Jim Walter corporation
POST OFFICE BOX 22601 · 1500 NORTH DALE MABRY
TAMPA, FLORIDA 33622

LEGAL DEPARTMENT

April 17, 1979

To: ASBESTOS FORUM MEMBERS

Re: Asbestos Health Hazards Compensation Act

Dear Fellow Members:

Attached, please find a copy of the final revised bill, as amended at our meeting on April 10, 1979.

I took the liberty of adding one clause at the end of section 107, adding "or said claim shall be barred".

Otherwise, I believe the bill accurately reflects the changes made at our meeting.

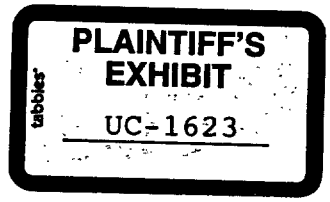
Unless I hear to the contrary, I will assume that this bill is acceptable to all concerned, with the exception of the products specified in appendix A. These products are still subject to change and I would welcome your comments on this appendix.

Best personal regards.

Sincerely,

Robert W. Emerton, III

RWE/bs
Atc:



A B I L L

To provide equitable, comprehensive, and exclusive benefits to (a) persons who are disabled as a result of employment-related diseases caused by the inhalation or ingestion of asbestos, and/or the inhalation of asbestos coupled with the inhalation of cigarette tobacco smoke, (b) members of such person's household, and (c) the surviving dependents of such persons whose death was due to such disease.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Asbestos Health Hazards Compensation Act".

TITLE I - GENERAL PROVISIONS

FINDINGS AND PURPOSE

SEC. 101. (a) The Congress finds and declares that -

(1) there is a significant number of persons who suffer disability or death from employment-related diseases caused by the inhalation or ingestion of asbestos, and/or the inhalation of asbestos coupled with the inhalation of cigarette tobacco smoke;

(2) members of households of persons who are occupationally exposed to asbestos may suffer from asbestos-related diseases;

(3) lung cancer at rates substantially above the general average occurs in persons who inhale asbestos coupled with the inhalation of cigarette tobacco smoke;

(4) there is a substantial number of surviving dependents of affected persons whose deaths were due to such diseases;

(5) the diseases arising out of occupational situations and caused by the inhalation of asbestos and/or the inhalation of asbestos coupled with the inhalation of cigarette tobacco smoke constitute a substantial burden upon interstate commerce and have an adverse effect upon the general welfare;

(6) few States provide adequate benefits for death or disability to such diseases to affected persons or their surviving dependents;

(7) the United States of America has been engaged, for a significant period of time, in the importation, sale and distribution of asbestos fibers.

(8) the full scope of the diseases and hazards causally related to asbestos, and/or cigarette tobacco smoke were unknown to industry,

labor, government, or medicine until recent times; and

(9) the responsibility exists to equitably and comprehensively deal with the human burdens caused by such health hazards without regard to fault.

(b) It is, therefore, the purpose of this Act through the exercise of the power of Congress to regulate commerce among the several States and with foreign nations and to provide for the general welfare to provide a schedule of equitable, comprehensive, and exclusive benefits to affected persons who become disabled as a result of an asbestos-related disease and to the dependents of affected persons who die from such diseases.

DEFINITIONS

SEC. 102. For purposes of this Act -

(a) The term "asbestos" includes chrysotile, amosite, and crocidolite, and when they occur in fibrous habit, tremolite, anthophyllite, and actionolite.

(b) The term "affected persons" means a person whose occupation involves, or did involve, exposure to asbestos or one who is or was a member of such person's household.

(c) The term "asbestos-related disease" means -

(1) asbestosis,

(2) bronchogenic cancer,

(3) mesothelioma of the pleura and/or peritoneum,

(4) gastro-intestinal cancer,

(5) any disease which the Secretary concludes is causally related to exposure to asbestos, and adds to the above list by regulation: Provided, however, That (2), (3), (4), and (5) shall be considered asbestos-related only in cases in which they are

casually related to exposure to asbestos and/or asbestos coupled with the inhalation of cigarette tobacco smoke and meeting criteria hereinafter set forth or as may be provided by regulation hereunder: And provided further, That in promulgating any regulation adding to, altering or amending the list of asbestos-related diseases as defined herein the Secretary shall comply with the rulemaking requirements of section 553 of title 5, United States Code, and the hearing requirements of sections 556 and 557 of title 5, United States Code. These sections shall apply as if the Secretary were the agency referred to therein.

