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[Report No. 108–118]

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

IN THE SENATE OF THE UNITED STATES

JULY 22, 2003

Mr. HATCH (for himself, Mr. NELSON of Nebraska, Mr. DEWINE, Mr. MILLER, Mr. VOINOVICH, Mr. ALLEN, Mr. CHAMBLISS, and Mr. HAGEL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JULY 30 (legislative day, JULY 21), 2003

Reported by Mr. HATCH, with amendments

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

A BILL

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

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

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

2 (a) SHORT TITLE.—This Act may be cited as the
 3 “Fairness in Asbestos Injury Resolution Act of 2003” or
 4 the “FAIR Act of 2003”.

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

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

TITLE I—ASBESTOS CLAIMS RESOLUTION

Subtitle A—United States Court of ~~Asbestos~~ *Federal Claims*

Sec. 101. ~~Establishment of Asbestos Court.~~ *United States Court of Federal Claims.*

Subtitle B—Asbestos Injury Claims Resolution Procedures

Sec. 111. Filing of claims.
 Sec. 112. General rule concerning no-fault compensation.
 Sec. 113. Essential elements of eligible asbestos claim.
 Sec. 114. Eligibility determinations and claim awards.
 Sec. 115. Medical evidence auditing procedures.
 Sec. 116. Claimant assistance program.

Subtitle C—Medical Criteria

Sec. 121. ~~Essential elements of eligible asbestos claim.~~ *Medical criteria requirements.*
~~Sec. 122. Diagnostic criteria requirements.~~
~~Sec. 123. Latency criteria requirements.~~
~~Sec. 124. Medical criteria requirements.~~
~~Sec. 125. Exposure criteria requirements.~~

Subtitle D—Awards

Sec. 131. Amount.
 Sec. 132. Medical monitoring.
 Sec. 133. Payments.
 Sec. 134. Reduction in benefit payments for collateral sources.

Subtitle E—En Banc Review

Sec. 141. En banc review.

TITLE II—ASBESTOS INJURY CLAIMS RESOLUTION FUND

Subtitle A—Asbestos Defendants Funding Allocation

Sec. 201. Definitions.
 Sec. 202. Authority and tiers.

- Sec. 203. Subtier assessments.
 Sec. 204. Assessment administration.

Subtitle B—Asbestos Insurers Commission

- Sec. 210. Definitions.*
 Sec. 211. Establishment of Asbestos Insurers Commission.
 Sec. 212. Duties of Asbestos Insurers Commission.
 Sec. 213. Powers of Asbestos Insurers Commission.
 Sec. 214. Personnel matters.
~~Sec. 215. Nonapplication of FOIA and confidentiality of information.~~
Sec. 215. Application of FOIA.
 Sec. 216. Termination of Asbestos Insurers Commission.
~~Sec. 217. Authorization of appropriations.~~
Sec. 217. Expenses and costs of the Commission.

Subtitle C—Office of Asbestos Injury Claims Resolution

- Sec. 221. Establishment of the Office of Asbestos Injury Claims Resolution.
 Sec. 222. Powers of the Administrator and management of the Fund.
 Sec. 223. Asbestos Injury Claims Resolution Fund.
 Sec. 224. Enforcement of contributions.
~~Sec. 225. Additional contributing participants.~~

TITLE III—JUDICIAL REVIEW

- Sec. 301. Judicial review of decisions of the ~~Asbestos Court~~, *United States Court of Asbestos Claims*.
 Sec. 302. Judicial review of final determinations of the Administrator and of the Asbestos Insurers Commission.
 Sec. 303. Exclusive review.
 Sec. 304. Private right of action against reinsurers.

TITLE IV—MISCELLANEOUS PROVISIONS

- Sec. 401. False information.
 Sec. 402. Effect on bankruptcy laws.
 Sec. 403. Effect on other laws and existing claims.
Sec. 404. Annual report of the Administrator.
Sec. 405. Rules of construction relating to liability of the United States Government.
Sec. 406. Effect on insurance and reinsurance contracts.

TITLE V—PROHIBITION OF ASBESTOS CONTAINING PRODUCTS

- Sec. 501. Prohibition on asbestos containing products.*

1 **SEC. 2. PURPOSE.**

2 The purpose of this Act is to create a privately fund-
 3 ed, publicly administered fund to provide the necessary re-
 4 sources for an asbestos, injury claims resolution program.

1 **SEC. 2. FINDINGS AND PURPOSE.**

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

3 (1) *A great number of Americans have been ex-*
4 *posed to forms of asbestos that can have devastating*
5 *health effects.*

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

9 (3) *The injuries caused by asbestos can have la-*
10 *tency periods of up to 40 years, and even limited ex-*
11 *posure to some forms of asbestos may result in injury*
12 *in some cases.*

13 (4) *Asbestos litigation has had a significant det-*
14 *rimonental effect on the country's economy, driving*
15 *companies into bankruptcy, diverting resources from*
16 *those who are truly sick, and endangering jobs and*
17 *pensions.*

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

20 (6) *The United States Supreme Court has recog-*
21 *nized that Congress must act to create a more ration-*
22 *al asbestos claims system. In 1991, a Judicial Con-*
23 *ference Ad Hoc Committee on Asbestos Litigation, ap-*
24 *pointed by Chief Justice William Rehnquist, found*
25 *that the “ultimate solution should be legislation recog-*
26 *nizing the national proportions of the problem . . .*

1 and creating a national asbestos dispute resolution
2 scheme . . .”. The Court found in 1997 in *Amchem*
3 *Products Inc. v. Windsor*, 521 U.S. 591, 595 (1997),
4 that “[t]he argument is sensibly made that a nation-
5 wide administrative claims processing regime would
6 provide the most secure, fair, and efficient means of
7 compensating victims of asbestos exposure.” In 1999,
8 the Court in *Ortiz v. Fibreboard Corp.*, 527 U.S. 819,
9 821 (1999), found that the “elephantine mass of as-
10 bestos cases . . . defies customary judicial adminis-
11 tration and calls for national legislation.” That find-
12 ing was again recognized in 2003 by the Court in
13 *Norfolk & Western Railway Co. v. Ayers*, 123 S.Ct.
14 1210 (2003).

15 (7) *This crisis, and its significant effect on the*
16 *health and welfare of the people of the United States,*
17 *on interstate and foreign commerce, and on the bank-*
18 *ruptcy system, compels Congress exercise its power to*
19 *regulate interstate commerce and create this legisla-*
20 *tive solution in the form of a national asbestos injury*
21 *claims resolution program to supersede all existing*
22 *methods to compensate those injured by asbestos, ex-*
23 *cept as specified in this Act.*

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

1 (1) *create a privately funded, publicly adminis-*
 2 *tered fund to provide the necessary resources for a*
 3 *fair and efficient system to resolve asbestos injury*
 4 *claims that will provide compensation for legitimate*
 5 *present and future claimants of asbestos exposure as*
 6 *provided in this Act;*

7 (2) *provide compensation to those present and*
 8 *future victims based on the severity of their injuries,*
 9 *while establishing a system flexible enough to accom-*
 10 *modate individuals whose condition worsens;*

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

13 (4) *increase economic stability by resolving the*
 14 *asbestos litigation crisis that has bankrupted compa-*
 15 *nies with asbestos liability, diverted resources from*
 16 *the truly sick, and endangered jobs and pensions.*

17 **SEC. 3. DEFINITIONS.**

18 In this Act, the following definitions shall apply:

19 (1) ADMINISTRATOR.—The term “Adminis-

20 trator” means the Administrator of the Office of As-

21 bestos Injury Claims Resolution appointed under

22 section 221(c).

23 (2) ASBESTOS.—The term “asbestos” in-

24 cludes—

25 (A) ~~asbestos chrysotile;~~

- 1 ~~(B)~~ asbestos amosite;
- 2 ~~(C)~~ asbestos crocidolite;
- 3 ~~(D)~~ asbestos tremolite;
- 4 ~~(E)~~ asbestos winchite;
- 5 ~~(F)~~ asbestos richterite;
- 6 ~~(G)~~ asbestos anthophyllite;
- 7 ~~(H)~~ asbestos actinolite;

8 (2) *ASBESTOS*.—*The term “asbestos” includes—*

- 9 *(A) chrysotile;*
- 10 *(B) amosite;*
- 11 *(C) crocidolite;*
- 12 *(D) tremolite asbestos;*
- 13 *(E) winchite asbestos;*
- 14 *(F) richterite asbestos;*
- 15 *(G) anthophyllite asbestos;*
- 16 *(H) actinolite asbestos;*

17 (I) any of the minerals listed under sub-
 18 paragraphs (A) through (H) that has been
 19 chemically treated or altered, and any
 20 asbestiform variety, type, or component thereof;
 21 and

22 (J) asbestos-containing material, such as
 23 asbestos-containing products, automotive or in-
 24 dustrial parts or components, equipment, im-
 25 provements to real property, and any other ma-

terial that contains asbestos in any physical or chemical form.

(3) ASBESTOS CLAIM.—

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

(B) EXCLUSION.—The term does not include claims for benefits under a workers’ compensation law or veterans’ benefits program, or claims brought by any person as a subrogee by virtue of the payment of benefits under a workers’ compensation law.

(4) ASBESTOS CLAIMANT.—The term “asbestos claimant” means an individual who files an asbestos claim under section 111.

~~(5) ASBESTOS COURT; COURT.~~—The terms “Asbestos Court” or “Court” means the United States

1 Court of Asbestos Claims established under section
2 101.

3 ~~(6)~~ (5) CIVIL ACTION.—The term “civil action”
4 means all suits of a civil nature in State or Federal
5 court, whether cognizable as cases at law or in eq-
6 uity or in admiralty, but does not include an action
7 relating to any workers’ compensation law, or a pro-
8 ceeding for benefits under any veterans’ benefits
9 program.

10 ~~(7)~~ COLLATERAL SOURCE.—The term “collat-
11 eral source”—

12 ~~(A)~~ means all collateral sources, includ-
13 ing—

14 (i) disability insurance;

15 (ii) health insurance;

16 (iii) medicare;

17 (iv) medicaid;

18 (v) death benefit programs;

19 (vi) defendants;

20 (vii) insurers of defendants; and

21 (viii) compensation trusts; and

22 ~~(B)~~ shall not include life insurance.

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

1 *receive, from a defendant or an insurer of that de-*
 2 *fendant, or compensation trust as a result of a judg-*
 3 *ment or settlement for an asbestos-related injury that*
 4 *is the subject of a claim filed under section 111.*

5 (7) COURT OF FEDERAL CLAIMS; COURT.—*The*
 6 *terms “Court of Federal Claims” or “Court” mean*
 7 *the United States Court of Federal Claims established*
 8 *under section 171 of title 28, United States Code.*

9 (8) ELIGIBLE DISEASE OR CONDITION.—The
 10 term “eligible disease or condition” means, to the
 11 extent that the illness meets the medical criteria re-
 12 quirements established under subtitle C of title I, as-
 13 bestosis/pleural disease, severe asbestosis disease,
 14 mesothelioma, lung cancer I, lung cancer II, other
 15 cancers, and qualifying nonmalignant asbestos-re-
 16 lated diseases.

17 (9) FUND.—The term “Fund” means the As-
 18 bestos Injury Claims Resolution Fund established
 19 under section 223.

20 (10) LAW.—The term “law” includes all law,
 21 judicial or administrative decisions, rules, regula-
 22 tions, or any other principle or action having the ef-
 23 fect of law.

1 ~~(11) PARTICIPANT.—~~The term “participant”
 2 means any person subject to the funding require-
 3 ments of title II, including—

4 ~~(A)~~ any defendant participant subject to
 5 an assessment for contribution under subtitle A
 6 of that title; and

7 ~~(B)~~ any insurer participant subject to an
 8 assessment for contribution under subtitle B of
 9 that title.

10 ~~(11) PARTICIPANT.—~~

11 ~~(A) IN GENERAL.—~~The term “participant”
 12 means any person subject to the funding require-
 13 ments of title II, including—

14 ~~(i)~~ any defendant participant subject
 15 to an assessment for contribution under
 16 subtitle A of that title;

17 ~~(ii)~~ any insurer participant subject to
 18 an assessment for contribution under sub-
 19 title B of that title; and

20 ~~(iii)~~ any successor in interest of a par-
 21 ticipant.

22 ~~(B) EXCEPTION.—~~

23 ~~(i) IN GENERAL.—~~A defendant partici-
 24 pant shall not include any person protected
 25 from any asbestos claim by reason of an in-

1 *junction entered in connection with a plan*
 2 *of reorganization under chapter 11 of title*
 3 *11, United States Code, that has been con-*
 4 *firmed by a duly entered order or judgment*
 5 *of a court that is no longer subject to any*
 6 *appeal or judicial review.*

7 *(ii) APPLICABILITY.—Clause (i) shall*
 8 *not apply to a person who may be assessed*
 9 *for contributions under subtitle A of title II*
 10 *for prior asbestos expenditures related to as-*
 11 *bestos claims that are not covered by an in-*
 12 *junction described under clause (i).*

13 (12) PERSON.—The term “person”—

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

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

23 (13) STATE.—The term “State” means any
 24 State of the United States and also includes the Dis-
 25 trict of Columbia, Commonwealth of Puerto Rico,

the Northern Mariana Islands, the Virgin islands, Guam, American Samoa, and any other territory or possession of the United States or any political subdivision of any of the entities under this paragraph.

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

(15) *SUCCESSOR IN INTEREST.*—*The term “successor in interest” means any person that acquires assets, and substantially continues the business operations, of a participant. The factors to be considered in determining whether a person is a successor in interest include, but are not limited to—*

(A) *retention of the same facilities or location;*

(B) *retention of the same employees;*

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

(D) *retention of the same supervisory personnel;*

(E) *continuity of assets;*

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

(G) *retention of the same name;*

1 (H) maintenance of the same customer base;

2 (I) identity of stocks, stockholders, and di-
3 rectors between the asset seller and the purchaser;

4 or

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

10 (14) (16) VETERANS' BENEFITS PROGRAM.—

11 The term “veterans’ benefits program” means any
12 program for benefits in connection with military
13 service administered by the Veterans’ Administration
14 under title 38, United States Code.

15 (15) (17) WORKER’S COMPENSATION LAW.—

16 The term “worker’s compensation law”—

17 (A) means a law respecting a program ad-
18 ministered by a State or the United States to
19 provide benefits, funded by a responsible em-
20 ployer or its insurance carrier, for occupational
21 diseases or injuries or for disability or death
22 caused by occupational diseases or injuries;

23 (B) includes the Longshore and Harbor
24 Workers’ Compensation Act (33 U.S.C. sections

1 901 et seq.) and chapter 81 of title 5, United
2 States Code; and

3 (C) does not include the Act of April 22,
4 1908 (45 U.S.C. 51 et seq.), commonly known
5 as the Federal Employers' Liability Act, or
6 damages recovered by any employee in a liabil-
7 ity action against an employer.

8 **TITLE I—ASBESTOS CLAIMS**
9 **RESOLUTION**
10 **Subtitle A—United States Court of**
11 **Asbestos Claims**

12 **SEC. 101. ESTABLISHMENT OF ASBESTOS COURT.**

13 (a) IN GENERAL.—Part I of title 28, United States
14 Code, is amended by inserting after chapter 7 the fol-
15 lowing:

16 **“CHAPTER 9—UNITED STATES COURT OF**
17 **ASBESTOS CLAIMS**

“Sec.

“201. Establishment of the United States Court of Asbestos Claims.

“202. Magistrates.

“203. Retirement of judges of the United States Court of Asbestos Claims.

18 **“§ 201. Establishment of the United States Court of**
19 **Asbestos Claims**

20 “(a) ESTABLISHMENT AND APPOINTMENT OF
21 JUDGES.—

22 “(1) IN GENERAL.—The President shall ap-
23 point, by and with the advice and consent of the

Senate, 5 judges, who shall constitute a court of record known as the United States Court of Asbestos Claims.

“(2) ARTICLE I COURT.—The Court of Asbestos Claims is declared to be a court established under article I of the Constitution of the United States.

“(b) TERM; REMOVAL; COMPENSATION.—

“(1) TERM.—Each judge appointed under subsection (a) shall serve for a term of 15 years, except that judges initially appointed shall serve for staggered terms as the President shall determine appropriate to assure continuity.

“(2) REMOVAL.—Judges may be removed by the President only for good cause.

“(3) COMPENSATION.—Each judge shall receive a salary at the rate of pay, and in the same manner, as judges of the district courts of the United States.

“(c) CHIEF JUDGE.—

“(1) IN GENERAL.—The President shall designate 1 of the judges appointed under subsection (b)(1), who is less than 70 years of age, to serve as chief judge.

“(2) TERM.—The chief judge may continue to serve as such until—

“(A) he or she reaches the age of 70 years;

1 “(B) another judge is designated as chief
2 judge by the President; or

3 “(C) the expiration of his or her term
4 under subsection (b)(1).

5 “(3) CONTINUITY OF SERVICE.—Upon the des-
6 ignation by the President of another judge to serve
7 as chief judge, the former chief judge may continue
8 to serve as a judge of the Court of Asbestos Claims
9 for the balance of the term to which he or she was
10 appointed.

11 “(4) POWERS OF CHIEF JUDGE.—The chief
12 judge is authorized to—

13 “(A) prescribe rules and procedures for
14 hearings and appeals of the Court of Asbestos
15 Claims and its magistrates;

16 “(B) appoint magistrates;

17 “(C) appoint or contract for the services of
18 such personnel as may be necessary and appro-
19 priate to carry out the responsibilities of the
20 Court of Asbestos Claims; and

21 “(D) make such expenditures as may be
22 necessary and appropriate in the administration
23 of the responsibilities of the Court of Asbestos
24 Claims and the chief judge under this chapter

1 and the Fairness in Asbestos Injury Resolution
2 Act of 2003.

3 ~~“(d) TIME AND PLACES OF HOLDING COURT.—~~

4 ~~“(1) IN GENERAL.—~~The principal office of the
5 Court of Asbestos Claims shall be in the District of
6 Columbia, but the Court of Asbestos Claims may
7 hold court at such times and in such places as the
8 chief judge may prescribe by rule.

9 ~~“(2) LIMITATION.—~~The times and places of the
10 sessions of the Court of Asbestos Claims shall be
11 prescribed with a view to securing reasonable oppor-
12 tunity to citizens to appear before the Court of As-
13 bestos Claims.

14 ~~“(e) OFFICIAL DUTY STATION; RESIDENCE.—~~

15 ~~“(1) DUTY STATION.—~~The official duty station
16 of each judge of the Court of Asbestos Claims is the
17 District of Columbia.

18 ~~“(2) RESIDENCE.—~~After appointment and
19 while in active service, each judge of the Court of
20 Asbestos Claims shall reside within 50 miles of the
21 District of Columbia.

22 **~~“§ 202. Magistrates~~**

23 ~~“(a) APPOINTMENT.—~~The chief judge shall appoint
24 such magistrates as necessary to facilitate the expeditious
25 processing of claims.

1 “(b) COMPENSATION.—The compensation of mag-
 2 istrates shall be determined by the chief judge, but shall
 3 not exceed the annual rate of basic pay of level V of the
 4 Executive Schedule, as prescribed by section 5316 of title
 5 5.

6 “(c) RETIREMENT.—For purposes of Federal laws
 7 relating to retirement, including chapters 83 and 84 of
 8 title 5, magistrates appointed under this section shall be
 9 deemed to be appointed under section 631 of this title.

10 “(d) REGULATIONS.—Except as provided under sub-
 11 section (c), chapter 43 shall not apply to magistrates ap-
 12 pointed under this chapter, except the chief judge may
 13 prescribe rules similar to the provisions of chapter 43 to
 14 apply to magistrates.

15 **“§ 203. Retirement of judges of the United States**
 16 **Court of Asbestos Claims**

17 “(a) IN GENERAL.—For purposes of Federal laws re-
 18 lating to retirement, judges of the Court of Asbestos
 19 Claims shall be treated in the same manner and to the
 20 same extent as judges of the Court of Federal Claims.

21 “(b) REGULATIONS.—In carrying out this section—

22 “(1) the Director of the Administrative Office
 23 of the United States Courts shall promulgate regula-
 24 tions to apply provisions similar to section 178 of
 25 this title (including the establishment of a Court of

1 Asbestos Claims Judges Retirement Fund) to judges
2 of the Court of Asbestos Claims; and

3 “(2) the Director of the Office of Personnel
4 Management shall promulgate regulations to apply
5 chapters 83 and 84 of title 5 to judges of the Court
6 of Asbestos Claims.”.

7 (b) TECHNICAL AND CONFORMING AMENDMENT.—
8 The table of chapters for part I of title 28, United States
9 Code, is amended by striking the item relating to chapter
10 9, and inserting after the item relating to chapter 7 the
11 following:

“9. United States Court of Asbestos Claims.”.

12 ***Subtitle A—United States Court of***
13 ***Federal Claims***

14 ***SEC. 101. UNITED STATES COURT OF FEDERAL CLAIMS.***

15 (a) *IN GENERAL.*—*The United States Court of Federal*
16 *Claims, through the Office of Special Asbestos Masters, shall*
17 *have authority to examine asbestos claims and make*
18 *awards in accordance with this Act. The Office of Special*
19 *Asbestos Masters shall be under the supervision of the Court.*

20 (b) *OFFICE OF SPECIAL ASBESTOS MASTERS.*—

21 (1) *ESTABLISHMENT.*—*There is established the*
22 *Office of Special Asbestos Masters within the United*
23 *States Court of Federal Claims.*

24 (2) *PURPOSE.*—*The purpose of the Office of Spe-*
25 *cial Asbestos Masters is to provide fair compensation*

1 *in a nonadversarial manner to individuals whose*
 2 *health has been adversely affected by exposure to as-*
 3 *bestos in the amounts and under the terms specified*
 4 *in this Act.*

5 (c) *SPECIAL ASBESTOS MASTERS.*—

6 (1) *APPOINTMENT.*—

7 (A) *IN GENERAL.*—*The chief judge of the*
 8 *Court of Federal Claims shall appoint special*
 9 *asbestos masters as necessary to facilitate the ex-*
 10 *peditious processing of claims.*

11 (B) *CONCURRENCE OF THE COURT.*—*The*
 12 *appointment and reappointment of each special*
 13 *asbestos master, including the chief special asbes-*
 14 *tos master, shall be by the concurrence of a ma-*
 15 *jority of the active judges of the Court.*

16 (2) *LIMITATION IN NUMBERS.*—*The chief judge of*
 17 *the Court may not appoint more than 20 special as-*
 18 *bestos masters, including the chief special asbestos*
 19 *master, to carry out this Act, unless the chief judge*
 20 *submits notice to Congress 60 days before each ap-*
 21 *pointment in excess of that number is made.*

22 (3) *CHIEF SPECIAL ASBESTOS MASTER.*—

23 (A) *APPOINTMENT.*—*The chief judge of the*
 24 *Court shall appoint a chief special asbestos mas-*
 25 *ter in accordance with paragraph (1).*

1 (B) *TERM OF CHIEF SPECIAL ASBESTOS*

2 MASTER.—*The chief special asbestos master shall*
 3 *serve for a term of 4 years. The chief judge of the*
 4 *Court may reappoint the chief special asbestos*
 5 *master for additional 2-year terms in accordance*
 6 *with paragraph (1).*

7 (C) *POWERS OF CHIEF SPECIAL ASBESTOS*

8 MASTER.—*The chief special asbestos master, in*
 9 *consultation with the chief judge of the Court,*
 10 *may—*

11 (i) *prescribe rules and procedures for*
 12 *the processing of claims;*

13 (ii) *appoint or contract for the services*
 14 *of such personnel, as may be necessary and*
 15 *appropriate, to carry out the responsibil-*
 16 *ities of the Office of Special Asbestos Mas-*
 17 *ters; and*

18 (iii) *make such expenditures as may be*
 19 *necessary and appropriate in the adminis-*
 20 *tration of the responsibilities of the Office of*
 21 *Special Asbestos Masters under this Act.*

22 (4) *TERM OF SPECIAL ASBESTOS MASTERS.—The*
 23 *special asbestos masters shall serve for a term of 4*
 24 *years and may be reappointed for additional 2-year*
 25 *terms.*

1 (5) *REMOVAL.*—*Special asbestos masters, includ-*
 2 *ing the chief special asbestos master, shall be subject*
 3 *to removal by the concurrence of a majority of the ac-*
 4 *tive judges of the Court for incompetency, misconduct,*
 5 *neglect of duty, physical or mental disability, or other*
 6 *good cause shown.*

7 (6) *COMPENSATION.*—*The compensation of spe-*
 8 *cial asbestos masters shall be determined by the chief*
 9 *judge, but shall not exceed the annual rate of basic*
 10 *pay of level V of the Executive Schedule under section*
 11 *5316 of title 5, United States Code.*

12 (d) *RULES OF CONSTRUCTION.*—

13 (1) *LIBBY, MONTANA CLAIMANTS.*—*Nothing in*
 14 *this Act shall preclude the formation of a fund for the*
 15 *payment of eligible medical expenses related to treat-*
 16 *ing asbestos-related disease for current and former*
 17 *residents of Libby, Montana.*

18 (2) *HEALTH CARE FROM PROVIDER OF*
 19 *CHOICE.*—*Nothing in this Act shall be construed to*
 20 *preclude any eligible claimant from receiving*
 21 *healthcare from the provider of their choice.*

22 **Subtitle B—Asbestos Injury Claims** 23 **Resolution Procedures**

24 **SEC. 111. FILING OF CLAIMS.**

25 (a) *WHO MAY SUBMIT.*—

1 (1) GENERAL RULE.—Any individual who has
 2 suffered from an eligible disease or condition that is
 3 believed to meet the requirements established under
 4 subtitle C (or the spouse, parent, child, or other rel-
 5 ative of such individual in a representative capacity,
 6 or the executor of the estate of such individual) may
 7 file a claim with the ~~Asbestos Court~~ *Court of Federal*
 8 *Claims* for an award with respect to such injury.

9 (2) RULES.—The ~~Asbestos Court~~ *Court of Fed-*
 10 *eral Claims* may issue procedural rules to specify in-
 11 dividuals who may file an asbestos claim as a rep-
 12 resentative of another individual.

13 (3) LIMITATION.—An asbestos claim may not
 14 be filed by any person seeking contribution or in-
 15 demnity.

16 (b) REQUIRED INFORMATION.—To be valid, an as-
 17 bestos claim filed under subsection (a) shall be notarized
 18 and include—

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

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

1 (3) a detailed description of the work history of
2 the claimant, including social security records or a
3 signed release permitting access to such records;

4 (4) a detailed description of the asbestos expo-
5 sure of the claimant, including information on the
6 ~~identity of any product or manufacturer,~~ site, or lo-
7 cation of exposure, plant name, and duration and in-
8 tensity of exposure;

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

12 (6) an identification and description of the as-
13 bestos-related diseases of the claimant, including a
14 written report by the claimant's physician with med-
15 ical diagnoses, *x-ray films*, and test results necessary
16 to make a determination of medical eligibility that
17 complies with the applicable requirements of this
18 subtitle and subtitle C;

19 (7) a description of any prior or pending civil
20 action or other claim brought by the claimant for as-
21 bestos-related injury or any other pulmonary, paren-
22 chymal or pleural injury, including an identification
23 of any recovery of compensation or damages through
24 settlement, judgment, or otherwise; ~~and~~

(8) *any claimant who asserts that the claimant is a nonsmoker or an ex-smoker, as defined in section 131, shall provide sufficient evidence of nonsmoking, including relevant medical records; and*

~~(8)~~ (9) any other information that is required to be included under procedural rules issued by the Court.

(c) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), if an individual fails to file an asbestos claim with the ~~Asbestos Court~~ *Court of Federal Claims* under this section within ~~2~~ 4 years after the date on which the individual first—

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

(B) discovered facts that would have led a reasonable person to obtain a medical diagnosis with respect to an eligible disease or condition, any claim relating to that injury, and any other asbestos claim related to that injury, shall be extinguished, and any recovery thereon shall be prohibited.

(2) EFFECT ON PENDING CLAIMS.—If an asbestos claimant has any timely filed claim for an asbes-

1 tos-related injury that is pending in a Federal or
 2 State court or with a trust established under title
 3 11, United States Code, on the date of enactment of
 4 this Act, such claimant shall file an asbestos claim
 5 under this section within ~~2~~ 4 years after such date
 6 of enactment or be barred from receiving any award
 7 under this title.

8 (3) EFFECT OF MULTIPLE INJURIES.—An as-
 9 bestos claimant who receives an award under this
 10 title for an eligible disease or condition, and who
 11 subsequently develops another such injury, shall be
 12 eligible for additional awards under this title (sub-
 13 ject to appropriate setoffs for such prior recovery of
 14 any award under this title and from any other collat-
 15 eral source) and the statute of limitations under
 16 paragraph (1) shall not begin to run with respect to
 17 such subsequent injury until such claimant obtains
 18 a medical diagnosis of such other injury or discovers
 19 facts that would have led a reasonable person to ob-
 20 tain such a diagnosis.

21 ~~(4) RULE OF CONSTRUCTION.—Paragraph (2)~~
 22 ~~shall be interpreted as a statute of limitations and~~
 23 ~~be construed to the benefit of the Fund and of any~~
 24 ~~person who might otherwise have been made subject~~

1 ~~to an asbestos claim to which such paragraph is ap-~~
 2 ~~plied.~~

3 **SEC. 112. GENERAL RULE CONCERNING NO-FAULT COM-**
 4 **PENSATION.**

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

9 **SEC. 113. ESSENTIAL ELEMENTS OF ELIGIBLE ASBESTOS**
 10 **CLAIM.**

11 To be eligible for an award under this subtitle for
 12 an asbestos-related injury, an individual shall—

13 (1) file an asbestos claim in a timely manner in
 14 accordance with section 111; and

15 (2) prove, by a preponderance of the evidence
 16 that—

17 (A) the claimant suffers from an eligible
 18 disease or condition, as demonstrated by evi-
 19 dence (submitted as part of the claim) that
 20 meets the medical criteria requirements and di-
 21 agnostic criteria requirements established under
 22 subtitle C; and

23 (B) the claimant meets the latency criteria
 24 requirements and the exposure criteria require-
 25 ments established under subtitle C.

1 **SEC. 114. ELIGIBILITY DETERMINATIONS AND CLAIM**
 2 **AWARDS.**

3 (a) CLAIMS EXAMINERS.—

4 (1) IN GENERAL.—The ~~Asbestos Court~~ *Office of*
 5 *Special Asbestos Masters, in consultation with the*
 6 *chief judge of the Court of Federal Claims,* shall ap-
 7 point, or contract for the services of, qualified indi-
 8 viduals to assist ~~magistrates~~ *special asbestos masters*
 9 by conducting eligibility reviews of asbestos claims
 10 filed with the Court.

11 (2) CRITERIA.—The ~~Asbestos Court~~ *Office of*
 12 *Special Asbestos Masters, in consultation with the*
 13 *chief judge of the Court of Federal Claims,* shall es-
 14 tablish criteria with respect to the qualifications of
 15 individuals who are eligible to serve as claims exam-
 16 iners and, in developing such criteria, shall consult
 17 with such experts as the Court determines appro-
 18 priate.

