**Union Calendar No. 392**

103D CONGRESS
2D SESSION

# H. R. 3800

**[Report No. 103–582, Parts I, II, and III]**

# A BILL

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes.

AUGUST 26, 1994

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 3, 1994

Mr. SWIFT, by request (for himself, Mr. DINGELL, Mr. MINETA, Mr. ROSTENKOWSKI, and Mr. APPLEGATE) introduced the following bill; which was divided and referred as follows: titles I through VIII jointly to the Committees on Energy and Commerce and Public Works and Transportation; and title IX to the Committee on Ways and Means

JUNE 30, 1994

Reported from the Committee on Energy and Commerce with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

AUGUST 8, 1994

Reported from the Committee on Public Works and Transportation with an amendment

[Strike out all after the enacting clause and insert the part printed in bold face roman]

AUGUST 26, 1994

Reported from the Committee on Ways and Means with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out title IX of the introduced bill and insert the part printed in bold face italic]

[For text of introduced bill, see copy of bill as introduced on February 3, 1994]

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# A BILL

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 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,*

3 ***SECTION 1. SHORT TITLE.***

4 *This Act may be cited as the ''Superfund Reform Act*
5 *of 1994''.*

6 ***SEC. 2. TABLE OF CONTENTS.***

7 *The table of contents for this Act is as follows:*

*Sec. 1. Short title.*
*Sec. 2. Table of contents.*
*Sec. 3. References to Comprehensive Environmental Response, Compensation, and Liability Act of 1980.*

*TITLE I—COMMUNITY PARTICIPATION AND HUMAN HEALTH*

*Sec. 101. Public participation.*
*Sec. 102. Community working groups.*
*Sec. 103. Hazard ranking system.*
*Sec. 104. Disease registry and medical care providers.*
*Sec. 105. Substance profiles.*
*Sec. 106. Determining health effects.*
*Sec. 107. Public health at NPL facilities.*
*Sec. 108. Health studies.*
*Sec. 109. Distribution of materials to health professionals and medical centers.*
*Sec. 110. Grant awards, contracts, and community assistance activities.*
*Sec. 111. Public health recommendations in remedial actions.*
*Sec. 112. Transition.*

*TITLE II—STATE ROLES*

*Sec. 201. Contracts or cooperative agreements with States.*
*Sec. 202. State cost share.*
*Sec. 203. Siting.*
*Sec. 204. The National Priorities List.*
*Sec. 205. The State registry.*
*Sec. 206. Conforming and miscellaneous amendments.*
*Sec. 207. Study of authorization of States to carry out Superfund.*
*Sec. 208. State role at Federal facilities.*

*TITLE III—VOLUNTARY RESPONSE*

*Sec. 301. Voluntary response program.*

*TITLE IV—LIABILITY AND ALLOCATION*

*Sec. 401. Information gathering and access.*
*Sec. 402. Compliance with administrative orders.*
*Sec. 403. Limitations to liability for response costs.*
*Sec. 404. Liability.*
*Sec. 405. Civil proceedings.*
*Sec. 406. Limitations on contribution actions.*
*Sec. 407. Scope of rulemaking authority.*
*Sec. 408. Enhancement of settlement authorities.*
*Sec. 409. Professional services.*
*Sec. 410. Final covenants.*
*Sec. 411. Expedited final settlements.*
*Sec. 412. Allocation procedures.*
*Sec. 413. Recycling transactions.*

*TITLE V—REMEDY SELECTION AND CLEANUP STANDARDS*

*Sec. 501. Cleanup standards.*
*Sec. 502. Remedy selection.*
*Sec. 503. Miscellaneous amendments to section 121.*
*Sec. 504. Response authorities.*
*Sec. 505. Removal actions.*
*Sec. 506. Transition.*

*TITLE VI—MISCELLANEOUS*

*Sec. 601. Interagency agreements at mixed ownership and mixed responsibility facilities.*
*Sec. 602. Transfers of uncontaminated property.*
*Sec. 603. Agreements to transfer by deed.*
*Sec. 604. Alternative or innovative treatment technologies.*
*Sec. 605. Definitions.*
*Sec. 606. Response claims procedures.*
*Sec. 607. Small business ombudsman.*
*Sec. 608. Consideration of local government cleanup priorities.*
*Sec. 609. Consistent application among regional offices.*
*Sec. 610. Study of participants.*
*Sec. 611. Public comment.*
*Sec. 612. Certification of environmental training and certification organizations.*
*Sec. 613. Savings clause.*
*Sec. 614. Federal entities and facilities.*

*TITLE VII—FUNDING*

*Sec. 701. Authorization of appropriations.*
*Sec. 702. Orphan share funding.*
*Sec. 703. Agency for Toxic Substances and Disease Registry.*
*Sec. 704. Limitations on research, development, and demonstration programs.*
*Sec. 705. Authorization of appropriations from general revenues.*
*Sec. 706. Additional limitations.*
*Sec. 707. Uses of the fund.*

*TITLE VIII—ENVIRONMENTAL INSURANCE RESOLUTION FUND*

*Sec. 801. Short title.*
*Sec. 802. Definitions.*
*Sec. 803. Environmental Insurance Resolution Fund.*
*Sec. 804. Resolution offers.*
*Sec. 805. Documentation of claims and insurance coverage.*
*Sec. 806. Amount of resolution offers.*
*Sec. 807. Acceptance of resolution offer.*
*Sec. 808. Resolution payments.*
*Sec. 809. Rejection of resolution offer and reimbursement to insurer.*
*Sec. 810. Financial statements, audits, investigations, and inspections.*
*Sec. 811. Stay of pending litigation.*
*Sec. 812. Regulations.*
*Sec. 813. Court jurisdiction and penalties.*
*Sec. 814. Miscellaneous provisions.*
*Sec. 815. Reports.*
*Sec. 816. Effective date.*
*Sec. 817. Termination of authority to offer and accept resolution.*
*Sec. 818. Termination of fund.*

*TITLE IX—TAXES*

*Sec. 901. Amendments to the Internal Revenue Code of 1986.*
*Sec. 902. Environmental fees and assessments on insurance companies.*
*Sec. 903. Funding provisions for Environmental Insurance Resolution Fund.*
*Sec. 904. Resolution Fund not subject to tax.*

***SEC. 3. REFERENCES TO COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980.***

*Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (commonly known as ''Superfund'') (42 U.S.C. 9601 and following).*

# *TITLE I—COMMUNITY PARTICIPATION AND HUMAN HEALTH*

*Sec. 101. Public participation.*
*Sec. 102. Community working groups.*
*Sec. 103. Hazard ranking system.*
*Sec. 104. Disease registry and medical care providers.*
*Sec. 105. Substance profiles.*
*Sec. 106. Determining health effects.*
*Sec. 107. Public health at NPL facilities.*
*Sec. 108. Health studies.*
*Sec. 109. Distribution of materials to health professionals and medical centers.*
*Sec. 110. Grant awards, contracts, and community assistance activities.*
*Sec. 111. Public health recommendations in remedial actions.*
*Sec. 112. Transition.*

## *SEC. 101. PUBLIC PARTICIPATION.*

*Section 117 (42 U.S.C. 9617) is amended by striking subsection (e) and inserting the following:*

*"(e) GRANTS FOR TECHNICAL ASSISTANCE.—*

*"(1) AUTHORITY.—In accordance with the rules promulgated by the Administrator, the Administrator may make grants available to any group of individuals which may be affected by the release or threatened release of hazardous substances, pollutants, or contaminants at any facility on the State Registry or the National Priorities List. Such grants shall be known as Technical Assistance Grants. To ensure that the application process is accessible to all affected citizens, the Administrator shall periodically review such process and, based on such review, shall implement appropriate changes to the application process to improve access.*

*"(2) SPECIAL RULES.—No matching contribution shall be required for a Technical Assistance Grant. The President shall make a portion of the grant available to the grant recipient, in advance of the expenditures to be covered by the grant, in $5,000 installments.*

*"(3) REPRESENTATIVE OF THE COMMUNITY.—The President shall publish guidance for determining that the recipient of any Technical Assistance Grant award is a legitimate representative of the community affected by the facility.*

*"(4) LIMIT PER FACILITY.—Not more than one grant may be made under this subsection with respect to a single facility, but the grant may be renewed to facilitate public participation at all stages of response action. Limits shall be established with respect to the number of years for which grants may be available based on the duration, type, and extent of response activity at a facility.*

*"(5) FUNDING AVAILABILITY.—Subject to the limitations provided in paragraph (6), grants shall be made available to affected citizens who live in communities containing facilities in the State Registry not listed on the National Priorities List.*

*"(6) FUNDING LIMIT.—Not more than 4 percent of the funds made available for carrying out this Act for any fiscal year may be used for grants under this subsection in that fiscal year and not more than one-eighth of the funds under this subsection may be used for grants with respect to facilities not listed on the National Priorities List. If such one-eighth portion is not needed for such facilities, such portion may be used for grants with respect to facilities listed on the National Priorities List.*

*"(7) FUNDING AMOUNT.—The initial amount of any grant under this subsection may not exceed $50,000 for a single grant recipient. However, the Administrator shall increase the amount of the initial grant, as appropriate, to reflect the complexity of response action, the nature and extent of contamination at the facility, the level of facility activity, projected total needs as requested by the grant recipient, the size and diversity of the affected population, and the ability of the grant recipient to identify and raise funds from other sources.*

*"(8) AUTHORIZED GRANT ACTIVITIES.—*

*"(A) INTERPRETATION OF INFORMATION.—Grants awarded under this subsection may be used to obtain technical assistance in interpret-*

*ing information with regard to (i) the nature of the hazard at a facility; (ii) the remedial investigation and feasibility study; (iii) the record of decision; (iv) the selection, design, and construction of the remedial action; (v) operation and maintenance; or (vi) removal activities at such facility.*

*"(B) ADDITIONAL ACTIVITIES.—Grants awarded under this section also may be used (i) to obtain technical assistance in gathering and interpreting information used to rank facilities according to the Hazard Ranking System, (ii) for gathering information to assess a remedy selection decision, (iii) to hire health and safety experts to advise affected residents on health assessment and contamination data gathering efforts and response activities, (iv) to hire a community liaison to potentially responsible parties and government agencies, (v) to hire experts to file comments with governmental agencies and generate other documents as necessary to ensure full participation by the grant recipient, (vi) to hire experts to provide input to the design of any health studies that a government agency performs, and (vii) for training funds for interested*

*affected community members to enable them to more effectively participate in the remedy selection process.*

*"(C) LIMITATION.—Grants awarded under this section may not be used for the purposes of collecting field sampling data.*

*"(9) USE OF EXPERTS.—Technical or other experts hired by grant recipients under this subsection shall be hired by such recipients pursuant to guidelines developed by the Administrator.*

*"(10) NON-SITE-SPECIFIC GRANTS.—In accordance with the rules promulgated by the Administrator, the Administrator may make Technical Assistance Grant funds available to nonprofit organizations and citizens groups to enhance their participation in consensus-based rulemaking processes carried out in accordance with this Act. Total funding for all such grants shall not exceed $100,000.*

*"(f) IMPROVING CITIZEN AND COMMUNITY PARTICIPATION IN THE SUPERFUND DECISIONMAKING PROCESS.—(1)(A) In order to provide an opportunity for meaningful public participation in every significant phase of response activities under this Act, the President shall provide the opportunity for public meetings and publish a notice of such*

*meetings before or during performance of each of the following:*

*"(i) The health assessment and the preliminary assessment and site inspection, as appropriate. Where the President determines a meeting is not appropriate at the preliminary assessment and site inspection stage, the President shall provide adequate public notice of that decision.*

*"(ii) The Remedial Investigation and Feasibility Study (RI/FS).*

*"(iii) The announcement of the preferred remedial alternative.*

*"(iv) The completion of the work plan for the RI/FS, Remedial Design and Remedial Action.*

*"(B) Public meetings shall be designed to obtain information from the community and disseminate information to the community concerning the President's facility activities and pending decisions.*

*"(2) The President also shall provide reasonable notice of an opportunity for public participation in meetings in which—*

*"(A) the participants include Federal officials, or State officials where the State is conducting response activities, with authority to make significant decisions affecting a response action, and any other*

*person or persons, unless the other person or persons are all coregulators that are not potentially responsible parties, or government contractors; and*

*"(B) the subject of the meeting involves the development of the work plan for the preliminary assessment and site inspection, the RI/FS, Remedial Design or Remedial Action, or any other phase of the remedial process for facilities on the National Priorities List or in the State Registry.*

*"(3) To the extent practicable, before or during the health assessments and site inspection, the President shall solicit and evaluate concerns, interests, and information from the community likely affected by the facility. The evaluation shall include, as appropriate, face-to-face community surveys to identify the location of private drinking water wells, historic and current or potential use of water, and other environmental resources in the community; a public meeting; written responses to significant concerns; and other appropriate participatory activities.*

*"(4) During the remedial investigation and feasibility study, the President shall solicit the views and preferences of the affected community on the remediation and disposition of hazardous substances, pollutants, or contaminants at the facility. The views and preferences of affected community members shall be described in the remedial investiga-*

*tion and feasibility study and considered in the screening of remedial alternatives for the facility.*

*"(5) Members of the affected community may propose remedial alternatives to the President, and the President shall consider such alternatives in the same manner as the President considers alternatives proposed by potentially responsible parties.*

*"(6) The President, with the assistance of the Citizen Information and Access Office (as provided for in subsection (h)), shall provide information to the community and seek comment from affected citizens throughout all significant phases of the response action at the facility. The President shall ensure that information gathered from affected citizens during community outreach efforts reaches appropriate technical staff in a timely and effective manner. The President also shall ensure reasonable written or other appropriate responses to such information.*

*"(7) The President shall make all nonprivileged information available to the public throughout all phases of response action at the facility. Such information shall be made available to the public for inspection and copying without the need to file a formal request subject to reasonable service charges as appropriate.*

*"(8)(A) The President, in carrying out responsibilities under this Act, shall ensure that the presentation of infor-*

*mation on risk is unbiased and informative. To the extent feasible, documents made available to the general public which purport to describe the degree of risk to human health shall, at a minimum, state—*

*"(i) the population or populations addressed by any risk estimates;*

*"(ii) the expected risk or central estimate of risk for the specific population;*

*"(iii) any appropriate upperbound and lowerbound estimates; and*

*"(iv) the reasonable range or other description of uncertainties in the assessment process.*

*"(B) To the extent practical and appropriate, the Administrator shall provide comparisons of the level of risk from hazardous substances found at facilities to comparable levels of risk from hazardous substances ordinarily encountered by the general public through other routes of exposure.*

*"(9) Notwithstanding any other provision of this subsection, in the case of a removal action taken in accordance with section 104 which is expected to extend beyond 180 days, the President shall comply with the requirements of this section. Whenever the planning period for a removal action is expected to be greater than 6 months, the Administrator shall provide the community with notice of the an-*

*ticipated removal action and a public comment period of no less than 30 days.''.*

***SEC. 102. COMMUNITY WORKING GROUPS.***

*Section 117 (42 U.S.C. 9617) is amended by adding after subsection (f) (as added by this Act) the following new subsections:*

*''(g) COMMUNITY WORKING GROUPS.—*

*''(1) CREATION AND RESPONSIBILITIES.—The President shall provide the opportunity for the establishment of a representative public forum, known as a Community Working Group (CWG), to achieve direct, regular, and meaningful consultation with all interested parties throughout all stages of a response action whenever—*

*''(A) the President determines such a group will be helpful; or*

*''(B) 50 citizens, or at least 20 percent of the population of a locality in which the National Priorities List facility is located, petition for a Community Working Group to be established.*

*''(2) DUTIES.—Each Community Working Group shall provide information and views to the President, and, as appropriate, any or all of the following: the Agency for Toxic Substances and Disease*

*Registry, State regulatory agencies, Federal and State natural resource trustees, and potentially responsible parties conducting response actions. The information and views reported shall include the various subjects related to facility remediation, including facility health studies, potential remedial alternatives, and selection and implementation of remedial and removal actions. The Community Working Group shall attempt to achieve consensus among its members before reporting positions to agencies or potentially responsible parties. In cases in which consensus cannot be reached, the Community Working Group shall allow the presentation of divergent views.*

*"(3) LAND USE RECOMMENDATIONS.—To obtain greater community support for remedial decisions affecting future land use, the President shall consult with the CWG on a regular basis throughout the remedy selection process regarding the reasonably anticipated future use of land at the facility and any institutional controls required to assure that land use determinations remain in effect. The CWG may offer recommendations on the reasonably anticipated future use of land at the facility to the President at any time prior to the selection of a remedy at the facility. The land use recommendation shall consider at a*

*minimum future facility waste management needs and the criteria in section 121(b)(2). The President shall not be bound by any recommendation of the CWG. However, the President shall give substantial weight to the CWG's land use recommendation when the CWG achieves consensus on the reasonably anticipated future use of land at the facility. In cases in which there is substantive disagreement within the CWG over a recommendation regarding the reasonably anticipated future use of land at the facility, the President shall make reasonable efforts to reconcile the differences. In the event of continued substantive disagreement, substantial weight shall be given to the views of the residents in the affected community. Should the President make a determination that is inconsistent with a consensus CWG recommendation on the reasonably expected future use of land at the facility, the President shall issue a written explanation for the inconsistency.*

*"(4) COMMUNITY WORKING GROUP INPUT.—With the exception of land use recommendations, input received from the Community Working Groups shall be considered by the President to be of equal weight with the advice received from the Technical Assistance*

*Grant recipients and other affected community members.*

*"(5) COMMUNITY WORKING GROUP MEMBERS.—Members shall serve on the Community Working Group without pay. Membership on the Community Working Group shall not exceed 20 persons. The President shall solicit and accept nominations for the Community Working Group membership. Ultimate selection of CWG members shall be made by the President after consultation with the Citizen Information and Access Office as provided for in subsection (h). The President shall also provide notice and opportunity to participate to persons who are or historically have been disproportionately affected by facility contamination in their community. Each Community Working Group shall, to the extent practicable, reflect the composition of the community near the facility and the diversity of interest. Local residents shall comprise no less than 50 percent of the total membership of the CWG. In general, the President shall allow members of the following groups representation on a CWG:*

*"(A) Persons residing or owning residential property near the facility or persons who may be directly affected by the releases from the facility.*

*At least one person in this group shall represent the Technical Assistance Grant recipient if such a grant has been awarded under subsection (e).*

*"(B) Persons who, although not residing or owning property near the facility, may be potentially affected by releases from the facility.*

*"(C) Members of the local medical community practicing in the community.*

*"(D) Representatives of local Indian tribes or Indian communities.*

*"(E) Local representatives of citizen, environmental, or public interest groups with members residing in the community.*

*"(F) Local government which may include pertinent city or county governments, or both, and any other governmental unit which regulates land use in the vicinity of the facility.*

*"(G) Workers at the facility who will be involved in actual response operations.*

*"(H) Workers employed at the facility during facility operation.*

*"(I) Facility owners and local representatives of the significant Potentially Responsible Parties (PRPs), who represent, wherever practicable, a balance of PRP interests.*

*"(J) Members of the local business community.*

*"(6) TECHNICAL AND ADMINISTRATIVE SUPPORT FOR COMMUNITY WORKING GROUPS.—The President shall provide administrative services and meeting facilities for Community Working Groups. The Administrator of Environmental Protection Agency, the Administrator of the Agency for Toxic Substances and Disease Registry and the State, as appropriate, shall participate in Community Working Group meetings to provide information and technical expertise, but shall not be members of the Community Working Group.*

*"(7) OTHER PUBLIC COMMENT.—The existence of a CWG shall not diminish any other obligation of the President to consider the views of any person in selecting response actions under this Act.*

*"(h) CITIZEN INFORMATION AND ACCESS OFFICES.—*

*"(1) ESTABLISHMENT OF CITIZEN INFORMATION AND ACCESS OFFICES.—Within 18 months after the date of enactment of the Superfund Reform Act of 1994, a Citizen Information and Access Office (CIAO) shall be established within each State to perform the functions provided in this subsection. The CIAO shall be an independent special purpose unit of*

*the government, subject to the administrative laws of the State, including any sunshine laws. If a CIAO has not been established in a State within such 18 months, the Administrator shall establish an office within the Agency to perform the functions of the CIAO in that State until such time as a CIAO is established.*

*"(2) PRIMARY FUNCTIONS.—Each Citizen Information and Access Office shall have the following primary functions:*

*"(A) The Citizen Information and Access Office shall inform citizens and elected officials at all levels of government of the existence of State Registry and National Priorities List facilities in the State.*

*"(B) The Citizen Information and Access Office shall provide citizens with a description of the identification and response process under this Act and citizens' legal rights within that process. It may include identification of resources, including Technical Assistance Grants, that are available to assist affected citizens in participating effectively in the Superfund process. Information shall be disseminated in a manner that is easily understood by the community,*

*considering any unique cultural needs of the community, including presentation of information orally and distribution of information in languages other than English as appropriate. Other information that the CIAO shall provide to the public may include the following:*

*''(i) The possibility, where relevant, that a community may qualify to receive an alternative water supply or relocation assistance.*

*''(ii) The potential for or existence of a Community Working Group.*

*''(iii) A description of the facility's location and characteristics, the hazardous substances, pollutants or contaminants present, the known exposure pathways, and the steps being taken to assess the risk presented by the facility. The Citizen Information and Access Office shall disseminate information characterizing the risks presented by a facility. Where a CIAO receives conflicting information from the President and the Community Working Group, the CIAO will make every effort to resolve any apparent difference in information on the risks*

*present at the facility before it distributes that information to the public. Where no agreement is reached among the Citizen Information and Access Office, the President, and the Community Working Group, the Citizen Information and Access Office shall disseminate such information reflecting the differing views about the risk presented by the facility. The Citizen Information and Access Office shall seek to ensure that the information it disseminates is based on the most current technical and scientific data in its possession for any State Registry or National Priorities List facility.*

*''(C) The Citizen Information and Access Office shall serve as an information clearinghouse in each State. Its functions also shall include maintaining records of each facility's status and any health data generated concerning National Priorities List facilities in each State. The facility data maintained by the Citizen Information and Access Office shall also include—*

*''(i) a record of any institutional controls at all facilities in the State;*

*"(ii) any annual health data generated in connection with the facility;*

*"(iii) the location of each facility on the State Registry;*

*"(iv) to the extent available, the hazardous substances or pollutants or contaminants present at each facility in the State, including the volume of the hazardous substances or pollutants or contaminants;*

*"(v) the exposure pathways, current exposure (if any), potential future exposure, and risks to human health or the environment, after seeking to resolve any discrepancies as provided in subparagraph (B)(iii);*

*"(vi) protective concentration levels established for the facility;*

*"(vii) the biennial Environmental Justice Report prepared pursuant to this section; and*

*"(viii) any report generated during the review conducted in accordance with section 121(c).*

*"(D) The Citizen Information and Access Office shall assist the Administrator in the Ad-*

*ministrator's efforts to disseminate information, notify citizens of public meetings, notify potential Community Working Group members, and other tasks, as appropriate.*

*"(E) The Citizen Information and Access Office shall collect available information from the Administrator or other Federal or State agencies regarding the continued effectiveness of removal and remedial actions taken in the State.*

*"(F) The Citizen Information and Access Office shall conduct outreach activities and provide information to small disadvantaged businesses about Federal and State contracting and (to the extent available) subcontracting opportunities at facilities in the State.*

*"(3) FUNDING.—Funding for all Citizen Information and Access Offices, collectively, shall not exceed $50,000,000 per year. The Administrator shall publish guidelines establishing a formula for determining the actual amount of funding for each Citizen Information and Access Office and procedures for awarding grants to any CIAO. The formula shall include factors such as the number and complexity of State Registry and National Priorities List facilities in the State. The funding shall be available directly*

*to each Citizen Information and Access Office or, in States where no CIAO is established, the funding shall be made available to the Administrator to carry out the responsibilities of this subsection in that State or for the use of the entity with whom the Administrator contracts to perform the functions of the CIAO.*

*"(4) CITIZEN INFORMATION AND ACCESS OFFICE GOVERNING BOARD.—*

*"(A) ESTABLISHMENT.—Each Citizen Information and Access Office shall establish a volunteer Citizen Governing Board which shall have the ultimate responsibility for ensuring that the Citizen Information and Access Office is properly managed.*

*"(B) CITIZEN INFORMATION AND ACCESS OFFICE GOVERNING BOARD MEMBERS.—*

*"(i) NOMINATIONS.—Citizens active in State Registry and National Priorities List facility communities shall nominate persons for board membership.*

*"(ii) APPOINTMENTS.—The Governor of each State shall appoint, from those nominees put forward, between 7 and 15 citizens to serve as board members.*

*"(iii) MEMBERS QUALIFICATIONS.—Where possible, the Governor shall ensure that one-half of the appointees reside in communities affected by a variety of National Priorities List facilities in the State, and the other half reside in communities affected by a variety of non-NPL State Registry facilities in the State. Board members shall have a demonstrated commitment to the needs of the citizens in these communities, and shall reasonably reflect the racial and ethnic composition of these communities. Special efforts shall be made to nominate citizens who are or historically have been disproportionately adversely affected by facility contamination.*

*"(iv) EXPERIENCE.—Where possible, Board members should have a background in a field of study related to the scientific and technical issues common to Superfund facilities, or have practical experience related to the Superfund program.*

*"(v) TERMS.—Board members shall serve for limited, staggered terms.*

*"(5) CITIZEN INFORMATION AND ACCESS OFFICE STAFF.—Each Citizen Information and Access Office shall have a permanent staff to assist in carrying out its functions. Staff shall have demonstrated qualifications for working with citizens in communities located near State Registry or National Priorities List facilities, and shall also meet other criteria established by the President in consultation with the Citizen Information and Access Office Citizen Governing Board. An Executive Director or President, selected by the full Governing Board, shall be responsible for all Citizen Information and Access Office staffing decisions.*

*"(6) FEDERAL OVERSIGHT OF CITIZEN INFORMATION AND ACCESS OFFICE.—*

*"(A) REPORT.—The Citizens Information and Access Office shall report annually to the Administrator regarding performance of its duties and shall provide a detailed accounting of its use of funds under this section.*

*"(B) VERIFICATION BY INSPECTOR GENERAL.—The Inspector General of the Environmental Protection Agency shall periodically review the programs and reports made under this section.*

*"(C) CONSEQUENCES OF FAILURE.—The Administrator may withhold any funding authorized under this section if the Administrator determines, after notice to the affected CIAO, that the CIAO has expended funds in a manner inconsistent with this section.*

*"(7) CITIZEN INFORMATION AND ACCESS OFFICES AND COMMUNITY WORKING GROUPS FOR TRIBAL PEOPLES.—Members of Indian tribes affected by a facility on the National Priorities List may petition the Administrator to form a body that is the equivalent of a State Citizen Information and Access Office. Notwithstanding the creation of a tribal Citizen Information and Access Office, the State Citizen Information and Access Office shall be responsible for providing information and expertise to tribal members as well as other citizens in the State. Tribal members may establish Community Working Groups under subsection (g) regardless of whether there exists a tribal Citizen Information and Access Office or other tribal program relating to this Act.*

*"(i) ENVIRONMENTAL JUSTICE STUDY.—*

*"(1) REPORT BY THE ADMINISTRATOR.—The Administrator shall prepare and submit to Congress an Environmental Justice Study two years after the date*

*of enactment of the Superfund Reform Act of 1994 and every 2 years thereafter. Such study also shall be provided to the Citizen Information Access Offices. The Administrator and Citizen Information Access Offices shall ensure that copies of such studies are made available to the public.*

*"(2) CONTENT OF THE REPORT.—The Administrator's report shall include an analysis of each facility which shall compare information on priority setting, response actions, and public participation requirements conducted under this Act to the population, race, ethnicity, and income characteristics of each community affected by each facility.*

*"(3) EVALUATION.—The Administrator shall evaluate the information in the study to determine whether priority setting, response actions, and public participation requirements were conducted in a fair and equitable manner and identify program areas that require improvements or modification.*

*"(4) ACTIONS BASED ON EVALUATION.—The Administrator shall institute the necessary improvements or modifications to address any deficiencies identified in the study prepared under this section.".*

***SEC. 103. HAZARD RANKING SYSTEM.***

*Section 105 (42 U.S.C. 9605(a)) is amended as follows:*

*(1) By inserting after subsection (g) the following new subsections:*

*"(h) HAZARD RANKING SYSTEM.—In setting priorities under subsection (a)(8), the President—*

*"(1) shall group facilities together, even if they are not adjacent or geographically juxtaposed, and score them as a single facility where more than one facility listed on the State Registry results in hazardous substances exposures to the same population;*

*"(2) may take into account to the maximum extent technically feasible any history of exposure to hazardous substances in the community regardless of the source of exposure, in placing facilities on the National Priorities List;*

*"(3) shall take into account the use of land or waterways for subsistence, religious, spiritual, or cultural practices where such use results in additional exposures, in placing facilities on the National Priorities List; and*

*"(4) shall conduct interviews with persons affected by the facility and living in the community and solicit their input and information in the hazard ranking system evaluation.*

*"(i) ENVIRONMENTAL JUSTICE FACILITY SCORING.—The Administrator shall evaluate major urban areas and*

*any other areas where environmental justice concerns may warrant special attention (such as tribal lands or poor rural communities) and identify 5 facilities in each region of the Environmental Protection Agency that are, or that should be, on the State Registry and that are likely to warrant inclusion on the National Priorities List. These facilities shall be accorded a priority in evaluation for NPL listing and scoring, and shall be evaluated for listing within 2 years after the date of enactment of the Superfund Reform Act of 1994.''.*

*(2) By striking the period at the end of paragraph (10) of subsection (a) and inserting ''; and'' and by adding the following new paragraph after such paragraph (10):*

*''(11) a process and procedure for reviewing petitions to reevaluate a facility not on the National Priorities List for inclusion on the National Priorities List where paragraphs (1), (2), and (3) of subsection (h) are relevant.''.*

***SEC. 104. DISEASE REGISTRY AND MEDICAL CARE PROVIDERS.***

*Section 104(i)(1) (42 U.S.C. 9604(i)(1)) is amended as follows:*

*(1) By amending subparagraph (A) to read as follows:*

*''(A) in cooperation with the States, for scientific purposes and public health purposes, establish and maintain a national registry of persons exposed to toxic substances;''.*

*(2) In subparagraph (E), by striking ''admission to hospitals and other facilities and services operated or provided by the Public Health Service'' and inserting ''referral to accredited medical care providers''.*

***SEC. 105. SUBSTANCE PROFILES.***

*Section 104(i)(3) (42 U.S.C. 9604(i)(3)) is amended as follows:*

*(1) By inserting ''(A)'' after ''(3)''.*

*(2) By redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively.*

*(3) By striking out the matter beginning with ''Any toxicological profile or revision thereof'' and all that follows through the end of such paragraph and inserting in lieu thereof the following:*

*''(B) Any toxicological profile or revision thereof shall reflect the Administrator of ATSDR's assessment of all relevant toxicological testing which has been peer reviewed. The profiles prepared under this paragraph shall be for those substances highest on the list of priorities under paragraph (2) for which profiles have not previously been prepared or for substances not on the listing but which have*

*been found at non-National Priorities List facilities and which have been determined by ATSDR to be of critical health concern. Profiles required under this paragraph shall be revised and republished as necessary, based on scientific need. Such profiles shall be provided to the States and made available to other interested parties.''.*

***SEC. 106. DETERMINING HEALTH EFFECTS.***

*Section 104(i)(5)(A) (42 U.S.C. 9604(i)(5)(A)) is amended as follows:*

*(1) By striking ''designed to determine the health effects (and techniques for development of methods to determine such health effects) of such substance'' and inserting ''conducted directly or by means such as co-operative agreements and grants with appropriate public and nonprofit institutions. The research shall be designed to determine the health effects (and techniques for development of methods to determine such health effects) of the substance''.*

*(2) By redesignating clause (iv) as clause (v).*

*(3) By striking ''and'' at the end of clause (iii).*

*(4) By inserting after clause (iii) the following new clause:*

*''(iv) laboratory and other studies which can lead to the development of innovative techniques for*

*predicting organ-specific, site-specific, and system-specific acute and chronic toxicity; and''.*

***SEC. 107. PUBLIC HEALTH AT NPL FACILITIES.***

*Section 104(i)(6) (42 U.S.C. 9604(i)(6)) is amended as follows:*

*(1) By amending subparagraph (A) to read as follows:*

*''(A) The Administrator of ATSDR shall perform a public health assessment for each facility, including those facilities owned by any department, agency, or instrumentality of the United States, on the National Priorities List established under section 105 of this Act. The public health assessment shall be commenced as soon as practicable after each facility is proposed for inclusion on the National Priorities List and shall be completed not later than the date of issuance of a remedial investigation and feasibility study for the facility to allow full consideration in selecting the remedial action of the public health implications of any release.''.*

*(2) In subparagraph (D), by inserting ''(i)'' after ''(D)'' and by adding the following at the end of the subparagraph: ''The Administrator and the Administrator of ATSDR shall develop strategies to obtain relevant on-site and off-site characterization data for use in the health assessment. The Administrator shall,*

*to the maximum extent practicable, provide the Administrator of ATSDR with the data and information necessary to make public health assessments sufficiently prior to the initiation of remedial actions to allow ATSDR to complete these assessments. Where deemed appropriate, the Administrator of ATSDR shall provide to the Administrator as soon as practicable after site discovery, recommendations for sampling environmental media for hazardous substances of public health concern. To the extent feasible, the Administrator shall incorporate such recommendations into its site investigation activities.*

*"(ii) In order to improve community involvement in health assessments, the Administrator of ATSDR shall carry out each of the following duties:*

*"(I) The Administrator of ATSDR shall actively collect data from Community Working Groups ('Community Working Groups') and from other sources in communities affected or potentially affected by releases of hazardous substances, pollutants, or contaminants regarding exposure, relevant human activities, and other factors.*

*"(II) The Administrator of ATSDR shall design health assessments that take into account the needs and conditions of the affected community. Commu-*

*nity-based research models, building links to local expertise and local health resources should be used. Each Community Working Group (or affected community where no Community Working Group exists) shall be permitted to play an active and early role in reviewing health assessment designs. In preparing such designs, emphasis shall be placed on collection of actual exposure data and sources of multiple exposure shall be considered.''.*

*(3) In subparagraph (H), by striking ''health assessment'' each place it appears and inserting ''public health assessment''.*

***SEC. 108. HEALTH STUDIES.***

*Subparagraph (A) of section 104(i)(7) (42 U.S.C. 9604(i)(7)) is amended to read as follows: ''(A) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of a public health assessment or on the basis of other appropriate information, the Administrator of ATSDR shall conduct a human health study of exposure or other health effects for selected groups or individuals in order to determine the desirability of conducting full scale epidemiologic or other health studies of the entire exposed population.''.*

***SEC. 109. DISTRIBUTION OF MATERIALS TO HEALTH PROFESSIONALS AND MEDICAL CENTERS.***

*Paragraph (14) of section 104(i) (42 U.S.C. 9604(i)) is amended to read as follows:*

*''(14) In implementing this subsection and other health-related provisions of this Act in cooperation with the States, the Administrator of ATSDR shall—*

*''(A) assemble, develop as necessary, and distribute to the States, medical colleges, physicians, nursing institutions, nurses, and other health professionals and medical centers, appropriate educational materials (including short courses) on the medical surveillance, screening, and methods of prevention, diagnosis, and treatment of injury or disease related to exposure to hazardous substances (giving priority to those listed in paragraph (2)), through means the Administrator of ATSDR considers appropriate; and*

*''(B) assemble, develop as necessary, and distribute to the general public and to at-risk populations appropriate educational materials and other information on human health effects of hazardous substances.''.*

***SEC. 110. GRANT AWARDS, CONTRACTS, AND COMMUNITY ASSISTANCE ACTIVITIES.***

*Section 104(i)(15) (42 U.S.C. 6904(i)(15)) is amended as follows:*

*(1) By inserting ''(A)'' before ''The activities''.*

*(2) In the first sentence, by striking ''cooperative agreements with States (or political subdivisions thereof)'' and inserting ''grants, cooperative agreements, or contracts with States (or political subdivisions thereof), other appropriate public authorities, public or private institutions, colleges, universities, and professional associations''.*

*(3) In the second sentence, by inserting ''public'' before ''health assessments''.*

*(4) By adding at the end the following new subparagraph:*

*''(B) When a public health assessment is conducted at a facility on the National Priorities List, or a release is being evaluated for inclusion on the National Priorities List, the Administrator of ATSDR may provide the assistance specified in this paragraph to public or private nonprofit entities, individuals, and community-based groups that may be affected by the release or threatened release of hazardous substances in the environment.''.*

***SEC. 111. PUBLIC HEALTH RECOMMENDATIONS IN REMEDIAL ACTIONS.***

*Section 121(c) (42 U.S.C. 9621(c)) is amended in the first sentence by inserting after ''remedial action'' the second time it appears the following: '', including public health*

*recommendations and decisions resulting from activities under section 104(i),''.*

***SEC. 112. TRANSITION.***

*(a) EFFECTIVE DATE IN GENERAL.—Except as provided in subsection (b), this title and the amendments made by this title shall become effective upon the date of enactment of this Act.*

*(b) SPECIAL RULE.—The requirements of paragraphs (1) through (4) of section 117(f) and paragraph (1) of section 117(g) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as added by sections 101 and 102, shall become effective 180 days after the date of enactment of this Act.*

# *TITLE II—STATE ROLES*

*Sec. 201. Contracts or cooperative agreements with States.*
*Sec. 202. State cost share.*
*Sec. 203. Siting.*
*Sec. 204. The National Priorities List.*
*Sec. 205. The State registry.*
*Sec. 206. Conforming and miscellaneous amendments.*
*Sec. 207. Study of authorization of States to carry out Superfund.*
*Sec. 208. State role at Federal facilities.*

***SEC. 201. CONTRACTS OR COOPERATIVE AGREEMENTS WITH STATES.***

*Title I is amended by adding after section 126 the following new section:*

***''SEC. 127. CONTRACTS OR COOPERATIVE AGREEMENTS WITH STATES.***

*''(a) IN GENERAL.—*

*"(1) APPLICATION FOR AUTHORITY TO TAKE PREREMEDIAL ACTION AT NON-NPL FACILITIES.—A State may apply to the Administrator to take or require preremedial actions (including removal actions) under a contract or cooperative agreement as provided in this section at any non-federally owned or operated facility within the boundaries of the State that is not listed on the National Priorities List (NPL).*

*"(2) APPLICATION FOR AUTHORITY TO TAKE RESPONSE ACTION AT NPL FACILITIES.—A State may apply to the Administrator to take or require response actions, including selection and enforcement of remedial actions and use of allocation procedures under section 130, under a contract or cooperative agreement as provided in this section at any non-federally owned or operated facility within the boundaries of the State that is listed on the National Priorities List (NPL) or to take or require removal actions at any facility proposed for listing on the National Priorities List.*

*"(3) APPROVAL OF APPLICATION.—The Administrator shall enter into a contract or cooperative agreement under this section if the Administrator determines that the State—*

*"(A) meets the qualification requirements set forth in the regulations promulgated pursuant to subsection (b); and*

*"(B) with respect to authority to select remedial actions and use allocation procedures, meets the qualification requirements set forth in subsection (c).*

*"(b) REGULATIONS.—The Administrator, in consultation with the States, shall promulgate regulations to implement this section. The regulations shall provide such additional qualifications for a contract or cooperative agreement under this section as the Administrator considers reasonable, including qualifications applicable to particular types of preremedial or response actions. The regulations shall include a requirement that, in order for a State to qualify for a contract or cooperative agreement with respect to a facility under this section, the State may not be a major potentially responsible party with respect to that facility.*

*"(c) QUALIFICATION REQUIREMENTS WITH RESPECT TO SELECTION OF REMEDIAL ACTION AND USE OF ALLOCATION PROCEDURES.—For purposes of subsection (a)(3)(B), with respect to a contract or cooperative agreement under this section for authority to select remedial action or to use the allocation procedures under section 130, the Administrator also shall make each of the following determinations:*

*"(1) The State has the capability to select remedial actions or to use the allocation procedures under section 130, including adequate legal authority, financial and personnel resources, organization, and expertise.*

*"(2) The State meets any other qualifications set forth in the regulations promulgated under subsection (b) for selecting remedial actions or using the allocation procedures.*

*"(3) The State demonstrates a historical record of performing similar response actions.*

*"(d) REQUIREMENTS FOR SELECTION OF REMEDIAL ACTION.—In any contract or cooperative agreement that allows a State to select remedial actions, the State shall agree to select such remedial actions in accordance with all of the procedures and requirements set forth in sections 117 and 121 of this Act, the National Contingency Plan, and any other relevant regulations and guidelines adopted by the Administrator.*

*"(e) STATE AUTHORITY REGARDING ENFORCEMENT OF SELECTED REMEDIAL ACTION.—(1) A State that selects a remedial action pursuant to a contract or cooperative agreement entered into under subsection (a) shall have the authority to enforce the requirements of such remedial action pursuant to section 121(f)(4).*

*"(2) Such State also shall have the authority to enforce compliance with any standard, regulation, condition, requirement, order, or final determination of the State with respect to the remedial action. Such State also may seek civil penalties not to exceed $25,000 per day for any violation of such standard, regulation, condition, requirement, order, or final determination. Such State may commence an action seeking such relief unless the standard, regulation, condition, requirement, order, or final determination is arbitrary, capricious, or contrary to law when reviewed upon the administrative record presented by the State.*

*"(3) In addition, if expressly provided in the contract or cooperative agreement, such State may waive a Federal requirement applicable to the remedial action in accordance with section 121.*

*"(f) REQUIREMENTS FOR ENFORCEMENT AND ALLOCATION.—*

*"(1) ENFORCEMENT.—In the case of a contract or cooperative agreement providing for a State to initiate an enforcement action with respect to a facility for purposes of recovering costs or compelling performance of a remedy at the facility, the contract or cooperative agreement shall require the State to provide for expedited settlements under section 122.*

*"(2) USE OF ALLOCATION PROCEDURES.—(A) In the case of a contract or cooperative agreement providing for a State to initiate an enforcement action with respect to a facility subject to mandatory allocation pursuant to section 130(a)(1), the contract or cooperative agreement shall require the State to use allocation procedures with respect to the facility. The contract or cooperative agreement shall require the State to initiate the allocation process by certifying each of the following:*

*"(i) The State has completed a potentially responsible party search substantially consistent with subsection (c) of section 130 and will make the results of that search available to the allocator and the parties.*

*"(ii) The State has notified Federal, State, and tribal natural resource trustees of the commencement of the allocation process and, pursuant to section 104(b)(2), of potential damages to natural resources.*

*"(iii) The facility would be subject to mandatory allocation under section 130(a)(1) if the President were conducting the response action.*

*"(B) After the State has made a certification under subparagraph (A), the Administrator shall ini-*

*tiate an allocation in accordance with the terms of section 130. The Administrator may assign to the State, by cooperative agreement or otherwise, any responsibilities to conduct the allocation, except that the Administrator and Attorney General shall retain their authority relating to orphan share funding as provided by this paragraph and in section 130, including the timing and terms of payment.*

*"(C) The State may accept or reject the allocation report on the same basis as provided in section 130(l). If the State does not reject the allocation, it shall use the allocator's report as the basis of State settlements. The State may recover the costs of the allocation pursuant to State law or the provisions of this Act.*

*"(D) The President, through either the Administrator or the Attorney General, or both, may participate in any phase of an allocation proceeding where an orphan share is identified according to the factors set forth in section 130.*

*"(E) If the State accepts an allocation report as the basis for its settlements, and the allocation report identifies an orphan share subject to Federal funding, the State shall apply for such funding by certifying*

*each of the following to the Administrator and the Attorney General:*

*"(i) The allocation presents a reasonable basis for resolving responsibility for the facility.*

*"(ii) The assignment of an orphan share shall be in accordance with section 130.*

*"(F) The Administrator and the Attorney General shall accept a State's request for orphan share funding supported by an allocation report and the certification described in subparagraph (E), unless the Administrator and Attorney General determine, within 120 days after the request by the State, that the allocation does not meet the standards set forth in section 130. Such determination shall be made in the same manner, and shall be subject to the same limitations, as set forth in section 130.*

*"(G) The contract or cooperative agreement shall provide the following:*

*"(i) The Administrator may deduct from orphan share funding the costs incurred in conducting the allocation.*

*"(ii) The State may use the orphan share funding only to fund response actions through settlement or to reimburse parties performing work in excess of the share assigned to them in*

*allocation. No such reimbursement may exceed the reimbursement level available under section 130.*

*"(H) The State may recover funds provided through orphan share funding from nonsettling responsible parties pursuant to State law or the provisions of this Act. Seventy-five percent of such recoveries shall be returned to the Fund. The remaining 25 percent shall be used for any other response action by the recovering State.*

*"(3) COVENANTS.—(A) In a case in which either the President, acting under the authority of this Act, or a State, acting pursuant to a contract or cooperative agreement under this section, has responsibility for selecting a response action at a facility listed or proposed for listing on the National Priorities List and enters an administrative or judicial settlement to resolve the liability of responsible parties at the facility, the President or the State may confer, in accordance with requirements relating to covenants of sections 122 and 130, a covenant that will preclude some or all administrative or judicial action by both the President and the State to recover response costs or to compel response actions at the facility with respect to matters addressed in the settlement, except that*

*such covenants shall not be binding on the governmental entity that did not confer the covenant to the extent that—*

*"(i) the covenant purports to address natural resource damages; or*

*"(ii) the President or the State has not been provided notice of, and an opportunity to participate in, the settlement concerning the response action; or*

*"(iii) the President or the State objects to the settlement within 120 days of the date of signature for the record of decision or receipt of notice of the settlement, whichever is later.*

*"(B) The covenants described by this paragraph may be conferred by either the Administrator or the State with respect to a facility owned or operated by any department, agency, or instrumentality of the United States (including the executive, legislative, and judicial branches of government). The Administrator may confer a covenant in an administrative order, consent decree, or an interagency agreement. The State may confer a covenant in an administrative order or a consent decree.*

*"(g) TERMS AND CONDITIONS; ENFORCEMENT.—*

*"(1) IN GENERAL.—A contract or cooperative agreement under this section shall be subject to such terms and conditions as the Administrator may prescribe. If a State fails to comply with a requirement of a contract or cooperative agreement, the Administrator, after 90 days notice to the affected State, may seek in the appropriate United States district court to ensure performance of the response action, or to recover any funds advanced or any costs incurred because of the breach.*

*"(2) SPECIFIC TERMS.—A contract or cooperative agreement under this section shall include the following requirements:*

*"(A) A requirement that the State shall exercise any authority conferred by this section or the contract or cooperative agreement on behalf of the State, and not on behalf of or in the name of the Administrator, the President, or the United States.*

*"(B) A requirement that the State have and maintain sufficient legal authority under applicable State law to enter into the contract or cooperative agreement.*

*"(C) A requirement that the Administrator retain authority to terminate and recoup fund-*

*ing, and to terminate the contract or cooperative agreement, if the State fails to perform the contract or cooperative agreement in a manner consistent with this Act. At least 90 days before terminating any contract or cooperative agreement with a State, the Administrator shall provide to the State a written explanation of the reasons for the proposed termination and afford an opportunity to the State to discuss the termination and to propose actions to correct any deficiencies.*

*''(D) A requirement imposing a nondiscretionary duty on the Administrator to perform or compel expeditious performance of response actions under the contract or cooperative agreement if the State fails to comply with the terms of the contract or cooperative agreement.*

*''(h) SAVINGS CLAUSE.—Nothing in this section shall affect the exercise by a State of any other authorities that may be applicable to facilities in such State.''.*

***SEC. 202. STATE COST SHARE.***

*Section 104(c) is amended by adding at the end the following new paragraphs:*

*''(10) EXISTING CONTRACTS AND COOPERATIVE AGREEMENTS.—The requirements of paragraphs (3), (6),*

*and (7) of this subsection shall apply only to contracts and cooperative agreements pursuant to section 104(d) entered into prior to the enactment of the Superfund Reform Act of 1994.*

*"(11) STATE COST SHARE.—After the date of enactment of the Superfund Reform Act of 1994, the Administrator shall not provide any funding under this subsection or section 127, or any response action pursuant to this section, except for emergency removal actions, unless the State in which the release or threatened release occurs has entered into a contract or cooperative agreement pursuant to this subsection or section 127 that provides assurances, deemed adequate by the Administrator, that—*

*"(A) the State will pay or assure payment of 15 percent of the cost of such response action or funding, including 15 percent of orphan share funding and operation and maintenance costs; and*

*"(B) the State will assure oversight of any operation and maintenance of funded response actions.".*

***SEC. 203. SITING.***

*Section 104(c)(9) is amended to read as follows:*

*"(9) SITING.—Effective 1 year after the date of enactment of the Superfund Reform Act of 1994, the President shall not provide any remedial actions pursuant to this section or section 127 unless the State in which the release*

*occurs submits a report describing its plans for adequate treatment, storage, and disposal capacity of hazardous wastes generated within the State, in accordance with guidelines issued by the Administrator.''.*

***SEC. 204. THE NATIONAL PRIORITIES LIST.***

*Section 105(a)(8)(B) is amended by striking ''as part of the plan''.*

***SEC. 205. THE STATE REGISTRY.***

*Section 105(a)(8) of the Act (42 U.S.C. 9605(a)(8)) is amended by adding after subparagraph (B) the following new subparagraph:*

*''(C) STATE REGISTRY.—Each State shall maintain and make available to the public a list of facilities in the State that are believed to present a current or potential hazard to human health or the environment due to the release or threatened release of hazardous substances or pollutants or contaminants. Each State, in consultation with the Administrator and other appropriate Federal agencies, shall update such listing on an annual basis.''.*

***SEC. 206. CONFORMING AND MISCELLANEOUS AMENDMENTS.***

*(a) TRANSFER OF SECTION 121(e)(2).—(1) Section 121(e) is amended—*

*(A) by striking out paragraph (2); and*

*(B) by striking out ''PERMITS AND ENFORCEMENT.—(1)'' and inserting ''PERMITS.—''.*

*(2) Section 121(f) is amended by adding at the end the following new paragraph:*

*''(4) A State may enforce any Federal or State standard, requirement, criteria, or limitation to which the remedial action is required to conform under this Act in the United States district court for the district in which the facility is located.''.*

*(b) SECTION 126(a).—Section 126(a) is amended by adding after ''section 104(i) (regarding health authorities)'' the following: '', section 127 (regarding contracts and cooperative agreements), section 128 (regarding voluntary response actions), subsection (f) of section 121 (relating to cleanup standards), section 122(d)(1)(D) (relating to compliance with consent decrees),''.*

*(c) SECTION 310(a).—Section 310(a) is amended by inserting ''(including any State)'' after ''person''.*

*(d) TRANSITION.—Subsection (d) of section 104 is amended by adding at the end the following new paragraph:*

*''(5) TERMINATION.—This subsection shall cease to be in effect on the effective date of regulations promulgated to implement section 127, as added by the Superfund Reform Act of 1994.''.*

***SEC. 207. STUDY OF AUTHORIZATION OF STATES TO CARRY OUT SUPERFUND.***

*The Administrator of the Environmental Protection Agency shall conduct a study of the feasibility of authorizing States to use their own laws to carry out the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 in lieu of the Federal program established under such Act.*

***SEC. 208. STATE ROLE AT FEDERAL FACILITIES.***

*Subsection (g) of section 120 is amended to read as follows:*

*"(g) TRANSFER OF AUTHORITIES.—*

*"(1) STATE APPLICATION FOR TRANSFER OF AUTHORITIES.—A State may apply to the Administrator to exercise the authorities vested in the Administrator under this section at any or all facilities owned or operated by any department, agency, or instrumentality of the United States (including the executive, legislative, and judicial branches of government), including the authority—*

*"(A) to publish a timetable and deadlines for completion of any remedial investigation and feasibility study;*

*"(B) to review and approve all documents prepared in connection with any such investigation and study;*

*"(C) to select and approve remedies; and*

*"(D) to enter into and enforce, through judicial or administrative means, agreements, orders, and consent decrees entered into pursuant to this Act.*

*"(2) TRANSFER OF AUTHORITIES.—The Administrator shall enter into a contract or cooperative agreement to transfer the authorities described in paragraph (1) if the Administrator determines the following:*

*"(A) The State has the ability to exercise such authorities in accordance with this Act, including adequate legal authority, financial and personnel resources, organization, and expertise.*

*"(B) The State demonstrates experience in exercising similar authorities.*

*"(3) EFFECT OF AUTHORIZATION UNDER SOLID WASTE DISPOSAL ACT.—In the review by the Administrator of an application of a State for transfer of authorities under this subsection, if the State is authorized to implement a State hazardous waste program pursuant to section 3006 of the Solid Waste Disposal Act (42 U.S.C. 6926), the following provisions apply:*

*"(A) With respect to a State that is a signatory to an interagency agreement under subsection (e)(2) that is in effect on the effective date of the Superfund Reform Act of 1994, the Administrator, in making the determinations referred to in paragraph (2), shall accord substantial weight to the State's hazardous waste program authorization and the Administrator's findings in approving such authorization.*

*"(B) With respect to a State whose authorization under such section 3006 includes authorization to implement the corrective action provisions of the Solid Waste Disposal Act, the Administrator shall approve the application and provide for the orderly transfer of authorities as expeditiously as possible, but in no case later than 6 months after the date of receipt of the application, unless the parties agree to another deadline.*

*"(4) EFFECT OF TRANSFER.—Any State to which authorities are transferred under this subsection shall not be deemed to be an agent of the President but shall exercise such authorities in its own name.*

*"(5) DEADLINES.—Except as provided in paragraph (3)(B), the Administrator shall make a determination on an application from a State under this subsection not later than 90 days after the date the Administrator receives the application.*

*"(6) WITHDRAWAL OF AUTHORITIES.—(A) The Administrator may withdraw the authorities transferred under this subsection in whole or in part if the Administrator determines—*

*"(i) that the State, in whole or in part, is exercising such authorities in a manner clearly inconsistent with the requirements of this Act; or*

*"(ii) in the case of a State that was approved under paragraph (3)(B), that the State is no longer authorized to implement the corrective action provisions of the Solid Waste Disposal Act.*

*"(B) At least 90 days before withdrawing any such transferred authorities from a State, the Administrator shall provide to the State a written explanation of the reasons for the proposed withdrawal and afford an opportunity to the State to discuss the withdrawal and to propose actions to correct any deficiencies.*

*"(7) LIMITATION.—Except for authorities that are transferred by the Administrator to a State pursuant to this subsection, or that are transferred by the Administrator to an officer or employee of the Environmental Protection Agency, no authority vested in the Administrator under this section may be transferred, by executive order of the President or otherwise, to any other officer or employee of the United States or to any other person. Except as necessary to implement the transfer of the Administrator's authorities to a State pursuant to this subsection, nothing in this subsection shall be construed as altering, modifying, or impairing in any manner any agreement, permit, administrative or judicial order, decree, or interagency agreement existing on the effective date of the Superfund Reform Act of 1994. Nothing in this subsection shall affect the exercise by a State of any other authorities that may be applicable to facilities in such State.".*

# *TITLE III—VOLUNTARY RESPONSE*

*Sec. 301. Voluntary response program.*

***SEC. 301. VOLUNTARY RESPONSE PROGRAM.***

*Title I is amended by adding the following new section after section 127:*

***"SEC. 128. VOLUNTARY RESPONSE PROGRAM.***

*"(a) PURPOSES AND OBJECTIVES.—The purposes and objectives of this section are to—*

*"(1) significantly increase the pace of response activities at contaminated sites by promoting and encouraging the creation, development, and expansion of State voluntary response programs; and*

*"(2) benefit the public health, welfare, and the environment by returning contaminated sites to economically productive or other beneficial uses.*

*"(b) ESTABLISHMENT OF PROGRAM.—The Administrator shall establish a program to provide technical, financial, and other assistance, including grants, to States to establish and expand voluntary response programs.*

*"(c) EPA ASSISTANCE TO STATES FOR STATE VOLUNTARY RESPONSE PROGRAMS.—The Administrator shall assist States in the establishment and administration of State voluntary response programs that—*

*"(1) provide opportunities for technical assistance for voluntary response actions;*

*"(2) provide adequate opportunities for public participation in selecting response actions, including prior notice and opportunity for comment in appropriate circumstances;*

*"(3) provide streamlined procedures to ensure expeditious voluntary response actions;*

*"(4) provide adequate oversight and enforcement authorities to ensure that voluntary response actions are protective of human health and the environment, are conducted accordance with an appropriate response action plan and ensure completion of response actions if the person conducting the response action fails or refuses to complete the necessary response activities, including operation and maintenance or long-term monitoring activities;*

*"(5) provide mechanisms for the approval of a response action plan; and*

*"(6) provide for a certification or similar documentation from the State to the person conducting the response action indicating that the response is complete.*

*"(d) EPA REVIEW OF STATE PROGRAMS.—At any time after the enactment of this Act, a State may submit, for review by the Administrator, documents the State deems appropriate to describe a State voluntary response program, together with a certification that the program is consistent with the elements set forth in subsection (c).*

*"(e) QUALIFICATION OF STATE PROGRAM.—*

*"(1) APPROVAL OR DISAPPROVAL.—A State voluntary response program submitted under subsection (d) shall be a qualified program under this Act begin-*

*ning on the date 120 days after the submittal of the certification under subsection (d) unless the Administrator determines before that date that the State's submittal is not consistent with the elements set forth in subsection (c). The Administrator shall seek public comment on the submittal of a State voluntary response program under this section and shall publish in the Federal Register the reasons for the approval or disapproval of any such program.*

*"(2) WITHDRAWAL OF APPROVAL.—Whenever the Administrator determines after public hearing that a State is not administering and enforcing a qualified program in accordance with subsection (c), the Administrator shall notify the State in writing of such determination. If appropriate corrective action is not taken by the State within 120 days after receipt of the notice, the Administrator shall withdraw approval of the program and publish a notice of such withdrawal in the Federal Register, after which the State program shall cease to be a qualified program under this section. If the State subsequently undertakes corrective measures, the Administrator shall reinstate the program as a qualified program under this section. The Administrator shall not withdraw approval of any such program unless the Administrator provides to*

*the State in writing and publishes in the Federal Register the reasons for such withdrawal.*

*"(f) NPL LISTING.—No portion of a facility subject to a response action plan approved under a qualified program under this section shall be proposed for listing on the National Priorities List so long as substantial and continual response activities are being undertaken pursuant to such plan to complete the response action in a timely manner as set forth in the response action plan. Nothing in this section shall be construed to limit the Administrator's ability to list on the National Priorities List facilities that have been proposed for listing, or to compel response action under section 106 of the Act.*

*"(g) CONDUCT OF RESPONSE.—The Administrator shall, after consultation with the State, and notice and opportunity for public comment, promulgate regulations describing circumstances in which any State having a qualified program, and also authorized to issue permits under Federal environmental statutes, may waive such permit requirements with respect to activities conducted pursuant to an approved voluntary response plan if (1) such State has the authority under its own statutes or regulations to grant such waivers, (2) the State waiver authority is used in no less stringent a manner than allowed under Federal permit waiver authority, and (3) the response action plan requires*

*compliance with the relevant substantive requirements of the statute concerned.*

*"(h) EFFECT OF RESPONSE.—Performance of a voluntary response action pursuant to this section shall not constitute an admission of liability under any Federal, State, or local law or regulation or in any citizens suit or other private action.*

*"(i) COMPLIANCE WITH NCP.—Response actions conducted pursuant to a qualified program shall be presumed to be consistent with the National Contingency Plan for the purposes of private cost recovery claims under this Act.*

*"(j) ANNUAL REPORTING.—*

*"(1) REPORT BY STATE.—States with qualified programs under this section shall report to the Administrator at the end of each calendar year on the status of their programs. Each such report shall include a statement regarding whether the program continues to be consistent with the elements set forth in subsection (c).*

*"(2) REPORT BY ADMINISTRATOR.—The Administrator shall report, not later than one year after the enactment of this section, and annually thereafter, to the Congress on the status of State voluntary response program. The report shall include an analysis of whether qualified State voluntary response action*

*programs continue to be consistent with the elements set forth in subsection (c).*

*''(k) STATUTORY CONSTRUCTION.—(1) This section is not intended to impose any requirement on a State voluntary response program existing on or after the date of the enactment of the Superfund Reform Act of 1994.*

*''(2) This section is not intended to affect the liability of any person or to affect other response authorities afforded under any law or regulation relating to environmental contamination, including this Act, the Solid Waste Disposal Act, the Clean Water Act, the Toxic Substances Control Act, and title XIV of the Public Health Service Act (the Safe Drinking Water Act), except that the successful completion of a response action at a facility pursuant to a qualified program under this section shall be considered for purposes of section 107(a)(6)(C) as evidence that a person acquiring ownership of the facility is a bona fide prospective purchaser of the facility within the meaning of section 101(39).*

*''(3) Nothing in this section shall be construed to require any person to participate in a qualified voluntary response program under this section or in any other voluntary response program in order to qualify as a bona fide purchaser for purposes of section 107(a)(6)(C).''.*

# *TITLE IV—LIABILITY AND ALLOCATION*

*Sec. 401. Information gathering and access.*
*Sec. 402. Compliance with administrative orders.*
*Sec. 403. Limitations to liability for response costs.*
*Sec. 404. Liability.*
*Sec. 405. Civil proceedings.*
*Sec. 406. Limitations on contribution actions.*
*Sec. 407. Scope of rulemaking authority.*
*Sec. 408. Enhancement of settlement authorities.*
*Sec. 409. Professional services.*
*Sec. 410. Final covenants.*
*Sec. 411. Expedited final settlements.*
*Sec. 412. Allocation procedures.*
*Sec. 413. Recycling transactions.*

## *SEC. 401. INFORMATION GATHERING AND ACCESS.*

*(a) ADDITIONAL INFORMATION.—Section 104(e)(2) (42 U.S.C. 9604(e)(2)) is amended—*

*(1) by striking ''cleanup'' in subparagraph (C) and inserting ''response action''; and*

*(2) by inserting after subparagraph (C) the following:*

*''(D) The identity of any persons engaged in, responsible for, controlling, or having the ability to control activities or operations at a vessel or facility giving rise to liability under this Act.*

*''(E) Information relating to the potential liability or responsibility of any person to perform or pay for a response action.*

*''(F) Information that is otherwise relevant to enforce the provisions of this Act.*

*"(G) For a person conducting a response action, an accounting of direct and indirect costs the person has incurred in conducting such response action.".*

*(b) CERTIFICATIONS.—Section 104(e) (42 U.S.C. 9604(e)) is amended—*

*(1) by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (4), (5), (6), (7), and (8), respectively; and*

*(2) by inserting after paragraph (2) the following:*

*"(3) CERTIFICATION.—The President may require respondents to requests made pursuant to this subsection to certify that—*

*"(A) the responses are true, accurate, and complete to the best of the respondent's knowledge;*

*"(B) the responses are based on a diligent, good faith search of records in the possession or control of the person to whom the request was directed;*

*"(C) the responses are based on a reasonable inquiry of the current and former officers, directors, employees, and agents of the person to whom the request was directed;*

*"(D) the responses accurately and completely reflect information obtained in the course of conducting such search and inquiry;*

*"(E) the respondent understands that there is a continuing obligation to supplement the response if any additional, new, or different information relevant to the matters addressed in the request or the response thereto becomes known or available to the respondent; and*

*"(F) the respondent understands that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.".*

*(c) ADMINISTRATIVE SUBPOENAS.—Section 104(e) (42 U.S.C. 9604(e)) is further amended by inserting after paragraph (8) (as redesignated by subsection (b)) the following new paragraph:*

*"(9) ADMINISTRATIVE SUBPOENAS.—When it would assist in the collection of information necessary or appropriate for the purposes of implementing this Act, the Administrator may by subpoena require the attendance and testimony of witnesses and the production of reports, papers, documents, answers to questions, and other information listed in paragraph (2) that the Administrator considers necessary. Wit-*

*nesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In the event of contumacy or failure or refusal of any person to obey any such subpoena, any district court of the United States in which venue is proper shall have jurisdiction to order any such person to comply with such subpoena. Any failure to obey such an order of the court is punishable by the court as a contempt thereof.''.*

*(d) CONFIDENTIALITY OF INFORMATION.—Subparagraph (A) of section 104(e)(8) (as redesignated by subsection (b)), is amended to read as follows:*

*''(A) Any records, reports, documents, or information obtained from any person under this section (including records, reports, documents, or information obtained by representatives of the President and records, reports, documents, or information obtained pursuant to a contract, grant, or other agreement to perform work pursuant to this section) shall be available to the public, except as follows:*

*''(i) Upon a showing satisfactory to the President (or the State, as the case may be) by any person that records, reports, documents, or information, or any particular part thereof (other than health or safety effects data), to*