(d) The term "dependent" means -

(1) a wife who is a member of the same household as the affected person, or is receiving regular contributions from the affected person for her support, or whose husband is an affected person who has been ordered by a court to contribute to her support, or who meets the requirements of section 216 (b) (1) or (2) of the Social Security Act. The determination of an individual's status as the wife of an affected person shall be made in accordance with section 216 (h) (1) of the Social Security Act as if such person were the insured individual referred to therein. The term "wife" also includes a divorced wife, as defined in section 216 (d) (1) of the Social Security Act, who is receiving at least one-half of her support, as determined in accordance with regulations prescribed by the Secretary, from the affected person, or is receiving substantial contributions from the affected person (pursuant to a written agreement), or there is in effect a court order for substantial contributions to her support from the affected person;

(2) a widow, which term includes the wife living with or dependent for support on the affected person at the time of his death, or living apart for reasonable cause or because of his desertion, or who meets the requirements of section 216 (c) (1), (2), (3), (4), or (5) and section 216 (k) of the Social Security Act, who is

not married. The determination of an individual's status as the widow of an affected person shall be made in accordance with section 216 (h) (1) of the Social Security Act as if such affected person were the insured individual referred to therein. Such term also includes a surviving divorced wife as defined in section 216 (d) (2) of the Social Security Act, who, for the month preceding the month in which the affected person died, was entitled to or receiving at least one-half of her support, as determined in accordance with regulations prescribed by the Secretary, from the affected person, or was receiving substantial contributions from the affected person (pursuant to a written agreement), or there was in effect a court order for substantial contributions to her support from the affected person at the time of his death.

(3) a child, which term means a natural or adopted child or a stepchild who is—

(1) unmarried, and

(2) (A) under eighteen years of age, or

(B) (i) under a disability as defined in section 102 (g) of this Act,

(ii) which began before the age of twenty-two, or, in the case of a student, before he ceased to be a student, or

(C) a student.

The term "student" means a full-time student as defined in section 202 (d) (7) of the Social Security Act, or a student as defined in section 8101 (17) of title 5, United States Code. The determination of an individual's status as the child of the affected person or widow, as the case may be, shall be made in accordance with section 216 (h) (2) or (3) of the Social Security Act as if such affected person or widow were the insured individual referred to therein;

(4) a parent, brother, or sister, which terms mean such persons who bear the relationship to an affected person consistent with such legal standards as are applicable to relationship determination under title II of the Social Security Act, and who are dependent on the affected person for support.

(e) The term "Secretary" means the Secretary of Labor.

(f) The term "permanent total disability" has the meaning given it by regulation of the Secretary. Such regulation shall provide that an affected person shall be considered totally disabled when by reason of an asbestos-related disease his prior level of earnings has decreased by 60 per centum. For purposes of this definition, an affected person's level of earnings shall be his highest annual income

within the ten years preceding his application for benefits under this Act. The level of earnings of an affected person who has not been employed within that period shall be measured by his earning capacity.

(g) The term "permanent partial disability" means a condition that results in less than total disability as defined in this Act and that exists after the affected person is restored to health as far as the permanent character of the disease will permit.

(h) The term "temporary total disability" means a condition that results in total disability as defined in this Act and that exists until the affected person is restored to health as far as the permanent character of the disease will permit.

(i) The term "temporary partial disability" means a condition that results in less than total disability as defined in this Act and that exists until the affected person is restored to health as far as the permanent character of the disease will permit.

(j) The term "responsible party" means a corporation, partnership, individual, joint enterprise or any other entity, which was or is currently, engaged in (1) the manufacture and first sale of any product or substance containing asbestos, (2) the import for sale or distribution of products containing asbestos, and (3) the manufacture and first sale or import for sale or distribution of cigarettes or cigarette tobacco: Provided, however, that responsible party shall not apply to carriers for hire who transport products or substances which contain asbestos or cigarettes or cigarette tobacco.

(k) Responsible parties as herein defined shall be classified as follows:

CLASS I: A corporation, partnership, individual, joint enterprise, or other entity which was or currently is engaged in the manufacture and first sale and/or the import for first sale of any product or substance containing asbestos and which during handling, use, application, or installation create the likelihood that dust containing asbestos will be produced, such classes of products and substances being identified in appendix A.