19 (b) REFERRAL OF ASBESTOS CLAIM.—Not later than
 20 20 days after the filing of an asbestos claim with the ~~As-~~
 21 ~~bestos Court~~ *Court of Federal Claims,* the Court shall refer
 22 such claim to a ~~magistrate~~ *the Office of Special Asbestos*
 23 *Masters.*

24 (c) INITIAL REVIEW.—

25 (1) IN GENERAL.—Under the direction of a
 26 ~~magistrate~~ *special asbestos master,* a claims examiner

1 shall make an initial review of an asbestos claim to
 2 determine whether all required information has been
 3 submitted by the claimant.

4 (2) NOTICE OF INCOMPLETE CLAIM.—If the
 5 claims examiner determines that all required infor-
 6 mation has not been submitted, the examiner—

7 (A) shall notify the claimant of such deter-
 8 mination and require the submission of addi-
 9 tional information necessary for a determina-
 10 tion of eligibility;

11 (B) may compel the submission of any ad-
 12 ditional information;

13 (C) may request that the claimant undergo
 14 additional medical examinations and tests if in-
 15 formation from such examinations or tests is
 16 necessary to enable the examiner to make a de-
 17 termination of medical eligibility; and

18 (D) may require any releases necessary to
 19 enable the examiner to obtain medical or other
 20 information relevant to the determination of eli-
 21 gibility.

22 (3) *INDEPENDENT REVIEWS OF MEDICAL EVI-*
 23 *DENCE.*—

24 (A) *IN GENERAL.*—*The Court of Federal*
 25 *Claims shall establish procedures for independ-*

1 *ently evaluating the medical evidence submitted*
2 *in support of claims.*

3 *(B) REVIEW OF CERTIFIED B READERS.—*

4 *(i) IN GENERAL.—At a minimum, the*
5 *Court of Federal Claims shall prescribe pro-*
6 *cedures for special asbestos masters to ran-*
7 *domly assign claims for confirmation by an*
8 *independent certified B reader of x-rays*
9 *submitted in support of a claim, the cost of*
10 *which shall be borne by the Fund.*

11 *(ii) DISAGREEMENT.—If an inde-*
12 *pendent certified B reader assigned under*
13 *clause (i) disagrees with the quality grading*
14 *or ILO level assigned to an x-ray submitted*
15 *in support of a claim, the Court of Federal*
16 *Claims shall require a review of such x-rays*
17 *by a second independent certified B reader.*

18 *(iii) DENIAL OF CLAIM.—If neither*
19 *certified B reader under clause (ii) agrees*
20 *with the quality grading and the ILO grade*
21 *level assigned to an x-ray as part of the*
22 *claim, the special asbestos master shall rec-*
23 *ommend denial of the claim under sub-*
24 *section (f).*

1 (iv) *CERTIFIED B READERS.*—*The Ad-*
 2 *ministrator shall maintain a list of a min-*
 3 *imum of 50 certified B readers eligible to*
 4 *participate in the independent reviews, cho-*
 5 *sen from all certified B readers. When an x-*
 6 *ray is sent for independent review, the Ad-*
 7 *ministrator shall choose the certified B*
 8 *reader at random from that list.*

9 (4) *SMOKING ASSESSMENT.*—

10 (A) *IN GENERAL.*—*To aid in the assessment*
 11 *of the accuracy of claimant representations as to*
 12 *their smoking status for purposes of determining*
 13 *eligibility and amount of award under sections*
 14 *121 and 131, a claimant shall provide consent*
 15 *for the claims examiner to obtain relevant histor-*
 16 *ical records, including—*

17 (i) *records of past medical treatment*
 18 *and evaluation;*

19 (ii) *affidavits of the claimant or a*
 20 *family member;*

21 (iii) *applications for insurance and*
 22 *supporting materials; and*

23 (iv) *employer medical examinations if*
 24 *available after a good faith attempt to ob-*
 25 *tain such historical records.*

1 (B) *REVIEW.*—*The frequency of review of*
 2 *historical records submitted under subparagraph*
 3 *(A) shall be at the discretion of the claims exam-*
 4 *iner, but shall address at least 5 percent of the*
 5 *claimant nonsmokers.*

6 (C) *CONSENT.*—*Claimants that assert they*
 7 *are nonsmokers and ex-smokers consent to the*
 8 *performance of blood tests or any other appro-*
 9 *priate medical test to confirm the validity of the*
 10 *assertion.*

11 (D) *PENALTY FOR FALSE STATEMENTS.*—
 12 *Any false information submitted under this sub-*
 13 *section shall be subject to criminal prosecution or*
 14 *civil penalties as provided under section 401.*

15 (d) *EXPEDITIOUS DETERMINATIONS.*—~~The Asbestos~~
 16 ~~Court~~ *Court of Federal Claims* shall prescribe rules to ex-
 17 pedite claims for asbestos claimants with exigent cir-
 18 cumstances.

19 (e) *AUDIT AND PERSONNEL REVIEW PROCE-*
 20 *DURES.*—~~The Asbestos Court~~ *Court of Federal Claims*
 21 shall establish audit and personnel review procedures for
 22 evaluating the accuracy of eligibility recommendations of
 23 ~~magistrates~~ *special asbestos masters.*

24 (f) *ELIGIBILITY DETERMINATIONS.*—

1 (1) ~~IN GENERAL.~~—Not later than 60 days after
 2 the receipt by a magistrate of all required informa-
 3 tion and requested medical advice with respect to an
 4 asbestos claim, the magistrate shall transmit a rec-
 5 ommendation of the amount of any award to which
 6 the claimant is entitled and findings of fact to a
 7 judge of the Asbestos Court.

8 (2) ~~ADMISSIBILITY OF FINDINGS OF FACT.~~—A
 9 determination under paragraph (1) shall include rel-
 10 evant findings of fact and shall be admissible as evi-
 11 dence in any judicial review.

12 ~~(g) DECISION OF JUDGE.~~—

13 (1) ~~IN GENERAL.~~—Not later than 30 days after
 14 receipt of a recommendation of a magistrate, a judge
 15 of the Asbestos Court shall make a final decision of
 16 any award to which the claimant is entitled.

17 (2) ~~WAIVER OF JUDICIAL REVIEW.~~—The final
 18 decision under paragraph (1) shall include an ac-
 19 ceptance form by which the claimant may waive the
 20 right to judicial review and expedite payment of an
 21 award from the Fund.

22 ~~(f) ELIGIBILITY DETERMINATIONS.~~—

23 (1) *IN GENERAL.*—*Not later than 60 days after*
 24 *the receipt by a special asbestos master of all required*
 25 *information and requested medical advice with re-*

1 *spect to an asbestos claim, the special asbestos master*
 2 *shall determine the amount of any award to which*
 3 *the claimant is entitled.*

4 (2) *ADMISSIBILITY OF FINDINGS OF FACT.—A*
 5 *determination under paragraph (1) shall include rel-*
 6 *evant findings of fact and shall be admissible as evi-*
 7 *dence in any additional review.*

8 (g) *WAIVER OF ADDITIONAL REVIEW.—The final deci-*
 9 *sion under subsection (f) shall include an acceptance form*
 10 *by which the claimant may waive the right to additional*
 11 *review and expedite payment of an award from the Fund.*

12 ~~(h) AWARDING OF COMPENSATION.—~~

13 ~~(1) IN GENERAL.—If a judge of the Asbestos~~
 14 ~~Court determines that an asbestos claimant is enti-~~
 15 ~~tled to an award, the Court shall notify the Adminis-~~
 16 ~~trator to award the claimant an amount of the~~
 17 ~~judge's decision from the Fund.~~

18 ~~(2) CLAIM EXTINGUISHED.—The acceptance of~~
 19 ~~a payment under this Act shall extinguish all claims~~
 20 ~~related to such payment.~~

21 ~~(h) AWARDING OF COMPENSATION.—~~

22 (1) *IN GENERAL.—If a special asbestos master*
 23 *determines that an asbestos claimant is entitled to an*
 24 *award and the claimant waives any right to appeal,*
 25 *the special asbestos master shall notify the Adminis-*

1 *trator to award the claimant an amount of the spe-*
 2 *cial asbestos master's decision from the Fund.*

3 (2) *CLAIM EXTINGUISHED.*—*The acceptance of a*
 4 *payment under this Act shall extinguish all claims re-*
 5 *lated to such payment.*

6 (i) *APPEAL TO PANEL OF SPECIAL ASBESTOS MAS-*
 7 *TERS.*—

8 (1) *IN GENERAL.*—*Not later than 30 days after*
 9 *receiving notice of the decision of a special asbestos*
 10 *master under section 114, a claimant may appeal the*
 11 *special asbestos master's determination to a panel of*
 12 *3 special masters. Within 60 days after receipt of an*
 13 *appeal, the panel may reverse the special asbestos*
 14 *master's determination if—*

15 (A) *new and material evidence is available*
 16 *that, despite due diligence, was not available*
 17 *when the record closed;*

18 (B) *the decision of the special asbestos mas-*
 19 *ter is based on an erroneous interpretation of*
 20 *statute or regulation; or*

21 (C) *the decision of the special asbestos mas-*
 22 *ter is clearly erroneous based on the evidence.*

23 (2) *AWARDING OF COMPENSATION.*—

24 (A) *IN GENERAL.*—*If a panel of special as-*
 25 *bestos masters determines that an asbestos claim-*

1 *ant is entitled to an award and the claimant*
 2 *waives any right to appeal, the panel shall no-*
 3 *tify the Administrator to award the claimant an*
 4 *amount of the decision of the panel from the*
 5 *Fund.*

6 *(B) CLAIM EXTINGUISHED.—The acceptance*
 7 *of a payment as provided under this subsection*
 8 *shall extinguish all claims related to such pay-*
 9 *ment.*

10 *(j) MEDICAL ADVISORY COMMITTEE.—*

11 *(1) IN GENERAL.—The chief judge of the Court*
 12 *of Federal Claims may appoint a Medical Advisory*
 13 *Committee of the Court of Federal Claims consisting*
 14 *of qualified physicians for purposes of providing ap-*
 15 *propriate medical advice relating to the review of*
 16 *claims.*

17 *(2) QUALIFICATIONS.—To be eligible for appoint-*
 18 *ment to the Medical Advisory Committee under para-*
 19 *graph (1), a person shall be—*

20 *(A) a physician licensed in any State;*

21 *(B) board-certified in pulmonary medicine,*
 22 *occupational medicine, internal medicine, oncol-*
 23 *ogy, or pathology; and*

1 (C) actively and primarily practicing medi-
 2 cine in a field directly related to the board cer-
 3 tification of the physician.

4 (3) DUTIES.—Special asbestos masters and
 5 claims examiners may refer questions concerning the
 6 medical eligibility of claimants to the committee for
 7 its advice and recommendations.

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

9 (a) DEVELOPMENT.—The ~~Asbestos Court~~ Court of
 10 *Federal Claims* shall develop methods for auditing the
 11 medical evidence submitted as part of an asbestos claim,
 12 including methods to ensure the independent reading of
 13 x-rays and results of pulmonary function tests. The Court
 14 may develop additional methods for auditing other types
 15 of evidence or information received by the Court.

16 (b) REFUSAL TO CONSIDER CERTAIN EVIDENCE.—

17 (1) IN GENERAL.—If the ~~Asbestos Court~~ Court
 18 *of Federal Claims* determines that an audit con-
 19 ducted in accordance with the methods developed
 20 under subsection (a) demonstrates that the medical
 21 evidence submitted by a specific physician or medical
 22 facility is not consistent with prevailing medical
 23 practices or the applicable requirements of this Act,
 24 the Court shall notify claims examiners and the
 25 ~~magistrates~~ special asbestos masters that any medical

1 evidence from such physician or facility shall be un-
 2 acceptable for purposes of establishing eligibility for
 3 an award under this Act.

4 (2) NOTIFICATION.—Upon a determination by
 5 the ~~Asbestos Court~~ *Court of Federal Claims* under
 6 paragraph (1), the Court shall notify the physician
 7 or medical facility involved of the results of the
 8 audit. Such physician or facility shall have a right
 9 to appeal the determination of the Court under pro-
 10 cedures issued by the Court.

11 **SEC. 116. CLAIMANT ASSISTANCE PROGRAM.**

12 (a) ESTABLISHMENT.—The ~~Asbestos Court~~ *Court of*
 13 *Federal Claims* shall establish an asbestos claimant assist-
 14 ance program to provide assistance to claimants in pre-
 15 paring and submitting asbestos claim applications and in
 16 responding to claimant inquiries.

17 (b) LEGAL ASSISTANCE.—

18 (1) IN GENERAL.—As part of the program es-
 19 tablished under subsection (a), the ~~Asbestos Court~~
 20 *Court of Federal Claims* shall establish a legal assist-
 21 ance program to provide assistance to asbestos
 22 claimants concerning legal representation issues.

23 (2) LIST OF QUALIFIED ATTORNEYS.—As part
 24 of the program, the Court shall maintain a roster of
 25 qualified attorneys who have agreed to provide pro

bono services to asbestos claimants under rules established by the Court. The claimants shall not be required to use the attorneys listed on such roster.

(3) *NOTICE.*—

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

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

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

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

Subtitle C—Medical Criteria

SEC. 121. ESSENTIAL ELEMENTS OF ELIGIBLE ASBESTOS CLAIM.

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

(1) file an asbestos claim under this title in a timely manner; and

(2) prove, by a preponderance of the evidence that—

(A) the claimant suffers from an eligible disease or condition, as demonstrated by evidence (submitted as part of the claim) that meets the diagnostic criteria requirements described in section 122 and the medical criteria requirements described in section 124; and

(B) the claimant meets the latency criteria requirements described in section 123 and the exposure criteria requirements described in section 125.

SEC. 122. DIAGNOSTIC CRITERIA REQUIREMENTS.

(a) IN GENERAL.—To be eligible to receive an award under this title for an asbestos-related injury, the claim submitted by the asbestos claimant shall demonstrate a medical diagnosis that meets the requirements of this section.

(b) DIAGNOSIS.—A medical diagnosis meets the requirements of this section if the diagnosis—

(1) is made by a physician who—

(A) treated, or is treating, the claimant;

(B) conducted an in-person medical examination of the claimant; and

(C) is licensed to practice medicine in the State in which the examination occurred and in which the diagnosis is rendered;

1 (2) includes a review by the physician of the
2 work history, asbestos exposure pattern, and smok-
3 ing history of the claimant, or other factors deter-
4 mined appropriate by the Asbestos Court;

5 (3) is independently verified with respect to the
6 duration, proximity, regularity, and intensity of the
7 asbestos exposure involved; and

8 (4) has excluded other more likely causes of the
9 injury of the claimant.

10 (c) RESULTS OF MEDICAL EXAMINATIONS AND
11 TESTS.—

12 (1) IN GENERAL.—In making the demonstra-
13 tion required under subsection (a), an asbestos
14 claimant shall submit—

15 (A) x-rays (including both films and B-
16 reader reports);

17 (B) detailed results of pulmonary function
18 tests (including spirometric tracings);

19 (C) laboratory tests; and

20 (D) the results of medical examination or
21 reviews of other medical evidence.

22 (2) PROCEDURAL REQUIREMENTS.—A submis-
23 sion under paragraph (1) shall comply with the re-
24 quirements of this Act and recognized medical
25 standards regarding equipment, testing methods,

1 and procedures to ensure that such medical evidence
2 is reliable.

3 ~~(d) SUFFICIENCY OF MEDICAL EVIDENCE.—In mak-~~
4 ~~ing determinations under this section, a magistrate shall~~
5 ~~not make a determination unless the medical evidence pro-~~
6 ~~vided in support of the asbestos claim is credible and con-~~
7 ~~sistent with this section, the medical criteria described in~~
8 ~~section 124, and recognized medical standards.~~

9 ~~(e) ATTORNEY RETENTION AGREEMENTS.—An at-~~
10 ~~torney retention agreement shall not be required as a pre-~~
11 ~~requisite to a medical examination or medical screening~~
12 ~~for purposes of obtaining a medical diagnosis or other~~
13 ~~medical information under this section.~~

14 ~~(f) RULES.—The Asbestos Court shall prescribe rules~~
15 ~~to implement the diagnostic criteria requirements to be~~
16 ~~used in applying this section.~~

17 **SEC. 123. LATENCY CRITERIA REQUIREMENTS.**

18 ~~(a) IN GENERAL.—To be eligible to receive an award~~
19 ~~under this title for an asbestos-related injury, the claim~~
20 ~~submitted by the asbestos claimant shall demonstrate that~~
21 ~~the claimant was exposed to asbestos—~~

22 ~~(1) in a manner that meets the exposure re-~~
23 ~~quirements of sections 124 and 125;~~

24 ~~(2) within the United States or its territories or~~
25 ~~possessions; and~~

1 ~~(3) for at least 10 years before the initial diag-~~
 2 ~~nosis of any asbestos-related injury.~~

3 ~~(b) CONSISTENCY WITH MEDICAL CRITERIA.—An~~
 4 ~~asbestos claimant shall be required to demonstrate that~~
 5 ~~any delay between asbestos exposure and the asbestos-re-~~
 6 ~~lated injury is consistent with medical criteria concerning~~
 7 ~~the latency periods typically associated with the disease~~
 8 ~~category for which the claim is being made.~~

9 ~~(c) VARIATIONS IN LATENCY PERIODS.—Latency pe-~~
 10 ~~riods under this section may vary based on the eligible~~
 11 ~~disease or condition involved.~~

12 ~~(d) RULES.—The Asbestos Court shall prescribe~~
 13 ~~rules, based on the medical literature or other appropriate~~
 14 ~~medical evidence concerning latency periods, for the pur-~~
 15 ~~pose of implementing the criteria used in applying this sec-~~
 16 ~~tion.~~

17 **SEC. 124. MEDICAL CRITERIA REQUIREMENTS.**

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

20 ~~(1) BILATERAL ASBESTOS-RELATED NONMALIGNANT~~
 21 ~~DISEASE.—The term “bilateral asbestos-re-~~
 22 ~~lated nonmalignant disease” means a diagnosis of~~
 23 ~~bilateral asbestos-related nonmalignant disease~~
 24 ~~based on—~~

1 (A) an x-ray reading of $\frac{1}{10}$ or higher on the
2 ILO scale; or

3 (B) an x-ray showing bilateral pleural
4 plaques or pleural thickening, bilateral intersti-
5 tial fibrosis, or bilateral interstitial markings.

6 (2) BILATERAL PLEURAL DISEASE OF B2.—The
7 term “bilateral pleural disease of B2” means a chest
8 wall pleural thickening or plaque with a maximum
9 width of at least 5 millimeters and a total length of
10 at least $\frac{1}{4}$ of the projection of the lateral chest wall.

11 (3) FEV1.—The term “FEV1” means forced
12 expiratory volume (1 second), which is the maximal
13 volume of air expelled in 1 second during perform-
14 ance of the spirometric test for forced vital capacity.

15 (4) FVC.—The term “FVC” means forced vital
16 capacity, which is the maximal volume of air expired
17 with a maximally forced effort from a position of
18 maximal inspiration.

19 (5) ILO GRADE.—The term “ILO grade”
20 means the radiological ratings for the presence of
21 lung or pleural changes as determined from a chest
22 x-ray, all as established from time to time by the
23 International Labor Organization.

24 (6) PATHOLOGICAL EVIDENCE OF ASBES-
25 TOSIS.—The term “pathological evidence of asbes-

1 tosis” means proof of asbestosis based on the patho-
 2 logical grading system for asbestosis described in the
 3 Special Issue of the Archives of Pathology and Lab-
 4 oratory Medicine, “Asbestos-associated Diseases”,
 5 Vol. 106, No. 11, App. 3 (October 8, 1982).

6 (7) PULMONARY FUNCTION TESTING.—The
 7 term “pulmonary function testing” means
 8 spirometry testing that is in compliance with the
 9 quality criteria established from time to time by the
 10 American Thoracic Society and is performed on
 11 equipment which is in compliance with the standards
 12 of the American Thoracic Society for technical qual-
 13 ity and calibration.

14 (A) handled raw asbestos fibers on a reg-
 15 ular basis;

16 (B) fabricated asbestos-containing prod-
 17 ucts so that the claimant in the fabrication
 18 process was exposed on a regular basis to raw
 19 asbestos fibers;

20 (C) altered, repaired, or otherwise worked
 21 with an asbestos-containing product such that
 22 the claimant was exposed on a regular basis to
 23 asbestos fibers; or

24 (D) was employed in an industry and occu-
 25 pation such that the claimant worked on a reg-

1 ular basis in close proximity to workers engaged
 2 in the activities described under subparagraph
 3 (A), (B), or (C).

4 (8) SIGNIFICANT OCCUPATIONAL EXPOSURE.—

5 The term “significant occupational exposure” means
 6 employment for a cumulative period of at least 5
 7 years, in an industry and an occupation in which the
 8 claimant—

9 (9) TLC.—The term “TLC” means total lung
 10 capacity, which is the volume of air in the lung after
 11 maximal inspiration.

12 (b) REQUIREMENT.—To be eligible for an award or
 13 medical monitoring reimbursement under this title, a
 14 claimant shall establish that the claimant meets the med-
 15 ical criteria for 1 of the following categories:

16 (1) For Level I: Asymptomatic Exposure, the
 17 claimant shall provide—

18 (A) a diagnosis that meets the require-
 19 ments of section 122 of a bilateral asbestos-re-
 20 lated nonmalignant disease or an asbestos-re-
 21 lated malignancy (except mesothelioma); and

22 (B) meaningful and credible evidence of 6
 23 months of occupational exposure to asbestos be-
 24 fore December 31, 1982.

1 (2) For Level II: Asbestosis/Pleural Disease A,
2 the claimant shall provide—

3 (A) a diagnosis that meets the require-
4 ments of section 122 of a bilateral asbestos-re-
5 lated nonmalignant disease by B-reader cer-
6 tified chest x-rays; and

7 (B) meaningful and credible evidence of—

8 (i) 6 months of occupational exposure
9 to asbestos before December 31, 1982; and

10 (ii) significant occupational exposure.

11 (3) For Level III: Asbestosis/Pleural Disease B,
12 the claimant shall provide—

13 (A) a diagnosis that meets the require-
14 ments of section 122 of asbestosis by B-reader
15 certified chest x-rays showing bilateral pleural
16 disease of B2 or greater, or by pathological evi-
17 dence of asbestosis;

18 (B) pulmonary function testing that
19 shows—

20 (i) TLC less than 80 percent of pre-
21 dicted; or

22 (ii) FVC less than 80 percent of pre-
23 dicted, and a FEV1/FVC ratio of not less
24 than 65 percent;

25 (C) meaningful and credible evidence of—

1 (i) 6 months of occupational exposure
 2 to asbestos before December 31, 1982; and

3 (ii) significant occupational exposure;
 4 and

5 (D) supporting medical documentation es-
 6 tablishing asbestos exposure as a contributing
 7 factor in causing the pulmonary condition in
 8 question.

9 (4) For Level IV: Severe Asbestosis, the claim-
 10 ant shall provide—

11 (A) a diagnosis that meets the require-
 12 ments of section 122 of asbestosis by B-reader
 13 certified chest x-rays of ILO Grade 2/4 or great-
 14 er, or by pathological evidence of asbestosis;

15 (B) pulmonary function testing that
 16 shows—

17 (i) TLC less than 65 percent of pre-
 18 dicted; or

19 (ii) FVC less than 65 percent of pre-
 20 dicted, and a FEV1/FVC ratio greater
 21 than 65 percent;

22 (C) meaningful and credible evidence of—

23 (i) 6 months of occupational exposure
 24 to asbestos before December 31, 1982; and

1 (ii) significant occupational exposure;

2 and

3 ~~(D) supporting medical documentation es-~~
 4 ~~tablishing asbestos exposure as a contributing~~
 5 ~~factor in causing the pulmonary condition in~~
 6 ~~question.~~

7 ~~(5) For Level V: Other Cancer, the claimant~~
 8 ~~shall provide—~~

9 ~~(A) a diagnosis that meets the require-~~
 10 ~~ments of section 122 of a primary laryngeal,~~
 11 ~~esophageal, pharyngeal, or stomach cancer;~~

12 ~~(B) evidence of an underlying bilateral as-~~
 13 ~~bestos-related nonmalignant disease;~~

14 ~~(C) meaningful and credible evidence of—~~

15 ~~(i) 6 months of occupational exposure~~
 16 ~~to asbestos before December 31, 1982; and~~

17 ~~(ii) significant occupational exposure;~~

18 and

19 ~~(D) supporting medical documentation es-~~
 20 ~~tablishing asbestos exposure as a contributing~~
 21 ~~factor in causing the other cancer in question.~~

22 ~~(6) For Level VI: Lung Cancer One, the claim-~~
 23 ~~ant shall provide—~~

24 ~~(A) a diagnosis that meets the require-~~
 25 ~~ments of section 122 of a primary lung cancer;~~

1 ~~(B)~~ meaningful and credible evidence of 6
 2 months of occupational exposure to asbestos be-
 3 fore ~~December 31, 1982;~~ and

4 ~~(C)~~ supporting medical documentation and
 5 certification by or on behalf of the claimant es-
 6 tablishing asbestos exposure as a contributing
 7 factor causing the relevant lung cancer.

8 ~~(7)~~ For Level VII: Lung Cancer Two, the
 9 claimant shall provide—

10 ~~(A)~~ a diagnosis that meets the require-
 11 ments of section 122 of a primary lung cancer;

12 ~~(B)~~ evidence of an underlying bilateral as-
 13 bestos-related nonmalignant disease;

14 ~~(C)~~ meaningful and credible evidence of—

15 ~~(i)~~ 6 months of occupational exposure
 16 to asbestos before ~~December 31, 1982;~~ and

17 ~~(ii)~~ significant occupational exposure;

18 and

19 ~~(D)~~ supporting medical documentation and
 20 certification by or on behalf of the claimant es-
 21 tablishing asbestos exposure as a contributing
 22 factor causing the relevant lung cancer.

23 ~~(8)~~ For Level VIII: Mesothelioma, the claimant
 24 shall provide—

1 (A) a diagnosis that meets the require-
2 ments of section 122 of mesothelioma; and

3 (B) meaningful and credible evidence of
4 exposure to asbestos before December 31, 1982.

5 **SEC. 125. EXPOSURE CRITERIA REQUIREMENTS.**

6 (a) **REQUIREMENT.**—To be eligible to receive an
7 award under this title for an asbestos-related injury, the
8 claim submitted by the asbestos claimant shall contain in-
9 formation to demonstrate that—

10 (1) the claimant meets the minimum exposure
11 requirements under this subtitle; and

12 (2) such exposure to asbestos occurred within
13 the United States, its territories, or possessions.

14 (b) **BURDEN OF PROOF.**—

15 (1) **IN GENERAL.**—An asbestos claimant has
16 the burden of demonstrating meaningful and cred-
17 ible exposure to asbestos for purposes of this sub-
18 title.

19 (2) **EVIDENCE.**—The demonstration under
20 paragraph (1) may be established by—

21 (A) an affidavit submitted by the claimant,
22 a coworker of the claimant, or a family mem-
23 ber, in the case of a deceased claimant;

24 (B) employment records;

25 (C) invoices;

1 (D) construction or other similar records;

2 or

3 (E) other credible evidence.

4 (c) RULES.—

5 (1) EXPOSURE INFORMATION.—The Asbestos
6 Court shall issue rules prescribing specific exposure
7 information that shall be submitted to permit the
8 Court to process an asbestos claim and prescribing
9 a proof of claim form. Such rules may provide that
10 a claims examiner or magistrate, as applicable, may
11 require the submission of other or additional evi-
12 dence of exposure when determined to be appro-
13 priate and necessary.

14 (2) REBUTTABLE PRESUMPTIONS.—The Asbes-
15 tos Court may prescribe rules identifying specific in-
16 dustries, occupations within those industries, time
17 periods, and employment periods for which signifi-
18 cant occupational exposure (as defined under section
19 124) may be a rebuttable presumption for asbestos
20 claimants who provide meaningful and credible evi-
21 dence that the claimant worked in that industry and
22 occupation for the requisite period of time. The Ad-
23 ministrator may provide evidence to rebut this pre-
24 sumption.

1 **SEC. 121. MEDICAL CRITERIA REQUIREMENTS.**

2 (a) *DEFINITIONS.—In this section, the following defi-*
 3 *nitions shall apply:*

4 (1) *ASBESTOSIS DETERMINED BY PATHOLOGY.—*

5 *The term “asbestosis determined by pathology” means*
 6 *indications of asbestosis based on the pathological*
 7 *grading system for asbestosis described in the Special*
 8 *Issues of the Archives of Pathology and Laboratory*
 9 *Medicine, “Asbestos-associated Diseases”, Vol. 106,*
 10 *No. 11, App. 3 (October 8, 1982).*

11 (2) *BILATERAL ASBESTOS-RELATED NONMALIGNANT DISEASE.—The term “bilateral asbestos-related*
 12 *nonmalignant disease” means a diagnosis of bilateral*
 13 *asbestos-related nonmalignant disease based on—*

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

16 (B) *bilateral pleural plaques;*

17 (C) *bilateral pleural thickening; or*

18 (D) *bilateral pleural calcification.*

19 (3) *BILATERAL PLEURAL DISEASE OF B2.—The*
 20 *term “bilateral pleural disease of B2” means a chest*
 21 *wall pleural thickening or plaque with a maximum*
 22 *width of at least 5 millimeters and a total length of*
 23 *at least 1/4 of the projection of the lateral chest wall.*

24 (4) *CERTIFIED B-READER.—The term “certified*
 25 *B-reader” means an individual who is certified by*
 26

1 *the National Institute of Occupational Safety and*
2 *Health and whose certification by the National Insti-*
3 *tute of Occupational Safety and Health is up to date.*

4 (5) *DIFFUSE PLEURAL THICKENING.*—*The term*
5 *“diffuse pleural thickening” means blunting of either*
6 *costophrenic angle and bilateral pleural plaque or bi-*
7 *lateral pleural thickening.*

8 (6) *DLCO.*—*The term “DLCO” means the sin-*
9 *gle-breath diffusing capacity of the lung (carbon mon-*
10 *oxide) technique used to measure the volume of carbon*
11 *monoxide transferred from the alveoli to blood in the*
12 *pulmonary capillaries for each unit of driving pres-*
13 *sure of the carbon monoxide.*

14 (7) *FEV1.*—*The term “FEV1” means forced ex-*
15 *piratory volume (1 second), which is the maximal vol-*
16 *ume of air expelled in 1 second during performance*
17 *of the spirometric test for forced vital capacity.*

18 (8) *FVC.*—*The term “FVC” means forced vital*
19 *capacity, which is the maximal volume of air expired*
20 *with a maximally forced effort from a position of*
21 *maximal inspiration.*

22 (9) *ILO GRADE.*—*The term “ILO grade” means*
23 *the radiological ratings for the presence of lung*
24 *changes as determined from a chest x-ray, all as es-*

1 *tablished from time to time by the International*
 2 *Labor Organization.*

3 (10) *LOWER LIMITS OF NORMAL.*—*The term*
 4 *“lower limits of normal” means the fifth percentile of*
 5 *healthy populations as defined in the American Tho-*
 6 *racic Society statement on lung function testing*
 7 *(Amer. Rev. Resp. Disease 1991, 144:1202–1218) and*
 8 *any future revision of the same statement.*

9 (11) *NONSMOKER.*—*The term “nonsmoker”*
 10 *means that the claimant never smoked.*

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

14 (13) *PULMONARY FUNCTION TESTING.*—*The term*
 15 *“pulmonary function testing” means spirometry test-*
 16 *ing that is in material compliance with the quality*
 17 *criteria established by the American Thoracic Society*
 18 *and is performed on equipment which is in material*
 19 *compliance with the standards of the American Tho-*
 20 *racic Society for technical quality and calibration.*

21 (14) *SUBSTANTIAL OCCUPATIONAL EXPOSURE TO*
 22 *ASBESTOS.*—*The term “substantial occupational expo-*
 23 *sure” means employment in an industry and an oc-*
 24 *cupation where for a substantial portion of a normal*
 25 *work year for that occupation, the claimant—*

1 (A) handled raw asbestos fibers;

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

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

9 (D) worked in close proximity to other
10 workers engaged in the activities described under
11 subparagraph (A), (B), or (C) such that the
12 claimant was exposed on a regular basis to as-
13 bestos fibers.