*which the President (or the State, as the case may be) or any officer, employee, or representative has access under this section if made public would divulge information entitled to protection under section 1905 of title 18, United States Code, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States carrying out this Act, or when relevant in any proceeding under this Act, or, if such records, reports, documents, or information are obtained or submitted to the United States (or the State, as the case may be) pursuant to a contract, grant, or other agreement to perform work pursuant to this section, to persons from whom the President seeks to recover costs pursuant to this Act.*

*"(ii) This section does not require that information which is exempt from disclosure pursuant to section 552(a) of title 5, United States Code, by reason of subsection (b)(5), subsection (b)(6), or subsection (b)(7) of such section, be*

*available to the public, nor shall the disclosure of any such information pursuant to this section authorize disclosure to other parties or be deemed to waive any confidentiality privilege available to the President under any Federal or State law.''.*

*(e) CONFIDENTIALITY REQUIREMENTS FOR CONTRACTORS.—Paragraph (8) of section 104(e) (as redesignated by subsection (b)) is amended by adding at the end the following new subparagraph:*

*''(G)(i) No person described in clause (ii) may disclose such record, report, document, or other information without the permission of the President.*

*''(ii) A person referred to in clause (i) is any person—*

*''(I) who is not an employee of the United States Government; and*

*''(II) who, by virtue of the person's duties under a contract or cooperative agreement with the United States under this section to perform work for the United States Government or implement the requirements of this Act, has received information obtained under this section (or any record, report, or document containing such information) which, if requested from the United*

*States Government pursuant to section 552 of title 5, United States Code, would be exempt from disclosure by reason of subsection (b) of such section.''.*

*(f) AVAILABILITY OF INFORMATION TO CONGRESS.—Subsection 104(e) is further amended by adding after paragraph (9) the following new paragraph:*

*''(10) AVAILABILITY OF INFORMATION TO CONGRESS.—Nothing in this subsection shall be construed to authorize any person, including the allocator, to withhold any documents or information from Congress, or any duly authorized Committee thereof, or limit in any manner the right of Congress, or any duly authorized Committee thereof, to obtain such documents or information.''.*

***SEC. 402. COMPLIANCE WITH ADMINISTRATIVE ORDERS.***

*(a) ADDITIONAL AUTHORITY TO ISSUE ORDERS.—Section 106(a) (42 U.S.C. 9606(a)) is amended by adding at the end the following: ''The President may amend such orders and issue additional orders relating to the facility, as appropriate, without a subsequent finding of an imminent and substantial endangerment, to complete all response actions necessary to respond to an actual or threatened release or to require additional response actions that are necessary or appropriate to respond to the actual or*

*threatened release that was the subject of the original order.''.*

*(b) SUFFICIENT CAUSE.—Section 106(b)(1) (42 U.S.C. 9606(b)(1)) is amended—*

*(1) by inserting ''(A)'' after ''(b)(1)'';*

*(2) by striking ''to enforce such order'';*

*(3) by inserting before the period '', or be required to comply with such order, or both, even if another person has complied, or is complying, with the terms of the same order or another order pertaining to the same facility and release or threatened release''; and*

*(4) by inserting at the end the following:*

*''(B) For purposes of this subsection, a 'sufficient cause' requires—*

*''(i) an objectively reasonable belief by the person to whom the order is issued that the person is not liable for any response costs under section 107; or*

*''(ii) that the action to be performed pursuant to the order is inconsistent with the national contingency plan, as determined by a Federal court that has jurisdiction over such order.*

*''(C) The existence or results of an allocation process pursuant to section 130 shall not affect or constitute a basis*

*for a determination of 'sufficient cause' under this paragraph or under section 107(c)(3).''.*

*(c) REIMBURSEMENT.—Subsection (b) of section 106 (42 U.S.C. 9606(b)) is further amended in the first sentence of paragraph (2)(A) by striking ''completion of'' and inserting ''the President determines that such person has completed''.*

***SEC. 403. LIMITATIONS TO LIABILITY FOR RESPONSE COSTS.***

*(a) LIMITATIONS ON LIABILITY.—Section 107(a) (42 U.S.C. 9607(a)) is amended as follows:*

*(1) In paragraph (1), by striking ''and'' and inserting ''or''.*

*(2) In paragraph (3), by striking ''person,'' and inserting ''person or''.*

*(3) In paragraph (4)(A), by inserting '', including the costs of overseeing response actions conducted by potentially responsible parties,'' before ''incurred by the United States''.*

*(4) In paragraph (4)(B)—*

*(A) by striking ''other'' both places it appears; and*

*(B) by inserting '', other than the United States, a State, or an Indian tribe,'' before the*

*phrase ''consistent with the national contingency plan''.*

*(5) In paragraph (4), by striking ''by such person,'' and all that follows through ''shall be liable for—'' and inserting in lieu thereof the following: ''by such person—*

*from which there is a release, or a threatened release, that causes the incurrence of response costs, of a hazardous substance, shall be liable for—''.*

*(6) By designating the text beginning with ''The amounts recoverable'' and ending with ''this subsection commences.'' as paragraph (5) and aligning the margin of such text with paragraph (4).*

*(7) By adding the following new paragraphs after paragraph (5):*

*''(6) Notwithstanding paragraphs (1) through (4) of this subsection, a person who does not impede the performance of response actions or natural resource restoration shall not be liable:*

*''(A)(i) To the extent liability is based solely on paragraph (3) or (4) of this subsection, and the person arranged for disposal, treatment, or transport for disposal or treatment, or accepted for transport for disposal or treatment of only*

*municipal solid waste or sewage sludge owned or possessed by such person, and the person is—*

*"(I) the owner, operator, or lessee of residential property;*

*"(II) a small business; or*

*"(III) a small non-profit organization.*

*"(ii) This subparagraph shall have no effect on the liability of any other person.*

*"(B) To the extent liability is based solely on paragraph (3) or (4) of this subsection, and the person can demonstrate that it arranged for disposal or treatment, or transport for disposal or treatment or accepted for transport for disposal or treatment, 55 gallons or less of liquid materials containing hazardous substances or pollutants or contaminants or less than 100 pounds of solid materials containing hazardous substances or pollutants or contaminants, or such greater or lesser amount as the Administrator may determine by regulation, except in a case in which—*

*"(i) the Administrator has determined that such material contributed or could contribute significantly to the costs of response at the facility, or*

*"(ii) the person has failed to respond fully and completely to information requests or administrative subpoenas by the United States.*

*"(C) To the extent liability is based solely on paragraph (1) of this subsection for a release or threat of release from a facility, and the person is a bona fide prospective purchaser of the facility.*

*"(D) To the extent liability is based solely on the person's status as owner under paragraph (1) for a release or threat of release from a facility, and the person acquired the facility by inheritance or bequest if the person—*

*"(i) acquired the real property on which the facility concerned is located after disposal or placement of the hazardous substance took place;*

*"(ii) did not cause or contribute to the release or threat of release; and*

*"(iii) exercised due care with respect to the hazardous substance concerned, including precautions against foreseeable acts of third parties, taking into consideration the characteristics of such hazardous substance,*

*in light of all relevant facts and circumstances.*

*"(E) To the extent the liability of a Federal or State governmental entity or municipality is based solely on its—*

*"(i) ownership of a road, street, or other right of way or public transportation route (other than railroad rights of way and railroad property) over which hazardous substances are transported; or*

*"(ii) granting of a license or permit to conduct business.*

*"(F) To the extent the liability of a department, agency, or instrumentality of the United States is based on actions of such department, agency, or instrumentality taken in response to a natural disaster pursuant to the Act of August 18, 1941 (33 U.S.C. 701n) or The Robert T. Stafford Disaster Relief and Emergency Act (42 U.S.C. 5121 and following).*

*"(7) Notwithstanding paragraphs (1) through (4), a person shall not be liable for more than 10 percent of total response costs at a facility, in aggregate, to the extent the person's liability is based solely on paragraph (3) or (4) of this subsection, and the ar-*

*rangement for disposal, treatment, or transport for disposal or treatment, or the acceptance for transport for disposal or treatment, involved only municipal solid waste or sewage sludge. In any case in which more than one person at a facility comes within the coverage of this paragraph, the 10 percent limitation on liability shall apply to the aggregate liability of all such persons. Such limitation on liability shall apply only if either the acts or omissions giving rise to liability occurred before the date occurring 36 months after enactment of this paragraph, or the person asserting the limitation institutes or participates in a qualified household hazardous waste collection program within the meaning of section 101(43).''.*

*(b) PROSPECTIVE PURCHASER AND WINDFALL LIEN.—Section 107 is amended by inserting after subsection (m) the following new subsection:*

*''(n) PROSPECTIVE PURCHASER AND WINDFALL LIEN.—(1) In any case in which there are unrecovered response costs at a facility for which an owner of the facility is not liable by reason of subsection (a)(6)(C), and the conditions described in paragraph (2) are met, the United States shall have a lien upon such facility for such unrecovered costs. Such lien—*

*''(A) shall not exceed the increase in fair market value of the property attributable to the response action at the time of a subsequent sale or other disposition of property;*

*''(B) shall arise at the time costs are first incurred by the United States with respect to a response action at the facility;*

*''(C) shall be subject to the requirements for notice and validity established in paragraph (3) of subsection (l); and*

*''(D) shall continue until the earlier of satisfaction of the lien or recovery of all response costs incurred at the facility.*

*''(2) The conditions referred to in paragraph (1) are the following:*

*''(A) A response action for which there are unrecovered costs is carried out at the facility.*

*''(B) Such response action increases the fair market value of the facility above the fair market value of the facility that existed within six months before the response action was taken.*

*''(C) A sale or other disposition of all or a portion of the facility has occurred.''.*

*''(3) No lien under this section shall arise (A) with respect to property for which the property owner preceding*

*the first bona fide prospective purchaser is not a liable party or has resolved its liability under this Act, or (B) where an audit or inquiry required under section 101(39)(B) by an environmental professional certified under section 612 of the Superfund Reform Act of 1994 gives the bona fide prospective purchaser no knowledge or reason to know of the release of hazardous substances.*

***SEC. 404. LIABILITY.***

*(a) LIABILITY.—Section 107(a) (42 U.S.C. 9607(a)) (as amended by section 403) is further amended by adding the following new paragraph at the end thereof:*

*''(8) The Administrator shall calculate the Environmental Protection Agency response action oversight costs for which potentially responsible parties are liable under this section (pursuant to paragraph (4)(A)) on a national basis as a percentage of total response costs incurred by potentially responsible parties (in this paragraph referred to as the 'national oversight rate'). The calculation shall be based on data comparing oversight expenditures of the Environmental Protection Agency to estimated or actual response costs incurred by potentially responsible parties. The Administrator shall periodically review and update the national oversight rate. In no case shall the rate exceed 10 percent of total response costs in-*

*curred by potentially responsible parties. The national oversight rate shall be applied to all settlements under section 130.''.*

*(b) POLLUTANT AND CONTAMINANT LIABILITY.—(1) Section 107(a) (42 U.S.C. 6907A(a)) (as amended by subsection (a)) is further amended by adding after paragraph (8) the following new paragraph:*

*''(9) When the President responds under the authority of section 104(a)(1)(B), liability for response costs under this section for pollutants and contaminants shall be identical to that for hazardous substances only if such pollutants and contaminants constitute an imminent and substantial danger to human health.''.*

*(2) Such section is further amended by inserting ''or pollutant or contaminant'' after ''hazardous substance'' and ''hazardous substances'' each place they appear in subsection (b), subsection (c), paragraphs (1) and (2) of subsection (d), subsection (i), subsection (j), and paragraph (1)(B) of subsection (k).*

*(c) AMOUNT OF LIABILITY.—Section 107(c)(3) (42 U.S.C. 9607(c)(3)) is amended in the first sentence—*

*(1) by inserting '', in addition to liability for any response costs incurred by the United States as*

*a result of such failure to take proper action,'' after ''person'' the second time it appears; and*

*(2) by striking ''at least equal to,'' and all that follows through the end of the sentence and inserting ''up to three times the amount of such response costs.''.*

*(d) CLARIFICATION OF COMMON CARRIER LIABILITY.—Section 107(b)(3) is amended by striking out ''from a published tariff and acceptance for'' and inserting ''exclusively from a contract for''.*

***SEC. 405. CIVIL PROCEEDINGS.***

*(a) PETITIONS.—Section 113(a) (42 U.S.C. 9613(a)) is amended—*

*(1) by striking ''upon application by any interested person'' and inserting ''by any interested person through the filing of a petition for review''; and*

*(2) by striking ''application shall be made'', and inserting ''petition shall be filed''.*

*(b) PERIOD IN WHICH ACTION MAY BE BROUGHT.—Section 113(g) (42 U.S.C. 9613(g)) is amended by striking paragraphs (2) and (3) and inserting in lieu thereof the following:*

*''(2) ACTIONS FOR RECOVERY OF COSTS.—(A) Except as provided in subparagraph (C), an initial*

*action for recovery of costs referred to in section 107 must be commenced—*

*"(i) for a removal action, within 3 years after completion of all removal action taken with respect to the facility, including off-site disposal of any removed materials, except that if physical on-site construction of the remedial action is initiated within 3 years after the completion of all removal action taken with respect to the facility, costs incurred for removal action may be recovered in a cost recovery action brought under clause (ii); and*

*"(ii) for a remedial action, within 6 years after initiation of physical on-site construction of the remedial action.*

*"(B) In any such action described in this paragraph, the court shall enter a declaratory judgment on liability for response costs or damages that will be binding in such action or in any subsequent action or actions to recover further response costs or damages. A subsequent action or actions under section 107 for further response costs at the vessel or facility may be maintained at any time during the response action, but must be commenced no later than 3 years after the date of completion of all response action. Ex-*

*cept as otherwise provided in this paragraph, an action may be commenced under section 107 for recovery of costs at any time after such costs have been incurred.*

*"(C) An action by any potentially responsible party against another potentially responsible party for recovery of any response costs or damages must be commenced within the later of—*

*"(i) the time limitations set forth in subparagraph (A); or*

*"(ii) where recovery is sought for costs or damages paid pursuant to a judgment or settlement, 3 years after—*

*"(I) the date of judgment in any action under this Act for recovery of such costs or damages, or*

*"(II) the date of any administrative order or judicial settlement for recovery of the costs or damages paid or incurred pursuant to such a settlement.*

*"(3) CLAIMS BY THE UNITED STATES OR STATES.—Claims by the United States under section 106 and claims by the United States or a State under section 107(a) shall not be deemed compulsory counterclaims in an action against the United States or*

*a State seeking response costs, contribution, damages, or any other claim by any person under this Act.''.*

*(c) JUDICIAL REVIEW.—Section 113(j)(1) (42 U.S.C. 9613(j)(1)) is amended by striking ''or ordered by the President'' and inserting ''or selected by the President pursuant to this Act, or ordered or sought by the President,''.*

***SEC. 406. LIMITATIONS ON CONTRIBUTION ACTIONS.***

*Section 113(f) (42 U.S.C. 9613(f)) is amended as follows:*

*(1) Paragraph (1) is amended—*

*(A) by striking ''Any person'' in the first sentence and inserting ''Except as provided in paragraph (4), any person who is liable or potentially liable under section 107(a)'';*

*(B) by striking '', during or following any civil action under section 106 or under section 107(a).'' and inserting ''in a claim asserted under section 107(a).'';*

*(C) in the second sentence, by striking ''this section'' and inserting ''section 107(a), this section,''; and*

*(D) by striking the sentence beginning with ''Nothing in this subsection''.*

*(2) Paragraph (2) is amended to read as follows:*

*"(2) SETTLEMENTS.—A person who has resolved its liability to the United States in an administrative or judicially approved settlement shall not be liable for contribution or any other claims by any person other than a State acting under section 107(a)(4)(A) (and not as a potentially responsible party) regarding response actions, response costs, or damages addressed in the settlement. A person who has resolved its liability to a State or an Indian tribe in an administrative or judicially approved settlement shall not be liable for contribution or any other claims by persons other than the United States Government acting under section 107(a)(4)(A) (and not as a potentially responsible party) regarding response costs or damages addressed in the settlement for which the State or Indian tribe has a claim under this title. Such settlement does not discharge any other potentially responsible persons unless its terms so provide, but it reduces the potential liability of such other persons by the amount of the settlement. The protection afforded by this subsection shall include protection against claims, under Federal or State law, that may be asserted against the settling party for recovery of response costs or damages incurred or paid by another person, if such costs or damages are addressed in the*

*settlement, but shall not include protection against claims based on contractual indemnification or other express contractual agreements to pay such costs or damages.''.*

*(3) Such section is amended by adding at the end the following new paragraph:*

*''(4) LIMITATIONS ON CONTRIBUTION ACTIONS.—(A) There shall be no right of contribution under this subsection in any of the following circumstances:*

*''(i) The person asserting the right of contribution has waived the right in a settlement pursuant to this Act.*

*''(ii) The person from whom contribution is sought is not liable under this Act.*

*''(iii) The person from whom contribution is sought has entered into a settlement with the United States pursuant to section 122(g), with respect to matters addressed in that settlement.*

*''(B) Any person who commences an action for contribution shall be liable to the person against whom the claim of contribution is brought for all reasonable costs of defending against the claim, including all reasonable attorneys' and expert witness fees, if—*

*"(i) the action is barred by subparagraph (A);*

*"(ii) the action is brought against a person who is not liable under this Act;*

*"(iii) the action is brought against a person who is protected from such suits pursuant to section 113(f)(2) by reason of a settlement with the United States; or*

*"(iv) the action is brought during the moratorium pursuant to section 130.".*

***SEC. 407. SCOPE OF RULEMAKING AUTHORITY.***

*(a) IN GENERAL.—Section 115 (42 U.S.C. 9615) is amended to read as follows:*

***"SEC. 115. PRESIDENTIAL DELEGATION AND ASSIGNMENT OF DUTIES OR POWERS AND PROMULGATION OF REGULATIONS.***

*"The President (or the Administrator where applicable) is authorized to promulgate such regulations as the President (or the Administrator where applicable) deems necessary to carry out the provisions of this Act, and to delegate and assign any duties or powers imposed upon or assigned to him by this Act, including the authority to promulgate regulations. The preceding sentence includes authority to clarify or interpret all terms and to implement any provision of this Act.".*

*(b) LENDER LIABILITY RULE.—(1) Effective on the date of enactment of this section, the final rule issued by the Administrator of the Environmental Protection Agency on April 29, 1992 (57 Fed. Reg. 18344), shall be deemed to have been validly issued pursuant to the authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and to have been effective according to the final rule's terms. No additional administrative or judicial proceedings shall be necessary with respect to such final rule.*

*(2) Notwithstanding section 113(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, no court shall have jurisdiction to review the final rule issued by the Administrator of the Environmental Protection Agency on April 29, 1992 (57 Fed. Reg. 18344).*

*(3) Nothing in this subsection shall be construed to limit the authority of the President or his delegate to amend the final rule issued by the Administrator of the Environmental Protection Agency on April 29, 1992 (57 Fed. Reg. 18344), in accordance with applicable provisions of law.*

***SEC. 408. ENHANCEMENT OF SETTLEMENT AUTHORITIES.***

*Section 122 (42 U.S.C. 9622) is amended as follows:*

*(1) Subsection (b) is amended by striking paragraph (3) and redesignating paragraph (4) as paragraph (3).*

*(2) Section 122(d)(1) is amended by adding at the end the following new subparagraph:*

*"(D) COMPLIANCE.—Any consent decree shall require the parties to attempt expeditiously to resolve disagreements concerning implementation of the remedial action informally with the appropriate Federal and State agencies. Where the parties agree, the consent decree may provide for administrative enforcement. Each consent decree shall also contain stipulated penalties for violations of the decree in an amount not to exceed $25,000 per day, which may be enforced by either the President or the State. Such stipulated penalties shall not be construed to impair or affect the authority of the court to order compliance with the specific terms of any such decree.".*

*(3) Subsection (e) is amended—*

*(A) by striking paragraph (3); and*

*(B) by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.*

*(4) The section is amended—*

*(A) by transferring paragraph (6) to the end of the section and redesignating such paragraph as subsection (o);*

*(B) in such subsection (o) (as so transferred and redesignated), by striking ''remedial action'' and inserting ''response action'', and by inserting ''or the State under applicable law'' before the period at the end; and*

*(C) by adding after such subsection (o) (as so transferred and redesignated) the following new subsections:*

*''(p) RETENTION OF FUNDS.—(1) If, as part of any settlement agreement under this Act, the potentially responsible parties will be paying amounts to the President for carrying out any response action, the President may retain such amounts in interest bearing accounts, and use such amounts, together with accrued interest, to conduct or enable other persons to conduct such response action.*

*''(2) If, as part of any settlement agreement for carrying out a response action under this Act, a potentially responsible party or parties will be paying amounts to the United States, the Administrator is authorized to accept ownership of a financial instrument running irrevocably to the benefit of the United States to conduct, or enable other persons to conduct, such response actions. For the purposes of this paragraph, the term 'financial instrument' means an annuity contract, funding agreement, or similar instrument acceptable to the Secretary of the Treasury, that is*

*purchased by one or more potentially responsible parties, and has a defined schedule of periodic payments which coincides with the obligations set forth in the settlement agreement. Periodic payments under such a financial instrument will be made to the owner, or as the owner directs, for response costs at the facility which is the subject of the settlement agreement.*

*"(q) CHALLENGE TO COST RECOVERY COMPONENT OF SETTLEMENT.—Notwithstanding the limitations on review in section 113(h), and except as provided in subsection (g) of this section, a person whose potential claim for response costs or contribution is limited as a result of contribution protection afforded by an administrative settlement under this section may challenge the cost recovery component of such settlement. Such a challenge may be made only by filing a complaint against the Administrator in the United States District Court within 60 days after such settlement becomes final. Venue shall lie in the district in which the principal office of the appropriate region of the Environmental Protection Agency is located. Any review of an administrative settlement shall be limited to the administrative record, and the settlement shall be upheld unless the objecting party can demonstrate on that record that the decision of the President to enter into the administrative set-*

*tlement was arbitrary, capricious, or otherwise not in accordance with law.*

*''(r) UNSUCCESSFUL CHALLENGERS LIABLE FOR ATTORNEY'S FEES.—Any party who challenges any settlement entered into between the President and any potentially responsible party under this Act, and who is not successful in overturning or modifying the settlement, shall be liable to the United States and any settling party for all reasonable attorneys' fees and costs incurred in defending the settlement.''.*

***SEC. 409. PROFESSIONAL SERVICES.***

*Section 122 is amended by adding after subsection (r), as added by section 408, the following new subsection:*

*''(s) PROFESSIONAL SERVICES.—The Administrator has the authority to use the procedures set forth in section 109(e) to obtain the services of neutral professionals to assist in the conduct of settlement negotiations under this section, whether or not the neutral professional actually participates in such negotiations.''.*

***SEC. 410. FINAL CONVENANTS.***

*Section 122(f) is amended as follows:*

*(1) Paragraph (1) is amended to read as follows:*

*''(1) FINAL COVENANTS.—The President shall offer potentially responsible parties who enter into settlement agreements that are in the public interest*

*a final covenant not to sue concerning any liability to the United States under this Act, including a covenant with respect to future liability, for response actions or response costs addressed in the settlement, if all of the following conditions are met:*

*"(A) The settling party agrees to perform, or there are other adequate assurances of the performance of, a final remedial action authorized by the Administrator for the release or threat of release that is the subject of the settlement.*

*"(B) The remedial action does not provide that any hazardous substances will remain at the facility at concentrations above the protective concentration levels established pursuant to section 121(d) after the final remedial action is completed.*

*"(C) The settlement agreement has been reached prior to the commencement of litigation against the settling party under section 106 or 107 of this Act with respect to this facility.*

*"(D) The settling party waives all contribution rights against other potentially responsible parties at the facility.*

*"(E) The settling party pays a premium that compensates for the risks of remedy failure;*

*future liability resulting from unknown conditions; unanticipated increases in the cost of any uncompleted response action, unless the settling party is performing the response action; and the United States litigation risk as provided in section 130 with respect to persons who have not resolved their liability to the United States under this Act, unless all parties have settled their liability to the United States, or the settlement covers 100 percent of the United States response costs. The President shall have sole discretion to determine the appropriate amount of any such premium, and such determinations are committed to the President's discretion. The President has discretion to waive or reduce the premium payment for persons who demonstrate an inability to pay such a premium.*

*''(F) The settlement is otherwise acceptable to the United States.''.*

*(2) Paragraph (3) is amended to read as follows:*

*''(3) DISCRETIONARY COVENANTS.—For settlements under this title for which covenants under section 122(f)(1) are not available, the President may, in his discretion, provide any person with a covenant not to sue concerning any liability to the United*

*States under this title, if the covenant not to sue is in the public interest. Such covenants shall be subject to the requirements of section 122(f)(5). The President may include any conditions in such covenant not to sue, including the additional condition referred to in paragraph (5). In determining whether such conditions or covenants are in the public interest, the President shall consider the nature and scope of the commitment by the settling party under the settlement, the effectiveness and reliability of the response action, the nature of the risks remaining at the facility, the strength of evidence, the likelihood of cost recovery, the reliability of any response action or actions to restore, replace, or acquire the equivalent of injured natural resources, the extent to which performance standards are included in the order or decree, the extent to which the technology used in the response action is demonstrated to be effective, and any other factors relevant to the protection of human health and the environment.''.*

*(3) Such subsection (f) is amended by striking paragraph (4) and redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.*

*(4) Paragraph (2) is amended by striking ''remedial'' each place it appears and inserting ''response''.*

*(5) Subparagraph (A) of paragraph (5) (as so redesignated) is amended—*

*(A) by striking ''remedial'' and inserting ''response'';*

*(B) by striking ''paragraph (2)'' in the first sentence and inserting ''paragraph (1) or (2)'';*

*(C) by striking ''de minimis settlements'' and inserting ''de minimis and other expedited settlements pursuant to subsection (g) of this section''; and*

*(D) by striking ''the President certifies under paragraph (3) that remedial action has been completed at the facility concerned'', and inserting ''that the response action that is the subject of the settlement agreement is selected''.*

*(6) Subparagraph (B) of paragraph (5) (as so redesignated) is amended—*

*(i) by striking ''In extraordinary circumstances, the'' and inserting ''The'';*

*(ii) by striking ''those referred to in paragraph (4) and'';*

*(iii) by striking ''if other terms,'' and inserting '', if the agreement containing the covenant not to sue provides for payment of a premium to address possible remedy fail-*

*ure or any releases that may result from unknown conditions, and if other terms,''; and*

*(iv) by inserting at the end the following: ''The President may, in his discretion, waive or reduce the premium payment for persons who demonstrate an inability to pay such a premium.''.*

***SEC. 411. EXPEDITED FINAL SETTLEMENTS.***

*Section 122 is amended as follows:*

*(1) Subsection (g) is amended by striking ''(g)'' and all that follows through the end of subparagraph (A) of paragraph (1) and inserting in lieu thereof the following:*

*''(g) EXPEDITED FINAL SETTLEMENT.—*

*''(1) PARTIES ELIGIBLE FOR EXPEDITED SETTLEMENT.—Whenever practicable and in the public interest as determined by the President, the President shall, as promptly as possible, offer to reach a final administrative or judicial settlement with potentially responsible parties who, in the judgment of the President, meet one or more of the following conditions for eligibility for an expedited settlement—*

*''(A) The potentially responsible party's individual contribution of hazardous substances at*

*the facility is de minimis. The contribution of hazardous substance to a facility by a potentially responsible party is de minimis if both of the following conditions are met:*

*''(i) The potentially responsible party's volumetric contribution of materials containing hazardous substances is minimal in comparison to the total volumetric contributions of materials containing hazardous substances at the facility; such individual contribution is presumed to be minimal if it is one percent or less of the total volumetric contribution at the facility, unless the Administrator identifies a different threshold based on site-specific factors.*

*''(ii) The potentially responsible party's hazardous substances do not present toxic or other hazardous effects that are significantly greater than those of other hazardous substances at the facility.''.*

*(2) Subsection (g) is further amended by inserting after subparagraph (B) of paragraph (1) the following:*

*''(C) The potentially responsible party's liability is based solely on paragraph (3) or (4)*

*of section 107(a), and the arrangement for disposal, treatment, or transport for disposal or treatment, or the acceptance for transport for disposal or treatment, involved only municipal solid waste or sewage sludge. The Administrator may offer to settle the liability of generators and transporters of municipal solid waste or sewage sludge whose liability is limited pursuant to paragraph (7) of section 107(a) for up to 10 percent of the total response costs at the facility.*

*''(D)(i) The potentially responsible party is a natural person, a small business, or a municipality and can demonstrate to the United States a limited ability to pay response costs.*

*''(ii) For purposes of this subparagraph, the following provisions apply:*

*''(I) In the case of a small business, the President shall take into consideration the ability to pay of the business, if requested by the business. The term 'ability to pay' means the President's reasonable expectation of the ability of the small business to pay its total settlement amount and still maintain its basic business operations. Such consideration shall include the*

*business's overall financial condition and demonstrable constraints on its ability to raise revenues.*

*"(II) Any business requesting such consideration shall promptly provide the President with all relevant information needed to determine the business's ability to pay.*

*"(III) The business shall demonstrate the amount of its ability to pay. If the business employs fewer than 20 employees, and has annual gross revenues of less than $1,800,000 or a net profit margin of less than 2 percent, the President shall perform any analysis that may be required to demonstrate the business's ability to pay. The President, in his discretion, may perform such analysis for any other party or require such other party to perform the analysis.*

*"(IV) If the President determines that a small business is unable to pay its total settlement amount immediately, the President shall consider alternative payment methods as may be necessary or appropriate. The methods to be considered may*

*include installment payments and the provision of in-kind services.*

*"(iii) For purposes of this subparagraph, in the case of a municipal owner or operator, the President shall consider, to the extent that information is provided by the municipality, the following factors:*

*"(I) the municipality's general obligation bond rating and information about the most recent bond issue for which the rating was prepared;*

*"(II) the amount of total available funds (other than dedicated funds);*

*"(III) the amount of total operating revenues (other than obligated or encumbered revenues);*

*"(IV) the amount of total expenses;*

*"(V) the amounts of total debt and debt service;*

*"(VI) per capita income;*

*"(VII) real property values;*

*"(VIII) unemployment information; and*

*"(IX) population information.*

*"(iv) A municipality may also submit for consideration by the President an evaluation of the potential impact of the settlement on essential services that the municipality must provide, and the feasibility of making delayed payments or payments over time. If a municipality asserts that it has additional environmental obligations besides its potential liability under this Act, then the municipality may create a list of the obligations, including an estimate of the costs of complying with such obligations.*

*"(v) A municipality may establish an inability to pay through an affirmative showing that such payment of its liability under this Act would either—*

*"(I) create a substantial demonstrable risk that the municipality would default on existing debt obligations, be forced into bankruptcy, be forced to dissolve, or be forced to make budgetary cutbacks that would substantially reduce current levels of protection of public health and safety; or*

*"(II) necessitate a violation of legal requirements or limitations of general appli-*

*cability concerning the assumption and maintenance of fiscal municipal obligations.*

*''(vi) This subparagraph does not limit or affect the President's authority to evaluate any person's ability to pay or to enter into settlements with any person based on that person's inability to pay.''.*

*(3) Paragraphs (2) and (3) of subsection (g) are amended to read as follows:*

*''(2) BASIS OF DETERMINATION.—Any person who enters into a settlement pursuant to this subsection shall provide any information requested by the President or by an allocator in accordance with section 130(d)(2) or section 104(e) of this Act. The determination of whether a person is eligible for an expedited settlement shall be made on the basis of all information available to the President at the time the determination is made. Such determination, and the settlement, are committed to the President's discretion. If the President determines not to apply these provisions for expedited settlements at a facility, the President shall explain the basis for that determination in writing to any person who requests such a settlement.*

*"(3) ADDITIONAL FACTORS RELEVANT TO SETTLEMENTS WITH MUNICIPALITIES.—In any settlement with a municipality pursuant to this title, the President may take additional equitable factors into account in determining an appropriate settlement amount, including the limited resources available to that party, and any in-kind services that the party may provide to support the response action at the facility. In considering the value of in-kind services, the President shall consider the fair market value of those services.".*

*(4) Subsection (g) is further amended—*

*(A) in paragraph (4), by striking "$500,000" and inserting "$2,000,000"; and*

*(B) by striking paragraph (5).*

*(5) Subsection (h) is amended—*

*(A) by amending the heading to read as follows: "AUTHORITY TO SETTLE CLAIMS FOR FINES, CIVIL PENALTIES, PUNITIVE DAMAGES, AND COST RECOVERY.—";*

*(B) in paragraph (1)—*

*(i) in the first sentence, by striking "costs incurred" and inserting "past and future costs incurred or that may be incurred";*

*(ii) in the first sentence, by inserting after ''if the claim has not been referred to the Department of Justice for further action.'' the following: ''The head of any department or agency with the authority to seek fines, civil penalties, or punitive damages under this Act may consider, compromise, and settle claims for any such fines, civil penalties, or punitive damages which may otherwise be assessed in civil administrative or judicial proceedings if the claim has not been referred to the Department of Justice for further action. If the total claim for fines, civil penalties, or punitive damages exceeds $300,000, such claim may be compromised and settled only with the prior written approval of the Attorney General.''; and*

*(iii) in the second sentence, by striking ''$500,000 (excluding interest), any claim referred to in the preceding sentence'' and inserting ''$2,000,000 (excluding interest), any claim for response costs referred to in this subsection''; and*

*(C) by striking paragraph (4).*

***SEC. 412. ALLOCATION PROCEDURES.***

*Insert after section 129 the following new section:*

***"SEC. 130. ALLOCATION AT MULTIPARTY FACILITIES.***

*"(a) SCOPE.—*

*"(1) POST-INTRODUCTION RODS.—For each non-federally owned facility listed on the National Priorities List involving 2 or more potentially responsible parties for which the President selects a remedial action on or after February 3, 1994, the Administrator shall initiate the allocation process under this section. This paragraph shall not apply to response actions selected prior to such date.*

*"(2) PRE-INTRODUCTION RODS.—For each non-federally owned facility listed on the National Priorities List involving 2 or more potentially responsible parties, for any remedial action selected by the President before February 3, 1994, the Administrator shall initiate the allocation process under this section, if requested to do so by a potentially responsible party which has resolved its liability to the United States with respect to the remedial action or which is performing the remedial action pursuant to an order issued under section 106(a).*

*"(3) OTHER FACILITIES.—The Administrator, as the Administrator deems appropriate, may initiate the allocation process under this section for any facil-*

*ity other than a facility referred to in paragraph (1) or (2) involving 2 or more potentially responsible parties.*

*"(4) EXCLUDED FACILITIES.—The allocation process under this section shall not apply to any of the following:*

*"(A) A facility for which there has been a final settlement, decree, or order that determines all liability or allocated shares of all potentially responsible parties.*

*"(B) A facility at which all of the potentially responsible parties are liable or potentially liable as facility owners or operators pursuant to section 107(a)(1) or (2).*

*"(5) MULTIPLE REMEDIAL ACTIONS.—An allocation under this section, shall apply to all remedial actions selected by the President on or after February 3, 1994, for a facility (but not to those remedial actions described in paragraph (2)), unless the allocator determines that the allocation should address only one or more of such remedial actions.*

*"(6) MULTIPLE FACILITIES.—Where appropriate, the Administrator may initiate a single allocation process under this section for more than 1 facility.*

*"(7) EFFECT OF ALLOCATION.—An allocation performed pursuant to paragraph (2) or (3) of this section shall not be construed to require—*

*"(A) payment of an orphan share pursuant to this section; or*

*"(B) the conferral of reimbursement rights pursuant to this section.*

*"(8) SETTLEMENT OFFERS AFTER COMMENCEMENT OF LITIGATION.—The provisions of this section shall not apply to any offer of settlement made after expiration of the moratorium period under subsection (b).*

*"(b) MORATORIUM ON COMMENCEMENT OR CONTINUATION OF SUITS.—*

*"(1) MORATORIUM.—No person may assert any claim for response costs pursuant to section 107 of this Act or commence any civil action seeking recovery of any response costs in connection with a response action for which an allocation is required under subsection (a)(1) or (2), or for which the Administrator has initiated an allocation under subsection (a)(3), until 90 days after issuance of the allocator's report under subsection (h) or (m), whichever is later.*

*"(2) STAY OF EXISTING ACTIONS.—If a claim for response costs pursuant to section 107 of this Act or an action seeking recovery of response costs in connection with a response action for which an allocation is to be performed under this section is pending—*

*"(A) upon the date of enactment of the Superfund Reform Act of 1994, or*

*"(B) upon initiation of an allocation,*

*the action or claim shall be stayed until 90 days after the issuance of the allocator's report under subsection (h) or (m), unless the court determines that a stay will result in manifest injustice.*

*"(3) STATUTE OF LIMITATIONS.—Any applicable limitations period with respect to a cause of action subject to paragraph (1) shall be tolled from the earlier of the following until 180 days after the issuance of the allocator's report under subsection (h) or (m) has been issued by the allocator:*

*"(A) The date of listing of the facility on the National Priorities List.*

*"(B) The commencement of the allocation process pursuant to this section.*

*"(c) COMMENCEMENT OF ALLOCATION.—*

*"(1) RESPONSIBLE PARTY SEARCH.—At all facilities subject to this section, the Administrator shall,*

*as soon as practicable, but not later than 60 days after the commencement of the remedial investigation, initiate a thorough investigation and search for all potentially responsible parties, using his authorities under section 104. Any person may submit information to the Administrator concerning any potentially responsible party at the facility, and the Administrator shall consider such information in carrying out the responsible party search.*

*"(2) NOTIFICATION OF DE MINIMIS PARTIES.—As soon as practicable after receipt of sufficient information, but not more than 12 months after the commencement of the remedial investigation, the Administrator shall take each of the following actions:*

*"(A) The Administrator shall notify any potentially responsible party who the Administrator determines is eligible for an expedited final settlement in accordance with section 122(g)(1)(A) of its eligibility, based on information available to the Administrator at the time the determination is made. Any such information that is not confidential shall, to the extent practicable, be made available by the Administrator to the party at the time of the settlement offer.*

*"(B) The Administrator shall submit a written settlement offer to each party notified under subparagraph (A) no later than 60 days after such notification.*

*"(3) PRELIMINARY NOTICE TO OTHER PARTIES.—As soon as practicable after receipt of sufficient information, but not later than 18 months after commencement of the remedial investigation, the Administrator shall—*

*"(A) notify any party not previously notified under paragraph (2) who the Administrator determines is eligible for an expedited final settlement in accordance with section 122(g)(1)(A) of its eligibility, based on information available to the Administrator at the time the determination is made and submit a written settlement offer to each party notified pursuant to this subparagraph no later than 60 days after such notification;*

*"(B) issue a list of all potentially responsible parties preliminarily identified by the Administrator to all such parties;*

*"(C) notify the public, in accordance with section 117(d), of the list of potentially respon-*

*sible parties identified pursuant to subparagraphs (A) and (B) by the Administrator; and*

*"(D) make available all responses to the Administrator's information requests, as well as other relevant information concerning the facility and potentially responsible parties, to the notified parties, to the extent it is available to the Administrator.*

*The Administrator shall not make available any privileged or confidential information, except as otherwise authorized by law. The Administrator shall take the actions specified in this paragraph within 9 months after the date of enactment of this section for all facilities eligible for allocation under subsection (a)(1) or (a)(2) for which the responsible party search required by a paragraph (1) was substantially complete prior to the date of the enactment of this section.*

*"(4) STATUS OF PARTIES.—At the time of proposing the list of potentially responsible parties under paragraph (3), the Administrator shall—*

*"(A) identify parties that are eligible for expedited settlement pursuant to section 122(g);*

*"(B) identify parties who are not eligible for such expedited settlement; or*

*"(C) determine that there is insufficient information to ascertain whether or not the party is entitled to such expedited settlement.*

*"(5) NOMINATION OF PARTIES.—(A) For 60 days after information has been made available pursuant to paragraph (3), the parties identified by the Administrator and members of the affected community shall have the opportunity to identify and nominate additional potentially responsible parties or otherwise provide information relevant to the facility or such potentially responsible parties. This period may be extended by the Administrator for an additional 30 days upon request of any person.*

*"(B) Any proposal for the addition of any potentially responsible party shall be supported by full disclosure to the Administrator of all available information concerning that party's liability and contribution of hazardous substances to the site.*

*"(6) LIST OF ALLOCATION PARTIES.—(A) Within 60 days after the end of the period specified in paragraph (5)(A) for the proposal of additional parties, the Administrator shall—*

*"(i) issue a list of parties subject to the allocation process (hereinafter referred to in this section as the 'allocation parties');*

*"(ii) identify in writing, as to each of the proposed additional parties, which parties the Administrator has determined, in the Administrator's sole discretion:*

*"(I) to be eligible for expedited settlement pursuant to section 122(g),*

*"(II) not to be eligible for such expedited settlement, and*

*"(III) for whom insufficient information exists to determine whether or not the party is eligible for such expedited settlement; and*

*"(iii) identify (in writing supported by brief explanation) those parties as to which the Administrator has determined, in the Administrator's sole discretion, that there is an inadequate basis in law or fact to determine that the party is potentially liable.*

*For each party identified under clause (iii), the Administrator shall further identify whether that party, if liable, would be eligible for an expedited settlement.*

*"(B) At the time of issuance of the list of parties provided for in subparagraph (A), the Administrator shall provide the potentially responsible parties who received notice under this paragraph with a list of*

*neutral parties who are not employees of the United States and who the Administrator determines, in the Administrator's sole discretion, are qualified to perform an allocation at the facility.*

*"(C) De minimis parties the Administrator identifies as potentially liable but entitled to expedited settlement pursuant to this section, shall not be subject to, or assigned a share in, the allocation (except to the extent required to determine the orphan share pursuant to subsection (h)), unless that party fails to reach an agreement with the President on settlement terms within 30 days after the offer.*

*"(D) If the Administrator determines that there is an inadequate basis in law or fact to conclude that a party is liable based on the information presented by the nominating party or otherwise available to the Administrator, the determination shall have the following effect:*

*"(i) With respect to a party that the Administrator has determined to be—*

*"(I) exempt from liability pursuant to section 107(a)(6)(A) or (B); or*

*"(II) not liable on some other basis but who, if liable, would be eligible for an expedited settlement,*

*the Administrator's determination shall mean that the party shall not be subject to, and shall not be assigned a share in, the allocation.*

*"(ii) With respect to all other parties, the Administrator's determination shall be accorded deference by the allocator. For such parties the allocator shall consider the Administrator's determination together with the allocation factors listed in subsection (h)(2).*

*"(E) The Administrator's determinations for purposes of this subsection shall not be subject to judicial review, nor shall any determination or explanation provided for purposes of the allocation be admissible for any purpose in an action commenced by the United States against the party that is the subject of the determination or any other party.*

*"(F) The allocator may assign a zero share to any party the allocator deems should receive such a share in consideration of the allocation factors including the Administrator's determinations under subparagraph (C).*

*"(G) If a party is included in the allocation pursuant to the nomination of a potentially responsible party pursuant to subsection (c)(5), but assigned a zero share by the allocator, that party's costs of par-*

*ticipating in the allocation (including reasonable attorneys' fees) shall be borne by the party who proposed the addition of the party to the allocation.*

*"(d) DE MINIMIS SETTLEMENT OFFER.—(1) Within 30 days after the final list of parties is issued pursuant to paragraph (6) of subsection (c), the Administrator shall submit a written settlement offer to any party identified as a potentially responsible party pursuant to this section who the Administrator has determined to be eligible for an expedited final settlement in accordance with section 122(g)(1)(A), and who has not entered into a settlement with the United States regarding the matters being addressed by the allocation.*

*"(2) The President shall not include any premia pursuant to section 122(g) in a settlement offer made pursuant to paragraph (1) more than 60 days after the date the offer is required to be made pursuant to paragraph (1) to a party that is a small business, as defined in section 101(47).*

*"(e) SELECTION OF ALLOCATOR.—*

*"(1) PROPOSAL OF ADDITIONAL CANDIDATES.—Any party identified by the Administrator under subsection (c) may propose any person whom such party deems qualified for selection as an allocator in addition to those proposed from the list provided under subsection (c)(6)(B).*

*"(2) SELECTION OF ALLOCATOR BY ALLOCATION PARTIES.—(A) The allocation parties shall select an allocator from the list of allocators proposed by the Administrator or under paragraph (1) by the following voting method with each allocation party having a single vote:*

*"(i) Each allocation party, with the Administrator voting for the identified but insolvent or defunct parties, shall numerically rank the individuals on the final list of proposed allocators, with a ranking of 1 indicating first preference, and forward its vote to the Administrator within 30 days of the issuance of the final list of allocators pursuant to subsection (c)(6)(B).*

*"(ii) The proposed allocator who receives the lowest combined numerical score, taking into account all votes submitted to the Administrator pursuant to clause (i), and who agrees to serve as allocator, shall be determined to be the allocator.*

*"(B) The Administrator may cast the votes of identified but insolvent or defunct parties.*

*"(3) PEREMPTORY STRIKE.—The Administrator may reject any allocator selected by the allocation parties if the proposed allocator is not on the list pro-*

*vided under paragraph (6)(B) of subsection (c). In the case of any such rejection, the allocation parties shall select the allocator in order of numerical ranking in accordance with this subsection.*

*"(4) SELECTION OF ALLOCATOR BY EPA.—If the allocation parties do not select an allocator pursuant to this subsection within 30 days after receipt of the list provided under paragraph (2), the Administrator shall select the allocator, except that if the Administrator rejects 4 or more allocators selected by the allocation parties, the Administrator shall initiate a new allocator selection process under this section.*

*"(f) CONTRACT.—Following selection of the allocator, the Administrator shall enter into a contract with the selected allocator for the provision of allocation services, and immediately make available all responses to information requests, as well as other relevant information concerning the facility and potentially responsible parties, to the allocator. The Administrator has the authority to use the procedures set forth in section 109(e) to obtain the services of a neutral professional for use in conducting allocation procedures under this section, whether or not the neutral professional actually conducts such allocation procedures.*

*"(g) POTENTIALLY RESPONSIBLE PARTY SETTLEMENT.—At any time prior to the issuance of an allocation*

*report as described in subsection (h), any group of potentially responsible parties may submit to the allocator a private allocation for the remedial action. If such private allocation meets all of the following criteria, the allocator shall promptly adopt it as the allocation report:*

*"(1) The private allocation is a binding allocation of 100 percent of the past, present, and future recoverable costs of the remedial action or operable unit.*

*"(2) The private allocation does not allocate any share of response costs to any person who is not a signatory to the proposed private allocation or, in the case of any orphan share, unless the United States is a signatory to the proposed private allocation.*

*"(3) The signatories to the proposed private allocation waive their contribution rights with respect to the remedial action against all other potentially responsible parties at the facility.*

*"(h) ALLOCATION DETERMINATION.—*

*"(1) SETTLEMENT AND ALLOCATION REPORT.—Following issuance of the final list of allocation parties pursuant to subsection (c)(6)(A)(i), the allocator shall initiate and conduct an allocation process that shall culminate in the issuance of a written report, with a nonbinding, equitable allocation of the percentage shares of responsibility of all allocation parties,*

*including the orphan share, for the facility, and provide such report to the allocation parties and the Administrator. The allocator shall provide the report to the allocation parties and the Administrator within 180 days of the issuance of the list of allocation parties pursuant to subsection (c)(6) or the date of the contract for allocation service pursuant to subsection (f), whichever is later. Upon request, for good cause shown, the Administrator may grant the allocator additional time to complete the allocation, not to exceed 90 days.*

*"(2) FACTORS IN THE ALLOCATION.—The allocator shall prepare a nonbinding, equitable allocation of percentage shares for the facility based on the following factors:*

*"(A) The amount of hazardous substances contributed by each allocation party.*

*"(B) The degree of toxicity of hazardous substances contributed by each allocation party.*

*"(C) The mobility of hazardous substances contributed by each allocation party.*

*"(D) The degree of involvement of each allocation party in the generation, transportation, treatment, storage, or disposal of the hazardous substance.*

*"(E) The degree of care exercised by each allocation party with respect to the hazardous substance, taking into account the characteristics of the hazardous substance.*

*"(F) The cooperation of each allocation party in contributing to the response action and in providing complete and timely information during the allocation process.*

*"(G) Such other factors that the Administrator determines are appropriate by published guidance. Any such guidance shall be consistent with this Act and shall be published only after notice and opportunity for public comment. An alleged failure of the allocator to consider 1 or more additional factors set forth in such guidance shall not be deemed unlawful conduct or procedural error for purposes of subsection (l)(2) or (3).*

*"(3) CONDUCT OF ALLOCATION PROCESS.—The allocator shall conduct the allocation process and render a decision based solely on the provisions of this section, including the allocation factors specified in paragraph (2). Each party to the allocation shall be afforded an opportunity to be heard (either orally or in writing, at the allocator's discretion), and an op-*

*portunity to comment on a draft allocation report. The allocator shall not be required to respond to comments.*

*"(4) IDENTIFICATION OF ORPHAN SHARES.—*

*"(A) COMPONENTS OF ORPHAN SHARE.— The allocator may determine that a percentage share for the facility is specifically attributable to an orphan share. The orphan share shall consist only of the following:*

*"(i) Shares attributable to hazardous substances that the allocator determines, on the basis of information presented, to be specifically attributable to identified but insolvent or defunct allocation parties who are not affiliated with any viable allocation party.*

*"(ii) The difference between the aggregate shares that the allocator determines, on the basis of the information presented, is specifically attributable to allocation parties that are contributors of municipal solid waste subject to the limitations in section 107(a)(6), and the share actually assumed by those parties in any settlements with the United States pursuant to section 122(g),*

*including the fair market value of in-kind services provided by a municipality.*

*"(iii) The difference between the aggregate share that the allocator determines, on the basis of information presented, to be specifically attributable to allocation parties with a limited ability to pay response costs and the share actually assumed by those parties in any settlements with the United States pursuant to section 122(g).*

*"(B) UNATTRIBUTABLE SHARES.—Shares attributable to hazardous substances that the allocator cannot attribute to any identified party shall be distributed among the allocation parties, including the orphan share.*

*"(i) ANSWERS AND CERTIFICATIONS TO ALLOCATOR'S INFORMATION REQUESTS.—*

*"(1) SUBPOENAS AND INFORMATION REQUESTS.—Where necessary to assist in determining the allocation of shares, the allocator may request information or documents from any allocation party in accordance with paragraphs (2) or (5) of section 104(e), and require by subpoena the attendance of persons or the production of documents, or other information in accordance with section 104(e)(7). Any*

*allocation party to whom a request is directed shall include in the response a certification by a responsible representative or authorized representative that satisfies the requirement of section 104(e)(3). The allocator may also request the Administrator to utilize the authorities of paragraph (2) and to exercise any information-gathering authority of the Administrator under this Act.*

*"(2) POWERS OF THE ALLOCATOR.—In addition to the information-gathering authority set forth in paragraph (1), the allocator shall have the authority to schedule meetings and require the attendance of allocation parties at such meetings; to require that allocation parties wishing to present similar legal or factual positions consolidate their presentations; to obtain or employ support services, including secretarial and clerical services, computer support services, and legal and investigative services; and to take any other actions necessary to conduct a fair, efficient, and impartial allocation process.*

*"(j) CIVIL AND CRIMINAL PENALTIES.—*

*"(1) CIVIL PENALTIES.—Where the allocator issues an administrative subpoena or information request pursuant to subsection (i), a party who unreasonably fails to comply with the subpoena or request*

*shall be subject to a civil penalty not to exceed $25,000 for each day of noncompliance.*

*"(2) ENFORCEMENT.—The allocator may seek enforcement of an administrative subpoena or information request pursuant to subsection (i)(1), and shall seek such enforcement by requesting that the Attorney General commence an action to enforce the subpoena or request. The Attorney General, within 30 days after receiving such request from the allocator, shall—*

*"(A) notify the allocator that the Attorney General will commence an action to enforce the subpoena or information request;*

*"(B) notify the allocator that the Attorney General will not seek enforcement of the subpoena or request because the subpoena or request is barred by law or would result in annoyance, embarrassment, oppression, or undue burden or expense to the party to whom it was issued; or*

*"(C) notify the allocator that the Attorney General has insufficient information on which to determine whether an enforcement action is appropriate.*

*"(3) FAILURE OF ATTORNEY GENERAL TO RESPOND.—If the Attorney General fails to provide any*

*response to the allocator within 30 days of a request for enforcement of a subpoena or information request, the allocator may retain counsel to commence a civil action to enforce the subpoena or information request.*

*"(4) PENALTY.—If the Attorney General or allocator prevails in an action to enforce an allocator's subpoena or information request, the party who failed to comply shall be subject to a sanction that may include civil penalties as provided in paragraph (1). The court shall require such party to pay the reasonable expenses, including attorney's fees, caused by the failure to comply, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.*

*"(5) CRIMINAL.—Any person who knowingly makes any false material statement or representation in the response to an allocator's information request or subpoena issued pursuant to subsection (i) shall be deemed to have made a false statement on a matter within the jurisdiction of the United States within the meaning of section 1001 of title 18, United States Code.*

*"(k) DOCUMENT REPOSITORY; CONFIDENTIALITY.—*

*"(1) DOCUMENT REPOSITORY.—The allocator shall establish and maintain a document repository containing copies of all documents and information—*

*"(A) provided by the Administrator pursuant to this section,*

*"(B) provided or generated by the allocation parties, or*

*"(C) generated by the allocator during the allocation.*

*The documents and information in the document repository shall be available only to the parties to the allocation process for review and copying at their own expense, subject to the confidentiality provisions of paragraph (2). The Administrator shall provide to the allocator all information obtained under section 104(e), including information entitled to protection under section 1905 of title 18, United States Code, or exempt from disclosure pursuant to section 552(a) of title 5, United States Code. An allocation party shall not assert any privilege as a basis for withholding any information from the allocator.*

*"(2) CONFIDENTIALITY.—All documents and materials submitted to the allocator or placed in the document repository, together with the record of any information generated or obtained during the allocation*

*process, shall be confidential. The allocator, each allocation party, the Administrator, and the Attorney General shall maintain such documents and materials, together with the record of any information generated or obtained during the allocation, as confidential and are prohibited from using any such material in any other matter or proceeding, and shall not be subject to disclosure under section 552 of title 5, United States Code. Such material shall not be discoverable or admissible in any other Federal, State, or local judicial or administrative proceedings, except—*

*"(A) a new allocation pursuant to subsection (m) or (n) for the same remedial action, or*

*"(B) an initial allocation for a different remedial action at the same facility.*

*Nothing in this section shall be construed to authorize any person, including the allocator, to withhold any documents or information from Congress, or any duly authorized Committee thereof, or limit in any manner the right of Congress, or any duly authorized Committee thereof, to obtain such documents or information. Any person disclosing such documents or information to Congress shall notify the person who pro-*

*duced such documents or information of the fact of such disclosure pursuant to paragraph (5).*

*"(3) DISCOVERABILITY AND ADMISSIBILITY.—Notwithstanding the foregoing, if the original of any document or material submitted to the allocator or placed in the document repository was, in the hands of the party which provided it, otherwise discoverable or admissible, then such original document, if subsequently sought from such party, shall remain so. If a fact generated or obtained during the allocation was, in the hands of a witness, otherwise discoverable or admissible, then such fact, if subsequently sought from such other party, shall remain so.*

*"(4) NO WAIVER OF PRIVILEGE.—The submission of, documents, or information pursuant to the allocation process shall not be deemed to be a waiver of any privilege, applicable to such documents or information under any Federal or State law or rule of discovery or evidence.*

*"(5) PROCEDURE WHEN DISCOVERY IS SOUGHT.—Any person, including the United States and any Federal, State, or local agency, department or instrumentality, receiving any request for a statement, document, or material submitted, or for the record of any allocation proceeding, shall promptly*

*notify the person who originally submitted such item and, except in the case of a request from the Congress or a duly authorized committee thereof, shall provide such submitting person the opportunity to assert and defend the confidentiality of such item. No person shall release or provide a copy of the item to any person not a party to such allocation, other than the Congress or a duly authorized committee thereof, except as may be required by court order.*

*"(6) CIVIL PENALTY FOR VIOLATION OF CONFIDENTIALITY.—Any person who fails to maintain the confidentiality of any statements, documents or information generated or obtained during an allocation proceeding, or who releases any such information in violation of this section shall be subject to civil penalties of up to $25,000 per violation. Such penalties may be sought in a civil action initiated by the Attorney General on behalf of the United States, or any allocation party adversely affected by the failure to maintain confidentiality.*

*"(l) REJECTION OF ALLOCATOR'S REPORT.—The Administrator and the Attorney General of the United States may reject the allocator's report if they jointly determine that—*

*"(1) no rational interpretation of the facts before the allocator, in light of the factors required to be considered, would form a reasonable basis for the shares assigned to the parties;*

*"(2) the allocation was affected by bias, fraud, or unlawful conduct; or*

*"(3) the allocation was substantially and directly affected by procedural error.*

*The allocator's report may not be rejected after the United States has accepted a settlement offer (excluding de minimis or other expedited settlements under section 122(g)) based on the allocation. The Administrator and the Attorney General shall make any such determination within 180 days after the receipt of the first offer based on the allocator's report. The determinations of the Administrator and the Attorney General under this subsection shall not be judicially reviewable. No such determination may be delegated to any officer or employee of the Environmental Protection Agency or the Department of Justice below the level of an Assistant Secretary or Acting Assistant Secretary with authority for implementing this Act at the Environmental Protection Agency or the Department of Justice.*

*"(m) SECOND ALLOCATION.—If the United States rejects an allocator's report, the parties shall select a new allocator pursuant to subsection (e) to perform, on an expedited*

*basis, a new allocation based on the same record available to the first allocator. The moratorium on commencement of litigation and tolling of statutes of limitation set forth in subsection (b) shall be extended until 90 days after the issuance of the second allocation report. If the United States rejects the second allocation the President may, following the expiration of the moratorium on commencement of litigation, commence an action under section 107.*

*"(n) NEW INFORMATION.—Any settling party, including the United States, may seek a new allocation pursuant to subsection (h), where that party presents clear and convincing information or the United States otherwise determines on the basis of clear and convincing information that—*

*"(1) the allocator did not have information concerning 35 percent or more of the materials containing hazardous substances at the facility, and that this information has been discovered subsequent to the issuance of the allocator's report; or*

*"(2) the allocator did not have information concerning a person not subject to the allocation who contributed 15 percent or more of materials containing hazardous substances at the facility, and that this information has been discovered subsequent to the issuance of the allocator's report.*

*Determinations by the United States pursuant to this subsection shall not be subject to judicial review.*

*"(o) SETTLEMENT FOLLOWING ALLOCATION.—*

*"(1) ACCEPTANCE OF OFFERS.—If, within 90 days after issuance of the allocator's report for an allocation conducted under subsection (a)(1), an allocation party—*

*"(A) makes a written offer to settle with respect to the response action based on the percentage share specified by the allocator and on the additional terms and conditions of settlement (other than the allocated percentage share) that are acceptable to the President, and*

*"(B) is not in default on any information requests under this Act,*

*then the President shall not seek a higher percentage share other than the premia authorized by this section, unless the President has rejected the offer on a basis other than the percentage share, or unless the Administrator and the Attorney General have rejected the allocation report pursuant to subsection (l).*

*"(2) EXPLANATION OF REFUSAL TO SETTLE.—If the Administrator and the Attorney General determine not to settle on the basis of the allocation, they shall provide the allocation parties and members of*

*the affected community with a written explanation of the Administrator's determination.*

*"(3) SETTLEMENT PROVISIONS.—Settlements based on allocated shares shall include each of the following:*

*"(A) A waiver of contribution rights against all parties who are potentially responsible parties for the response action, as well as a waiver of any rights to challenge any settlement the President enters into with any other potentially responsible party.*

*"(B) Covenants not to sue, consistent with section 122(f), and provisions regarding performance or adequate assurance of performance of response actions addressed in the settlement.*

*"(C) A premium determined on a site specific basis and subject to the limitations set forth in paragraph (4), that compensates for the United States litigation risk with respect to potentially responsible parties who have not resolved their liability to the United States, except that no such premium shall apply if all parties settle or the settlement covers 100 percent of response costs.*

*"(D) Contribution protection, consistent with section 113(f), regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially responsible parties unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.*

*"(E) Provisions through which the settling parties shall receive reimbursement from the Fund for any response costs incurred by such parties in excess of the aggregate of their allocated share and any premia required by the settlement. Such right to reimbursement shall not be contingent on the United States recovery of response costs from any responsible person not a party to any settlement with the United States.*

*"(4) The premium authorized by paragraph (3)(C) for litigation risk shall not exceed the following:*

*"(A) Five percent of the total costs assumed by a settling party, where settlements (and any orphan share identified by the allocator) account for 80 percent or more of responsibility at the facility.*

*"(B) Ten percent of the total costs assumed by a settling party, where settlements (and any orphan share identified by the allocator) account for more than 60 percent and less than 80 percent of responsibility at the facility.*

*"(C) Fifteen percent of the total costs assumed by a settling party, where settlements (and any orphan share identified by the allocator) account for more than 40 percent and less than 60 percent of responsibility at the facility.*

*"(D) Twenty percent of the total costs assumed by a settling party, where settlements (and any orphan share identified by the allocator) account for 40 percent or less of responsibility at the facility.*

*The Administrator shall have authority to promulgate regulations to modify the premia percentages established in this subsection. The Administrator may not propose a rule before the date 36 months after the enactment of this section, and no such rule may take effect before the date 48 months after the enactment of this section. Such rule must be based upon an administrative record establishing that such modification is necessary to reflect actual experience regarding the*

*litigation risk faced by the United States in proceeding against nonsettling parties under this section.*

*"(5) AUTHORIZATION OF REIMBURSEMENT.—In any settlement in which a party agrees to perform response work in excess of its share, the Administrator shall have authority to carry out his duty to reimburse settling parties under this section pursuant to such reasonable procedures as the Administrator may prescribe.*

*"(6) REIMBURSEMENT CLAIMS.—The Administrator shall require all claims for reimbursement to be supported by—*

*"(A) documentation of actual costs incurred; and*

*"(B) sufficient information to enable the Administrator to determine whether such costs were reasonable.*

*The Administrator may require independent auditing of any claim for reimbursement.*

*"(p) POST-ALLOCATION LITIGATION.—*

*"(1) IN GENERAL.—The United States may commence an action under section 107 against any person liable under that section who has not resolved its liability to the United States following allocation, on or after 90 days following issuance of the allocator's*

*report. In any such action, such person shall be liable in accordance with section 107 for all response costs not recovered through settlements with other persons. Such recoverable costs shall include any federally funded orphan share identified in accordance with subsection (h), but shall not include any shares allocated to Federal, State, or local governmental agencies, departments, or instrumentalities. Defendants in any such action may implead only allocation parties who did not resolve their liability to the United States. The Administrator and the Attorney General shall issue guidelines to ensure that the relief sought against de minimis parties under principles of joint and several liability will not be grossly disproportionate to their contribution to the facility. The application of such guidelines is committed to the discretion of the Administrator and the Attorney General.*

*"(2) CERTIFICATION.—In commencing any action under section 107 following allocation, the Attorney General must certify, in the complaint, that the United States has been unable to reach a settlement that would be in the best interests of the United States. This certification shall not be subject to judicial review.*

*"(3) DEFENDANTS.—No person may commence an action under section 107 or otherwise seek contribution against any person who was not identified as an allocation party pursuant to subsection (c) or subsequently identified as a potentially liable party under subsection (n) (relating to new information).*

*"(4) ADMISSIBILITY OF ALLOCATOR'S REPORT.—The allocator's report shall not be admissible in any court for any purpose, except as set forth in this section. The allocator's report, subject to the rules and discretion of the court, may be admissible solely for the purpose of assisting the court in making an equitable allocation of response costs among the relative shares of nonsettling liable parties.*

*"(5) COSTS OF ALLOCATION PROCEDURE ON ORPHAN SHARE.—*

*"(A) INCLUDED AS COSTS OF RESPONSE.—The costs of implementing the allocation procedure set forth in this section, including reasonable fees and expenses of the allocator, shall be considered necessary costs of response for purposes of this Act.*

*"(B) ORPHAN SHARE.—The costs attributable to any funding of orphan shares identified by the allocator pursuant to subsection (e)(4)*

*also shall be considered necessary costs of response for purposes of this Act, and shall be recoverable from liable parties who do not resolve their liability on the basis of the allocation.*

*"(6) REJECTION OF SHARE DETERMINATION.—In any action by the United States under this title, if the United States has rejected an offer of settlement that is consistent with subsection (o) and that was presented to the United States prior to the expiration of the moratorium period set forth in subsection (b), the offeror shall be entitled to recover from the United States the offeror's reasonable costs of defending the action after the making of the offer (including reasonable attorneys' fees) if the ultimate resolution of liability or allocation of costs with respect to the offeror (taking into account all settlements and reimbursements with respect to the facility other than those attributable to insurance or indemnification), is as, or more, favorable to the offeror than the offer based on the allocation.*