CLASS II: A corporation, partnership, individual, joint enterprise, or other entity, which was or currently is, engaged in the manufacture and first sale and/or the import for first sale of any product or substance containing asbestos and not included in Class I.

CLASS III: A corporation, partnership, individual, joint enterprise, or other entity, which was or currently is, engaged in the manufacture and first sale of digarettes or cigarette tobacco.

(1) The Secretary is authorized, subsequent to the initial product classification herein set forth, to reclassify products from Class I to Class II or from Class II to Class I. Any such product reclassification shall be based upon claims experience. In making any such product reclassification the Secretary shall comply with the rulemaking requirements of section 553 of title 5, United States Code, and the hearing requirements of sections 556 and 557 of title 5, United States Code. These sections shall apply as if the Secretary were the agency referred to therein.

Responsible parties shall have the right to petition the Secretary for a reclassification of any products manufactured by said responsible party; provided however, that following a determination after notice and hearing on any such petition, the party or parties filing such a

petition shall be precluded from filing a petition for reclassification of the same product or products for a period of one year from the date of determination.

(m) In the case of an affected person who is a woman, references in this Act to the wife or widow of such affected person shall be deemed to refer to the husband or widower, as the case may be, of such affected person.

(n) The term "accruing" means the time when an affected person knew or should have known of the existence of an asbestos-related disease.

SEC. 103. (a) Nothing in this Act shall be construed to prevent an affected person who has previously applied for benefits under this Act and whose disability has increased or the dependent of an affected person who had previously applied for benefits under this Act and whose disability had increased, from reapplying for benefits or from applying for an increase in the level of benefits.

SEC. 104. No person or person entitled to file a claim for benefits pursuant to the provisions of this Act or who would have been entitled to file such a claim but for the expiration of limitation of action periods as set forth in this Act or who has previously adjudicated or settled at common law a claim which would otherwise be brought under this act shall be allowed to recover against (a) a manufacturer, miner, distributor, seller, contractor, or applicator of asbestos fiber or asbestos materials, (b) a manufacturer, packager, distributor, or seller of cigarettes or cigarette smoking tobacco, (c) the United States of America, or (d) a union which has represented such person for collective bargaining purposes and/or the parent organization of

such union, for damages, actual or consequential, for bodily injury or death caused by exposure to asbestos and/or asbestos coupled with the inhalation of cigarette tobacco smoke, loss of consortium or for exemplary or punitive damages relating to such exposure: Provided, however, that nothing in this section shall operate as a bar to existing workers' compensation remedies as may exist in the several States or pursuant to Federal law.

SEC. 105. Except as otherwise provided herein, no corporation, partnership, individual, joint enterprise, governmental body, or any other entity may maintain any action for indemnity, contribution, monetary damages or monetary relief against any other corporation, partnership, individual, joint enterprise, governmental body or any other entity based upon (1) contributions required under Title III of this Act, (2) alleged liability to any party entitled to file a claim under this Act.

SEC. 106. Any affected person or dependent thereof entitled to file an application for benefits under the provisions of this Act, who as of the effective date of this Act, has pending in any Federal court or any court in any of the several States an action at common law to recover damages on account of any asbestos-related disease, as defined in section 102(c) of this Act, may elect, upon first dismissing with prejudice such action at common law, to proceed under the provisions of this Act: Provided, however, That such election shall be made within one hundred and eighty days from and after the effective date of this Act.

SEC. 107. Any claim for benefits by an affected person or his dependents under this Act shall be filed within three years after an initial medical determination of disability due to asbestos-related

disease or within three years after a death due to an asbestos-related disease, whichever occurs first, or said claim shall be barred.

SEC. 108. (a) No employer shall discharge or in any other way discriminate against any affected person employed by him because such person has filed a claim for benefits under this Act. No person shall cause or attempt to cause an employer to violate this section.

