134(e)) is amended by striking "repository involved" and inserting "repository".

(l) ENVIRONMENTAL IMPACT STATEMENT.—Section 114(f) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10134(f)) is amended to read as follows:

"(f) ENVIRONMENTAL IMPACT STATEMENT.—(1) Any recommendation made by the Secretary under this section shall be considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). A final environmental impact statement prepared by the Secretary under such Act shall accompany any recommendation to the President to approve a site for a repository.

"(2) With respect to the requirements imposed by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), compliance with the procedures and requirements of this Act shall be deemed adequate consideration of the need for a repository, the time of the initial availability of a repository, and all alternatives to the isolation of high-level radioactive waste and spent nuclear fuel in a repository.

"(3) For purposes of complying with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and this section, the Secretary need not consider alternate sites to the Yucca Mountain site for the repository to be developed under this subtitle.

"(4) Any environmental impact statement prepared in connection with a repository proposed to be constructed by the Secretary under this subtitle shall, to the extent practicable, be adopted by the Commission in connection with the issuance by the Commission of a

construction authorization and license for such repository. To the extent such statement is adopted by the Commission, such adoption shall be deemed to also satisfy the responsibilities of the Commission under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and no further consideration shall be required, except that nothing in this subsection shall affect any independent responsibilities of the Commission to protect the public health and safety under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

"(5) Nothing in this Act shall be construed to amend or otherwise detract from the licensing requirements of the Nuclear Regulatory Commission established in title II of the Energy Reorganization Act of 1974 (42 U.S.C. 5841 et seq.).

"(6) In any such statement prepared with respect to the repository to be constructed under this subtitle, the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, alternate sites to the Yucca Mountain site, or nongeologic alternatives to such site.".

(m) ON-SITE REPRESENTATIVE.—Section 117 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10137) is amended by adding at the end the following new subsection:

"(d) ON-SITE REPRESENTATIVE.—The Secretary shall offer to any State, Indian tribe or unit of local government within whose jurisdiction a site for a repository or monitored retrievable storage facility is located under this title an opportunity to designate a representative to conduct on-site oversight activities at such site. Reasonable expenses of such representatives shall be paid out of the Waste Fund.".

SEC. 5012. SECOND REPOSITORY.

Subtitle E of title I of the Nuclear Waste Policy Act of 1982 (as created by section 5011 of this Act) is amended by adding at the end the following new section:

"SITING A SECOND REPOSITORY

"SEC. 161. (a) CONGRESSIONAL ACTION REQUIRED.—The Secretary may not conduct site-specific activities with respect to a second repository unless Congress has specifically authorized and appropriated funds for such activities. 42 USC 10172a.

"(b) REPORT.—The Secretary shall report to the President and to Congress on or after January 1, 2007, but not later than January 1, 2010, on the need for a second repository.

"(c) TERMINATION OF GRANITE RESEARCH.—Not later than 6 months after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987, the Secretary shall phase out in an orderly manner funding for all research programs in existence on such date of enactment designed to evaluate the suitability of crystalline rock as a potential repository host medium.

"(d) ADDITIONAL SITING CRITERIA.—In the event that the Secretary at any time after such date of enactment considers any sites in crystalline rock for characterization or selection as a repository, the Secretary shall consider (as a supplement to the siting guidelines under section 112) such potentially disqualifying factors as—

"(1) seasonal increases in population;

"(2) proximity to public drinking water supplies, including those of metropolitan areas; and

"(3) the impact that characterization or siting decisions would have on lands owned or placed in trust by the United States for Indian tribes.".

PART B—MONITORED RETRIEVABLE STORAGE

SEC. 5021. AUTHORIZATION OF MONITORED RETRIEVABLE STORAGE.

Subtitle C of the Nuclear [74] Waste Policy Act of 1982 is amended by adding at the end the following new sections:

"AUTHORIZATION OF MONITORED RETRIEVABLE STORAGE

42 USC 10162.

"SEC. 142. (a) NULLIFICATION OF OAK RIDGE SITING PROPOSAL.—The proposal of the Secretary (EC-1022, 100th Congress) to locate a monitored retrievable storage facility at a site on the Clinch River in the Roane County portion of Oak Ridge, Tennessee, with alternative sites on the Oak Ridge Reservation of the Department of Energy and on the former site of a proposed nuclear powerplant in Hartsville, Tennessee, is annulled and revoked. In carrying out the provisions of sections 144 and 145, the Secretary shall make no presumption or preference to such sites by reason of their previous selection.

"(b) AUTHORIZATION.—The Secretary is authorized to site, construct, and operate one monitored retrievable storage facility subject to the conditions described in sections 143 through 149.

"MONITORED RETRIEVABLE STORAGE COMMISSION

42 USC 10163.

"SEC. 143. (a) ESTABLISHMENT.—(1)(A) There is established a Monitored Retrievable Storage Review Commission (hereinafter in this section referred to as the 'MRS Commission'), that shall consist of 3 members who shall be appointed by and serve at the pleasure of the President pro tempore of the Senate and the Speaker of the House of Representatives.

"(B) [75] Members of the MRS Commission shall be appointed not later than 30 days after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987 from among persons who as a result of training, experience and attainments are exceptionally well qualified to evaluate the need for a monitored retrievable storage facility as a part of the Nation's nuclear waste management system.

Reports.

"(C) The MRS Commission shall prepare a report on the need for a monitored retrievable storage facility as a part of a national nuclear waste management system that achieves the purposes of this Act. In preparing the report under this subparagraph, the MRS Commission shall—

"(i) review the status and adequacy of the Secretary's evaluation of the systems advantages and disadvantages of bringing such a facility into the national nuclear waste disposal system;

"(ii) obtain comment and available data on monitored retrievable storage from affected parties, including States containing potentially acceptable sites;

"(iii) evaluate the utility of a monitored retrievable storage facility from a technical perspective; and

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[74] Copy read "C of Nuclear".
[75] Copy read " "(B)(i)".

"(iv) make a recommendation to Congress as to whether such a facility should be included in the national nuclear waste management system in order to achieve the purposes of this Act, including meeting needs for packaging and handling of spent nuclear fuel, improving the flexibility of the repository development schedule, and providing temporary storage of spent nuclear fuel accepted for disposal.

"(2) In preparing the report and making its recommendation under paragraph (1) the MRS Commission shall compare such a facility to the alternative of at-reactor storage of spent nuclear fuel prior to disposal of such fuel in a repository under this Act. Such comparison shall take into consideration the impact on—

"(A) repository design and construction;

"(B) waste package design, fabrication and standardization;

"(C) waste preparation;

"(D) waste transportation systems;

"(E) the reliability of the national system for the disposal of radioactive waste;

"(F) the ability of the Secretary to fulfill contractual commitments of the Department under this Act to accept spent nuclear fuel for disposal; and

"(G) economic factors, including the impact on the costs likely to be imposed on ratepayers of the Nation's electric utilities for temporary at-reactor storage of spent nuclear fuel prior to final disposal in a repository, as well as the costs likely to be imposed on ratepayers of the Nation's electric utilities in building and operating such a facility.

"(3) The report under this subsection, together with the recommendation of the MRS Commission, shall be transmitted to Congress on June 1, 1989. Reports.

"(4)(A)(i) Each member of the MRS Commission shall be paid at the rate provided for level III of the Executive Schedule for each day (including travel time) such member is engaged in the work of the MRS Commission, and shall receive travel expenses, including per diem in lieu of subsistence in the same manner as is permitted under sections 5702 and 5703 of title 5, United States Code.

"(ii) The MRS Commission may appoint and fix compensation, not to exceed the rate of basic pay payable for GS-18 of the General Schedule, for such staff as may be necessary to carry out its functions.

"(B)(i) The MRS Commission may hold hearings, sit and act at such times and places, take such testimony and receive such evidence as the MRS Commission considers appropriate. Any member of the MRS Commission may administer oaths or affirmations to witnesses appearing before the MRS Commission.

"(ii) The MRS Commission may request any Executive agency, including the Department, to furnish such assistance or information, including records, data, files, or documents, as the Commission considers necessary to carry out its functions. Unless prohibited by law, such agency shall promptly furnish such assistance or information.

"(iii) To the extent permitted by law, the Administrator of the General Services Administration shall, upon request of the MRS Commission, provide the MRS Commission with necessary administrative services, facilities, and support on a reimbursable basis.

"(iv) The MRS Commission may procure temporary and intermittent services from experts and consultants to the same extent as is

authorized by section 3109(b) of title 5, United States Code, at rates and under such rules as the MRS Commission considers reasonable.

"(C) The MRS Commission shall cease to exist 60 days after the submission to Congress of the report required under this subsection.

"SURVEY

42 USC 10164.

"SEC. 144. After the MRS Commission submits its report to the Congress under section 143, the Secretary may conduct a survey and evaluation of potentially suitable sites for a monitored retrievable storage facility. In conducting such survey and evaluation, the Secretary shall consider the extent to which siting a monitored retrievable storage facility at each site surveyed would—

"(1) enhance the reliability and flexibility of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under this Act;

"(2) minimize the impacts of transportation and handling of such fuel and waste;

"(3) provide for public confidence in the ability of such system to safely dispose of the fuel and waste;

"(4) impose minimal adverse effects on the local community and the local environment;

"(5) provide a high probability that the facility will meet applicable environmental, health, and safety requirements in a timely fashion;

"(6) provide such other benefits to the system for the disposal of spent nuclear fuel and high-level radioactive waste as the Secretary deems appropriate; and

"(7) unduly burden a State in which significant volumes of high-level radioactive waste resulting from atomic energy defense activities are stored.

"SITE SELECTION

42 USC 10165.

"SEC. 145. (a) IN GENERAL.—The Secretary may select the site evaluated under section 144 that the Secretary determines on the basis of available information to be the most suitable for a monitored retrievable storage facility that is an integral part of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under this Act.

"(b) LIMITATION.—The Secretary may not select a site under subsection (a) until the Secretary recommends to the President the approval of a site for development as a repository under section 114(a).

"(c) SITE SPECIFIC ACTIVITIES.—The Secretary may conduct such site specific activities at each site surveyed under section 144 as he determines may be necessary to support an application to the Commission for a license to construct a monitored retrievable storage facility at such site.

"(d) ENVIRONMENTAL ASSESSMENT.—Site specific activities and selection of a site under this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Secretary shall prepare an environmental assessment with respect to such selection in accordance with regulations issued by the Secretary implementing such Act. Such environmental assessment shall be based upon available information regarding

alternative technologies for the storage of spent nuclear fuel and high-level radioactive waste. The Secretary shall submit such environmental assessment to the Congress at the time such site is selected.

"(e) NOTIFICATION BEFORE SELECTION.—(1) At least 6 months before selecting a site under subsection (a), the Secretary shall notify the Governor and legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, of such potential selection and the basis for such selection.

"(2) Before selecting any site under subsection (a), the Secretary shall hold at least one public hearing in the vicinity of such site to solicit any recommendations of interested parties with respect to issues raised by the selection of such site.

"(f) NOTIFICATION OF SELECTION.—The Secretary shall promptly notify Congress and the appropriate State or Indian tribe of the selection under subsection (a).

"(g) LIMITATION.—No monitored retrievable storage facility authorized pursuant to section 142(b) may be constructed in the State of Nevada.

"NOTICE OF DISAPPROVAL

"SEC. 146. (a) IN GENERAL.—The selection of a site under section 145 shall be effective at the end of the period of 60 calendar days beginning on the date of notification under such subsection, unless the governing body of the Indian tribe on whose reservation such site is located, or, if the site is not on a reservation, the Governor and the legislature of the State in which the site is located, has submitted to Congress a notice of disapproval with respect to such site. If any such notice of disapproval has been submitted under this subsection, the selection of the site under section 145 shall not be effective except as provided under section 115(c). 42 USC 10166.

"(b) REFERENCES.—For purposes of carrying out the provisions of this subsection, references in section 115(c) to a repository shall be considered to refer to a monitored retrievable storage facility and references to a notice of disapproval of a repository site designation under section 116(b) or 118(a) shall be considered to refer to a notice of disapproval under this section.

"BENEFITS AGREEMENT

"SEC. 147. Once selection of a site for a monitored retrievable storage facility is made by the Secretary under section 145, the Indian tribe on whose reservation the site is located, or, in the case that the site is not located on a reservation, the State in which the site is located, shall be eligible to enter into a benefits agreement with the Secretary under section 170. 42 USC 10167.

"CONSTRUCTION AUTHORIZATION

"SEC. 148. (a) ENVIRONMENTAL IMPACT STATEMENT.—(1) Once the selection of a site is effective under section 146, the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall apply with respect to construction of a monitored retrievable storage facility, except that any environmental impact statement prepared with respect to such facility shall not be required to 42 USC 10168.

consider the need for such facility or any alternative to the design criteria for such facility set forth in section 141(b)(1).

"(2) Nothing in this section shall be construed to limit the consideration of alternative facility designs consistent with the criteria described in section 141(b)(1) in any environmental impact statement, or in any licensing procedure of the Commission, with respect to any monitored retrievable storage facility authorized under section 142(b).

"(b) APPLICATION FOR CONSTRUCTION LICENSE.—Once the selection of a site for a monitored retrievable storage facility is effective under section 146, the Secretary may submit an application to the Commission for a license to construct such a facility as part of an integrated nuclear waste management system and in accordance with the provisions of this section and applicable agreements under this Act affecting such facility.

"(c) LICENSING.—Any monitored retrievable storage facility authorized pursuant to section 142(b) shall be subject to licensing under section 202(3) of the Energy Reorganization Act of 1974 (42 U.S.C. 5842(3)). In reviewing the application filed by the Secretary for licensing of such facility, the Commission may not consider the need for such facility or any alternative to the design criteria for such facility set forth in section 141(b)(1).

"(d) LICENSING CONDITIONS.—Any license issued by the Commission for a monitored retrievable storage facility under this section shall provide that—

"(1) construction of such facility may not begin until the Commission has issued a license for the construction of a repository under section 115(d);

"(2) construction of such facility or acceptance of spent nuclear fuel or high-level radioactive waste shall be prohibited during such time as the repository license is revoked by the Commission or construction of the repository ceases;

"(3) the quantity of spent nuclear fuel or high-level radioactive waste at the site of such facility at any one time may not exceed 10,000 metric tons of heavy metal until a repository under this Act first accepts spent nuclear fuel or solidified high-level radioactive waste; and

"(4) the quantity of spent nuclear fuel or high-level radioactive waste at the site of such facility at any one time may not exceed 15,000 metric tons of heavy metal.

"FINANCIAL ASSISTANCE

42 USC 10169.

"SEC. 149. The provisions of section 116(c) or 118(b) with respect to grants, technical assistance, and other financial assistance shall apply to the State, to affected Indian tribes and to affected units of local government in the case of a monitored retrievable storage facility in the same manner as for a repository.".

PART C—BENEFITS

SEC. 5031. BENEFITS.

Title I of the Nuclear Waste Policy Act of 1982 is further amended by adding at the end the following new subtitles:

"SUBTITLE F—BENEFITS

"BENEFITS AGREEMENTS

"SEC. 170. (a) IN GENERAL.—(1) The Secretary may enter into a benefits agreement with the State of Nevada concerning a repository or with a State or an Indian tribe concerning a monitored retrievable storage facility for the acceptance of high-level radioactive waste or spent nuclear fuel in that State or on the reservation of that tribe, as appropriate. 42 USC 10173.

"(2) The State or Indian tribe may enter into such an agreement only if the State Attorney General or the appropriate governing authority of the Indian tribe or the Secretary of the Interior, in the absence of an appropriate governing authority, as appropriate, certifies to the satisfaction of the Secretary that the laws of the State or Indian tribe provide adequate authority for that entity to enter into the benefits agreement.

"(3) Any benefits agreement with a State under this section shall be negotiated in consultation with affected units of local government in such State.

"(4) Benefits and payments under this subtitle may be made available only in accordance with a benefits agreement under this section.

"(b) AMENDMENT.—A benefits agreement entered into under subsection (a) may be amended only by the mutual consent of the parties to the agreement and terminated only in accordance with section 173.

"(c) AGREEMENT WITH NEVADA.—The Secretary shall offer to enter into a benefits agreement with the Governor of Nevada. Any benefits agreement with a State under this subsection shall be negotiated in consultation with any affected units of local government in such State.

"(d) MONITORED RETRIEVABLE STORAGE.—The Secretary shall offer to enter into a benefits agreement relating to a monitored retrievable storage facility with the governing body of the Indian tribe on whose reservation the site for such facility is located, or, if the site is not located on a reservation, with the Governor of the State in which the site is located and in consultation with affected units of local government in such State.

"(e) LIMITATION.—Only one benefits agreement for a repository and only one benefits agreement for a monitored retrievable storage facility may be in effect at any one time.

"(f) JUDICIAL REVIEW.—Decisions of the Secretary under this section are not subject to judicial review.

"CONTENT OF AGREEMENTS

"SEC. 171. (a) IN GENERAL.—(1) In addition to the benefits to which a State, an affected unit of local government or Indian tribe is entitled under title I, the Secretary shall make payments to a State or Indian tribe that is a party to a benefits agreement under section 170 in accordance with the following schedule: 42 USC 10173a.

"BENEFITS SCHEDULE

(amounts in $ millions)

Event	MRS	Repository
(A) Annual payments prior to first spent fuel receipt	5	10
(B) Upon first spent fuel receipt	10	20
(C) Annual payments after first spent fuel receipt until closure of the facility	10	20

"(2) For purposes of this section, the term—

"(A) 'MRS' means a monitored retrievable storage facility,

"(B) 'spent fuel' means high-level radioactive waste or spent nuclear fuel, and

"(C) 'first spent fuel receipt' does not include receipt of spent fuel or high-level radioactive waste for purposes of testing or operational demonstration.

"(3) Annual payments prior to first spent fuel receipt under paragraph (1)(A) shall be made on the date of execution of the benefits agreement and thereafter on the anniversary date of such execution. Annual payments after the first spent fuel receipt until closure of the facility under paragraph (1)(C) shall be made on the anniversary date of such first spent fuel receipt.

"(4) If the first spent fuel payment under paragraph (1)(B) is made within six months after the last annual payment prior to the receipt of spent fuel under paragraph (1)(A), such first spent fuel payment under paragraph (1)(B) shall be reduced by an amount equal to one-twelfth of such annual payment under paragraph (1)(A) for each full month less than six that has not elapsed since the last annual payment under paragraph (1)(A).

"(5) Notwithstanding paragraph (1), (2), or (3), no payment under this section may be made before January 1, 1989, and any payment due under this title before January 1, 1989, shall be made on or after such date.

"(6) Except as provided in paragraph (7), the Secretary may not restrict the purposes for which the payments under this section may be used.

"(7)(A) Any State receiving a payment under this section shall transfer an amount equal to not less than one-third of the amount of such payment to affected units of local government of such State.

"(B) A plan for this transfer and appropriate allocation of such portion among such governments shall be included in the benefits agreement under section 170 covering such payments.

"(C) In the event of a dispute concerning such plan, the Secretary shall resolve such dispute, consistent with this Act and applicable State law.

"(b) CONTENTS.—A benefits agreement under section 170 shall provide that—

"(1) a Review Panel be established in accordance with section 172;

"(2) the State or Indian tribe that is party to such agreement waive its rights under title I to disapprove the recommendation of a site for a repository;

"(3) the parties to the agreement shall share with one another information relevant to the licensing process for the repository or monitored retrievable storage facility, as it becomes available;

"(4) the State or Indian tribe that is party to such agreement participate in the design of the repository or monitored retrievable storage facility and in the preparation of documents required under law or regulation governing the effects of the facility on the public health and safety; and

"(5) the State or Indian tribe waive its rights, if any, to impact assistance under sections 116(c)(1)(B)(ii), 116(c)(2), 118(b)(2)(A)(ii), and 118(b)(3).

"(c) The Secretary shall make payments to the States or affected Indian tribes under a benefits agreement under this section from the Waste Fund. The signature of the Secretary on a valid benefits agreement under section 170 shall constitute a commitment by the United States to make payments in accordance with such agreement.

"REVIEW PANEL

"SEC. 172. (a) IN GENERAL.—The Review Panel required to be established by section 171(b)(1) of this Act shall consist of a Chairman selected by the Secretary in consultation with the Governor of the State or governing body of the Indian tribe, as appropriate, that is party to such agreement and 6 other members as follows: 42 USC 10173b.

"(1) 2 members selected by the Governor of such State or governing body of such Indian tribe;

"(2) 2 members selected by units of local government affected by the repository or monitored retrievable storage facility;

"(3) 1 member to represent persons making payments into the Waste Fund, to be selected by the Secretary; and

"(4) 1 member to represent other public interests, to be selected by the Secretary.

"(b) TERMS.—(1) The members of the Review Panel shall serve for terms of 4 years each.

"(2) Members of the Review Panel who are not full-time employees of the Federal Government, shall receive a per diem compensation for each day spent conducting work of the Review Panel, including their necessary travel or other expenses while engaged in the work of the Review Panel.

"(3) Expenses of the Panel shall be paid by the Secretary from the Waste Fund.

"(c) DUTIES.—The Review Panel shall—

"(1) advise the Secretary on matters relating to the proposed repository or monitored retrievable storage facility, including issues relating to design, construction, operation, and decommissioning of the facility;

"(2) evaluate performance of the repository or monitored retrievable storage facility, as it considers appropriate;

"(3) recommend corrective actions to the Secretary;

"(4) assist in the presentation of State or affected Indian tribe and local perspectives to the Secretary; and

"(5) participate in the planning for and the review of preoperational data on environmental, demographic, and socioeconomic conditions of the site and the local community.

"(d) INFORMATION.—The Secretary shall promptly make available promptly any information in the Secretary's possession requested by the Panel or its Chairman.

"(e) FEDERAL ADVISORY COMMITTEE ACT.—The requirements of the Federal Advisory Committee Act shall not apply to a Review Panel established under this title.

"TERMINATION

42 USC 10173c. "SEC. 173. (a) IN GENERAL.—The Secretary may terminate a benefits agreement under this title if—

"(1) the site under consideration is disqualified for its failure to comply with guidelines and technical requirements established by the Secretary in accordance with this Act; or

"(2) the Secretary determines that the Commission cannot license the facility within a reasonable time.

"(b) TERMINATION BY STATE OR INDIAN TRIBE.—A State or Indian tribe may terminate a benefits agreement under this title only if the Secretary disqualifies the site under consideration for its failure to comply with technical requirements established by the Secretary in accordance with this Act or the Secretary determines that the Commission cannot license the facility within a reasonable time.

"(c) DECISIONS OF THE SECRETARY.—Decisions of the Secretary under this section shall be in writing, shall be available to Congress and the public, and are not subject to judicial review.

"SUBTITLE G—OTHER BENEFITS

"CONSIDERATION IN SITING FACILITIES

42 USC 10174. "SEC. 174. The Secretary, in siting Federal research projects, shall give special consideration to proposals from States where a repository is located.

"REPORT

42 USC 10174a. "SEC. 175. (a) IN GENERAL.—Within one year of the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987, the Secretary shall report to Congress on the potential impacts of locating a repository at the Yucca Mountain site, including the recommendations of the Secretary for mitigation of such impacts and a statement of which impacts should be dealt with by the Federal Government, which should be dealt with by the State with State resources, including the benefits payments under section 171, and which should be a joint Federal-State responsibility. The report under this subsection shall include the analysis of the Secretary of the authorities available to mitigate these impacts and the appropriate sources of funds for such mitigation.

"(b) IMPACTS TO BE [76] CONSIDERED.—Potential impacts to be addressed in the report under this subsection (a) shall include impacts on—

"(1) education, including facilities and personnel for elementary and secondary schools, community colleges, vocational and technical schools and universities;

"(2) public health, including the facilities and personnel for treatment and distribution of water, the treatment of sewage, the control of pests and the disposal of solid waste;

"(3) law enforcement, including facilities and personnel for the courts, police and sheriff's departments, district attorneys and public defenders and prisons;

"(4) fire protection, including personnel, the construction of fire stations, and the acquisition of equipment;

"(5) medical care, including emergency services and hospitals;

[76] Copy read "TO BE".

"(6) cultural and recreational needs, including facilities and personnel for libraries and museums and the acquisition and expansion of parks;

"(7) distribution of public lands to allow for the timely expansion of existing, or creation of new, communities and the construction of necessary residential and commercial facilities;

"(8) vocational training and employment services;

"(9) social services, including public assistance programs, vocational and physical rehabilitation programs, mental health services, and programs relating to the abuse of alcohol and controlled substances;

"(10) transportation, including any roads, terminals, airports, bridges, or railways associated with the facility and the repair and maintenance of roads, terminals, airports, bridges, or railways damaged as a result of the construction, operation, and closure of the facility;

"(11) equipment and training for State and local personnel in the management of accidents involving high-level radioactive waste;

"(12) availability of energy;

"(13) tourism and economic development, including the potential loss of revenue and future economic growth; and

"(14) other needs of the State and local governments that would not have arisen but for the characterization of the site and the construction, operation, and eventual closure of the repository facility.".

SEC. 5032. PARTICIPATION OF STATES.

(a) FINANCIAL ASSISTANCE.—Section 116(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10136(c)) is amended to read as follows:

"(c) FINANCIAL ASSISTANCE.—(1)(A) The Secretary shall make grants to the State of Nevada and any affected unit of local government for the purpose of participating in activities required by this section and section 117 or authorized by written agreement entered into pursuant to section 117(c). Any salary or travel expense that would ordinarily be incurred by such State or affected unit of local government, may not be considered eligible for funding under this paragraph.

"(B) The Secretary shall make grants to the State of Nevada and any affected unit of local government for purposes of enabling such State or affected unit of local government— Grants.

"(i) to review activities taken under this subtitle with respect to the Yucca Mountain site for purposes of determining any potential economic, social, public health and safety, and environmental impacts of a repository on such State, or affected unit of local government and its residents;

"(ii) to develop a request for impact assistance under paragraph (2);

"(iii) to engage in any monitoring, testing, or evaluation activities with respect to site characterization programs with regard to such site;

"(iv) to provide information to Nevada residents regarding any activities of such State, the Secretary, or the Commission with respect to such site; and

"(v) to request information from, and make comments and recommendations to, the Secretary regarding any activities taken under this subtitle with respect to such site.

"(C) Any salary or travel expense that would ordinarily be incurred by the State of Nevada or any affected unit of local government may not be considered eligible for funding under this paragraph.

"(2)(A)(i) The Secretary shall provide financial and technical assistance to the State of Nevada, and any affected unit of local government requesting such assistance.

"(ii) Such assistance shall be designed to mitigate the impact on such State or affected unit of local government of the development of such repository and the characterization of such site.

"(iii) Such assistance to such State or affected unit of local government of such State shall commence upon the initiation of site characterization activities.

Reports.

"(B) The State of Nevada and any affected unit of local government may request assistance under this subsection by preparing and submitting to the Secretary a report on the economic, social, public health and safety, and environmental impacts that are likely to result from site characterization activities at the Yucca Mountain site. Such report shall be submitted to the Secretary after the Secretary has submitted to the State a general plan for site characterization activities under section 113(b).

"(C) As soon as practicable after the Secretary has submitted such site characterization plan, the Secretary shall seek to enter into a binding agreement with the State of Nevada setting forth—

"(i) the amount of assistance to be provided under this subsection to such State or affected unit of local government; and

"(ii) the procedures to be followed in providing such assistance.

Grants.

"(3)(A) In addition to financial assistance provided under paragraphs (1) and (2), the Secretary shall grant to the State of Nevada and any affected unit of local government an amount each fiscal year equal to the amount such State or affected unit of local government, respectively, would receive if authorized to tax site characterization activities at such site, and the development and operation of such repository, as such State or affected unit of local government taxes the non-Federal real property and industrial activities occurring within such State or affected unit of local government.

"(B) Such grants shall continue until such time as all such activities, development, and operation are terminated at such site.

Grants.

"(4)(A) The State of Nevada or any affected unit of local government may not receive any grant under paragraph (1) after the expiration of the 1-year period following—

"(i) the date on which the Secretary notifies the Governor and legislature of the State of Nevada of the termination of site characterization activities at the site in such State;

"(ii) the date on which the Yucca Mountain site is disapproved under section 115; or

"(iii) the date on which the Commission disapproves an application for a construction authorization for a repository at such site;

whichever occurs first.

"(B) The State of Nevada or any affected unit of local government may not receive any further assistance under paragraph (2) with respect to a site if repository construction activities or site characterization activities at such site are terminated by the Secretary or if such activities are permanently enjoined by any court.

"(C) At the end of the 2-year period beginning on the effective date of any license to receive and possess for a repository in a State, no Federal funds, shall be made available to such State or affected unit of local government under paragraph (1) or (2), except for—

"(i) such funds as may be necessary to support activities related to any other repository located in, or proposed to be located in, such State, and for which a license to receive and possess has not been in effect for more than 1 year;

"(ii) such funds as may be necessary to support State activities pursuant to agreements or contracts for impact assistance entered into, under paragraph (2), by such State with the Secretary during such 2-year period; and

"(iii) such funds as may be provided under an agreement entered into under title IV.

"(5) Financial assistance authorized in this subsection shall be made out of amounts held in the Waste Fund.

"(6) No State, other than the State of Nevada, may receive financial assistance under this subsection after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987.".

SEC. 5033. PARTICIPATION OF INDIAN TRIBES.

Section 118(b)(5) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10138(b)(5)) is amended by—

(1) striking "or" at the end of clause (ii); and

(2) adding at the end the following new clause:

"(iv) the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987;".

PART D—NUCLEAR WASTE NEGOTIATOR

SEC. 5041. NUCLEAR WASTE NEGOTIATOR.

The Nuclear Waste Policy Act of 1982 is amended by adding at the end the following new title:

"TITLE IV—NUCLEAR WASTE NEGOTIATOR

"DEFINITION

"SEC. 401. For purposes of this title, the term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, any other territory or possession of the United States, and the Republic of the Marshall Islands. 42 USC 10241.

"THE OFFICE OF THE NUCLEAR WASTE NEGOTIATOR

"SEC. 402. (a) ESTABLISHMENT.—There is established within the Executive Office of the President the Office of the Nuclear Waste Negotiator. 42 USC 10242.

"(b) THE NUCLEAR WASTE NEGOTIATOR.—(1) The Office shall be headed by a Nuclear Waste Negotiator who shall be appointed by the President, by and with the advice and consent of the Senate. The Negotiator shall hold office at the pleasure of the President, and shall be compensated at the rate provided for level III of the Executive Schedule in section 5314 of title 5, United States Code. President of U.S.

"(2) The Negotiator shall attempt to find a State or Indian tribe willing to host a repository or monitored retrievable storage facility at a technically qualified site on reasonable terms and shall negotiate with any State or Indian tribe which expresses an interest in hosting a repository or monitored retrievable storage facility.

"DUTIES OF THE NEGOTIATOR

42 USC 10243.

"SEC. 403. (a) NEGOTIATIONS WITH POTENTIAL HOSTS.—(1) The Negotiator shall—

"(A) seek to enter into negotiations on behalf of the United States, with—

"(i) the Governor of any State in which a potential site is located; and

"(ii) the governing body of any Indian tribe on whose reservation a potential site is located; and

"(B) attempt to reach a proposed agreement between the United States and any such State or Indian tribe specifying the terms and conditions under which such State or tribe would agree to host a repository or monitored retrievable storage facility within such State or reservation.

"(2) In any case in which State law authorizes any person or entity other than the Governor to negotiate a proposed agreement under this section on behalf of the State, any reference in this title to the Governor shall be considered to refer instead to such other person or entity.

"(b) CONSULTATION WITH AFFECTED STATES, SUBDIVISIONS OF STATES, AND TRIBES.—In addition to entering into negotiations under subsection (a), the Negotiator shall consult with any State, affected unit of local government, or any Indian tribe that the Negotiator determines may be affected by the siting of a repository or monitored retrievable storage facility and may include in any proposed agreement such terms and conditions relating to the interest of such States, affected units of local government, or Indian tribes as the Negotiator determines to be reasonable and appropriate.

"(c) CONSULTATION WITH OTHER FEDERAL AGENCIES.—The Negotiator may solicit and consider the comments of the Secretary, the Nuclear Regulatory Commission, or any other Federal agency on the suitability of any potential site for site characterization. Nothing in this subsection shall be construed to require the Secretary, the Nuclear Regulatory Commission, or any other Federal agency to make a finding that any such site is suitable for site characterization.

"(d) PROPOSED AGREEMENT.—(1) The Negotiator shall submit to the Congress any proposed agreement between the United States and a State or Indian tribe negotiated under subsection (a) and an environmental assessment prepared under section 404(a) for the site concerned.

"(2) Any such proposed agreement shall contain such terms and conditions (including such financial and institutional arrangements) as the Negotiator and the host State or Indian tribe determine to be reasonable and appropriate and shall contain such provisions as are necessary to preserve any right to participation or compensation of such State, affected unit of local government, or Indian tribe under sections 116(c), 117, and 118(b).

"(3)(A) No proposed agreement entered into under this section shall have legal effect unless enacted into Federal law.

"(B) A State or Indian tribe shall enter into an agreement under this section in accordance with the laws of such State or tribe Nothing in this section may be construed to prohibit the disapproval of a proposed agreement between a State and the United States under this section by a referendum or an act of the legislature of such State.

"(4) Notwithstanding any proposed agreement under this section, the Secretary may construct a repository or monitored retrievable storage facility at a site agreed to under this title only if authorized by the Nuclear Regulatory Commission in accordance with the Atomic Energy Act of 1954 (42 U.S.C. 2012 et seq.), title II of the Energy Reorganization Act of 1982 (42 U.S.C. 5841 et seq.) and any other law applicable to authorization of such construction.

"ENVIRONMENTAL ASSESSMENT OF SITES

"SEC. 404. (a) IN GENERAL.—Upon the request of the Negotiator, the Secretary shall prepare an environmental assessment of any site that is the subject of negotiations under section 403(a). 42 USC 10244.

"(b) CONTENTS.—(1) Each environmental assessment prepared for a repository site shall include a detailed statement of the probable impacts of characterizing such site and the construction and operation of a repository at such site.

"(2) Each environmental assessment prepared for a monitored retrievable storage facility site shall include a detailed statement of the probable impacts of construction and operation of such a facility at such site.

"(c) JUDICIAL REVIEW.—The issuance of an environmental assessment under subsection (a) shall be considered to be a final agency action subject to judicial review in accordance with the provisions of chapter 7 of title 5, United States Code, and section 119.

"(d) PUBLIC HEARINGS.—(1) In preparing an environmental assessment for any repository or monitored retrievable storage facility site, the Secretary shall hold public hearings in the vicinity of such site to inform the residents of the area in which such site is located that such site is being considered and to receive their comments.

"(2) At such hearings, the Secretary shall solicit and receive any recommendations of such residents with respect to issues that should be addressed in the environmental assessment required under subsection (a) and the site characterization plan described in section 113(b)(1).

"(e) PUBLIC AVAILABILITY.—Each environmental assessment prepared under subsection (a) shall be made available to the public.

"(f) EVALUATION OF SITES.—(1) In preparing an environmental assessment under subsection (a), the Secretary shall use available geophysical, geologic, geochemical and hydrologic, and other information and shall not conduct any preliminary borings or excavations at any site that is the subject of such assessment unless—

"(A) such preliminary boring or excavation activities were in progress on or before the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987; or

"(B) the Secretary certifies that, in the absence of preliminary borings or excavations, adequate information will not be available to satisfy the requirements of this Act or any other law.

"(2) No preliminary boring or excavation conducted under this section shall exceed a diameter of 40 inches.

"SITE CHARACTERIZATION; LICENSING

42 USC 10245.

"SEC. 405. (a) SITE CHARACTERIZATION.—Upon enactment of legislation to implement an agreement to site a repository negotiated under section 403(a), the Secretary shall conduct appropriate site characterization activities for the site that is the subject of such agreement subject to the conditions and terms of such agreement. Any such site characterization activities shall be conducted in accordance with section 113, except that references in such section to the Yucca Mountain site and the State of Nevada shall be deemed to refer to the site that is the subject of the agreement and the State or Indian tribe entering into the agreement.

"(b) LICENSING.—(1) Upon the completion of site characterization activities carried out under subsection (a), the Secretary shall submit to the Nuclear Regulatory Commission an application for construction authorization for a repository at such site.

"(2) The Nuclear Regulatory Commission shall consider an application for a construction authorization for a repository or monitored retrievable storage facility in accordance with the laws applicable to such applications, except that the Nuclear Regulatory Commission shall issue a final decision approving or disapproving the issuance of a construction authorization not later than 3 years after the date of the submission of such application.

"MONITORED RETRIEVABLE STORAGE

42 USC 10246.

"SEC. 406. (a) CONSTRUCTION AND OPERATION.—Upon enactment of legislation to implement an agreement negotiated under section 403(a) to site a monitored retrievable storage facility, the Secretary shall construct and operate such facility as part of an integrated nuclear waste management system in accordance with the terms and conditions of such agreement.

Grants.

"(b) FINANCIAL ASSISTANCE.—The Secretary may make grants to any State, Indian tribe, or affected unit of local government to assess the feasibility of siting a monitored retrievable storage facility under this section at a site under the jurisdiction of such State, tribe, or affected unit of local government.

"ENVIRONMENTAL IMPACT STATEMENT

42 USC 10247.

"SEC. 407. (a) IN GENERAL.—Issuance of a construction authorization for a repository or monitored retrievable storage facility under section 405(b) shall be considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

"(b) PREPARATION.—A final environmental impact statement shall be prepared by the Secretary under such Act and shall accompany any application to the Nuclear Regulatory Commission for a construction authorization.

"(c) ADOPTION.—(1) Any such environmental impact statement shall, to the extent practicable, be adopted by the Nuclear Regulatory Commission, in accordance with section 1506.3 of title 40, Code of Federal Regulations, in connection with the issuance by the Nuclear Regulatory Commission of a construction authorization and license for such repository or monitored retrievable storage facility.

"(2)(A) In any such statement prepared with respect to a repository to be constructed under this title at the Yucca Mountain site,

the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, alternate sites to the Yucca Mountain site, or nongeologic alternatives to such site.

"(B) In any such statement prepared with respect to a repository to be constructed under this title at a site other than the Yucca Mountain site, the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, or nongeologic alternatives to such site but shall consider the Yucca Mountain site as an alternate to such site in the preparation of such statement.

"ADMINISTRATIVE POWERS OF THE NEGOTIATOR

"SEC. 408. In carrying out his functions under this title, the Negotiator may— 42 USC 10248.

"(1) appoint such officers and employees as he determines to be necessary and prescribe their duties;

"(2) obtain services as authorized by section 3109 of title 5, United States Code, at rates not to exceed the rate prescribed for grade GS-18 of the General Schedule by section 5332 of title 5, United States Code;

"(3) promulgate such rules and regulations as may be necessary to carry out such functions;

"(4) utilize the services, personnel, and facilities of other Federal agencies (subject to the consent of the head of any such agency);

"(5) for purposes of performing administrative functions under this title, and to the extent funds are appropriated, enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary and on such terms as the Negotiator determines to be appropriate, with any agency or instrumentality of the United States, or with any public or private person or entity; Contracts.

"(6) accept voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31, United States Code;

"(7) adopt an official seal, which shall be judicially noticed;

"(8) use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States;

"(9) hold such hearings as are necessary to determine the views of interested parties and the general public; and

"(10) appoint advisory committees under the Federal Advisory Committee Act (5 U.S.C. App.).

"COOPERATION OF OTHER DEPARTMENTS AND AGENCIES

"SEC. 409. Each department, agency, and instrumentality of the United States, including any independent agency, may furnish the Negotiator such information as he determines to be necessary to carry out his functions under this title. 42 USC 10249.

"TERMINATION OF THE OFFICE

"SEC. 410. The Office shall cease to exist not later than 30 days after the date 5 years after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987. 42 USC 10250.

"AUTHORIZATION OF APPROPRIATIONS

42 USC 10251. "SEC. 411. Notwithstanding subsection (d) of section 302, and subject to subsection (e) of such section, there are authorized to be appropriated for expenditures from amounts in the Waste Fund established in subsection (c) of such section, such sums as may be necessary to carry out the provisions of this title.".

PART E—NUCLEAR WASTE TECHNICAL REVIEW BOARD

SEC. 5051. NUCLEAR WASTE TECHNICAL REVIEW BOARD.

The Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.) is further amended by adding at the end the following new title:

"TITLE V—NUCLEAR WASTE TECHNICAL REVIEW BOARD

"DEFINITIONS

42 USC 10261. "SEC. 501. As used in this title:

"(1) The term 'Chairman' means the Chairman of the Nuclear Waste Technical Review Board.

"(2) The term 'Board' means the Nuclear Waste Technical Review Board established under section 502.

"NUCLEAR WASTE TECHNICAL REVIEW BOARD

42 USC 10262. "SEC. 502. (a) ESTABLISHMENT.—There is established a Nuclear Waste Technical Review Board that shall be an independent establishment within the executive branch.

President of U.S. "(b) MEMBERS.—(1) The Board shall consist of 11 members who shall be appointed by the President not later than 90 days after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987 from among persons nominated by the National Academy of Sciences in accordance with paragraph (3).

President of U.S. "(2) The President shall designate a member of the Board to serve as chairman.

"(3)(A) The National Academy of Sciences shall, not later than 90 days after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987, nominate not less than 22 persons for appointment to the Board from among persons who meet the qualifications described in subparagraph (C).

"(B) The National Academy of Sciences shall nominate not less than 2 persons to fill any vacancy on the Board from among persons who meet the qualifications described in subparagraph (C).

"(C)(i) Each person nominated for appointment to the Board shall be—

"(I) eminent in a field of science or engineering, including environmental sciences; and

"(II) selected solely on the basis of established records of distinguished service.

"(ii) The membership of the Board shall be representative of the broad range of scientific and engineering disciplines related to activities under this title.

"(iii) No person shall be nominated for appointment to the Board who is an employee of—

"(I) the Department of Energy;

"(II) a national laboratory under contract with the Department of Energy; or

"(III) an entity performing high-level radioactive waste or spent nuclear fuel activities under contract with the Department of Energy.

"(4) Any vacancy on the Board shall be filled by the nomination and appointment process described in paragraphs (1) and (3).

"(5) Members of the Board shall be appointed for terms of 4 years, each such term to commence 120 days after the date of enactment of the Nuclear Waste Policy Amendments Act of 1987, except that of the 11 members first appointed to the Board, 5 shall serve for 2 years and 6 shall serve for 4 years, to be designated by the President at the time of appointment.

"FUNCTIONS

"SEC. 503. The Board shall evaluate the technical and scientific validity of activities undertaken by the Secretary after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987, including— 42 USC 10263.

"(1) site characterization activities; and

"(2) activities relating to the packaging or transportation of high-level radioactive waste or spent nuclear fuel.

"INVESTIGATORY POWERS

"SEC. 504. (a) HEARINGS.—Upon request of the Chairman or a majority of the members of the Board, the Board may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Board considers appropriate. Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board. 42 USC 10264.

"(b) PRODUCTION OF DOCUMENTS.—(1) Upon the request of the Chairman or a majority of the members of the Board, and subject to existing law, the Secretary (or any contractor of the Secretary) shall provide the Board with such records, files, papers, data, or information as may be necessary to respond to any inquiry of the Board under this title.

"(2) Subject to existing law, information obtainable under paragraph (1) shall not be limited to final work products of the Secretary, but shall include drafts of such products and documentation of work in progress.

"COMPENSATION OF MEMBERS

"SEC. 505. (a) IN GENERAL.—Each member of the Board shall be paid at the rate of pay payable for level III of the Executive Schedule for each day (including travel time) such member is engaged in the work of the Board. 42 USC 10265.

"(b) TRAVEL EXPENSES.—Each member of the Board may receive travel expenses, including per diem in lieu of subsistence, in the same manner as is permitted under sections 5702 and 5703 of title 5, United States Code.

"STAFF

"SEC. 506. (a) CLERICAL STAFF.—(1) Subject to paragraph (2), the Chairman may appoint and fix the compensation of such clerical 42 USC 10266.

staff as may be necessary to discharge the responsibilities of the Board.

"(2) Clerical staff shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

"(b) PROFESSIONAL STAFF.—(1) Subject to paragraphs (2) and (3), the Chairman may appoint and fix the compensation of such professional staff as may be necessary to discharge the responsibilities of the Board.

"(2) Not more than 10 professional staff members may be appointed under this subsection.

"(3) Professional staff members may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

"SUPPORT SERVICES

42 USC 10267.

"SEC. 507. (a) GENERAL SERVICES.—To the extent permitted by law and requested by the Chairman, the Administrator of General Services shall provide the Board with necessary administrative services, facilities, and support on a reimbursable basis.

"(b) ACCOUNTING, RESEARCH, AND TECHNOLOGY ASSESSMENT SERVICES.—The Comptroller General, the Librarian of Congress, and the Director of the Office of Technology Assessment shall, to the extent permitted by law and subject to the availability of funds, provide the Board with such facilities, support, funds and services, including staff, as may be necessary for the effective performance of the functions of the Board.

"(c) ADDITIONAL SUPPORT.—Upon the request of the Chairman, the Board may secure directly from the head of any department or agency of the United States information necessary to enable it to carry out this title.

"(d) MAILS.—The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

"(e) EXPERTS AND CONSULTANTS.—Subject to such rules as may be prescribed by the Board, the Chairman may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

"REPORT

42 USC 10268.

"SEC. 508. The Board shall report not less than 2 times per year to Congress and the Secretary its findings, conclusions, and recommendations. The first such report shall be submitted not later than 12 months after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 509. Notwithstanding subsection (d) of section 302, and subject to subsection (e) of such section, there are authorized to be appropriated for expenditures from amounts in the Waste Fund established in subsection (c) of such section such sums as may be necessary to carry out the provisions of this title. 42 USC 10269.

"TERMINATION OF THE BOARD

"SEC. 510. The Board shall cease to exist not later than 1 year after the date on which the Secretary begins disposal of high-level radioactive waste or spent nuclear fuel in a repository.". 42 USC 10270.

PART F—MISCELLANEOUS

SEC. 5061. TRANSPORTATION.

Title I of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10121-10171) is further amended by adding at the end the following new subtitle:

"SUBTITLE H—TRANSPORTATION

"TRANSPORTATION

"SEC. 180. (a) No spent nuclear fuel or high-level radioactive waste may be transported by or for the Secretary under subtitle A or under subtitle C except in packages that have been certified for such purpose by the Commission. 42 USC 10175.

"(b) The Secretary shall abide by regulations of the Commission regarding advance notification of State and local governments prior to transportation of spent nuclear fuel or high-level radioactive waste under subtitle A or under subtitle C.

"(c) The Secretary shall provide technical assistance and funds to States for training for public safety officials of appropriate units of local government and Indian tribes through whose jurisdiction the Secretary plans to transport spent nuclear fuel or high-level radioactive waste under subtitle A or under subtitle C. Training shall cover procedures required for safe routine transportation of these materials, as well as procedures for dealing with emergency response situations. The Waste Fund shall be the source of funds for work carried out under this subsection.".

SEC. 5062. TRANSPORTATION OF PLUTONIUM BY AIRCRAFT THROUGH UNITED STATES AIR SPACE. 42 USC 5841 note.

(a) IN GENERAL.—Notwithstanding any other provision of law, no form of plutonium may be transported by aircraft through the air space of the United States from a foreign nation to a foreign nation unless the Nuclear Regulatory Commission has certified to Congress that the container in which such plutonium is transported is safe, as determined in accordance with subsection (b), the second undesignated paragraph under section 201 of Public Law 94-79 (89 Stat. 413; 42 U.S.C. 5841 note), and all other applicable laws.

(b) RESPONSIBILITIES OF THE NUCLEAR REGULATORY COMMISSION.—

(1) DETERMINATION OF SAFETY.—The Nuclear Regulatory Commission shall determine whether the container referred to in subsection (a) is safe for use in the transportation of plutonium by aircraft and transmit to Congress a certification for the

purposes of such subsection in the case of each container determined to be safe.

(2) TESTING.—In order to make a determination with respect to a container under paragraph (1), the Nuclear Regulatory Commission shall—

(A) require an actual drop test from maximum cruising altitude of a full-scale sample of such container loaded with test materials; and

(B) require an actual crash test of a cargo aircraft fully [77] loaded with full-scale samples of such container loaded with test material unless the Commission determines, after consultation with an independent scientific review panel, that the stresses on the container produced by other tests used in developing the container exceed the stresses which would occur during a worst case plutonium air shipment accident.

(3) LIMITATION.—The Nuclear Regulatory Commission may not certify under this section that a container is safe for use in the transportation of plutonium by aircraft if the container ruptured or released its contents during testing conducted in accordance with paragraph (2).

(4) EVALUATION.—The Nuclear Regulatory Commission shall evaluate the container certification required by title II of the Energy Reorganization Act of 1974 (42 U.S.C. 5841 et seq.) and subsection (a) in accordance with the National Environmental Policy Act of 1969 (83 Stat. 852; 42 U.S.C. 4321 et seq.) and all other applicable law.

(c) CONTENT OF CERTIFICATION.—A certification referred to in subsection (a) with respect to a container shall include—

(1) the determination of the Nuclear Regulatory Commission as to the safety of such container;

(2) a statement that the requirements of subsection (b)(2) were satisfied in the testing of such container; and

(3) a statement that the container did not rupture or release its contents into the environment during testing.

(d) DESIGN OF TESTING PROCEDURES.—The tests required by subsection (b) shall be designed by the Nuclear Regulatory Commission to replicate actual worst case transportation conditions to the maximum extent practicable. In designing such tests, the Commission shall provide for public notice of the proposed test procedures, provide a reasonable opportunity for public comment on such procedures, and consider such comments, if any.

(e) TESTING RESULTS: REPORTS AND PUBLIC DISCLOSURE.—The Nuclear Regulatory Commission shall transmit to Congress a report on the results of each test conducted under this section and shall make such results available to the public.

President of U.S.

(f) ALTERNATIVE ROUTES AND MEANS OF TRANSPORTATION.—With respect to any shipments of plutonium from a foreign nation to a foreign nation which are subject to United States consent rights contained in an Agreement for Peaceful Nuclear Cooperation, the President is authorized to make every effort to pursue and conclude arrangements for alternative routes and means of transportation, including sea shipment. All such arrangements shall be subject to stringent physical security conditions, and other conditions designed

[77] Copy read "full".

to protect the public health and safety, and provisions of this section, and all other applicable laws.

(g) INAPPLICABILITY TO MEDICAL DEVICES.—Subsections (a) through (e) shall not apply with respect to plutonium in any form contained in a medical device designed for individual human application.

(h) INAPPLICABILITY TO MILITARY USES.—Subsections (a) through (e) shall not apply to plutonium in the form of nuclear weapons nor to other shipments of plutonium determined by the Department of Energy to be directly connected with the United States national security or defense programs.

(i) INAPPLICABILITY TO PREVIOUSLY CERTIFIED CONTAINERS.—This section shall not apply to any containers for the shipment of plutonium previously certified as safe by the Nuclear Regulatory Commission under Public Law 94-79 (89 Stat. 413; 42 U.S.C. 5841 note).

(j) PAYMENT OF COSTS.—All costs incurred by the Nuclear Regulatory Commission associated with the testing program required by this section, and administrative costs related thereto, shall be reimbursed to the Nuclear Regulatory Commission by any foreign country receiving plutonium shipped through United States airspace in containers specified by the Commission.

SEC. 5063. SUBSEABED DISPOSAL.

Title II of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10191-10203) is amended by adding at the end the following new section:

"SUBSEABED DISPOSAL

"SEC. 224. (a) STUDY.—Within 270 days after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987, the Secretary shall report to Congress on subseabed disposal of spent nuclear fuel and high-level radioactive waste. The report under this subsection shall include— Reports. 42 USC 10204.

"(1) an assessment of the current state of knowledge of subseabed disposal as an alternative technology for disposal of spent nuclear fuel and high-level radioactive waste;

"(2) an estimate of the costs of subseabed disposal;

"(3) an analysis of institutional factors associated with subseabed disposal, including international aspects of a decision of the United States to proceed with subseabed disposal as an option for nuclear waste management;

"(4) a full discussion of the environmental and public health and safety aspects of subseabed disposal;

"(5) recommendations on alternative ways to structure an effort in research, development, and demonstration with respect to subseabed disposal; and

"(6) the recommendations of the Secretary with respect to research, development and demonstration in subseabed disposal of spent nuclear fuel and high-level radioactive waste.

"(b) OFFICE OF SUBSEABED DISPOSAL RESEARCH.—(1) There is hereby established an Office of Subseabed Disposal Research within the Office of Energy Research of the Department of Energy. The Office shall be headed by the Director, who shall be a member of the Senior Executive Service appointed by the Director of the Office of Energy Research, and compensated at a rate determined by applicable law. Establishment.

"(2) The Director of the Office of Subseabed Disposal Research shall be responsible for carrying out research, development, and demonstration activities on all aspects of subseabed disposal of high-level radioactive waste and spent nuclear fuel, subject to the general supervision of the Secretary. The Director of the Office shall be directly responsible to the Director of the Office of Energy Research, and the first such Director shall be appointed within 30 days of the date of enactment of the Nuclear Waste Policy Amendments Act of 1987.

Grants.
Contracts.

"(3) In carrying out his responsibilities under this Act, the Secretary may make grants to, or enter into contracts with, the Subseabed Consortium described in subsection (d) of this section, and other persons.

"(4)(A) Within 60 days of the date of enactment of the Nuclear Waste Policy Amendments Act of 1987, the Secretary shall establish a university-based Subseabed Consortium involving leading oceanographic universities and institutions, national laboratories, and other organizations to investigate the technical and institutional feasibility of subseabed disposal.

"(B) The Subseabed Consortium shall develop a research plan and budget to achieve the following objectives by 1995:

"(i) demonstrate the capacity to identify and characterize potential subseabed disposal sites;

"(ii) develop conceptual designs for a subseabed disposal system, including estimated costs and institutional requirements; and

"(iii) identify and assess the potential impacts of subseabed disposal on the human and marine environment.

Reports.

"(C) In 1990, and again in 1995, the Subseabed Consortium shall report to Congress on the progress being made in achieving the objectives of paragraph (2).

Reports.

"(5) The Director of the Office of Subseabed Disposal Research shall annually prepare and submit a report to the Congress on the activities and expenditures of the Office.".

SEC. 5604. DRY CASK STORAGE.

(a) STUDY.—During the period between the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987 and October 1, 1988, the Secretary of Energy (hereinafter in this section referred to as the "Secretary") shall conduct a study and evaluation of the use of dry cask storage technology at the sites of civilian nuclear power reactors for the temporary storage of spent nuclear fuel until such time as a permanent geologic repository has been constructed and licensed by the Nuclear Regulatory Commission (hereinafter in this section referred to as the "Commission") and is capable of receiving spent nuclear fuel. The Secretary shall report to Congress on the study under this paragraph by October 1, 1988.

Reports.

(b) CONTENTS OF STUDY.—In conducting the study under paragraph (1) the Secretary shall—

(1) consider the costs of dry cask storage technology, the extent to which dry cask storage on the site of civilian nuclear power reactors will affect human health and the environment, the extent to which the storage on the sites of civilian nuclear power reactors affects the costs and risk of transporting spent nuclear fuel to a central facility such as a monitored retrievable storage facility, and any other factors the Secretary considers appropriate;

(2) consider the extent to which amounts in the Nuclear Waste Fund established in section 302(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(c)) can be used, and should be used, to provide funds to construct, operate, maintain, and safeguard spent nuclear fuel in dry cask storage at the sites for civilian nuclear power reactors;

(3) consult with the Commission and include the views of the Commission in the report under paragraph (1); and

(4) solicit the views of State and local governments and the public.

SEC. 5065. AMENDMENTS TO THE TABLE OF CONTENTS.

The table of contents of the Nuclear Waste Policy Act of 1982 is amended by—

(1) adding at the end of subtitle C the following new sections:

"Sec. 142. Authorization of monitored retrievable storage.
"Sec. 143. Monitored Retrievable Storage Commission.
"Sec. 144. Survey.
"Sec. 145. Site selection.
"Sec. 146. Notice of disapproval.
"Sec. 147. Benefits agreement.
"Sec. 148. Construction authorization.
"Sec. 149. Financial assistance.";

(2) adding at the end of title I the following new subtitles:

"SUBTITLE E—REDIRECTION OF THE NUCLEAR WASTE PROGRAM

"Sec. 160. Selection of Yucca Mountain site.
"Sec. 161. Siting a second repository.

"SUBTITLE F—BENEFITS

"Sec. 170. Benefits agreements.
"Sec. 171. Content of agreements.
"Sec. 172. Review panel.
"Sec. 173. Termination.

"SUBTITLE G—OTHER BENEFITS

"Sec. 174. Consideration in siting facilities.
"Sec. 175. Report.

"SUBTITLE H—TRANSPORTATION

"Sec. 180. Transportation.";

(3) adding at the end of title II the following new section.

"Sec. 224. Subseabed disposal."; and

(4) adding at the end the following new titles:

"TITLE IV—NUCLEAR WASTE NEGOTIATOR

"Sec. 401. Definition.
"Sec. 402. The Office of Nuclear Waste Negotiator.
"Sec. 403. Duties of the Negotiator.
"Sec. 404. Environmental assessment of sites.
"Sec. 405. Site characterization; licensing.
"Sec. 406. Monitored retrievable storage
"Sec. 407. Environmental impact statement.
"Sec. 408. Administrative powers of the Negotiator
"Sec. 409. Cooperation of other departments and agencies.
"Sec. 410. Termination of the office.".

Federal Onshore Oil and Gas Leasing Reform Act of 1987. Contracts.

Subtitle B—Federal Onshore Oil and Gas Leasing Reform Act of 1987

SEC. 5101. SHORT TITLE; REFERENCES.

30 USC 181 note.

(a) SHORT TITLE.—This subtitle may be cited as the "Federal Onshore Oil and Gas Leasing Reform Act of 1987".

(b) REFERENCES.—Any reference in this subtitle to the "Act of February 25, 1920", is a reference to the Act of February 25, 1920, entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain" (30 U.S.C. 181 and following).

SEC. 5102. OIL AND GAS LEASING SYSTEM.

(a) COMPETITIVE BIDDING.—Section 17(b)(1) of the Act of February 25, 1920 (30 U.S.C. 226(b)(1)), is amended to read as follows:

"(b)(1)(A) All lands to be leased which are not subject to leasing under paragraph (2) of this subsection shall be leased as provided in this paragraph to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than 2,560 acres, except in Alaska, where units shall be not more than 5,760 acres. Such units shall be as nearly compact as possible. Lease sales shall be conducted by oral bidding. Lease sales shall be held for each State where eligible lands are available at least quarterly and more frequently if the Secretary of the Interior determines such sales are necessary. A lease shall be conditioned upon the payment of a royalty at a rate of not less than 12.5 percent in amount or value of the production removed or sold from the lease. The Secretary shall accept the highest bid from a responsible qualified bidder which is equal to or greater than the national minimum acceptable bid, without evaluation of the value of the lands proposed for lease. Leases shall be issued within 60 days following payment by the successful bidder of the remainder of the bonus bid, if any, and the annual rental for the first lease year. All bids for less than the national minimum acceptable bid shall be rejected. Lands for which no bids are received or for which the highest bid is less than the national minimum acceptable bid shall be offered promptly within 30 days for leasing under subsection (c) of this section and shall remain available for leasing for a period of 2 years after the competitive lease sale.

"(B) The national minimum acceptable bid shall be $2 per acre for a period of 2 years from the date of enactment of the Federal Onshore Oil and Gas Leasing Reform Act of 1987. Thereafter, the Secretary may establish by regulation a higher national minimum acceptable bid for all leases based upon a finding that such action is necessary: (i) to enhance financial returns to the United States; and (ii) to promote more efficient management of oil and gas resources on Federal lands. Ninety days before the Secretary makes any change in the national minimum acceptable bid, the Secretary shall notify the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. The proposal or promulgation of any regulation to establish a national minimum acceptable bid shall not be considered a major Federal action subject to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969.".

Regulations.

(b) NONCOMPETITIVE LEASING.—Section 17(c) of the Act of February 25, 1920 (30 U.S.C. 226(c)), is amended to read as follows:

"(c)(1) If the lands to be leased are not leased under subsection (b)(1) of this section or are not subject to competitive leasing under subsection (b)(2) of this section, the person first making application for the lease who is qualified to hold a lease under this Act shall be entitled to a lease of such lands without competitive bidding, upon payment of a non-refundable application fee of at least $75. A lease under this subsection shall be conditioned upon the payment of a royalty at a rate of 12.5 percent in amount or value of the production removed or sold from the lease. Leases shall be issued within 60 days of the date on which the Secretary identifies the first responsible qualified applicant.

"(2)(A) Lands (i) which were posted for sale under subsection (b)(1) of this section but for which no bids were received or for which the highest bid was less than the national minimum acceptable bid and (ii) for which, at the end of the period referred to in subsection (b)(1) of this section no lease has been issued and no lease application is pending under paragraph (1) of this subsection, shall again be available for leasing only in accordance with subsection (b)(1) of this section.

"(B) The land in any lease which is issued under paragraph (1) of this subsection or under subsection (b)(1) of this section which lease terminates, expires, is cancelled or is relinquished shall again be available for leasing only in accordance with subsection (b)(1) of this section.".

(c) RENTALS.—Section 17(d) of the Act of February 25, 1920 (30 U.S.C. 226(d)), is amended to read as follows:

"(d) All leases issued under this section, as amended by the Federal Onshore Oil and Gas Leasing Reform Act of 1987, shall be conditioned upon payment by the lessee of a rental of not less than $1.50 per acre per year for the first through fifth years of the lease and not less than $2 per acre per year for each year thereafter. A minimum royalty in lieu of rental of not less than the rental which otherwise would be required for that lease year shall be payable at the expiration of each lease year beginning on or after a discovery of oil or gas in paying quantities on the lands leased.".

(d) NOTICE AND RECLAMATION.—(1) Section 17 of the Act of February 25, 1920 (30 U.S.C. 226), is amended by redesignating subsections (f) through (k) as subsections (i) through (n) and by adding the following new subsections (f) through (h):

"(f) At least 45 days before offering lands for lease under this section, and at least 30 days before approving applications for permits to drill under the provisions of a lease or substantially modifying the terms of any lease issued under this section, the Secretary shall provide notice of the proposed action. Such notice shall be posted in the appropriate local office of the leasing and land management agencies. Such notice shall include the terms or modified lease terms and maps or a narrative description of the affected lands. Where the inclusion of maps in such notice is not practicable, maps of the affected lands shall be made available to the public for review. Such maps shall show the location of all tracts to be leased, and of all leases already issued in the general area. The requirements of this subsection are in addition to any public notice required by other law. Public information.

"(g) The Secretary of the Interior, or for National Forest lands, the Secretary of Agriculture, shall regulate all surface-disturbing Regulations.

activities conducted pursuant to any lease issued under this Act, and shall determine reclamation and other actions as required in the interest of conservation of surface resources. No permit to drill on an oil and gas lease issued under this Act may be granted without the analysis and approval by the Secretary concerned of a plan of operations covering proposed surface-disturbing activities within the lease area. The Secretary concerned shall, by rule or regulation, establish such standards as may be necessary to ensure that an adequate bond, surety, or other financial arrangement will be established prior to the commencement of surface-disturbing activities on any lease, to ensure the complete and timely reclamation of the lease tract, and the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease. The Secretary shall not issue a lease or leases or approve the assignment of any lease or leases under the terms of this section to any person, association, corporation, or any subsidiary, affiliate, or person controlled by or under common control with such person, association, or corporation, during any period in which, as determined by the Secretary of the Interior or Secretary of Agriculture, such entity has failed or refused to comply in any material respect with the reclamation requirements and other standards established under this section for any prior lease to which such requirements and standards applied. Prior to making such determination with respect to any such entity the concerned Secretary shall provide such entity with adequate notification and an opportunity to comply with such reclamation requirements and other standards and shall consider whether any administrative or judicial appeal is pending. Once the entity has complied with the reclamation requirement or other standard concerned an oil or gas lease may be issued to such entity under this Act.

"(h) The Secretary of the Interior may not issue any lease on National Forest System Lands reserved from the public domain over the objection of the Secretary of Agriculture.".

(2) Section 31(h) of the Act of February 25, 1920 (30 U.S.C. 188(h)), is amended by striking out "section 17(j)" and substituting "section 17(m)".

SEC. 5103. ASSIGNMENTS.

Sections 30(a) and 30(b) of the Act of February 25, 1920 (30 U.S.C. 187a, 187b), are redesignated as sections 30A and 30B, respectively, and the third sentence of section 30A, as so redesignated, is amended to read as follows: "The Secretary shall disapprove the assignment or sublease only for lack of qualification of the assignee or sublessee or for lack of sufficient bond: *Provided, however,* That the Secretary may, in his discretion, disapprove an assignment of any of the following, unless the assignment constitutes the entire lease or is demonstrated to further the development of oil and gas:

"(1) A separate zone or deposit under any lease.

"(2) A part of a legal subdivision.

"(3) Less than 640 acres outside Alaska or of less than 2,560 acres within Alaska.

Requests for approval of assignment or sublease shall be processed promptly by the Secretary. Except where the assignment or sublease is not in accordance with applicable law, the approval shall be given within 60 days of the date of receipt by the Secretary of a request for such approval.".

SEC. 5104. LEASE CANCELLATION.

The first sentence of section 31(b) of the Act of February 25, 1920 (30 U.S.C. 188(b)) is amended to read as follows: "Any lease issued after August 21, 1935, under the provisions of section 17 of this Act shall be subject to cancellation by the Secretary of the Interior after 30 days notice upon the failure of the lessee to comply with any of the provisions of the lease, unless or until the leasehold contains a well capable of production of oil or gas in paying quantities, or the lease is committed to an approved cooperative or unit plan or communitization agreement under section 17(m) of this Act which contains a well capable of production of unitized substances in paying quantities.".

SEC. 5105. ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT.

Section 1008 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3148) is amended as follows:

(1) Subsections (c) and (e) are deleted in their entirety.

(2) The second sentence of subsection 1008(d) is deleted.

SEC. 5106. PENDING APPLICATIONS, OFFERS, AND BIDS. 30 USC 226 note.

(a) Notwithstanding any other provision of this subtitle and except as provided in subsection (b) of this section, all noncompetitive oil and gas lease applications and offers and competitive oil and gas bids pending on the date of enactment of this subtitle shall be processed, and leases shall be issued under the provisions of the Act of February 25, 1920, as in effect before its amendment by this subtitle, except where the issuance of any such lease would not be lawful under such provisions or other applicable law.

(b) No noncompetitive lease applications or offers pending on the date of enactment of this subtitle for lands within the Shawnee National Forest, Illinois; the Ouachita National Forest, Arkansas; Fort Chafee, Arkansas; or Eglin [78] Air Force Base, Florida; shall be processed until these lands are posted for competitive bidding in accordance with section 5102 of this subtitle. If any such tract does not receive a bid equal to or greater than the national minimum acceptable bid from a responsible qualified bidder then the noncompetitive applications or offers pending for such a tract shall be reinstated and noncompetitive leases issued under the Act of February 25, 1920, as in effect before its amendment by this subtitle, except where the issuance of any such lease would not be lawful under such provisions or other applicable law. If competitive leases are issued for any such tract, then the pending noncompetitive application or offer shall be rejected.

(c) Except as provided in subsections (a) and (b) of this section, all oil and gas leasing pursuant to the Act of February 25, 1920, after the date of enactment of this subtitle shall be conducted in accordance with the provisions of this subtitle.

SEC. 5107. REGULATIONS; TEST SALE. 30 USC 226 note.

(a) REGULATIONS.—The Secretary shall issue final regulations to implement this subtitle within 180 days after the enactment of this subtitle. The regulations shall be effective when published in the Federal Register. Effective date. Federal Register, publication.

(b) TREATMENT UNDER OTHER LAW.—The proposal or promulgation of such regulations shall not be considered a major Federal

[78] Copy read "Elgin".

action subject to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969.

(c) TEST SALE.—The Secretary may hold one or more lease sales conducted in accordance with the amendments made by this subtitle before promulgation of regulations referred to in subsection (a). Sale procedures for such sale shall be established in the notice of sale.

SEC. 5108. ENFORCEMENT.

The Act of February 25, 1920, is amended by inserting after section 40 the following new section:

30 USC 195.

"SEC. 41. ENFORCEMENT.

"(a) VIOLATIONS.—It shall be unlawful for any person:

"(1) to organize or participate in any scheme, arrangement, plan, or agreement to circumvent or defeat the provisions of this Act or its implementing regulations, or

"(2) to seek to obtain or to obtain any money or property by means of false statements of material facts or by failing to state material facts concerning:

"(A) the value of any lease or portion thereof issued or to be issued under this Act;

"(B) the availability of any land for leasing under this Act;

"(C) the ability of any person to obtain leases under this Act; or

"(D) the provisions of this Act and its implementing regulations.

"(b) PENALTY.—Any person who knowingly violates the provisions of subsection (a) of this section shall be punished by a fine of not more than $500,000, imprisonment for not more than five years, or both.

"(c) CIVIL ACTIONS.—Whenever it shall appear that any person is engaged, or is about to engage, in any act which constitutes or will constitute a violation of subsection (a) of this section, the Attorney General may institute a civil action in the district court of the United States for the judicial district in which the defendant resides or in which the violation occurred or in which the lease or land involved is located, for a temporary restraining order, injunction, civil penalty of not more than $100,000 for each violation, or other appropriate remedy, including but not limited to, a prohibition from participation in exploration, leasing, or development of any Federal mineral, or any combination of the foregoing.

"(d) CORPORATIONS.—(1) Whenever a corporation or other entity is subject to civil or criminal action under this section, any officer, employee, or agent of such corporation or entity who knowingly authorized, ordered, or carried out the proscribed activity shall be subject to the same action.

"(2) Whenever any officer, employee, or agent of a corporation or other entity is subject to civil or criminal action under this section for activity conducted on behalf of the corporation or other entity, the corporation or other entity shall be subject to the same action, unless it is shown that the officer, employee, or agent was acting without the knowledge or consent of the corporation or other entity.

"(e) REMEDIES, FINES, AND IMPRISONMENT.—The remedies, penalties, fines, and imprisonment prescribed in this section shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies, penalties,

fines, and imprisonment prescribed in this section shall be in addition to any other remedies, penalties, fines, and imprisonment afforded by any other law or regulation.