*"(q) REIMBURSEMENT FOR UAO PERFORMANCE.—*

*"(1) REIMBURSEMENT.—Parties who satisfactorily perform work under an administrative order issued under section 106(a) with respect to a remedial action for which an allocation is required by sub-*

*section (a)(1), shall be entitled to reimbursement for the reasonable and necessary costs of work they perform in excess of the share assigned to them in the allocation in accordance with the provisions of this section, provided that the allocation report is not rejected by the United States and, that, at the end of the moratorium following the allocation, the performing party, in consideration of such reimbursement—*

*"(A) agrees not to contest liability for all response costs not inconsistent with the National Contingency Plan to the extent of the allocated share;*

*"(B) receives no covenant not to sue;*

*"(C) agrees that its reimbursement shall be reduced by an amount equal to the maximum litigation risk premium provided for in subsection (o)(4) based on the total allocated shares of the allocation parties who have not reached settlements with the United States by the end of the moratorium on commencement of actions provided in subsection (b);*

*"(D) waives contribution rights against all parties who are potentially responsible parties for the response action, as well as waives any rights to challenge any settlement the President*

*enters into with any other potentially responsible party.*

*"(2) OFFSET.—Any and all reimbursement provided to a performing party for work in excess of its share is subject to equitable offset or reduction by the Administrator upon a finding of a failure to perform any aspect of the remedy in a proper and timely manner.*

*"(3) TIME OF PAYMENT.—Any and all reimbursement to a performing party for work in excess of its share shall be paid after work is completed, but no sooner than completion of the construction of the remedial action.*

*"(4) LIMIT ON ORPHAN SHARE FUNDING.—The amount of orphan share funding available to the performing party shall be further limited as follows:*

*"(A) Performing parties who fully waive their right to challenge remedy selection at the end of the moratorium following allocation shall be entitled to full reimbursement of costs in excess of the party's share and attributable by the allocator to the orphan share paid in nominal dollars after the work is completed, but no sooner than completion of the construction of the remedial action.*

*"(B) Performing parties who retain their right to challenge the remedy shall be reimbursed for 90 percent of orphan share funding, paid in nominal dollars after the work is completed, but no sooner than completion of the construction of the remedial action, unless the orphan share is less than 20 percent of responsibility at the site, in which case such parties shall be reimbursed only 80 percent of the orphan share.*

*For purposes of this subsection 'nominal dollars' means actual dollars spent by the performing party, without increase for interest or inflation.*

*"(5) NONORPHAN SHARE REIMBURSEMENT.—Reimbursement for work in excess of the performing party's allocated share but that is not attributable to the orphan share shall be paid in nominal dollars after work is completed, but no sooner than completion of the construction of the remedial action, provided that the performing party is entitled to all interest (prejudgment and post judgment, whether recovered from a party or earned in a site account) that has accrued on money recovered by the United States from other parties for such work at the time construction of the remedy is completed.*

*"(6) REIMBURSEMENT CLAIMS.—The Administrator shall require that all claims for reimbursement be supported by—*

*"(A) documentation of actual costs incurred; and*

*"(B) sufficient information to enable the Administrator to determine whether such costs were reasonable.*

*The Administrator may require independent auditing of any claim for reimbursement.*

*"(r) FUNDING OF ORPHAN SHARES.—From funds available in the Fund in any given fiscal year, and without further appropriation action, the President shall make reimbursements from the Fund, to eligible parties for costs incurred and equitably attributable to orphan shares determined pursuant to this section, provided that Fund financing of orphan shares shall not exceed $300,000,000 in any fiscal year. Reimbursements made under this subsection shall be subject to such terms and conditions as the President may prescribe.*

*"(s) PROCEDURES.—The Administrator, after consultation with the Attorney General, may promulgate rules (or guidance) of Agency organization, procedure, and practices but shall not have additional authority, except as specifically set forth in this section, to promulgate rules or pub-*

*lish guidance to restrict the allocator's discretion in the conduct of the allocation.*

*"(t) ROLE OF FEDERAL AGENCIES.—Federal departments, agencies, or instrumentalities that are identified as potentially responsible parties shall be subject to, and be entitled to the benefits of, the allocation process provided by this section to the same extent as any other party.*

*"(u) REPRESENTATION OF THE UNITED STATES AND AFFECTED STATES.—The Administrator and the Attorney General, and a representative of any State that may be responsible for a portion of the orphan share, shall be entitled to review all documents and participate in any phase of the allocation proceeding.*

*"(v) ANNUAL REPORT.—The President shall report annually to Congress on the administration of the allocation scheme under this section, and provide information comparing allocation results with actual settlements at multiparty facilities.*

*"(w) SAVINGS PROVISIONS.—(1) Nothing in this section shall in any way limit or affect the President's authority to exercise the powers conferred by section 103, 104, 105, 106, or 122 of this title, or to commence an action against a party where there is a contemporaneous filing of a judicial consent decree resolving that party's liability; or to file*

*a proof of claim or take other action in a proceeding under title 11 of the United States Code.*

*''(2) The procedures established in this section shall not be construed to modify or affect in any way the principles of retroactive, strict, joint and several liability under this title.*

*''(3) Nothing in this section shall limit or affect—*

*''(A) the Administrator's obligation to perform an allocation for facilities that have been the subject of partial or expedited settlements;*

*''(B) the ability of a potentially responsible party at a facility to resolve its liability to the United States or other parties at any time before initiation or completion of the allocation process;*

*''(C) the validity, enforceability, finality, or merits of any judicial or administrative order, judgment, or decree that is issued, signed, lodged, or entered with respect to liability under this Act or that authorizes modification of any such order, judgment or decree; or*

*''(D) the validity, enforceability, finality or merits of any preexisting contract or agreement relating to any allocation of responsibility or any sharing of response costs under this Act.''.*

***SEC. 413. RECYCLING TRANSACTIONS.***

*(a) PURPOSES.—The purposes of this section are—*

*(1) to promote the reuse and recycling of scrap material in furtherance of the goals of waste minimization and natural resource conservation while protecting human health and the environment;*

*(2) to level the playing field between the use of virgin materials and recycled materials; and*

*(3) to remove the disincentives and impediments to recycling because of potential liability.*

*(b) CLARIFICATION OF LIABILITY UNDER CERCLA FOR RECYCLING TRANSACTIONS.—Title I is amended by adding after section 128 the following new section:*

***"SEC. 129. RECYCLING TRANSACTIONS.***

*"(a) LIABILITY CLARIFICATION.—As provided in subsections (b), (c), (d) and (e), a person who arranged for the recycling of recyclable material shall not be liable under section 107(a)(3) or 107(a)(4).*

*"(b) RECYCLABLE MATERIAL DEFINED.—For purposes of this section, the term 'recyclable material' means scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber (other than whole tires), scrap metal, or spent lead-acid, spent nickel-cadmium and other spent batteries, as well as minor amounts of material incident to or adhering to the scrap material as a result of its normal and customary use prior to becoming scrap.*

*"(c) TRANSACTIONS INVOLVING SCRAP PAPER, PLASTIC, GLASS, TEXTILES, OR RUBBER.—Transactions involving scrap paper, scrap plastic, scrap glass, scrap textiles, or scrap rubber (other than whole tires) shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that all of the following criteria were met at the time of the transaction:*

*"(1) The recyclable material met a commercial specification grade.*

*"(2) A market existed for the recyclable material.*

*"(3) A substantial portion of the recyclable material was made available for use as a feedstock for the manufacture of a new saleable product.*

*"(4) The recyclable material could have been a replacement or substitute for a virgin raw material, or the product to be made from the recyclable material could have been a replacement or substitute for a product made, in whole or in part, from a virgin raw material.*

*"(5) For transactions occurring 90 days or more after the date of enactment of this section, the person exercised reasonable care to determine that the facility where the recyclable material would be handled, proc-*

*essed, reclaimed, or otherwise managed by another person (hereinafter in this section referred to as a 'consuming facility') was in compliance with substantive (not procedural or administrative) provisions of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with the recyclable material.*

*''(6) For purposes of this subsection, 'reasonable care' shall be determined using criteria that include (but are not limited to) (A) the price paid in the recycling transaction; (B) the ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation, or other management activities associated with the recyclable material; and (C) the result of inquiries made to the appropriate Federal, State, or local environmental agency (or agencies) regarding the consuming facility's past and current compliance with substantive (not procedural or administrative) provisions of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities*

*associated with the recyclable material. For the purposes of this paragraph, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activity associated with the recyclable materials shall be deemed to be a substantive provision.*

*"(d) TRANSACTIONS INVOLVING SCRAP METAL.—*

*"(1) Transactions involving scrap metal shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that at the time of the transaction—*

*"(A) the person met the criteria set forth in subsection (c) with respect to the scrap metal;*

*"(B) the person was in compliance with any applicable regulations or standards regarding the storage, transport, management, or other activities associated with the recycling of scrap metal that the Administrator promulgates under the Solid Waste Disposal Act subsequent to the enactment of this section and with regard to transactions occurring after the effective date of such regulations or standards; and*

*"(C) the person did not melt the scrap metal prior to the transaction.*

*"(2) For purposes of paragraph (1)(C), melting of scrap metal does not include the thermal separation of 2 or more materials due to differences in their melting points (referred to as 'sweating').*

*"(3) For the purposes of this subsection, the term 'scrap metal' means bits and pieces of metal parts (e.g. bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g. radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled, except for scrap metals that the Administrator excludes from this definition by regulation.*

*"(e) TRANSACTIONS INVOLVING BATTERIES.—Transactions involving spent lead-acid batteries, spent nickel-cadmium batteries or other spent batteries shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that at the time of the transaction—*

*"(1) the person met the criteria set forth in subsection (c) with respect to the spent lead-acid batteries, spent nickel-cadmium batteries, or other spent*

*batteries but did not recover the valuable components of such batteries; and*

*"(2)(A) with respect to transactions involving lead-acid batteries, the person was in compliance with applicable Federal environmental regulations or standards, and any amendments thereto, regarding the storage, transport, management, or other activities associated with the recycling of spent lead-acid batteries;*

*"(B) with respect to transactions involving nickel-cadmium batteries, Federal environmental regulations or standards are in effect regarding the storage, transport, management, or other activities associated with the recycling of spent nickel-cadmium batteries, and the person was in compliance with applicable regulations or standards or any amendments thereto; or*

*"(C) with respect to transactions involving other spent batteries, Federal environmental regulations or standards are in effect regarding the storage, transport, management, or other activities associated with the recycling of such batteries, and the person was in compliance with applicable regulations or standards or any amendments thereto.*

*"(f) EXCLUSIONS.—(1) The exemptions set forth in subsections (c), (d), and (e) shall not apply if—*

*"(A) the person had an objectively reasonable basis to believe at the time of the recycling transaction—*

*"(i) that the recyclable material would not be recycled,*

*"(ii) that the recyclable material would be burned as fuel, or for energy recovery or incineration, or*

*"(iii) for transactions occurring before 90 days after the date of the enactment of this section, that the consuming facility was not in compliance with a substantive (not a procedural or administrative) provision of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, or other management activities associated with the recyclable material; or*

*"(B) the person added hazardous substances to the recyclable material for purposes other than processing for recycling; or*

*"(C) the person failed to exercise reasonable care with respect to the management and handling of the recyclable material.*

*"(2) For purposes of this subsection, an objectively reasonable basis for belief shall be determined using criteria that include (but are not limited to) the size of the person's business, customary industry practices, the price paid in the recycling transaction, and the ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation or other management activities associated with the recyclable material.*

*"(3) For purposes of this subsection, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activities associated with recyclable material shall be deemed to be a substantive provision.*

*"(g) EFFECT ON OTHER LIABILITY.—Nothing in this section shall be deemed to affect the liability of a person under paragraph (1) or (2) of section 107(a).*

*"(h) PCBS.—An exemption under this section does not apply if the recyclable material contained polychlorinated biphenyls in excess of 50 parts per million or any new standard promulgated pursuant to applicable Federal laws.*

*"(i) REGULATIONS.—The Administrator has the authority, under section 115, to promulgate additional regulations concerning this section.*

*"(j) EFFECT ON PENDING OR CONCLUDED ACTIONS.—The exemptions provided in this section shall not affect any concluded judicial or administrative action or any pending judicial action initiated by the United States prior to enactment of this section.*

*"(k) LIABILITY FOR ATTORNEY'S FEES FOR CERTAIN ACTIONS.—Any person who commences an action in contribution against a person who is not liable by operation of this section shall be liable to that person for all reasonable costs of defending that action, including all reasonable attorney's and expert witness fees.*

*"(l) RELATIONSHIP TO LIABILITY UNDER OTHER LAWS.—Nothing in this section shall affect—*

*"(1) liability under any other Federal, State, or local statute or regulation promulgated pursuant to any such statute, including any requirements promulgated by the Administrator under the Solid Waste Disposal Act; or*

*"(2) the ability of the Administrator to promulgate regulations under any other statute, including the Solid Waste Disposal Act.".*

# *TITLE V—REMEDY SELECTION AND CLEANUP STANDARDS*

*Sec. 501. Cleanup standards.*
*Sec. 502. Remedy selection.*
*Sec. 503. Miscellaneous amendments to section 121.*
*Sec. 504. Response authorities.*
*Sec. 505. Removal actions.*
*Sec. 506. Transition.*

## *SEC. 501. CLEANUP STANDARDS.*

*Section 121(d) (42 U.S.C. 9621(d)) is amended as follows:*

*(1) In paragraph (3), by inserting ''or 4010(c) if appropriate'' after ''3005''.*

*(2) By redesignating paragraphs (3) and (4) as paragraphs (9) and (10), respectively.*

*(3) By striking out the subsection heading and designation and all that follows through the end of paragraph (2) and inserting in lieu thereof the following:*

*''(d) ESTABLISHMENT OF PROTECTIVE CONCENTRATION LEVELS.—*

*''(1) NATIONAL GOALS FOR THE PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT.—In order to provide consistent and equivalent protection of human health and the environment to all communities, within 18 months after the enactment of the Superfund Reform Act of 1994, the Administrator shall promulgate national goals to be applied at all*

*facilities subject to remedial action under this Act. National goals for human health shall be expressed as a single, numerical level for chemical carcinogens and noncarcinogens, respectively. The national goals shall provide the basis for protective concentration levels unless the achievement of such goals is technically infeasible or unreasonably costly pursuant to subsection (b). In a case in which the President selects a remedy that does not achieve the national goals, the President shall publish an explanation of the basis for that decision. The national goals shall be developed and promulgated in accordance with sections 561 through 570 of title 5, United States Code (commonly referred to as the 'Negotiated Rulemaking Act').*

*"(2) SCOPE AND PURPOSE OF NATIONAL RISK PROTOCOL.—The Administrator shall promulgate a national risk protocol for conducting risk assessments under this Act. The national risk protocol shall be used for risk assessments underlying determinations of the need for remedial action, the establishment of protective concentration levels of chemicals, and the evaluation of remedial alternatives. The national risk protocol shall be developed and promulgated in accordance with sections 561 through 570 of title 5, United States Code, to the extent the Administrator*

*deems appropriate. The national risk protocol shall establish, to the extent appropriate and practicable, the following:*

*"(A) Standardized exposure scenarios defining exposure pathways for a range of unrestricted and restricted land uses.*

*"(B) Standardized formulae or methodologies for—*

*"(i) evaluating the exposure pathways of concern under the standardized exposure scenarios established under subparagraph (A); and*

*"(ii) developing, consistent with the national goals under paragraph (1), chemical concentration levels protective of receptors currently and reasonably anticipated to be exposed via the pathways included in such scenarios for the 100 contaminants most frequently occurring at facilities addressed under this Act for which adequate toxicity information is available.*

*"(C) Methodologies for facility-specific evaluations of ecological risks.*

*"(3) STANDARDIZED FORMULAE OR METHODOLOGIES.—Standardized formulae or methodologies estab-*

*lished under subparagraphs (A) and (B) of paragraph (2) shall include the following:*

*"(A) National constants for specific characteristics of individual chemicals not expected to vary from facility to facility.*

*"(B) Facility-specific variables for physical characteristics of the facility and other factors. Criteria for identifying such variables shall include the following:*

*"(i) Whether a characteristic or factor can be objectively measured based on actual facility data or reasonably estimated based on credible scientific studies when facility-measured data cannot be reasonably obtained.*

*"(ii) Whether the effects of a characteristic or factor are scientifically well-understood.*

*"(iii) Whether the impact of the characteristic or factor on estimations of risk or protective concentration levels is significant.*

*"(C) Exposure factors related to demographics (including separate exposure factors for sensitive subpopulations to be applied where relevant), activity patterns, and natural con-*

*straints. Defaults or ranges of default values shall be established for such factors and used unless verifiable data are presented that the defaults are significantly different from actual facility conditions. In such cases, the values shall be determined on a site-specific basis after consideration of any views expressed by the Community Working Group, if available, and the affected community.*

*''(4) APPLICATION OF NATIONAL RISK PROTOCOL.—(A) The President shall conduct an analysis at each facility to determine which exposure scenarios, pathways, and contaminants are relevant to that facility. Where standardized formulae or methodologies for addressing such relevant scenarios, pathways, and contaminants are available, they shall be used.*

*''(B) Standardized formulae or methodologies for exposure pathways that do not exist or are not reasonably anticipated to exist in the future at a facility shall not be applied in establishing protective concentration levels for the facility.*

*''(C) Where standardized formulae or methodologies for particular exposure scenarios, exposure pathways, or chemicals are unavailable, facility-specific risk assessment shall be used.*

*"(5) CONSIDERATIONS IN ESTABLISHING THE NATIONAL RISK PROTOCOL.—(A) In developing the national risk protocol under paragraph (2), the Administrator shall evaluate and, to the degree appropriate and practicable—*

*"(i) identify appropriate sources of toxicity information;*

*"(ii) define the use of probabilistic modeling;*

*"(iii) identify criteria for the selection and application of transport and fate models;*

*"(iv) define the use of high end and central tendency exposure cases and assumptions;*

*"(v) define the use of population risk estimates in addition to individual risk estimates;*

*"(vi) define appropriate approaches for addressing cumulative risks posed by multiple contaminants or multiple exposure pathways; and*

*"(vii) establish appropriate sampling approaches and data quality requirements.*

*"(B) The national risk protocol shall establish guidelines for all risk assessments conducted under paragraph (2), including those by which protective concentration levels are established, which result in*

*final protection at the 90th exposure percentile of the affected population defined by the President.*

*"(6) PHASING AND UPDATING OF THE NATIONAL RISK PROTOCOL.—The national risk protocol shall be developed in accordance with a schedule promulgated by the Administrator within 90 days after the date of enactment of the Superfund Reform Act of 1994. The national risk protocol may be developed and promulgated in phases as determined appropriate by the Administrator. The final protocol shall be promulgated within 18 months after the enactment of such Act. The Administrator also shall determine an appropriate approach and schedule for ensuring that the national risk protocol remains current with emerging science and relevant Agency policy.*

*"(7) FEDERAL AND STATE LAWS.—(A) A remedial action shall be required to—*

*"(i) comply with the substantive requirements of any promulgated standard, requirement, criterion, or limitation under any Federal, or more stringent State, environmental or facility siting law that is applicable to the conduct or operation of the remedial action;*

*"(ii) attain any promulgated protective concentration levels applicable to determining*

*the level of cleanup for remedial actions conducted under any State environmental law where such levels are more stringent than those established under subparagraph (C)(i) or the concentration levels determined to be protective for a given facility in accordance with the requirements of paragraph (2); and*

*"(iii) comply with or attain any other promulgated standard, requirement, criterion, or limitation under any State environmental or facility siting law that the State demonstrates is consistently applied to remedial actions under State law, and that the State determines, through a promulgation process which includes public notice, comment, and written response thereto, and opportunity for judicial review, apply to remedial actions under the Act.*

*"(B) Compliance with any State standard, criterion, requirement, or limitation under subparagraph (A) shall be required at a given facility if it has been identified by the State to the President in a timely manner as applicable at that facility. In addition, each State shall publish a comprehensive list of the promulgated standards, criteria, requirements, or limitations that the State may apply to remedial*

*actions under this Act and revise such list periodically. The State shall also revise such list as requested by the President.*

*"(C)(i) Remedial actions for contaminated ground water and surface water that may be used for drinking water shall attain Federal Maximum Contaminant Levels and non-zero Maximum Contaminant Level Goals where available under the title XIV of the Public Health Service Act (the Safe Drinking Water Act) in the ground water or surface water, except where the provisions of clause (ii) apply. Attainment of such levels shall satisfy the requirements of paragraph (1).*

*"(ii) Concentration levels other than those required under clause (i) may be established for ground water that may be used for drinking water in any case in which the following conditions are met:*

*"(I) The President determines that the use of alternate concentration levels is appropriate.*

*"(II) There are known and projected points of entry of such ground water into surface water.*

*"(III) On the basis of measurements or projections, there is or will be no increase of such constituents that would pose a threat to human*

*health or the environment from such ground water in such surface water.*

*"(IV) The remedial action includes enforceable measures that will preclude human exposure to the contaminated ground water within the facility and up to all known and projected points of entry of such ground water into surface water.*

*"(V) Monitoring to ensure attainment of the alternative concentration level is conducted in ground water at a point or points immediately prior to where the ground water enters into surface water. In such cases, the point of human exposure may be assumed to be at such known and projected points of entry.*

*"(D) Procedural requirements of Federal and State standards, requirements, criteria, or limitations, including permitting requirements, shall not apply to response actions conducted on-site. Compliance with subparagraph (A) shall not be required with respect to return, replacement, or disposal of contaminated media or residuals of contaminated media into the same medium in or very near existing areas of contamination on-site.*

*"(E)(i) The President may select a remedial action meeting the requirements of paragraph (1) that*

*does not comply with or attain a Federal or State standard, requirement, criterion, or limitation as required by subparagraphs (A) and (C), if the President finds any of the following:*

*"(I) The remedial action selected is only part of a total remedial action that will comply with or attain the applicable requirements of subparagraphs (A) and (C) of this paragraph when completed.*

*"(II) Compliance with or attainment of such requirement at that facility will result in greater risk to human health and the environment than alternative options.*

*"(III) Compliance with or attainment of such requirement is technically impracticable from an engineering perspective.*

*"(IV) The remedial action selected will attain a standard of performance that is equivalent to that required under a standard, requirement, criterion, or limitation identified under subparagraph (A) through use of another approach.*

*"(V) With respect to a State standard, requirement, criterion, or limitation under clauses (i), (ii), and (iii) of subparagraph (A), the State*

*has not consistently applied (or demonstrated the intention to consistently apply) the standard, requirement, criterion, or limitation in similar circumstances at other remedial actions within the State.*

*"(VI) In the case of a remedial action to be undertaken solely under section 104 using the Fund, a selection of a remedial action that complies with or attains standards, criteria, requirements, or limitations will not provide a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund to respond to other facilities that present or may present a threat to public health or welfare or the environment, taking into consideration the relative immediacy of such threat.*

*"(ii) The President shall publish any findings made under clause (i), together with an explanation and appropriate documentation.*

*"(8)(A) Except as provided in subparagraph (B), a State standard, requirement, criteria, or limitation (including any State siting standard or requirement) which could effectively result in the statewide prohibition of land dis-*

*posal of hazardous substances, pollutants, or contaminants shall not apply.*

*"(B) Any State standard, requirement, criteria, or limitation referred to in subparagraph (A) shall apply where each of the following conditions is met:*

*"(i) The State standard, requirement, criteria, or limitation is of general applicability and was adopted by formal means.*

*"(ii) The State standard, requirement, criteria, or limitation was adopted on the basis of hydrologic, geologic, or other relevant considerations and was not adopted for the purpose of precluding onsite remedial actions or other land disposal for reasons unrelated to protection of human health and the environment.*

*"(iii) The State arranges for, and assures payment of the incremental costs of utilizing, a facility for disposition of the hazardous substances, pollutants, or contaminants concerned.".*

***SEC. 502. REMEDY SELECTION.***

*Section 121(b) (42 U.S.C. 9621(b)) is amended to read as follows:*

*"(b) GENERAL RULES. —*

*"(1) SELECTION OF PROTECTIVE REMEDIES.— Remedies selected at individual facilities shall be protective of human health and the environment and pro-*

*vide long-term reliability at reasonable cost. A remedial action may achieve protection of human health and the environment through treatment that reduces the toxicity, mobility, or volume of hazardous substances, pollutants, or contaminants; containment or other engineering controls to limit exposure; a combination of treatment and containment; or other methods of protection. The method or methods of remediation appropriate for a given facility shall be determined through the evaluation of remedial alternatives and the selection process under paragraphs (2) and (3). When determining the appropriate remedial method, treatment is to be preferred for hot spots as defined under paragraph (3)(B). This preference shall not apply to materials that do not constitute hot spots.*

*"(2) LAND USE.—(A) In selecting a remedy, the President shall take into account the reasonably anticipated future uses of land at a facility as required by this Act. In identifying reasonably anticipated future land uses the President shall consider factors, which generally shall include the following:*

*"(i) Any consensus recommendation of the Community Working Group and any other views expressed by members of the affected community.*

*"(ii) The land use history of the facility and surrounding properties, the current land uses of the facility and surrounding properties, recent development patterns in the area where the facility is located, and population projections for that area.*

*"(iii) Federal or State land use designations, including Federal facilities and national parks, State ground water or surface water recharge areas established under a State's comprehensive protection plan for ground water or surface water, and recreational areas.*

*"(iv) The current land use zoning and future land use plans of the local government with land use regulatory authority.*

*"(v) The potential for economic redevelopment.*

*"(vi) The proximity of the contamination to residences, sensitive populations or ecosystems, natural resources, or areas of unique historic or cultural significance.*

*"(vii) Current plans for the facility by the property owner or owners, not including potential voluntary remedial measures.*

*"(B) In developing its recommendation, the Community Working Group shall consider factors (ii) through (vii) of subparagraph (A), and the President shall give substantial weight to that recommendation where consensus is reached, or substantial weight to the views of the affected community where the Community Working Group does not reach consensus in accordance with section 117(g).*

*"(C) All information considered by the President in evaluating reasonably anticipated future land uses under this paragraph shall be included in the administrative record under section 113(k).*

*"(3) APPROPRIATE REMEDIAL ACTION.—(A) The President shall identify and select an appropriate remedy that prevents exposures in excess of protective concentration levels established under subsection (d) by balancing the following factors:*

*"(i) The effectiveness of the remedy.*

*"(ii) The long-term reliability of the remedy, that is, its capability to achieve long-term protection of human health and the environment considering the preference for treatment of hot spots.*

*"(iii) Any short-term risk posed by the implementation of the remedy to the affected com-*

*munity, to those engaged in the cleanup effort, and to the environment.*

*"(iv) The acceptability of the remedy to the affected community.*

*"(v) The reasonableness of the cost of the remedy.*

*"(B) HOT SPOTS.—The following shall apply to the remediation of hot spots:*

*"(i) For purposes of this section, the term 'hot spot' means a discrete area within a facility that contains hazardous substances, pollutants or contaminants that are present in high concentrations, are highly mobile, or cannot be reliably contained, that would present a significant risk to human health or the environment should exposure occur. The President shall develop guidelines for the identification of hot spots. Such guidelines shall recommend appropriate field investigations that will not require extraordinarily complex or costly measures.*

*"(ii) In determining an appropriate remedy for hot spots, the President shall consider the factors under subparagraph (A). With respect to the factor in clause (v), the President shall use a higher threshold for evaluating the reasonableness*

*of costs for hot spot treatment relative to the remediation of non-hot spot materials.*

*"(iii) The President shall select a remedy requiring treatment of materials constituting hot spots unless an appropriate treatment technology is unavailable or is available only at unreasonable cost. In such instances, the President shall select an interim containment remedy for such hot spot subject to adequate monitoring and public reporting to ensure its continued integrity and shall review the interim containment remedy in accordance with subsection (c). When the appropriate treatment technology becomes available, as determined by the President, that remedy shall be considered in accordance with this section.*

*"(iv) Notwithstanding the presence of a hot spot, the President may select a final containment remedy for hot spots at landfills and mining sites or similar facilities under the following circumstances:*

*"(I) The hot spot is small relative to the overall volume of waste or contamination being addressed, the hot spot is not readily identifiable and accessible, and*

*without the presence of the hot spot containment would have been selected as the appropriate remedy under subparagraph (A) for the larger body of waste or area of contamination in which the hot spot is located.*

*"(II) the volume and areal extent of the hot spot is extraordinary compared to other facilities, and it is highly unlikely due to the size and other characteristics of the hot spot that any treatment technology will be developed that could be implemented at reasonable cost.*

*Where final containment for a hot spot is selected, the President shall publish an explanation of the basis for that decision.*

*"(4) GENERIC REMEDIES.—In order to streamline the remedy selection process and to facilitate rapid voluntary action, the President shall establish, taking into account the factors enumerated in paragraph (3)(A), cost-effective generic remedies for categories of facilities, and expedited procedures that include community involvement for selecting generic remedies at an individual facility. To be eligible for selection at a facility, a generic remedy shall be protective of human health and the environment at that*

*facility. In appropriate cases, the President may select a generic remedy without considering alternatives to the generic remedy.''.*

***SEC. 503. MISCELLANEOUS AMENDMENTS TO SECTION 121.***

*(a) REVIEW.—Section 121(c) (42 U.S.C. 9621(c)) is amended—*

*(1) in the first sentence, by striking out ''initiation'' and inserting in lieu thereof ''completion of all physical on-site construction,'';*

*(2) in the second sentence, by inserting ''(1)'' after ''it is the judgment of the President that''; and*

*(3) in the second sentence, by inserting after ''section 104 or 106,'' the following: ''or (2) an interim containment remedy was selected for such site and an appropriate final remedial action is available under subsection (b)(3)(B)(iii) and appropriate to select in accordance with subsection (b)(3)(A) of this section,''.*

*(b) Section 121(e)(1) (42 U.S.C. 9621(e)(1)) is amended by adding at the end thereof the following: ''Furthermore, no Federal, State, or local permit or permit application shall be required for on-site or off-site activities conducted under section 311(b).''.*

***SEC. 504. RESPONSE AUTHORITIES.***

*(a) STUDIES AND INVESTIGATIONS.—Section 104(b)(1) (42 U.S.C. 9604(b)(1)) is amended in the second sentence by striking ''studies'' and all that follows through the end of the sentence and inserting in lieu thereof the following: ''actions, studies, or investigations as he may deem necessary or appropriate to plan and direct response actions or to enforce the provisions of this Act and shall be entitled to recover the costs thereof.''.*

*(b) DISPOSAL AUTHORITY.—Section 104(j) (42 U.S.C. 9604(j)) is amended—*

*(1) in paragraph (1), by striking ''remedial'' in the first sentence and inserting ''response'';*

*(2) by striking paragraph (2);*

*(3) by redesignating paragraph (3) as paragraph (2) and in that paragraph by striking ''estate'' and inserting ''property''; and*

*(4) by inserting after paragraph (2) (as redesignated) the following new paragraph:*

*''(3) DISPOSAL AUTHORITY.—The President is authorized to dispose of any interest in real property acquired for use by the Administrator under this subsection by sale, exchange, donation, or otherwise and any such interest in real property shall not be subject to any of the provisions of section 120 except the notice provisions of section 120(h)(1). Any moneys re-*

*ceived by the President pursuant to this paragraph shall be deposited in the Fund.''.*

*(c) PRIVATE PARTY REMOVAL LIMITATIONS.—Section 104(a)(2) (42 U.S.C. 9604(a)(2)) is amended by adding at the end the following: ''In any case in which implementation of a removal action is expected to obviate or in fact does obviate the need to conduct a long-term remedial action, such removal action must—*

*''(A) comply with the protective concentration levels and other standards in subsections (b) and (d) of section 121; and*

*''(B) allow for public participation in accordance with section 117 to the maximum extent practicable.''.*

***SEC. 505. REMOVAL ACTIONS.***

*(a) OBLIGATIONS FROM FUND.—Section 104(c)(1) (42 U.S.C. 9604(c)(1)) is amended—*

*(1) by striking ''consistent with the remedial action to be taken'' and inserting ''not inconsistent with any remedial action that has been selected or is anticipated at the time of the removal action,'';*

*(2) by striking ''$2,000,000'' and inserting ''$4,000,000''; and*

*(3) by striking ''12 months'' and inserting ''two years''.*

*(b) NON-EMERGENCY REMOVALS.—Section 120(e) (42 U.S.C. 9620(e)) is amended by adding at the end the following new paragraph:*

*"(7) NOTIFICATION OF AND CONCURRENCE FROM EPA OR STATE FOR NON-EMERGENCY REMOVAL ACTIONS.—(A) Before the commencement of any non-emergency removal action by a department, agency, or instrumentality of the United States, such department, agency, or instrumentality shall—*

*"(i) notify the Environmental Protection Agency and the State of the planned removal action; and*

*"(ii) obtain, in the case of facilities which are listed or proposed for listing on the National Priorities List, concurrence in the planned removal action from the Environmental Protection Agency or the State, as applicable.*

*"(B) The lack of concurrence under clause (ii) shall not delay the commencement of the remedial investigation and feasibility study in accordance with the time requirements of this section. The requirements of this paragraph relating to notification and concurrence shall not affect, alter, or supplant, directly or indirectly, the applicability of any State law to the removal action concerned. Within a reasonable*

*period of time after any emergency removal action is carried out by a department, agency, or instrumentality of the United States, the department, agency, or instrumentality shall notify the Environmental Protection Agency or the State, as appropriate, of the removal action.''.*

***SEC. 506. TRANSITION.***

*(a) EFFECTIVE DATE.—This title, and the amendments made by this title, shall become effective 180 days after the date of enactment of this Act. Remedies selected under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 following that effective date shall be selected as provided in section 121(b) of that Act (as amended by this Act) and subject to the Federal and State requirements specified in section 121(d)(7) of that Act (as amended by this Act).*

*(b) CONTINUED EFFECTIVENESS OF REGULATIONS AND GUIDANCE.—Until promulgation of the national goals and the national risk protocol under section 121(d), the President may continue to rely on current regulations and guidance with regard to acceptable risk levels and the conduct of risk assessments.*

*(c) PRIOR RODS.—(1) Nothing in this Act shall place upon the President an obligation to reopen a record of decision signed prior to the effective date of this title.*

*(2) If, pursuant to section 117 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the President determines that a change to a record of decision signed prior to the effective date of this title is necessary, the President may apply the rules in effect at the time the original record of decision was signed.*

# *TITLE VI—MISCELLANEOUS*

*Sec. 601. Interagency agreements at mixed ownership and mixed responsibility facilities.*
*Sec. 602. Transfers of uncontaminated property.*
*Sec. 603. Agreements to transfer by deed.*
*Sec. 604. Alternative or innovative treatment technologies.*
*Sec. 605. Definitions.*
*Sec. 606. Response claims procedures.*
*Sec. 607. Small business ombudsman.*
*Sec. 608. Consideration of local government cleanup priorities.*
*Sec. 609. Consistent application among regional offices.*
*Sec. 610. Study of participants.*
*Sec. 611. Public comment.*
*Sec. 612. Certification of environmental training and certification organizations.*
*Sec. 613. Savings clause.*
*Sec. 614. Federal entities and facilities.*

## *SEC. 601. INTERAGENCY AGREEMENTS AT MIXED OWNERSHIP AND MIXED RESPONSIBILITY FACILITIES.*

*Section 120(e) (42 U.S.C. 9620(e)) is amended—*

*(1) by inserting at the end of paragraph (4) the following new subparagraph:*

*"(D) A provision allowing for the participation of other responsible parties (if any) in the response action."; and*

*(2) by inserting after paragraph (7) the following new paragraphs:*

*"(8) EXCEPTION TO REQUIRED ACTION.—(A) A department, agency, or instrumentality of the United States that owns or operates a facility over which the department, agency, or instrumentality exercised no regulatory or other control over activities that directly or indirectly resulted in a release or threat of a release of a hazardous substance shall be subject to the requirements of paragraphs (1) through (6), other than subparagraphs (F) and (G) of paragraph (5), unless and to the extent the department, agency, or instrumentality demonstrates to the satisfaction of the Administrator that—*

*"(i) no department, agency, or instrumentality was the primary or sole source or cause of a release or threat of release of a hazardous substance at the facility;*

*"(ii) the activities either directly or indirectly resulting in a release or threat of a release of a hazardous substance at the facility were pursuant to a statutory authority and occurred before 1976; and*

*"(iii) the person or persons primarily or solely responsible for such release or threat of release are financially viable and are capable of*

*performing or financing all or a portion of the response action at the facility.*

*"(B) If the conditions listed in clauses (i) through (iii) of subparagraph (A) are not met, the applicable terms of this subsection apply to the department, agency, or instrumentality of the United States at the facility. Upon determination by the Administrator that a department, agency, or instrumentality qualifies for the exception provided by this paragraph, the head of such department, agency, or instrumentality may exercise enforcement authority under section 106. To the extent a person who has been issued an order under the authority of this paragraph seeks reimbursement under the provisions of section 106, the relevant department, agency, or instrumentality, and not the Fund, shall be the source of any appropriate reimbursement. If the relevant department, agency, or instrumentality has failed to obtain the performance of response actions by responsible parties pursuant to an order or consent decree within 12 months after the facility has been listed on the National Priorities List, the exception provided by this paragraph shall be void and the department, agency, or instrumentality shall, in consultation with the Administrator and appropriate State authorities,*

*commence a remedial investigation and feasibility study for such facility within six months after the expiration of the 12-month period.*

*''(9) An interagency agreement under this section shall in no way impair or diminish the obligation of any department, agency, or instrumentality of the United States to comply with requirements of applicable law, unless such requirements have been specifically—*

*''(A) addressed; or*

*''(B) waived;*

*without objection from the State prior to or at the time the response action is selected pursuant to section 121.''.*

***SEC. 602. TRANSFERS OF UNCONTAMINATED PROPERTY.***

*Section 120(h)(4)(A) (42 U.S.C. 9620(h)(4)(A)) is amended by striking ''stored for one year or more,'' in the first sentence.*

***SEC. 603. AGREEMENTS TO TRANSFER BY DEED.***

*Section 120(h) (42 U.S.C. 9620(h)) is amended by adding after paragraph (5) the following new paragraph:*

*''(6) AGREEMENTS TO TRANSFER BY DEED.—Nothing in this subsection shall be construed to prohibit the head of the department, agency, or instrumentality of the United States from entering into an*

*agreement to transfer by deed real property or facilities prior to the entering of such deed.''.*

***SEC. 604. ALTERNATIVE OR INNOVATIVE TREATMENT TECHNOLOGIES.***

*Section 111(a) is amended by adding after paragraph (6) the following new paragraph:*

*''(7) ALTERNATIVE OR INNOVATIVE TREATMENT TECHNOLOGIES.—Payment of no more than 50 percent of response costs incurred by a potentially liable party in taking actions approved by the Administrator to achieve required levels of response under this Act after employing an alternative or innovative technology that fails to achieve a level of response required under this Act pursuant to an administrative order or consent decree. The Administrator shall issue guidance on the procedures for the appropriate level of funding for response activities using alternative innovative technologies as defined in section 311(b)(10) that are necessary to achieve a level of response required under this Act. The Administrator shall review and update such guidance, as appropriate.''.*

***SEC. 605. DEFINITIONS.***

*Section 101 (42 U.S.C. 9601) is amended as follows:*

*(1) Paragraph (10)(H) is amended by striking ''subject to'' and inserting ''in compliance with''.*

*(2) Paragraph (14) is amended by adding at the end the following: ''The term includes methane, but only when a response action undertaken to address a release or threat of release of a hazardous substance (as otherwise defined in this paragraph) at a landfill or similar site also addresses methane.''.*

*(3) Paragraph (20) is amended—*

*(A) in subparagraph (A), by inserting ''the United States or'' after ''similar means to'';*

*(B) in subparagraph (D)—*

*(i) in the first sentence by inserting ''the United States or'' after ''does not include'';*

*(ii) in the second sentence, by inserting ''any department, agency, or instrumentality of the United States or'' before ''any State''; and*

*(iii) in the second sentence, by striking ''a'' after ''such'' and inserting ''department, agency, or instrumentality of the United States or''; and*

*(C) by adding after subparagraph (D) the following new subparagraphs:*

*''(E)(i) The term 'owner or operator' includes a trust or estate or a person who holds title to a vessel*

*or facility, or otherwise is affiliated with the vessel or facility solely in a fiduciary capacity. Subject to clauses (ii) and (iii), a fiduciary holding such title or having such affiliation shall be personally subject to the obligations and liabilities of an owner or operator to the same extent as if the vessel or facility were held by the fiduciary free of trust.*

*"(ii) The personal obligations and liabilities of a fidicuary referred to in clause (i) shall be limited to the extent to which the assets of the trust or estate are sufficient to indemnify the fiduciary, unless—*

*"(I) the obligations and liabilities would have arisen even if the person had not served as fiduciary;*

*"(II) the fiduciary's own failure to exercise due care with respect to a vessel or facility caused or contributed to the release of hazardous substances following establishment of the trust, estate, or fiduciary relationship;*

*"(III) the fiduciary had a role in establishing the trust, estate, or fiduciary relationship, and such trust, estate, or fiduciary relationship has no objectively reasonable or substantial purpose apart from the avoidance or limitation of liability under this Act; or*

*"(IV) the fiduciary has not complied with such other requirements as the Administrator may set forth by regulation.*

*"(iii) A fiduciary shall not be personally liable for undertaking or directing another to undertake a response action under section 107(d)(1).*

*"(F) The term 'owner or operator' shall not include the United States or any department, agency, or instrumentality of the United States or a conservator or receiver appointed by a department, agency, or instrumentality of the United States if the United States or the conservator or receiver meets both of the following conditions:*

*"(i) The United States, conservator, or receiver acquired ownership or control of a vessel or facility (or any right or interest therein)—*

*"(I) in connection with the exercise of receivership or conservatorship authority or the liquidation or winding up of the affairs of any entity subject to a receivership or conservatorship, including any subsidiary thereof; and*

*"(II) in connection with the exercise of any seizure or forfeiture authority.*

*''(ii) The United States, conservator, or receiver does not participate in the management of the vessel or facility operations that result in a release or threat of release of hazardous substances and complies with such other requirements as the Administrator may set forth by regulation.''.*

*(4) Paragraph (23) (relating to the terms ''remove'' and ''removal'') is amended—*

*(A) in the first sentence—*

*(i) by striking ''terms'' and inserting ''term'';*

*(ii) by striking ''necessary'' the first place it appears and inserting ''necessarily''; and*

*(iii) by inserting after ''environment, such actions'' the phrase ''or combination of such actions'';*

*(B) in the second sentence by striking ''term includes'' and inserting ''terms include''; and*

*(C) by adding at the end the following: ''The term 'remove' or 'removal' is not limited to emergency situations and includes actions to address future or potential exposures.''.*

*(5) Paragraph (25) (relating to the terms ''respond'' and ''response'') is amended—*

*(A) by striking ''terms'' and inserting ''term'';*

*(B) by striking the comma after ''remedial action;''; and*

*(C) by striking ''related thereto'' and inserting ''(including attorneys' fees and expert witness fees) and oversight activities related thereto when such activities are undertaken by the President''.*

*(6) Paragraph (29) (relating to the terms ''disposal'', ''hazardous waste'', and ''treatment'') is amended by inserting before the period the following: '', except that the term 'hazardous substance' shall be substituted for the term 'hazardous waste' in the definitions of 'disposal' and 'treatment' ''.*

*(7) Paragraph (33) (relating to the term ''pollutant or contaminant'') is amended by striking ''; except that the'' and inserting ''. The''.*

*(8) Paragraph (35) (relating to the term ''contractual relationship'') is amended—*

*(A) in subparagraph (A)—*

*(i) by striking out clause (iii); and*

*(ii) in the matter preceding clause (i), by striking out ''clause (i), (ii), or (iii)'' and inserting ''clause (i) or (ii)'';*

*(B) by amending subparagraph (B) to read as follows:*

*''(B)(i) To establish that the defendant had no reason to know, as provided in clause (i) of subparagraph (A) of this paragraph, the defendant must have undertaken, at the time of the acquisition, all appropriate inquiry into the previous ownership and uses of the facility and its real property in accordance with generally accepted good commercial and customary standards and practices. For the purposes of the preceding sentence and until the Administrator issues or designates standards and practices as provided in clause (ii) of this subparagraph, the court shall take into account any specialized knowledge or experience on the part of the defendant, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate investigation.*

*"(ii) The Administrator may, by regulation, promulgate standards and practices or, by regulation, designate standards and practices promulgated or developed by others, that satisfy the requirements of this subparagraph. In issuing or designating such standards and practices, the Administrator shall consider factors for the inquiry, including the following:*

*"(I) Conduct of the inquiry by an environmental professional.*

*"(II) Inclusion of interviews with past and present owners, operators, and occupants of the facility and its real property for the purpose of gathering information regarding the potential for contamination at the facility and its real property.*

*"(III) Inclusion of a review of historical sources, such as chain of title documents, aerial photographs, building department records, and land use records, to determine previous uses and occupancies of the real property since it was first developed.*

*"(IV) Inclusion of a search for recorded environmental cleanup liens, filed under Federal, State, or local law, against the facility or its real property.*

*"(V) Inclusion of a review of Federal, State, and local government records, such as waste disposal records; underground storage tank records; and hazardous waste handling, generation, treatment, disposal, and spill records, concerning contamination at or near the facility or its real property.*

*"(VI) Inclusion of a visual inspection of the facility and its real property and of adjoining properties.*

*"(VII) Any specialized knowledge or experience on the part of the defendant.*

*"(VIII) The relationship of the purchase price to the value of the property if uncontaminated.*

*"(IX) Commonly known or reasonably ascertainable information about the property.*

*"(X) The obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate investigation*

*"(iii) In the case of property for residential use or other similar use, purchased by a nongovernmental or noncommercial entity, a site inspection and title*

*search that reveal no basis for further investigation satisfy the requirements of this subparagraph.''; and*

*(C) By adding the following new subparagraph at the end thereof:*

*''(E) The term 'contractual relationship' shall not include the initial filing by a claimant of an unpatented mining claim or the issuance of a patent for any such claim.''.*

*(9) The following new paragraphs are added after paragraph (38):*

*''(39) BONA FIDE PROSPECTIVE PURCHASER.—The term 'bona fide prospective purchaser' means a person who acquires ownership of a facility after the date of enactment of the Superfund Reform Act of 1994, or a tenant of such a person, who can establish each of the following by a preponderance of the evidence:*

*''(A) All active disposal of hazardous substances at the facility occurred before that person acquired the facility.*

*''(B) The person made all appropriate inquiry into the previous ownership and uses of the facility and its real property in accordance with generally accepted good commercial and customary standards and practices. The regula-*

*tions promulgated by the Administrator pursuant to paragraph (35)(B)(ii) shall satisfy the requirements of this subparagraph. In the case of property for residential or other similar use, purchased by a nongovernmental or noncommercial entity, a site inspection and title search that reveal no basis for further investigation satisfy the requirements of this subparagraph.*

*''(C) The person provided all legally required notices with respect to the discovery or release of any hazardous substances at the facility.*

*''(D) The person exercised appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to stop ongoing releases, prevent threatened future releases of hazardous substances, and prevent or limit human or natural resource exposure to hazardous substances previously released into the environment.*

*''(E) The person provides full cooperation, assistance, and facility access to persons authorized to conduct response actions at the facility, including the cooperation and access necessary for the installation, integrity, operation, and*

*maintenance of any complete or partial response action at the facility.*

*"(F) The person is not affiliated with any other person liable for response costs at the facility, through any direct or indirect familial relationship, or any contractual, corporate, or financial relationship other than that created by the instruments by which title to the facility is conveyed or financed.*

*"(40) FIDUCIARY.—*

*"(A) Except as provided in subparagraph (B), the term 'fiduciary' means a person who owns or controls property—*

*"(i) as a fiduciary within the meaning of section 3(31) of the Employee Retirement Income Security Act of 1974, or as a trustee, executor, administrator, custodian, guardian, conservator, or receiver acting for the exclusive benefit of another person; and*

*"(ii) who has not previously owned or operated the property in a non-fiduciary capacity.*

*"(B) The term 'fiduciary' does not include any person described in subparagraph (A)—*

*"(i) who acquires ownership or control of property to avoid the liability of such person or any other person under this Act; or*

*"(ii) who owns or controls property on behalf of or for the benefit of a holder of a security interest.*

*"(41) MUNICIPAL SOLID WASTE.—The term 'municipal solid waste' means all waste materials generated by households, including single and multi-family residences, and hotels and motels. The term also includes waste materials generated by commercial, institutional, and industrial sources, to the extent such wastes (A) are essentially the same as waste normally generated by households, or (B) are collected and disposed of with other municipal solid waste or sewage sludge as part of normal municipal solid waste collection services, and, regardless of when generated, would be considered conditionally exempt small quantity generator waste under section 3001(d) of the Solid Waste Disposal Act (42 U.S.C. 6921(d)). Examples of municipal solid waste include food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, elementary or sec-*

*ondary school science laboratory waste, and household hazardous waste. The term does not include combustion ash generated by resource recovery facilities or municipal incinerators, or waste from manufacturing or processing (including pollution control) operations not essentially the same as waste normally generated by households.*

*"(42) MUNICIPALITY.—The term 'municipality' means a political subdivision of a State, including a city, county, village, town, township, borough, parish, school district, sanitation district, water district, or other public entity performing local governmental functions. The term also includes a natural person acting in the capacity of an official, employee, or agent of any entity referred to in the preceding sentence in the performance of governmental functions.*

*"(43) QUALIFIED HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.—The term 'qualified household hazardous waste collection program' means a program established by an entity of the Federal Government, a State, a municipality, or an Indian tribe that provides, at a minimum, for semiannual collection of household hazardous wastes at accessible, well-publicized collection points within the relevant jurisdiction.*

*"(44) SEWAGE SLUDGE.—The term 'sewage sludge' means solid, semisolid, or liquid residue removed during the treatment of municipal waste water, domestic sewage, or other waste water at or by publicly owned or federally owned treatment works.*

*"(45) SITE CHARACTERIZATION.—The term 'site characterization' means an investigation that determines the nature and extent of a release or potential release of a hazardous substance, pollutant, or contaminant, and that includes an on site evaluation and sufficient testing, sampling, and other field data gathering activities to analyze whether there has been a release or threat of a release of a hazardous substance, pollutant, or contaminant, and the health and environmental risks posed by such a release or threat of release. The investigation also may include review of existing information (available at the time of the review), an off-site evaluation, or other measures that the Administrator considers appropriate.*

*"(46) OWNER, OPERATOR, OR LESSEE OF RESIDENTIAL PROPERTY.—The term 'owner, operator, or lessee of residential property' refers to a person who owns, operates, manages, or leases residential property and who uses or allows the use of the residential property exclusively for residential purposes. The*

*term 'residential property' refers to single or multi-family residences, including accessory land, buildings, or improvements incidental to such dwellings, which are exclusively for residential use.*

*''(47) SMALL BUSINESS.—The term 'small business' refers to any business entity that employs no more than 100 individuals and is a 'small business concern' as defined under the Small Business Act (15 U.S.C. 631 et seq.).*

*''(48) SMALL NONPROFIT ORGANIZATION.—The term 'small nonprofit organization' means any organization that, at the time of disposal, did not distribute any part of its income or profit to its members, directors, or officers, employed no more than 100 paid individuals at the involved chapter, office, or department, and was recognized as a non-profit organization under section 501(c) of the Internal Revenue Code of 1986.''.*

***SEC. 606. RESPONSE CLAIMS PROCEDURES.***

*(a) AMENDMENT OF SECTION 111.—Section 111(a)(2) (42 U.S.C. 9611(a)(2)) is amended by inserting after ''under said plan'' the phrase '', reasonable in amount based on open and free competition or fair market value for similar available goods and services,''.*

*(b) AMENDMENT OF SECTION 112.—Section 112(a) (42 U.S.C. 9612(a)(2)) is amended—*

*(1) in the first sentence, by adding after ''unless such claim is'' the following: ''(1) accompanied by an audit prepared by an independent, certified public accountant, and (2)''; and*

*(2) by inserting after the first sentence the following: ''The Administrator reserves the right to review such audits to determine that the costs for which the claimant is seeking reimbursement are consistent with section 111(a) and, where necessary, withhold claims or a portion thereof which are inconsistent with section 111(a).''.*

***SEC. 607. SMALL BUSINESS OMBUDSMAN.***

*The Administrator of the Environmental Protection Agency shall establish a small business assistance section within the small business ombudsman office at the Environmental Protection Agency. This section shall—*

*(1) act as a clearinghouse of information for small businesses on the Comprehensive Environmental Response, Compensation and Liability Act of 1980, including without limitation the allocation process in section 130 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and expedited settlements under section 122(g)(1); and*

*(2) provide general advice and assistance to small businesses as to the allocation and settlement processes, except that such advice and assistance shall not include any legal advice as to liability or any other legal representation. The ombudsman shall not participate in the allocation process.*

***SEC. 608. CONSIDERATION OF LOCAL GOVERNMENT CLEAN-UP PRIORITIES.***

*Section 104(c)(2) is amended—*

*(1) by inserting ''(A)'' after ''(2)''; and*

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

*''(B) In setting priorities for scheduling work and allocating oversight resources for a remedial action at a facility at which a potentially responsible party that is a State or local government proposes to carry out the remedial action (or a portion thereof), the Administrator should give higher priority to such remedial action (or portion thereof) if the State or local government demonstrates that the remedial action (i) will have a public benefit; and (ii) will result in the property on or adjacent to the facility being returned to productive use. A private potentially responsible party may request similar consideration, in the Administrator's discretion. Nothing in this subparagraph shall affect the responsibility of the Administrator to schedule and oversee*

*the conduct of remedial action so as to assure protection of human health and the environment.''.*

***SEC. 609. CONSISTENT APPLICATION AMONG REGIONAL OFFICES.***

*Section 115 (42 U.S.C. 9615), as amended by section 407, is further amended as follows:*

*(1) By inserting the following immediately before ''The President'': ''(a) PRESIDENTIAL RULEMAKING AND DELEGATION AUTHORITY.—''.*

*(2) By inserting at the end thereof the following new subsection:*

*''(b) CONSISTENT APPLICATION AMONG REGIONAL OFFICES.—Each Regional Administrator should implement, execute, and enforce this Act and regulations, guidance, and policies established in accordance with this Act by (1) the President (or by the Administrator pursuant to a delegation from the President), or (2) the Administrator (or by the Deputy Administrator or an Assistant Administrator pursuant to a delegation from the Administrator).''.*

***SEC. 610. STUDY OF PARTICIPANTS.***

*(a) STUDY.—The Administrator shall undertake a study of current Environmental Protection Agency procedures for suspension and debarment of persons and business entities, particularly response action contractors and to assess the feasibility and cost of creating a nationwide data*

*base to track such persons. The study shall include, but shall not be limited, to the following items:*

*(1) Whether the certification process pursuant to 40 CFR 32 regarding debarment and suspensions is sufficient to uncover those persons who have previously served as a principal of a business entity affiliated or unaffiliated with the certifying entity.*

*(2) Whether the 3-year period for certification is a sufficient length of time to uncover past activities.*

*(3) Whether the process under Federal regulations for determining false certification is sufficient, particularly for those persons who are attempting to hide past debarment or suspension.*

*(4) The effectiveness of the current debarment and suspension procedures.*

*(5) The practicability of coordination, through a central data base, with other Federal agencies the tracking and sharing of data on such persons who have been debarred or suspended.*

*(6) The effectiveness of debarment and suspension on the future conduct of persons or business entities with regard to compliance with Federal and State environmental laws.*

*(7) The extent of sharing data within the Environmental Protection Agency and among its regional offices.*

*(8) The cost of creating a central data base.*

*(b) REPORT AND RECOMMENDATIONS.—The Administrator shall report the findings of this study to Congress within 12 months after the enactment of this Act. The Administrator shall also make a recommendation to Congress whether statutory language or further regulations are necessary to correct any problems or deficiencies that may be uncovered.*

***SEC. 611. PUBLIC COMMENT.***

*Nothing in this Act or any amendments made by this Act shall limit the obligations of the President or the Administrator to fully consider and respond to public comments during any available comment period or otherwise abridge the requirements of subchapter II of chapter 5 of title 5, United States Code (commonly referred to as the Administrative Procedures Act).*

***SEC. 612. CERTIFICATION OF ENVIRONMENTAL TRAINING AND CERTIFICATION ORGANIZATIONS.***

*(a) REGULATIONS.—(1) Not later than 2 years after enactment of this Act, the Administrator of the Environmental Protection Agency shall publish guidelines, in accordance with subsection (b), for a model State program*

*for organizations that train and certify individuals to perform Phase I Environmental Site Assessments.*

*(2) The guidelines published under paragraph (1) may include, but not be limited to, minimum standards relating to—*

*(A) formal environmental training;*

*(B) continuing environmental education;*

*(C) environmental certification and testing procedures;*

*(D) revocation and disciplinary procedures;*

*(E) establishment of a code of ethics;*

*(F) consumer education;*

*(G) certification renewal procedures; and*

*(H) annual reporting of program activities.*

*(b) ESTABLISHMENT OF THE ENVIRONMENTAL CERTIFICATION BOARD.—(1) Not later than 60 days after enactment of this Act, the Administrator of the Environmental Protection Agency shall establish a certification advisory board to be known as the ''Environmental Certification Board'' (hereafter in this section referred to as the ''Board'').*

*(2) The Board shall consist of a minimum of 6 members, appointed by the Administrator, with a demonstrated knowledge in the environmental field. The Board may include representatives from the Environmental Protection*

*Agency, environmental interest organizations, the chemical/manufacturing industry, the environmental consulting service industry, the insurance industry, the banking/investment industry, professional societies, private sector accreditation organizations, State government, and other appropriate representatives with a knowledge in the environmental field.*

*(3) All members of the Board shall serve on a voluntary basis, except those members from the Environmental Protection Agency.*

*(4) The Board shall appoint 1 member to serve as Chairman of the Board who shall exercise the executive and administrative functions of the Board.*

*(5) Not later than 6 months after the date of enactment of this Act, the Board shall issue recommendations to the Administrator which shall include, but not be limited to, the minimum standards to be established under subsection (a).*

*(c) STATE ADOPTION OF REGULATIONS.—(1) After the publication of the guidelines under subsection (a), any State may adopt regulations identical (except as provided in paragraph (2) of this subsection) to the guidelines promulgated by the Administrator under subsection (a)(1).*

*(2) Nothing in this section shall be construed to preempt any State from issuing and enforcing, at any time,*

*additional or more stringent guidelines and regulations regarding the training and certification of Phase I environmental professionals.*

*(3) Nothing in this section shall be construed to require a profession or occupation licensed by a State authority and whose scope of practice, as defined by State law, includes Phase I Environmental Site Assessments to obtain certification as a ''certified Phase I Environmental Site Professional'' as a condition for performing Phase I Environmental Site Assessments.*

*(4) Nothing in this section shall be construed to permit a certified Phase I Environmental Professional to practice within the scope of practice of a licensed profession or occupation, as defined by State law, unless that individual also meets the requirements of the State licensing statute.*

*(d) DETERMINATION OF COMPLIANCE.—(1) If a State adopts the guidelines issued by the Administrator, any organization that seeks to obtain a determination of compliance with the regulations set forth in subsection (c) may submit to any such State, in which the organization is located, information documenting such compliance.*

*(2) Such State shall make the determination of such organization's compliance or noncompliance with such regulations.*

*(3) Upon a determination of compliance under paragraph (2), the State shall issue notice in writing to such organization, indicating that such organization is an ''Approved Phase I Environmental Training and Certification Organization'' in accordance with this Act. Such approval shall be valid for a term to be set by the State, but no longer than 5 years.*

*(4) A State may charge a reasonable fee, equal to the cost of determining compliance under paragraph (2), to each organization that applies for such determination. Any such fees shall be listed as part of the regulations promulgated under subsection (c).*

*(5) Any organization that has received notice of a determination of compliance from a State under paragraph (3), may issue a diploma, certification, or other form of degree, to any individual who has completed to its satisfaction such organization's curriculum and training program signifying that the recipient is a ''Certified Phase I Environmental Professional'' qualified to perform Phase I Environmental Site Assessments.*

*(6) A State may periodically, or upon expiration of a notification of a determination of compliance under paragraph (3), review the program, curriculum, facilities, and training methods of any such organization to determine*

*such organizations continued compliance with the regulations promulgated under subsection (c).*

*(e) DEFINITIONS.—For purposes of this section:*

*(1) PHASE I ENVIRONMENTAL SITE ASSESSMENT.—The term ''Phase I Environmental Site Assessment'' means the process by which a person or entity seeks to determine whether a particular parcel of real property is subject to recognized environmental conditions. These conditions indicate the presence or likely presence of a hazardous substance or pollutant or contaminant on a property under conditions that indicate the existence of a release or threatened release at the facility into structures on the property or into the ground, ground water or surface water of the property.*

*(2) CERTIFIED PHASE I ENVIORNMENTAL PROFESSIONAL.—The term ''Certified Phase I Environmental Professional'' means any person receiving certification to perform Phase I Environmental Site Assessments from an approved environmental training and certification organization in accordance with this section.*

*(3) APPROVED PHASE I ENVIRONMENTAL TRAINING AND CERTIFICATION ORGANIZATION.—The term ''Approved Phase I Environmental Training and Cer-*

*tification Organization'' means Phase I Environmental Training and Certification Organization whose curriculum, program, facilities, training, and testing methods comply with the regulations adopted by a State under this section.*

***SEC. 613. SAVINGS CLAUSE.***

*Nothing in this Act or any amendment made by this Act shall affect the application of the Atomic Energy Act of 1954 to any facility licensed by the Nuclear Regulatory Commission.*

***SEC. 614. FEDERAL ENTITIES AND FACILITIES.***

*Section 120 (42 U.S.C. 9620) is amended as follows:*

*(1) By amending the heading to read as follows:* ***"SEC. 120. FEDERAL ENTITIES AND FACILITIES.".***

*(2) By amending paragraph (1) of subsection (a) to read as follows:*

*''(1)(A) Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the United States shall be subject to, and comply with, all Federal, State, interstate and local requirements, both substantive and procedural (including any requirements for permits, reporting, or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), regarding response actions related to, or man-*

*agement of, hazardous substances, pollutants, or contaminants in the same manner, and to the same extent, as any nongovernmental entity is subject to such requirements, including enforcement and liability under sections 106 and 107 of this title and the payment of reasonable service charges.*

*''(B) The Federal, State, interstate, and local substantive and procedural requirements referred to in subparagraph (A) include, but are not limited to, all administrative orders and all civil and administrative penalties and fines, regardless of whether such penalties and fines are punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations. The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order or civil or administrative penalty or fine referred to in the preceding sentence, or reasonable service charge).*

*''(C) The reasonable service charges referred to in this paragraph include, but are not limited to, fees or charges assessed in connection with the processing and issuance of permits, renewal of permits, amendments to permits, review of plans, studies, and other*

*documents, and inspection and monitoring of facilities, as well as any other nondiscriminatory charges that are assessed in connection with a State, interstate, or local response program.*

*"(D) Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal court with respect to the enforcement of any injunctive relief.*

*"(E) No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal or State response law with respect to any act or omission within the scope of their official duties. An agent, employee, or officer of the United States shall be subject to any criminal sanction (including, but not limited to, any fine or imprisonment) under any Federal or State response law, but no department, agency, or instrumentality of the executive, legislative, or judicial branch of the United States shall be subject to any such sanctions.*

*"(F) The waiver of sovereign immunity provided in this paragraph shall not apply to the extent a State law would apply any standard or requirement to such Federal department, agency, or instrumentality in a manner which is more stringent than such*

*standard or requirement would be applied to any other person.*

*"(G) Nothing in this section shall be construed to affect the liability of any person or entity other than a department, agency, or instrumentality of the United States under sections 9606 and 9607 of this title.*

*"(H)(i) The Administrator may issue an order under section 106 of this Act to any department, agency, or instrumentality of the executive, legislative, or judicial branch of the United States. The Administrator shall initiate an administrative enforcement action against such a department, agency, or instrumentality in the same manner and under the same circumstances as action would be initiated against any other person.*

*"(ii) No administrative order issued to such department, agency, or instrumentality shall become final until such department, agency, or instrumentality has had the opportunity to confer with the Administrator.*

*"(iii) Unless a State law in effect on the effective date of the Superfund Reform Act of 1994, or a State Constitution, requires the funds to be used in a different manner, all funds collected by a State from the*

*Federal Government from penalties and fines imposed for violation of any substantive or procedural requirement referred to in subsection (a) of this section shall be used by the State only for projects designed to improve or protect the environment or to defray the costs of environmental protection or enforcement.*

*''(I) Each such department, agency, and instrumentality shall have the right to contribution protection set forth in section 113, when such department, agency, or instrumentality resolves its liability under this Act.''.*

*(3) By striking paragraph (4) of subsection (a).*

*(4) By inserting ''(other than the indemnification requirements of section 119)'' after ''responsibility'' in subsection (a)(3).*

# *TITLE VII—FUNDING*

*Sec. 701. Authorization of appropriations.*
*Sec. 702. Orphan share funding.*
*Sec. 703. Agency for Toxic Substances and Disease Registry.*
*Sec. 704. Limitations on research, development, and demonstration programs.*
*Sec. 705. Authorization of appropriations from general revenues.*
*Sec. 706. Additional limitations.*
*Sec. 707. Uses of the fund.*

## *SEC. 701. AUTHORIZATION OF APPROPRIATIONS.*

*Section 111(a) is amended by striking ''$8,500,000,000 for the 5-year period beginning on the date of enactment of the Superfund Amendments and Reauthorization Act of 1986, and not more than $5,100,000,000 for the period commencing October 1, 1991, and ending September 30, 1994''*

*and inserting ''$9,600,000,000 for the period commencing October 1, 1994, and ending September 30, 1999''.*

***SEC. 702. ORPHAN SHARE FUNDING.***

*Section 111(a) is amended by adding after paragraph (7) (as added by this Act) the following new paragraph:*

*''(8) ORPHAN SHARE FUNDING.—Payment of orphan shares pursuant to section 130(e) of this Act.''.*

***SEC. 703. AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY.***

*Section 111(m) (relating to ATSDR) is amended to read as follows:*

*''(m) AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY.—There shall be directly available to the Agency for Toxic Substances and Disease Registry to be used for the purpose of carrying out activities described in subsection (c)(4) of this section and section 104(i) of this Act not less than $80,000,000 per fiscal year for each of fiscal years 1995, 1996, 1997, 1998, and 1999. Any funds so made available which are not obligated by the end of the fiscal year in which made available shall be returned to the Fund.''.*

***SEC. 704. LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAMS.***

*Section 111(n) is amended to read as follows:*

*"(n) LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAM.—*

*"(1) SECTION 311(a).—From the amounts available in the Fund, not more than the following amounts may be used for the purposes of section 311(a) of this title (relating to hazardous substance research, demonstration, and training activities):*

*"(A) For fiscal year 1995 $40,000,000.*

*"(B) For fiscal year 1996 $50,000,000.*

*"(C) For fiscal year 1997 $55,000,000.*

*"(D) For fiscal year 1998 $55,000,000.*

*"(E) For fiscal year 1999 $55,000,000.*

*No more than 10 percent of such amounts shall be used for training under section 311(a) of this title for any fiscal year.*

*"(2) SECTION 311(d).—For each of the fiscal years 1995, 1996, 1997, 1998, and 1999, not more than $5,000,000 of the amounts available in the Fund may be used for the purposes of section 311(d) of this title (relating to university hazardous substance research centers)."*.