(b) Any affected person who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) of this section, or any representative of such affected person, may, within six months after such violation occurs, apply to the Secretary for a review of such alleged discharge or discrimination. A copy of the application shall be sent back to such person who shall be the respondent. Upon receipt of such application the Secretary shall cause an investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to enable the parties to present information relating to such violation. The parties shall be given written notice of the time and place of the hearing at least fourteen days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Each hearing examiner presiding under this section and under the provisions of title II and III of this Act shall receive compensation at the rate not less than that prescribed for GS-16 under section 5332 of title 5, United States Code. Upon receiving the report of such investigation, the Secretary shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein, requiring the person committing such violation to take such affirmative action

as the Secretary deems appropriate, including but not limited to, the rehiring or reinstatement of the affected person to his former position, with backpay. If he finds that there was no violation, he shall issue an order denying the application. Such order shall incorporate the Secretary's findings therein.

(c) Whenever an order is issued under this subsection granting relief to an affected person, at the request of such affected person a sum equal to the aggregate amount of all costs and expenses (including attorney's fees) as determined by the Secretary to have been reasonably incurred by such affected person for, or in connection with, the institution and prosecution of such proceedings, may be assessed against the person committing the violation.

SEC. 109. (a) An order of the Secretary entered pursuant to title II or title III of this Act allowing or denying benefits shall become effective when executed by the Secretary, and, unless proceedings for the review, suspension, or setting aside of such order are instituted as provided in subdivision (b) of this section, shall become final at the expiration of the thirtieth day thereafter.

(b) If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injuction proceedings, mandatory or otherwise, brought by any party in interest against the Secretary making the order, and instituted in the Federal district court for the judicial district in which the injury occurred (or in the United States District Court for the District of Columbia if the injury occurred in the District). The orders, writs, and processes of the court in such proceedings may run, be served, and be returnable anywhere in the United States. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceedings.

SEC. 110. The Secretary is authorized to enter into contracts with, and make grants to, public and private agencies, organizations, and individuals for the construction, purchase, and operation of fixed sites and mobile clinical facilities for the analysis, detection, examination, and treatment of asbestos-related disease, in those areas in which the Secretary determines that such facilities are unavailable or inadequate. The Secretary shall make such contracts or grants only if he determines that they will not jeopardize his ability to make payments from the Fund pursuant to section 301.

SEC. 111. The Secretary is authorized to establish and operate such field offices as necessary to assist affected persons and dependents in the filing and processing of claims under this Act. Such field offices shall, to the extent feasible, be reasonably accessible to such affected persons and dependents. The Secretary may, in the establishment of such field offices, enter into such arrangements as he deems necessary with the heads of other Federal departments, agencies, and instrumentalities, and with State agencies, for the use of existing facilities and personnel under their control.

TITLE II--BENEFITS FOR CLAIMS ACCRUING ON OR BEFORE DECEMBER 31, 1979

SEC. 201. (a) The Secretary shall, in accordance with the provisions of this title, and the regulations promulgated by him under this title, make payments of benefits in respect of disability of any affected person due to asbestos-related disease and in respect to the death of any affected person whose death was due to asbestos-related disease: Provided, however, that a claim for disability of an affected person which is unfiled or undetermined as of the date of death of

such affected person shall vest in his dependents.

(b) The Secretary shall by regulation prescribe standards for determining for purposes of section 201(a) whether an affected person is disabled due to asbestos-related disease; or whether the death of an affected person was due to asbestos-related disease. Regulations required by this subsection shall be promulgated and published in the Federal Register at the earliest practicable date after the date of enactment of this Act, but in no event later than one hun-

dred twenty days after this Act is enacted. In promulgating such regulations the Secretary shall comply with the rule-making requirements of section 553 of title 5, United States Code, and the hearing requirements of sections 556 and 557 of title 5, United States Code. These sections shall apply as if the Secretary were the agency referred to therein. Such regulations shall provide that affected persons or dependents seeking benefits under this Act must demonstrate to the satisfaction of the Secretary, under such regulations, and using such forms, as the Secretary may prescribe, that such affected person has, in fact, contracted an asbestos-related disease. In making the determination that an affected person has contracted a disabling abestos-related disease, the Secretary is directed to provide for the consideration of all relevant evidence including the history of the affected person's exposure to asbestos including, but not limited to, as relevant, medical tests such as blood gas studies, X-ray examination, pulmonary function studies, or physical performance tests, pathology studies, and medical histories, hospital records, physicians' reports and his spouse's affidavit, and in the case of a deceased affected person, other appropriate affidavits competent and relevant to show the affected person's physical condition, and other supportive material. The Secretary shall accept the interpretation by a physician who is board certified or board eligible