"(f) STATE CIVIL ACTIONS.—(1) A State may commence a civil action under subsection (c) of this section against any person conducting activity within the State in violation of this section. Civil actions brought by a State shall only be brought in the United States district court for the judicial district in which the defendant resides or in which the violation occurred or in which the lease or land involved is located. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to order appropriate remedies and penalties as described in subsection (c) of this section.

"(2) A State shall notify the Attorney General of the United States of any civil action filed by the State under this subsection within 30 days of filing of the action. The Attorney General of the United States shall notify a State of any civil action arising from activity conducted within that State filed by the Attorney General under this subsection within 30 days of filing of the action.

"(3) Any civil penalties recovered by a State under this subsection shall be retained by the State and may be expended in such manner and for such purposes as the State deems appropriate. If a civil action is jointly brought by the Attorney General and a State, by more than one State or by the Attorney General and more than one State, any civil penalties recovered as a result of the joint action shall be shared by the parties bringing the action in the manner determined by the court rendering judgment in such action.

"(4) If a State has commenced a civil action against a person conducting activity within the State in violation of this section, the Attorney General may join in such action but may not institute a separate action arising from the same activity under this section. If the Attorney General has commenced a civil action against a person conducting activity within a State in violation of this section, that State may join in such action but may not institute a separate action arising from the same activity under this section.

"(5) Nothing in this section shall deprive a State of jurisdiction to enforce its own civil and criminal laws against any person who may also be subject to civil and criminal action under this section.".

SEC. 5109. PAYMENTS TO STATES.

Section 35 of the Act of February 25, 1920 (30 U.S.C. 191) is amended by adding the following at the end thereof: "In determining the amount of payments to States under this section, the amount of such payments shall not be reduced by any administrative or other costs incurred by the United States.".

SEC. 5110. REPORT. 30 USC 226 note.

The Secretary shall submit annually for 5 years after enactment of this subtitle to the Congress a report containing appropriate information to facilitate congressional monitoring of this subtitle. Such report shall include, but not be limited to—

(1) the number of acres leased, and the number of leases issued, competitively and noncompetitively;

(2) the amount of revenue received from bonus bids, filing fees, rentals, and royalties;

(3) the amount of production from competitive and noncompetitive leases; and

(4) such other data and information as will facilitate—

(A) an assessment of the onshore oil and gas leasing system, and

(B) a comparison of the system as revised by this subtitle with the system in operation prior to the enactment of this subtitle.

30 USC 226 note.

SEC. 5111. LAND USE STUDY.

The National Academy of Sciences and the Comptroller General of the United States shall conduct a study of the manner in which oil and gas resources are considered in the land use plans developed by the Secretary of the Interior in accordance with provisions of the Federal Land Policy and Management Act of 1976 (90 Stat. 2743) and the Secretary of Agriculture in accordance with the Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 476), as amended by the National Forest Management Act of 1976 (90 Stat. 2949), and recommend any improvements that may be necessary to ensure that—

(1) potential oil and gas resources are adequately addressed in planning documents;

(2) the social, economic, and environmental consequences of exploration and development of oil and gas resources are determined; and

(3) any stipulations to be applied to oil and gas leases are clearly identified.

SEC. 5112. LANDS NOT SUBJECT TO OIL AND GAS LEASING.

The Act of February 25, 1920, is amended by adding the following at the end thereof:

30 USC 226-3.

"SEC. 43. LANDS NOT SUBJECT TO OIL AND GAS LEASING.

"(a) PROHIBITION.—The Secretary shall not issue any oil and gas lease under this Act on any of the following Federal lands:

"(1) Lands recommended for wilderness allocation by the surface managing agency.

"(2) Lands within Bureau of Land Management wilderness study areas.

"(3) Lands designated by Congress as wilderness study areas, except where oil and gas leasing is specifically allowed to continue by the statute designating the study area.

"(4) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-Sixth Congress (House Document numbered 96-119), unless such lands are allocated to uses other than wilderness by a land and resource management plan or have been released to uses other than wilderness by an act of Congress.

"(b) EXPLORATION.—In the case of any area of National Forest or public lands subject to this section, nothing in this section shall affect any authority of the Secretary of the Interior (or for National Forest Lands reserved from the public domain, the Secretary of Agriculture) to issue permits for exploration for oil and gas by means not requiring construction of roads or improvement of existing roads if such activity is conducted in a manner compatible with the preservation of the wilderness environment.".

SEC. 5113. SHORT TITLE.

The Act of February 25, 1920, is amended by inserting after section 43 the following new section:

"SEC. 44. SHORT TITLE.

"This Act may be cited as the 'Mineral Leasing Act'.". Mineral Leasing Act. 30 USC 181 note.

Subtitle C—Land and Water Conservation Fund and Tongass Timber Supply Fund

SEC. 5201. LAND AND WATER CONSERVATION FUND ACT AMENDMENTS.

(a) ADMISSION FEES.—Section 4(a) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-6a(a)) is amended as follows:

(1) Paragraph (1) is amended by striking out "$10" and inserting in lieu thereof "$25" in the first sentence.

(2) Paragraph (1) is further amended by striking out "(1)" and inserting in lieu thereof "(1)(A)" and adding the following new subparagraph at the end thereof:

"(B) For admission into a specific designated unit of the National Park System, or into several specific units located in a particular geographic area, the Secretary is authorized to make available an annual admission permit for a reasonable fee. The fee shall not exceed $15 regardless of how many units of the park system are covered. The permit shall convey the privileges of, and shall be subject to the same terms and conditions as, the Golden Eagle Passport, except that it shall be valid only for admission into the specific unit or units of the National Park System indicated at the time of purchase.".

(3) Paragraph (2) is amended by adding the following sentences at the end thereof: "The fee for a single-visit permit at any designated area applicable to those persons entering by private, noncommercial vehicle shall be no more than $5 per vehicle. The single-visit permit shall admit the permittee and all persons accompanying him in a single vehicle. The fee for a single-visit permit at any designated area applicable to those persons entering by any means other than a private noncommercial vehicle shall be no more than $3 per person. Except as otherwise provided in this subsection, the maximum fee amounts set forth in this paragraph shall apply to all designated areas.".

(4) Paragraph (3) is amended by adding the following new sentence at the end thereof: "Notwithstanding any other provision of this Act, no admission fee may be charged at any unit of the National Park System which provides significant outdoor recreation opportunities in an urban environment and to which access is publicly available at multiple locations.".

(5) Add the following new paragraphs:

"(6)(A) No later than 60 days after the date of enactment of this paragraph, the Secretary of the Interior shall submit to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate a report on the entrance fees proposed to be charged at units of the National Park System. The report shall include a list of units of the Reports.

National Park System and the entrance fee proposed to be charged at each unit. The Secretary of the Interior shall include in the report an explanation of the guidelines used in applying the criteria in subsection (d).

"(B) Following submittal of the report to the respective committees, any proposed changes to matters covered in the report, including the addition or deletion of park units or the increase or decrease of fee levels at park units shall not take effect until 60 days after notice of the proposed change has been submitted to the committees.

"(7) No admission fee may be charged at any unit of the National Park System for admission of any person 16 years of age or less.

"(8) No admission fee may be charged at any unit of the National Park System for admission of organized school groups or outings conducted for educational purposes by schools or other bona fide educational institutions.

"(9) No admission fee may be charged at the following units of the National Park System: U.S.S. Arizona Memorial, Independence National Historical Park, any unit of the National Park System within the District of Columbia, Arlington House—Robert E. Lee National Memorial, San Juan National Historic Site, and Canaveral National Seashore.

"(10) For each unit of the National Park System where an admission fee is collected, the Director shall annually designate at least one day during periods of high visitation as a 'Fee-Free Day' when no admission fee shall be charged.

"(11) In the case of the following parks, the fee for a single-visit permit applicable to those persons entering by private, noncommercial vehicle (the permittee and all persons accompanying him in a single vehicle) shall be no more than $10 per vehicle and the fee for a single-visit permit applicable to persons entering by any means other than a private noncommercial vehicle shall be no more than $5 per person: Yellowstone National Park and Grand Teton National Park and after the end of fiscal year 1990, Grand Canyon National Park. In the case of Yellowstone and Grand Teton, a single-visit fee collected at one unit shall also admit the vehicle or person who paid such fee for a single-visit to the other unit.

"(12) Notwithstanding section 203 of the Alaska National Interest Lands Conservation Act, the Secretary may charge an admission fee under this section at Denali National Park and Preserve in Alaska.".

(b) VISITOR RESERVATION SERVICES.—Section 4(f) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-6a(f)) is amended to read as follows:

Contracts.

"(f) The head of any Federal agency, under such terms and conditions as he deems appropriate, may contract with any public or private entity to provide visitor reservation services. Any such contract may provide that the contractor shall be permitted to deduct a commission to be fixed by the agency head from the amount charged the public for providing such services and to remit the net proceeds therefrom to the contracting agency.".

(c) SPECIAL PROVISIONS.—Section 4 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-6a) is amended by adding the following new subsections at the end thereof:

"(i)(1) Except in the case of fees collected by the United States Fish and Wildlife Service or the Tennessee Valley Authority, all receipts from fees collected pursuant to this section by any Federal agency (or by any public or private entity under contract with a Federal agency) shall be covered into a special account for that agency established in the Treasury of the United States. Fees collected by the Secretary of Agriculture pursuant to this subsection shall continue to be available for the purposes of distribution to States and counties in accordance with applicable law. Contracts.

"(2) Amounts covered into the special account for each agency during each fiscal year shall, after the end of such fiscal year, be available for appropriation solely for the purposes and in the manner provided in this subsection. No funds shall be transferred from fee receipts made available under this Act to each unit of the national park system: *Provided, however,* That in making appropriations, funds derived from such fees may be used for any purpose authorized therein. Funds credited to the special account shall remain available until expended.

"(3) For agencies other than the National Park Service, such funds shall be made available for resource protection, research, interpretation, and maintenance activities related to resource protection in areas managed by that agency at which outdoor recreation is available. To the extent feasible, such funds should be used for purposes (as provided for in this paragraph) which are directly related to the activities which generated the funds, including but not limited to water-based recreational activities and camping.

"(4) Amounts covered into the special account for the National Park Service shall be allocated among park system units in accordance with subsection (j) for obligation or expenditure by the Director of the National Park Service for the following purposes:

"(A) In the case of receipts from the collection of admission fees: for resource protection, research, and interpretation at units of the National Park System.

"(B) In the case of receipts from the collection of user fees: for resource protection, research, interpretation, and maintenance activities related to resource protection at units of the National Park System.

"(j)(1) 10 percent of the funds made available to the Director of the National Park Service under subsection (i) in each fiscal year shall be allocated among units of the National Park System on the basis of need in a manner to be determined by the Director.

"(2) 40 percent of the funds made available to the Director of the National Park Service under subsection (i) in each fiscal year shall be allocated among units of the National Park System in accordance with paragraph (3) of this subsection and 50 percent shall be allocated in accordance with paragraph (4) of this subsection.

"(3) The amount allocated to each unit under this paragraph for each fiscal year shall be a fraction of the total allocation to all units under this paragraph. The fraction for each unit shall be determined by dividing the operating expenses at that unit during the prior fiscal year by the total operating expenses at all units during the prior fiscal year.

"(4) The amount allocated to each unit under this paragraph for each fiscal year shall be a fraction of the total allocation to all units under this paragraph. The fraction for each unit shall be determined by dividing the user fees and admission fees collected under

this section at that unit during the prior fiscal year by the total of user fees and admission fees collected under this section at all units during the prior fiscal year.

"(5) Amounts allocated under this subsection to any unit for any fiscal year and not expended in that fiscal year shall remain available for expenditure at that unit until expended.

"(k) When authorized by the head of the collecting agency, volunteers at designated areas may sell permits and collect fees authorized or established pursuant to this section. The head of such agency shall ensure that such volunteers have adequate training regarding—

"(1) the sale of permits and the collection of fees,

"(2) the purposes and resources of the areas in which they are assigned, and

"(3) the provision of assistance and information to visitors to the designated area.

The Secretary shall require a surety bond for any such volunteer performing services under this subsection. Funds available to the collecting agency may be used to cover the cost of any such surety bond. The head of the collecting agency may enter into arrangements with qualified public or private entities pursuant to which such entities may sell (without cost to the United States) annual admission permits (including Golden Eagle Passports) at any appropriate location. Such arrangements shall require each such entity to reimburse the United States for the full amount to be received from the sale of such permits at or before the agency delivers the permits to such entity for sale.

"(l)(1) Where the National Park Service provides transportation to view all or a portion of any unit of the National Park System, the Director may impose a charge for such service in lieu of an admission fee under this section. The charge imposed under this paragraph shall not exceed the maximum admission fee under subsection (a).

"(2) Notwithstanding any other provision of law, half of the charges imposed under paragraph (1) shall be retained by the unit of the National Park System at which the service was provided. The remainder shall be covered into the special account referred to in subsection (i) in the same manner as receipts from fees collected pursuant to this section. Fifty percent of the amount retained shall be expended only for maintenance of transportation systems at the unit where the charge was imposed. The remaining 50 percent of the retained amount shall be expended only for activities related to resource protection at such units.

"(m) Where the primary public access to a unit of the National Park System is provided by a concessioner, the Secretary may charge an admission fee at such units only to the extent that the total of the fee charged by the concessioner for access to the unit and the admission fee does not exceed the maximum amount of the admission fee which could otherwise be imposed under subsection (a).".

16 USC 460*l*-5a.

(d) REPEALS.—(1) Title I of Public Law 96-514 is amended by striking out the following provisions which appear under the heading "Land and Water Conservation Fund": "Notwithstanding the provisions of Public Law 90-401, revenues from recreation fee collections by Federal agencies shall hereafter be paid into the Land and Water Conservation Fund, to be available for appropriation for any or all purposes authorized by the Land and Water Conservation

Fund Act of 1965, as amended, without regard to the source of such revenues.".

(2) Section 402 of the Act of October 12, 1979 (93 Stat. 664), is hereby repealed. 16 USC 460*l*-6b.

(3) The seventh paragraph of title I of the Energy and Water Development Appropriation Act, 1982, entitled "Special Recreation Use Fees" is hereby repealed.

16 USC 460*l*-5a note.

(e) STUDY.—(1) The Secretary of the Interior shall assess the extent to which traffic congestion and overcrowding occurs at certain park system units during times of seasonally high usage and shall conduct a study of the following— 16 USC 460*l*-6a note.

(A) the feasibility of reducing vehicular traffic within national park system units through fee reductions for visitors traveling by bus and through other means which could shift visitation from automobiles to buses; and

(B) the feasibility of encouraging more even seasonal distribution of visitation.

(2) The study shall include a pilot project to be carried out in Yosemite National Park. For purposes of such pilot project, the Secretary may reduce the fees for admission of various classes or categories of visitors to Yosemite National Park and may reduce the admission fees imposed at the park during seasons with low visitation. A report containing the results of the study shall be transmitted to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate within 3 years after the enactment of this Act. Reports.

(f) EXTENSION OF LAND AND WATER CONSERVATION FUND.—(1) Section 2 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601 and following) is amended as follows: 16 USC 460*l*-5.

(A) In the matter preceding subsection (a) strike "1989" and substitute "2015".

(B) In subsection (c)(1) strike "1989" and substitute "2015".

(2) The last sentence of section 3 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601 and following) is amended to read as follows: "Moneys made available for obligation or expenditure from the fund or from the special account established under section 4(i)(1) may be obligated or expended only as provided in this Act.". 16 USC 460*l*-6.

(g) RELATIONSHIP TO FISCAL YEAR 1988 APPROPRIATIONS.—For purposes of legislation providing appropriations for the fiscal year 1988 to the Department of the Interior, the provisions of this section shall be treated as "permanent statutory language" establishing entrance fees for the National Park Service.

SEC. 5202. TONGASS TIMBER SUPPLY FUND. 16 USC 539d note.

From the period beginning on October 1, 1987, and extending until September 30, 1989, the provisions of section 705(a) of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 539(d)) shall not be effective. In lieu thereof, the following provision shall apply:

"There is hereby authorized to be appropriated the sum of at least $40,000,000 annually (or such sums as the Secretary of Agriculture determines necessary) to maintain the timber supply from the Tongass National Forest to dependent industry at a rate of 4,500,000,000 foot board measure per decade." Appropriation authorization.

Subtitle D—Reclamation

43 USC 421b note.

SEC. 5301. SALE OF BUREAU OF RECLAMATION LOANS.

(a) SALE.—The Secretary of the Interior (hereinafter in this section referred to as the "Secretary"), under such terms as the Secretary shall prescribe, shall sell or otherwise dispose of loans made pursuant to the Distribution System Loans Act (43 U.S.C. 421a-421d), the Small Reclamation Projects Act (43 U.S.C. 422a-422l), and the Rehabilitation and Betterment Act (43 U.S.C. 504-505) in such amounts as to realize net proceeds to the Federal Government of not less than $130,000,000 in the fiscal year ending September 30, 1988.

Contracts.

In the conduct of such sales, the Secretary shall take such actions as he deems appropriate to accommodate, effectuate, and otherwise protect the rights and obligations of the United States and the borrowers under the contracts executed to provide for repayment of such loans.

(b) SAVINGS PROVISIONS.—Nothing in this section, including the prepayment or other disposition of any loan or loans, shall—

(1) except to the extent that prepayment may have been authorized heretofore, relieve the borrower from the application of the provisions of Federal Reclamation law (Act of June 17, 1902, and Acts amendatory thereof or supplementary thereto, including the Reclamation Reform Act of 1982), including acreage limitations, to the extent such provisions would apply absent such prepayment, or

(2) authorize the transfer of title to any federally owned facilities funded by the loans specified in subsection (a) of this section without a specific Act of Congress.

(c) FEES AND EXPENSES OF PROGRAM.—Proceeds from the conduct of the program authorized by this section shall be first used to pay the fees and expenses of such program and the net proceeds shall be deposited in the Treasury of the United States as miscellaneous receipts.

(d) TERMINATION.—The authority granted by this section to sell or otherwise dispose of loans shall terminate on December 31, 1988.

SEC. 5302. RECLAMATION REFORM ACT AMENDMENTS.

43 USC 390ww.

(a) AUDIT.—Section 224 of the Reclamation Reform Act of 1982 (Public Law 97-293) is amended by adding the following new subsections after subsection (f):

"(g) In addition to any other audit or compliance activities which may otherwise be undertaken, the Secretary of the Interior, or his designee, shall conduct a thorough audit of the compliance with the reclamation law of the United States, specifically including this Act, by legal entities and individuals subject to such law. At a minimum, the Secretary shall complete audits of those legal entities and individuals whose landholdings or operations exceed 960 acres within 3 years. The Secretary shall submit an annual written report to the Senate Committee on Energy and Natural Resources and the House Committee on Interior and Insular Affairs. Such report shall summarize the legal entities and individuals audited, the results of such audits, and the actions taken by the Secretary to correct any instances of noncompliance with the reclamation law.

Reports.

Contracts.

"(h) The provisions of section 205(c) are and have been applicable to all recordable contracts executed prior to October 12, 1982, and any decision, rule, or regulation promulgated by the Department of

the Interior to the contrary is hereby revoked: *Provided,* That notwithstanding the provisions of subsection (i), the Secretary shall not seek reimbursement for any amounts due under this subsection or section 205(c) which was due prior to the date of enactment of this subsection.

"(i) When the Secretary finds that any individual or legal entity subject to reclamation law, including this Act, has not paid the required amount for irrigation water delivered to a landholding pursuant to reclamation law, including this Act, he shall collect the amount of any underpayment with interest accruing from the date the required payment was due until paid. The interest rate shall be determined by the Secretary of the Treasury on the basis of the weighted average yield of all interest bearing marketable issues sold by the Treasury during the period of underpayment.".

(b) REVOCABLE TRUSTS.—Section 214 of the Reclamation Reform Act of 1982 (Public Law 97-293) is amended by inserting "(a)" after "214" and by adding the following new subsection at the end thereof: 43 USC 390nn.

"(b) Lands placed in a revocable trust shall be attributable to the grantor if—

"(1) the trust is revocable at the discretion of the grantor and revocation results in the title to such lands reverting either directly or indirectly to the grantor; or

"(2) the trust is revoked or terminated by its terms upon the expiration of a specified period of time and the revocation or termination results in the title to such lands reverting either directly or indirectly to the grantor.".

Subtitle E—Panama Canal

SEC. 5401. REFERENCE TO THE PANAMA CANAL ACT OF 1979.

Except as otherwise expressly provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Panama Canal Act of 1979 (22 U.S.C. 3601 and following).

PART 1—PANAMA CANAL REAUTHORIZATION

SEC. 5411. OPERATING EXPENSES.

There is authorized to be appropriated from the Panama Canal Commission Fund to the Panama Canal Commission (hereafter in this part referred to as the "Commission") for the fiscal year beginning October 1, 1987, not to exceed $467,050,000, for necessary expenses of the Commission incurred under the Panama Canal Act of 1979 (22 U.S.C. 3601 and following), including expenses for—

(1) the hire of passenger motor vehicles and aircraft;

(2) the purchase of passenger motor vehicles as may be necessary for fiscal year 1988, the number and price of which shall not exceed the amount provided in appropriation Acts; except that large heavy-duty passenger sedans used to transport Commission employees across the Isthmus of Panama may be purchased for fiscal year 1988 without regard to price limitations set forth in applicable regulations of any department or agency of the United States;

(3) official receptions and representation expenses, except that not more than $43,000 may be made available for such expenses, of which (A) not more than $10,000 may be made available for such expenses of the Supervisory Board of the Commission, (B) not more than $5,000 may be made available for such expenses of the Secretary of the Commission, and (C) not more than $28,000 may be made available for such expenses of the Administrator of the Commission;

(4) the procurement of expert and consultant services as provided in section 3109 of title 5, United States Code;

(5) a residence for the Administrator of the Commission;

(6) uniforms, or allowances therefor, as authorized by section 5901 and 5902 of title 5, United States Code;

(7) disbursements by the Administrator of the Commission for employee recreation and community projects; and

(8) the operation of guide services.

SEC. 5412. CAPITAL OUTLAY.

Of any funds appropriated pursuant to section 5411, not more than $37,000,000 (which is authorized to remain available until expended) may be made available for the acquisition, construction, replacement and improvements of facilities, structures, and equipment required by the Commission.

SEC. 5413. AUTHORIZATION OF ADDITIONAL APPROPRIATIONS.

In addition to the amount authorized to be appropriated by section 5411, there are authorized to be appropriated to the Commission for the fiscal year 1988 such amounts as may be necessary for—

(1) increases in salary, pay, retirement, and other employee benefits provided by law;

(2) covering payments to Panama under paragraph 4(a) of Article XIII of the Panama Canal Treaty of 1977, as provided by section 1341(a) of the Panama Canal Act of 1979 (22 U.S.C. 3751(a)); and

(3) increased costs for fuel.

SEC. 5414. INSURANCE.

Section 1419 (22 U.S.C. 3779) is amended by inserting "or other unpredictable events" after "marine accidents".

Contracts.
22 USC 3712a.

SEC. 5415. AUTHORITY TO LEASE OFFICE SPACE.

Notwithstanding section 210 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490), the Commission is authorized to negotiate directly and enter into contracts for the lease of, and for improvements to, real property in the United States for use by the Commission as office space, on such terms as the Commission considers to be in the interest of the United States, and to make direct payments therefor.

SEC. 5416. COMPENSATION OF BOARD MEMBERS.

Section 1102(b) (22 U.S.C. 3612(b)) is amended by inserting before the period at the end thereof the following: "or, as authorized by the Chairman of the Board, while on [79] official Panama Canal Commission business".

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[79] Copy read "an".

SEC. 5417. SETTLEMENT OF CLAIMS.

(a) SETTLEMENT OF CLAIMS.—Section 1401(b) (22 U.S.C. 3761(b)) is amended to read as follows:

"(b) The Commission may pay not more than $50,000 on any claim described in subsection (a).".

(b) INJURIES TO VESSELS WITHOUT PILOTS.—Section 1411(b)(1) (22 U.S.C. 3771(b)(1)) is amended by striking out "adjust and pay" and all that follows through "$50,000" and inserting in lieu thereof "pay not more than $50,000 on the claim".

SEC. 5418. REPORT TO CONGRESS.

22 USC 3871 note.

Out of the funds authorized to be appropriated by this part, the Commission shall prepare and submit to the Congress a report on—

(1) the condition of the Panama Canal and potential adverse effects on United States shipping and commerce;

(2) the effect on canal operations of the military forces under General Noriega; and

Manuel Noriega.

(3) the Commission's evaluation of the effect on canal operations if the Panamanian Government continues to withhold its consent to major factors in the United States Senate's ratification of the Panama Canal Treaties.

PART 2—PANAMA CANAL REVOLVING FUND

Panama Canal Revolving Fund Act. 22 USC 3601 note.

SEC. 5421. SHORT TITLE.

This part may be referred to as the "Panama Canal Revolving Fund Act".

SEC. 5422. ESTABLISHMENT OF REVOLVING FUND.

(a) ESTABLISHMENT.—Section 1302 (22 U.S.C. 3712) is amended by striking out subsections (a) through (d) and inserting in lieu thereof the following:

"SEC. 1302. (a)(1) There is established in the Treasury of the United States a revolving fund to be known as the 'Panama Canal Revolving Fund'. The Panama Canal Revolving Fund shall, subject to subsection (c), be available to the Commission to carry out the purposes, functions, and powers authorized by this Act, including for—

"(A) the hire of passenger motor vehicles and aircraft;

"(B) uniforms or allowances therefor, as authorized by sections 5901 and 5902 of title 5, United States Code;

"(C) official receptions and representation expenses of the Board, the Secretary of the Commission, and the Administrator;

"(D) the operation of guide services;

"(E) a residence for the Administrator;

"(F) disbursements by the Administrator for employee and community projects; and

"(G) the procurement of expert and consultant services as provided in section 3109 of title 5, United States Code.

"(2) On the effective date of the Panama Canal Revolving Fund Act—

"(A) the Panama Canal Commission Fund shall be terminated and the unappropriated balance, including undeposited receipts as of the close of business on the day before the effective date of the Panama Canal Revolving Fund Act, shall be transferred to the Panama Canal Revolving Fund;

"(B) the unexpended balance of appropriations to the Commission, as of the close of business on the day before the effective date of the Panama Canal Revolving Fund Act, shall be transferred to the Panama Canal Revolving Fund, and such amounts, including amounts appropriated for capital expenditures, shall remain available until expended;

"(C) the assets and liabilities recorded before such effective date under the 'Panama Canal Commission Fund' shall be recorded under the Panama Canal Revolving Fund; and

"(D) the Panama Canal Emergency Fund shall be terminated and the remaining balance shall be transferred to the Panama Canal Revolving Fund.

"(b) Upon completion of the transfers of funds under subsection (a)—

"(1) amounts attributable to interest on the investment of the United States in the Panama Canal which accrued before January 1, 1986, shall be transferred from the Panama Canal Revolving Fund to the general fund of the Treasury; and

"(2) such amounts as were appropriated to the Commission in the fiscal year which ended September 30, 1980, and for which the Commission has not reimbursed the general fund of the Treasury, shall be transferred to the general fund of the Treasury.

"(c)(1) There shall be deposited in the Panama Canal Revolving Fund, on a continuing basis, toll receipts and all other receipts of the Commission. Except as provided in section 1303 and subject to paragraph (2), no funds may be obligated or expended by the Commission in any fiscal year unless such obligation or expenditure has been specifically authorized by law.

"(2) No funds may be obligated or expended by the Commission in any fiscal year for administrative expenses except to the extent or in such amounts as are provided in appropriations Acts.

"(3) No funds may be authorized for the use of the Commission, or obligated or expended by the Commission in any fiscal year in excess of—

"(A) the amount of revenues deposited in the Panama Canal Revolving Fund during such fiscal year, plus

"(B) the amount of revenues deposited in the Panama Canal Revolving Fund before such fiscal year and remaining unexpended at the beginning of such fiscal year.

Reports. Not later than 30 days after the end of each fiscal year, the Secretary of the Treasury shall report to the Congress the amount of revenues deposited in the Panama Canal Revolving Fund during such fiscal year.

"(d) With the approval of the Secretary of the Treasury, the Commission may deposit amounts in the Panama Canal Revolving Fund in any Federal Reserve bank, any depository for public funds, or in such other places and in such manner as the Commission and the Secretary may agree.

"(e) The Committee on Appropriations of each House of Congress shall review the annual budget of the Commission, including operations and capital expenditures.".

(b) CONFORMING AMENDMENTS.—(1) The section heading for section 1302 is amended to read as follows:

22 USC 3712.

"PANAMA CANAL REVOLVING FUND".

(2) The item relating to section 1302 in the table of contents of the Panama Canal Act of 1979 is amended to read as follows:

"1302. Panama Canal Revolving Fund.".

SEC. 5423. EMERGENCY AUTHORITY.

(a) GRANT OF AUTHORITY.—Section 1303 (22 U.S.C. 3713) is amended to read as follows:

"SEC. 1303. If authorizing legislation described in section 1302(c)(1) has not been enacted for a fiscal year, then the Commission may withdraw funds from the Panama Canal Revolving Fund in order to defray emergency expenses and to ensure the continuous, efficient, and safe operation of the Panama Canal, including expenses for capital projects. The authority of this section may not be used for administrative expenses. The authority of this section may be exercised only until authorizing legislation described in section 1302(c)(1) is enacted, or for a period of 24 months after the end of the fiscal year for which such authorizing legislation was last enacted, whichever occurs first. Within 60 days after the end of any calendar quarter in which expenditures are made under this section, the Commission shall report such expenditures to the appropriate committees of the Congress.". Reports.

(b) CONFORMING AMENDMENTS.—(1) The section heading for section 1303 is amended by striking out "FUND" and inserting in lieu thereof "AUTHORITY". 22 USC 3713.

(2) The item relating to section 1303 in the table of contents of the Panama Canal Act of 1979 is amended by striking out "fund" and inserting in lieu thereof "authority".

SEC. 5424. BORROWING AUTHORITY.

(a) GRANT OF AUTHORITY.—Subchapter I of chapter 3 of title I (22 U.S.C. 3711 and following) is amended by adding at the end thereof the following new section:

"BORROWING AUTHORITY

"SEC. 1304. (a) The Panama Canal Commission may borrow from the Treasury, for any of the purposes of the Commission, not more than $100,000,000 outstanding at any time. For this purpose, the Commission may issue to the Secretary of the Treasury its notes or other obligations— 22 USC 3714.

"(1) which shall have maturities (of not later than December 31, 1999) agreed upon by the Commission and the Secretary of the Treasury, and

"(2) which may be redeemable at the option of the Commission before maturity.

"(b) Amounts borrowed under this section shall not be available for payments to Panama under Article XIII of the Panama Canal Treaty of 1977.

"(c) Amounts borrowed under this section shall increase the investment of the United States in the Panama Canal, and repayment of such amounts shall decrease such investment.

"(d) The Commission shall report to the Congress and to the Office of Management and Budget on each exercise of borrowing authority under this section.". Reports.

(b) CONFORMING AMENDMENT.—The table of contents of the Panama Canal Act of 1979 is amended by inserting after the item relating to section 1303 the following:

"1304. Borrowing authority.".

SEC. 5425. CALCULATION OF INTEREST.

(a) CALCULATION OF INTEREST.—Section 1603 (22 U.S.C. 3793) is amended—

(1) in subsection (b)(1)(A), by striking out "appropriations to the Commission made on or after the effective date of this Act" and inserting in lieu thereof "the Panama Canal Revolving Fund,";

(2) in subsection (b)(2)(A), by striking out "covered into the Panama Canal Commission Fund pursuant to section 1302 of this Act" and inserting in lieu thereof "deposited in the Panama Canal Revolving Fund"; and

(3) by adding at the end thereof the following new subsection:

"(d) The Panama Canal Commission shall pay to the Treasury of the United States interest on the investment of the United States, as determined under this section. Such interest shall be deposited in the general fund of the Treasury.".

SEC. 5426. PAYMENTS TO THE REPUBLIC OF PANAMA.

The second sentence of section 1341(e) (22 U.S.C. 3751(e)) is amended—

(1) by striking out "and" before "(6)"; and

(2) by inserting before the period ", and (7) amounts programmed to meet working capital requirements".

SEC. 5427. BASES OF TOLLS.

Section 1602(b) (22 U.S.C 3792(b)) is amended by inserting "working capital," after "depreciation,".

SEC. 5428. TECHNICAL AND CONFORMING AMENDMENTS.

(a) APPLIANCES FOR EMPLOYEES INJURED BEFORE SEPTEMBER 7, 1916.—Section 1246 (22 U.S.C. 3683) is amended by striking out "appropriated" and inserting in lieu thereof "available".

(b) DISASTER RELIEF.—Section 1343 (22 U.S.C. 3753) is amended by striking out "available funds appropriated" and inserting in lieu thereof "funds available".

(c) CONGRESSIONAL RESTRAINTS ON PROPERTY TRANSFERS AND TAX EXPENDITURES.—Section 1344(b)(4) (22 U.S.C. 3754(b)(4)) is amended—

(1) by striking out "appropriated to or" and inserting in lieu thereof "available"; and

(2) by striking out "Panama Canal Commission Fund" and inserting in lieu thereof "Panama Canal Revolving Fund".

(d) CIVIL SERVICE RETIREMENT AND DISABILITY FUND.—Section 8348(i)(2) of title 5, United States Code, is amended by striking out "The Secretary of the Treasury shall pay to the Fund from appropriations" and inserting in lieu thereof "The Panama Canal Commission shall pay to the Fund from funds available to it".

(e) CANAL ZONE GOVERNMENT FUNDS.—Section 1301 (22 U.S.C. 3711) is amended—

(1) by amending the second sentence to read as follows: "The Commission may, to the extent of funds available to it, pay

claims or make payments chargeable to such accounts, upon proper audit of such claims or payments."; and

(2) by striking out the third sentence.

SEC. 5429. EFFECTIVE DATE.

22 USC 3683 note.

This part and the amendments made by this part take effect on January 1, 1988.

Subtitle F—Abandoned Mine Funds in Wyoming

SEC. 5501. ALLOCATION OF ABANDONED MINE RECLAMATION FUNDS IN WYOMING.

Notwithstanding any other provision of law, the State of Wyoming may, subject to a plan approved by the Governor, expend not more than $2,000,000 from its allocation of fiscal year 1987 appropriated funds under section 402(g) of Public Law 95-87 for direct assistance to citizens evacuated from their homes in the Rawhide and Horizon Subdivisions in Campbell County, Wyoming, due to hazards from methane and hydrogen sulfide gases.

Subtitle G—Nuclear Regulatory Commission User Fees

SEC. 5601. USER FEES.

Section 7601(b)(1)(A) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272; 100 Stat. 147) is amended by inserting "; except that for fiscal years 1988 and 1989, such percentage shall be increased an additional 6 percent of such costs plus all other assessments made by the Nuclear Regulatory Commission pursuant to House Joint Resolution 395, 100th Congress, 1st Session, as enacted; but in no event shall such percentage be less than a total of 45 percent of such costs in each such fiscal year" after "with respect to such fiscal year".

42 USC 2213.

TITLE VI—CIVIL SERVICE AND POSTAL SERVICE PROGRAMS

SEC. 6001. PARTIAL DEFERRED PAYMENT OF LUMP-SUM CREDIT FOR CERTAIN INDIVIDUALS ELECTING ALTERNATIVE FORMS OF ANNUITIES.

5 USC 8343a note.

(a) IN GENERAL.—Notwithstanding any other provision of law, and except as provided in subsection (c), any lump-sum credit payable to an employee or Member pursuant to the election of an alternative form of annuity by such employee or Member under section 8343a or section 8420a of title 5, United States Code, shall be paid in accordance with the schedule under subsection (b) (instead of the schedule which would otherwise apply), if the commencement date of the annuity payable to such employee or Member occurs after January 3, 1988, and before October 1, 1989.

(b) SCHEDULE OF PAYMENTS.—The schedule of payment of any lump-sum credit subject to this section is as follows:

(1) 60 percent of the lump-sum credit shall be payable on the date on which, but for the enactment of this section, the full amount of the lump-sum credit would otherwise be payable.

(2) The remainder of the lump-sum credit shall be payable on the date which occurs 12 months after the date described in paragraph (1).

An amount payable in accordance with paragraph (2) shall be payable with interest, computed using the rate under section 8334(e)(3) of title 5, United States Code.

Regulations.

(c) EXCEPTIONS.—The Office of Personnel Management shall prescribe regulations under which this section shall not apply—

(1) in the case of any individual who is separated from Government service involuntarily, other than for cause on charges of misconduct or delinquency; and

(2) in the case of any individual as to whom the application of this section would be against equity and good conscience, due to a life-threatening affliction or other critical medical condition affecting such individual.

(d) ANNUITY BENEFITS NOT AFFECTED.—Nothing in this section shall affect the commencement date, the amount, or any other aspect of any annuity benefits payable under section 8343a or section 8420a of title 5, United States Code.

(e) DEFINITIONS.—For purposes of this section, the terms "lump-sum credit", "employee", and "Member" each has the meaning given such term by section 8331 or section 8401 of title 5, United States Code, as appropriate.

39 USC 2003 note.

SEC. 6002. CONTRIBUTIONS BY THE UNITED STATES POSTAL SERVICE TO THE CIVIL SERVICE RETIREMENT AND DISABILITY FUND.

(a) ESTABLISHMENT OF POSTAL SERVICE ESCROW FUND.—There is established as a separate account in the United States Treasury, the "Postal Service Escrow Fund".[79a] Such Fund shall—

(1) have such amounts described under subsection (b)(2) deposited no later than October 31, 1988;

(2) not be available for expenditures of any amounts therein during the existence of such Fund; and

(3) cease to exist on October 1, 1989, and on such date all amounts deposited in such Fund under subsection (b)(2) shall be deposited in the Postal Service Fund established under section 2003 of title 39, United States Code.

(b) DEPOSIT OF CERTAIN SAVINGS IN CERTAIN FUNDS.—

(1) FISCAL YEAR 1988.—From all funds available to the United States Postal Service in fiscal year 1988, the Postal Service shall deposit into the Civil Service Retirement and Disability Fund established under section 8348 of title 5, United States Code, an amount of $350,000,000 in fiscal year 1988, in addition to any amount deposited pursuant to subsection (h) of such section.

(2) FISCAL YEAR 1989.—From all funds available to the United States Postal Service in fiscal year 1989, the Postal Service shall deposit into the Postal Service Escrow Fund an amount of $465,000,000 no later than October 31, 1988.

(c) CAPITAL LIMITATIONS FOR FISCAL YEARS 1988 AND 1989.—

(1) The United States Postal Service may not make any commitment or obligation to expend any monies deposited in the Postal Service Fund established under section 2003 of title 39, United States Code, for the capital investment program—

(A) in excess of $625,000,000 in fiscal year 1988; and

[79a] Copy read "Fund." ".

(B) in excess of $1,995,000,000 in fiscal year 1989.

(2) CAPITAL INVESTMENT PROGRAMS.—For the purposes of paragraph (1) the term "capital investment program" shall include all investments in long-term assets and capital investment expenditures (including direct and indirect costs associated with such investments and expenditures, such as obligations through contracts).

SEC. 6003. CONTRIBUTIONS BY THE UNITED STATES POSTAL SERVICE TO THE EMPLOYEES HEALTH BENEFITS FUND. 5 USC 8906 note.

(a) CONTRIBUTIONS FOR CERTAIN ANNUITANTS OF THE UNITED STATES POSTAL SERVICE.—As partial payment to the Employees Health Benefits Fund established under section 8909 of title 5, United States Code, for benefits of certain annuitants and survivor annuitants (no portion of the cost of which was paid by the Postal Service before the date of enactment of this section) the Postal Service shall pay into the Employee Health Benefits Fund $160,000,000 in fiscal year 1988, and $270,000,000 in fiscal year 1989 in addition to any amount deposited into such Fund pursuant to section 8906 of such title 5 in each such fiscal year.

(b) PAYMENT LIMITATIONS IN FISCAL YEARS 1988 AND 1989.—The partial payment required by subsection (a) of this section shall—

(1) be from all funds available to the United States Postal Service in each such fiscal year;

(2) be from funds representing savings to the United States Postal Service resulting from savings from the operating budget of the United States Postal Service in each such fiscal year; and

(3) be paid into such Fund in each such fiscal year, without—

(A) increasing borrowing under section 2005 of title 39, United States Code;

(B) using any budgetary resources other than budgetary resources derived from the operating budget of the United States Postal Service; or

(C) increasing postal rates under chapter 36 of title 39, United States Code,

for the purposes of financing such payment.

(c) IMPLEMENTATION PLANS, PROGRESS REPORTS, AND COMPLIANCE FOR FISCAL YEARS 1988 AND 1989.—

(1) IMPLEMENTATION.—No later than March 1, 1988 for fiscal year 1988, and October 1, 1988 for fiscal year 1989, the United States Postal Service shall—

(A) formulate an implementation plan specifically enumerating the methods by which the Postal Service shall make the payments required under subsection (b) and fulfill the conditions required under paragraphs (1), (2), and (3) of such subsection; and

(B) submit such plan to the Committee on Governmental Affairs of the Senate and the Committee on Post Office and Civil Service of the House of Representatives.

(2) INTERIM REPORT.—No later than July 15, 1988 for fiscal year 1988, and March 1, 1989 for fiscal year 1989, the United States Postal Service shall submit an interim report to the Committee on Governmental Affairs of the Senate and the Committee on Post Office and Civil Service of the House of Representatives on the status of meeting the guidelines and goals of the plans submitted under paragraph (1)(B), and any adjustments necessary to meet the requirements under the

provisions of subsection (b) of this section for each such fiscal year.

(3) PRELIMINARY AUDIT AND REPORT BY THE GENERAL ACCOUNTING OFFICE.—No later than September 1, 1988 for fiscal year 1988, and September 1, 1989 for fiscal year 1989, the General Accounting Office shall—

(A) conduct an audit of the plans and adjustments to the plans submitted by the United States Postal Service under paragraphs (1) and (2) of this subsection and determine the extent of compliance of the Postal Service with such plans and the requirements of subsection (b) of this section; and

(B) submit a report of such audit and determinations to the Committee on Governmental Affairs of the Senate and the Committee on Post Office and Civil Service of the House of Representatives.

[80] (4) DETERMINATION OF COMPLIANCE.—On October 31, 1988 for fiscal year 1988, and on October 31, 1989 for fiscal year 1989, the General Accounting Office shall—

(A) make a final audit and determination of whether the United States Postal Service is in compliance with the requirements of subsection (b) of this section;

(B) submit a final report for each such fiscal year on such compliance to the Committee on Governmental Affairs of the Senate and the Committee on Post Office and Civil Service of the House of Representatives; and

(C) include in each final report submitted under subparagraph (B), such recommendations (if applicable) for any actions to enforce compliance with the provisions of subsection (b) of this section.

(5) COMPLIANCE IN FISCAL YEARS 1988 AND 1989.—Based on the determination of compliance required by subsection (c)(4) of this section for fiscal years 1988 and 1989, the Congress shall (after receiving the recommendation of the General Accounting Office under paragraph (4)(C)) determine appropriate action, if necessary, to enforce compliance with any payment limitation under subsection (b) of this section.

SEC. 6004. TECHNICAL CLARIFICATION.

For purposes of section 202 of the Balanced Budget and Emergency Deficit Reaffirmation Act of 1987, the amendments made by this title shall be considered an exception under subsection (b) of such section.

TITLE VII—VETERANS' PROGRAMS

SEC. 7001. SALES OF VENDEE LOANS WITH OR WITHOUT RECOURSE.

Section 1816(d) of title 38, United States Code, is amended—

(1) by redesignating paragraph (3) as subparagraph (C);

(2) by inserting after paragraph (2) the following:

"(3)(A) Before October 1, 1989, notes evidencing such loans may be sold with or without recourse as determined by the Administrator, with respect to specific proposed sales of such notes, to be in the best interest of the effective functioning of the loan guaranty program under this chapter, taking into consideration the comparative cost-

[80] Paragraphs "(4)", "(A)", "(B)", and "(C)", indented wrong.

effectiveness of each type of sale. In comparing the cost-effectiveness of conducting a proposed sale of such notes with recourse or without recourse, the Administrator shall, based on available estimates regarding likely market conditions and other pertinent factors as of the time of the sale, determine and consider—

"(i) the average amount by which the selling price for such notes sold with recourse would exceed the selling price for such notes if sold without recourse; and

"(ii) the total cost of selling such notes with recourse, including—

"(I) any estimated discount or premium;

"(II) the projected cost, based on Veterans' Administration experience with the sale of notes evidencing vendee loans with recourse and the quality of the loans evidenced by the notes to be sold, of repurchasing defaulted notes;

"(III) the total servicing cost with respect to repurchased notes, including the costs of taxes and insurance, collecting monthly payments, servicing delinquent accounts, and terminating insoluble loans;

"(IV) the costs of managing and disposing of properties acquired as the result of defaults on such notes;

"(V) the loss or gain on resale of such properties; and

"(VI) any other cost determined appropriate by the Administrator.

"(B) Not later than 60 days after making any sale described in subparagraph (A) of this paragraph occurring before October 1, 1989, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report describing— Reports.

"(i) the application of the provisions of such subparagraph, and each of the determinations required thereunder, in the case of such sale;

"(ii) the results of the sale in comparison to the anticipated results; and

"(iii) actions taken by the Administrator to facilitate the marketing of the notes involved."; and

(3) in subparagraph (C), as redesignated by clause (1) of this section—

(A) by striking out "The Administrator may sell any note securing" and inserting in lieu thereof "Beginning on October 1, 1989, the Administrator may sell any note evidencing"; and

(B) by redesignating clauses (A) and (B) as clauses (i) and (ii), respectively.

SEC. 7002. LOAN FEE EXTENSION.

Section 1829(c) of title 38, United States Code, is amended by striking out "1987" and inserting in lieu thereof "1989".

SEC. 7003. CASH SALES OF PROPERTIES ACQUIRED THROUGH FORECLOSURES.

(a) IN GENERAL.—Section 1816(d)(1) of title 38, United States Code, is amended by striking out "not more than 75 percent, nor less than 60 percent," in the first sentence and inserting in lieu thereof "not more than 65 percent, nor less than 50 percent,".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as of October 1, 1987. 38 USC 1816 note.

SEC. 7004. STATUTORY CONSTRUCTION.

(a) STATUTORY CONSTRUCTION FOR PURPOSES OF THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL REAFFIRMATION ACT OF 1987.—For the purposes of subsections (a) and (b) of section 202 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100-119), the amendments made by section 7003 achieve savings made possible by changes in program requirements.

38 USC 1816 note.

(b) RULE FOR CONSTRUCTION OF DUPLICATE PROVISIONS.—In applying the provisions of this title and the provisions of the Veterans' Home Loan Program Improvements and Property Rehabilitation Act of 1987 which make the same amendments as the provisions of this title—

(1) the identical provisions of title 38, United States Code, amended by the provisions of this title and the provisions of such Act shall be treated as having been amended only once; and

(2) in executing to title 38, United States Code, the amendments made by this title and by such Act, such amendments shall be executed so as to appear only once in the law.

TITLE VIII—BUDGET POLICY AND FISCAL PROCEDURES

SEC. 8001. DEFENSE AND DOMESTIC DISCRETIONARY SPENDING LIMITS.

(a) AGGREGATE ALLOCATIONS FOR DEFENSE.—The levels of budget authority and budget outlays for fiscal years 1988 and 1989 for major functional category 050 (National Defense) shall be:

(1) Fiscal year 1988:
(A) New budget authority, $292,000,000,000.
(B) Outlays, $285,400,000,000.

(2) Fiscal year 1989:
(A) New budget authority, $299,500,000,000.
(B) Outlays, $294,000,000,000.

(b) AGGREGATE ALLOCATIONS FOR DOMESTIC DISCRETIONARY SPENDING.—The levels of total budget authority and total budget outlays for fiscal years 1988 and 1989 for all discretionary spending in categories other than major functional category 050 (National Defense) shall be:

(1) Fiscal year 1988:
(A) New budget authority, $162,900,000,000.
(B) Outlays, $176,800,000,000.

(2) Fiscal year 1989:
(A) New budget authority, $166,200,000,000.
(B) Outlays, $185,300,000,000.

(c) FISCAL YEAR 1989 BUDGET RESOLUTION.—

(1) HOUSE OF REPRESENTATIVES.—The Committee on the Budget of the House of Representatives [81] shall report a concurrent resolution on the budget for fiscal year 1989, pursuant to section 301 of the Congressional Budget Act of 1974, in accordance with the appropriate levels of budget authority and budget outlays for major functional category 050 (National Defense) and for all discretionary spending in categories other than

[81] Copy read "Representative".

major functional category 050 as set forth in subsections (a)(2) and (b)(2).

(2) POINT OF ORDER IN THE SENATE ON AGGREGATE ALLOCATIONS FOR DEFENSE AND DOMESTIC DISCRETIONARY SPENDING FOR FISCAL YEAR 1989.—

(A) Except as provided in subparagraph (E), it shall not be in order in the Senate to consider any concurrent resolution on the budget for fiscal year 1989 (including a conference report thereon), or any amendment to such a resolution, that would fail to be consistent with the allocations in subsections (a) and (b) for such fiscal year.

(B) Subparagraph (A) may be waived or suspended by a vote of three-fifths of the Members of the Senate, duly chosen and sworn.

(C) If the ruling of the presiding officer of the Senate sustains a point of order raised pursuant to subparagraph (A), a vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required to sustain an appeal of such ruling. Debate on any such appeal shall be limited to two hours, to be equally divided between, and controlled by, the Majority and Minority Leaders, or their designees.

(D) For purposes of this paragraph, the levels of new budget authority, spending authority as described in section 401(c)(2), outlays, and new credit authority for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the Senate.

(E) This paragraph shall not apply if a declaration of war by the Congress is in effect or if a resolution pursuant to section 254(a) of the Balanced Budget and Emergency Deficit Control Act of 1985 has been enacted.

(d) ALLOCATIONS PURSUANT TO FISCAL YEAR 1989 BUDGET RESOLUTION.—(1) The allocations required to be included in the joint explanatory statement accompanying the conference report on the concurrent resolution on the budget for fiscal year 1989, pursuant to section 302(a) of the Congressional Budget Act of 1974, shall be based upon the levels set forth in subsections (a)(2) and (b)(2) of this section.

(2) The Committee on Appropriations of each House shall, after consulting with the Committee on Appropriations of the other House, make the subdivisions required under section 302(b)(1) of the Congressional Budget Act of 1974 consistent with the allocations in subsections (a)(2) and (b)(2) for fiscal year 1989.

SEC. 8002. RESTORATION OF FUNDS SEQUESTERED. 2 USC 902 note.

(a) ORDER RESCINDED.—Upon the enactment of this Act and House Joint Resolution 395, 100th Congress,[82] 1st session, the orders issued by the President on October 20, 1987, and November 20, 1987, pursuant to section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 are hereby rescinded. 3 CFR, 1987 Comp., pp. 311, 315.

(b) AMOUNTS RESTORED.—Except as otherwise provided in sections 4001, 4041(b), and 4061, any action taken to implement the orders referred to in subsection (a) shall be reversed, and any sequesterable resource that has been reduced or sequestered by such orders is hereby restored, revived, or released and shall be available to the

[82] Copy read "Congres".

same extent and for the same purpose as if the orders had not been issued.

SEC. 8003. TECHNICAL AMENDMENTS TO THE CONGRESSIONAL BUDGET ACT OF 1974.

(a) REFERENCES IN SECTION.—Except as otherwise specifically provided, whenever in this section an amendment is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to that section or other provision of the Congressional Budget and Impoundment Control Act of 1974.

88 Stat. 297. (b) REVISION OF TABLE OF CONTENTS.—Section 1(b) is amended by striking "Disapproval of proposed deferrals" and inserting "Proposed deferrals".

(c) REDESIGNATION OF SUBPARAGRAPH HEADINGS.—Section 3(7) (as amended by section 106(a) of the Balanced Budget and Emergency 2 USC 622. Deficit Control Reaffirmation Act of 1987) is amended by—

(1) striking section 3(7)(C);
(2) redesignating section 3(7)(D) as 3(7)(C);
(3) redesignating section 3(7)(E) as 3(7)(D);
(4) redesignating section 3(7)(F) as 3(7)(E);
(5) redesignating section 3(7)(G) as 3(7)(F);
(6) redesignating section 3(7)(H) as 3(7)(G); and
(7) redesignating section 3(7)(I) as 3(7)(H).

(d) GRAMMATICAL CLARIFICATION OF SECTION 305(c).—Section 305(c) (as amended by section 209 of the Balanced Budget and Emergency 2 USC 636. Deficit Control Reaffirmation Act of 1987) is amended by inserting a comma after "therewith".

(e) SUBSTITUTION OF "PROPOSED" FOR "MADE" WITH REGARD TO AMENDMENTS IN COMMITTEE.—Section 252(c)(2)(F)(ii) of the Balanced Budget and Emergency Deficit Control Act of 1985 (as amended by section 102(a) of the Balanced Budget and Emergency Deficit Con- 2 USC 902. trol Reaffirmation Act of 1987) is amended by striking "made" and inserting "proposed".

(f) CLARIFICATION OF BUDGET BASELINE.—Section 251(a)(6)(B) of the Balanced Budget and Emergency Deficit Control Act of 1985 (as amended by section 102(a) of the Balanced Budget and Emergency 2 USC 901. Deficit Control Reaffirmation Act of 1987) is amended by striking out "and" before "contract authority" and by inserting before the semicolon at the end thereof the following: ", and that authority to provide insurance through the Federal Housing Administration Fund is continued".

1 USC 106 note. **SEC. 8004. PREPARATION OF PRINTED ENROLLED BILL.**

(a) PREPARATION OF PRINTED ENROLLMENT.—(1) Upon the enactment of this Act enrolled as a hand enrollment, the Clerk of the House of Representatives shall prepare a printed enrollment of this Act as in the case of a bill or joint resolution to which sections 106 and 107 of title 1, United States Code, apply. Such enrollment shall be a correct enrollment of this Act as enrolled in the hand enrollment.

(2) A printed enrollment prepared pursuant to paragraph (1) may, in order to conform to customary style for printed laws, include corrections in spelling, punctuation, indentation, type face, and type size and other necessary stylistic corrections to the hand enrollment. Such a printed enrollment shall include notations (in the margins or as otherwise appropriate) of all such corrections.

(b) TRANSMITTAL TO PRESIDENT.—A printed enrollment prepared pursuant to subsection (a) shall be signed by the presiding officers of both Houses of Congress as a correct printing of the hand enrollment of this Act and shall be transmitted to the President.

(c) CERTIFICATION BY PRESIDENT; LEGAL EFFECT.—Upon certification by the President that a printed enrollment transmitted pursuant to subsection (b) is a correct printing of the hand enrollment of this Act, such printed enrollment shall be considered for all purposes as the original enrollment of this Act and as valid evidence of the enactment of this Act.

(d) ARCHIVES.—A printed enrollment certified by the President under subsection (c) shall be transmitted to the Archivist of the United States, who shall preserve it with the hand enrollment. In preparing this Act for publication in slip form and in the United States Statutes at Large pursuant to section 112 of title 1, United States Code, the Archivist of the United States shall use the printed enrollment certified by the President under subsection (c) in lieu of the hand enrollment.

(e) HAND ENROLLMENT DEFINED.—As used in this section, the term "hand enrollment" means enrollment in a form other than the printed form required by sections 106 and 107 of title 1, United States Code, as authorized by the joint resolution entitled "Joint resolution authorizing the hand enrollment of the budget reconciliation bill and of the full-year continuing resolution for fiscal year 1988", approved December 1987 (H.J. Res. 426 of the 100th Congress).

SEC. 8005. ASSET SALES.

In the fiscal year 1989 budget process, Congress commits to pass legislation sufficient to achieve the budget summit agreement of $3,500,000,000 of asset sales in fiscal year 1989.

TITLE IX—INCOME SECURITY AND RELATED PROGRAMS

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[83] Copy read "family independence program.".
[84] Copy read "state.".
[85] Copy read "commission on children.".

[86] Copy read "service".

Subtitle A—OASDI Provisions

PART 1—COVERAGE AND BENEFITS

SEC. 9001. COVERAGE OF INACTIVE DUTY MILITARY TRAINING.

42 USC 410.

(a) SOCIAL SECURITY ACT AMENDMENTS.—(1) Paragraph (1) of section 210(l) of the Social Security Act is amended to read as follows:

"(l)(1) Except as provided in paragraph (4), the term 'employment' shall, notwithstanding the provisions of subsection (a) of this section, include—

"(A) service performed after December 1956 by an individual as a member of a uniformed service on active duty, but such term shall not include any such service which is performed while on leave without pay, and

"(B) service performed after December 1987 by an individual as a member of a uniformed service on inactive duty training.".

42 USC 409.

(2) The second indented paragraph following subsection (s) in section 209 of such Act (relating to service in the uniformed services) is amended by striking "only his basic pay" and all that follows and inserting "only (1) his basic pay as described in chapter 3 and section 1009 of title 37, United States Code, in the case of an individual performing service to which subparagraph (A) of such section 210(l)(1) applies, or (2) his compensation for such service as determined under section 206(a) of title 37, United States Code, in the case of an individual performing service to which subparagraph (B) of such section 210(l)(1) applies.".

26 USC 3121.

(b) FICA AMENDMENTS.—(1) Paragraph (1) of section 3121(m) of the Internal Revenue Code of 1986 (relating to inclusion of service in the uniformed services) is amended to read as follows:

"(1) INCLUSION OF SERVICE.—The term 'employment' shall, notwithstanding the provisions of subsection (b) of this section, include—

"(A) service performed by an individual as a member of a uniformed service on active duty, but such term shall not include any such service which is performed while on leave without pay, and

"(B) service performed by an individual as a member of a uniformed service on inactive duty training.".

(2) Paragraph (2) of section 3121(i) of such Code (relating to computation of wages for individuals performing service in the uniformed services) is amended by striking "only his basic pay" and all that follows and inserting "only (A) his basic pay as described in chapter 3 and section 1009 of title 37, United States Code, in the case of an individual performing service to which subparagraph (A) of such subsection (m)(1) applies, or (B) his compensation for such service as determined under section 206(a) of title 37, United States Code, in the case of an individual performing service to which subparagraph (B) of such subsection (m)(1) applies.".

42 USC 429.

(c) CONFORMING AMENDMENT.—Section 229(a) of the Social Security Act is amended by striking "section 210(l)" and inserting "210(l)(1)(A)".

26 USC 3121 note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to remuneration paid after December 31, 1987.

SEC. 9002. COVERAGE OF ALL CASH PAY OF AGRICULTURAL EMPLOYEES WHOSE EMPLOYERS SPEND $2,500 OR MORE A YEAR FOR AGRICULTURAL LABOR.

(a) SOCIAL SECURITY ACT AMENDMENT.—Paragraph (2) of section 209(h) of the Social Security Act is amended by striking clause (B) and inserting "(B) the employer's expenditures for agricultural labor in such year equal or exceed $2,500;". 42 USC 409.

(b) FICA AMENDMENT.—Subparagraph (B) of section 3121(a)(8) of the Internal Revenue Code of 1986 (relating to wages) is amended by striking clause (ii) and inserting "(ii) the employer's expenditures for agricultural labor in such year equal or exceed $2,500;". 26 USC 3121.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to remuneration for agricultural labor paid after December 31, 1987. 26 USC 3121 note.

SEC. 9003. COVERAGE OF THE EMPLOYER COST OF GROUP-TERM LIFE INSURANCE.

(a) COVERAGE UNDER OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM.—

(1) SOCIAL SECURITY ACT AMENDMENT.—Clause (3) of section 209(b) of the Social Security Act is amended by striking "death" and inserting "death, except that this subsection does not apply to a payment for group-term life insurance to the extent that such payment is includible in the gross income of the employee under the Internal Revenue Code of 1986". 42 USC 409.

(2) FICA AMENDMENT.—Subparagraph (C) of section 3121(a)(2) of the Internal Revenue Code of 1986 (relating to wages) is amended by striking "death" and inserting "death, except that this paragraph does not apply to a payment for group-term life insurance to the extent that such payment is includible in the gross income of the employee". 26 USC 3121.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to group-term life insurance coverage in effect after December 31, 1987. 26 USC 3121 note.

SEC. 9004. COVERAGE OF SERVICES PERFORMED BY ONE SPOUSE IN THE EMPLOY OF THE OTHER.

(a) SOCIAL SECURITY ACT AMENDMENTS.—

(1) IN GENERAL.—Subparagraph (A) of section 210(a)(3) of the Social Security Act is amended by striking "performed by an individual in the employ of his spouse, and service". 42 USC 410.

(2) EXCEPTION FOR CERTAIN DOMESTIC SERVICE IN THE PRIVATE HOME OF A SPOUSE.—Paragraph (3) of section 210(a) of such Act is amended by striking so much of subparagraph (B) as precedes clause (i) and inserting the following:

"(B) Service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual in the employ of his spouse or son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service performed by an individual in the employ of his son or daughter if—".

(b) FICA AMENDMENTS.—

(1) IN GENERAL.—Subparagraph (A) of section 3121(b)(3) of the Internal Revenue Code of 1986 (relating to employment) is amended by striking "performed by an individual in the employ of his spouse, and service". 26 USC 3121.

26 USC 3121.

(2) EXCEPTION FOR CERTAIN DOMESTIC SERVICE IN THE PRIVATE HOME OF A SPOUSE.—Paragraph (3) of section 3121(b) of such Code (relating to employment) is amended by striking so much of subparagraph (B) as precedes clause (i) and inserting the following:

"(B) service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual in the employ of his spouse or son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service performed by an individual in the employ of his son or daughter if—".

26 USC 3121 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to remuneration paid after December 31, 1987.

SEC. 9005. TREATMENT OF SERVICE PERFORMED BY AN INDIVIDUAL IN THE EMPLOY OF A PARENT.

42 USC 410.

(a) SOCIAL SECURITY ACT AMENDMENTS.—

(1) AGE BELOW WHICH SERVICE FOR PARENT IS EXCLUDED FROM COVERED EMPLOYMENT REDUCED TO AGE 18.—Subparagraph (A) of section 210(a)(3) of the Social Security Act (as amended by section 9004(a)(1) of this Act) is further amended by striking "twenty-one" and inserting "18".

(2) EXCEPTION FOR CERTAIN DOMESTIC SERVICE IN THE PRIVATE HOME OF PARENT.—Subparagraph (B) of section 210(a)(3) of such Act (as amended by section 9004(a)(2) of this Act) is further amended by inserting "under the age of 21 in the employ of his father or mother, or performed by an individual" after "individual" the first place it appears.

(b) FICA AMENDMENTS.—

(1) AGE BELOW WHICH SERVICE FOR PARENT IS EXCLUDED FROM COVERED EMPLOYMENT REDUCED TO AGE 18.—Subparagraph (A) of section 3121(b)(3) of the Internal Revenue Code of 1986 (as amended by section 9004(b)(1) of this Act) is further amended by striking "21" and inserting "18".

(2) EXCEPTION FOR CERTAIN DOMESTIC SERVICE IN THE PRIVATE HOME OF PARENT.—Subparagraph (B) of section 3121(b)(3) of such Code (as amended by section 9004(b)(2) of this Act) is further amended by inserting "under the age of 21 in the employ of his father or mother, or performed by an individual" after "individual" the first place it appears.

26 USC 3121 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to remuneration paid after December 31, 1987.

SEC. 9006. APPLICATION OF EMPLOYER TAXES TO EMPLOYEES' CASH TIPS.

26 USC 3121.

(a) APPLICATION OF TAX TO TIPS.—Section 3121(q) of the Internal Revenue Code of 1986 (relating to inclusion of tips for employee taxes) is amended—

(1) by striking "EMPLOYEE TAXES" in the heading and inserting "BOTH EMPLOYEE AND EMPLOYER TAXES";

(2) by striking "other than for purposes of the taxes imposed by section 3111";

(3) by striking "remuneration for employment" and inserting "remuneration for such employment (and deemed to have been paid by the employer for purposes of subsections (a) and (b) of section 3111)"; and

(4) by inserting after "at the time received" the following: "; except that, in determining the employer's liability in connection with the taxes imposed by section 3111 with respect to such tips in any case where no statement including such tips was so furnished (or to the extent that the statement so furnished was inaccurate or incomplete), such remuneration shall be deemed for purposes of subtitle F to be paid on the date on which notice and demand for such taxes is made to the employer by the Secretary".

(b) CONFORMING AMENDMENTS.—(1) Subsections (a) and (b) of section 3111(a) of such Code (relating to rate of tax on employers) are each amended by striking "and (t)". 26 USC 3111.

(2) Section 3121(t) of such Code (relating to special rule) is repealed.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to tips received (and wages paid) on and after January 1, 1988. 26 USC 3111 note.

SEC. 9007. APPLICABILITY OF GOVERNMENT PENSION OFFSET TO CERTAIN FEDERAL EMPLOYEES.

(a) WIFE'S INSURANCE BENEFITS.—Paragraph (4) of section 202(b) of the Social Security Act is amended— 42 USC 402.

(1) by redesignating subparagraph (B) as subparagraph (C); and

(2) by striking subparagraph (A) and inserting the following:

"(A) The amount of a wife's insurance benefit for each month (as determined after application of the provisions of subsections (q) and (k)) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the wife (or divorced wife) for such month which is based upon her earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2)) if, on the last day she was employed by such entity—

"(i) such service did not constitute 'employment' as defined in section 210, or

"(ii) such service was being performed while in the service of the Federal Government, and constituted 'employment' as so defined solely by reason of—

"(I) clause (ii) or (iii) of subparagraph (G) of section 210(a)(5), where the lump-sum payment described in such clause (ii) or the cessation of coverage described in such clause (iii) (whichever is applicable) was received or occurred on or after January 1, 1988, or

"(II) an election to become subject to chapter 84 of title 5, United States Code, made pursuant to law after December 31, 1987,

unless subparagraph (B) applies.

The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

"(B) Subparagraph (A)(ii) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted 'employment' as defined in section 210 if such service was performed for at least 60 months in the aggregate during the period beginning January 1, 1988, and ending with the close of the first calendar month as of the end of which the wife (or divorced wife) is

eligible for benefits under this subsection and has made a valid application for such benefits.".

(b) HUSBAND'S INSURANCE BENEFITS.—Paragraph (2) of section 202(c) of such Act is amended— 42 USC 402.

(1) by redesignating subparagraph (B) as subparagraph (C); and

(2) by striking subparagraph (A) and inserting the following:

"(A) The amount of a husband's insurance benefit for each month (as determined after application of the provisions of subsections (q) and (k)) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the husband (or divorced husband) for such month which is based upon his earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2)) if, on the last day he was employed by such entity—

"(i) such service did not constitute 'employment' as defined in section 210, or

"(ii) such service was being performed while in the service of the Federal Government, and constituted 'employment' as so defined solely by reason of—

"(I) clause (ii) or (iii) of subparagraph (G) of section 210(a)(5), where the lump-sum payment described in such clause (ii) or the cessation of coverage described in such clause (iii) (whichever is applicable) was received or occurred on or after January 1, 1988, or

"(II) an election to become subject to chapter 84 of title 5, United States Code, made pursuant to law after December 31, 1987,

unless subparagraph (B) applies.

The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

"(B) Subparagraph (A)(ii) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted 'employment' as defined in section 210 if such service was performed for at least 60 months in the aggregate during the period beginning January 1, 1988, and ending with the close of the first calendar month as of the end of which the husband (or divorced husband) is eligible for benefits under this subsection and has made a valid application for such benefits.".

(c) WIDOW'S INSURANCE BENEFITS.—Paragraph (7) of section 202(e) of such Act is amended—

(1) by redesignating subparagraph (B) as subparagraph (C); and

(2) by striking subparagraph (A) and inserting the following:

"(A) The amount of a widow's insurance benefit for each month (as determined after application of the provisions of subsections (q) and (k), paragraph (2)(D), and paragraph (3)) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the widow (or surviving divorced wife) for such month which is based upon her earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2)) if, on the last day she was employed by such entity—

"(i) such service did not constitute 'employment' as defined in section 210, or

"(ii) such service was being performed while in the service of the Federal Government, and constituted 'employment' as so defined solely by reason of—

"(I) clause (ii) or (iii) of subparagraph (G) of section 210(a)(5), where the lump-sum payment described in such clause (ii) or the cessation of coverage described in such clause (iii) (whichever is applicable) was received or occurred on or after January 1, 1988, or

"(II) an election to become subject to chapter 84 of title 5, United States Code, made pursuant to law after December 31, 1987,

unless subparagraph (B) applies.

The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

"(B) Subparagraph (A)(ii) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted 'employment' as defined in section 210 if such service was performed for at least 60 months in the aggregate during the period beginning January 1, 1988, and ending with the close of the first calendar month as of the end of which the widow (or surviving divorced wife) is eligible for benefits under this subsection and has made a valid application for such benefits.".

(d) WIDOWER'S INSURANCE BENEFITS.—Paragraph (2) of section 202(f) of such Act is amended— 42 USC 402.

(1) by redesignating subparagraph (B) as subparagraph (C); and

(2) by striking subparagraph (A) and inserting the following:

"(A) The amount of a widower's insurance benefit for each month (as determined after application of the provisions of subsections (q) and (k), paragraph (3)(D), and paragraph (4)) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the widower (or surviving divorced husband) for such month which is based upon his earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2)) if, on the last day he was employed by such entity—

"(i) such service did not constitute 'employment' as defined in section 210, or

"(ii) such service was being performed while in the service of the Federal Government, and constituted 'employment' as so defined solely by reason of—

"(I) clause (ii) or (iii) of subparagraph (G) of section 210(a)(5), where the lump-sum payment described in such clause (ii) or the cessation of coverage described in such clause (iii) (whichever is applicable) was received or occurred on or after January 1, 1988, or

"(II) an election to become subject to chapter 84 of title 5, United States Code, made pursuant to law after December 31, 1987,

unless subparagraph (B) applies.

The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

"(B) Subparagraph (A)(ii) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted 'employment' as defined in section 210 if such service was

performed for at least 60 months in the aggregate during the period beginning January 1, 1988, and ending with the close of the first calendar month as of the end of which the widower (or surviving divorced husband) is eligible for benefits under this subsection and has made a valid application for such benefits.".