***SEC. 705. AUTHORIZATION OF APPROPRIATIONS FROM GENERAL REVENUES.***

*Section 111(p)(1) is amended to read as follows:*

*"(1) IN GENERAL.—The following sums are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund:*

*"(A) For fiscal year 1995, $250,000,000.*

*"(B) For fiscal year 1996, $250,000,000.*

*"(C) For fiscal year 1997, $250,000,000.*

*"(D) For fiscal year 1998, $250,000,000.*

*"(E) For fiscal year 1999, $250,000,000.*

*In addition there is authorized to be appropriated to the Hazardous Substance Superfund for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection (and paragraph (2) of section 131(b) of this title) as has not been appropriated before the beginning of the fiscal year involved.".*

***SEC. 706. ADDITIONAL LIMITATIONS.***

*Section 111 is amended by adding after subsection (p) the following new subsections:*

*"(q) CITIZEN INFORMATION AND ACCESS OFFICES.—For each of the fiscal years 1995, 1996, 1997, 1998, and 1999, not more than $50,000,000 of the amounts available in the Fund may be used for the purposes of section 117(h) of this Act (relating to citizen information and access offices).*

*"(r) VOLUNTARY RESPONSE PROGRAMS.—For each of the fiscal years 1995 through 1999, not more than $20,000,000 of the amounts available in the Fund may be used for the purposes of section 128 of this Act (relating to State voluntary cleanup programs)."*.

***SEC. 707. USES OF THE FUND.***

*Section 111(a) is amended by adding after paragraph (8) the following new paragraph:*

*"(9) REIMBURSEMENT OF POTENTIALLY RESPONSIBLE PARTY COSTS.—If a potentially responsible party and the Administrator enter into a settlement under this Act in which the Administrator is reimbursed for its response costs, and if the Administrator determines, through a Federal audit of response the costs, that costs for which the Administrator was reimbursed—*

*"(A) are unallowable due to contractor fraud, or*

*"(B) are unallowable under the Federal Acquisition Regulations, or*

*"(C) should be adjusted due to routine contract and Environmental Protection Agency response cost audit procedures,*

*then the Administrator is authorized to use the fund to reimburse a potentially responsible party for any*

*costs identified under subparagraph (A), (B), or (C) of this paragraph.''.*

# *TITLE VIII—ENVIRONMENTAL INSURANCE RESOLUTION FUND*

*Sec. 801. Short title.*
*Sec. 802. Definitions.*
*Sec. 803. Environmental Insurance Resolution Fund.*
*Sec. 804. Resolution offers.*
*Sec. 805. Documentation of claims and insurance coverage.*
*Sec. 806. Amount of resolution offers.*
*Sec. 807. Acceptance of resolution offer.*
*Sec. 808. Resolution payments.*
*Sec. 809. Rejection of resolution offer and reimbursement to insurer.*
*Sec. 810. Financial Statements, audits, investigations, and inspections.*
*Sec. 811. Stay of pending litigation.*
*Sec. 812. Regulations.*
*Sec. 813. Court jurisdiction and penalties.*
*Sec. 814. Miscellaneous provisions.*
*Sec. 815. Reports.*
*Sec. 816. Effective date.*
*Sec. 817. Termination of authority to offer and accept resolution.*
*Sec. 818. Termination of fund.*

## *SEC. 801. SHORT TITLE.*

*This title may be cited as the ''Environmental Insurance Resolution and Equity Act of 1994''.*

## *SEC. 802. DEFINITIONS.*

*For purposes of this title:*

*(1) APPLICABLE COSTS.—The term ''applicable costs'' means applicable National Priorities List (NPL) facility costs or applicable non-NPL facility costs. Costs of removal shall be treated as applicable costs only if the removal is conducted in accordance with section 104, 106 or 122 of CERCLA or under the regulations of the Administrator governing re-*

*moval actions (40 CFR 300.415 or any successor regulations).*

*(2) APPLICABLE NPL FACILITY COSTS.—The term ''applicable NPL facility costs'' means the costs for an eligible NPL facility, —*

*(A) of response (as defined in section 101(25) of CERCLA);*

*(B) for natural resources damages under section 107 of CERCLA; or*

*(C) to defend potential liability for the costs described in subparagraph (A) or (B) or both, including, but not limited to, attorney's fees, costs of suit, consultant and expert fees and costs, and expenses for testing and monitoring.*

*(3) APPLICABLE NON-NPL FACILITY COSTS.—The term ''applicable non-NPL facility costs'' means the costs for a non-NPL facility—*

*(A) of removal (as defined in section 101(23) of CERCLA); and*

*(B) to defend potential liability for such costs of removal, including, but not limited to, attorney's fees, costs of suit, consultant and expert fees and costs, and expenses for testing and monitoring.*

*(4) BOARD.—The term ''Board'' means the Board of Trustees of the Fund.*

*(5) CERCLA.—The term ''CERCLA'' means the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601 et seq.).*

*(6) ELIGIBLE COSTS.—The term ''eligible costs'' means the applicable costs incurred with respect to a hazardous substance disposed of at an eligible facility for which an eligible person either (A) has not been reimbursed or (B) has been reimbursed and that are the subject of a dispute between the eligible person and an insurer. The term eligible costs shall not include any costs paid by the United States.*

*(7) ELIGIBLE FACILITY.—The term ''eligible facility'' means an eligible NPL facility or an eligible non-NPL facility.*

*(8) ELIGIBLE NPL FACILITY.—The term ''eligible NPL facility'' means any facility placed on the National Priority List at any time, at which a hazardous substance was disposed of on or before December 31, 1985.*

*(9) ELIGIBLE NON-NPL FACILITY.—The term ''eligible non-NPL facility'' means any site or facility where a removal (as defined in section 101(23) of*

*CERCLA) was conducted pursuant to governmental direction or oversight under CERCLA and the National Contingency Plan at any time, at which a hazardous substance was disposed of on or before December 31, 1985.*

*(10) ELIGIBLE PERSON.—The term ''eligible person'' means any person that demonstrates, to the satisfaction of the Resolution Fund, that such person either—*

*(A) has received a notice at any time that it may be a potentially responsible party pursuant to CERCLA with respect to an eligible NPL facility, which notice requests or demands that such party perform response actions or pay response costs or natural resource damages for such facility; or*

*(B) is or was liable, or alleged to be liable, at any time for a removal (as defined in section 101(23) of CERCLA) at any eligible facility,*

*and had entered into a valid insurance contract for qualified insurance.*

*(11) FACILITY.—The term ''facility'' has the same meaning as provided in section 101(9) of CERCLA.*

*(12) FUND.—The term ''Fund'' means the Environmental Insurance Resolution Fund.*

*(13) NPL.—The term ''NPL'' means the National Priorities List.*

*(14) PERSON.—The term person means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity or governmental unit (including any predecessor in interest or any subsidiary thereof).*

*(15) QUALIFIED INSURANCE.—The term ''qualified insurance'' means insurance for comprehensive general liability or commercial multi-peril insurance coverage for any period prior to January 1, 1986. For purposes of this paragraph, comprehensive general liability insurance includes broad form liability, general liability, commercial general liability, and excess or umbrella coverage; and commercial multi-peril insurance includes broad form property, commercial package, special multi-peril, and excess or umbrella coverage. Such term shall not include any other insurance, such as environmental impairment liability insurance, whether found in primary, excess, or umbrella coverage.*

*(16) VALID INSURANCE CONTRACT.—The term ''valid insurance contract'' means a contract for qualified insurance other than any of the following:*

*(A) An insurance contract with respect to which a person has entered into a settlement with an insurer providing, or where a final judgment has provided, that the contract has been satisfied and that such person has no right to make any further claims under such contract.*

*(B) An insurance contract which covers only a time period prior to the earliest date of the action or status of the insured person which resulted in liability or potential liability under section 107 of CERCLA.*

*(C) An insurance contract with an insurance company which is insolvent or in insolvency proceedings.*

*(D) An insurance contract which is the subject of a settlement between the insurance company and the insured pursuant to which the policy has been reformed to include an absolute exclusion for pollution liability (''absolute pollution exclusion'').*

*(17) STATE.—The term ''State'' has the same meaning as provided in section 101(27) of CERCLA.*

***SEC. 803. ENVIRONMENTAL INSURANCE RESOLUTION FUND.***

*(a) ENVIRONMENTAL INSURANCE RESOLUTION FUND ESTABLISHED.—There is hereby established the Environmental Insurance Resolution Fund.*

*(b) OFFICES.—The principal office of the Fund shall be in the District of Columbia or at such other place as the Fund may from time to time prescribe.*

*(c) STATUS OF RESOLUTION FUND.—Except as expressly provided in this title, the Fund shall not be considered an agency or establishment of the United States. The members of the Board of Trustees shall not, by reason of such membership, be deemed to be officers or employees of the United States.*

*(d) BOARD OF TRUSTEES.—*

*(1) IN GENERAL.—The Fund shall be administered by a Board of Trustees.*

*(2) MEMBERSHIP.—The Board shall consist of the following:*

*(A) GOVERNMENTAL MEMBERS.—*

*(i) The Administrator of the Environmental Protection Agency or the Administrator's designee.*

*(ii) The Attorney General of the United States or the Attorney General's designee.*

*(B) PUBLIC MEMBERS.—Five public members appointed by the President not later than 60 days after the date of enactment of this title, not less than two of whom shall represent insurers subject to section ____ of the Internal Revenue Code of 1986, and not less than two of whom shall represent eligible persons as defined in section 802(10). The public members shall be citizens of the United States.*

*(C) EX-OFFICIO MEMBER.—The Secretary of the Treasury shall serve as an ex officio member of the Board.*

*(3) CHAIR.—The Chair of the Board shall be designated by the President from time to time from among the members described in paragraph (2)(A). No expenditure may be made, or other action taken, by the Fund without the concurrence of the Chair of the Board.*

*(4) COMPENSATION.—Governmental members of the Board shall serve without additional compensation. Public members of the Board shall, while attending meetings of the Board or while engaged in duties related to such meetings or other activities of the Board pursuant to this title, be entitled to receive compensation at the rate of $200 per day, including*

*travel time. While away from their homes or regular places of business, members of the Board shall be allowed travel and actual, reasonable and necessary expenses to the same extent as officers of the United States.*

*(5) TERM OF PUBLIC MEMBERS.—Public members of the Board shall serve for a term of 5 years, except that such members may be removed by the President for any reason at any time. A public member whose term has expired may continue to serve on the Board until such time as the President appoints a successor. The President may reappoint a public member of the Board, but no such member may consecutively serve more than two terms.*

*(6) VACANCIES.—A vacancy on the Board shall be filled in the same manner as the original appointment, except that such appointment shall be for the balance of the unexpired term of the vacant position.*

*(7) QUORUM.—Four members of the Board shall constitute a quorum for the conduct of business.*

*(8) MEETINGS.—The Board shall meet not less than quarterly at the call of the Chair. Meetings of the Board shall be open to the public unless the Board, by a majority vote of members present in open session, determines that it is necessary or appropriate*

*to close a meeting. The Chair shall provide at least 10 days notice of a meeting by publishing a notice in the Federal Register and such notice shall indicate whether it is expected that the Board will consider closing all or a portion of the meeting. Nothing in this paragraph shall be construed to apply to informal discussions or meetings among Board members.*

*(e) OFFICERS AND EMPLOYEES.—*

*(1) CHIEF EXECUTIVE OFFICER; CHIEF FINANCIAL OFFICER.—(A) The Fund shall have a Chief Executive Officer appointed by the Board who shall exercise any authority of the Fund under such terms and conditions as the Board may prescribe.*

*(B) The Fund shall have a Chief Financial Officer appointed by the Board.*

*(2) COMPENSATION.—No officer or employee of the Fund may be compensated by the Fund at an annual rate of pay which exceeds the rate of basic pay in effect from time to time for level I of the Executive Schedule under section 5312 of title 5, United States Code. No officer or employee of the Fund, other than a member of the Board, may receive any salary or other compensation from any source other than the Fund for services rendered during the period of employment by the Fund.*

*(3) POLITICAL TEST OR QUALIFICATION.—No political test or qualification shall be used in selecting, appointing, promoting, or taking other personnel actions with respect to officers, agents, and employees of the Fund.*

*(4) ASSISTANCE BY FEDERAL AGENCIES.—The Attorney General, the Secretary of the Treasury, and the Administrator of the Environmental Protection Agency, may to the extent practicable and feasible, and in their sole discretion, make personnel and other resources available to the Fund. Such personnel and resources may be provided on a reimbursable basis, and any personnel so provided shall not be considered employees of the Fund for purposes of paragraph (2).*

*(f) POWERS OF RESOLUTION FUND.—Notwithstanding any other provision of law, except as provided in this title or as may be hereafter enacted by the Congress expressly in limitation of the provisions of this subsection, the Fund shall have the power—*

*(1) to have succession until dissolved by Act of Congress;*

*(2) to make and enforce such bylaws, rules and regulations as may be necessary or appropriate to carry out the purposes of this title;*

*(3) to make and perform contracts, agreements, and commitments;*

*(4) to settle, adjust, and compromise, and with or without consideration or benefit to the Fund release or waive in whole or in part, in advance or otherwise, any claim, demand, or right of, by, or against the Fund;*

*(5) to sue and be sued, complain and defend, in any State, Federal or other court;*

*(6) to determine its necessary expenditures and appoint, employ, and fix and provide for the duties, compensation and benefits of officers, employees, attorneys, and agents, all of whom shall serve at the pleasure of the Board; except that all amounts withdrawn from the Treasury of the United States by or on behalf of the Resolution Fund shall be certified by a federally authorized certifying officer who is an employee of the Federal agency represented by the chair of the Resolution Fund;*

*(7) to hire or accept the voluntary services of consultants, experts, advisory boards, and panels to aid the Fund in carrying out the purposes of this title; and*

*(8) to take such other actions as may be necessary to carry out the responsibilities of the Fund under this title.*

*(g) BORROWING AUTHORITY.—Nothing in this title shall be construed to permit the Fund to issue any evidence of indebtedness or otherwise borrow money.*

***SEC. 804. RESOLUTION OFFERS.***

*(a) IN GENERAL.—The Fund shall offer one comprehensive resolution to each eligible person. The offer shall be for a percentage of all the eligible costs of such eligible person incurred in connection with all eligible facilities. The amount of the offer shall be determined pursuant to section 806.*

*(b) REQUESTS FOR RESOLUTION OFFERS.—*

*(1) IN GENERAL.—An eligible person may, at any time after the promulgation of the interim final regulations under section 812(a), file a request for a resolution offer from the Fund.*

*(2) RESPONSE TO REQUEST.—Not later than 180 days after the receipt of a complete request as determined by the Fund, the Fund shall in writing—*

*(A) make a resolution offer to each eligible person that has filed a request for a resolution offer; or*

*(B) notify a person filing such a request that such person is not an eligible person.*

*(c) JOINT VENTURES AND SUBSIDIARIES.—A joint venture shall not be aggregated with any individual joint venturer for purposes of this section but shall be treated as a distinct entity for such purposes. All claims by subsidiaries shall be included in a single claim by the corporate parent for purposes of this Act.*

***SEC. 805. DOCUMENTATION OF CLAIMS AND INSURANCE COVERAGE.***

*(a) SCREENING OF CLAIMS.—*

*(1) DENIAL BY REASON OF FELONY.—The Fund may deny a resolution offer to an otherwise eligible person for a specific facility if the eligible person has been convicted of a felony under any Federal or State statute which has a material effect on the response costs or natural resource damage incurred at the facility.*

*(2) FILING AND ACTIVE PURSUIT OF CLAIMS.—The Fund may decide not to make an offer to an eligible person unless the eligible person has filed a claim and is actively pursuing the claim. The Fund may also decide that an offer should be made to any such person.*

*(b) FILING OF CLAIMS.—For the purposes of subsection (a), an eligible person shall be deemed to have filed a claim if the eligible person has notified one or more of its insurers of the existence of a claim, or has engaged in active investigation and preparation of a claim, or has filed a lawsuit seeking coverage for eligible costs. Failure to have filed a claim or to have engaged in settlement discussions before January 1, 1994, shall not be deemed to preclude an eligible person from receiving an offer from the Fund if the eligible person had not received any notice letter from a governmental authority or one or more potentially responsible parties asserting its potential liability under CERCLA at any eligible facility until after January 1, 1993.*

*(c) ACTIVE PURSUIT OF CLAIMS.—For purposes of this section, an eligible person shall be considered to be actively pursuing a claim if—*

*(1) the person has filed a lawsuit against an insurer, or has filed a motion or another pleading in a lawsuit against an insurer, or has engaged in any discovery in a lawsuit against an insurer between January 1, 1993, and December 31, 1993 regarding eligible costs at an eligible facility;*

*(2) the person has engaged in settlement discussions with an insurer between January 1, 1993, and*

*December 31, 1993 regarding eligible costs at an eligible facility;*

*(3) the person has engaged in active investigation and preparation of a claim before January 1, 1994;*

*(4) if the person has received a letter from an insurer rejecting coverage or reserving its rights to reject coverage regarding eligible costs at an eligible facility, the person has sent within 1 year thereafter an additional status report or letter apprising an insurer of activities regarding an eligible facility; or*

*(5) the eligible person has sent a letter to an insurer notifying an insurer of the potential existence of a claim regarding eligible costs at an eligible facility and has received no response from the insurer.*

*(d) DOCUMENTATION OF COVERAGE.—*

*(1) EFFECT OF DOCUMENTATION.—Coverage of an eligible person for policy years prior to 1986 and the applicable deductibles and limits on coverage shall be confirmed to the satisfaction of the Fund by the terms of the policies or other documentary proof of insurance provided by, or for, the eligible person in accordance with this subsection.*

*(2) SUBMISSION OF DOCUMENTARY EVIDENCE.—After promulgation of regulations governing docu-*

*mentation requirements, an eligible person requesting an offer shall submit: copies of its insurance policies, or other documentary evidence sufficient to establish the following six terms of coverage: insurance company, policy number, type of policy, duration of policy, deductible or self-insured retention, and limit of coverage. Documentary evidence may consist of any documents from an insurance company or broker or documents of the eligible person or other party which are generally contemporaneous with the term of the policy or with subsequent retrospective rating under the policy. Where documentary evidence (other than a policy) is relied upon as the proof of coverage, an eligible person must certify that it has undertaken a good faith investigation of its records, that its submission is complete and accurate to the best of its information and belief, and that it does not have a copy of the insurance policy. If an eligible person submits documentary evidence which does not establish all six terms of coverage but which does establish the name of the insurance company and one or more other terms evidencing coverage, the named insurance company shall undertake an investigation for any policy or other relevant documents evidencing the eligible*

*person's coverage. At the conclusion of the investigation, the named insurance company shall—*

*(A) produce to the Fund any policies or other documents relevant to the eligible person's claim of coverage; or*

*(B) certify that it has undertaken a good faith investigation of its records and that it has produced any and all policies or documents available to the insurer and relevant to the eligible person's claim of coverage.*

*Subsequent to the named insurance company's production or certification, the Fund shall decide whether a person has provided adequate proof of insurance based on the evidence presented. Submission of the six terms of coverage referred to in this paragraph shall be treated as adequate proof of insurance.*

*(e) PRIOR SETTLEMENTS.—*

*(1) DISCLOSURE.—Each eligible person shall be required to disclose and certify the amounts and terms of any settlement reached with an insurer for eligible costs at eligible facilities. In the event that the terms of such a settlement are subject to a protective order or are otherwise confidential, the eligible person may provide evidence of the confidential nature of the settlement information to the Fund. Upon receipt of*

*such evidence, the Fund shall be obligated to preserve the confidentiality of all such settlement information.*

*(2) EFFECT OF TITLE ON PRIOR SETTLEMENTS.—This title shall have no effect on prior settlements between eligible persons and an insurer.*

***SEC. 806. AMOUNT OF RESOLUTION OFFERS.***

*(a) RESOLUTION OFFERS.—The Fund shall make resolution offers to each eligible person equal to the applicable percentage (determined under this section) of the lesser of the following:*

*(1) The eligible costs actually incurred by an eligible person.*

*(2) The available coverage, as determined under this section.*

*(b) APPLICABLE PERCENTAGE.—*

*(1) IN GENERAL.—For each eligible person that has not established a litigation venue pursuant to subsection (d), the applicable percentage shall be equal to the facility location percentage for that person. For each eligible person that has established one or more litigation venues pursuant to subsection (d), the applicable percentage shall be comprised of one-half of the facility location percentage for that person plus one-half of the venue percentage for that person.*

*(2) FACILITY LOCATION PERCENTAGE.—*

*(A) ONE OR MORE ELIGIBLE NPL FACILITIES.—For each eligible person, the Fund shall establish a facility location percentage. The percentage shall be equal to the weighted average of the State percentages for each eligible NPL facility for which such person has been identified as a potentially responsible party. In determining such weighted average, each such eligible facility shall be accorded equal value, except as provided in paragraph (4).*

*(B) NO ELIGIBLE NPL FACILITIES.—For each person not identified as a potentially responsible party at one or more eligible NPL facilities but who is, or is alleged to be, liable at any time for removal (as defined in section 101(23) of CERCLA) at one or more eligible non-NPL facilities, the Fund shall establish a facility location percentage equal to the weighted average of the State percentages for each such eligible non-NPL facility. In determining such weighted average, each such facility shall be accorded equal value.*

*(3) LITIGATION VENUE PERCENTAGE.—*

*(A) ONE OR MORE ELIGIBLE NPL FACILITIES.—For each eligible person that has estab-*

*lished one or more litigation venues pursuant to subsection (d) with respect to one or more eligible NPL facilities, the Fund shall establish a litigation venue percentage. The percentage shall be equal to the weighted average of the State percentages for each eligible NPL facility in each State in which such eligible person has established a litigation venue. In determining such weighted average, each eligible NPL facility with respect to which such person has established a litigation venue shall be accorded equal value.*

*(B) NO ELIGIBLE NPL FACILITIES.—For each eligible person that does not have one or more eligible NPL facilities and has established litigation venue with respect to one or more eligible non-NPL facilities pursuant to subsection (d), the Fund shall establish a litigation venue percentage equal to the weighted average of the State percentages for each eligible non-NPL facility in each State in which such eligible person has established a litigation venue. In determining such weighted average, each eligible non-NPL facility with respect to which litigation venue has been established shall be accorded equal value.*

*(4) EXTRA WEIGHTING OF LARGE SITES.—In determining the facility location percentage under paragraph (2)(A), the Fund shall count a facility twice for weighting purposes if—*

*(A) the facility is located in the same State as the State in which litigation venue has been established;*

*(B) the facility is included in the eligible person's coverage litigation in that venue; and*

*(C) total response costs incurred plus estimated response costs exceed $50,000,000, as established by governmental cost summaries or demands, records or decision, or evidence satisfactory to the Fund of costs actually incurred.*

*(c) STATE PERCENTAGE.—*

*(1) CONGRESSIONAL FINDINGS.—The Congress finds that as of January 1, 1994, State law generally is more favorable to eligible persons that pursue claims concerning eligible costs against insurers in some States, that State law generally is more favorable to insurers with respect to such claims in some States, and that in some States the law generally favors neither insurers nor eligible persons with respect to such claims or that there is insufficient information to determine whether such law generally favors*

*insurers or eligible persons with respect to such claims. The Congress further finds that considerations of equity and fairness require that resolution offers made by the Fund must vary to reflect the relative state of the law among the several States.*

*(2) STATE PERCENTAGE CATEGORIES.—The States are hereby classified into the following percentage categories:*

*(A) 20 PERCENT.—The State percentage shall be 20 percent for: Florida, Maine, Maryland, Massachusetts, Michigan, New York, North Carolina, and Ohio.*

*(B) 60 PERCENT.—The State percentage shall be 60 percent for: California, Colorado, Georgia, Illinois, New Jersey, Washington, West Virginia, and Wisconsin.*

*(C) 40 PERCENT.—For all other States the State percentage shall be 40 percent.*

*(d) LITIGATION VENUE.—For purposes of this section, litigation venue is considered established with respect to an eligible person if—*

*(1) on or before December 31, 1993, the eligible person had pending in a court of competent jurisdiction a complaint against an insurer with respect to eligible costs at an eligible facility; and*

*(2) no motion to change venue with respect to such complaint was pending on or before January 31, 1994.*

*(e) AVAILABLE COVERAGE.—*

*(1) IN GENERAL.—The Fund shall determine the available coverage for each eligible person by adding the limits of liability contained in all valid insurance contracts of insurance (including per occurrence, aggregate, primary, excess or other limits) and then by subtracting the total of all deductibles and self-insured retentions applicable to those policies. In calculating the available coverage and the average deductible pursuant to section 808(c), the Fund shall exclude any deductible or self-insured retention contained in a policy which has already been paid by the eligible person.*

*(2) PER OCCURRENCE BASIS POLICIES.—For insurance policies with limits or deductibles expressed on a per occurrence basis without an aggregate limit, the limit or deductible shall be an amount equal to the limit or deductible in the policy multiplied by the number of eligible facilities of the eligible person and by the number of years the policy was in effect. Per occurrence limits or deductibles may be adjusted by*

*the Fund whenever there is an increase in the eligible facilities attributable to an eligible party.*

*(f) ADJUSTMENT FOR OWNED PROPERTY SITES.—*

*(1) ADJUSTMENT.—If an eligible person seeks payment of eligible costs for an owned property site, only 70 percent of such eligible costs (including eligible costs for off site contamination attributable to the owned property) shall be taken into account in making payments under this section.*

*(2) DEFINITIONS.—For purposes of this subsection—*

*(A) OWNED PROPERTY SITE.—A facility shall be considered an owned property site if—*

*(i) an eligible person owned or leased the facility at the time of initial disposal or a predecessor company owned or leased the facility at the time of initial disposal and the predecessor company merged into an eligible person or became the wholly owned subsidiary of an eligible person;*

*(ii) the property owned or leased by the eligible person or predecessor company represents all or a portion of the facility as specifically designated on the NPL or as subject to a removal covered by this title;*

*(iii)(I) an eligible person or predecessor company generated all of the hazardous substances which were disposed of during the period such person or predecessor owned or leased the facility, or (II) an eligible person or predecessor company owned a landfill which is part of the property on which a manufacturing or industrial facility is situated, the landfill was used for the treatment, storage, or disposal of waste generated from the manufacturing or industrial facility and from third parties, and the landfill contains waste that is not primarily municipal solid waste or sewage sludge as defined in title VI of this Act; and*

*(iv) the hazardous substances associated with the owned property constitute the basis for liability at the facility.*

*(B) PROPERTY NOT CONSIDERED OWNED PROPERTY.—A facility shall not be considered owned property of an eligible person for purposes of this section when the eligible person acquired the facility from, or acquired the assets of, a company which engaged in initial disposal of hazardous substances at the facility and the eli-*

*gible person did not engage in initial disposal of hazardous substances at the facility during its period of ownership. An owned property site shall not include a public or commercial landfill primarily used for disposal, storage, or treatment of municipal solid waste or sewage sludge as defined in title VI of this Act.*

*(C) INITIAL DISPOSAL.—For purposes of this paragraph, the term initial disposal means the spilling, pumping, pouring, emitting, emptying, discharging, injecting, dumping, disposing, placing, or leaking of hazardous substances into the environment caused by the facility owner but does not include—*

*(i) any continuing or further leaking, escaping, or leaching of hazardous substances into the environment during subsequent periods of ownership which was not caused by the acts of a subsequent owner; or*

*(ii) any activities undertaken by an owner related to response at the facility.*

***SEC. 807. ACCEPTANCE OF RESOLUTION OFFER.***

*(a) ACCEPTANCE.—*

*(1) ELECTION TO ACCEPT.—An eligible person may, when submitting a request for a resolution to*

*the Fund, make a written irrevocable election to accept any resolution to be made by the Fund.*

*(2) NOTIFICATION.—An eligible person that does not make an election pursuant to paragraph (1) shall, within 60 days of the receipt of a resolution offer from the Fund, notify the Fund in writing of its irrevocable acceptance or rejection of such offer. An eligible person who does not so accept or reject a resolution offer within 60 days shall be deemed to have made an irrevocable election to reject the offer.*

*(b) ACCEPTANCE OR REJECTION PRIOR TO OFFER.—Upon expiration of the 60-day period immediately following the enactment of this Act, any eligible person may notify the Fund that such eligible person accepts or rejects any offer to be issued by the Fund under this title. Any such notice shall be signed by a duly authorized officer of the eligible person, as certified by the secretary of the eligible person or by a person with equivalent authority.*

*(c) WAIVER OF INSURANCE CLAIMS.—Any eligible person accepting a resolution offer from the Fund shall agree in writing, subject to reinstatement described in subsection (d) to waive, stay, or dismiss any of its existing and future claims against any insurer for eligible costs, including bad faith claims pertaining to actions to recover eligible costs.*

*(d) REINSTATEMENT OF INSURANCE CLAIMS.—If the Fund fails to timely fulfill its obligations to an eligible person under the terms of an accepted resolution offer, such eligible person shall be entitled to reinstate any of its existing and future claims under a contract for insurance with respect to eligible costs. A shortfall provided for in section 808(f) shall not be considered a failure of the Fund to timely fulfill its obligations.*

***SEC. 808. RESOLUTION PAYMENTS.***

*(a) TIME OF PAYMENT; PRE-RESOLUTION COSTS.—The Fund shall make equal annual payments over a period of 10 years for the applicable percentage of eligible costs incurred by an eligible person on or before the date such person accepts a resolution offer. The Fund may, in its sole discretion, make such payments over a shorter period if the aggregate eligible costs do not exceed $50,000. An eligible person shall submit to the Fund documentation of such costs as the Fund may require. The initial payment to an eligible person under this paragraph shall be made not later than 60 days after the receipt of documentation satisfactory to the Fund. Interest shall not accrue on amounts payable pursuant to a resolution offer during the 5-year period beginning on the date of the enactment of this Act. In each year thereafter, interest shall accrue on the unpaid balance of the pre-resolution costs in an amount equal to the rate*

*of interest on one year Treasury bills issued on the anniversary of such date of enactment, or if no bills were issued on such date, on the last date such bills were issued prior to such anniversary.*

*(b) TIME OF PAYMENT; POST-RESOLUTION COSTS.—The Fund shall make payments for eligible costs incurred by an eligible person after the date such person accepts a resolution offer to the eligible person, or to a contractor or other person designated by the eligible person, subject to such documentation as the Fund may require. Payments under this title shall be made not later than 60 days after the receipt of documentation (satisfactory to the Fund) with respect to such costs.*

*(c) ADJUSTMENT FOR DEDUCTIBLE OR SELF INSURANCE.—In the case of an eligible person that has submitted to the Fund, as proof of status as an eligible person, a valid insurance contract subject to a self-insured retention or a deductible, payment to such eligible person pursuant to a resolution shall be reduced once by an amount equal to the average of the amounts of self-insured retentions and deductibles in all valid insurance contracts of insurance of the eligible person. For purposes of determining such average in the case of a per occurrence deductible or self-insured retention, the Fund shall only count such deductible or self-insured retention once for each policy year.*

*(d) ADJUSTMENT FOR CERTAIN DUTY-TO-DEFEND COSTS.—If an insurer has incurred and paid costs pursuant to a duty-to-defend clause contained in a contract for insurance, and such costs are the subject of a dispute between the eligible person and an insurer, the Fund shall reduce payment of a resolution to an eligible person by such amount and pay such amount to the insurer. If such costs were paid by the insurer on or before the date the eligible person accepted a resolution offer made by the Fund, payment to an insurer under this section shall be made in equal annual installments over a period of 10 years, and interest shall not accrue with respect to such costs. The Fund may, in its sole discretion, make such payments over a shorter period if the aggregate costs do not exceed $50,000.*

*(e) EFFECT OF PAYMENTS.—(1) Payments made to an eligible person by the Fund pursuant to a resolution offer shall be treated as payments made by an insurer in satisfaction of the terms and conditions of a contract of insurance. Such payments shall be allocated pro rata to each year in which proof of insurance has been established. The amount allocated to each coverage year shall be allocated 100 percent to the primary coverage until it is exhausted and then 100 percent to each successively higher layer of coverage until each such layer is exhausted.*

*(2) No insurer shall be allowed to collect recovery pursuant to a reinsurance contract on the basis of a payment by the Fund unless such reinsurer is not subject to the fees under section _____ of the Internal Revenue Code or has not satisfied its obligations pursuant to such fees.*

*(f) SHORTFALL.—If, in any year during the first 10 years after enactment, the Fund does not have sufficient funds available to pay all eligible costs of resolution offers accepted by eligible persons, the Fund shall determine the amount of the costs which cannot be paid in that year (the ''shortfall''). The Fund shall allocate the shortfall to the eligible persons in proportion to the size of their pending claims for reimbursement from the Fund. This shortfall shall be paid to the eligible person and shall be amortized over the next 5 years, and the amortized amount shall be paid with interest at the rate specified for the amortization of past costs. A shortfall which is being amortized hereunder shall not be considered a default by the Fund, triggering the reinstatement of claims.*

*(g) INTERIM ALLOCATIONS.—An eligible person accepting an offer of resolution shall be entitled to receive payment of all eligible costs which have been incurred. If an eligible person obtains reimbursement of such eligible costs as a result of a final allocation, contribution action, or otherwise, the eligible person must notify the Fund of the*

*amount of the reimbursement and must either (1) reduce its next claim to the Fund for payment of eligible costs by the amount of the reimbursement, or (2) refund the amount of the reimbursement.*

***SEC. 809. REJECTION OF RESOLUTION OFFER AND REIMBURSEMENT TO INSURER.***

*If an eligible person rejects a resolution offer (including a rejection pursuant to section 807(b)), litigates a claim with respect to eligible costs against 1 or more insurers, and obtains a final judgment against, or enters into a settlement with, any such insurer, the Fund—*

*(1) shall reimburse to such insurer or insurers the lesser of the amount of the resolution offer made to the eligible person (or, in the case of a rejection pursuant to section 807(b), the amount which the Fund would have offered) or the final judgment or settlement; and*

*(2) may, if the resolution offer exceeded the final judgment or settlement, reimburse the insurer or insurers for unrecovered reasonable costs and legal fees, except that the total reimbursement under this subsection may not exceed the amount of the resolution offer to the eligible person (or, in the case of a rejection pursuant to section 807(b), the amount which the Fund would have offered).*

*Reimbursements pursuant to this subsection shall be subject to such documentation as the Fund may require and shall be made by the Fund not later than 60 days after receipt by the Fund of a complete request for reimbursement satisfactory to the Fund.*

***SEC. 810. FINANCIAL STATEMENTS, AUDITS, INVESTIGATIONS, AND INSPECTIONS.***

*(a) IN GENERAL.—The financial statements of the Fund shall be prepared in accordance with generally accepted accounting principles and shall be audited annually by an independent certified public accountant in accordance with the auditing standards issued by the Comptroller General. Such auditing standards shall be consistent with the private sector's generally accepted auditing standards.*

*(b) INVESTIGATIONS AND OTHER AUDITS.—The Inspector General of the Environmental Protection Agency is authorized to conduct audits and investigations as the Inspector General deems necessary or appropriate.*

***SEC. 811. STAY OF PENDING LITIGATION.***

*(a) ENACTMENT OPERATES AS STAY.—Except as provided in this section, enactment of this title shall operate as a stay, applicable to all persons other than the United States, of the commencement or continuation, including the issuance or employment of process or service of any pleading, motion, or notice, of any judicial, administrative, or*

*other action with respect to claims for indemnity or other claims arising from a valid insurance contract of qualified insurance concerning insurance coverage for eligible costs.*

*(b) ACTIONS NOT AFFECTED.—Nothing in this title shall be construed to authorize a stay of any action involving claims that do not concern eligible costs or a valid insurance contract of qualified insurance. Any such claim shall be severed by operation of law from claims involving eligible costs or valid contracts of insurance of qualified insurance, and the insured party may proceed with the prosecution of the severed claims not involving eligible costs or not involving qualified insurance.*

*(c) TERMINATION OF STAY.—(1) The stay established by subsection (a) shall terminate with respect to an eligible person upon the earlier of the following—*

*(A) The rejection of a resolution offer (including an early rejection) by such eligible person pursuant to section 807.*

*(B) A determination by the Fund that an offer will not be made to such eligible person or that such person is not an eligible person.*

*(C) A determination by the Fund pursuant to section 816(b) that the minimum participation level has not been achieved.*

*(D) A failure by the Fund at any time after the date 10 years after the enactment of this Act to timely pay to such eligible person a resolution payment equal to the total amount of eligible costs (including shortfalls from prior years) required to be paid to such person under a resolution offer in any year after such date.*

*(2) The stay established by subsection (a) shall terminate on the date that is 10 years after the enactment of this Act with respect to:*

*(A) A person that becomes an eligible person on or after such date.*

*(B) An eligible person that has not filed a request for a resolution offer and has not rejected a resolution offer pursuant to section 807(b) before such date.*

*(d) AUTHORITY OF UNITED STATES UNAFFECTED.—Nothing in this section shall be construed to limit or affect in any way the discretion or authority of the United States or any party to commence or continue any allocation process, cost recovery, or other action pursuant to the authority of sections 101 through 122a of CERCLA.*

*(e) STATUTE OF LIMITATION TOLLED.—Notwithstanding any other provision of Federal or State law, any Federal or State statute of limitation concerning the filing or*

*prosecution of an action by an eligible person against an insurer, or by an insurer against an eligible person, with respect to eligible costs shall be tolled during the pendency of the stay of pending litigation established by this title.*

***SEC. 812. REGULATIONS.***

*(a) PROCEDURES AND DOCUMENTATION.—Not later than 120 days after the date of enactment of this title, the Fund shall publish in the Federal Register for public comment of not more than 60 days interim final regulations concerning procedures and documentation for the submission of requests for resolution offers and the payment of accepted resolution offers. Not later than 60 days after the close of the public comment period, the Fund shall publish in the Federal Register final regulations concerning such procedures and documentation, which may be amended by the Fund from time to time. The Fund in its discretion may require that requests for resolution offers made before the issuance of final regulations pursuant to this subsection be revised to conform to the requirements of such final regulations.*

*(b) OTHER REGULATIONS.—The Fund may prescribe such other regulations, rules and procedures as the Fund deems appropriate from time to time.*

*(c) JUDICIAL REVIEW.—No regulation, rule or procedure prescribed by the Fund shall be subject to review by*

*any court except to the extent such regulation, rule or procedure is not consistent with a provision of this title. No resolution offer made by the Fund shall be subject to review by any court.*

***SEC. 813. COURT JURISDICTION AND PENALTIES.***

*(a) JURISDICTION OF FEDERAL COURTS.—Notwithstanding section 1349 of title 28, United States Code:*

*(1) The Fund shall be deemed to be an agency of the United States for purposes of sections 1345 and 1442 of title 28, United States Code.*

*(2) All civil actions to which the Fund is a party shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of all such actions, without regard to amount or value.*

*(3) Any civil or other action, case or controversy in a court of a State, or in any court other than a district court of the United States, to which the Fund is a party may at any time before the trial thereof be removed by the Fund, without the giving of any bond or security, to the district court of the United States for the district and division embracing the place where the same is pending, or, if there is no such district court, to the district court of the United States for the district in which the principal office of*

*the Fund is located, by following any procedure for removal of causes in effect at the time of such removal.*

*(4) No attachment or execution shall be issued against the Fund or any of its property before final judgment in any State, Federal, or other court.*

*(b) FALSE OR FRAUDULENT STATEMENTS OR CLAIMS.—*

*(1) CRIMINAL PENALTIES.—(A) For purposes of section 287 of title 18, United States Code (relating to false claims), the Fund shall be considered an agency of the United States and any officer or employee of the Fund shall be considered a person in the civil service of the United States.*

*(B) For purposes of section 1001 of title 18, United States Code (relating to false statements or entries), the Fund shall be considered an agency of the United States.*

*(2) CIVIL PENALTIES.—Officers and employees of the Fund shall be considered officers and employees of the United States for purposes of section 3729 of title 31, United States Code (relating to false claims).*

***SEC. 814. MISCELLANEOUS PROVISIONS.***

*(a) ADMISSIBILITY OF RESOLUTION OFFER.—No resolution offered by the Fund shall be admissible in any legal*

*action brought by an eligible person against an insurer or by an insurer against an eligible person.*

*(b) RESOLUTION PROCESS NOT ADMISSION OF LIABILITY.—No provision of this title, and no action by an eligible person undertaken in connection with any provision of this title shall in any way constitute an admission of liability in connection with the disposal of a hazardous substance.*

*(c) PRECEDENTIAL EFFECT.—No provision of this title shall affect or be construed to establish a precedent with respect to any insurance dispute between any person and insurer not subject to a stay under this title.*

*(d) SOVEREIGN IMMUNITY OF THE UNITED STATES.—No obligation or liability of the Fund shall constitute an obligation or liability of the United States, or of any department, agency, instrumentality, officer, or employee thereof. No person shall have a cause of action of any kind against the United States, or any department agency, instrumentality, officer, or employee thereof with respect to any obligation, liability, or activity of the Fund.*

***SEC. 815. REPORTS.***

*(a) REPORT ON POTENTIAL FOR ESCALATION OF EIRF LIABILITY.—Not later than the end of the 5th year after enactment of this title, the President shall submit a report to Congress assessing the potential liability of the Fund over the next 5-year period. The report shall include*

*recommendations for amendments to address any shortfalls between the projected potential liability of the Fund and the amounts authorized to be raised over such 5-year period.*

*(b) REPORT ON NON-NPL FACILITIES.—The President shall conduct a study of the number of non-NPL facilities and the average cleanup cost per non-NPL facility and shall report his findings not later than 3 years after the date of enactment.*

*(c) ANNUAL REPORTS.—The Fund shall report annually to the President and the Congress not later than January 15 of each year on its activities for the prior fiscal year. The report shall include—*

*(1) a financial statement audited by an independent auditor; and*

*(2) a determination of whether the fees and assessments imposed by section ____ of the Internal Revenue Code of 1986 will be sufficient to meet the anticipated obligations of the Fund.*

*(d) SPECIAL REPORTS.—The Fund shall promptly report to the President and the Congress at any time the Fund determines that the fees and assessments imposed by section ____ of the Internal Revenue Code of 1986 will be insufficient to meet the anticipated obligations of the Fund.*

***SEC. 816. EFFECTIVE DATE.***

*(a) IN GENERAL.—This title shall take effect on the date of enactment of this Act.*

*(b) MINIMUM PARTICIPATION LEVEL BY ELIGIBLE PERSONS.—*

*(1) IDENTIFICATION OF LITIGATING ELIGIBLE PERSONS.—Each insurance company providing insurance coverage to eligible persons shall submit to the Fund, within 30 days after the enactment of this Act, a list of all eligible persons which filed suit against that company for eligible costs prior to the enactment of this Act and shall notify each eligible person which is on the list.*

*(2) REQUESTS FOR APPLICABLE PERCENTAGE.—Each eligible person identified on a list under paragraph (1) shall file a request for its applicable percentage (as determined under section 806(b)) with the Fund within 60 days after the enactment of this Act. The Fund shall determine the applicable percentage of the eligible person and notify the eligible person of such percentage within 90 days of enactment. Each eligible person receiving such notification shall decide whether to accept or reject the applicable percentage determination within 135 days of enactment. An eligible person which has made an early acceptance or rejection pursuant to section 807(b) shall be deemed*

*to have accepted or rejected its applicable percentage, as the case may be. Any eligible person which does not file such a request within such period, and any eligible person which files such a request and does not reject the applicable percentage determination within 135 days after the enactment of this Act, shall be deemed to have accepted the determination solely for the purposes of this section.*

*(3) MINIMUM PARTICIPATION LEVEL.—Within 150 days after enactment, the Fund shall determine—*

*(A) the number of eligible persons on the list under paragraph (1), and*

*(B) the weighted average (as determined under paragraph (4)) of such eligible persons,*

*which have accepted or rejected applicable percentage determinations under this subsection. If more than 15 percent of the eligible persons on such list or more than a weighted average of 15 percent of such eligible persons have rejected such determinations, the provisions of this title and the insurance fee provisions of title IX shall cease to have any force and effect, and any fees paid by insurance companies which have not been utilized for administration of the Fund shall be refunded to those companies.*

*(4) WEIGHTED AVERAGE.—The weighted average of eligible persons accepting or rejecting applicable percentage determinations shall be determined by multiplying the acceptances or rejections by eligible persons listed under paragraph (1) times the number of each such person's eligible facilities (without regard to whether or not any such is the subject of any lawsuit).*

***SEC. 817. TERMINATION OF AUTHORITY TO OFFER AND ACCEPT RESOLUTION.***

*(a) AUTHORITY TO ACCEPT REQUEST FOR RESOLUTION.—The authority of the Fund to accept requests for resolution shall terminate on the date 10 years after the enactment of this Act.*

*(b) AUTHORITY TO OFFER RESOLUTIONS.—The authority of the Fund to offer resolutions to eligible persons shall terminate after the date 10 years and 180 days after the date of the enactment of this Act.*

*(c) CONTINUING OBLIGATIONS.—Until termination of the Fund, the Fund shall continue to—*

*(1) make payments pursuant to resolution offers for any eligible facility which is identified at the time of acceptance of the resolution offer or within 10 years after the enactment of this Act; or*

*(2) reimburse insurers with respect to litigation commenced or continued in connection with a resolution offer made on or before the date 10 years after the date of the enactment of this Act, where the resolution offer was rejected by an eligible person or not acted upon by an eligible person.*

***SEC. 818. TERMINATION OF FUND.***

*If, during any two-year calendar period commencing after the date 10 years after the date of the enactment of this Act, no eligible person makes a claim to the Fund for payment of eligible costs, the Fund shall terminate, and all amounts remaining in the Fund shall be deposited in the General Fund of the Treasury.*

# *TITLE IX—TAXES*

*Sec. 901. Amendments to the Internal Revenue Code of 1986.*
*Sec. 902. Environmental fees and assessments on insurance companies.*
*Sec. 903. Funding provisions for environmental insurance resolution fund.*
*Sec. 904. Resolution Fund not subject to tax.*

***SEC. 901. AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.***

*(a) Section 59A(e)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 59A(e)(1)) is amended by striking ''January 1, 1996'' and inserting instead ''January 1, 2001''.*

*(b) Section 4611(e) of the Internal Revenue Code of 1986 (26 U.S.C. 4611(e)) is amended—*

*(1) in paragraph (1), by striking ''December 31, 1986'' and inserting instead ''December 31, 1995'';*

*(2) in paragraph (2)—*

*(A) by striking ''December 31, 1993 or December 31, 1994'' and inserting instead ''December 31, 1998 or December 31, 1999'';*

*(B) by striking ''December 31, of 1994 or 1995, respectively'' and inserting instead ''December 31 of 1999 or 2000, respectively''; and*

*(C) by striking ''1994 or 1995'' the last place it appears and inserting instead ''1999 or 2000'';*

*(3) in paragraph (3)(A), by striking ''January 1, 1987, and ending December 31, 1995'' and inserting instead ''January 1, 1996, and ending December 31, 2000''; and*

*(4) in paragraph (3)(B)—*

*(A) in the title thereof, by striking ''January 1, 1996'' and inserting ''January 1, 2001''; and*

*(B) by striking ''Fund before January 1, 1996'' and inserting instead ''Fund before January 1, 2001''.*

***SEC. 902. ENVIRONMENTAL FEES AND ASSESSMENTS ON INSURANCE COMPANIES.***

*(a) IN GENERAL.—The Internal Revenue Code of 1986 is amended by inserting after section ____ the following new section:*

***"§ . Environmental fees and assessments on insurance companies".***

*[RESERVED]*

*(b) CLERICAL AMENDMENTS.—The table of sections for chapter ____ of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section ____ the following:*

***"§ . Environmental fees and assessments on insurance companies".***

***SEC. 903. FUNDING PROVISIONS FOR ENVIRONMENTAL INSURANCE RESOLUTION FUND.***

*(A) IN GENERAL.—*

*(1) Except as provided in section 802(f)(7) of this Act, all expenditures of the Resolution Fund shall be paid out of the fees and assessments imposed by section ____ of the Internal Revenue Code.*

*(2) Except as may be expressly authorized by the Secretary of the Treasury, all funds of the Resolution Fund shall be maintained in the Treasury of the United States. The Secretary may provide for the disbursement of such funds to the Resolution Fund or on*

*behalf of the Resolution Fund under such procedures, terms and conditions as the Secretary may prescribe.*

*(b) TRANSFER TO RESOLUTION FUND.—The Secretary of the Treasury shall transfer to the Resolution Fund on October 1 of fiscal year 1995, 1996, 1997, 1998 and 1999, an amount equal to the fees and assessments anticipated to be collected pursuant to section ____ of the Internal Revenue Code of 1986 during the then current fiscal year.*

*(c) ADJUSTMENTS.—In each succeeding fiscal year the Secretary of the Treasury shall adjust the amounts transferred pursuant to paragraph (2) to reflect actual collections of fees and assessments during the prior fiscal year, except that with respect to the transfer made on October 1, 1999, the Resolution Fund shall reimburse the Secretary the amount of such transfer subsequently determined by the Secretary to have exceeded actual collections of fees and assessments during such fiscal year.*

***SEC. 904. RESOLUTION FUND NOT SUBJECT TO TAX.***

*The Resolution Fund, including its capital, reserves, surplus, security holdings, and income shall be exempt from all taxation now or hereafter imposed by the United States (including any territory, dependency or possession thereof) or any State, county, municipality or local taxing authority.*

1 **SECTION 1. SHORT TITLE.**

2 **This Act may be cited as the "Superfund**
3 **Reform Act of 1994".**

4 **SEC. 2. TABLE OF CONTENTS.**

5 **The table of contents for this Act is as fol-**
6 **lows:**

**Sec. 1. Short title.**
**Sec. 2. Table of contents.**
**Sec. 3. References to Comprehensive Environmental Response, Compensation, and Liability Act of 1980.**

**TITLE I—COMMUNITY PARTICIPATION AND HUMAN HEALTH**

**Sec. 101. Public participation.**
**Sec. 102. Community working groups.**
**Sec. 103. Hazard ranking system.**
**Sec. 104. Disease registry and medical care providers.**
**Sec. 105. Substance profiles.**
**Sec. 106. Determining health effects.**
**Sec. 107. Public health at NPL facilities.**
**Sec. 108. Health studies.**
**Sec. 109. Distribution of materials to health professionals and medical centers.**
**Sec. 110. Grant awards, contracts, and community assistance activities.**
**Sec. 111. Public health recommendations in remedial actions.**
**Sec. 112. Clarification of ATSDR authority.**
**Sec. 113. Recruitment and training demonstration program.**
**Sec. 114. Transition.**

**TITLE II—STATE ROLES**

**Sec. 201. Contracts or cooperative agreements with States.**
**Sec. 202. State cost share.**
**Sec. 203. Siting.**
**Sec. 204. The State registry.**
**Sec. 205. Conforming and miscellaneous amendments.**
**Sec. 206. Study of authorization of States to carry out Superfund.**
**Sec. 207. State role at Federal facilities.**

**TITLE III—VOLUNTARY RESPONSE**

**Sec. 301. Voluntary response program.**

**TITLE IV—LIABILITY AND ALLOCATION**

**Sec. 401. Information gathering and access.**
**Sec. 402. Compliance with administrative orders.**

**Sec. 403. Limitations to liability for response costs.**
**Sec. 404. Liability.**
**Sec. 405. Civil proceedings.**
**Sec. 406. Limitations on contribution actions.**
**Sec. 407. Scope of rulemaking authority.**
**Sec. 408. Response action contractors.**
**Sec. 409. Enhancement of settlement authorities.**
**Sec. 410. Professional services.**
**Sec. 411. Final convenants.**
**Sec. 412. Expedited final settlements.**
**Sec. 413. Allocation procedures.**
**Sec. 414. Recycling transactions.**
**Sec. 415. Release of evidence.**
**Sec. 416. Contiguous properties.**

**TITLE V—REMEDY SELECTION AND CLEANUP STANDARDS**

**Sec. 501. Cleanup standards.**
**Sec. 502. Remedy selection.**
**Sec. 503. Miscellaneous amendments to section 121.**
**Sec. 504. Response authorities.**
**Sec. 505. Removal actions.**
**Sec. 506. Hazardous substance property use.**
**Sec. 507. Transition.**

**TITLE VI—MISCELLANEOUS**

**Sec. 601. Interagency agreements at mixed ownership and mixed responsibility facilities.**
**Sec. 602. Contents of certain deeds.**
**Sec. 603. Transfers of uncontaminated property.**
**Sec. 604. Agreements to transfer by deed.**
**Sec. 605. Alternative or innovative treatment technologies.**
**Sec. 606. Definitions.**
**Sec. 607. Response claims procedures.**
**Sec. 608. Small business ombudsman.**
**Sec. 609. Consideration of local government cleanup priorities.**
**Sec. 610. Consistent application among regional offices.**
**Sec. 611. Study of participants.**
**Sec. 612. Public comment.**
**Sec. 613. Certification of environmental training and certification organizations.**
**Sec. 614. Savings clause.**
**Sec. 615. Federal entities and facilities.**
**Sec. 616. Worker training and education grants.**
**Sec. 617. Report and oversight requirements.**
**Sec. 618. Remedial technologies.**
**Sec. 619. Addition of States to governmental entities eligible for reimbursement for emergency removal actions; clarification of authority to take emergency response action at illicit drug laboratories.**
**Sec. 620. Incentives to managing parties.**
**Sec. 621. Study of small disadvantaged business goals.**
**Sec. 622. Incineration of dioxin at Times Beach, Missouri.**
**Sec. 623. Conforming amendment.**

TITLE VII—FUNDING

Sec. 701. Authorization of appropriations.
Sec. 702. Orphan share funding.
Sec. 703. Agency for Toxic Substances and Disease Registry.
Sec. 704. Limitations on research, development, and demonstration programs.
Sec. 705. Authorization of appropriations from general revenues.
Sec. 706. Additional limitations.
Sec. 707. Uses of the fund.

TITLE VIII—ENVIRONMENTAL INSURANCE RESOLUTION FUND

Sec. 801. Short title.
Sec. 802. Definitions.
Sec. 803. Environmental Insurance Resolution Fund.
Sec. 804. Resolution offers.
Sec. 805. Documentation of claims and insurance coverage.
Sec. 806. Amount of resolution offers.
Sec. 807. Acceptance of resolution offer.
Sec. 808. Resolution payments.
Sec. 809. Rejection of resolution offer and reimbursement to insurer.
Sec. 810. Financial Statements, audits, investigations, and inspections.
Sec. 811. Stay of pending litigation.
Sec. 812. Regulations.
Sec. 813. Court jurisdiction and penalties.
Sec. 814. Miscellaneous provisions.
Sec. 815. Reports.
Sec. 816. Effective date.
Sec. 817. Termination of authority to offer and accept resolution.
Sec. 818. Termination of fund.

TITLE IX—TAXES

Sec. 901. Amendments to the Internal Revenue Code of 1986.
Sec. 902. Environmental fees and assessments on insurance companies.
Sec. 903. Funding provisions for Environmental Insurance Resolution Fund.
Sec. 904. Resolution Fund not subject to tax.

1 SEC. 3. REFERENCES TO COMPREHENSIVE ENVIRON-
2 MENTAL RESPONSE, COMPENSATION, AND LI-
3 ABILITY ACT OF 1980.

4 Except as otherwise expressly provided,
5 whenever in this Act an amendment or repeal

is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (commonly known as "Superfund") (42 U.S.C. 9601 and following).