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in the fields of preventative medicine/occupational health, pulmonary medicine or radiology of a chest roentgenogram which is of acceptable quality submitted in support of a claim for benefits under this title if such roentgenogram has been taken by a radiologist or qualified radiologic technologist or technician, except where the Secretary has reason to believe that the claim has been fraudulently represented. Where there is no medical evidence, or where such evidence is insufficient in the case of a deceased affected person, affidavits may be considered as evidence to establish that an affected person was disabled due to asbestos-related disease or that his death was due to asbestos-related disease. The Secretary shall not make any determination that an affected person has not contracted an asbestos-related disease solely on the basis of a negative chest roentgenogram. In no event shall there be any presumption of asbestos-related disease based solely on the length or degree of exposure of an affected person to asbestos.

SEC. 202. (a) Benefit payments shall be made by the Secretary under this title as follows:

(1) In the case of death of an affected person due to asbestos-related disease, benefits shall be paid to his widow (if any) at the rate the deceased affected person would receive such benefits if he were totally disabled.

(2) In the case of death of an affected person who was

receiving benefits at the time of his death the benefits to which the deceased affected person was entitled at the time of death shall be paid to his widow (if any).

(3) In the case of permanent or temporary total disability of an affected person due to asbestos-related disease, the disabled affected person shall be paid benefits during the period of disability at a rate equal to the minimum monthly payment to which a Federal employee in grade GS–5 who is totally disabled, is entitled at the time of payment under chapter 81, of title 5, United States Code.

(4) In the case of permanent or temporary partial disability of an affected person due to asbestos-related disease, the disabled affected person shall be paid benefits at the rate prescribed by the Secretary: *Provided*, That such rates shall not be equal to or greater than the rate of benefits paid for total disability as provided in section 202 (a) (3).

(5) In the case of an individual entitled to benefit payments under clause (1), (2), (3), or (4) of this subsection who has one or more dependents, the benefit payment shall be increased at the rate of 50 per centum of such benefit payments, if such individual has one dependent, 75 per centum if such individual has two dependents, and 100 per centum if such individual has three or more dependents.

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(6) In the case of the child or children of an affected person whose death is due to asbestos-related disease, who is receiving benefits under this title at the time of his death and in the case of the child or children of a widow who is receiving benefits under this title at the time of her death, benefits shall be paid to such child or children as follows: If there is more than one such child, the benefits paid shall be divided equally among them and shall be paid at a rate equal to the rate specified in paragraphs (3) and (4) increased by 50 per centum of such rate if there are two such children, by 75 per centum of such rate if there are three children, and by 100 per centum of such rate if there are more than three children: *Provided*, That benefits shall only be paid to a child for so long as he meets the criteria for the term "child" contained in section 102(c)(3): *And provided further*, That no entitlement to benefits as a child shall be established under this paragraph (6) for any month for which entitlement to benefits as a widow is established under paragraphs (1) or (2).

(7) In the case of the dependent parent or parents of an affected person whose death is due to asbestos-related disease, or of an affected person who is receiving benefits under this title at the time of his death, and who is not survived at the time of his death by a widow, or a child, or in the case of the dependent surviving brother(s) or sister(s)

of such affected person who is not survived at the time of his death by a widow, child, or parent, benefits shall be paid under this title to such parent (s), or to such brother (s) or sister (s) at the rate specified in paragraph (5) (as if such parent (s) or such brother (s) or sister (s), were the children of such affected person). In determining for purposes of this paragraph whether a claimant bears the relationship as the minor's parent, brother or sister, the Secretary shall apply legal standards consistent with those applicable to relationship determination under title II of the Social Security Act. No benefits to a sister or brother shall be payable under this paragraph for any month beginning with the month in which he or she receives support from his or her spouse, or marries. As used in this paragraph, "dependent" means that during the one-year period prior to and ending with such affected person's death, such parent, brother, or sister was living in the affected person's household, and was, during such period, predominantly dependent on the affected person for support. Any such proof which is filed after the expiration of such period shall be deemed to have been filed within such period if it is shown to the satisfaction of the Secretary that there was good cause for failure to file such proof within such period. The determination of what constitutes "living in the affected person's household", predominantly dependent on the affected person

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for support, and good cause, shall for purposes of this paragraph be made in accordance with regulations of the Secretary.