42 USC 202.

(e) MOTHER'S AND FATHER'S INSURANCE BENEFITS.—Paragraph (4) of section 202(g) of such Act is amended—

(1) by redesignating subparagraph (B) as subparagraph (C); and

(2) by striking subparagraph (A) and inserting the following:

"(A) The amount of a mother's or father's insurance benefit for each month (as determined after application of the provisions of subsection (k)) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the individual for such month which is based upon the individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2)) if, on the last day the individual was employed by such entity—

"(i) such service did not constitute 'employment' as defined in section 210, or

"(ii) such service was being performed while in the service of the Federal Government, and constituted 'employment' as so defined solely by reason of—

"(I) clause (ii) or (iii) of subparagraph (G) of section 210(a)(5), where the lump-sum payment described in such clause (ii) or the cessation of coverage described in such clause (iii) (whichever is applicable) was received or occurred on or after January 1, 1988, or

"(II) an election to become subject to chapter 84 of title 5, United States Code, made pursuant to law after December 31, 1987,

unless subparagraph (B) applies.

The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

"(B) Subparagraph (A)(ii) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted 'employment' as defined in section 210 if such service was performed for at least 60 months in the aggregate during the period beginning January 1, 1988, and ending with the close of the first calendar month as of the end of which the individual is eligible for benefits under this subsection and has made a valid application for such benefits.".

42 USC 402 note.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply only with respect to benefits for months after December 1987; except that nothing in such amendments shall affect any exemption (from the application of the pension offset provisions contained in subsection (b)(4), (c)(2), (e)(7), (f)(2), or (g)(4) of section 202 of the Social Security Act) which any individual may have by reason of subsection (g) or (h) of section 334 of the Social Security Amendments of 1977.

42 USC 418 note.

SEC. 9008. MODIFICATION OF AGREEMENT WITH IOWA TO PROVIDE COVERAGE FOR CERTAIN POLICEMEN AND FIREMEN.

(a) IN GENERAL.—Notwithstanding subsection (d)(5)(A) of section 218 of the Social Security Act and the references thereto in subsec-

tions (d)(1) and (d)(3) of such section 218, the agreement with the State of Iowa heretofore entered into pursuant to such section 218 may, at any time prior to January 1, 1989, be modified pursuant to subsection (c)(4) of such section 218 so as to apply to services performed in policemen's or firemen's positions required to be covered by a retirement system pursuant to section 410.1 of the Iowa Code as in effect on July 1, 1953, if the State of Iowa has at any time prior to the date of the enactment of this Act paid to the Secretary of the Treasury, with respect to any of the services performed in such positions, the sums prescribed pursuant to subsection (e)(1) of such section 218 (as in effect on December 31, 1986, with respect to payments due with respect to wages paid on or before such date).

(b) SERVICE TO BE COVERED.—Notwithstanding the provisions of subsection (e) of section 218 of the Social Security Act (as so redesignated by section 9002(c)(1) of the Omnibus Budget Reconciliation Act of 1986)), any modification in the agreement with the State of Iowa under subsection (a) shall be made effective with respect to—

(1) all services performed in any policemen's or firemen's position to which the modification relates on or after January 1, 1987, and

(2) all services performed in such a position before January 1, 1987, with respect to which the State of Iowa has paid to the Secretary of the Treasury the sums prescribed pursuant to subsection (e)(1) of such section 218 (as in effect on December 31, 1986, with respect to payments due with respect to wages paid on or before such date) at the time or times established pursuant to such subsection (e)(1), if and to the extent that—

(A) no refund of the sums so paid has been obtained, or

(B) a refund of part or all of the sums so paid has been obtained but the State of Iowa repays to the Secretary of the Treasury the amount of such refund within 90 days after the date on which the modification is agreed to by the State and the Secretary of Health and Human Services.

SEC. 9009. CONTINUATION OF DISABILITY BENEFITS DURING APPEAL.

Subsection (g) of section 223 of the Social Security Act is amended— 42 USC 423.

(1) in paragraph (1)(iii), by striking "June 1988" and inserting "June 1989"; and

(2) in paragraph (3)(B), by striking "January 1, 1988" and inserting "January 1, 1989".

SEC. 9010. EXTENSION OF DISABILITY RE-ENTITLEMENT PERIOD FROM 15 MONTHS TO 36 MONTHS.

(a) DISABILITY INSURANCE BENEFITS.—Paragraph (1) of section 223(a) of the Social Security Act is amended by striking "15 months" and inserting "36 months".

(b) CHILD'S INSURANCE BENEFITS BASED ON DISABILITY.—Clause (i) of section 202(d)(1)(G) of such Act is amended by striking "15 months" and inserting "36 months". 42 USC 402.

(c) WIDOW'S INSURANCE BENEFITS BASED ON DISABILITY.—Paragraph (1) of section 202(e) of such Act is amended, in subclause (II) of the last sentence, by striking "15 months" and inserting "36 months".

(d) WIDOWER'S INSURANCE BENEFITS BASED ON DISABILITY.—Paragraph (1) of section 202(f) of such Act is amended, in subclause (II) of

the last sentence, by striking "15 months" and inserting "36 months".

(e) CONFORMING AMENDMENTS.—

42 USC 416.

(1) TERMINATION OF PERIOD OF DISABILITY.—Subparagraph (D) of section 216(i)(2) of such Act is amended by striking "15-month" and inserting "36-month".

42 USC 423.

(2) TERMINATION OF BENEFITS DURING RE-ENTITLEMENT PERIOD.—Subsection (e) of section 223 of such Act is amended by striking "15-month" and inserting "36-month".

42 USC 426.

(3) SPECIAL RULE FOR [87] DETERMINATION OF CONTINUED MEDICARE ELIGIBILITY BASED ON ENTITLEMENT TO DISABILITY BENEFITS.—Section 226(b) of such Act is amended by adding at the end the following new sentence: "In determining when an individual's entitlement or status terminates for purposes of the preceding sentence, the second sentence of section 223(a) shall be applied as though the term '36 months' (in such second sentence) read '15 months'.".

42 USC 402 note.

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect January 1, 1988, and shall apply with respect to—

(1) individuals who are entitled to benefits which are payable under subsection (d)(1)(B)(ii), (d)(6)(A)(ii), (d)(6)(B), (e)(1)(B)(ii), or (f)(1)(B)(ii) of section 202 of the Social Security Act or subsection (a)(1) of section 223 of such Act for any month after December 1987, and

(2) individuals who are entitled to benefits which are payable under any provision referred to in paragraph (1) for any month before January 1988 and with respect to whom the 15-month period described in the applicable provision amended by this section has not elapsed as of January 1, 1988.

PART 2—OTHER SOCIAL SECURITY PROVISIONS

SEC. 9021. MORATORIUM ON REDUCTIONS IN ATTORNEYS' FEES; STUDIES OF ATTORNEYS' FEE PAYMENT SYSTEM.

(a) MORATORIUM.—(1) The provisions of the memorandum of the Associate Commissioner of Social Security dated March 31, 1987 (relating to revised delegations of authority for administrative law judges to determine fees of representatives) which amend sections 1-220 through 1-226 of the Office of Hearings and Appeals Staff Guides and Programs Digest (commonly referred to as the OHA Handbook), and Interim Circular No. 122 (relating to the determination authority regarding fees for representation of claimants), are hereby declared to be null and void. The preceding sentence shall apply with respect to all attorneys' fees finally authorized in connection with claims for benefits under title II of the Social Security Act on and after the date of the enactment of this Act, regardless of when the legal services involved were performed; and no reconsideration of any such fee finally authorized prior to that date shall be required.

(2) Until July 1, 1989, neither the Secretary nor the Social Security Administration may modify any of the rules and regulations relating to attorneys' fees in connection with claims for benefits under title II of the Social Security Act.

[87] Copy read "FOR".

(b) STUDIES.—(1) The Secretary of Health and Human Services shall conduct a study of the attorneys' fee payment process under title II of the Social Security Act. Such study shall—

(A) assess the levels of reimbursement to attorneys, giving consideration to the contingent nature of most arrangements between claimants and their legal representatives, and propose alternative methods for establishing fees which take the nature of these arrangements into account, and

(B) suggest changes aimed at eliminating unnecessary delays in the approval and payment of attorneys' fees and thereby streamlining the payment process.

In conducting this study, the Secretary shall consult with individuals who represent the views of attorneys and with others who represent the views of claimants.

(2) At the same time, the Comptroller General shall conduct a study of the fee approval system, including at a minimum—

(A) a study of the impact of the current system on claimants and attorneys,

(B) an identification of obstacles to the timely payment of attorneys' fees under present law, and

(C) an assessment of the effect, if any, which the reduced limit on attorneys' fees in effect immediately prior to the enactment of this Act has had on access to legal representation by applicants for disability insurance benefits.

(3) The studies required by paragraphs (1) and (2), along with any recommendations resulting therefrom, shall be submitted to the Congress no later than July 1, 1988.

SEC. 9022. CORPORATE DIRECTORS.

(a) SOCIAL SECURITY ACT AMENDMENT.—Section 211(a) of the Social Security Act is amended by adding at the end thereof the following new paragraph: 42 USC 411.

"Any income of an individual which results from or is attributable to the performance of services by such individual as a director of a corporation during any taxable year shall be deemed to have been derived (and received) by such individual in that year, at the time the services were performed, regardless of when the income is actually paid to or received by such individual (unless it was actually paid and received prior to that year).".

(b) SECA AMENDMENT.—Section 1402(a) of the Internal Revenue Code of 1986 (relating to definition of net earnings from self-employment) is amended by adding at the end thereof the following new paragraph: 26 USC 1402.

"Any income of an individual which results from or is attributable to the performance of services by such individual as a director of a corporation during any taxable year shall be deemed to have been derived (and received) by such individual in that year, at the time the services were performed, regardless of when the income is actually paid to or received by such individual (unless it was actually paid and received prior to that year).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to services performed in taxable years beginning on or after January 1, 1988.

SEC. 9023. TECHNICAL CORRECTIONS.

(a) The heading of section 210(p) of the Social Security Act is amended to read as follows: 42 USC 410.

"Medicare Qualified Government Employment".

42 USC 411. (b)(1) Section 211(a)(7) of such Act is amended—

(A) by inserting "and" before "section 911"; and

(B) by striking "and section 931 (relating to income from sources within possessions of the United States) of the Internal Revenue Code of 1954".

(2) Section 211(a)(8) of such Act is amended to read as follows:

"(8) The exclusion from gross income provided by section 931 of the Internal Revenue Code of 1986 shall not apply;".

42 USC 418. (c) Section 218(v) of such Act is amended—

(1) by striking "(v)" and inserting "(n)";

(2) by striking paragraph (3); and

(3) by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

26 USC 3121. (d) Section 3121(a)(5) of the Internal Revenue Code of 1986 is amended—

(1) by striking "; or" at the end of subparagraph (F) and inserting ", or"; and

(2) by striking the comma at the end of subparagraph (G) and inserting a semicolon.

PART 3—RAILROAD RETIREMENT PROGRAM

SEC. 9031. INCREASE IN RATES OF TIER 2 RAILROAD RETIREMENT TAX ON EMPLOYEES FOR 1988 AND THEREAFTER.

(a) IN GENERAL.—Subsection (b) of section 3201 of the Internal Revenue Code of 1986 (relating to tier 2 employee tax) is amended to read as follows:

"(b) TIER 2 TAX.—In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to 4.90 percent of the compensation received during any calendar year by such employee for services rendered by such employee.".

26 USC 3201 note. (b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to compensation received after December 31, 1987.

SEC. 9032. INCREASE IN RATES OF TIER 2 RAILROAD RETIREMENT TAX ON EMPLOYERS FOR 1988 AND THEREAFTER.

(a) IN GENERAL.—Subsection (b) of section 3221 of the Internal Revenue Code of 1986 (relating to tier 2 employer tax) is amended to read as follows:

"(b) TIER 2 TAX.—In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to 16.10 percent of the compensation paid during any calendar year by such employer for services rendered to such employer.".

26 USC 3221 note. (b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to compensation paid after December 31, 1987.

45 USC 231n note.

SEC. 9033. COMMISSION ON RAILROAD RETIREMENT REFORM.

(a) COMMISSION ON RAILROAD RETIREMENT REFORM.—There is established a commission to be known as the Commission on Railroad Retirement Reform (in this section referred to as the "Commission").

(b) STUDY.—The Commission shall conduct a comprehensive study of the issues pertaining to the long-term financing of the railroad

retirement system (in this section referred to as the "system") and the system's short-term and long-term solvency. The Commission shall submit a report containing a detailed statement of its findings and conclusions together with recommendations to the Congress for revisions in, or alternatives to, the current system to assure the provision of retirement benefits to former, present, and future railroad employees on an actuarially sound basis. The study will take into account— Reports.

(1) the possibility of restructuring the financing of railroad retirement benefits through increases in the tier 2 tax rate, increases in the tier 2 tax wage base, the imposition of a tax on operating revenues, revisions in the investment policy of the railroad retirement pension fund, and establishing a privately funded and administered railroad industry pension plan;

(2) the economic outlook for the railroad industry, and the nature of the relationships between the railroad retirement system, levels of railroad employment and compensation, and the performance of the rail sector;

(3) the ability of the system under current law to pay benefits to current and future retirees and other beneficiaries;

(4) the financial relationship of the system to the railroad unemployment insurance system, the social security system, and the General Fund; and

(5) any other matters which the Commission considers would be necessary, appropriate, or useful to the Congress in developing legislation to reform the system.

(c) MEMBERSHIP OF THE COMMISSION.—

(1) NUMBER AND APPOINTMENT.—The Commission shall be composed of seven members, as follows:

(A) four individuals appointed by the President— President of U.S.

(i) one of whom shall be appointed on the basis of recommendations made by representatives of employers (as defined in section 1(a) of the Railroad Retirement Act of 1974) so as to provide representation on the Commission satisfactory to the largest number of employers concerned,

(ii) one of whom shall be appointed on the basis of recommendations made by representatives of employees (as defined in section 1(b) of the Railroad Retirement Act of 1974) so as to provide representation on the Commission satisfactory to the largest number of employees concerned,

(iii) one of whom shall be appointed on the basis of recommendations made by representatives of commuter railroads, and

(iv) one of whom shall be appointed from members of the public;

(B) one individual appointed by the Speaker of the House of Representatives from among members of the public;

(C) one individual appointed by the President pro tempore of the Senate from among members of the public; and

(D) one individual appointed by the Comptroller General from among members of the public with expertise in the fields of retirement systems and pension plans.

All public members of the Commission shall be appointed from among individuals who are not in the employment of and are not pecuniarily or otherwise interested in any employer (as so

President of U.S.

defined) or organization of employees (as so defined). In making appointments under this section, the President, the Speaker of the House of Representatives, and the President pro tempore of the Senate shall ensure that the members of the Commission, collectively, possess special knowledge of retirement income policy, social insurance, private pensions, taxation, and the structure of the transportation industry. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(2) PAY.—Members of the Commission shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the Commission.

(3) QUORUM.—Five members of the Commission shall constitute a quorum but a lesser number may hold hearings.

(4) CHAIRMAN.—The members of the Commission shall elect a Chairman [87a] from among the membership.

(d) STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.—

(1) STAFF.—Subject to such rules as may be prescribed by the Commission, the Chairman may appoint and fix the pay of such personnel as the Chairman considers appropriate.

(2) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

(3) EXPERTS AND CONSULTANTS.—Subject to such rules as may be prescribed by the Commission, the Chairman may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

(4) STAFF OF FEDERAL AGENCIES.—Upon request of the Commission, the Railroad Retirement Board and any other Federal agency may detail, on a reimbursable basis, any of the personnel thereof to the Commission to assist the Commission in carrying out its duties under this section.

(e) ACCESS TO OFFICIAL DATA AND SERVICES.—

(1) OFFICIAL DATA.—The Commission may, as appropriate, secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairman of the Commission, the head of such department or agency shall, as appropriate, furnish such information to the Commission.

(2) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(3) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(f) REPORT.—The Commission shall transmit a report to the President and to each House of the Congress not later than October 1,

[87a] Copy read "chairman".

1989. The report shall contain a detailed statement of the findings and conclusions of the Commission, together with its legislative recommendations.

(g) TERMINATION.—The Commission shall cease to exist 60 days after submitting its report pursuant to subsection (f).

(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated the sum of $1,000,000 for purposes of this section, to remain available until expended but in no event beyond the date of termination provided in subsection (g).

SEC. 9034. TRANSFER TO RAILROAD RETIREMENT ACCOUNT.

Subsection (c)(1)(A) of section 224 of the Railroad Retirement Solvency Act of 1983 (relating to section 72(r) revenue increase transferred to certain railroad accounts) is amended— 45 USC 231n note.

(1) by inserting "(other than amounts described in subparagraph (B))" after "amounts";

(2) by striking "1988" and inserting "1989"; and

(3) by striking the last sentence.

Subtitle B—Provisions Relating to Public Assistance and Unemployment Compensation

PART 1—AFDC AND SSI AMENDMENTS

SEC. 9101. PERMANENT EXTENSION OF DISREGARD OF NONPROFIT ORGANIZATIONS' IN-KIND ASSISTANCE TO SSI AND AFDC RECIPIENTS.

Effective as of October 1, 1987, section 2639(d) of the Deficit Reduction Act of 1984 is amended by striking "; but" and all that follows and inserting a period. Effective date. 42 USC 602 note.

SEC. 9102. FRAUD CONTROL UNDER AFDC PROGRAM.

(a) IN GENERAL.—Part A of title IV of the Social Security Act is amended by adding at the end the following new section:

"FRAUD CONTROL

"SEC. 416. (a) Any State, in the administration of its State plan approved under section 402, may elect to establish and operate a fraud control program in accordance with this section. 42 USC 616.

"(b) Under any such program, if an individual who is a member of a family applying for or receiving aid under the State plan approved under section 402 is found by a Federal or State court or pursuant to an administrative hearing meeting requirements determined in regulations of the Secretary, on the basis of a plea of guilty or nolo contendere or otherwise, to have intentionally—

"(1) made a false or misleading statement or misrepresented, concealed, or withheld facts, or

"(2) committed any act intended to mislead, misrepresent, conceal, or withhold facts or propound a falsity,

for the purpose of establishing or maintaining the family's eligibility for aid under such State plan or of increasing (or preventing a reduction in) the amount of such aid, then the needs of such individual shall not be taken into account in making the determination under section 402(a)(7) with respect to his or her family (A) for a period of 6 months upon the first occasion of any such offense, (B) for

a period of 12 months upon the second occasion of any such offense, and (C) permanently upon the third or a subsequent occasion of any such offense.

"(c) The State agency involved shall proceed against any individual alleged to have committed an offense described in subsection (b) either by way of administrative hearing or by referring the matter to the appropriate authorities for civil or criminal action in a court of law. The State agency shall coordinate its actions under this section with any corresponding actions being taken under the food stamp program in any case where the factual issues involved arise from the same or related circumstances.

"(d) Any period for which sanctions are imposed under subsection (b) shall remain in effect, without possibility of administrative stay, unless and until the finding upon which the sanctions were imposed is subsequently reversed by a court of appropriate jurisdiction; but in no event shall the duration of the period for which such sanctions are imposed be subject to review.

"(e) The sanctions provided under subsection (b) shall be in addition to, and not in substitution for, any other sanctions which may be provided for by law with respect to the offenses involved.

"(f) Each State which has elected to establish and operate a fraud control program under this section must provide all applicants for aid to families with dependent children under its approved State plan, at the time of their application for such aid, with a written notice of the penalties for fraud which are provided for under this section.".

42 USC 602.

(b) STATE PLAN REQUIREMENT.—Section 402(a) of such Act is amended—

(1) by striking "and" after the semicolon at the end of paragraph (38);

(2) by striking the period at the end of paragraph (39) and inserting "; and"; and

(3) by inserting immediately after paragraph (39) the following new paragraph:

"(40) provide, if the State has elected to establish and operate a fraud control program under section 416, that the State will submit to the Secretary (with such revisions as may from time to time be necessary) a description of and budget for such program, and will operate such program in full compliance with that section.".

42 USC 603.

(c) FEDERAL MATCHING.—Section 403(a)(3) of such Act is amended—

(1) by striking "and" after the final comma in subparagraph (B);

(2) by redesignating subparagraph (C) as subparagraph (D);

(3) by inserting after subparagraph (B) the following new subparagraph:

"(C) 75 percent of so much of such expenditures as are for the costs of carrying out a fraud control program under section 416, including costs related to the investigation, prosecution, and administrative hearing of fraudulent cases and the making of any resultant collections, and"; and

(4) by striking "(C)" in the matter following subparagraph (D) (as redesignated by paragraph (2) of this subsection) and inserting "(D)".

[88] (d) EFFECTIVE DATE.—The amendments made by this section shall become effective April 1, 1988. 42 USC 602 note.

SEC. 9103. EXCLUSION OF REAL PROPERTY WHEN IT CANNOT BE SOLD.

(a) IN GENERAL.—Section 1613(b) of the Social Security Act is amended— 42 USC 1382b.

(1) by inserting "(1)" after "(b)"; and

(2) by adding at the end the following new paragraph:

"(2) Notwithstanding the provisions of paragraph (1), the Secretary shall not require the disposition of any real property for so long as it cannot be sold because (A) it is jointly owned (and its sale would cause undue hardship, due to loss of housing, for the other owner or owners), (B) its sale is barred by a legal impediment, or (C) as determined under regulations issued by the Secretary, the owner's reasonable efforts to sell it have been unsuccessful.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective April 1, 1988. 42 USC 1382b note.

SEC. 9104. ADJUSTMENT OF PENALTY WHERE ASSET IS TRANSFERRED FOR LESS THAN FAIR MARKET VALUE.

[89] (a) IN GENERAL.—Section 1613(c) of the Social Security Act is amended—

(1) by inserting immediately after "the exclusions under subsection (a)" in paragraph (1) the following: ", and subject to paragraph (4) of this subsection"; and

(2) by adding at the end the following new paragraph:

"(4) The Secretary shall by regulation provide for suspending the application of paragraph (1) to the extent (in any instance) that the Secretary determines that such suspension is necessary to avoid undue hardship.". Regulations.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective April 1, 1988. 42 USC 1382b note.

SEC. 9105. EXCLUSION OF INTEREST ON BURIAL ACCOUNTS.

(a) IN GENERAL.—Section 1613(d) of the Social Security Act is amended—

(1) in paragraph (1), by striking "if the inclusion" and all that follows and inserting a period; and

(2) in paragraph (3), by striking "aside" and inserting "aside in cases where the inclusion of any portion of the amount would cause the resources of such individual, or of such individual and spouse, to exceed the limits specified in paragraph (1) or (2) (whichever may be applicable) of section 1611(a)".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective April 1, 1988. 42 USC 1382b note.

SEC. 9106. EXCEPTION FROM SSI RETROSPECTIVE ACCOUNTING FOR AFDC AND CERTAIN OTHER ASSISTANCE PAYMENTS.

(a) IN GENERAL.—Section 1611(c) of the Social Security Act is amended— 42 USC 1382.

(1) by striking "paragraphs (2), (3), and (4)" in paragraph (1) and inserting "paragraphs (2), (3), (4), and (5)";

(2) by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively; and

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[88] Copy read "EFFECTIVE DATE.—".
[89] Copy read "IN GENERAL.—".

(3) by inserting after paragraph (4) the following new paragraph:

"(5) Notwithstanding paragraphs (1) and (2), any income which is paid to or on behalf of an individual in any month pursuant to (A) a State plan approved under part A of title IV of this Act (relating to aid to families with dependent children), (B) section 472 of this Act (relating to foster care assistance), (C) section 412(e) of the Immigration and Nationality Act (relating to assistance for refugees), (D) section 501(a) of Public Law 96-422 (relating to assistance for Cuban and Haitian entrants), or (E) the Act of November 2, 1921 (42 Stat. 208), as amended (relating to assistance furnished by the Bureau of Indian Affairs), shall be taken into account in determining the amount of the benefit under this title of such individual (and his eligible spouse, if any) only for that month, and shall not be taken into account in determining the amount of the benefit for any other month.".

42 USC 1382 note.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective April 1, 1988.

SEC. 9107. TECHNICAL AMENDMENT RELATING TO 1986 AMENDMENT CONCERNING THE TREATMENT OF CERTAIN COUPLES IN MEDICAL INSTITUTIONS.

Effective date. 42 USC 1382.

Effective November 10, 1986, section 1611(e)(5) of the Social Security Act is amended—

(1) by striking "sharing a room or comparable accommodation in a hospital, home, or facility" and inserting "living in the same hospital, home, or facility"; and

(2) by striking "shared such a room or accommodation" and inserting "lived in the same such hospital, home, or facility".

SEC. 9108. EXTENSION OF DEADLINE FOR DISABLED WIDOWS TO APPLY FOR MEDICAID PROTECTION UNDER 1984 AMENDMENTS.

Effective date. 42 USC 1383c.

Effective July 1, 1987, section 1634(b)(3) of the Social Security Act is amended by striking "during the 15-month period beginning with the month in which this subsection is enacted" and inserting "no later than July 1, 1988".

SEC. 9109. INCREASE IN SSI EMERGENCY ADVANCE PAYMENTS.

42 USC 1383.

(a) IN GENERAL.—Section 1631(a)(4)(A) of the Social Security Act is amended by striking "a cash advance against such benefits in an amount not exceeding $100" and inserting "a cash advance against such benefits, including any federally-administered State supplementary payments, in an amount not exceeding the monthly amount that would be payable to an eligible individual with no other income for the first month of such presumptive eligibility".

42 USC 1383 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective on the date of the enactment of this Act.

SEC. 9110. MODIFICATION OF INTERIM ASSISTANCE REIMBURSEMENT PROGRAM.

(a) IN GENERAL.—The first sentence of section 1631(g)(2) of the Social Security Act is amended by striking "at the time the Secretary makes the first payment of benefits" and inserting "at the time the Secretary makes the first payment of benefits with respect to the period described in clause (A) or (B) of paragraph (3)".

(b) DEFINITION OF INTERIM ASSISTANCE.—Section 1631(g)(3) of such Act is amended—

(1) by inserting "(A)" after "basic needs"; and

(2) by inserting before the period at the end the following: ", or (B) during the period beginning with the first month for which the individual's benefits (as defined in paragraph (2)) have been terminated or suspended if the individual was subsequently found to have been eligible for such benefits".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective with the 13th month following the month in which this Act is enacted, or, if sooner, with the first month for which the Secretary of Health and Human Services determines that it is administratively feasible. 42 USC 1383 note.

SEC. 9111. SPECIAL NOTICE TO BLIND RECIPIENTS.

(a) IN GENERAL.—(1) Section 1631 of the Social Security Act is amended by adding at the end the following new subsection: 42 USC 1383.

"Special Notice to Blind Individuals with Respect to Hearings and Other Official Actions

"(l)(1) In any case where an individual who is applying for or receiving benefits under this title on the basis of blindness is entitled (under subsection (c) or otherwise) to receive notice from the Secretary of any decision or determination made or other action taken or proposed to be taken with respect to his or her rights under this title, such individual shall at his or her election be entitled either (A) to receive a supplementary notice of such decision, determination, or action, by telephone, within 5 working days after the initial notice is mailed, (B) to receive the initial notice in the form of a certified letter, or (C) to receive notification by some alternative procedure established by the Secretary and agreed to by the individual.

"(2) The election under paragraph (1) may be made at any time; but an opportunity to make such an election shall in any event be given (A) to every individual who is an applicant for benefits under this title on the basis of blindness, at the time of his or her application, and (B) to every individual who is a recipient of such benefits on the basis of blindness, at the time of each redetermination of his or her eligibility. Such an election, once made by an individual, shall apply with respect to all notices of decisions, determinations, and actions which such individual may thereafter be entitled to receive under this title until such time as it is revoked or changed.".

(2) Not later than one year after the date on which the amendment made by paragraph (1) becomes effective, the Secretary of Health and Human Services shall provide every individual receiving benefits under title XVI of the Social Security Act on the basis of blindness an opportunity to make an election under section 1631(l)(1) of such Act (as added by such amendment). 42 USC 1383 note.

(b) STUDY.—The Secretary of Health and Human Services shall study the desirability and feasibility of extending special or supplementary notices of the type provided to blind individuals by section 1631(l) of the Social Security Act (as added by subsection (a) of this section) to other individuals who may lack the ability to read and comprehend regular written notices, and shall report the results of such study to the Congress, along with such recommendations as may be appropriate, within 12 months after the date of the enactment of this Act. Reports. 42 USC 1383 note.

42 USC 1383. note.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective July 1, 1988.

SEC. 9112. REHABILITATION SERVICES FOR BLIND SSI RECIPIENTS.

42 USC 1383.

(a) IN GENERAL.—Section 1631(a)(6) of the Social Security Act is amended—

(1) by inserting "blindness (as determined under section 1614(a)(2)) or" before "disability (as determined under section 1614(a)(3))";

(2) by inserting "blindness or other" before "physical or mental impairment"; and

(3) by inserting "blindness and" before "disability benefit rolls" in subparagraph (B).

42 USC 1383 note.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective April 1, 1988.

SEC. 9113. EXTENDING THE NUMBER OF MONTHS THAT AN INDIVIDUAL IN A PUBLIC EMERGENCY SHELTER CAN BE ELIGIBLE FOR SSI.

42 USC 1382.

(a) IN GENERAL.—Section 1611(e)(1)(D) of the Social Security Act is amended by striking "three months in any 12-month period" and inserting "6 months in any 9-month period".

42 USC 1382 note.

(b) EFFECTIVE DATE.—(1) The amendment made by subsection (a) shall become effective January 1, 1988.

(2) In the application of section 1611(e)(1)(D) of the Social Security Act on and after the effective date of such amendment, months before January 1988 in which a person was an eligible individual or eligible spouse by reason of such section shall not be taken into account.

SEC. 9114. EXCLUSION OF UNDERPAYMENTS FROM RESOURCES.

42 USC 1382b.

(a) IN GENERAL.—Section 1613(a)(7) of the Social Security Act is amended by inserting after "shall be limited to the first 6 months following the month in which such amount is received" the following: "(or to the first 9 months following such month with respect to any amount so received during the period beginning October 1, 1987, and ending September 30, 1989)".

42 USC 1382b note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective January 1, 1988.

SEC. 9115. CONTINUATION OF FULL BENEFIT STANDARD FOR INDIVIDUALS TEMPORARILY INSTITUTIONALIZED.

(a) IN GENERAL.—Section 1611(e)(1) of the Social Security Act is amended—

(1) in subparagraph (A), by striking "and (E)" and inserting "(E), and (G)";

(2) in subparagraph (B), by inserting "(subject to subparagraph (G))" after "throughout any month"; and

(3) by adding at the end the following new subparagraphs:

"(G) A person may be an eligible individual or eligible spouse for purposes of this title, and subparagraphs (A) and (B) shall not apply, with respect to any particular month throughout which he or she is an inmate of a public institution the primary purpose of which is the provision of medical or psychiatric care, or which is a hospital, extended care facility, nursing home, or intermediate care facility receiving payments (with respect to such individual or spouse) under

a State plan approved under title XIX, if it is determined in accordance with subparagraph (H) that—

"(i) such person's stay in that institution or facility (or in that institution or facility and one or more other such institutions or facilities during a continuous period of institutionalization) is likely (as certified by a physician) not to exceed 3 months, and the particular month involved is one of the first 3 months throughout which such person is in such an institution or facility during a continuous period of institutionalization; and

"(ii) such person needs to continue to maintain and provide for the expenses of the home or living arrangement to which he or she may return upon leaving the institution or facility.

The benefit of any person under this title (including State supplementation if any) for each month to which this subparagraph applies shall be payable, without interruption of benefit payments and on the date the benefit involved is regularly due, at the rate that was applicable to such person in the month prior to the first month throughout which he or she is in the institution or facility.

"(H) The Secretary shall establish procedures for the determinations required by clauses (i) and (ii) of subparagraph (G), and may enter into agreements for making such determinations (or for providing information or assistance in connection with the making of such determinations) with appropriate State and local public and private agencies and organizations. Such procedures and agreements shall include the provision of appropriate assistance to individuals who, because of their physical or mental condition, are limited in their ability to furnish the information needed in connection with the making of such determinations.". Contracts.

(b) CONFORMING AMENDMENT.—Section 1902(l) of such Act is amended by striking "section 1611(e)(1)(E)" and inserting "subparagraph (E) or (G) of section 1611(e)(1)". 42 USC 1396a.

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective July 1, 1988. 42 USC 1382 note.

SEC. 9116. RETENTION OF MEDICAID WHEN SSI BENEFITS ARE LOST UPON ENTITLEMENT TO EARLY WIDOW'S OR WIDOWER'S INSURANCE BENEFITS.

(a) IN GENERAL.—Section 1634 of the Social Security Act is amended by adding at the end the following new subsection: 42 USC 1383c.

"(d) If any person—

"(1) applies for and obtains benefits under subsection (e) or (f) of section 202 (or under any other subsection of section 202 if such person is also eligible for benefits under such subsection (e) or (f)) as required by section 1611(e)(2), being then at least 60 years of age but not entitled to hospital insurance benefits under part A of title XVIII, and

"(2) is determined to be ineligible (by reason of the receipt of such benefits under section 202) for supplemental security income benefits under this title or for State supplementary payments of the type described in section 1616(a),

such person shall nevertheless be deemed to be a recipient of supplemental security income benefits under this title for purposes of title XIX, so long as he or she (A) would be eligible for such supplemental security income benefits, or such State supplementary payments, in the absence of such benefits under section 202, and (B) is not entitled to hospital insurance benefits under part A of title XVIII.".

42 USC 1383c note.

(b) NOTICE.—The Secretary of Health and Human Services, acting through the Social Security Administration, shall (within 3 months after the date of the enactment of this Act) issue a notice to all individuals who will have attained age 60 but not age 65 as of April 1, 1988, and who received supplemental security income benefits under title XVI of the Social Security Act prior to attaining age 60 but lost those benefits by reason of the receipt of widow's or widower's insurance benefits (or other benefits as described in section 1634(d)(1) of that Act as added by subsection (a) of this section) under title II of that Act. Each such notice shall set forth and explain the provisions of section 1634(d) of the Social Security Act (as so added), and shall inform the individual that he or she should contact the Secretary or the appropriate State agency concerning his or her possible eligibility for medical assistance benefits under such title XIX.

42 USC 1383c note.

(c) STATE DETERMINATIONS.—Any determination required under section 1634(d) of the Social Security Act with respect to whether an individual would be eligible for benefits under title XVI of such Act (or State supplementary payments) in the absence of benefits under section 202 shall be made by the appropriate State agency.

42 USC 1396s.

(d) CONFORMING AMENDMENTS.—Section 1922(a)(2) of the Social Security Act is amended—

(1) by striking "1634 (b)" in subparagraph (B) and inserting "1634 (b) and (c)"; and

(2) by adding at the end the following new subparagraph:

"(C) Section 1634(d) of this Act (relating to individuals who lose eligibility for SSI benefits due to entitlement to early widow's or widower's insurance benefits under section 202 (e) or (f) of this Act).".

42 USC 1383c note.

(e) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to any individual without regard to whether the determination of his or her ineligibility for supplemental security income benefits by reason of the receipt of benefits under section 202 of the Social Security Act [90] (as described in section 1634(d)(2) of such Act) occurred before, on, or after the date of the enactment of this Act; but no individual shall be eligible for assistance under title XIX of such Act by reason of such amendments for any period before July 1, 1988.

42 USC 1383 note.

SEC. 9117. DEMONSTRATION PROGRAM TO ASSIST HOMELESS INDIVIDUALS.

Grants.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") is authorized to make grants to States for projects designed to demonstrate and test the feasibility of special procedures and services to ensure that homeless individuals are provided SSI and other benefits under the Social Security Act to which they are entitled and receive assistance in using such benefits to obtain permanent housing, food, and health care. Each project approved under this section shall meet such conditions and requirements, consistent with this section, as the Secretary shall prescribe.

Grants.

(b) SCOPE OF PROJECTS.—Projects for which grants are made under this section shall include, more specifically, procedures and services to overcome barriers which prevent homeless individuals (particu-

[90] Copy read "Social Security (as".

larly the chronically mentally ill) from receiving and appropriately using benefits, including—

(1) the creation of cooperative approaches between the Social Security Administration, State and local governments, shelters for the homeless, and other providers of services to the homeless;

(2) the establishment, where appropriate, of multi-agency SSI Outreach Teams (as described in subsection (c)), to facilitate communication between the agencies and staff involved in taking and processing claims for SSI and other benefits by the homeless who use shelters;

(3) special efforts to identify homeless individuals who are potentially eligible for SSI or other benefits under the Social Security Act;

(4) the provision of special assistance to the homeless in applying for benefits, including assistance in obtaining and developing evidence of disability and supporting documentation for nondisability-related eligibility requirements;

(5) the provision of special training and assistance to public and private agency staff, including shelter employees, on disability eligibility procedures and evidentiary requirements;

(6) the provision of ongoing assistance to formerly homeless individuals to ensure their responding to information requests related to periodic redeterminations of eligibility for SSI and other benefits;

(7) the provision of assistance in ensuring appropriate use of benefit funds for the purpose of enabling homeless individuals to obtain permanent housing, nutrition, and physical and mental health care, including the use, where appropriate, of the disabled individual's representative payee for case management services; and

(8) such other procedures and services as the Secretary may approve.

(c) SSI OUTREACH TEAM PROJECTS.—(1) If a State applies for funds under this section for the purpose of establishing a multi-agency SSI Outreach Team, the membership and functions of such Team [91] shall be as follows (except as provided in paragraph (2)):

(A) The membership of the Team shall include a social services case worker (or case workers, if necessary); a consultative medical examiner who is qualified to provide consultative examinations for the Disability Determination Service of the State; a disability examiner, from the State Disability Determination Service; and a claims representative from an office of the Social Security Administration.

(B) The Team shall have designated members responsible for—

(i) identification of homeless individuals who are potentially eligible for SSI or other benefits under the Social Security Act;

(ii) ensuring that such individuals understand their rights under the programs;

(iii) assisting such individuals in applying for benefits, including assistance in obtaining and developing evidence

[91] Copy read "team".

and supporting documentation relating to disability- and nondisability-related eligibility requirements;

(iv) arranging transportation and accompanying applicants to necessary examinations, if needed; and

(v) providing for the tracking and monitoring of all claims for benefits by individuals under the project.

(2) If the Secretary determines that an application by a State for an SSI Outreach Team Project under this section which proposes a membership and functions for such Team different from those prescribed in paragraph (1) but which is expected to be as effective, the Secretary may waive the requirements of such paragraph.

(d) INFORMATION AND REPORTS; EVALUATION.—(1) Each State having an approved SSI Outreach Team Project shall periodically submit to the Secretary such information (with respect to the project) as may be necessary to enable the Secretary to evaluate such project in particular and the demonstration program under this section in general.

(2)(A) The Secretary shall from time to time (but not less often than annually) submit to the Congress a full and complete report on the program under this section, together with a detailed evaluation of such program and of the projects thereunder along with such recommendations as may be deemed appropriate. Such evaluation and such recommendations shall be designed to serve as a basis for determining whether (and to what extent) the activities and procedures included in the demonstration program under this section should be continued, expanded, or modified, or converted (with or without changes) into a regular feature of permanent law.

(B) The criteria used by the Secretary in evaluating the program and the projects thereunder shall not be limited to those which would normally be used in evaluating programs and activities of the kind involved, but shall fully take into account the special circumstances of the homeless and their need for personalized attention and follow-through assistance, and shall emphasize the extent to which the procedures and assistance made available to applicants under such projects are recognizing those circumstances and meeting that need.

(e) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated to the Secretary—

(A) the sum of $1,250,000 for the fiscal year 1988;

(B) the sum of $2,500,000 for the fiscal year 1989; and

(C) such sums as may be necessary for each fiscal year thereafter.

SEC. 9118. ASSISTANCE TO HOMELESS AFDC FAMILIES.

Federal Register, publication.

The Secretary of Health and Human Services may not take any action, prior to October 1, 1988, that would have the effect of implementing in whole or in part the proposed regulation published in the Federal Register on December 14, 1987, with respect to emergency assistance and the need for and amount of assistance under the program of aid to families with dependent children, or that would change current policy with respect to any of the matters addressed in such proposed regulation.

SEC. 9119. INCREASE IN PERSONAL NEEDS ALLOWANCE FOR SSI RECIPIENTS.

42 USC 1382.

(a) INCREASE IN STANDARD.—Section 1611(e)(1)(B) of the Social Security Act is amended—

(1) by striking "$300 per year" in clauses (i) and (ii)(I) and inserting "$360 per year"; and

(2) by striking "$600 per year" in clause (iii) and inserting "$720 per year".

(b) MANDATORY PASS-THROUGH OF INCREASED PERSONAL NEEDS ALLOWANCE.—Section 1618 of such Act is amended by adding at the end the following new subsection: 42 USC 1382g.

"(g) In order for any State which makes supplementary payments of the type described in section 1616(a) (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93-66) to recipients of benefits determined under section 1611(e)(1)(B), on or after October 1, 1987, to be eligible for payments pursuant to title XIX with respect to any calendar quarter which begins—

"(1) after October 1, 1987, or, if later

"(2) after the calendar quarter in which it first makes such supplementary payments to recipients of benefits so determined,

such State must have in effect an agreement with the Secretary whereby the State will—

"(3) continue to make such supplementary payments to recipients of benefits so determined, and

"(4) maintain such supplementary payments to recipients of benefits so determined at levels which assure (with respect to any particular month beginning with the month in which this subsection is first effective) that—

"(A) the combined level of such supplementary payments and the amounts payable to or on behalf of such recipients under section 1611(e)(1)(B) for that particular month,

is not less than—

"(B) the combined level of such supplementary payments and the amounts payable to or on behalf of such recipients under section 1611(e)(1)(B) for October 1987 (or, if no such supplementary payments were made for that month, the combined level for the first subsequent month for which such payments were made), increased—

"(i) in a case to which clause (i) of such section 1611(e)(1)(B) applies or (with respect to the individual or spouse who is in the hospital, home, or facility involved) to which clause (ii) of such section applies, by $5, and

"(ii) in a case to which clause (iii) of such section 1611(e)(1)(B) applies, by $10.".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall become effective July 1, 1988. 42 USC 1382 note.

SEC. 9120. EXCLUSION OF DEATH BENEFITS TO THE EXTENT SPENT ON LAST ILLNESS AND BURIAL.

(a) IN GENERAL.—Subparagraphs (D) and (E) of section 1612(a)(2) of the Social Security Act are amended to read as follows: 42 USC 1382a.

"(D) payments to the individual occasioned by the death of another person, to the extent that the total of such payments exceeds the amount expended by such individual for purposes of the deceased person's last illness and burial;

"(E) support and alimony payments, and (subject to the provisions of subparagraph (D) excluding certain amounts

expended for purposes of a last illness and burial) gifts (cash or otherwise) and inheritances; and".

42 USC 1382a note.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective April 1, 1988.

42 USC 602 note.

SEC. 9121. DEMONSTRATION OF FAMILY INDEPENDENCE PROGRAM.

(a) IN GENERAL.—Upon application of the State of Washington and approval by the Secretary of Health and Human Services, the State of Washington (in this section referred to as the "State") may conduct a demonstration project in accordance with this section for the purpose of testing whether the operation of its Family Independence Program enacted in May 1987 (in this section referred to as the "Program"), as an alternative to the AFDC program under title IV of the Social Security Act, would more effectively break the cycle of poverty and provide families with opportunities for economic independence and strengthened family functioning.

(b) NATURE OF PROJECT.—Under the demonstration project conducted under this section—

(1) every individual eligible for aid under the State plan approved under section 402(a) of the Social Security Act shall be eligible to enroll in the Program, which shall operate simultaneously with the AFDC program so long as there are individuals who qualify for the latter;

(2) cash assistance shall be furnished in a timely manner to all eligible individuals under the Program (and the State may not make expenditures for services under the Program until it has paid all necessary cash assistance), with no family receiving less in cash benefits than it would have received under the AFDC program;

(3) individuals may be required to register, undergo assessment, and participate in work, education, or training under the Program, except that—

(A) work or training may not be required in the case of—

(i) a single parent of a child under six months of age, or more than one parent of such a child in a two-parent family,

(ii) a single parent with a child of any age who has received assistance for less than six months,

(iii) a single parent with a child under three years of age who has received assistance for less than three years,

(iv) an individual under 16 years of age or over 64 years of age,

(v) an individual who is incapacitated, temporarily ill, or needed at home to care for an impaired person, or

(vi) an individual who has not yet been individually notified in writing of such requirement or of the expiration of his or her exempt status under this subparagraph;

(B) participation in work or training shall in any case be voluntary during the first two years of the Program, and may thereafter be made mandatory only in counties where more than 50 percent of the enrollees can be placed in employment within three months after they are job ready;

(C) in no case shall the work and training aspect of the Program be mandated in any county where the unemployment level is at least twice the State average; and

(D) mandated work shall not include work in any position created by a reduction in the work force, a bona fide labor dispute, the decertification of a bargaining unit, or a new job classification which subverts the intention of the Program;

(4) there shall be no change in existing State law which would eliminate guaranteed benefits or reduce the rights of applicants or enrollees; and

(5) the Program shall include due process guarantees and procedures no less than those which are available to participants in the AFDC program under Federal law and regulation and under State law.

(c) WAIVERS.—The Secretary shall (with respect to the project under this section) waive compliance with any requirements contained in title IV of the Social Security Act which (if applied) would prevent the State from carrying out the project or effectively achieving its purpose, or with the requirements of sections 1902(a)(1), 1902(e)(1), and 1916 of that Act (but only to the extent necessary to enable the State to carry out the Program [92] as enacted by the State in April 1987).

(d) FUNDING.—

(1) The Secretary, under section 403(b) or 1903(d) of the Social Security Act, shall reimburse the State for its expenditures under the Program—

(A) at a rate equal to the Federal matching rate applicable to the State under section 403(a)(1) (or 1118) of the Social Security Act, for cash assistance, medical assistance, and child care provided to enrollees;

(B) at a rate equal to the applicable Federal matching rate under section 403(a)(3) of such Act, for administrative expenses; and

(C) at the rate of 75 percent for an evaluation plan approved by the Secretary.

(2) As a condition of approval of the project under this section, the State must provide assurances satisfactory to the Secretary that the total amount of Federal reimbursement over the period of the project will not exceed the anticipated Federal reimbursements (over that period) under the AFDC and Medicaid programs; but this paragraph shall not prevent the State from claiming reimbursement for additional persons who would qualify for assistance under the AFDC program, for costs attributable to increases in the State's payment standard, or for any other federally-matched benefits or services.

(e) EVALUATION.—The State must satisfy the Secretary that the Program [93] will be evaluated using a reasonable methodology.

(f) DURATION OF PROJECT.—

(1) The project under this section shall begin on the date on which the first individual is enrolled in the Program and (subject to paragraph (2)) shall end five years after that date.

(2) The project may be terminated at any time, on six months written notice, by the State or (upon a finding that the State has materially failed to comply with this section) by the Secretary.

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[92] Copy read "program".
[93] Copy read "program".

42 USC 602 note.

SEC. 9122. CHILD SUPPORT DEMONSTRATION PROGRAM IN NEW YORK STATE.

(a) IN GENERAL.—Upon application by the State of New York and approval by the Secretary of Health and Human Services (in this section referred to as the "Secretary"), the State of New York (in this section referred to as the "State") may conduct a demonstration program in accordance with this section for the purpose of testing a State program as an alternative to the program of Aid to Families with Dependent Children under title IV of the Social Security Act.

(b) NATURE OF PROGRAM.—Under the demonstration program conducted under this section—

(1) all custodial parents of dependent children who are eligible for supplements under the State plan approved under section 402(a) of the Social Security Act (and such other types or classes of such parents as the State may specify) may elect to receive benefits under the State's Child Support Supplement Program in lieu of supplements under such plan; and

(2) the Federal Government will pay to the State with respect to families receiving benefits under the State's Child Support Supplement Program the same amounts as would have been payable with respect to such families under sections 403 and 1903 of the Social Security Act as if the families were receiving aid and medical assistance under the State plans in effect with respect to such sections.

(c) WAIVERS.—The Secretary shall (with respect to the program under this section) waive compliance with any requirements contained in title IV of the Social Security Act which (if applied) would prevent the State from carrying out the program or effectively achieving its purpose.

(d) CONDITIONS OF APPROVAL.—As a condition of approval of the program under this section, the State shall—

(1) provide assurances satisfactory to the Secretary that the State—

(A) will continue to make assistance available to all eligible children in the State who are in need of financial support, and

(B) will continue to operate an effective child support enforcement program;

(2) agree—

(A) to have the program evaluated, and

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(B) to report interim findings to the Secretary at such times as the Secretary shall provide; and

(3) satisfy the Secretary that the program will be evaluated using a reasonable methodology that can determine whether changes in work behavior and changes in earnings are attributable to participation in the program.

(e) APPLICATION PROCESS.—In order to participate in the program under this section, the State must submit an application under this section not later than two years after the date of enactment of this Act. The Secretary shall approve or disapprove the application of the State not later than 90 days after the date of its submission. If the application is disapproved, the Secretary shall provide to the State a statement of the reasons for such disapproval, of the changes needed to obtain approval, and of the date by which the State may resubmit the application.

(f) EFFECTIVE DATE.—The program under this section shall commence not later than the first day of the third calendar quarter beginning on or after the date on which the application of the State is approved in accordance with subsection (e).

(g) DURATION OF PROGRAM.—

(1) Except as provided in paragraph (2), if the Secretary approves the application of the State, the demonstration program under this section shall be conducted for a period not to exceed five years.

(2)(A) The Governor of the State may before the end of the period described in paragraph (1) terminate the demonstration program under this section if the Governor finds that the program is not successful in testing the State's Child Support Supplement Program as an alternative to the program under title IV of the Social Security Act. The Governor shall notify the Secretary of the decision to terminate the program not less than three months prior to the date of such termination.

(B) The Secretary may terminate the program before the end of such period if the Secretary finds that the program is not in compliance with the terms of the application. The Secretary shall notify the Governor of the decision to terminate the program not less than three months prior to the date of such termination.

SEC. 9123. TECHNICAL CORRECTION.

The subsection of section 1631 of the Social Security Act which was added as subsection (j) by section 11006 of the Anti-Drug Abuse Act of 1986 is redesignated as subsection (m) and is moved to the end of such section 1631 so that it appears immediately after subsection (l) thereof (as added by section 9111(a) of this Act); and the heading of such subsection is amended to read as follows: 42 USC 1383.

"Pre-Release Procedures for Institutionalized Persons".

PART 2—SOCIAL SERVICES, CHILD WELFARE SERVICES, AND OTHER PROVISIONS RELATING TO CHILDREN

SEC. 9131. PERMANENT EXTENSION OF AUTHORITY FOR VOLUNTARY FOSTER CARE PLACEMENTS.

(a) IN GENERAL.—Section 102 of the Adoption Assistance and Child Welfare Act of 1980 is amended— 42 USC 672 note.

(1) in subsection (a)(1) (in the matter preceding subparagraph (A)), by striking "and before October 1, 1987,";

(2) in subsection (c), by striking all that follows "September 30, 1979" and inserting a period; and

(3) in subsection (e), by striking "with respect to which the amendments made by this section are in effect".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective October 1, 1987. 42 USC 672 note.

SEC. 9132. 2-YEAR EXTENSION OF FOSTER CARE CEILING AND OF AUTHORITY TO TRANSFER FOSTER CARE FUNDS TO CHILD WELFARE SERVICES.

(a) IN GENERAL.—Section 474 of the Social Security Act is amended— 42 USC 674.

(1) in paragraphs (1), (2)(A)(iii), (2)(B), (4)(B), and (5)(A)(ii) of subsection (b), by striking "through 1987" and inserting "through 1989";

(2) in paragraph (5)(A) of subsection (b) (in the matter preceding clause (i)), by striking "October 1, 1987" and inserting "October 1, 1989"; and

(3) in paragraphs (1) and (2) of subsection (c), by striking "through 1987" and inserting "through 1989".

42 USC 674 note. (b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective October 1, 1987.

SEC. 9133. MOTHER/INFANT FOSTER CARE.

42 USC 675. (a) IN GENERAL.—Section 475(4) of the Social Security Act is amended—

(1) by inserting "(A)" after "(4)"; and

(2) by adding at the end the following new subparagraph:

"(B) In cases where—

"(i) a child placed in a foster family home or child-care institution is the parent of a son or daughter who is in the same home or institution, and

"(ii) payments described in subparagraph (A) are being made under this part with respect to such child,

the foster care maintenance payments made with respect to such child as otherwise determined under subparagraph (A) shall also include such amounts as may be necessary to cover the cost of the items described in that subparagraph with respect to such son or daughter.".

(b) CONFORMING AMENDMENTS RELATING TO ELIGIBILITY UNDER OTHER PROGRAMS.—

42 USC 602. (1) Section 402(a)(24) of such Act is amended by striking "if an individual is receiving benefits under title XVI, then, for the period for which such benefits are received," and inserting the following: "if an individual is receiving benefits under title XVI or his costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made to his or her minor parent as provided in section 475(4)(B), then, for the period for which such benefits are received or such costs are so covered,".

42 USC 672. (2) Section 472(h) of such Act is amended by adding at the end the following new sentence: "For purposes of the preceding sentence, a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to his or her minor parent, as provided in section 475(4)(B), shall be considered a child with respect to whom foster care maintenance payments are made under this section.".

42 USC 673. (3)(A) Section 473(a)(2)(A) of such Act is amended—

(i) by striking "or" at the end of clause (i);

(ii) by adding "or" at the end of clause (ii); and

(iii) by adding after clause (ii) the following new clause:

"(iii) is a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to his or her minor parent as provided in section 475(4)(B),".

(B) Section 473(a)(2)(B)(iii) of such Act is amended by inserting "or (A)(iii)" after "(A)(ii)".

(4) Section 473(b) of such Act is amended by adding at the end the following new sentence: "For purposes of the preceding sentence, a child whose costs in a foster family home or child-care institution

are covered by the foster care maintenance payments being made with respect to his or her minor parent, as provided in section 475(4)(B), shall be considered a child with respect to whom foster care maintenance payments are being made under section 472.".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective April 1, 1988. 42 USC 602 note.

SEC. 9134. INCREASED FUNDING FOR SOCIAL SERVICES BLOCK GRANTS.

(a) INCREASE IN FUNDING.—Section 2003(c) of the Social Security Act is amended— 42 USC 1397b.

(A) by striking "and" at the end of paragraph (2);

(B) in paragraph (3), by striking "year" the first place it appears and all that follows through the period and inserting "years 1984, 1985, 1986, and 1987, and for each succeeding fiscal year other than the fiscal year 1988; and"; and

(C) by adding at the end the following new paragraph:

"(4) $2,750,000,000 for the fiscal year 1988.".

(b) REQUIREMENT THAT ADDITIONAL FUNDS SUPPLEMENT AND NOT SUPPLANT FUNDS AVAILABLE FROM OTHER SOURCES.—The additional $50,000,000 made available to the States for the fiscal year 1988 pursuant to the amendments made by subsection (a) shall— 42 USC 1397b note.

(A) be used only for the purpose of providing additional services under title XX of the Social Security Act; and

(B) be expended only to supplement the level of any funds that would, in the absence of the additional funds appropriated pursuant to such amendments, be available from other sources (including any amounts available under title XX of the Social Security Act without regard to such amendments) for services in accordance with such title, and shall in no case supplant such funds from other sources or reduce the level thereof.

SEC. 9135. EXTENSION OF SOCIAL SERVICES BLOCK GRANT AND CHILD WELFARE SERVICES PROGRAMS TO AMERICAN SAMOA.

(a) SOCIAL SERVICES BLOCK GRANT PROGRAM.—(1) Section 1101(a)(1) of the Social Security Act is amended by inserting "American Samoa," after "Guam," in the last sentence. 42 USC 1301.

(2)(A) Section 2003(a) of such Act is amended by adding at the end the following new sentence: "The allotment for fiscal year 1989 and each succeeding fiscal year to American Samoa shall be an amount which bears the same ratio to the amount allotted to the Northern Mariana Islands for that fiscal year as the population of American Samoa bears to the population of the Northern Mariana Islands determined on the basis of the most recent data available at the time such allotment is determined.".

(B) Section 2003(b) of such Act is amended by inserting "American Samoa," after "the Virgin Islands," each place it appears.

(b) CHILD WELFARE SERVICES PROGRAM.—(1) Section 1101(a)(1) of such Act is amended by adding at the end thereof the following new sentence: "Such term when used in part B of title IV also includes American Samoa.".

(2) Section 421(b) of such Act is amended by striking "and Guam" and inserting "Guam, and American Samoa". 42 USC 621.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to fiscal years beginning on or after October 1, 1988. 42 USC 621 note.

Establishment.

SEC. 9136. NATIONAL COMMISSION ON CHILDREN.

Part A of title XI of the Social Security Act is amended by adding at the end the following new section:

"NATIONAL COMMISSION ON CHILDREN

42 USC 1320b-9.

"SEC. 1139. (a)(1) There is hereby established a commission to be known as the National Commission on Children (in this section referred to as the 'Commission').

"(b)(1) The Commission shall consist of—

President of U.S.

"(A) 12 members to be appointed by the President,

"(B) 12 members to be appointed by the Speaker of the House of Representatives, and

"(C) 12 members to be appointed by the President pro tempore of the Senate.

President of U.S.

"(2) The President, the Speaker, and the President pro tempore shall each appoint as members of the Commission—

"(A) 4 individuals who—

"(i) are representatives of organizations providing services to children,

"(ii) are involved in activities on behalf of children, or

"(iii) have engaged in academic research with respect to the problems and needs of children,

"(B) 4 individuals who are elected or appointed public officials (at the Federal, State, or local level) involved in issues and programs relating to children, and

"(C) 4 individuals who are parents or representatives of parents or parents' organizations.

"(3) The appointments made pursuant to subparagraphs (B) and (C) of paragraph (1) shall be made in consultation with the chairmen of committees of the House of Representatives and the Senate, respectively, having jurisdiction over relevant Federal programs.

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"(c)(1) It shall be the duty and function of the Commission to serve as a forum on behalf of the children of the Nation and to conduct the studies and issue the report required by subsection (d).

"(2) The Commission (and any committees that it may form) shall conduct public hearings in different geographic areas of the country, both urban and rural, in order to receive the views of a broad spectrum of the public on the status of the Nation's children and on ways to safeguard and enhance the physical, mental, and emotional well-being of all of the children of the Nation, including those with physical or mental disabilities, and others whose circumstances deny them a full share of the opportunities that parents of the Nation may rightfully expect for their children.

"(3) The Commission shall receive testimony from individuals, and from representatives of public and private organizations and institutions with an interest in the welfare of children, including educators, health care professionals, religious leaders, providers of social services, representatives of organizations with children as members, elected and appointed public officials, and from parents and children speaking in their own behalf.

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"(d) The Commission shall submit to the President, and to the Committees on Finance and Labor and Human Resources of the Senate and the Committees on Ways and Means, Education and Labor, and Energy and Commerce of the House of Representatives, an interim report no later than September 30, 1988, and a final

report no later than March 31, 1989, setting forth recommendations with respect to the following subjects:

"(1) Questions relating to the health of children that the Commission shall address include—

"(A) how to reduce infant mortality,

"(B) how to reduce the number of low-birth-weight babies,

"(C) how to reduce the number of children with chronic illnesses and disabilities,

"(D) how to improve the nutrition of children,

"(E) how to promote the physical fitness of children,

"(F) how to ensure that pregnant women receive adequate prenatal care,

"(G) how to ensure that all children have access to both preventive and acute care health services, and

"(H) how to improve the quality and availability of health care for children.

"(2) Questions relating to social and support services for children and their parents that the Commission shall address include—

"(A) how to prevent and treat child neglect and abuse,

"(B) how to provide help to parents who seek assistance in meeting the problems of their children,

"(C) how to provide counseling services for children,

"(D) how to strengthen the family unit,

"(E) how children can be assured of adequate care while their parents are working or participating in education or training programs,

"(F) how to improve foster care and adoption services,

"(G) how to reduce drug and alcohol abuse by children and youths, and

"(H) how to reduce the incidence of teenage pregnancy.

"(3) Questions relating to education that the Commission shall address include—

"(A) how to encourage academic excellence for all children at all levels of education,

"(B) how to use preschool experiences to enhance educational achievement,

"(C) how to improve the qualifications of teachers,

"(D) how schools can better prepare the Nation's youth to compete in the labor market,

"(E) how parents and schools can work together to help children achieve success at each step of the academic ladder,

"(F) how to encourage teenagers to complete high school and remain in school to fulfill their academic potential,

"(G) how to address the problems of drug and alcohol abuse by young people,

"(H) how schools might lend support to efforts aimed at reducing the incidence of teenage pregnancy, and

"(I) how schools might better meet the special needs of children who have physical or mental handicaps.

"(4) Questions relating to income security that the Commission shall address include—

"(A) how to reduce poverty among children,

"(B) how to ensure that parents support their children to the fullest extent possible through improved child support

collection services, including services on behalf of children whose parents are unmarried, and

"(C) how to ensure that cash assistance to needy children is adequate.

"(5) Questions relating to tax policy that the Commission shall address include—

"(A) how to assure the equitable tax treatment of families with children,

"(B) the effect of existing tax provisions, including the dependent care tax credit, the earned income tax credit, and the targeted jobs tax credit, on children living in poverty,

"(C) whether the dependent care tax credit should be refundable and the effect of such a policy,

"(D) whether the earned income tax credit should be adjusted for family size and the effect of such a policy, and

"(E) whether there are other tax-related policies which would reduce poverty among children.

"(6) In addition to addressing the questions specified in paragraphs (1) through (5), the Commission shall—

"(A) seek to identify ways in which public and private organizations and institutions can work together at the community level to identify deficiencies in existing services for families and children and to develop recommendations to ensure that the needs of families and children are met, using all available resources, in a coordinated and comprehensive manner, and

"(B) assess the existing capacities of agencies to collect and analyze data on the status of children and on relevant programs, identify gaps in the data collection system, and recommend ways to improve the collection of data and the coordination among agencies in the collection and utilization of data.

The reports required by this subsection shall be based upon the testimony received in the hearings conducted pursuant to subsection (c), and upon other data and findings developed by the Commission.

"(e)(1)(A) Members of the Commission shall first be appointed not later than 60 days after the date of the enactment of this section, for terms ending on March 31, 1989.

"(B) A vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the vacant position was first filled.

"(2) The Commission shall elect one of its members to serve as Chairman of the Commission. The Chairman shall be a nonvoting member of the Commission.

"(3) A majority of the members of the Commission shall constitute a quorum for the transaction of business.

"(4)(A) The Commission shall meet at the call of the Chairman, or at the call of a majority of the members of the Commission.

"(B) The Commission shall meet not less than 4 times during the period beginning with the date of the enactment of this section and ending with March 31, 1989.

"(5) Decisions of the Commission shall be according to the vote of a simple majority of those present and voting at a properly called meeting.

"(6) Members of the Commission shall serve without compensation, but shall be reimbursed for travel, subsistence, and other

necessary expenses incurred in the performance of their duties as members of the Commission.

"(f)(1) The Commission shall appoint an Executive Director of the Commission who shall be compensated at a rate fixed by the Commission, but which shall not exceed the rate established for level V of the Executive Schedule under title 5, United States Code.

"(2) In addition to the Executive Director, the Commission may appoint and fix the compensation of such personnel as it deems advisable, in accordance with the provisions of title 5, United States Code, governing appointments to the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

"(g) In carrying out its duties, the Commission, or any duly organized committee thereof, is authorized to hold such hearings, sit and act at such times and places, and take such testimony, with respect to matters for which it has a responsibility under this section, as the Commission or committee may deem advisable.

"(h)(1) The Commission may secure directly from any department or agency of the United States such data and information as may be necessary to carry out its responsibilities.

"(2) Upon request of the Commission, any such department or agency shall furnish any such data or information.

"(i) The General Services Administration shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request.

"(j) There are authorized to be appropriated such sums as may be necessary to carry out this section.".

SEC. 9137. BOARDER BABIES DEMONSTRATION PROJECT.

Section 426 of the Social Security Act is amended— 42 USC 626.

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting immediately after subsection (a) the following new subsection:

"(b)(1) There are authorized to be appropriated $4,000,000 for each of the fiscal years 1988, 1989, and 1990 for grants by the Secretary to public or private nonprofit entities submitting applications under this subsection for the purpose of conducting demonstration projects under this subsection to develop alternative care arrangements for infants who do not have health conditions that require hospitalization and who would otherwise remain in inappropriate hospital settings.

"(2) The demonstration projects conducted under this section may include—

"(A) multidisciplinary projects designed to prevent the inappropriate hospitalization of infants and to allow infants described in paragraph (1) to remain with or return to a parent in a residential setting, where appropriate care for the infant and suitable treatment for the parent (including treatment for drug or alcohol addiction) may be assured, with the goal (where possible) of rehabilitating the parent and eliminating the need for such care for the infant;

"(B) multidisciplinary projects that assure appropriate, individualized care for such infants in a foster home or other non-medical residential setting in cases where such infant does not require hospitalization and would otherwise remain in inappropriate hospital settings, including projects to dem-

onstrate methods to recruit, train, and retain foster care families; and

"(C) such other projects as the Secretary determines will best serve the interests of such infants and will serve as models for projects that agencies or organizations in other communities may wish to develop.

"(3) In the case of any project which includes the use of funds authorized under this subsection for the care of infants in foster homes or other non-medical residential settings away from their parents, there shall be developed for each such infant a case plan of the type described in section 475(1) (to the extent that such infant is not otherwise covered by such a plan), and each such project shall include a case review system of the type described in section 475(5) (covering each such infant who is not otherwise subject to such a system).

"(4) In evaluating applications from entities proposing to conduct demonstration projects under this subsection, the Secretary shall give priority to those projects that serve areas most in need of alternative care arrangements for infants described in paragraph (1).

"(5) No project may be funded unless the application therefor contains assurances that it will—

"(A) provide for adequate evaluation;

"(B) provide for coordination with local governments;

"(C) provide for community education regarding the inappropriate hospitalization of infants;

"(D) use, to the extent practical, other available private, local, State, and Federal sources for the provision of direct services; and

"(E) meet such other criteria as the Secretary may prescribe.

Grants.

"(6) Grants may be used to pay the costs of maintenance and of necessary medical and social services (to the extent that these costs are not otherwise paid for under other titles of this Act), and for such other purposes as the Secretary may allow.

"(7) The Secretary shall provide training and technical assistance to grantees, as requested.".

SEC. 9138. STUDY OF INFANTS AND CHILDREN WITH AIDS IN FOSTER CARE.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall conduct (or arrange for) a survey to determine—

(1) the total number of infants and children in the United States who have been diagnosed as having acquired immune deficiency syndrome and who have been placed in foster care;

(2) the problems encountered by social service agencies in placing infants and children with such syndrome in foster care; and

(3) the potential increase (over the five-year period beginning on the date of the enactment of this Act) in the number of infants and children with such syndrome who will require foster care.

For purposes of this section, an infant or child with acquired immune deficiency syndrome includes an infant or child who is infected with the virus associated with such syndrome.

(b) RESTRICTION ON SCOPE OF SURVEY.—In conducting (or arranging for) the survey under subsection (a), the Secretary shall assure

that survey activities do not duplicate research activities conducted by the Centers for Disease Control.

(c) REPORT.—Not later than 12 months after the date of enactment of this Act, the Secretary shall report to the Congress on the results of the survey conducted under subsection (a) and shall make recommendations to the Congress with respect to improving the care of infants and children with acquired immune deficiency syndrome who lack ongoing parental involvement and support.

SEC. 9139. TECHNICAL CORRECTIONS.

(a) The last sentence of section 472(a) of the Social Security Act is amended by striking out "473(a)(1)(B)" and inserting in lieu thereof "473(a)(2)(B)". 42 USC 672.

(b) Section 201(b)(2)(B) of the Immigration Reform and Control Act of 1986 is amended by striking out "Section 473(a)(1) of such Act" and inserting in lieu thereof "Section 473(a)(2) of such Act (as amended by section 1711(a) of the Tax Reform Act of 1986)". 42 USC 673.

PART 3—CHILD SUPPORT ENFORCEMENT AMENDMENTS

SEC. 9141. CONTINUATION OF CHILD SUPPORT ENFORCEMENT SERVICES TO FAMILIES NO LONGER RECEIVING AFDC.

(a) IN GENERAL.—(1) Section 457(c) of the Social Security Act is amended to read as follows: 42 USC 657.

"(c) Whenever a family with respect to which child support enforcement services have been provided pursuant to section 454(4) ceases to receive assistance under part A of this title, the State shall provide appropriate notice to the family and continue to provide such services, and pay any amount of support collected, subject to the same conditions and on the same basis as in the case of the individuals to whom services are furnished pursuant to section 454(6), except that no application or other request to continue services shall be required of a family to which this subsection applies, and the provisions of section 454(6)(B) may not be applied.".

(2) Section 454(5) of such Act is amended by striking "(except as provided in section 457(c))". 42 USC 654.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective upon enactment. 42 USC 654 note.

SEC. 9142. CHILD SUPPORT ENFORCEMENT SERVICES REQUIRED FOR CERTAIN FAMILIES RECEIVING MEDICAID.

(a) IN GENERAL.—Section 454 of the Social Security Act is amended—

(1)(A) by striking "an assignment under section 402(a)(26) of this title" in paragraph (4)(A) and inserting "an assignment under section 402(a)(26) or section 1912";

(B) by striking ", and" at the end of paragraph (4)(A) and inserting ", or, in the case of such a child with respect to whom an assignment under section 1912 is in effect, the State agency administering the plan approved under title XIX determines pursuant to section 1912(a)(1)(B) that it is against the best interests of the child to do so, and"; and

(C) by inserting "or medical assistance under a State plan approved under title XIX" immediately after "aid to families with dependent children" in paragraph (4)(B); and

(2)(A) by striking "provide that," and inserting "provide that (A)" in paragraph (5); and

(B) by striking the semicolon at the end of paragraph (5) and inserting "; and (B) in any case in which support payments are collected for an individual pursuant to the assignment made under section 1912, such payments shall be made to the State for distribution pursuant to section 1912, except that this clause shall not apply to such payments for any month after the month in which the individual ceases to be eligible for medical assistance;".