# TITLE I—COMMUNITY PARTICIPATION AND HUMAN HEALTH

## SEC. 101. PUBLIC PARTICIPATION.

Section 117 (42 U.S.C. 9617) is amended by striking subsection (e) and inserting the following:

"(e) GRANTS FOR TECHNICAL ASSISTANCE.—

"(1) AUTHORITY.—In accordance with the rules promulgated by the Administrator, the Administrator may make grants available to any group of individuals which may be affected by the release or threatened release of hazardous substances, pollutants, or contaminants at any facility on the State Registry or the National Priorities List. Such grants shall be known as Technical Assistance Grants. To ensure that the application process is

**accessible to all affected citizens, the Administrator shall periodically review such process and, based on such review, shall implement appropriate changes to the application process to improve access.**

**"(2) SPECIAL RULES.—No matching contribution shall be required for a Technical Assistance Grant. The President shall make a portion of the grant available to the grant recipient, in advance of the expenditures to be covered by the grant, in $5,000 installments.**

**"(3) REPRESENTATIVE OF THE COMMUNITY.—The President shall publish guidance for determining that the recipient of any Technical Assistance Grant award is a legitimate representative of the community affected by the facility.**

**"(4) LIMIT PER FACILITY.—Not more than one grant may be made under this subsection with respect to a single facility, but the grant may be renewed to facilitate public participation at all stages of response action. Limits shall be estab-**

**lished with respect to the number of years for which grants may be available based on the duration, type, and extent of response activity at a facility.**

**"(5) FUNDING AVAILABILITY.—Subject to the limitations provided in paragraph (6), grants shall be made available to affected citizens who live in communities containing facilities in the State Registry not listed on the National Priorities List.**

**"(6) FUNDING LIMIT.—Not more than 4 percent of the funds made available for carrying out this Act for any fiscal year may be used for grants under this subsection in that fiscal year and not more than one-eighth of the funds under this subsection may be used for grants with respect to facilities not listed on the National Priorities List. If such one-eighth portion is not needed for such facilities, such portion may be used for grants with respect to facilities listed on the National Priorities List.**

**"(7) FUNDING AMOUNT.—The initial amount of any grant under this sub-**

**section may not exceed $50,000 for a single grant recipient. However, the Administrator shall increase the amount of the initial grant, as appropriate, to reflect the complexity of response action, the nature and extent of contamination at the facility, the level of facility activity, projected total needs as requested by the grant recipient, the size and diversity of the affected population, and the ability of the grant recipient to identify and raise funds from other sources.**

**"(8) AUTHORIZED GRANT ACTIVITIES.—**

**"(A) INTERPRETATION OF INFORMATION.—Grants awarded under this subsection may be used to obtain technical assistance in interpreting information with regard to (i) the nature of the hazard at a facility; (ii) the remedial investigation and feasibility study; (iii) the record of decision; (iv) the selection, design, and construction of the remedial action; (v) operation and maintenance; or (vi) removal activities at such facility.**

"(B) ADDITIONAL ACTIVITIES.—Grants awarded under this section also may be used (i) to obtain technical assistance in gathering and interpreting information used to rank facilities according to the Hazard Ranking System, (ii) for gathering information to assess a remedy selection decision, (iii) to hire health and safety experts to advise affected residents on health assessment and contamination data gathering efforts and response activities, (iv) to hire a community liaison to potentially responsible parties and government agencies, (v) to hire experts to file comments with governmental agencies and generate other documents as necessary to ensure full participation by the grant recipient, (vi) to hire experts to provide input to the design of any health studies that a government agency performs, and (vii) for training funds for interested affected community members to enable them

**to more effectively participate in the remedy selection process.**

**"(C) LIMITATION.—Grants awarded under this section may not be used for the purposes of collecting field sampling data.**

**"(9) USE OF EXPERTS.—Technical or other experts hired by grant recipients under this subsection shall be hired by such recipients pursuant to guidelines developed by the Administrator.**

**"(10) NON-SITE-SPECIFIC GRANTS.—In accordance with the rules promulgated by the Administrator, the Administrator may make Technical Assistance Grant funds available to nonprofit organizations and citizens groups to enhance their participation in consensus-based rulemaking processes carried out in accordance with this Act. Total funding for all such grants shall not exceed $100,000.**

**"(f) IMPROVING CITIZEN AND COMMUNITY PARTICIPATION IN THE SUPERFUND DECISION-MAKING PROCESS.—(1)(A) In order to provide an opportunity for meaningful public partici-**

**pation in every significant phase of response activities under this Act, the President shall provide the opportunity for public meetings and publish a notice of such meetings before or during performance of each of the following:**

**"(i) The health assessment and the preliminary assessment and site inspection, as appropriate. Where the President determines a meeting is not appropriate at the preliminary assessment and site inspection stage, the President shall provide adequate public notice of that decision.**

**"(ii) The Remedial Investigation and Feasibility Study (RI/FS).**

**"(iii) The announcement of the preferred remedial alternative.**

**"(iv) The completion of the work plan for the RI/FS, Remedial Design and Remedial Action.**

**"(B) Public meetings shall be designed to obtain information from the community and disseminate information to the community**

**concerning the President's facility activities and pending decisions.**

**"(2) The President also shall provide reasonable notice of an opportunity for public participation in meetings in which—**

**"(A) the participants include Federal officials, or State officials where the State is conducting response activities, with authority to make significant decisions affecting a response action, and any other person or persons, unless the other person or persons are all coregulators that are not potentially responsible parties, or government contractors; and**

**"(B) the subject of the meeting involves the development of the work plan for the preliminary assessment and site inspection, the RI/FS, Remedial Design or Remedial Action, or any other phase of the remedial process for facilities on the National Priorities List or in the State Registry.**

**"(3) To the extent practicable, before or during the health assessments and site inspection, the President shall solicit and evalu-**

**ate concerns, interests, and information from the community likely affected by the facility. The evaluation shall include, as appropriate, face-to-face community surveys to identify the location of private drinking water wells, historic and current or potential use of water, and other environmental resources in the community; a public meeting; written responses to significant concerns; and other appropriate participatory activities.**

**"(4) During the remedial investigation and feasibility study, the President shall solicit the views and preferences of the affected community on the remediation and disposition of hazardous substances, pollutants, or contaminants at the facility. The views and preferences of affected community members shall be described in the remedial investigation and feasibility study and considered in the screening of remedial alternatives for the facility.**

**"(5) Members of the affected community may propose remedial alternatives to the President, and the President shall consider such alternatives in the same manner as the**

**President considers alternatives proposed by potentially responsible parties.**

**"(6) The President, with the assistance of the Citizen Information and Access Office (as provided for in subsection (h)), shall provide information to the community and seek comment from affected citizens throughout all significant phases of the response action at the facility. The President shall ensure that information gathered from affected citizens during community outreach efforts reaches appropriate technical staff in a timely and effective manner. The President also shall ensure reasonable written or other appropriate responses to such information.**

**"(7) The President shall make all nonprivileged information available to the public throughout all phases of response action at the facility. Such information shall be made available to the public for inspection and copying without the need to file a formal request subject to reasonable service charges as appropriate.**

**"(8)(A) The President, in carrying out responsibilities under this Act, shall ensure that**

**the presentation of information on risk is unbiased and informative. To the extent feasible, documents made available to the general public which purport to describe the degree of risk to human health shall, at a minimum, state—**

**"(i) the population or populations addressed by any risk estimates;**

**"(ii) the expected risk or central estimate of risk for the specific population;**

**"(iii) any appropriate upperbound and lower-bound estimates; and**

**"(iv) the reasonable range or other description of uncertainties in the assessment process.**

**"(B) To the extent practical and appropriate, the Administrator shall provide comparisons of the level of risk from hazardous substances found at facilities to comparable levels of risk from hazardous substances ordinarily encountered by the general public through other routes of exposure.**

**"(9) Notwithstanding any other provision of this subsection, in the case of a removal action taken in accordance with section 104**

**which is expected to extend beyond 180 days, the President shall comply with the requirements of this section. Whenever the planning period for a removal action is expected to be greater than 6 months, the Administrator shall provide the community with notice of the anticipated removal action and a public comment period of no less than 30 days.".**

**SEC. 102. COMMUNITY WORKING GROUPS.**

**Section 117 (42 U.S.C. 9617) is amended by adding after subsection (f) (as added by this Act) the following new subsections:**

**"(g) COMMUNITY WORKING GROUPS.—**

**"(1) CREATION AND RESPONSIBILITIES.— The President shall provide the opportunity for the establishment of a representative public forum, known as a Community Working Group (CWG), to achieve direct, regular, and meaningful consultation with all interested parties throughout all stages of a response action whenever—**

**"(A) the President determines such a group will be helpful; or**

**"(B) 50 citizens, or at least 20 percent of the population of a locality in which the National Priorities List facility is located, petition for a Community Working Group to be established.**

**"(2) DUTIES.—Each Community Working Group shall provide information and views to the President, and, as appropriate, any or all of the following: the Agency for Toxic Substances and Disease Registry, State regulatory agencies, Federal and State natural resource trustees, and potentially responsible parties conducting response actions. The information and views reported shall include the various subjects related to facility remediation, including facility health studies, potential remedial alternatives, and selection and implementation of remedial and removal actions. The Community Working Group shall attempt to achieve consensus among its members before reporting positions to agencies or potentially responsible parties. In cases in**

**which consensus cannot be reached, the Community Working Group shall allow the presentation of divergent views.**

**"(3) LAND USE RECOMMENDATIONS.—To obtain greater community support for remedial decisions affecting future land use, the President shall consult with the CWG on a regular basis throughout the remedy selection process regarding the reasonably anticipated future use of land at the facility and any institutional controls required to assure that land use determinations remain in effect. The CWG may offer recommendations on the reasonably anticipated future use of land at the facility to the President at any time prior to the selection of a remedy at the facility. The land use recommendation shall consider at a minimum future facility waste management needs and the criteria in section 121(b)(2). The President shall not be bound by any recommendation of the CWG. However, the President shall give substantial weight to the CWG's land use recommendation when**

**the CWG achieves consensus on the reasonably anticipated future use of land at the facility. In cases in which there is substantive disagreement within the CWG over a recommendation regarding the reasonably anticipated future use of land at the facility, the President shall make reasonable efforts to reconcile the differences. In the event of continued substantive disagreement, substantial weight shall be given to the views of the residents in the affected community. Should the President make a determination that is inconsistent with a consensus CWG recommendation on the reasonably expected future use of land at the facility, the President shall issue a written explanation for the inconsistency.**

**"(4) COMMUNITY WORKING GROUP INPUT.—With the exception of land use recommendations, input received from the Community Working Groups shall be considered by the President to be of equal weight with the advice received from the Technical Assistance Grant re-**

**cipients and other affected community members.**

**"(5) COMMUNITY WORKING GROUP MEMBERS.—Members shall serve on the Community Working Group without pay. Membership on the Community Working Group shall not exceed 20 persons. The President shall solicit and accept nominations for the Community Working Group membership. Ultimate selection of CWG members shall be made by the President after consultation with the Citizen Information and Access Office as provided for in subsection (h). The President shall also provide notice and opportunity to participate to persons who are or historically have been disproportionately affected by facility contamination in their community. Each Community Working Group shall, to the extent practicable, reflect the composition of the community near the facility and the diversity of interest. Local residents shall comprise no less than 50 percent of the total membership of the CWG. In general,**

**the President shall allow members of the following groups representation on a CWG:**

**"(A) Persons residing or owning residential property near the facility or persons who may be directly affected by the releases from the facility. At least one person in this group shall represent the Technical Assistance Grant recipient if such a grant has been awarded under subsection (e).**

**"(B) Persons who, although not residing or owning property near the facility, may be potentially affected by releases from the facility.**

**"(C) Members of the local medical community practicing in the community.**

**"(D) Representatives of local Indian tribes or Indian communities.**

**"(E) Local representatives of citizen, environmental, or public interest groups with members residing in the community.**

**"(F) Local government which may include pertinent city or county governments, or both, and any other governmental unit which regulates land use in the vicinity of the facility.**

**"(G) Workers at the facility who will be involved in actual response operations.**

**"(H) Workers employed at the facility during facility operation.**

**"(I) Facility owners and local representatives of the significant Potentially Responsible Parties (PRPs), who represent, wherever practicable, a balance of PRP interests.**

**"(J) Members of the local business community.**

**"(6) TECHNICAL AND ADMINISTRATIVE SUPPORT FOR COMMUNITY WORKING GROUPS.—The President shall provide administrative services and meeting facilities for Community Working Groups. The Administrator of Environmental Protection Agency, the Administrator of the Agency for Toxic Substances and Disease**

**Registry and the State, as appropriate, shall participate in Community Working Group meetings to provide information and technical expertise, but shall not be members of the Community Working Group.**

**"(7) OTHER PUBLIC COMMENT.—The existence of a CWG shall not diminish any other obligation of the President to consider the views of any person in selecting response actions under this Act.**

**"(h) CITIZEN INFORMATION AND ACCESS OFFICES.—**

**"(1) ESTABLISHMENT OF CITIZEN INFORMATION AND ACCESS OFFICES.—Within 18 months after the date of enactment of the Superfund Reform Act of 1994, a Citizen Information and Access Office (CIAO) shall be established within each State to perform the functions provided in this subsection. The CIAO shall be an independent special purpose unit of the government, subject to the administrative laws of the State, including any sunshine laws. If a CIAO has not been established**

**in a State within such 18 months, the Administrator shall establish an office within the Agency to perform the functions of the CIAO in that State until such time as a CIAO is established.**

**"(2) PRIMARY FUNCTIONS.—Each Citizen Information and Access Office shall have the following primary functions:**

**"(A) The Citizen Information and Access Office shall inform citizens and elected officials at all levels of government of the existence of State Registry and National Priorities List facilities in the State.**

**"(B) The Citizen Information and Access Office shall provide citizens with a description of the identification and response process under this Act and citizens' legal rights within that process. It may include identification of resources, including Technical Assistance Grants, that are available to assist affected citizens in participating effectively in the Superfund process. Information shall**

**be disseminated in a manner that is easily understood by the community, considering any unique cultural needs of the community, including presentation of information orally and distribution of information in languages other than English as appropriate. Other information that the CIAO shall provide to the public may include the following:**

**"(i) The possibility, where relevant, that a community may qualify to receive an alternative water supply or relocation assistance.**

**"(ii) The potential for or existence of a Community Working Group.**

**"(iii) A description of the facility's location and characteristics, the hazardous substances, pollutants or contaminants present, the known exposure pathways, and the steps being taken to assess the risk presented**

**by the facility. The Citizen Information and Access Office shall disseminate information characterizing the risks presented by a facility. Where a CIAO receives conflicting information from the President and the Community Working Group, the CIAO will make every effort to resolve any apparent difference in information on the risks present at the facility before it distributes that information to the public. Where no agreement is reached among the Citizen Information and Access Office, the President, and the Community Working Group, the Citizen Information and Access Office shall disseminate such information reflecting the differing views about the risk presented by the facility. The Citizen Information and Access Office shall seek to ensure that the information it disseminates is based on the most**

current technical and scientific data in its possession for any State Registry or National Priorities List facility.

"(C) The Citizen Information and Access Office shall serve as an information clearinghouse in each State. Its functions also shall include maintaining records of each facility's status and any health data generated concerning National Priorities List facilities in each State. The facility data maintained by the Citizen Information and Access Office shall also include—

"(i) a record of any institutional controls at all facilities in the State;

"(ii) any annual health data generated in connection with the facility;

"(iii) the location of each facility on the State Registry;

"(iv) to the extent available, the hazardous substances or pol-

**lutants or contaminants present at each facility in the State, including the volume of the hazardous substances or pollutants or contaminants;**

**"(v) the exposure pathways, current exposure (if any), potential future exposure, and risks to human health or the environment, after seeking to resolve any discrepancies as provided in subparagraph (B)(iii);**

**"(vi) protective concentration levels established for the facility;**

**"(vii) the biennial Environmental Justice Report prepared pursuant to this section; and**

**"(viii) any report generated during the review conducted in accordance with section 121(c).**

**"(D) The Citizen Information and Access Office shall assist the Administrator in the Administrator's efforts to disseminate information, notify citizens of public meetings, notify po-**

**tential Community Working Group members, and other tasks, as appropriate.**

**"(E) The Citizen Information and Access Office shall collect available information from the Administrator or other Federal or State agencies regarding the continued effectiveness of removal and remedial actions taken in the State.**

**"(F) The Citizen Information and Access Office shall conduct outreach activities and provide information to small disadvantaged businesses about Federal and State contracting and (to the extent available) subcontracting opportunities at facilities in the State.**

**"(3) FUNDING.—Funding for all Citizen Information and Access Offices, collectively, shall not exceed $50,000,000 per year. The Administrator shall publish guidelines establishing a formula for determining the actual amount of funding for each Citizen Information and Access**

**Office and procedures for awarding grants to any CIAO. The formula shall include factors such as the number and complexity of State Registry and National Priorities List facilities in the State. The funding shall be available directly to each Citizen Information and Access Office or, in States where no CIAO is established, the funding shall be made available to the Administrator to carry out the responsibilities of this subsection in that State or for the use of the entity with whom the Administrator contracts to perform the functions of the CIAO.**

**"(4) CITIZEN INFORMATION AND ACCESS OFFICE GOVERNING BOARD.—**

**"(A) ESTABLISHMENT.—Each Citizen Information and Access Office shall establish a volunteer Citizen Governing Board which shall have the ultimate responsibility for ensuring that the Citizen Information and Access Office is properly managed.**

**"(B) CITIZEN INFORMATION AND ACCESS OFFICE GOVERNING BOARD MEMBERS.—**

**"(i) NOMINATIONS.—Citizens active in State Registry and National Priorities List facility communities shall nominate persons for board membership.**

**"(ii) APPOINTMENTS.—The Governor of each State shall appoint, from those nominees put forward, between 7 and 15 citizens to serve as board members.**

**"(iii) MEMBERS QUALIFICATIONS.— Where possible, the Governor shall ensure that one-half of the appointees reside in communities affected by a variety of National Priorities List facilities in the State, and the other half reside in communities affected by a variety of non-NPL State Registry facilities in the State. Board members shall have a demonstrated commitment to the needs of the**

citizens in these communities, and shall reasonably reflect the racial and ethnic composition of these communities. Special efforts shall be made to nominate citizens who are or historically have been disproportionately adversely affected by facility contamination.

"(iv) EXPERIENCE.—Where possible, Board members should have a background in a field of study related to the scientific and technical issues common to Superfund facilities, or have practical experience related to the Superfund program.

"(v) TERMS.—Board members shall serve for limited, staggered terms.

"(5) CITIZEN INFORMATION AND ACCESS OFFICE STAFF.—Each Citizen Information and Access Office shall have a permanent staff to assist in carrying out its functions. Staff shall have demonstrated

**qualifications for working with citizens in communities located near State Registry or National Priorities List facilities, and shall also meet other criteria established by the President in consultation with the Citizen Information and Access Office Citizen Governing Board. An Executive Director or President, selected by the full Governing Board, shall be responsible for all Citizen Information and Access Office staffing decisions.**

**"(6) FEDERAL OVERSIGHT OF CITIZEN INFORMATION AND ACCESS OFFICE.—**

**"(A) REPORT.—The Citizens Information and Access Office shall report annually to the Administrator regarding performance of its duties and shall provide a detailed accounting of its use of funds under this section.**

**"(B) VERIFICATION BY INSPECTOR GENERAL.—The Inspector General of the Environmental Protection Agency shall periodically review the programs and reports made under this section.**

"(C) CONSEQUENCES OF FAILURE.—The Administrator may withhold any funding authorized under this section if the Administrator determines, after notice to the affected CIAO, that the CIAO has expended funds in a manner inconsistent with this section.

"(7) CITIZEN INFORMATION AND ACCESS OFFICES AND COMMUNITY WORKING GROUPS FOR TRIBAL PEOPLES.—Members of Indian tribes affected by a facility on the National Priorities List may petition the Administrator to form a body that is the equivalent of a State Citizen Information and Access Office. Notwithstanding the creation of a tribal Citizen Information and Access Office, the State Citizen Information and Access Office shall be responsible for providing information and expertise to tribal members as well as other citizens in the State. Tribal members may establish Community Working Groups under subsection (g) regardless of whether there exists a tribal Citizen Informa-

**tion and Access Office or other tribal program relating to this Act.**

**"(i) ENVIRONMENTAL JUSTICE STUDY.—**

**"(1) REPORT BY THE ADMINISTRATOR.—The Administrator shall prepare and submit to Congress an Environmental Justice Study two years after the date of enactment of the Superfund Reform Act of 1994 and every 2 years thereafter. Such study also shall be provided to the Citizen Information Access Offices. The Administrator and Citizen Information Access Offices shall ensure that copies of such studies are made available to the public.**

**"(2) CONTENT OF THE REPORT.—The Administrator's report shall include an analysis of each facility which shall compare information on priority setting, response actions, and public participation requirements conducted under this Act to the population, race, ethnicity, and income characteristics of each community affected by each facility.**

"(3) EVALUATION.—The Administrator shall evaluate the information in the study to determine whether priority setting, response actions, and public participation requirements were conducted in a fair and equitable manner and identify program areas that require improvements or modification.

"(4) ACTIONS BASED ON EVALUATION.—The Administrator shall institute the necessary improvements or modifications to address any deficiencies identified in the study prepared under this section.".

SEC. 103. HAZARD RANKING SYSTEM.

(a) IN GENERAL.—Section 105 (42 U.S.C. 9605(a)) is amended as follows:

(1) By inserting after subsection (g) the following new subsections:

"(h) HAZARD RANKING SYSTEM.—In setting priorities under subsection (a)(8), the President—

"(1) shall group facilities together, even if they are not adjacent or geographically juxtaposed, and score them as a single facility where more than one

**facility listed on the State Registry results in hazardous substances exposures to the same population;**

**"(2) may take into account to the maximum extent technically feasible any history of exposure to hazardous substances in the community regardless of the source of exposure, in placing facilities on the National Priorities List;**

**"(3) shall take into account the use of land or waterways for subsistence, religious, spiritual, or cultural practices where such use results in additional exposures, in placing facilities on the National Priorities List;**

**"(4) shall conduct interviews with persons affected by the facility and living in the community and solicit their input and information in the hazard ranking system evaluation; and**

**"(5) shall place highest priority on facilities with releases of hazardous substances which result in actual ongoing human exposures at levels resulting in demonstrated adverse health effects as**

**shown in a health assessment conducted by the Agency for Toxic Substances and Disease Registry.**

**"(i) ENVIRONMENTAL JUSTICE FACILITY SCORING.—The Administrator shall evaluate major urban areas and any other areas where environmental justice concerns may warrant special attention (such as tribal lands or poor rural communities) and identify 5 facilities in each region of the Environmental Protection Agency that are, or that should be, on the State Registry and that are likely to warrant inclusion on the National Priorities List. These facilities shall be accorded a priority in evaluation for NPL listing and scoring, and shall be evaluated for listing within 2 years after the date of enactment of the Superfund Reform Act of 1994.".**

**(2) By striking the period at the end of paragraph (10) of subsection (a) and inserting a semicolon and by adding the following new paragraphs after such paragraph (10):**

**"(11) a process and procedure for reviewing petitions to reevaluate a facility**

**not on the National Priorities List for inclusion on the National Priorities List where paragraphs (1), (2), and (3) of subsection (h) are relevant; and**

**"(12) alternative procedures for conducting response measures, including remedial investigations, feasibility studies, remedial designs, and remedial actions, which procedures shall—**

**"(A) utilize a results-oriented approach in order to minimize the time required to conduct response measures, and reduce the potential for exposure to hazardous substances, in an efficient, timely, and cost-effective manner; and**

**"(B) be conducted in accordance with specified methods and criteria, including directives, standards, and time limits, for the implementation of the alternative procedures.".**

**(b) PROCEDURES.—The national contingency plan shall be amended within 180 days after the date of the enactment of this Act to include procedures required by section**

**105(a)(12) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, after notice and opportunity for public comment. Procedures described in such section shall be subject to the requirements of section 117, section 120, section 121, and any other provision of such Act in the same manner and to the same degree as these sections and provisions apply to such response measures.**

**SEC. 104. DISEASE REGISTRY AND MEDICAL CARE PROVIDERS.**

**Section 104(i)(1) (42 U.S.C. 9604(i)(1)) is amended as follows:**

**(1) By amending subparagraph (A) to read as follows:**

**"(A) in cooperation with the States, for scientific purposes and public health purposes, establish and maintain a national registry of persons exposed to toxic substances;".**

**(2) In subparagraph (E), by striking "admission to hospitals and other facilities and services operated or provided by the Public Health Service" and inserting**

**"referral to accredited medical care providers".**

**SEC. 105. SUBSTANCE PROFILES.**

**Section 104(i)(3) (42 U.S.C. 9604(i)(3)) is amended as follows:**

**(1) By inserting "(A)" after "(3)".**

**(2) By redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively.**

**(3) By striking out the matter beginning with "Any toxicological profile or revision thereof" and all that follows through the end of such paragraph and inserting in lieu thereof the following:**

**"(B) Any toxicological profile or revision thereof shall reflect the Administrator of ATSDR's assessment of all relevant toxicological testing which has been peer reviewed. The profiles prepared under this paragraph shall be for those substances highest on the list of priorities under paragraph (2) for which profiles have not previously been prepared or for substances not on the listing but which have been found at non-National Priorities List facilities and which have**

**been determined by ATSDR to be of critical health concern. Profiles required under this paragraph shall be revised and republished as necessary, based on scientific need. Such profiles shall be provided to the States and made available to other interested parties.".**

**SEC. 106. DETERMINING HEALTH EFFECTS.**

**Section 104(i)(5)(A) (42 U.S.C. 9604(i)(5)(A)) is amended as follows:**

**(1) By striking "designed to determine the health effects (and techniques for development of methods to determine such health effects) of such substance" and inserting "conducted directly or by means such as cooperative agreements and grants with appropriate public and nonprofit institutions. The research shall be designed to determine the health effects (and techniques for development of methods to determine such health effects) of the substance".**

**(2) By redesignating clause (iv) as clause (v).**

**(3) By striking "and" at the end of clause (iii).**

**(4) By inserting after clause (iii) the following new clause:**

**"(iv) laboratory and other studies which can lead to the development of innovative techniques for predicting organ-specific, site-specific, and system-specific acute and chronic toxicity; and".**

**SEC. 107. PUBLIC HEALTH AT NPL FACILITIES.**

**Section 104(i)(6) (42 U.S.C. 9604(i)(6)) is amended as follows:**

**(1) By amending subparagraph (A) to read as follows:**

**"(A) The Administrator of ATSDR shall perform a public health assessment for each facility, including those facilities owned by any department, agency, or instrumentality of the United States, on the National Priorities List established under section 105 of this Act. The public health assessment shall be commenced as soon as practicable after each facility is proposed for inclusion on the National Priorities List and shall be completed not later than the date of issuance of a remedial investigation and feasibility study for the facility to allow full consideration in selecting**

**the remedial action of the public health implicaitons of any release.".**

**(2) In subparagraph (D), by inserting "(i)" after "(D)" and by adding the following at the end of the subparagraph: "The Administrator and the Administrator of ATSDR shall develop strategies to obtain relevant on-site and off-site characterization data for use in the health assessment. The Administrator shall, to the maximum extent practicable, provide the Administrator of ATSDR with the data and information necessary to make public health assessments sufficiently prior to the initiation of remedial actions to allow ATSDR to complete these assessments. Where deemed appropriate, the Administrator of ATSDR shall provide to the Administrator as soon as practicable after site discovery, recommendations for sampling environmental media for hazardous substances of public health concern. To the extent feasible, the Administrator shall incorporate such rec-**

**ommendations into its site investigation activities.**

**"(ii) In order to improve community involvement in health assessments, the Administrator of ATSDR shall carry out each of the following duties:**

**"(I) The Administrator of ATSDR shall actively collect data from Community Working Groups ('Community Working Groups') and from other sources in communities affected or potentially affected by releases of hazardous substances, pollutants, or contaminants regarding exposure, relevant human activities, and other factors.**

**"(II) The Administrator of ATSDR shall design health assessments that take into account the needs and conditions of the affected community. Community-based research models, building links to local expertise and local health resources should be used. Each Community Working Group (or affected community where no Community Working Group exists) shall be permitted to play an active and**

**early role in reviewing health assessment designs. In preparing such designs, emphasis shall be placed on collection of actual exposure data and sources of multiple exposure shall be considered.".**

**(3) In subparagraph (H), by striking "health assessment" each place it appears and inserting "public health assessment".**

**SEC. 108. HEALTH STUDIES.**

**Subparagraph (A) of section 104(i)(7) (42 U.S.C. 9604(i)(7)) is amended to read as follows: "(A) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of a public health assessment or on the basis of other appropriate information, the Administrator of ATSDR shall conduct a human health study of exposure or other health effects for selected groups or individuals in order to determine the desirability of conducting full scale epidemiologic or other health studies of the entire exposed population.".**

**SEC. 109. DISTRIBUTION OF MATERIALS TO HEALTH PROFESSIONALS AND MEDICAL CENTERS.**

**Paragraph (14) of section 104(i) (42 U.S.C. 9604(i)) is amended to read as follows:**

**"(14) In implementing this subsection and other health-related provisions of this Act in cooperation with the States, the Administrator of ATSDR shall—**

**"(A) assemble, develop as necessary, and distribute to the States, medical colleges, physicians, nursing institutions, nurses, and other health professionals and medical centers, appropriate educational materials (including short courses) on the medical surveillance, screening, and methods of prevention, diagnosis, and treatment of injury or disease related to exposure to hazardous substances (giving priority to those listed in paragraph (2)), through means the Administrator of ATSDR considers appropriate; and**

**"(B) assemble, develop as necessary, and distribute to the general public and to at-risk populations appropriate educational materials and other information**

on human health effects of hazardous substances.".

SEC. 110. GRANT AWARDS, CONTRACTS, AND COMMUNITY ASSISTANCE ACTIVITIES.

Section 104(i)(15) (42 U.S.C. 6904(i)(15)) is amended as follows:

(1) By inserting "(A)" before "The activities".

(2) In the first sentence, by striking "cooperative agreements with States (or political subdivisions thereof)" and inserting "grants, cooperative agreements, or contracts with States (or political subdivisions thereof), other appropriate public authorities, public or private institutions, colleges, universities, and professional associations giving consideration to those colleges and universities that are historically black colleges and universities and to other educational institutions that primarily serve minorities or represent the interests of affected communities".

(3) In the second sentence, by inserting "public" before "health assessments".

**(4) By adding at the end the following new subparagraphs:**

**"(B) When a public health assessment is conducted at a facility on the National Priorities List, or a release is being evaluated for inclusion on the National Priorities List, the Administrator of ATSDR may provide the assistance specified in this paragraph to public or private nonprofit entities, individuals, and community-based groups that may be affected by the release or threatened release of hazardous substances in the environment.**

**"(C) The Administrator of the Agency for Toxic Substances and Disease Registry, pursuant to the grants, cooperative agreements and contracts referred to in this paragraph, is authorized and directed to provide for the establishment of environmental health clinics, or health services in existing clinics, serving communities affected by the release of hazardous substances. Such clinics shall provide diagnostic services, specialized treatment, health data registries and preventative public health education.".**

**SEC. 111. PUBLIC HEALTH RECOMMENDATIONS IN REMEDIAL ACTIONS.**

**Section 121(c) (42 U.S.C. 9621(c)) is amended in the first sentence by inserting after "remedial action" the second time it appears the following: ", including public health recommendations and decisions resulting from activities under section 104(i),".**

**SEC. 112. CLARIFICATION OF ATSDR AUTHORITY.**

**Section 111(c)(4) (42 U.S.C. 9611(c)(4)) is amended by inserting "establishment of environmental health clinics and health services," after "assessments,".**

**SEC. 113. RECRUITMENT AND TRAINING DEMONSTRATION PROGRAM.**

**(a) IN GENERAL.—The Administrator of the Environmental Protection Agency is authorized to carry out a demonstration program to assist in the recruitment and training of individuals from areas affected by National Priority List facilities for employment in remediation activities conducted at such facilities.**

**(b) FUNDING.—Amounts made available from the Hazardous Substance Response Fund by section 111(q) of the Comprehensive Environmental Response, Compensation, and**

**Liability Act of 1980 shall also be available to carry out this section.**

**SEC. 114. TRANSITION.**

**(a) EFFECTIVE DATE IN GENERAL.—Except as provided in subsection (b), this title and the amendments made by this title shall become effective upon the date of enactment of this Act.**

**(b) SPECIAL RULE.—The requirements of paragraphs (1) through (4) of section 117(f) and paragraph (1) of section 117(g) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as added by sections 101 and 102, shall become effective 180 days after the date of enactment of this Act.**

# TITLE II—STATE ROLES

**SEC. 201. CONTRACTS OR COOPERATIVE AGREEMENTS WITH STATES.**

**Title I is amended by adding after section 126 the following new section:**

**"SEC. 127. CONTRACTS OR COOPERATIVE AGREEMENTS WITH STATES.**

**"(a) IN GENERAL.—**

**"(1) APPLICATION FOR AUTHORITY TO TAKE PREREMEDIAL ACTION AT NON-NPL FACILITIES.—A State may apply to the Administrator to take or require preremedial actions (including removal actions) under a contract or cooperative agreement as provided in this section at any non-federally owned or operated facility within the boundaries of the State that is not listed on the National Priorities List (NPL).**

**"(2) APPLICATION FOR AUTHORITY TO TAKE RESPONSE ACTION AT NPL FACILITIES.—A State may apply to the Administrator to take or require response actions, including selection and enforcement of remedial actions and use of allocation procedures under section 130, under a contract or cooperative agreement as provided in this section at any non-federally owned or operated facility within the boundaries of the State that is listed on the National Priorities List (NPL) or to take or require removal actions at any fa-**

**cility proposed for listing on the National Priorities List.**

**"(3) APPROVAL OF APPLICATION.—The Administrator shall enter into a contract or cooperative agreement under this section if the Administrator determines that the State—**

**"(A) meets the qualification requirements set forth in the regulations promulgated pursuant to subsection (b); and**

**"(B) with respect to authority to select remedial actions and use allocation procedures, meets the qualification requirements set forth in subsection (c).**

**"(b) REGULATIONS.—The Administrator, in consultation with the States, shall promulgate regulations to implement this section. The regulations shall provide such additional qualifications for a contract or cooperative agreement under this section as the Administrator considers reasonable, including qualifications applicable to particular types of preremedial or response actions. The regula-**

**tions shall include a requirement that, in order for a State to qualify for a contract or cooperative agreement with respect to a facility under this section, the State may not be a major potentially responsible party with respect to that facility.**

**"(c) QUALIFICATION REQUIREMENTS WITH RESPECT TO SELECTION OF REMEDIAL ACTION AND USE OF ALLOCATION PROCEDURES.—For purposes of subsection (a)(3)(B), with respect to a contract or cooperative agreement under this section for authority to select remedial action or to use the allocation procedures under section 130, the Administrator also shall make each of the following determinations:**

**"(1) The State has the capability to select remedial actions or to use the allocation procedures under section 130, including adequate legal authority, financial and personnel resources, organization, and expertise.**

**"(2) The State meets any other qualifications set forth in the regulations promulgated under subsection (b) for select-**

**ing remedial actions or using the allocation procedures.**

**"(3) The State demonstrates a historical record of performing similar response actions.**

**"(d) REQUIREMENTS FOR SELECTION OF REMEDIAL ACTION.—In any contract or cooperative agreement that allows a State to select remedial actions, the State shall agree to select such remedial actions in accordance with all of the procedures and requirements set forth in sections 117 and 121 of this Act, the National Contingency Plan, and any other relevant regulations and guidelines adopted by the Administrator.**

**"(e) STATE AUTHORITY REGARDING ENFORCEMENT OF SELECTED REMEDIAL ACTION.—(1) A State that selects a remedial action pursuant to a contract or cooperative agreement entered into under subsection (a) shall have the authority to enforce the requirements of such remedial action pursuant to section 121(f)(4).**

**"(2) Such State also shall have the authority to enforce compliance with any standard,**

**regulation, condition, requirement, order, or final determination of the State with respect to the remedial action. Such State also may seek civil penalties not to exceed $25,000 per day for any violation of such standard, regulation, condition, requirement, order, or final determination. Such State may commence an action seeking such relief unless the standard, regulation, condition, requirement, order, or final determination is arbitrary, capricious, or contrary to law when reviewed upon the administrative record presented by the State.**

**"(3) In addition, if expressly provided in the contract or cooperative agreement, such State may waive a Federal requirement applicable to the remedial action in accordance with section 121.**

**"(f) REQUIREMENTS FOR ENFORCEMENT AND ALLOCATION.—**

**"(1) ENFORCEMENT.—In the case of a contract or cooperative agreement providing for a State to initiate an enforcement action with respect to a facility for purposes of recovering costs or compel-**

**ling performance of a remedy at the facility, the contract or cooperative agreement shall require the State to provide for expedited settlements under section 122.**

**"(2) USE OF ALLOCATION PROCEDURES.—(A) In the case of a contract or cooperative agreement providing for a State to initiate an enforcement action with respect to a facility subject to mandatory allocation pursuant to section 130(a)(1), the contract or cooperative agreement shall require the State to use allocation procedures with respect to the facility. The contract or cooperative agreement shall require the State to initiate the allocation process by certifying each of the following:**

**"(i) The State has completed a potentially responsible party search substantially consistent with subsection (c) of section 130 and will make the results of that search available to the allocator and the parties.**

**"(ii) The State has notified Federal, State, and tribal natural resource trustees of the commencement of the allocation process and, pursuant to section 104(b)(2), of potential damages to natural resources.**

**"(iii) The facility would be subject to mandatory allocation under section 130(a)(1) if the President were conducting the response action.**

**"(B) After the State has made a certification under subparagraph (A), the Administrator shall initiate an allocation in accordance with the terms of section 130. The Administrator may assign to the State, by cooperative agreement or otherwise, any responsibilities to conduct the allocation, except that the Administrator and Attorney General shall retain their authority relating to orphan share funding as provided by this paragraph and in section 130, including the timing and terms of payment.**

**"(C) The State may accept or reject the allocation report on the same basis as**

**provided in section 130(l). If the State does not reject the allocation, it shall use the allocator's report as the basis of State settlements. The State may recover the costs of the allocation pursuant to State law or the provisions of this Act.**

**"(D) The President, through either the Administrator or the Attorney General, or both, may participate in any phase of an allocation proceeding where an orphan share is identified according to the factors set forth in section 130.**

**"(E) If the State accepts an allocation report as the basis for its settlements, and the allocation report identifies an orphan share subject to Federal funding, the State shall apply for such funding by certifying each of the following to the Administrator and the Attorney General:**

**"(i) The allocation presents a reasonable basis for resolving responsibility for the facility.**

**"(ii) The assignment of an orphan share shall be in accordance with section 130.**

**"(F) The Administrator and the Attorney General shall accept a State's request for orphan share funding supported by an allocation report and the certification described in subparagraph (E), unless the Administrator and Attorney General determine, within 120 days after the request by the State, that the allocation does not meet the standards set forth in section 130. Such determination shall be made in the same manner, and shall be subject to the same limitations, as set forth in section 130.**

**"(G) The contract or cooperative agreement shall provide the following:**

**"(i) The Administrator may deduct from orphan share funding the costs incurred in conducting the allocation.**

**"(ii) The State may use the orphan share funding only to fund response actions through settlement or to reimburse parties performing work in excess of the share assigned to them in allocation. No such reim-**

**bursement may exceed the reimbursement level available under section 130.**

**"(H) The State may recover funds provided through orphan share funding from nonsettling responsible parties pursuant to State law or the provisions of this Act. Seventy-five percent of such recoveries shall be returned to the Fund. The remaining 25 percent shall be used for any other response action by the recovering State.**

**"(3) COVENANTS.—(A) In a case in which either the President, acting under the authority of this Act, or a State, acting pursuant to a contract or cooperative agreement under this section, has responsibility for selecting a response action at a facility listed or proposed for listing on the National Priorities List and enters an administrative or judicial settlement to resolve the liability of responsible parties at the facility, the President or the State may confer, in accordance with requirements relating to covenants of sections**

**122 and 130, a covenant that will preclude some or all administrative or judicial action by both the President and the State to recover response costs or to compel response actions at the facility with respect to matters addressed in the settlement, except that such covenants shall not be binding on the governmental entity that did not confer the covenant to the extent that—**

**"(i) the covenant purports to address natural resource damages; or**

**"(ii) the President or the State has not been provided notice of, and an opportunity to participate in, the settlement concerning the response action; or**

**"(iii) the President or the State objects to the settlement within 120 days of the date of signature for the record of decision or receipt of notice of the settlement, whichever is later.**

**"(B) The covenants described by this paragraph may be conferred by either the Administrator or the State with re-**

**spect to a facility owned or operated by any department, agency, or instrumentality of the United States (including the executive, legislative, and judicial branches of government). The Administrator may confer a covenant in an administrative order, consent decree, or an interagency agreement. The State may confer a covenant in an administrative order or a consent decree.**

**"(g) TERMS AND CONDITIONS; ENFORCEMENT.—**

**"(1) IN GENERAL.—A contract or cooperative agreement under this section shall be subject to such terms and conditions as the Administrator may prescribe. If a State fails to comply with a requirement of a contract or cooperative agreement, the Administrator, after 90 days notice to the affected State, may seek in the appropriate United States district court to ensure performance of the response action, or to recover any funds advanced or any costs incurred because of the breach.**

**"(2) SPECIFIC TERMS.—A contract or cooperative agreement under this section shall include the following requirements:**

**"(A) A requirement that the State shall exercise any authority conferred by this section or the contract or cooperative agreement on behalf of the State, and not on behalf of or in the name of the Administrator, the President, or the United States.**

**"(B) A requirement that the State have and maintain sufficient legal authority under applicable State law to enter into the contract or cooperative agreement.**

**"(C) A requirement that the Administrator retain authority to terminate and recoup funding, and to terminate the contract or cooperative agreement, if the State fails to perform the contract or cooperative agreement in a manner consistent with this Act. At least 90 days before terminating any contract or cooperative agreement with a State, the Ad-**

ministrator shall provide to the State a written explanation of the reasons for the proposed termination and afford an opportunity to the State to discuss the termination and to propose actions to correct any deficiencies.

"(D) A requirement imposing a nondiscretionary duty on the Administrator to perform or compel expeditious performance of response actions under the contract or cooperative agreement if the State fails to comply with the terms of the contract or cooperative agreement.

"(h) SAVINGS CLAUSE.—Nothing in this section shall affect the exercise by a State of any other authorities that may be applicable to facilities in such State.".

SEC. 202. STATE COST SHARE.

Section 104(c) is amended by adding at the end the following new paragraphs:

"(10) EXISTING CONTRACTS AND COOPERATIVE AGREEMENTS.—The requirements of paragraphs (3), (6), and (7) of this subsection shall

**apply only to contracts and cooperative agreements pursuant to section 104(d) entered into prior to the enactment of the Superfund Reform Act of 1994.**

**"(11) STATE COST SHARE.—After the date of enactment of the Superfund Reform Act of 1994, the Administrator shall not provide any funding under this subsection or section 127, or any response action pursuant to this section, except for emergency removal actions, unless the State in which the release or threatened release occurs has entered into a contract or cooperative agreement pursuant to this subsection or section 127 that provides assurances, deemed adequate by the Administrator, that—**

**"(A) the State will pay or assure payment of 15 percent of the cost of such response action or funding, including 15 percent of orphan share funding and operation and maintenance costs; and**

**"(B) the State will assure oversight of any operation and maintenance of funded response actions.".**

**SEC. 203. SITING.**

**Section 104(c)(9) is amended to read as follows:**

**"(9) SITING.—Effective 1 year after the date of enactment of the Superfund Reform Act of 1994, the President shall not provide any remedial actions pursuant to this section or section 127 unless the State in which the release occurs submits a report describing its plans for adequate treatment, storage, and disposal capacity of hazardous wastes generated within the State, in accordance with guidelines issued by the Administrator.".**

**SEC. 204. THE STATE REGISTRY.**

**Section 105(a)(8) of the Act (42 U.S.C. 9605(a)(8)) is amended by adding after subparagraph (B) the following new subparagraph:**

**"(C) STATE REGISTRY.—Each State shall maintain and make available to the public a list of facilities in the State that are believed to present a current or potential hazard to human health or the environment due to the release or threatened release of hazardous substances or pollutants or contaminants. Each State,**

**in consultation with the Administrator and other appropriate Federal agencies, shall update such listing on an annual basis.".**

**SEC. 205. CONFORMING AND MISCELLANEOUS AMENDMENTS.**

**(a) TRANSFER OF SECTION 121(e)(2).—(1) Section 121(e) is amended—**

**(A) by striking out paragraph (2); and**

**(B) by striking out "PERMITS AND ENFORCEMENT.—(1)" and inserting "PERMITS.—".**

**(2) Section 121(f) is amended by adding at the end the following new paragraphs:**

**"(4) A State may enforce any Federal or State standard, requirement, criteria, or limitation to which the remedial action is required to conform under this Act in the United States district court for the district in which the facility is located.**

**"(5) The President shall modify regulations promulgated pursuant to paragraph (1) to provide to any State within a 50-mile radius of a remedial action at a Federal facility the same opportunity as is provided pursuant**

**to paragraph (1)(E) to the State in which the remedial action is to be undertaken.".**

**(b) SECTION 126(a).—Section 126(a) is amended by adding after "section 104(i) (regarding health authorities)" the following: ", section 127 (regarding contracts and cooperative agreements), section 128 (regarding voluntary response actions), subsection (f) of section 121 (relating to cleanup standards), section 122(d)(1)(D) (relating to compliance with consent decrees),".**

**(c) SECTION 310(a).—Section 310(a) is amended by inserting "(including any State)" after "person".**

**(d) TRANSITION.—Subsection (d) of section 104 is amended by adding at the end the following new paragraph:**

**"(5) TERMINATION.—This subsection shall cease to be in effect on the effective date of regulations promulgated to implement section 127, as added by the Superfund Reform Act of 1994.".**

**SEC. 206. STUDY OF AUTHORIZATION OF STATES TO CARRY OUT SUPERFUND.**

**The Administrator of the Environmental Protection Agency shall conduct a study of the feasibility of authorizing States to use their own laws to carry out the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 in lieu of the Federal program established under such Act.**

**SEC. 207. STATE ROLE AT FEDERAL FACILITIES.**

**Subsection (g) of section 120 is amended to read as follows:**

**"(g) TRANSFER OF AUTHORITIES.—**

**"(1) STATE APPLICATION FOR TRANSFER OF AUTHORITIES.—A State may apply to the Administrator to exercise the authorities vested in the Administrator under this section at any or all facilities owned or operated by any department, agency, or instrumentality of the United States (including the executive, legislative, and judicial branches of government), including the authority—**

**"(A) to publish a timetable and deadlines for completion of any reme-**

**dial investigation and feasibility study;**

**"(B) to review and approve all documents prepared in connection with any such investigation and study;**

**"(C) to select and approve remedies; and**

**"(D) to enter into and enforce, through judicial or administrative means, agreements, orders, and consent decrees entered into pursuant to this Act.**

**"(2) TRANSFER OF AUTHORITIES.—The Administrator shall enter into a contract or cooperative agreement to transfer the authorities described in paragraph (1) if the Administrator determines the following:**

**"(A) The State has the ability to exercise such authorities in accordance with this Act, including adequate legal authority, financial and personnel resources, organization, and expertise.**

**"(B) The State demonstrates experience in exercising similar authorities.**

**"(3) EFFECT OF AUTHORIZATION UNDER SOLID WASTE DISPOSAL ACT.—In the review by the Administrator of an application of a State for transfer of authorities under this subsection, if the State is authorized to implement a State hazardous waste program pursuant to section 3006 of the Solid Waste Disposal Act (42 U.S.C. 6926), the following provisions apply:**

**"(A) With respect to a State that is a signatory to an interagency agreement under subsection (e)(2) that is in effect on the effective date of the Superfund Reform Act of 1994, the Administrator, in making the determinations referred to in paragraph (2), shall accord substantial weight to the State's hazardous waste program authorization and the Administrator's findings in approving such authorization.**

**"(B) With respect to a State whose authorization under such section 3006 includes authorization to implement the corrective action provisions of the Solid Waste Disposal Act, the Administrator shall approve the application and provide for the orderly transfer of authorities as expeditiously as possible, but in no case later than 6 months after the date of receipt of the application, unless the parties agree to another deadline.**

**"(4) EFFECT OF TRANSFER.—Any State to which authorities are transferred under this subsection shall not be deemed to be an agent of the President but shall exercise such authorities in its own name.**

**"(5) DEADLINES.—Except as provided in paragraph (3)(B), the Administrator shall make a determination on an application from a State under this subsection not later than 90 days after the date the Administrator receives the application.**

**"(6) WITHDRAWAL OF AUTHORITIES.—(A) The Administrator may withdraw the authorities transferred under this subsection in whole or in part if the Administrator determines—**

**"(i) that the State, in whole or in part, is exercising such authorities in a manner clearly inconsistent with the requirements of this Act; or**

**"(ii) in the case of a State that was approved under paragraph (3)(B), that the State is no longer authorized to implement the corrective action provisions of the Solid Waste Disposal Act.**

**"(B) At least 90 days before withdrawing any such transferred authorities from a State, the Administrator shall provide to the State a written explanation of the reasons for the proposed withdrawal and afford an opportunity to the State to discuss the withdrawal and to propose actions to correct any deficiencies.**

**"(7) LIMITATION.—Except for authorities that are transferred by the Adminis-**

**trator to a State pursuant to this subsection, or that are transferred by the Administrator to an officer or employee of the Environmental Protection Agency, no authority vested in the Administrator under this section may be transferred, by executive order of the President or otherwise, to any other officer or employee of the United States or to any other person. Except as necessary to implement the transfer of the Administrator's authorities to a State pursuant to this subsection, nothing in this subsection shall be construed as altering, modifying, or impairing in any manner any agreement, permit, administrative or judicial order, decree, or interagency agreement existing on the effective date of the Superfund Reform Act of 1994. Nothing in this subsection shall affect the exercise by a State of any other authorities that may be applicable to facilities in such State.".**

# TITLE III—VOLUNTARY RESPONSE

**SEC. 301. VOLUNTARY RESPONSE PROGRAM.**

**Title I is amended by adding the following new section after section 127:**

**"SEC. 128. VOLUNTARY RESPONSE PROGRAM.**

**"(a) PURPOSES AND OBJECTIVES.—The purposes and objectives of this section are to—**

**"(1) significantly increase the pace of response activities at contaminated sites by promoting and encouraging the creation, development, and expansion of State voluntary response programs; and**

**"(2) benefit the public health, welfare, and the environment by returning contaminated sites to economically productive or other beneficial uses.**

**"(b) ESTABLISHMENT OF PROGRAM.—The Administrator shall establish a program to provide technical, financial, and other assistance, including grants, to States to establish and expand voluntary response programs.**

**"(c) EPA ASSISTANCE TO STATES FOR STATE VOLUNTARY RESPONSE PROGRAMS.—The Administrator shall assist States in the establish-**

**ment and administration of State voluntary response programs that—**

**"(1) provide opportunities for technical assistance for voluntary response actions;**

**"(2) provide adequate opportunities for public participation in selecting response actions, including prior notice and opportunity for comment in appropriate circumstances;**

**"(3) provide streamlined procedures to ensure expeditious voluntary response actions;**

**"(4) provide adequate oversight and enforcement authorities to ensure that voluntary response actions are protective of human health and the environment, are conducted in accordance with an appropriate response action plan and ensure completion of response actions if the person conducting the response action fails or refuses to complete the necessary response activities, including operation and maintenance or long-term monitoring activities;**

"(5) provide mechanisms for the approval of a response action plan; and

"(6) provide for a certification or similar documentation from the State to the person conducting the response action indicating that the response is complete.

"(d) EPA REVIEW OF STATE PROGRAMS.—At any time after the enactment of this Act, a State may submit, for review by the Administrator, documents the State deems appropriate to describe a State voluntary response program, together with a certification that the program is consistent with the elements set forth in subsection (c).

"(e) QUALIFICATION OF STATE PROGRAM.—

"(1) APPROVAL OR DISAPPROVAL.—A State voluntary response program submitted under subsection (d) shall be a qualified program under this Act beginning on the date 120 days after the submittal of the certification under subsection (d) unless the Administrator determines before that date that the State's submittal is not consistent with the ele-

**ments set forth in subsection (c). The Administrator shall seek public comment on the submittal of a State voluntary response program under this section and shall publish in the Federal Register the reasons for the approval or disapproval of any such program.**

**"(2) WITHDRAWAL OF APPROVAL.—Whenever the Administrator determines after public hearing that a State is not administering and enforcing a qualified program in accordance with subsection (c), the Administrator shall notify the State in writing of such determination. If appropriate corrective action is not taken by the State within 120 days after receipt of the notice, the Administrator shall withdraw approval of the program and publish a notice of such withdrawal in the Federal Register, after which the State program shall cease to be a qualified program under this section. If the State subsequently undertakes corrective measures, the Administrator shall reinstate the program as a qualified program**

**under this section. The Administrator shall not withdraw approval of any such program unless the Administrator provides to the State in writing and publishes in the Federal Register the reasons for such withdrawal.**

**"(f) NPL LISTING.—No portion of a facility subject to a response action plan approved under a qualified program under this section shall be proposed for listing on the National Priorities List so long as substantial and continual response activities are being undertaken pursuant to such plan to complete the response action in a timely manner as set forth in the response action plan. Nothing in this section shall be construed to limit the Administrator's ability to list on the National Priorities List facilities that have been proposed for listing, or to compel response action under section 106 of the Act.**

**"(g) CONDUCT OF RESPONSE.—The Administrator shall, after consultation with the State, and notice and opportunity for public comment, promulgate regulations describing circumstances in which any State having a**

**qualified program, and also authorized to issue permits under Federal environmental statutes, may waive such permit requirements with respect to activities conducted pursuant to an approved voluntary response plan if (1) such State has the authority under its own statutes or regulations to grant such waivers, (2) the State waiver authority is used in no less stringent a manner than allowed under Federal permit waiver authority, and (3) the response action plan requires compliance with the relevant substantive requirements of the statute concerned.**

**"(h) EFFECT OF RESPONSE.—Performance of a voluntary response action pursuant to this section shall not constitute an admission of liability under any Federal, State, or local law or regulation or in any citizens suit or other private action.**

**"(i) COMPLIANCE WITH NCP.—Response actions conducted pursuant to a qualified program shall be presumed to be consistent with the National Contingency Plan for the purposes of private cost recovery claims under this Act.**

**"(j) ANNUAL REPORTING.—**

**"(1) REPORT BY STATE.—States with qualified programs under this section shall report to the Administrator at the end of each calendar year on the status of their programs. Each such report shall include a statement regarding whether the program continues to be consistent with the elements set forth in subsection (c).**

**"(2) REPORT BY ADMINISTRATOR.—The Administrator shall report, not later than one year after the enactment of this section, and annually thereafter, to the Congress on the status of State voluntary response program. The report shall include an analysis of whether qualified State voluntary response action programs continue to be consistent with the elements set forth in subsection (c).**

**"(k) STATUTORY CONSTRUCTION.—(1) This section is not intended to impose any requirement on a State voluntary response program existing on or after the date of the enactment of the Superfund Reform Act of 1994.**

**"(2) This section is not intended to affect the liability of any person or to affect other response authorities afforded under any law or regulation relating to environmental contamination, including this Act, the Solid Waste Disposal Act, the Clean Water Act, the Toxic Substances Control Act, and title XIV of the Public Health Service Act (the Safe Drinking Water Act), except that the successful completion of a response action at a facility pursuant to a qualified program under this section shall be considered for purposes of section 107(a)(6)(C) as evidence that a person acquiring ownership of the facility is a bona fide prospective purchaser of the facility within the meaning of section 101(39).**

**"(3) Nothing in this section shall be construed to require any person to participate in a qualified voluntary response program under this section or in any other voluntary response program in order to qualify as a bona fide purchaser for purposes of section 107(a)(6)(C).".**

# TITLE IV—LIABILITY AND ALLOCATION

**SEC. 401. INFORMATION GATHERING AND ACCESS.**

**(a) ADDITIONAL INFORMATION.—Section 104(e)(2) (42 U.S.C. 9604(e)(2)) is amended—**

**(1) by striking "cleanup" in subparagraph (C) and inserting "response action"; and**

**(2) by inserting after subparagraph (C) the following:**

**"(D) The identity of any persons engaged in, responsible for, controlling, or having the ability to control activities or operations at a vessel or facility giving rise to liability under this Act.**

**"(E) Information relating to the potential liability or responsibility of any person to perform or pay for a response action.**

**"(F) Information that is otherwise relevant to enforce the provisions of this Act.**

**"(G) For a person conducting a response action, an accounting of direct**

**and indirect costs the person has incurred in conducting such response action.".**

**(b) CERTIFICATIONS.—Section 104(e) (42 U.S.C. 9604(e)) is amended—**

**(1) by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (4), (5), (6), (7), and (8), respectively; and**

**(2) by inserting after paragraph (2) the following:**

**"(3) CERTIFICATION.—The President may require respondents to requests made pursuant to this subsection to certify that—**

**"(A) the responses are true, accurate, and complete to the best of the respondent's knowledge;**

**"(B) the responses are based on a diligent, good faith search of records in the possession or control of the person to whom the request was directed;**

**"(C) the responses are based on a reasonable inquiry of the current and former officers, directors, employees,**

**and agents of the person to whom the request was directed;**

**"(D) the responses accurately and completely reflect information obtained in the course of conducting such search and inquiry;**

**"(E) the respondent understands that there is a continuing obligation to supplement the response if any additional, new, or different information relevant to the matters addressed in the request or the response thereto becomes known or available to the respondent; and**

**"(F) the respondent understands that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.".**

**(c) ADMINISTRATIVE SUBPOENAS.—Section 104(e) (42 U.S.C. 9604(e)) is further amended by inserting after paragraph (8) (as redesignated by subsection (b)) the following new paragraph:**

"(9) ADMINISTRATIVE SUBPOENAS.—When it would assist in the collection of information necessary or appropriate for the purposes of implementing this Act, the Administrator may by subpoena require the attendance and testimony of witnesses and the production of reports, papers, documents, answers to questions, and other information listed in paragraph (2) that the Administrator considers necessary. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In the event of contumacy or failure or refusal of any person to obey any such subpoena, any district court of the United States in which venue is proper shall have jurisdiction to order any such person to comply with such subpoena. Any failure to obey such an order of the court is punishable by the court as a contempt thereof.".

(d) CONFIDENTIALITY OF INFORMATION.—Subparagraph (A) of section 104(e)(8) (as re-

**designated by subsection (b)), is amended to read as follows:**

**"(A) Any records, reports, documents, or information obtained from any person under this section (including records, reports, documents, or information obtained by representatives of the President and records, reports, documents, or information obtained pursuant to a contract, grant, or other agreement to perform work pursuant to this section) shall be available to the public, except as follows:**

**"(i) Upon a showing satisfactory to the President (or the State, as the case may be) by any person that records, reports, documents, or information, or any particular part thereof (other than health or safety effects data), to which the President (or the State, as the case may be) or any officer, employee, or representative has access under this section if made public would divulge information entitled to protection under section**

**1905 of title 18, United States Code, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States carrying out this Act, or when relevant in any proceeding under this Act, or, if such records, reports, documents, or information are obtained or submitted to the United States (or the State, as the case may be) pursuant to a contract, grant, or other agreement to perform work pursuant to this section, to persons from whom the President seeks to recover costs pursuant to this Act.**

**"(ii) This section does not require that information which is exempt from disclosure pursuant to section 552(a) of title 5, United States Code, by reason of subsection (b)(5), sub-**

**section (b)(6), or subsection (b)(7) of such section, be available to the public, nor shall the disclosure of any such information pursuant to this section authorize disclosure to other parties or be deemed to waive any confidentiality privilege available to the President under any Federal or State law.".**

**(e) CONFIDENTIALITY REQUIREMENTS FOR CONTRACTORS.—Paragraph (8) of section 104(e) (as redesignated by subsection (b)) is amended by adding at the end the following new subparagraph:**

**"(G)(i) No person described in clause (ii) may disclose such record, report, document, or other information without the permission of the President.**

**"(ii) A person referred to in clause (i) is any person—**

**"(I) who is not an employee of the United States Government; and**

**"(II) who, by virtue of the person's duties under a contract or cooperative agreement with the United**

**States under this section to perform work for the United States Government or implement the requirements of this Act, has received information obtained under this section (or any record, report, or document containing such information) which, if requested from the United States Government pursuant to section 552 of title 5, United States Code, would be exempt from disclosure by reason of subsection (b) of such section.".**

**(f) AVAILABILITY OF INFORMATION TO CONGRESS.—Subsection 104(e) is further amended by adding after paragraph (9) the following new paragraph:**

**"(10) AVAILABILITY OF INFORMATION TO CONGRESS.—Nothing in this subsection shall be construed to authorize any person, including the allocator, to withhold any documents or information from Congress, or any duly authorized Committee thereof, or limit in any manner the right of Congress, or any duly authorized Com-**

**mittee thereof, to obtain such documents or information.".**

**SEC. 402. COMPLIANCE WITH ADMINISTRATIVE ORDERS.**

**(a) ADDITIONAL AUTHORITY TO ISSUE ORDERS.—Section 106(a) (42 U.S.C. 9606(a)) is amended by adding at the end the following: "The President may amend such orders and issue additional orders relating to the facility, as appropriate, without a subsequent finding of an imminent and substantial endangerment, to complete all response actions necessary to respond to an actual or threatened release or to require additional response actions that are necessary or appropriate to respond to the actual or threatened release that was the subject of the original order.".**

**(b) SUFFICIENT CAUSE.—Section 106(b)(1) (42 U.S.C. 9606(b)(1)) is amended—**

**(1) by inserting "(A)" after "(b)(1)";**

**(2) by striking "to enforce such order";**

**(3) by inserting before the period ", or be required to comply with such order, or both, even if another person has com-**

**plied, or is complying, with the terms of the same order or another order pertaining to the same facility and release or threatened release"; and**

**(4) by inserting at the end the following:**

**"(B) For purposes of this subsection, a 'sufficient cause' requires—**

**"(i) an objectively reasonable belief by the person to whom the order is issued that the person is not liable for any response costs under section 107; or**

**"(ii) that the action to be performed pursuant to the order is inconsistent with the national contingency plan.**

**"(C) The existence or results of an allocation process pursuant to section 130 shall not affect or constitute a basis for a determination of 'sufficient cause' under this paragraph or under section 107(c)(3).".**

**(c) REIMBURSEMENT.—Subsection (b) of section 106 (42 U.S.C. 9606(b)) is further amended in the first sentence of paragraph (2)(A) by striking "completion of" and insert-**

**ing "the President determines that such person has completed".**

**SEC. 403. LIMITATIONS TO LIABILITY FOR RESPONSE COSTS.**

**(a) LIMITATIONS ON LIABILITY.—Section 107(a) (42 U.S.C. 9607(a)) is amended as follows:**

**(1) In paragraph (1), by striking "and" and inserting "or".**

**(2) In paragraph (3), by striking "person," and inserting "person or".**

**(3) In paragraph (4)(A), by inserting ", including the costs of overseeing response actions conducted by potentially responsible parties," before "incurred by the United States".**

**(4) In paragraph (4)(B)—**

**(A) by striking "other" both places it appears; and**

**(B) by inserting ", other than the United States, a State, or an Indian tribe," before the phrase "consistent with the national contingency plan".**

**(5) In paragraph (4), by striking "by such person," and all that follows**

through "shall be liable for—" and inserting in lieu thereof the following: "by such person—

from which there is a release, or a threatened release, that causes the incurrence of response costs, of a hazardous substance, shall be liable for—".

(6) By designating the text beginning with "The amounts recoverable" and ending with "this subsection commences." as paragraph (5) and aligning the margin of such text with paragraph (4).

(7) By adding the following new paragraphs after paragraph (5):

"(6) Notwithstanding paragraphs (1) through (4) of this subsection, a person who does not impede the performance of response actions or natural resource restoration shall not be liable:

"(A)(i) To the extent liability is based solely on paragraph (3) or (4) of this subsection, and the person arranged for disposal, treatment, or transport for disposal or treatment, or accepted for transport for disposal

**or treatment of only municipal solid waste or sewage sludge owned or possessed by such person, and the person is—**

**"(I) the owner, operator, or lessee of residential property;**

**"(II) a small business; or**

**"(III) a small non-profit organization.**

**"(ii) This subparagraph shall have no effect on the liability of any other person.**

**"(B) To the extent liability is based solely on paragraph (3) or (4) of this subsection, and the person can demonstrate that it arranged for disposal or treatment, or transport for disposal or treatment or accepted for transport for disposal or treatment, 55 gallons or less of liquid materials containing hazardous substances or pollutants or contaminants or less than 100 pounds of solid materials containing hazardous substances or pollutants or contaminants, or such**

**greater or lesser amount as the Administrator may determine by regulation, except in a case in which—**

**"(i) the Administrator has determined that such material contributed or could contribute significantly to the costs of response at the facility, or**

**"(ii) the person has failed to respond fully and completely to information requests or administrative subpoenas by the United States.**

**"(C) To the extent liability is based solely on paragraph (1) of this subsection for a release or threat of release from a facility, and the person is a bona fide prospective purchaser of the facility. Not later than 18 months after the date of the enactment of the Superfund Reform Act of 1994, the Administrator shall issue guidelines containing criteria for a person to qualify as a bona fide prospective purchaser. Such guidelines**

**shall include provision for a person to make a self-evaluation on whether he or she qualifies as a bona fide prospective purchaser under the criteria established in the guidelines. Such provision shall be made readily available to the public.**

**"(D) To the extent liability is based solely on the person's status as owner under paragraph (1) for a release or threat of release from a facility, and the person acquired the facility by inheritance or bequest if the person—**

**"(i) acquired the real property on which the facility concerned is located after disposal or placement of the hazardous substance took place;**

**"(ii) did not cause or contribute to the release or threat of release; and**

**"(iii) exercised due care with respect to the hazardous substance concerned, including pre-**

**cautions against foreseeable acts of third parties, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances.**

**"(E) To the extent the liability of a Federal or State governmental entity or municipality is based solely on its—**

**"(i) ownership of a road, street, or other right of way or public transportation route (other than railroad rights of way and railroad property) over which hazardous substances are transported; or**

**"(ii) granting of a license or permit to conduct business.**

**"(F) To the extent the liability of a department, agency, or instrumentality of the United States is based on actions of such department, agency, or instrumentality taken in response to a natural disaster pursuant to the**

**Act of August 18, 1941 (33 U.S.C. 701n) or The Robert T. Stafford Disaster Relief and Emergency Act (42 U.S.C. 5121 and following).**

**"(7) Notwithstanding paragraphs (1) through (4), a person shall not be liable for more than 10 percent of total response costs at a facility, in aggregate, to the extent the person's liability is based solely on paragraph (3) or (4) of this subsection, and the arrangement for disposal, treatment, or transport for disposal or treatment, or the acceptance for transport for disposal or treatment, involved only municipal solid waste or sewage sludge. In any case in which more than one person at a facility comes within the coverage of this paragraph, the 10 percent limitation on liability shall apply to the aggregate liability of all such persons. Such limitation on liability shall apply only if either the acts or omissions giving rise to liability occurred before the date occurring 36 months after enactment of this paragraph, or the person as-**

**serting the limitation institutes or participates in a qualified household hazardous waste collection program within the meaning of section 101(43).**

**"(8)(A) Notwithstanding paragraphs (1) through (4) of this subsection, the liability of a person who does not impede the performance of response actions or natural resource restoration with respect to a release or threatened release from a vessel or facility shall be limited to the lesser of the fair market value of the vessel or facility or the actual proceeds of the sale of the vessel or facility received by the person, to the extent such liability is based solely on the person's status as owner under paragraph (1) of the vessel or facility if the person—**

**"(i) holding title, either outright or in trust, to the vessel or facility is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code and holds such title as a result of a chari-**

table donation that qualifies under section 170 of such Code; and

"(ii) exercised due care with respect to the hazardous substance concerned, including precautions against foreseeable acts of third parties, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances.

"(B) The limitation on liability provided for by subparagraph (A) shall not apply in any case in which the Administrator determines that the person—

"(i) acquired the real property on which the facility is located, or acquired the vessel, on or before disposal or placement of the hazardous substance took place; or

"(ii) caused or contributed to the release or threat of release.".