(8) Any affected person not entitled to apply for payment of medical expenses for care and treatment of an asbestos-related disease pursuant to the worker's compensation laws of the State in which such affected person resides shall be entitled, under this Title, to apply for and receive benefits for medical care and treatment of an asbestos-related disease in an amount not to exceed that provided for pursuant to the worker's compensation laws of the State in which such affected person resides.

(9) If an individual's benefits would be increased under paragraph (5) of this subsection because he or she has one or more dependents, and it appears to the Secretary that it would be in the interest of any such dependent to have the amount of such increase in benefits (to the extent attributable to such dependent) certified to a person other than such individual, then the Secretary may, under regulations prescribed by him, certify the amount of such increase in benefits (to the extent so attributable) not to such individual but directly to such dependent or to another person for the use and benefit of such dependent; and any payment made under this clause, if otherwise valid under this title, shall be a com-

plete settlement and satisfaction of all claims, rights and interest in and to such payment.

(b) This title shall not be considered a workers' compensation law or plan for purposes of section 224(a) of the Social Security Act. All benefits provided hereunder are exclusive of and additional to all Social Security benefits.

(c) The statutory compensation benefits for an asbestos-related disease, as defined in section 102 of this Act to which an affected person would be entitled as of the effective date of this Act for an allowed claim for such asbestos-related disease under the worker's compensation, unemployment compensation, or disability insurance laws of such affected person's State of residence shall be deemed the base compensation benefit, and all benefits provided pursuant to this Act are exclusive of and additional to such base compensation benefit. Notwithstanding sections 202(a)(1) through 202(a)(4), inclusive of this Act, benefit payments under this section to an affected person or dependent shall be reduced, on a monthly or other appropriate basis, by an amount equal to any payment received by such affected person or dependent in excess of the base compensation benefit under the worker's compensation, unemployment compensation, or disability insurance laws of such person's State of residence, or applicable Federal worker's compen-

sation law, as a result of any increase in the schedule of benefits subsequent to the effective date of this Act.

(d) Benefits payable under this title shall be deemed not to be income for purposes of the Internal Revenue Code of 1954.

SEC. 203. (a) Except as otherwise provided in this title, no payment of benefits shall be made under this title except pursuant to a claim filed therefor in such manner, in such form and containing such information, as the Secretary shall by regulation prescribe.

(b) Claimants under this title shall be reimbursed in a sum not to exceed $1,000 for reasonable medical or legal expense incurred.

(c) The determination referred to in section 201(a) of this title shall be made by the Secretary in accordance with regulations prescribed by him. For purposes of such determination, the provisions of sections 221(d), 204, 205(a), (b), (except that the procedure of section 204(b) shall also be available to the brother(s) or sister(s) of the affected person), (d), (e), (h), (j), (k), (l), and (n), 206, 207, and 208 of the Social Security Act shall be applicable under this title with respect to an affected person, widow, child, parent, brother, sister, or dependent as if benefits under this part were benefits under title II of the Social Security Act.

SEC. 204. The Secretary shall issue such regulations as are necessary and appropriate to carry out the purpose of this title.

SEC. 205. The payment of benefits for claims accruing and/or arising prior to December 31, 1979, shall be paid from General Treasury funds of the United States of America.

SEC. 206. There are authorized to be appropriated for the fiscal year , dollars to carry out the purposes of this title, such sum to remain available until expended.

TITLE III--BENEFITS FOR CLAIMS ACCRUING AFTER DECEMBER 31, 1979

SEC. 301(a) Responsibility for funding the payment of benefits for all claims accruing and/or arising on or after January 1, 1980, and filed pursuant to this title shall be borne as specified in section 303(a). The Secretary shall direct the payment of benefits for valid claims according to the terms, rates and procedures and to the persons as set forth in sections 201, 202, 203,(b), (c) and 103, 106, and 204 of this Act, and according to the provisions of this title and the regulations promulgated by him under this title.

(b) Moneys to assure the payment of benefits under this title shall be secured in the manner set forth in this title.

SEC. 302. (a) There is hereby established within the Department of Labor the Asbestos Health Hazards Compensation Fund (hereafter referred to as the Fund). All

valid claims for benefits under this title shall be satisfied by payment from the Fund. For purposes of this title, the Fund shall be considered to have qualified as a tax-exempt organization under of the Internal Revenue Code.