14 In this paragraph, the term “on a regular basis”
15 means on a frequent or recurring basis.

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

19 (16) WEIGHTED OCCUPATIONAL EXPOSURE.—

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

1 (B) *MODERATE EXPOSURE.*—Subject to sub-
2 paragraph (E), each year that a claimant's pri-
3 mary occupation, during a substantial portion of
4 a normal work year for that occupation, involved
5 working in areas immediate to where asbestos-
6 containing products were being installed, re-
7 paired, or removed under circumstances that in-
8 volved regular airborne emissions of asbestos fi-
9 bers, shall count as 1 year of substantial occupa-
10 tional exposure.

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

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

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

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

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

1 *evaluated on an individual basis by the Medical*
2 *Advisory Committee.*

3 **(b) MEDICAL EVIDENCE.—**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (3) *CREDIBILITY OF MEDICAL EVIDENCE.*—To
 11 ensure the medical evidence provided in support of a
 12 claim is credible and consistent with recognized med-
 13 ical standards, a claimant under this title may be re-
 14 quired to submit—

15 (A) x-rays or computerized tomography;

16 (B) detailed results of pulmonary function
 17 tests;

18 (C) laboratory tests;

19 (D) tissue samples;

20 (E) results of medical examinations;

21 (F) reviews of other medical evidence; and

22 (G) medical evidence that complies with
 23 recognized medical standards regarding equip-
 24 ment, testing methods, and procedure to ensure

1 *the reliability of such evidence as may be sub-*
2 *mitted.*

3 (c) *EXPOSURE EVIDENCE.*—

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

6 (A) *a minimum exposure to asbestos or as-*
7 *bestos-containing products;*

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

16 (C) *any additional asbestos exposure re-*
17 *quirement under this section.*

18 (2) *GENERAL EXPOSURE REQUIREMENTS.*—*In*
19 *order to establish exposure to asbestos, a claimant*
20 *shall present meaningful and credible evidence—*

21 (A) *by an affidavit of the claimant;*

22 (B) *by an affidavit of a coworker or family*
23 *member, if the claimant is deceased and such*
24 *evidence is found in proceedings under this title*
25 *to be reasonably reliable;*

1 (C) *by invoices, construction, or similar*
 2 *records; or*

3 (D) *any other credible evidence.*

4 (3) *TAKE-HOME EXPOSURE.—*

5 (A) *IN GENERAL.—A claimant may alter-*
 6 *natively satisfy the medical criteria requirements*
 7 *of this section where a claim is filed by a person*
 8 *who alleges their exposure to asbestos was the re-*
 9 *sult of living with a person who, if the claim had*
 10 *been filed by that person, would have met the ex-*
 11 *posure criteria for the given disease level, and*
 12 *the claimant lived with such person for the time*
 13 *period necessary to satisfy the exposure require-*
 14 *ment for the claimed disease level.*

15 (B) *REVIEW.—Except for claims for disease*
 16 *Level X (mesothelioma), all claims alleging take-*
 17 *home exposure shall be submitted as an excep-*
 18 *tional medical claim under section 121(f) for re-*
 19 *view by the Medical Advisory Committee.*

20 (4) *WAIVER FOR WORKERS AND RESIDENTS OF*
 21 *LIBBY, MONTANA.—Because of the unique nature of*
 22 *the asbestos exposure related to the vermiculite min-*
 23 *ing and milling operations in Libby, Montana, the*
 24 *Court of Federal Claims shall waive the exposure re-*
 25 *quirements under this subtitle for individuals who*

1 *worked at the vermiculite mining and milling facility*
 2 *in Libby, Montana, or lived or worked within a 20-*
 3 *mile radius of Libby, Montana, for at least 12 con-*
 4 *secutive months before December 31, 2003. Claimants*
 5 *under this section shall provide such supporting docu-*
 6 *mentation as the Court of Federal Claims shall re-*
 7 *quire.*

8 *(d) ASBESTOS DISEASE LEVELS.—*

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

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

13 *(B) evidence of 5 years cumulative occupa-*
 14 *tional exposure to asbestos.*

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

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

er, or bilateral pleural disease of grade B2 or greater;

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

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

(D) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the pulmonary condition in question.

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

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

(B) evidence of TLC less than 80 percent; FVC less than the lower limits of normal and FEV1/FVC ratio greater than or equal to 65 percent; or evidence of a decline in FVC of 20 per-

cent or greater, after allowing for the expected decrease due to aging, and an FEV1/FVC ratio greater than or equal to 65 percent documented with a second spirometry;

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

(D) supporting medical documentation—

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

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

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

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

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

1 (C) evidence of 5 or more weighted years of
 2 substantial occupational exposure to asbestos be-
 3 fore diagnosis; and

4 (D) supporting medical documentation—

5 (i) establishing asbestos exposure as a
 6 contributing factor in causing the pul-
 7 monary condition in question; and

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

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

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

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

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

24 or

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

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

6 (D) supporting medical documentation—

7 (i) establishing asbestos exposure as a
8 contributing factor in causing the pul-
9 monary condition in question; and

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

12 (6) *MALIGNANT LEVEL VI.*—

13 (A) *IN GENERAL.*—To receive Level VI com-
14 pensation a claimant shall provide—

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

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

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

24 (iv) supporting medical documentation
25 establishing asbestos exposure as a contrib-

1 *uting factor in causing the cancer in ques-*
2 *tion.*

3 *(B) REFERRAL TO MEDICAL ADVISORY COM-*
4 *MITTEE.—All claims filed with respect to Level*
5 *VI under this paragraph shall be referred to the*
6 *Medical Advisory Committee for a determination*
7 *that it is more probable than not that asbestos*
8 *exposure was a substantial contributing factor in*
9 *causing the other cancer in question. If the*
10 *claimant meets the requirements of subpara-*
11 *graph (A), there shall be a presumption of eligi-*
12 *bility for the scheduled value of compensation*
13 *unless there is evidence determined by the Med-*
14 *ical Advisory Committee that rebuts that pre-*
15 *sumption.*

16 *(C) REQUEST FOR REFERRAL TO MEDICAL*
17 *ADVISORY COMMITTEE.—A claimant filing a*
18 *claim with respect to Level VI under this para-*
19 *graph may request that the claim be referred to*
20 *the Medical Advisory Committee for a deter-*
21 *mination on amount of award. In making its de-*
22 *termination under this subparagraph, the Med-*
23 *ical Advisory Committee shall consider the inten-*
24 *sity and duration of exposure, smoking history,*
25 *and the quality of evidence relating to exposure*

1 *and smoking. Claimants shall bear the burden of*
 2 *producing meaningful and credible evidence of*
 3 *their smoking history as part of their claim sub-*
 4 *mission.*

5 (7) *MALIGNANT LEVEL VII.*—

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

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

11 (ii) *evidence of 15 or more weighted*
 12 *years of substantial occupational exposure*
 13 *to asbestos; and*

14 (iii) *supporting medical documenta-*
 15 *tion establishing asbestos exposure as a con-*
 16 *tributing factor in causing the lung cancer*
 17 *in question.*

18 (B) *MEDICAL ADVISORY COMMITTEE.*—*All*
 19 *claims filed relating to Level VII under this*
 20 *paragraph shall be referred to the Medical Advi-*
 21 *sory Committee for a determination on the*
 22 *amount of award. In making its determination*
 23 *under this subparagraph, the Medical Advisory*
 24 *Committee shall consider the intensity and dura-*
 25 *tion of exposure, smoking history, and the qual-*

ity of evidence relating to exposure and smoking.
 Claimants shall bear the burden of producing
 meaningful and credible evidence of their smoking
 history as part of their claim submission.

(8) *MALIGNANT LEVEL VIII.*—

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

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

(ii) evidence of bilateral pleural
 plaques or bilateral pleural thickening or
 bilateral pleural calcification;

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

(iv) supporting medical documentation
 establishing asbestos exposure as a contributing
 factor in causing the lung cancer in
 question.

(B) *MEDICAL ADVISORY COMMITTEE.*—A
 claimant filing a claim relating to Level VIII
 under this paragraph may request that the claim
 be referred to the Medical Advisory Committee
 for a determination on amount of award. In

1 *making its determination under this subpara-*
 2 *graph, the Medical Advisory Committee shall*
 3 *consider the intensity and duration of exposure,*
 4 *smoking history, and the quality of evidence re-*
 5 *lating to exposure and smoking. Claimants shall*
 6 *bear the burden of producing meaningful and*
 7 *credible evidence of their smoking history as part*
 8 *of their claim submission.*

9 (9) *MALIGNANT LEVEL IX.*—

10 (A) *IN GENERAL.*—*To receive Level IX com-*
 11 *penetration, a claimant shall provide—*

12 (i) *a diagnosis of a primary lung can-*
 13 *cer disease on the basis of findings by a*
 14 *board certified pathologist;*

15 (ii)(I) *evidence of—*

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

21 (bb) *10 or more weighted years of*
 22 *substantial occupational exposure to*
 23 *asbestos;*

24 (II) *evidence of—*

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

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

9 (III) asbestosis determined by pathol-
10 ogy and 10 or more weighted years of sub-
11 stantial occupational exposure to asbestos;
12 and

13 (iii) supporting medical documenta-
14 tion establishing asbestos exposure as a con-
15 tributing factor in causing the lung cancer
16 in question.

17 (B) MEDICAL ADVISORY COMMITTEE.—A
18 claimant filing a claim with respect to Level IX
19 under this paragraph may request that the claim
20 be referred to the Medical Advisory Committee
21 for a determination on amount of award. In
22 making its determination under this subpara-
23 graph, the Medical Advisory Committee shall
24 consider the intensity and duration of exposure,
25 smoking history, and the quality of evidence re-

1 *lating to exposure and smoking. Claimants shall*
 2 *bear the burden of producing meaningful and*
 3 *credible evidence of their smoking history as part*
 4 *of their claim submission.*

5 (10) *MALIGNANT LEVEL X.—To receive Level X*
 6 *compensation, a claimant shall provide—*

7 (A) *a diagnosis of malignant mesothelioma*
 8 *disease on the basis of findings by a board cer-*
 9 *tified pathologist; and*

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

12 (i) *occupational exposure to asbestos;*

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

16 (iii) *exposure to asbestos fibers result-*
 17 *ing from living or working in the proximate*
 18 *vicinity of a factory, shipyard, building*
 19 *demolition site, or other operation that reg-*
 20 *ularly released asbestos fibers into the air*
 21 *due to operations involving asbestos at that*
 22 *site; or*

23 (iv) *other identifiable exposure to as-*
 24 *bestos fibers, in which case the claim shall*
 25 *be reviewed by the Medical Advisory Com-*

1 mittee under section 121(f) for a
2 determination of eligibility.

3 (e) *INSTITUTE OF MEDICINE STUDY.*—

4 (1) *IN GENERAL.*—Not later than 2 years after
5 date of enactment of this Act, the Institute of Medi-
6 cine of the National Academy of Sciences shall com-
7 plete a study of the causal link between asbestos expo-
8 sure and other cancers, including colorectal, laryn-
9 geal, esophageal, pharyngeal, and stomach cancers,
10 except for mesothelioma and lung cancers. The Insti-
11 tute of Medicine shall issue a report on its findings
12 on causation, which shall be transmitted to Congress,
13 the Court of Federal Claims, and the Medical Advi-
14 sory Committee. The Court of Federal Claims and the
15 Medical Advisory Committee may consider the results
16 of the report for purposes of determining whether as-
17 bestos exposure is a substantial contributing factor
18 under section 121(d)(6)(B).

19 (2) *SUBSEQUENT STUDIES.*—If the Court of Fed-
20 eral Claims has evidence that there have been ad-
21 vancements in science that would require additional
22 study, the Court may request that the Institute of
23 Medicine conduct a subsequent study to determine if
24 asbestos exposure is a cause of other cancers.

25 (f) *EXCEPTIONAL MEDICAL CLAIMS.*—

1 (1) *IN GENERAL.*—*A claimant who does not meet*
2 *the medical criteria requirements under this section*
3 *may apply for designation of the claim as an excep-*
4 *tional medical claim.*

5 (2) *APPLICATION.*—*When submitting an applica-*
6 *tion for review of an exceptional medical claim, the*
7 *claimant shall—*

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

11 (B) *seek designation as an exceptional med-*
12 *ical claim within 60 days after a determination*
13 *that the claim is ineligible solely for failure to*
14 *meet the medical criteria requirements under*
15 *subsection (d).*

16 (3) *REPORT OF PHYSICIAN.*—

17 (A) *IN GENERAL.*—*Any claimant applying*
18 *for designation of a claim as an exceptional*
19 *medical claim shall support an application filed*
20 *under paragraph (1) with a report from a physi-*
21 *cian meeting the requirements of this section.*

22 (B) *CONTENTS.*—*A report filed under sub-*
23 *paragraph (A) shall include—*

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

1 (ii) such additional material by way of
 2 analysis and documentation as shall be pre-
 3 scribed by rule of the Court of Federal
 4 Claims; and

5 (iii) a detailed explanation as to why
 6 the claim meets the requirements of para-
 7 graph (4)(B).

8 (4) REVIEW.—

9 (A) IN GENERAL.—The Court of Federal
 10 Claims shall refer all applications and sup-
 11 porting documentation submitted under para-
 12 graph (2) to the Medical Advisory Committee for
 13 review for eligibility as an exceptional medical
 14 claim.

15 (B) STANDARD.—A claim shall be des-
 16 ignated as an exceptional medical claim if the
 17 claimant, for reasons beyond the control of the
 18 claimant, cannot satisfy the requirements under
 19 this section, but is able, through comparably reli-
 20 able evidence that meets the standards under this
 21 section, to show that the claimant has an asbes-
 22 tos-related condition that is substantially com-
 23 parable to that of a medical condition that
 24 would satisfy the requirements of a category
 25 under this section.

1 (C) *ADDITIONAL INFORMATION.*—*The Med-*
2 *ical Advisory Committee may request additional*
3 *reasonable testing to support the claimant’s ap-*
4 *plication.*

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

7 (5) *APPROVAL.*—

8 (A) *IN GENERAL.*—*If the Medical Advisory*
9 *Committee determines that the medical evidence*
10 *is sufficient to show a comparable asbestos-re-*
11 *lated condition, it shall issue a certificate of*
12 *medical eligibility designating the category of as-*
13 *bestos-related injury under this section for which*
14 *the claimant may be eligible to seek compensa-*
15 *tion.*

16 (B) *REFERRAL.*—*Upon the issuance of a*
17 *certificate under subparagraph (A), the Medical*
18 *Advisory Committee shall submit the claim to a*
19 *special asbestos master, who shall proceed to de-*
20 *termine whether the claimant meets the require-*
21 *ments for compensation under this Act.*

22 (6) *RESUBMISSION.*—*Any claimant whose appli-*
23 *cation for designation as an exceptional medical*
24 *claim is rejected may resubmit an application if new*
25 *evidence becomes available. The application shall*

1 *identify any prior applications and state the new evi-*
2 *dence that forms the basis of the resubmission.*

3 (7) *RULES.*—*The chief judge of the Court of Fed-*
4 *eral Claims shall promulgate rules governing the pro-*
5 *cedures for seeking designation of a claim as an ex-*
6 *ceptional medical claim.*

7 (8) *LIBBY, MONTANA.*—*All claims filed by Libby,*
8 *Montana claimants shall be designated as exceptional*
9 *medical claims and referred to the Medical Advisory*
10 *Committee for review. In reviewing the medical evi-*
11 *dence submitted by a Libby, Montana claimant in*
12 *support of that claim, and before making an eligi-*
13 *bility determination for a Libby, Montana claimant,*
14 *the Medical Advisory Committee shall review the cur-*
15 *rent medical and scientific literature relating to the*
16 *study, diagnosis, and treatment of asbestos-related*
17 *diseases resulting from exposure to asbestos and other*
18 *fibers found in and around Libby, Montana, includ-*
19 *ing public health assessments prepared by the Agency*
20 *for Toxic Substances and Disease Registry for the*
21 *Libby Asbestos Site. The Medical Advisory Committee*
22 *shall take into consideration the unique and serious*
23 *nature of asbestos exposure in Libby, Montana, in-*
24 *cluding the nature of the pleural disease related to as-*
25 *bestos exposure in Libby, when making a determina-*

4 SEC. 131. AMOUNT.

(a) IN GENERAL.—An asbestos claimant who meets the requirements of section 113 shall be entitled to an award in an amount determined by reference to the benefit table contained in subsection (b).

9 (b) BENEFIT TABLE.—

(1) IN GENERAL.—An asbestos claimant with an eligible disease or condition established in accordance with section ~~124~~ *121*, ~~other than an injury described in paragraph (2)~~, shall be eligible for an award according to the following schedule:

Level	Scheduled Condition or Disease	Scheduled Value
I	Asymptomatic Exposure	\$0
II	Asbestosis/Pleural Disease A	\$0
III	Asbestosis/Pleural Disease B	\$40,000
IV	Severe Asbestosis	\$400,000
V	Other Cancer	\$200,000
VI	Lung Cancer I	\$0 or \$50,000
VII	Lung Cancer II	\$100,000 or \$400,000
VIII	Mesothelioma	\$750,000

(2) SCHEDULED VALUES FOR LEVELS VI AND VII.—

(A) DEFINITION.—In this paragraph, the term “nonsmoker” means a claimant who—

- 1 (i) never smoked; or
 2 (ii) has not smoked during any por-
 3 tion of the 12-year period preceding the di-
 4 agnosis of the lung cancer.

5 (B) SCHEDULED VALUES.—In accordance
 6 with subsection (a), a claimant—

- 7 (i) who is a nonsmoker shall receive—
 8 (I) \$50,000 for Level VI; and
 9 (II) \$400,000 for Level VII; and
 10 (ii) who is not a nonsmoker shall re-
 11 ceive—

- 12 (I) \$0 for Level VI; and
 13 (II) \$100,000 for Level VII.

<i>Level</i>	<i>Scheduled Condi- tion or Disease</i>	<i>Scheduled Value</i>
<i>I</i>	<i>Asbestosis/Pleural Disease A</i>	<i>Medical Monitoring</i>
<i>II</i>	<i>Mixed Disease With Impairment</i>	<i>\$20,000</i>
<i>III</i>	<i>Asbestosis/Pleural Disease B</i>	<i>\$75,000</i>
<i>IV</i>	<i>Severe Asbestosis</i>	<i>\$300,000</i>
<i>V</i>	<i>Disabling Asbestosis</i>	<i>\$750,000</i>
<i>VI</i>	<i>Other Cancer</i>	<i>\$150,000</i>
<i>VII</i>	<i>Lung Cancer One</i>	<i>individual evaluation; smokers receive between \$25,000–\$75,000; ex-smokers receive be- tween \$75,000– \$225,000; nonsmokers receive be- tween \$225,000– \$600,000</i>

VIII	<i>Lung Cancer With Pleural Disease</i>	<i>smokers receive between \$125,000—\$225,000; ex-smokers receive be- tween \$400,000— \$600,000; nonsmokers receive be- tween \$609,000— \$1,000,000</i>
IX	<i>Lung Cancer With Asbestosis</i>	<i>smokers receive \$300,000—\$400,000; ex-smokers receive be- tween \$550,000— \$850,000; nonsmokers receive be- tween \$800,000— \$1,000,000</i>
X	<i>Mesothelioma</i>	<i>\$1,000,000</i>

1 (2) *DEFINITIONS.—In this section—*

2 (A) *the term “nonsmoker” means a claim-*
3 *ant who never smoked; and*

4 (B) *the term “ex-smoker” means a claimant*
5 *who has not smoked during any portion of the*
6 *12-year period preceding the diagnosis of lung*
7 *cancer.*

8 (3) *VALUES WITHIN LEVELS RELATING TO LUNG*
9 *CANCER.—*

10 (A) *IN GENERAL.—In setting values for lev-*
11 *els relating to lung cancer, the Administrator*
12 *shall develop a matrix of classes for each of Lev-*
13 *els VII, VIII, and IX based on—*

14 (i) *the smoking history of the claimant*
15 *including whether the claimant currently or*
16 *in the past smoked tobacco products, the du-*
17 *ration of smoking, pack years, and whether*

1 *the claimant has quit smoking and for how*
 2 *long;*

3 (ii) *the age of the claimant at diag-*
 4 *nosis with claim values increased propor-*
 5 *tionately for claimants who are younger*
 6 *than the average life span and reduced for*
 7 *those who are older; and*

8 (iii) *the level and duration of asbestos*
 9 *exposure with those receiving the highest*
 10 *total dose (level x duration) receiving great-*
 11 *er values.*

12 (B) *DETERMINATION OF EXPOSURE.—Levels*
 13 *of exposure shall be based on research in the*
 14 *fields of epidemiology and industrial hygiene.*

15 ~~(3)~~ (4) *MEDICAL MONITORING.—An asbestos*
 16 *claimant with asymptomatic exposure or asbestosis/*
 17 *pleural disease A, based on the criteria under section*
 18 ~~124(b)(1)~~ *121(d)(1), shall only be eligible for medical*
 19 *monitoring reimbursement.*

20 (5) *COST-OF-LIVING ADJUSTMENT.—*

21 (A) *IN GENERAL.—Beginning January 1,*
 22 *2006, award amounts under paragraph (1) shall*
 23 *be annually increased by an amount equal to*
 24 *such dollar amount multiplied by the cost-of-liv-*

ing adjustment, rounded to the nearest \$1,000
increment.

(B) *CALCULATION OF COST-OF-LIVING ADJUSTMENT.*—For the purposes of subparagraph (A), the cost-of-living adjustment for any calendar year shall be the percentage, if any, by which the consumer price index for the succeeding calendar year exceeds the consumer price index for calendar year 2004.

(C) *CONSUMER PRICE INDEX.*—

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

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

1 *index based period, as published by the De-*
 2 *partment of Labor.*

3 **SEC. 132. MEDICAL MONITORING.**

4 (a) RELATION TO STATUTE OF LIMITATIONS.—The
 5 filing of an asbestos claim that seeks reimbursement for
 6 medical monitoring shall not be considered as evidence
 7 that the claimant has discovered facts that would other-
 8 wise commence the period applicable for purposes of the
 9 statute of limitations under section 111(c).

10 (b) COSTS.—Reimbursable medical monitoring costs
 11 shall include the costs of a claimant not covered by health
 12 insurance for x-ray tests and pulmonary function tests
 13 every 3 years.

14 (c) REGULATIONS.—The Administrator shall promul-
 15 gate regulations that establish—

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

18 (2) the procedures applicable to asbestos claim-
 19 ants.

20 **SEC. 133. PAYMENTS.**

21 (a) STRUCTURED PAYMENTS.—

22 (1) IN GENERAL.—An asbestos claimant who is
 23 entitled to an award ~~shall~~ *should* receive the amount
 24 of the award through structured payments from the
 25 Fund, made over a period of ~~not less than~~ 3 years,

1 *and in no event more than 4 years after the date of*
2 *final adjudication of the claim.*

3 (2) ACCELERATED PAYMENTS.—The Adminis-
4 trator shall develop guidelines to provide for acceler-
5 ated payments to asbestos claimants who are meso-
6 thelioma victims and who are alive on the date on
7 which the administrator receives notice of the eligi-
8 bility of the claimant. Such payments shall be cred-
9 ited against the first regular payment under the
10 structured payment plan for the claimant.

11 (3) EXPEDITED PAYMENTS.—The Adminis-
12 trator shall develop guidelines to provide for expe-
13 dited payments to asbestos claimants in cases of exi-
14 gent circumstances or extreme hardship caused by
15 asbestos-related injury.

16 (4) ANNUITY.—An asbestos claimant may elect
17 to receive any payments to which they are entitled
18 under this title in the form of an annuity.

19 (b) LIMITATION ON TRANSFERABILITY.—An asbestos
20 claim shall not be assignable or otherwise transferable
21 under this Act.

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

1 ~~(d) TREATMENT FOR INTERNAL REVENUE PUR-~~
 2 ~~POSES.—All amounts of an award received under this sub-~~
 3 ~~title shall be deemed to be compensation for personal phys-~~
 4 ~~ical injuries or physical sickness under section 104 of the~~
 5 ~~Internal Revenue Code of 1986.~~

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

10 **SEC. 134. REDUCTION IN BENEFIT PAYMENTS FOR COLLAT-**
 11 **ERAL SOURCES.**

12 (a) IN GENERAL.—The amount of an award other-
 13 wise available to an asbestos claimant under this title shall
 14 be reduced by the amount of collateral source compensa-
 15 tion ~~that the claimant received, or is entitled to receive,~~
 16 ~~for the asbestos-related injury that is the subject of the~~
 17 ~~compensation.~~

18 (b) EXCLUSIONS.—In no case shall statutory benefits
 19 under workers' compensation laws and veterans benefits
 20 programs be deemed as collateral source compensation for
 21 purposes of this section.

22 **Subtitle E—En Banc Review**

23 **SEC. 141. EN BANC REVIEW.**

24 (a) IN GENERAL.—

1 (1) EN BANC PANELS.—The chief judge of the
2 ~~Asbestos Court~~ *Court of Federal Claims* shall—

3 (A) establish en banc panels to carry out
4 this subtitle; and

5 (B) assign 3 judges of the Asbestos Court
6 to each en banc panel.

7 ~~(2) RANDOM ASSIGNMENT OF PANELS.—In car-~~
8 ~~rying out paragraph (1), the chief judge shall—~~

9 ~~(A) except as necessary to effectuate sub-~~
10 ~~paragraph (B), assign judges to panels ran-~~
11 ~~domly; and~~

12 ~~(B) assign appeals to panels in a manner~~
13 ~~that results in no judge reviewing a decision~~
14 ~~made by that judge.~~

15 ~~(3) FILING OF APPEAL.—Not later than 30~~
16 ~~days after receiving notice of the decision of a judge~~
17 ~~under section 114, a claimant may file an appeal for~~
18 ~~review with an en banc panel of the Asbestos Court.~~

19 (2) *UNITED STATES COURT OF ASBESTOS*
20 ~~CLAIMS.—Each panel established under this sub-~~
21 ~~section may be referred to as the “United States~~
22 ~~Court of Asbestos Claims”.~~

23 (3) *RANDOM ASSIGNMENT OF PANELS.—In car-*
24 ~~rying out paragraph (1), the chief judge shall assign~~
25 ~~judges to panels randomly.~~

1 (4) *FILING OF APPEAL*.—Not later than 30 days
 2 after receiving notice of the decision of a panel of spe-
 3 cial asbestos masters under section 114, a claimant
 4 may file an appeal with the United States Court of
 5 Asbestos Claims.

6 ~~(b) DE NOVO REVIEW~~.—An Asbestos Court panel
 7 shall provide a de novo review of the magistrate's deter-
 8 mination and the judge's decision.

9 (b) *REVIEW OF DECISION OF SPECIAL ASBESTOS MAS-*
 10 *TER*.—

11 (1) *IN GENERAL*.—The United States Court of
 12 Asbestos Claims may—

13 (A) uphold the findings of fact and conclu-
 14 sions of law of the special asbestos master and
 15 sustain the special asbestos master's decision;

16 (B) set aside any findings of fact or conclu-
 17 sion of law of the special asbestos master found
 18 to be arbitrary, capricious, an abuse of discre-
 19 tion, or otherwise not in accordance with law
 20 and issue its own findings of fact and conclu-
 21 sions of law; or

22 (C) remand the petition to the special asbes-
 23 tos master for further action in accordance with
 24 the direction of the United States Court of Asbes-
 25 tos Claims.

1 (2) *REMANDS.*—*The United States Court of As-*
 2 *bestos Claims may allow not more than 30 days for*
 3 *remands under paragraph (1)(C).*

4 (3) *FINAL DECISION.*—*If the United States Court*
 5 *of Asbestos Claims makes a final decision after review*
 6 *as provided under paragraph (1) (A) or (B), the*
 7 *Court shall notify the Administrator to award the*
 8 *claimant an amount as determined by the United*
 9 *States Court of Asbestos Claims.*

10 (4) *CLAIM EXTINGUISHED.*—*The acceptance of*
 11 *payment of an award as provided under this sub-*
 12 *section shall extinguish all claims related to such pay-*
 13 *ment.*

14 (c) REPRESENTATION OF THE ADMINISTRATOR.—
 15 The Administrator may appoint counsel to represent the
 16 interests of the Fund and the Administrator in all pro-
 17 ceedings before a panel, including oral arguments and the
 18 submission of briefs.

19 (d) FEDERAL RULES OF APPELLATE PROCEDURE.—
 20 ~~An Asbestos Court~~ *A Court of Federal Claims* panel shall
 21 apply the Federal Rules of Appellate Procedures to all
 22 proceedings before the panel.

23 (e) DECISION OF PANEL.—~~An Asbestos Court~~ *A*
 24 *Court of Federal Claims* panel shall enter a final decision
 25 on an appeal on the earlier date occurring—

1 (1) not later than 30 days after the date of the
2 conclusion of oral arguments; or

3 (2) not later than 60 days after an appeal is
4 filed under this section.

5 **TITLE II—ASBESTOS INJURY**
6 **CLAIMS RESOLUTION FUND**
7 **Subtitle A—Asbestos Defendants**
8 **Funding Allocation**

9 **SEC. 201. DEFINITIONS.**

10 In this subtitle, the following definitions shall apply:

11 (1) **AFFILIATED GROUP.**—The term “affiliated
12 group”—

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

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

21 (2) **CLASS ACTION TRUST.**—*The term “class ac-*
22 *tion trust” means a trust or similar entity established*
23 *to hold assets for the payment of asbestos claims as-*
24 *serted against a debtor or participating defendant,*
25 *under a settlement that—*

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

4 (B) has been approved by a final judgment
 5 of a United States District Court before the date
 6 of enactment of this Act.