(b) PROSPECTIVE PURCHASER AND WINDFALL LIEN.—Section 107 is amended by inserting after subsection (m) the following new subsection:

**"(n) PROSPECTIVE PURCHASER AND WINDFALL LIEN.—(1) In any case in which there are unrecovered response costs at a facility for which an owner of the facility is not liable by reason of subsection (a)(6)(C), and the conditions described in paragraph (2) are met, the United States shall have a lien upon such facility for such unrecovered costs. Such lien—**

**"(A) shall not exceed the increase in fair market value of the property attributable to the response action at the time of a subsequent sale or other disposition of property;**

**"(B) shall arise at the time costs are first incurred by the United States with respect to a response action at the facility;**

**"(C) shall be subject to the requirements for notice and validity established in paragraph (3) of subsection (l); and**

**"(D) shall continue until the earlier of satisfaction of the lien or recovery of all response costs incurred at the facility.**

**"(2) The conditions referred to in paragraph (1) are the following:**

**"(A) A response action for which there are unrecovered costs is carried out at the facility.**

**"(B) Such response action increases the fair market value of the facility above the fair market value of the facility that existed within six months before the response action was taken.**

**"(C) A sale or other disposition of all or a portion of the facility has occurred.".**

**"(3) No lien under this section shall arise (A) with respect to property for which the property owner preceding the first bona fide prospective purchaser is not a liable party or has resolved its liability under this Act, or (B) where an audit or inquiry required under section 101(39)(B) by an environmental professional certified under section 612 of the Superfund Reform Act of 1994 gives the bona fide prospective purchaser no knowledge or reason to know of the release of hazardous substances.".**

**SEC. 404. LIABILITY.**

**(a) LIABILITY.—Section 107(a) (42 U.S.C. 9607(a)) (as amended by section 403) is further**

**amended by adding the following new paragraph at the end thereof:**

**"(9) The Administrator shall calculate the Environmental Protection Agency response action oversight costs for which potentially responsible parties are liable under this section (pursuant to paragraph (4)(A)) on a national basis as a percentage of total response costs incurred by potentially responsible parties (in this paragraph referred to as the 'national oversight rate'). The calculation shall be based on data comparing oversight expenditures of the Environmental Protection Agency to estimated or actual response costs incurred by potentially responsible parties. The Administrator shall periodically review and update the national oversight rate. In no case shall the rate exceed 10 percent of total response costs incurred by potentially responsible parties. The national oversight rate shall be applied to all settlements under section 130.".**

**(b) AMOUNT OF LIABILITY.—Section 107(c)(3) (42 U.S.C. 9607(c)(3)) is amended in the first sentence—**

**(1) by inserting ", in addition to liability for any response costs incurred by the United States as a result of such failure to take proper action," after "person" the second time it appears; and**

**(2) by striking "at least equal to," and all that follows through the end of the sentence and inserting "up to three times the amount of such response costs.".**

**(c) CLARIFICATION OF COMMON CARRIER LIABILITY.—Section 107(b)(3) is amended by striking out "from a published tariff and acceptance for" and inserting "exclusively from a contract for".**

**(d) SMALL BUSINESS CONSTRUCTION CONTRACTORS.—Section 107 is amended by adding at the end the following:**

**"(o) SMALL BUSINESS CONSTRUCTION CONTRACTORS.—There shall be no liability under subsection (a) of this section based solely on a person's construction activities at a facility**

**if such person can demonstrate by a preponderance of evidence that—**

**"(1) such construction activities were specifically directed by and carried out in accordance with a contract with an owner or operator of the facility; and**

**"(2) the person is a small business construction contractor as defined by section 101(49).".**

**SEC. 405. CIVIL PROCEEDINGS.**

**(a) PETITIONS.—Section 113(a) (42 U.S.C. 9613(a)) is amended—**

**(1) by striking "upon application by any interested person" and inserting "by any interested person through the filing of a petition for review"; and**

**(2) by striking "application shall be made", and inserting "petition shall be filed".**

**(b) PERIOD IN WHICH ACTION MAY BE BROUGHT.— Section 113(g) (42 U.S.C. 9613(g)) is amended by striking paragraphs (2) and (3) and inserting in lieu thereof the following:**

**"(2) ACTIONS FOR RECOVERY OF COSTS.—(A) Except as provided in sub-**

**paragraph (C), an initial action for recovery of costs referred to in section 107 must be commenced—**

**"(i) for a removal action, within 3 years after completion of all removal action taken with respect to the facility, including off-site disposal of any removed materials, except that if physical on-site construction of the remedial action is initiated within 3 years after the completion of all removal action taken with respect to the facility, costs incurred for removal action may be recovered in a cost recovery action brought under clause (ii); and**

**"(ii) for a remedial action, within 6 years after initiation of physical on-site construction of the remedial action.**

**"(B) In any such action described in this paragraph, the court shall enter a declaratory judgment on liability for response costs or damages that will be binding in such action or in any subse-**

**quent action or actions to recover further response costs or damages. A subsequent action or actions under section 107 for further response costs at the vessel or facility may be maintained at any time during the response action, but must be commenced no later than 3 years after the date of completion of all response action. Except as otherwise provided in this paragraph, an action may be commenced under section 107 for recovery of costs at any time after such costs have been incurred.**

**"(C) An action by any potentially responsible party against another potentially responsible party for recovery of any response costs or damages must be commenced within the later of—**

**"(i) the time limitations set forth in subparagraph (A); or**

**"(ii) where recovery is sought for costs or damages paid pursuant to a judgment or settlement, 3 years after—**

**"(I) the date of judgment in any action under this Act for recovery of such costs or damages, or**

**"(II) the date of any administrative order or judicial settlement for recovery of the costs or damages paid or incurred pursuant to such a settlement.**

**"(3) CLAIMS BY THE UNITED STATES OR STATES.—Claims by the United States under section 106 and claims by the United States or a State under section 107(a) shall not be deemed compulsory counterclaims in an action against the United States or a State seeking response costs, contribution, damages, or any other claim by any person under this Act.".**

**(c) JUDICIAL REVIEW.—Section 113(j)(1) (42 U.S.C. 9613(j)(1)) is amended by striking "or ordered by the President" and inserting "or selected by the President pursuant to this Act, or ordered or sought by the President,".**

**SEC. 406. LIMITATIONS ON CONTRIBUTION ACTIONS.**

**Section 113(f) (42 U.S.C. 9613(f)) is amended as follows:**

**(1) Paragraph (1) is amended—**

**(A) by striking "Any person" in the first sentence and inserting "Except as provided in paragraph (4), any person who is liable or potentially liable under section 107(a)";**

**(B) by striking ", during or following any civil action under section 106 or under section 107(a)." and inserting "in a claim asserted under section 107(a).";**

**(C) in the second sentence, by striking "this section" and inserting "section 107(a), this section,"; and**

**(D) by striking the sentence beginning with "Nothing in this subsection".**

**(2) Paragraph (2) is amended to read as follows:**

**"(2) SETTLEMENTS.—A person who has resolved its liability to the United States in an administrative or judicially approved settlement shall not be liable for**

**contribution or any other claims by any person other than a State acting under section 107(a)(4)(A) (and not as a potentially responsible party) regarding response actions, response costs, or damages addressed in the settlement. A person who has resolved its liability to a State or an Indian tribe in an administrative or judicially approved settlement shall not be liable for contribution or any other claims by persons other than the United States Government acting under section 107(a)(4)(A) (and not as a potentially responsible party) regarding response costs or damages addressed in the settlement for which the State or Indian tribe has a claim under this title. Such settlement does not discharge any other potentially responsible persons unless its terms so provide, but it reduces the potential liability of such other persons by the amount of the settlement. The protection afforded by this subsection shall include protection against claims, under Federal or State law, that may be as-**

**serted against the settling party for recovery of response costs or damages incurred or paid by another person, if such costs or damages are addressed in the settlement, but shall not include protection against claims based on contractual indemnification or other express contractual agreements to pay such costs or damages.".**

**(3) Such section is amended by adding at the end the following new paragraph:**

**"(4) LIMITATIONS ON CONTRIBUTION ACTIONS.—(A) There shall be no right of contribution under this subsection in any of the following circumstances:**

**"(i) The person asserting the right of contribution has waived the right in a settlement pursuant to this Act.**

**"(ii) The person from whom contribution is sought is not liable under this Act.**

**"(iii) The person from whom contribution is sought has entered into a settlement with the United States**

**pursuant to section 122(g), with respect to matters addressed in that settlement.**

**"(B) Any person who commences an action for contribution shall be liable to the person against whom the claim of contribution is brought for all reasonable costs of defending against the claim, including all reasonable attorneys' and expert witness fees, if—**

**"(i) the action is barred by subparagraph (A);**

**"(ii) the action is brought against a person who is not liable under this Act;**

**"(iii) the action is brought against a person who is protected from such suits pursuant to section 113(f)(2) by reason of a settlement with the United States; or**

**"(iv) the action is brought during the moratorium pursuant to section 130.".**

**SEC. 407. SCOPE OF RULEMAKING AUTHORITY.**

**(a) IN GENERAL.—Section 115 (42 U.S.C. 9615) is amended to read as follows:**

**"SEC. 115. PRESIDENTIAL DELEGATION AND ASSIGNMENT OF DUTIES OR POWERS AND PROMULGATION OF REGULATIONS.**

**"The President (or the Administrator where applicable) is authorized to promulgate such regulations as the President (or the Administrator where applicable) deems necessary to carry out the provisions of this Act, and to delegate and assign any duties or powers imposed upon or assigned to him by this Act, including the authority to promulgate regulations. The preceding sentence includes authority to clarify or interpret all terms and to implement any provision of this Act.".**

**(b) LENDER LIABILITY RULE.—(1) Effective on the date of enactment of this section, the final rule issued by the Administrator of the Environmental Protection Agency on April 29, 1992 (57 Fed. Reg. 18344), shall be deemed to have been validly issued pursuant to the authority of the Comprehensive Environmental Response, Compensation, and Liability Act of**

**1980, and to have been effective according to the final rule's terms. No additional administrative or judicial proceedings shall be necessary with respect to such final rule.**

**(2) Notwithstanding section 113(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, no court shall have jurisdiction to review the final rule issued by the Administrator of the Environmental Protection Agency on April 29, 1992 (57 Fed. Reg. 18344).**

**(3) Nothing in this subsection shall be construed to limit the authority of the President or his delegate to amend the final rule issued by the Administrator of the Environmental Protection Agency on April 29, 1992 (57 Fed. Reg. 18344), in accordance with applicable provisions of law.**

**SEC. 408. RESPONSE ACTION CONTRACTORS.**

**(a) EXTENSION OF NEGLIGENCE STANDARD.—Section 119(a)(1) (42 U.S.C. 9619(a)(1)) is amended—**

**(1) by inserting "or under the law of any State or political subdivision" after "Federal law"; and**

**(2) by adding at the end the following new sentence: "Notwithstanding the preceding sentence, this section shall not apply in determining the liability of a response action contractor under the law of any State or political subdivision thereof if the State has adopted by statute an alternative process intended to promote quality response actions and ensure maximum competition by professional companies of all sizes providing response actions.".**

**(b) NEGLIGENCE STANDARD.—Section 119(a)(2) (42 U.S.C. 9619(a)(2)) is amended by inserting "(A)" before "Paragraph" and by adding at the end the following:**

**"(B) For the purposes of this paragraph, a response action contractor's conduct shall not be deemed to be negligent if—**

**"(i) such conduct is based on the standard of skill and learning commonly possessed by members of the profession in good standing as those standards exist at the time that the**

**conduct occurred and under the particular circumstances involved, or**

**"(ii) such conduct is carried out in accordance with a plan which was approved by the President.".**

**(c) CLARIFICATION OF RESPONSE ACTION CONTRACTOR LIABILITY.—Section 119(a) (42 U.S.C. 9619(a)) is amended by inserting after paragraph (4) the following new paragraph:**

**"(5) LIABILITY.—Notwithstanding any other provision of this Act, any liability of a response action contractor under this Act shall be determined solely in accordance with this section.".**

**(d) INDEMNIFICATION FOR THREATENED RELEASES.—Section 119(a) (42 U.S.C. 9619(a)) is further amended by adding at the end the following:**

**"(6) IMPLEMENTATION OF TECHNOLOGIES.—No response action contractor shall be liable under this title solely as a result of such contractor's testing or implementation of an investigative or remedial technology with respect to a response action if use of the technology in**

**connection with the response action has been approved by the authorized Federal or State regulatory agency. This paragraph shall not apply in the case of negligence, gross negligence, or intentional misconduct by such contractor in implementing the approved technology, including any noncompliance with the approved process for implementing the technology.".**

**(e) INDEMNIFICATION CLARIFICATION.—Section 119(c)(1) (42 U.S.C. 9619(c)(1)) is amended by inserting "under Federal, State, or common law" after "any liability".**

**(f) INDEMNIFICATION FOR THREATENED RELEASES.—Section 119(c)(5)(A) (42 U.S.C. 9619(c)(5)(A)) is amended by inserting "or threatened release" after "release" each place it appears.**

**(g) DETERMINATION TO INDEMNIFY.—Section 119(c) (42 U.S.C. 9619(c)) is amended by redesignating paragraphs (5), (6), (7), and (8) as paragraphs (6), (7), (8), and (9), respectively, and by inserting after paragraph (4) the following new paragraph:**

"(5) DETERMINATION TO INDEMNIFY.—Notwithstanding any guidelines or regulations of this section, the President shall, for each response action contract for a facility or facilities, make a decision whether to enter into an indemnification agreement with a response action contractor. The President shall enter into such an agreement unless the President determines there is insurance reasonably available to such contractor upon fair and reasonable terms (including consideration of premium, policy terms, and deductibles) that is likely to provide adequate long-term protection to the public for the potential liabilities involved in the response action (including consideration of policy coverage, limits, and renewal terms). The President's determination shall be made a part of the invitation for bids or the request for proposals for each such response action contract.".

(h) EXTENSION OF SECTION 119 COVERAGE.—Section 119(e)(1) (42 U.S.C. 9619(e)(1)) is amended—

**(1) by striking "carrying out an agreement under section 106 or 122";**

**(2) by striking "any remedial action under this Act at a facility listed on the National Priorities List, or any removal under this Act," and inserting "any response action under this Act"; and**

**(3) by inserting "or to undertake appropriate actions necessary to protect and restore any natural resources damaged by such release or threatened release" before the period at the end.**

**(i) EXTENSION.—Section 119 (42 U.S.C. 9619) is amended—**

**(1) in subsection (e)(2)(C) by striking ", and before January 1, 1996,"; and**

**(2) in subsection (g)(5) by striking ", or after December 31, 1995".**

**(j) STATUTE OF REPOSE.—Section 119 (42 U.S.C. 9619) is amended by adding at the end the following new subsection:**

**"(h) LIMITATION ON ACTIONS AGAINST RESPONSE ACTION CONTRACTORS.—No action to recover for any injury to property, real or personal, or for bodily injury or wrongful death,**

**or any other expenses or costs arising out of the performance of services under a response action contract, nor any action for contribution or indemnity for damages sustained as a result of such injury, shall be brought against any response action contractor more than 6 years after the completion of work at any site under such contract. The limitation prescribed in this subsection shall not affect any right of indemnification which such response action contractor may have under this section or may acquire by written agreement with any party. This subsection shall not apply if a State adopts by statute an alternative process intended to promote quality response actions and ensure maximum competition by professional companies of all sizes providing response actions.".**

**SEC. 409. ENHANCEMENT OF SETTLEMENT AUTHORITIES.**

**Section 122 (42 U.S.C. 9622) is amended as follows:**

**(1) Subsection (b) is amended by striking paragraph (3) and redesignating paragraph (4) as paragraph (3).**

**(2) Section 122(d)(1) is amended by adding at the end the following new subparagraph:**

**"(D) COMPLIANCE.—Any consent decree shall require the parties to attempt expeditiously to resolve disagreements concerning implementation of the remedial action informally with the appropriate Federal and State agencies. Where the parties agree, the consent decree may provide for administrative enforcement. Each consent decree shall also contain stipulated penalties for violations of the decree in an amount not to exceed $25,000 per day, which may be enforced by either the President or the State. Such stipulated penalties shall not be construed to impair or affect the authority of the court to order compliance with the specific terms of any such decree.".**

**(3) Subsection (e) is amended—**

**(A) by striking paragraph (3); and**

**(B) by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.**

**(4) The section is amended—**

**(A) by transferring paragraph (6) to the end of the section and redesignating such paragraph as subsection (o);**

**(B) in such subsection (o) (as so transferred and redesignated), by striking "remedial action" and inserting "response action", and by inserting "or the State under applicable law" before the period at the end; and**

**(C) by adding after such subsection (o) (as so transferred and redesignated) the following new subsections:**

**"(p) RETENTION OF FUNDS.—(1) If, as part of any settlement agreement under this Act, the potentially responsible parties will be paying amounts to the President for carrying out any response action, the President may retain such amounts in interest bearing accounts, and use such amounts, together with accrued**

**interest, to conduct or enable other persons to conduct such response action.**

**"(2) If, as part of any settlement agreement for carrying out a response action under this Act, a potentially responsible party or parties will be paying amounts to the United States, the Administrator is authorized to accept ownership of a financial instrument running irrevocably to the benefit of the United States to conduct, or enable other persons to conduct, such response actions. For the purposes of this paragraph, the term 'financial instrument' means an annuity contract, funding agreement, or similar instrument acceptable to the Secretary of the Treasury, that is purchased by one or more potentially responsible parties, and has a defined schedule of periodic payments which coincides with the obligations set forth in the settlement agreement. Periodic payments under such a financial instrument will be made to the owner, or as the owner directs, for response costs at the facility which is the subject of the settlement agreement.**

**"(q) CHALLENGE TO COST RECOVERY COMPONENT OF SETTLEMENT.—Notwithstanding the limitations on review in section 113(h), and except as provided in subsection (g) of this section, a person whose potential claim for response costs or contribution is limited as a result of contribution protection afforded by an administrative settlement under this section may challenge the cost recovery component of such settlement. Such a challenge may be made only by filing a complaint against the Administrator in the United States District Court within 60 days after such settlement becomes final. Venue shall lie in the district in which the principal office of the appropriate region of the Environmental Protection Agency is located. Any review of an administrative settlement shall be limited to the administrative record, and the settlement shall be upheld unless the objecting party can demonstrate on that record that the decision of the President to enter into the administrative settlement was arbitrary, capricious, or otherwise not in accordance with law.**

**"(r) UNSUCCESSFUL CHALLENGERS LIABLE FOR ATTORNEY'S FEES.—Any party who challenges any settlement entered into between the President and any potentially responsible party under this Act, and who is not successful in overturning or modifying the settlement, shall be liable to the United States and any settling party for all reasonable attorneys' fees and costs incurred in defending the settlement.".**

**SEC. 410. PROFESSIONAL SERVICES.**

**Section 122 is amended by adding after subsection (r), as added by section 408, the following new subsection:**

**"(s) PROFESSIONAL SERVICES.—The Administrator has the authority to use the procedures set forth in section 109(e) to obtain the services of neutral professionals to assist in the conduct of settlement negotiations under this section, whether or not the neutral professional actually participates in such negotiations.".**

**SEC. 411. FINAL CONVENANTS.**

**Section 122(f) is amended as follows:**

**(1) Paragraph (1) is amended to read as follows:**

**"(1) FINAL COVENANTS.—The President shall offer potentially responsible parties who enter into settlement agreements that are in the public interest a final covenant not to sue concerning any liability to the United States under this Act, including a covenant with respect to future liability, for response actions or response costs addressed in the settlement, if all of the following conditions are met:**

**"(A) The settling party agrees to perform, or there are other adequate assurances of the performance of, a final remedial action authorized by the Administrator for the release or threat of release that is the subject of the settlement.**

**"(B) The remedial action does not provide that any hazardous substances will remain at the facility at concentrations above the protective concentration levels established pur-**

**suant to section 121(d) after the final remedial action is completed.**

**"(C) The settlement agreement has been reached prior to the commencement of litigation against the settling party under section 106 or 107 of this Act with respect to this facility.**

**"(D) The settling party waives all contribution rights against other potentially responsible parties at the facility.**

**"(E) The settling party pays a premium that compensates for the risks of remedy failure; future liability resulting from unknown conditions; unanticipated increases in the cost of any uncompleted response action, unless the settling party is performing the response action; and the United States litigation risk as provided in section 130 with respect to persons who have not resolved their liability to the United States under this Act, unless all parties have settled their li-**

**ability to the United States, or the settlement covers 100 percent of the United States response costs. The President shall have sole discretion to determine the appropriate amount of any such premium, and such determinations are committed to the President's discretion. The President has discretion to waive or reduce the premium payment for persons who demonstrate an inability to pay such a premium.**

**"(F) The settlement is otherwise acceptable to the United States.".**

**(2) Paragraph (3) is amended to read as follows:**

**"(3) DISCRETIONARY COVENANTS.—For settlements under this title for which covenants under section 122(f)(1) are not available, the President may, in his discretion, provide any person with a covenant not to sue concerning any liability to the United States under this title, if the covenant not to sue is in the public interest. Such covenants shall be subject**

**to the requirements of section 122(f)(5). The President may include any conditions in such covenant not to sue, including the additional condition referred to in paragraph (5). In determining whether such conditions or covenants are in the public interest, the President shall consider the nature and scope of the commitment by the settling party under the settlement, the effectiveness and reliability of the response action, the nature of the risks remaining at the facility, the strength of evidence, the likelihood of cost recovery, the reliability of any response action or actions to restore, replace, or acquire the equivalent of injured natural resources, the extent to which performance standards are included in the order or decree, the extent to which the technology used in the response action is demonstrated to be effective, and any other factors relevant to the protection of human health and the environment.”.**

**(3) Such subsection (f) is amended by striking paragraph (4) and redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.**

**(4) Paragraph (2) is amended by striking "remedial" each place it appears and inserting "response".**

**(5) Subparagraph (A) of paragraph (5) (as so redesignated) is amended—**

**(A) by striking "remedial" and inserting "response";**

**(B) by striking "paragraph (2)" in the first sentence and inserting "paragraph (1) or (2)";**

**(C) by striking "de minimis settlements" and inserting "de minimis and other expedited settlements pursuant to subsection (g) of this section"; and**

**(D) by striking "the President certifies under paragraph (3) that remedial action has been completed at the facility concerned", and inserting "that the response action that is the subject of the settlement agreement is selected".**

**(6) Subparagraph (B) of paragraph (5) (as so redesignated) is amended—**

**(i) by striking "In extraordinary circumstances, the" and inserting "The";**

**(ii) by striking "those referred to in paragraph (4) and";**

**(iii) by striking "if other terms," and inserting ", if the agreement containing the covenant not to sue provides for payment of a premium to address possible remedy failure or any releases that may result from unknown conditions, and if other terms,"; and**

**(iv) by inserting at the end the following: "The President may, in his discretion, waive or reduce the premium payment for persons who demonstrate an inability to pay such a premium.".**

**SEC. 412. EXPEDITED FINAL SETTLEMENTS.**

**Section 122 is amended as follows:**

**(1) Subsection (g) is amended by striking "(g)" and all that follows through the end of subparagraph (A) of paragraph (1) and inserting in lieu thereof the following:**

**"(g) EXPEDITED FINAL SETTLEMENT.—**

**"(1) PARTIES ELIGIBLE FOR EXPEDITED SETTLEMENT.—The President shall, as promptly as possible, offer to reach a final administrative or judicial settlement with potentially responsible parties who, in the judgment of the President, meet one or more of the following conditions for eligibility for an expedited settlement—**

**"(A) The potentially responsible party's individual contribution of hazardous substances at the facility is de minimis. The contribution of hazardous substance to a facility by a potentially responsible party is de minimis if both of the following conditions are met:**

**"(i) The potentially responsible party's volumetric contribu-**

**tion of materials containing hazardous substances is minimal in comparison to the total volumetric contributions of materials containing hazardous substances at the facility; such individual contribution is presumed to be minimal if it is one percent or less of the total volumetric contribution at the facility, unless the Administrator identifies a different threshold based on site-specific factors.**

**"(ii) The potentially responsible party's hazardous substances do not present toxic or other hazardous effects that are significantly greater than those of other hazardous substances at the facility.".**

**(2) Subsection (g) is further amended by inserting after subparagraph (B) of paragraph (1) the following:**

**"(C) The potentially responsible party's liability is based solely on**

**paragraph (3) or (4) of section 107(a), and the arrangement for disposal, treatment, or transport for disposal or treatment, or the acceptance for transport for disposal or treatment, involved only municipal solid waste or sewage sludge. The Administrator may offer to settle the liability of generators and transporters of municipal solid waste or sewage sludge whose liability is limited pursuant to paragraph (7) of section 107(a) for up to 10 percent of the total response costs at the facility.**

**"(D)(i) The potentially responsible party is a natural person, a small business, or a municipality and can demonstrate to the United States an inability or limited ability to pay response costs. A party who enters into a settlement pursuant to this subparagraph shall be deemed to have resolved its liability under this Act to the United States for all matters addressed in the settlement.**

**"(ii) For purposes of this subparagraph, the following provisions apply:**

**"(I) In the case of a small business, the President shall take into consideration the ability to pay of the business, if requested by the business. The term 'ability to pay' means the President's reasonable expectation of the ability of the small business to pay its total settlement amount and still maintain its basic business operations. Such consideration shall include the business's overall financial condition and demonstrable constraints on its ability to raise revenues.**

**"(II) Any business requesting such consideration shall promptly provide the President with all relevant information needed to determine the business's ability to pay.**

**"(III) The business shall demonstrate the amount of its ability**

**to pay. If the business employs fewer than 20 employees, and has annual gross revenues of less than $1,800,000 or a net profit margin of less than 2 percent, the President shall perform any analysis that may be required to demonstrate the business's ability to pay. The President, in his discretion, may perform such analysis for any other party or require such other party to perform the analysis.**

**"(IV) If the President determines that a small business is unable to pay its total settlement amount immediately, the President shall consider alternative payment methods as may be necessary or appropriate. The methods to be considered may include installment payments to be paid during a period of not to exceed 10 years and the provision of in-kind services.**

**"(iii) For purposes of this subparagraph, in the case of a municipal owner or operator, the President shall consider, to the extent that information is provided by the municipality, the following factors:**

**"(I) the municipality's general obligation bond rating and information about the most recent bond issue for which the rating was prepared;**

**"(II) the amount of total available funds (other than dedicated funds and State assistance payments for remediation of inactive hazardous waste sites);**

**"(III) the amount of total operating revenues (other than obligated or encumbered revenues);**

**"(IV) the amount of total expenses;**

**"(V) the amounts of total debt and debt service;**

**"(VI) per capita income;**

**"(VII) real property values;**

**"(VIII) unemployment information; and**

**"(IX) population information.**

**"(iv) A municipality may also submit for consideration by the President an evaluation of the potential impact of the settlement on essential services that the municipality must provide, and the feasibility of making delayed payments or payments over time. If a municipality asserts that it has additional environmental obligations besides its potential liability under this Act, then the municipality may create a list of the obligations, including an estimate of the costs of complying with such obligations.**

**"(v) A municipality may establish an inability to pay through an affirmative showing that such payment of its liability under this Act would either—**

**"(I) create a substantial demonstrable risk that the municipality would default on existing**

**debt obligations, be forced into bankruptcy, be forced to dissolve, or be forced to make budgetary cutbacks that would substantially reduce current levels of protection of public health and safety; or**

**"(II) necessitate a violation of legal requirements or limitations of general applicability concerning the assumption and maintenance of fiscal municipal obligations.**

**"(vi) This subparagraph does not limit or affect the President's authority to evaluate any person's ability to pay or to enter into settlements with any person based on that person's inability to pay.".**

**(3) Paragraphs (2) and (3) of subsection (g) are amended to read as follows:**

**"(2) BASIS OF DETERMINATION.—Any person who enters into a settlement pursuant to this subsection shall provide any**

**information requested by the President or by an allocator in accordance with section 130(d)(2) or section 104(e) of this Act. The determination of whether a person is eligible for an expedited settlement shall be made on the basis of all information available to the President at the time the determination is made. Neither the President's determination as to the eligibility of a party for settlement pursuant to this section, nor the terms of the final settlement, shall be subject to judicial review. If the President determines that a party is not eligible for a settlement pursuant to this section, the President shall explain the basis for that determination in writing to any person who requests such a settlement.**

**"(3) ADDITIONAL FACTORS RELEVANT TO SETTLEMENTS WITH MUNICIPALITIES.—In any settlement with a municipality pursuant to this title, the President may take additional equitable factors into account in determining an appropriate settlement amount, including the limited resources**

**available to that party, and any in-kind services that the party may provide to support the response action at the facility. In considering the value of in-kind services, the President shall consider the fair market value of those services.".**

**(4) Subsection (g) is further amended—**

**(A) in paragraph (4), by striking "$500,000" and inserting "$2,000,000"; and**

**(B) by striking paragraph (5).**

**(5) Subsection (h) is amended—**

**(A) by amending the heading to read as follows: "AUTHORITY TO SETTLE CLAIMS FOR FINES, CIVIL PENALTIES, PUNITIVE DAMAGES, AND COST RECOVERY.—";**

**(B) in paragraph (1)—**

**(i) in the first sentence, by striking "costs incurred" and inserting "past and future costs incurred or that may be incurred";**

**(ii) in the first sentence, by inserting after "if the claim has not**

**been referred to the Department of Justice for further action." the following: "The head of any department or agency with the authority to seek fines, civil penalties, or punitive damages under this Act may consider, compromise, and settle claims for any such fines, civil penalties, or punitive damages which may otherwise be assessed in civil administrative or judicial proceedings if the claim has not been referred to the Department of Justice for further action. If the total claim for fines, civil penalties, or punitive damages exceeds $300,000, such claim may be compromised and settled only with the prior written approval of the Attorney General."; and**

**(iii) in the second sentence, by striking "$500,000 (excluding interest), any claim referred to in the preceding sentence" and in-**

**serting "$2,000,000 (excluding interest), any claim for response costs referred to in this subsection"; and**

**(C) by striking paragraph (4).**

**SEC. 413. ALLOCATION PROCEDURES.**

**Insert after section 129 the following new section:**

**"SEC. 130. ALLOCATION AT MULTIPARTY FACILITIES.**

**"(a) SCOPE.—**

**"(1) POST-INTRODUCTION RODS.—For each non-federally owned facility listed on the National Priorities List involving 2 or more potentially responsible parties for which the President selects a remedial action on or after February 3, 1994, the Administrator shall initiate the allocation process under this section. This paragraph shall not apply to response actions selected prior to such date.**

**"(2) PRE-INTRODUCTION RODS.—For each non-federally owned facility listed on the National Priorities List involving 2 or more potentially responsible parties, for any remedial action selected by the**

**President before February 3, 1994, the Administrator shall initiate the allocation process under this section, if requested to do so by a potentially responsible party which has resolved its liability to the United States with respect to the remedial action or which is performing the remedial action pursuant to an order issued under section 106(a).**

**"(3) OTHER FACILITIES.—The Administrator, as the Administrator deems appropriate, may initiate the allocation process under this section for any facility other than a facility referred to in paragraph (1) or (2) involving 2 or more potentially responsible parties.**

**"(4) EXCLUDED FACILITIES.—The allocation process under this section shall not apply to any of the following:**

**"(A) A facility for which there has been a final settlement, decree, or order that determines all liability or allocated shares of all potentially responsible parties.**

**"(B) A facility at which all of the potentially responsible parties are liable or potentially liable as facility owners or operators pursuant to section 107(a) (1) or (2).**

**"(5) MULTIPLE REMEDIAL ACTIONS.—An allocation under this section, shall apply to all remedial actions selected by the President on or after February 3, 1994, for a facility (but not to those remedial actions described in paragraph (2)), unless the allocator determines that the allocation should address only one or more of such remedial actions.**

**"(6) MULTIPLE FACILITIES.—Where appropriate, the Administrator may initiate a single allocation process under this section for more than 1 facility.**

**"(7) EFFECT OF ALLOCATION.—An allocation performed pursuant to paragraph (2) or (3) of this section shall not be construed to require—**

**"(A) payment of an orphan share pursuant to this section; or**

"(B) the conferral of reimbursement rights pursuant to this section.

"(8) SETTLEMENT OFFERS AFTER COMMENCEMENT OF LITIGATION.—The provisions of this section shall not apply to any offer of settlement made after expiration of the moratorium period under subsection (b).

"(b) MORATORIUM ON COMMENCEMENT OR CONTINUATION OF SUITS.—

"(1) MORATORIUM.—No person may assert any claim for response costs pursuant to section 107 of this Act or commence any civil action seeking recovery of any response costs in connection with a response action for which an allocation is required under subsection (a)(1) or (2), or for which the Administrator has initiated an allocation under subsection (a)(3), until 90 days after issuance of the allocator's report under subsection (h) or (m), whichever is later.

"(2) STAY OF EXISTING ACTIONS.—If a claim for response costs pursuant to section 107 of this Act or an action seeking

**recovery of response costs in connection with a response action for which an allocation is to be performed under this section is pending—**

**"(A) upon the date of enactment of the Superfund Reform Act of 1994, or**

**"(B) upon initiation of an allocation,**

**the action or claim shall be stayed until 90 days after the issuance of the allocator's report under subsection (h) or (m), unless the court determines that a stay will result in manifest injustice.**

**"(3) STATUTE OF LIMITATIONS.—Any applicable limitations period with respect to a cause of action subject to paragraph (1) shall be tolled from the earlier of the following until 180 days after the issuance of the allocator's report under subsection (h) or (m) has been issued by the allocator:**

**"(A) The date of listing of the facility on the National Priorities List.**

**"(B) The commencement of the allocation process pursuant to this section.**

**"(c) COMMENCEMENT OF ALLOCATION.—**

**"(1) RESPONSIBLE PARTY SEARCH.—At all facilities subject to this section, the Administrator shall, as soon as practicable, but not later than 60 days after the commencement of the remedial investigation, initiate a thorough investigation and search for all potentially responsible parties, using his authorities under section 104. Any person may submit information to the Administrator concerning any potentially responsible party at the facility, and the Administrator shall consider such information in carrying out the responsible party search.**

**"(2) NOTIFICATION OF DE MINIMIS PARTIES.—As soon as practicable after receipt of sufficient information, but not more than 12 months after the commencement of the remedial investigation, the Administrator shall take each of the following actions:**

**"(A) The Administrator shall notify any potentially responsible party who the Administrator determines is eligible for an expedited final settlement in accordance with section 122(g)(1)(A) of its eligibility, based on information available to the Administrator at the time the determination is made. Any such information that is not confidential shall, to the extent practicable, be made available by the Administrator to the party at the time of the settlement offer.**

**"(B) The Administrator shall submit a written settlement offer to each party notified under subparagraph (A) no later than 60 days after such notification. The Administrator shall, at the same time, make available to such party upon request any nonconfidential information related to the party's settlement upon which the Administrator based the settlement offer. If the settlement offer is based in whole or in part on con-**

**fidential information, the Administrator shall so advise such party.**

**"(3) PRELIMINARY NOTICE TO OTHER PARTIES.—As soon as practicable after receipt of sufficient information, but not later than 18 months after commencement of the remedial investigation, the Administrator shall—**

**"(A) notify any party not previously notified under paragraph (2) who the Administrator determines is eligible for an expedited final settlement in accordance with section 122(g)(1)(A) of its eligibility, based on information available to the Administrator at the time the determination is made;**

**"(B) issue a list of all potentially responsible parties preliminarily identified by the Administrator to all such parties;**

**"(C) notify the public, in accordance with section 117(d), of the list of potentially responsible parties identi-**

**fied pursuant to subparagraphs (A) and (B) by the Administrator; and**

**"(D) make available all responses to the Administrator's information requests, as well as other relevant information concerning the facility and potentially responsible parties, to the notified parties, to the extent it is available to the Administrator.**

**The Administrator shall not make available any privileged or confidential information, except as otherwise authorized by law. The Administrator shall take the actions specified in this paragraph within 9 months after the date of enactment of this section for all facilities eligible for allocation under subsection (a)(1) or (a)(2) for which the responsible party search required by a paragraph (1) was substantially complete prior to the date of the enactment of this section.**

**"(4) STATUS OF PARTIES.—At the time of proposing the list of potentially responsible parties under paragraph (3), the Administrator shall—**

**"(A) identify parties that are eligible for expedited settlement pursuant to section 122(g);**

**"(B) identify parties who are not eligible for such expedited settlement; or**

**"(C) determine that there is insufficient information to ascertain whether or not the party is entitled to such expedited settlement.**

**"(5) NOMINATION OF PARTIES.—(A) For 60 days after information has been made available pursuant to paragraph (3), the parties identified by the Administrator and members of the affected community shall have the opportunity to identify and nominate additional potentially responsible parties or otherwise provide information relevant to the facility or such potentially responsible parties. This period may be extended by the Administrator for an additional 30 days upon request of any person.**

**"(B) Any proposal for the addition of any potentially responsible party with re-**

**spect to a facility shall be supported by a statement demonstrating that there is an adequate basis in law and fact to determine that the additional nominated party is potentially liable under this Act and by full disclosure to the Administrator and to the nominated party at the same time of all available information concerning that party's liability under this Act and that party's contribution of hazardous substances to the site. The nominated party may submit to the Administrator information relating to its inclusion as an additional potentially responsible party within 45 days of the receipt of such information.**

**"(6) LIST OF ALLOCATION PARTIES.—(A) Within 60 days after the end of the period specified in paragraph (5)(A) for the proposal of additional parties, the Administrator shall—**

**"(i) issue a list of parties subject to the allocation process (hereinafter referred to in this section as the 'allocation parties');**

**"(ii) identify in writing, as to each of the proposed additional parties, which parties the Administrator has determined, in the Administrator's sole discretion—**

**"(I) to be eligible for expedited settlement pursuant to section 122(g),**

**"(II) not to be eligible for such expedited settlement, and**

**"(III) for whom insufficient information exists to determine whether or not the party is eligible for such expedited settlement; and**

**"(iii) identify (in writing supported by brief explanation) those parties as to which the Administrator has determined, in the Administrator's sole discretion, that there is an inadequate basis in law or fact to determine that the party is liable under this Act.**

**The Administrator shall consider, when making determinations under this sub-**

**paragraph, all available information provided pursuant to section 130(c)(5)(B). For each party identified under clause (iii), the Administrator shall further identify whether that party, if liable, would be eligible for an expedited settlement.**

**"(B) At the time of issuance of the list of parties provided for in subparagraph (A), the Administrator shall provide the potentially responsible parties who received notice under this paragraph with a list of neutral parties who are not employees of the United States and who the Administrator determines, in the Administrator's sole discretion, are qualified to perform an allocation at the facility.**

**"(C) De minimis parties the Administrator identifies as potentially liable but entitled to expedited settlement pursuant to this section, shall not be subject to, or assigned a share in, the allocation (except to the extent required to determine the orphan share pursuant to subsection (h)), unless that party fails to reach an agree-**

**ment with the President on settlement terms within 30 days after the offer.**

**"(D) If the Administrator determines that there is an inadequate basis in law or fact to conclude that a party is liable based on the information presented by the nominating party or otherwise available to the Administrator, the determination shall have the following effect:**

**"(i) With respect to a party that the Administrator has determined to be—**

**"(I) exempt from liability pursuant to section 107(a)(6)(A) or (B); or**

**"(II) not liable on some other basis but who, if liable, would be eligible for an expedited settlement,**

**the Administrator's determination shall mean that the party shall not be subject to, and shall not be assigned a share in, the allocation.**

**"(ii) With respect to all other parties, the Administrator's determina-**

**tion shall be accorded deference by the allocator. For such parties the allocator shall consider the Administrator's determination together with the allocation factors listed in subsection (h)(2).**

**"(E) The Administrator's determinations for purposes of this subsection shall not be subject to judicial review, nor shall any determination or explanation provided for purposes of the allocation be admissible for any purpose in an action commenced by the United States against the party that is the subject of the determination or any other party.**

**"(F) The allocator may assign a zero share to any party the allocator deems should receive such a share in consideration of the allocation factors including the Administrator's determinations under subparagraph (C).**

**"(G) If a party is included in the allocation pursuant to the nomination of a potentially responsible party pursuant to subsection (c)(5), but assigned a zero**

**share by the allocator, that party's costs of participating in the allocation (including reasonable attorneys' fees) shall be borne by the party who proposed the addition of the party to the allocation.**

**"(d) DE MINIMIS SETTLEMENT OFFER.—(1) Within 30 days after the final list of parties is issued pursuant to paragraph (6) of subsection (c), the Administrator shall submit a written settlement offer to any party identified as a potentially responsible party pursuant to this section who the Administrator has determined to be eligible for an expedited final settlement in accordance with section 122(g)(1)(A), and who has not entered into a settlement with the United States regarding the matters being addressed by the allocation. The Administrator shall, at the same time, make available to such party upon request any nonconfidential information related to the party's settlement.**

**"(2) The President shall not include any premia pursuant to section 122(g) in a settlement offer made pursuant to paragraph (1) more than 60 days after the date the offer is**

**required to be made pursuant to paragraph (1) to a party that is a small business, as defined in section 101(47).**

**"(3) If a party is a small business which the President has determined is eligible for a settlement pursuant to section 122(g)(1)(A), and the party is not offered a settlement by the President within 120 days after the date the offer is required to be made pursuant to paragraph (1), the party shall have no further liability under this Act for the costs of response actions at the facility for which the allocation is being performed, unless the President determines that there is just cause for the delay and such delay is due to factors outside the President's control.**

**"(e) SELECTION OF ALLOCATOR.—**

**"(1) PROPOSAL OF ADDITIONAL CANDIDATES.—Any party identified by the Administrator under subsection (c) may propose any person whom such party deems qualified for selection as an allocator in addition to those proposed from the list provided under subsection (c)(6)(B).**

**"(2) SELECTION OF ALLOCATOR BY ALLOCATION PARTIES.—(A) The allocation parties shall select an allocator from the list of allocators proposed by the Administrator or under paragraph (1) by the following voting method with each allocation party having a single vote:**

**"(i) Each allocation party, with the Administrator voting for the identified but insolvent or defunct parties, shall numerically rank the individuals on the final list of proposed allocators, with a ranking of 1 indicating first preference, and forward its vote to the Administrator within 30 days of the issuance of the final list of allocators pursuant to subsection (c)(6)(B).**

**"(ii) The proposed allocator who receives the lowest combined numerical score, taking into account all votes submitted to the Administrator pursuant to clause (i), and who agrees to serve as allocator, shall be determined to be the allocator.**

**"(B) The Administrator may cast the votes of identified but insolvent or defunct parties.**

**"(3) PEREMPTORY STRIKE.—The Administrator may reject any allocator selected by the allocation parties if the proposed allocator is not on the list provided under paragraph (6)(B) of subsection (c). In the case of any such rejection, the allocation parties shall select the allocator in order of numerical ranking in accordance with this subsection.**

**"(4) SELECTION OF ALLOCATOR BY EPA.—If the allocation parties do not select an allocator pursuant to this subsection within 30 days after receipt of the list provided under paragraph (2), the Administrator shall select the allocator, except that if the Administrator rejects 4 or more allocators selected by the allocation parties, the Administrator shall initiate a new allocator selection process under this section.**

**"(f) CONTRACT.—Following selection of the allocator, the Administrator shall enter into a**

**contract with the selected allocator for the provision of allocation services, and immediately make available all responses to information requests, as well as other relevant information concerning the facility and potentially responsible parties, to the allocator. The Administrator has the authority to use the procedures set forth in section 109(e) to obtain the services of a neutral professional for use in conducting allocation procedures under this section, whether or not the neutral professional actually conducts such allocation procedures.**

**"(g) POTENTIALLY RESPONSIBLE PARTY SETTLEMENT.—At any time prior to the issuance of an allocation report as described in subsection (h), any group of potentially responsible parties may submit to the allocator a private allocation for the remedial action. If such private allocation meets all of the following criteria, the allocator shall promptly adopt it as the allocation report:**

**"(1) The private allocation is a binding allocation of 100 percent of the past,**

**present, and future recoverable costs of the remedial action or operable unit.**

**"(2) The private allocation does not allocate any share of response costs to any person who is not a signatory to the proposed private allocation or, in the case of any orphan share, unless the United States is a signatory to the proposed private allocation.**

**"(3) The signatories to the proposed private allocation waive their contribution rights with respect to the remedial action against all other potentially responsible parties at the facility.**

**"(h) ALLOCATION DETERMINATION.—**

**"(1) SETTLEMENT AND ALLOCATION REPORT.—Following issuance of the final list of allocation parties pursuant to subsection (c)(6)(A)(i), the allocator shall initiate and conduct an allocation process that shall culminate in the issuance of a written report, with a nonbinding, equitable allocation of the percentage shares of responsibility of all allocation parties, including the orphan share, for the facil-**

**ity, and provide such report to the allocation parties and the Administrator. The allocator shall provide the report to the allocation parties and the Administrator within 180 days of the issuance of the list of allocation parties pursuant to subsection (c)(6) or the date of the contract for allocation service pursuant to subsection (f), whichever is later. Upon request, for good cause shown, the Administrator may grant the allocator additional time to complete the allocation, not to exceed 90 days.**

**"(2) FACTORS IN THE ALLOCATION.—The allocator shall prepare a nonbinding, equitable allocation of percentage shares for the facility based on the following factors:**

**"(A) The amount of hazardous substances contributed by each allocation party.**

**"(B) The degree of toxicity of hazardous substances contributed by each allocation party.**

**"(C) The mobility of hazardous substances contributed by each allocation party.**

**"(D) The degree of involvement of each allocation party in the generation, transportation, treatment, storage, or disposal of the hazardous substance. For the purpose of carrying out the preceding sentence, the allocator shall assign a lower share to any person where liability or potential liability is based on a party's status as an owner or operator and where the allocation party did not engage in the actual disposal of greater than a de minimis quantity of hazardous substances at a facility.**

**"(E) The degree of care exercised by each allocation party with respect to the hazardous substance, taking into account the characteristics of the hazardous substance.**

**"(F) The cooperation of each allocation party in contributing to the response action and in providing com-**

**plete and timely information during the allocation process.**

**"(G) Such other factors that the Administrator determines are appropriate by published guidance. Any such guidance shall be consistent with this Act and shall be published only after notice and opportunity for public comment. An alleged failure of the allocator to consider 1 or more additional factors set forth in such guidance shall not be deemed unlawful conduct or procedural error for purposes of subsection (l) (2) or (3).**

**"(3) CONDUCT OF ALLOCATION PROCESS.—The allocator shall conduct the allocation process and render a decision based solely on the provisions of this section, including the allocation factors specified in paragraph (2). Each party to the allocation shall be afforded an opportunity to be heard (either orally or in writing, at the allocator's discretion), and an opportunity to comment on a draft al-**

**location report. The allocator shall not be required to respond to comments.**

**"(4) IDENTIFICATION OF ORPHAN SHARES.—**

**"(A) COMPONENTS OF ORPHAN SHARE.—The allocator may determine that a percentage share for the facility is specifically attributable to an orphan share. The orphan share shall consist only of the following:**

**"(i) Shares attributable to hazardous substances that the allocator determines, on the basis of information presented, to be specifically attributable to identified but insolvent or defunct allocation parties who are not affiliated with any viable allocation party.**

**"(ii) The difference between the aggregate shares that the allocator determines, on the basis of the information presented, is specifically attributable to allocation parties that are contributors of**

**municipal solid waste subject to the limitations in section 107(a)(6), and the share actually assumed by those parties in any settlements with the United States pursuant to section 122(g), including the fair market value of in-kind services provided by a municipality.**

**"(iii) The difference between the aggregate share that the allocator determines, on the basis of information presented, to be specifically attributable to allocation parties with a limited ability to pay response costs and the share actually assumed by those parties in any settlements with the United States pursuant to section 122(g).**

**"(iv) Shares that the allocator determines, on the basis of the information presented, are specifically attributable to parties that, solely due to the operation of sub-**

**section (d)(3), have no liability under this Act for the costs of response actions at the facility for which the allocation is being performed.**

**"(B) UNATTRIBUTABLE SHARES.—Shares attributable to hazardous substances that the allocator cannot attribute to any identified party shall be distributed among the allocation parties, including the orphan share.**

**"(i) ANSWERS AND CERTIFICATIONS TO ALLOCATOR'S INFORMATION REQUESTS.—**

**"(1) SUBPOENAS AND INFORMATION REQUESTS.—Where necessary to assist in determining the allocation of shares, the allocator may request information or documents from any allocation party in accordance with paragraphs (2) or (5) of section 104(e), and require by subpoena the attendance of persons or the production of documents, or other information in accordance with section 104(e)(7). Any allocation party to whom a request is directed shall include in the response a cer-**

**tification by a responsible representative or authorized representative that satisfies the requirement of section 104(e)(3). The allocator may also request the Administrator to utilize the authorities of paragraph (2) and to exercise any information-gathering authority of the Administrator under this Act.**

**"(2) POWERS OF THE ALLOCATOR.—In addition to the information-gathering authority set forth in paragraph (1), the allocator shall have the authority to schedule meetings and require the attendance of allocation parties at such meetings; to require that allocation parties wishing to present similar legal or factual positions consolidate their presentations; to obtain or employ support services, including secretarial and clerical services, computer support services, and legal and investigative services; and to take any other actions necessary to conduct a fair, efficient, and impartial allocation process.**

**"(j) CIVIL AND CRIMINAL PENALTIES.—**

**"(1) CIVIL PENALTIES.—Where the allocator issues an administrative subpoena or information request pursuant to subsection (i), a party who unreasonably fails to comply with the subpoena or request shall be subject to a civil penalty not to exceed $25,000 for each day of noncompliance.**

**"(2) ENFORCEMENT.—The allocator may seek enforcement of an administrative subpoena or information request pursuant to subsection (i)(1), and shall seek such enforcement by requesting that the Attorney General commence an action to enforce the subpoena or request. The Attorney General, within 30 days after receiving such request from the allocator, shall—**

**"(A) notify the allocator that the Attorney General will commence an action to enforce the subpoena or information request;**

**"(B) notify the allocator that the Attorney General will not seek enforcement of the subpoena or request**

because the subpoena or request is barred by law or would result in annoyance, embarrassment, oppression, or undue burden or expense to the party to whom it was issued; or

"(C) notify the allocator that the Attorney General has insufficient information on which to determine whether an enforcement action is appropriate.

"(3) FAILURE OF ATTORNEY GENERAL TO RESPOND.—If the Attorney General fails to provide any response to the allocator within 30 days of a request for enforcement of a subpoena or information request, the allocator may retain counsel to commence a civil action to enforce the subpoena or information request.

"(4) PENALTY.—If the Attorney General or allocator prevails in an action to enforce an allocator's subpoena or information request, the party who failed to comply shall be subject to a sanction that may include civil penalties as provided in paragraph (1). The court shall require

**such party to pay the reasonable expenses, including attorney's fees, caused by the failure to comply, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.**

**"(5) CRIMINAL.—Any person who knowingly makes any false material statement or representation in the response to an allocator's information request or subpoena issued pursuant to subsection (i) shall be deemed to have made a false statement on a matter within the jurisdiction of the United States within the meaning of section 1001 of title 18, United States Code.**

**"(k) DOCUMENT REPOSITORY; CONFIDENTIALITY.—**

**"(1) DOCUMENT REPOSITORY.—The allocator shall establish and maintain a document repository containing copies of all documents and information—**

**"(A) provided by the Administrator pursuant to this section,**

**"(B) provided or generated by the allocation parties, or**

**"(C) generated by the allocator during the allocation.**

**The documents and information in the document repository shall be available only to the parties to the allocation process for review and copying at their own expense, subject to the confidentiality provisions of paragraph (2). The Administrator shall provide to the allocator all information obtained under section 104(e), including information entitled to protection under section 1905 of title 18, United States Code, or exempt from disclosure pursuant to section 552(a) of title 5, United States Code. An allocation party shall not assert any privilege as a basis for withholding any information from the allocator.**

**"(2) CONFIDENTIALITY.—All documents and materials submitted to the allocator or placed in the document repository, together with the record of any information generated or obtained during the al-**

**location process, shall be confidential. The allocator, each allocation party, the Administrator, and the Attorney General shall maintain such documents and materials, together with the record of any information generated or obtained during the allocation, as confidential and are prohibited from using any such material in any other matter or proceeding, and shall not be subject to disclosure under section 552 of title 5, United States Code. Such material shall not be discoverable or admissible in any other Federal, State, or local judicial or administrative proceedings, except—**

**"(A) a new allocation pursuant to subsection (m) or (n) for the same remedial action, or**

**"(B) an initial allocation for a different remedial action at the same facility.**

**Nothing in this section shall be construed to authorize any person, including the allocator, to withhold any documents or information from Congress, or any duly au-**

**thorized Committee thereof, or limit in any manner the right of Congress, or any duly authorized Committee thereof, to obtain such documents or information. Any person disclosing such documents or information to Congress shall notify the person who produced such documents or information of the fact of such disclosure pursuant to paragraph (5).**

**"(3) DISCOVERABILITY AND ADMISSIBILITY.—Notwithstanding the foregoing, if the original of any document or material submitted to the allocator or placed in the document repository was, in the hands of the party which provided it, otherwise discoverable or admissible, then such original document, if subsequently sought from such party, shall remain so. If a fact generated or obtained during the allocation was, in the hands of a witness, otherwise discoverable or admissible, then such fact, if subsequently sought from such other party, shall remain so.**

**"(4) NO WAIVER OF PRIVILEGE.—The submission of, documents, or information**

**pursuant to the allocation process shall not be deemed to be a waiver of any privilege, applicable to such documents or information under any Federal or State law or rule of discovery or evidence.**

**"(5) PROCEDURE WHEN DISCOVERY IS SOUGHT.—Any person, including the United States and any Federal, State, or local agency, department or instrumentality, receiving any request for a statement, document, or material submitted, or for the record of any allocation proceeding, shall promptly notify the person who originally submitted such item and, except in the case of a request from the Congress or a duly authorized committee thereof, shall provide such submitting person the opportunity to assert and defend the confidentiality of such item. No person shall release or provide a copy of the item to any person not a party to such allocation, other than the Congress or a duly authorized committee thereof,**

**except as may be required by court order.**

**"(6) CIVIL PENALTY FOR VIOLATION OF CONFIDENTIALITY.—Any person who fails to maintain the confidentiality of any statements, documents or information generated or obtained during an allocation proceeding, or who releases any such information in violation of this section shall be subject to civil penalties of up to $25,000 per violation. Such penalties may be sought in a civil action initiated by the Attorney General on behalf of the United States, or any allocation party adversely affected by the failure to maintain confidentiality.**

**"(l) REJECTION OF ALLOCATOR'S REPORT.—The Administrator and the Attorney General of the United States may reject the allocator's report if they jointly determine that—**

**"(1) no rational interpretation of the facts before the allocator, in light of the factors required to be considered, would form a reasonable basis for the shares assigned to the parties;**

**"(2) the allocation was affected by bias, fraud, or unlawful conduct; or**

**"(3) the allocation was substantially and directly affected by procedural error. The allocator's report may not be rejected after the United States has accepted a settlement offer (excluding de minimis or other expedited settlements under section 122(g)) based on the allocation. The Administrator and the Attorney General shall make any such determination within 180 days after the receipt of the first offer based on the allocator's report. The determinations of the Administrator and the Attorney General under this subsection shall not be judicially reviewable. No such determination may be delegated to any officer or employee of the Environmental Protection Agency or the Department of Justice below the level of an Assistant Secretary or Acting Assistant Secretary with authority for implementing this Act at the Environmental Protection Agency or the Department of Justice.**

**"(m) SECOND ALLOCATION.—If the United States rejects an allocator's report, the parties**

**shall select a new allocator pursuant to subsection (e) to perform, on an expedited basis, a new allocation based on the same record available to the first allocator. The moratorium on commencement of litigation and tolling of statutes of limitation set forth in subsection (b) shall be extended until 90 days after the issuance of the second allocation report. If the United States rejects the second allocation the President may, following the expiration of the moratorium on commencement of litigation, commence an action under section 107.**

**"(n) NEW INFORMATION.—Any settling party, including the United States, may seek a new allocation pursuant to subsection (h), where that party presents clear and convincing information or the United States otherwise determines on the basis of clear and convincing information that—**

**"(1) the allocator did not have information concerning 35 percent or more of the materials containing hazardous substances at the facility, and that this information has been discovered subsequent**

**to the issuance of the allocator's report; or**

**"(2) the allocator did not have information concerning a person not subject to the allocation who contributed 15 percent or more of materials containing hazardous substances at the facility, and that this information has been discovered subsequent to the issuance of the allocator's report.**

**Determinations by the United States pursuant to this subsection shall not be subject to judicial review.**

**"(o) SETTLEMENT FOLLOWING ALLOCATION.—**

**"(1) ACCEPTANCE OF OFFERS.—If, within 90 days after issuance of the allocator's report for an allocation conducted under subsection (a)(1), an allocation party—**

**"(A) makes a written offer to settle with respect to the response action based on the percentage share specified by the allocator and on the additional terms and conditions of settlement (other than the allocated**

**percentage share) that are acceptable to the President, and**

**"(B) is not in default on any information requests under this Act,**

**then the President shall not seek a higher percentage share other than the premia authorized by this section, unless the President has rejected the offer on a basis other than the percentage share, or unless the Administrator and the Attorney General have rejected the allocation report pursuant to subsection (l).**

**"(2) EXPLANATION OF REFUSAL TO SETTLE.—If the Administrator and the Attorney General determine not to settle on the basis of the allocation, they shall provide the allocation parties and members of the affected community with a written explanation of the Administrator's determination.**

**"(3) SETTLEMENT PROVISIONS.—Settlements based on allocated shares shall include each of the following:**

**"(A) A waiver of contribution rights against all parties who are po-**

**tentially responsible parties for the response action, as well as a waiver of any rights to challenge any settlement the President enters into with any other potentially responsible party.**

**"(B) Covenants not to sue, consistent with section 122(f), and provisions regarding performance or adequate assurance of performance of response actions addressed in the settlement.**

**"(C) A premium determined on a site specific basis and subject to the limitations set forth in paragraph (4), that compensates for the United States litigation risk with respect to potentially responsible parties who have not resolved their liability to the United States, except that no such premium shall apply if all parties settle or the settlement covers 100 percent of response costs.**

**"(D) Contribution protection, consistent with section 113(f), regarding matters addressed in the settlement.**

**Such settlement does not discharge any of the other potentially responsible parties unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.**

**"(E) Provisions through which the settling parties shall receive reimbursement from the Fund for any response costs incurred by such parties in excess of the aggregate of their allocated share and any premia required by the settlement. Such right to reimbursement shall not be contingent on the United States recovery of response costs from any responsible person not a party to any settlement with the United States.**

**"(4) PREMIUM LIMITATIONS.—The premium authorized by paragraph (3)(C) for litigation risk shall not exceed the following:**

**"(A) Five percent of the total costs assumed by a settling party, where settlements (and any orphan share**

**identified by the allocator) account for 80 percent or more of responsibility at the facility.**

**"(B) Ten percent of the total costs assumed by a settling party, where settlements (and any orphan share identified by the allocator) account for more than 60 percent and less than 80 percent of responsibility at the facility.**

**"(C) Fifteen percent of the total costs assumed by a settling party, where settlements (and any orphan share identified by the allocator) account for more than 40 percent and less than 60 percent of responsibility at the facility.**

**"(D) Twenty percent of the total costs assumed by a settling party, where settlements (and any orphan share identified by the allocator) account for 40 percent or less of responsibility at the facility.**

**The Administrator shall have authority to promulgate regulations to modify the**

premia percentages established in this subsection. The Administrator may not propose a rule before the date 36 months after the enactment of this section, and no such rule may take effect before the date 48 months after the enactment of this section. Such rule must be based upon an administrative record establishing that such modification is necessary to reflect actual experience regarding the litigation risk faced by the United States in proceeding against nonsettling parties under this section.

"(5) AUTHORIZATION OF REIMBURSEMENT.—In any settlement in which a party agrees to perform response work in excess of its share, the Administrator shall have authority to carry out his duty to reimburse settling parties under this section pursuant to such reasonable procedures as the Administrator may prescribe.

"(6) REIMBURSEMENT CLAIMS.—The Administrator shall require all claims for reimbursement to be supported by—

**"(A) documentation of actual costs incurred; and**

**"(B) sufficient information to enable the Administrator to determine whether such costs were reasonable.**

**"(7) SETTLEMENTS WITH SMALL BUSINESS PARTIES.—In connection with any small business allocation party that makes a written offer to settlement pursuant to paragraph (1), and that the President determines has a limited ability or inability to pay its allocated share, the President shall apply the provisions of section 122(g)(1)(D)(ii).**

**"(8) INDEPENDENT AUDITING.—The Administrator may require independent auditing of any claim for reimbursement.**

**"(p) POST-ALLOCATION LITIGATION.—**

**"(1) IN GENERAL.—The United States may commence an action under section 107 against any person liable under that section who has not resolved its liability to the United States following allocation, on or after 90 days following issuance of the allocator's report. In any such action,**

**such person shall be liable in accordance with section 107 for all response costs not recovered through settlements with other persons. Such recoverable costs shall include any federally funded orphan share identified in accordance with subsection (h), but shall not include any shares allocated to Federal, State, or local governmental agencies, departments, or instrumentalities. Defendants in any such action may implead only allocation parties who did not resolve their liability to the United States. The Administrator and the Attorney General shall issue guidelines to ensure that the relief sought against de minimis parties under principles of joint and several liability will not be grossly disproportionate to their contribution to the facility. The application of such guidelines is committed to the discretion of the Administrator and the Attorney General.**

**"(2) CERTIFICATION.—In commencing any action under section 107 following allocation, the Attorney General must cer-**

**tify, in the complaint, that the United States has been unable to reach a settlement that would be in the best interests of the United States. This certification shall not be subject to judicial review.**

**"(3) DEFENDANTS.—No person may commence an action under section 107 or otherwise seek contribution against any person who was not identified as an allocation party pursuant to subsection (c) or subsequently identified as a potentially liable party under subsection (n) (relating to new information).**

**"(4) ADMISSIBILITY OF ALLOCATOR'S REPORT.—The allocator's report shall not be admissible in any court for any purpose, except as set forth in this section. The allocator's report, subject to the rules and discretion of the court, may be admissible solely for the purpose of assisting the court in making an equitable allocation of response costs among the relative shares of nonsettling liable parties.**

**"(5) COSTS OF ALLOCATION PROCEDURE ON ORPHAN SHARE.—**

**"(A) INCLUDED AS COSTS OF RESPONSE.—The costs of implementing the allocation procedure set forth in this section, including reasonable fees and expenses of the allocator, shall be considered necessary costs of response for purposes of this Act.**

**"(B) ORPHAN SHARE.—The costs attributable to any funding of orphan shares identified by the allocator pursuant to subsection (e)(4) also shall be considered necessary costs of response for purposes of this Act, and shall be recoverable from liable parties who do not resolve their liability on the basis of the allocation.**

**"(6) REJECTION OF SHARE DETERMINATION.—In any action by the United States under this title, if the United States has rejected an offer of settlement that is consistent with subsection (o) and that was presented to the United States prior to the expiration of the moratorium period set forth in subsection (b), the offeror shall be entitled to recover from**

**the United States the offeror's reasonable costs of defending the action after the making of the offer (including reasonable attorneys' fees) if the ultimate resolution of liability or allocation of costs with respect to the offeror (taking into account all settlements and reimbursements with respect to the facility other than those attributable to insurance or indemnification), is as, or more, favorable to the offeror than the offer based on the allocation.**

**"(q) REIMBURSEMENT FOR UAO PERFORMANCE.—**

**"(1) REIMBURSEMENT.—Parties who satisfactorily perform work under an administrative order issued under section 106(a) with respect to a remedial action for which an allocation is required by subsection (a)(1), shall be entitled to reimbursement for the reasonable and necessary costs of work they perform in excess of the share assigned to them in the allocation in accordance with the provisions of this section, provided that the al-**

**location report is not rejected by the United States and, that, at the end of the moratorium following the allocation, the performing party, in consideration of such reimbursement—**

**"(A) agrees not to contest liability for all response costs not inconsistent with the National Contingency Plan to the extent of the allocated share;**

**"(B) receives no covenant not to sue;**

**"(C) agrees that its reimbursement shall be reduced by an amount equal to the maximum litigation risk premium provided for in subsection (o)(4) based on the total allocated shares of the allocation parties who have not reached settlements with the United States by the end of the moratorium on commencement of actions provided in subsection (b); and**

**"(D) waives contribution rights against all parties who are potentially responsible parties for the response action, as well as waives any**

**rights to challenge any settlement the President enters into with any other potentially responsible party.**

**"(2) OFFSET.—Any and all reimbursement provided to a performing party for work in excess of its share is subject to equitable offset or reduction by the Administrator upon a finding of a failure to perform any aspect of the remedy in a proper and timely manner.**

**"(3) TIME OF PAYMENT.—Any and all reimbursement to a performing party for work in excess of its share shall be paid after work is completed, but no sooner than completion of the construction of the remedial action.**

**"(4) LIMIT ON ORPHAN SHARE FUNDING.—The amount of orphan share funding available to the performing party shall be further limited as follows:**

**"(A) Performing parties who fully waive their right to challenge remedy selection at the end of the moratorium following allocation shall be entitled to full reimbursement of costs**

in excess of the party's share and attributable by the allocator to the orphan share paid in nominal dollars after the work is completed, but no sooner than completion of the construction of the remedial action.

"(B) Performing parties who retain their right to challenge the remedy shall be reimbursed for 90 percent of orphan share funding, paid in nominal dollars after the work is completed, but no sooner than completion of the construction of the remedial action, unless the orphan share is less than 20 percent of responsibility at the site, in which case such parties shall be reimbursed only 80 percent of the orphan share.

For purposes of this subsection 'nominal dollars' means actual dollars spent by the performing party, without increase for interest or inflation.