42 USC 654 note.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on July 1, 1988.

SEC. 9143. REPEAL OF UNNECESSARY CHILD SUPPORT REVOLVING FUND.

42 USC 652.

(a) IN GENERAL.—Section 452(c) of the Social Security Act is amended to read as follows:

"(c) The Secretary of the Treasury shall from time to time pay to each State for distribution in accordance with the provisions of section 457 the amount of each collection made on behalf of such State pursuant to subsection (b).".

42 USC 652 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to amounts collected after the date of the enactment of this Act.

PART 4—UNEMPLOYMENT COMPENSATION

26 USC 3304 note.

SEC. 9151. DETERMINATION OF AMOUNT OF FEDERAL SHARE WITH RESPECT TO CERTAIN EXTENDED BENEFITS PAYMENTS.

For the purpose of determining the amount of the Federal payment to any State under section 204(a)(1) of the Federal-State Extended Unemployment Compensation Act of 1970 with respect to the implementation of paragraph (3) of section 202 (a) of such Act (as added by section 1024(a) of the Omnibus Reconciliation Act of 1980), such paragraph shall be considered to apply only with respect to weeks of unemployment beginning after October 31, 1981, except that for any State in which the State legislature did not meet in 1981, it shall be considered to apply for such purpose only with respect to weeks of unemployment beginning after October 31, 1982.

Contracts. 26 USC 3304 note.

SEC. 9152. DEMONSTRATION PROGRAM TO PROVIDE SELF-EMPLOYMENT ALLOWANCES FOR ELIGIBLE INDIVIDUALS.

(a) IN GENERAL.—The Secretary of Labor (hereinafter in this section referred to as the "Secretary") shall carry out a demonstration program under this section for the purpose of making available self-employment allowances to eligible individuals. To carry out such program, the Secretary shall enter into agreements with three States that—

(1) apply to participate in such program, and

(2) demonstrate to the Secretary that they are capable of implementing the provisions of the agreement.

(b) SELECTION OF STATES.—(1) In determining whether to enter into an agreement with a State under this section, the Secretary shall take into consideration at least—

(A) the availability and quality of technical assistance currently provided by agencies of the State to the self-employed;

(B) existing local market conditions and the business climate for new, small business enterprises in the State;

(C) the adequacy of State resources to carry out a regular unemployment compensation program and a program under this section;

(D) the range and extent of specialized services to be provided by the State to individuals covered by such an agreement;

(E) the design of the evaluation to be applied by the State to the program; and

(F) the standards which are to be utilized by the State for the purpose of assuring that individuals who will receive self-employment assistance under this section will have sufficient experience (or training) and ability to be self employed.

(2) The Secretary may not enter into an agreement with any State under this section unless the Secretary makes a determination that the State's unemployment compensation program has adequate reserves.

(c) PROVISIONS OF AGREEMENTS.—Any agreement entered into with a State under this section shall provide that—

(1) each individual who is an eligible individual with respect to any benefit year beginning during the three-year period commencing on the date on which such agreement is entered into shall receive a self-employment allowance;

(2) self-employment allowances made to any individual under this section shall be made in the same amount, on the same terms, and subject to the same conditions as regular or extended unemployment compensation, as the case may be, paid by such State; except that—

(A) State and Federal requirements relating to availability for work, active search for work, or refusal to accept suitable work shall not apply to such individual; and

(B) such individual shall be considered to be unemployed for purposes of the State and Federal laws applicable to unemployment compensation, as long as the individual meets the requirements applicable under this section to such individual;

(3) to the extent that such allowances are made to an individual under this section, an amount equal to the amount of such allowances shall be charged against the amount that may be paid to such individual under State law for regular or extended unemployment compensation, as the case may be;

(4) the total amount paid to an individual with respect to any benefit year under this section may not exceed the total amount that could be paid to such individual for regular or extended unemployment compensation, as the case may be, with respect to such benefit year under State law;

(5) the State shall implement a program that—

(A) is approved by the Secretary;

(B) will not result in any cost to the Unemployment Trust Fund established by section 904(a) of the Social Security Act in excess of the cost which would have been incurred by such State and charged to such Fund if the State had not participated in the demonstration program under this section;

(C) is designed to select and assist individuals for self-employment allowances, monitor the individual's self-employment, and provide, as described in subsection (d), to the Secretary a complete evaluation of the use of such allowances; and

(D) otherwise meets the requirements of this section; and

(6) the State, from its general revenue funds, shall—

(A) repay to the Unemployment Trust Fund any cost incurred by the State and charged to the Fund which exceeds the cost which would have been incurred by such State and charged to such Fund if the State had not participated in the demonstration program under this section; and

(B) in any case in which any excess cost described in subparagraph (A) is not repaid in the fiscal year in which it was charged to the Fund, pay to the Fund an amount of interest, on the outstanding balance of such excess cost, which is sufficient (when combined with any repayment by the State described in subparagraph (A)) to reimburse the Fund for any loss which would not have been incurred if such excess cost had not been incurred.

(d) EVALUATION.—(1) Each State that enters into an agreement under this section shall carry out an evaluation of its activities under this section. Such evaluation shall be based on an experimental design with random assignment between a treatment group and a control group with not more than one-half of the individuals receiving assistance at any one time being assigned to the treatment group.

Reports.

(2) The Secretary shall use the data provided from such evaluation to analyze the benefits and the costs of the program carried out under this section, to formulate the reports under subsection (g), and to estimate any excess costs described in subsection (c)(6)(A).

(e) FINANCING.—(1) Notwithstanding section 303(a)(5) of the Social Security Act and section 3304(a)(4) of the Internal Revenue Code of 1986, amounts in the unemployment fund of a State may be used by a State to make payments (exclusive of expenses of administration) for self-employment allowances made under this section to an individual who is receiving them in lieu of regular unemployment compensation.

(2) In any case in which a self-employment allowance is made under this section to an individual in lieu of extended unemployment compensation under the Federal-State Extended Unemployment Compensation Act of 1970, payments made under this section for self-employment allowances shall be considered to be compensation described in section 204(a)(1) of such Act and paid under State law.

(f) LIMITATION.—No funds made available to a State under title III of the Social Security Act or any other Federal law may be used for the purpose of administering the program carried out by such State under this section.

(g) REPORT TO CONGRESS.—(1) Not later than two years after the date of the enactment of this Act, the Secretary shall submit an interim report to the Congress on the effectiveness of the demonstration program carried out under this section. Such report shall include—

(A) information on the extent to which this section has been utilized;

(B) an analysis of any barriers to such utilization; and

(C) an analysis of the feasibility of extending the provisions of this section to individuals not covered by State unemployment compensation laws.

(2) Not later than four years after the date of the enactment of this Act, the Secretary shall submit a final report to the Congress on such program.

(h) FRAUD AND OVERPAYMENTS.—(1) If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received payment under this section to which he was not entitled, such individual shall be—

(A) ineligible for further assistance under this section; and

(B) subject to prosecution under section 1001 of title 18, United States Code.

(2)(A) If any person received any payment under this section to which such person was not entitled, the State is authorized to require such person to repay such assistance; except that the State agency may waive such repayment if it determines that—

(i) the providing of such assistance or making of such payment was without fault on the part of such person; and

(ii) such repayment would be contrary to equity and good conscience.

(B) No repayment shall be required under subparagraph (A) until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the person, and the determination has become final. Any determination under such subparagraph shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

(i) DEFINITIONS.—For purposes of this section—

(1) the term "eligible individual" means, with respect to any benefit year, an individual who—

(A) is eligible to receive regular or extended compensation under the State law during such benefit year;

(B) is likely to receive unemployment compensation for the maximum number of weeks that such compensation is made available under the State law during such benefit year;

(C) submits an application to the State agency for a self-employment allowance under this section; and

(D) meets applicable State requirements,

except that not more than (i) 3 percent of the number of individuals eligible to receive regular compensation in a State at the beginning of a fiscal year, or (ii) the number of persons who exhausted their unemployment compensation benefits in the fiscal year ending before such fiscal year, whichever is lesser, may be considered as eligible individuals for such State for purposes of this section during such fiscal year;

(2) the term "self-employment allowance" means compensation paid under this section for the purpose of assisting an eligible individual with such individual's self-employment; and

(3) the terms "compensation", "extended compensation", "regular compensation", "benefit year", "State", and "State law", have the respective meanings given to such terms by section 205 of the Federal-State Extended Unemployment Compensation Act of 1970.

SEC. 9153. EXTENSION OF FUTA TAX.

(a) IN GENERAL.—Paragraphs (1) and (2) of section 3301 of the Federal Unemployment Tax Act (26 U.S.C. 3301) are amended to read as follows:

"(1) 6.2 percent in the case of calendar years 1988, 1989, and 1990; or

"(2) 6.0 percent in the case of calendar year 1991 and each calendar year thereafter;".

26 USC 3301 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to wages paid on or after January 1, 1988.

SEC. 9154. TRANSFER OF FUNDS INTO THE FEDERAL UNEMPLOYMENT ACCOUNT AND THE EXTENDED UNEMPLOYMENT COMPENSATION ACCOUNT.

(a) IN GENERAL.—Section 901 of the Social Security Act (42 U.S.C. 1101) is amended by adding at the end the following new subsection:

"Transfers For Calendar Years 1988, 1989, and 1990

"(g)(1) With respect to calendar years 1988, 1989, and 1990, the Secretary of the Treasury shall transfer from the employment security administration account—

"(A) to the Federal unemployment account an amount equal to 50 percent of the amount of tax received under section 3301(1) of the Federal Unemployment Tax Act which is attributable to the difference in the tax rates between paragraphs (1) and (2) of such section; and

"(B) to the extended unemployment compensation account an amount equal to 50 percent of such amount of tax received.

"(2) Transfers under this subsection shall be as of the beginning of the month succeeding the month in which the moneys were credited to the employment security administration account pursuant to subsection (b)(2) with respect to wages paid during such calendar years.".

(b) INCREASE IN THE LIMITATION ON THE AMOUNTS IN SUCH ACCOUNTS.—(1) Section 902(a)(2) of such Act (42 U.S.C. 1102(a)(2)) is amended by striking out "one-eighth" and inserting in lieu thereof "five-eighths".

(2) Section 905(b)(2)(B) of such Act (42 U.S.C. 1105(b)(2)(B)) is amended by striking out "one-eighth" and inserting in lieu thereof "three-eighths".

(c) CONFORMING AMENDMENTS.—(1) Section 905(b)(1) of such Act (42 U.S.C. 1105(b)(1)) is amended by striking out the last sentence thereof.

(2) Section 901(c)(3)(C) of such Act (42 U.S.C. 1101(c)(3)(C)) is amended by striking out "(i)" and all that follows through the period and inserting in lieu thereof "a tax rate of 0.6 percent.".

42 USC 1101 note.

(d) EFFECTIVE DATE.—The amendments made by this section shall become effective on the date of the enactment of this Act.

SEC. 9155. INTEREST ON ADVANCES TO THE FEDERAL UNEMPLOYMENT ACCOUNT AND THE EXTENDED UNEMPLOYMENT COMPENSATION ACCOUNT.

(a) EXTENDED UNEMPLOYMENT COMPENSATION ACCOUNT.—Section 905(d) of the Social Security Act (42 U.S.C. 1105(d)) is amended—

(1) by striking out "(without interest)" and ", without interest,"; and

(2) by adding the following new sentence at the end: "Amounts appropriated as repayable advances for purposes of this subsection shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such advance, borne by all interest bearing obligations of the United States then forming part of the public debt; except that in cases in which such average rate is not a multiple of one-eighth of 1 percent, the rate of interest shall be the multiple of one-eighth of 1 percent next lower than such average rate.".

(b) FEDERAL UNEMPLOYMENT ACCOUNT.—Section 1203 of such Act (42 U.S.C. 1323) is amended—

(1) by striking out "(without interest)" and ", without interest,"; and

(2) by adding the following new sentence at the end: "Amounts appropriated as repayable advances for purposes of this subsection shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such advance, borne by all interest bearing obligations of the United States then forming part of the public debt; except that in cases in which such average rate is not a multiple of one-eighth of 1 percent, the rate of interest shall be the multiple of one-eighth of 1 percent next lower than such average rate.".

(c) CONFORMING AMENDMENT.—Section 903(a)(1) of such Act (42 U.S.C. 1103(a)(1)) is amended by inserting "and interest" after "all advances".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to advances made on or after the date of the enactment of this Act. 42 USC 1103 note.

SEC. 9156. CREDITING TO THE FEDERAL UNEMPLOYMENT ACCOUNT OF INTEREST EARNED ON ADVANCES TO THE STATES.

(a) IN GENERAL.—Section 1202 of the Social Security Act is amended by adding at the end the following new subsection: 42 USC 1322.

"(c) Interest paid by States in accordance with this section shall be credited to the Federal unemployment account established by section 904(g) in the Unemployment Trust Fund.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to interest paid on advances made on or after the date of the enactment of this Act. 42 USC 1322 note.

Subtitle C—Manufacturers Excise Tax on Certain Vaccines

SEC. 9201. MANUFACTURERS EXCISE TAX ON CERTAIN VACCINES.

(a) IN GENERAL.—Chapter 32 of the Internal Revenue Code of 1986 (relating to manufacturers excise taxes) is amended by inserting after subchapter B the following new subchapter:

"Subchapter C—Certain Vaccines

26 USC 4131.

"SEC. 4131. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on any taxable vaccine sold by the manufacturer, producer, or importer thereof.

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

"If the taxable vaccine is:	The tax per dose is:
DPT vaccine	$4.56
DT vaccine	0.06
MMR vaccine	4.44
Polio vaccine	0.29.

"(2) COMBINATIONS OF VACCINES.—If any taxable vaccine is included in more than 1 category of vaccines in the table contained in paragraph (1), the amount of the tax imposed by subsection (a) on such vaccine shall be the sum of the amounts determined under such table for each category in which such vaccine is so included.

"(c) TERMINATION OF TAX IF AMOUNTS COLLECTED EXCEED PROJECTED FUND LIABILITY.—

"(1) IN GENERAL.—If the Secretary estimates under paragraph (3) that the Vaccine Injury Compensation Trust Fund would not have a negative projected balance were the tax imposed by this section to terminate as of the close of any applicable date, no tax shall be imposed by this section after such date.

"(2) APPLICABLE DATE.—For purposes of paragraph (1), the term 'applicable date' means—

"(A) the close of any calendar quarter ending on or after December 31, 1992, and

"(B) the 1st date on which petitions may not be filed under section 2111 and 2111(a) of the Public Health Service Act by reason of section 2134 of such Act and each date thereafter.

"(3) ESTIMATES BY SECRETARY.—

"(A) IN GENERAL.—The Secretary shall estimate the projected balance of the Vaccine Injury Compensation Trust Fund as of—

"(i) the close of each calendar quarter ending on or after December 31, 1992, and

"(ii) such other times as are appropriate in the case of applicable dates described in paragraph (2)(B).

"(B) DETERMINATION OF PROJECTED BALANCE.—In determining the projected balance of the Fund as of any date, the Secretary shall assume that—

"(i) the tax imposed by this section will not apply after such date, and

"(ii) there shall be paid from such Trust Fund all claims made or to be made against such Trust Fund—

"(I) with respect to vaccines administered before October 1, 1992, in the case of an applicable date described in paragraph (2)(A), or

"(II) with respect to petitions filed under section 2111 or section 2111(a) of the Public Health Service Act, in the case of an applicable date described in paragraph (2)(B).

"SEC. 4132. DEFINITIONS AND SPECIAL RULES. 26 USC 4132.

"(a) DEFINITIONS RELATING TO TAXABLE VACCINES.—For purposes of this subchapter—

"(1) TAXABLE VACCINE.—The term 'taxable vaccine' means any vaccine—

"(A) which is listed in the table contained in section 4131(b)(1), and

"(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

"(2) DPT VACCINE.—The term 'DPT vaccine' means any vaccine containing pertussis bacteria, extracted or partial cell bacteria, or specific pertussis antigens.

"(3) DT VACCINE.—The term 'DT vaccine' means any vaccine (other than a DPT vaccine) containing diphtheria toxoid or tetanus toxoid.

"(4) MMR VACCINE.—The term "MMR vaccine' means any vaccine against measles, mumps, or rubella. Not more than 1 tax shall be imposed by section 4131 on any MMR vaccine by reason of being a vaccine against more than 1 of measles, mumps, or rubella.

"(5) POLIO VACCINE.—The term 'polio vaccine' means any vaccine containing polio virus.

"(6) VACCINE.—The term 'vaccine' means any substance designed to be administered to a human being for the prevention of 1 or more diseases.

"(7) UNITED STATES.—The term 'United States' has the meaning given such term by section 4612(a)(4).

"(8) IMPORTER.—The term 'importer' means the person entering the vaccine for consumption, use, or warehousing.

"(b) CREDIT OR REFUND WHERE VACCINE RETURNED TO MANUFACTURER, ETC., OR DESTROYED.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, whenever any vaccine on which tax was imposed by section 4131 is—

"(A) returned (other than for resale) to the person who paid such tax, or

"(B) destroyed,

the Secretary shall abate such tax or allow a credit, or pay a refund (without interest), to such person equal to the tax paid under section 4131 with respect to such vaccine.

"(2) CLAIM MUST BE FILED WITHIN 6 MONTHS.—Paragraph (1) shall apply to any returned or destroyed vaccine only with respect to claims filed within 6 months after the date the vaccine is returned or destroyed.

"(3) CONDITION OF ALLOWANCE OF CREDIT OR REFUND.—No credit or refund shall be allowed or made under paragraph (1) with respect to any vaccine unless the person who paid the tax establishes that he—

"(A) has repaid or agreed to repay the amount of the tax to the ultimate purchaser of the vaccine, or

"(B) has obtained the written consent of such purchaser to the allowance of the credit or the making of the refund.

"(4) TAX IMPOSED ONLY ONCE.—No tax shall be imposed by section 4131 on the sale of any vaccine if tax was imposed by

section 4131 on any prior sale of such vaccine and such tax is not abated, credited, or refunded.

"(c) OTHER SPECIAL RULES.—

"(1) FRACTIONAL PART OF A DOSE.—In the case of a fraction of a dose, the tax imposed by section 4131 shall be the same fraction of the amount of such tax imposed by a whole dose.

"(2) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4131."

(b) CERTAIN PROVISIONS RELATING TO TAX-FREE SALES, ETC. NOT TO APPLY.—

26 USC 4221.

(1) Subsection (a) of section 4221 of such Code (relating to certain tax-free sales) is amended by adding at the end thereof the following new sentence: "In the case of the tax imposed by section 4131, paragraphs (3), (4), and (5) shall not apply and paragraph (2) shall apply only if the use of the exported vaccine meets such requirements as the Secretary may by regulations prescribe."

(2) Paragraph (2) of section 6416(b) of such Code (relating to specified uses or resales) is amended by adding at the end thereof the following new sentence: "In the case of the tax imposed by section 4131, subparagraphs (B), (C), and (D) shall not apply and subparagraph (A) shall apply only if the use of the exported vaccine meets such requirements as the Secretary may by regulations prescribe."

(c) CLERICAL AMENDMENT.—The table of subchapters for chapter 32 of such Code is amended by inserting after the item relating to subchapter B the following new item:

"SUBCHAPTER C. Certain vaccines."

26 USC 4131 note.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1988.

SEC. 9202. VACCINE INJURY COMPENSATION TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to trust fund code) is amended by adding at the end thereof the following new section:

26 USC 9510.

"SEC. 9510. VACCINE INJURY COMPENSATION TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Vaccine Injury Compensation Trust Fund', consisting of such amounts as may be credited to such Trust Fund as provided in section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—

"(1) IN GENERAL.—There are hereby appropriated to the Vaccine Injury Compensation Trust Fund amounts equivalent to the net revenues received in the Treasury from the tax imposed by section 4131 (relating to tax on certain vaccines).

"(2) NET REVENUES.—For purposes of paragraph (1), the term 'net revenues' means the amount estimated by the Secretary based on the excess of—

"(A) the taxes received in the Treasury under section 4131 (relating to tax on certain vaccines), over

"(B) the decrease in the tax imposed by chapter 1 resulting from the tax imposed by section 4131.

"(c) EXPENDITURES FROM TRUST FUND.—

"(1) IN GENERAL.—Amounts in the Vaccine Injury Compensation Trust Fund shall be available, as provided in appropriation Acts, only for the payment of compensation under subtitle 2 of title XXI of the Public Health Service Act (as in effect on the date of the enactment of this section) for vaccine-related injury or death with respect to vaccines administered after September 30, 1988, and before October 1, 1992.

"(2) TRANSFERS FOR CERTAIN REPAYMENTS.—

"(A) IN GENERAL.—The Secretary shall pay from time to time from the Vaccine Injury Compensation Trust Fund into the general fund of the Treasury amounts equivalent to amounts paid under section 4132(b) and section 6416 with respect to the taxes imposed by section 4131.

"(B) TRANSFERS BASED ON ESTIMATES.—Transfers under subparagraph (A) shall be made on the basis of estimates by the Secretary, and proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

"(d) LIABILITY OF UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

"(1) GENERAL RULE.—Any claim filed against the Vaccine Injury Compensation Trust Fund may be paid only out of such Trust Fund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in the National Childhood Vaccine Injury Act of 1986 (or in any amendment made by such Act) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Vaccine Injury Compensation Trust Fund.

"(3) ORDER IN WHICH UNPAID CLAIMS TO BE PAID.—If at any time the Vaccine Injury Compensation Trust Fund has insufficient funds to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under paragraph (1) be paid in full in the order in which they are finally determined."

(b) CLERICAL AMENDMENT.—The table of sections for such subchapter A is amended by adding at the end thereof the following new item:

"Sec. 9510. Vaccine Injury Compensation Trust Fund."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1988. 26 USC 9510 note.

Subtitle D—Pension Provisions

PART I—FULL-FUNDING LIMITATIONS

SEC. 9301. FULL-FUNDING LIMITATION FOR DEDUCTIONS TO QUALIFIED PLANS.

(a) GENERAL RULE.—Paragraph (7) of section 412(c) of the Internal Revenue Code of 1986 (defining full-funding limitation) is amended to read as follows: 26 USC 412.

"(7) FULL-FUNDING LIMITATION.—

"(A) IN GENERAL.—For purposes of paragraph (6), the term 'full-funding limitation' means the excess (if any) of—

"(i) the lesser of (I) 150 percent of current liability, or (II) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

"(ii) the lesser of—

"(I) the fair market value of the plan's assets, or

"(II) the value of such assets determined under paragraph (2).

"(B) CURRENT LIABILITY.—For purposes of subparagraphs (A) and (D), the term 'current liability' has the meaning given such term by subsection (l)(7) (without regard to subparagraph (D) thereof).

"(C) SPECIAL RULE FOR PARAGRAPH (6)(B).—For purposes of paragraph (6)(B), subparagraph (A)(i) shall be applied without regard to subclause (I) thereof.

"(D) REGULATORY AUTHORITY.—The Secretary may by regulations provide—

"(i) for adjustments to the percentage contained in subparagraph (A)(i) to take into account the respective ages or lengths of service of the participants,

"(ii) alternative methods based on factors other than current liability for the determination of the amount taken into account under subparagraph (A)(i), and

"(iii) for the treatment under this section of contributions which would be required to be made under the plan but for the provisions of subparagraph (A)(i)(I)."

(b) AMENDMENT TO ERISA.—Paragraph (7) of section 302(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082(c)(7)) is amended to read as follows:

"(7) FULL-FUNDING LIMITATION.—

"(A) IN GENERAL.—For purposes of paragraph (6), the term 'full-funding limitation' means the excess (if any) of—

"(i) the lesser of (I) 150 percent of current liability, or (II) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

"(ii) the lesser of—

"(I) the fair market value of the plan's assets, or

"(II) the value of such assets determined under paragraph (2).

"(B) CURRENT LIABILITY.—For purposes of subparagraphs (A) and (D), the term 'current liability' has the meaning given such term by subsection (d)(7) (without regard to subparagraph (D) thereof).

"(C) SPECIAL RULE FOR PARAGRAPH (6)(B).—For purposes of paragraph (6)(B), subparagraph (A)(i) shall be applied without regard to subclause (I) thereof.

"(D) REGULATORY AUTHORITY.—The Secretary of the Treasury may by regulations provide—

"(i) for adjustments to the percentage contained in subparagraph (A)(i) to take into account the respective ages or lengths of service of the participants,

"(ii) alternative methods based on factors other than current liability for the determination of the amount taken into account under subparagraph (A)(i), and

"(iii) for the treatment under this section of contributions which would be required to be made under the plan but for the provisions of subparagraph (A)(i)(I)."

(c) EFFECTIVE DATE.— 26 USC 412 note.

(1) IN GENERAL.—The amendments made by this section shall apply to years beginning after December 31, 1987.

(2) REGULATIONS.—The Secretary of the Treasury or his delegate shall prescribe such regulations as are necessary to carry out the amendments made by this section no later than August 15, 1988.

(3) STUDY.—The Secretary of the Treasury or his delegate shall study the effect of the amendments made by this section on benefit security under defined benefit pension plans and shall report the results of such study to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate no later than August 15, 1988.

PART II—PENSION FUNDING AND TERMINATION REQUIREMENTS

Pension Protection Act.

SEC. 9302. SHORT TITLE; DEFINITIONS.

(a) SHORT TITLE.—This part may be cited as the "Pension Protection Act". 26 USC 1 note.

(b) DEFINITIONS.—For purposes of this part—

(1) 1986 CODE.—The term "1986 Code" means the Internal Revenue Code of 1986.

(2) ERISA.—The term "ERISA" means the Employee Retirement Income Security Act of 1974.

Subpart A—Modifications of Minimum Funding Standard

SEC. 9303. ADDITIONAL FUNDING REQUIREMENTS.

(a) AMENDMENTS TO 1986 CODE.—

(1) IN GENERAL.—Section 412 of the 1986 Code (relating to minimum funding standard) is amended by adding at the end thereof the following new subsection: 26 USC 412.

"(l) ADDITIONAL FUNDING REQUIREMENTS FOR PLANS WHICH ARE NOT MULTIEMPLOYER PLANS.—

"(1) IN GENERAL.—In the case of a defined benefit plan (other than a multiemployer plan) which has an unfunded current liability for any plan year, the amount charged to the funding standard account for such plan year shall be increased by the sum of—

"(A) the excess (if any) of—

"(i) the deficit reduction contribution determined under paragraph (2) for such plan year, over

"(ii) the sum of the charges for such plan year under subparagraphs (B) (other than clauses (iv) and (v) thereof), (C), and (D) of subsection (b)(2), reduced by the sum of the credits for such plan year under subparagraph (B)(i) of subsection (b)(3), plus

"(B) the unpredictable contingent event amount (if any) for such plan year.

Such increase shall not exceed the amount necessary to increase the funded current liability percentage to 100 percent.

"(2) DEFICIT REDUCTION CONTRIBUTION.—For purposes of paragraph (1), the deficit reduction contribution determined under this paragraph for any plan year is the sum of—

"(A) the unfunded old liability amount, plus

"(B) the unfunded new liability amount.

"(3) UNFUNDED OLD LIABILITY AMOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—The unfunded old liability amount with respect to any plan for any plan year is the amount necessary to amortize the unfunded old liability under the plan in equal annual installments over a period of 18 plan years (beginning with the 1st plan year beginning after December 31, 1988).

"(B) UNFUNDED OLD LIABILITY.—The term 'unfunded old liability' means the unfunded current liability of the plan as of the beginning of the 1st plan year beginning after December 31, 1987 (determined without regard to any plan amendment increasing liabilities adopted after October 16, 1987).

"(C) SPECIAL RULES FOR BENEFIT INCREASES UNDER EXISTING COLLECTIVE BARGAINING AGREEMENTS.—

"(i) IN GENERAL.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and the employer ratified before October 17, 1987, the unfunded old liability amount with respect to such plan for any plan year shall be increased by the amount necessary to amortize the unfunded existing benefit increase liability in equal annual installments over a period of 18 plan years beginning with—

"(I) the plan year in which the benefit increase with respect to such liability occurs, or

"(II) if the taxpayer elects, the 1st plan year beginning after December 31, 1988.

"(ii) UNFUNDED EXISTING BENEFIT INCREASE LIABILITIES.—For purposes of clause (i), the unfunded existing benefit increase liability means, with respect to any benefit increase under the agreements described in clause (i) which takes effect during or after the 1st plan year beginning after December 31, 1987, the unfunded current liability determined—

"(I) by taking into account only liabilities attributable to such benefit increase, and

"(II) by reducing the amount determined under paragraph (8)(A)(ii) by the current liability determined without regard to such benefit increase.

"(iii) EXTENSIONS, MODIFICATIONS, ETC. NOT TAKEN INTO ACCOUNT.—For purposes of this subparagraph, any extension, amendment, or other modification of an agreement after October 16, 1987, shall not be taken into account.

"(4) UNFUNDED NEW LIABILITY AMOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—The unfunded new liability amount with respect to any plan for any plan year is the applicable percentage of the unfunded new liability.

"(B) UNFUNDED NEW LIABILITY.—The term 'unfunded new liability' means the unfunded current liability of the plan for the plan year determined without regard to—

"(i) the unamortized portion of the unfunded old liability, and

"(ii) the liability with respect to any unpredictable contingent event benefits (without regard to whether the event has occurred).

"(C) APPLICABLE PERCENTAGE.—The term 'applicable percentage' means, with respect to any plan year, 30 percent, reduced by the product of—

"(i) .25 multiplied by

"(ii) the number of percentage points (if any) by which the funded current liability percentage exceeds 35 percent.

"(5) UNPREDICTABLE CONTINGENT EVENT AMOUNT.—

"(A) IN GENERAL.—The unpredictable contingent event amount with respect to a plan for any plan year is an amount equal to the greater of—

"(i) the applicable percentage of the product of—

"(I) 100 percent, reduced (but not below zero) by the funded current liability percentage for the plan year, multiplied by

"(II) the amount of unpredictable contingent event benefits paid during the plan year, including (except as provided by the Secretary) any payment for the purchase of an annuity contract for a participant or beneficiary with respect to such benefits, or

"(ii) the amount which would be determined for the plan year if the unpredictable contingent event benefit liabilities were amortized in equal annual installments over 7 plan years (beginning with the plan year in which such event occurs).

"(B) APPLICABLE PERCENTAGE.—

"In the case of plan years beginning in:	The applicable percentage is:
1989 and 1990	5
1991	10
1992	15
1993	20
1994	30
1995	40
1996	50
1997	60
1998	70
1999	80
2000	90
2001 and thereafter	100.

"(C) PARAGRAPH NOT TO APPLY TO EXISTING BENEFITS.—This paragraph shall not apply to unpredictable contingent event benefits (and liabilities attributable thereto) for which the event occurred before October 17, 1987.

"(D) SPECIAL RULE FOR FIRST YEAR OF AMORTIZATION.—Unless the employer elects otherwise, the amount deter-

mined under subparagraph (A) for the plan year in which the event occurs shall be equal to 150 percent of the amount determined under subparagraph (A)(i). The amount under subparagraph (A)(ii) for subsequent plan years in the amortization period shall be adjusted in the manner provided by the Secretary to reflect the application of this subparagraph.

"(6) SPECIAL RULES FOR SMALL PLANS.—

"(A) PLANS WITH 100 OR FEWER PARTICIPANTS.—This subsection shall not apply to any plan for any plan year if on each day during the preceding plan year such plan had no more than 100 participants.

"(B) PLANS WITH MORE THAN 100 BUT NOT MORE THAN 150 PARTICIPANTS.—In the case of a plan to which subparagraph (A) does not apply and which on each day during the preceding plan year had no more than 150 participants, the amount of the increase under paragraph (1) for such plan year shall be equal to the product of—

"(i) such increase determined without regard to this subparagraph, multiplied by

"(ii) 2 percent for the highest number of participants in excess of 100 on any such day.

"(C) AGGREGATION OF PLANS.—For purposes of this paragraph, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only employees of such employer or member shall be taken into account.

"(7) CURRENT LIABILITY.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'current liability' means all liabilities to employees and their beneficiaries under the plan.

"(B) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.—

"(i) IN GENERAL.—For purposes of subparagraph (A), any unpredictable contingent event benefit shall not be taken into account until the event on which the benefit is contingent occurs.

"(ii) UNPREDICTABLE CONTINGENT EVENT BENEFIT.—The term 'unpredictable contingent event benefit' means any benefit contingent on an event other than—

"(I) age, service, compensation, death, or disability, or

"(II) an event which is reasonably and reliably predictable (as determined by the Secretary).

"(C) INTEREST RATES USED.—The rate of interest used to determine current liability shall be the rate of interest used under subsection (b)(5).

"(D) CERTAIN SERVICE DISREGARDED.—

"(i) IN GENERAL.—In the case of a participant to whom this subparagraph applies, only the applicable percentage of the years of service before such individual became a participant shall be taken into account in computing the current liability of the plan.

"(ii) APPLICABLE PERCENTAGE.—For purposes of this subparagraph, the applicable percentage shall be determined as follows:

"If the years of participation are:	The applicable percentage is:
1	20
2	40
3	60
4	80
5 or more	100.

"(iii) PARTICIPANTS TO WHOM SUBPARAGRAPH APPLIES.—This subparagraph shall apply to any participant who, at the time of becoming a participant—

"(I) has not accrued any other benefit under any defined benefit plan (whether or not terminated) maintained by the employer or a member of the same controlled group of which the employer is a member, and

"(II) who first becomes a participant under the plan in a plan year beginning after December 31, 1987.

"(8) OTHER DEFINITIONS.—For purposes of this subsection—

"(A) UNFUNDED CURRENT LIABILITY.—The term 'unfunded current liability' means, with respect to any plan year, the excess (if any) of—

"(i) the current liability under the plan, over

"(ii) value of the plan's assets determined under subsection (c)(2) reduced by any credit balance in the funding standard account.

"(B) FUNDED CURRENT LIABILITY PERCENTAGE.—The term 'funded current liability percentage' means, with respect to any plan year, the percentage which—

"(i) the amount determined under subparagraph (A)(ii), is of

"(ii) the current liability under the plan.

"(C) CONTROLLED GROUP.—The term 'controlled group' means any group treated as a single employer under subsections (b), (c), (m), and (o) of section 414.

"(D) ADJUSTMENTS TO PREVENT OMISSIONS AND DUPLICATIONS.—The Secretary shall provide such adjustments in the unfunded old liability amount, the unfunded new liability amount, the unpredictable contingent event amount, the current payment amount, and any other charges or credits under this section as are necessary to avoid duplication or omission of any factors in the determination of such amounts, charges, or credits."

(2) CONFORMING AMENDMENT.—Paragraph (2) of section 412(b) of the 1986 Code is amended by adding at the end thereof the following new sentence: [94] "For additional requirements in the case of plans other than multiemployer plans, see subsection (l)." 26 USC 412.

(b) AMENDMENTS TO ERISA.—

(1) IN GENERAL.—Section 302 of ERISA (29 U.S.C. 1082) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) ADDITIONAL FUNDING REQUIREMENTS FOR PLANS WHICH ARE NOT MULTIEMPLOYER PLANS.—

[94] Incorrect indention in copy.

"(1) IN GENERAL.—In the case of a defined benefit plan (other than a multiemployer plan) which has an unfunded current liability for any plan year, the amount charged to the funding standard account for such plan year shall be increased by the sum of—

"(A) the excess (if any) of—

"(i) the deficit reduction contribution determined under paragraph (2) for such plan year, over

"(ii) the sum of the charges for such plan year under subparagraphs (B) (other than clauses (iv) and (v) thereof), (C), and (D) of subsection (b)(2), reduced by the sum of the credits for such plan year under subparagraph (B)(i) of subsection (b)(3), plus

"(B) the unpredictable contingent event amount (if any) for such plan year.

Such increase shall not exceed the amount necessary to increase the funded current liability percentage to 100 percent.

"(2) DEFICIT REDUCTION CONTRIBUTION.—For purposes of paragraph (1), the deficit reduction contribution determined under this paragraph for any plan year is the sum of—

"(A) the unfunded old liability amount, plus

"(B) the unfunded new liability amount.

"(3) UNFUNDED OLD LIABILITY AMOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—The unfunded old liability amount with respect to any plan for any plan year is the amount necessary to amortize the unfunded old liability under the plan in equal annual installments over a period of 18 plan years (beginning with the 1st plan year beginning after December 31, 1988).

"(B) UNFUNDED OLD LIABILITY.—The term 'unfunded old liability' means the unfunded current liability of the plan as of the beginning of the 1st plan year beginning after December 31, 1987 (determined without regard to any plan amendment increasing liabilities adopted after October 16, 1987).

"(C) SPECIAL RULES FOR BENEFIT INCREASES UNDER EXISTING COLLECTIVE BARGAINING AGREEMENTS.—

"(i) IN GENERAL.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and the employer ratified before October 17, 1987, the unfunded old liability amount with respect to such plan for any plan year shall be increased by the amount necessary to amortize the unfunded existing benefit increase liability in equal annual installments over a period of 18 plan years beginning with—

"(I) the plan year in which the benefit increase with respect to such liability occurs, or

"(II) if the taxpayer elects, the 1st plan year beginning after December 31, 1988.

"(ii) UNFUNDED EXISTING BENEFIT INCREASE LIABILITIES.—For purposes of clause (i), the unfunded existing benefit increase liability means, with respect to any benefit increase under the agreements described in clause (i) which takes effect during or after the 1st plan

year beginning after December 31, 1987, the unfunded current liability determined—

"(I) by taking into account only liabilities attributable to such benefit increase, and

"(II) by reducing the amount determined under paragraph (8)(A)(ii) by the current liability determined without regard to such benefit increase.

"(iii) EXTENSIONS, MODIFICATIONS, ETC. NOT TAKEN INTO ACCOUNT.—For purposes of this subparagraph, any extension, amendment, or other modification of an agreement after October 16, 1987, shall not be taken into account.

"(4) UNFUNDED NEW LIABILITY AMOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—The unfunded new liability amount with respect to any plan for any plan year is the applicable percentage of the unfunded new liability.

"(B) UNFUNDED NEW LIABILITY.—The term 'unfunded new liability' means the unfunded current liability of the plan for the plan year determined without regard to—

"(i) the unamortized portion of the unfunded old liability, and

"(ii) the liability with respect to any unpredictable contingent event benefits (without regard to whether the event has occurred).

"(C) APPLICABLE PERCENTAGE.—The term 'applicable percentage' means, with respect to any plan year, 30 percent, reduced by the product of—

"(i) .25 multiplied by

"(ii) the number of percentage points (if any) by which the funded current liability percentage exceeds 35 percent.

"(5) UNPREDICTABLE CONTINGENT EVENT AMOUNT.—

"(A) IN GENERAL.—The unpredictable contingent event amount with respect to a plan for any plan year is an amount equal to the greater of—

"(i) the applicable percentage of the product of—

"(I) 100 percent, reduced (but not below zero) by the funded current liability percentage for the plan year, multiplied by

"(II) the amount of unpredictable contingent event benefits paid during the plan year, including (except as provided by the Secretary of the Treasury) any payment for the purchase of an annuity contract for a participant or beneficiary with respect to such benefits, or Contracts.

"(ii) the amount which would be determined for the plan year if the unpredictable contingent event benefit liabilities were amortized in equal annual installments over 7 plan years (beginning with the plan year in which such event occurs).

"(B) APPLICABLE PERCENTAGE.—

"In the case of plan years beginning in:	The applicable percentage is:
1989 and 1990	5
1991	10
1992	15
1993	20
1994	30
1995	40
1996	50
1997	60
1998	70
1999	80
2000	90
2001 and thereafter	100.

"(C) PARAGRAPH NOT TO APPLY TO EXISTING BENEFITS.—This paragraph shall not apply to unpredictable contingent event benefits (and liabilities attributable thereto) for which the event occurred before October 17, 1987.

"(D) SPECIAL RULE FOR FIRST YEAR OF AMORTIZATION.—Unless the employer elects otherwise, the amount determined under subparagraph (A) for the plan year in which the event occurs shall be equal to 150 percent of the amount determined under subparagraph (A)(i). The amount under subparagraph (A)(ii) for subsequent plan years in the amortization period shall be adjusted in the manner provided by the Secretary of the Treasury to reflect the application of this subparagraph.

"(6) SPECIAL RULES FOR SMALL PLANS.—

"(A) PLANS WITH 100 OR FEWER PARTICIPANTS.—This subsection shall not apply to any plan for any plan year if on each day during the preceding plan year such plan had no more than 100 participants.

"(B) PLANS WITH MORE THAN 100 BUT NOT MORE THAN 150 PARTICIPANTS.—In the case of a plan to which subparagraph (A) does not apply and which on each day during the preceding plan year had no more than 150 participants, the amount of the increase under paragraph (1) for such plan year shall be equal to the product of—

"(i) such increase determined without regard to this subparagraph, multiplied by

"(ii) 2 percent for the highest number of participants in excess of 100 on any such day.

"(C) AGGREGATION OF PLANS.—For purposes of this paragraph, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only employees of such employer or member shall be taken into account.

"(7) CURRENT LIABILITY.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'current liability' means all liabilities to participants and their beneficiaries under the plan.

"(B) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.—

"(i) IN GENERAL.—For purposes of subparagraph (A), any unpredictable contingent event benefit shall not be taken into account until the event on which the benefit is contingent occurs.

"(ii) UNPREDICTABLE CONTINGENT EVENT BENEFIT.—

The term 'unpredictable contingent event benefit' means any benefit contingent on an event other than—

"(I) age, service, compensation, death, or disability, or

"(II) an event which is reasonably and reliably predictable (as determined by the Secretary of the Treasury).

"(C) INTEREST RATES USED.—The rate of interest used to determine current liability shall be the rate of interest used under subsection (b)(5).

"(D) CERTAIN SERVICE DISREGARDED.—

"(i) IN GENERAL.—In the case of a participant to whom this subparagraph applies, only the applicable percentage of the years of service before such individual became a participant shall be taken into account in computing the current liability of the plan.

"(ii) APPLICABLE PERCENTAGE.—For purposes of this subparagraph, the applicable percentage shall be determined as follows:

"If the years of participation are:	The applicable percentage is:
1	20
2	40
3	60
4	80
5 or more	100.

"(iii) PARTICIPANTS TO WHOM SUBPARAGRAPH APPLIES.—This subparagraph shall apply to any participant who, at the time of becoming a participant—

"(I) has not accrued any other benefit under any defined benefit plan (whether or not terminated) maintained by the employer or a member of the same controlled group of which the employer is a member, and

"(II) who first becomes a participant under the plan in a plan year beginning after December 31, 1987.

"(8) OTHER DEFINITIONS.—For purposes of this subsection—

"(A) UNFUNDED CURRENT LIABILITY.—The term 'unfunded current liability' means, with respect to any plan year, the excess (if any) of—

"(i) the current liability under the plan, over

"(ii) value of the plan's assets determined under subsection (c)(2) reduced by any credit balance in the funding standard account.

"(B) FUNDED CURRENT LIABILITY PERCENTAGE.—The term 'funded current liability percentage' means, with respect to any plan year, the percentage which—

"(i) the amount determined under subparagraph (A)(ii), is of

"(ii) the current liability under the plan.

"(C) CONTROLLED GROUP.—The term 'controlled group' means any group treated as a single employer under subsections[94a] (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986.

"(D) ADJUSTMENTS TO PREVENT OMISSIONS AND DUPLICATIONS.—The Secretary of the Treasury shall provide such adjustments in the unfunded old liability amount, the un-

[94a] Copy read "subsection".

funded new liability amount, the unpredictable contingent event amount, the current payment amount, and any other charges or credits under this section as are necessary to avoid duplication or omission of any factors in the determination of such amounts, charges, or credits."

26 USC 412 note.

(c) REVISION OF VALUATION REGULATIONS.—Effective with respect to plan years beginning after December 31, 1987, the provisions of the regulations prescribed under section 412(c)(2) of the 1986 Code which permit asset valuations to be based on a range between 85 percent and 115 percent of average value shall have no force and effect with respect to plans other than multiemployer plans (as defined in section 414(f) of the 1986 Code). The Secretary of the Treasury or his delegate shall amend such regulations to carry out the purposes of the preceding sentence.

(d) VALUATION OF BONDS.—

Regulations.
26 USC 412.

(1) AMENDMENT TO 1986 CODE.—Subparagraph (B) of section 412(c)(2) of the 1986 Code is amended by adding at the end thereof the following new sentence: "In the case of a plan other than a multiemployer plan, this subparagraph shall not apply, but the Secretary may by regulations provide that the value of any dedicated bond portfolio of such plan shall be determined by using the interest rate under subsection (b)(5)."

Regulations.
29 USC 1082.

(2) AMENDMENT TO ERISA.—Subparagraph (B) of section 302(c)(2) of ERISA is amended by adding at the end thereof the following new sentence: "In the case of a plan other than a multiemployer plan, this subparagraph shall not apply, but the Secretary of the Treasury may by regulations provide that the value of any dedicated bond portfolio of such plan shall be determined by using the interest rate under subsection (b)(5)."

26 USC 412 note.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply with respect to plan years beginning after December 31, 1988.

(2) SUBSECTIONS (C) AND (D).—The amendments made by subsections (c) and (d) shall apply with respect to years beginning after December 31, 1987.

(3) SPECIAL RULE FOR STEEL COMPANIES.—

(A) IN GENERAL.—For any plan year beginning before January 1, 1994, any increase in the funding standard account under section 412(l) of the 1986 Code or section 302(d) of ERISA (as added by this section) with respect to any steel employee plan shall not exceed the sum of—

(i) the required percentage of the current liability under such plan, plus

(ii) the amount determined under subparagraph (C)(i) for such plan year.

(B) REQUIRED PERCENTAGE.—For purposes of subparagraph (A), the term "required percentage" means, with respect to any plan year, the excess (if any) of—

(i) the sum of—

(I) the funded current liability percentage as of the beginning of the 1st plan year beginning after December 31, 1988 (determined without regard to any plan amendment adopted after June 30, 1987), plus

(II) 1 percentage point for the plan year for which the determination under this paragraph is being made and for each prior plan year beginning after December 31, 1988, over

(ii) the funded current liability percentage as of the beginning of the plan year for which such determination is being made.

(C) SPECIAL RULES FOR CONTINGENT EVENTS.—In the case of any unpredictable contingent event benefit with respect to which the event on which such benefits are contingent occurs after December 17, 1987—

(i) AMORTIZATION AMOUNT.—For purposes of subparagraph (A)(ii), the amount determined under this clause for any plan year is the amount which would be determined if the unpredictable contingent event benefit liability were amortized in equal annual installments over 10 plan years (beginning with the plan year in which such event occurs).

(ii) BENEFIT AND CONTRIBUTIONS NOT TAKEN INTO ACCOUNT.—For purposes of subparagraph (B), in determining the funded current liability percentage for any plan year, there shall not be taken into account—

(I) the unpredictable contingent event benefit liability, or

(II) any amount contributed to the plan which is attributable to clause (i).

(D) STEEL EMPLOYEE PLAN.—For purposes of this paragraph, the term "steel employee plan" means any plan if—

(i) such plan is maintained by a steel company, and

(ii) substantially all of the employees covered by such plan are employees of such company.

(E) OTHER DEFINITIONS.—For purposes of this paragraph—

(i) STEEL COMPANY.—The term "steel company" means any corporation described in section 806(b) of the Steel Import Stabilization Act.

(ii) OTHER DEFINITIONS.—The terms "current liability", "funded current liability percentage", and "unpredictable contingent event benefit" have the meanings given such terms by section 412(l) of the 1986 Code (as added by this section).

(F)[95] SPECIAL RULE.—The provisions of this paragraph shall apply in the case of a company which was originally incorporated on April 25, 1927, in Michigan and reincorporated on June 3, 1968, in Delaware in the same manner as if such company were a steel company.

SEC. 9304. TIME FOR MAKING CONTRIBUTIONS.

(a) PERIOD DURING WHICH CONTRIBUTIONS MAY BE MADE AFTER CLOSE OF YEAR.—

(1) AMENDMENT TO 1986 CODE.—Paragraph (10) of section 412(c) of the 1986 Code (relating to time when certain contributions deemed made) is amended to read as follows: 26 USC 412.

"(10) TIME WHEN CERTAIN CONTRIBUTIONS DEEMED MADE.—For purposes of this section—

"(A) PLANS OTHER THAN MULTIEMPLOYER PLANS.—In the case of a plan other than a multiemployer plan, any contributions for a plan year made by an employer during the period—

[95] Copy read "(E)".

"(i) beginning on the day after the last day of such plan year, and

"(ii) ending on the day which is 8½ months after the close of the plan year,

shall be deemed to have been made on such last day.

"(B) MULTIEMPLOYER PLANS.—In the case of a multiemployer plan, any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this subparagraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary."

(2) AMENDMENT TO ERISA.—Paragraph (10) of section 302(c) of ERISA (relating to time when certain contributions deemed made) (29 U.S.C. 1082(c)(10)) [96] is amended to read as follows:

"(10) For purposes of this section—

"(A) In the case of a plan other than a multiemployer plan, any contributions for a plan year made by an employer during the period—

"(i) beginning on the day after the last day of such plan year, and

"(ii) ending on the date which is 8½ months after the close of the plan year,

shall be deemed to have been made on such last day.

"(B) In the case of a multiemployer plan, any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this subparagraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary of the Treasury."

Regulations.

26 USC 412 note.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to plan years beginning after December 31, 1987.

(b) QUARTERLY ESTIMATED PAYMENTS REQUIRED.—

(1) AMENDMENT TO 1986 CODE.—Section 412 of the 1986 Code (relating to minimum funding standard) is amended by adding at the end thereof the following new subsection:

26 USC 412.

"(m) QUARTERLY CONTRIBUTIONS REQUIRED.—

"(1) IN GENERAL.—If a plan (other than a multiemployer plan) fails to pay the full amount of a required installment for any plan year, then the rate of interest charged to the funding standard account under subsection (b)(5) with respect to the amount of the underpayment for the period of the underpayment shall be equal to the greater of—

"(A) 175 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), or

"(B) the rate under subsection (b)(5).

"(2) AMOUNT OF UNDERPAYMENT, PERIOD OF UNDERPAYMENT.—For purposes of paragraph (1)—

"(A) AMOUNT.—The amount of the underpayment shall be the excess of—

"(i) the required installment, over

[96] Copy read "1082(c)(10)".

"(ii) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

"(B) PERIOD OF UNDERPAYMENT.—The period for which interest is charged under this subsection with regard to any portion of the underpayment shall run from the due date for the installment to the date on which such portion is contributed to or under the plan (determined without regard to subsection (c)(10)).

"(C) ORDER OF CREDITING CONTRIBUTIONS.—For purposes of subparagraph (A)(ii), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

"(3) NUMBER OF REQUIRED INSTALLMENTS; DUE DATES.—For purposes of this subsection—

"(A) PAYABLE IN 4 INSTALLMENTS.—There shall be 4 required installments for each plan year.

"(B) TIME FOR PAYMENT OF INSTALLMENTS.—

"In the case of the following required installments:	The due date is:
1st	April 15
2nd	July 15
3rd	October 15
4th	January 15 of the following year.

"(4) AMOUNT OF REQUIRED INSTALLMENT.—For purposes of this subsection—

"(A) IN GENERAL.—The amount of any required installment shall be the applicable percentage of the required annual payment.

"(B) REQUIRED ANNUAL PAYMENT.—For purposes of subparagraph (A), the term 'required annual payment' means the lesser of—

"(i) 90 percent of the amount required to be contributed to or under the plan by the employer for the plan year under section 412 (without regard to any waiver under subsection (c) thereof), or

"(ii) 100 percent of the amount so required for the preceding plan year.

Clause (ii) shall not apply if the preceding plan year was not a year of 12 months.

"(C) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

"For plan years beginning in:	The applicable percentage is:
1989	6.25
1990	12.5
1991	18.75
1992 and thereafter	25.

"(D) SPECIAL RULES FOR UNPREDICTABLE CONTINGENT EVENT BENEFITS.—In the case of a plan with any unpredictable contingent event benefit liabilities—

"(i) such liabilities shall not be taken into account in computing the required annual payment under subparagraph (B), and

"(ii) each required installment shall be increased by the greater of—

"(I) the amount of benefits described in subsection (l)(5)(A)(i) paid during the 3-month period preceding the month in which the due date for such installment occurs, or

"(II) 25 percent of the amount determined under subsection (l)(5)(A)(ii) for the plan year.

"(5) FISCAL YEARS AND SHORT YEARS.—

"(A) FISCAL YEARS.—In applying this subsection to a plan year beginning on any date other than January 1, there shall be substituted for the months specified in this subsection, the months which correspond thereto.

"(B) SHORT PLAN YEAR.—This subsection shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary."

(2) AMENDMENT TO ERISA.—Section 302 of ERISA (29 U.S.C. 1082) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) QUARTERLY CONTRIBUTIONS REQUIRED.—

"(1) IN GENERAL.—If a plan (other than a multiemployer plan) fails to pay the full amount of a required installment for any plan year, then the rate of interest charged to the funding standard account under subsection (b)(5) with respect to the amount of the underpayment for the period of the underpayment shall be equal to the greater of—

"(A) 175 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of such plan year), or

"(B) the rate under subsection (b)(5).

"(2) AMOUNT OF UNDERPAYMENT, PERIOD OF UNDERPAYMENT.—For purposes of paragraph (1)—

"(A) AMOUNT.—The amount of the underpayment shall be the excess of—

"(i) the required installment, over

"(ii) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

"(B) PERIOD OF UNDERPAYMENT.—The period for which any interest is charged under this subsection with respect to any portion of the underpayment shall run from the due date for the installment to the date on which such portion is contributed to or under the plan (determined without regard to subsection (c)(10)).

"(C) ORDER OF CREDITING CONTRIBUTIONS.—For purposes of subparagraph (A)(ii), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

"(3) NUMBER OF REQUIRED INSTALLMENTS; DUE DATES.—For purposes of this subsection—

"(A) PAYABLE IN 4 INSTALLMENTS.—There shall be 4 required installments for each plan year.

"(B) TIME FOR PAYMENT OF INSTALLMENTS.—

"In the case of the following required installments:	The due date is:
1st	April 15
2nd	July 15
3rd	October 15
4th	January 15 of the following year.

"(4) AMOUNT OF REQUIRED INSTALLMENT.—For purposes of this subsection—

"(A) IN GENERAL.—The amount of any required installment shall be the applicable percentage of the required annual payment.

"(B) REQUIRED ANNUAL PAYMENT.—For purposes of subparagraph (A), the term 'required annual payment' means the lesser of—

"(i) 90 percent of the amount required to be contributed to or under the plan by the employer for the plan year under section 412 of the Internal Revenue Code of 1986 (without regard to any waiver under subsection (c) thereof), or

"(ii) 100 percent of the amount so required for the preceding plan year.

Clause (ii) shall not apply if the preceding plan year was not a year of 12 months.

"(C) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

"For plan years beginning in:	The applicable percentage is:
1989	6.25
1990	12.5
1991	18.75
1992 and thereafter	25.

"(D) SPECIAL RULES FOR UNPREDICTABLE CONTINGENT EVENT BENEFITS.—In the case of a plan with any unpredictable contingent event benefit liabilities—

"(i) such liabilities shall not be taken into account in computing the required annual payment under subparagraph (B), and

"(ii) each required installment shall be increased by the greater of—

"(I) the amount of benefits described in subsection (d)(5)(A)(i) paid during the 3-month period preceding the month in which the due date for such installment occurs, or

"(II) 25 percent of the amount determined under subsection (d)(5)(A)(ii) for the plan year.

"(5) FISCAL YEARS AND SHORT YEARS.—

"(A) FISCAL YEARS.—In applying this subsection to a plan year beginning on any date other than January 1, there shall be substituted for the months specified in this subsection, the months which correspond thereto.

"(B) SHORT PLAN YEAR.—This section shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary of the Treasury." Regulations.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to plan years beginning after 1988. 26 USC 412 note.

(c) INCREASE IN EXCISE TAX FROM 5 PERCENT TO 10 PERCENT.—

26 USC 4971.

(1) IN GENERAL.—Section 4971(a) of the 1986 Code (relating to initial tax on failure to meet minimum funding standards) is amended by striking out "5 percent" and inserting in lieu thereof "10 percent (5 percent in the case of a multiemployer plan)".

26 USC 4971 note.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to plan years beginning after 1988.

(d) REQUIREMENT OF NOTICE.—Section 101 of ERISA (relating to duty of disclosure and reporting) (29 U.S.C. 1021) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) NOTICE OF FAILURE TO MEET MINIMUM FUNDING STANDARDS.—

"(1) IN GENERAL.—If an employer of a plan other than a multiemployer plan fails to make a required installment or other payment required to meet the minimum funding standard under section 302 to a plan before the 60th day following the due date for such installment or other payment, the employer shall notify each participant and beneficiary (including an alternate payee as defined in section 206(d)(3)(K)) of such plan of such failure. Such notice shall be made at such time and in such manner as the Secretary may prescribe.

"(2) SUBSECTION NOT TO APPLY IF WAIVER PENDING.—This subsection shall not apply to any failure if the employer has filed a waiver request under section 303 with respect to the plan year to which the required installment relates, except that if the waiver request is denied, notice under paragraph (1) shall be provided within 60 days after the date of such denial.

"(3) DEFINITIONS.—For purposes of this subsection, the terms 'required installment' and 'due date' have the same meanings given such terms by section 302(e)."

(e) IMPOSITION OF LIEN WHERE FAILURE TO MAKE REQUIRED CONTRIBUTIONS.—

(1) AMENDMENT TO 1986 CODE.—Section 412 of the 1986 Code (as amended by this subtitle) is amended by adding at the end thereof the following new subsection:

"(n) IMPOSITION OF LIEN WHERE FAILURE TO MAKE REQUIRED CONTRIBUTIONS.—

"(1) IN GENERAL.—In the case of a plan to which this section applies, if—

"(A) any person fails to make a required installment under subsection (m) or any other payment required under this section before the due date for such installment or other payment, and

"(B) the unpaid balance of such installment or other payment (including interest), when added to the aggregate unpaid balance of all preceding such installments or other payments for which payment was not made before the due date (including interest), exceeds $1,000,000,

then there shall be a lien in favor of the plan in the amount determined under paragraph (3) upon all property and rights to property, whether real or personal, belonging to such person and any other person who is a member of the same controlled group of which such person is a member.

"(2) PLANS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to a defined benefit plan (other than a multiemployer plan) for any plan year for which the funded current liability percentage (within the meaning of subsection (1)(8)(B)) of such plan is less than 100 percent.

"(3) AMOUNT OF LIEN.—For purposes of paragraph (1), the amount of the lien shall be equal to the lesser of—

"(A) the amount by which the unpaid balances described in paragraph (1)(B) (including interest) exceed $1,000,000, or

"(B) the aggregate unpaid balance of required installments and other payments required under this section (including interest)—

"(i) for plan years beginning after 1987, and

"(ii) for which payment has not been made before the due date.

"(4) NOTICE OF FAILURE; LIEN.—

"(A) NOTICE OF FAILURE.—A person committing a failure described in paragraph (1) shall notify the Pension Benefit Guaranty Corporation of such failure within 10 days of the due date for the required installment or other payment.

"(B) PERIOD OF LIEN.—The lien imposed by paragraph (1) shall arise on the 60th day following the due date for the required installment or other payment and shall continue until the last day of the first plan year in which the plan ceases to be described in paragraph (1)(B). Such lien shall continue to run without regard to whether such plan continues to be described in paragraph (2) during the period referred to in the preceding sentence.

"(C) CERTAIN RULES TO APPLY.—Any amount with respect to which a lien is imposed under paragraph (1) shall be treated as taxes due and owing the United States and rules similar to the rules of subsections (c), (d), and (e) of section 4068 of the Employee Retirement Income Security Act of 1974 shall apply with respect to a lien imposed by subsection (a) and the amount with respect to such lien.

"(5) ENFORCEMENT.—Any lien created under paragraph (1) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Pension Benefit Guaranty Corporation, by the contributing sponsor (or any member of the controlled group of the contributing sponsor).

"(6) DEFINITIONS.—For purposes of this subsection—

"(A) DUE DATE; REQUIRED INSTALLMENT.—The terms 'due date' and 'required installment' have the meanings given such terms by subsection (m), except that in the case of a payment other than a required installment, the due date shall be the date such payment is required to be made under this section.[97]

"(B) CONTROLLED GROUP.—The term 'controlled group' means any group treated as a single employer under subsections (b), (c), (m), and (o) of section 414."

(2) AMENDMENT TO ERISA.—Section 302 of ERISA (as amended by this subtitle) (29 U.S.C. 1082) is amended by redesignating subsection (f) as subsection (g) and by adding after subsection (e) the following new subsection:

"(f) IMPOSITION OF LIEN WHERE FAILURE TO MAKE REQUIRED CONTRIBUTIONS.—

"(1) IN GENERAL.—In the case of a plan to which this section applies, if—

[97] Copy read "section." ".

"(A) any person fails to make a required installment under subsection (e) or any other payment required under this section before the due date for such installment or other payment, and

"(B) the unpaid balance of such installment or other payment (including interest), when added to the aggregate unpaid balance of all preceding such installments or other payments for which payment was not made before the due date (including interest), exceeds $1,000,000,

then there shall be a lien in favor of the plan in the amount determined under paragraph (3) upon all property and rights to property, whether real or personal, belonging to such person and any other person who is a member of the same controlled group of which such person is a member.

"(2) PLANS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to a defined benefit plan (other than a multiemployer plan) for any plan year for which the funded current liability percentage (within the meaning of subsection (d)(8)(B)) of such plan is less than 100 percent.

"(3) AMOUNT OF LIEN.—For purposes of paragraph (1), the amount of the lien shall be equal to the lesser of—

"(A) the amount by which the unpaid balances described in paragraph (1)(B) (including interest) exceed $1,000,000, or

"(B) the aggregate unpaid balance of required installments and other payments required under this section (including interest)—

"(i) for plan years beginning after 1987, and

"(ii) for which payment has not been made before the due date.

"(4) NOTICE OF FAILURE; LIEN.—

"(A) NOTICE OF FAILURE.—A person committing a failure described in paragraph (1) shall notify the Pension Benefit Guaranty Corporation of such failure within 10 days of the due date for the required installment or other payment.

"(B) PERIOD OF LIEN.—The lien imposed by paragraph (1) shall arise on the 60th day following the due date for the required installment or other payment and shall continue until the last day of the first plan year in which the plan ceases to be described in paragraph (1)(B). Such lien shall continue to run without regard to whether such plan continues to be described in paragraph (2) during the period referred to in the preceding sentence.

"(C) CERTAIN RULES TO APPLY.—Any amount with respect to which a lien is imposed under paragraph (1) shall be treated as taxes due and owing the United States and rules similar to the rules of subsections (c), (d), and (e) of section 4068 shall apply with respect to a lien imposed by subsection (a) and the amount with respect to such lien.

"(5) ENFORCEMENT.—Any lien created under paragraph (1) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Pension Benefit Guaranty Corporation, by the contributing sponsor (or any member of the controlled group of the contributing sponsor).

"(6) DEFINITIONS.—For purposes of this subsection—

"(A) DUE DATE; REQUIRED INSTALLMENT.—The terms 'due date' and 'required installment' have the meanings given such terms by subsection (e), except that in the case of a

payment other than a required installment, the due date shall be the date such payment is required to be made under this section."

"(B) CONTROLLED GROUP.—The term 'controlled group' means any group treated as a single employer under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986."

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to plan years beginning after December 31, 1987. 26 USC 412 note.

SEC. 9305. LIABILITY OF MEMBERS OF CONTROLLED GROUP FOR TAXES ON FAILURE TO MEET MINIMUM FUNDING STANDARDS AND TO MAKE MINIMUM FUNDING CONTRIBUTIONS.

(a) EXCISE TAX.—

(1) IN GENERAL.—Section 4971 of the 1986 Code (relating to taxes on failure to meet minimum funding standards) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection: 26 USC 4971.

"(e) LIABILITY FOR TAX.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the tax imposed by subsection (a) or (b) shall be paid by the employer responsible for contributing to or under the plan the amount described in section 412(b)(3)(A).

"(2) JOINT AND SEVERAL LIABILITY WHERE EMPLOYER MEMBER OF CONTROLLED GROUP.—

"(A) IN GENERAL.—In the case of a plan other than a multiemployer plan, if the employer referred to in paragraph (1) is a member of a controlled group, each member of such group shall be jointly and severally liable for the tax imposed by subsection (a) or (b).

"(B) CONTROLLED GROUP.—For purposes of subparagraph (A), the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414."

(2) TECHNICAL AMENDMENTS.—

(A) Subsection (a) of section 4971 of the 1986 Code is amended by striking out the last sentence.

(B) Subsection (b) of section 4971 of the 1986 Code is amended by striking out the last sentence.

(b) MINIMUM FUNDING CONTRIBUTIONS.—

(1) AMENDMENT TO 1986 CODE.—Section 412(c) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(11) LIABILITY FOR CONTRIBUTIONS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amount of any contribution required by this section and any required installments under subsection (m) shall be paid by the employer responsible for contributing to or under the plan the amount described in subsection (b)(3)(A).

"(B) JOINT AND SEVERAL LIABILITY WHERE EMPLOYER MEMBER OF CONTROLLED GROUP.—

"(i) IN GENERAL.—In the case of a plan other than a multiemployer plan, if the employer referred to in subparagraph (A) is a member of a controlled group, each member of such group shall be jointly and sever-

ally liable for payment of such contribution or required installment.

"(ii) CONTROLLED GROUP.—For purposes of clause (i), the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414."

(2) AMENDMENT TO ERISA.—Section 302(c) of ERISA (29 U.S.C. 1082(c)) is amended by adding at the end thereof the following new paragraph:

"(11) LIABILITY FOR CONTRIBUTIONS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amount of any contribution required by this section and any required installments under subsection (e) shall be paid by the employer responsible for contributing to or under the plan the amount described in subsection (b)(3)(A).

"(B) JOINT AND SEVERAL LIABILITY WHERE EMPLOYER MEMBER OF CONTROLLED GROUP.—

"(i) IN GENERAL.—In the case of a plan other than a multiemployer plan, if the employer referred to in subparagraph (A) is a member of a controlled group, each member of such group shall be jointly and severally liable for payment of such contribution or required installment.

"(ii) CONTROLLED GROUP.—For purposes of clause (i), the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986." [98]

26 USC 414.

(c) CONFORMING AMENDMENT.—Section 414(b) of the 1986 Code is amended by striking out "the minimum funding standard of section 412, the tax imposed by section 4971, and".

26 USC 412 note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after December 31, 1987.

SEC. 9306. FUNDING WAIVERS.

(a) REQUIREMENTS FOR WAIVERS.—

(1) AMENDMENTS TO 1986 CODE.—

(A) APPLICATION MUST BE SUBMITTED BEFORE DATE 2½ MONTHS AFTER CLOSE OF YEAR.—Subsection (d) of section 412 of the 1986 Code (relating to variance from minimum funding standard) is amended by adding at the end thereof the following new paragraph:

"(4) APPLICATION MUST BE SUBMITTED BEFORE DATE 2½ MONTHS AFTER CLOSE OF YEAR.—In the case of a plan other than a multiemployer plan, no waiver may be granted under this subsection with respect to any plan for any plan year unless an application therefor is submitted to the Secretary not later than the 15th day of the 3rd month beginning after the close of such plan year."

(B) WAIVER ALLOWED ONLY FOR TEMPORARY HARDSHIP.—Subsection (d) of section 412 of the 1986 Code is amended—

(i) by striking out "substantial business hardship" in paragraphs (1) and (2) and inserting in lieu thereof "temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan)", and

[98] Indention on paragraphs " '(11)", " '(A)", " '(B)", " '(i)", and " '(ii)", incorrect.

(ii) by striking out "SUBSTANTIAL" in the headings of paragraphs (1) and (2).

(C) HARDSHIP MUST ALSO EXIST AT CONTROLLED GROUP LEVEL.—Subsection (d) of section 412 of the 1986 Code is amended by adding at the end thereof the following new paragraph: 26 USC 412.

"(5) SPECIAL RULE IF EMPLOYER IS MEMBER OF CONTROLLED GROUP.—

"(A) IN GENERAL.—In the case of a plan other than a multiemployer plan, if an employer is a member of a controlled group, the temporary substantial business hardship requirements of paragraph (1) shall be treated as met only if such requirements are met—

"(i) with respect to such employer, and

"(ii) with respect to the controlled group of which such employer is a member (determined by treating all members of such group as a single employer).

The Secretary may provide that an analysis of a trade or business or industry of a member need not be conducted if the Secretary determines such analysis is not necessary because the taking into account of such member would not significantly affect the determination under this subsection.

"(B) CONTROLLED GROUP.—For purposes of subparagraph (A), the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414."

(2) AMENDMENTS TO ERISA.—

(A) APPLICATION MUST BE SUBMITTED BEFORE DATE 2½ MONTHS AFTER CLOSE OF YEAR.—Section 303 of ERISA (relating to variance from minimum funding standard) (29 U.S.C. 1083) is amended by redesignating subsection (d) as subsection (f) and by inserting after subsection (c) the following new subsection:

"(d) SPECIAL RULES.—

"(1) APPLICATION MUST BE SUBMITTED BEFORE DATE 2½ MONTHS AFTER CLOSE OF YEAR.—In the case of a plan other than a multiemployer plan, no waiver may be granted under this section with respect to any plan for any plan year unless an application therefor is submitted to the Secretary of the Treasury not later than the 15th day of the 3rd month beginning after the close of such plan year."

(B) WAIVER ALLOWED ONLY FOR TEMPORARY HARDSHIP.—Section 303 of ERISA (29 U.S.C. 1083) is amended by striking out "substantial business hardship" in subsections (a) and (b) and inserting in lieu thereof "temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan)".

(C) HARDSHIP MUST ALSO EXIST AT CONTROLLED GROUP LEVEL.—Subsection (d) of section 303 of ERISA (as amended by subparagraph (A)) (29 U.S.C. 1083) is amended by adding at the end thereof the following new paragraph:

"(2) SPECIAL RULE IF EMPLOYER IS MEMBER OF CONTROLLED GROUP.—

"(A) IN GENERAL.—In the case of a plan other than a multiemployer plan, if an employer is a member of a controlled group, the temporary substantial business hard-

ship requirements of subsection (a) shall be treated as met only if such requirements are met—

"(i) with respect to such employer, and

"(ii) with respect to the controlled group of which such employer is a member (determined by treating all members of such group as a single employer).