7 ~~(2)~~ (3) DEBTOR.—The term “debtor”—

8 (A) means—

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

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

22 (B) shall not include an entity—

23 (i) subject to chapter 7 of title 11,
 24 United States Code, if a final decree clos-

1 ing the estate shall have been entered be-
 2 fore the date of enactment of this Act; or
 3 (ii) subject to chapter 11 of title 11,
 4 United States Code, if a plan of reorga-
 5 nization for such entity shall have been
 6 confirmed by a duly entered order or judg-
 7 ment of a court that is no longer subject
 8 to any appeal or judicial review.

9 ~~(3)~~ (4) INDEMNIFIABLE COST.—The term
 10 “indemnifiable cost” means a cost, expense, debt,
 11 judgment, or settlement incurred with respect to an
 12 asbestos claim that, at any time before December
 13 31, 2002, was or could have been subject to indem-
 14 nification, contribution, surety, or guaranty.

15 ~~(4)~~ (5) INDEMNITEE.—The term “indemnitee”
 16 means a person against whom any asbestos claim
 17 has been asserted before December 31, 2002, who
 18 has received from any other person, or on whose be-
 19 half a sum has been paid by such other person to
 20 any third person, in settlement, judgment, defense,
 21 or indemnity in connection with an alleged duty with
 22 respect to the defense or indemnification of such
 23 person concerning that asbestos claim, other than
 24 under a policy of insurance or reinsurance.

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

13 ~~(6)~~ (7) PRIOR ASBESTOS EXPENDITURES.—The
 14 term “prior asbestos expenditures”—

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

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

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

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

~~(7)~~ (8) TRUST.—The term “trust” means any person formed under section 524(g) of title 11, United States Code, or formed under any plan under section 1129 of title 11, United States Code, ~~for any purpose, including administering and paying asbestos claims~~ *in whole or in part to provide compensation for asbestos claims.*

~~(8)~~ (9) ULTIMATE PARENT.—The term “ultimate parent” means a person—

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

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

7 **SEC. 202. AUTHORITY AND TIERS.**

8 (a) ASSESSMENT.—

9 (1) IN GENERAL.—The Administrator shall as-
 10 sess from defendant participants contributions to the
 11 Fund in accordance with this section based on tiers
 12 and subtiers assigned to defendant participants.

13 (2) AGGREGATE CONTRIBUTION LEVEL.—The
 14 total contribution required of all defendant partici-
 15 pants over the life of the Fund shall be equal to
 16 ~~\$45,000,000,000~~ \$52,000,000,000. *The Administrator*
 17 *shall have the authority to allocate the contributions*
 18 *assessed from the defendant participants among the*
 19 *tiers.*

20 (b) TIER I.—The Administrator shall assign to Tier
 21 I all debtors that, together with all of their direct or indi-
 22 rect majority-owned subsidiaries, have prior asbestos ex-
 23 penditures greater than \$1,000,000.

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

(1) DEFINITION.—In this subsection, the term “bankrupt business entity” means a person that is not a natural person that—

(A) filed under chapter 11, of title 11, United States Code, before January 1, 2003;

(B) has not confirmed a plan of reorganization as of the date of enactment of this Act; and

~~(C) the Chief Executive Officer, Chief Financial Officer, or Chief Legal Officer of that business entity certifies in writing to the bankruptcy court presiding over the business entity’s case, that asbestos liability was neither the sole nor precipitating cause for the filing under chapter 11.~~

(C) the bankruptcy court presiding over the business entity’s case determines, after notice and a hearing upon motion filed by the entity within 30 days of the effective date of this Act, which motion shall be supported by—

(i) an affidavit or declaration of the Chief Executive Officer, Chief Financial Officer, or Chief Legal Officer of the business entity; and

1 (ii) copies of the entity's public state-
 2 ments and securities filings made in con-
 3 nection with the entity's filing for chapter
 4 11 protection that asbestos liability was not
 5 the sole or precipitating cause of the entity's
 6 chapter 11 filing. Notice of such motion
 7 shall be as directed by the bankruptcy court
 8 and the hearing shall be limited to consider-
 9 ation of the question of whether or not as-
 10 bestos liability was the sole or precipitating
 11 cause of the entity's chapter 11 filing. The
 12 bankruptcy court shall hold a hearing and
 13 make its determination with respect to the
 14 motion within 60 days after the date the
 15 motion is filed. In making its determina-
 16 tion, the bankruptcy court shall take into
 17 account the affidavits, public statements,
 18 and securities filings, and other informa-
 19 tion, if any, submitted by the entity and all
 20 other facts and circumstances presented by
 21 an objecting party.

22 (iii) JUDICIAL REVIEW.—Any review
 23 of this determination must be an expedited
 24 appeal and limited to whether the decision
 25 was against the weight of the evidence.

1 ~~(2)~~ (3) PROCEEDING WITH REORGANIZATION
 2 PLAN.—A bankrupt business entity may proceed
 3 with the filing, solicitation, and confirmation of a
 4 plan of reorganization that does not comply with the
 5 requirements of this Act, including a trust and chan-
 6 neling injunction under section 524(g) of title 11,
 7 United States Code, notwithstanding any other pro-
 8 visions of this Act, if—

9 (A) the bankruptcy court presiding over
 10 the chapter 11 case of the bankrupt business
 11 entity determines that—

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

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

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

23 ~~(3)~~ (4) APPLICABILITY.—If the bankruptcy
 24 court does not make the required determination, or
 25 if an order confirming the plan is not entered within

1 9 months after the effective date of this Act or such
2 longer period of time approved by the bankruptcy
3 court for cause shown, the provisions of the Act
4 shall apply to the bankrupt business entity notwith-
5 standing the certification. Any timely appeal under
6 title 11, United States Code, from a confirmation
7 order entered during the applicable time period shall
8 automatically extend the time during which this Act
9 is inapplicable to the bankrupt business entity, until
10 the appeal is fully and finally resolved.

11 ~~(4)~~ (5) OFFSETS.—

12 (A) PAYMENTS BY INSURERS.—To the ex-
13 tent that a bankrupt business entity *or debtor*
14 successfully confirms a plan of reorganization,
15 including a trust under section 524(g) of title
16 11, United States Code, and channeling injunc-
17 tion that involves payments by insurers who are
18 otherwise subject to this Act, an insurer who
19 makes payments to the trust under section
20 524(g) of title 11, United States Code, shall ob-
21 tain a dollar for dollar reduction in the amount
22 otherwise payable by that insurer under this
23 Act to the Fund.

24 (B) CONTRIBUTIONS TO FUND.—Any cash
25 payments by a bankrupt business entity, if any,

1 to a trust under section 524(g) of title 11,
 2 United States Code, may be counted as a con-
 3 tribution to the Fund.

4 (d) TIERS II THROUGH VI.—Except as provided in
 5 sections 202(b), 204(b), and 204(g), persons or affiliated
 6 groups shall be assigned to Tier II, III, IV, V, or VI ac-
 7 cording to the prior asbestos expenditures paid by such
 8 persons or affiliated groups as follows:

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

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

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

14 (4) Tier V: \$5,000,000 or greater, but less than
 15 \$10,000,000.

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

18 (e) ASSIGNMENTS AND COSTS.—

19 (1) PERMANENT ASSIGNMENT.—Subject to sec-
 20 tion 204(d), after the Administrator has assigned a
 21 person or affiliated group to a tier under this sec-
 22 tion, such person or affiliated group shall remain in
 23 that tier throughout the life of the Fund, regardless
 24 of subsequent events, including—

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

3 (B) a discharge from bankruptcy;

4 (C) the confirmation of a plan of reorga-
5 nization; or

6 (D) the sale or transfer of assets to any
7 other person or affiliated group.

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

12 (A) shall constitute costs and expenses of
13 administration of the case under section 503 of
14 that title 11 and shall be payable in accordance
15 with the payment provisions under this subtitle
16 notwithstanding the pendency of the case under
17 that title 11;

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

21 (C) shall not be impaired or discharged in
22 any current or future case under title 11,
23 United States Code.

24 (f) SUPERSEDING PROVISIONS.—Any plan of reorga-
25 nization with respect to any debtor assigned to Tier I and

1 any agreement, understanding, or undertaking by any
2 such debtor or any third party with respect to the treat-
3 ment of any asbestos claim filed before the date of enact-
4 ment of this Act and subject to confirmation of a plan
5 under chapter 11 of title 11, United States Code, shall
6 be superseded in their entirety by this Act. Any such plan
7 of reorganization, agreement, understanding, or under-
8 taking by any debtor or any third party shall be of no
9 force or effect, and no person shall have any rights or
10 claims with respect to any of the foregoing.

11 **SEC. 203. SUBTIER ASSESSMENTS.**

12 (a) IN GENERAL.—

13 (1) ASSESSMENTS.—Except as provided under
14 subsections (a), (b), (d), (f), and (g) of section 204,
15 the Administrator shall assess contributions to per-
16 sons or affiliated groups within Tiers I through VII
17 in accordance with this section.

18 (2) REVENUES.—

19 (A) IN GENERAL.—For purposes of this
20 section, revenues shall be determined in accord-
21 ance with generally accepted accounting prin-
22 ciples, consistently applied, using the amount
23 reported as revenues in the annual report filed
24 with the Securities and Exchange Commission
25 in accordance with section 13(a)(2) of the Secu-

1 rities Exchange Act of 1934 (15 U.S.C.
2 78m(a)(2)) for the most recent fiscal year end-
3 ing on or before December 31, 2002. If the de-
4 fendant participant does not file reports with
5 the Securities and Exchange Commission, reve-
6 nues shall be the amount that the defendant
7 participant would have reported as revenues
8 under the rules of the Securities and Exchange
9 Commission in the event that it had been re-
10 quired to file.

11 (B) INSURANCE PREMIUMS.—Any portion
12 of revenues of a defendant participant that is
13 derived from insurance premiums shall not be
14 used to calculate the contribution of that de-
15 fendant participant under this subtitle.

16 (C) PRIVATELY HELD COMPANIES.—If the
17 defendant participant is not required to file an
18 earnings report with the Securities and Ex-
19 change Commission, revenues shall be the
20 amount that the defendant participant would
21 have reported as revenues in the event that it
22 had been required to file the report described
23 under subparagraph (A).

24 (D) DEBTORS.—Each debtor's revenues
25 shall include the revenues of the debtor and all

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

12 (i) *all revenues of the person in respect*
 13 *of whose liabilities for asbestos claims the*
 14 *class action trust was established, and*

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

23 (b) TIER I SUBTIERS.—

24 (1) IN GENERAL.—Except as provided under
 25 subsections (a), (b), (d), (f), and (g) of section 204,

the Administrator shall assign each debtor in Tier I to subtiers. Each debtor or shall make contributions to the Fund as provided under this section.

(2) SUBTIER 1.—

(A) IN GENERAL.—All persons that are debtors with prior asbestos expenditures of \$1,000,000 or greater, shall be assigned to Subtier 1.

(B) ASSIGNMENT.—Each debtor assigned to Subtier 1 shall make annual payments based on a percentage of its 2002 revenues.

(C) PAYMENT.—Each debtor assigned to Subtier 1 shall pay on an annual basis the following with respect to the year of the establishment of the Fund:

(i) Years 1 through 5, ~~1.5005~~ 1.5184 percent of the debtor's 2002 revenues.

(ii) Years 6 through 8, ~~1.3504~~ 1.3666 percent of the debtor's 2002 revenues.

(iii) Years 9 through 11, ~~1.2154~~ 1.2147 percent of the debtor's 2002 revenues.

(iv) Years 12 through 14, ~~1.0938~~ 1.0629 percent of the debtor's 2002 revenues.

1 (v) Years 15 through 17, ~~.9845~~ .9111
 2 percent of the debtor's 2002 revenues.

3 (vi) Years 18 through 20, ~~.8860~~ .7592
 4 percent of the debtor's 2002 revenues.

5 (vii) Years 21 through 23, ~~.7974~~
 6 .6074 percent of the debtor's 2002 reve-
 7 nues.

8 ~~(viii) Years 24 through 26, .7177 per-~~
 9 ~~cent of the debtor's 2002 revenues.~~

10 ~~(ix)~~ (viii) Year 27, ~~.1794~~ .1518 per-
 11 cent of the debtor's 2002 revenues.

12 (3) SUBTIER 2.—

13 (A) IN GENERAL.—Notwithstanding para-
 14 graph (2), all persons that are debtors that
 15 have no material continuing business operations
 16 but hold cash or other assets that have been al-
 17 located or earmarked for asbestos settlements
 18 shall be assigned to Subtier 2.

19 (B) ASSIGNMENT OF ASSETS.—Not later
 20 than 30 days after the date of enactment of
 21 this Act, each person assigned to Subtier 2
 22 shall assign all of its assets to the Fund.

23 (4) SUBTIER 3.—

24 (A) IN GENERAL.—Notwithstanding para-
 25 graph (2), all persons that are debtors other

1 than those included in Subtier 2, which have no
 2 material continuing business operations and no
 3 cash or other assets allocated or earmarked for
 4 the settlement of any asbestos claim, shall be
 5 assigned to Subtier 3.

6 (B) ASSIGNMENT OF UNENCUMBERED AS-
 7 SETS.—Not later than 30 days after the date of
 8 enactment of this Act, each person assigned to
 9 Subtier 3 shall contribute an amount equal to
 10 50 percent of its total unencumbered assets.

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

15 (i) all allowable administrative ex-
 16 penses;

17 (ii) allowed priority claims under sec-
 18 tion 507 of title 11, United States Code;
 19 and

20 (iii) allowed secured claims.

21 (5) *CLASS ACTION TRUST.*—*The assets of any*
 22 *class action trust that has been established in respect*
 23 *of the liabilities for asbestos claims of any person in-*
 24 *cluded within a debtor and affiliated group that has*
 25 *been assigned to Tier I (exclusive of any assets needed*

1 *to pay previously incurred expenses and asbestos*
 2 *claims reduced to a final order or judgment within*
 3 *the meaning of section 403(d)(1) before the date of en-*
 4 *actment of this Act) shall be transferred to the Fund*
 5 *not later than 6 months after the date of enactment*
 6 *of this Act.*

7 (c) TIER II SUBTIERS.—

8 (1) IN GENERAL.—The Administrator shall as-
 9 sign each person or affiliated group in Tier II to 1
 10 of 5 subtiers, based on the person's or affiliated
 11 group's revenues. Such subtiers shall each contain as
 12 close to an equal number of total persons and affili-
 13 ated groups as possible, with—

14 (A) those persons or affiliated groups with
 15 the highest revenues assigned to Subtier 1;

16 (B) those persons or affiliated groups with
 17 the next highest revenues assigned to Subtier 2;

18 (C) those persons or affiliated groups with
 19 the lowest revenues assigned to Subtier 5;

20 (D) those persons or affiliated groups with
 21 the next lowest revenues assigned to Subtier 4;

22 and

23 (E) those persons or affiliated groups re-
 24 maining assigned to Subtier 3.

1 (2) PAYMENT.—Each person or affiliated group
 2 within an assigned subtier shall pay, on an annual
 3 basis, the following:

4 (A) Subtier 1: \$25,000,000.

5 (B) Subtier 2: \$22,500,000.

6 (C) Subtier 3: \$20,000,000.

7 (D) Subtier 4: \$17,500,000.

8 (E) Subtier 5: \$15,000,000.

9 (d) TIER III SUBTIERS.—

10 (1) IN GENERAL.—The Administrator shall as-
 11 sign each person or affiliated group in Tier III to 1
 12 of 5 subtiers, based on the person's or affiliated
 13 group's revenues. Such subtiers shall each contain as
 14 close to an equal number of total persons and affili-
 15 ated groups as possible, with—

16 (A) those persons or affiliated groups with
 17 the highest revenues assigned to Subtier 1;

18 (B) those persons or affiliated groups with
 19 the next highest revenues assigned to Subtier 2;

20 (C) those persons or affiliated groups with
 21 the lowest revenues assigned to Subtier 5;

22 (D) those persons or affiliated groups with
 23 the next lowest revenues assigned to Subtier 4;

24 and

1 (E) those persons or affiliated groups re-
 2 maining assigned to Subtier 3.

3 (2) PAYMENT.—Each person or affiliated group
 4 within an assigned subtier shall pay, on an annual
 5 basis, the following:

6 (A) Subtier 1: \$15,000,000.

7 (B) Subtier 2: \$12,500,000.

8 (C) Subtier 3: \$10,000,000.

9 (D) Subtier 4: \$7,500,000.

10 (E) Subtier 5: \$5,000,000.

11 (e) TIER IV SUBTIERS.—

12 (1) IN GENERAL.—The Administrator shall as-
 13 sign each person or affiliated group in Tier IV to 1
 14 of 4 subtiers, based on the person's or affiliated
 15 group's revenues. Such subtiers shall each contain as
 16 close to an equal number of total persons and affili-
 17 ated groups as possible, with those persons or affili-
 18 ated groups with the highest revenues in Subtier 1,
 19 those with the lowest revenues in Subtier 4. Those
 20 persons or affiliated groups with the highest reve-
 21 nues among those remaining will be assigned to
 22 Subtier 2 and the rest in Subtier 3.

23 (2) PAYMENT.—Each person or affiliated group
 24 within an assigned subtier shall pay, on an annual
 25 basis, the following:

1 (A) Subtier 1: \$3,500,000.

2 (B) Subtier 2: \$2,250,000.

3 (C) Subtier 3: \$1,500,000.

4 (D) Subtier 4: \$500,000.

5 (f) TIER V SUBTIERS.—

6 (1) IN GENERAL.—The Administrator shall as-
 7 sign each person or affiliated group in Tier V to 1
 8 of 3 subtiers, based on the person's or affiliated
 9 group's revenues. Such subtiers shall each contain as
 10 close to an equal number of total persons and affili-
 11 ated groups as possible, with those persons or affili-
 12 ated groups with the highest revenues in Subtier 1,
 13 those with the lowest revenues in Subtier 3, and
 14 those remaining in Subtier 2.

15 (2) PAYMENT.—Each person or affiliated group
 16 within an assigned subtier shall pay, on an annual
 17 basis, the following:

18 (A) Subtier 1: \$1,000,000.

19 (B) Subtier 2: \$500,000.

20 (C) ~~SUBTIER~~ Subtier 3: \$200,000.

21 (g) TIER VI SUBTIERS.—

22 (1) IN GENERAL.—The Administrator shall as-
 23 sign each person or affiliated group in Tier VI to 1
 24 of 3 Subtiers, based on the person's or affiliated
 25 group's revenues. Such subtiers shall each contain as

1 close to an equal number of total persons and affili-
 2 ated groups as possible, with those persons or affili-
 3 ated groups with the highest revenues in Subtier 1,
 4 those with the lowest revenues in Subtier 3, and
 5 those remaining in Subtier 2.

6 (2) PAYMENT.—Each person or affiliated group
 7 within an assigned subtier shall pay, on an annual
 8 basis, the following:

9 (A) Subtier 1: \$500,000.

10 (B) Subtier 2: \$250,000.

11 (C) Subtier 3: \$100,000.

12 (h) TIER VII.—

13 (1) IN GENERAL.—Notwithstanding any assign-
 14 ment to Tiers II, III, IV, V, and VI based on prior
 15 asbestos expenditures under section 204(d), a person
 16 shall be assigned to Tier VII if the person—

17 (A) is subject to asbestos claims brought
 18 under the Federal Employers' Liability Act (45
 19 U.S.C. 51 et seq.) as a result of operations as
 20 a common carrier by railroad; and

21 (B) have paid not less than \$5,000,000 in
 22 settlement, judgment, defense, or indemnity
 23 costs relating to such claims.

24 (2) ADDITIONAL AMOUNT.—The contribution
 25 requirement for persons assigned to Tier VII shall

1 be in addition to any applicable contribution require-
2 ment that such person may be assessed under Tiers
3 II through VI.

4 (3) SUBTIER 1.—The Administrator shall as-
5 sign each person or affiliated group in Tier VII with
6 revenues of not less than \$5,000,000,000 to Subtier
7 1 and shall require each such person or affiliated
8 group to make annual payments of \$10,000,000 into
9 the Fund.

10 (4) SUBTIER 2.—The Administrator shall as-
11 sign each person or affiliated group in Tier VII with
12 revenues of less than \$5,000,000,000, but not less
13 than \$3,000,000,000 to Subtier 2, and shall require
14 each such person or affiliated group to make annual
15 payments of \$5,000,000 into the Fund.

16 (5) SUBTIER 3.—The Administrator shall as-
17 sign each person or affiliated group in Tier VII with
18 revenues of less than \$3,000,000,000, but not less
19 than \$500,000,000 to Subtier 3, and shall require
20 each such person or affiliated group to make annual
21 payments of \$500,000 into the Fund.

22 (6) JOINT VENTURE REVENUES AND LIABIL-
23 ITY.—

24 (A) REVENUES.—For purposes of this sub-
25 section, the revenues of a joint venture shall be

1 included on a pro rata basis reflecting relative
 2 joint ownership to calculate the revenues of the
 3 parents of that joint venture. The joint venture
 4 shall not be responsible for a contribution
 5 amount under this subsection.

6 (B) LIABILITY.—For purposes of this sub-
 7 section, the liability under the Act of April 22,
 8 1908 (45 U.S.C. 51 et seq.), commonly known
 9 as the Federal Employers' Liability Act, shall
 10 be attributed to the parent owners of the joint
 11 venture on a pro rata basis, reflecting their rel-
 12 ative share of ownership. The joint venture
 13 shall not be responsible for a contribution
 14 amount under this provision.

15 **SEC. 204. ASSESSMENT ADMINISTRATION.**

16 (a) REDUCTION ADJUSTMENTS.—*Subject to section*
 17 *223(f)*, ~~The~~ *the* Administrator shall assess contributions
 18 based on amounts provided under this subtitle for each
 19 person or affiliated group within Tiers II, III, IV, V, VI,
 20 and VII for the first 5 years of the operation of the Fund.
 21 Beginning in year 6, and thereafter, the Administrator
 22 shall reduce the contribution amount for each defendant
 23 participant in each of these tiers in proportion to the re-
 24 ductions in the schedule under subsection (h)(2).

1 (b) SMALL BUSINESS EXEMPTION.—A person or af-
2 filiated group that is a small business concern (as defined
3 under section 3 of the Small Business Act (15 U.S.C.
4 632)), on December 31, 2002, is exempt from any con-
5 tribution requirement under this subtitle.

6 (c) PROCEDURES.—The Administrator shall pre-
7 scribe procedures on how contributions assessed under
8 this subtitle are to be paid.

9 (d) EXCEPTIONS.—

10 (1) IN GENERAL.—Under expedited procedures
11 established by the Administrator, a defendant partic-
12 ipant may seek adjustment of the amount of its con-
13 tribution based on severe financial hardship or dem-
14 onstrated inequity. The Administrator may deter-
15 mine whether to grant an adjustment and the size
16 of any such adjustment, in accordance with this sub-
17 section. Such determinations shall not prejudice the
18 integrity of the Fund and shall not be subject to ju-
19 dicial review.

20 (2) FINANCIAL HARDSHIP ADJUSTMENTS.—

21 (A) IN GENERAL.—A defendant may apply
22 for an adjustment based on financial hardship
23 at any time during the life of the Fund and
24 may qualify for such adjustment by dem-
25 onstrating that the amount of its contribution

1 under the statutory allocation would constitute
2 a severe financial hardship.

3 (B) TERM.—A hardship adjustment under
4 this subsection shall have a term of 3 years.

5 (C) RENEWAL.—~~A~~ *After an initial hard-*
6 *ship adjustment is granted under this para-*
7 *graph, a* defendant may renew its hardship ad-
8 justment by demonstrating that it remains jus-
9 tified.

10 (D) LIMITATION.—The Administrator may
11 not grant hardship adjustments under this sub-
12 section in any year that exceed, in the aggre-
13 gate, \geq 6 percent of the total annual contribu-
14 tions required of all defendant participants.

15 (E) REINSTATEMENT.—

16 (i) IN GENERAL.—*Following the expi-*
17 *ration of the hardship adjustment period*
18 *provided for under this section and during*
19 *the mandatory funding period, the Admin-*
20 *istrator shall annually determine whether*
21 *there has been a material change in the fi-*
22 *nancial condition of the defendant such that*
23 *the Administrator may, consistent with the*
24 *policies and legislative intent underlying*
25 *this Act, reinstate under terms and condi-*

tions established by the Administrator any part of all of the defendant's contribution under the statutory allocation that was not paid during the hardship adjustment term.

(3) INEQUITY ADJUSTMENTS.—

~~(A) IN GENERAL.—~~A defendant may qualify for an adjustment based on inequity by demonstrating that the amount of its contribution under the statutory allocation is exceptionally inequitable when measured against the amount of the likely cost to the defendant of its future liability in the tort system in the absence of the Fund.

(A) IN GENERAL.—A defendant—

(i) may qualify for an adjustment based on inequity by demonstrating that the amount of contribution of the defendant under the statutory allocation is exceptionally inequitable—

(I) when measured against the amount of the likely cost to the defendant of its future liability in the tort system in the absence of the Fund;

1 (II) when compared to the median
2 contribution rate for all defendants in
3 the same tier; or

4 (III) when measured against the
5 percentage of the prior asbestos expend-
6 itures of the defendant that were in-
7 curred with respect to claims that nei-
8 ther resulted in an adverse judgment
9 against the defendant, nor were the
10 subject of a settlement that required a
11 payment to a plaintiff by or on behalf
12 of that defendant; and

13 (ii) shall qualify for a two-tier main
14 tier and a two-tier sub-tier adjustment re-
15 ducing the defendant's contribution based
16 on inequity by demonstrating that not less
17 than 95 percent of such person's prior as-
18 bestos expenditures arose from claims re-
19 lated to the manufacture and sale of rail-
20 road locomotives and related products, so
21 long as such person's manufacture and sale
22 of railroad locomotives and related products
23 is temporally and causally remote. For pur-
24 poses of this clause, a person's manufacture
25 and sale of railroad locomotives and related

1 *products shall be deemed to be temporally*
 2 *and causally remote if the asbestos claims*
 3 *historically and generally filed against such*
 4 *person relate to the manufacture and sale of*
 5 *railroad locomotives and related products*
 6 *by an entity dissolved more than 25 years*
 7 *prior to the date of enactment of this Act.*

8 (B) CONTRIBUTION RATE.—*For purposes of*
 9 *subparagraph (A), the contribution rate of a de-*
 10 *fendant is the contribution amount of the defend-*
 11 *ant as a percentage of such defendant's gross rev-*
 12 *enues for the year ending December 31, 2002.*

13 ~~(B)~~ (C) TERM.—Subject to the annual
 14 availability of funds in the Orphan Share Re-
 15 serve Account established under section 223(e
 16 h), an inequity adjustment granted by the Ad-
 17 ministrator under this subsection shall remain
 18 in effect ~~for the life of the Fund~~ *for a term of*
 19 *3 years.*

20 ~~(C)~~ (D) LIMITATION.—The Administrator
 21 may grant inequity adjustments only to the ex-
 22 tent that—

23 (i) the financial condition of the Fund
 24 is sufficient to accommodate such adjust-
 25 ments;

1 (ii) the Orphan Share Reserve Ac-
 2 count is sufficient to cover such adjust-
 3 ments for that year; and

4 (iii) such adjustments do not exceed ~~2~~
 5 4 percent of the total annual contributions
 6 required of all defendant participants.

7 (E) *RENEWAL*.—*A defendant may renew an*
 8 *inequity adjustment every 3 years by dem-*
 9 *onstrating that the adjustment remains justified.*

10 (F) *REINSTATEMENT*.—

11 (i) *IN GENERAL*.—*Following the termi-*
 12 *nation of an inequity adjustment under*
 13 *subparagraph (A), and during the manda-*
 14 *tory funding period of the Fund, the Ad-*
 15 *ministrator shall annually determine*
 16 *whether there has been a material change in*
 17 *conditions which would support a finding*
 18 *that the amount of the defendant's contribu-*
 19 *tion under the statutory allocation was not*
 20 *inequitable. Based on this determination,*
 21 *the Administrator may, consistent with the*
 22 *policies and legislative intent underlying*
 23 *this Act, reinstate any or all of the con-*
 24 *tribution requirements of the defendant as if*

1 *the inequity adjustment had not been grant-*
 2 *ed for that 3-year period.*

3 (ii) *TERMS AND CONDITIONS.—In the*
 4 *event of a reinstatement under clause (i),*
 5 *the Administrator may require the defend-*
 6 *ant to pay any part or all of amounts not*
 7 *contributed due to the inequity adjustment*
 8 *on such terms and conditions as established*
 9 *by the Administrator.*

10 (4) *ADVISORY PANELS.—*

11 (A) *APPOINTMENT.—The Administrator*
 12 *shall appoint a Financial Hardship Adjustment*
 13 *Panel and an Inequity Adjustment Panel to ad-*
 14 *vice the Administrator in carrying out this sub-*
 15 *section.*

16 (B) *MEMBERSHIP.—The membership of*
 17 *the panels appointed under subparagraph (A)*
 18 *may overlap.*

19 (C) *COORDINATION.—The panels ap-*
 20 *pointed under subparagraph (A) shall coordi-*
 21 *nate their deliberations and recommendations.*

22 (e) *LIMITATION ON LIABILITY.—The liability of each*
 23 *defendant participant to contribute to the Fund shall be*
 24 *limited to the payment obligations under this subtitle this*
 25 *Act, and, except as provided in subsection (f), no defend-*

1 ant participant shall have any liability for the payment
 2 obligations of any other defendant participant.

3 (f) CONSOLIDATION OF CONTRIBUTIONS.—

4 (1) IN GENERAL.—For purposes of determining
 5 the contribution levels of defendant participants, any
 6 affiliated group including 1 or more defendant par-
 7 ticipants may irrevocably elect, as part of the sub-
 8 mission to be made under subsection (i), to report
 9 on a consolidated basis all of the information nec-
 10 essary to determine the contribution level under this
 11 subtitle and contribute to the Fund on a consoli-
 12 dated basis.

13 (2) ELECTION.—If an affiliated group elects
 14 consolidation as provided in this subsection—

15 (A) for purposes of this Act other than
 16 this subsection, the affiliated group shall be
 17 treated as if it were a single participant, includ-
 18 ing without limitation with respect to the as-
 19 sessment of a single annual contribution under
 20 this subtitle for the entire affiliated group;

21 (B) the ultimate parent of the affiliated
 22 group shall prepare and submit the submission
 23 to be made under subsection (i), on behalf of
 24 the entire affiliated group and shall be solely
 25 liable, as between the Administrator and the af-

1 filiated group only, for the payment of the an-
2 nual contribution assessed against the affiliated
3 group, except that, if the ultimate parent does
4 not pay when due any contribution for the af-
5 filiated group, the Administrator shall have the
6 right to seek payment of all or any portion of
7 the entire amount due from any member of the
8 affiliated group;

9 (C) all members of the affiliated group
10 shall be identified in the submission under sub-
11 section (i) and shall certify compliance with this
12 subsection and the Administrator's regulations
13 implementing this subsection; and

14 (D) the obligations under this subtitle shall
15 not change even if, after the date of enactment
16 of this Act, the beneficial ownership interest be-
17 tween any members of the affiliated group shall
18 change.