(b) The Fund shall be directed by a Board of Directors (hereafter referred to as the Board). The Board shall be chaired by the Secretary of Labor or his delegate, and shall also include the Assistant Secretary of Labor for Occupational Safety and Health or his delegate, one representative from each class of responsible party as defined in section 102(1) of this Act to be appointed by the Secretary, three representatives of the affected persons to be appointed by the Secretary, and one person, a physician, deemed competent to render medical opinions regarding asbestos-related disease to be appointed by the Secretary. Board members appointed by the Secretary and delegates serving shall be selected upon the basis of their experience and competence in the field of occupational health. The Secretary's appointments shall be for terms of two years, and no representatives appointed by the Secretary shall be reappointed more than one time. Each appointment shall be made without regard to the provisions of title 5, United States Code, governing appointments in the competitive services.

(c) The public members of the Board shall be competent

in accordance with the provisions of section 3109 of title 5, United States Code.

(d) The Secretary shall furnish to the Board an executive secretary and legal counsel and such other personnel and other services as are deemed necessary to the conduct of its business.

(e) For purposes of this title—

(1) the Board, by majority vote, is empowered to determine the validity of all claims for benefits filed pursuant to this title;

(2) prior to authorizing the disbursement of moneys from the Fund in order to satisfy any claim for benefits, the Secretary is required to have in his possession the Board's certification that such claim is valid;

(3) the Secretary shall promulgate regulations which shall govern the operations of the Board under section 302 (c) (1) of this Act; and

(4) the Board, by majority vote, is authorized to invest such portion of the Fund as is not required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obliga-

tions at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of public debt obligations for purchase by the Fund. Such obligations issued for purchase by the Fund shall have maturities fixed with due regard for the needs of the Fund and shall bear interest at a rate equal to the average market yield (computed by the Secretary on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of four years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Board may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where it determines that the purchase of such other obligations is in the public interest. Any obligations acquired by the Fund (except public debt

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obligations issued exclusively to the Fund) may be sold by the Secretary of the Treasury at the market price, and such public debt obligations may be redeemed at par plus accrued interest. The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form part of the Fund.

(f) The Board shall hold no fewer than six meetings during each calendar year, which meetings shall be adjourned from day to day until a determination is made in all claims properly before the Board for disposition. All meetings of the Board shall be open to the public and a transcript shall be kept and made available for public inspection. The Board shall hold additional meetings on the call of its Chairman.

(g) The records, books, and any other supporting documents that the Chairman of the Board may direct to be maintained shall be made available to the General Accounting Office annually, and the General Accounting Office is hereby directed to conduct an annual audit of the Fund, reporting on such audit to the Congress, together with any other recommendations for legislative action which it deems advisable.

(h) Administrative expenses of the Board and expenses in administering the Fund shall be paid from the Fund.

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SEC. 303. (a) Except as otherwise provided in section 205 of this Act, the Fund shall be sustained and developed by means of contributions from the responsible parties as defined and classified in title I, section 102 of this Act and from the United States of America. The Secretary, with the advice and concurrence of the Director of the Internal Revenue Service, shall insure that such contributions are collected from the responsible parties and deposited in the Fund. Congress shall annually appropriate as the contribution of the United States of America, funds from the General Treasury, and deposit in the Fund a sum equal to that collected in each year from the responsible parties. To the extent that the Fund may be insufficient to meet it's obligations such insufficiencies shall be paid from General Treasury funds of the United States of America - to the extent that there exists a surplus in said Fund, said surplus shall be credited annually against contributions required in subsequent years, to each parties contributions to the Fund, on a pro-rata basis, based on their respective contributions.

(b) Each class of responsible party is required to contribute to the Fund, according to the following formula: for each quarter of every tax year, beginning with the first quarter of the tax year in 1980, a responsible party's contribution shall be:

(1) Class I--a sum of $325.00 dollars per ton of asbestos fiber purchased and used for the manufacture of Class I products for the quarter fifteen years preceding the quarter in which the contribution required under this Act is assessed.

(2) Class II--a sum of $32.50 dollars per ton of asbestos fiber purchased and used for the manufacture of Class II.

products for the quarter fifteen years preceding the quarter in which the contribution required under this Act is assessed (for example, sum assessed in the first quarter of 1980 would be based upon fiber purchase for the first quarter of 1965).