The Secretary of the Treasury may provide that an analysis of a trade or business or industry of a member need not be conducted if the Secretary of the Treasury determines such analysis is not necessary because the taking into account of such member would not significantly affect the determination under this subsection.

"(B) CONTROLLED GROUP.—For purposes of subparagraph (A), the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986."

(b) FREQUENCY OF WAIVERS.—

26 USC 412.

(1) AMENDMENTS TO 1986 CODE.—The second sentence of section 412(d)(1) of the 1986 Code is amended by striking out "more than 5 of any 15" and inserting in lieu thereof "more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan)".

(2) AMENDMENTS TO ERISA.—The second sentence of section 303(a) of ERISA (29 U.S.C. 1083(a)) is amended by striking out "more than 5 of any 15" and inserting in lieu thereof "more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan)".

(c) INTEREST ON REPAYMENT OF WAIVED CONTRIBUTIONS.—

(1) AMENDMENTS TO 1986 CODE.—

(A) Paragraph (1) of section 412(d) of the 1986 Code is amended by striking out the last sentence and inserting in lieu thereof the following new sentence: "The interest rate used for purposes of computing the amortization charge described in subsection (b)(2)(C) for any plan year shall be—

"(A) in the case of a plan other than a multiemployer plan, the greater of (i) 150 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), or (ii) the rate of interest used under the plan in determining costs, and

"(B) in the case of a multiemployer plan, the rate determined under section 6621(b)."

(B) Subsection (e) of section 412 of the 1986 Code is amended by striking out the last sentence and inserting in lieu thereof the following new sentence: "In the case of a plan other than a multiemployer plan, the interest rate applicable for any plan year under any arrangement entered into by the Secretary in connection with an extension granted under this subsection shall be the greater of (A) 150 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), or (B) the rate of interest used under the plan in determining costs. In the case of a multiemployer plan, such rate shall be the rate determined under section 6621(b)."

(2) AMENDMENTS TO ERISA.—

(A) Subsection (a) of section 303 of ERISA (29 U.S.C. 1083(a)) is amended by striking out the last sentence and inserting in lieu thereof the following new sentence: "The interest rate used for purposes of computing the amortiza-

tion charge described in subsection (b)(2)(C) for any plan year shall be—

"(A) in the case of a plan other than a multiemployer plan, the greater of (i) 150 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of such plan year), or (ii) the rate of interest used under the plan in determining costs, and

"(B) in the case of a multiemployer plan, the rate determined under section 6621(b)."

(B) Subsection (a) of section 304 of ERISA (29 U.S.C. 1084(a)) is amended by striking out the last sentence and inserting in lieu thereof the following new sentence:

"In the case of a plan other than a multiemployer plan, the interest rate applicable for any plan year under any arrangement entered into by the Secretary in connection with an extension granted under this subsection shall be the greater of (A) 150 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of such plan year), or (B) the rate of interest used under the plan in determining costs. In the case of a multiemployer plan, such rate shall be the rate determined under section 6621(b) of such Code."

(d) NOTICE TO PARTICIPANTS OF APPLICATION FOR FUNDING WAIVERS.—

(1) AMENDMENT TO 1986 CODE.—Section 412 (f)(4)(A) of the 1986 Code (relating to advance notice) is amended by striking out "plan." and inserting in lieu thereof "plan, and each participant, beneficiary, and alternate payee (within the meaning of section 414(p)(8)). Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV of such Act and the benefit liabilities.". 26 USC 412.

(2) AMENDMENT TO ERISA.—Section 303(e)(1) of ERISA (relating to advance notice) (29 U.S.C. 1083(e)(1)) is amended by striking out "plan." and inserting in lieu thereof "plan, and each affected party (as defined in section 4001(a)(21)) other than the Pension Benefit Guaranty Corporation. Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV and the benefit liabilities.".

(e) DECREASE IN AMOUNT OF DEFICIENCIES REQUIRED BEFORE SECURITY REQUIRED.—

(1) AMENDMENT TO 1986 CODE.—Subparagraph (C) of section 412 (f)(3) is amended by striking out "$2,000,000" and inserting in lieu thereof "$1,000,000".

(2) AMENDMENT TO ERISA.—Section 306(c)(1) of ERISA (29 U.S.C. 1085a(c)(1)) is amended by striking out "$2,000,000" and inserting in lieu thereof "$1,000,000".

(f) EFFECTIVE DATES.— 26 USC 412 note.

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply in the case of—

(A) any application submitted after December 17, 1987, and

(B) any waiver granted pursuant to such an application.

(2) SPECIAL RULE FOR APPLICATION REQUIREMENT.—

(A) IN GENERAL.—The amendments made by subsections (a)(1)(A) and (a)(2)(A) shall apply to plan years beginning after December 31, 1987.

(B) TRANSITIONAL RULE FOR YEARS BEGINNING IN 1988.—In the case of any plan year beginning during calendar 1988, section 412(d)(4) of the 1986 Code and section 303(d)(1) of ERISA (as added by subsection (a)(1)) shall be applied by substituting "6th month" for "3rd month".

(3) FREQUENCY OF WAIVERS.—In applying the second sentence of section 412(d) of the 1986 Code and section 303(a) of ERISA to plans other than multiemployer plans, the number of waivers which may be granted pursuant to applications submitted after December 17, 1987, shall be determined without regard to waivers granted with respect to plan years beginning before January 1, 1988.

(4) SUBSECTION (d).—The amendments made by subsection (d) shall apply to applications submitted more than 90 days after the date of the enactment of this Act.

SEC. 9307. OTHER FUNDING CHANGES.

(a) AMORTIZATION PERIODS.—

(1) AMENDMENTS TO 1986 CODE.—

(A) Paragraphs (2)(B)(iv), (2)(C), and (3)(B)(ii) of section 412(b) of the 1986 Code are each amended by striking out "15 plan years" and inserting in lieu thereof "5 plan years (15 plan years in the case of a multiemployer plan)". 26 USC 412.

(B) Paragraphs (2)(B)(v) and (3)(B)(iii) of section 412(b) of the 1986 Code are each amended by striking out "30 plan years" and inserting in lieu thereof "10 plan years (30 plan years in the case of a multiemployer plan)".

(2) AMENDMENTS TO ERISA.—

(A) Paragraphs (2)(B)(iv), (2)(C), and (3)(B)(ii) of section 302(b) of ERISA (29 U.S.C. 1082(b)) are each amended by striking out "15 plan years" and inserting in lieu thereof "5 plan years (15 plan years in the case of a multiemployer plan)".

(B) Paragraphs (2)(B)(v) and (3)(B)(iii) of section 302(b) of ERISA (29 U.S.C. 1082(b)) are each amended by striking out "30 plan years" and inserting in lieu thereof "10 plan years (30 plan years in the case of a multiemployer plan)".

(b) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—

(1) AMENDMENT TO 1986 CODE.—Paragraph (3) of section 412(c) of the 1986 Code is amended to read as follows:

"(3) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

"(A) in the case of—

"(i) a plan other than a multiemployer plan, each of which is reasonable (taking into account the experience of the plan and reasonable expectations) or which, in the aggregate, result in a total contribution equivalent to that which would be determined if each such assumption and method were reasonable, or

"(ii) a multiemployer plan, which, in the aggregate, are reasonable (taking into account the experiences of the plan and reasonable expectations), and

"(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan."

(2) AMENDMENT TO ERISA.—Paragraph (3) of section 302(c) of ERISA (29 U.S.C. 1082(c)(3)) is amended to read as follows:

"(3) For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

"(A) in the case of—

"(i) a plan other than a multiemployer plan, each of which is reasonable (taking into account the experience of the plan and reasonable expectations) or which, in the aggregate, result in a total contribution equivalent to that which would be determined if each such assumption and method were reasonable, or

"(ii) a multiemployer plan, which, in the aggregate, are reasonable (taking into account the experiences of the plan and reasonable expectations), and

"(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan."

(c) LIMITATION ON DEDUCTION FOR CONTRIBUTIONS TO CERTAIN PLANS NOT LESS THAN UNFUNDED CURRENT LIABILITY.—Paragraph (1) of section 404(a) of the 1986 Code is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph: 26 USC 404.

"(D) SPECIAL RULE IN CASE OF CERTAIN PLANS.—In the case of any defined benefit plan (other than a multiemployer plan) which has more than 100 participants for the plan year, except as provided in regulations, the maximum amount deductible under the limitations of this paragraph shall not be less than the unfunded current liability determined under section 412(l) (without regard to any reduction by the credit balance in the funding standard account). For purposes of this subparagraph, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group (within the meaning of section 412(l)(8)(c))) shall be treated as 1 plan, but only employees of such member or employer shall be taken into account."

(d) LIMITATION ON AMORTIZATION OF PAST SERVICE CREDITS.—Clause (iii) of section 404(a)(1)(A) of the 1986 Code (relating to pension trusts) is amended by striking out "to amortize such credits" and inserting in lieu thereof "to amortize the unfunded costs attributable to such credits".

(e) LIMITATION ON INTEREST RATE.—

(1) AMENDMENT TO 1986 CODE.—Paragraph (5) of section 412(b) of the 1986 Code (relating to interest) is amended to read as follows:

"(5) INTEREST.—

"(A) IN GENERAL.—The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs. Regulations.

"(B) REQUIRED CHANGE OF INTEREST RATE.—For purposes of determining a plan's current liability and for purposes of determining a plan's required contribution under section 412(l) for any plan year—

"(i) IN GENERAL.—If any rate of interest used under the plan to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

"(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

"(I) IN GENERAL.—Except as provided in subclause (II), the term 'permissible range' means a rate of interest which is not more than 10 percent above, and not more than 10 percent below, the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

"(II) SECRETARIAL AUTHORITY.—If the Secretary finds that the lowest rate of interest permissible under subclause (I) is unreasonably high, the Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under subclause (I).

"(iii) ASSUMPTIONS.—Notwithstanding subsection (c)(3)(A)(i), for purposes of this section and for purposes of determining current liability, the interest rate used under the plan shall be—

"(I) determined without taking into account the experience of the plan and reasonable expectations, but

"(II) consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.".

(2) AMENDMENT TO ERISA.—Paragraph (5) of section 302(b) of ERISA (relating to interest) (29 U.S.C. 1082(b)(5)) is amended to read as follows:

"(5) INTEREST.—For purposes of determining a plan's current liability and for purposes of determining a plan's required contribution under section 412(l) for any plan year—

Regulations.

"(A) IN GENERAL.—The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary of the Treasury) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

"(B) REQUIRED CHANGE OF INTEREST RATE.—

"(i) IN GENERAL.—If any rate of interest used under the plan to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

"(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

"(I) IN GENERAL.—Except as provided in subclause (II), the term 'permissible range' means a rate of interest which is not more than 10 percent above, and not more than 10 percent below, the average rate of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

"(II) SECRETARIAL AUTHORITY.—If the Secretary finds that the lowest rate of interest permissible under subclause (I) is unreasonably high, the Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under subclause (I).

"(iii) ASSUMPTIONS.—Notwithstanding subsection (c)(3)(A)(i), for purposes of this section and for purposes of determining current liability, the interest rate used under the plan shall be—

"(I) determined without taking into account the experience of the plan and reasonable expectations, but

"(II) consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.".[98a]

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1987. 26 USC 404 note.

Subpart B—Plan Terminations

SEC. 9311. LIMITATIONS ON EMPLOYER REVERSIONS UPON PLAN TERMINATION.

(a) RESTRICTIONS ON REVERSIONS PURSUANT TO RECENTLY AMENDED PLANS.—

(1) IN GENERAL.—Section 4044(d) of ERISA (29 U.S.C. 1344(d)) is amended—

(A) by redesignating paragraph (2) as paragraph (3); and

(B) by inserting after paragraph (1) the following new paragraph:

"(2)(A) In determining the extent to which a plan provides for the distribution of plan assets to the employer for purposes of paragraph (1)(C), any such provision, and any amendment increasing the amount which may be distributed to the employer, shall not be treated as effective before the end of the fifth calendar year following the date of the adoption of such provision or amendment.

"(B) A distribution to the employer from a plan shall not be treated as failing to satisfy the requirements of this paragraph if the plan has been in effect for fewer than 5 years and the plan has provided for such a distribution since the effective date of the plan.

"(C) Except as otherwise provided in regulations of the Secretary of the Treasury, in any case in which a transaction described in section 208 occurs, subparagraph (A) shall continue to apply separately with respect to the amount of any assets transferred in such transaction. Regulations.

"(D) For purposes of this subsection, the term 'employer' includes any member of the controlled group of which the employer is a member. For purposes of the preceding sentence, the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m) or (o) of section 414 of the Internal Revenue Code of 1986."

(2) TRANSITIONAL RULE.—The amendments made by paragraph (1) shall apply, in the case of plans which, as of December 17, 1987, have no provision relating to the distribution of plan assets to the employer for purposes of section 4044(d)(1)(C) of the Employee Retirement Income Security Act of 1974, only with respect to plan amendments providing for the 29 USC 1344 note.

[98a] Copy read "plan."

distribution of plan assets to the employer which are adopted after 1 year after the effective date of such amendments made by paragraph (1). Such amendment shall not apply to any provision of the plan adopted on or before December 17, 1987, which provides for the distribution of plan assets to the employer.

(b) DISTRIBUTION OF ASSETS ATTRIBUTABLE TO EMPLOYEE CONTRIBUTIONS.—Section 4044(d) of ERISA (29 U.S.C. 1344(d)) is amended—

(1) in paragraph (1), by striking "Any" and inserting "Subject to paragraph (3), any"; and

(2) by striking paragraph (3) (as redesignated by subsection (c)(1)) and inserting the following new paragraph:

"(3)(A) Before any distribution from a plan pursuant to paragraph (1), if any assets of the plan attributable to employee contributions remain after satisfaction of all liabilities described in subsection (a), such remaining assets shall be equitably distributed to the participants who made such contributions or their beneficiaries (including alternate payees, within the meaning of section 206(d)(3)(K)).

"(B) For purposes of subparagraph (A), the portion of the remaining assets which are attributable to employee contributions shall be an amount equal to the product derived by multiplying—

"(i) the market value of the total remaining assets, by

"(ii) a fraction—

"(I) the numerator of which is the present value of all portions of the accrued benefits with respect to participants which are derived from participants' mandatory contributions (referred to in subsection (a)(2)), and

"(II) the denominator of which is the present value of all benefits with respect to which assets are allocated under paragraphs (2) through (6) of subsection (a).

"(C) For purposes of this paragraph, each person who is, as of the termination date—

"(i) a participant under the plan, or

"(ii) an individual who has received, during the 3-year period ending with the termination date, a distribution from the plan of such individual's entire nonforfeitable benefit in the form of a single sum distribution in accordance with section 203(e) or in the form of irrevocable commitments purchased by the plan from an insurer to provide such nonforfeitable benefit,

shall be treated as a participant with respect to the termination, if all or part of the nonforfeitable benefit with respect to such person is or was attributable to participants' mandatory contributions (referred to in subsection (a)(2))."

(c) TECHNICAL AMENDMENT.—Section 4044(b)(4) of ERISA (29 U.S.C. 1344(b)(4)) is amended by striking "section 401(a), 403(a), or 405(a)" and inserting "section 401(a) or 403(a)".

29 USC 1344 note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to—

(1) plan terminations under section 4041(c) of ERISA with respect to which notices of intent to terminate are provided under section 4041(a)(2) of ERISA after December 17, 1987, and

(2) plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 4042 of ERISA after December 17, 1987.

SEC. 9312. ELIMINATION OF SECTION 4049 TRUST; INCREASE IN LIABILITY TO PENSION BENEFIT GUARANTY CORPORATION AND IN PAYMENTS BY CORPORATION TO PARTICIPANTS AND BENEFICIARIES.

(a) REPEAL.—Section 4049 of ERISA (29 U.S.C. 1349) is repealed.

(b) CONFORMING AMENDMENTS.—

(1) ELIMINATION OF EMPLOYER LIABILITY TO SECTION 4049 TRUST.—

(A) REPEAL.—Subsection (c) of section 4062 of ERISA (29 U.S.C. 1362(c)) is repealed.

(B) CONFORMING AMENDMENTS.—Section 4062 of ERISA is further amended by redesignating subsections (d), (e), and (f) as subsections (c), (d), and (e), respectively.

(2) INCREASE IN EMPLOYER LIABILITY TO THE CORPORATION.—

(A) IN GENERAL.—Subparagraph (A) of section 4062(b)(1) of ERISA (29 U.S.C. 1362(b)(1)(A)) is amended to read as follows:

"(A) IN GENERAL.—Except as provided in subparagraph (B), the liability to the corporation of a person described in subsection (a) shall be the total amount of the unfunded benefit liabilities (as of the termination date) to all participants and beneficiaries under the plan, together with interest (at a reasonable rate) calculated from the termination date in accordance with regulations prescribed by the corporation." Regulations.

(B) LIEN LIMITED TO 30 PERCENT OF NET WORTH.—

(i) Subsection (a) of section 4068 of ERISA (29 U.S.C. 1368(a)) is amended by striking out "to the extent of an amount equal to the unpaid amount described in section 4062(b)(1)(A)(i)" each place it appears and inserting in lieu thereof "to the extent such amount does not exceed 30 percent of the collective net worth of all persons described in section 4062(a)".

(ii) Title IV of ERISA (29 U.S.C. 4001 et seq.) is amended by transferring subsection (e) of section 4062 of ERISA (29 U.S.C. 1362(e)) to the end of section 4068 of ERISA (29 U.S.C. 1368) and by redesignating such subsection as subsection (f).

(C) TREATMENT OF MULTIPLE CONTROLLED GROUPS.—

(i) IN GENERAL.—So much of section 4064(b) of ERISA (29 U.S.C. 1364(b)) as precedes the second sentence is amended to read as follows:

"(b) The corporation shall determine the liability with respect to each contributing sponsor and each member of its controlled group in a manner consistent with section 4062, except that the amount of liability determined under section 4062(b)(1) with respect to the entire plan shall be allocated to each controlled group by multiplying such amount by a fraction—

"(1) the numerator of which is the amount required to be contributed to the plan for the last 5 plan years ending prior to the termination date by persons in such controlled group as contributing sponsors, and

"(2) the denominator of which is the total amount required to be contributed to the plan for such last 5 plan years by all persons as contributing sponsors,

and clauses (i)(II) and (ii) of section 4062(b)(1)(A) shall be applied separately with respect to each controlled group."

(ii) CONFORMING AMENDMENTS.—Section 4068(a) of ERISA (29 U.S.C. 1368(a)) is amended by adding at the end thereof the following new sentence: "The preceding provisions of this subsection shall be applied in a manner consistent with the provisions of section 4064(d) relating to treatment of multiple controlled groups."

(3) PAYMENT BY CORPORATION TO PARTICIPANTS AND BENEFICIARIES OF RECOVERY PERCENTAGE OF OUTSTANDING AMOUNT OF BENEFIT LIABILITIES.—

(A) IN GENERAL.—Section 4022 of ERISA (29 U.S.C. 1322) is amended—

(i) by redesignating subsections (c) and (d) as subsections (d) and (e); and

(ii) by inserting after subsection (b) the following new subsection:

"(c)(1) In addition to benefits paid under the preceding provisions of this section with respect to a terminated plan, the corporation shall pay the portion of the amount determined under paragraph (2) which is allocated with respect to each participant under section 4044(a), to such participant or (in the case of a deceased participant) to such participant's beneficiaries (including alternate payees, within the meaning of section 206(d)(3)(K)).

"(2) The amount determined under this paragraph is an amount equal to the product derived by multiplying—

"(A) the outstanding amount of benefit liabilities under the plan (including interest calculated from the termination date), by

"(B) the applicable recovery ratio.

"(3)(A) Except as provided in subparagraph (C), for purposes of this subsection, the term 'recovery ratio' means the average ratio, with respect to prior plan terminations described in subparagraph (B), of—

"(i) the value of the recovery of the corporation under section 4062, 4063, or 4064 in connection with such prior terminations, to

"(ii) the amount of unfunded benefit liabilities under such plans as of the termination date in connection with such prior terminations.

"(B) A plan termination described in this subparagraph is a termination with respect to which—

"(i) the corporation has determined the value of recoveries under section 4062, 4063, or 4064, and

"(ii) notices of intent to terminate were provided after December 17, 1987.

"(C) In the case of a terminated plan with respect to which the outstanding amount of benefit liabilities exceeds $20,000,000, for purposes of this section, the term 'recovery ratio' means, with respect to the termination of such plan, the ratio of—

"(i) the value of the recoveries of the corporation under section 4062, 4063, or 4064 in connection with such plan, to

"(ii) the amount of unfunded benefit liabilities under such plan as of the termination date.

"(4) Determinations under this subsection shall be made by the corporation. Such determinations shall be binding unless shown by clear and convincing evidence to be unreasonable."

(B) TRANSITIONAL RULE.— 29 USC 1322 note.

(i) IN GENERAL.—In the case of any plan termination to which the amendments made by this section apply and with respect to which notices of intent to terminate were provided on or before December 17, 1990—

(I) subparagraph (A) of section 4022(c)(1) of ERISA (as amended by this paragraph) shall not apply, and

(II) subparagraph (B) of section 4022(c)(1) of ERISA (as so amended) shall apply irrespective of the outstanding amount of benefit liabilities under the plan.

(ii) LIMITATION.—Clause (i) shall not apply in the case of any plan termination referred to in clause (i) with respect to which the recovery ratio is not finally determined under section 4022(c)(1)(B) of ERISA (as so amended) as of December 17, 1990.

(4) BENEFIT LIABILITIES.—Paragraph (16) of section 4001(a) of ERISA (29 U.S.C. 1301(a)(16)) is amended to read as follows:

"(16) 'benefit liabilities' means the benefits of employees and their beneficiaries under the plan (within the meaning of section 401(a)(2) of the Internal Revenue Code of 1986);".

(5) OUTSTANDING AMOUNT OF BENEFIT LIABILITIES.—Paragraph (19) of section 4001(a) of ERISA (29 U.S.C. 1301(a)(19)) is amended to read as follows:

"(19) 'outstanding amount of benefit liabilities' means, with respect to any plan, the excess (if any) of—

"(A) the value of the benefit liabilities under the plan (determined as of the termination date on the basis of assumptions prescribed by the corporation for purposes of section 4044), over

"(B) the value of the benefit liabilities which would be so determined by only taking into account benefits which are guaranteed under section 4022 or to which assets of the plan are allocated under section 4044;".

(c) ADDITIONAL CONFORMING AMENDMENTS.—

(1) Section 4041(c)(3)(B)(ii) of ERISA (29 U.S.C. 1341(c)(3)(B)(ii)) is amended—

(A) by striking subclause (II);

(B) by striking "plan, and" at the end of subclause (I) and inserting "plan."; and

(C) by striking "available to it—" and all that follows through "the plan administrator" and inserting "available to it, the plan administrator".

(2) Section 4041(c)(3)(B)(iii) of ERISA (29 U.S.C. 1341(c)(3)(B)(iii)) is amended—

(A) by striking subclause (II);

(B) by striking "section 4042, and" at the end of subclause (I) and inserting "section 4042."; and

(C) by striking "available to it—" and all that follows through "the corporation" in subclause (I) and inserting "available to it, the corporation".

(3) Subsection (i) of section 4042 of ERISA (29 U.S.C. 1342(i)) is repealed.

(4) Section 4005(g) of ERISA (29 U.S.C. 1305(g)) is amended by striking out "or fiduciaries with respect to trusts to which the requirements of section 4049 apply".

(d) EFFECTIVE DATE.—

29 USC 1301 note.

(1) IN GENERAL.—The amendments made by this section shall apply with respect to—

(A) plan terminations under section 4041(c) of ERISA with respect to which notices of intent to terminate are provided under section 4041(a)(2) of ERISA after December 17, 1987, and

(B) plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 4042 of ERISA after December 17, 1987.

Regulations.
29 USC 1349.

(2) SECTION 4049 ADMINISTRATIVE EXPENSES UNDER PRIOR TERMINATIONS.—Section 4049(a) of ERISA (as effective under paragraph (1)), is amended by adding at the end thereof the following new sentence: "Reasonable administrative expenses incurred in carrying out the responsibilities under this section prior to the receipt of any liability payments under section 4062(c) shall be paid by the persons described in section 4062(a) in accordance with procedures which shall be prescribed by the corporation by regulation, and the amount of the liability determined under section 4062(c) shall be reduced by the amount of such expenses so paid."

SEC. 9313. STANDARDS FOR TERMINATION.

(a) STANDARD TERMINATION PROCEDURES AVAILABLE ONLY WHEN ASSETS SUFFICIENT TO MEET BENEFIT LIABILITIES.—

(1) IN GENERAL.—Subparagraph (D) of section 4041(b)(1) of ERISA (29 U.S.C. 1341(b)(1)(D)) is amended to read as follows:

"(D) when the final distribution of assets occurs, the plan is sufficient for benefit liabilities (determined as of the termination date)."

(2) TECHNICAL AMENDMENTS.—

(A) Paragraphs (2)(A), (2)(C), (2)(D), and (3) of section 4041(b) of ERISA (29 U.S.C. 1341(b)(2)(A), (2)(C), (2)(D), (3)) are each amended by striking out "benefit commitments" each place it appears and inserting in lieu thereof "benefit liabilities".

(B) Subparagraph (B) of section 4041(b)(2) of ERISA (29 U.S.C. 1341(b)(2)(B)) is amended—

(i) by striking out "the amount of such person's benefit commitments (if any)" and inserting in lieu thereof "the amount of the benefit liabilities (if any) attributable to such person"; and

(ii) by striking out "such benefit commitments" and inserting in lieu thereof "such benefit liabilities".

(C)(i) Subparagraph (A) of section 4041(b)(3) of ERISA (29 U.S.C. 1341(b)(3)(A)) is amended by striking out clauses (i) and (ii) and inserting in lieu thereof the following:

"(i) purchase irrevocable commitments from an insurer to provide all benefit liabilities under the plan, or

"(ii) in accordance with the provisions of the plan and any applicable regulations, otherwise fully provide all benefit liabilities under the plan."

(ii) Subparagraph (B) of section 4041(b)(3) of ERISA (29 U.S.C. 1341(b)(3)) is amended by striking out "so as to pay"

and all that follows and inserting in lieu thereof "so as to pay all benefit liabilities under the plan".

(D) Paragraphs (2) and (3) of section 4041(c) of ERISA (29 U.S.C. 1341(c) (2), (3)) are each amended by striking out "benefit commitments" each place it appears (including in any heading) and inserting in lieu thereof "benefit liabilities".

(E) Paragraph (1) of section 4041(d) of ERISA (29 U.S.C. 1341(d)) is amended—

(i) by striking out "no amount of unfunded benefit commitments" and inserting in lieu thereof "no amount of unfunded benefit liabilities", and

(ii) by striking out "BENEFIT COMMITMENTS" in the paragraph heading and inserting in lieu thereof "BENEFIT LIABILITIES".

(F) Paragraph (18) of section 4001(a) of ERISA (29 U.S.C. 1301(a)(18)) is amended to read as follows:

"(18) 'amount of unfunded benefit liabilities' means, as of any date, the excess (if any) of—

"(A) the value of the benefit liabilities under the plan (determined as of such date on the basis of assumptions prescribed by the corporation for purposes of section 4044), over

"(B) the current value (as of such date) of the assets of the plan;".

(b) CRITERIA FOR DISTRESS TERMINATION.—

(1) APPLICABILITY TO ALL MEMBERS OF CONTROLLED GROUP.—Section 4041(c)(2) of ERISA (29 U.S.C. 1341(c)(2)) is amended—

(A) in subparagraph (B), by striking "a substantial member" in the matter preceding clause (i) and inserting "a member"; and

(B) by striking subparagraph (C) and by redesignating subparagraph (D) as subparagraph (C).

(2) REQUIREMENT OF ADDITIONAL FINDINGS TO QUALIFY FOR DISTRESS TERMINATION BASED ON REORGANIZATION IN BANKRUPTCY.—Section 4041(c)(2)(B)(ii)(III) of ERISA (29 U.S.C. 1341(c)(2)(B)(ii)(III)) is amended by striking "approves the termination" and inserting "determines that, unless the plan is terminated, such person will be unable to pay all its debts pursuant to a plan of reorganization and will be unable to continue in business outside the chapter 11 reorganization process and approves the termination".

(3) CLARIFICATION OF DATE AS OF WHICH EMPLOYER MUST BE IN A BANKRUPTCY PROCEEDING TO QUALIFY FOR DISTRESS TERMINATION.—Clauses (i) and (ii) of section 4041(c)(2)(B) of ERISA (29 U.S.C. 1341(c)(2)(B) (i) and (ii)) are each amended by inserting "proposed" before "termination date".

(4) TREATMENT UNDER DISTRESS TESTS OF CASES CONVERTED TO LIQUIDATION.—Section 4041(c)(2)(B)(i)(I) of ERISA (29 U.S.C. 1341(c)(2)(B)(i)(I)) is amended by inserting before the comma at the end the following: "(or a case described in clause (ii) filed by or against such person has been converted, as of such date, to a case in which liquidation is sought)".

(5) NOTICE TO CORPORATION UNDER REORGANIZATION DISTRESS TEST.—Section 4041(c)(2)(B)(ii) of ERISA (29 U.S.C 1341(c)(2)(B)(ii)) is amended—

(A) in subclause (II), by striking "and" at the end;

(B) by redesignating subclause (III) as subclause (IV);

(C) by inserting after subclause (II) the following new subclause:

"(III) such person timely submits to the corporation any request for the approval of the bankruptcy court (or other appropriate court in a case under such similar law of a State or political subdivision) of the plan termination, and";

and

(D) in subclause (IV) (as redesignated), by striking "(or other" and all that follows through "subdivision)" and inserting "(or such other appropriate court)".

(6) ARRANGEMENTS FOR PAYMENT OF LIABILITY BY CONTROLLED GROUPS.—Section 4067 of ERISA (29 U.S.C. 1367) is amended by striking "controlled groups who are" and inserting "controlled groups who are or may become".

29 USC 1301 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan terminations under section 4041 of ERISA with respect to which notices of intent to terminate are provided under section 4041(a)(2) of ERISA after December 17, 1987.

SEC. 9314. ADDITIONAL AMENDMENTS RELATING TO PLAN TERMINATION.

(a) CERTAIN INFORMATION NOT REQUIRED FROM CERTAIN INSURANCE CONTRACT PLANS.—

(1) STANDARD TERMINATION.—Section 4041(b)(2)(A) of ERISA (29 U.S.C. 1341(b)(2)(A)) is amended—

(A) by striking clause (iii) and inserting the following:

"(iii) certification by the plan administrator that—

"(I) the information on which the enrolled actuary based the certification under clause (i) is accurate and complete, and

"(II) the information provided to the corporation under clause (ii) is accurate and complete."; and

(B) by adding at the end thereof the following:

"Clause (i) and clause (iii)(I) shall not apply to a plan described in section 412(i) of the Internal Revenue Code of 1986.".

(2) DISTRESS TERMINATION.—Section 4041(c)(2)(A) of ERISA (29 U.S.C. 1341(c)(2)(A)) is amended—

(A) by striking clause (iv) and inserting the following:

"(iv) certification by the plan administrator that—

"(I) the information on which the enrolled actuary based the certifications under clause (ii) is accurate and complete, and

"(II) the information provided to the corporation under clauses (i) and (iii) is accurate and complete."; and

(B) by adding at the end the following:

"Clause (ii) and clause (iv)(I) shall not apply to a plan described in section 412(i) of the Internal Revenue Code of 1986.".

(b) CLARIFICATION OF EXISTING AUTHORITY TO POOL ASSETS OF TERMINATED PLANS.—Section 4042 of ERISA (29 U.S.C. 1342(a)) is amended by striking the third sentence and inserting the following: "Notwithstanding any other provision of this title, the corporation is authorized to pool assets of terminated plans for purposes of administration, investment, payment of liabilities of all such terminated plans, and such other purposes as it determines to be appropriate in the administration of this title.".

(b) SUBMISSION OF PLAN DATA IN INVOLUNTARY TERMINATION.—Section 4042(c) of ERISA (29 U.S.C. 1342(c)) is amended by adding at the end the following new paragraph:

"(3) In the case of a proceeding initiated under this section, the plan administrator shall provide the corporation, upon the request of the corporation, the information described in clauses (ii), (iii), and (iv) of section 4041(c)(2)(A).".

(c) CIVIL PENALTIES FOR FAILURE TO TIMELY PROVIDE REQUIRED INFORMATION RELATING TO SINGLE-EMPLOYER PLANS.—

(1) IN GENERAL.—Subtitle D of ERISA (29 U.S.C. 1361 et seq.) is amended by adding at the end the following new section:

"PENALTY FOR FAILURE TO TIMELY PROVIDE REQUIRED INFORMATION

"SEC. 4071. The corporation may assess a penalty, payable to the corporation, against any person who fails to provide any notice or other material information required under this subtitle or subtitle A, B, or C, or any regulations prescribed under any such subtitle, within the applicable time limit specified therein. Such penalty shall not exceed $1,000 for each day for which such failure continues.". 29 USC 1371.

(2) CLERICAL AMENDMENTS.—The table of contents in section 1 of ERISA (29 U.S.C. 1001 note) is amended by adding after the item relating to section 4070 the following new item:

"Sec. 4071. Penalty for failure to timely provide required information.".

Subpart C—Increase in Premium Rates

SEC. 9331. INCREASE IN PREMIUM RATES.

(a) GENERAL RULE.—Clause (i) of section 4006(a)(3)(A) of ERISA (29 U.S.C. 1306(a)(3)(A)) is amended by striking out "for plan years beginning after December 31, 1985, an amount equal to $8.50" and inserting in lieu thereof "for plan years beginning after December 31, 1987, an amount equal to the sum of $16 plus the additional premium (if any) determined under subparagraph (E)".

(b) DETERMINATION OF ADDITIONAL PREMIUM.—Paragraph (3) of section 4006(a) of ERISA (29 U.S.C. 1306(a)(3)) is amended by adding at the end thereof the following new subparagraph:

"(E)(i) The additional premium determined under this subparagraph with respect to any plan for any plan year shall be an amount equal to the amount determined under clause (ii) divided by the number of participants in such plan as of the close of the preceding plan year.

"(ii) The amount determined under this clause for any plan year shall be an amount equal to $6.00 for each $1,000 (or fraction thereof) of unfunded vested benefits under the plan as of the close of the preceding plan year.

"(iii) For purposes of clause (ii)—

"(I) Except as provided in subclause (II), the term 'unfunded vested benefits' means the amount which would be the unfunded current liability (within the meaning of section 302(d)(8)(A)) if only vested benefits were taken into account.

"(II) The interest rate used in valuing vested benefits for purposes of subclause (I) shall be equal to 80 percent of the annual yield on 30-year Treasury securities for the month preceding the month in which the plan year begins.

"(iv)(I) Except as provided in this clause, the aggregate increase in the premium payable with respect to any participant by reason of this subparagraph shall not exceed $34.

"(II) If an employer made contributions to a plan during 1 or more of the 5 plan years preceding the 1st plan year to which this subparagraph applies in an amount not less than the maximum amount allowable as a deduction with respect to such contributions under section 404 of such Code, the dollar amount in effect under subclause (I) for the 1st 5 plan years to which this subparagraph applies shall be reduced by $3 for each plan year for which such contributions were made in such amount.

(c) LIABILITY FOR PREMIUM.—

(1) IN GENERAL.—Section 4007 of ERISA (29 U.S.C. 1307) is amended by striking out "plan administrator" each place it appears and inserting in lieu thereof "designated payor".

(2) DESIGNATED PAYOR.—Section 4007 of ERISA (29 U.S.C. 1307) is amended by adding at the end thereof the following new subsection:

"(e)(1) For purposes of this section, the term 'designated payor' means—

"(A) the contributing sponsor or plan administrator in the case of a single-employer plan, and

"(B) the plan administrator in the case of a multiemployer plan.

"(2) If the contributing sponsor of any single-employer plan is a member of a controlled group, each member of such group shall be jointly and severally liable for any premiums required to be paid by such contributing sponsor. For purposes of the preceding sentence, the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986."

(d) DEPOSIT OF PREMIUMS INTO SEPARATE REVOLVING FUND.—Section 4005 of ERISA (relating to establishment of Pension Benefit Guaranty funds) (29 U.S.C. 1305) is amended by redesignating subsections (f) and (g) as subsections (g) and (h) and by inserting after subsection (e) the following new subsection:

"(f)(1) A seventh fund shall be established and credited with—

"(A) premiums, penalties, and interest charges collected under section 4006(a)(3)(A)(i) (not described in subparagraph (B)) to the extent attributable to the amount of the premium in excess of $8.50,

"(B) premiums, penalties, and interest charges collected under section 4006(a)(3)(E), and

"(C) earnings on investments of the fund or on assets credited to the fund.

"(2) Amounts in the fund shall be available for transfer to other funds established under this section with respect to a single-employer plan but shall not be available to pay—

"(A) administrative costs of the corporation, or

"(B) benefits under any plan which was terminated before October 1, 1988,

unless no other amounts are available for such payment.

"(3) The corporation may invest amounts of the fund in such obligations as the corporation considers appropriate."

(e) CONFORMING AMENDMENTS.—Section 4006(c)(1)(A) of ERISA (29 U.S.C. 1306(c)(1)(A)) is amended by striking out "and" at the end of clause (i), by inserting "and before January 1, 1986," after "after

December 31, 1977,", and by adding at the end thereof the following new clause:

"(iii) with respect to each plan year beginning after December 31, 1985, and before January 1, 1988, an amount equal to $8.50 for each individual who was a participant in such plan during the plan year, and".

(f) EFFECTIVE DATE.— 29 USC 1305 note.

(1) IN GENERAL.—The amendments made by this section shall apply to plan years beginning after December 31, 1987.

(2) SEPARATE ACCOUNTING.—The amendments made by subsection (d) shall apply to fiscal years beginning after September 30, 1988.

Subpart D—Miscellaneous Provisions

SEC. 9341. SECURITY REQUIRED UPON ADOPTION OF PLAN AMENDMENT RESULTING IN SIGNIFICANT UNDERFUNDING.

(a) AMENDMENTS TO 1986 CODE.—[99] Subsection (a) of section 401 of the 1986 Code (relating to requirements for qualification) is amended by inserting after paragraph (28) the following new paragraph: [100] 26 USC 401.

"(29) SECURITY REQUIRED UPON ADOPTION OF PLAN AMENDMENT RESULTING IN SIGNIFICANT UNDERFUNDING.—

"(A) IN GENERAL.—If—

"(i) a defined benefit plan (other than a multiemployer plan) adopts an amendment an effect of which is to increase current liability under the plan for a plan year, and

"(ii) the funded current liability percentage of the plan for the plan year in which the amendment takes effect is less than 60 percent, including the amount of the unfunded current liability under the plan attributable to the plan amendment,

the trust of which such plan is a part shall not constitute a qualified trust under this subsection unless such amendment does not take effect until the contributing sponsor (or any member of the controlled group of the contributing sponsor) provides security to the plan.

"(B) FORM OF SECURITY.—The security required under subparagraph (A) shall consist of—

"(i) a bond issued by a corporate surety company that is an acceptable surety for purposes of section 412 of the Employee Retirement Income Security Act of 1974,

"(ii) cash, or United States obligations which mature in 3 years or less, held in escrow by a bank or similar financial institution, or

"(iii) such other form of security as is satisfactory to the Secretary and the parties involved.

"(C) AMOUNT OF SECURITY.—The security shall be in an amount equal to the excess of—

"(i) the lesser of—

"(I) the amount of additional plan assets which would be necessary to increase the funded current

[99] Copy read "CODE—".
[100] Copy read "paragraph:—".

liability percentage under the plan to 60 percent, including the amount of the unfunded current liability under the plan attributable to the plan amendment, or

"(II) the amount of the increase in current liability under the plan attributable to the plan amendment, over

"(ii) $10,000,000.

"(D) RELEASE OF SECURITY.—The security shall be released (and any amounts thereunder shall be refunded together with any interest accrued thereon) at the end of the first plan year which ends after the provision of the security and for which the funded current liability percentage under the plan is not less than 60 percent. The Secretary may prescribe regulations for partial releases of the security by reason of increases in the funded current liability percentage.

Regulations.

"(E) DEFINITIONS.—For purposes of this paragraph, the terms 'current liability', 'funded current liability percentage', and 'unfunded current liability' shall have the meanings given such terms by section 412(l), except that in computing unfunded current liability there shall not be taken into account any unamortized portion of the unfunded old liability amount as of the close of the plan year."

(b) AMENDMENTS TO ERISA.—Part 3 of subtitle B of title I of ERISA (29 U.S.C. 1081 et seq.) is amended—

29 USC 1086.

(1) by redesignating section 307 as section 308; and

(2) by inserting after section 306 the following new section:

"SECURITY REQUIRED UPON ADOPTION OF PLAN AMENDMENT RESULTING IN SIGNIFICANT UNDERFUNDING

29 USC 1085b.

"SEC. 307. (a) IN GENERAL.—If—

"(1) a defined benefit plan (other than a multiemployer plan) adopts an amendment an effect of which is to increase current liability under the plan for a plan year, and

"(2) the funded current liability percentage of the plan for the plan year in which the amendment takes effect is less than 60 percent, including the amount of the unfunded current liability under the plan attributable to the plan amendment,

the contributing sponsor (or any member of the controlled group of the contributing sponsor) shall provide security to the plan.

"(b) FORM OF SECURITY.—The security required under subsection (a) shall consist of—

"(1) a bond issued by a corporate surety company that is an acceptable surety for purposes of section 412,

"(2) cash, or United States obligations which mature in 3 years or less, held in escrow by a bank or similar financial institution, or

"(3) such other form of security as is satisfactory to the Secretary of the Treasury and the parties involved.

"(c) AMOUNT OF SECURITY.—The security shall be in an amount equal to the excess of—

"(1) the lesser of—

"(A) the amount of additional plan assets which would be necessary to increase the funded current liability percentage under the plan to 60 percent, including the amount of

the unfunded current liability under the plan attributable to the plan amendment, or

"(B) the amount of the increase in current liability under the plan attributable to the plan amendment, over

"(2) $10,000,000.

"(d) RELEASE OF SECURITY.—The security shall be released (and any amounts thereunder shall be refunded together with any interest accrued thereon) at the end of the first plan year which ends after the provision of the security and for which the funded current liability percentage under the plan is not less than 60 percent. The Secretary may prescribe regulations for partial releases of the security by reason of increases in the funded current liability percentage. Regulations.

"(e) DEFINITIONS.—For purposes of this section, the terms 'current liability', 'funded current liability percentage', and 'unfunded current liability' shall have the meanings given such terms by section 302(d), except that in computing unfunded current liability there shall not be taken into account any unamortized portion of the unfunded old liability amount as of the close of the plan year."

(b) CLERICAL AMENDMENT.—The table of contents in section 1 of ERISA (29 U.S.C. 1001 note) is amended by striking out the item relating to section 307 and inserting in lieu thereof the following new items:

"Sec. 307. Security required upon adoption of plan amendment resulting in significant underfunding.
"Sec. 308. Effective dates."

(c) EFFECTIVE DATE.— 26 USC 401 note.

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to plan amendments adopted after the date of the enactment of this Act.

(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of the enactment of this Act, the amendments made by this section shall not apply to plan amendments adopted pursuant to collective bargaining agreements ratified before the date of enactment.

SEC. 9342. REPORTING REQUIREMENTS.

(a) FUNDED PERCENTAGE REQUIRED TO BE SHOWN IN ANNUAL REPORT.—

(1) Subsection (d) of section 103 of ERISA (29 U.S.C. 1023(d)) is amended by redesignating paragraphs (11) and (12) as paragraphs (12) and (13), respectively, and by inserting after paragraph (10) the following new paragraph:

"(11) If the current value of the assets of the plan is less than 60 percent of the current liability under the plan (within the meaning of section 302(d)(7)), such percentage."

(2) Paragraph (3) of section 104(b) of ERISA (29 U.S.C. 1024(b)(3)) is amended by striking out "such other material" and inserting in lieu thereof "such other material (including the percentage determined under section 103(d)(11))".

(b) AMENDMENT OF STATUTE OF LIMITATIONS WITH RESPECT TO CERTAIN REPORTS.—Section 413(a)(2) of ERISA (29 U.S.C. 1113(a)(2)) is amended by striking "(A)" and by striking "or (B)" and all that follows through "title".

(c) PENALTY FOR FAILURE TO PROVIDE ANNUAL REPORT IN COMPLETE FORM.—Section 502(c) of ERISA (29 U.S.C. 1132(c)) is amended—

(1) by inserting "(1)" after "(c)", and by striking "(1) who" and "(2) who" and inserting "(A) who" and "(B) who", respectively; and

(2) by adding at the end the following new paragraph:

"(2) The Secretary may assess a civil penalty of up to $1,000 a day from the date of a plan administrator's failure or refusal to file the annual report required to be filed with the Secretary under section 101(b)(4). For purposes of this paragraph, an annual report that has been rejected under section 104(a)(4) for failure to provide material information shall not be treated as having been filed with the Secretary.".

29 USC 1132 note. Reports.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to reports required to be filed after December 31, 1987.

(2) REGULATIONS.—The Secretary of Labor shall issue the regulations required to carry out the amendments made by subsection (c) not later than January 1, 1989.

SEC. 9343. COORDINATION OF PROVISIONS OF THE INTERNAL REVENUE CODE OF 1986 WITH PROVISIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.[101]

26 USC 401 note.

(a) INTERPRETATION OF INTERNAL REVENUE CODE.—Except to the extent specifically provided in the Internal Revenue Code of 1986 or as determined by the Secretary of the Treasury, titles I and IV of the Employee Retirement Income Security Act of 1974 are not applicable in interpreting such Code.

(b) CLARIFICATION REGARDING EFFECT OF DETERMINATION LETTER BY THE INTERNAL REVENUE SERVICE ON ENFORCEMENT BY THE DEPARTMENT OF LABOR OF FIDUCIARY STANDARDS UNDER[102] ERISA.—Section 3001(d) of ERISA (29 U.S.C. 1201(d)) is amended by adding after the second sentence the following: "The determination of the Secretary of the Treasury shall not be prima facie evidence on issues relating solely to part 4 of subtitle B of title I.".

(c) CLARIFICATION REGARDING RETURNS OF CONTRIBUTIONS UPON RECEIPT OF ADVERSE DETERMINATION LETTERS.—

(1) IN GENERAL.—Subparagraph (B) of section 403(c)(2) of ERISA (29 U.S.C. 1103(c)(2)(B)) is amended to read as follows:

"(B) If a contribution is conditioned on initial qualification of the plan under section 401 or 403(a) of the Internal Revenue Code of 1986, and if the plan receives an adverse determination with respect to its initial qualification, then paragraph (1) shall not prohibit the return of such contribution to the employer within one year after such determination, but only if the application for the determination is made by the time prescribed by law for filing the employer's return for the taxable year in which such plan was adopted, or such later date as the Secretary of the Treasury may prescribe.".

(2) CONFORMING AMENDMENT.—Paragraph (3) of section 403(c) of ERISA (29 U.S.C. 1103(c)(3)) is amended by striking out "4972(b) of the Internal Revenue Code of 1954" and inserting in lieu thereof "4979(c) of the Internal Revenue Code of 1986"

[101] Copy read "1974".
[102] Copy read "UNDER".

SEC. 9344. CLARIFICATION REGARDING THE IMPOSITION OF AN ANNUAL SANCTION FOR PROHIBITED TRANSACTIONS WHICH ARE CONTINUING IN NATURE.

Section 502(i) of ERISA (29 U.S.C. 1132(i)) is amended by striking the second sentence and inserting the following: "The amount of such penalty may not exceed 5 percent of the amount involved in each such transaction (as defined in section 4975(f)(4) of the Internal Revenue Code of 1986) for each year or part thereof during which the prohibited transaction continues, except that, if the transaction is not corrected (in such manner as the Secretary shall prescribe [103] in regulations which shall be consistent with section 4975(f)(5) of such Code) within 90 days after notice from the Secretary (or such longer period as the Secretary may permit), such penalty may be in an amount not more than 100 percent of the amount involved.". Regulations.

SEC. 9345. ADDITIONAL LIMITATIONS ON INVESTMENT BY AN INDIVIDUAL ACCOUNT PLAN FORMING PART OF A FLOOR-OFFSET ARRANGEMENT AND ON INVESTMENT BY AN INDIVIDUAL ACCOUNT PLAN IN EMPLOYER STOCK.

(a) TREATMENT OF INDIVIDUAL ACCOUNT PORTIONS OF FLOOR-OFFSET ARRANGEMENTS.—

(1) IN GENERAL.—Section 407(d)(3) of ERISA (29 U.S.C. 1107(d)(3)) is amended by adding at the end the following new subparagraph:

"(C) The term 'eligible individual account plan' does not include any individual account plan the benefits of which are taken into account in determining the benefits payable to a participant under any defined benefit plan."

(2) TREATMENT OF FLOOR-OFFSET ARRANGEMENT AS SINGLE PLAN.—Section 407(d) of ERISA (29 U.S.C. 1107(d)) is amended by adding at the end the following new paragraph:

"(9) For purposes of this section, an arrangement which consists of a defined benefit plan and an individual account plan shall be treated as 1 plan if the benefits of such arrangement are taken into account in determining the benefits payable under such defined benefit plan."

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to arrangements established after December 17, 1987. 29 USC 1107 note.

(b) RESTRICTIONS ON TREATMENT OF STOCK AS QUALIFYING EMPLOYER SECURITY.—Section 407 of ERISA (29 U.S.C. 1107) is amended—

(1) in subsection (d)(5), by adding at the end the following new sentence: "After December 17, 1987, in the case of a plan other than an eligible individual account plan, stock shall be considered a qualifying employer security only if such stock satisfies the requirements of subsection (f)(1).''; and

(2) by adding at the end the following new subsection:

"(f)(1) Stock satisfies the requirements of this subsection if—

"(A) no more than 25 percent of the aggregate amount of stock of the same class issued and outstanding at the time of acquisition is held by the plan, and

"(B) at least 50 percent of the aggregate amount referred to in subparagraph (A) is held by persons independent of the issuer.

[103] Copy read "presribe".

"(2) Until January 1, 1993, a plan shall not be treated as violating subsection (a) solely by holding stock which fails to satisfy the requirements of paragraph (1) if such stock—

"(A) has been so held since December 17, 1987, or

Contracts.

"(B) was acquired after December 17, 1987, pursuant to a legally binding contract in effect on December 17, 1987, and has been so held at all times after the acquisition.

Contracts.

"(3) After December 17, 1987, no plan may acquire stock which does not satisfy the requirements of paragraph (1) unless the acquisition is made pursuant to a legally binding contract in effect on such date.".

SEC. 9346. INTEREST RATE ON ACCUMULATED CONTRIBUTIONS.

(a) AMENDMENTS TO ERISA.—Section 204(c)(2) of ERISA (29 U.S.C. 1054(c)(2)) is amended—

(1) in subparagraph (C)(iii), by striking "5 percent per annum" and inserting "120 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of a plan year)"; and

(2) in subparagraph (D)—

(A) in the first sentence, by striking ", the rate of interest described in clause (iii) of subparagraph (C), or both,"; and

(B) by striking the second sentence.

26 USC 411.

(b) AMENDMENTS TO 1986 CODE.—Section 411(c)(2) of the 1986 Code (relating to accrued benefit derived from employee contributions) is amended—

(1) in subparagraph (C)(iii), by striking "5 percent per annum" and inserting "120 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of a plan year)"; and

(2) in subparagraph (D)—

(A) in the first sentence, by striking ", the rate of interest described in clause (iii) of subparagraph (C), or both,"; and

(B) by striking the second sentence.

29 USC 1054 note.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to plan years beginning after December 31, 1987.

(2) PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989.—If any amendment made by this section requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 1989, if—

(A) during the period after such amendments made by this section take effect and before such first plan year, the plan is operated in accordance with the requirements of such amendments or in accordance with an amendment prescribed by the Secretary of the Treasury and adopted by the plan, and

(B) such plan amendment applies retroactively to the period after such amendments take effect and such first plan year.

A plan shall not be treated as failing to provide definitely determinable benefits or contributions, or to be operated in accordance with the provisions of the plan, merely because it operates in accordance with this subsection.

Subtitle E—Miscellaneous Provisions

SEC. 9401. RESTORATION OF TRUST FUNDS FOR 1987.

(a) IN GENERAL.—

(1) OBLIGATIONS ISSUED.—Except as provided in subsection (b), within 30 days after the expiration of any debt issuance suspension period to which this section applies, the Secretary of the Treasury shall issue to each Federal fund obligations under chapter 31 of title 31, United States Code, which bear such issue dates, interest rates, and maturity dates as are necessary to ensure that, after such obligations are issued, the holdings of such Federal fund will replicate to the maximum extent practicable the obligations that would have been held by such Federal fund if any—

(A) failure to invest amounts in such Federal fund (or any disinvestment) resulting from the limitation of section 3101(b) of title 31, United States Code, had not occurred, and

(B) issuance of such obligations had occurred immediately on the expiration of the debt issuance suspension period.

(2) INTEREST CREDITED.—On the first normal interest payment date or within 30 days after the expiration of any debt issuance suspension period (whichever is later) to which this section applies, the Secretary of the Treasury shall credit to each Federal fund an amount determined by the Secretary, after taking into account the actions taken pursuant to paragraph (1), to be equal to the income lost by such Federal fund by reason of any failure to invest amounts in such Federal fund (or any disinvestment) resulting from the limitation of such section 3101(b), including any income lost between the expiration of the debt issuance suspension period and the date of the credit.

(b) INTEREST ON MARKET-BASED OBLIGATIONS.—With respect to any Federal fund which invests in market-based special obligations, on the expiration of a debt issuance suspension period to which this section applies, the Secretary of the Treasury shall immediately credit to such fund an amount equal to the interest that would have been earned by such fund during the debt issuance suspension period if the daily balance in such fund that the Secretary was unable to invest by reason of the limitation of such section 3101(b) had been invested each day during such period, overnight, in obligations under chapter 31 of title 31, United States Code, earning interest at a rate determined by the Secretary in accordance with the standard practice of the Department of the Treasury.

(c) INTEREST ON STATE AND LOCAL GOVERNMENT SERIES.—On the expiration of any debt issuance suspension period to which this section applies, the Secretary of the Treasury shall (as of the close of such period) credit to each holder of any obligation which is part of the State and Local Government Series and which is in the nature of a demand deposit an amount equal to the income lost by such holder by reason of not being able to reinvest the principal of, and interest on, such obligation during such period.

(d) DEBT ISSUANCE SUSPENSION PERIODS TO WHICH SECTION APPLIES.—This section shall apply to debt issuance suspension periods beginning on or after July 18, 1987, and ending before January 1, 1988.

(e) CREDITED AMOUNTS TREATED AS INTEREST.—[104] All amounts credited under this section shall be treated as interest on obligations issued under chapter 31 of title 31, United States Code, for all purposes of Federal law.

(f) DEFINITIONS.—For purposes of this section—

(1) DEBT ISSUANCE SUSPENSION PERIOD.—The term "debt issuance suspension period" means any period for which the Secretary of the Treasury determines that the issuance of obligations of the United States sufficient to conduct the orderly financial operations of the United States may not be made without exceeding the limitation imposed by section 3101(b) of title 31, United States Code.

(2) FEDERAL FUND.—The term "Federal fund" means any Federal trust fund or Government account established pursuant to Federal law to which the Secretary of the Treasury has issued or is expressly authorized by law directly to issue obligations under chapter 31 of title 31, United States Code, in respect of public money, money otherwise required to be deposited in the Treasury, or amounts appropriated; except that such term shall not include the Civil Service Retirement and Disability Fund or the Thrift Savings Fund of the Federal Employees' Retirement System.

(g) SPECIAL RULES.—In the case of any debt suspension period beginning on or after July 18, 1987, and ending before the date of the enactment of this Act—

(1) for purposes of determining the date on which the Secretary of the Treasury is required to take the actions described in subsections (a), (b), and (c), such period shall be treated as having ended on such date of enactment, and

(2) the amount required to be credited under subsection (c) shall include any income lost because the credit was not made upon the expiration of such period.

SEC. 9402. 6-MONTH EXTENSION OF PROVISIONS RELATING TO COLLECTION OF NON-TAX DEBTS OWED TO FEDERAL AGENCIES.

26 USC 6402 note.

(a) GENERAL RULE.—Subsection (c) of section 2653 of the Deficit Reduction Act of 1984 is amended by striking out "January 1, 1988" and inserting in lieu thereof "July 1, 1988".

26 USC 6402 note.

(b) CLARIFICATION OF CONGRESSIONAL INTENT AS TO SCOPE OF PROVISION.—

(1) Nothing in the amendments made by section 2653 of the Deficit Reduction Act of 1984 shall be construed as exempting debts of corporations or any other category of persons from the application of such amendments.

(2) It is the intent of the Congress that, to the extent practicable, the amendments made by section 2653 of the Deficit Reduction Act of 1984 shall extend to all Federal agencies (as defined in the amendments made by such section).

Regulations.

(3) The Secretary of the Treasury shall issue regulations to carry out the purposes of this subsection.

26 USC 6402 note.

(c) STUDY BY THE GENERAL ACCOUNTING OFFICE.—The Comptroller General of the United States, in consultation with the Secretary of the Treasury or his delegate, shall conduct a study of the operation and effectiveness of the amendments made by section 2653 of the Deficit Reduction Act of 1984. The study shall compile and evaluate

[104] Copy read "AMOUNTS TREATED AS INTEREST.—".

information on the effect of those amendments on voluntary compliance with the income tax laws. Not later than April 1, 1989, the Comptroller General shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report of the study conducted under this subsection, together with such recommendations as he may deem advisable. Reports.

SEC. 9403. INCREASE IN LIMIT ON LONG-TERM BONDS.

The last sentence of section 3102(a) of title 31, United States Code, is amended by striking out "$250,000,000,000" and inserting in lieu thereof "$270,000,000,000".

Subtitle F—Customs User Fees; Trade and Customs Agency Authorizations

SEC. 9501. CUSTOMS USER FEES.

(a) AMENDMENTS TO CUSTOMS USER FEES PROGRAM.—Section 13031 of the Consolidated Budget Reconciliation Act of 1985 (19 U.S.C. 58c) is amended as follows:

(1) MERCHANDISE PROCESSING FEE IMPOSED ON FOREIGN CONTENT OF CERTAIN SCHEDULE 8 ARTICLES.—

(A) Subsection (a)(9)(A) is amended to read as follows:

"(A) provided for under any item in schedule 8 of the Tariff Schedules of the United States except item 806.30 or 807.00,".

(B) Subsection (b)(8)(A) is amended—

(i) by striking out "and" at the end of clause (i);

(ii) by striking out the period at the end of clause (ii) and inserting a semicolon; and

(iii) by adding at the end thereof the following:

"(iii) in the case of merchandise classified under item 806.30 of the Tariff Schedules of the United States, be applied to the value of the foreign repairs or alterations to the merchandise; and

"(iv) in the case of merchandise classified under item 807.00 of such Schedules, be applied to the full value of the merchandise, less the cost or value of the component United States products.

With respect to merchandise that is classified under item 806.30 or 807.00 of such Schedules and is duty-free, the Secretary may collect the fee charged on the processing of the merchandise under subsection (a) (9) or (10) on the basis of aggregate data derived from financial and manufacturing reports used by the importer in the normal course of business, rather than on the basis of entry-by-entry accounting.".

(2) PROVISION OF CUSTOMS SERVICES.—Subsection (e) is amended—

(A) by redesignating paragraph (4) as paragraph (6);

(B) by inserting after paragraph (3) the following new paragraphs:

"(4) Notwithstanding any other provision of law, all customs services (including, but not limited to, normal and overtime clearance and preclearance services) shall be adequately provided, when requested, for—

"(A) the clearance of any commercial vessel, vehicle, or aircraft or its passengers, crew, stores, material, or cargo arriving, departing, or transiting the United States;

"(B) the preclearance at any customs facility outside the United States of any commercial vessel, vehicle or aircraft or its passengers, crew, stores, material, or cargo; and

"(C) the inspection or release of commercial cargo or other commercial shipments being entered into, or withdrawn from, the customs territory of the United States.

"(5) For purposes of this subsection, customs services shall be treated as being 'adequately provided' if such of those services that are necessary to meet the needs of parties subject to customs inspection are provided in a timely manner taking into account factors such as—

"(A) the unavoidability of weather, mechanical, and other delays;

"(B) the necessity for prompt and efficient passenger and baggage clearance;

"(C) the perishability of cargo;

"(D) the desirability or unavoidability of late night and early morning arrivals from various time zones;

"(E) the availability (in accordance with regulations prescribed under subsection (g)(2)) of customs personnel and resources; and

"(F) the need for specific enforcement checks."; and

(C) by amending paragraph (6) (as redesignated by subparagraph (A)) to read as follows:

"(6) Notwithstanding any other provision of law except paragraph (2), during any period when fees are authorized under subsection (a), no charges, other than such fees, may be collected—

"(A) for any—

"(i) cargo inspection, clearance, or other customs activity, expense, or service performed (regardless whether performed outside of normal business hours on an overtime basis), or

"(ii) customs personnel provided,

in connection with the arrival or departure of any commercial vessel, vehicle, or aircraft, or its passengers, crew, stores, material, or cargo, in the United States;

"(B) for any preclearance or other customs activity, expense, or service performed, and any customs personnel provided, outside the United States in connection with the departure of any commercial vessel, vehicle, or aircraft, or its passengers, crew, stores, material, or cargo, for the United States; or

"(C) in connection with—

"(i) the activation or operation (including Customs Service supervision) of any foreign trade zone or subzone established under the Act of June 18, 1934 (commonly know as the Foreign Trade Zones Act, 19 U.S.C. 81a et seq.), or

"(ii) the designation or operation (including Customs Service supervision) of any bonded warehouse under section 555 of the Tariff Act of 1930 (19 U.S.C. 1555).".

(3) DISPOSITION OF FEES.—Subsection (f) is amended by striking out paragraphs (1), (2), and (3) and inserting the following:

"(f) DISPOSITION OF FEES.—(1) There is established in the general fund of the Treasury a separate account which shall be known as the 'Customs User Fee Account'. Notwithstanding section 524 of the Tariff Act of 1930 (19 U.S.C. 1524), there shall be deposited as offsetting receipts into the Customs User Fee Account all fees

collected under subsection (a) except that portion of such fees that is required under paragraph (3) for the direct reimbursement of appropriations.

"(2) All funds in the Customs User Fee Account shall be available, to the extent provided for in appropriations Acts, to pay the costs (other than costs for which direct reimbursement under paragraph (3) is required) incurred by the United States Customs Service in conducting commercial operations, including, but not limited to, all costs associated with commercial passenger, vessel, vehicle, aircraft, and cargo processing. So long as there is a surplus of funds in the Customs User Fee Account, the Secretary of the Treasury may not reduce personnel staffing levels for providing commercial clearance and preclearance services.

"(3) The Secretary of the Treasury, in accordance with such section 524 and without regard to apportionment or any other administrative practice or limitation, shall directly reimburse, from the fees collected under subsection (a), each appropriation for the amount paid out of that appropriation for the costs incurred by the Secretary in providing—

"(A) inspectional overtime services; and

"(B) all preclearance services;

for which the recipients of such services are not required to reimburse the Secretary of the Treasury. Reimbursement under this paragraph shall apply with respect to each fiscal year occurring after September 30, 1987, and shall be made at least quarterly. To the extent necessary, reimbursement of appropriations under this paragraph may be made on the basis of estimates made by the Secretary of the Treasury of the costs for inspectional overtime and preclearance services, and adjustments shall be made in subsequent reimbursements to the extent that the estimates were in excess of, or less than, the amounts required to be reimbursed.".

(4) REGULATIONS.—Subsection (g) is amended—

(A) by striking out "(g) REGULATIONS.—The" and inserting "(g) REGULATIONS.—(1) In addition to the regulations required under paragraph (2), the "; and

(B) by inserting at the end thereof the following new paragraph:

"(2) The Secretary of the Treasury shall prescribe regulations governing the work shifts of customs personnel at airports. Such regulations shall provide, among such other factors considered appropriate by the Secretary, that—

"(A) the work shifts will be adjusted, as necessary, to meet cyclical and seasonal demands and to minimize the use of overtime;

"(B) the work shifts will not be arbitrarily reduced or compressed; and

"(C) consultation with the Advisory Committee on Commercial Operations of the United States Customs Service (established under section 9501(c) of the Omnibus Budget Reconciliation Act of 1987) will be carried out before adjustments are made in the work shifts.".

(5) EXTENSION OF CUSTOMS USER FEES PROGRAM.—Subsection (j)(3) is amended by striking out "1989" and inserting "1990".

(b) ADDITIONAL PERIOD TO CLAIM CERTAIN REFUNDS.—Section 1893(g)(2) of the Tax Reform Act of 1986 is amended by striking out "90 days after the date of enactment of this Act" and inserting "90 days after the date of the enactment of the Omnibus Budget Reconciliation Act of 1987". 19 USC 58c note.

19 USC 3 note.

(c) ANALYSIS REGARDING THE CES PROGRAM; EFFECT ON IMPLEMENTATION OF PROGRAM.—

(1) The Comptroller General of the United States shall conduct a comprehensive analysis, including a cost-benefit study, of the centralized cargo examination station (CES) concept from the perspective of both the United States Customs Service and business community users. The analysis shall be submitted on the same day to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (hereinafter in this subsection referred to as the "Committees") not later than March 30, 1988, and shall include recommendations as to how best to implement cargo inspection procedures.

(2) The United States Customs Service—

(A) may not, after the date of the enactment of this Act, establish any new centralized cargo examination station at any ocean port, airport, or land border location unless the Customs Service provides to the Committees advance notice, in writing, of not less than 90 days regarding the proposed establishment; and

(B) shall, on such date of enactment, suspend operations at each centralized cargo examination station that was operating at an airport on the day before such date until the 90th day after a date—

(i) that is not earlier than the date on which the analysis required under paragraph (1) is submitted to the Committees, and

(ii) on which the Customs Service provides to the Committees notice, in writing, that it intends to resume such operations at the station.

During the period of suspension of operations under subparagraph (B) at any centralized cargo examination station at an airport, the Secretary of the Treasury shall maintain customs operations and staffing at that airport at a level not less than that which was in effect immediately before the suspension took effect.

19 USC 58c note.

(d) EFFECTIVE DATES.—

(1) Except as otherwise provided in this subsection, the provisions of this section take effect on the date of the enactment of this Act.

(2) The amendments made by subsection (a)(1) apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of enactment of this Act.

(3) The amendment made by subsection (a)(3) shall take effect on October 1, 1987.

SEC. 9502. UNITED STATES INTERNATIONAL TRADE COMMISSION AUTHORIZATIONS.

Section 330(e)(2) of the Tariff Act of 1930 (19 U.S.C. 1330(e)(2)) is amended—

(1) by striking out "1986" and inserting "1988"; and

(2) by striking out "$28,901,000;" and inserting "$35,386,000;".

SEC. 9503. UNITED STATES CUSTOMS SERVICE AUTHORIZATIONS.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 301(b) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)) is amended to read as follows:

"(b) AUTHORIZATION OF APPROPRIATIONS.—

"(1) FOR NONCOMMERCIAL OPERATIONS.—There are authorized to be appropriated for fiscal year 1988 not to exceed $348,192,000 for the salaries and expenses of the United States Customs Service that are incurred in noncommercial operations, of which $171,857.06 shall be available only for concluding Contract TC-82-54 that was awarded for the development and testing of an automatic license plate reader.

"(2) FOR COMMERCIAL OPERATIONS.—There are authorized to be appropriated for fiscal year 1988 not to exceed $615,000,000 from the Customs User Fee Account for the salaries and expenses of the United States Customs Service that are incurred in commercial operations.

"(3) FOR AIR INTERDICTION.—There are authorized to be appropriated for fiscal year 1988 not to exceed $118,309,000 for the operation (including salaries and expenses) and maintenance of the air interdiction program of the United States Customs Service.".

(b) CONGRESSIONAL NOTICE OF CERTAIN ACTIONS.—Section 301 of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075) is amended—

(1) by striking out "USE OF SAVINGS RESULTING FROM ADMINISTRATIVE CONSOLIDATIONS.—" in subsection (f);

(2) by striking out "ALLOCATION OF RESOURCES.—" in subsection (g) and inserting "(1)"; and

(3) by adding at the end of subsection (g) the following new paragraph:

"(2) The Commissioner of Customs shall notify the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives at least 180 days prior to taking any action which would—

"(A) result in any significant reduction in force of employees other than by means of attrition;

"(B) result in any significant reduction in hours of operation or services rendered at any office of the United States Customs Service or any port of entry;

"(C) eliminate or relocate any office of the United States Customs Service;

"(D) eliminate any port of entry; or

"(E) significantly reduce the number of employees assigned to any office of the United States Customs Service or any port of entry.".

(c) ADVISORY COMMITTEE ON COMMERCIAL OPERATIONS OF THE UNITED STATES CUSTOMS SERVICE.— Establishment. 19 USC 2071 note.

(1) The Secretary of the Treasury shall establish an advisory committee which shall be known as the "Advisory Committee on Commercial Operations of the United States Customs Service" (hereafter in this subsection referred to as the "Advisory Committee").

(2)(A) The Advisory Committee shall consist of 20 members appointed by the Secretary of the Treasury.

(B) In making appointments under subparagraph (A), the Secretary of the Treasury shall ensure that—

(i) the membership of the Advisory Committee is representative of the individuals and firms affected by the commercial operations of the United States Customs Service; and

(ii) a majority of the members of the Advisory Committee do not belong to the same political party.

(3) The Advisory Committee shall—

(A) provide advice to the Secretary of the Treasury on all matters involving the commercial operations of the United States Customs Service; and

Reports.

(B) submit an annual report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives that shall—

(i) describe the operations of the Advisory Committee during the preceding year, and

(ii) set forth any recommendations of the Advisory Committee regarding the commercial operations of the United States Customs Service.

(4) The Assistant Secretary of the Treasury for Enforcement shall preside over meetings of the Advisory Committee.