19 (g) DETERMINATION OF PRIOR ASBESTOS EXPENDI-
20 TURES.—

21 (1) IN GENERAL.—For purposes of determining
22 a defendant participant's prior asbestos expenditure,
23 the Administrator shall prescribe such rules as may
24 be necessary or appropriate to assure that payments
25 by indemnitors before December 31, 2002, shall be

1 counted as part of the indemnitor's prior asbestos
2 expenditure, rather than the indemnitee's prior as-
3 bestos expenditure, in accordance with this sub-
4 section.

5 (2) INDEMNIFIABLE COSTS.—If an indemnitor
6 has paid or reimbursed to an indemnitee any
7 indemnifiable cost or otherwise made a payment on
8 behalf of or for the benefit of an indemnitee to a
9 third party for an indemnifiable cost before Decem-
10 ber 31, 2002, the amount of such indemnifiable cost
11 shall be solely for the account of the indemnitor for
12 purposes under this Act.

13 (3) INSURANCE PAYMENTS.—When computing
14 the prior asbestos expenditure with respect to an as-
15 bestos claim, any amount paid or reimbursed by in-
16 surance shall be solely for the account of the
17 indemnitor, even if the indemnitor would have no di-
18 rect right to the benefit of the insurance, if—

19 (A) such insurance has been paid or reim-
20 bursed to the indemnitor or the indemnitee, or
21 paid on behalf of or for the benefit of the
22 indemnitee, any indemnifiable cost related to
23 the asbestos claim; and

24 (B) the indemnitor has either, with respect
25 to such asbestos claim or any similar asbestos

1 claim, paid or reimbursed to its indemnitee any
 2 indemnifiable cost or paid to any third party on
 3 behalf of or for the benefit of the indemnitee
 4 any indemnifiable cost.

5 (h) MINIMUM CONTRIBUTIONS.—Minimum aggre-
 6 gate contributions of defendant participants to the Fund
 7 in any calendar year shall be as follows:

8 (1) For each of the first 5 years of the Fund,
 9 the aggregate contributions of defendant partici-
 10 pants to the fund shall be at least \$2,500,000,000.

11 (2) After the 5th year, the minimum aggregate
 12 contribution shall be reduced as follows:

13 (A) For years 6 through 8,
 14 \$2,250,000,000.

15 (B) For years 9 through 11,
 16 \$2,000,000,000.

17 (C) For years 12 through 14,
 18 \$1,750,000,000.

19 (D) For years 15 through 17,
 20 \$1,500,000,000.

21 (E) For years 18 through 20,
 22 \$1,250,000,000.

23 (F) For years 21 through 26,
 24 \$1,000,000,000.

25 (G) For year 27, \$250,000,000.

1 (i) PROCEDURES TO DETERMINE FUND CONTRIBU-
2 TION ASSESSMENTS.—

3 (1) NOTICE TO PARTICIPANTS.—Not later than
4 60 days after the initial appointment of the Admin-
5 istrator, the Administrator shall—

6 (A) directly notify all reasonably identifi-
7 able defendant participants of the requirement
8 to submit information necessary to calculate the
9 amount of any required contribution to the
10 Fund; and

11 (B) publish in the Federal Register a no-
12 tice requiring any person who may be a defend-
13 ant participant (as determined by criteria out-
14 lined in the notice) to submit such information.

15 (2) RESPONSE REQUIRED.—

16 (A) IN GENERAL.—Any person who re-
17 ceives notice under paragraph (1)(A), and any
18 other person meeting the criteria specified in
19 the notice published under paragraph (1)(B),
20 shall respond by providing the Administrator
21 with all the information requested in the notice
22 at the earlier of—

23 (i) 30 days after the receipt of direct
24 notice; or

1 (ii) 30 days after the publication of
2 notice in the Federal Register.

3 (B) CERTIFICATION.—The response sub-
4 mitted under subparagraph (A) shall be signed
5 by a responsible corporate officer, general part-
6 ner, proprietor, or individual of similar author-
7 ity, who shall certify under penalty of law the
8 completeness and accuracy of the information
9 submitted.

10 (3) NOTICE OF INITIAL DETERMINATION.—

11 (A) IN GENERAL.—Not later than 60 days
12 after receiving a response under paragraph (2),
13 the Administrator shall send the participant a
14 notice of initial determination assessing a con-
15 tribution to the Fund, which shall be based on
16 the information received from the participant in
17 response to the Administrator's request for in-
18 formation.

19 (B) NO RESPONSE; INCOMPLETE RE-
20 SPONSE.—If no response is received from the
21 participant, or if the response is incomplete, the
22 initial determination assessing a contribution
23 from the participant shall be based on the best
24 information available to the Administrator.

1 (4) ~~CONFIDENTIALITY.~~—Any person may des-
 2 ignate any information submitted under this sub-
 3 section as ~~confidential commercial or financial infor-~~
 4 mation for purposes of section 552 of title 5, United
 5 States Code (commonly referred to as the Freedom
 6 of Information Act). The Administrator shall adopt
 7 procedures for designating such information as con-
 8 fidential.

9 (4) *APPLICATION OF FOIA.*—

10 (A) *IN GENERAL.*—Section 552 of title 5,
 11 United States Code (commonly referred to as the
 12 Freedom of Information Act) shall apply to the
 13 Office of Asbestos Injury Claims Resolution.

14 (B) *CONFIDENTIALITY.*—Any person may
 15 designate any record submitted under this sub-
 16 section as a confidential commercial or financial
 17 record for purposes of section 552 of title 5,
 18 United States Code. The Administrator shall
 19 adopt procedures for designating such records as
 20 confidential.

21 (5) *NEW INFORMATION.*—

22 (A) *EXISTING PARTICIPANT.*—The Admin-
 23 istrator shall adopt procedures for revising ini-
 24 tial assessments based on new information re-

1 ceived after the initial assessments are cal-
2 culated.

3 (B) ADDITIONAL PARTICIPANT.—If the
4 Administrator, at any time, receives information
5 that an additional person may qualify as a par-
6 ticipant, the Administrator shall require such
7 person to submit information necessary to de-
8 termine whether an initial determination assess-
9 ing a contribution from that person should be
10 issued, in accordance with the requirements of
11 this subsection.

12 (6) PAYMENT SCHEDULE.—Any initial deter-
13 mination issued under this subsection may allow for
14 periodic payments, if the full annual amount as-
15 sessed is paid each year. Each participant shall pay
16 its contribution to the Fund in the amount specified
17 at the initial determination of assessment from the
18 Administrator, according to the schedule specified in
19 the initial determination.

20 (7) SUBPOENAS.—The Administrator may re-
21 quest the Attorney General to subpoena persons to
22 compel testimony, records, and other information
23 relevant to its responsibilities under this section. The
24 Attorney General may enforce such subpoena in ap-
25 propriate proceedings in the United States district

1 court for the district in which the person to whom
 2 the subpoena was addressed resides, was served, or
 3 transacts business.

4 (8) REHEARING.—A participant has a right to
 5 obtain rehearing of the Administrator’s initial deter-
 6 mination under section 202.

7 **Subtitle B—Asbestos Insurers** 8 **Commission**

9 **SEC. 211. ESTABLISHMENT OF ASBESTOS INSURERS COM-** 10 **MISSION.**

11 (a) ESTABLISHMENT.—There is established the As-
 12 bestos Insurers Commission (referred to in this subtitle
 13 as the “Commission”) to carry out the duties described
 14 in section 212.

15 (b) MEMBERSHIP.—

16 (1) APPOINTMENT.—The Commission shall be
 17 composed of 5 members who shall be appointed by
 18 the President, after consultation with—

19 (A) the majority leader of the Senate;

20 (B) the minority leader of the Senate;

21 (C) the Speaker of the House of Rep-
 22 resentatives; and

23 (D) the minority leader of the House of
 24 Representatives.

25 (2) QUALIFICATIONS.—

1 (A) ~~EXPERTISE.~~—Members of the Com-
 2 mission shall have sufficient expertise to fulfill
 3 their responsibilities under this subtitle.

4 (B) ~~CONFLICT OF INTEREST.~~—No member
 5 of the Commission appointed under paragraph
 6 (1) may be an employee, former employee, or
 7 shareholder of any insurer participant, or an
 8 immediate family member of any such indi-
 9 vidual.

10 (C) ~~FEDERAL EMPLOYMENT.~~—A member
 11 of the Commission may not be an officer or em-
 12 ployee of the Federal Government, except by
 13 reason of membership on the Commission.

14 (3) ~~DATE.~~—The appointments of the members
 15 of the Commission shall be made not later than 60
 16 days after the date of enactment of this Act.

17 (4) ~~PERIOD OF APPOINTMENT.~~—Members shall
 18 be appointed for the life of the Commission.

19 (5) ~~VACANCIES.~~—Any vacancy in the Commis-
 20 sion shall be filled in the same manner as the origi-
 21 nal appointment.

22 (6) ~~CHAIRMAN.~~—The Commission shall select a
 23 Chairman from among its members.

24 (c) ~~MEETINGS.~~—

1 (1) INITIAL MEETING.—Not later than 30 days
2 after the date on which all members of the Commis-
3 sion have been appointed, the Commission shall hold
4 its first meeting.

5 (2) SUBSEQUENT MEETINGS.—The Commission
6 shall meet at the call of the Chairman as necessary
7 to accomplish the duties under section 212.

8 (3) QUORUM.—No business may be conducted
9 or hearings held without the participation of all of
10 the members of the Commission.

11 **SEC. 212. DUTIES OF ASBESTOS INSURERS COMMISSION.**

12 (a) DETERMINATION OF INSURER LIABILITY FOR AS-
13 BESTOS INJURIES.—

14 (1) IN GENERAL.—The Commission shall deter-
15 mine the amount that each insurer participant will
16 be required to pay into the Fund to satisfy their
17 contractual obligation to compensate claimants for
18 asbestos injuries.

19 (2) ALLOCATION AGREEMENT.—

20 (A) IN GENERAL.—Not later than 30 days
21 after the Commission issues its initial deter-
22 mination, the insurer participants may submit
23 an allocation agreement, approved by all of the
24 insurer participants, to—

25 (i) the Commission;

1 (ii) the Committee on the Judiciary of
2 the Senate; and

3 (iii) the Committee on the Judiciary
4 of the House of Representatives.

5 (B) CERTIFICATION.—The authority of the
6 Commission under this subtitle shall terminate
7 on the day after the Commission certifies that
8 an allocation agreement submitted under sub-
9 paragraph (A) meets the requirements of this
10 subtitle.

11 (3) GENERAL PROVISIONS.—

12 (A) AGGREGATE CONTRIBUTION LEVEL.—
13 The total contribution required of all insurer
14 participants over the life of the Fund shall be
15 equal to \$45,000,000,000.

16 (B) DECLINING PAYMENTS.—Since the
17 payments from the Fund are expected to de-
18 cline over time, the annual contributions from
19 insurer participants is also expected to decline
20 over time. The proportionate share of each in-
21 surer participant's contributions to the Fund
22 will remain the same throughout the life of the
23 Fund.

24 (C) SEVERAL LIABILITY.—Each insurer
25 participant's obligation to contribute to the

1 Fund is several. There is no joint liability and
2 the future insolvency of any insurer participant
3 shall not affect the assessment assigned to any
4 other insurer participant.

5 (4) ASSESSMENT CRITERIA.—

6 (A) MANDATORY PARTICIPANTS.—Insurers
7 that have paid, or been assessed by a legal
8 judgment or settlement, at least \$1,000,000 in
9 defense and indemnity costs before the date of
10 enactment of this Act in response to claims for
11 compensation for asbestos injuries shall be
12 mandatory participants in the Fund. Other in-
13 surers shall be exempt from mandatory pay-
14 ments.

15 (B) PARTICIPANT TIERS.—Contributions
16 shall be determined by assigning mandatory in-
17 surer participants into tiers, which shall be de-
18 termined and defined based on—

19 (i) net written premiums received
20 from policies covering asbestos that were in
21 force at any time during the period begin-
22 ning on January 1, 1940 and ending on
23 December 31, 1986;

(ii) net paid losses for asbestos injuries compared to all such losses for the insurance industry;

(iii) net carried reserve level for asbestos claims on the most recent financial statement of the insurer participant; and

(iv) future liability.

(C) PAYMENT SCHEDULE.—Any final determination of assessment issued under subsection (b) may allow for periodic payments; provided that the full annual amount assessed is paid each year. Each insurer participant shall pay its contribution to the Fund in the amount specified in the final determination of assessment from the Commission; according to the schedule specified in the final determination.

(b) PROCEDURE.—

(1) NOTICE TO PARTICIPANTS.—Not later than 30 days after the initial meeting of the Commission, the Commission shall—

(A) directly notify all reasonably identifiable insurer participants of the requirement to submit information necessary to calculate the amount of any required contribution to the Fund; and

1 ~~(B)~~ publish in the Federal Register a no-
 2 tice requiring any person who may be an in-
 3 surer participant (as determined by criteria out-
 4 lined in the notice) to submit such information.

5 ~~(2) RESPONSE REQUIRED.—~~

6 ~~(A) IN GENERAL.—~~Any person who re-
 7 ceives notice under paragraph ~~(1)(A)~~, and any
 8 other person meeting the criteria specified in
 9 the notice published under paragraph ~~(1)(B)~~,
 10 shall respond by providing the Commission with
 11 all the information requested in the notice at
 12 the earlier of—

13 (i) 30 days after the receipt of direct
 14 notice; or

15 (ii) 30 days after the publication of
 16 notice in the Federal Register.

17 ~~(B) CERTIFICATION.—~~The response sub-
 18 mitted under subparagraph ~~(A)~~ shall be signed
 19 by a responsible corporate officer, general part-
 20 ner, proprietor, or individual of similar author-
 21 ity, who shall certify under penalty of law the
 22 completeness and accuracy of the information
 23 submitted.

24 ~~(3) NOTICE OF INITIAL DETERMINATION.—~~

1 (A) IN GENERAL.—Not later than 120
 2 days after the initial meeting of the Commis-
 3 sion, the Commission shall send each insurer
 4 participant a notice of initial determination as-
 5 sessing a contribution to the Fund, which shall
 6 be based on the information received from the
 7 participant in response to the Commission's re-
 8 quest for information.

9 (B) NO RESPONSE; INCOMPLETE RE-
 10 SPONSE.—If no response is received from an in-
 11 surer participant, or if the response is incom-
 12 plete, the initial determination assessing a con-
 13 tribution from the insurer participant shall be
 14 based on the best information available to the
 15 Commission.

16 (4) REVIEW PERIOD.—

17 (A) COMMENTS FROM INSURER PARTICI-
 18 PANTS.—Not later than 30 days after receiving
 19 a notice of initial determination from the Com-
 20 mission, an insurer participant may provide the
 21 Commission with additional information to sup-
 22 port limited adjustments to the assessment re-
 23 ceived to reflect exceptional circumstances.

24 (B) ADDITIONAL PARTICIPANTS.—If, be-
 25 fore the final determination of the Commission,

1 the Commission receives information that an
 2 additional person may qualify as an insurer
 3 participant, the Commission shall require such
 4 person to submit information necessary to de-
 5 termine whether a contribution from that per-
 6 son should be assessed, in accordance with the
 7 requirements of this subsection.

8 (C) REVISION PROCEDURES.—The Com-
 9 mission shall adopt procedures for revising ini-
 10 tial assessments based on information received
 11 under subparagraphs (A) and (B). Any adjust-
 12 ments to assessment levels shall comply with
 13 the criteria under subsection (a).

14 (5) SUBPOENAS.—The Commission may re-
 15 quest the Attorney General to subpoena persons to
 16 compel testimony, records, and other information
 17 relevant to its responsibilities under this section. The
 18 Attorney General may enforce such subpoena in ap-
 19 propriate proceedings in the United States district
 20 court for the district in which the person to whom
 21 the subpoena was addressed resides, was served, or
 22 transacts business.

23 (6) NOTICE OF FINAL DETERMINATION.—

24 (A) IN GENERAL.—Not later than 60 days
 25 after the notice of initial determination is sent

1 to the insurer participants, the Commission
 2 shall send each insurer participant a notice of
 3 final determination.

4 ~~(B) JUDICIAL REVIEW.~~—A participant has
 5 a right to obtain judicial review of the Commis-
 6 sion's final determination under title III.

7 ~~(c) DETERMINATION OF RELATIVE LIABILITY FOR~~
 8 ~~ASBESTOS INJURIES.~~—The Commission shall determine
 9 the percentage of the total liability of each participant
 10 identified under subsection (a).

11 ~~(d) REPORT.~~—

12 ~~(1) RECIPIENTS.~~—Not later than 1 year after
 13 the date of enactment of this Act, the Commission
 14 shall submit a report, containing the information de-
 15 scribed under paragraph ~~(2)~~, to—

16 ~~(A) the Committee on the Judiciary of the~~
 17 ~~Senate;~~

18 ~~(B) the Committee on the Judiciary of the~~
 19 ~~House of Representatives; and~~

20 ~~(C) the Court of Asbestos Claims.~~

21 ~~(2) CONTENTS.~~—The report under paragraph
 22 ~~(1)~~ shall contain the amount that each insurer par-
 23 ticipant is required to contribute to the Fund, in-
 24 cluding the payment schedule for such contributions.

1 **SEC. 213. POWERS OF ASBESTOS INSURERS COMMISSION.**

2 (a) **HEARINGS.**—The Commission may hold such
3 hearings, sit and act at such times and places, take such
4 testimony, and receive such evidence as the Commission
5 considers advisable to carry out this Act.

6 (b) **INFORMATION FROM FEDERAL AGENCIES.**—The
7 Commission may secure directly from any Federal depart-
8 ment or agency such information as the Commission con-
9 siderers necessary to carry out this Act. Upon request of
10 the Chairman of the Commission, the head of such depart-
11 ment or agency shall furnish such information to the Com-
12 mission.

13 (c) **POSTAL SERVICES.**—The Commission may use
14 the United States mails in the same manner and under
15 the same conditions as other departments and agencies of
16 the Federal Government.

17 (d) **GIFTS.**—The Commission may not accept, use, or
18 dispose of gifts or donations of services or property.

19 **SEC. 214. PERSONNEL MATTERS.**

20 (a) **COMPENSATION OF MEMBERS.**—Each member of
21 the Commission shall be compensated at a rate equal to
22 the daily equivalent of the annual rate of basic pay pre-
23 scribed for level IV of the Executive Schedule under sec-
24 tion 5315 of title 5, United States Code, for each day (in-
25 cluding travel time) during which such member is engaged
26 in the performance of the duties of the Commission.

1 (b) TRAVEL EXPENSES.—The members of the Com-
 2 mission shall be allowed travel expenses, including per
 3 diem in lieu of subsistence, at rates authorized for employ-
 4 ees of agencies under subchapter I of chapter 57 of title
 5 5, United States Code, while away from their homes or
 6 regular places of business in the performance of services
 7 for the Commission.

8 (c) STAFF.—

9 (1) IN GENERAL.—The Chairman of the Com-
 10 mission may, without regard to the civil service laws
 11 and regulations, appoint and terminate an executive
 12 director and such other additional personnel as may
 13 be necessary to enable the Commission to perform
 14 its duties. The employment of an executive director
 15 shall be subject to confirmation by the Commission.

16 (2) COMPENSATION.—The Chairman of the
 17 Commission may fix the compensation of the execu-
 18 tive director and other personnel without regard to
 19 chapter 51 and subchapter III of chapter 53 of title
 20 5, United States Code, relating to classification of
 21 positions and General Schedule pay rates, except
 22 that the rate of pay for the executive director and
 23 other personnel may not exceed the rate payable for
 24 level V of the Executive Schedule under section 5316
 25 of such title.

1 (d) ~~DETAIL OF GOVERNMENT EMPLOYEES.—Any~~
 2 Federal Government employee may be detailed to the
 3 Commission without reimbursement, and such detail shall
 4 be without interruption or loss of civil service status or
 5 privilege.

6 (e) ~~PROCUREMENT OF TEMPORARY AND INTERMIT-~~
 7 ~~TENT SERVICES.—~~The Chairman of the Commission may
 8 procure temporary and intermittent services under section
 9 3109(b) of title 5, United States Code, at rates for individ-
 10 uals which do not exceed the daily equivalent of the annual
 11 rate of basic pay prescribed for level V of the Executive
 12 Schedule under section 5316 of such title.

13 **SEC. 215. NONAPPLICATION OF FOIA AND CONFIDEN-**
 14 **TIALITY OF INFORMATION.**

15 (a) ~~IN GENERAL.—~~Section 552 of title 5, United
 16 States Code (commonly referred to as the Freedom of In-
 17 formation Act) shall not apply to the Commission.

18 (b) ~~CONFIDENTIALITY OF INFORMATION.—~~All infor-
 19 mation submitted to the Commission shall be privileged
 20 and confidential information and shall not be disclosed to
 21 any person outside the Commission, unless such privilege
 22 is knowingly and intentionally waived by the person sub-
 23 mitting the information. An appeal of an assessment to
 24 the Fund under this subtitle shall be deemed a waiver for

1 the purposes of this subsection unless the appellee partici-
 2 pant makes a motion for an in camera review of its appeal.

3 ***Subtitle B—Asbestos Insurers***
 4 ***Commission***

5 **SEC. 210. DEFINITIONS.**

6 *In this subtitle, the term “captive insurance company”*
 7 *means a company—*

8 (1) *whose entire beneficial interest is owned on*
 9 *the date of enactment of this Act, directly or indi-*
 10 *rectly, by a defendant participant or by the ultimate*
 11 *parent or the affiliated group of a defendant partici-*
 12 *pant;*

13 (2) *whose primary commercial business during*
 14 *the period from calendar years 1940 through 1986*
 15 *was to provide insurance to its ultimate parent or af-*
 16 *filiated group, or any portion of the affiliated group*
 17 *or a combination thereof; and*

18 (3) *that was incorporated or operating no later*
 19 *than December 31, 2002.*

20 **SEC. 211. ESTABLISHMENT OF ASBESTOS INSURERS COM-**
 21 **MISSION.**

22 (a) *ESTABLISHMENT.—There is established the Asbes-*
 23 *tos Insurers Commission (referred to in this subtitle as the*
 24 *“Commission”) to carry out the duties described in section*
 25 *212.*

1 (b) *MEMBERSHIP.*—

2 (1) *APPOINTMENT.*—*The Commission shall be*
 3 *composed of 5 members who shall be appointed by the*
 4 *President, after consultation with—*

5 (A) *the majority leader of the Senate;*

6 (B) *the minority leader of the Senate;*

7 (C) *the Speaker of the House of Representa-*
 8 *tives; and*

9 (D) *the minority leader of the House of*
 10 *Representatives.*

11 (2) *QUALIFICATIONS.*—

12 (A) *EXPERTISE.*—*Members of the Commis-*
 13 *sion shall have sufficient expertise to fulfill their*
 14 *responsibilities under this subtitle.*

15 (B) *CONFLICT OF INTEREST.*—

16 (i) *IN GENERAL.*—*No member of the*
 17 *Commission appointed under paragraph (1)*
 18 *may be an employee or immediate family*
 19 *member of an employee of an insurer par-*
 20 *ticipant. No member of the Commission*
 21 *may be a former employee or shareholder of*
 22 *any insurer participant, unless that is fully*
 23 *disclosed.*

24 (ii) *DEFINITION.*—*As used in clause*
 25 *(i), the term “shareholder” shall not include*

1 *a broadly based mutual fund that may,*
2 *from time-to-time include the stocks of in-*
3 *surer participants as a portion of its overall*
4 *holdings.*

5 *(C) FEDERAL EMPLOYMENT.—A member of*
6 *the Commission may not be an officer or em-*
7 *ployee of the Federal Government, except by rea-*
8 *son of membership on the Commission.*

9 *(3) DATE.—The appointments of the members of*
10 *the Commission shall be made not later than 60 days*
11 *after the date of enactment of this Act.*

12 *(4) PERIOD OF APPOINTMENT.—Members shall be*
13 *appointed for the life of the Commission.*

14 *(5) VACANCIES.—Any vacancy in the Commis-*
15 *sion shall be filled in the same manner as the original*
16 *appointment.*

17 *(6) CHAIRMAN.—The Commission shall select a*
18 *Chairman from among its members.*

19 *(c) MEETINGS.—*

20 *(1) INITIAL MEETING.—Not later than 30 days*
21 *after the date on which all members of the Commis-*
22 *sion have been appointed, the Commission shall hold*
23 *its first meeting.*

1 (2) *SUBSEQUENT MEETINGS.*—*The Commission*
 2 *shall meet at the call of the Chairman as necessary*
 3 *to accomplish the duties under section 212.*

4 (3) *QUORUM.*—*No business may be conducted or*
 5 *hearings held without the participation of all of the*
 6 *members of the Commission.*

7 **SEC. 212. DUTIES OF ASBESTOS INSURERS COMMISSION.**

8 (a) *DETERMINATION OF INSURER LIABILITY FOR AS-*
 9 *BESTOS INJURIES.*—

10 (1) *IN GENERAL.*—

11 (A) *DEFINITIONS.*—*For the purposes of this*
 12 *Act, the terms “insurer participant” and “man-*
 13 *datory insurer participant” shall, unless stated*
 14 *otherwise, include direct insurers and reinsurers,*
 15 *as well as any run-off entity established, in*
 16 *whole or in part, to review and pay asbestos*
 17 *claims.*

18 (B) *DETERMINATION.*—*The Commission*
 19 *shall determine the amount that each insurer*
 20 *participant will be required to pay into the*
 21 *Fund to satisfy its contractual obligation to*
 22 *compensate claimants for asbestos injuries.*

23 (C) *SCOPE.*—*Every insurer, reinsurer and*
 24 *run-off entity with asbestos-related obligations in*
 25 *the United States shall be included within the*

Commission's authority under this Act, including its allocation determinations, and shall be required to fulfill its allocation obligation, without regard as to whether it is licensed in the United States.

(2) *ALLOCATION AGREEMENT.*—

(A) *IN GENERAL.*—Not later than 30 days after the Commission issues its initial determination, the direct insurer participants or reinsurer participants may submit an allocation agreement, approved by all of the participants in the applicable group, to—

(i) the Commission;

(ii) the Committee on the Judiciary of the Senate; and

(iii) the Committee on the Judiciary of the House of Representatives.

(B) *CERTIFICATION.*—The authority of the Commission under this subtitle shall terminate on the day after the Commission certifies that an allocation agreement submitted under subparagraph (A) meets the requirements of this subtitle.

(3) *GENERAL PROVISIONS.*—

(A) *AGGREGATE CONTRIBUTION LEVEL.*—

The total contribution required of all insurer

1 *participants over the life of the Fund shall be*
 2 *equal to \$52,000,000,000.*

3 (B) *DECLINING PAYMENTS.*—*Subject to sec-*
 4 *tion 223(f), or unless otherwise provided under*
 5 *this Act, since the payments from the Fund are*
 6 *expected to decline over time, the annual con-*
 7 *tributions from insurer participants is also ex-*
 8 *pected to decline over time. The proportionate*
 9 *share of each insurer participant's contributions*
 10 *to the Fund will remain the same throughout the*
 11 *life of the Fund.*

12 (C) *SEVERAL LIABILITY.*—*Unless otherwise*
 13 *provided under this Act, each insurer partici-*
 14 *pant's obligation to contribute to the Fund is*
 15 *several. There is no joint liability and the future*
 16 *insolvency of any insurer participant shall not*
 17 *affect the assessment assigned to any other in-*
 18 *surer participant.*

19 (4) *ASSESSMENT CRITERIA.*—

20 (A) *MANDATORY PARTICIPANTS.*—*Insurers*
 21 *that have paid, or been assessed by a legal judg-*
 22 *ment or settlement, at least \$1,000,000 in defense*
 23 *and indemnity costs before the date of enactment*
 24 *of this Act in response to claims for compensa-*
 25 *tion for asbestos injuries arising from a policy of*

1 *liability insurance or contract of liability rein-*
 2 *surance or retrocessional reinsurance shall be*
 3 *mandatory insurer participants in the Fund.*
 4 *Other insurers shall be exempt from mandatory*
 5 *payments.*

6 (B) *PARTICIPANT ALLOCATION FORMULA.—*

7 (i) *IN GENERAL.—Contributions shall*
 8 *be determined by establishing an individual*
 9 *contribution obligation for each insurer*
 10 *participant. The Commission shall establish*
 11 *such contribution obligations on an equi-*
 12 *table basis, considering and weighting, as*
 13 *appropriate (but exclusive of workers' com-*
 14 *pensation), such factors as—*

15 (I) *historic premium for lines of*
 16 *insurance associated with asbestos ex-*
 17 *posure over relevant periods of time;*

18 (II) *recent loss experience for as-*
 19 *bestos liabilities;*

20 (III) *amounts reserved for asbestos*
 21 *liabilities;*

22 (IV) *the likely costs to each in-*
 23 *surer participant of its future liabil-*
 24 *ities under applicable insurance poli-*
 25 *cies; and*

1 (V) any other factor the Commis-
 2 sion may determine is relevant and
 3 appropriate.

4 (ii) *DETERMINATION OF RESERVES.*—
 5 For the purpose of determining reserves, the
 6 reserves of a United States licensed rein-
 7 surer that is wholly owned by a United
 8 States licensed direct insurer shall be in-
 9 cluded as part of the direct insurer's re-
 10 serves when the reinsurer's financial results
 11 are included as part of the direct insurer's
 12 United States operations, as reflected in
 13 footnote 29 of its filings with the National
 14 Association Insurance Commissioners or in
 15 published financial statements prepared in
 16 accordance with generally accepted account-
 17 ing principles.

18 (C) *TOTAL FUND CONTRIBUTIONS.*—

19 (i) *TOTAL FUND CONTRIBUTION OBLI-*
 20 *GATIONS FOR DIRECT INSURER PARTICI-*
 21 *PANTS, LICENSED IN THE UNITED*
 22 *STATES.*—The funding contribution obliga-
 23 tions of direct insurer participants licensed
 24 or domiciled in the United States shall be
 25 a portion of the \$52,000,000,000 total in-

1 *surer participant obligation set forth in*
2 *paragraph (3)(A). That total amount shall*
3 *be determined by the Administrator under*
4 *the assessment criteria as set forth in this*
5 *section.*

6 *(ii) TOTAL FUND CONTRIBUTION OBLI-*
7 *GATIONS FOR ALL OTHER INSURER PARTICI-*
8 *PANTS.—The funding contribution obliga-*
9 *tions of all insurer participants, other than*
10 *direct insurer participants licensed or dom-*
11 *iciled in the United States, shall be a por-*
12 *tion of the \$52,000,000,000 total obligation*
13 *set forth in paragraph (3)(A). That total*
14 *amount shall be determined by the Admin-*
15 *istrator under the assessment criteria as set*
16 *forth in this section, and take into account*
17 *that contributions shall not be required*
18 *from reinsurers whose reserves were in-*
19 *cluded in clause (i). In determining the al-*
20 *location obligations of run-off entities spe-*
21 *cifically created, in whole or in part, to re-*
22 *view and pay asbestos claims, the Commis-*
23 *sion shall use accounting standards equiva-*
24 *lent to those required for United States li-*
25 *censed direct insurers.*

1 (D) *CAPTIVE INSURANCE COMPANIES.*—No
 2 contribution to the Fund shall be assessed from
 3 a captive insurance company, unless and only to
 4 the extent a captive insurance company, on the
 5 date of enactment of this Act, has liability, di-
 6 rectly or indirectly, for any asbestos claim of a
 7 person or persons other than and unaffiliated
 8 with its ultimate parent or affiliated group or
 9 pool in which the ultimate parent participates or
 10 participated, or unaffiliated with a person that
 11 was its ultimate parent or a member of its affili-
 12 ated group or pool at the time the relevant insur-
 13 ance or reinsurance was issued by the captive in-
 14 surance company.