(3) Class III--a sum equal to three-tenths of 1 per centum of each responsible party's net domestic sales of cigarettes and cigarette smoking tobacco for the quarter fifteen years preceding the year in which payment is made.

(c) For purposes of section 162(a) of the Internal Revenue Code of 1964 (relating to trade or business expenses), any contribution paid by a responsible party under section 303(b) of this Act shall be considered to be an ordinary and necessary expense of carrying on the trade or business of such responsible party.

(d) Each responsible party shall make, keep, preserve, and make available to the Secretary such reports as the Secretary may prescribe as necessary or appropriate for the enforcement of this section. The Secretary may require the periodic reporting by each responsible party of such information as he may deem reasonably necessary for the purpose of carrying out his responsibilities under this section.

(e) If a responsible party fails or refuses to pay an assessment required to be paid under this title within thirty days after notification thereof, or if a responsible party

fails or refuses to comply with a rule promulgated pursuant to this Act, the Secretary is authorized to bring a civil action in the appropriate United States district court to require the payment of such assessment or compliance with such rule. A responsible party who fails or refuses to pay any assessment required to be paid under this section may be assessed a civil penalty by the Secretary in such amount as the Secretary may prescribe, but not in excess of an amount equal to 50 per centum the assessment the operator failed or refused to pay. Such penalty shall be in addition to any other liability of the responsible party under this Act. Penalties assessed under this paragraph may be recovered in a civil action brought by the Secretary and penalties so recovered shall be deposited in the Fund.

(f) During any period in which this title is applicable to a responsible party, as defined in section 102(k) of this Act, who on or after October 1, 1964, acquired such a business as defined in section 102(k) of this Act or substantially all the assets thereof from a corporation, partnership, individual, joint enterprise, or any other entity who was the operator of such business or the owner of such assets on or after October 1, 1964, such responsible party shall be liable for and shall in accordance with the provisions of title III of this Act make contributions to the Fund in the same manner and in the same amount as would

SE. 304. Beginning on March 31, 1981, and on that date each year thereafter, the Board shall deliver to the Congress a report covering its activities for the preceding calendar year.

(a) The report shall include, but is not limited to, a description of the number of persons receiving benefits under this title, together with a description of the total amount of benefits paid out of the Fund in order to satisfy such benefit claims and the Board's forecast for similar payments for the next year.

(b) The cost of such report shall be borne by the Fund, and such report will be made available upon request at no cost to any responsible party as defined in title I, section 102, of this Act, and to any recognized bargaining unit for affected persons. The report shall also be made available to any other person upon request and after receipt of a reasonable fee therefor as set by the Secretary.

SEC. 305. For the purposes of covering the initial administrative costs involved in establishing and administering the Fund, there are authorized to be appropriated $_____ for the fiscal year 1980.

95TH CONGRESS
1ST SESSION

H. R. 8639

A BILL

To provide equitable, comprehensive, and exclusive benefits to (a) persons who are disabled as a result of employment-related diseases caused by the inhalation or ingestion of asbestos, and/or the inhalation of asbestos coupled with the inhalation of cigarette tobacco smoke, (b) members of such person's household, and (c) the surviving dependents of such persons whose death was due to such disease.

By Mrs. FENWICK, Mr. BEARD of Rhode Island, Mr. DODD, Mr. EILBERG, Mr. VENTO, Mr. SIMON, Mr. LAGOMARSINO, Mr. HOLLENBECK, Mr. HARRINGTON, Mr. MITCHELL of Maryland, Mr. STEERS, Mr. HAWKINS, Mr. DELLUMS, Mr. EDWARDS of California, Mr. MINETA, Mr. CARR, Mr. RODINO, Mr. DANIELSON, Mr. MAGUIRE, and Mr. MCCLOSKEY

AUGUST 2, 1977
Referred to the Committee on Education and Labor

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"A P P E N D I X - A"

Insulating and acoustical spray materials

Calcium silicate sheets

Dry wall spackling and patching compounds (joint cements)

Asbestos paper, unsaturated

Roofing felt, unsaturated

Millboard, unsaturated

Asbestos textiles, untreated

Asbestos-cement sheets

Friction materials, automotive