(d) DISSOLUTION OF EXISTING ADVISORY COMMITTEE.—Section 13033 of the Consolidated Budget Reconciliation Act of 1985 is repealed.

19 USC 2071 note.

SEC. 9504. OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE AUTHORIZATIONS.

Section 141(f)(1) of the Trade Act of 1974 (19 U.S.C. 2171(f)(1)) is amended to read as follows:

"(f)(1)(A) There are authorized to be appropriated for fiscal year 1988 to the Office for the purposes of carrying out its functions not to exceed $15,172,000.

"(B) Of the amounts authorized to be appropriated under subparagraph (A) for fiscal year 1988—

"(i) not to exceed $69,000 may be used for entertainment and representation expenses of the Office; and

"(ii) not to exceed $1,000,000 shall remain available until expended.".

Revenue Act of 1987.

TITLE X—REVENUE PROVISIONS

SEC. 10000. SHORT TITLE; AMENDMENT OF THE 1986 CODE.

26 USC 1 note.

(a) SHORT TITLE.—This title may be cited as the "Revenue Act of 1987".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

26 USC 1 *et seq.*

26 USC 15 note.

(c) COORDINATION WITH SECTION 15.—No amendment made by this title shall be treated as a change in a rate of tax for purposes section 15 of the Internal Revenue Code of 1986.

(d) TABLE OF CONTENTS.—

TITLE X—REVENUE PROVISIONS

Subtitle A—Individual Income Tax Provisions

SEC. 10101. EXPENSES OF OVERNIGHT CAMPS NOT ALLOWABLE FOR DEPENDENT CARE CREDIT.

(a) GENERAL RULE.—Subparagraph (A) of section 21(b)(2) (defining employment-related expenses) is amended by adding at the end thereof the following new sentence:

"Such term shall not include any amount paid for services outside the taxpayer's household at a camp where the qualifying individual stays overnight."

26 USC 21 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to expenses paid in taxable years beginning after December 31, 1987.

SEC. 10102. CHANGES TO DEDUCTION FOR QUALIFIED RESIDENCE INTEREST.

(a) GENERAL RULE.—Paragraph (3) of section 163(h) (defining qualified residence interest) is amended to read as follows:

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[105] Copy read "Indian Tribal Governments.".

"(3) QUALIFIED RESIDENCE INTEREST.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified residence interest' means any interest which is paid or accrued during the taxable year on—

"(i) acquisition indebtedness with respect to any qualified residence of the taxpayer, or

"(ii) home equity indebtedness with respect to any qualified residence of the taxpayer.

For purposes of the preceding sentence, the determination of whether any property is a qualified residence of the taxpayer shall be made as of the time the interest is accrued.

"(B) ACQUISITION INDEBTEDNESS.—

"(i) IN GENERAL.—The term 'acquisition indebtedness' means any indebtedness which—

"(I) is incurred in acquiring, constructing, or substantially improving any qualified residence of the taxpayer, and

"(II) is secured by such residence.

Such term also includes any indebtedness secured by such residence resulting from the refinancing of indebtedness meeting the requirements of the preceding sentence (or this sentence); but only to the extent the amount of the indebtedness resulting from such refinancing does not exceed the amount of the refinanced indebtedness.

"(ii) $1,000,000 LIMITATION.—The aggregate amount treated as acquisition indebtedness for any period shall not exceed $1,000,000 ($500,000 in the case of a married individual filing a separate return).

"(C) HOME EQUITY INDEBTEDNESS.—

"(i) IN GENERAL.—The term 'home equity indebtedness' means any indebtedness (other than acquisition indebtedness) secured by a qualified residence to the extent the aggregate amount of such indebtedness does not exceed—

"(I) the fair market value of such qualified residence, reduced by

"(II) the amount of acquisition indebtedness with respect to such residence.

"(ii) LIMITATION.—The aggregate amount treated as home equity indebtedness for any period shall not exceed $100,000 ($50,000 in the case of a separate return by a married individual).

"(D) TREATMENT OF INDEBTEDNESS INCURRED ON OR BEFORE OCTOBER 13, 1987.—

"(i) IN GENERAL.—In the case of any pre-October 13, 1987, indebtedness—

"(I) such indebtedness shall be treated as acquisition indebtedness, and

"(II) the limitation of subparagraph (B)(ii) shall not apply.

"(ii) REDUCTION IN $1,000,000 LIMITATION.—The limitation of subparagraph (B)(ii) shall be reduced (but not below zero) by the aggregate amount of outstanding pre-October 13, 1987, indebtedness.

"(iii) PRE-OCTOBER 13, 1987, INDEBTEDNESS.—The term 'pre-October 13, 1987, indebtedness' means—

"(I) any indebtedness which was incurred on or before October 13, 1987, and which was secured by a qualified residence on October 13, 1987, and at all times thereafter before the interest is paid or accrued, or

"(II) any indebtedness which is secured by the qualified residence and was incurred after October 13, 1987, to refinance indebtedness described in subclause (I) (or refinanced indebtedness meeting the requirements of this subclause) to the extent (immediately after the refinancing) the principal amount of the indebtedness resulting from the refinancing does not exceed the principal amount of the refinanced indebtedness (immediately before the refinancing).

"(iv) LIMITATION ON PERIOD OF REFINANCING.—Subclause (II) of clause (iii) shall not apply to any indebtedness after—

"(I) the expiration of the term of the indebtedness described in clause (iii)(I), or

"(II) if the principal of the indebtedness described in clause (iii)(I) is not amortized over its term, the expiration of the term of the 1st refinancing of such indebtedness (or if earlier, the date which is 30 years after the date of such 1st refinancing)."

(b) CONFORMING AMENDMENTS.—Subsection (h) of section 163 is amended by striking out paragraph (4) and by redesignating paragraph (5) as paragraph (4).

26 USC 163 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1987.

26 USC 219 note.

SEC. 10103. CLARIFICATION OF TREATMENT OF FEDERAL JUDGES.

(a) GENERAL RULE.—A Federal judge—

(1) shall be treated as an active participant for purposes of section 219(g) of the Internal Revenue Code of 1986, and

(2) shall be treated as an employee for purposes of chapter 1 of such Code.

(b) EFFECTIVE DATE.—The provisions of subsection (a) shall apply to taxable years beginning after December 31, 1987.

SEC. 10104. TREATMENT OF REGULATED INVESTMENT COMPANIES UNDER 2-PERCENT FLOOR.

26 USC 67 note.

(a) 1-YEAR DELAY IN TREATMENT OF PUBLICLY OFFERED REGULATED INVESTMENT COMPANIES UNDER 2-PERCENT FLOOR.—

(1) GENERAL RULE.—Section 67(c) of the Internal Revenue Code of 1986 to the extent it relates to indirect deductions through a publicly offered regulated investment company shall apply only to taxable years beginning after December 31, 1987.

(2) PUBLICLY OFFERED REGULATED INVESTMENT COMPANY DEFINED.—For purposes of this subsection—

(A) IN GENERAL.—The term "publicly offered regulated investment company" means a regulated investment company the shares of which are—

(i) continuously offered pursuant to a public offering (within the meaning of section 4 of the Securities Act of 1933, as amended (15 U.S.C. 77a to 77aa)),

(ii) regularly traded on an established securities market, or

(iii) held by or for no fewer than 500 persons at all times during the taxable year.

(B) SECRETARY MAY REDUCE 500 PERSON REQUIREMENT.—The Secretary of the Treasury or his delegate may by regulation decrease the minimum shareholder requirement of subparagraph (A)(iii) in the case of regulated investment companies which experience a loss of shareholders through net redemptions of their shares. Regulations.

(b) CHANGES IN DISTRIBUTION REQUIREMENTS.—

(1) INCREASE IN REQUIRED DISTRIBUTION OF INCOME.—Paragraph (1) of section 4982(b) (defining required distribution) is amended by striking out "90 percent" in subparagraph (B) and inserting in lieu thereof "98 percent".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in the amendments made by section 651 of the Tax Reform Act of 1986. 26 USC 4982 note.

Subtitle B—Business Provisions

PART I—ACCOUNTING PROVISIONS

SEC. 10201. REPEAL OF RESERVE FOR ACCRUAL OF VACATION PAY.

(a) GENERAL RULE.—Section 463 (relating to accrual of vacation pay) is hereby repealed.

(b) TECHNICAL AMENDMENTS.—

(1) Section 81 is hereby repealed.

(2) Subparagraph (B) of section 404(b)(2) is amended to read as follows:

"(B) EXCEPTION.—Subparagraph (A) shall not apply to any benefit provided through a welfare benefit fund (as defined in section 419(e))."

(3) Section 404(a)(5) is amended by adding at the end thereof the following new sentence: "For purposes of this section, any vacation pay which is treated as deferred compensation shall be deductible for the taxable year of the employer in which paid to the employee."

(4) Paragraph (2) of section 419(e) is amended by inserting "or" at the end of subparagraph (B), by striking out ", or" at the end of subparagraph (C), and inserting in lieu thereof a period, and by striking out subparagraph (D).

(5) Paragraph (5) of section 461(h) is amended to read as follows:

"(5) SUBSECTION NOT TO APPLY TO CERTAIN ITEMS.—This subsection shall not apply to any item for which a deduction is allowable under a provision of this title which specifically provides for a deduction for a reserve for estimated expenses."

(6) The table of sections for part II of subchapter B of chapter 1 is amended by striking out the item relating to section 81.

(7) The table of sections for subpart C of part II of subchapter E of chapter 1 is amended by striking out the item relating to section 463.

(c) EFFECTIVE DATE.—

26 USC 404 note.

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1987.

26 USC 463 note.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer who elected to have section 463 of the Internal Revenue Code of 1986 apply for such taxpayer's last taxable year beginning before January 1, 1988, and who is required to change his method of accounting by reason of the amendments made by this section—

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as having been made with the consent of the Secretary, and

(C) the net amount of adjustments required by section 481 of such Code to be taken into account by the taxpayer—

(i) shall be reduced by the balance in the suspense account under section 463(c) of such Code as of the close of such last taxable year, and

(ii) shall be taken into account over the 4-taxable year period beginning with the taxable year following such last taxable year as follows:

In the case of the:	The percentage taken into account is:
1st year	25
2nd year	5
3rd year	35
4th year	35.

Notwithstanding subparagraph (C)(ii), if the period the adjustments are required to be taken into account under section 481 of such Code is less than 4 years, such adjustments shall be taken into account ratably over such shorter period.

SEC. 10202. PROVISIONS RELATING TO INSTALLMENT SALES.

(a) REPEAL OF PROPORTIONATE DISALLOWANCE OF INSTALLMENT METHOD.—

(1) IN GENERAL.—Section 453C (relating to certain indebtedness treated as payment on installment obligations) is hereby repealed.

(2) CONFORMING AMENDMENT.—The table of sections for subpart B of part II of subchapter E of chapter 1 is amended by striking out the item relating to section 453C.

(b) REPEAL OF INSTALLMENT METHOD FOR DEALERS IN PROPERTY.—

(1) IN GENERAL.—Subparagraph (A) of section 453(b)(2) (defining installment sale) is amended to read as follows:

"(A) DEALER DISPOSITIONS.—Any dealer disposition (as defined in subsection (l))."

(2) DEALER DISPOSITION DEFINED.—Section 453 (relating to installment method) is amended by adding at the end thereof the following new subsection:

"(l) DEALER DISPOSITIONS.—For purposes of subsection (b)(2)(A)—

"(1) IN GENERAL.—The term 'dealer disposition' means any of the following dispositions:

"(A) PERSONAL PROPERTY.—Any disposition of personal property by a person who regularly sells or otherwise disposes of personal property on the installment plan.

"(B) REAL PROPERTY.—Any disposition of real property which is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or business.

"(2) EXCEPTIONS.—The term 'dealer disposition' does not include—

"(A) FARM PROPERTY.—The disposition on the installment plan of any property used or produced in the trade or business of farming (within the meaning of section 2032A(e)(4) or (5)).

"(B) TIMESHARES AND RESIDENTIAL LOTS.—

"(i) IN GENERAL.—Any dispositions described in clause (ii) on the installment plan if the taxpayer elects to have paragraph (3) apply to any installment obligations which arise from such dispositions. An election under this paragraph shall not apply with respect to an installment obligation which is guaranteed by any person other than an individual.

"(ii) DISPOSITIONS TO WHICH SUBPARAGRAPH APPLIES.—A disposition is described in this clause if it is a disposition in the ordinary course of the taxpayer's trade or business to an individual of—

"(I) a timeshare right to use or a timeshare ownership interest in residential real property for not more than 6 weeks per year, or a right to use specified campgrounds for recreational purposes, or

"(II) any residential lot, but only if the taxpayer (or any related person) is not to make any improvements with respect to such lot.

For purposes of subclause (I), a timeshare right to use (or timeshare ownership interest in) property held by the spouse, children, grandchildren, or parents of an individual shall be treated as held by such individual.

"(C) CARRYING CHARGES OR INTEREST.—Any carrying charges or interest with respect to a disposition described in subparagraph (A) or (B) which are added on the books of account of the seller to the established cash selling price of the property shall be included in the total contract price of the property and, if such charges or interest are not so included, any payments received shall be treated as applying first against such carrying charges or interest.

"(3) PAYMENT OF INTEREST ON TIMESHARES AND RESIDENTIAL LOTS.—

"(A) IN GENERAL.—In the case of any installment obligation to which paragraph (2)(B) applies, the tax imposed by this chapter for any taxable year for which payment is received on such obligation shall be increased by the amount of interest determined in the manner provided under subparagraph (B).

"(B) COMPUTATION OF INTEREST.—

"(i) IN GENERAL.—The amount of interest referred to in subparagraph (A) for any taxable year shall be determined—

"(I) on the amount of the tax for such taxable year which is attributable to the payments received during such taxable year on installment obligations to which this subsection applies,

"(II) for the period beginning on the date of sale, and ending on the date such payment is received, and

"(III) by using the applicable Federal rate under section 1274 (without regard to subsection (d)(2) thereof) in effect at the time of the sale compounded semiannually.

"(ii) INTEREST NOT TAKEN INTO ACCOUNT.—For purposes of clause (i), the portion of any tax attributable to the receipt of any payment shall be determined without regard to any interest imposed under subparagraph (A).

"(iii) TAXABLE YEAR OF SALE.—No interest shall be determined for any payment received in the taxable year of the disposition from which the installment obligation arises.

"(C) TREATMENT AS INTEREST.—Any amount payable under this paragraph shall be taken into account in computing the amount of any deduction allowable to the taxpayer for interest paid or accrued during such taxable year."

(c) TREATMENT OF INSTALLMENT OBLIGATIONS OF NONDEALERS.—Section 453A (relating to installment method for dealers in personal property) is amended to read as follows:

"SEC. 453A. SPECIAL RULES FOR NONDEALERS OF REAL PROPERTY.

"(a) GENERAL RULE.—In the case of an installment obligation to which this section applies—

"(1) interest shall be paid on the deferred tax liability with respect to such obligation in the manner provided under subsection (c), and

"(2) the pledging rules under subsection (d) shall apply.

"(b) INSTALLMENT OBLIGATIONS TO WHICH SECTION APPLIES.—

"(1) IN GENERAL.—This section shall apply to any obligation which arises from the disposition of real property under the installment method which is property used in the taxpayer's trade or business or property held for the production of rental income, but only if the sales price of such property exceeds $150,000.

"(2) SPECIAL RULE FOR INTEREST PAYMENTS.—For purposes of subsection (a)(1), this section shall apply to an obligation described in paragraph (1) arising during a taxable year only if—

"(A) such obligation is outstanding as of the close of such taxable year, and

"(B) the face amount of all obligations of the taxpayer described in paragraph (1) which arose during, and are outstanding as of the close of, such taxable year exceeds $5,000,000.

Except as provided in regulations, all persons treated as a single employer under subsection (a) or (b) of section 52 shall be treated as one person for purposes of this paragraph.

"(3) EXCEPTION FOR PERSONAL USE AND FARM PROPERTY.—An installment obligation shall not be treated as described in paragraph (1) if it arises from the disposition—

"(A) by an individual of personal use property (within the meaning of section 1275(b)(3)), or

"(B) of any property used or produced in the trade or business of farming (within the meaning of section 2032A(e)(4) or (5)).

"(4) SPECIAL RULE FOR TIMESHARES AND RESIDENTIAL LOTS.—An installment obligation shall not be treated as described in paragraph (1) if it arises from a disposition described in section 453(l)(2)(B), but the provisions of section 453(l)(3) (relating to interest payments on timeshares and residential lots) shall apply to such obligation.

"(5) SALES PRICE.—For purposes of paragraph (1), all sales or exchanges which are part of the same transaction (or a series of related transactions) shall be treated as 1 sale or exchange.

"(c) INTEREST ON DEFERRED TAX LIABILITY.—

"(1) IN GENERAL.—If an obligation to which this section applies is outstanding as of the close of any taxable year, the tax imposed by this chapter for such taxable year shall be increased by the amount of interest determined in the manner provided under paragraph (2).

"(2) COMPUTATION OF INTEREST.—For purposes of paragraph (1), the interest for any taxable year shall be an amount equal to the product of—

"(A) the applicable percentage of the deferred tax liability with respect to such obligation, multiplied by

"(B) the underpayment rate in effect under section 6621(a)(2) for the month with or within which the taxable year ends.

"(3) DEFERRED TAX LIABILITY.—For purposes of this section, the term 'deferred tax liability' means, with respect to any taxable year, the product of—

"(A) the amount of gain with respect to an obligation which has not been recognized as of the close of such taxable year, multiplied by

"(B) the maximum rate of tax in effect under section 1 or 11, whichever is appropriate, for such taxable year.

"(4) APPLICABLE PERCENTAGE.—For purposes of this subsection, the term 'applicable percentage' means, with respect to obligations arising in any taxable year, the percentage determined by dividing—

"(A) the portion of the aggregate face amount of such obligations outstanding as of the close of such taxable year in excess of $5,000,000, by

"(B) the aggregate face amount of such obligations outstanding as of the close of such taxable year.

"(5) REGULATIONS.[106]—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this subsection including regulations providing for the application of this subsection in the case of contingent payments, short taxable years, and pass-thru entities.

"(d) PLEDGES, ETC., OF INSTALLMENT OBLIGATIONS.—

"(1) IN GENERAL.—For purposes of section 453, if any indebtedness (hereinafter in this subsection referred to as 'secured indebtedness') is secured by an installment obligation to which this section applies, the net proceeds of the secured indebted-

[106] Copy read "REGULATIONS—".

ness shall be treated as a payment received on such installment obligation as of the later of—

"(A) the time the indebtedness becomes secured indebtedness, or

"(B) the proceeds of such indebtedness are received by the taxpayer.

"(2) LIMITATION BASED ON TOTAL CONTRACT PRICE.—The amount treated as received under paragraph (1) by reason of any secured indebtedness shall not exceed the excess (if any) of—

"(A) the total contract price, over

"(B) any portion of the total contract price received under the contract before such secured indebtedness was incurred (including amounts previously treated as received under paragraph (1) but not including amounts not taken into account by reason of paragraph (3)).

"(3) LATER PAYMENTS TREATED AS RECEIPT OF TAX PAID AMOUNTS.—If any amount is treated as received under paragraph (1) with respect to any installment obligation, subsequent payments received on such obligation shall not be taken into account for purposes of section 453 to the extent that the aggregate of such subsequent payments does not exceed the aggregate amount treated as received under paragraph (1).

"(4) SECURED INDEBTEDNESS.—For purposes of this subsection indebtedness is secured by an installment obligation to the extent that payment of principal or interest on such indebtedness is directly secured (under the terms of the indebtedness or any underlying arrangements) by any interest in such installment obligation."

(2) CLERICAL AMENDMENT.—The table of sections for subpart B of part II of subchapter E of chapter 1 is amended by striking out the item relating to section 453A and inserting in lieu thereof the following new item:

"Sec. 453A. Special rules for nondealers of real property."

(3) CONFORMING AMENDMENTS.—Sections 381(c)(8) and 691(a)(4) and (5) are each amended by striking out "or 453A" each place it appears.

(d) MINIMUM TAX.—Paragraph (6) of section 56(a) (relating to installment sales of certain property) is amended to read as follows:

"(6) INSTALLMENT SALES OF CERTAIN PROPERTY.—In the case of any disposition after March 1, 1986, of any property described in section 1221(1), income from such disposition shall be determined without regard to the installment method under section 453. This paragraph shall not apply to any disposition with respect to which an election is in effect under section 453(l)(2)(B)."

26 USC 453 note.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to dispositions in taxable years beginning after December 31, 1987.

(2) SPECIAL RULES FOR DEALERS.—

(A) IN GENERAL.—In the case of dealer dispositions (within the meaning of section 453A of the Internal Revenue Code of 1986), the amendments made by subsections (a) and (b) shall apply to installment obligations arising from dispositions after December 31, 1987.

(B) SPECIAL RULES FOR OBLIGATIONS ARISING FROM DEALER DISPOSITIONS AFTER FEBRUARY 28, 1986, AND BEFORE JANUARY 1, 1988.—

(i) IN GENERAL.—In the case of an applicable installment obligation arising from a disposition described in subclause (I) or (II) of section 453C(e)(1)(A)(i) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this section) before January 1, 1988, the amendments made by subsections (a) and (b) shall apply to taxable years beginning after December 31, 1987.

(ii) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer who is required by clause (i) to change its method of accounting for any taxable year with respect to obligations described in clause (i)—

(I) such change shall be treated as initiated by the taxpayer,

(II) such change shall be treated as made with the consent of the Secretary of the Treasury or his delegate, and

(III) the net amount of adjustments required by section 481 of the Internal Revenue Code of 1986 shall be taken into account over a period not longer than 4 taxable years.

(3) SPECIAL RULE FOR NONDEALERS.—

(A) ELECTION.—A taxpayer may elect, at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe, to have the amendments made by subsections (a) and (c) apply to taxable years ending after December 31, 1986, with respect to dispositions and pledges occurring after August 16, 1986.

(B) PLEDGING RULES.—Except as provided in subparagraph (A)—

(i) IN GENERAL.—Section 453A(d) of the Internal Revenue Code of 1986 shall apply to any installment obligation which is pledged to secure any secured indebtedness (within the meaning of section 453A(d)(4) of such Code) after December 17, 1987, in taxable years ending after such date.

(ii) COORDINATION WITH SECTION 453C.—For purposes of section 453C of such Code (as in effect before its repeal), the face amount of any obligation to which section 453A(d) of such Code applies shall be reduced by the amount treated as payments on such obligation under section 453A(d) of such Code and the amount of any indebtedness secured by it shall not be taken into account.

(4) MINIMUM TAX.—The amendment made by subsection (d) shall apply to dispositions in taxable years beginning after December 31, 1986.

(5) COORDINATION WITH TAX REFORM ACT OF 1986.—The amendments made by this section shall not apply to any installment obligation or to any taxpayer during any period to the extent the amendments made by section 811 of the Tax Reform Act of 1986 do not apply to such obligation or during such period.

SEC. 10203. REDUCTION IN PERCENTAGE OF ITEMS TAKEN INTO ACCOUNT UNDER COMPLETED CONTRACT METHOD.

(a) IN GENERAL.—Section 460(a) (relating to percentage of completion—capitalized cost method) is amended—

(1) by striking out "40 percent" each place it appears in the text and heading thereof and inserting in lieu thereof "70 percent", and

(2) by striking out "60 percent" and inserting in lieu thereof "30 percent".

26 USC 460 note.

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to contracts entered into after October 13, 1987.

(2) SPECIAL RULE FOR CERTAIN SHIP CONTRACTS.—

(A) IN GENERAL.—The amendments made by this section shall not apply in the case of a qualified ship contract.

(B) QUALIFIED SHIP CONTRACT.—For purposes of subparagraph (A), the term "qualified ship contract" [107] means any contract for the construction in the United States of not more than 5 ships if—

(i) such ships will not be constructed (directly or indirectly) for the Federal Government, and

(ii) the taxpayer reasonably expects to complete such contract within 5 years of the contract commencement date (as defined in section 460(g) of the Internal Revenue Code of 1986).

26 USC 263A note.

SEC. 10204. AMORTIZATION OF PAST SERVICE PENSION COSTS.

(a) IN GENERAL.—For purposes of sections 263A and 460 of the Internal Revenue Code of 1986, the allocable costs (within the meaning of section 263A(a)(2) or section 460(c) of such Code, whichever is applicable) with respect to any property shall include contributions paid to or under a pension or annuity plan whether or not such contributions represent past service costs.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), subsection (a) shall apply to costs incurred after December 31, 1987, in taxable years ending after such date.

(2) SPECIAL RULE FOR INVENTORY PROPERTY.—In the case of any property which is inventory in the hands of the taxpayer—

(A) IN GENERAL.—Subsection (a) shall apply to taxable years beginning after December 31, 1987.

(B) CHANGE IN METHOD OF ACCOUNTING.—If the taxpayer is required by this section to change its method of accounting for any taxable year—

(i) such change shall be treated as initiated by the taxpayer,

(ii) such change shall be treated as made with the consent of the Secretary of the Treasury or his delegate, and

(iii) the net amount of adjustments required by section 481 of the Internal Revenue Code of 1986 shall be taken into account over a period not longer than 4 taxable years.

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[107] Copy read " 'qualified ship contract' ".

SEC. 10205. CERTAIN FARM CORPORATIONS REQUIRED TO USE ACCRUAL METHOD OF ACCOUNTING.

(a) GENERAL RULE.—Section 447 (relating to method of accounting for corporations engaged in farming) is amended by striking out subsections (c) and (e), by redesignating subsection (d) as subsection (e), and by inserting after subsection (b) the following new subsections:

"(c) EXCEPTION FOR CERTAIN CORPORATIONS.—For purposes of subsection (a), a corporation shall be treated as not being a corporation if it is—

"(1) an S corporation, or

"(2) a corporation the gross receipts of which meet the requirements of subsection (d).

"(d) GROSS RECEIPTS REQUIREMENTS.—

"(1) IN GENERAL.—A corporation meets the requirements of this subsection if, for each prior taxable year beginning after December 31, 1975, such corporation (and any predecessor corporation) did not have gross receipts exceeding $1,000,000. For purposes of the preceding sentence, all corporations which are members of the same controlled group of corporations (within the meaning of section 1563(a)) shall be treated as 1 corporation.

"(2) SPECIAL RULES FOR FAMILY CORPORATIONS.—

"(A) IN GENERAL.—In the case of a family corporation, paragraph (1) shall be applied—

"(i) by substituting 'December 31, 1985,' for 'December 31, 1975,'; and

"(ii) by substituting '$25,000,000' for '$1,000,000'.

"(B) GROSS RECEIPTS TEST.—

"(i) CONTROLLED GROUPS.—Notwithstanding the last sentence of paragraph (1), in the case of a family corporation—

"(I) except as provided by the Secretary, only the applicable percentage of gross receipts of any other member of any controlled group of corporations of which such corporation is a member shall be taken into account, and

"(II) under regulations, gross receipts of such corporation or of another member of such group shall not be taken into account by such corporation more than once.

"(ii) PASS-THRU ENTITIES.—For purposes of paragraph (1), if a family corporation holds directly or indirectly any interest in a partnership, estate, trust or other pass-thru entity, such corporation shall take into account its proportionate share of the gross receipts of such entity.

"(iii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the term 'applicable percentage' means the percentage equal to a fraction—

"(I) the numerator of which is the fair market value of the stock of another corporation held directly or indirectly as of the close of the taxable year by the family corporation, and

"(II) the denominator of which is the fair market value of all stock of such corporation as of such time.

For purposes of this clause, the term 'stock' does not include stock described in section 1563(c)(1).[108]

"(C) FAMILY CORPORATION.—For purposes of this section,[108a] the term 'family corporation' means—

"(i) any corporation if at least 50 percent of the total combined voting power of all classes of stock entitled to vote, and at least 50 percent of all other classes of stock of the corporation, are owned by members of the same family, and

"(ii) any corporation described in subsection (h)."

(b) SUSPENSE ACCOUNT IN LIEU OF 481 ADJUSTMENTS.—Section 447 is amended by adding at the end thereof the following new subsection:

"(i) SUSPENSE ACCOUNT FOR FAMILY CORPORATIONS.—

"(1) IN GENERAL.—If any family corporation is required by this section to change its method of accounting for any taxable year (hereinafter in this subsection referred to as the 'year of the change'), notwithstanding subsection (f), such corporation shall establish a suspense account under this subsection in lieu of taking into account adjustments under section 481(a) with respect to amounts included in the suspense account.

"(2) INITIAL OPENING BALANCE.—The initial opening balance of the account described in paragraph (1) shall be the lesser of—

"(A) the net adjustments which would have been required to be taken into account under section 481 but for this subsection, or

"(B) the amount of such net adjustments determined as of the beginning of the taxable year preceding the year of change.

If the amount referred to in subparagraph (A) exceeds the amount referred to in subparagraph (B), notwithstanding paragraph (1), such excess shall be included in gross income in the year of the change.

"(3) REDUCTION IN ACCOUNT IF FARMING BUSINESS CONTRACTS.—If—

"(A) the gross receipts of the corporation from the trade or business of farming for the year of the change or any subsequent taxable year, is less than

"(B) such gross receipts for the taxpayer's last taxable year beginning before the year of the change (or for the most recent taxable year for which a reduction in the suspense account was made under this paragraph),

the amount in the suspense account (after taking into account prior reductions) shall be reduced by the percentage by which the amount described in subparagraph (A) is less than the amount described in subparagraph (B).

"(4) INCOME INCLUSION.—Any reduction in the suspense account under paragraph (3) shall be included in gross income for the taxable year of the reduction.

"(5) INCLUSION WHERE CORPORATION CEASES TO BE A FAMILY CORPORATION.—

"(A) IN GENERAL.—If the corporation ceases to be a family corporation during any taxable year, the amount in the suspense account (after taking into account prior reduc-

[108] Copy read "1563(c)(1)." ".
[108a] Copy read "section.".

tions) shall be included in gross income for such taxable year.

"(B) SPECIAL RULE FOR CERTAIN TRANSFERS.—For purposes of subparagraph (A), any transfer in a corporation after December 15, 1987, shall be treated as a transfer to a person whose ownership could not qualify such corporation as a family corporation unless it is a transfer—

"(i) to a member of the family of the transferor, or

"(ii) in the case of a corporation described in subsection (h), to a member of a family which on December 15, 1987, held stock in such corporation which qualified the corporation under subsection (h).

"(6) SUBCHAPTER C TRANSACTIONS.—The application of this subsection with respect to a taxpayer which is a party to any transaction with respect to which there is nonrecognition of gain or loss to any party by reason of subchapter C shall be determined under regulations prescribed by the Secretary."

(c) TECHNICAL AMENDMENTS.—

(1) Subsection (e) of section 447 (as redesignated by subsection (a)) is amended by striking out "subsection (c)(2)" and inserting in lieu thereof "subsection (d)".

(2) Paragraph (1) of section 447(h) is amended—

(A) by striking out "This section shall not apply to any corporation" and inserting in lieu thereof "A corporation is described in this subsection",

(B) by striking out "subsection (d)" each place it appears and inserting in lieu thereof "subsection (e)", and

(C) by striking out "subsection (d)(1)" each place it appears and inserting in lieu thereof "subsection (e)(1)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1987. 26 USC 447 note.

SEC. 10206. ENTITIES MAY ELECT TAXABLE YEARS OTHER THAN REQUIRED TAXABLE YEAR.

(a) ELECTION OF DIFFERENT YEAR.—

(1) IN GENERAL.—Part I of subchapter E of chapter 1 (relating to accounting periods) is amended by adding at the end thereof the following new section:[109]

"SEC. 444. ELECTION OF TAXABLE YEAR OTHER THAN REQUIRED TAXABLE YEAR. 26 USC 444.

"(a) GENERAL RULE.—Except as provided in subsections (b) and (c), a partnership, S corporation, or personal service corporation may elect to have a taxable year other than the required taxable year.

"(b) LIMITATIONS ON TAXABLE YEARS WHICH MAY BE ELECTED.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), an election may be made under subsection (a) only if the deferral period of the taxable year elected is not longer than 3 months.

"(2) CHANGES IN TAXABLE YEAR.—Except as provided in paragraph (3), in the case of an entity changing a taxable year, an election may be made under subsection (a) only if the deferral period of the taxable year elected is not longer than the shorter of—

"(A) 3 months, or

[109] Copy read "section.".

"(B) the deferral period of the taxable year which is being changed.

"(3) SPECIAL RULE FOR ENTITIES RETAINING 1986 TAXABLE YEARS.—In the case of an entity's 1st taxable year beginning after December 31, 1986, an entity may elect a taxable year under subsection (a) which is the same as the entity's last taxable year beginning in 1986.

"(4) DEFERRAL PERIOD.—For purposes of this subsection, the term 'deferral period' means, with respect to any taxable year of the entity, the months between—

"(A) the beginning of such year, and

"(B) the close of the 1st required taxable year ending within such year.

"(c) EFFECT OF ELECTION.—If an entity makes an election under subsection (a), then—

"(1) in the case of a partnership or S corporation, such entity shall make the payments required by section 7519, and

"(2) in the case of a personal service corporation, such corporation shall be subject to the deduction limitations of section 280H.

"(d) ELECTIONS.—

"(1) PERSON MAKING ELECTION.—An election under subsection (a) shall be made by the partnership, S corporation, or personal service corporation.

"(2) PERIOD OF ELECTION.—

"(A) IN GENERAL.—Any election under subsection (a) shall remain in effect until the partnership, S corporation, or personal service corporation changes its taxable year. Any change to a required taxable year may be made without the consent of the Secretary.

"(B) NO FURTHER ELECTION.—If an election is terminated under subparagraph (A), the partnership, S corporation, or personal service corporation may not make another election under subsection (a).

"(3) TIERED STRUCTURES, ETC.—No election may be made under subsection (a) with respect to an entity which is part of a tiered structure other than a tiered structure comprised of 1 or more partnerships or S corporations all of which have the same taxable year.

"(e) REQUIRED TAXABLE YEAR.—For purposes of this section, the term 'required taxable year' means the taxable year determined under section 706(b), 1378, or 441(i) without taking into account any taxable year which is allowable by reason of business purposes. Solely for purposes of the preceding sentence, sections 706(b), 1378, and 441(i) shall be treated as in effect for taxable years beginning before January 1, 1987.

"(f) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section, including regulations to prevent the avoidance of subsection (b)(2)(B) or (d)(2)(B) through the change in form of an entity."

(2) CONFORMING AMENDMENT.—The table of sections for part I of subchapter E of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 444. Election of taxable year other than required taxable year."

(b) REQUIRED PAYMENTS.—

(1) IN GENERAL.—Chapter 77 is amended by adding at the end thereof the following new section:

"SEC. 7519. REQUIRED PAYMENTS FOR ENTITIES ELECTING NOT TO HAVE REQUIRED TAXABLE YEAR. 26 USC 7519.

"(a) GENERAL RULE.—This section applies to a partnership or S corporation for any taxable year, if—

"(1) an election under section 444 is in effect for the taxable year, and

"(2) the required payment determined under subsection (b) for such taxable year (or any preceding taxable year) exceeds $500.

"(b) REQUIRED PAYMENT.—For purposes of this section, the term 'required payment' means, with respect to any applicable election year of a partnership or S corporation, an amount equal to—

"(1) the excess of the product of—

"(A) the applicable percentage of the adjusted highest section 1 rate, multiplied by

"(B) the net base year income of the entity, over

"(2) the amount of the required payment for the preceding applicable election year.

For purposes of paragraph (1)(A), the term 'adjusted highest section 1 rate' means the highest rate of tax in effect under section 1 as of the end of the base year plus 1 percentage point (or, in the case of applicable election years beginning in 1987, 36 percent).

"(c) REFUND OF PAYMENTS.—If the amount determined under subsection (b)(2) exceeds the amount determined under subsection (b)(1), then the entity shall be entitled to a refund of such excess.

"(d) NET BASE YEAR INCOME.—For purposes of this section—

"(1) IN GENERAL.—An entity's net base year income shall be equal to the sum of—

"(A) the deferral ratio multiplied by the entity's net income for the base year, plus

"(B) the excess (if any) of—

"(i) the deferral ratio multiplied by the aggregate amount of applicable payments made by the entity during the base year, over

"(ii) the aggregate amount of such applicable payments made during the deferral period of the base year.

For purposes of this paragraph, the term 'deferral ratio' means the ratio which the number of months in the deferral period of the base year bears to the number of months in the partnership's or S corporation's taxable year.

"(2) NET INCOME.—Net income is determined by taking into account the aggregate amount of the following items—

"(A) PARTNERSHIPS.—In the case of a partnership, net income shall be the amount (not below zero) determined by taking into account the aggregate amount of the partnership's items described in section 702(a) (other than credits).

"(B) S CORPORATIONS.—In the case of an S corporation, net income shall be the amount (not below zero) determined by taking into account the aggregate amount of the S corporation's items described in section 1366(a) (other than credits). If the S corporation was a C corporation for the base year, its taxable income for such year shall be treated as its net income for such year.

"(C) CERTAIN LIMITATIONS DISREGARDED.—For purposes of subparagraph (A) or (B), any limitation on the amount of

any item described in either such paragraph which may be taken into account for purposes of computing the taxable income of a partner or shareholder shall be disregarded.

"(3) APPLICABLE PAYMENTS.—

"(A) IN GENERAL.—The term 'applicable payment' means amounts paid or incurred by a partnership or S corporation which are includible in gross income of a partner or shareholder.

"(B) EXCEPTIONS.—The term 'applicable payment' shall not include any—

"(i) gain from the sale or exchange of property between the partner or shareholder and the partnership or S corporation, and

"(ii) dividend paid by the S corporation.

"(4) APPLICABLE PERCENTAGE.—The applicable percentage is the percentage determined in accordance with the following table:

"If the applicable election year of the partnership or S corporation begins during:	The applicable percentage is:
1987	25
1988	50
1989	75
1990 or thereafter	100.

"(e) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) DEFERRAL PERIOD.—The term 'deferral period' has the meaning given to such term by section 444(b)(4).

"(2) YEARS.—

"(A) BASE YEAR.—The term 'base year' means, with respect to any applicable election year, the taxable year of the partnership or S corporation preceding such applicable election year.

"(B) APPLICABLE ELECTION YEAR.—The term 'applicable election year' means any taxable year of a partnership or S corporation with respect to which an election is in effect under section 444.

"(3) REQUIREMENT OF REPORTING.—Each partnership or S corporation which makes an election under section 444 shall include on any required return or statement such information as the Secretary shall prescribe as is necessary to carry out the provisions of this section.

"(f) ADMINISTRATIVE PROVISIONS.—

Regulations.

"(1) IN GENERAL.—Except as otherwise provided in this subsection or in regulations prescribed by the Secretary, any payment required by this section shall be assessed and collected in the same manner as if it were a tax imposed by subtitle C.

"(2) DUE DATE.—The amount of any payment required by this section shall be paid on or before April 15 of the calendar year following the calendar year in which the applicable election year begins (or such later date as may be prescribed by the Secretary).

"(3) INTEREST.—For purposes of determining interest, any payment required by this section shall be treated as a tax; except that no interest shall be allowed with respect to any refund of a payment made under this section.

"(4) PENALTIES.—

"(A) IN GENERAL.—In the case of any failure by any person to pay on the date prescribed therefor any amount required by this section, there shall be imposed on such person a penalty of 10 percent of the underpayment. For purposes of the preceding sentence, the term 'underpayment' means the excess of the amount of the payment required under this section over the amount (if any) of such payment paid on or before the date prescribed therefor.

"(B) NEGLIGENCE AND FRAUD PENALTIES MADE APPLICABLE.—For purposes of section 6653, any payment required by this section shall be treated as a tax.

"(C) WILLFUL [110] FAILURE.—If any partnership or S corporation willfully fails to comply with the requirements of this section, section 444 shall cease to apply with respect to such partnership or S corporation.

"(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the provisions of this section and section 280H, including regulations for annualizing the income and applicable payments of an entity if the base year is a taxable year of less than 12 months."

(2) CONFORMING AMENDMENT.—The table of sections for chapter 77 is amended by adding at the end thereof the following new item:

"Sec. 7519. Required payments for entities electing not to have required taxable year."

(c) DEDUCTION LIMITATIONS.—

(1) IN GENERAL.—Part IX of subchapter B of chapter 1 (relating to items not deductible) is amended by adding at the end thereof the following new section:

"SEC. 280H. LIMITATION ON CERTAIN AMOUNTS PAID TO EMPLOYEE-OWNERS BY PERSONAL SERVICE CORPORATIONS ELECTING ALTERNATIVE TAXABLE YEARS. 26 USC 280H.

"(a) GENERAL RULE.—If—

"(1) an election by a personal service corporation under section 444 is in effect for a taxable year, and

"(2) such corporation does not meet the minimum distribution requirements of subsection (c) for such taxable year,

then the deduction otherwise allowed under this chapter for applicable amounts paid or incurred by such corporation to employee-owners shall not exceed the maximum deductible amount. The preceding sentence shall not apply for purposes of subchapter G (relating to personal holding companies).

"(b) CARRYOVER OF NONDEDUCTIBLE AMOUNTS.—If any amount is not allowed as a deduction for a taxable year under subsection (a), such amount shall be treated as paid or incurred in the succeeding taxable year.

"(c) MINIMUM DISTRIBUTION REQUIREMENT.—For purposes of this section—

"(1) IN GENERAL.—A personal service corporation meets the minimum distribution requirements of this subsection if the applicable amounts paid or incurred during the deferral period

[110] Copy read "WILLFULL"

of the taxable year (determined without regard to subsection (b)) equal or exceed the lesser of—

"(A) the product of—

"(i) the applicable amounts paid or incurred during the preceding taxable year, divided by the number of months in such taxable year, multiplied by

"(ii) the number of months in the deferral period of the preceding taxable year, or

"(B) the applicable percentage of the adjusted taxable income for the deferral period of the taxable year.

"(2) APPLICABLE PERCENTAGE.—[110a] The term 'applicable percentage' means the percentage (not in excess of 95 percent) determined by dividing—

"(A) the applicable amounts paid or incurred during the 3 taxable years immediately preceding the taxable year, by

"(B) the adjusted taxable income of such corporation for such 3 taxable years.

"(d) MAXIMUM DEDUCTIBLE AMOUNT.—For purposes of this section, the term 'maximum deductible amount' means the sum of—

"(1) the applicable amounts paid or incurred during the deferral period, plus

"(2) an amount equal to the product of—

"(A) the amount determined under paragraph (1), divided by the number of months in the deferral period, multiplied by

"(B) the number of months in the nondeferral period.

"(e) DISALLOWANCE OF NET OPERATING LOSS CARRYBACKS.—No net operating loss carryback shall be allowed to (or from) any taxable year of a personal service corporation to which an election under section 444 applies.

"(f) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) APPLICABLE AMOUNT.—The term 'applicable amount' means any amount paid to an employee-owner which is includible in the gross income of such employee, other than—

"(A) any gain from the sale or exchange of property between the owner-employee and the corporation, or

"(B) any dividend paid by the corporation.

"(2) EMPLOYEE-OWNER.—The term 'employee-owner' has the meaning given such term by section 296A(b)(2).

"(3) NONDEFERRAL AND DEFERRAL PERIODS.—

"(A) DEFERRAL PERIOD.—The term 'deferral period' has the meaning given to such term by section 444(b)(4).

"(B) NONDEFERRAL PERIOD.—The term 'nondeferral period' means the portion of the taxable year of the personal service corporation which occurs after the portion of such year constituting the deferral period.[111]

"(4) ADJUSTED TAXABLE INCOME.—The term 'adjusted taxable income' means taxable income increased by any amount paid or incurred to an employee-owner which was includible in the gross income of such employee-owner."

(2) CLERICAL AMENDMENT.—The table of sections for part IX of subchapter B of chapter 1 is amended by adding at the end thereof the following item:

[110a] Copy read "PERCENTAGE.—".

[111] Copy read "period.' ".

"Sec. 280H. Limitation on certain amounts paid to owner-employees by personal service corporations electing alternative taxable years."

(d) EFFECTIVE DATES.— 26 USC 444 note.

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to taxable years beginning after December 31, 1986.

(2) REQUIRED PAYMENTS.—The amendments made by subsection (b) shall apply to applicable election years beginning after December 31, 1986.

(3) ELECTIONS.—Any election under section 444 of the Internal Revenue Code of 1986 (as added by subsection (a)) for an entity's 1st taxable year beginning after December 31, 1986, shall not be required to be made before the 90th day after the date of the enactment of this Act.

(4) SPECIAL RULE FOR EXISTING ENTITIES ELECTING S CORPORATION STATUS.—If a C corporation (within the meaning of section 1361(a)(2) [112] of the Internal Revenue Code of 1986) with a taxable year other than the calendar year—

(A) made an election after September 18, 1986, and before January 1, 1988, under section 1362 of such Code to be treated as an S corporation, and

(B) elected to have the calendar year as the taxable year of the S corporation,

then section 444(b)(2)(B) of such Code shall be applied by taking into account the deferral period of the last taxable year of the C corporation rather than the deferral period of the taxable year being changed.

PART II—PARTNERSHIP PROVISIONS

SEC. 10211. CERTAIN PUBLICLY TRADED PARTNERSHIPS TREATED AS CORPORATIONS.

(a) GENERAL RULE.—Chapter 79 (relating to definitions) is amended by adding at the end thereof the following new section:

"SEC. 7704. CERTAIN PUBLICLY TRADED PARTNERSHIPS TREATED AS CORPORATIONS. 26 USC 7704.

"(a) GENERAL RULE.—For purposes of this title, except as provided in subsection (c), a publicly traded partnership shall be treated as a corporation.

"(b) PUBLICLY TRADED PARTNERSHIP.—For purposes of this section, the term 'publicly traded partnership' means any partnership if—

"(1) interests in such partnership are traded on an established securities market, or

"(2) interests in such partnership are readily tradable on a secondary market (or the substantial equivalent thereof).

"(c) EXCEPTION FOR PARTNERSHIPS WITH PASSIVE-TYPE INCOME.—

"(1) IN GENERAL.—Subsection (a) shall not apply to any publicly traded partnership for any taxable year if such partnership met the gross income requirements of paragraph (2) for such taxable year and each preceding taxable year beginning after December 31, 1987, during which the partnership (or any predecessor) was in existence.

"(2) GROSS INCOME REQUIREMENTS.—A partnership meets the gross income requirements of this paragraph for any taxable

[112] Copy read "1361(a)(2))".

year if 90 percent or more of the gross income of such partnership for such taxable year consists of qualifying income.

"(3) EXCEPTION NOT TO APPLY TO CERTAIN PARTNERSHIPS WHICH COULD QUALIFY AS REGULATED INVESTMENT COMPANIES.—This subsection shall not apply to any partnership which would be described in section 851(a) if such partnership were a domestic corporation. To the extent provided in regulations, the preceding sentence shall not apply to any partnership a principal activity of which is the buying and selling of commodities (not described in section 1221(1)), or options, futures, or forwards with respect to commodities.

"(d) QUALIFYING INCOME.—For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the term 'qualifying income' means—

"(A) interest,

"(B) dividends,

"(C) real property rents,

"(D) gain from the sale or other disposition of real property (including property described in section 1221(1)),

"(E) income and gains derived from the exploration, development, mining or production, processing, refining, transportation (including pipelines transporting gas, oil, or products thereof), or the marketing of any mineral or natural resource (including fertilizer, geothermal energy, and timber),

"(F) any gain from the sale or disposition of a capital asset (or property described in section 1231(b)) held for the production of income described in any of the foregoing subparagraphs of this paragraph, and

"(G) in the case of a partnership described in the second sentence of subsection (c)(3), income and gains from commodities (not described in section 1221(1)) or futures, forwards, and options with respect to commodities.

"(2) CERTAIN INTEREST NOT QUALIFIED.—Interest shall not be treated as qualifying income if—

"(A) such interest is derived in the conduct of a financial or insurance business, or

"(B) such interest would be excluded from the term 'interest' under section 856(f).

"(3) REAL PROPERTY RENT.—The term 'real property rent' means amounts which would qualify as rent from real property under section 856(d) if such section were applied without regard to paragraph (2)(C) thereof (relating to independent contractor requirements).

"(4) CERTAIN INCOME QUALIFYING UNDER REGULATED INVESTMENT COMPANY OR REAL ESTATE TRUST PROVISIONS.—The term 'qualifying income' also includes any income which would qualify under section 851(b)(2) or 856(c)(2).

"(5) SPECIAL RULE FOR DETERMINING GROSS INCOME FROM CERTAIN REAL PROPERTY SALES.—In the case of the sale or other disposition of real property described in section 1221(1), gross income shall not be reduced by inventory costs.

"(e) INADVERTENT TERMINATIONS.—If—

"(1) a partnership fails to meet the gross income requirements of subsection (c)(2),

"(2) the Secretary determines that such failure was inadvertent,

"(3) no later than a reasonable time after the discovery of such failure, steps are taken so that such partnership once more meets such gross income requirements, and

"(4) such partnership agrees to make such adjustments (including adjustments with respect to the partners) as may be required by the Secretary with respect to such period,

then, notwithstanding such failure, such entity shall be treated as continuing to meet such gross income requirements for such period.

"(f) EFFECT OF BECOMING CORPORATION.—As of the 1st day that a partnership is treated as a corporation under this section, for purposes of this title, such partnership shall be treated as—

"(1) transferring all of its assets (subject to its liabilities) to a newly formed corporation in exchange for the stock of the corporation, and

"(2) distributing such stock to its partners in liquidation of their interests in the partnership."

(b) CLERICAL AMENDMENT.—The table of sections for chapter 79 is amended by adding at the end thereof the following new item:

"Sec. 7704. Certain publicly traded partnerships treated as corporations."

(c) EFFECTIVE DATE.— 26 USC 7704 note.

(1) IN GENERAL.—The amendments made by this section shall apply—

(A) except as provided in subparagraph (B), to taxable years beginning after December 31, 1987, or

(B) in the case of an existing partnership, to taxable years beginning after December 31, 1997.

(2) EXISTING PARTNERSHIP.—For purposes of this subsection—

(A) IN GENERAL.—The term "existing partnership" means any partnership if—

(i) such partnership was a publicly traded partnership on December 17, 1987,

(ii) a registration statement indicating that such partnership was to be a publicly traded partnership was filed with the Securities and Exchange Commission with respect to such partnership on or before such date, or

(iii) with respect to such partnership, an application was filed with a State regulatory commission on or before such date seeking permission to restructure a portion of a corporation as a publicly traded partnership.

(B) SPECIAL RULE WHERE SUBSTANTIAL NEW LINE OF BUSINESS ADDED AFTER DECEMBER 17, 1987.—A partnership which, but for this subparagraph, would be treated as an existing partnership shall cease to be treated as an existing partnership as of the 1st day after December 17, 1987, on which there has been an addition of a substantial new line of business with respect to such partnership.

SEC. 10212. TREATMENT OF PUBLICLY TRADED PARTNERSHIPS UNDER SECTION 469.

(a) GENERAL RULE.—Section 469 (relating to passive activity losses and credits limited) is amended by redesignating subsections (k) and (l) as subsections (l) and (m), respectively, and by inserting after subsection (j) the following new subsection:

"(k) SEPARATE APPLICATION OF SECTION IN CASE OF PUBLICLY TRADED PARTNERSHIPS.—

"(1) IN GENERAL.—This section shall be applied separately with respect to items attributable to each publicly traded partnership (and subsection (i) shall not apply with respect to items attributable to any such partnership). The preceding sentence shall not apply to any credit determined under section 42, or any rehabilitation investment credit (within the meaning of section 48(o)), attributable to a publicly traded partnership to the extent the amount of any such credits exceeds the regular tax liability attributable to income from such partnership.

"(2) PUBLICLY TRADED PARTNERSHIP.—For purposes of this section, the term 'publicly traded partnership' means any partnership if—

"(A) interests in such partnership are traded on an established securities market, or

"(B) interests in such partnership are readily tradable on a secondary market (or the substantial equivalent thereof)."

(b) CONFORMING AMENDMENTS.—Paragraph (3) of section 58(b) and subparagraph (E) of section 163(d)(4) are each amended by striking out "469(l)" and inserting in lieu thereof "469(m)".

26 USC 58 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by section 501 of the Tax Reform Act of 1986.

SEC. 10213. TREATMENT OF PUBLICLY TRADED PARTNERSHIPS FOR UNRELATED BUSINESS TAX.

(a) GENERAL RULE.—Subsection (c) of section 512 (relating to special rules for partnerships) is amended to read as follows:

"(c) SPECIAL RULES FOR PARTNERSHIPS.—

"(1) IN GENERAL.—If a trade or business regularly carried on by a partnership of which an organization is a member is an unrelated trade or business with respect to such organization, such organization in computing its unrelated business taxable income shall, subject to the exceptions, additions, and limitations contained in subsection (b), include its share (whether or not distributed) of the gross income of the partnership from such unrelated trade or business and its share of the partnership deductions directly connected with such gross income.

"(2) SPECIAL RULE FOR PUBLICLY TRADED PARTNERSHIPS.—Notwithstanding any other provision of this section—

"(A) any organization's share (whether or not distributed) of the gross income of a publicly traded partnership (as defined in section 469(k)(2)) shall be treated as gross income derived from an unrelated trade or business, and

"(B) such organization's share of the partnership deductions shall be allowed in computing unrelated business taxable income.

"(3) SPECIAL RULE WHERE PARTNERSHIP YEAR IS DIFFERENT FROM ORGANIZATION'S YEAR.—If the taxable year of the organization is different from that of the partnership, the amounts to be included or deducted in computing the unrelated business taxable income under paragraph (1) or (2) shall be based upon the income and deductions of the partnership for any taxable year of the partnership ending within or with the taxable year of the organization."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to partnership interests acquired after December 17, 1987. 26 USC 512 note.

SEC. 10214. TREATMENT OF CERTAIN PARTNERSHIP ALLOCATIONS.

(a) GENERAL RULE.—Clause (vi) of section 514(c)(9)(B) is amended to read as follows:

"(vi) the real property is held by a partnership unless the partnership meets the requirements of clauses (i) through (v) and unless—

"(I) all of the partners of the partnership are qualified organizations,

"(II) each allocation to a partner of the partnership which is a qualified organization is a qualified allocation (within the meaning of section 168(h)(6)), or

"(III) such partnership meets the requirements of subparagraph (E)."

(b) CERTAIN ALLOCATIONS PERMITTED.—Paragraph (9) of section 514(c) is amended by adding at the end thereof the following new subparagraph:

"(E) CERTAIN ALLOCATIONS PERMITTED.—

"(i) IN GENERAL.—A partnership meets the requirements of this subparagraph if—

"(I) the allocation of items to any partner other than a qualified organization cannot result in such partner having a share of the overall partnership loss for any taxable year greater than such partner's share of the overall partnership income for the taxable year for which such partner's income share will be the smallest,

"(II) the allocation of items to any partner which is a qualified organization cannot result in such partner having a share of the overall partnership income for any taxable year greater than such partner's share of the overall partnership loss for the taxable year for which such partner's loss share will be the smallest, and

"(III) each allocation with respect to the partnership has substantial economic effect within the meaning of section 704(b)(2).

For purposes of this clause, items allocated under section 704(c) shall not be taken into account.

"(ii) SPECIAL RULES.—

"(I) CHARGEBACKS.—Except as provided in regulations, a partnership may without violating the requirements of this subparagraph provide for chargebacks with respect to disproportionate losses previously allocated to qualified organizations and disproportionate income previously allocated to other partners. Any chargeback referred to in the preceding sentence shall not be at a ratio in excess of the ratio under which the loss or income (as the case may be) was allocated.

"(II) PREFERRED RATES OF RETURN, ETC.—To the extent provided in regulations, a partnership may without violating the requirements of this subpara-

graph provide for reasonable preferred returns or reasonable guaranteed payments."

26 USC 514 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) property acquired by the partnership after October 13, 1987, and

(2) partnership interests acquired after October 13, 1987,

except that such amendments shall not apply in the case of any property (or partnership interest) acquired pursuant to a written binding contract in effect on October 13, 1987, and at all times thereafter before such property (or interest) is acquired.

SEC. 10215. STUDY.

The Secretary of the Treasury or his delegate shall conduct a study of—

(1) the issue of treating publicly traded limited partnerships (and other partnerships which significantly resemble corporations) as corporations for Federal income tax purposes, including the issues of disincorporation and opportunities for avoidance of the corporate tax, and

(2) the administrative and compliance issues related to the tax treatment of publicly traded partnerships and other large partnerships.

Reports.

Not later than January 1, 1989, the Secretary of the Treasury or his delegate shall submit a report on such study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, together with such recommendations as he may deem appropriate. Not later than May 1, 1988, an interim report with respect to the issues referred to in paragraph (2) shall be submitted to such Committees.

PART III—CORPORATE PROVISIONS

SEC. 10221. REDUCTION IN DIVIDENDS RECEIVED DEDUCTION FOR DIVIDENDS FROM CORPORATIONS NOT 20-PERCENT OWNED.

(a) GENERAL RULE.—The following provisions are each amended by striking out "80 percent" and inserting in lieu thereof "70 percent":

(1) Section 243(a)(1) (relating to dividends received by corporations).

(2) Subsections (a)(3) and (b)(2) of section 244 (relating to dividends received on certain preferred stock).

(b) RETENTION OF 80-PERCENT DIVIDENDS RECEIVED DEDUCTION FOR DIVIDENDS FROM 20-PERCENT OWNED CORPORATIONS.—Section 243 is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

"(c) RETENTION OF 80-PERCENT DIVIDENDS RECEIVED DEDUCTION FOR DIVIDENDS FROM 20-PERCENT OWNED CORPORATIONS.—

"(1) IN GENERAL.—In the case of any dividend received from a 20-percent owned corporation—

"(A) subsection (a)(1) of this section, and

"(B) subsections (a)(3) and (b)(2) of section 244,

shall be applied by substituting '80 percent' for '70 percent'.

"(2) 20-PERCENT OWNED CORPORATION.—For purposes of this section, the term '20-percent owned corporation' means any corporation if 20 percent or more of the stock of such corpora-

tion (by vote and value) is owned by the taxpayer. For purposes of the preceding sentence, stock described in section 1504(a)(4) shall not be taken into account."

(c) MODIFICATIONS TO TAXABLE YEAR LIMITATIONS.—

(1) Subsection (b) of section 246 (relating to limitation on aggregate amount of deductions) is amended—

(A) by striking out "80 percent" in paragraph (1) and inserting in lieu thereof "the percentage determined under paragraph (3)", and

(B) by adding at the end thereof the following new paragraph:

"(3) SPECIAL RULES.—The provisions of paragraph (1) shall be applied—

"(A) first separately with respect to dividends from 20-percent owned corporations (as defined in section 243(c)(2)) and the percentage determined under this paragraph shall be 80 percent, and

"(B) then separately with respect to dividends not from 20-percent owned corporations and the percentage determined under this paragraph shall be 70 percent and the taxable income shall be reduced by the aggregate amount of dividends from 20-percent owned corporations (as so defined)."

(2) Subparagraph (B) of section 805(a)(4) is amended by striking out "shall be 80 percent of the life insurance company taxable income" and inserting in lieu thereof "shall be the percentage determined under section 246(b)(3) of the life insurance company taxable income (and such limitation shall be applied as provided in section 246(b)(3))".

(d) CONFORMING AMENDMENTS.—

(1) Subparagraph (B) of section 245(c)(1) is amended by striking out "85 percent" and inserting in lieu thereof "70 percent (80 percent in the case of dividends from a 20-percent owned corporation as defined in section 243(c)(2))".

(2) Paragraph (1) of section 246A(a) is amended by striking out "80 percent" and inserting in lieu thereof "70 percent (80 percent in the case of any dividend from a 20-percent owned corporation as defined in section 243(c)(2))".

(3) Subparagraph (A) of section 854(b)(1) is amended by inserting before the period at the end thereof the following: "and such dividend shall be treated as received from a corporation which is not a 20-percent owned corporation".

(4) Paragraph (2) of section 861(a) is amended—

(A) by striking out "100/85th" and inserting in lieu thereof "100/70th", and

(B) by adding at the end thereof the following new sentence:

"In the case of any dividend from a 20-percent owned corporation (as defined in section 243(c)(2)), subparagraph (B) shall be applied by substituting '100/80th' for '100/70th'."

(e) EFFECTIVE DATES.— 26 USC 243 note.

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to dividends received or accrued after December 31, 1987, in taxable years ending after such date.

(2) AMENDMENTS RELATING TO LIMITATIONS.—The amendments made by subsection (b) shall apply to taxable years beginning after December 31, 1987.

SEC. 10222. CERTAIN EARNINGS AND PROFITS ADJUSTMENTS NOT TO APPLY FOR CERTAIN PURPOSES.

(a) SPECIAL RULE FOR DETERMINING ADJUSTED BASIS OF STOCK OF MEMBERS OF AFFILIATED GROUP.—

(1) IN GENERAL.—Section 1503 (relating to computation and payment of tax by affiliated group) is amended by adding at the end thereof the following new subsection:

"(e) SPECIAL RULE FOR DETERMINING ADJUSTMENTS TO BASIS.—

"(1) IN GENERAL.—Solely for purposes of determining gain or loss on the disposition of intragroup stock, in determining the adjustments to the basis of such intragroup stock on account of the earnings and profits of any member of an affiliated group for any consolidated year—

"(A) such earnings and profits shall be determined as if section 312 were applied for such taxable year (and all preceding consolidated years of the member with respect to such group) without regard to subsections (k) and (n) thereof, and

"(B) earnings and profits shall not include any amount excluded from gross income under section 108 to the extent the amount so excluded was not applied to reduce tax attributes (other than basis in property).

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) INTRAGROUP STOCK.—The term 'intragroup stock' means any stock which—

"(i) is in a corporation which is or was a member of an affiliated group of corporations, and

"(ii) is held by another member of such group.

Such term includes any other property the basis of which is determined (in whole or in part) by reference to the basis of stock described in the preceding sentence.

"(B) CONSOLIDATED YEAR.—The term 'consolidated year' means any taxable year for which the affiliated group makes a consolidated return."

26 USC 1503 note.

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by paragraph (1) shall apply to any intragroup stock disposed of after December 15, 1987. For purposes of determining the adjustments to the basis of such stock, such amendment shall be deemed to have been in effect [113] for all periods whether before, on, or after December 15, 1987.

(B) EXCEPTION.—The amendment made by paragraph (1) shall not apply to any intragroup stock disposed of after December 15, 1987, and before January 1, 1989, if such disposition is pursuant to a written binding contract, governmental order, letter of intent or preliminary agreement, or stock acquisition agreement, in effect on or before December 15, 1987.

(b) DISTRIBUTIONS RECEIVED BY 20-PERCENT CORPORATE SHAREHOLDERS.—

[113] Copy read "been effect".

(1) IN GENERAL.—Paragraph (1) of section 301(f) (relating to special rule for certain distributions received by 20-percent corporate shareholders) is amended by striking out "subsection (n) thereof" and inserting in lieu thereof "subsections (k) and (n) thereof".

(2) EFFECTIVE DATES.— 26 USC 301 note.

(A) IN GENERAL.—The amendment made by paragraph (1) shall apply to distributions after December 15, 1987. For purposes of applying such amendment to any such distribution—

(i) for purposes of determining earnings and profits, such amendment shall be deemed to be in effect for all periods whether before, on, or after December 15, 1987, but

(ii) such amendment shall not affect the determination of whether any distribution on or before December 15, 1987, is a dividend and the amount of any reduction in accumulated earnings and profits on account of any such distribution.

(B) EXCEPTION.—The amendment made by paragraph (1) shall not apply for purposes of determining gain or loss on any disposition described in subsection (a)(2)(B) of this section.

SEC. 10223. TREATMENT OF MIRROR SUBSIDIARY TRANSACTIONS.

(a) CONSOLIDATED RETURN REGULATIONS NOT TO APPLY FOR [114] PURPOSES OF NONRECOGNITION UNDER SECTION 337.—Subsection (c) of section 337 (defining 80-percent distributee) is amended by adding at the end thereof the following new sentence: "For purposes of this section, the determination of whether any corporation is an 80-percent distributee shall be made without regard to any consolidated return regulation."

(b) AMENDMENT TO SECTION 355.—Subparagraph (D) of section 355(b)(2) (relating to requirements as to active business) is amended—

(1) by amending clause (i) to read as follows:

"(i) was not acquired by any distributee corporation directly (or through 1 or more corporations, whether through the distributing corporation or otherwise) within the period described in subparagraph (B), or",

(2) by striking out "by another corporation" in clause (ii) and inserting in lieu thereof "such distributee corporation", and

(3) by adding at the end thereof the following new sentence: "For purposes of subparagraph (D), all distributee corporations which are members of the same affiliated group (as defined in section 1504(a) without regard to section 1504(b)) shall be treated as 1 distributee corporation."

(c) AMENDMENT TO SECTION 304.—Subsection (b) of section 304 (relating to redemption through use of related corporations) is amended by adding at the end thereof the following new paragraph:

"(4) TREATMENT OF CERTAIN INTRAGROUP TRANSACTIONS.—

"(A) IN GENERAL.—In the case of any transfer described in subsection (a) of stock of 1 member of an affiliated group to another member of such group, proper adjustments shall be made to—

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[114] Copy read "TO APPLY FOR PURPOSES".

"(i) the adjusted basis of any intragroup stock, and

"(ii) the earnings and profits of any member of such group,

to the extent necessary to carry out the purposes of this section.

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) AFFILIATED GROUP.—The term 'affiliated group' has the meaning given such term by section 1504(a).

"(ii) INTRAGROUP STOCK.—The term 'intragroup stock' means any stock which—

"(I) is in a corporation which is a member of an affiliated group, and

"(II) is held by another member of such group."

26 USC 304 note.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to distributions or transfers after December 15, 1987.

(2) EXCEPTIONS.—

(A) DISTRIBUTIONS.—The amendments made by this section shall not apply to any distribution after December 15, 1987, and before January 1, 1993, if—

(i) 80 percent or more of the stock of the distributing corporation was acquired by the distributee before December 15, 1987, or

Contracts.

(ii) 80 percent or more of the stock of the distributing corporation was acquired by the distributee before January 1, 1989, pursuant to a binding written contract or tender offer in effect on December 15, 1987.

For purposes of the preceding sentence, stock described in section 1504(a)(4) of the Internal Revenue Code of 1986 shall not be taken into account.

(B) SECTION 304 TRANSFERS.—The amendment made by subsection (c) shall not apply to any transfer after December 15, 1987, and before January 1, 1993, if such transfer is—

(i) between corporations which are members of the same affiliated group on December 15, 1987, or

Contracts.

(ii) between corporations which become members of the same affiliated group before January 1, 1989, pursuant to a binding written contract or tender offer in effect on December 15, 1987.

(C) DISTRIBUTIONS COVERED BY PRIOR TRANSITION RULE.—The amendments made by this section shall not apply to any distribution to which the amendments made by subtitle D of title VI of the Tax Reform Act of 1986 do not apply.

SEC. 10224. BENEFITS OF GRADUATED CORPORATE RATES NOT ALLOWED TO PERSONAL SERVICE CORPORATIONS.

(a) GENERAL RULE.—Subsection (b) of section 11 (relating to corporate tax rates) is amended to read as follows:

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of the tax imposed by subsection (a) shall be the sum of—

"(A) 15 percent of so much of the taxable income as does not exceed $50,000,

"(B) 25 percent of so much of the taxable income as exceeds $50,000 but does not exceed $75,000, and

"(C) 34 percent of so much of the taxable income as exceeds $75,000.

In the case of a corporation which has taxable income in excess of $100,000 for any taxable year, the amount of tax determined under the preceding sentence for such taxable year shall be increased by the lesser of (i) 5 percent of such excess, or (ii) $11,750.

"(2) CERTAIN PERSONAL SERVICE CORPORATIONS NOT ELIGIBLE FOR GRADUATED RATES.—Notwithstanding paragraph (1), the amount of the tax imposed by subsection (a) on the taxable income of a qualified personal service corporation (as defined in section 448(d)(2)) shall be equal to 34 percent of the taxable income."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1987. 26 USC 11 note.

SEC. 10225. AMENDMENTS TO SECTION 382.

(a) TREATMENT OF WORTHLESS STOCK.—Paragraph (4) of section 382(g) (defining ownership change) is amended by adding at the end thereof the following new subparagraph:

"(D) TREATMENT OF WORTHLESS STOCK.—If any stock held by a 50-percent shareholder is treated by such shareholder as becoming worthless during any taxable year of such shareholder and such stock is held by such shareholder as of the close of such taxable year, for purposes of determining whether an ownership change occurs after the close of such taxable year, such shareholder—

"(i) shall be treated as having acquired such stock on the 1st day of his 1st succeeding taxable year, and

"(ii) shall not be treated as having owned such stock during any prior period.

For purposes of the preceding sentence, the term '50-percent shareholder' means any person owning 50 percent or more of the stock of the corporation at any time during the 3-year period ending on the last day of the taxable year with respect to which the stock was so treated."

(b) TREATMENT OF DEPRECIATION UNDER BUILT-IN LOSS RULES.—Subparagraph (B) of section 382(h)(2) (defining recognized built-in loss) is amended by adding at the end thereof the following new sentence:

"Such term includes any amount allowable as depreciation, amortization, or depletion for any period within the recognition period except to the extent the new loss corporation establishes that the amount so allowable is not attributable to the excess described in clause (ii)."

(c) EFFECTIVE DATES.— 26 USC 382 note.

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply in the case of stock treated as becoming worthless in taxable years beginning after December 31, 1987.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply in the case of ownership changes (as defined in section 382 of the Internal Revenue Code of 1986 as amended by subsection (a)) after December 15, 1987; except that such amendment shall not apply in the case of any ownership change pursuant to a binding written contract which was in effect on December 15, 1987, and at all times thereafter before such ownership change. Contracts.

SEC. 10226. LIMITATION ON USE OF PREACQUISITION LOSSES TO OFFSET BUILT-IN GAINS.

(a) GENERAL RULE.—Part V of subchapter C of chapter 1 (relating to carryovers) is amended by adding at the end thereof the following new section:

26 USC 384.

"SEC. 384. LIMITATION ON USE OF PREACQUISITION LOSSES TO OFFSET BUILT-IN GAINS.