"(5) NONORPHAN SHARE REIMBURSEMENT.—Reimbursement for work in excess of the performing party's allocated

**share but that is not attributable to the orphan share shall be paid in nominal dollars after work is completed, but no sooner than completion of the construction of the remedial action, provided that the performing party is entitled to all interest (prejudgment and post judgment, whether recovered from a party or earned in a site account) that has accrued on money recovered by the United States from other parties for such work at the time construction of the remedy is completed.**

**"(6) REIMBURSEMENT CLAIMS.—The Administrator shall require that all claims for reimbursement be supported by—**

**"(A) documentation of actual costs incurred; and**

**"(B) sufficient information to enable the Administrator to determine whether such costs were reasonable.**

**"(7) INDEPENDENT AUDITING.—The Administrator may require independent auditing of any claim for reimbursement.**

**"(r) CAPPED APPROPRIATED ENTITLEMENT.—(1) The United States shall pay, subject to the numerical limitation in paragraph (2), in the fiscal year 1996, and in each fiscal year thereafter, reimbursements to eligible parties for costs incurred and equitably attributable to orphan shares in accordance with subsection (h)(4)(A).**

**"(2) There are authorized to be appropriated to the President from the Fund not to exceed $300,000,000 for the fiscal year 1996, and for each fiscal year thereafter for the payments required by paragraph (1), to remain available until expended.**

**"(s) PROCEDURES.—The Administrator, after consultation with the Attorney General, may promulgate rules (or guidance) of Agency organization, procedure, and practices but shall not have additional authority, except as specifically set forth in this section, to promulgate rules or publish guidance to restrict the allocator's discretion in the conduct of the allocation.**

**"(t) ROLE OF FEDERAL AGENCIES.—Federal departments, agencies, or instrumentalities**

**that are identified as potentially responsible parties shall be subject to, and be entitled to the benefits of, the allocation process provided by this section to the same extent as any other party.**

**"(u) REPRESENTATION OF THE UNITED STATES AND AFFECTED STATES.—The Administrator and the Attorney General, and a representative of any State that may be responsible for a portion of the orphan share, shall be entitled to review all documents and participate in any phase of the allocation proceeding.**

**"(v) ANNUAL REPORT.—The President shall report annually to Congress on the administration of the allocation scheme under this section, and provide information comparing allocation results with actual settlements at multiparty facilities.**

**"(w) SAVINGS PROVISIONS.—(1) Nothing in this section shall in any way limit or affect the President's authority to exercise the powers conferred by section 103, 104, 105, 106, or 122 of this title, or to commence an action against a party where there is a contemporaneous fil-**

**ing of a judicial consent decree resolving that party's liability; or to file a proof of claim or take other action in a proceeding under title 11 of the United States Code.**

**"(2) The procedures established in this section shall not be construed to modify or affect in any way the principles of retroactive, strict, joint and several liability under this title.**

**"(3) Nothing in this section shall limit or affect—**

**"(A) the Administrator's obligation to perform an allocation for facilities that have been the subject of partial or expedited settlements;**

**"(B) the ability of a potentially responsible party at a facility to resolve its liability to the United States or other parties at any time before initiation or completion of the allocation process;**

**"(C) the validity, enforceability, finality, or merits of any judicial or administrative order, judgment, or decree that is issued, signed, lodged, or entered with respect to liability under this Act or that**

**authorizes modification of any such order, judgment or decree; or**

**"(D) the validity, enforceability, finality or merits of any preexisting contract or agreement relating to any allocation of responsibility or any sharing of response costs under this Act.**

**"(x) RESPONSE ACTION CONTRACTOR.—Notwithstanding any other provision of this section, any liability of a response action contractor under this Act shall be determined in accordance with section 119, to the extent such liability arises from a person's activities as a response action contractor.".**

**SEC. 414. RECYCLING TRANSACTIONS.**

**(a) PURPOSES.—The purposes of this section are—**

**(1) to promote the reuse and recycling of scrap material in furtherance of the goals of waste minimization and natural resource conservation while protecting human health and the environment;**

**(2) to level the playing field between the use of virgin materials and recycled materials; and**

**(3) to remove the disincentives and impediments to recycling because of potential liability.**

**(b) CLARIFICATION OF LIABILITY UNDER CERCLA FOR RECYCLING TRANSACTIONS.—Title I is amended by adding after section 128 the following new section:**

**"SEC. 129. RECYCLING TRANSACTIONS.**

**"(a) LIABILITY CLARIFICATION.—As provided in subsections (b), (c), (d) and (e), a person who arranged for the recycling of recyclable material shall not be liable under section 107(a)(3) or 107(a)(4).**

**"(b) RECYCLABLE MATERIAL DEFINED.—For purposes of this section, the term 'recyclable material' means scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber (other than whole tires), scrap metal, or spent lead-acid, spent nickel-cadmium and other spent batteries, as well as minor amounts of material incident to or adhering to the scrap material as a result of its normal and customary use prior to becoming scrap.**

**"(c) TRANSACTIONS INVOLVING SCRAP PAPER, PLASTIC, GLASS, TEXTILES, OR RUBBER.—**

**Transactions involving scrap paper, scrap plastic, scrap glass, scrap textiles, or scrap rubber (other than whole tires) shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that all of the following criteria were met at the time of the transaction:**

**"(1) The recyclable material met a commercial specification grade.**

**"(2) A market existed for the recyclable material.**

**"(3) A substantial portion of the recyclable material was made available for use as a feedstock for the manufacture of a new saleable product.**

**"(4) The recyclable material could have been a replacement or substitute for a virgin raw material, or the product to be made from the recyclable material could have been a replacement or substitute for a product made, in whole or in part, from a virgin raw material.**

**"(5) For transactions occurring 90 days or more after the date of enactment of this section, the person exercised reasonable care to determine that the facility where the recyclable material would be handled, processed, reclaimed, or otherwise managed by another person (hereinafter in this section referred to as a 'consuming facility') was in compliance with substantive (not procedural or administrative) provisions of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with the recyclable material.**

**"(6) For purposes of this subsection, 'reasonable care' shall be determined using criteria that include (but are not limited to) (A) the price paid in the recycling transaction; (B) the ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation, or**

**other management activities associated with the recyclable material; and (C) the result of inquiries made to the appropriate Federal, State, or local environmental agency (or agencies) regarding the consuming facility's past and current compliance with substantive (not procedural or administrative) provisions of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with the recyclable material. For the purposes of this paragraph, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activity associated with the recyclable materials shall be deemed to be a substantive provision.**

**"(d) TRANSACTIONS INVOLVING SCRAP METAL.—**

**"(1) Transactions involving scrap metal shall be deemed to be arranging for**

**recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that at the time of the transaction—**

**"(A) the person met the criteria set forth in subsection (c) with respect to the scrap metal;**

**"(B) the person was in compliance with any applicable regulations or standards regarding the storage, transport, management, or other activities associated with the recycling of scrap metal that the Administrator promulgates under the Solid Waste Disposal Act subsequent to the enactment of this section and with regard to transactions occurring after the effective date of such regulations or standards; and**

**"(C) the person did not melt the scrap metal prior to the transaction.**

**"(2) For purposes of paragraph (1)(C), melting of scrap metal does not include the thermal separation of 2 or more materials due to differences in their melting points (referred to as 'sweating').**

**"(3) For the purposes of this subsection, the term 'scrap metal' means bits and pieces of metal parts (e.g. bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g. radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled, except for scrap metals that the Administrator excludes from this definition by regulation and steel shipping containers of a capacity from 30 liters to and including 3,000 liters, whether intact or not, having any hazardous substance (but not metal bits or pieces) contained in or adhering thereto.**

**"(e) TRANSACTIONS INVOLVING BATTERIES.—(1) Transactions involving spent lead-acid batteries, spent nickel-cadmium batteries or other spent batteries shall be deemed to be ar-**

**ranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that at the time of the transaction—**

**"(A) the person met the criteria set forth in subsection (c) with respect to the spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries but did not recover the valuable components of such batteries; and**

**"(B)(i) with respect to transactions involving lead-acid batteries, the person was in compliance with applicable Federal environmental regulations or standards, and any amendments thereto, regarding the storage, transport, management, or other activities associated with the recycling of spent lead-acid batteries;**

**"(ii) with respect to transactions involving nickel-cadmium batteries, Federal environmental regulations or standards are in effect regarding the storage, transport, management, or other activi-**

**ties associated with the recycling of spent nickel-cadmium batteries, and the person was in compliance with applicable regulations or standards or any amendments thereto; or**

**"(iii) with respect to transactions involving other spent batteries, Federal environmental regulations or standards are in effect regarding the storage, transport, management, or other activities associated with the recycling of such batteries, and the person was in compliance with applicable regulations or standards or any amendments thereto.**

**"(2) For purposes of paragraph (1)(A) of this subsection, a person who, by contract, arranges or pays for processing of batteries by an unrelated third person and receives from such third person materials reclaimed from such batteries shall not thereby be deemed to recover the valuable components of such batteries.**

**"(f) EXCLUSIONS.—(1) The exemptions set forth in subsections (c), (d), and (e) shall not apply if—**

**"(A) the person had an objectively reasonable basis to believe at the time of the recycling transaction—**

**"(i) that the recyclable material would not be recycled,**

**"(ii) that the recyclable material would be burned as fuel, or for energy recovery or incineration, or**

**"(iii) for transactions occurring before 90 days after the date of the enactment of this section, that the consuming facility was not in compliance with a substantive (not a procedural or administrative) provision of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, or other management activities associated with the recyclable material; or**

**"(B) the person added hazardous substances to the recyclable material for purposes other than processing for recycling; or**

**"(C) the person failed to exercise reasonable care with respect to the management and handling of the recyclable material.**

**"(2) For purposes of this subsection, an objectively reasonable basis for belief shall be determined using criteria that include (but are not limited to) the size of the person's business, customary industry practices, the price paid in the recycling transaction, and the ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation or other management activities associated with the recyclable material.**

**"(3) For purposes of this subsection, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activities associated with recyclable material shall be deemed to be a substantive provision.**

**"(g) EFFECT ON OTHER LIABILITY.—Nothing in this section shall be deemed to affect the liability of a person under paragraph (1) or (2) of section 107(a).**

**"(h) PCBs.—An exemption under this section does not apply if the recyclable material contained polychlorinated biphenyls in excess of 50 parts per million or any new standard promulgated pursuant to applicable Federal laws.**

**"(i) REGULATIONS.—The Administrator has the authority, under section 115, to promulgate additional regulations concerning this section.**

**"(j) EFFECT ON PENDING OR CONCLUDED ACTIONS.—The exemptions provided in this section shall not affect any concluded judicial or administrative action or any pending judicial action initiated by the United States prior to enactment of this section.**

**"(k) LIABILITY FOR ATTORNEY'S FEES FOR CERTAIN ACTIONS.—Any person who commences an action in contribution against a person who is not liable by operation of this section shall be liable to that person for all reasonable costs of defending that action, including all reasonable attorney's and expert witness fees.**

**"(l) RELATIONSHIP TO LIABILITY UNDER OTHER LAWS.—Nothing in this section shall affect—**

**"(1) liability under any other Federal, State, or local statute or regulation promulgated pursuant to any such statute, including any requirements promulgated by the Administrator under the Solid Waste Disposal Act; or**

**"(2) the ability of the Administrator to promulgate regulations under any other statute, including the Solid Waste Disposal Act.".**

**SEC. 415. RELEASE OF EVIDENCE.**

**(a) TIMELY ACCESS TO INFORMATION FURNISHED UNDER SECTION 104(e).—Section 104(e)(8)(A) (as redesignated by section 401(b)(1) of this Act) is further amended by inserting after "shall be available to the public" the following: "not later than 14 days after the records, reports, or information is obtained".**

**(b) REQUIREMENT TO PROVIDE PRPS EVIDENCE OF LIABILITY.—(1) Subsection (a) of section 106 (42 U.S.C. 9606(a)), as amended by section 402(a) of this Act, is further amended**

**by adding at the end the following: "In any case in which the President issues an order to a person under this subsection, the President shall provide information concerning the evidence that indicates that each element of liability contained in section 107(a) is present.".**

**(2) Section 122(e)(1) (42 U.S.C. 9622(e)(2)) is amended by inserting after subparagraph (C) the following:**

**"(D) For each potentially responsible party, information concerning the evidence that indicates that each element of liability contained in section 107(a) is present.".**

**SEC. 416. CONTIGUOUS PROPERTIES.**

**Section 107(a) (42 U.S.C. 9607(a)) is amended by adding at the end the following new paragraph:**

**"(10) A person who owns or operates real property that is contiguous to or otherwise situated with respect to real property on which there has been a release of a hazardous substance and that is or may be contaminated by the release shall not**

**be considered an owner or operator of a facility under paragraph (1)(A) solely by reason of such contamination if such person establishes by a preponderance of the evidence that—**

**"(A) such person exercised due care with respect to the hazardous substance, in light of all relevant facts and circumstances;**

**"(B) such person took precautions against foreseeable acts or omissions that resulted in the release and the consequences that could foreseeably result from such acts or omissions; and**

**"(C) such person did not cause or contribute to the release.**

**The President may issue assurances of no enforcement action under this Act to such person and may grant such person protection against cost recovery and contribution actions pursuant to section 113(f).".**

# TITLE V—REMEDY SELECTION AND CLEANUP STANDARDS

**SEC. 501. CLEANUP STANDARDS.**

**Section 121(d) (42 U.S.C. 9621(d)) is amended as follows:**

**(1) In paragraph (3), by inserting "or 4010(c) if appropriate" after "3005".**

**(2) By redesignating pargraphs (3) and (4) as paragraphs (9) and (10), respectively.**

**(3) By striking out the subsection heading and designation and all that follows through the end of paragraph (2) and inserting in lieu thereof the following:**

**"(d) ESTABLISHMENT OF PROTECTIVE CONCENTRATION LEVELS.—**

**"(1) NATIONAL GOALS FOR THE PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT.—In order to provide consistent and equivalent protection of human health and the environment to all communities, within 18 months after the enactment of the Superfund Reform Act of 1994, the Administrator shall promulgate national**

**goals to be applied at all facilities subject to remedial action under this Act. National goals for human health shall be expressed as a single, numerical level for chemical carcinogens and a single, numerical level for noncarcinogens, respectively. The national goals shall provide the basis for protective concentration levels unless the achievement of such goals is technically infeasible or unreasonably costly pursuant to subsection (b). In a case in which the President selects a remedy that does not achieve the national goals, the President shall publish an explanation of the basis for that decision. The national goals shall be developed and promulgated in accordance with sections 561 through 570 of title 5, United States Code (commonly referred to as the 'Negotiated Rulemaking Act').**

**"(2) SCOPE AND PURPOSE OF NATIONAL RISK PROTOCOL.—The Administrator shall promulgate a national risk protocol for conducting risk assessments under this Act. The national risk protocol shall be**

**used for risk assessments underlying determinations of the need for remedial action, the establishment of protective concentration levels of chemicals, and the evaluation of remedial alternatives. The goal of the national risk protocol is to promote the use of best available scientific information and promote realistic estimates that neither minimize nor exaggerate the risks or potential risks posed by a facility at which hazardous substances have been disposed of or otherwise come to be located. The national risk protocol shall be developed and promulgated in accordance with sections 561 through 570 of title 5, United States Code, to the extent the Administrator deems appropriate. The national risk protocol shall establish, to the extent appropriate and practicable, the following:**

**"(A) Standardized exposure scenarios defining exposure pathways for a range of unrestricted and restricted land uses.**

**"(B) Standardized formulae or methodologies for—**

**"(i) evaluating the exposure pathways of concern under the standardized exposure scenarios established under subparagraph (A); and**

**"(ii) developing, consistent with the national goals under paragraph (1), chemical concentration levels protective of receptors currently and reasonably anticipated to be exposed via the pathways included in such scenarios for the 100 contaminants most frequently occurring at facilities addressed under this Act for which adequate toxicity information is available.**

**"(C) Methodologies for facility-specific evaluations of ecological risks.**

**"(3) STANDARDIZED FORMULAE OR METHODOLOGIES.—Standardized formulae or methodologies established under sub-**

**paragraphs (A) and (B) of paragraph (2) shall include the following:**

**"(A) National constants for specific characteristics of individual chemicals not expected to vary from facility to facility.**

**"(B) Facility-specific variables for physical characteristics of the facility and other factors. Criteria for identifying such variables shall include the following:**

**"(i) Whether a characteristic or factor can be objectively measured based on actual facility data or reasonably estimated based on credible scientific studies when facility-measured data cannot be reasonably obtained.**

**"(ii) Whether the effects of a characteristic or factor are scientifically well-understood.**

**"(iii) Whether the impact of the characteristic or factor on estimations of risk or protective concentration levels is significant.**

**"(C) Exposure factors related to demographics (including separate exposure factors for sensitive subpopulations to be applied where relevant), activity patterns, and natural constraints. Defaults or ranges of default values shall be established for such factors and used unless verifiable data are presented that the defaults are significantly different from actual facility conditions. In such cases, the values shall be determined on a site-specific basis after consideration of any views expressed by the Community Working Group, if available, and the affected community.**

**"(4) APPLICATION OF NATIONAL RISK PROTOCOL.—(A) The President shall conduct an analysis at each facility to determine which exposure scenarios, pathways, and contaminants are relevant to that facility. Where standardized formulae or methodologies for addressing such relevant scenarios, pathways, and**

**contaminants are available, they shall be used.**

**"(B) Standardized formulae or methodologies for exposure pathways that do not exist or are not reasonably anticipated to exist in the future at a facility shall not be applied in establishing protective concentration levels for the facility.**

**"(C) Where standardized formulae or methodologies for particular exposure scenarios, exposure pathways, or chemicals are unavailable, facility-specific risk assessment shall be used.**

**"(5) CONSIDERATIONS IN ESTABLISHING THE NATIONAL RISK PROTOCOL.—(A) In developing the national risk protocol under paragraph (2), the Administrator shall evaluate and, to the degree appropriate and practicable—**

**"(i) identify appropriate sources of toxicity information;**

**"(ii) define the use of probabilistic modeling;**

**"(iii) identify criteria for the selection and application of transport and fate models;**

**"(iv) define the use of high end and central tendency exposure cases and assumptions;**

**"(v) define the use of population risk estimates in addition to individual risk estimates;**

**"(vi) define appropriate approaches for addressing cumulative risks posed by multiple contaminants or multiple exposure pathways; and**

**"(vii) establish appropriate sampling approaches and data quality requirements.**

**"(B) The national risk protocol shall establish guidelines for all risk assessments conducted under paragraph (2), including those by which protective concentration levels are established, which result in final protection at the 90th exposure percentile of the affected population defined by the President.**

**"(6) PHASING AND UPDATING OF THE NATIONAL RISK PROTOCOL.—The national risk protocol shall be developed in accordance with a schedule promulgated by the Administrator within 90 days after the date of enactment of the Superfund Reform Act of 1994. The national risk protocol may be developed and promulgated in phases as determined appropriate by the Administrator. The final protocol shall be promulgated within 18 months after the enactment of such Act. The Administrator also shall determine an appropriate approach and schedule for ensuring that the national risk protocol remains current with emerging science and relevant Agency policy.**

**"(7) FEDERAL AND STATE LAWS.—(A) A remedial action shall be required to—**

**"(i) comply with the substantive requirements of any promulgated standard, requirement, criterion, or limitation under any Federal, or more stringent State, environmental or facility siting law that is applicable to**

**the conduct or operation of the remedial action;**

**"(ii) attain any promulgated protective concentration levels applicable to determining the level of cleanup for remedial actions conducted under any State environmental law where such levels are more stringent than those established under subparagraph (C)(i) or the concentration levels determined to be protective for a given facility in accordance with the requirements of paragraph (2); and**

**"(iii) comply with or attain any other promulgated standard, requirement, criterion, or limitation under any State environmental or facility siting law that the State demonstrates is consistently applied to remedial actions under State law, and that the State determines, through a promulgation process which includes public notice, comment, and written response thereto, and opportunity for**

**judicial review, apply to remedial actions under the Act.**

**"(B) Compliance with any State standard, criterion, requirement, or limitation under subparagraph (A) shall be required at a given facility if it has been identified by the State to the President in a timely manner as applicable at that facility. In addition, each State shall publish a comprehensive list of the promulgated standards, criteria, requirements, or limitations that the State may apply to remedial actions under this Act and revise such list periodically. The State shall also revise such list as requested by the President.**

**"(C)(i) A goal of this Act is to restore any contaminated ground water and surface water that may be used for drinking water to—**

**"(I) the level of any maximum contaminant level or non-zero maximum contaminant level goal for any hazardous substance, pollutant, or contaminant which has been estab-**

**lished under title XIV of the Public Health Service Act (the Safe Drinking Water Act), and**

**"(II) a protective concentration level that attains the goal in paragraph (1) for any other hazardous substance, pollutant, or contaminant.**

**Each total remedy selected under this Act and each protective concentration level established under this subsection shall achieve this goal in the ground water or surface water unless the President makes a finding which is published with an explanation and appropriate documentation that the achievement of the goal is technically impracticable from an engineering perspective or, in the case of ground water that meets the requirements of subsection (b)(4)(C) and has low levels of contamination relative to such goal, compliance with or attainment of such goal is unreasonably costly. Upon making such a finding, the President shall publish the alternative remedial strategy and its goals.**

**"(ii) For the purpose of this section, the phrase 'ground water that may be used for drinking water' shall not include ground waters (I) containing more than 10,000 milligrams per liter total dissolved solids, (II) that are so contaminated by naturally occurring conditions or by the effects of broad-scale human activity unrelated to a specific activity that restoration of drinking water quality is impracticable, or (III) the potential source of drinking water is physically incapable of yielding a quantity of 150 gallons per day of water to a well or spring without adverse environmental consequences.**

**"(iii) Remedial actions for contaminated ground water (other than ground water that may be used for drinking water) shall attain levels appropriate for the current or reasonably anticipated future use of such ground water, or levels appropriate considering the current use of any ground water or surface water to which such contaminated ground water discharges.**

**"(iv) Concentration levels other than those required under clause (i) may be established for ground water that may be used for drinking water in any case in which the following conditions are met:**

**"(I) The President determines that the use of alternate concentration levels is appropriate.**

**"(II) There are known and projected points of entry of such ground water into surface water.**

**"(III) On the basis of measurements or projections, there is or will be no increase of such constituents that would pose a threat to human health or the environment from such ground water in such surface water.**

**"(IV) The remedial action includes enforceable measures that will preclude human exposure to the contaminated ground water within the facility and up to all known and projected points of entry of such ground water into surface water.**

**"(V) Monitoring to ensure attainment of the alternative concentration level is conducted in ground water at a point or points immediately prior to where the ground water enters into surface water. In such cases, the point of human exposure may be assumed to be at such known and projected points of entry.**

**"(v) Not later than 18 months after the date of the enactment of the Superfund Reform Act of 1994, after notice and comment, the President shall publish guidance as to determinations of technical impracticability from an engineering perspective to achieve the goal of this subparagraph, for use in the selection of remedies for contaminated ground water under subsection (b). Such guidance shall identify certain hazardous substances, pollutants, or contaminants and certain geological or hydrological characteristics of facilities with ground water contamination, or combinations thereof, for which restoration in accordance with**

**subclauses (I) and (II) of clause (i) may be from an engineering perspective technically impracticable or technically practicable. Such guidance shall be taken into consideration under subsection (b)(4)(A)(x) and this subparagraph.**

**"(vi) The President shall make findings of technical impracticability from an engineering perspective (including findings under this subparagraph or subparagraph (E) or subsection (b)(4)(A) on the basis of projections, modeling, measures undertaken under subsection (b)(4)(B), or other analysis on a site specific basis (including the consideration of information presented by responsible parties at such facility) without a requirement that the remedial measure for which a finding of technical impracticability is under consideration be first constructed or installed and operated and its performance over time reviewed, unless such projection, modeling, measure, or other analysis are insufficient or inadequate to make such a finding.**

**"(D) Procedural requirements of Federal and State standards, requirements, criteria, or limitations, including permitting requirements, shall not apply to response actions conducted on-site. Compliance with subparagraph (A) shall not be required with respect to return, replacement, or disposal of contaminated media or residuals of contaminated media into the same medium in or very near existing areas of contamination on-site.**

**"(E)(i) The President may select a remedial action meeting the requirements of paragraph (1) that does not comply with or attain a Federal or State standard, requirement, criterion, or limitation as required by subparagraphs (A) and (C), if the President finds any of the following:**

**"(I) The remedial action selected is only part of a total remedial action that will comply with or attain the applicable requirements of subparagraphs (A) and (C) of this paragraph when completed.**

**"(II) Compliance with or attainment of such requirement at that facility will result in greater risk to human health and the environment than alternative options.**

**"(III) Compliance with or attainment of such requirement is technically impracticable from an engineering perspective.**

**"(IV) The remedial action selected will attain a standard of performance that is equivalent to that required under a standard, requirement, criterion, or limitation identified under subparagraph (A) through use of another approach.**

**"(V) With respect to a State standard, requirement, criterion, or limitation under clauses (i), (ii), and (iii) of subparagraph (A), the State has not consistently applied (or demonstrated the intention to consistently apply) the standard, requirement, criterion, or limitation in similar circumstances**

**at other remedial actions within the State.**

**"(VI) In the case of a remedial action to be undertaken solely under section 104 using the Fund, a selection of a remedial action that complies with or attains standards, criteria, requirements, or limitations will not provide a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund to respond to other facilities that present or may present a threat to public health or welfare or the environment, taking into consideration the relative immediacy of such threat.**

**"(ii) The President shall publish any findings made under clause (i), together with an explanation and appropriate documentation.**

**"(8)(A) Except as provided in subparagraph (B), a State standard, requirement, cri-**

**teria, or limitation (including any State siting standard or requirement) which could effectively result in the statewide prohibition of land disposal of hazardous substances, pollutants, or contaminants shall not apply.**

**"(B) Any State standard, requirement, criteria, or limitation referred to in subparagraph (A) shall apply where each of the following conditions is met:**

**"(i) The State standard, requirement, criteria, or limitation is of general applicability and was adopted by formal means.**

**"(ii) The State standard, requirement, criteria, or limitation was adopted on the basis of hydrologic, geologic, or other relevant considerations and was not adopted for the purpose of precluding onsite remedial actions or other land disposal for reasons unrelated to protection of human health and the environment.**

**"(iii) The State arranges for, and assures payment of the incremental costs of utilizing, a facility for disposition of**

**the hazardous substances, pollutants, or contaminants concerned.".**

**SEC. 502. REMEDY SELECTION.**

**Section 121(b) (42 U.S.C. 9621(b)) is amended to read as follows:**

**"(b) GENERAL RULES. —**

**"(1) SELECTION OF PROTECTIVE REMEDIES.—Remedies selected at individual facilities shall be protective of human health and the environment and provide long-term reliability at reasonable cost. A remedial action may achieve protection of human health and the environment through treatment that reduces the toxicity, mobility, or volume of hazardous substances, pollutants, or contaminants; containment or other engineering controls to limit exposure; a combination of treatment and containment; or other methods of protection. The method or methods of remediation appropriate for a given facility shall be determined through the evaluation of remedial alternatives and the selection process under paragraphs (2) and (3). When determining**

**the appropriate remedial method, treatment is to be preferred for hot spots as defined under paragraph (3)(B). This preference shall not apply to materials that do not constitute hot spots.**

**"(2) LAND USE.—(A) In selecting a remedy, the President shall take into account the reasonably anticipated future uses of land at a facility as required by this Act. In identifying reasonably anticipated future land uses the President shall consider factors, which generally shall include the following:**

**"(i) Any consensus recommendation of the Community Working Group and any other views expressed by members of the affected community. The President shall consider the consensus recommendation of a reuse entity which has been established for a Federal facility scheduled for closure or realignment instead of any corresponding consensus recommendation of a Community Working Group if the reuse entity has been**

**in existence for a period of at least 1 year and has a membership that is representative of the community and that is similar to the membership of a Community Working Group.**

**"(ii) The land use history of the facility and surrounding properties, the current land uses of the facility and surrounding properties, recent development patterns in the area where the facility is located, and population projections for that area.**

**"(iii) Federal or State land use designations, including Federal facilities and national parks, State ground water or surface water recharge areas established under a State's comprehensive protection plan for ground water or surface water, and recreational areas.**

**"(iv) The current land use zoning and future land use plans of the local government with land use regulatory authority.**

**"(v) The potential for economic redevelopment.**

**"(vi) The proximity of the contamination to residences, sensitive populations or ecosystems, natural resources, or areas of unique historic or cultural significance.**

**"(vii) Current plans for the facility by the property owner or owners, not including potential voluntary remedial measures.**

**"(B) In developing its recommendation, the Community Working Group shall consider factors (ii) through (vii) of subparagraph (A), and the President shall give substantial weight to that recommendation where consensus is reached, or substantial weight to the views of the affected community where the Community Working Group does not reach consensus in accordance with section 117(g).**

**"(C) All information considered by the President in evaluating reasonably anticipated future land uses under this**

**paragraph shall be included in the administrative record under section 113(k).**

**"(3) APPROPRIATE REMEDIAL ACTION.—(A) The President shall identify and select an appropriate remedy that prevents exposures in excess of protective concentration levels established under subsection (d) by balancing the following factors:**

**"(i) The effectiveness of the remedy.**

**"(ii) The long-term reliability of the remedy, that is, its capability to achieve long-term protection of human health and the environment considering the preference for treatment of hot spots.**

**"(iii) Any short-term risk posed by the implementation of the remedy to the affected community, to those engaged in the cleanup effort, and to the environment.**

**"(iv) The acceptability of the remedy to the affected community.**

**"(v) The reasonableness of the cost of the remedy.**

**"(B) HOT SPOTS.—The following shall apply to the remediation of hot spots:**

**"(i) For purposes of this section, the term 'hot spot' means a discrete area within a facility that contains hazardous substances, pollutants or contaminants that are present in high concentrations, are highly mobile, or cannot be reliably contained, that would present a significant risk to human health or the environment should exposure occur. The President shall develop guidelines for the identification of hot spots. Such guidelines shall recommend appropriate field investigations that will not require extraordinarily complex or costly measures.**

**"(ii) In determining an appropriate remedy for hot spots, the President shall consider the factors under subparagraph (A). With respect to the factor in clause (v), the Presi-**

**dent shall use a higher threshold for evaluating the reasonableness of costs for hot spot treatment relative to the remediation of non-hot spot materials.**

**"(iii) The President shall select a remedy requiring treatment of materials constituting hot spots unless an appropriate treatment technology is unavailable or is available only at unreasonable cost. In such instances, the President shall select an interim containment remedy for such hot spot subject to adequate monitoring and public reporting to ensure its continued integrity and shall review the interim containment remedy in accordance with subsection (c). When the appropriate treatment technology becomes available, as determined by the President, that remedy shall be considered in accordance with this section.**

**"(iv) Notwithstanding the presence of a hot spot, the President may**

**select a final containment remedy for hot spots at landfills and mining sites or similar facilities under the following circumstances:**

**"(I) The hot spot is small relative to the overall volume of waste or contamination being addressed, the hot spot is not readily identifiable and accessible, and without the presence of the hot spot containment would have been selected as the appropriate remedy under subparagraph (A) for the larger body of waste or area of contamination in which the hot spot is located.**

**"(II) The volume and areal extent of the hot spot is extraordinary compared to other facilities, and it is highly unlikely due to the size and other characteristics of the hot spot that any treatment technology will be developed that could be implemented at reasonable cost.**

**Where final containment for a hot spot is selected, the President shall publish an explanation of the basis for that decision.**

**"(4) SELECTION OF RESPONSE ACTIONS FOR GROUND WATER CONTAMINATION.—**

**"(A) FACTORS.—The President shall identify and select an appropriate remedy for contaminated ground water that achieves protection of human health and the environment pursuant to subsection (d)(1) and the goal as determined pursuant to subsection (d)(7)(C) by taking into consideration the following factors:**

**"(i) The effectiveness of the remedy in achieving the goal under subsections (d)(1) and (d)(7)(C).**

**"(ii) The long-term reliability of the remedy, that is, its capability to achieve long-term protection of human health and the environment.**

**"(iii) Any short-term risk posed by the implementation of**

**the remedy to the affected community, to those engaged in the cleanup effort, and to the environment.**

**"(iv) The acceptability of the remedy to the affected community.**

**"(v) The urgency of the need for the ground water.**

**"(vi) The reasonableness of the cost of the remedy.**

**"(vii) The timing of the implementation of any such remedy or potential achievement of such goal in relation to the timing of the use of such ground water.**

**"(viii) The ability of such remedy to prevent human exposure to such contaminated water.**

**"(ix) The ability of such remedy to achieve the goal of restoration.**

**"(x) The technical practicability of the remedy (including any**

**determinations as provided in subsection (d)(7)(C)).**

**"(B) EARLY EVALUATION AND RESPONSE MEASURES.—(i) To facilitate efficient and effective site characterization that promotes early evaluation of remedial alternatives and to prevent the ground water contamination problems from worsening, the President shall ensure, to the extent practicable, that hydrogeologic and contaminant-related information necessary to select final ground water remedial actions, including findings of technical impracticability, shall be collected as part of site characterization activities prior to and including the remedial investigation. Such data shall include information from response actions under clause (ii).**

**"(ii) To facilitate efficient and effective site characterization that promotes early evaluation of remedial alternatives and to prevent the ground water contamination problems from**

**worsening, the President shall, as appropriate, consistent with the factors in subparagraph (A), and to the extent technically practicable from an engineering perspective, implement early response measures to minimize further contaminant migration and reduce the risk of exposure to contaminated ground water. Such measures may include containment of the leading edge of the plume to prevent further contamination of unaffected portions of an aquifer, removal of source material, remediation of highly contaminated ground water, and installation of physical barriers or caps to contain releases from source materials. Such measures shall be monitored to collect detailed information on site characterization and potential remedial alternatives.**

**"(C) MINIMUM REQUIREMENTS.—Subject to subsection (d)(7)(C), any remedy for contaminated ground water that may be used for drinking**

**water selected under this paragraph shall—**

**"(i) prevent or eliminate any actual human exposure through drinking water to any hazardous substance, pollutant or contaminant at levels in excess of the maximum contaminant level or non-zero maximum contaminant level goal established under title XIV of the Public Health Service Act (the Safe Drinking Water Act) including, as appropriate, the provision of an alternate water supply;**

**"(ii) unless technically impracticable from an engineering perspective, prevent impairment of any surface water designated use established under section 303 of the Federal Water Pollution Control Act caused by such hazardous substance, pollutant, or contaminant in any surface water body into which such contami-**

**nated ground water is known or projected to enter;**

**"(iii) assure that concentrated areas of hazardous substances, pollutants, or contaminants in the ground water, including any known source area within such ground water, shall be contained to the extent technically feasible and to the extent technically practicable from an engineering perspective, and consistent with effective containment, such hazardous substance, pollutants, or contaminants shall be treated;**

**"(iv) assure that unless technically impracticable from an engineering perspective the spatial extent of such contamination shall not be allowed to increase beyond that detected or known at the time of the selection of remedial action, except as provided in subsection (d)(7)(C)(iv); and**

**"(v) provide for long-term monitoring of such ground water, as appropriate (including any information needed for the purposes of review under subsection (c)).**

**"(D) PERIODIC REVIEW.—Each remedial action conducted pursuant to subsection (d)(7)(E)(i)(III) shall be reviewed no less often than every 5 years as provided in subsection (c). If the President determines that characteristics at the facility have changed or that remedial alternatives have become available to attain the goal of subsection (d)(7)(C), the President shall select a new remedy in accordance with this section.**

**"(5) GENERIC REMEDIES.—In order to streamline the remedy selection process and to facilitate rapid voluntary action, the President shall establish, taking into account the factors enumerated in paragraph (3)(A), cost-effective generic remedies for categories of facilities, and ex-**

**pedited procedures that include community involvement for selecting generic remedies at an individual facility. To be eligible for selection at a facility, a generic remedy shall be protective of human health and the environment at that facility. In appropriate cases, the President may select a generic remedy without considering alternatives to the generic remedy.**

**"(6) INSTITUTIONAL CONTROLS.—Whenever the President selects a remedial action which relies on restrictions on the use of land, water, or other resources to achieve protection of human health and the environment, the President shall specify the nature of the restrictions required to achieve such protections, including restrictions on the permissible uses of land, prohibitions on specified activities upon the property, restrictions on the drilling of wells or the use of ground water, or restrictions on the use of surface water, and ensure that such restrictions are incorporated into a hazardous**

**substance easement, as provided by section 104(k). In reviewing remedial action alternatives which would require the use of such restrictions and providing opportunity for public comment on those alternatives, the President shall identify the nature of any institutional controls that would be required to implement such restrictions, known or anticipated affected persons, the likely duration of such restrictions, and the anticipated costs for acquiring hazardous substance easements and enforcing the appropriate restrictions.".**

**SEC. 503. MISCELLANEOUS AMENDMENTS TO SECTION 121.**

**(a) REVIEW.—Section 121(c) (42 U.S.C. 9621(c)) is amended—**

**(1) in the first sentence, by striking out "initiation" and inserting in lieu thereof "completion of all physical on-site construction,";**

**(2) in the second sentence, by inserting "(1)" after "it is the judgment of the President that"; and**

**(3) in the second sentence, by inserting after "section 104 or 106," the following: "or (2) an interim containment remedy was selected for such site and an appropriate final remedial action is available under subsection (b)(3)(B)(iii) and appropriate to select in accordance with subsection (b)(3)(A) of this section,".**

**(b) Section 121(e)(1) (42 U.S.C. 9621(e)(1)) is amended by adding at the end thereof the following: "Furthermore, no Federal, State, or local permit or permit application shall be required for on-site or off-site activities conducted under section 311(b).".**

**SEC. 504. RESPONSE AUTHORITIES.**

**(a) STUDIES AND INVESTIGATIONS.—Section 104(b)(1) (42 U.S.C. 9604(b)(1)) is amended in the second sentence by striking "studies" and all that follows through the end of the sentence and inserting in lieu thereof the following: "actions, studies, or investigations as he may deem necessary or appropriate to plan and direct response actions or to enforce the provisions of this Act and shall be entitled to recover the costs thereof.".**

**(b) DISPOSAL AUTHORITY.—Section 104(j) (42 U.S.C. 9604(j)) is amended—**

**(1) in paragraph (1), by striking "remedial" in the first sentence and inserting "response";**

**(2) by striking paragraph (2);**

**(3) by redesignating paragraph (3) as paragraph (2) and in that paragraph by striking "estate" and inserting "property"; and**

**(4) by inserting after paragraph (2) (as redesignated) the following new paragraph:**

**"(3) DISPOSAL AUTHORITY.—The President is authorized to dispose of any interest in real property acquired for use by the Administrator under this subsection by sale, exchange, donation, or otherwise and any such interest in real property shall not be subject to any of the provisions of section 120 except the notice provisions of section 120(h)(1). Any moneys received by the President pursuant to this paragraph shall be deposited in the Fund.".**

**(c) PRIVATE PARTY REMOVAL LIMITATIONS.—Section 104(a)(2) (42 U.S.C. 9604(a)(2)) is amended by adding at the end the following: "In any case in which implementation of a removal action is expected to obviate or in fact does obviate the need to conduct a long-term remedial action, such removal action must—**

**"(A) comply with the protective concentration levels and other standards in subsections (b) and (d) of section 121; and**

**"(B) allow for public participation in accordance with seciton 117 to the maximum extent practicable.".**

**SEC. 505. REMOVAL ACTIONS.**

**(a) OBLIGATIONS FROM FUND.—Section 104(c)(1) (42 U.S.C. 9604(c)(1)) is amended—**

**(1) by striking "consistent with the remedial action to be taken" and inserting "not inconsistent with any remedial action that has been selected or is anticipated at the time of the removal action,";**

**(2) by striking "$2,000,000" and inserting "$4,000,000"; and**

**(3) by striking "12 months" and inserting "two years".**

**(b) NON-EMERGENCY REMOVALS.—Section 120(e) (42 U.S.C. 9620(e)) is amended by adding at the end the following new paragraph:**

**"(7) NOTIFICATION OF AND CONCURRENCE FROM EPA OR STATE FOR NON-EMERGENCY REMOVAL ACTIONS.—(A) Before the commencement of any non-emergency removal action by a department, agency, or instrumentality of the United States, such department, agency, or instrumentality shall—**

**"(i) notify the Environmental Protection Agency and the State of the planned removal action; and**

**"(ii) obtain, in the case of facilities which are listed or proposed for listing on the National Priorities List, concurrence in the planned removal action from the Environmental Protection Agency or the State, as applicable.**

**"(B) The lack of concurrence under clause (ii) shall not delay the commence-**

ment of the remedial investigation and feasibility study in accordance with the time requriements of this section. The requriements of this paragraph relating to notification and concurrence shall not affect, alter, or supplant, directly or indirectly, the applicability of any State law to the removal action concerned. Within a reasonable period of time after any emergency removal action is carried out by a department, agency, or instrumentality of the United States, the department, agency, or instrumentality shall notify the Environmental Protection Agency or the State, as appropriate, of the removal action.".

SEC. 506. HAZARDOUS SUBSTANCE PROPERTY USE.

Section 104 (42 U.S.C. 9604) is amended by adding at the end the following:

"(k) HAZARDOUS SUBSTANCE PROPERTY USE.—

"(1) AUTHORITY OF PRESIDENT TO ACQUIRE EASEMENTS.—In order to prevent exposure to, reduce the likelihood of, or otherwise respond to a release or threat-

**ened release of a hazardous substance, pollutant, or contaminant, the President may acquire, at fair market value for the interest acquired, a hazardous substance easement which restricts, limits, or controls the use of land or other natural resources, including specifying permissible or impermissible uses of land, prohibiting specified activities upon property, prohibiting the drilling of wells or use of ground water, or restricting the use of surface water.**

**"(2) USE OF EASEMENTS.—A hazardous substance easement and notice of a property use restriction under this subsection shall be used wherever institutional controls have been selected as a component of a removal or remedial action in accordance with this Act and the National Contingency Plan. Such easements and notices shall not be used in cases in which institutional controls are not relied upon in a removal or remedial action. Whenever such controls are selected as a component of a removal or remedial**

**action, the President shall ensure that the terms of the controls and the easement are specified in all appropriate decision documents, enforcement orders, and public information regarding the site.**

**"(3) PERSONS SUBJECT TO EASEMENTS.—A hazardous substance easement shall be enforceable in perpetuity (unless terminated and released as provided for in this section) against any owner of the affected property and all persons who subsequently acquire interest in the property or rights to use the property, including lessees, licensees, and any other person with an interest in the property, without respect to privity or lack of privity of estate or contract, lack of benefit running to any other property, assignment of the easement to another party, or any other circumstance which might otherwise affect the enforceability of easements or similar deed restrictions under the laws of the State. The easement shall be binding upon holders of any other interests in**

**the property regardless of whether such interests are recorded or whether they were recorded prior or subsequent to the easement, and shall remain in effect notwithstanding any foreclosure or other assertion of such interests.**

**"(4) CONTENTS OF EASEMENTS.—A hazardous substance easement shall contain, at a minimum—**

**"(A) a legal description of the property affected;**

**"(B) the name or names of any current owner or owners of the property as reflected in public land records;**

**"(C) a description of the release or threatened release; and**

**"(D) a statement as to the nature of the restriction, limitation, or control created by the easement.**

**"(5) USE RESTRICTION NOTICE.—Whenever the President acquires a hazardous substance easement or assigns a hazardous substance easement to another party, the President shall record a notice of**

**property use restriction in the public land records for the jurisdiction in which the affected property is located. Such a notice shall specify restrictions, limitations, or controls on the use of land or other natural resources provided for in the hazardous substance easement. Failure to record such a notice shall not relieve the affected persons from the requirements of the easement.**

**"(6) FILING OF NOTICE.—Wherever recording in the public land records is required under this subsection, the President shall file the notice or other instrument in the appropriate office within the State (or governmental subdivision) in which the affected property is located, as designated by State law. If the State has not by law designated one office for the recording of interests in real property or claims or rights burdening real property, the document or notice shall be filed in the office of the clerk of the United States district court for the district in which the affected property is located.**

"(7) METHODS OF ACQUIRING EASEMENTS.—The President may acquire a hazardous substance easement by purchase or other agreement, by condemnation, or by any other means permitted by law. Compensation for such easement shall be at fair market value for the interest acquired. The costs of obtaining such easements, ensuring adequate public notice of such easements, and otherwise tracking and maintaining the protections afforded by the easements shall be considered response costs which are recoverable under this Act.

"(8) ASSIGNMENT OF EASEMENTS TO PARTIES OTHER THAN THE PRESIDENT.—

"(A) AUTHORITY TO ASSIGN.—The President may assign an easement acquired under this subsection to a State or other governmental entity that has the capability of effectively enforcing the easement over the period of time necessary to achieve the purposes of the easement. In the case of any assignment, the easement shall

**be fully enforceable by the assignee. Any assignment of such an easement by the President may be made by following the same procedures as are used for the transfer of an interest in real property to a State under section 104(j).**

**"(B) EFFECT OF ASSIGNMENT.—Any interest in property granted to a State or other governmental entity which restricts, limits, or controls the use of land or other natural resources in order to prevent exposure to, reduce the likelihood of, or otherwise respond to, a release or threatened release of a hazardous substance, pollutant, or contaminant, and which is expressly designated in writing as a hazardous substance easement within the meaning of this paragraph, shall create the same rights, have the same legal effect, and be enforceable in the same manner as a hazardous substance easement acquired by the President regardless of whether the**

**interest in property is otherwise denominated as an easement, covenant, or any other form of property right.**

**"(9) PUBLIC NOTICE.—Not later than 180 days after the date of the enactment of this subsection, the President shall issue regulations regarding the procedures to be used for public notice of proposed property use restrictions. Such regulations shall ensure that before acquiring a hazardous substance easement, and before recording any notice of such easement, the President will give notice and an opportunity to comment to the owner of the affected property, all other persons with recorded interests in the property, any lessees or other authorized occupants of the property known to the President, the State and any municipalities in which the property is located, any relevant community work group established under section 117, the affected community, and the general public.**

**"(10) TERMINATION OF EASEMENTS.—An easement acquired under this subsection**

**shall remain in force until the holder of the easement executes and records a termination and release in accordance with the terms of the easement and approved by the Administrator of the Environmental Protection Agency or the relevant assignee. Such termination shall be recorded in the same manner as the easement.**

**"(11) ENFORCEMENT.—**

**"(A) EFFECT OF VIOLATIONS.—Violation of any restriction, limitation, or control imposed under a hazardous substance easement shall have the same effect as failure to comply with an order issued under section 106 and relief may be sought in the same manner and to the same extent, including penalties, as for failure to comply with such an order. Such relief may be sought either in enforcement actions under section 106 or in citizens suits under section 310. No citizens suit under section 310 to enforce such a notice may be commenced if the**

**holder of the easement has commenced and is diligently prosecuting an action in court to enforce the easement.**

**"(B) ENFORCEMENT ACTIONS.—The President shall take appropriate enforcement actions to ensure compliance with the terms of the easement whenever the Administrator of the Environmental Protection Agency determines that the terms set forth in the easement are being violated. If the easement has been assigned to a party other than the President and that party has not taken appropriate enforcement actions, the President shall notify the party of the violation. If the party does not take appropriate enforcement actions within 30 days of such notification, or sooner in the case of an imminent hazard, the President shall initiate such enforcement actions.**

**"(12) APPLICABILITY OF OTHER PROVISIONS.—Holding a hazardous substance**

**easement shall not subject either the holder thereof or the owner of the affected property to liability under section 107. Any such easement acquired by the President shall not be subject to the requirements of section 104(j) or 120(h).".**

**SEC. 507. TRANSITION.**

**(a) EFFECTIVE DATE.—This title, and the amendments made by this title, shall become effective 180 days after the date of enactment of this Act. Remedies selected under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 following that effective date shall be selected as provided in section 121(b) of that Act (as amended by this Act) and subject to the Federal and State requirements specified in section 121(d)(7) of that Act (as amended by this Act).**

**(b) CONTINUED EFFECTIVENESS OF REGULATIONS AND GUIDANCE.—Until promulgation of the national goals and the national risk protocol under section 121(d), the President may continue to rely on current regulations and guidance with regard to acceptable risk levels and the conduct of risk assessments.**

**(c) PRIOR RODS.—(1) Nothing in this Act shall place upon the President an obligation to reopen a record of decision signed prior to the effective date of this title.**

**(2) If, pursuant to section 117 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the President determines that a change to a record of decision signed prior to the effective date of this title is necessary, the President may apply the rules in effect at the time the original record of decision was signed.**

# TITLE VI—MISCELLANEOUS

## SEC. 601. INTERAGENCY AGREEMENTS AT MIXED OWNERSHIP AND MIXED RESPONSIBILITY FACILITIES.

**Section 120(e) (42 U.S.C. 9620(e)) is amended—**

**(1) by inserting at the end of paragraph (4) the following new subparagraph:**

**"(D) A provision allowing for the participation of other responsible parties (if any) in the response action."; and**

**(2) by inserting after paragraph (7) the following new paragraphs:**

**"(8) EXCEPTION TO REQUIRED ACTION.—(A) A department, agency, or instrumentality of the United States that owns or operates a facility over which the department, agency, or instrumentality exercised no regulatory or other control over activities that directly or indirectly resulted in a release or threat of a release of a hazardous substance shall be subject to the requirements of paragraphs (1) through (6), other than subparagraphs (F) and (G) of paragraph (5), unless and to the extent the department, agency, or instrumentality demonstrates to the satisfaction of the Administrator that—**

**"(i) no department, agency, or instrumentality was the primary or sole source or cause of a release or threat of release of a hazardous substance at the facility;**

**"(ii) the activities either directly or indirectly resulting in a release or threat of a release of a hazardous**

**substance at the facility were pursuant to a statutory authority and occurred before 1976; and**

**"(iii) the person or persons primarily or solely responsible for such release or threat of release are financially viable and are capable of performing or financing all or a portion of the response action at the facility.**

**"(B) If the conditions listed in clauses (i) through (iii) of subparagraph (A) are not met, the applicable terms of this subsection apply to the department, agency, or instrumentality of the United States at the facility. Upon determination by the Administrator that a department, agency, or instrumentality qualifies for the exception provided by this paragraph, the head of such department, agency, or instrumentality may exercise enforcement authority under section 106. To the extent a person who has been issued an order under the authority of this paragraph seeks reimbursement under the provisions of section 106, the relevant depart-**

**ment, agency, or instrumentality, and not the Fund, shall be the source of any appropriate reimbursement. If the relevant department, agency, or instrumentality has failed to obtain the performance of response actions by responsible parties pursuant to an order or consent decree within 12 months after the facility has been listed on the National Priorities List, the exception provided by this paragraph shall be void and the department, agency, or instrumentality shall, in consultation with the Administrator and appropriate State authorities, commence a remedial investigation and feasibility study for such facility within six months after the expiration of the 12-month period.**

**"(9) An interagency agreement under this section shall in no way impair or diminish the obligation of any department, agency, or instrumentality of the United States to comply with requirements of applicable law, unless such requirements have been specifically—**

"(A) addressed; or

"(B) waived;

without objection from the State prior to or at the time the response action is selected pursuant to section 121.".

SEC. 602. CONTENTS OF CERTAIN DEEDS.

Section 120(h)(3) (42 U.S.C. 9620(h)(3)) is amended in the matter following subparagraph (C) by inserting after "the Administrator" both places it appears the following: "or, in the case of real property that is not part of a facility on the National Priorities List, to the Governor of the affected State".

SEC. 603. TRANSFERS OF UNCONTAMINATED PROPERTY.

Section 120(h)(4)(A) (42 U.S.C. 9620(h)(4)(A)) is amended by striking "stored for one year or more," in the first sentence.

SEC. 604. AGREEMENTS TO TRANSFER BY DEED.

Section 120(h) (42 U.S.C. 9620(h)) is amended by adding after paragraph (5) the following new paragraph:

"(6) AGREEMENTS TO TRANSFER BY DEED.—Nothing in this subsection shall be construed to prohibit the head of the department, agency, or instrumentality of

the United States from entering into an agreement to transfer by deed real property or facilities prior to the entering of such deed.".

SEC. 605. ALTERNATIVE OR INNOVATIVE TREATMENT TECHNOLOGIES.

Section 111(a) is amended by adding after paragraph (6) the following new paragraph:

"(7) ALTERNATIVE OR INNOVATIVE TREATMENT TECHNOLOGIES.—Payment of no more than 50 percent of response costs incurred by a potentially liable party in taking actions approved by the Administrator to achieve required levels of response under this Act after employing an alternative or innovative technology that fails to achieve a level of response required under this Act pursuant to an administrative order or consent decree. The Administrator shall issue guidance on the procedures for the appropriate level of funding for response activities using alternative innovative technologies as defined in section 311(b)(10) that are necessary to achieve a level of

**response required under this Act. The Administrator shall review and update such guidance, as appropriate.".**

**SEC. 606. DEFINITIONS.**

**Section 101 (42 U.S.C. 9601) is amended as follows:**

**(1) Paragraph (10)(H) is amended by striking "subject to" and inserting "in compliance with".**

**(2) Paragraph (14) is amended by adding at the end the following: "The term includes methane, but only when a response action undertaken to address a release or threat of release of a hazardous substance (as otherwise defined in this paragraph) at a landfill or similar site also addresses methane.".**

**(3) Paragraph (20) is amended—**

**(A) in subparagraph (A), by inserting "the United States or" after "similar means to";**

**(B) in subparagraph (D)—**

**(i) in the first sentence by inserting "the United States or" after "does not include";**

**(ii) in the second sentence, by inserting "any department, agency, or instrumentality of the United States or" before "any State"; and**

**(iii) in the second sentence, by striking "a" after "such" and inserting "department, agency, or instrumentality of the United States or"; and**

**(C) by adding after subparagraph (D) the following new subparagraphs:**

**"(E)(i) The term 'owner or operator' includes a trust or estate or a person who holds title to a vessel or facility, or otherwise is affiliated with the vessel or facility solely in a fiduciary capacity. Subject to clauses (ii) and (iii), a fiduciary holding such title or having such affiliation shall be personally subject to the obligations and liabilities of an owner or operator to the same extent as if the vessel or facility were held by the fiduciary free of trust.**

**"(ii) The personal obligations and liabilities of a fidicuary referred to in clause (i) shall be limited to the extent to which the assets of the trust or estate are sufficient to indemnify the fiduciary, unless—**

**"(I) the obligations and liabilities would have arisen even if the person had not served as fiduciary;**

**"(II) the fiduciary's own failure to exercise due care with respect to a vessel or facility caused or contributed to the release of hazardous substances following establishment of the trust, estate, or fiduciary relationship;**

**"(III) the fiduciary had a role in establishing the trust, estate, or fiduciary relationship, and such trust, estate, or fiduciary relationship has no objectively reasonable or substantial purpose apart from the avoidance or limitation of liability under this Act; or**

**"(IV) the fiduciary has not complied with such other requirements as the Administrator may set forth by regulation.**

**"(iii) A fiduciary shall not be personally liable for undertaking or directing another to undertake a response action under section 107(d)(1).**

**"(F) The term 'owner or operator' shall not include the United States or any department, agency, or instrumentality of the United States or a conservator or receiver appointed by a department, agency, or instrumentality of the United States if the United States or the conservator or receiver meets both of the following conditions:**

**"(i) The United States, conservator, or receiver acquired ownership or control of a vessel or facility (or any right or interest therein)—**

**"(I) in connection with the exercise of receivership or conservatorship authority or the liquidation or winding up of the**

**affairs of any entity subject to a receivership or conservatorship, including any subsidiary thereof; and**

**"(II) in connection with the exercise of any seizure or forfeiture authority.**

**"(ii) The United States, conservator, or receiver does not participate in the management of the vessel or facility operations that result in a release or threat of release of hazardous substances and complies with such other requirements as the Administrator may set forth by regulation.".**

**(4) Paragraph (23) (relating to the terms "remove" and "removal") is amended—**

**(A) in the first sentence—**

**(i) by striking "terms" and inserting "term";**

**(ii) by striking "necessary" the first place it appears and inserting "necessarily"; and**

**(iii) by inserting after "environment, such actions" the phrase "or combination of such actions";**

**(B) in the second sentence by striking "term includes" and inserting "terms include"; and**

**(C) by adding at the end the following: "The term 'remove' or 'removal' is not limited to emergency situations and includes actions to address future or potential exposures.".**

**(5) Paragraph (25) (relating to the terms "respond" and "response") is amended—**

**(A) by striking "terms" and inserting "term";**

**(B) by striking the comma after "remedial action;"; and**

**(C) by striking "related thereto" and inserting "(including attorneys' fees and expert witness fees) and oversight activities related thereto when such activities are undertaken by the President".**

**(6) Paragraph (29) (relating to the terms "disposal", "hazardous waste", and "treatment") is amended by inserting before the period the following: ", except that the term 'hazardous substance' shall be substituted for the term 'hazardous waste' in the definitions of 'disposal' and 'treatment'".**

**(7) Paragraph (33) (relating to the term "pollutant or contaminant") is amended by striking "; except that the" and inserting ". The".**

**(8) Paragraph (35) (relating to the term "contractual relationship") is amended—**

**(A) in subparagraph (A)—**

**(i) by striking out clause (iii); and**

**(ii) in the matter preceding clause (i), by striking out "clause (i), (ii), or (iii)" and inserting "clause (i) or (ii)";**

**(B) by amending subparagraph (B) to read as follows:**

**"(B)(i) To establish that the defendant had no reason to know, as provided in clause (i) of subparagraph (A) of this paragraph, the defendant must have undertaken, at the time of the acquisition, all appropriate inquiry into the previous ownership and uses of the facility and its real property in accordance with generally accepted good commercial and customary standards and practices. For the purposes of the preceding sentence and until the Administrator issues or designates standards and practices as provided in clause (ii) of this subparagraph, the court shall take into account any specialized knowledge or experience on the part of the defendant, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate investigation.**

**"(ii) The Administrator may, by regulation, promulgate standards and practices or, by regulation, designate standards and practices promulgated or developed by others, that satisfy the requirements of this subparagraph. In issuing or designating such standards and practices, the Administrator shall consider factors for the inquiry, including the following:**

**"(I) Conduct of the inquiry by an environmental professional.**

**"(II) Inclusion of interviews with past and present owners, operators, and occupants of the facility and its real property for the purpose of gathering information regarding the potential for contamination at the facility and its real property.**

**"(III) Inclusion of a review of historical sources, such as chain of title documents, aerial photographs, building department records, and land use records, to determine previous uses**

**and occupancies of the real property since it was first developed.**

**"(IV) Inclusion of a search for recorded environmental cleanup liens, filed under Federal, State, or local law, against the facility or its real property.**

**"(V) Inclusion of a review of Federal, State, and local government records, such as waste disposal records; underground storage tank records; and hazardous waste handling, generation, treatment, disposal, and spill records, concerning contamination at or near the facility or its real property.**

**"(VI) Inclusion of a visual inspection of the facility and its real property and of adjoining properties.**

**"(VII) Any specialized knowledge or experience on the part of the defendant.**

**"(VIII) The relationship of the purchase price to the value of the property if uncontaminated.**

**"(IX) Commonly known or reasonably ascertainable information about the property.**

**"(X) The obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate investigation**

**"(iii) In the case of property for residential use or other similar use, purchased by a nongovernmental or noncommercial entity, a site inspection and title search that reveal no basis for further investigation satisfy the requirements of this subparagraph."; and**

**(C) By adding the following new subparagraph at the end thereof:**

**"(E) The term 'contractual relationship' shall not include the initial filing by a claimant of an unpatented mining claim or the issuance of a patent for any such claim.".**

**(9) The following new paragraphs are added after paragraph (38):**

**"(39) BONA FIDE PROSPECTIVE PURCHASER.—The term 'bona fide prospective purchaser' means a person who acquires ownership of a facility after the date of enactment of the Superfund Reform Act of 1994, or a tenant of such a person, who can establish each of the following by a preponderance of the evidence:**

**"(A) All active disposal of hazardous substances at the facility occurred before that person acquired the facility.**

**"(B) The person made all appropriate inquiry into the previous ownership and uses of the facility and its real property in accordance with generally accepted good commercial and customary standards and practices. The regulations promulgated by the Administrator pursuant to paragraph (35)(B)(ii) shall satisfy the requirements of this subparagraph. In the case of property for residential or other similar use, purchased by a nongovernmental or noncommercial**

**entity, a site inspection and title search that reveal no basis for further investigation satisfy the requirements of this subparagraph.**

**"(C) The person provided all legally required notices with respect to the discovery or release of any hazardous substances at the facility.**

**"(D) The person exercised appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to stop ongoing releases, prevent threatened future releases of hazardous substances, and prevent or limit human or natural resource exposure to hazardous substances previously released into the environment.**

**"(E) The person provides full cooperation, assistance, and facility access to persons authorized to conduct response actions at the facility, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of**

**any complete or partial response action at the facility.**

**"(F) The person is not affiliated with any other person liable for response costs at the facility, through any direct or indirect familial relationship, or any contractual, corporate, or financial relationship other than that created by the instruments by which title to the facility is conveyed or financed.**

**"(40) FIDUCIARY.—**

**"(A) Except as provided in subparagraph (B), the term 'fiduciary' means a person who owns or controls property—**

**"(i) as a fiduciary within the meaning of section 3(31) of the Employee Retirement Income Security Act of 1974, or as a trustee, executor, administrator, custodian, guardian, conservator, or receiver acting for the exclusive benefit of another person; and**

**"(ii) who has not previously owned or operated the property in a non-fiduciary capacity.**

**"(B) The term 'fiduciary' does not include any person described in subparagraph (A)—**

**"(i) who acquires ownership or control of property to avoid the liability of such person or any other person under this Act; or**

**"(ii) who owns or controls property on behalf of or for the benefit of a holder of a security interest.**

**"(41) MUNICIPAL SOLID WASTE.—The term 'municipal solid waste' means all waste materials generated by households, including single and multi-family residences, and hotels and motels. The term also includes waste materials generated by commercial, institutional, and industrial sources, to the extent such wastes (A) are essentially the same as waste normally generated by households, or (B) are collected and disposed of with other mu-**

**nicipal solid waste or sewage sludge as part of normal municipal solid waste collection services, and, regardless of when generated, would be considered conditionally exempt small quantity generator waste under section 3001(d) of the Solid Waste Disposal Act (42 U.S.C. 6921(d)). Examples of municipal solid waste include food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, elementary or secondary school science laboratory waste, and household hazardous waste. The term does not include combustion ash generated by resource recovery facilities or municipal incinerators, or waste from manufacturing or processing (including pollution control) operations not essentially the same as waste normally generated by households.**

**"(42) MUNICIPALITY.—The term 'municipality' means a political subdivision of a State, including a city, county, vil-**

lage, town, township, borough, parish, school district, sanitation district, water district, or other public entity performing local governmental functions. The term also includes a natural person acting in the capacity of an official, employee, or agent of any entity referred to in the preceding sentence in the performance of governmental functions.

"(43) QUALIFIED HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.—The term 'qualified household hazardous waste collection program' means a program established by an entity of the Federal Government, a State, a municipality, or an Indian tribe that provides, at a minimum, for semiannual collection of household hazardous wastes at accessible, well-publicized collection points within the relevant jurisdiction.

"(44) SEWAGE SLUDGE.—The term 'sewage sludge' means solid, semisolid, or liquid residue removed during the treatment of municipal waste water, domestic sewage, or other waste water at or by

publicly owned or federally owned treatment works.

"(45) SITE CHARACTERIZATION.—The term 'site characterization' means an investigation that determines the nature and extent of a release or potential release of a hazardous substance, pollutant, or contaminant, and that includes an on site evaluation and sufficient testing, sampling, and other field data gathering activities to analyze whether there has been a release or threat of a release of a hazardous substance, pollutant, or contaminant, and the health and environmental risks posed by such a release or threat of release. The investigation also may include review of existing information (available at the time of the review), an off-site evaluation, or other measures that the Administrator considers appropriate.