15 (E) *PAYMENT SCHEDULE.*—

16 (i) *IN GENERAL.*—Any final deter-
 17 mination of assessment issued under sub-
 18 paragraph (B) shall allow for periodic pay-
 19 ments, if the full annual amount assessed is
 20 paid each year. Each insurer participant
 21 shall pay its contribution to the Fund in
 22 the amount specified in the final determina-
 23 tion of assessment from the Commission, ac-
 24 cording to the schedule specified in the final
 25 determination. Unless otherwise provided

1 *under this Act, when an insurer participant*
 2 *has fully paid its allocation obligation to*
 3 *the Fund, it shall have no further financial*
 4 *responsibilities under this Act.*

5 (ii) *EXPEDITED PAYMENTS.—Any*
 6 *mandatory insurer participant, irrespective*
 7 *of whether that participant is a direct in-*
 8 *surer, may make a lump-sum payment, or*
 9 *expedited payments, to the Fund. Such pay-*
 10 *ment or payments shall reflect the insurer*
 11 *participant's allocation obligation on a net*
 12 *present value basis at the time the payment*
 13 *is made.*

14 (iii) *SPECIAL PAYMENT SCHEDULE*
 15 *FOR DIRECT INSURERS.—Without regard to*
 16 *clause (i), every insurer participant that is*
 17 *a direct insurer shall pay 100 percent of its*
 18 *allocated amount within 3 years after the*
 19 *effective date of this Act. The amount paid*
 20 *by each such direct insurer in each of the 3*
 21 *years shall equal $\frac{1}{3}$ of its total obligation.*

22 (F) *JUDICIAL REVIEW.—An interested party*
 23 *may obtain judicial review of any final regula-*
 24 *tion of the Commission with regard to an alloca-*
 25 *tion formula established under this section. The*

1 *review shall be governed by the requirements and*
 2 *procedures of section 302.*

3 (G) *FINANCIAL HARDSHIPS.*—*Under expe-*
 4 *ditied procedures established by the Commission,*
 5 *an insurer participant may seek adjustment of*
 6 *the amount of its contribution based on severe fi-*
 7 *nancial hardship. The Commission may deter-*
 8 *mine whether to grant an adjustment and the*
 9 *size of any such adjustment, in accordance with*
 10 *this subsection. Such determinations shall not*
 11 *prejudice the integrity of the Fund and shall not*
 12 *be subject to judicial review.*

13 (b) *PROCEDURE.*—

14 (1) *NOTICE TO PARTICIPANTS.*—*Not later than*
 15 *30 days after the initial meeting of the Commission,*
 16 *or an alternative date determined consistent with the*
 17 *Commission’s rulemaking process, the Commission*
 18 *shall—*

19 (A) *directly notify all reasonably identifi-*
 20 *able insurer participants of the requirement to*
 21 *submit information necessary to calculate the*
 22 *amount of any required contribution to the*
 23 *Fund, including at the Commission’s discretion*
 24 *newly calculated asbestos reserves undertaken*

1 under a common methodology established by the
2 Commission; and

3 (B) publish in the *Federal Register* a notice
4 requiring any person who may be an insurer
5 participant (as determined by criteria outlined
6 in the notice) to submit such information.

7 (2) *RESPONSE REQUIRED.*—

8 (A) *IN GENERAL.*—Any person who receives
9 notice under paragraph (1)(A), and any other
10 person meeting the criteria specified in the notice
11 published under paragraph (1)(B), shall respond
12 by providing the Commission with all the infor-
13 mation requested in the notice at the earlier of—

14 (i) 30 days after the receipt of direct
15 notice; or

16 (ii) 30 days after the publication of
17 notice in the *Federal Register*.

18 (B) *CERTIFICATION.*—The response sub-
19 mitted under subparagraph (A) shall be signed
20 by a responsible corporate officer, general part-
21 ner, proprietor, or individual of similar author-
22 ity, who shall certify under penalty of law the
23 completeness and accuracy of the information
24 submitted.

25 (3) *NOTICE OF INITIAL DETERMINATION.*—

1 (A) *IN GENERAL.*—Not later than 120 days
 2 after the initial meeting of the Commission, or
 3 an alternative date determined consistent with
 4 the Commission’s rulemaking process, the Com-
 5 mission shall send each insurer participant a
 6 notice of initial determination assessing a con-
 7 tribution to the Fund, which shall be based on
 8 the information received from the participant in
 9 response to the Commission’s request for infor-
 10 mation.

11 (B) *NO RESPONSE; INCOMPLETE RE-*
 12 *SPONSE.*—If no response is received from an in-
 13 surer participant, or if the response is incom-
 14 plete, the initial determination assessing a con-
 15 tribution from the insurer participant shall be
 16 based on the best information available to the
 17 Commission.

18 (4) *REVIEW PERIOD.*—

19 (A) *COMMENTS FROM INSURER PARTICI-*
 20 *PANTS.*—Not later than 30 days after receiving
 21 a notice of initial determination from the Com-
 22 mission, an insurer participant may provide the
 23 Commission with additional information to sup-
 24 port limited adjustments to the assessment re-
 25 ceived to reflect exceptional circumstances, in-

1 cluding the provision of an offset credit for an
2 insurer participant for the amount of any asbes-
3 tos-related payments it made or was legally obli-
4 gated to make, including payments released from
5 an escrow, as the result of a bankruptcy judi-
6 cially confirmed after May 22, 2003, but before
7 the date of enactment of this Act.

8 (B) *ADDITIONAL PARTICIPANTS.*—If, before
9 the final determination of the Commission, the
10 Commission receives information that an addi-
11 tional person may qualify as an insurer partici-
12 pant, the Commission shall require such person
13 to submit information necessary to determine
14 whether a contribution from that person should
15 be assessed, in accordance with the requirements
16 of this subsection.

17 (C) *REVISION PROCEDURES.*—The Commis-
18 sion shall adopt procedures for revising initial
19 assessments based on information received under
20 subparagraphs (A) and (B). The Commission
21 shall adopt procedures for revising initial assess-
22 ments based on information received under sub-
23 paragraphs (A) and (B), including a provision
24 requiring an offset credit for an insurer partici-
25 pant for the amount of any asbestos-related pay-

1 *ments it made or was legally obligated to make,*
2 *including payments released from an escrow, as*
3 *the result of a bankruptcy confirmed after May*
4 *22, 2003, but before the date of enactment of this*
5 *Act. Any adjustments to assessment levels shall*
6 *comply with the criteria under subsection (a).*

7 (5) *SUBPOENAS.—The Commission may request*
8 *the Attorney General to subpoena persons to compel*
9 *testimony, records, and other information relevant to*
10 *its responsibilities under this section. The Attorney*
11 *General may enforce such subpoena in appropriate*
12 *proceedings in the United States district court for the*
13 *district in which the person to whom the subpoena*
14 *was addressed resides, was served, or transacts busi-*
15 *ness.*

16 (6) *ESCROW PAYMENTS.—Without regard to an*
17 *insurer participant's allocation obligation under this*
18 *section, any escrow or similar account established be-*
19 *fore the date of enactment of this Act by an insurer*
20 *participant in connection with an asbestos trust fund*
21 *that has not been judicially confirmed by the date of*
22 *enactment of this Act shall be the property of the in-*
23 *surer participant and returned to that insurer partic-*
24 *ipant.*

25 (7) *NOTICE OF FINAL DETERMINATION.—*

1 (A) *IN GENERAL.*—Not later than 60 days
 2 after the notice of initial determination is sent
 3 to the insurer participants, the Commission shall
 4 send each insurer participant a notice of final
 5 determination.

6 (B) *JUDICIAL REVIEW.*—A participant has
 7 a right to obtain judicial review of the Commis-
 8 sion's final determination under title III.

9 (c) *DETERMINATION OF RELATIVE LIABILITY FOR AS-*
 10 *BESTOS INJURIES.*—The Commission shall determine the
 11 percentage of the total liability of each participant identi-
 12 fied under subsection (a).

13 (d) *REPORT.*—

14 (1) *RECIPIENTS.*—Not later than 1 year after the
 15 date of enactment of this Act, the Commission shall
 16 submit a report, containing the information described
 17 under paragraph (2), to—

18 (A) *the Committee on the Judiciary of the*
 19 *Senate;*

20 (B) *the Committee on the Judiciary of the*
 21 *House of Representatives; and*

22 (C) *the Court of Federal Claims.*

23 (2) *CONTENTS.*—The report under paragraph (1)
 24 shall contain the amount that each insurer partici-

1 *pant is required to contribute to the Fund, including*
 2 *the payment schedule for such contributions.*

3 **SEC. 213. POWERS OF ASBESTOS INSURERS COMMISSION.**

4 (a) *RULEMAKING.*—*The Commission shall promulgate*
 5 *such rules and regulations as necessary to implement its*
 6 *authority under this Act, including regulations governing*
 7 *an allocation formula. Such rules and regulations shall be*
 8 *promulgated after providing interested parties with the op-*
 9 *portunity for notice and comment. Before the adoption of*
 10 *a regulation for an allocation formula, the Commission*
 11 *shall, as authorized in subsection (b), hold informational*
 12 *hearings to assist in its development of allocation factors*
 13 *and requirements. The Commission shall also hold a hear-*
 14 *ing on any proposed regulation establishing an allocation*
 15 *formula, before the Commission's adoption of a final regula-*
 16 *tion.*

17 (b) *HEARINGS.*—*The Commission may hold such hear-*
 18 *ings, sit and act at such times and places, take such testi-*
 19 *mony, and receive such evidence as the Commission con-*
 20 *siders advisable to carry out this Act.*

21 (c) *INFORMATION FROM FEDERAL AGENCIES.*—*The*
 22 *Commission may secure directly from any Federal depart-*
 23 *ment or agency such information as the Commission con-*
 24 *siders necessary to carry out this Act. Upon request of the*
 25 *Chairman of the Commission, the head of such department*

1 or agency shall furnish such information to the Commis-
2 sion.

3 (d) *POSTAL SERVICES.*—The Commission may use the
4 United States mails in the same manner and under the
5 same conditions as other departments and agencies of the
6 Federal Government.

7 (e) *GIFTS.*—The Commission may not accept, use, or
8 dispose of gifts or donations of services or property.

9 (f) *EXPERT ADVICE.*—In carrying out its responsibil-
10 ities, the Commission may enter into such contracts and
11 agreements as the Commission determines necessary to ob-
12 tain expert advice and analysis.

13 (g) *INSURER PARTICIPANT PAYMENTS PRIOR TO AL-*
14 *LOCATION ASSESSMENT DETERMINATION.*—The Adminis-
15 trator may require insurer participants to make payments
16 to the Fund prior to the Commission having established its
17 allocation formula, except that no such obligation shall ex-
18 ceed the ultimate financial obligation of a direct insurer
19 under the final allocation formula. Any such prior pay-
20 ments shall be made solely for the purpose of assuring the
21 ability of the Fund to meet its financial obligations. Such
22 payments shall be assessed on an equitable basis and shall
23 be equivalent, in total, to the funding obtained from the de-
24 fendant participants for the same period of time. All such

1 *payments shall be credited against an insurer participant's*
 2 *ultimate financial obligation to the Fund.*

3 (h) *CAUSE OF ACTION.*—*In addition to the authority*
 4 *granted under section 224, the Administrator shall have the*
 5 *authority to pursue a civil action in Federal court against*
 6 *any reinsurer that fails to comply with its obligations*
 7 *under this Act and shall be able to seek treble damages for*
 8 *such failure. For any amounts the Administrator is unable*
 9 *to collect from a reinsurer, the direct insurer shall be obli-*
 10 *gated.*

11 **SEC. 214. PERSONNEL MATTERS.**

12 (a) *COMPENSATION OF MEMBERS.*—*Each member of*
 13 *the Commission shall be compensated at a rate equal to the*
 14 *daily equivalent of the annual rate of basic pay prescribed*
 15 *for level IV of the Executive Schedule under section 5315*
 16 *of title 5, United States Code, for each day (including travel*
 17 *time) during which such member is engaged in the perform-*
 18 *ance of the duties of the Commission.*

19 (b) *TRAVEL EXPENSES.*—*The members of the Commis-*
 20 *sion shall be allowed travel expenses, including per diem*
 21 *in lieu of subsistence, at rates authorized for employees of*
 22 *agencies under subchapter I of chapter 57 of title 5, United*
 23 *States Code, while away from their homes or regular places*
 24 *of business in the performance of services for the Commis-*
 25 *sion.*

1 (c) *STAFF.*—

2 (1) *IN GENERAL.*—*The Chairman of the Com-*
3 *mission may, without regard to the civil service laws*
4 *and regulations, appoint and terminate an executive*
5 *director and such other additional personnel as may*
6 *be necessary to enable the Commission to perform its*
7 *duties. The employment of an executive director shall*
8 *be subject to confirmation by the Commission.*

9 (2) *COMPENSATION.*—*The Chairman of the Com-*
10 *mission may fix the compensation of the executive di-*
11 *rector and other personnel without regard to chapter*
12 *51 and subchapter III of chapter 53 of title 5, United*
13 *States Code, relating to classification of positions and*
14 *General Schedule pay rates, except that the rate of*
15 *pay for the executive director and other personnel*
16 *may not exceed the rate payable for level V of the Ex-*
17 *ecutive Schedule under section 5316 of such title.*

18 (d) *DETAIL OF GOVERNMENT EMPLOYEES.*—*Any Fed-*
19 *eral Government employee may be detailed to the Commis-*
20 *sion without reimbursement, and such detail shall be with-*
21 *out interruption or loss of civil service status or privilege.*

22 (e) *PROCUREMENT OF TEMPORARY AND INTERMIT-*
23 *TENT SERVICES.*—*The Chairman of the Commission may*
24 *procure temporary and intermittent services under section*
25 *3109(b) of title 5, United States Code, at rates for individ-*

1 uals which do not exceed the daily equivalent of the annual
 2 rate of basic pay prescribed for level V of the Executive
 3 Schedule under section 5316 of such title.

4 **SEC. 215. APPLICATION OF FOIA.**

5 (a) *IN GENERAL.*—Section 552 of title 5, United
 6 States Code (commonly referred to as the Freedom of Infor-
 7 mation Act) shall apply to the Commission.

8 (b) *CONFIDENTIALITY.*—Any person may designate
 9 any record submitted under this subtitle as a confidential
 10 commercial or financial record for purposes of section 552
 11 of title 5, United States Code. The Chairman of the Com-
 12 mission shall adopt procedures for designating such records
 13 as confidential.

14 **SEC. 216. TERMINATION OF ASBESTOS INSURERS COMMIS-**
 15 **SION.**

16 The Commission shall terminate 60 days after the
 17 date on which the Commission submits its report under
 18 section 212(e).

19 **SEC. 217. AUTHORIZATION OF APPROPRIATIONS.**

20 (a) *IN GENERAL.*—There are authorized to be appro-
 21 priated to the Commission such sums as may be necessary
 22 for fiscal year 2004 to carry out the provisions of this sub-
 23 title.

1 (b) ~~AVAILABILITY.—Any sums appropriated under~~
 2 the authorization contained in this section shall remain
 3 available, without fiscal year limitation, until expended.

4 **SEC. 216. TERMINATION OF ASBESTOS INSURERS COMMIS-**
 5 **SION.**

6 *The Commission shall terminate 60 days after the date*
 7 *on which the Commission submits its report under section*
 8 *212(c).*

9 **SEC. 217. EXPENSES AND COSTS OF COMMISSION.**

10 *All expenses and costs of the Commission shall be paid*
 11 *from the Fund.*

12 **Subtitle C—Office of Asbestos**
 13 **Injury Claims Resolution**

14 **SEC. 221. ESTABLISHMENT OF THE OFFICE OF ASBESTOS**
 15 **INJURY CLAIMS RESOLUTION.**

16 (a) **IN GENERAL.**—There is established the Office of
 17 Asbestos Injury Claims Resolution.

18 (b) **RESPONSIBILITIES.**—The Office shall be respon-
 19 sible for—

20 (1) administering the Fund;

21 (2) providing payments from the Fund to as-
 22 bestos claimants who are determined to be eligible
 23 for awards; and

1 (3) carrying out other applicable provisions of
2 this title and other activities determined appropriate
3 by the Administrator.

4 (c) ADMINISTRATOR.—

5 (1) APPOINTMENT.—The Office shall be headed
6 by an Administrator who shall be appointed by the
7 President, by and with the advice and consent of the
8 Senate.

9 (2) TERM; REMOVAL.—The Administrator shall
10 serve for a term of 5 years and may be removable
11 by the President only for good cause.

12 **SEC. 222. POWERS OF THE ADMINISTRATOR AND MANAGE-**
13 **MENT OF THE FUND.**

14 (a) GENERAL POWERS.—The Administrator shall
15 have the following general powers:

16 (1) To promulgate such regulations as the Ad-
17 ministrator determines to be necessary to implement
18 the provisions of this subtitle.

19 (2) To appoint employees or contract for the
20 services of other personnel as may be necessary and
21 appropriate to carry out the provisions of this sub-
22 title, including entering into cooperative agreements
23 with other Federal agencies.

1 (3) To make such expenditures as may be nec-
2 essary and appropriate in the administration of this
3 subtitle.

4 (4) To take all actions necessary to prudently
5 manage the Fund, including—

6 (A) administering, in a fiduciary capacity,
7 the assets of the Fund for the exclusive purpose
8 of providing benefits to asbestos claimants and
9 their beneficiaries;

10 (B) defraying the reasonable expenses of
11 administering the Fund;

12 (C) investing the assets of the Fund in ac-
13 cordance with subsection (b)(2); and

14 (D) retaining advisers, managers, and
15 custodians who possess the necessary facilities
16 and expertise to provide for the skilled and pru-
17 dent management of the Fund, to assist in the
18 development, implementation and maintenance
19 of the Fund's investment policies and invest-
20 ment activities, and to provide for the safe-
21 keeping and delivery of the Fund's assets.

22 (5) To have all other powers incidental, nec-
23 essary, or appropriate to carrying out the functions
24 of the Office.

25 (b) REQUIREMENTS RELATING TO FUND ASSETS.—

1 (1) IN GENERAL.—Amounts in the Fund shall
2 be held for the exclusive purpose of providing bene-
3 fits to asbestos claimants and their beneficiaries and
4 to otherwise defray the reasonable expenses of ad-
5 ministering the Fund.

6 (2) INVESTMENTS.—

7 (A) IN GENERAL.—Amounts in the Fund
8 shall be administered and invested with the
9 care, skill, prudence, and diligence, under the
10 circumstances prevailing at the time of such in-
11 vestment, that a prudent person acting in a like
12 capacity and manner would use.

13 (B) STRATEGY.—The Administrator shall
14 invest amounts in the Fund in a manner that
15 enables the Fund to make current and future
16 distributions to or for the benefit of asbestos
17 claimants. In pursuing an investment strategy
18 under this subparagraph, the Administrator
19 shall consider, to the extent relevant to an in-
20 vestment decision or action—

21 (i) the size of the Fund;

22 (ii) the nature and estimated duration
23 of the Fund;

24 (iii) the liquidity and distribution re-
25 quirements of the Fund;

- 1 (iv) general economic conditions at the
- 2 time of the investment;
- 3 (v) the possible effect of inflation or
- 4 deflation on Fund assets;
- 5 (vi) the role that each investment or
- 6 course of action plays with respect to the
- 7 overall assets of the Fund;
- 8 (vii) the expected amount to be earned
- 9 (including both income and appreciation of
- 10 capital) through investment of amounts in
- 11 the Fund; and
- 12 (viii) the needs of asbestos claimants
- 13 for current and future distributions au-
- 14 thorized under this Act.

15 (c) VIOLATIONS OF ENVIRONMENTAL AND OCCUPA-
 16 TIONAL HEALTH AND SAFETY REQUIREMENTS.—

17 (1) ASBESTOS IN COMMERCE.—If the Adminis-
 18 trator receives information concerning conduct oc-
 19 ccurring after the date of enactment of this Act that
 20 may have been a violation of standards issued by the
 21 Environmental Protection Agency under ~~section 6(a)~~
 22 ~~of~~ the Toxic Substances Control Act (15 U.S.C.
 23 ~~2605(a)~~ *2601 et seq.*), relating to the manufacture,
 24 importation, processing, *disposal* and distribution in
 25 commerce of asbestos-containing products, the Ad-

1 administrator ~~may refer the matter~~ *shall refer the mat-*
 2 *ter in writing within 30 days after receiving that in-*
 3 *formation* to the Administrator of the Environmental
 4 Protection Agency and the United States Attorney
 5 for possible civil or criminal penalties ~~under section~~
 6 ~~16(a) of the Toxic Substances Control Act (15~~
 7 ~~U.S.C. 2615(a))~~ , *including those under section 17 of*
 8 *the Toxic Substances Control Act (15 U.S.C. 2616),*
 9 *and to the appropriate State authority with jurisdic-*
 10 *tion to investigate asbestos matters.*

11 (2) ASBESTOS AS AIR POLLUTANT.—If the Ad-
 12 ministrator receives information concerning conduct
 13 occurring after the date of enactment of this Act
 14 that may have been a violation of standards issued
 15 by the Environmental Protection Agency under ~~see-~~
 16 ~~tion 112(d) of the Clean Air Act (42 U.S.C. 7412(d)~~
 17 *7401 et seq.)*, relating to asbestos as a hazardous air
 18 pollutant, the Administrator ~~may refer the matter~~
 19 *shall refer the matter in writing within 30 days after*
 20 *receiving that information* to the Administrator of
 21 the Environmental Protection Agency and the
 22 United States Attorney for possible criminal and
 23 civil penalties, *including those* under section 113 of
 24 the Clean Air Act (42 U.S.C. 7413), *and to the ap-*

1 *propriate State authority with jurisdiction to inves-*
 2 *tigate asbestos matters.*

3 (3) OCCUPATIONAL EXPOSURE.—If the Admin-
 4 istrator receives information concerning conduct oc-
 5 curring after the date of enactment of this Act that
 6 may have been a violation of standards issued by the
 7 Occupational Safety and Health Administration
 8 under the Occupational Safety and Health Act of
 9 1970 (29 U.S.C. 651 et seq.), relating to occupa-
 10 tional exposure to asbestos, the Administrator ~~may~~
 11 ~~refer the matter to the United States Attorney for~~
 12 ~~possible criminal prosecution under section 5(a) of~~
 13 ~~such Act (29 U.S.C. 654(a)), and to the Secretary~~
 14 ~~of Labor for possible civil penalties under section 17~~
 15 ~~(a)–(d) of such Act (29 U.S.C. 666 (a)–(d)).~~ *shall*
 16 *refer the matter in writing within 30 days after re-*
 17 *ceiving that information and refer the matter to—*

18 (A) *the United States Attorney for possible*
 19 *criminal prosecution under section 5(a) of such*
 20 *Act (29 U.S.C. 654(a));*

21 (B) *the Secretary of Labor for possible civil*
 22 *penalties under section 17 (a) through (d) of*
 23 *such Act (29 U.S.C. 666 (a) through (d)); and*

24 (C) *the Assistant Secretary for the Occupa-*
 25 *tional Safety and Health Commission, and the*

1 appropriate State authority with jurisdiction to
 2 investigate asbestos matters, for possible civil or
 3 criminal penalties, including those under section
 4 17 of the Occupational Safety and Health Act of
 5 1970 (29 U.S.C. 666).

6 (4) *REVIEW OF FEDERAL SENTENCING GUIDE-*
 7 *LINES FOR ENVIRONMENTAL CRIMES RELATED TO AS-*
 8 *BESTOS.*—Under section 994 of title 28, United States
 9 Code, and in accordance with this section, the United
 10 States Sentencing Commission shall review and
 11 amend, as appropriate, the United States Sentencing
 12 Guidelines and related policy statements to ensure
 13 that—

14 (A) appropriate changes are made within
 15 the guidelines to reflect any statutory amend-
 16 ments that have occurred since the time that the
 17 current guideline was promulgated;

18 (B) the base offense level, adjustments and
 19 specific offense characteristics contained in sec-
 20 tion 2Q1.2 of the United States Sentencing
 21 Guidelines (relating to mishandling of hazardous
 22 or toxic substances or pesticides; record keeping,
 23 tampering, and falsification; and unlawfully
 24 transporting hazardous materials in commerce)
 25 are increased as appropriate to ensure that fu-

1 *ture asbestos-related offenses reflect the serious-*
2 *ness of the offense, the harm to the community,*
3 *the need for ongoing reform, and the highly regu-*
4 *lated nature of asbestos;*

5 *(C) the base offense level, adjustments and*
6 *specific offense characteristics are sufficient to*
7 *deter and punish future activity and are ade-*
8 *quate in cases in which the relevant offense con-*
9 *duct—*

10 *(i) involves asbestos as a hazardous or*
11 *toxic substance; and*

12 *(ii) occurs after the date of enactment*
13 *of this Act;*

14 *(D) the adjustments and specific offense*
15 *characteristics contained in section 2B1.1 of the*
16 *United States Sentencing Guidelines related to*
17 *fraud, deceit and false statements, adequately*
18 *take into account that asbestos was involved in*
19 *the offense, and the possibility of death or serious*
20 *bodily harm as a result;*

21 *(E) the guidelines that apply to organiza-*
22 *tions in chapter 8 of the United States Sen-*
23 *tencing Guidelines, are sufficient to deter and*
24 *punish organizational criminal misconduct that*

1 *involves the use, handling, purchase, sale, dis-*
 2 *posal, or storage of asbestos; and*

3 *(F) the guidelines that apply to organiza-*
 4 *tions in chapter 8 of the United States Sen-*
 5 *tencing Guidelines, are sufficient to deter and*
 6 *punish organizational criminal misconduct that*
 7 *involves fraud, deceit, or false statements against*
 8 *the Asbestos Insurers Commission or the Office of*
 9 *Asbestos Injury Claim Resolution.*

10 **SEC. 223. ASBESTOS INJURY CLAIMS RESOLUTION FUND.**

11 (a) ESTABLISHMENT.—There is established in the
 12 Office of Asbestos Injury Claims Resolution, the Asbestos
 13 Injury Claims Resolution Fund, which shall be available
 14 to pay—

15 (1) claims for awards for an eligible disease or
 16 condition determined under title I;

17 (2) claims for reimbursement for medical moni-
 18 toring determined under title I;

19 (3) principal and interest on borrowings under
 20 subsection (c); and

21 (4) administrative expenses to carry out this
 22 subtitle.

23 (b) ~~LIMITATIONS ON~~ CONTRIBUTIONS BY MANDA-
 24 TORY PARTICIPANTS.—The aggregate contributions of all
 25 mandatory participants to the Fund may not exceed

1 \$5,000,000,000 in any calendar year *unless otherwise pro-*
2 *vided.*

3 (c) BORROWING AUTHORITY.—The Administrator is
4 authorized to borrow, in any calendar year, an amount not
5 to exceed anticipated contributions to the Fund in the fol-
6 lowing calendar year for purposes of carrying out the obli-
7 gations of the Fund under this Act.

8 (d) GUARANTEED PAYMENT ACCOUNT.—

9 (1) IN GENERAL.—The Administrator shall es-
10 tablish a guaranteed payment account within the
11 Fund to insure payment of the total amount of con-
12 tributions required to be paid into the Fund by all
13 participants.

14 (2) SURCHARGE.—The Administrator shall im-
15 pose, on each participant required to pay contribu-
16 tions into the Fund under this Act, in addition to
17 the amount of such contributions, a reasonable sur-
18 charge to be paid into the guaranteed payment ac-
19 count in an amount that the Administrator deter-
20 mines appropriate to insure against the risk of non-
21 payment of required contributions by any such par-
22 ticipant.

23 (3) PROCEDURE.—The surcharge required
24 under this section shall be paid in such manner, at

1 such times, and in accordance with such procedures
 2 as the Administrator determines appropriate.

3 (4) USES OF GUARANTEED PAYMENT AC-
 4 COUNT.—Amounts in the guaranteed payment ac-
 5 count shall be used as necessary to pay claims from
 6 the Fund, to the extent that amounts in the Fund
 7 are insufficient to pay such claims due to non-
 8 payment by any participant.

9 (5) ENFORCEMENT.—The enforcement of the
 10 payment of a surcharge under this subsection may
 11 be enforced in the same manner and to the same ex-
 12 tent as the enforcement of a contribution under sec-
 13 tion 224.

14 (e) *LOCKBOX FOR SEVERE ASBESTOS-RELATED IN-*
 15 *JURY CLAIMANTS.*—

16 (1) *IN GENERAL.*—*Within the Fund, the Admin-*
 17 *istrator shall establish the following accounts:*

18 (A) *A Mesothelioma Account, which shall be*
 19 *used solely to make payments to claimants eligi-*
 20 *ble for an award under the criteria of Level X.*

21 (B) *A Lung Cancer Account, which shall be*
 22 *used solely to make payments to claimants eligi-*
 23 *ble for an award under the criteria of Level IX.*

24 (C) *A Severe Asbestosis Account, which shall*
 25 *be used solely to make payments to claimants el-*

1 igible for an award under the criteria of Level
2 V.

3 (D) *A Moderate Asbestosis Account, which*
4 *shall be used solely to make payments to claim-*
5 *ants eligible for an award under the criteria of*
6 *Level IV.*

7 (2) *ALLOCATION.—The Administrator shall allo-*
8 *cate to each of the 4 accounts established under para-*
9 *graph (1) a portion of contributions to the Fund ade-*
10 *quate to compensate all anticipated claimants for*
11 *each account. Within 60 days after the date of enact-*
12 *ment of this Act, and periodically during the life of*
13 *the Fund, the Administrator shall determine an ap-*
14 *propriate amount to allocate to each account after*
15 *consulting appropriate epidemiological and statistical*
16 *studies.*

17 (f) *CONTINGENT CALL FOR ADDITIONAL MANDATORY*
18 *FUNDING.—*

19 (1) *IN GENERAL.—Notwithstanding sections*
20 *202(a)(2) and 212(a)(3)(A), unless the Administrator*
21 *certifies under this subsection that there are adequate*
22 *funds available to compensate past, pending, and pro-*
23 *jected future claimants at the scheduled award values*
24 *provided in section 131(b), the Administrator shall*
25 *assess additional contributions from all participants*

1 *during first 27 years of the Fund (in this section, the*
 2 *“mandatory funding period”), as provided in this*
 3 *subsection.*

4 (2) *ALLOCATION.—Any additional contributions*
 5 *assessed under this subsection shall be allocated*
 6 *among each participant as provided under para-*
 7 *graphs (4) and (5).*

8 (3) *REDUCTION ADJUSTMENT CERTIFICATION.—*

9 (A) *IN GENERAL.—Before making any re-*
 10 *duction adjustment under section 204(a) or sec-*
 11 *tion 212(a)(3)(B), the Administrator shall cer-*
 12 *tify, after consultation with appropriate experts,*
 13 *that during the time period in which such reduc-*
 14 *tion adjustment would apply there will be ade-*
 15 *quate funds available to compensate past, pend-*
 16 *ing, and projected future claimants at the sched-*
 17 *uled award values provided in section 131(b) of*
 18 *this Act.*

19 (B) *INITIAL NOTICE.—Before making any*
 20 *certification under subparagraph (A), the Ad-*
 21 *ministrator shall publish a notice in the Federal*
 22 *Register of the proposed certification, including*
 23 *a description and explanation of the Adminis-*
 24 *trator’s analysis supporting the certification of*
 25 *the Administrator.*

1 (C) *COMMENTS FROM PARTICIPANTS.*—Not
2 later than 60 days after the publication of the
3 notice under subparagraph (B), a participant
4 may provide the Administrator with additional
5 information to support a determination that ad-
6 ditional contributions from participants are not
7 required.