"(a) GENERAL RULE.—

"(1) STOCK ACQUISITIONS, ETC.—If—

"(A) a corporation (hereinafter in this section referred to as the 'gain corporation') becomes a member of an affiliated group, and

"(B) such corporation has a net unrealized built-in gain,

the income of such corporation for any recognition period taxable year (to the extent attributable to recognized built-in gains) shall not be offset by any preacquisition loss of any other member of such group.

"(2) ASSET ACQUISITIONS.—If—

"(A) the assets of a corporation (hereinafter in this section referred to as the 'gain corporation') are acquired by another corporation—

"(i) in a liquidation to which section 332 applies, or

"(ii) in a reorganization described in subparagraph (A), (C), or (D) of section 368(a)(1), and

"(B) the gain corporation has a net unrealized built-in gain,

the income of the acquiring corporation for any recognition period taxable year (to the extent attributable to recognized built-in gains of the gain corporation) shall not be offset by any preacquisition loss of any corporation (other than the gain corporation).

"(b) EXCEPTION WHERE 50 PERCENT OF GAIN CORPORATION HELD.—Subsection (a) shall not apply if more than 50 percent of the stock (by vote and value) of the gain corporation was held throughout the 5-year period ending on the acquisition date—

"(1) in any case described in subsection (a)(1), by members of the affiliated group referred to in subsection (a)(1), or

"(2) in any case described in subsection (a)(2), by the acquiring corporation or members of such acquiring corporation's affiliated group.

For purposes of the preceding sentence, stock described in section 1504(a)(4) shall not be taken into account.

"(c) DEFINITIONS.—For purposes of this section—

"(1) RECOGNIZED BUILT-IN GAIN.—

"(A) IN GENERAL.—The term 'recognized built-in gain' means any gain recognized during the recognition period on the disposition of any asset except to the extent the gain corporation (or, in any case described in subsection (a)(2), the acquiring corporation) establishes that—

"(i) such asset was not held by the gain corporation on the acquisition date, or

"(ii) such gain exceeds the excess (if any) of—

"(I) the fair market value of such asset on the acquisition date, over

"(II) the adjusted basis of such asset on such date.

"(B) TREATMENT OF CERTAIN INCOME ITEMS.—Any item of income which is properly taken into account for any recognition period taxable year but which is attributable to periods before the acquisition date shall be treated as a recognized built-in gain for the taxable year in which it is properly taken into account and shall be taken into account in determining the amount of the net unrealized built-in gain.

"(C) LIMITATION.—The amount of the recognized built-in gains for any recognition period taxable year shall not exceed—

"(i) the net unrealized built-in gain, reduced by

"(ii) the recognized built-in gains for prior years ending in the recognition period which (but for this section) would have been offset by preacquisition losses.

"(2) ACQUISITION DATE.—The term 'acquisition date' means the date on which the gain corporation becomes a member of the affiliated group or, in any case described in subsection (a)(2), the date of the distribution or transfer in the liquidation or reorganization.

"(3) PREACQUISITION LOSS.—

"(A) IN GENERAL.—The term 'preacquisition loss' means—

"(i) any net operating loss carryforward to the taxable year in which the acquisition date occurs, and

"(ii) any net operating loss for the taxable year in which the acquisition date occurs to the extent such loss is allocable to the period in such year on or before the acquisition date.

Except as provided in regulations, the net operating loss shall, for purposes of clause (ii), be allocated ratably to each day in the year.

"(B) TREATMENT OF RECOGNIZED BUILT-IN LOSS.—In the case of a corporation with a net unrealized built-in loss, the term 'preacquisition loss' includes any recognized built-in loss.

"(4) OTHER DEFINITIONS.—Except as provided in regulations, the terms 'net unrealized built-in gain', 'net unrealized built-in loss', 'recognized built-in loss', 'recognition period', and 'recognition period taxable year', have the same respective meanings as when used in section 382(h), except that the acquisition date shall be taken into account in lieu of the change date.

"(d) LIMITATION ALSO TO APPLY TO EXCESS CREDITS OR NET CAPITAL LOSSES.—Rules similar to the rules of subsection (a) shall also apply in the case of any excess credit (as defined in section 383(a)(2)) or net capital loss.

"(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations to ensure that the purposes of this section may not be circumvented through—

"(1) the use of any provision of law or regulations (including subchapter K of this chapter), or

"(2) contributions of property to the gain corporation."

(b) CLERICAL AMENDMENT.—The table of sections for part V of subchapter C of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 384. Limitation on use of preacquisition losses to offset built-in gains."

26 USC 384 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply in cases where the acquisition date (as defined in section 384(c)(2) of the Internal Revenue Code of 1986 as added by this section) is after December 15, 1987; except that such amendments shall not apply in the case of any transaction pursuant to—

(1) a binding written contract in effect on or before December 15, 1987, or

(2) a letter of intent or agreement of merger signed on or before December 15, 1987.

SEC. 10227. RECAPTURE OF LIFO AMOUNT IN THE CASE OF ELECTIONS BY S CORPORATIONS.

(a) GENERAL RULE.—Section 1363 (relating to effect of election on corporations) is amended by adding at the end thereof the following new subsection:

"(d) RECAPTURE OF LIFO BENEFITS.—

"(1) IN GENERAL.—If—

"(A) an S corporation was a C corporation for the last taxable year before the first taxable year for which the election under section 1362(a) was effective, and

"(B) the corporation inventoried goods under the LIFO method for such last taxable year,

the LIFO recapture amount shall be included in the gross income of the corporation for such last taxable year (and appropriate adjustments to the basis of inventory shall be made to take into account the amount included in gross income under this paragraph).

"(2) ADDITIONAL TAX PAYABLE IN INSTALLMENTS.—

"(A) IN GENERAL.—Any increase in the tax imposed by this chapter by reason of this subsection shall be payable in 4 equal installments.

"(B) DATE FOR PAYMENT OF INSTALLMENTS.—The first installment under subparagraph (A) shall be paid on or before the due date (determined without regard to extensions) for the return of the tax imposed by this chapter for the last taxable year for which the corporation was a C corporation and the 3 succeeding installments shall be paid on or before the due date (as so determined) for the corporation's return for the 3 succeeding taxable years.

"(C) NO INTEREST FOR PERIOD OF EXTENSION.—Notwithstanding section 6601(b), for purposes of section 6601, the date prescribed for the payment of each installment under this paragraph shall be determined under this paragraph.

"(3) LIFO RECAPTURE AMOUNT.—For purposes of this subsection, the term 'LIFO recapture amount' means the amount (if any) by which—

"(A) the inventory amount of the inventory asset under the first-in, first-out method authorized by section 471, exceeds

"(B) the inventory amount of such assets under the LIFO method.

For purposes of the preceding sentence, inventory amounts shall be determined as of the close of the last taxable year referred to in paragraph (1).

"(4) OTHER DEFINITIONS.—For purposes of this subsection—

"(A) LIFO METHOD.—The term 'LIFO method' means the method authorized by section 472.

"(B) INVENTORY ASSETS.—The term 'inventory assets' means stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year.

"(C) METHOD OF DETERMINING INVENTORY AMOUNT.—The inventory amount of assets under a method authorized by section 471 shall be determined—

"(i) if the corporation uses the retail method of valuing inventories under section 472, by using such method, or

"(ii) if clause (i) does not apply, by using cost or market, whichever is lower."

(b) EFFECTIVE DATES.— 26 USC 1363 note.

(1) IN GENERAL.—Except as provided in paragraph (2) the amendment made by subsection (a) shall apply in the case of elections made after December 17, 1987.

(2) EXCEPTION.—The amendment made by subsection (a) shall not apply in the case of any election made by a corporation after December 17, 1987, and before January 1, 1989, if, on or before December 17, 1987—

(A) there was a resolution adopted by the board of directors of such corporation to make an election under subchapter S of chapter 1 of the Internal Revenue Code of 1986, or

(B) there was a ruling request with respect to the business filed with the Internal Revenue Service expressing an intent to make such an election.

SEC. 10228. EXCISE TAX ON RECEIPT OF GREENMAIL.

(a) IN GENERAL.—Subtitle E is amended by adding at the end thereof the following new chapter:

"CHAPTER 54—GREENMAIL

"Sec. 5881. Greenmail.

"SEC. 5881. GREENMAIL.

"(a) IMPOSITION OF TAX.—There is hereby imposed on any person who receives greenmail a tax equal to 50 percent of gain realized by such person on such receipt.

"(b) GREENMAIL.—For purposes of this section, the term 'greenmail' means any consideration transferred by a corporation to directly or indirectly acquire its stock from any shareholder if—

"(1) such shareholder held such stock (as determined under section 1223) for less than 2 years before entering into the agreement to make the transfer,

"(2) at some time during the 2-year period ending on the date of such acquisition—

"(A) such shareholder,

"(B) any person acting in concert with such shareholder, or

"(C) any person who is related to such shareholder or person described in subparagraph (B),

made or threatened to make a public tender offer for stock of such corporation, and

"(3) such acquisition is pursuant to an offer which was not made on the same terms to all shareholders.

For purposes of the preceding sentence, payments made in connection with, or in transactions related to, an acquisition shall be treated as paid in such acquisition.

"(c) OTHER DEFINITIONS.—For purposes of this section—

"(1) PUBLIC TENDER OFFER.—The term 'public tender offer' means any offer to purchase or otherwise acquire stock or assets in a corporation if such offer was or would be required to be filed or registered with any Federal or State agency regulating securities.

"(2) RELATED PERSON.—A person is related to another person if the relationship between such persons would result in the disallowance of losses under section 267 or 707(b).

"(d) TAX APPLIES WHETHER OR NOT GAIN RECOGNIZED.—The tax imposed by this section shall apply whether or not the gain referred to in subsection (a) is recognized."

(b) DENIAL OF INCOME TAX DEDUCTION FOR GREENMAIL TAX.—Paragraph (6) of section 275(a) is amended by striking out "and 46" and inserting in lieu thereof "46, and 54".

(c) CLERICAL AMENDMENT.—The table of chapters for subtitle E is amended by adding at the end thereof the following new item:

"CHAPTER 54. GREENMAIL."

26 USC 5881 note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to consideration received after the date of the enactment of this Act in taxable years ending after such date; except that such amendments shall not apply in the case of any acquisition pursuant to a written binding contract in effect on December 15, 1987, and at all times thereafter before the acquisition.

PART IV—FOREIGN TAX PROVISIONS

SEC. 10231. DENIAL OF FOREIGN TAX CREDIT FOR TAXES PAID OR ACCRUED TO SOUTH AFRICA.

(a) GENERAL RULE.—Paragraph (2) of section 901(j) (relating to denial of foreign tax credit, etc., with respect to certain foreign countries) is amended by adding at the end thereof the following new subparagraph:

"(C) SPECIAL RULE FOR SOUTH AFRICA.—

"(i) IN GENERAL.—In addition to any period during which this subsection would otherwise apply to South Africa, this subsection shall apply to South Africa during the period—

Effective date. Termination date.

"(I) beginning on January 1, 1988, and

"(II) ending on the date the Secretary of State certifies to the Secretary of the Treasury that South Africa meets the requirements of section 311(a) of the Comprehensive Anti-Apartheid Act of 1986 (as in effect on the date of the enactment of this subparagraph).

"(ii) SOUTH AFRICA DEFINED.—For purposes of clause (i), the term 'South Africa' has the meaning given to such term by paragraph (6) of section 3 of the Comprehensive Anti-Apartheid Act of 1986 (as so in effect)."

(b) TECHNICAL AMENDMENTS.—Paragraph (1) of section 901(j) is amended—

(1) by striking out "to which" in subparagraph (A) and inserting in lieu thereof "during which", and

(2) by striking out "any country so identified" and inserting in lieu thereof "such country".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1987. 26 USC 901 note.

PART V—INSURANCE PROVISIONS

SEC. 10241. INTEREST RATE USED IN COMPUTING TAX RESERVES FOR LIFE INSURANCE COMPANIES MAY NOT BE LESS THAN APPLICABLE FEDERAL RATE.

(a) IN GENERAL.—Subparagraph (B) of section 807(d)(2) (relating to method of computing reserves for purposes of determining income) is amended to read as follows:

"(B) the greater of—

"(i) the applicable Federal interest rate, or

"(ii) the prevailing State assumed interest rate, and".

(b) APPLICABLE FEDERAL INTEREST RATE.—

(1) IN GENERAL.—Paragraph (4) of section 807(d) (defining State assumed interest rate) is amended to read as follows:

"(4) APPLICABLE FEDERAL INTEREST RATE; PREVAILING STATE ASSUMED INTEREST RATE.—For purposes of this subsection—

"(A) APPLICABLE FEDERAL INTEREST RATE.—

"(i) IN GENERAL.—Except as provided in clause (ii), the term 'applicable Federal interest rate' means the annual rate determined by the Secretary under section 846(c)(2) for the calendar year in which the contract was issued.

"(ii) ELECTION TO RECOMPUTE FEDERAL INTEREST RATE EVERY 5 YEARS.—

"(I) IN GENERAL.—In computing the amount of the reserve with respect to any contract to which an election under this clause applies for periods during any recomputation period, the applicable Federal interest rate shall be the annual rate determined by the Secretary under section 846(c)(2) for the 1st year of such period. No change in the applicable Federal interest rate shall be made under the preceding sentence unless such change would equal or exceed ½ of 1 percentage point.

"(II) RECOMPUTATION PERIOD.—For purposes of subclause (I), the term 'recomputation period' means, with respect to any contract, the 5 calendar year period beginning with the 5th calendar year beginning after the calendar year in which the contract was issued (and each subsequent 5 calendar year period).

"(III) ELECTION.—An election under this clause shall apply to all contracts issued during the calendar year for which the election was made or during any subsequent calendar year unless such election is revoked with the consent of the Secretary. Contracts.

"(IV) SPREAD NOT AVAILABLE.—Subsection (f) shall not apply to any adjustment required under this clause.

"(B) PREVAILING STATE ASSUMED INTEREST RATE.—

"(i) IN GENERAL.—The term 'prevailing State assumed interest rate' means, with respect to any contract, the highest assumed interest rate permitted to be used in computing life insurance reserves for insurance contracts or annuity contracts (as the case may be) under the insurance laws of at least 26 States. For purposes of the preceding sentence, the effect of nonforfeiture laws of a State on interest rates for reserves shall not be taken into account.

Contracts.

"(ii) WHEN RATE DETERMINED.—The prevailing State assumed interest rate with respect to any contract shall be determined as of the beginning of the calendar year in which the contract was issued."

(2) TECHNICAL AMENDMENTS.—

(A) The third to the last sentence of section 807(c) is amended by striking out "the higher of" and all that follows and inserting in lieu thereof "whichever of the following rates is the highest as of the time such obligation first did not involve life, accident, or health contingencies: the applicable Federal interest rate under subsection (d)(2)(B)(i), the prevailing State assumed interest rate under subsection (d)(2)(B)(ii), or the rate of interest assumed by the company in determining the guaranteed benefit."

(B) Paragraph (2) of section 812(b) is amended—

(i) by striking out "at the prevailing State assumed rate or, where such rate is not used, another appropriate rate" and inserting in lieu thereof "at the greater of the prevailing State assumed rate or the applicable Federal interest rate", and

(ii) by adding at the end thereof the following new sentence:

"In any case where the prevailing State assumed rate is not used, another appropriate rate shall be treated as the prevailing State assumed rate for purposes of subparagraph (A)."

26 USC 807 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contracts issued in taxable years beginning after December 31, 1987.

SEC. 10242. TREATMENT OF FOREIGN INSURANCE COMPANIES.

(a) IN GENERAL.—Section 842 (relating to foreign corporations carrying on insurance business) is amended to read as follows:

26 USC 842.

"SEC. 842. FOREIGN COMPANIES CARRYING ON INSURANCE BUSINESS.

"(a) TAXATION UNDER THIS SUBCHAPTER.—If a foreign company carrying on an insurance business within the United States would qualify under part I or II of this subchapter for the taxable year if (without regard to income not effectively connected with the conduct of any trade or business within the United States) it were a domestic corporation, such company shall be taxable under such part on its income effectively connected with its conduct of any trade or business within the United States. With respect to the remainder of its income which is from sources within the United States, such a foreign company shall be taxable as provided in section 881.

"(b) MINIMUM EFFECTIVELY CONNECTED NET INVESTMENT INCOME.—

"(1) IN GENERAL.—In the case of a foreign company taxable under part I or II of this subchapter for the taxable year, its net investment income for such year which is effectively connected with the conduct of an insurance business within the United States shall be not less than the product of—

"(A) the required United States [115] assets of such company, and

"(B) the domestic investment yield applicable to such company for such year.

"(2) REQUIRED U.S. ASSETS.—

"(A) IN GENERAL.—For purposes of paragraph (1), the required United States[115] assets of any foreign company for any taxable year is an amount equal to the product of—

"(i) the mean of such foreign company's total insurance liabilities on United States business, and

"(ii) the domestic asset/liability percentage applicable to such foreign company for such year.

"(B) TOTAL INSURANCE LIABILITIES.—For purposes of this paragraph—

"(i) COMPANIES TAXABLE UNDER PART I [116].—In the case of a company taxable under part I, the term 'total insurance liabilities' means the sum of the total reserves (as defined in section 816(c)) plus (to the extent not included in total reserves) the items referred to in paragraphs (3), (4), (5), and (6) of section 807(c).

"(ii) COMPANIES TAXABLE UNDER PART [117] II.—In the case of a company taxable under part II, the term 'total insurance liabilities' means the sum of unearned premiums and unpaid losses.

"(C) DOMESTIC ASSET/LIABILITY PERCENTAGE.—The domestic asset/liability percentage applicable for purposes of subparagraph (A)(ii) to any foreign company for any taxable year is a percentage determined by the Secretary on the basis of a ratio—

"(i) the numerator of which is the mean of the assets of domestic insurance companies taxable under the same part of this subchapter as such foreign company, and

"(ii) the denominator of which is the mean of the total insurance liabilities of the same companies.

"(3) DOMESTIC INVESTMENT YIELD.—The domestic investment yield applicable for purposes of paragraph (1)(B) to any foreign company for any taxable year is the percentage determined by the Secretary on the basis of a ratio—

"(A) the numerator of which is the net investment income of domestic insurance companies taxable under the same part of this subchapter as such foreign company, and

"(B) the denominator of which is the mean of the assets of the same companies held for the production of such income.

"(4) ELECTION TO USE WORLDWIDE YIELD.—

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[115] Copy read "U.S.".
[116] Copy read "PART I.—".
[117] Copy read "PART II.—".

"(A) IN GENERAL.—If the foreign company makes an election under this paragraph, such company's worldwide current investment yield shall be taken into account in lieu of the domestic investment yield for purposes of paragraph (1)(B).

"(B) WORLDWIDE CURRENT INVESTMENT YIELD.—For purposes of subparagraph (A), the term 'worldwide current investment yield' means the percentage obtained by dividing—

"(i) the net investment income of the company from all sources, by

"(ii) the mean of all assets of the company (whether or not held in the United States) held for the production of investment income.

"(C) ELECTION.—An election under this paragraph shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

"(5) NET INVESTMENT INCOME.—For purposes of this subsection, the term 'net investment income' means—

"(A) gross investment income (within the meaning of section 834(b)), reduced by

"(B) expenses allocable to such income.

"(c) SPECIAL RULES FOR PURPOSES OF SUBSECTION (b).—

"(1) COORDINATION WITH SMALL LIFE INSURANCE COMPANY DEDUCTION.—In the case of a foreign company taxable under part I, subsection (b) shall be applied before computing the small life insurance company deduction.

"(2) REDUCTION IN SECTION 881 TAXES.—

"(A) IN GENERAL.—The tax under section 881 (determined without regard to this paragraph) shall be reduced (but not below zero) by an amount which bears the same ratio to such tax as—

"(i) the amount of the increase in effectively connected income of the company resulting from subsection (b), bears to

"(ii) the amount which would be subject to tax under section 881 if the amount taxable under such section were determined without regard to sections 103 and 894.

"(B) LIMITATION ON REDUCTION.—The reduction under subparagraph (A) shall not exceed the increase in taxes under part I or II (as the case may be) by reason of the increase in effectively connected income of the company resulting from subsection (b).

"(3) ADJUSTMENT TO LIMITATION ON DEDUCTION FOR POLICYHOLDER DIVIDENDS IN THE CASE OF FOREIGN MUTUAL LIFE INSURANCE COMPANIES.—For purposes of section 809, the equity base of any foreign mutual life insurance company as of the close of any taxable year shall be increased by the excess of—

"(A) the required United States [118] assets of the company (determined under subsection (b)(2)), over

"(B) the mean of the assets held in the United States during the taxable year.

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[118] Copy read "U.S.".

"(4) DATA USED IN DETERMINING DOMESTIC ASSET/LIABILITY PERCENTAGES AND DOMESTIC INVESTMENT YEILDS.—Each domestic asset/liability percentage, and each domestic investment yield, for any taxable year shall be based on such representative data with respect to domestic insurance companies for the second preceding taxable year as the Secretary considers appropriate.

"(d) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations—

"(1) providing for the proper treatment of segregated asset accounts,

"(2) providing for proper adjustments in succeeding taxable years where the company's actual net investment income for any taxable year which is effectively connected with the conduct of an insurance business within the United States exceeds the amount required under subsection (b)(1), and

"(3) providing for the proper treatment of investments in domestic subsidiaries."

(b) PART II COMPANIES SUBJECT TO SAME EFFECTIVELY CONNECTED INCOME RULE AS PART I COMPANIES.—Subparagraph (C) of section 864(c)(4) (relating to income from sources without the United States) is amended by inserting "or part II" after "part I".

(c) REPEAL OF SECTION [119] 813.—

(1) Section 813 (relating to foreign life insurance companies) is hereby repealed.

(2) Subsection (h) of section 816 is amended by striking out "section 813(a)(4)(B)" and inserting in lieu thereof "section 842(c)(1)(A)".

(3) Paragraph (2) of section 4371 is amended by striking out "section 813" and inserting in lieu thereof "section 842(b)".

(4) The table of sections for part I of subchapter L of chapter 1 is amended by striking out the item relating to section 813.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1987. 26 USC 816 note.

SEC. 10243. TREATMENT OF MUTUAL LIFE INSURANCE COMPANY POLICYHOLDER DIVIDENDS FOR PURPOSES OF BOOK PREFERENCE.

(a) GENERAL RULE.—Paragraph (2) of section 56(f) (defining adjusted net book income) is amended by redesignating subparagraph (H) as subparagraph (I) and by inserting after subparagraph (G) the following new subparagraph:

"(H) SPECIAL RULES FOR LIFE INSURANCE COMPANIES.—

"(i) POLICYHOLDER DIVIDENDS OF MUTUAL COMPANIES.—In determining the adjusted net book income of any mutual life insurance company, a reduction shall be allowed for policyholder dividends with respect to any taxable year only to the extent such dividends exceed the differential earnings amount determined for such taxable year under section 809.

"(ii) OTHER ADJUSTMENTS.—To the extent provided by the Secretary, such additional adjustments shall be made as may be necessary to make the calculation of adjusted net book income in the case of any life insur-

[119] Copy read "SECTION 813—".

ance company consistent with the calculation of adjusted net book income generally."

26 USC 56 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1987.

SEC. 10244. CERTAIN INSURANCE SYNDICATES.

(a) STUDY.—The Secretary of the Treasury (or his delegate) shall conduct a study of the proper Federal income tax treatment of income earned by members of insurance or reinsurance syndicates. Not later than April 1, 1988, the Secretary shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the results of the study conducted under this subsection, together with such recommendations as he may deem advisable.

Reports.

(b) RENEGOTIATION OF CLOSING AGREEMENT.—Not later than January 1, 1990, the Secretary of the Treasury (or his delegate) shall renegotiate the closing agreement with the underwriters participating in certain insurance or reinsurance syndicates which was signed by the Internal Revenue Service on April 1, 1980, to implement the conclusions reached in the study conducted under subsection (a).

Subtitle C—Estimated Tax Provisions

SEC. 10301. REVISION OF CORPORATE ESTIMATED TAX PROVISIONS.

(a) GENERAL RULE.—Section 6655 (relating to failure by corporation to pay estimated income tax) is amended to read as follows:

26 USC 6655.

"SEC. 6655. FAILURE BY CORPORATION TO PAY ESTIMATED INCOME TAX.

"(a) ADDITION TO TAX.—Except as otherwise provided in this section, in the case of any underpayment of estimated tax by a corporation, there shall be added to the tax under chapter 1 for the taxable year an amount determined by applying—

"(1) the underpayment rate established under section 6621,

"(2) to the amount of the underpayment,

"(3) for the period of the underpayment.

"(b) AMOUNT OF UNDERPAYMENT; PERIOD OF UNDERPAYMENT.—For purposes of subsection (a)—

"(1) AMOUNT.—The amount of the underpayment shall be the excess of—

"(A) the required installment, over

"(B) the amount (if any) of the installment paid on or before the due date for the installment.

"(2) PERIOD OF UNDERPAYMENT.—The period of the underpayment shall run from the due date for the installment to whichever of the following dates is the earlier—

"(A) the 15th day of the 3rd month following the close of the taxable year, or

"(B) with respect to any portion of the underpayment, the date on which such portion is paid.

"(3) ORDER OF CREDITING PAYMENTS.—For purposes of paragraph (2)(B), a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

"(c) NUMBER OF REQUIRED INSTALLMENTS; DUE DATES.—For purposes of this section—

"(1) PAYABLE IN 4 INSTALLMENTS.—There shall be 4 required installments for each taxable year.

"(2) TIME FOR PAYMENT OF INSTALLMENTS.—

"In the case of the following required installments:	The due date is:
1st	April 15
2nd	June 15
3rd	September 15
4th	December 15.

"(d) AMOUNT OF REQUIRED INSTALLMENTS.—For purposes of this section—

"(1) AMOUNT.—

"(A) IN GENERAL.—Except as otherwise provided in this section, the amount of any required installment shall be 25 percent of the required annual payment.

"(B) REQUIRED ANNUAL PAYMENT.—Except as otherwise provided in this subsection, the term 'required annual payment' means the lesser of—

"(i) 90 percent of the tax shown on the return for the taxable year (or, if no return is filed, 90 percent of the tax for such year), or

"(ii) 100 percent of the tax shown on the return of the corporation for the preceding taxable year.

Clause (ii) shall not apply if the preceding taxable year was not a taxable year of 12 months, or the corporation did not file a return for such preceding taxable year showing a liability for tax.

"(2) LARGE CORPORATIONS REQUIRED TO PAY 90 PERCENT OF CURRENT YEAR TAX.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), clause (ii) of paragraph (1)(B) shall not apply in the case of a large corporation.

"(B) MAY USE LAST YEAR'S TAX FOR 1ST INSTALLMENT.—Subparagraph (A) shall not apply for purposes of determining the amount of the 1st required installment for any taxable year. Any reduction in such 1st installment by reason of the preceding sentence shall be recaptured by increasing the amount of the next required installment determined under paragraph (1) by the amount of such reduction.

"(e) LOWER REQUIRED INSTALLMENT WHERE ANNUALIZED INCOME INSTALLMENT OR ADJUSTED SEASONAL INSTALLMENT IS LESS THAN AMOUNT DETERMINED UNDER SUBSECTION (d).—

"(1) IN GENERAL.—In the case of any required installment, if the corporation establishes that the annualized income installment or the adjusted seasonal installment is less than the amount determined under section (d)(1) (as modified by subsection (d)(2))—

"(A) the amount of such required installment shall be the annualized income installment (or, if lesser, the adjusted seasonal installment), and

"(B) any reduction in a required installment resulting from the application of this paragraph shall be recaptured by increasing the amount of the next required installment determined under subsection (d)(1) (as so modified) by the amount of such reduction (and by increasing subsequent

required installments to the extent that the reduction has not previously been recaptured under this subparagraph). A reduction shall be treated as recaptured for purposes of subparagraph (B) if 90 percent of the reduction is recaptured.

"(2) DETERMINATION OF ANNUALIZED INCOME INSTALLMENT.—

"(A) IN GENERAL.—In the case of any required installment, the annualized income installment is the excess (if any) of—

"(i) an amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the taxable income, alternative minimum taxable income, and modified alternative minimum taxable income—

"(I) for the first 3 months of the taxable year, in the case of the 1st required installment,

"(II) for the first 3 months or for the first 5 months of the taxable year, in the case of the 2nd required installment,

"(III) for the first 6 months or for the first 8 months of the taxable year in the case of the 3rd required installment, and

"(IV) for the first 9 months or for the first 11 months of the taxable year, in the case of the 4th required installment, over

"(ii) the aggregate amount of any prior required installments for the taxable year.

"(B) SPECIAL RULES.—For purposes of this paragraph—

"(i) ANNUALIZATION.—The taxable income, alternative minimum taxable income, and modified alternative minimum taxable income shall be placed on an annualized basis under regulations prescribed by the Secretary.

"(ii) APPLICABLE PERCENTAGE.—

"In the case of the following required installments:	The applicable percentage is:
1st	22.5
2nd	45
3rd	67.5
4th	90

"(iii) MODIFIED ALTERNATIVE MINIMUM TAXABLE INCOME.—The term 'modified alternative minimum taxable income' has the meaning given to such term by section 59A(b).

"(3) DETERMINATION OF ADJUSTED SEASONAL INSTALLMENT.—

"(A) IN GENERAL.—In the case of any required installment, the amount of the adjusted seasonal installment is the excess (if any) of—

"(i) 90 percent of the amount determined under subparagraph (C), over

"(ii) the aggregate amount of all prior required installments for the taxable year.

"(B) LIMITATION ON APPLICATION OF PARAGRAPH.—This paragraph shall apply only if the base period percentage for any 6 consecutive months of the taxable year equals or exceeds 70 percent.

"(C) DETERMINATION OF AMOUNT.—The amount determined under this subparagraph for any installment shall be determined in the following manner—

"(i) take the taxable income for all months during the taxable year preceding the filing month,

"(ii) divide [120] such amount by the base period percentage for all months during the taxable year preceding the filing month,

"(iii) determine the tax on the amount determined under clause (ii), and

"(iv) multiply the tax computed under clause (iii) by the base period percentage for the filing month and all months during the taxable year preceding the filing month.

"(D) DEFINITIONS AND SPECIAL RULES.—For purposes of this paragraph—

"(i) BASE PERIOD PERCENTAGE.—The base period percentage for any period of months shall be the average percent which the taxable income for the corresponding months in each of the 3 preceding taxable years bears to the taxable income for the 3 preceding taxable years.

"(ii) FILING MONTH.—The term 'filing month' means the month in which the installment is required to be paid.

"(iii) REORGANIZATION, ETC.—The Secretary may by regulations provide for the determination of the base period percentage in the case of reorganizations, new corporations, and other similar circumstances. Regulations.

"(f) EXCEPTION WHERE TAX IS [121] SMALL AMOUNT.—No addition to tax shall be imposed under subsection (a) for any taxable year if the tax shown on the return for such taxable year (or, if no return is filed, the tax) is less than $500.

"(g) DEFINITIONS AND SPECIAL RULES.—

"(1) TAX.—For purposes of this section, the term 'tax' means the excess of—

"(A) the sum of—

"(i) the tax imposed by section 11 or 1201(a), or subchapter L of chapter 1, whichever applies,

"(ii) the tax imposed by section 55,

"(iii) the tax imposed by section 59A, plus

"(iv) the tax imposed by section 887, over

"(B) the sum of—

"(i) the credits against tax provided by part IV of subchapter A of chapter 1, plus

"(ii) to the extent allowed under regulations prescribed by the Secretary, any overpayment of the tax imposed by section 4986 (determined without regard to section 4995(a)(4)(B)).

For purposes of the preceding sentence, in the case of a foreign corporation subject to taxation under section 11 or 1201(a), or under subchapter L of chapter 1, the tax imposed by section 881 shall be treated as a tax imposed by section 11.

"(2) LARGE CORPORATION.—

[120] Copy read "divided".
[121] Copy read "IS".

"(A) IN GENERAL.—For purposes of this section, the term 'large corporation' means any corporation if such corporation (or any predecessor corporation) had taxable income of $1,000,000 or more for any taxable year during the testing period.

"(B) RULES FOR APPLYING SUBPARAGRAPH (A).—

"(i) TESTING PERIOD.—For purposes of subparagraph (A), the term 'testing period' means the 3 taxable years immediately preceding the taxable year involved.

"(ii) MEMBERS OF CONTROLLED GROUP.—For purposes of applying subparagraph (A) to any taxable year in the testing period with respect to corporations which are component members of a controlled group of corporations for such taxable year, the $1,000,000 amount specified in subparagraph (A) shall be divided among such members under rules similar to the rules of section 1561.

"(iii) CERTAIN CARRYBACKS AND CARRYOVERS NOT TAKEN INTO ACCOUNT.—For purposes of subparagraph (A), taxable income shall be determined without regard to any amount carried to the taxable year under section 172 or 1212(a).

"(3) CERTAIN TAX-EXEMPT ORGANIZATIONS.—For purposes of this section—

"(A) Any organization subject to the tax imposed by section 511, and any private foundation, shall be treated as a corporation subject to tax under section 11.

"(B) Any tax imposed by section 511, and any tax imposed by section 1 or 4940 on a private foundation, shall be treated as a tax imposed by section 11.

"(C) Any reference to taxable income shall be treated as including a reference to unrelated business taxable income or net investment income (as the case may be).

In the case of any organization described in subparagraph (A), subsection (b)(2)(A) shall be applied by substituting '5th month' for '3rd month'.

"(h) EXCESSIVE ADJUSTMENT UNDER SECTION 6425.—

"(1) ADDITION TO TAX.—If the amount of an adjustment under section 6425 made before the 15th day of the 3rd month following the close of the taxable year is excessive, there shall be added to the tax under chapter 1 for the taxable year an amount determined at the underpayment rate established under section 6621 upon the excessive amount from the date on which the credit is allowed or the refund is paid to such 15th day.

"(2) EXCESSIVE AMOUNT.—For purposes of paragraph (1), the excessive amount is equal to the amount of the adjustment or (if smaller) the amount by which—

"(A) the income tax liability (as defined in section 6425(c)) for the taxable year as shown on the return for the taxable year, exceeds

"(B) the estimated income tax paid during the taxable year, reduced by the amount of the adjustment.

"(i) FISCAL YEARS AND SHORT YEARS.—

"(1) FISCAL YEARS.—In applying this section to a taxable year beginning on any date other than January 1, there shall be

substituted, for the months specified in this section, the months which correspond thereto.

"(2) SHORT TAXABLE YEAR.—This section shall be applied to taxable years of less than 12 months in accordance with regulations prescribed by the Secretary.

"(j) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section."

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 6154 of such Code is hereby repealed.

(2) Subparagraph (C) of section 585(c)(3) of such Code is amended by striking out "section 6655(d)(3)" and inserting in lieu thereof "section 6655(e)(2)(A)(i)".

(3) Paragraph (1) of section 6201(b) of such Code is amended by striking out "section 6154 or 6654" and inserting in lieu thereof "section 6654 or 6655".

(4) Subsection (c) of section 6425 of such Code is amended by striking out "section 6655(g)" and inserting in lieu thereof "section 6655(h)".

(5) Subsection (h) of section 6601 of such Code is amended by striking out "section 6154 or 6654" and inserting in lieu thereof "section 6654 or 6655".

(6) Subsection (e) of section 6651 of such Code is amended by striking out "section 6154 or 6654" and inserting in lieu thereof "section 6654 or 6655".

(7) The table of sections for subchapter A of chapter 62 of such Code is amended by striking out the item relating to section 6154.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1987. 26 USC 585 note.

SEC. 10302. REVISED WITHHOLDING CERTIFICATES REQUIRED TO BE PUT INTO EFFECT MORE PROMPTLY.

(a) GENERAL RULE.—Subparagraph (B) of section 3402(f)(3) (relating to when certificate takes effect) is amended to read as follows:

"(B) FURNISHED TO TAKE PLACE OF EXISTING CERTIFICATE.—

"(i) IN GENERAL.—Except as provided in clauses (ii) and (iii), a withholding exemption certificate furnished to the employer in cases in which a previous such certificate is in effect shall take effect as of the beginning of the 1st payroll period ending (or the 1st payment of wages made without regard to a payroll period) on or after the 30th day after the day on which such certificate is so furnished.

"(ii) EMPLOYER MAY ELECT EARLIER EFFECTIVE DATE.—At the election of the employer, a certificate described in clause (i) may be made effective beginning with any payment of wages made on or after the day on which the certificate is so furnished and before the 30th day referred to in clause (i).

"(iii) CHANGE OF STATUS WHICH AFFECTS NEXT YEAR.—Any certificate furnished pursuant to paragraph (2)(C) shall not take effect, and may not be made effective, with respect to any payment of wages made in the calendar year in which the certificate is furnished."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to certificates furnished after the day 30 days after the date of the enactment of this Act. 26 USC 3402 note.

SEC. 10303. ESTIMATED TAX PENALTIES FOR 1987.

26 USC 6654 note.

(a) DELAY OF INCREASE IN CURRENT YEAR LIABILITY TEST FOR INDIVIDUALS.—Notwithstanding section 1541(c) of the Tax Reform Act of 1986, the amendments made by section 1541 of such Act shall apply only to taxable years beginning after December 31, 1987.

(b) CORPORATE PROVISIONS.—

(1) RATIFICATION OF SECRETARIAL WAIVER.—The Congress hereby ratifies the safe harbor provided by paragraph (b) of the Treasury Temporary Regulation 1.6655-2T.

26 USC 6655 note.

(2) CORPORATIONS ALSO MAY USE 1986 TAX TO DETERMINE AMOUNT OF CERTAIN ESTIMATED TAX INSTALLMENTS DUE ON OR BEFORE JUNE 15, 1987.—

(A) IN GENERAL.—In the case of a large corporation, no addition to tax shall be imposed by section 6655 of the Internal Revenue Code of 1986 with respect to any underpayment of an estimated tax installment to which this subsection applies if no addition would be imposed with respect to such underpayment by reason of section 6655(d)(1) of such Code if such corporation were not a large corporation. The preceding sentence shall apply only to the extent the underpayment is paid on or before the last date prescribed for payment of the most recent installment of estimated tax due on or before September 15, 1987.

(B) INSTALLMENT TO WHICH SUBSECTION APPLIES.—This subsection applies to any installment of estimated tax for a taxable year beginning after December 31, 1986, which is due on or before June 15, 1987.

(C) LARGE CORPORATION.—For purposes of this subsection, the term "large corporation" has the meaning given such term by section 6655(i)(2) of such Code (as in effect on the day before the date of the enactment of this Act).

Subtitle D—Estate and Gift Tax Provisions

PART I—GENERAL PROVISIONS

SEC. 10401. 5-YEAR EXTENSION OF EXISTING RATES; PHASEOUT OF BENEFITS OF EXISTING RATES AND UNIFIED CREDIT.

(a) 5-YEAR EXTENSION OF GRADUATED RATES.—Paragraph (2) of section 2001(c) (relating to phasein of 50 percent maximum rate) is amended—

(1) by striking out "1988" in subparagraph (A) and inserting in lieu thereof "1993",

(2) by striking out "in 1984, 1985, 1986, or 1987" in the text of subparagraph (D) and inserting in lieu thereof "after 1983 and before 1993", and

(3) by amending the heading of subparagraph (D) to read as follows:

"(D) AFTER 1983 AND BEFORE 1993.—".

(b) PHASEOUT OF BENEFITS OF GRADUATED RATES AND UNIFIED CREDIT.—

(1) IN GENERAL.—Subsection (c) of section 2001 is amended by adding at the end thereof the following new paragraph:

"(3) PHASEOUT OF GRADUATED RATES AND UNIFIED CREDIT.—The tentative tax determined under paragraph (1) shall be increased by an amount equal to 5 percent of so much of the amount (with

respect to which the tentative tax is to be computed) as exceeds $10,000,000 but does not exceed $21,040,000 ($18,340,000 in the case of decedents dying, and gifts made, after 1992)."

(2) TECHNICAL AMENDMENTS.—

(A) Subsection (b) of section 2001 is amended—

(i) by striking out "in accordance with the rate schedule set forth in subsection (c)" in paragraph (1) and inserting in lieu thereof "under subsection (c)", and

(ii) by striking out "the rate schedule set forth in subsection (c) (as in effect at the decedent's death)" in paragraph (2) and inserting in lieu thereof "the provisions of subsection (c) (as in effect at the decedent's death)".

(B) Subsection (a) of section 2502 is amended—

(i) by striking out "in accordance with the rate schedule set forth in section 2001(c)" in paragraph (1) and inserting in lieu thereof "under section 2001(c)", and

(ii) by striking out "in accordance with such rate schedule" in paragraph (2) and inserting in lieu thereof "under such section".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply in the case of decedents dying, and gifts made, after December 31, 1987. 26 USC 2001 note.

SEC. 10402. INCLUSION RELATED TO VALUATION FREEZES.

(a) IN GENERAL.—Section 2036 (relating to transfers with retained life estate) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) INCLUSION RELATED TO VALUATION FREEZES.—

"(1) IN GENERAL.—For purposes of subsection (a), if—

"(A) any person holds a substantial interest in an enterprise, and

"(B) such person in effect transfers after December 17, 1987, property having a disproportionately large share of the potential appreciation in such person's interest in the enterprise while retaining a disproportionately large share in the income of, or rights in, the enterprise,

then the retention of the retained interest shall be considered to be a retention of the enjoyment of the transferred property.

"(2) SPECIAL RULE FOR SALES TO FAMILY MEMBERS.—The exception contained in subsection (a) for a bona fide sale shall not apply to a transfer described in paragraph (1) if such transfer is to a member of the transferor's family.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) SUBSTANTIAL INTEREST.—A person holds a substantial interest in an enterprise if such person owns (directly or indirectly) 10 percent or more of the voting power or income stream, or both, in such enterprise. For purposes of the preceding sentence, an individual shall be treated as owning any interest in an enterprise which is owned (directly or indirectly) by any member of such individual's family.

"(B) FAMILY.—The term 'family' means, with respect to any individual, such individual's spouse, any lineal descendant of such individual or of such individual's spouse, any parent or grandparent of such individual, and any spouse of

any of the foregoing. For purposes of the preceding sentence, a relationship by legal adoption shall be treated as a relationship by blood.

"(C) TREATMENT OF SPOUSE.—An individual and such individual's spouse shall be treated as 1 person.

"(4) COORDINATION WITH SECTION 2035.—For purposes of applying section 2035, any transfer of the retained interest referred to in paragraph (1) shall be treated as a transfer of an interest in the transferred property referred to in paragraph (1).

"(5) COORDINATION WITH SECTION 2043.—In lieu of applying section 2043, appropriate adjustments shall be made for the value of the retained interest." [122]

26 USC 2036 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to estates of decedents dying after December 31, 1987, but only in the case of property transferred after December 17, 1987.

PART II—ESTATE TAX PROVISIONS RELATING TO EMPLOYEE STOCK OWNERSHIP PLANS

SEC. 10411. CONGRESSIONAL CLARIFICATION OF ESTATE TAX DEDUCTION FOR SALES OF EMPLOYER SECURITIES.

(a) INTENT OF CONGRESS IN ENACTING SECTION 2057 OF THE INTERNAL REVENUE CODE OF 1986.—Section 2057 (relating to sales of employer securities to employee stock ownership plans or worker-owned cooperatives) is amended by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively, and by inserting after subsection (c) the following new subsection:

"(d) QUALIFIED PROCEEDS FROM QUALIFIED SALES.—

"(1) IN GENERAL.—For purposes of this section, the proceeds of a sale of employer securities by an executor to an employee stock ownership plan or an eligible worker-owned cooperative shall not be treated as qualified proceeds from a qualified sale unless—

"(A) the decedent directly owned the securities immediately before death, and

"(B) after the sale, the employer securities—

"(i) are allocated to participants, or

"(ii) are held for future allocation in connection with—

"(I) an exempt loan under the rules of section 4975, or

"(II) a transfer of assets under the rules of section 4980(c)(3).

"(2) NO SUBSTITUTION PERMITTED.—For purposes of paragraph (1)(B), except in the case of a bona fide business transaction (e.g., a substitution of employer securities in connection with a merger of employers), employer securities shall not be treated as allocated or held for future allocation to the extent that such securities are allocated or held for future allocation in substitution of other employer securities that had been allocated or held for future allocation."

[122] Copy read "interest.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if included in the amendments made by section 1172 of the Tax Reform Act of 1986. 26 USC 2057 note.

SEC. 10412. MODIFICATIONS OF ESTATE TAX DEDUCTION FOR SALE OF EMPLOYER SECURITIES.

(a) IN GENERAL.—Section 2057 (relating to estate tax deduction for sales of employer securities to employee stock ownership plans or worker-owned cooperatives) is amended to read as follows:

"SEC. 2057. SALES OF EMPLOYER SECURITIES TO EMPLOYEE STOCK OWNERSHIP PLANS OR WORKER-OWNED COOPERATIVES.

"(a) GENERAL RULE.—For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate an amount equal to 50 percent of the proceeds of any sale of any qualified employer securities to—

"(1) an employee stock ownership plan, or

"(2) an eligible worker-owned cooperative.

"(b) LIMITATIONS.—

"(1) MAXIMUM REDUCTION IN TAX LIABILITY.—The amount allowable as a deduction under subsection (a) shall not exceed the amount which would result in an aggregate reduction in the tax imposed by section 2001 (determined without regard to any credit allowable against such tax) equal to $750,000.

"(2) DEDUCTION SHALL NOT EXCEED 50 PERCENT OF TAXABLE ESTATE.—The amount of the deduction allowable under subsection (a) shall not exceed 50 percent of the taxable estate (determined without regard to this section).

"(c) LIMITATIONS ON PROCEEDS WHICH MAY BE TAKEN INTO ACCOUNT.—

"(1) DISPOSITIONS BY PLAN OR COOPERATIVE WITHIN 1 YEAR OF SALE.—

"(A) IN GENERAL.—Proceeds from a sale which are taken into account under subsection (a) shall be reduced (but not below zero) by the net sale amount.

"(B) NET SALE AMOUNT.—For purposes of subparagraph (A), the term 'net sale amount' means the excess (if any) of—

"(i) the proceeds of the plan or cooperative from the disposition of employer securities during the 1-year period immediately preceding such sale, over

"(ii) the cost of employer securities purchased by such plan or cooperative during such 1-year period.

"(C) EXCEPTIONS.—For purposes of subparagraph (B)(i), there shall not be taken into account any proceeds of a plan or cooperative from a disposition described in section 4978A(e).

"(D) AGGREGATION RULES.—For purposes of this paragraph, all employee stock ownership plans maintained by an employer shall be treated as 1 plan.

"(2) SECURITIES MUST BE ACQUIRED BY PLAN FROM ASSETS WHICH ARE NOT TRANSFERRED ASSETS.—

"(A) IN GENERAL.—Proceeds from a sale shall not be taken into account under subsection (a) to the extent that such proceeds (as reduced under paragraph (1)) are attributable to transferred assets. For purposes of the preceding sentence, all assets of a plan or cooperative (other than

qualified employer securities) shall be treated as first acquired out of transferred assets.

"(B) TRANSFERRED ASSETS.—For purposes of subparagraph (A)—

"(i) IN GENERAL.—The term 'transferred assets' means assets of an employee stock ownership plan which—

"(I) are attributable to assets held by a plan exempt from tax under section 501(a) and meeting the requirements of section 401(a) (other than an employee stock ownership plan of the employer), or

"(II) were held by the plan when it was not an employee stock ownership plan.

"(ii) EXCEPTION FOR ASSETS HELD ON FEBRUARY 26, 1987.—The term 'transferred assets' shall not include any asset held by the employee stock ownership plan on February 26, 1987.

"(iii) SECRETARIAL AUTHORITY TO WAIVE TREATMENT AS TRANSFERRED ASSET.—The Secretary may provide that assets or a class of assets shall not be treated as transferred assets if the Secretary finds such treatment is not necessary to carry out the purposes of this paragraph.

"(3) OTHER PROCEEDS.—The following proceeds shall not be taken into account under subsection (a):

"(A) PROCEEDS FROM SALE AFTER DUE DATE FOR RETURN.—Any proceeds from a sale which occurs after the date on which the return of the tax imposed by section 2001 is required to be filed (determined by taking into account any extension of time for filing).

"(B) PROCEEDS FROM SALE OF CERTAIN SECURITIES.—Any proceeds from a sale of employer securities which were received by the decedent—

"(i) in a distribution from a plan exempt from tax under section 501(a) and meeting the requirements of section 401(a), or

"(ii) as a transfer pursuant to an option or other right to acquire stock to which section 83, 422, 422A, 423, or 424 applies.

Any employer security the basis of which is determined by reference to any employer security described in the preceding sentence shall be treated as an employer security to which this subparagraph applies.

"(d) QUALIFIED EMPLOYER SECURITIES.—

"(1) IN GENERAL.—The term 'qualified employer securities' means employer securities—

"(A) which are issued by a domestic corporation which has no stock outstanding which is readily tradable on an established securities market,

"(B) which are includible in the gross estate of the decedent,

"(C) which would have been includible in the gross estate of the decedent if the decedent had died at any time during the shorter of—

"(i) the 5-year period ending on the date of death, or

"(ii) the period beginning on October 22, 1986, and ending on the date of death, and

"(D) with respect to which the executor elects the application of this section.

Subparagraph (C) shall not apply if the decedent died on or before October 22, 1986.

"(2) CERTAIN ASSETS HELD BY SPOUSE.—For purposes of paragraph (1)(C), any employer security which would have been includible in the gross estate of the spouse of a decedent during any period if the spouse had died during such period shall be treated as includible in the gross estate of the decedent during such period.

"(3) PERIODS DURING WHICH DECEDENT NOT AT RISK.—For purposes of paragraph (1)(C), employer securities shall not be treated as includible in the gross estate of the decedent during any period described in section 246(c)(4).

"(e) WRITTEN STATEMENT REQUIRED.—

"(1) IN GENERAL.—No deduction shall be allowed under subsection (a) unless the executor of the estate of the decedent files with the Secretary the statement described in paragraph (2).

"(2) STATEMENT.—A statement is described in this paragraph if it is a verified written statement—

"(A) which is made by—

"(i) the employer whose employees are covered by the employee stock ownership plan, or

"(ii) any authorized officer of the eligible worker-owned cooperative, and

"(B) which—

"(i) acknowledges that the sale of employer securities to the plan or cooperative is a sale to which sections 4978A and 4979A apply, and

"(ii) certifies—

"(I) the net sale amount for purposes of subsection (c)(1), and

"(II) the amount of assets which are not transferred assets for purposes of subsection (c)(2).

"(f) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) EMPLOYER SECURITIES.—The term 'employer securities' has the meaning given such term by section 409(l).

"(2) EMPLOYEE STOCK OWNERSHIP PLAN.—The term 'employee stock ownership plan' means—

"(A) a tax credit employee stock ownership plan (within the meaning of section 409(a)), or

"(B) a plan described in section 4975(e)(7).

"(3) ELIGIBLE WORKER-OWNED COOPERATIVE.—The term 'eligible worker-owned cooperative' has the meaning given such term by section 1042(c).

"(4) EMPLOYER.—Except to the extent provided in regulations, the term 'employer' includes any person treated as an employer under subsections (b), (c), (m), and (o) of section 414.

"(g) TERMINATION.—This section shall not apply to any sale after December 31, 1991."

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to sales after February 26, 1987.

26 USC 2057 note.

(2) PROVISIONS TAKING EFFECT AS IF INCLUDED IN THE TAX REFORM ACT OF 1986.—The following provisions shall take effect as if included in the amendments made by section 1172 of the Tax Reform Act of 1986:

(A) Section 2057(f)(2) of the Internal Revenue Code of 1986, as added by this section.

(B) The repeal of the requirement that a sale be made by the executor of an estate to qualify for purposes of section 2057 of such Code.

(3) DIRECT OWNERSHIP REQUIREMENT.—If the requirements of section 2057(d)(1)(B) of such Code (as modified by section 2057(d)(2) of such Code), as in effect after the amendments made by this section, are met with respect to any employer securities sold after October 22, 1986, and before February 27, 1987, such securities shall be treated as having been directly owned by the decedent for purposes of section 2057 of such Code, as in effect before such amendments.

(4) REDUCTION FOR SALES ON OR BEFORE FEBRUARY 26, 1987.—In applying the limitations of subsection (b) of section 2057 of such Code to sales after February 26, 1987, there shall be taken into account sales on or before February 26, 1987, to which section 2057 of such Code applied.

SEC. 10413. EXCISE TAX ON PLANS OR COOPERATIVES DISPOSING OF EMPLOYER SECURITIES FOR WHICH ESTATE TAX DEDUCTION WAS ALLOWED.

(a) IN GENERAL.—Chapter 43 (relating to excise taxes on qualified pension, etc., plans) is amended by inserting after section 4978 the following new section:

"SEC. 4978A. TAX ON CERTAIN DISPOSITIONS OF EMPLOYER SECURITIES TO WHICH SECTION 2057 APPLIED.

"(a) IMPOSITION OF TAX.—In the case of a taxable event involving qualified employer securities held by an employee stock ownership plan or eligible worker-owned cooperative, there is hereby imposed a tax equal to the amount determined under subsection (b).

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of the tax imposed by subsection (a) shall be equal to 30 percent of—

"(A) the amount realized on the disposition in the case of a taxable event described in paragraph (1) or (2) of subsection (c), or

Loans.

"(B) the amount repaid on the loan in the case of a taxable event described in paragraph (3) of subsection (c).

"(2) DISPOSITIONS OTHER THAN SALES OR EXCHANGES.—For purposes of paragraph (1), in the case of a disposition of employer securities which is not a sale or exchange, the amount realized on such disposition shall be the fair market value of such employer securities at the time of disposition.

"(c) TAXABLE EVENT.—For purposes of this section, the term 'taxable event' means the following:

"(1) DISPOSITION WITHIN 3 YEARS OF ACQUISITION.—Any disposition of employer securities by an employee stock ownership plan or eligible worker-owned cooperative within 3 years after such plan or cooperative acquired qualified employer securities.

"(2) STOCKS DISPOSED OF BEFORE ALLOCATION.—Any disposition of qualified employer securities to which paragraph (1) does not apply if—

"(A) such disposition occurs before such securities are allocated to accounts of participants or their beneficiaries, and

"(B) the proceeds from such disposition are not so allocated.

"(3) USE OF ASSETS TO REPAY ACQUISITION LOANS.—The payment by an employee stock ownership plan of any portion of any loan used to acquire employer securities from transferred assets (within the meaning of section 2057(c)(2)(B)).

"(d) ORDERING RULES.—For purposes of this section and section 4978, any disposition of employer securities shall be treated as having been made in the following order:

"(1) First, from qualified employer securities acquired during the 3-year period ending on the date of such disposition, beginning with the securities first so acquired.

"(2) Second, from qualified employer securities acquired before such 3-year period unless such securities (or the proceeds from such disposition) have been allocated to accounts of participants or their beneficiaries.

"(3) Third, from qualified securities (within the meaning of section 4978(e)(2)) to which section 1042 applied acquired during the 3-year period ending on the date of such disposition, beginning with the securities first so acquired.

"(4) Finally, from any other employer securities. In the case of a disposition to which section 4978(d) or subsection (e) applies, the disposition of employer securities shall be treated as having been made in the opposite order of the preceding sentence.

"(e) SECTION NOT TO APPLY TO CERTAIN DISPOSITIONS.—

"(1) IN GENERAL.—This section shall not apply to any disposition described in paragraph (1) or (3) of section 4978(d).

"(2) CERTAIN REORGANIZATIONS.—For purposes of this section, any exchange of qualified employer securities for employer securities of another corporation in any reorganization described in section 368(a)(1) shall not be treated as a disposition, but the employer securities which were received shall be treated—

"(A) as qualified employer securities of the plan or cooperative, and

"(B) as having been held by the plan or cooperative during the period the qualified employer securities were held.

"(3) DISPOSITION TO MEET DIVERSIFICATION REQUIREMENTS.—Any disposition which is made to meet the requirements of section 401(a)(28) shall not be treated as a disposition.

"(f) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) TERMS USED IN SECTION 2057.—Any term used in this section which is used in section 2057 shall have the meaning given such term by section 2057.

"(2) QUALIFIED EMPLOYER SECURITIES.—The term 'qualified employer securities' has the meaning given such term by section

2057, except that such term shall include employer securities sold before February 27, 1987, for which a deduction was allowed under section 2057.

"(3) DISPOSITION.—The term 'disposition' includes any distribution.

"(4) LIABILITY FOR PAYMENT OF TAXES.—The tax imposed by this section shall be paid by—

"(A) the employer, or

"(B) the eligible worker-owned cooperative,

which made the written statement described in section 2057(e)."

(b) CONFORMING AMENDMENTS.—

(1) Section 4978(b)(2) is amended by striking out the parenthetical and inserting in lieu thereof "(determined as if such securities were disposed of in the order described in section 4978A(e))".

(2) The table of sections for chapter 43 is amended by inserting after the item relating to section 4978 the following new item:

"Sec. 4978A. Tax on certain dispositions of employer securities to which section 2057 applied."

26 USC 4978 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable events (within the meaning of section 4978A(c) of the Internal Revenue Code of 1986) occurring after February 26, 1987.

Subtitle E—Provisions Relating to Excise Taxes and User Fees

PART I—EXCISE TAXES

SEC. 10501. EXTENSION OF TELEPHONE EXCISE TAX.

Paragraph (2) of section 4251(b) (relating to applicable percentage) is amended to read as follows:

"(2) APPLICABLE PERCENTAGE.—The term 'applicable percentage' means 3 percent; except that, with respect to amounts paid pursuant to bills first rendered after 1990, the applicable percentage shall be zero."

SEC. 10502. DIESEL FUEL AND AVIATION FUEL TAXES IMPOSED AT WHOLESALE LEVEL.

(a) IN GENERAL.—Part III of subchapter A of chapter 32 is amended by inserting after subpart A the following new subpart:

"Subpart B—Diesel Fuel and Aviation Fuel

26 USC 4091.

"SEC. 4091. IMPOSITION OF TAX.

"(a) IN GENERAL.—There is hereby imposed a tax on the sale of any taxable fuel by the producer or the importer thereof or by any producer of a taxable fuel.

"(b) RATE OF TAX.—

"(1) IN GENERAL.—The rate of the tax imposed by subsection (a) shall be the sum of—

"(A)(i) the Highway Trust Fund financing rate in the case of diesel fuel, and

"(ii) the Airport and Airway Trust Fund financing rate in the case of aviation fuel, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate in the case of any taxable fuel.

"(2) HIGHWAY TRUST FUND FINANCING RATE.—For purposes of paragraph (1), except as provided in subsection (c), the Highway Trust Fund financing rate is 15 cents per gallon.

"(3) AIRPORT AND AIRWAY TRUST FUND FINANCING RATE.—For purposes of paragraph (1), the Airport and Airway Trust Fund financing rate is 14 cents per gallon.

"(4) LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—For purposes of paragraph (1), the Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cent per gallon.

"(5) TERMINATION OF RATES.—

"(A) The Highway Trust Fund financing rate shall not apply on and after October 1, 1993.

"(B) The Airport and Airway Trust Fund financing rate shall not apply on and after January 1, 1988.

"(C) The Leaking Underground Storage Tank Trust Fund financing rate shall not apply during any period during which the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 does not apply.

"(c) REDUCED RATE OF TAX FOR DIESEL FUEL IN ALCOHOL MIXTURE, ETC.—Under regulations prescribed by the Secretary—

"(1) IN GENERAL.—The Highway Trust Fund financing rate shall be—

"(A) 9 cents per gallon in the case of the sale of any mixture of diesel fuel if—

"(i) at least 10 percent of such mixture consists of alcohol (as defined in section 4081(c)(3)), and

"(ii) the diesel fuel in such mixture was not taxed under subparagraph (B), and

"(B) 10 cents per gallon in the case of the sale of diesel fuel for use (at the time of such sale) in producing a mixture described in subparagraph (A).

"(2) LATER SEPARATION.—If any person separates the diesel fuel from a mixture of the diesel fuel and alcohol on which tax was imposed under subsection (a) at a Highway Trust Fund financing rate equivalent to 9 cents a gallon by reason of this subsection (or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(1)), such person shall be treated as the producer of such diesel fuel. The amount of tax imposed on any sale of such diesel fuel by such person shall be 5 cents per gallon.

"(3) TERMINATION.—Paragraph (1) shall not apply to any sale after September 30, 1993.

"(d) EXEMPTION FROM TAX FOR AVIATION FUEL IN ALCOHOL MIXTURE, ETC.—

"(1) IN GENERAL.—The Airport and Airway Trust Fund financing rate shall not apply to the sale of—

"(A) any mixture of aviation fuel at least 10 percent of which consists of alcohol (as defined in section 4081(c)(3)), or

"(B) any aviation fuel for use (at the time of such sale) in producing a mixture described in subparagraph (A).

"(2) LATER SEPARATION.—If any person separates the aviation fuel from a mixture of the aviation fuel and alcohol on which the Airport and Airway Trust Fund financing rate did not apply by reason of this subsection (or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(2)), such person shall be treated as the producer of such aviation fuel.

"(3) TERMINATION.—Paragraph (1) shall not apply to any sale after September 30, 1993.

26 USC 4092.

"SEC. 4092. DEFINITIONS.

"(a) TAXABLE FUEL.—For purposes of this subpart—

"(1) IN GENERAL.—The term 'taxable fuel' means—

"(A) diesel fuel, and

"(B) aviation fuel.

"(2) DIESEL FUEL.—The term 'diesel fuel' means any liquid (other than any product taxable under section 4081) which is suitable for use as a fuel in a diesel-powered highway vehicle or a diesel-powered train.

"(3) AVIATION FUEL.—The term 'aviation fuel' means any liquid (other than any product taxable under section 4081) which is suitable for use as a fuel in an aircraft.

"(b) PRODUCER.—For purposes of this subpart—

"(1) CERTAIN PERSONS TREATED AS PRODUCERS.—

"(A) IN GENERAL.—The term 'producer' includes any person described in subparagraph (B) who elects to register under section 4101 with respect to the tax imposed by section 4091.

"(B) PERSONS DESCRIBED.—A person is described in this subparagraph if such person is—

"(i) a refiner, compounder, blender, or wholesale distributor of a taxable fuel, or

"(ii) a dealer selling any taxable fuel exclusively to producers of such taxable fuel.

"(C) TAX-FREE PURCHASERS TREATED AS PRODUCERS.—Any person to whom any taxable fuel is sold tax-free under this subpart shall be treated as the producer of such fuel.

"(2) WHOLESALE DISTRIBUTOR.—For purposes of paragraph (1), the term 'wholesale distributor' includes any person who sells a taxable fuel to producers, retailers, or to users who purchase in bulk quantities and deliver into bulk storage tanks. Such term does not include any person who (excluding the term 'wholesale distributor' from paragraph (1)) is a producer or importer.

26 USC 4093.

"SEC. 4093. EXEMPTIONS; SPECIAL RULE.

"(a) HEATING OIL.—The tax imposed by section 4091 shall not apply in the case of sales of any taxable fuel which the Secretary determines is destined for use as heating oil.

Regulations.

"(b) SALES TO PRODUCER.—Under regulations prescribed by the Secretary, the tax imposed by section 4091 shall not apply in the case of sales of a taxable fuel to a producer of such fuel.

Regulations.

"(c) AUTHORITY TO EXEMPT CERTAIN OTHER USES.—Subject to such terms and conditions as the Secretary may provide (including the application of section 4101), the Secretary may by regulation provide that—

"(1) the Highway Trust Fund financing rate under section 4091 shall not apply to diesel fuel sold for use by any purchaser as a fuel in a diesel-powered train,

"(2) the Airport and Airway Trust Fund financing rate under section 4091 shall not apply to aviation fuel sold for use by any purchaser as a fuel in an aircraft not in noncommercial aviation (as defined in section 4041(c)(4)),

"(3) the tax imposed by section 4091 shall not apply to taxable fuel sold for use by any purchaser other than as a motor fuel, and

"(4) the tax imposed by section 4091 shall not apply to taxable fuel sold for the exclusive use of any State, any political subdivision of a State, or the District of Columbia.

"(d) SPECIAL ADMINISTRATIVE RULES.—The Secretary may require— Reports.

"(1) information reporting by each remitter of the tax imposed by section 4091, and

"(2) information reporting by, and registration of, such other persons as the Secretary deems necessary to carry out this subpart.

"(e) CROSS REFERENCES.—

"(1) For imposition of tax where certain uses of diesel fuel or aviation fuel occur before imposition of tax by section 4091, see subsections (a)(1) and (c)(1) of section 4041.

"(2) For provisions allowing a credit or refund for fuel not used for certain taxable purposes, see section 6427."

(b) RETAIL DIESEL FUEL AND AVIATION FUEL TAXES TO BE RESIDUAL TAXES.—

(1) Paragraph (1) of section 4041(a) is amended—

(A) by striking out "DIESEL FUEL" in the heading and inserting in lieu thereof "TAX ON DIESEL FUEL WHERE NO TAX IMPOSED ON FUEL UNDER SECTION 4091", and

(B) by adding at the end thereof the following new sentence:

"No tax shall be imposed by this paragraph on the sale or use of any liquid if there was a taxable sale of such liquid under section 4091."

(2) Paragraph (1) of section 4041(c) is amended—

(A) by striking out "IN GENERAL" in the heading and inserting in lieu thereof "TAX ON NONGASOLINE FUELS WHERE NO TAX IMPOSED ON FUEL UNDER SECTION 4091", and

(B) by adding at the end thereof the following new sentence:

"No tax shall be imposed by this paragraph on the sale or use of any liquid if there was a taxable sale of such liquid under section 4091."

(3) Subsection (d) of section 4041 is amended by redesignating paragraph (3) as paragraph (4) and by striking out paragraphs (1) and (2) and inserting in lieu thereof the following:

"(1) TAX ON SALES AND USES SUBJECT TO TAX UNDER SUBSECTION (a).—In addition to the taxes imposed by subsection (a), there is hereby imposed a tax of 0.1 cent a gallon on the sale or use of any liquid (other than liquefied petroleum gas) if tax is imposed by subsection (a) on such sale or use.

"(2) TAX ON DIESEL FUEL USED IN TRAINS.—There is hereby imposed a tax of 0.1 cent a gallon on any liquid (other than a product taxable under section 4081)—

"(A) sold by any person to an owner, lessee, or other operator of a diesel-powered train for use as a fuel in such train, or

"(B) used by any person as a fuel in a diesel-powered train unless there was a taxable sale of such liquid under subparagraph (A).

No tax shall be imposed by this paragraph on the sale or use of any liquid if there was a taxable sale of such liquid under section 4091.

"(3) LIQUIDS USED IN AVIATION.—In addition to the taxes imposed by subsection (c), there is hereby imposed a tax of 0.1 cent a gallon on any liquid (other than any product taxable under section 4081)—

"(A) sold by any person to an owner, lessee, or other operator of an aircraft for use as a fuel in such aircraft, or

"(B) used by any person as a fuel in an aircraft unless there was a taxable sale of such liquid under subparagraph (A).

No tax shall be imposed by this paragraph on the sale or use of any liquid if there was a taxable sale of such liquid under section 4091."

(4) Subsection (n) of section 4041 is hereby repealed.

(c) AMENDMENTS RELATING TO CREDITS AND REFUNDS.—

(1) Section 6427 is amended by redesignating subsections (l) through (p) as subsections (m) through (q), respectively, and by inserting after subsection (k) the following new subsection:

"(l) NONTAXABLE USES OF DIESEL FUEL AND AVIATION FUEL TAXED UNDER SECTION 4091.—

"(1) IN GENERAL.—Except as provided in subsection (k) and in paragraph (3) of this subsection, if any fuel on which tax has been imposed by section 4091 is used by any person in a nontaxable use, the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the aggregate amount of tax imposed on such fuel under section 4091.

"(2) NONTAXABLE USE.—For purposes of this subsection, the term 'nontaxable use' means, with respect to any fuel, any use of such fuel if such use is exempt from the taxes imposed by subsections (a)(1) and (c)(1) of section 4041 (other than by reason of the imposition of tax on any sale thereof).

"(3) NO REFUND OF LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING TAX.—Paragraph (1) shall not apply to so much of the tax imposed by section 4091 as is attributable to the Leaking Underground Storage Tank Trust Fund financing rate imposed by such section in the case of—

"(A) fuel used in a diesel-powered train, and

"(B) fuel used in any aircraft."

(2) Paragraph (1) of section 6427(b) is amended—

(A) by striking out "subsection (a) of section 4041" the first place it appears and inserting in lieu thereof "section 4041(a) or 4091", and

(B) by striking out "subsection (a) of section 4041" the second place it appears and inserting in lieu thereof "section 4041(a) or 4091, as the case may be".

(3) Subparagraph (B) of section 6427(e)(1) is amended by inserting "or 4091" after "section 4041".

(4) Subsection (f) of section 6427 is amended to read as follows:

"(f) GASOLINE, DIESEL FUEL, AND AVIATION FUEL USED TO[123] PRODUCE CERTAIN ALCOHOL FUELS.—Except as provided in subsection (k)—

"(1) GASOLINE AND DIESEL FUELS.—

"(A) IN GENERAL.—If any gasoline or diesel fuel on which tax was imposed by section 4081 or 4091 at the regular Highway Trust Fund financing rate is used by any person in producing a mixture described in section 4081(c) or in section 4091(c)(1)(A) (as the case may be) which is sold or used in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the excess of the regular Highway Trust Fund financing rate over the incentive Highway Trust Fund Financing rate with respect to such fuel.

"(B) DEFINITIONS.—For purposes of subparagraph (A)—

"(i) REGULAR HIGHWAY TRUST FUND FINANCING RATE.—The term 'regular Highway Trust Fund financing rate' means—

"(I) 9 cents per gallon in the case of gasoline, and

"(II) 15 cents per gallon in the case of diesel fuel.

"(ii) INCENTIVE HIGHWAY TRUST FUND FINANCING RATE.—The term 'incentive Highway Trust Fund Financing rate' means—

"(I) 3⅓ cents per gallon in the case of gasoline, and

"(II) 10 cents per gallon in the case of diesel fuel.

"(C) COORDINATION WITH OTHER REPAYMENT PROVISIONS.—No amount shall be payable under subparagraph (A) with respect to any gasoline or diesel fuel with respect to which an amount is payable under subsection (d), (e), or (l) of this section or under section 6420 or 6421.

"(2) AVIATION FUEL.—If any aviation fuel on which tax was imposed by section 4091 is used by any person in producing a mixture at least 10 percent of which is alcohol (as defined in section 4081(c)(3)) which is sold or used in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the aggregate amount of tax (attributable to the Airport and Airway Trust Fund financing rate) imposed on such fuel under section 4091.

"(3) TERMINATION.—Paragraphs (1) and (2) shall not apply with respect to any mixture sold or used after September 30, 1993."

(5)(A) Paragraph (1) of section 6427(i) is amended by striking out "or (h)" and inserting in lieu thereof "(h), or (l)".

(B) Clause (i) of section 6427(i)(2)(A) is amended by striking out "and (h)" and inserting in lieu thereof "(h), and (l)".

(6) Subsection (o) of section 6427 (as redesignated by paragraph (1)) is amended to read as follows:

"(o) TERMINATION OF CERTAIN PROVISIONS.—Except with respect to taxes imposed by section 4041(d) and sections 4081 and 4091 at the Leaking Underground Storage Tank Trust Fund financing rate, subsections (a), (b), (c), (d), (g), (h), and (l) shall only apply with respect to fuels purchased before October 1, 1993."

(d) OTHER CONFORMING AMENDMENTS.—

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[123] Copy read "TO".

(1) Subsection (c) of section 40 is amended by striking out "or section 4081(c)" and inserting in lieu thereof ", section 4081(c), or section 4091(c)".

(2) Subparagraph (B) of section 4081(e)(2), as amended by section 1703 of the Tax Reform Act of 1986, is amended by striking out "net revenues" and all that follows and inserting in lieu thereof the following: "net revenues are at least $500,000,000 from taxes imposed by section 4041(d) and taxes attributable to Leaking Underground Storage Tank Trust Fund financing rate imposed under this section and sections 4042 and 4091."

(3) Subsection (a) of section 4101, as amended by section 1703 of the Tax Reform Act of 1986, is amended by inserting "or 4091" after "section 4081".

(4) Subsection (a) of section 4221 is amended by striking out "(other than" and all that follows through "sale by the manufacturer" and inserting in lieu thereof "(other than under section 4121, 4081, or 4091) on the sale by the manufacturer".

(5) Section 6206 is amended by striking out "or 4041" and inserting in lieu thereof "or 4041 or 4091".

(6) Paragraph (2) of section 6416(b) is amended—

(A) by striking out "(other than coal taxable under section 4121)", and

(B) by adding at the end thereof the following new sentence: "This paragraph shall not apply in the case of any tax paid under section 4091 or 4121."

(7) Subparagraph (A) of section 6416(b)(3) is amended by inserting "and other than any fuel taxable under section 4091" after "section 4081".

(8) Subparagraph (B) of section 6416(b)(3) is amended by striking out ", such gasoline" and inserting in lieu thereof "or any fuel taxable under section 4091, such gasoline or fuel".

(9) Subparagraph (C) of section 6421(e)(2) is hereby repealed.

(10) The subsection (j) of section 6421 relating to cross references is amended by striking out paragraph (1) and by redesignating paragraphs (2), (3), and (4), as paragraphs (1), (2), and (3), respectively.

(11) Section 6652 is amended by striking out the subsection (j) added by section 1702(b) of the Tax Reform Act of 1986 and by redesignating subsections (l) and (m) as subsections (k) and (l), respectively.

(12) Subsection (b) of section 9502 is amended by striking out "and" at the end of paragraph (2), by redesignating paragraph (3) as paragraph (4), and by inserting after paragraph (2) the following new paragraph:

"(3) amounts determined by the Secretary to be equivalent to the taxes received in the Treasury before January 1, 1988, under section 4091 (to the extent attributable to the Airport and Airway Trust Fund financing rate), and".

(13) Paragraph (1) of section 9503(b) is amended by striking out subparagraph (F) and inserting in lieu thereof the following:

"(F) section 4091 (relating to tax on diesel fuel), and".

(14) Paragraph (4) of section 9503(b) is amended to read as follows:

"(4) CERTAIN ADDITIONAL TAXES NOT TRANSFERRED TO HIGHWAY TRUST FUND.—For purposes of paragraphs (1) and (2)—

"(A) there shall not be taken into account the taxes imposed by sections 4041(d), and

"(B) there shall be taken into account the taxes imposed by sections 4081 and 4091 only to the extent attributable to the Highway Trust Fund financing rates under such sections."

(15) Paragraph (2) of section 9503(e) is amended—

(A) by striking out "sections 4041 and 4081" and inserting in lieu thereof "sections 4041, 4081, and 4091", and

(B) by striking out "section 4041 or 4081" and inserting in lieu thereof "section 4041, 4081, or 4091".

(16) Subsection (b) of section 9508 is amended by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively, and by inserting after paragraph (2) the following new paragraph:

"(3) taxes received in the Treasury under section 4091 (relating to tax on diesel fuel and aviation fuel) to the extent attributable to the Leaking Underground Storage Trust Fund financing rate under such section,".

(17) Subparagraph (A) of section 9508(c)(2) is amended by striking out clause (ii) and all that follows and inserting in lieu thereof the following:

"(ii) credits allowed under section 34,

with respect to the taxes imposed by section 4041(d) or by sections 4081 and 4091 (to the extent attributable to the Leaking Underground Storage Trust Fund financing rate under such sections)."

(18) The table of subparts for part III of subchapter A of chapter 32 is amended by inserting after the item relating to subpart A the following new item:

"Subpart B. Diesel fuel and aviation fuel."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after March 31, 1988. 26 USC 40 note.

(f) FLOOR STOCKS TAX.— 26 USC 4091 note.

(1) IMPOSITION OF TAX.—On any taxable fuel which on April 1, 1988, is held by a taxable person, there is hereby imposed a floor stocks tax at the rate of tax which would be imposed if such fuel were sold on such date in a sale subject to tax under section 4091 of the Internal Revenue Code of 1986 (as added by this section).

(2) OVERPAYMENT OF FLOOR STOCKS TAXES, ETC.—Sections 6416 and 6427 of such Code shall apply in respect of the floor stocks taxes imposed by this subsection so as to entitle, subject to all provisions of such sections, any person paying such floor stocks taxes to a credit or refund thereof for any reason specified in such sections. All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4091 of such Code (as so added) shall apply to the floor stocks taxes imposed by this subsection.

(3) DUE DATE OF TAX.—The taxes imposed by this subsection shall be paid before June 16, 1988.

(4) DEFINITIONS.—For purposes of this subsection—

(A) TAXABLE FUEL.—

(i) IN GENERAL.—The term "taxable fuel" means any taxable fuel (as defined in section 4092 of such Code, as

added by this section) on which no tax has been imposed under section 4041 of such Code.

(ii) EXCEPTION FOR FUEL HELD FOR NONTAXABLE USES.—The term "taxable fuel" [124] shall not include fuel held exclusively for any use which is a nontaxable use (as defined in section 6427(l) of such Code, as added by this section).

(B) TAXABLE PERSON.—The term "taxable person" means any person other than a producer (as defined in section 4092 of such Code, as so added) or importer of taxable fuel.

(C) HELD BY A TAXABLE PERSON.—An article shall be treated as held by a person if title thereto has passed to such person (whether or not delivery to such person has been made).

(5) SPECIAL RULE FOR FUEL HELD FOR USE IN TRAINS AND COMMERCIAL AIRCRAFT.—Only the Leaking Underground Storage Tank Trust Fund financing rate under section 4091 of such Code shall apply for purposes of this subsection with respect to—

(A) diesel fuel held exclusively for use as a fuel in a diesel-powered train, and

(B) aviation fuel held exclusively for use as a fuel in an aircraft not in noncommercial aviation (as defined in section 4041(c)(4) of such Code).

(6) TRANSFER OF FLOOR STOCK REVENUES TO TRUST FUNDS.—For purposes of determining the amount transferred to any trust fund, the tax imposed by this subsection shall be treated as imposed by section 4091 of such Code (as so added).

Effective date.
26 USC 4091 note.

(g) COORDINATION WITH AIRPORT AND AIRWAY SAFETY AND CAPACITY EXPANSION ACT OF 1987.—If the Airport and Airway Safety and Capacity Expansion Act of 1987 is enacted, effective on December 31, 1987, sections 4091(b)(5)(B) and 9502(b)(3) of such Code (as added by this section) are each amended by striking out "January 1, 1988" and inserting in lieu thereof "January 1, 1991".[125]

SEC. 10503. EXTENSION OF TEMPORARY INCREASE IN AMOUNT OF TAX IMPOSED ON COAL PRODUCERS.

Subparagraph (A) of section 4121(e)(2) (relating to temporary increase termination date) is amended by striking out "January 1, 1996" and inserting in lieu thereof "January 1, 2014".

PART II—TAX-RELATED USER FEES

26 USC 7801 note.

SEC. 10511. FEES FOR REQUESTS FOR RULING, DETERMINATION, AND SIMILAR LETTERS.

(a) GENERAL RULE.—The Secretary of the Treasury or his delegate (hereinafter in this section referred to as the "Secretary") shall establish a program requiring the payment of user fees for requests to the Internal Revenue Service for ruling letters, opinion letters, and determination letters and for similar requests.

(b) PROGRAM CRITERIA.—

(1) IN GENERAL.—The fees charged under the program required by subsection (a)—

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[124] Copy read " 'taxable fuel' ".
[125] Copy read "1991", and.".

(A) shall vary according to categories (or subcategories) established by the Secretary,

(B) shall be determined after taking into account the average time for (and difficulty of) complying with requests in each category (and subcategory), and

(C) shall be payable in advance.

(2) EXEMPTIONS, ETC.—The Secretary shall provide for such exemptions (and reduced fees) under such program as he determines to be appropriate.

(3) AVERAGE FEE REQUIREMENT.—The average fee charged under the program required by subsection (a) shall not be less than the amount determined under the following table:

Category	Average Fee
Employee plan ruling and opinion	$250
Exempt organization ruling	$350
Employee plan determination	$300
Exempt organization determination	$275
Chief counsel ruling	$200.

(c) APPLICATION OF SECTION.—Subsection (a) shall apply with respect to requests made on or after the 1st day of the second calendar month beginning after the date of the enactment of this Act and before September 30, 1990. Effective date.

SEC. 10512. OCCUPATIONAL TAXES RELATING TO ALCOHOL, TOBACCO, AND FIREARMS.

(a) OCCUPATIONAL TAXES ON DISTILLED SPIRITS PLANTS, BONDED WINE CELLARS, BREWERIES, ETC.—

(1) DISTILLED SPIRITS PLANTS, BONDED WINE CELLARS, ETC.—

(A) IN GENERAL.—Part II of subchapter A of chapter 51 (relating to distilled spirits, wines, and beer) is amended by inserting before subpart B the following new subpart:

"Subpart A—Proprietors of Distilled Spirits Plants, Bonded Wine Cellars, Etc.

"Sec. 5081. Imposition and rate of tax.

"SEC. 5081. IMPOSITION AND RATE OF TAX. 26 USC 5081.

"(a) GENERAL RULE.—Every proprietor of—

"(1) a distilled spirits plant,

"(2) a bonded wine cellar,

"(3) a bonded wine warehouse, or

"(4) a taxpaid wine bottling house,

shall pay a tax of $1,000 per year in respect of each such premises.

"(b) REDUCED RATES FOR SMALL PROPRIETORS.—

"(1) IN GENERAL.—Subsection (a) shall be applied by substituting '$500' for '$1,000' with respect to any taxpayer the gross receipts of which (for the most recent taxable year ending before the 1st day of the taxable period to which the tax imposed by subsection (a) relates) are less than $500,000.

"(2) CONTROLLED GROUP RULES.—All persons treated as 1 taxpayer under section 5061(e)(3) shall be treated as 1 taxpayer for purposes of paragraph (1).

"(3) CERTAIN RULES TO APPLY.—For purposes of paragraph (1), rules similar to the rules of subparagraphs (B) and (C) of section 448(c)(3) shall apply."

(B) TECHNICAL AMENDMENTS.—

(i) Subsection (a) of section 5691 is amended by striking out "the business of a brewer, wholesale dealer in liquors, retail dealer in liquors, wholesale dealer in beer, retail dealer in beer, or limited retail dealer," and inserting in lieu thereof "a business subject to a special tax imposed by part II of subchapter A or section 5276 (relating to occupational taxes)"

(ii) The section heading of section 5691 is amended by striking out "**RELATING TO LIQUORS**".

(iii) The table of sections for part V of subchapter J of chapter 51 is amended by striking out "relating to liquors" in the item relating to section 5691.

(C) CLERICAL AMENDMENT.—The table of subparts for part II of subchapter A of chapter 51 is amended by inserting before the item relating to subpart B the following new item:

"Subpart A. Proprietors of distilled spirits plants, bonded wine cellars, etc."

(2) BREWERIES.—Section 5091 (relating to imposition and rate of tax on brewers) is amended to read as follows:

26 USC 5091.

"**SEC. 5091. IMPOSITION AND RATE OF TAX.**

"(a) GENERAL RULE.—Every brewer shall pay a tax of $1,000 per year in respect of each brewery.

"(b) REDUCED RATES FOR SMALL BREWERS.—Rules similar to the rules of section 5081(b) shall apply for purposes of subsection (a)."

(b) WHOLESALE DEALERS IN LIQUORS AND BEER.—

(1) LIQUORS.—Subsection (a) of section 5111 (relating to imposition and rate of tax on wholesale dealers) is amended by striking out "$255" and inserting in lieu thereof "$500".

(2) BEER.—Subsection (b) of section 5111 is amended by striking out "$123" and inserting in lieu thereof "$500".

(c) RETAIL DEALERS IN LIQUORS AND BEER.—

(1) LIQUORS.—Subsection (a) of section 5121 (relating to imposition and rate of tax on retail dealers) is amended by striking out "$54" and inserting in lieu thereof "$250".

(2) BEER.—Subsection (b) of section 5121 is amended by striking out "$24" and inserting in lieu thereof "$250".

(3) REPEAL OF TAX ON LIMITED RETAIL DEALERS.—Subsection (c) of section 5121 is hereby repealed.

(d) TAX ON NONBEVERAGE DOMESTIC DRAWBACK.—Subsection (b) of section 5131 (relating to eligibility and rate of tax) is amended to read as follows:

"(b) RATE OF TAX.—The special tax imposed by subsection (a) shall be $500 per year."

(e) TAX ON INDUSTRIAL USE OF DISTILLED SPIRITS.—

(1) IN GENERAL.—Subchapter D of chapter 51 (relating to industrial use of distilled spirits) is amended by adding at the end thereof the following new section:

26 USC 5276.

"**SEC. 5276. OCCUPATIONAL TAX.**

"(a) GENERAL RULE.—A permit issued under section 5271 shall not be valid with respect to acts conducted at any place unless the person holding such permit pays a special tax of $250 with respect to such place.

"(b) CERTAIN OCCUPATIONAL TAX RULES TO APPLY.—Rules similar to the rules of subpart G of part II of subchapter A shall apply for purposes of this section."

(2) CLERICAL AMENDMENT.—The table of sections for such subchapter is amended by adding at the end thereof the following new item:

"Sec. 5276. Occupational tax."

(f) TOBACCO.—

(1) IN GENERAL.—Chapter 52 (relating to cigars, cigarettes, smokeless tobacco and cigarette papers and tubes) is amended by redesignating subchapters D, E, and F as subchapters E, F, and G, respectively, and by inserting after subchapter C the following new subchapter:

"Subchapter D—Occupational Tax

"Sec. 5731. Imposition and rate of tax.

"SEC. 5731. IMPOSITION AND RATE OF TAX. 26 USC 5731.

"(a) GENERAL RULE.—Every person engaged in business as—

"(1) a manufacturer of tobacco products,

"(2) a manufacturer of cigarette papers and tubes, or

"(3) an export warehouse proprietor,

shall pay a tax of $1,000 per year in respect of each premises at which such business is carried on.

"(b) REDUCED RATES FOR SMALL PROPRIETORS.—

"(1) IN GENERAL.—Subsection (a) shall be applied by substituting '$500' for '$1,000' with respect to any taxpayer the gross receipts of which (for the most recent taxable year ending before the 1st day of the taxable period to which the tax imposed by subsection (a) relates) are less than $500,000.

"(2) CONTROLLED GROUP RULES.—All persons treated as 1 taxpayer under section 5061(e)(3) shall be treated as 1 taxpayer for purposes of paragraph (1).

"(3) CERTAIN RULES TO APPLY.—For purposes of paragraph (1), rules similar to the rules of subparagraphs (B) and (C) of section 448(c)(3) shall apply.

"(c) CERTAIN OCCUPATIONAL TAX RULES TO APPLY.—Rules similar to the rules of subpart G of part II of subchapter A of chapter 51 shall apply for purposes of this section.

"(d) PENALTY FOR FAILURE TO REGISTER.—Any person engaged in a business referred to in subsection (a) who willfully fails to pay the tax imposed by subsection (a) shall be fined not more than $5,000, or imprisoned not more than 2 years, or both, for each such offense."

(2) CLERICAL AMENDMENT.—The table of subchapters for chapter 52 is amended by redesignating the items relating to subchapters D, E, and F as items relating to subchapters E, F, and G, respectively, and by inserting after the item relating to subchapter C the following new item:

"SUBCHAPTER D. Occupational tax."

(g) FIREARMS.—

(1) IN GENERAL.—Section 5801 (relating to occupational taxes) is amended to read as follows:

26 USC 5801.

"SEC. 5801. IMPOSITION OF TAX.

"(a) GENERAL RULE.—On 1st engaging in business and thereafter on or before July 1 of each year, every importer, manufacturer, and dealer in firearms shall pay a special (occupational) tax for each place of business at the following rates:

"(1) Importers and manufacturers: $1,000 a year or fraction thereof.

"(2) Dealers: $500 a year or fraction thereof.

"(b) REDUCED RATES OF TAX FOR SMALL IMPORTERS AND MANUFACTURERS.—

"(1) IN GENERAL.—Paragraph (1) of subsection (a) shall be applied by substituting '$500' for '$1,000' with respect to any taxpayer the gross receipts of which (for the most recent taxable year ending before the 1st day of the taxable period to which the tax imposed by subsection (a) relates) are less than $500,000.

"(2) CONTROLLED GROUP RULES.—All persons treated as 1 taxpayer under section 5061(e)(3) shall be treated as 1 taxpayer for purposes of paragraph (1).

"(3) CERTAIN RULES TO APPLY.—For purposes of paragraph (1), rules similar to the rules of subparagraphs (B) and (C) of section 448(c)(3) shall apply."

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter A of chapter 53 is amended by striking out the item relating to section 5801 and inserting in lieu thereof the following new item:

"Sec. 5801. Imposition of tax."

26 USC 5081 note.

(h) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on January 1, 1988.

(2) ALL TAXPAYERS TREATED AS COMMENCING IN BUSINESS ON JANUARY 1, 1988.—

(A) IN GENERAL.—Any person engaged on January 1, 1988, in any trade or business which is subject to an occupational tax shall be treated for purposes of such tax as having 1st engaged in such trade or business on such date.

(B) LIMITATION ON AMOUNT OF TAX.—In the case of a taxpayer who paid an occupational tax in respect of any premises for any taxable period which began before January 1, 1988, and includes such date, the amount of the occupational tax imposed by reason of subparagraph (A) in respect of such premises shall not exceed an amount equal to ½ the excess (if any) of—

(i) the rate of such tax as in effect on January 1, 1988, over

(ii) the rate of such tax as in effect on December 31, 1987.

(C) OCCUPATIONAL TAX.—For purposes of this paragraph, the term "occupational tax" means any tax imposed under part II of subchapter A of chapter 51, section 5276, section 5731, or section 5801 of the Internal Revenue Code of 1986 (as amended by this section).

(D) DUE DATE OF TAX.—The amount of any tax required to be paid by reason of this paragraph shall be due on April 1, 1988.

Subtitle F—Other Revenue Provisions

PART I—TARGETED JOBS CREDIT

SEC. 10601. DENIAL OF TARGETED JOBS CREDIT FOR WAGES PAID DURING PERIOD OF LABOR DISPUTE.

(a) GENERAL RULE.—Subsection (c) of section 51 (defining wages) is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) PAYMENTS FOR SERVICES DURING LABOR DISPUTES.—If—

"(A) the principal place of employment of an individual with the employer is at a plant or facility, and

"(B) there is a strike or lockout involving employees at such plant or facility,

the term 'wages' shall not include any amount paid or incurred by the employer to such individual for services which are the same as, or substantially similar to, those services performed by employees participating in, or affected by, the strike or lockout during the period of such strike or lockout."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to amounts paid or incurred on or after January 1, 1987, for services rendered on or after such date. 26 USC 51 note.

PART II—TREATMENT OF CERTAIN ILLEGAL IRRIGATION SUBSIDIES

SEC. 10611. TREATMENT OF CERTAIN ILLEGAL IRRIGATION SUBSIDIES.

(a) GENERAL RULE.—Part II of subchapter B of chapter 1 (relating to items specifically included in gross income) is amended by adding at the end thereof the following new section:

"SEC. 90. ILLEGAL FEDERAL IRRIGATION SUBSIDIES. 26 USC 90.

"(a) GENERAL RULE.—Gross income shall include an amount equal to any illegal Federal irrigation subsidy received by the taxpayer during the taxable year.

"(b) ILLEGAL FEDERAL IRRIGATION SUBSIDY.—For purposes of this section—

"(1) IN GENERAL.—The term 'illegal Federal[126] irrigation subsidy' means the excess (if any) of—

"(A) the amount required to be paid for any Federal irrigation water delivered to the taxpayer during the taxpayer year, over

"(B) the amount paid for such water.

"(2) FEDERAL IRRIGATION WATER.—The term 'Federal irrigation water' means any water made available for agricultural purposes from the operation of any reclamation or irrigation project referred to in paragraph (8) of section 202 of the Reclamation Reform Act of 1982.

"(c) DENIAL OF DEDUCTION.—No deduction shall be allowed under this subtitle by reason of any inclusion in gross income under subsection (a)."

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[126] Copy read "federal".

(b) CLERICAL AMENDMENT.—The table of sections for part II of subchapter B of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 90. Federal irrigation subsidies."

26 USC 90 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to water delivered to the taxpayer in months beginning after the date of the enactment of this Act.

PART III—COMPLIANCE

SEC. 10621. STATE ESCHEAT LAWS NOT TO APPLY TO REFUNDS OF FEDERAL TAX.

(a) GENERAL RULE.—Subchapter A of chapter 65 (relating to procedure in general for abatements, credits, and refunds) is amended by adding at the end thereof the following new section:

26 USC 6408.

"SEC. 6408. STATE ESCHEAT LAWS NOT TO APPLY.

"No overpayment of any tax imposed by this title shall be refunded (and no interest with respect to any such overpayment shall be paid) if the amount of such refund (or interest) would escheat to a State or would otherwise become the property of a State under any law relating to the disposition of unclaimed or abandoned property. No refund (or payment of interest) shall be made to the estate of any decedent unless it is affirmatively shown that such amount will not escheat to a State or otherwise become the property of a State under such a law."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 65 is amended by adding at the end thereof the following new item:

"Sec. 6408. State escheat laws not to apply."

26 USC 6408 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

26 USC 7803 note.

SEC. 10622. SENSE OF CONGRESS AS TO INCREASED INTERNAL REVENUE SERVICE FUNDING FOR TAXPAYER ASSISTANCE AND ENFORCEMENT.

(a) FINDINGS.—The Congress hereby finds that—

(1) the Internal Revenue Service estimates that the amount of taxes owed for 1986 will exceed the amount of taxes collected for such year by $100 billion;

(2) the current taxpayer compliance rate stands at 81.5 percent;

(3) the tax gap can be significantly reduced by enhancing taxpayer assistance services and enforcement; and

(4) the Appropriations Committee of the House of Representatives, in its fiscal year 1988 Internal Revenue Service appropriation, took a step in the direction of providing additional funding for taxpayer assistance and enforcement efforts.

(b) It is the sense of the Congress that:

(1) The Congress increase outlays for the Internal Revenue Service in fiscal year 1989 and fiscal year 1990 in the areas of taxpayer assistance and enforcement by $.7 billion in fiscal year 1989 for a revenue total of $3.2 billion and by $.8 billion in fiscal year 1990 for a revenue total of $4.4 billion. The net revenue increase would be $2.5 billion in fiscal year 1989 and $3.6 billion in fiscal year 1990, or a net revenue increase over the House

Appropriations Committee recommendations of $.4 billion in fiscal year 1989 and $1.3 billion in fiscal year 1990.

(2) The Internal Revenue Service offer improved taxpayer assistance and enforcement efforts by using the aforementioned outlays in areas recommended by, or consistent with the recommendations of, the "Dorgan Task Force Report". Taxpayer assistance efforts would include providing expanded taxpayer education programs, instituting pilot programs of taxmobiles in rural areas, and upgrading the quality of telephone assistance. Taxpayer enforcement efforts would include raising the audit rate from 1.1 percent toward 2.5 percent, restoring resources to criminal investigations, and the collection of delinquent accounts.

(3) The Congress should undertake an experimental multiyear authorization and 2-year appropriation for the Internal Revenue Service consistent with the recommendations in Public Law 100-119, section [127] 201 (Increasing the Statutory Limit on the Public Debt).

(4) Increased funding should be provided for compilation and analysis of statistics of income and research.

Reports.

The Internal Revenue Service must issue a report on the extent of the tax gap and the measures that could be undertaken to decrease the tax gap. The report must utilize more current data than has been utilized recently. The report must be issued by April 15, 1989. The Internal Revenue Service must also report annually on the improvements being made in the audit rate, taxpayer assistance, and enforcement efforts.

PART IV—TAX-EXEMPT BOND PROVISIONS

SEC. 10631. ISSUES USED TO ACQUIRE NONGOVERNMENTAL OUTPUT PROPERTY.

(a) IN GENERAL.—Section 141 is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) CERTAIN ISSUES USED TO ACQUIRE NONGOVERNMENTAL OUTPUT PROPERTY TREATED AS PRIVATE ACTIVITY BONDS.—

"(1) IN GENERAL.—For purposes of this title, the term 'private activity bond' includes any bond issued as part of an issue if the amount of the proceeds of the issue which are to be used (directly or indirectly) for the acquisition by a governmental unit of nongovernmental output property exceeds the lesser of—

"(A) 5 percent of such proceeds, or

"(B) $5,000,000.

"(2) NONGOVERNMENTAL OUTPUT PROPERTY.—Except as otherwise provided in this subsection, for purposes of paragraph (1), the term 'nongovernmental output property' means any property (or interest therein) which before such acquisition was used (or held for use) by a person other than a governmental unit in connection with an output facility (within the meaning of subsection (b)(4)) (other than a facility for the furnishing of water). For purposes of the preceding sentence, use (or the holding for use) before October 14, 1987, shall not be taken into account.

"(3) EXCEPTION FOR PROPERTY ACQUIRED TO PROVIDE OUTPUT TO CERTAIN AREAS.—For purposes of paragraph (1)—

"(A) IN GENERAL.—The term 'nongovernmental output property' shall not include any property which is to be used in connection with an output facility 95 percent or more of the output of which will be consumed in—

"(i) a qualified service area of the governmental unit acquiring the property, or

"(ii) a qualified annexed area of such unit.

"(B) DEFINITIONS.—For purposes of subparagraph (A)—

"(i) QUALIFIED SERVICE AREA.—The term 'qualified service area' means, with respect to the governmental unit acquiring the property, any area throughout which such unit provided (at all times during the 10-year period ending on the date such property is acquired by such unit) output of the same type as the output to be provided by such property. For purposes of the preceding sentence, the period before October 14, 1987, shall not be taken into account.

"(ii) QUALIFIED ANNEXED AREA.—The term 'qualified annexed area' means, with respect to the governmental unit acquiring the property, any area if—

"(I) such area is contiguous to, and annexed for general governmental purposes into, a qualified service area of such unit,

"(II) output from such property is made available to all members of the general public in the annexed area, and

"(III) the annexed area is not greater than 10 percent of such qualified service area.

"(C) LIMITATION ON SIZE OF ANNEXED AREA NOT TO APPLY WHERE OUTPUT CAPACITY DOES NOT INCREASE BY MORE THAN 10 PERCENT.—Subclause (III) of subparagraph (B)(ii) shall not apply to an annexation of an area by a governmental unit if the output capacity of the property acquired in connection with the annexation, when added to the output capacity of all other property which is not treated as nongovernmental output property by reason of subparagraph (A)(ii) with respect to such annexed area, does not exceed 10 percent of the output capacity of the property providing output of the same type to the qualified service area into which it is annexed.

"(D) RULES FOR DETERMINING RELATIVE SIZE, ETC.—For purposes of subparagraphs (B)(ii) and (C)—

"(i) The size of any qualified service area and the output capacity of property serving such area shall be determined as the close of the calendar year preceding the calendar year in which the acquisition of nongovernmental output property or the annexation occurs.

"(ii) A qualified annexed area shall be treated as part of the qualified service area into which it is annexed for purposes of determining whether any other area annexed in a later year is a qualified annexed area.

"(4) EXCEPTION FOR PROPERTY CONVERTED TO NONOUTPUT USE.—For purposes of paragraph (1)—

"(A) IN GENERAL.—The term 'nongovernmental output property' shall not include any property which is to be converted to a use not in connection with an output facility.

"(B) EXCEPTION.—Subparagraph (A) shall not apply to any property which is part of the output function of a nuclear power facility.

"(5) SPECIAL RULES.—In the case of a bond which is a private activity bond solely by reason of this subsection—

"(A) subsections (c) and (d) of section 147 (relating to limitations on acquisition of land and existing property) shall not apply, and

"(B) paragraph (8) of section 142(a) shall be applied as if it did not contain 'local'.

"(6) TREATMENT OF JOINT ACTION AGENCIES.—With respect to nongovernmental output property acquired by a joint action agency the members of which are governmental units, this subsection shall be applied at the member level by treating each member as acquiring its proportionate share of such property."

(b) TECHNICAL AMENDMENT.—Subparagraph (A) of section 146(f)(5) is amended to read as follows:

"(A) the purpose of issuing exempt facility bonds described in 1 of the paragraphs of section 142(a),".

(c) EFFECTIVE DATE.— 26 USC 141 note.

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to bonds issued after October 13, 1987 (other than bonds issued to refund bonds issued on or before such date).

(2) BINDING AGREEMENTS.—The amendments made by this section shall not apply to bonds (other than advance refunding bonds) with respect to a facility acquired after October 13, 1987, pursuant to a binding contract entered into on or before such date.

(3) TRANSITIONAL RULE.—The amendments made by this section shall not apply to bonds issued—

(A) after October 13, 1987, by an authority created by a statute—

(i) approved by the State Governor on July 24, 1986 and

(ii) sections 1 through 10 of which became effective on January 15, 1987, and

(B) to provide facilities serving the area specified in such statute on the date of its enactment.

SEC. 10632. BONDS ISSUED BY INDIAN TRIBAL GOVERNMENTS.

(a) IN GENERAL.—Section 7871 is amended by adding at the end thereof the following new subsection:

"(e) ESSENTIAL GOVERNMENTAL FUNCTION.—For purposes of this section, the term 'essential governmental function' shall not include any function which is not customarily performed by State and local governments with general taxing powers."

(b) EXCEPTION FOR CERTAIN PRIVATE ACTIVITY BONDS.—

(1) IN GENERAL.—Subsection (c) of section 7871 (relating to additional requirements for tax-exempt bonds) is amended by adding at the end thereof the following new paragraph:

"(3) EXCEPTION FOR CERTAIN PRIVATE ACTIVITY BONDS.—

"(A) IN GENERAL.—In the case of an obligation to which this paragraph applies—

"(i) paragraph (2) shall not apply,

"(ii) such obligation shall be treated for purposes of this title as a qualified small issue bond, and

"(iii) section 146 shall not apply.

"(B) OBLIGATIONS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to any obligation issued as part of an issue if—

"(i) 95 percent or more of the net proceeds of the issue are to be used for the acquisition, construction, reconstruction, or improvement of property which is of a character subject to the allowance for depreciation and which is part of a manufacturing facility (as defined in section 144(a)(12)(C)),

"(ii) such issue is issued by an Indian tribal government or a subdivision thereof,

"(iii) 95 percent or more of the net proceeds of the issue are to be used to finance property which—

"(I) is to be located on land which, throughout the 5-year period ending on the date of issuance of such issue, is part of the qualified Indian lands of the issuer, and

"(II) is to be owned and operated by such issuer,

"(iv) such obligation would not be a private activity bond without regard to subparagraph (C),

"(v) it is reasonably expected (at the time of issuance of the issue) that the employment requirement of subparagraph (D)(i) will be met with respect to the facility to be financed by the net proceeds of the issue, and

"(vi) no principal user of such facility will be a person (or group of persons) described in section 144(a)(6)(B).

For purposes of clause (iii), section 150(a)(5) shall apply.

"(C) PRIVATE ACTIVITY BOND RULES TO APPLY.—An obligation to which this paragraph applies (other than an obligation described in paragraph (1)) shall be treated for purposes of this title as a private activity bond.

"(D) EMPLOYMENT REQUIREMENTS.—

"(i) IN GENERAL.—The employment requirements of this subparagraph are met with respect to a facility financed by the net proceeds of an issue if, as of the close of each calendar year in the testing period, the aggregate face amount of all outstanding tax-exempt private activity bonds issued to provide financing for the establishment which includes such facility is not more than 20 times greater than the aggregate wages (as defined by section 3121(a)) paid during the preceding calendar year to individuals (who are enrolled members of the Indian tribe of the issuer or the spouse of any such member) for services rendered at such establishment.

"(ii) FAILURE TO MEET REQUIREMENTS.—

"(I) IN GENERAL.—If, as of the close of any calendar year in the testing period, the requirements of this subparagraph are not met with respect to an establishment, section 103 shall cease to apply to interest received or accrued (on all private activity bonds issued to provide financing for the

establishment) after the close of such calendar year.

"(II) EXCEPTION.—Subclause (I) shall not apply if the requirements of this subparagraph would be met if the aggregate face amount of all tax-exempt private activity bonds issued to provide financing for the establishment and outstanding at the close of the 90th day after the close of the calender year were substituted in clause (i) for such bonds outstanding at the close of such calendar year.

"(iii) TESTING PERIOD.—For purposes of this subparagraph, the term 'testing period' means, with respect to an issue, each calendar year which begins more than 2 years after the date of issuance of the issue (or, in the case of a refunding obligation, the date of issuance of the original issue).

"(E) DEFINITIONS.—For purposes of this paragraph—

"(i) QUALIFIED INDIAN LANDS.—The term 'qualified Indian lands' means land which is held in trust by the United States for the benefit of an Indian tribe.

"(ii) INDIAN TRIBE.—The term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"(iii) NET PROCEEDS.—The term 'net proceeds' has the meaning given such term by section 150(a)(3)."

(2) TECHNICAL AMENDMENT.—Paragraph (2) of section 7871(c) is amended by striking out "Subsection (a)" and inserting in lieu thereof "Except as provided in paragraph (3), subsection (a)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after October 13, 1987. 26 USC 7871 note.

Subtitle G—Lobbying and Political Activities of Tax-Exempt Organizations

PART I—DISCLOSURE REQUIREMENTS

SEC. 10701. REQUIRED DISCLOSURE OF NONDEDUCTIBILITY OF CONTRIBUTIONS.

(a) GENERAL RULE.—Subchapter B of chapter 61 (relating to miscellaneous provisions) is amended by redesignating section 6113 as section 6114 and by inserting after section 6112 the following new section:

"SEC. 6113. DISCLOSURE OF NONDEDUCTIBILITY OF CONTRIBUTIONS. 26 USC 6113.

"(a) GENERAL RULE.—Each fundraising solicitation by (or on behalf of) an organization to which this section applies shall contain an express statement (in a conspicuous and easily recognizable format) that contributions or gifts to such organization are not deductible as charitable contributions for Federal income tax purposes.

"(b) ORGANIZATIONS TO WHICH SECTION APPLIES.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, this section shall apply to any organization which is not described in section 170(c) and which—

"(A) is described in subsection (c) (other than paragraph (1) thereof) or (d) of section 501 and exempt from taxation under section 501(a),

"(B) is a political organization (as defined in section 527(e)), or

"(C) was an organization described in subparagraph (A) or (B) at any time during the 5-year period ending on the date of the fundraising solicitation or is a successor to an organization so described at any time during such 5-year period.

"(2) EXCEPTION FOR SMALL ORGANIZATIONS.—

"(A) ANNUAL GROSS RECEIPTS DO NOT EXCEED $100,000.—This section shall not apply to any organization the gross receipts of which in each taxable year are normally not more than $100,000.

"(B) MULTIPLE ORGANIZATION RULE.—The Secretary may treat any group of 2 or more organizations as 1 organization for purposes of subparagraph (A) where necessary or appropriate to prevent the avoidance of this section through the use of multiple organizations.

"(3) SPECIAL RULE FOR CERTAIN FRATERNAL ORGANIZATIONS.—For purposes of paragraph (1), an organization described in section 170(c)(4) shall be treated as described in section 170(c) only with respect to solicitations for contributions or gifts which are to be used exclusively for purposes referred to in section 170(c)(4).

"(c) FUNDRAISING SOLICITATION.—For purposes of this section—

"(1) IN GENERAL.—Except as provided in paragraph (2), the term 'fundraising solicitation' means any solicitation of contributions or gifts which is made—

"(A) in written or printed form,

"(B) by television or radio, or

"(C) by telephone.

"(2) EXCEPTION FOR CERTAIN LETTERS OR CALLS.—The term 'fundraising solicitation' shall not include any letter or telephone call if such letter or call is not part of a coordinated fundraising campaign soliciting more than 10 persons during the calendar year."

(b) PENALTY.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

26 USC 6710.

"SEC. 6710. FAILURE TO DISCLOSE THAT CONTRIBUTIONS ARE NONDEDUCTIBLE.

"(a) IMPOSITION OF PENALTY.—If there is a failure to meet the requirement of section 6113 with respect to a fundraising solicitation by (or on behalf of) an organization to which section 6113 applies, such organization shall pay a penalty of $1,000 for each day on which such a failure occurred. The maximum penalty imposed under this subsection on failures by any organization during any calendar year shall not exceed $10,000.

"(b) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.

"(c) $10,000 LIMITATION NOT TO APPLY WHERE INTENTIONAL DISREGARD.—If any failure to which subsection (a) applies is due to intentional disregard of the requirement of section 6113—

"(1) the penalty under subsection (a) for the day on which such failure occurred shall be the greater of—

"(A) $1,000, or

"(B) 50 percent of the aggregate cost of the solicitations which occurred on such day and with respect to which there was such a failure,

"(2) the $10,000 limitation of subsection (a) shall not apply to any penalty under subsection (a) for the day on which such failure occurred, and

"(3) such penalty shall not be taken into account in applying such limitation to other penalties under subsection (a).

"(d) DAY ON WHICH FAILURE OCCURS.—For purposes of this section, any failure to meet the requirement of section 6113 with respect to a solicitation—

"(1) by television or radio, shall be treated as occurring when the solicitation was telecast or broadcast,

"(2) by mail, shall be treated as occurring when the solicitation was mailed,

"(3) not by mail but in written or printed form, shall be treated as occurring when the solicitation was distributed, or

"(4) by telephone, shall be treated as occurring when the solicitation was made."

(c) CLERICAL AMENDMENTS.—

(1) The table of sections for subchapter B of chapter 61 is amended by striking out the item relating to section 6113 and inserting in lieu thereof the following:

"Sec. 6113. Disclosure of nondeductibility of contributions.
"Sec. 6114. Cross reference."

(2) The table of sections for part I of subchapter B of chapter 68 is amended by adding at the end thereof the following new item:

"Sec. 6710. Failure to disclose that contributions are nondeductible."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to solicitations after January 31, 1988. 26 USC 6113 note.

SEC. 10702. PUBLIC INSPECTION OF ANNUAL RETURNS AND APPLICATIONS FOR TAX-EXEMPT STATUS.

(a) GENERAL RULE.—Section 6104 (relating to publicity of information required from certain tax-exempt organizations and certain trusts) is amended by adding at the end thereof the following new subsection:

"(e) PUBLIC INSPECTION OF CERTAIN ANNUAL RETURNS AND APPLICATIONS FOR EXEMPTION.—

"(1) ANNUAL RETURNS.—

"(A) IN GENERAL.—During the 3-year period beginning on the filing date, a copy of the annual return filed under section 6033 (relating to returns by exempt organizations) by any organization to which this paragraph applies shall be made available by such organization for inspection during regular business hours by any individual at the principal office of the organization and, if such organization regularly maintains 1 or more regional or district offices Public information.

having 3 or more employees, at each such regional or district office.

"(B) ORGANIZATIONS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to any organization which—

"(i) is described in subsection (c) or (d) of section 501 and exempt from taxation under section 501(a), and

"(ii) is not a private foundation (within the meaning of section 509(a)).

"(C) NONDISCLOSURE OF CONTRIBUTORS.—Subparagraph (A) shall not require the disclosure of the name or address of any contributor to the organization.

"(D) FILING DATE.—For purposes of subparagraph (A), the term 'filing date' means the last day prescribed for filing the return under section 6033 (determined with regard to any extension of time for filing).

"(2) APPLICATION FOR EXEMPTION.—

"(A) IN GENERAL.—If—

"(i) an organization described in subsection (c) or (d) of section 501 is exempt from taxation under section 501(a), and

Public information.

"(ii) such organization filed an application for recognition of exemption under section 501,

a copy of such application (together with a copy of any papers submitted in support of such application and any letter or other document issued by the Internal Revenue Service with respect to such application) shall be made available by the organization for inspection during regular business hours by any individual at the principal office of the organization and, if the organization regularly maintains 1 or more regional or district offices having 3 or more employees, at each such regional or district office.

"(B) NONDISCLOSURE OF CERTAIN INFORMATION.—Subparagraph (A) shall not require the disclosure of any information if the Secretary withheld such information from public inspection under subsection (a)(1)(D)."

26 USC 6104 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply—

(1) to returns for years beginning after December 31, 1986, and

(2) on and after the 30th day after the date of the enactment of this Act in the case of applications submitted to the Internal Revenue Service—

(A) after July 15, 1987, or

(B) on or before July 15, 1987, if the organization has a copy of the application on July 15, 1987.

SEC. 10703. ADDITIONAL INFORMATION REQUIRED ON ANNUAL RETURNS OF SECTION 501(c)(3) ORGANIZATIONS.

(a) GENERAL RULE.—Subsection (b) of section 6033 (relating to certain organizations described in section 501(c)(3)) [128] is amended by striking out "and" at the end of paragraph (7), by striking out the period at the end of paragraph (8) and inserting in lieu thereof a comma, and by inserting after paragraph (8) the following new paragraphs:

[128] Copy read "503(c)(3))".

"(9) such other information with respect to direct or indirect transfers to, and other direct or indirect transactions and relationships with, other organizations described in section 501(c) (other than paragraph (3) thereof) or section 527 as the Secretary may require to prevent—

"(A) diversion of funds from the organization's exempt purpose, or

"(B) misallocation of revenues or expenses, and

"(10) such other information for purposes of carrying out the internal revenue laws as the Secretary may require."

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to returns for years beginning after December 31, 1987. 26 USC 6033 note.

SEC. 10704. PENALTIES.

(a) GENERAL RULE.—Subsection (c) of section 6652 (relating to returns by exempt organizations and by certain trusts) is amended to read as follows:

"(c) RETURNS BY EXEMPT ORGANIZATIONS AND BY CERTAIN TRUSTS.—

"(1) ANNUAL RETURNS UNDER SECTION 6033.—

"(A) PENALTY ON ORGANIZATION.—In the case of—

"(i) a failure to file a return required under section 6033 (relating to returns by exempt organizations) on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), or

"(ii) a failure to include any of the information required to be shown on a return filed under section 6033 or to show the correct information,

there shall be paid by the exempt organization $10 for each day during which such failure continues. The maximum penalty under this subparagraph on failures with respect to any 1 return shall not exceed the lesser of $5,000 or 5 percent of the gross receipts of the organization for the year.

"(B) MANAGERS.—

"(i) IN GENERAL.—The Secretary may make a written demand on any organization subject to penalty under subparagraph (A) specifying therein a reasonable future date by which the return shall be filed (or the information furnished) for purposes of this subparagraph.

"(ii) FAILURE TO COMPLY WITH DEMAND.—If any person fails to comply with any demand under clause (i) on or before the date specified in such demand, there shall be paid by the person failing to so comply $10 for each day after the expiration of the time specified in such demand during which such failure continues. The maximum penalty imposed under this subparagraph on all persons for failures with respect to any 1 return shall not exceed $5,000.

"(C) PUBLIC INSPECTION OF ANNUAL RETURNS.—In the case of a failure to comply with the requirements of subsection (d) or (e)(1) of section 6104 (relating to public inspection of annual returns) on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), there shall be paid by the person failing to meet

such requirements $10 for each day during which such failure continues. The maximum penalty imposed under this subparagraph on all persons for failures with respect to any 1 return shall not exceed $5,000.

"(D) PUBLIC INSPECTION OF APPLICATIONS FOR EXEMPTION.—In the case of a failure to comply with the requirements of section 6104(e)(2) (relating to public inspection of applications for exemption) on the date and in the manner prescribed therefor, there shall be paid by the person failing to meet such requirements $10 for each day during which such failure continues.

"(2) RETURNS UNDER SECTION 6034 OR 6043(b).—

"(A) PENALTY ON ORGANIZATION OR TRUST.—In the case of a failure to file a return required under section 6034 (relating to returns by certain trusts) or section 6043(b) (relating to terminations, etc., of exempt organizations), on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), there shall be paid by the exempt organization or trust failing so to file $10 for each day during which such failure continues, but the total amount imposed under this subparagraph on any organization or trust for failure to file any 1 return shall not exceed $5,000.

"(B) MANAGERS.—The Secretary may make written demand on an organization or trust failing to file under subparagraph (A) specifying therein a reasonable future date by which such filing shall be made for purposes of this subparagraph. If such filing is not made on or before such date, there shall be paid by the person failing so to file $10 for each day after the expiration of the time specified in the written demand during which such failure continues, but the total amount imposed under this subparagraph on all persons for failure to file any 1 return shall not exceed $5,000.

"(3) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this subsection with respect to any failure if it is shown that such failure is due to reasonable cause.

"(4) OTHER SPECIAL RULES.—

"(A) TREATMENT AS TAX.—Any penalty imposed under this subsection shall be paid on notice and demand of the Secretary and in the same manner as tax.

"(B) JOINT AND SEVERAL LIABILITY.—If more than 1 person is liable under this subsection for any penalty with respect to any failure, all such persons shall be jointly and severally liable with respect to such failure.

"(C) PERSON.—For purposes of this subsection, the term 'person' means any officer, director, trustee, employee, or other individual who is under a duty to perform the act in respect of which the violation occurs."

(b) WILLFUL FAILURE TO PERMIT PUBLIC INSPECTION.—

(1) IN GENERAL.—Section 6685 (relating to assessable penalty with respect to private foundation annual returns) is amended to read as follows:

"SEC. 6685. ASSESSABLE PENALTY WITH RESPECT TO PUBLIC INSPECTION REQUIREMENTS FOR CERTAIN TAX-EXEMPT ORGANIZATIONS. 26 USC 6685.

"In addition to the penalty imposed by section 7207 (relating to fraudulent returns, statements, or other documents), any person who is required to comply with the requirements of subsection (d) or (e) of section 6104 and who fails to so comply with respect to any return or application, if such failure is willful, shall pay a penalty of $1,000 with respect to each such return or application."

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by striking out the item relating to section 6685 and inserting in lieu thereof the following:

"Sec. 6685. Assessable penalty with respect to public inspection requirements for certain tax-exempt organizations."

(c) FURNISHING FRAUDULENT INFORMATION.—Section 7207 (relating to fraudulent returns, statements, or other documents) is amended by striking out "subsection (d) of section 6104" and inserting in lieu thereof "subsection (d) or (e) of section 6104".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply— 26 USC 6652 note.

(1) to returns for years beginning after December 31, 1986, and

(2) on and after the date of the enactment of this Act in the case of applications submitted to the Internal Revenue Service—

(A) after July 15, 1987, or

(B) on or before July 15, 1987, if the organization has a copy of the application on July 15, 1987.

SEC. 10705. REQUIRED DISCLOSURE THAT CERTAIN INFORMATION OR SERVICE AVAILABLE FROM FEDERAL GOVERNMENT.

(a) GENERAL RULE.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6711. FAILURE BY TAX-EXEMPT ORGANIZATION TO DISCLOSE THAT CERTAIN INFORMATION OR SERVICE AVAILABLE FROM FEDERAL GOVERNMENT. 26 USC 6711.

"(a) IMPOSITION OF PENALTY.—If—

"(1) a tax-exempt organization offers to sell (or solicits money for) specific information or a routine service for any individual which could be readily obtained by such individual free of charge (or for a nominal charge) from an agency of the Federal Government,

"(2) the tax-exempt organization, when making such offer or solicitation, fails to make an express statement (in a conspicuous and easily recognizable format) that the information or service can be so obtained, and

"(3) such failure is due to intentional disregard of the requirements of this subsection,

such organization shall pay a penalty determined under subsection (b) for each day on which such a failure occurred.

"(b) AMOUNT OF PENALTY.—The penalty under subsection (a) for any day on which a failure referred to in such subsection occurred shall be the greater of—

"(1) $1,000, or

"(2) 50 percent of the aggregate cost of the offers and solicitations referred to in subsection (a)(1) which occurred on such day and with respect to which there was such a failure.

"(c) DEFINITIONS.—For purposes of this section—

"(1) TAX-EXEMPT ORGANIZATION.—The term 'tax-exempt organization' means any organization which—

"(A) is described in subsection (c) or (d) of section 501 and exempt from taxation under section 501(a), or

"(B) is a political organization (as defined in section 527(e)).

"(2) DAY ON WHICH FAILURE OCCURS.—The day on which any failure referred to in subsection (a) occurs shall be determined under rules similar to the rules of section 6710(d)."

(b) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by adding at the end thereof the following new item:

"Sec. 6711. Failure by tax-exempt organization to disclose that certain information or service available from Federal Government."

26 USC 6711 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to offers and solicitations after January 31, 1988.

PART II—POLITICAL ACTIVITIES

SEC. 10711. CLARIFICATION OF PROHIBITED POLITICAL ACTIVITIES.

(a) GENERAL RULE.—The following provisions are each amended by striking out "on behalf of any candidate" and inserting in lieu thereof "on behalf of (or in opposition to) any candidate":

(1) Section 170(c)(2)(D).
(2) Section 501(c)(3).
(3) Paragraphs (2) and (3) of section 2055(a).
(4) Clauses (ii) and (iii) of section 2106(a)(2)(A).
(5) Section 2522(a)(2).
(6) Paragraphs (2) and (3) of section 2522(b).

(b) STATUS AFTER DISQUALIFICATION BECAUSE OF POLITICAL ACTIVITIES.—

(1) IN GENERAL.—Paragraph (2) of section 504(a) (relating to status after organization ceases to qualify for exemption under section 501(c)(3) because of substantial lobbying) is amended to read as follows:

"(2) is not an organization described in section 501(c)(3)—

"(A) by reason of carrying on propaganda, or otherwise attempting, to influence legislation, or

"(B) by reason of participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for public office,".

(2) CLERICAL AMENDMENTS.—

(A) The section heading for section 504 is amended by striking out "SUBSTANTIAL LOBBYING" and inserting in lieu thereof "SUBSTANTIAL LOBBYING OR BECAUSE OF POLITICAL ACTIVITIES".

(B) The table of sections for part I of subchapter F of chapter 1 is amended by striking out "substantial lobbying" in the item relating to section 504 and inserting in lieu thereof "substantial lobbying or because of political activities".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to activities after the date of the enactment of this Act. 26 USC 170 note.

SEC. 10712. EXCISE TAXES ON POLITICAL EXPENDITURES BY SECTION 501(c)(3) ORGANIZATIONS.

(a) GENERAL RULE.—Chapter 42 (relating to excise taxes on private foundations and black lung benefit trusts) is amended by redesignating subchapter C as subchapter D and by inserting after subchapter B the following new subchapter:

"Subchapter C—Political Expenditures of Section 501(c)(3) Organizations

"Sec. 4955. Taxes on political expenditures of section 501(c)(3) organizations.

"SEC. 4955. TAXES ON POLITICAL EXPENDITURES OF SECTION 501(c)(3) ORGANIZATIONS. 26 USC 4955.

"(a) INITIAL TAXES.—

"(1) ON THE ORGANIZATION.—There is hereby imposed on each political expenditure by a section 501(c)(3) organization a tax equal to 10 percent of the amount thereof. The tax imposed by this paragraph shall be paid by the organization.

"(2) ON THE MANAGEMENT.—There is hereby imposed on the agreement of any organization manager to the making of any expenditure, knowing that it is a political expenditure, a tax equal to 2½ percent of the amount thereof, unless such agreement is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any organization manager who agreed to the making of the expenditure.

"(b) ADDITIONAL TAXES.—

"(1) ON THE ORGANIZATION.—In any case in which an initial tax is imposed by subsection (a)(1) on a political expenditure and such expenditure is not corrected within the taxable period, there is hereby imposed a tax equal to 100 percent of the amount of the expenditure. The tax imposed by this paragraph shall be paid by the organization.

"(2) ON THE MANAGEMENT.—In any case in which an additional tax is imposed by paragraph (1), if an organization manager refused to agree to part or all of the correction, there is hereby imposed a tax equal to 50 percent of the amount of the political expenditure. The tax imposed by this paragraph shall be paid by any organization manager who refused to agree to part or all of the correction.

"(c) SPECIAL RULES.—For purposes of subsections (a) and (b)—

"(1) JOINT AND SEVERAL LIABILITY.—If more than 1 person is liable under subsection (a)(2) or (b)(2) with respect to the making of a political expenditure, all such persons shall be jointly and severally liable under such subsection with respect to such expenditure.

"(2) LIMIT FOR MANAGEMENT.—With respect to any 1 political expenditure, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed $5,000, and the maximum amount of the tax imposed by subsection (b)(2) shall not exceed $10,000.

"(d) POLITICAL EXPENDITURE.—For purposes of this section—

"(1) IN GENERAL.—The term 'political expenditure' means any amount paid or incurred by a section 501(c)(3) organization in any participation in, or intervention in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

"(2) CERTAIN OTHER EXPENDITURES INCLUDED.—In the case of an organization which is formed primarily for purposes of promoting the candidacy (or prospective candidacy) of an individual for public office (or which is effectively controlled by a candidate or prospective candidate and which is availed of primarily for such purposes), the term 'political expenditure' includes any of the following amounts paid or incurred by the organization:

"(A) Amounts paid or incurred to such individual for speeches or other services.

"(B) Travel expenses of such individual.

"(C) Expenses of conducting polls, surveys, or other studies, or preparing papers or other materials, for use by such individual.

"(D) Expenses of advertising, publicity, and fundraising for such individual.

"(E) Any other expense which has the primary effect of promoting public recognition, or otherwise primarily accruing to the benefit, of such individual.

"(e) COORDINATION WITH SECTION 4945.—If tax is imposed under this section with respect to any political expenditure, such expenditure shall not be treated as a taxable expenditure for purposes of section 4945.

"(f) OTHER DEFINITIONS.—For purposes of this section—

"(1) SECTION 501(C)(3) ORGANIZATION.—The term 'section 501(c)(3) organization' means any organization which (without regard to any political expenditure) would be described in section 501(c)(3) and exempt from taxation under section 501(a).

"(2) ORGANIZATION MANAGER.—The term 'organization manager' means—

"(A) any officer, director, or trustee of the organization (or individual having powers or responsibilities similar to those of officers, directors, or trustees of the organization), and

"(B) with respect to any expenditure, any employee of the organization having authority or responsibility with respect to such expenditure.

"(3) CORRECTION.—The terms 'correction' and 'correct' mean, with respect to any political expenditure, recovering part or all of the expenditure to the extent recovery is possible, establishment of safeguards to prevent future political expenditures, and where full recovery is not possible, such additional corrective action as is prescribed by the Secretary by regulations.

"(4) TAXABLE PERIOD.—The term 'taxable period' means, with respect to any political expenditure, the period beginning with the date on which the political expenditure occurs and ending on the earlier of—

"(A) the date of mailing a notice of deficiency under section 6212 with respect to the tax imposed by subsection (a)(1), or

"(B) the date on which tax imposed by subsection (a)(1) is assessed."

(b) ABATEMENT OF FIRST TIER TAX IN CERTAIN CASES.—

(1) Section 4962 (relating to abatement of private foundation first tier taxes in certain cases) is amended by striking out subsection (b) and inserting in lieu thereof the following new subsections:

"(b) QUALIFIED FIRST TIER TAX.—For purposes of this section, the term 'qualified first tier tax' means any first tier tax imposed by subchapter A or C of this chapter, except that such term shall not include the tax imposed by section 4941(a) (relating to initial tax on self-dealing).

"(c) SPECIAL RULE FOR TAX ON POLITICAL EXPENDITURES OF SECTION 501(c)(3) ORGANIZATIONS.—In the case of the tax imposed by section 4955(a), subsection (a)(1) shall be applied by substituting 'not willful and flagrant' for 'due to reasonable cause and not to willful neglect'."

(2) Subsection (a) of section 4962 is amended by striking out "any private foundation first tier tax" and inserting in lieu thereof "any qualified first tier tax".

(3) Subsections (a), (b), and (c) of section 4963 are each amended by striking out "4952," and inserting in lieu thereof "4952, 4955,".

(4) The section heading for section 4962 is amended by striking out "**PRIVATE FOUNDATION**".

(5) The table of sections for subchapter D of chapter 42 (as redesignated by this section) is amended by striking out "private foundation" in the item relating to section 4962.

(c) TECHNICAL AMENDMENTS.—

(1) Subsection (e) of section 6213 is amended by striking out "4971" and inserting in lieu thereof "4955 (relating to taxes on political expenditures), 4971".

(2) Paragraph (1) of section 6501(l) is amended by striking out "plan, or trust" and inserting in lieu thereof "plan, trust, or other organization".

(3) Subsection (g) of section 6503 is amended by striking out "4951, 4952,".

(4) Section 6684 is amended by striking out "private foundations" and inserting in lieu thereof "private foundations and certain other tax-exempt organizations".

(5) Paragraphs (2) and (3) of section 7422(g) are each amended by striking out "4952," and inserting in lieu thereof "4952, 4955,".

(6) Subsection (b) of section 7454 is amended by striking out "the burden of proof" and inserting in lieu thereof "or whether an organization manager (as defined in section 4955(e)(2)) has 'knowingly' agreed to the making of a political expenditure (within the meaning of section 4955), the burden of proof".

(7) The chapter heading for chapter 42 is amended by striking out "**BLACK LUNG BENEFIT TRUSTS**" and inserting in lieu thereof "**AND CERTAIN OTHER TAX-EXEMPT ORGANIZATIONS**".

(8) The table of chapters for subtitle D of such Code is amended by striking out "black lung benefit trusts" in the item relating to chapter 42 and inserting in lieu thereof "and certain other tax-exempt organizations".

(9) The table of subchapters for chapter 42 is amended by striking out the item relating to subchapter C and inserting in lieu thereof the following:

"SUBCHAPTER C. Political expenditures of section 501(c)(3) organizations.
"SUBCHAPTER D. Abatement of first and second-tier taxes in certain cases."

26 USC 4955 note.

(d) EFFECTIVE DATES.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 10713. ADDITIONAL ENFORCEMENT AUTHORITY IN THE CASE OF FLAGRANT POLITICAL EXPENDITURES.

(a) AUTHORITY TO ENJOIN FLAGRANT POLITICAL EXPENDITURES.—

(1) IN GENERAL.—Subchapter A of chapter 76 (relating to civil actions by the United States) is amended by redesignating section 7409 as section 7410 and by inserting after section 7408 the following new section:

26 USC 7409.

"SEC. 7409. ACTION TO ENJOIN FLAGRANT POLITICAL EXPENDITURES OF SECTION 501(c)(3) ORGANIZATIONS.

"(a) AUTHORITY TO SEEK INJUNCTION.—

"(1) IN GENERAL.—If the requirements of paragraph (2) are met, a civil action in the name of the United States may be commenced at the request of the Secretary to enjoin any section 501(c)(3) organization from further making political expenditures and for such other relief as may be appropriate to ensure that the assets of such organization are preserved for charitable or other purposes specified in section 501(c)(3). Any action under this section shall be brought in the district court of the United States for the district in which such organization has its principal place of business or for any district in which it has made political expenditures. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such organization.

"(2) REQUIREMENTS.—An action may be brought under subsection (a) only if—

"(A) the Internal Revenue Service has notified the organization of its intention to seek an injunction under this section if the making of political expenditures does not immediately cease, and

"(B) the Commissioner of Internal Revenue has personally determined that—

"(i) such organization has flagrantly participated in, or intervened in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office, and

"(ii) injunctive relief is appropriate to prevent future political expenditures.

"(b) ADJUDICATION AND DECREE.—In any action under subsection (a), if the court finds on the basis of clear and convincing evidence that—

"(1) such organization has flagrantly participated in, or intervened in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office, and

"(2) injunctive relief is appropriate to prevent future political expenditures,

the court may enjoin such organization from making political expenditures and may grant such other relief as may be appropriate

to ensure that the assets of such organization are preserved for charitable or other purposes specified in section 501(c)(3).

"(c) DEFINITIONS.—For purposes of this section, the terms 'section 501(c)(3) organization' and 'political expenditures' have the respective meanings given to such terms by section 4955."

(2) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 76 is amended by striking the item relating to section 7409 and inserting in lieu thereof the following:

"Sec. 7409. Action to enjoin flagrant political expenditures of section 501(c)(3) organizations.
"Sec. 7410. Cross references."

(b) AUTHORITY TO MAKE IMMEDIATE ASSESSMENTS.—

(1) IN GENERAL.—Part I of subchapter A of chapter 70 (relating to termination of taxable year) is amended by adding at the end thereof the following new section:

"SEC. 6852. TERMINATION ASSESSMENTS IN CASE OF FLAGRANT POLITICAL EXPENDITURES OF SECTION 501(c)(3) ORGANIZATIONS. 26 USC 6852.

"(a) AUTHORITY TO MAKE.—

"(1) IN GENERAL.—If the Secretary finds that—

"(A) a section 501(c)(3) organization has made political expenditures, and

"(B) such expenditures constitute a flagrant violation of the prohibition against making political expenditures,

the Secretary shall immediately make a determination of any income tax payable by such organization for the current or immediately preceding taxable year, or both, and shall immediately make a determination of any tax payable under section 4955 by such organization or any manager thereof with respect to political expenditures during the current or preceding taxable year, or both. Notwithstanding any other provision of law, any such tax shall become immediately due and payable. The Secretary shall immediately assess the amount of tax so determined (together with all interest, additional amounts, and additions to the tax provided by law) for the current year or the preceding taxable year, or both, and shall cause notice of such determination and assessment to be given to the organization or any manager thereof, as the case may be, together with a demand for immediate payment of such tax.

"(2) COMPUTATION OF TAX.—In the case of a current taxable year, the Secretary shall determine the taxes for the period beginning on the 1st day of such current taxable year and ending on the date of the determination under paragraph (1) as though such period were a taxable year of the organization, and shall take into account any prior determination made under this subsection with respect to such current taxable year.

"(3) TREATMENT OF AMOUNTS COLLECTED.—Any amounts collected as a result of any assessments under this subsection shall, to the extent thereof, be treated as a payment of income tax for such taxable year, or tax under section 4955 with respect to the expenditure, as the case may be.

"(4) SECTION INAPPLICABLE TO ASSESSMENTS AFTER DUE DATE.—This section shall not authorize any assessment of tax for the preceding taxable year which is made after the due date of the organization's return for such taxable year (determined with regard to any extensions).

"(b) DEFINITIONS AND SPECIAL RULES.—

"(1) DEFINITIONS.—For purposes of this section, the terms 'section 501(c)(3) organization', 'political expenditure', and 'organization manager' have the respective meanings given to such terms by section 4955.

"(2) CERTAIN RULES MADE APPLICABLE.—The provisions of sections 6851(b), 6861(f), and 6861(g) shall apply with respect to any assessment made under subsection (a), except that determinations under section 6861(g) shall be made on the basis of whether the requirements of subsection (a)(1)(B) of this section are met in lieu of whether jeopardy exists."

(2) TECHNICAL AND CONFORMING AMENDMENTS.—

(A) Clause (v) of section 6091(b)(1)(B) is amended by striking out "section 6851(a)" and inserting in lieu thereof "section 6851(a) or 6852(a)".

(B) Paragraph (1) of section 6211(b) is amended by striking out "section 6851" and inserting in lieu thereof "section 6851 or 6852".

(C) Paragraph (1) of section 6212(c) is amended by striking out "section 6851" and inserting in lieu thereof "section 6851 or 6852".

(D) Subsection (a) of section 6213 is amended by striking out "section 6851 or section 6861" and inserting in lieu thereof "section 6851, 6852, or 6861".

(E) Section 6863 is amended—

(i) by striking out "6851" in subsection (a) and inserting in lieu thereof "6851, 6852,",

(ii) by striking out "6851 or 6861" in subsection (b)(3)(A) and inserting in lieu thereof "6851, 6852, or 6861", and

(iii) by striking out "6851(a) or 6861(a)" and inserting in lieu thereof "6851(a), 6852(a), or 6861(a)".

(F) Section 7429 is amended—

(i) by striking out "6851(a)," each place it appears and inserting in lieu thereof "6851(a), 6852(a),", and

(ii) by striking out "6851," each place it appears and inserting in lieu thereof "6851, 6852,".

(G) Paragraph (3) of section 7611(i) is amended by striking out "or section 6861" and inserting in lieu thereof "section 6852 relating to termination assessments in case of political expenditures of section 501(c)(3), or 6861".

(H) The table of sections for part I of subchapter 70 is amended by adding at the end thereof the following new item:

"Sec. 6852. Termination assessments in case of flagrant political expenditures of section 501(c)(3) organizations."

26 USC 6091 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 10714. TAX ON DISQUALIFYING LOBBYING EXPENDITURES.

(a) GENERAL RULE.—Chapter 41 (relating to public charities) is amended by adding at the end thereof the following new section:

26 USC 4912.

"SEC. 4912. TAX ON DISQUALIFYING LOBBYING EXPENDITURES OF CERTAIN ORGANIZATIONS.

"(a) TAX ON ORGANIZATION.—If an organization to which this section applies is not described in section 501(c)(3) for any taxable

year by reason of making lobbying expenditures, there is hereby imposed a tax on the lobbying expenditures of such organization for such taxable year equal to 5 percent of the amount of such expenditures. The tax imposed by this subsection shall be paid by the organization.

"(b) ON MANAGEMENT.—If tax is imposed under subsection (a) on the lobbying expenditures of any organization, there is hereby imposed on the agreement of any organization manager to the making of any such expenditures, knowing that such expenditures are likely to result in the organization not being described in section 501(c)(3), a tax equal to 5 percent of the amount of such expenditures, unless such agreement is not willful and is due to reasonable cause. The tax imposed by this subsection shall be paid by any manager who agreed to the making of the expenditures.

"(c) ORGANIZATIONS TO WHICH SECTION APPLIES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), this section shall apply to any organization which was exempt (or was determined by the Secretary to be exempt) from taxation under section 501(a) by reason of being an organization described in section 501(c)(3).

"(2) EXCEPTIONS.—This section shall not apply to any organization—

"(A) to which an election under section 501(h) applies,

"(B) which is a disqualified organization (within the meaning of section 501(h)(5)), or

"(C) which is a private foundation.

"(d) DEFINITIONS.—

"(1) LOBBYING EXPENDITURES.—The term 'lobbying expenditure' means any amount paid or incurred by the organization in carrying on propaganda, or otherwise attempting to influence legislation.

"(2) ORGANIZATION MANAGER.—The term 'organization manager' has the meaning given to such term by section 4955(f)(2).

"(3) JOINT AND SEVERAL LIABILITY.—If more than 1 person is liable under subsection (b), all such persons shall be jointly and severally liable under such subsection."

(b) BURDEN OF PROOF.—Subsection (b) of section 7454 (as amended by this Act) is amended by striking out "the burden of proof" and inserting in lieu thereof ", or whether an organization manager (as defined in section 4912(d)(2)) has 'knowingly' agreed to the making of disqualifying lobbying expenditures within the meaning of section 4912(b), the burden of proof".

(c) TECHNICAL AMENDMENT.—Paragraph (1) of section 6501(l) is amended by striking out "by chapter 42 (other than section 4940)" and inserting in lieu thereof "by section 4912, by chapter 42 (other than section 4940),".

(d) CLERICAL AMENDMENT.—The table of sections for chapter 41 is amended by adding at the end thereof the following new item:

"Sec. 4912. Tax on disqualifying lobbying expenditures of certain organizations."

26 USC 4912 note.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

Approved December 22, 1987.

Certified April 20, 1988.

Editorial note: This printed version of the original hand enrollment is published pursuant to section 8004(c) of this law. The following memorandum for the Archivist of the United States was signed by the President on January 28, 1988, and was printed in the *Federal Register* on February 1, 1988:

By the authority vested in me as President by the Constitution and laws of the United States, including Section 301 of Title 3 of the United States Code, I hereby authorize you to ascertain whether the printed enrollments of H.J. Res. 395, Joint Resolution making further continuing appropriations for the fiscal year 1988 (Public Law 100-202), and H.R. 3545, the Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203), are correct printings of the hand enrollments, which were approved on December 22, 1987, and if so to make on my behalf the certifications required by Section 101(n)(4) of H.J. Res. 395 and Section 8004(c) of H.R. 3545.

Attached are the printed enrollments of H.J. Res. 395 and H.R. 3545, which were received at the White House on January 27, 1988.

This memorandum shall be published in the *Federal Register*.

The Archivist on April 20, 1988, certified this to be a correct printing of the hand enrollment of Public Law 100-203.

LEGISLATIVE HISTORY—H.R. 3545 (S. 1920):

HOUSE REPORTS: No. 100-391 (Comm. on the Budget) and No. 100-495 (Comm. of Conference).

CONGRESSIONAL RECORD, Vol. 133 (1987):

Oct. 29, considered and passed House.

Dec. 9, S. 1920 considered in Senate.

Dec. 10, H.R. 3545 considered and passed Senate, amended, in lieu of S. 1920.

Dec. 21, House and Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 23 (1987):

Dec. 22, Presidential remarks.