8 (D) *FINAL CERTIFICATION.*—

9 (i) *IN GENERAL.*—The Administrator
10 shall publish a notice in the Federal Reg-
11 ister of the final certification after consider-
12 ation of all comments submitted under sub-
13 paragraph (C).

14 (ii) *WRITTEN NOTICE.*—Not later than
15 30 days of publishing a final certification
16 under clause (i), the Administrator shall
17 provide each participant with notice of that
18 participant’s final contribution assessment
19 after application of any reduction adjust-
20 ment under section 204(a) or section
21 212(a)(3)(B), subject to paragraphs (4) and
22 (5).

23 (4) *DEFENDANT PARTICIPANTS.*—

24 (A) *IN GENERAL.*—Any additional con-
25 tributions from the defendant participants under

1 paragraph (1) shall be allocated in accordance
2 with subparagraphs (B) through (H).

3 (B) YEARS 6 THROUGH 8.—If the Adminis-
4 trator fails to certify that there are adequate
5 funds during years 6 through 8 of the mandatory
6 funding period, the Administrator shall main-
7 tain after year 5 of the mandatory funding pe-
8 riod the contribution levels assessed under section
9 203 and not make any reduction adjustments as
10 provided in section 204(a) for years 6 through 8.

11 (C) YEARS 9 THROUGH 11.—If the Adminis-
12 trator fails to certify that there are adequate
13 funds during years 9 through 11 of the manda-
14 tory funding period, the Administrator shall
15 maintain after year 8 of the mandatory funding
16 period the contribution levels assessed under sec-
17 tion 203 and not make any reduction adjust-
18 ments as provided in section 204(a) for years 9
19 through 11.

20 (D) YEARS 12 THROUGH 14.—If the Admin-
21 istrator fails to certify that there are adequate
22 funds during years 12 through 14 of the manda-
23 tory funding period, the Administrator shall
24 maintain after year 11 of the mandatory fund-
25 ing period the contribution levels assessed under

1 *section 203 and not make reduction adjustments*
2 *as provided in section 204(a) for years 12*
3 *through 14.*

4 (E) YEARS 15 THROUGH 17.—*If the Admin-*
5 *istrator fails to certify that there are adequate*
6 *funds available during years 15 through 17 of*
7 *the mandatory funding period, the Adminis-*
8 *trator shall maintain after year 14 of the man-*
9 *datory funding period the contribution levels as-*
10 *essed under section 203 and not make any re-*
11 *duction adjustments as provided in section*
12 *204(a) for years 15 through 17.*

13 (F) YEARS 18 THROUGH 20.—*If the Admin-*
14 *istrator fails to certify that there are adequate*
15 *funds available during years 18 through 20 of*
16 *the mandatory funding period, the Adminis-*
17 *trator shall maintain after year 17 of the man-*
18 *datory funding period the contribution levels as-*
19 *essed under section 203 and not make any re-*
20 *duction adjustments as provided in section*
21 *204(a) for years 18 through 20.*

22 (G) YEARS 21 THROUGH 26.—*If the Admin-*
23 *istrator fails to certify that there are adequate*
24 *funds available during years 21 through 26 of*
25 *the mandatory funding period, the Adminis-*

1 *trator shall maintain until year 26 of the man-*
 2 *datory funding period the contribution levels as-*
 3 *essed under section 203 and not make any re-*
 4 *duction adjustments as provided in section*
 5 *204(a) for years 21 through 26.*

6 *(H) YEAR 27.—If the Administrator fails to*
 7 *certify that there are adequate funds available*
 8 *during year 27 of the mandatory funding period,*
 9 *the Administrator shall maintain the contribu-*
 10 *tion levels assessed under section 203 and not*
 11 *make any reduction adjustments as provided in*
 12 *section 204(a) for year 27.*

13 *(I) DETERMINATION OF REDUCTION AD-*
 14 *JUSTMENTS.—*

15 *(i) IN GENERAL.—In administering*
 16 *subparagraphs (C) through (H), clauses (ii)*
 17 *and (iii) shall apply.*

18 *(ii) CERTIFICATION OF ADEQUATE*
 19 *FUNDS.—If a reduction adjustment was not*
 20 *made in any preceding 3-year, 6-year, or 1-*
 21 *year period and the Administrator certifies*
 22 *there are adequate funds under paragraph*
 23 *(3), the amount of any reduction adjust-*
 24 *ment under section 204(a) shall be deter-*

1 *mined as though all preceding reductions*
2 *had been made.*

3 *(iii) ADDITIONAL REDUCTION ADJUST-*
4 *MENT.—If at any time during the first 27*
5 *years of the Fund the Administrator deter-*
6 *mines that there are more than adequate*
7 *funds to compensate past, pending, and fu-*
8 *ture claimants at the scheduled award val-*
9 *ues under section 131(b), the Administrator*
10 *may use any excess funds to provide an ad-*
11 *ditional reduction adjustment to partici-*
12 *pants in addition to any reduction adjust-*
13 *ment made under clause (ii). The total re-*
14 *duction adjustment for any participant*
15 *shall be no greater than the amount of addi-*
16 *tional contributions required under this sec-*
17 *tion.*

18 *(J) LIMITATION OF REQUIRED CONTRIBU-*
19 *TION.—Notwithstanding subparagraphs (B)*
20 *through (H), if the Administrator certifies, after*
21 *consultation with appropriate experts, there will*
22 *be adequate funds available to compensate past,*
23 *pending, and projected future claimants at the*
24 *scheduled award values provided in section*
25 *131(b) after applying a smaller reduction adjust-*

1 *ment than otherwise required under this para-*
 2 *graph, during the time period in which such re-*
 3 *duction adjustment would apply, the Adminis-*
 4 *trator shall apply such smaller reduction adjust-*
 5 *ment.*

6 (K) NO ORPHAN SHARE.—*The additional*
 7 *contributions collected by the Administrator*
 8 *under this subsection shall not be considered ex-*
 9 *cess monies under subsection (h) to be placed in*
 10 *the orphan share reserve account and shall be*
 11 *credited to the Fund only for the payment of*
 12 *claims.*

13 (5) INSURER PARTICIPANTS.—

14 (A) IN GENERAL.—*The Administrator shall*
 15 *require additional contributions from the insurer*
 16 *participants in an amount equal the total*
 17 *amount of additional contributions allocated to*
 18 *the defendant participants under paragraph (4)*
 19 *for any 3-year, 6-year, or 1-year period.*

20 (B) ALLOCATION.—*Of the amount of addi-*
 21 *tional contributions required under subpara-*
 22 *graph (A), each insurer participant shall be allo-*
 23 *cated an additional contribution equal to the in-*
 24 *surer participant's proportionate share of an-*

1 *nual contributions to the Fund under section*
 2 *212.*

3 (6) *ENFORCEMENT.*—*The additional contribu-*
 4 *tions required under this subsection may be enforced*
 5 *in the same manner and to the same extent as the en-*
 6 *forcement of a contribution under section 224.*

7 (g) *BACK-END PAYMENTS.*—

8 (1) *IN GENERAL.*—*Notwithstanding sections*
 9 *202(a)(2), 204(a), and 212(a)(3)(A), in any year*
 10 *after year 27 of the Fund, if the Administrator, after*
 11 *consultation with appropriate experts, determines*
 12 *that additional contributions are needed to assure*
 13 *adequate funding for claimants eligible to receive*
 14 *compensation under this Act at the scheduled awards*
 15 *value as originally enacted, as adjusted for inflation,*
 16 *the Administrator may request, each year, in the ag-*
 17 *gregate, no more than—*

18 (A) *an additional \$1,000,000,000 from the*
 19 *defendant participants; and*

20 (B) *an additional \$1,000,000,000 from the*
 21 *insurer participants.*

22 (2) *VOLUNTARY CONTRIBUTIONS.*—*Upon a deter-*
 23 *mination by the Administrator under paragraph (1)*
 24 *that additional contributions are required, a defend-*
 25 *ant participant or an insurer participant may make*

1 *an annual contribution to the Fund in an amount*
 2 *equal to that participant's required share of the ag-*
 3 *gregate payment requested by the Administrator.*

4 (3) *FAILURE TO MAKE VOLUNTARY PAYMENTS.—*

5 (A) *SUBJECTION TO ASBESTOS CLAIMS.—If*
 6 *a participant fails to make a voluntary con-*
 7 *tribution under paragraph (2)—*

8 (i) *section 403 shall no longer apply to*
 9 *that participant; and*

10 (ii) *the participant shall be subject to*
 11 *civil actions for asbestos claims brought*
 12 *under any Federal or State law, including*
 13 *tort or common law, that were otherwise su-*
 14 *perseded or preempted by this Act.*

15 (B) *EXCLUSIVE JURISDICTION.—The dis-*
 16 *trict courts of the United States shall have exclu-*
 17 *sive jurisdiction to hear any asbestos claim al-*
 18 *lowable under subparagraph (A).*

19 (C) *STATUTE OF LIMITATIONS.—With re-*
 20 *spect to any civil action for an asbestos claim*
 21 *against a participant that failed to make a vol-*
 22 *untary contribution under paragraph (2), the*
 23 *statute of limitations with respect to that asbes-*
 24 *tos claim shall not begin to run for any claimant*
 25 *who has filed such claim under section 111(c)*

1 *and who has not received full compensation*
 2 *under this Act, until such time the claimant*
 3 *knew or should have known that the participant*
 4 *failed to make a voluntary contribution under*
 5 *paragraph (2).*

6 ~~(e)~~ (h) ORPHAN SHARE RESERVE ACCOUNT.—

7 (1) IN GENERAL.—To the extent the total
 8 amount of contributions of the participants in any
 9 given year exceed the ~~maximum~~ *minimum* aggregate
 10 contribution under section 204(h), the excess monies
 11 shall be placed in an orphan share reserve account
 12 established within the Fund by the Administrator.

13 (2) USE OF ACCOUNT MONIES.—Monies from
 14 the orphan share reserve account shall be preserved
 15 and administered like the remainder of the Fund,
 16 but shall be reserved and may be used only—

17 (A) in the event that a petition for relief
 18 is filed and not withdrawn for the participant
 19 under title 11, United States Code, after the
 20 date of enactment of this Act and the partici-
 21 pant cannot meet its obligations under this sub-
 22 title; and

23 (B) to the extent the Administrator grants
 24 a participant relief for severe financial hardship
 25 or demonstrated inequity under this section.

1 **SEC. 224. ENFORCEMENT OF CONTRIBUTIONS.**

2 (a) DEFAULT.—If any participant fails to make any
3 payment in the amount and according to the schedule
4 specified in a determination of assessment, after demand
5 and 30 days opportunity to cure the default, there shall
6 be a lien in favor of the United States for the amount
7 of the delinquent payment (including interest) upon all
8 property and rights to property, whether real or personal,
9 belonging to such participant.

10 (b) BANKRUPTCY.—In the case of a bankruptcy or
11 insolvency proceeding, the lien imposed under subsection
12 (a) shall be treated in the same manner as a lien for taxes
13 due and owing to the United States for purposes of the
14 provisions of title 11, United States Code, or section
15 3713(a) of title 31, United States Code.

16 (c) CIVIL ACTION.—

17 ~~(1) IN GENERAL.—In any case in which there~~
18 ~~has been a refusal or neglect to pay the liability im-~~
19 ~~posed by the final determination under section 202~~
20 ~~or 212, the Administrator may bring a civil action~~
21 ~~in the Federal district court for the District of Co-~~
22 ~~lumbia to—~~

23 ~~(A) enforce such liability and the lien of~~
24 ~~the United States under this section; or~~

25 ~~(B) subject any property, of whatever na-~~
26 ~~ture, of the participant, or in which the partici-~~

1 pant has any right, title, or interest, to the pay-
 2 ment of such liability.

3 ~~(2) DEFENSE LIMITATION.~~—In any proceeding
 4 under this subsection, the participant shall be barred
 5 from bringing any challenge to the assessment if
 6 such challenge could have been made during the re-
 7 view period under section 202(b)(4) or 212(b)(4), or
 8 a judicial review proceeding under title III.

9 (1) *IN GENERAL.*—In any case in which there
 10 has been a refusal or failure to pay any liability im-
 11 posed by a final determination under section 202 or
 12 212, the Administrator may bring a civil action in
 13 the Federal District Court for the District of Colum-
 14 bia—

15 (A) to enforce the liability and any lien of
 16 the United States imposed under this section;

17 (B) to subject any property of the partici-
 18 pant, including any property in which the par-
 19 ticipant has any right, title, or interest, to the
 20 payment of such liability; or

21 (C) for temporary, preliminary, or perma-
 22 nent relief.

23 (2) *ADDITIONAL PENALTIES.*—In any action
 24 under paragraph (1) in which the refusal or failure

1 to pay was willful, the Administrator may seek recov-
2 ery—

3 (A) for punitive damages;

4 (B) for the costs of any civil action under
5 this subsection, including reasonable fees in-
6 curred for collection, expert witnesses, and attor-
7 ney's fees; and

8 (C) in addition to any other penalty, collect
9 a fine equal to the total amount of the liability
10 that has not been collected.

11 (3) *DEFENSE LIMITATION.*—In any proceeding
12 under this subsection, the participant shall be barred
13 from bringing any challenge to the assessment if such
14 challenge could have been made during the review pe-
15 riod under section 202(b)(4) or 212(b)(4), or a judi-
16 cial review proceeding under title III.

17 (4) *DEPOSIT OF FUNDS.*—

18 (A) *IN GENERAL.*—Any funds collected
19 under paragraph (2)(C) shall be—

20 (i) deposited in the Fund; and

21 (ii) used only to pay—

22 (I) claims for awards for an eligi-
23 ble disease or condition determined
24 under title I; or

1 (II) *claims for reimbursement for*
 2 *medical monitoring determined under*
 3 *title I.*

4 (B) *NO EFFECT ON OTHER LIABILITIES.—*
 5 *The imposition of a fine under paragraph (1)(E)*
 6 *shall have no effect on—*

7 (i) *the assessment of contributions*
 8 *under section 202 or 212; or*

9 (ii) *any other provision of this Act.*

10 **SEC. 225. ADDITIONAL CONTRIBUTING PARTICIPANTS.**

11 (a) **DEFINITION.**—In this section, the term “addi-
 12 tional contributing participant” means any defendant in
 13 an asbestos claim that is not a mandatory participant
 14 under subtitle A and is likely to avoid future civil liability
 15 as a result of this Act.

16 (b) **ASSESSMENT.**—In addition to contributions as-
 17 sessed under subtitle A, the Administrator may assess ad-
 18 ditional contributing participants for contributions to the
 19 Fund. Any additional contributing participant assessed
 20 under this section shall be treated as a defendant partici-
 21 pant for purposes of procedures and appeals under this
 22 Act.

23 (c) **ASSESSMENT LIMITATIONS.**—The Administrator
 24 may assess under subsection (b), over the life of the Fund,

1 an amount not to exceed \$14,000,000,000 from all addi-
 2 tional contributing participants.

3 **TITLE III—JUDICIAL REVIEW**

4 **SEC. 301. JUDICIAL REVIEW OF DECISIONS OF THE ASBES-** 5 **~~TOS COURT~~ *UNITED STATES COURT OF AS-*** 6 ***BESTOS CLAIMS.***

7 (a) EXCLUSIVE JURISDICTION.—~~The United States~~
 8 ~~Court of Appeals for the District of Columbia~~ *The United*
 9 *States Court of Appeals for the Federal Circuit* shall have
 10 exclusive jurisdiction over any action to review a final deci-
 11 sion of the ~~Asbestos Court~~ *United States Court of Asbestos*
 12 *Claims of the Court of Federal Claims.*

13 (b) PROCEDURE FOR APPEALS.—

14 (1) PERIOD FOR FILING APPEAL.—An appeal
 15 under this section shall be filed not later than 30
 16 days after the issuance of a final decision by the ~~As-~~
 17 ~~bestos Court~~ *United States Court of Asbestos Claims.*

18 (2) TRANSMITTAL OF RECORD.—Upon the fil-
 19 ing of an appeal, a copy of the filing shall be trans-
 20 mitted by the clerk of the court to the ~~Asbestos~~
 21 ~~Court~~ *United States Court of Asbestos Claims*, and
 22 the ~~Asbestos Court~~ *United States Court of Asbestos*
 23 *Claims* shall file in the court the record in the pro-
 24 ceeding, as provided in section 2112 of title 28,
 25 United States Code.

(3) STANDARD OF REVIEW.—

(A) IN GENERAL.—The court shall uphold the decision of the ~~Asbestos Court~~ *United States Court of Asbestos Claims* if the court determines, upon review of the record as a whole, that the decision is not arbitrary and capricious.

(B) EFFECT OF DETERMINATION.—If the court determines that a final decision of the ~~Asbestos Court~~ *United States Court of Asbestos Claims* is arbitrary and capricious, the court shall remand the case to the ~~Asbestos Court~~ *United States Court of Asbestos Claims*.

(4) FINALITY OF DETERMINATION.—The decision of the ~~United States Court of Appeals for the District of Columbia~~ *United States Court of Appeals for the Federal Circuit* shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28, United States Code.

**SEC. 302. JUDICIAL REVIEW OF FINAL DETERMINATIONS
OF THE ADMINISTRATOR AND OF THE ASBESTOS
INSURERS COMMISSION.**

(a) EXCLUSIVE JURISDICTION.—The United States District Court for the District of Columbia shall have ex-

1 exclusive jurisdiction over any action to review a final deter-
2 mination by the Administrator or the Asbestos Insurers
3 Commission regarding the assessment of a contribution to
4 the Fund from a participant.

5 (b) PROCEDURE FOR APPEAL.—

6 (1) PERIOD FOR FILING APPEAL.—An appeal
7 under this section shall be filed not later than 30
8 days after the issuance of a final determination by
9 the Administrator or the Commission.

10 (2) TRANSMITTAL OF RECORD.—Upon the fil-
11 ing of an appeal, a copy of the filing shall be trans-
12 mitted by the clerk of the court to the Administrator
13 or the Commission.

14 (c) STANDARD OF REVIEW.—

15 (1) IN GENERAL.—The United States District
16 Court for the District of Columbia shall uphold the
17 final determination of the Administrator or the
18 Commission with respect to the assessment of a con-
19 tribution to the Fund from a participant if such de-
20 termination is not arbitrary and capricious.

21 (2) EFFECT OF DETERMINATION.—If the court
22 determines that a final determination with respect to
23 the amount of a contribution to the Fund by a par-
24 ticipant may not be upheld, the court shall remand
25 the decision to the Administrator or the Commis-

1 sion, with instructions to modify the final determina-
 2 tion.

3 (3) NO STAYS.—The court may not issue a stay
 4 of payment into the Fund pending its final judg-
 5 ment.

6 (4) FINALITY OF DETERMINATION.—The judg-
 7 ment and decree of the court shall be final, except
 8 that the same shall be subject to review by the Su-
 9 preme Court, as provided in section 1254 of title 28,
 10 United States Code.

11 **SEC. 303. EXCLUSIVE REVIEW.**

12 (a) EXCLUSIVITY OF REVIEW.—An action of the ~~As-~~
 13 ~~bestos Court~~ *United States Court of Asbestos Claims*, the
 14 Administrator, or the Asbestos Insurers Commission for
 15 which review could have been obtained under section 301
 16 or 302 shall not be subject to judicial review in any other
 17 proceeding, including proceedings before the ~~Asbestos~~
 18 ~~Court~~ *Court of Federal Claims*.

19 (b) CONSTITUTIONAL REVIEW.—

20 (1) IN GENERAL.—Notwithstanding any other
 21 provision of law, any interlocutory or final judgment,
 22 decree, or order of a Federal court holding this Act,
 23 or any provision or application thereof, unconstitu-
 24 tional shall be reviewable as a matter of right by di-
 25 rect appeal to the Supreme Court.

1 (2) PERIOD FOR FILING APPEAL.—Any such
2 appeal shall be filed not more than 30 days after
3 entry of such judgment, decree, or order.

4 **SEC. 304. PRIVATE RIGHT OF ACTION AGAINST REIN-**
5 **SURERS.**

6 (a) IN GENERAL.—Any insurer participant may file
7 a claim in the United States District Court for the District
8 of Columbia against any reinsurer that is contractually ob-
9 ligated to reimburse such insurer participant for a portion
10 of costs incurred as a result of payment of asbestos related
11 claims.

12 (b) EXPEDITED PROCEDURES.—

13 (1) IN GENERAL.—A claim filed under sub-
14 section (a) shall be subject to expedited procedures,
15 as prescribed by the United States District Court for
16 the District of Columbia.

17 (2) EVIDENTIARY STANDARD.—The plaintiff
18 shall not recover in a claim under subsection (a) un-
19 less the plaintiff demonstrates the right to recover
20 by a preponderance of the evidence.

21 (3) FINAL JUDGMENT.—A final judgment shall
22 be issued on a claim filed under subsection (a) not
23 later than 30 days after such filing.

24 (c) APPEALS.—

1 (1) IN GENERAL.—An appeal from a decision
 2 under subsection (b) may be filed with the Court of
 3 Appeals for the District of Columbia.

4 (2) STANDARD OF REVIEW.—The final judg-
 5 ment of the district court shall be upheld unless the
 6 court of appeals finds the judgment to be arbitrary
 7 and capricious.

8 (3) FINAL JUDGMENT.—A final judgment shall
 9 be issued on an appeal filed under paragraph (1) not
 10 later than 30 days after such filing.

11 **TITLE IV—MISCELLANEOUS** 12 **PROVISIONS**

13 **SEC. 401. FALSE INFORMATION.**

14 Any person who knowingly provides false information
 15 in connection with an assessment of contributions, a claim
 16 for an award, or an audit under this Act shall be subject
 17 to—

18 ~~(1) criminal prosecution under section 1001 of~~
 19 ~~title 18, United States Code; and~~

20 ~~(2) civil penalties under section 3729 of title~~
 21 ~~31, United States Code.~~

22 *(a) IN GENERAL.—Chapter 63 of title 18, United*
 23 *States Code, is amended by adding at the end the following:*

1 **“§1348. Fraud and false statements in connection**
 2 **with participation in Asbestos Injury**
 3 **Claims Resolution Fund**

4 “(a) *FRAUD RELATING TO ASBESTOS INJURY CLAIMS*
 5 *RESOLUTION FUND.*—Whoever knowingly and willfully exe-
 6 cutes, or attempts to execute, a scheme or artifice to defraud
 7 the Asbestos Insurers Commission or the Office of Asbestos
 8 Injury Claims Resolution under title II of the Fairness in
 9 Asbestos Injury Resolution Act of 2003 shall be fined under
 10 this title or imprisoned not more than 20 years, or both.

11 “(b) *FALSE STATEMENTS RELATING TO ASBESTOS IN-*
 12 *JURY CLAIMS RESOLUTION FUND.*—Whoever, in any mat-
 13 ter involving the Asbestos Insurers Commission or the Office
 14 of Asbestos Injury Claim Resolution, knowingly and will-
 15 fully—

16 “(1) falsifies, conceals, or covers up by any trick,
 17 scheme, or device a material fact;

18 “(2) makes any materially false, fictitious, or
 19 fraudulent statements or representations; or

20 “(3) makes or uses any false writing or docu-
 21 ment knowing the same to contain any materially
 22 false, fictitious, or fraudulent statement or entry,
 23 in connection with the award of a claim or the assessment
 24 of contributions under title I or II of the Fairness in Asbes-
 25 tos Injury Resolution Act of 2003 shall be fined under this
 26 title or imprisoned not more than 10 years, or both.”.

1 (b) *TECHNICAL AND CONFORMING AMENDMENT.*—*The*
 2 *table of sections for chapter 63 of title 18, United States*
 3 *Code, is amended by adding at the end the following:*

“1348. Fraud and false statements in connection with participation in Asbestos Injury Claims Resolution Fund.”.

4 **SEC. 402. EFFECT ON BANKRUPTCY LAWS.**

5 (a) NO AUTOMATIC STAY.—Section 362(b) of title
 6 11, United States Code, is amended—

7 (1) in paragraph (17), by striking “or” at the
 8 end;

9 (2) in paragraph (18), by striking the period at
 10 the end and inserting “; or”; and

11 (3) by inserting after paragraph (18) the fol-
 12 lowing:

13 “(19) under subsection (a) of this section of the
 14 enforcement of any payment obligations under sec-
 15 tion 204 of the Fairness in Asbestos Injury Resolu-
 16 tion Act of 2003, against a debtor, or the property
 17 of the estate of a debtor, that is a participant (as
 18 that term is defined in section 3 of that Act).”.

19 (b) ASSUMPTION OF EXECUTORY CONTRACTS.—Sec-
 20 tion 365 of title 11, United States Code, is amended by
 21 adding at the end the following:

22 “~~(p)~~ (p) If a debtor is a participant (as that term
 23 is defined in section 3 of the Fairness in Asbestos Injury
 24 Resolution Act of 2003), the trustee shall be deemed to

1 have assumed all executory contracts entered into by the
2 participant under section 204 of that Act. The trustee
3 may not reject any such executory contract.”.

4 (c) ALLOWED ADMINISTRATIVE EXPENSES.—Section
5 503 of title 11, United States Code, is amended by adding
6 at the end the following:

7 “(c)(1) Claims or expenses of the United States, the
8 Attorney General, or the Administrator (as that term is
9 defined in section 3 of the Fairness in Asbestos Injury
10 Resolution Act of 2003) based upon the asbestos payment
11 obligations of a debtor that is a Participant (as that term
12 is defined in section 3 of that Act), shall be paid as an
13 allowed administrative expense. The debtor shall not be
14 entitled to either notice or a hearing with respect to such
15 claims.

16 “(2) For purposes of paragraph (1), the term ‘asbes-
17 tos payment obligation’ means any payment obligation
18 under subtitle B of title II of the Fairness in Asbestos
19 Injury Resolution Act of 2003.”.

20 (d) NO DISCHARGE.—Section 523 of title 11, United
21 States Code, is amended by adding at the end the fol-
22 lowing:

23 “(f) A discharge under section 727, 1141, 1228, or
24 1328 of this title does not discharge any debtor that is
25 a participant (as that term is defined in section 3 of the

1 Fairness in Asbestos Injury Resolution Act of 2003) of
2 the payment obligations that is a debtor under subtitle B
3 of title II of that Act.”.

4 (e) PAYMENT.—Section 524 of title 11, United States
5 Code, is amended by adding at the end the following:

6 “(i) PARTICIPANT DEBTORS.—

7 “(1) IN GENERAL.—Paragraphs (2) and (3)
8 shall apply to a debtor who—

9 “(A) is a participant that has made prior
10 asbestos expenditures (as such terms are de-
11 fined in the Fairness in Asbestos Injury Resolu-
12 tion Act of 2003); and

13 “(B) is subject to a case under this title
14 that is pending—

15 “(i) on the date of enactment of the
16 Fairness in Asbestos Injury Resolution Act
17 of 2003; or

18 “(ii) at any time during the 1-year pe-
19 riod preceding the date of enactment of
20 that Act.

21 “(2) TIER I DEBTORS.—A debtor that has been
22 assigned to tier I under section 202 of the Fairness
23 in Asbestos Injury Resolution Act of 2003 shall
24 make payments in accordance with sections 202 and
25 203 of that Act.

1 “(3) TREATMENT OF PAYMENT OBLIGA-
 2 TIONS.—All payment obligations of a debtor under
 3 sections 202 and 203 of the Fairness in Asbestos In-
 4 jury Resolution Act of 2003 shall—

5 “(A) constitute costs and expenses of ad-
 6 ministration of a case under section 503 of this
 7 title;

8 “(B) notwithstanding any case pending
 9 under this title, be payable in accordance with
 10 section 202 of that Act;

11 “(C) not be stayed;

12 “(D) not be affected as to enforcement or
 13 collection by any stay or injunction of any
 14 court; and

15 “(E) not be impaired or discharged in any
 16 current or future case under this title.”.

17 (f) TREATMENT OF TRUSTS.—Section 524 of title
 18 11, United States Code, as amended by this Act, is
 19 amended by adding at the end the following:

20 “(j) ASBESTOS TRUSTS.—

21 “(1) IN GENERAL.—A trust shall assign a por-
 22 tion of the corpus of the trust to the Asbestos Injury
 23 Claims Resolution Fund (referred to in this sub-
 24 section as the ‘Fund’) ~~as is required under section~~
 25 ~~202 of~~ *as established under* the Fairness in Asbestos

1 Injury Resolution Act of 2003 if the trust qualifies
2 as a ‘trust’ under section 201 of that Act.

3 “(2) TRANSFER OF TRUST ASSETS.—

4 “(A) IN GENERAL.—Except as provided
5 under subparagraphs (B) and (C), the assets in
6 any trust established to provide compensation
7 for asbestos claims (as defined in section 3 of
8 the Fairness in Asbestos Injury Resolution Act
9 of 2003) shall be transferred to the Fund not
10 later than 6 months after the date of enactment
11 of the Fairness in Asbestos Injury Resolution
12 Act of 2003. Except as provided under subpara-
13 graph (B), the Administrator of the Fund shall
14 accept such assets and utilize them for any pur-
15 poses of the Fund under section 223 of such
16 Act, including the payment of claims for awards
17 under such Act to beneficiaries of the trust
18 from which the assets were transferred. After
19 such transfer, each trustee of such trust shall
20 have no liability to any beneficiary of such
21 trust.

22 “(B) AUTHORITY TO REFUSE ASSETS.—

23 The Administrator of the Fund may refuse to
24 accept any asset that the Administrator deter-

1 mines may create liability for the Fund in ex-
2 cess of the value of the asset.

3 “(C) ALLOCATION OF TRUST ASSETS.—If
4 a trust under subparagraph (A) has bene-
5 ficiaries with claims that are not asbestos
6 claims, the assets transferred to the Fund
7 under subparagraph (A) shall not include assets
8 allocable to such beneficiaries. The trustees of
9 any such trust shall determine the amount of
10 such trust assets to be reserved for the con-
11 tinuing operation of the trust in processing and
12 paying claims that are not asbestos claims.
13 Such reserved amount shall not be greater than
14 3 percent of the total assets in the trust and
15 shall not be transferred to the Fund.

16 “(D) SALE OF FUND ASSETS.—The invest-
17 ment requirements under section 222 of the
18 Fairness in Asbestos Injury Resolution Act of
19 2003 shall not be construed to require the Ad-
20 ministrator of the Fund to sell assets trans-
21 ferred to the Fund under subparagraph (A).

22 “(E) LIQUIDATED CLAIMS.—A trust shall
23 not make any payment relating to asbestos
24 claims unless such claims were liquidated in the
25 ordinary course and the normal and usual ad-

1 ministration of the trust consistent with past
2 practices before the date of enactment of the
3 Fairness in Asbestos Injury Resolution Act of
4 2003.

5 “(3) INJUNCTION.—Any injunction issued as
6 part of the formation of a trust described in para-
7 graph (1) shall remain in full force and effect ~~until~~
8 ~~the assignment required under paragraph (1) has~~
9 ~~been made.~~”.

10 (g) NO AVOIDANCE OF TRANSFER.—Section 546 of
11 title 11, United States Code, is amended by adding at the
12 end the following:

13 “(h) Notwithstanding the rights and powers of a
14 trustee under sections 544, 545, 547, 548, 549, and 550
15 of this title, if a debtor is a participant (as that term is
16 defined in section 3 of the Fairness in Asbestos Injury
17 Resolution Act of 2003), the trustee may not avoid a
18 transfer made by the debtor pursuant to its payment obli-
19 gations under section 202 or 203 of that Act.”.

20 (h) CONFIRMATION OF PLAN.—Section 1129(a) of
21 title 11, United States Code, is amended by adding at the
22 end the following:

23 “(14) If the debtor is a participant (as that
24 term is defined in section 3 of the Fairness in As-
25 bestos Injury Resolution Act of 2003), the plan pro-

1 vides for the continuation after its effective date of
2 payment of all payment obligations under title II of
3 that Act.”.

4 **SEC. 403. EFFECT ON OTHER LAWS AND EXISTING CLAIMS.**

5 (a) EFFECT ON FEDERAL AND STATE LAW.—The
6 provisions of this Act shall supersede any and all Federal
7 and State laws insofar as they may relate to any asbestos
8 claim filed under this Act.

9 (b) SUPERSEDING PROVISIONS.—

10 (1) IN GENERAL.—Any agreement, under-
11 standing, or undertaking by any person or affiliated
12 group ~~assigned to Tiers II through VI~~ with respect
13 to the treatment of any asbestos claim ~~filed before~~
14 ~~the date of enactment of this Act~~ that requires fu-
15 ture performance by any party shall be superseded
16 in its entirety by this Act.

17 (2) NO FORCE OR EFFECT.—Any such agree-
18 ment, understanding, or undertaking by any such
19 person or affiliated group shall be of no force or ef-
20 fect, and no person shall have any rights or claims
21 with respect to any of the foregoing.

22 (c) EXCLUSIVE REMEDY.—The remedies provided
23 under this Act shall be the exclusive remedy for any asbes-
24 tos claim under any Federal or State law.

25 (d) BAR ON ASBESTOS CLAIMS.—

1 (1) IN GENERAL.—No asbestos claim may be
2 pursued in any Federal or State court, except for
3 enforcement of claims for which an order or judg-
4 ment has been duly entered by a court that is no
5 longer subject to any appeal or judicial review before
6 the date of enactment of this Act.

7 (2) PREEMPTION.—Any action asserting an as-
8 bestos claim in a court of any State, except actions
9 for which an order or judgment has been duly en-
10 tered by a court that is no longer subject to any ap-
11 peal or judicial review before the date of enactment
12 of this Act, is preempted by this Act.

13 (3) DISMISSAL.—No judgment other than a
14 judgment of dismissal may be entered in any such
15 action, including an action pending on appeal, or on
16 petition or motion for discretionary review, on or
17 after the date of enactment of this Act. A court may
18 dismiss any such action on its motion. If the district
19 court denies the motion to dismiss, it shall stay fur-
20 ther proceedings until final disposition of any appeal
21 taken under this Act.

22 (4) REMOVAL.—

23 (A) IN GENERAL.—If an action under
24 paragraph (2) is not dismissed, or if an order
25 entered after the date of enactment of this Act

1 purporting to enter judgment or deny review is
2 not rescinded and replaced with an order of dis-
3 missal within 30 days after the filing of a mo-
4 tion by any party to the action advising the
5 court of the provisions of this Act, any party
6 may remove the case to the district court of the
7 United States for the district in which such ac-
8 tion is pending.

9 (B) TIME LIMITS.—For actions originally
10 filed after the date of enactment of this Act, the
11 notice of removal shall be filed within the time
12 limits specified in section 1441(b) of title 28,
13 United States Code.

14 (C) PROCEDURES.—The procedures for re-
15 moval and proceedings after removal shall be in
16 accordance with sections 1446 through 1450 of
17 title 28, United States Code, except as may be
18 necessary to accommodate removal of any ac-
19 tions pending (including on appeal) on the date
20 of enactment of this Act.

21 (D) JURISDICTION.—The jurisdiction of
22 the district court shall be limited to—

23 (i) determining whether removal was
24 proper; and

1 (ii) ruling on a motion to dismiss
2 based on this Act.

3 (5) *DETERMINATION.*—

4 (A) *IN GENERAL.*—*Paragraphs (1), (2), (3),*
5 *and (4) shall not be effective until the Adminis-*
6 *trator determines that the Fund is fully oper-*
7 *ational and processing claims.*

8 (B) *REMEDY UNDER STATE LAW.*—*Any*
9 *rights and remedies relating to an asbestos claim*
10 *shall be available under State law until para-*
11 *graphs (1), (2), (3), and (4) become effective*
12 *under subparagraph (A).*

13 (C) *OFFSET FROM CONTRIBUTIONS TO*
14 *FUND.*—*A participant's contributions to the*
15 *Fund shall be reduced by the amount of any*
16 *claims made payable by the operation of this*
17 *paragraph after the date of enactment of this*
18 *Act.*

19 **SEC. 404. ANNUAL REPORT OF THE ADMINISTRATOR.**

20 (1) *IN GENERAL.*—*The Administrator shall sub-*
21 *mit an annual report to the Committee on the Judici-*
22 *ary of the House of Representatives and the Com-*
23 *mittee on the Judiciary of the Senate on the oper-*
24 *ation of the Asbestos Injury Claims Resolution Fund*
25 *within 6 months after the close of each fiscal year.*

1 (2) *CONTENTS OF REPORT.*—*The annual report*
2 *submitted under this subsection shall include—*

3 (A) *a summary of the claims made during*
4 *the most recent fiscal year, including—*

5 (i) *the number of claims made to the*
6 *Fund and a description of the types of med-*
7 *ical diagnoses and asbestos exposure under-*
8 *lying those claims; and*

9 (ii) *the number of claims denied by the*
10 *Fund and a description of the types of med-*
11 *ical diagnoses and asbestos exposures under-*
12 *lying those claims;*

13 (B) *a summary of the eligibility determina-*
14 *tions made by the Court of Federal Claims under*
15 *section 113;*

16 (C) *a summary of the awards made from*
17 *the Fund, including the amount of the awards;*

18 (D) *a certification by the Administrator*
19 *that, by date of the filing of this Report, 95 per-*
20 *cent or more of the asbestos claimants who filed*
21 *claims during the prior calendar year, and who*
22 *were determined to be eligible to receive com-*
23 *pensation under this Act, have received the com-*
24 *pensation for which they are entitled, according*
25 *to the terms of section 133 of this Act;*

1 (E) a certification by the Administrator
2 that, by the date of the filing of this Report, 95
3 percent or more of the total obligations of the
4 Fund owed to eligible claimants in the prior cal-
5 endar year have been paid;

6 (F) the identity of all participants and a
7 summary of the funding allocations of each par-
8 ticipant, including the amounts of all contribu-
9 tions;

10 (G) a summary of all financial hardship or
11 inequity adjustments applied for during the fis-
12 cal year, and a summary of the adjustments that
13 were made during the fiscal year;

14 (H) a summary of the investments made
15 under section 222(b);

16 (I) a summary of all referrals made to law
17 enforcement authorities under section 222(c),
18 and of any legal actions brought or penalties im-
19 posed under section 224;

20 (J) an estimate of the number and types of
21 claims, the amount of awards, and the partici-
22 pant contributions for the next fiscal year;

23 (K) any recommendations from the medical
24 panel of the Fund to improve the medical cri-

1 *teria requirements or diagnostic provisions of the*
2 *Fund;*

3 *(L) audits conducted under section 115;*

4 *(M) prosecutions under section 1348 of title*
5 *18, United States Code; and*

6 *(N) any recommendations to improve the*
7 *operation of the Fund.*

8 *(3) SUNSET OF ACT IF CERTIFICATIONS NOT*
9 *MET.—*

10 *(A) If the Administrator fails to make the*
11 *certifications required in paragraph (2)(D) and*
12 *(E), above, as part of the required Annual Re-*
13 *port, then the Administrator shall have 90 days*
14 *to remedy this situation and to submit new cer-*
15 *tifications to the Committee on the Judiciary of*
16 *the House of Representatives and the Committee*
17 *on the Judiciary of the Senate. If the Adminis-*
18 *trator fails to make the required certifications by*
19 *this later date, then the Act, and all of its provi-*
20 *sions and requirements, shall sunset imme-*
21 *diately.*

22 *(B) If the Act sunsets according to the terms*
23 *of subparagraph (A), then the applicable statute*
24 *of limitations for the filing of asbestos-related*
25 *claims shall be deemed tolled for any past or*

1 *pending claimants while they were pursuing*
2 *claims through the Asbestos Injury Claims Reso-*
3 *lution Fund. For those claimants who decide to*
4 *pursue a claim in the appropriate court, the ap-*
5 *plicable statute of limitations shall apply, or the*
6 *claimants shall have two years from the date the*
7 *Act sunsets to file a claim in court, whichever is*
8 *longer.*

9 *(C) If an asbestos claimant has received all*
10 *or part of the award for which he or she was de-*
11 *termined to be eligible under this Act, then any*
12 *amount he or she is awarded through a court ac-*
13 *tion, or through settlement negotiations, shall be*
14 *reduced by the amount the claimant has already*
15 *received through the Asbestos Injury Claims Res-*
16 *olution Fund.*

17 **SEC. 405. RULES OF CONSTRUCTION RELATING TO LIABIL-**
18 **ITY OF THE UNITED STATES GOVERNMENT.**

19 *(a) CAUSES OF ACTIONS.—Except as otherwise specifi-*
20 *cally provided in this Act, nothing in this Act may be con-*
21 *strued as creating a cause of action against the United*
22 *States Government, any entity established under this Act,*
23 *or any officer or employee of the United States Government*
24 *or such entity.*

1 (b) *FUNDING LIABILITY.*—*Nothing in this Act may be*
 2 *construed to—*

3 (1) *create any obligation of funding from the*
 4 *United States Government, other than the funding for*
 5 *personnel and support as provided under subtitle A*
 6 *of title I; or*

7 (2) *obligate the United States Government to*
 8 *pay any award or part of an award, if amounts in*
 9 *the Fund are inadequate.*

10 **SEC. 406. EFFECT ON INSURANCE AND REINSURANCE CON-**
 11 **TRACTS.**

12 (a) *EROSION OF INSURANCE COVERAGE LIMITS.*—

13 (1) *DEFINITIONS.*—*In this section, the following*
 14 *definitions shall apply:*

15 (A) *REMAINING AGGREGATE PRODUCTS LIM-*
 16 *ITS.*—*The term “remaining aggregate products*
 17 *limits” means aggregate limits that apply to in-*
 18 *surance coverage granted under the “products*
 19 *hazard”, “completed operations hazard”, or*
 20 *“Products—Completed Operations Liability” in*
 21 *any comprehensive general liability policy issued*
 22 *between calendar years 1940 and 1986 to cover*
 23 *injury which occurs in any State, as reduced*
 24 *by—*

1 (i) *any existing impairment of such*
2 *aggregate limits as of the date of enactment*
3 *of this Act; and*

4 (ii) *the resolution of claims for reim-*
5 *bursement or coverage of liability or paid or*
6 *incurred loss for which notice was provided*
7 *to the insurer before the date of enactment*
8 *of this Act.*

9 (B) *SCHEDULED ASSESSMENT AMOUNTS.—*

10 *The term “scheduled assessment amounts” means*
11 *the future contributions to the Fund assessed by*
12 *the Administrator from a defendant participant*
13 *in the amount established under sections 203*
14 *and 204.*

15 (2) *QUANTUM AND TIMING OF EROSION.—*

16 (A) *EROSION UPON ENACTMENT.—The col-*
17 *lective payment obligations to the Fund of the*
18 *insurer and reinsurer participants as assessed by*
19 *the Administrator shall be deemed as of the date*
20 *of enactment of this Act to erode remaining ag-*
21 *gregate products limits available to a defendant*
22 *participant only in an amount of 74.51 percent*
23 *of each defendant participant’s scheduled assess-*
24 *ment amount.*

1 (B) *EROSION UPON CONTINGENT CALL.*—If
2 the Administrator, under section 223(f), fails to
3 certify that there are adequate funds during any
4 3-year, 6-year, or 1-year period of the manda-
5 tory funding period, the resulting collective con-
6 tingent payment obligations to the Fund of the
7 insurer participants shall be deemed to erode re-
8 maining aggregate products limits available to a
9 defendant participant in an amount of 74.51
10 percent of the amount of the contingent call upon
11 that defendant participant for such period. For
12 any 3-year, 6-year, or 1-year period, the amount
13 of the contingent call upon a defendant partici-
14 pant shall be the difference between the contribu-
15 tion required for that period and the contribu-
16 tion that would have been required for that pe-
17 riod if the reduction adjustment under section
18 204(a) had been made. Erosion in accordance
19 with this paragraph shall be deemed to occur at
20 the time of the Administrator's notice to the de-
21 fendant participant under section
22 223(f)(3)(D)(ii).

23 (C) *EROSION UPON VOLUNTARY PAY-*
24 *MENTS.*—Payments by insurer participants
25 under section 223(g)(2) shall be deemed at the

1 *time of payment to erode remaining aggregate*
2 *products limits available to a defendant partici-*
3 *pant in an amount of 74.51 percent of the*
4 *amount of the voluntary payment requested of*
5 *that defendant participant, except that an in-*
6 *surer participant that fails to make the vol-*
7 *untary payment requested by the Administrator*
8 *under section 223(g) shall not be entitled to*
9 *claim that payments to the Fund under section*
10 *223(g) erode, exhaust, or otherwise limit that in-*
11 *surer participant's insurance obligations. With*
12 *respect to any insurer participant that fails to*
13 *make the voluntary payment requested by the*
14 *Administrator under section 223(g), payments*
15 *by a participant under section 223(g) shall be*
16 *considered amounts that participant is legally*
17 *obligated to pay as a result of asbestos-related*
18 *bodily injury.*

19 (D) NO ASSERTION OF CLAIM.—No insurer
20 *or reinsurer may assert any claim against a de-*
21 *fendant participant or captive insurer for insur-*
22 *ance, reinsurance, payment of a deductible, or*
23 *retrospective premium adjustment arising out of*
24 *that insurer or reinsurer's payments to the Fund*
25 *or the erosion deemed to occur under this section.*

1 (E) *POLICIES WITHOUT CERTAIN LIMITS OR*
2 *WITH EXCLUSION.*—Other than under subpara-
3 graph (G), nothing in this section shall require
4 or permit the erosion of any insurance policy or
5 limit that does not contain an aggregate prod-
6 ucts limit, or that contains an asbestos exclusion.

7 (F) *TREATMENT OF CONSOLIDATION ELEC-*
8 *TION.*—If an affiliated group elects consolidation
9 as provided in section 204(f), the total erosion of
10 limits for the affiliated group under paragraph
11 (2)(A) shall not exceed 74.51 percent of the
12 scheduled assessment amount of the single con-
13 tribution assessed for the entire affiliated group,
14 and the total erosion of limits for the affiliated
15 group under paragraph (2) (B) or (C) shall not
16 exceed 74.51 percent of the single contingent call
17 amount or voluntary payment amount, respec-
18 tively, for the entire affiliated group. The total
19 erosion of limits for any individual defendant
20 participant in the affiliated group shall not ex-
21 ceed its individual share of 74.51 percent of the
22 affiliated group's scheduled assessment amount,
23 contingent call amount, or voluntary payment
24 amount, as measured by the individual defend-

1 *ant participant's percentage share of the affili-*
2 *ated group's prior asbestos expenditures.*

3 (G) *RULE OF CONSTRUCTION.*—*Notwith-*
4 *standing any other provision of this section,*
5 *nothing in the Act shall be deemed to erode re-*
6 *maining aggregate products limits of a defend-*
7 *ant participant that can demonstrate by a pre-*
8 *ponderance of the evidence that 75 percent of its*
9 *prior asbestos expenditures were made in defense*
10 *or satisfaction of asbestos claims alleging bodily*
11 *injury arising exclusively from the exposure to*
12 *asbestos at premises owned, rented, or controlled*
13 *by the defendant participant (a “premises de-*
14 *fendant”). In calculating such percentage, where*
15 *expenditures were made in defense or satisfaction*
16 *of asbestos claims alleging bodily injury due to*
17 *exposure to the defendant participant's products*
18 *and to asbestos at premises owned, rented or con-*
19 *trolled by the defendant participant, half of such*
20 *expenditures shall be deemed to be for such prem-*
21 *ises exposures. In the event that a defendant par-*
22 *ticipant establishes itself as a premises defend-*
23 *ant, 75 percent of the payments by such defend-*
24 *ant participant shall erode coverage limits, if*

1 *any, applicable to premises liabilities under ap-*
2 *plicable law.*

3 (3) *METHOD OF EROSION.*—

4 (A) *ALLOCATION.*—*The amount of erosion*
5 *allocated to each defendant participant shall be*
6 *allocated among periods in which policies with*
7 *remaining aggregate product limits are available*
8 *to that defendant participant pro rata by policy*
9 *period, in ascending order by attachment point.*

10 (B) *OTHER EROSION METHODS.*—

11 (i) *IN GENERAL.*—*Notwithstanding*
12 *subparagraph (A), the method of erosion of*
13 *any remaining aggregate products limits*
14 *which are subject to—*

15 (I) *a coverage-in-place or settle-*
16 *ment agreement between a defendant*
17 *participant and 1 or more insurance*
18 *participants as of the date of enact-*
19 *ment; or*

20 (II) *a final and nonappealable*
21 *judgment as of the date of enactment*
22 *or resulting from a claim for coverage*
23 *or reimbursement pending as of such*
24 *date,*

1 *shall be as specified in such agreement or*
 2 *judgment with regard to erosion applicable*
 3 *to such insurance participants' policies.*

4 (ii) *REMAINING LIMITS.—To the extent*
 5 *that a final nonappealable judgment or set-*
 6 *tlement agreement in effect as of the date of*
 7 *enactment of this Act extinguished a defend-*
 8 *ant participant's right to seek coverage for*
 9 *asbestos claims under an insurer partici-*
 10 *pant's policies, any remaining limits in*
 11 *such policies shall not be considered to be*
 12 *remaining aggregate products limits under*
 13 *subsection (a)(1)(A).*

14 (4) *PAYMENTS BY DEFENDANT PARTICIPANT.—*
 15 *Payments made by a defendant participant shall be*
 16 *deemed to erode applicable self-insured retentions,*
 17 *deductibles, retrospectively rated premiums, and lim-*
 18 *its issued by nonparticipating insolvent or captive in-*
 19 *surance companies. Reduction of remaining aggregate*
 20 *limits under this subsection shall not limit the right*
 21 *of a defendant participant to collect from any insurer*
 22 *not a participant.*

23 (5) *EFFECT ON OTHER INSURANCE CLAIMS.—*
 24 *Other than as specified in this subsection, this Act*

1 *does not alter, change, modify, or affect insurance for*
2 *claims other than asbestos claims.*

3 *(c) DISPUTE RESOLUTION PROCEDURE.—*

4 *(1) ARBITRATION.—The parties to a dispute re-*
5 *garding the erosion of insurance coverage limits*
6 *under this section may agree in writing to settle such*
7 *dispute by arbitration. Any such provision or agree-*
8 *ment shall be valid, irrevocable, and enforceable, ex-*
9 *cept for any grounds that exist at law or in equity*
10 *for revocation of a contract.*

11 *(2) TITLE 9, UNITED STATES CODE.—Arbitration*
12 *of such disputes, awards by arbitrators, and con-*
13 *firmation of awards shall be governed by title 9,*
14 *United States Code, to the extent such title is not in-*
15 *consistent with this section. In any such arbitration*
16 *proceeding, the erosion principles provided for under*
17 *this section shall be binding on the arbitrator, unless*
18 *the parties agree to the contrary.*

19 *(3) FINAL AND BINDING AWARD.—An award by*
20 *an arbitrator shall be final and binding between the*
21 *parties to the arbitration, but shall have no force or*
22 *effect on any other person. The parties to an arbitra-*
23 *tion may agree that in the event a policy which is the*
24 *subject matter of an award is subsequently deter-*
25 *mined to be eroded in a manner different from the*

1 *manner determined by the arbitration in a judgment*
2 *rendered by a court of competent jurisdiction from*
3 *which no appeal can or has been taken, such arbitra-*
4 *tion award may be modified by any court of com-*
5 *petent jurisdiction upon application by any party to*
6 *the arbitration. Any such modification shall govern*
7 *the rights and obligations between such parties from*
8 *the date of such modification.*

9 *(d) EFFECT ON NONPARTICIPANTS.—*

10 *(1) IN GENERAL.—No insurance company or re-*
11 *insurance company that is not a participant, other*
12 *than a captive insurer, shall be entitled to claim that*
13 *payments to the Fund erode, exhaust, or otherwise*
14 *limit the nonparticipant's insurance or reinsurance*
15 *obligations.*

16 *(2) OTHER CLAIMS.—Nothing in this Act shall*
17 *preclude a participant from pursuing any claim for*
18 *insurance or reinsurance from any person that is not*
19 *a participant other than a captive insurer.*

1 **TITLE V—PROHIBITION OF AS-**
 2 **BESTOS CONTAINING PROD-**
 3 **UCTS**

4 **SEC. 501. PROHIBITION ON ASBESTOS CONTAINING PROD-**
 5 **UCTS.**

6 (a) *IN GENERAL.*—Part I of title 18, United States
 7 Code, is amended by inserting after chapter 39 the fol-
 8 lowing:

9 **“CHAPTER 39A—BAN OF ASBESTOS**
 10 **CONTAINING PRODUCTS**

“Sec.
 “838. *Ban of asbestos containing products*

11 **“§ 838. Ban of asbestos containing products**

12 “(a) *DEFINITIONS.*—In this chapter:

13 “(1) *ADMINISTRATOR.*—The term ‘Adminis-
 14 trator’ means the Administrator of the Environ-
 15 mental Protection Agency.

16 “(2) *ASBESTOS.*—The term ‘asbestos’ includes—

17 “(A) *chrysotile*;

18 “(B) *amosite*;

19 “(C) *crocidolite*;

20 “(D) *tremolite asbestos*;

21 “(E) *winchite asbestos*;

22 “(F) *richterite asbestos*;

23 “(G) *anthophyllite asbestos*;

1 “(H) *actinolite asbestos*;

2 “(I) *any of the minerals listed under sub-*
3 *paragraphs (A) through (H) that has been*
4 *chemically treated or altered, and any*
5 *asbestiform variety, type or component thereof.*

6 “(3) *ASBESTOS CONTAINING PRODUCT.*— *The*
7 *term ‘asbestos containing product’ means any product*
8 *(including any part) to which asbestos is deliberately*
9 *or knowingly added or used because the specific prop-*
10 *erties of asbestos are necessary for product use or*
11 *function. Under no circumstances shall the term ‘as-*
12 *bestos containing product’ be construed to include*
13 *products that contain de minimus levels of naturally*
14 *occurring asbestos as defined by the Administrator*
15 *not later than 1 year after the date of enactment of*
16 *this chapter.*

17 “(4) *DISTRIBUTE IN COMMERCE.*—*The term ‘dis-*
18 *tribute in commerce’—*

19 “(A) *has the meaning given the term in sec-*
20 *tion 3 of the Toxic Substances Control Act (15*
21 *U.S.C. 2602); and*

22 “(B) *shall not include—*

23 “(i) *an action taken with respect to an*
24 *asbestos containing product in connection*
25 *with the end use of the asbestos containing*

product by a person that is an end user, or
 an action taken by a person who purchases
 or receives a product, directly or indirectly
 from an end user; or

“(ii) distribution of an asbestos con-
 taining product by a person solely for the
 purpose of disposal of the asbestos con-
 taining product in compliance with appli-
 cable Federal, State, and local requirements.

“(b) *IN GENERAL.*—Subject to subsection (c), the Ad-
 ministrator shall, after consultation with the Assistant At-
 torney General for the Environmental and Natural Re-
 sources Division of the United States Department of Jus-
 tice, promulgate—

“(1) not later than 1 year after the date of enact-
 ment of this chapter, proposed regulations that—

“(A) prohibit persons from manufacturing,
 processing, or distributing in commerce asbestos
 containing products; and

“(B) provide for implementation of sub-
 sections (c) and (d); and

“(2) not later than 2 years after the date of en-
 actment of this chapter, final regulations that, effec-
 tive 60 days after the date of promulgation, prohibit

1 *persons from manufacturing, processing, or distrib-*
 2 *uting in commerce asbestos containing products.*

3 “(c) *EXEMPTIONS.*—

4 “(1) *IN GENERAL.*—*Any person may petition the*
 5 *Administrator for, and the Administrator may grant*
 6 *an exemption from the requirements of subsection (b),*
 7 *if the Administrator determines that—*

8 “(A) *the exemption would not result in an*
 9 *unreasonable risk of injury to public health or*
 10 *the environment; and*

11 “(B) *the person has made good faith efforts*
 12 *to develop, but has been unable to develop, a sub-*
 13 *stance, or identify a mineral that does not*
 14 *present an unreasonable risk of injury to public*
 15 *health or the environment and may be sub-*
 16 *stituted for an asbestos containing product.*

17 “(2) *TERMS AND CONDITIONS.*—*An exemption*
 18 *granted under this subsection shall be in effect for*
 19 *such period (not to exceed 5 years) and subject to such*
 20 *terms and conditions as the Administrator may pre-*
 21 *scribe.*

22 “(3) *GOVERNMENTAL USE.*—

23 “(A) *IN GENERAL.*—*The Administrator of*
 24 *the Environmental Protection Agency shall pro-*
 25 *vide an exemption from the requirements of sub-*

1 *section (a), without review or limit on duration,*
2 *if such exemption for an asbestos containing*
3 *product is—*

4 *“(i) sought by the Secretary of Defense*
5 *and the Secretary certifies, and provides a*
6 *copy of that certification to Congress,*
7 *that—*

8 *“(I) use of the asbestos containing*
9 *product is necessary to the critical*
10 *functions of the Department;*

11 *“(II) no reasonable alternatives to*
12 *the asbestos containing product exist*
13 *for the intended purpose; and*

14 *“(III) use of the asbestos con-*
15 *taining product will not result in an*
16 *unreasonable risk to health or the envi-*
17 *ronment; or*

18 *“(ii) sought by the Administrator of*
19 *the National Aeronautics and Space Ad-*
20 *ministration and the Administrator of the*
21 *National Aeronautics and Space Adminis-*
22 *tration certifies, and provides a copy of that*
23 *certification to Congress, that—*

24 *“(I) the asbestos containing prod-*
25 *uct is necessary to the critical func-*

1 *tions of the National Aeronautics and*
 2 *Space Administration;*

3 *“(II) no reasonable alternatives to*
 4 *the asbestos containing product exist*
 5 *for the intended purpose; and*

6 *“(III) the use of the asbestos con-*
 7 *taining product will not result in an*
 8 *unreasonable risk to health or the envi-*
 9 *ronment.*

10 *“(B) ADMINISTRATIVE PROCEDURE ACT.—*
 11 *Any certification required under subparagraph*
 12 *(A) shall not be subject to chapter 5 of title 5,*
 13 *United States Code (commonly referred to as the*
 14 *‘Administrative Procedure Act’.*

15 *“(4) SPECIFIC EXEMPTIONS.—The following are*
 16 *exempted:*

17 *“(A) Asbestos diaphragms for use in the*
 18 *manufacture or chlor-alkali and the products*
 19 *and derivative therefrom.*

20 *“(B) Roofing cements, coatings and mastics*
 21 *utilizing asbestos that is totally encapsulated*
 22 *with asphalt, subject to a determination by the*
 23 *Administrator of the Environmental Protection*
 24 *Agency under paragraph (5).*

1 “(5) *ENVIRONMENTAL PROTECTION AGENCY RE-*
2 *VIEW.*—

3 “(A) *REVIEW IN 18 MONTHS.*—*Not later*
4 *than 18 months after the date of enactment of*
5 *this chapter, the Administrator of the Environ-*
6 *mental Protection Agency shall complete a re-*
7 *view of the exemption for roofing cements, coat-*
8 *ings, and mastics utilizing asbestos that are to-*
9 *tally encapsulated with asphalt to determine*
10 *whether—*

11 “(i) *the exemption would result in an*
12 *unreasonable risk of injury to public health*
13 *or the environment; and*

14 “(ii) *there are reasonable, commercial*
15 *alternatives to the roofing cements, coatings,*
16 *and mastics utilizing asbestos that is totally*
17 *encapsulated with asphalt.*

18 “(B) *REVOCATION OF EXEMPTION.*—*Upon*
19 *completion of the review, the Administrator of*
20 *the Environmental Protection Agency shall have*
21 *the authority to revoke the exemption for the*
22 *products exempted under paragraph (4)(B) if*
23 *warranted.*

24 “(d) *DISPOSAL.*—

1 “(1) *IN GENERAL.*—*Except as provided in para-*
 2 *graph (2), not later than 3 years after the date of en-*
 3 *actment of this chapter, each person that possesses an*
 4 *asbestos containing product that is subject to the pro-*
 5 *hibition established under this section shall dispose of*
 6 *the asbestos containing product, by a means that is*
 7 *in compliance with applicable Federal, State, and*
 8 *local requirements.*

9 “(2) *EXEMPTION.*—*Nothing in paragraph (1)—*
 10 *“(A) applies to an asbestos containing prod-*
 11 *uct that—*

12 “(i) *is no longer in the stream of com-*
 13 *merce; or*

14 “(ii) *is in the possession of an end user*
 15 *or a person who purchases or receives an*
 16 *asbestos containing product directly or indi-*
 17 *rectly from an end user; or*

18 “(B) *requires that an asbestos containing*
 19 *product described in subparagraph (A) be re-*
 20 *moved or replaced.”.*

21 “(b) *TECHNICAL AND CONFORMING AMENDMENT.*—*The*
 22 *table of chapters for part I of title 18, United States Code,*
 23 *is amended by inserting after the item relating to chapter*
 24 *39 the following:*

“39A. Ban of asbestos containing products 838”.

Calendar No. 239

108TH CONGRESS
1ST SESSION

S. 1125

[Report No. 108–118]

A BILL

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

JULY 30 (legislative day, JULY 21), 2003

Reported with amendments