"(46) OWNER, OPERATOR, OR LESSEE OF RESIDENTIAL PROPERTY.—The term 'owner, operator, or lessee of residential property' refers to a person who owns, oper-

**ates, manages, or leases residential property and who uses or allows the use of the residential property exclusively for residential purposes. The term 'residential property' refers to single or multifamily residences, including accessory land, buildings, or improvements incidental to such dwellings, which are exclusively for residential use.**

**"(47) SMALL BUSINESS.—The term 'small business' refers to any business entity that employs no more than 100 individuals and is a 'small business concern' as defined under the Small Business Act (15 U.S.C. 631 et seq.).**

**"(48) SMALL NONPROFIT ORGANIZATION.—The term 'small nonprofit organization' means any organization that, at the time of disposal, did not distribute any part of its income or profit to its members, directors, or officers, employed no more than 100 paid individuals at the involved chapter, office, or department, and was recognized as a non-profit orga-**

**nization under section 501(c) of the Internal Revenue Code of 1986.**

**"(49) SMALL BUSINESS CONSTRUCTION CONTRACTOR.—The term 'small business construction contractor' means a person who—**

**"(A) is a small business as defined by paragraph (47);**

**"(B) is not a response action contractor, as defined by section 119(e)(2), for the release or threatened release concerned;**

**"(C) did not know or have reason to know of the presence of hazardous substances at the facility before beginning construction activities; and**

**"(D) exercised due care with respect to any hazardous substances discovered during the course of performing construction activities.".**

**SEC. 607. RESPONSE CLAIMS PROCEDURES.**

**(a) AMENDMENT OF SECTION 111.—Section 111(a)(2) (42 U.S.C. 9611(a)(2)) is amended by inserting after "under said plan" the phrase ", reasonable in amount based on open and**

**free competition or fair market value for similar available goods and services,".**

**(b) AMENDMENT OF SECTION 112.—Section 112(a) (42 U.S.C. 9612(a)(2)) is amended—**

**(1) in the first sentence, by adding after "unless such claim is" the following: "(1) accompanied by an audit prepared by an independent, certified public accountant, and (2)"; and**

**(2) by inserting after the first sentence the following: "The Administrator reserves the right to review such audits to determine that the costs for which the claimant is seeking reimbursement are consistent with section 111(a) and, where necessary, withhold claims or a portion thereof which are inconsistent with section 111(a).".**

**SEC. 608. SMALL BUSINESS OMBUDSMAN.**

**The Administrator of the Environmental Protection Agency shall establish a small business Superfund assistance section within the small business ombudsman office at the Environmental Protection Agency. Such section shall carry out the following functions:**

**(1) Act as a clearinghouse of information for small businesses regarding the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Such information shall be comprehensible to a lay person and shall include information regarding the allocation process under section 130 of such Act, requirements and procedures for expedited settlements pursuant to section 122(g) of such Act, de minimis and de micromis status, and ability-to-pay procedures.**

**(2) Provide general advice and assistance to small businesses as to their questions and problems concerning the allocation and settlement processes, except that such advice and assistance shall not include any legal advice as to liability or any other legal representation. The ombudsman shall not participate in the allocation process.**

**(3) Develop proposals and make recommendations for changes in policies and activities of the Environmental Protection Agency which would better fulfill**

**the goals of title IV of the Superfund Reform Act of 1994 in ensuring equitable, simplified, and expedited allocations and settlements for small businesses.**

**SEC. 609. CONSIDERATION OF LOCAL GOVERNMENT CLEANUP PRIORITIES.**

**Section 104(c)(2) is amended—**

**(1) by inserting "(A)" after "(2)"; and**

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

**"(B) In setting priorities for scheduling work and allocating oversight resources for a remedial action at a facility at which a potentially responsible party that is a State or local government proposes to carry out the remedial action (or a portion thereof), the Administrator should give higher priority to such remedial action (or portion thereof) if the State or local government demonstrates that the remedial action (i) will have a public benefit; and (ii) will result in the property on or adjacent to the facility being returned to productive use. A private potentially responsible party may request similar consideration, in the Administrator's discretion. Nothing in**

**this subparagraph shall affect the responsibility of the Administrator to schedule and oversee the conduct of remedial action so as to assure protection of human health and the environment.".**

**SEC. 610. CONSISTENT APPLICATION AMONG REGIONAL OFFICES.**

**Section 115 (42 U.S.C. 9615), as amended by section 407, is further amended as follows:**

**(1) By inserting the following immediately before "The President": "(a) PRESIDENTIAL RULEMAKING AND DELEGATION AUTHORITY.—".**

**(2) By inserting at the end thereof the following new subsection:**

**"(b) CONSISTENT APPLICATION AMONG REGIONAL OFFICES.—Each Regional Administrator should implement, execute, and enforce this Act and regulations, guidance, and policies established in accordance with this Act by (1) the President (or by the Administrator pursuant to a delegation from the President), or (2) the Administrator (or by the Deputy Administrator or an Assistant Administrator**

**pursuant to a delegation from the Administrator).".**

**SEC. 611. STUDY OF PARTICIPANTS.**

**(a) STUDY.—The Administrator shall undertake a study of current Environmental Protection Agency procedures for suspension and debarment of persons and business entities, particularly response action contractors and to assess the feasibility and cost of creating a nationwide data base to track such persons. The study shall include, but shall not be limited, to the following items:**

**(1) Whether the certification process pursuant to 40 CFR 32 regarding debarment and suspensions is sufficient to uncover those persons who have previously served as a principal of a business entity affiliated or unaffiliated with the certifying entity.**

**(2) Whether the 3-year period for certification is a sufficient length of time to uncover past activities.**

**(3) Whether the process under Federal regulations for determining false certification is sufficient, particularly for**

**those persons who are attempting to hide past debarment or suspension.**

**(4) The effectiveness of the current debarment and suspension procedures.**

**(5) The practicability of coordination, through a central data base, with other Federal agencies the tracking and sharing of data on such persons who have been debarred or suspended.**

**(6) The effectiveness of debarment and suspension on the future conduct of persons or business entities with regard to compliance with Federal and State environmental laws.**

**(7) The extent of sharing data within the Environmental Protection Agency and among its regional offices.**

**(8) The cost of creating a central data base.**

**(b) REPORT AND RECOMMENDATIONS.—The Administrator shall report the findings of this study to Congress within 12 months after the enactment of this Act. The Administrator shall also make a recommendation to Congress whether statutory language or further**

**regulations are necessary to correct any problems or deficiencies that may be uncovered.**

**SEC. 612. PUBLIC COMMENT.**

**Nothing in this Act or any amendments made by this Act shall limit the obligations of the President or the Administrator to fully consider and respond to public comments during any available comment period or otherwise abridge the requirements of subchapter II of chapter 5 of title 5, United States Code (commonly referred to as the Administrative Procedures Act).**

**SEC. 613. CERTIFICATION OF ENVIRONMENTAL TRAINING AND CERTIFICATION ORGANIZATIONS.**

**(a) REGULATIONS.—(1) Not later than 2 years after enactment of this Act, the Administrator of the Environmental Protection Agency shall publish guidelines, in accordance with subsection (b), for a model State program for organizations that train and certify individuals to perform Phase I Environmental Site Assessments.**

**(2) The guidelines published under paragraph (1) may include, but not be limited to, minimum standards relating to—**

**(A) formal environmental training;**

**(B) continuing environmental education;**

**(C) environmental certification and testing procedures;**

**(D) revocation and disciplinary procedures;**

**(E) establishment of a code of ethics;**

**(F) consumer education;**

**(G) certification renewal procedures; and**

**(H) annual reporting of program activities.**

**(b) ESTABLISHMENT OF THE ENVIRONMENTAL CERTIFICATION BOARD.—(1) Not later than 60 days after enactment of this Act, the Administrator of the Environmental Protection Agency shall establish a certification advisory board to be known as the "Environmental Certification Board" (hereafter in this section referred to as the "Board").**

**(2) The Board shall consist of a minimum of 6 members, appointed by the Administrator, with a demonstrated knowledge in the environmental field. The Board may include**

**representatives from the Environmental Protection Agency, environmental interest organizations, the chemical/manufacturing industry, the environmental consulting service industry, the insurance industry, the banking/investment industry, professional societies, private sector accreditation organizations, State government, and other appropriate representatives with a knowledge in the environmental field.**

**(3) All members of the Board shall serve on a voluntary basis, except those members from the Environmental Protection Agency.**

**(4) The Board shall appoint 1 member to serve as Chairman of the Board who shall exercise the executive and administrative functions of the Board.**

**(5) Not later than 6 months after the date of enactment of this Act, the Board shall issue recommendations to the Administrator which shall include, but not be limited to, the minimum standards to be established under subsection (a).**

**(c) STATE ADOPTION OF REGULATIONS.—(1) After the publication of the guidelines under**

**subsection (a), any State may adopt regulations identical (except as provided in paragraph (2) of this subsection) to the guidelines promulgated by the Administrator under subsection (a)(1).**

**(2) Nothing in this section shall be construed to preempt any State from issuing and enforcing, at any time, additional or more stringent guidelines and regulations regarding the training and certification of Phase I environmental professionals.**

**(3) Nothing in this section shall be construed to require a profession or occupation licensed by a State authority and whose scope of practice, as defined by State law, includes Phase I Environmental Site Assessments to obtain certification as a "certified Phase I Environmental Site Professional" as a condition for performing Phase I Environmental Site Assessments.**

**(4) Nothing in this section shall be construed to permit a certified Phase I Environmental Professional to practice within the scope of practice of a licensed profession or occupation, as defined by State law, unless**

**that individual also meets the requirements of the State licensing statute.**

**(d) DETERMINATION OF COMPLIANCE.—(1) If a State adopts the guidelines issued by the Administrator, any organization that seeks to obtain a determination of compliance with the regulations set forth in subsection (c) may submit to any such State, in which the organization is located, information documenting such compliance.**

**(2) Such State shall make the determination of such organization's compliance or noncompliance with such regulations.**

**(3) Upon a determination of compliance under paragraph (2), the State shall issue notice in writing to such organization, indicating that such organization is an "Approved Phase I Environmental Training and Certification Organization" in accordance with this Act. Such approval shall be valid for a term to be set by the State, but no longer than 5 years.**

**(4) A State may charge a reasonable fee, equal to the cost of determining compliance under paragraph (2), to each organization**

**that applies for such determination. Any such fees shall be listed as part of the regulations promulgated under subsection (c).**

**(5) Any organization that has received notice of a determination of compliance from a State under paragraph (3), may issue a diploma, certification, or other form of degree, to any individual who has completed to its satisfaction such organization's curriculum and training program signifying that the recipient is a "Certified Phase I Environmental Professional" qualified to perform Phase I Environmental Site Assessments.**

**(6) A State may periodically, or upon expiration of a notification of a determination of compliance under paragraph (3), review the program, curriculum, facilities, and training methods of any such organization to determine such organizations continued compliance with the regulations promulgated under subsection (c).**

**(e) DEFINITIONS.—For purposes of this section:**

**(1) PHASE I ENVIRONMENTAL SITE ASSESSMENT.—The term "Phase I Environ-**

**mental Site Assessment" means the process by which a person or entity seeks to determine whether a particular parcel of real property is subject to recognized environmental conditions. These conditions indicate the presence or likely presence of a hazardous substance or pollutant or contaminant on a property under conditions that indicate the existence of a release or threatened release at the facility into structures on the property or into the ground, ground water or surface water of the property.**

**(2) CERTIFIED PHASE I ENVIRONMENTAL PROFESSIONAL.—The term "Certified Phase I Environmental Professional" means any person receiving certification to perform Phase I Environmental Site Assessments from an approved environmental training and certification organization in accordance with this section.**

**(3) APPROVED PHASE I ENVIRONMENTAL TRAINING AND CERTIFICATION ORGANIZATION.—The term "Approved Phase I Environmental Training and Certification Or-**

ganization" means Phase I Environmental Training and Certification Organization whose curriculum, program, facilities, training, and testing methods comply with the regulations adopted by a State under this section.

SEC. 614. SAVINGS CLAUSE.

Nothing in this Act or any amendment made by this Act shall affect the application of the Atomic Energy Act of 1954 to any facility licensed by the Nuclear Regulatory Commission.

SEC. 615. FEDERAL ENTITIES AND FACILITIES.

Section 120 (42 U.S.C. 9620) is amended as follows:

(1) By amending the heading to read as follows:

"SEC. 120. FEDERAL ENTITIES AND FACILITIES.".

(2) By amending paragraph (1) of subsection (a) to read as follows:

"(1)(A) Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the United States shall be subject to, and comply with, all Federal, State, interstate and

**local requirements, both substantive and procedural (including any requirements for permits, reporting, or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), regarding response actions related to, or management of, hazardous substances, pollutants, or contaminants in the same manner, and to the same extent, as any nongovernmental entity is subject to such requirements, including enforcement and liability under sections 106 and 107 of this title and the payment of reasonable service charges.**

**"(B) The Federal, State, interstate, and local substantive and procedural requirements referred to in subparagraph (A) include, but are not limited to, all administrative orders and all civil and administrative penalties and fines, regardless of whether such penalties and fines are punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations. The United States hereby expressly waives any immunity**

**otherwise applicable to the United States with respect to any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order or civil or administrative penalty or fine referred to in the preceding sentence, or reasonable service charge).**

**"(C) The reasonable service charges referred to in this paragraph include, but are not limited to, fees or charges assessed in connection with the processing and issuance of permits, renewal of permits, amendments to permits, review of plans, studies, and other documents, and inspection and monitoring of facilities, as well as any other nondiscriminatory charges that are assessed in connection with a State, interstate, or local response program.**

**"(D) Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Fed-**

**eral court with respect to the enforcement of any injunctive relief.**

**"(E) No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal or State response law with respect to any act or omission within the scope of their official duties. An agent, employee, or officer of the United States shall be subject to any criminal sanction (including, but not limited to, any fine or imprisonment) under any Federal or State response law, but no department, agency, or instrumentality of the executive, legislative, or judicial branch of the United States shall be subject to any such sanctions.**

**"(F) The waiver of sovereign immunity provided in this paragraph shall not apply to the extent a State law would apply any standard or requirement to such Federal department, agency, or instrumentality in a manner which is more stringent than such standard or require-**

**ment would be applied to any other person.**

**"(G) Nothing in this section shall be construed to affect the liability of any person or entity other than a department, agency, or instrumentality of the United States under sections 9606 and 9607 of this title.**

**"(H)(i) The Administrator may issue an order under section 106 of this Act to any department, agency, or instrumentality of the executive, legislative, or judicial branch of the United States. The Administrator shall initiate an administrative enforcement action against such a department, agency, or instrumentality in the same manner and under the same circumstances as action would be initiated against any other person.**

**"(ii) No administrative order issued to such department, agency, or instrumentality shall become final until such department, agency, or instrumentality has had the opportunity to confer with the Administrator.**

**"(iii) Unless a State law in effect on the effective date of the Superfund Reform Act of 1994, or a State Constitution, requires the funds to be used in a different manner, all funds collected by a State from the Federal Government from penalties and fines imposed for violation of any substantive or procedural requirement referred to in subsection (a) of this section shall be used by the State only for projects designed to improve or protect the environment or to defray the costs of environmental protection or enforcement.**

**"(I) Each such department, agency, and instrumentality shall have the right to contribution protection set forth in section 113, when such department, agency, or instrumentality resolves its liability under this Act.".**

**(3) By striking paragraph (4) of subsection (a).**

**(4) By inserting "(other than the indemnification requirements of section**

**119)" after "responsibility" in subsection (a)(3).**

**SEC. 616. WORKER TRAINING AND EDUCATION GRANTS.**

**Section 111(c)(12) (42 U.S.C. 9611(c)(12)) is amended—**

**(1) by striking "$10,000,000" and inserting "$20,000,000"; and**

**(2) by inserting before the period at the end "and $40,000,000 for each of fiscal years 1995, 1996, 1997, 1998, and 1999".**

**SEC. 617. REPORT AND OVERSIGHT REQUIREMENTS.**

**(a) SUBMISSION TO STATE GOVERNORS.—Section 301(h)(1) (42 U.S.C. 9651(h)(1)) is amended in the matter preceding subparagraph (A) by striking "to Congress of such Agency" and inserting "of such Agency to Congress and the Governor of each State".**

**(b) SITE-SPECIFIC PROGRESS REPORT.—Section 301(h)(1)(A) is amended to read as follows:**

**"(A) A site-specific progress report of accomplishments and expenditures on a State-by-State basis, including—**

**"(i) a statement of the number of completed record of decisions, removal actions, remedial actions, and enforcement actions; and**

**"(ii) a statement of—**

**"(I) the aggregate amount expended in each State;**

**"(II) the amount expended in each State for site investigation and cleanup activities;**

**"(III) the amount expended in each State for non site-specific costs; and**

**"(IV) the amount expended for enforcement actions and cost recovery activities.".**

**(c) OTHER REPORT CONTENTS.—Section 301(h)(1) is amended—**

**(1) in subparagraph (B) by striking the period at the end and inserting "and removal or remedial action."; and**

(2) in subparagraph (C) by inserting ", removal action, and remedial action" after "study".

(d) RESPONSE TO STATE COMMENTS BY EPA.—Section 301(h) is amended by adding at the end the following:

"(4) RESPONSE TO STATE COMMENTS BY EPA.—The Administrator of the Environmental Protection Agency shall respond in writing to any comments submitted to the Administrator by a State regarding reports developed under this subsection.".

SEC. 618. REMEDIAL TECHNOLOGIES.

Section 311 (42 U.S.C. 9660) is amended by adding at the end the following:

"(h) REMEDIAL TECHNOLOGIES.—

"(1) REPORT.—Not later than 180 days after the date of the enactment of this subsection, the Administrator shall publish a report which—

"(A) identifies and prioritizes existing remedial technology demonstration and development programs conducted by the Adminis-

**trator, the States, and Federal agencies, including the Department of Energy and the Department of Defense; and**

**"(B) identifies and prioritizes remedial technology needs at National Priority List, non-National Priority List, and Federal facility sites.**

**"(2) STATE INVOLVEMENT.—In preparing the report pursuant to paragraph (1), the Administrator shall solicit State involvement.".**

**SEC. 619. ADDITION OF STATES TO GOVERNMENTAL ENTITIES ELIGIBLE FOR REIMBURSEMENT FOR EMERGENCY REMOVAL ACTIONS; CLARIFICATION OF AUTHORITY TO TAKE EMERGENCY RESPONSE ACTION AT ILLICIT DRUG LABORATORIES.**

**(a) AMENDMENT OF SECTION 123.—Section 123 (42 U.S.C. 9623) is amended to read as follows:**

**"SEC. 123. REIMBURSEMENT TO STATE AND LOCAL GOVERNMENTS.**

**"(a) APPLICATION.—Any State or general purpose unit of local government for a politi-**

**cal subdivision of a State that is affected by a release or threatened release at any facility may apply to the President for reimbursement under this section.**

**"(b) REIMBURSEMENT.—**

**"(1) EMERGENCY RESPONSE ACTIONS.—The President is authorized to reimburse States and local community authorities for expenses incurred (before or after the enactment of the Superfund Reform Act of 1994) in carrying out emergency response actions necessary to prevent or mitigate injury to human health or the environment associated with the release or threatened release of any hazardous substance or pollutant or contaminant. Such actions may include, where appropriate, security fencing to limit access, cleanup of illicit drug laboratories, response to fires and explosions, and other measures that require immediate response at the State or local level.**

**"(2) STATE OR LOCAL FUNDS NOT SUPPLANTED.—Reimbursement under this sec-**

**tion shall not supplant State or local funds normally provided for response.**

**"(c) AMOUNT.—(1) The amount of any reimbursement to a local authority under subsection (b)(1) may not exceed $25,000 for a single response. The reimbursement under this section with respect to a single facility shall be limited to the units of local government having jurisdiction over the political subdivision in which the facility is located.**

**"(2) The amount of any reimbursement to a State under subsection (b)(1) may not exceed $50,000 for a single response. The reimbursement under this section with respect to a single facility shall be limited to the State in which the facility is located.**

**"(3) The amounts allowed for State and local governments under subsection (b)(1) may not be combined for any single response action.**

**"(d) PROCEDURE.—Reimbursements authorized pursuant to this section shall be in accordance with rules promulgated by the Administrator.".**

**(b) AMENDMENT OF SECTION 111.—Paragraph (11) of section 111(c) of such Act is amended—**

**(1) by striking out "LOCAL GOVERNMENT REIMBURSEMENT.—" and inserting in lieu thereof "STATE AND LOCAL GOVERNMENT REIMBURSEMENT.—(A)"; and**

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

**"(B) Reimbursements to States under section 123, except that no State may receive more than $2,000,000 in any one fiscal year.".**

**(c) DEADLINE FOR REGULATIONS.—The Administrator of Environmental Protection Agency shall promulgate regulations to implement section 123 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9623), as amended by subsection (a), not later than one year after the date of the enactment of this Act.**

**SEC. 620. INCENTIVES TO MANAGING PARTIES.**

**The President shall encourage managing parties conducting response actions under the Comprehensive Environmental Response,**

**Compensation, and Liability Act of 1980 to have their contractors train minorities and other disadvantaged persons from the affected community in remediation skills directly and in conjunction with historically black colleges and universities and other educational institutions that primarily serve minorities.**

**SEC. 621. STUDY OF SMALL DISADVANTAGED BUSINESS GOALS.**

**The Administrator of the Environmental Protection Agency shall study the advisability and feasibility of instituting a small disadvantaged business goal program for all contracts entered into by the Federal Government under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and shall report the Administrator's recommendations to Congress within 1 year after the date of the enactment of this Act. In carrying out the study, the Administrator shall give due consideration to the small disadvantaged business goals established under section 2323 of title 10, United States Code, for the Department of Defense and to the implementation of**

such goals by a State in any case in which a State is authorized to carry out such Act.

SEC. 622. INCINERATION OF DIOXIN AT TIMES BEACH, MISSOURI.

The Administrator of the Environmental Protection Agency may not incinerate dioxin at the Times Beach site in the vicinity of St. Louis, Missouri, until the General Accounting Office and the Office of Technology Assessment have completed a study on alternatives to the incineration of dioxin at such site.

SEC. 623. CONFORMING AMENDMENT.

Section 104(g)(1) (42 U.S.C. 9604(g)(1)) is amended by striking "section" and inserting in lieu thereof "Act".

# TITLE VII—FUNDING

SEC. 701. AUTHORIZATION OF APPROPRIATIONS.

Section 111(a) is amended by striking "$8,500,000,000 for the 5-year period beginning on the date of enactment of the Superfund Amendments and Reauthorization Act of 1986, and not more than $5,100,000,000 for the period commencing October 1, 1991, and ending September 30, 1994" and inserting

"$9,600,000,000 for the period commencing October 1, 1994, and ending September 30, 1999".

SEC. 702. ORPHAN SHARE FUNDING.

Section 111(a) is amended by adding after paragraph (7) (as added by this Act) the following new paragraph:

"(8) ORPHAN SHARE FUNDING.—Payment of orphan shares pursuant to section 130(e) of this Act.".

SEC. 703. AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY.

Section 111(m) (relating to ATSDR) is amended to read as follows:

"(m) AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY.—There shall be directly available to the Agency for Toxic Substances and Disease Registry to be used for the purpose of carrying out activities described in subsection (c)(4) of this section and section 104(i) of this Act not less than $100,000,000 per fiscal year for each of fiscal years 1995, 1996, 1997, 1998, and 1999 of which $20,000,000 per fiscal year shall be available for the purposes of section 104(i)(15)(C). Any funds so made available which are not obligated by the end

**of the fiscal year in which made available shall be turned to the Fund.".**

**SEC. 704. LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAMS.**

**Section 111(n) is amended to read as follows:**

**"(n) LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAM.—**

**"(1) SECTION 311(a).—From the amounts available in the Fund, not more than the following amounts may be used for the purposes of section 311(a) of this title (relating to hazardous substance research, demonstration, and training activities):**

**"(A) For fiscal year 1995 $40,000,000.**

**"(B) For fiscal year 1996 $50,000,000.**

**"(C) For fiscal year 1997 $55,000,000.**

**"(D) For fiscal year 1998 $55,000,000.**

**"(E) For fiscal year 1999 $55,000,000.**

**No more than 10 percent of such amounts shall be used for training under section 311(a) of this title for any fiscal year.**

**"(2) SECTION 311(d).—For each of the fiscal years 1995, 1996, 1997, 1998, and 1999, not more than $5,000,000 of the amounts available in the Fund may be used for the purposes of section 311(d) of this title (relating to university hazardous substance research centers).".**

**SEC. 705. AUTHORIZATION OF APPROPRIATIONS FROM GENERAL REVENUES.**

**Section 111(p)(1) is amended to read as follows:**

**"(1) IN GENERAL.—The following sums are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund:**

**"(A) For fiscal year 1995, $250,000,000.**

**"(B) For fiscal year 1996, $250,000,000.**

**"(C) For fiscal year 1997, $250,000,000.**

"(D) For fiscal year 1998, $250,000,000.

"(E) For fiscal year 1999, $250,000,000.

In addition there is authorized to be appropriated to the Hazardous Substance Superfund for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection (and paragraph (2) of section 131(b) of this title) as has not been appropriated before the beginning of the fiscal year involved.".

SEC. 706. ADDITIONAL LIMITATIONS.

Section 111 is amended by adding after subsection (p) the following new subsections:

"(q) CITIZEN INFORMATION AND ACCESS OFFICES.—For each of the fiscal years 1995, 1996, 1997, 1998, and 1999, not more than $50,000,000 of the amounts available in the Fund may be used for the purposes of section 117(h) of this Act (relating to citizen information and access offices).

"(r) VOLUNTARY RESPONSE PROGRAMS.—For each of the fiscal years 1995 through 1999, not

more than $20,000,000 of the amounts available in the Fund may be used for the purposes of section 128 of this Act (relating to State voluntary cleanup programs).".

SEC. 707. USES OF THE FUND.

Section 111(a) is amended by adding after paragraph (8) the following new paragraph:

"(9) REIMBURSEMENT OF POTENTIALLY RESPONSIBLE PARTY COSTS.—If a potentially responsible party and the Administrator enter into a settlement under this Act in which the Administrator is reimbursed for its response costs, and if the Administrator determines, through a Federal audit of response the costs, that costs for which the Administrator was reimbursed:

"(A) are unallowable due to contractor fraud, or

"(B) are unallowable under the Federal Acquisition Regulations, or

"(C) should be adjusted due to routine contract and Environmental Protection Agency response cost audit procedures,

then the Administrator is authorized to use the fund to reimburse a potentially responsible party for any costs identified under subparagraph (A), (B), or (C) of this paragraph.".

# TITLE VIII—ENVIRONMENTAL INSURANCE RESOLUTION FUND

**SEC. 801. SHORT TITLE.**

This title may be cited as the "Environmental Insurance Resolution and Equity Act of 1994".

**SEC. 802. DEFINITIONS.**

For purposes of this title:

(1) APPLICABLE COSTS.—The term "applicable costs" means applicable National Priorities List (NPL) facility costs or applicable non-NPL facility costs. Costs of removal shall be treated as applicable costs only if the removal is conducted in accordance with section 104, 106 or 122 of CERCLA or under the regulations of the Administrator governing removal actions (40 CFR 300.415 or any successor regulations).

**(2) APPLICABLE NPL FACILITY COSTS.—The term "applicable NPL facility costs" means the costs for an eligible NPL facility—**

**(A) of response (as defined in section 101(25) of CERCLA);**

**(B) for natural resources damages under section 107 of CERCLA; or**

**(C) to defend potential liability for the costs described in subparagraph (A) or (B) or both, including, but not limited to, attorney's fees, costs of suit, consultant and expert fees and costs, and expenses for testing and monitoring.**

**(3) APPLICABLE NON-NPL FACILITY COSTS.—The term "applicable non-NPL facility costs" means the costs for a non-NPL facility—**

**(A) of removal (as defined in section 101(23) of CERCLA); and**

**(B) to defend potential liability for such costs of removal, including, but not limited to, attorney's fees, costs of suit, consultant and expert**

**fees and costs, and expenses for testing and monitoring.**

**(4) BOARD.—The term "Board" means the Board of Trustees of the Fund.**

**(5) CERCLA.—The term "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601 et seq.).**

**(6) ELIGIBLE COSTS.—The term "eligible costs" means the applicable costs incurred with respect to a hazardous substance disposed of at an eligible facility for which an eligible person either (A) has not been reimbursed or (B) has been reimbursed and that are the subject of a dispute between the eligible person and an insurer. The term eligible costs shall not include any costs paid by the United States.**

**(7) ELIGIBLE FACILITY.—The term "eligible facility" means an eligible NPL facility or an eligible non-NPL facility.**

**(8) ELIGIBLE NPL FACILITY.—The term "eligible NPL facility" means any facility placed on the National Priority List at**

**any time, at which a hazardous substance was disposed of on or before December 31, 1985.**

**(9) ELIGIBLE NON-NPL FACILITY.—The term "eligible non-NPL facility" means any site or facility where a removal (as defined in section 101(23) of CERCLA) was conducted pursuant to governmental direction or oversight under CERCLA and the National Contingency Plan at any time, at which a hazardous substance was disposed of on or before December 31, 1985.**

**(10) ELIGIBLE PERSON.—The term "eligible person" means any person that demonstrates, to the satisfaction of the Resolution Fund, that such person either—**

**(A) has received a notice at any time that it may be a potentially responsible party pursuant to CERCLA with respect to an eligible NPL facility, which notice requests or demands that such party perform response ac-**

**tions or pay response costs or natural resource damages for such facility; or**

**(B) is or was liable, or alleged to be liable, at any time for a removal (as defined in section 101(23) of CERCLA) at any eligible facility,**

**and had entered into a valid insurance contract for qualified insurance.**

**(11) FACILITY.—The term "facility" has the same meaning as provided in section 101(9) of CERCLA.**

**(12) FUND.—The term "Fund" means the Environmental Insurance Resolution Fund.**

**(13) NPL.—The term "NPL" means the National Priorities List.**

**(14) PERSON.—The term person means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity or governmental unit (including any predecessor in interest or any subsidiary thereof).**

**(15) QUALIFIED INSURANCE.—The term "qualified insurance" means insurance for comprehensive general liability or**

**commercial multi-peril insurance coverage for any period prior to January 1, 1986. For purposes of this paragraph, comprehensive general liability insurance includes broad form liability, general liability, commercial general liability, and excess or umbrella coverage; and commercial multi-peril insurance includes broad form property, commercial package, special multi-peril, and excess or umbrella coverage. Such term shall not include any other insurance, such as environmental impairment liability insurance, whether found in primary, excess, or umbrella coverage.**

**(16) VALID INSURANCE CONTRACT.—The term "valid insurance contract" means a contract for qualified insurance other than any of the following:**

**(A) An insurance contract with respect to which a person has entered into a settlement with an insurer providing, or where a final judgment has provided, that the contract has been satisfied and that such person has no**

**right to make any further claims under such contract.**

**(B) An insurance contract which covers only a time period prior to the earliest date of the action or status of the insured person which resulted in liability or potential liability under section 107 of CERCLA.**

**(C) An insurance contract with an insurance company which is insolvent or in insolvency proceedings.**

**(D) An insurance contract which is the subject of a settlement between the insurance company and the insured pursuant to which the policy has been reformed to include an absolute exclusion for pollution liability ("absolute pollution exclusion").**

**(17) STATE.—The term "State" has the same meaning as provided in section 101(27) of CERCLA.**

**SEC. 803. ENVIRONMENTAL INSURANCE RESOLUTION FUND.**

**(a) ENVIRONMENTAL INSURANCE RESOLUTION FUND ESTABLISHED.—There is hereby estab-**

**lished the Environmental Insurance Resolution Fund.**

**(b) OFFICES.—The principal office of the Fund shall be in the District of Columbia or at such other place as the Fund may from time to time prescribe.**

**(c) STATUS OF RESOLUTION FUND.—Except as expressly provided in this title, the Fund shall not be considered an agency or establishment of the United States. The members of the Board of Trustees shall not, by reason of such membership, be deemed to be officers or employees of the United States.**

**(d) BOARD OF TRUSTEES.—**

**(1) IN GENERAL.—The Fund shall be administered by a Board of Trustees.**

**(2) MEMBERSHIP.—The Board shall consist of the following:**

**(A) GOVERNMENTAL MEMBERS.—**

**(i) The Administrator of the Environmental Protection Agency or the Administrator's designee.**

**(ii) The Attorney General of the United States or the Attorney General's designee.**

**(B) PUBLIC MEMBERS.—Five public members appointed by the President not later than 60 days after the date of enactment of this title, not less than two of whom shall represent insurers subject to section ____ of the Internal Revenue Code of 1986, and not less than two of whom shall represent eligible persons as defined in section 802(10). The public members shall be citizens of the United States.**

**(C) EX-OFFICIO MEMBER.—The Secretary of the Treasury shall serve as an ex officio member of the Board.**

**(3) CHAIR.—The Chair of the Board shall be designated by the President from time to time from among the members described in paragraph (2)(A). No expenditure may be made, or other action taken, by the Fund without the concurrence of the Chair of the Board.**

**(4) COMPENSATION.—Governmental members of the Board shall serve without additional compensation. Public members of the Board shall, while attending**

**meetings of the Board or while engaged in duties related to such meetings or other activities of the Board pursuant to this title, be entitled to receive compensation at the rate of $200 per day, including travel time. While away from their homes or regular places of business, members of the Board shall be allowed travel and actual, reasonable and necessary expenses to the same extent as officers of the United States.**

**(5) TERM OF PUBLIC MEMBERS.—Public members of the Board shall serve for a term of 5 years, except that such members may be removed by the President for any reason at any time. A public member whose term has expired may continue to serve on the Board until such time as the President appoints a successor. The President may reappoint a public member of the Board, but no such member may consecutively serve more than two terms.**

**(6) VACANCIES.—A vacancy on the Board shall be filled in the same manner**

**as the original appointment, except that such appointment shall be for the balance of the unexpired term of the vacant position.**

**(7) QUORUM.—Four members of the Board shall constitute a quorum for the conduct of business.**

**(8) MEETINGS.—The Board shall meet not less than quarterly at the call of the Chair. Meetings of the Board shall be open to the public unless the Board, by a majority vote of members present in open session, determines that it is necessary or appropriate to close a meeting. The Chair shall provide at least 10 days notice of a meeting by publishing a notice in the Federal Register and such notice shall indicate whether it is expected that the Board will consider closing all or a portion of the meeting. Nothing in this paragraph shall be construed to apply to informal discussions or meetings among Board members.**

**(e) OFFICERS AND EMPLOYEES.—**

**(1) CHIEF EXECUTIVE OFFICER; CHIEF FINANCIAL OFFICER.—(A) The Fund shall have a Chief Executive Officer appointed by the Board who shall exercise any authority of the Fund under such terms and conditions as the Board may prescribe.**

**(B) The Fund shall have a Chief Financial Officer appointed by the Board.**

**(2) COMPENSATION.—No officer or employee of the Fund may be compensated by the Fund at an annual rate of pay which exceeds the rate of basic pay in effect from time to time for level I of the Executive Schedule under section 5312 of title 5, United States Code. No officer or employee of the Fund, other than a member of the Board, may receive any salary or other compensation from any source other than the Fund for services rendered during the period of employment by the Fund.**

**(3) POLITICAL TEST OR QUALIFICATION.—No political test or qualification shall be used in selecting, appointing, promoting, or taking other personnel actions with**

**respect to officers, agents, and employees of the Fund.**

**(4) ASSISTANCE BY FEDERAL AGENCIES.—The Attorney General, the Secretary of the Treasury, and the Administrator of the Environmental Protection Agency, may to the extent practicable and feasible, and in their sole discretion, make personnel and other resources available to the Fund. Such personnel and resources may be provided on a reimbursable basis, and any personnel so provided shall not be considered employees of the Fund for purposes of paragraph (2).**

**(f) POWERS OF RESOLUTION FUND.—Notwithstanding any other provision of law, except as provided in this title or as may be hereafter enacted by the Congress expressly in limitation of the provisions of this subsection, the Fund shall have the power—**

**(1) to have succession until dissolved by Act of Congress;**

**(2) to make and enforce such bylaws, rules and regulations as may be nec-**

**essary or appropriate to carry out the purposes of this title;**

**(3) to make and perform contracts, agreements, and commitments;**

**(4) to settle, adjust, and compromise, and with or without consideration or benefit to the Fund release or waive in whole or in part, in advance or otherwise, any claim, demand, or right of, by, or against the Fund;**

**(5) to sue and be sued, complain and defend, in any State, Federal or other court;**

**(6) to determine its necessary expenditures and appoint, employ, and fix and provide for the duties, compensation and benefits of officers, employees, attorneys, and agents, all of whom shall serve at the pleasure of the Board; except that all amounts withdrawn from the Treasury of the United States by or on behalf of the Resolution Fund shall be certified by a federally authorized certifying officer who is an employee of the Federal agency**

**represented by the chair of the Resolution Fund;**

**(7) to hire or accept the voluntary services of consultants, experts, advisory boards, and panels to aid the Fund in carrying out the purposes of this title; and**

**(8) to take such other actions as may be necessary to carry out the responsibilities of the Fund under this title.**

**(g) BORROWING AUTHORITY.—Nothing in this title shall be construed to permit the Fund to issue any evidence of indebtedness or otherwise borrow money.**

**SEC. 804. RESOLUTION OFFERS.**

**(a) IN GENERAL.—The Fund shall offer one comprehensive resolution to each eligible person. The offer shall be for a percentage of all the eligible costs of such eligible person incurred in connection with all eligible facilities. The amount of the offer shall be determined pursuant to section 806.**

**(b) REQUESTS FOR RESOLUTION OFFERS.—**

**(1) IN GENERAL.—An eligible person may, at any time after the promulgation**

of the interim final regulations under section 812(a), file a request for a resolution offer from the Fund.

(2) RESPONSE TO REQUEST.—Not later than 180 days after the receipt of a complete request as determined by the Fund, the Fund shall in writing—

(A) make a resolution offer to each eligible person that has filed a request for a resolution offer; or

(B) notify a person filing such a request that such person is not an eligible person.

(c) JOINT VENTURES AND SUBSIDIARIES.—A joint venture shall not be aggregated with any individual joint venturer for purposes of this section but shall be treated as a distinct entity for such purposes. All claims by subsidiaries shall be included in a single claim by the corporate parent for purposes of this Act.

SEC. 805. DOCUMENTATION OF CLAIMS AND INSURANCE COVERAGE.

(a) SCREENING OF CLAIMS.—

(1) DENIAL BY REASON OF FELONY.—The Fund may deny a resolution offer to an

**otherwise eligible person for a specific facility if the eligible person has been convicted of a felony under any Federal or State statute which has a material effect on the response costs or natural resource damage incurred at the facility.**

**(2) FILING AND ACTIVE PURSUIT OF CLAIMS.—The Fund may decide not to make an offer to an eligible person unless the eligible person has filed a claim and is actively pursuing the claim. The Fund may also decide that an offer should be made to any such person.**

**(b) FILING OF CLAIMS.—For the purposes of subsection (a), an eligible person shall be deemed to have filed a claim if the eligible person has notified one or more of its insurers of the existence of a claim, or has engaged in active investigation and preparation of a claim, or has filed a lawsuit seeking coverage for eligible costs. Failure to have filed a claim or to have engaged in settlement discussions before January 1, 1994, shall not be deemed to preclude an eligible person from receiving an offer from the Fund if the eligible person**

**had not received any notice letter from a governmental authority or one or more potentially responsible parties asserting its potential liability under CERCLA at any eligible facility until after January 1, 1993.**

**(c) ACTIVE PURSUIT OF CLAIMS.—For purposes of this section, an eligible person shall be considered to be actively pursuing a claim if—**

**(1) the person has filed a lawsuit against an insurer, or has filed a motion or another pleading in a lawsuit against an insurer, or has engaged in any discovery in a lawsuit against an insurer between January 1, 1993, and December 31, 1993 regarding eligible costs at an eligible facility;**

**(2) the person has engaged in settlement discussions with an insurer between January 1, 1993, and December 31, 1993 regarding eligible costs at an eligible facility;**

**(3) the person has engaged in active investigation and preparation of a claim before January 1, 1994;**

**(4) if the person has received a letter from an insurer rejecting coverage or reserving its rights to reject coverage regarding eligible costs at an eligible facility, the person has sent within 1 year thereafter an additional status report or letter apprising an insurer of activities regarding an eligible facility; or**

**(5) the eligible person has sent a letter to an insurer notifying an insurer of the potential existence of a claim regarding eligible costs at an eligible facility and has received no response from the insurer.**

**(d) DOCUMENTATION OF COVERAGE.—**

**(1) EFFECT OF DOCUMENTATION.—Coverage of an eligible person for policy years prior to 1986 and the applicable deductibles and limits on coverage shall be confirmed to the satisfaction of the Fund by the terms of the policies or other documentary proof of insurance provided by, or for, the eligible person in accordance with this subsection.**

**(2) SUBMISSION OF DOCUMENTARY EVIDENCE.—After promulgation of regulations governing documentation requirements, an eligible person requesting an offer shall submit: copies of its insurance policies, or other documentary evidence sufficient to establish the following six terms of coverage: insurance company, policy number, type of policy, duration of policy, deductible or self-insured retention, and limit of coverage. Documentary evidence may consist of any documents from an insurance company or broker or documents of the eligible person or other party which are generally contemporaneous with the term of the policy or with subsequent retrospective rating under the policy. Where documentary evidence (other than a policy) is relied upon as the proof of coverage, an eligible person must certify that it has undertaken a good faith investigation of its records, that its submission is complete and accurate to the best of its information and belief, and that it does not have a copy of the insur-**

**ance policy. If an eligible person submits documentary evidence which does not establish all six terms of coverage but which does establish the name of the insurance company and one or more other terms evidencing coverage, the named insurance company shall undertake an investigation for any policy or other relevant documents evidencing the eligible person's coverage. At the conclusion of the investigation, the named insurance company shall—**

**(A) produce to the Fund any policies or other documents relevant to the eligible person's claim of coverage; or**

**(B) certify that it has undertaken a good faith investigation of its records and that it has produced any and all policies or documents available to the insurer and relevant to the eligible person's claim of coverage.**

**Subsequent to the named insurance company's production or certification, the**

**Fund shall decide whether a person has provided adequate proof of insurance based on the evidence presented. Submission of the six terms of coverage referred to in this paragraph shall be treated as adequate proof of insurance.**

**(e) PRIOR SETTLEMENTS.—**

**(1) DISCLOSURE.—Each eligible person shall be required to disclose and certify the amounts and terms of any settlement reached with an insurer for eligible costs at eligible facilities. In the event that the terms of such a settlement are subject to a protective order or are otherwise confidential, the eligible person may provide evidence of the confidential nature of the settlement information to the Fund. Upon receipt of such evidence, the Fund shall be obligated to preserve the confidentiality of all such settlement information.**

**(2) EFFECT OF TITLE ON PRIOR SETTLEMENTS.—This title shall have no effect on prior settlements between eligible persons and an insurer.**

**SEC. 806. AMOUNT OF RESOLUTION OFFERS.**

**(a) RESOLUTION OFFERS.—The Fund shall make resolution offers to each eligible person equal to the applicable percentage (determined under this section) of the lesser of the following:**

**(1) The eligible costs actually incurred by an eligible person.**

**(2) The available coverage, as determined under this section.**

**(b) APPLICABLE PERCENTAGE.—**

**(1) IN GENERAL.—For each eligible person that has not established a litigation venue pursuant to subsection (d), the applicable percentage shall be equal to the facility location percentage for that person. For each eligible person that has established one or more litigation venues pursuant to subsection (d), the applicable percentage shall be comprised of one-half of the facility location percentage for that person plus one-half of the venue percentage for that person.**

**(2) FACILITY LOCATION PERCENTAGE.—**

**(A) ONE OR MORE ELIGIBLE NPL FACILITIES.—For each eligible person,**

**the Fund shall establish a facility location percentage. The percentage shall be equal to the weighted average of the State percentages for each eligible NPL facility for which such person has been identified as a potentially responsible party. In determining such weighted average, each such eligible facility shall be accorded equal value, except as provided in paragraph (4).**

**(B) NO ELIGIBLE NPL FACILITIES.—For each person not identified as a potentially responsible party at one or more eligible NPL facilities but who is, or is alleged to be, liable at any time for removal (as defined in section 101(23) of CERCLA) at one or more eligible non-NPL facilities, the Fund shall establish a facility location percentage equal to the weighted average of the State percentages for each such eligible non-NPL facility. In determining such weighted aver-**

**age, each such facility shall be accorded equal value.**

**(3) LITIGATION VENUE PERCENTAGE.—**

**(A) ONE OR MORE ELIGIBLE NPL FACILITIES.—For each eligible person that has established one or more litigation venues pursuant to subsection (d) with respect to one or more eligible NPL facilities, the Fund shall establish a litigation venue percentage. The percentage shall be equal to the weighted average of the State percentages for each eligible NPL facility in each State in which such eligible person has established a litigation venue. In determining such weighted average, each eligible NPL facility with respect to which such person has established a litigation venue shall be accorded equal value.**

**(B) NO ELIGIBLE NPL FACILITIES.—For each eligible person that does not have one or more eligible NPL facilities and has established litigation venue with respect to one or more eli-**

**gible non-NPL facilities pursuant to subsection (d), the Fund shall establish a litigation venue percentage equal to the weighted average of the State percentages for each eligible non-NPL facility in each State in which such eligible person has established a litigation venue. In determining such weighted average, each eligible non-NPL facility with respect to which litigation venue has been established shall be accorded equal value.**

**(4) EXTRA WEIGHTING OF LARGE SITES.—In determining the facility location percentage under paragraph (2)(A), the Fund shall count a facility twice for weighting purposes if—**

**(A) the facility is located in the same State as the State in which litigation venue has been established;**

**(B) the facility is included in the eligible person's coverage litigation in that venue; and**

**(C) total response costs incurred plus estimated response costs exceed $50,000,0000, as established by governmental cost summaries or demands, records or decision, or evidence satisfactory to the Fund of costs actually incurred.**

**(c) STATE PERCENTAGE.—**

**(1) CONGRESSIONAL FINDINGS.—The Congress finds that as of January 1, 1994, State law generally is more favorable to eligible persons that pursue claims concerning eligible costs against insurers in some States, that State law generally is more favorable to insurers with respect to such claims in some States, and that in some States the law generally favors neither insurers nor eligible persons with respect to such claims or that there is insufficient information to determine whether such law generally favors insurers or eligible persons with respect to such claims. The Congress further finds that considerations of equity and fairness require that resolution offers made by**

**the Fund must vary to reflect the relative state of the law among the several States.**

**(2) STATE PERCENTAGE CATEGORIES.—The States are hereby classified into the following percentage categories:**

**(A) 20 PERCENT.—The State percentage shall be 20 percent for: Florida, Maine, Maryland, Massachusetts, Michigan, New York, North Carolina, and Ohio.**

**(B) 60 PERCENT.—The State percentage shall be 60 percent for: California, Colorado, Georgia, Illinois, New Jersey, Washington, West Virginia, and Wisconsin.**

**(C) 40 PERCENT.—For all other States the State percentage shall be 40 percent.**

**(d) LITIGATION VENUE.—For purposes of this section, litigation venue is considered established with respect to an eligible person if—**

**(1) on or before December 31, 1993, the eligible person had pending in a court of competent jurisdiction a com-**

**plaint against an insurer with respect to eligible costs at an eligible facility; and**

**(2) no motion to change venue with respect to such complaint was pending on or before January 31, 1994.**

**(e) AVAILABLE COVERAGE.—**

**(1) IN GENERAL.—The Fund shall determine the available coverage for each eligible person by adding the limits of liability contained in all valid insurance contracts of insurance (including per occurrence, aggregate, primary, excess or other limits) and then by subtracting the total of all deductibles and self-insured retentions applicable to those policies. In calculating the available coverage and the average deductible pursuant to section 808(c), the Fund shall exclude any deductible or self-insured retention contained in a policy which has already been paid by the eligible person.**

**(2) PER OCCURRENCE BASIS POLICIES.—For insurance policies with limits or deductibles expressed on a per occurrence basis without an aggregate limit,**

**the limit or deductible shall be an amount equal to the limit or deductible in the policy multiplied by the number of eligible facilities of the eligible person and by the number of years the policy was in effect. Per occurrence limits or deductibles may be adjusted by the Fund whenever there is an increase in the eligible facilities attributable to an eligible party.**

**(f) ADJUSTMENT FOR OWNED PROPERTY SITES.—**

**(1) ADJUSTMENT.—If an eligible person seeks payment of eligible costs for an owned property site, only 70 percent of such eligible costs (including eligible costs for off site contamination attributable to the owned property) shall be taken into account in making payments under this section.**

**(2) DEFINITIONS.—For purposes of this subsection:**

**(A) OWNED PROPERTY SITE.—A facility shall be considered an owned property site if—**

**(i) an eligible person owned or leased the facility at the time of initial disposal or a predecessor company owned or leased the facility at the time of initial disposal and the predecessor company merged into an eligible person or became the wholly owned subsidiary of an eligible person;**

**(ii) the property owned or leased by the eligible person or predecessor company represents all or a portion of the facility as specifically designated on the NPL or as subject to a removal covered by this title;**

**(iii)(I) an eligible person or predecessor company generated all of the hazardous substances which were disposed of during the period such person or predecessor owned or leased the facility, or (II) an eligible person or predecessor company owned a landfill which is part of the prop-**

**erty on which a manufacturing or industrial facility is situated, the landfill was used for the treatment, storage, or disposal of waste generated from the manufacturing or industrial facility and from third parties, and the landfill contains waste that is not primarily municipal solid waste or sewage sludge as defined in title VI of this Act; and**

**(iv) the hazardous substances associated with the owned property constitute the basis for liability at the facility.**

**(B) PROPERTY NOT CONSIDERED OWNED PROPERTY.—A facility shall not be considered owned property of an eligible person for purposes of this section when the eligible person acquired the facility from, or acquired the assets of, a company which engaged in initial disposal of hazardous substances at the facility and the eligible person did not engage in initial**

**disposal of hazardous substances at the facility during its period of ownership. An owned property site shall not include a public or commercial landfill primarily used for disposal, storage, or treatment of municipal solid waste or sewage sludge as defined in title VI of this Act.**

**(C) INITIAL DISPOSAL.—For purposes of this paragraph, the term initial disposal means the spilling, pumping, pouring, emitting, emptying, discharging, injecting, dumping, disposing, placing, or leaking of hazardous substances into the environment caused by the facility owner but does not include—**

**(i) any continuing or further leaking, escaping, or leaching of hazardous substances into the environment during subsequent periods of ownership which was not caused by the acts of a subsequent owner; or**

**(ii) any activities undertaken by an owner related to response at the facility.**

**SEC. 807. ACCEPTANCE OF RESOLUTION OFFER.**

**(a) ACCEPTANCE.—**

**(1) ELECTION TO ACCEPT.—An eligible person may, when submitting a request for a resolution to the Fund, make a written irrevocable election to accept any resolution to be made by the Fund.**

**(2) NOTIFICATION.—An eligible person that does not make an election pursuant to paragraph (1) shall, within 60 days of the receipt of a resolution offer from the Fund, notify the Fund in writing of its irrevocable acceptance or rejection of such offer. An eligible person who does not so accept or reject a resolution offer within 60 days shall be deemed to have made an irrevocable election to reject the offer.**

**(b) ACCEPTANCE OR REJECTION PRIOR TO OFFER.—Upon expiration of the 60-day period immediately following the enactment of this Act, any eligible person may notify the Fund that such eligible person accepts or rejects**

**any offer to be issued by the Fund under this title. Any such notice shall be signed by a duly authorized officer of the eligible person, as certified by the secretary of the eligible person or by a person with equivalent authority.**

**(c) WAIVER OF INSURANCE CLAIMS.—Any eligible person accepting a resolution offer from the Fund shall agree in writing, subject to reinstatement described in subsection (d) to waive, stay, or dismiss any of its existing and future claims against any insurer for eligible costs, including bad faith claims pertaining to actions to recover eligible costs.**

**(d) REINSTATEMENT OF INSURANCE CLAIMS.—If the Fund fails to timely fulfill its obligations to an eligible person under the terms of an accepted resolution offer, such eligible person shall be entitled to reinstate any of its existing and future claims under a contract for insurance with respect to eligible costs. A shortfall provided for in section 808(f) shall not be considered a failure of the Fund to timely fulfill its obligations.**

**SEC. 808. RESOLUTION PAYMENTS.**

**(a) TIME OF PAYMENT; PRE-RESOLUTION COSTS.—The Fund shall make equal annual payments over a period of 10 years for the applicable percentage of eligible costs incurred by an eligible person on or before the date such person accepts a resolution offer. The Fund may, in its sole discretion, make such payments over a shorter period if the aggregate eligible costs do not exceed $50,000. An eligible person shall submit to the Fund documentation of such costs as the Fund may require. The initial payment to an eligible person under this paragraph shall be made not later than 60 days after the receipt of documentation satisfactory to the Fund. Interest shall not accrue on amounts payable pursuant to a resolution offer during the 5-year period beginning on the date of the enactment of this Act. In each year thereafter, interest shall accrue on the unpaid balance of the pre-resolution costs in an amount equal to the rate of interest on one year Treasury bills issued on the anniversary of such date of enactment, or if no bills were issued on such date, on the**

**last date such bills were issued prior to such anniversary.**

**(b) TIME OF PAYMENT; POST-RESOLUTION COSTS.—The Fund shall make payments for eligible costs incurred by an eligible person after the date such person accepts a resolution offer to the eligible person, or to a contractor or other person designated by the eligible person, subject to such documentation as the Fund may require. Payments under this title shall be made not later than 60 days after the receipt of documentation (satisfactory to the Fund) with respect to such costs.**

**(c) ADJUSTMENT FOR DEDUCTIBLE OR SELF INSURANCE.—In the case of an eligible person that has submitted to the Fund, as proof of status as an eligible person, a valid insurance contract subject to a self-insured retention or a deductible, payment to such eligible person pursuant to a resolution shall be reduced once by an amount equal to the average of the amounts of self-insured retentions and deductibles in all valid insurance contracts of insurance of the eligible person. For purposes of determining such average in the case of a**

**per occurrence deductible or self-insured retention, the Fund shall only count such deductible or self-insured retention once for each policy year.**

**(d) ADJUSTMENT FOR CERTAIN DUTY-TO-DEFEND COSTS.—If an insurer has incurred and paid costs pursuant to a duty-to-defend clause contained in a contract for insurance, and such costs are the subject of a dispute between the eligible person and an insurer, the Fund shall reduce payment of a resolution to an eligible person by such amount and pay such amount to the insurer. If such costs were paid by the insurer on or before the date the eligible person accepted a resolution offer made by the Fund, payment to an insurer under this section shall be made in equal annual installments over a period of 10 years, and interest shall not accrue with respect to such costs. The Fund may, in its sole discretion, make such payments over a shorter period if the aggregate costs do not exceed $50,000.**

**(e) EFFECT OF PAYMENTS.—(1) Payments made to an eligible person by the Fund pursu-**

**ant to a resolution offer shall be treated as payments made by an insurer in satisfaction of the terms and conditions of a contract of insurance. Such payments shall be allocated pro rata to each year in which proof of insurance has been established. The amount allocated to each coverage year shall be allocated 100 percent to the primary coverage until it is exhausted and then 100 percent to each successively higher layer of coverage until each such layer is exhausted.**

**(2) No insurer shall be allowed to collect recovery pursuant to a reinsurance contract on the basis of a payment by the Fund unless such reinsurer is not subject to the fees under section _____ of the Internal Revenue Code or has not satisfied its obligations pursuant to such fees.**

**(f) SHORTFALL.—If, in any year during the first 10 years after enactment, the Fund does not have sufficient funds available to pay all eligible costs of resolution offers accepted by eligible persons, the Fund shall determine the amount of the costs which cannot be paid in that year (the "shortfall"). The Fund shall al-**

**locate the shortfall to the eligible persons in proportion to the size of their pending claims for reimbursement from the Fund. This shortfall shall be paid to the eligible person and shall be amortized over the next 5 years, and the amortized amount shall be paid with interest at the rate specified for the amortization of past costs. A shortfall which is being amortized hereunder shall not be considered a default by the Fund, triggering the reinstatement of claims.**

**(g) INTERIM ALLOCATIONS.—An eligible person accepting an offer of resolution shall be entitled to receive payment of all eligible costs which have been incurred. If an eligible person obtains reimbursement of such eligible costs as a result of a final allocation, contribution action, or otherwise, the eligible person must notify the Fund of the amount of the reimbursement and must either (1) reduce its next claim to the Fund for payment of eligible costs by the amount of the reimbursement, or (2) refund the amount of the reimbursement.**

**SEC. 809. REJECTION OF RESOLUTION OFFER AND REIMBURSEMENT TO INSURER.**

**If an eligible person rejects a resolution offer (including a rejection pursuant to section 807(b)), litigates a claim with respect to eligible costs against 1 or more insurers, and obtains a final judgment against, or enters into a settlement with, any such insurer, the Fund—**

**(1) shall reimburse to such insurer or insurers the lesser of the amount of the resolution offer made to the eligible person (or, in the case of a rejection pursuant to section 807(b), the amount which the Fund would have offered) or the final judgment or settlement; and**

**(2) may, if the resolution offer exceeded the final judgment or settlement, reimburse the insurer or insurers for unrecovered reasonable costs and legal fees, except that the total reimbursement under this subsection may not exceed the amount of the resolution offer to the eligible person (or, in the case of a rejection pursuant to section 807(b), the amount which the Fund would have offered).**

**Reimbursements pursuant to this subsection shall be subject to such documentation as the Fund may require and shall be made by the Fund not later than 60 days after receipt by the Fund of a complete request for reimbursement satisfactory to the Fund.**

**SEC. 810. FINANCIAL STATEMENTS, AUDITS, INVESTIGATIONS, AND INSPECTIONS.**

**(a) IN GENERAL.—The financial statements of the Fund shall be prepared in accordance with generally accepted accounting principles and shall be audited annually by an independent certified public accountant in accordance with the auditing standards issued by the Comptroller General. Such auditing standards shall be consistent with the private sector's generally accepted auditing standards.**

**(b) INVESTIGATIONS AND OTHER AUDITS.—The Inspector General of the Environmental Protection Agency is authorized to conduct audits and investigations as the Inspector General deems necessary or appropriate.**

**SEC. 811. STAY OF PENDING LITIGATION.**

**(a) ENACTMENT OPERATES AS STAY.—Except as provided in this section, enactment of this title shall operate as a stay, applicable to all persons other than the United States, of the commencement or continuation, including the issuance or employment of process or service of any pleading, motion, or notice, of any judicial, administrative, or other action with respect to claims for indemnity or other claims arising from a valid insurance contract of qualified insurance concerning insurance coverage for eligible costs.**

**(b) ACTIONS NOT AFFECTED.—Nothing in this title shall be construed to authorize a stay of any action involving claims that do not concern eligible costs or a valid insurance contract of qualified insurance. Any such claim shall be severed by operation of law from claims involving eligible costs or valid contracts of insurance of qualified insurance, and the insured party may proceed with the prosecution of the severed claims not involving eligible costs or not involving qualified insurance.**

**(c) TERMINATION OF STAY.—(1) The stay established by subsection (a) shall terminate with respect to an eligible person upon the earlier of the following:—**

**(A) The rejection of a resolution offer (including an early rejection) by such eligible person pursuant to section 807.**

**(B) A determination by the Fund that an offer will not be made to such eligible person or that such person is not an eligible person.**

**(C) A determination by the Fund pursuant to section 816(b) that the minimum participation level has not been achieved.**

**(D) A failure by the Fund at any time after the date 10 years after the enactment of this Act to timely pay to such eligible person a resolution payment equal to the total amount of eligible costs (including shortfalls from prior years) required to be paid to such person under a resolution offer in any year after such date.**

**(2) The stay established by subsection (a) shall terminate on the date that is 10 years**

**after the enactment of this Act with respect to:**

**(A) A person that becomes an eligible person on or after such date.**

**(B) An eligible person that has not filed a request for a resolution offer and has not rejected a resolution offer pursuant to section 807(b) before such date.**

**(d) AUTHORITY OF UNITED STATES UNAFFECTED.—Nothing in this section shall be construed to limit or affect in any way the discretion or authority of the United States or any party to commerce or continue any allocation process, cost recovery, or other action pursuant to the authority of sections 101 through 122a of CERCLA.**

**(e) STATUTE OF LIMITATION TOLLED.—Notwithstanding any other provision of Federal or State law, any Federal or State statute of limitation concerning the filing or prosecution of an action by an eligible person against an insurer, or by an insurer against an eligible person, with respect to eligible costs shall be tolled during the pendency of the stay of pending litigation established by this title.**

**SEC. 812. REGULATIONS.**

**(a) PROCEDURES AND DOCUMENTATION.—Not later than 120 days after the date of enactment of this title, the Fund shall publish in the Federal Register for public comment of not more than 60 days interim final regulations concerning procedures and documentation for the submission of requests for resolution offers and the payment of accepted resolution offers. Not later than 60 days after the close of the public comment period, the Fund shall publish in the Federal Register final regulations concerning such procedures and documentation, which may be amended by the Fund from time to time. The Fund in its discretion may require that requests for resolution offers made before the issuance of final regulations pursuant to this subsection be revised to conform to the requirements of such final regulations.**

**(b) OTHER REGULATIONS.—The Fund may prescribe such other regulations, rules and procedures as the Fund deems appropriate from time to time.**

**(c) JUDICIAL REVIEW.—No regulation, rule or procedure prescribed by the Fund shall be**

**subject to review by any court except to the extent such regulation, rule or procedure is not consistent with a provision of this title. No resolution offer made by the Fund shall be subject to review by any court.**

**SEC. 813. COURT JURISDICTION AND PENALTIES.**

**(a) JURISDICTION OF FEDERAL COURTS.—Notwithstanding section 1349 of title 28, United States Code:**

**(1) The Fund shall be deemed to be an agency of the United States for purposes of sections 1345 and 1442 of title 28, United States Code.**

**(2) All civil actions to which the Fund is a party shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of all such actions, without regard to amount or value.**

**(3) Any civil or other action, case or controversy in a court of a State, or in any court other than a district court of the United States, to which the Fund is a party may at any time before the trial thereof be removed by the Fund, without**

**the giving of any bond or security, to the district court of the United States for the district and division embracing the place where the same is pending, or, if there is no such district court, to the district court of the United States for the district in which the principal office of the Fund is located, by following any procedure for removal of causes in effect at the time of such removal.**

**(4) No attachment or execution shall be issued against the Fund or any of its property before final judgment in any State, Federal, or other court.**

**(b) FALSE OR FRAUDULENT STATEMENTS OR CLAIMS.—**

**(1) CRIMINAL PENALTIES.—(A) For purposes of section 287 of title 18, United States Code (relating to false claims), the Fund shall be considered an agency of the United States and any officer or employee of the Fund shall be considered a person in the civil service of the United States.**

**(B) For purposes of section 1001 of title 18, United States Code (relating to false statements or entries), the Fund shall be considered an agency of the United States.**

**(2) CIVIL PENALTIES.—Officers and employees of the Fund shall be considered officers and employees of the United States for purposes of section 3729 of title 31, United States Code (relating to false claims).**

**SEC. 814. MISCELLANEOUS PROVISIONS.**

**(a) ADMISSIBILITY OF RESOLUTION OFFER.—No resolution offered by the Fund shall be admissible in any legal action brought by an eligible person against an insurer or by an insurer against an eligible person.**

**(b) RESOLUTION PROCESS NOT ADMISSION OF LIABILITY.—No provision of this title, and no action by an eligible person undertaken in connection with any provision of this title shall in any way constitute an admission of liability in connection with the disposal of a hazardous substance.**

**(c) PRECEDENTIAL EFFECT.—No provision of this title shall affect or be construed to establish a precedent with respect to any insurance dispute between any person and insurer not subject to a stay under this title.**

**(d) SOVEREIGN IMMUNITY OF THE UNITED STATES.—No obligation or liability of the Fund shall constitute an obligation or liability of the United States, or of any department, agency, instrumentality, officer, or employee thereof. No person shall have a cause of action of any kind against the United States, or any department agency, instrumentality, officer, or employee thereof with respect to any obligation, liability, or activity of the Fund.**

**SEC. 815. REPORTS.**

**(a) REPORT ON POTENTIAL FOR ESCALATION OF EIRF LIABILITY.—Not later than the end of the 5th year after enactment of this title, the President shall submit a report to Congress assessing the potential liability of the Fund over the next 5-year period. The report shall include recommendations for amendments to address any shortfalls between the projected potential liability of the Fund and the**

**amounts authorized to be raised over such 5-year period.**

**(b) REPORT ON NON-NPL FACILITIES.—The President shall conduct a study of the number of non-NPL facilities and the average cleanup cost per non-NPL facility and shall report his findings not later than 3 years after the date of enactment.**

**(c) ANNUAL REPORTS.—The Fund shall report annually to the President and the Congress not later than January 15 of each year on its activities for the prior fiscal year. The report shall include—**

**(1) a financial statement audited by an independent auditor; and**

**(2) a determination of whether the fees and assessments imposed by section ____ of the Internal Revenue Code of 1986 will be sufficient to meet the anticipated obligations of the Fund.**

**(d) SPECIAL REPORTS.—The Fund shall promptly report to the President and the Congress at any time the Fund determines that the fees and assessments imposed by section ____ of the Internal Revenue Code of 1986 will**

**be insufficient to meet the anticipated obligations of the Fund.**

**SEC. 816. EFFECTIVE DATE.**

**(a) IN GENERAL.—This title shall take effect on the date of enactment of this Act.**

**(b) MINIMUM PARTICIPATION LEVEL BY ELIGIBLE PERSONS.—**

**(1) IDENTIFICATION OF LITIGATING ELIGIBLE PERSONS.—Each insurance company providing insurance coverage to eligible persons shall submit to the Fund, within 30 days after the enactment of this Act, a list of all eligible persons which filed suit against that company for eligible costs prior to the enactment of this Act and shall notify each eligible person which is on the list.**

**(2) REQUESTS FOR APPLICABLE PERCENTAGE.—Each eligible person identified on a list under paragraph (1) shall file a request for its applicable percentage (as determined under section 806(b)) with the Fund within 60 days after the enactment of this Act. The Fund shall determine the applicable percentage of the eli-**

**gible person and notify the eligible person of such percentage within 90 days of enactment. Each eligible person receiving such notification shall decide whether to accept or reject the applicable percentage determination within 135 days of enactment. An eligible person which has made an early acceptance or rejection pursuant to section 807(b) shall be deemed to have accepted or rejected its applicable percentage, as the case may be. Any eligible person which does not file such a request within such period, and any eligible person which files such a request and does not reject the applicable percentage determination within 135 days after the enactment of this Act, shall be deemed to have accepted the determination solely for the purposes of this section.**

**(3) MINIMUM PARTICIPATION LEVEL.—Within 150 days after enactment, the Fund shall determine—**

**(A) the number of eligible persons on the list under paragraph (1), and**

**(B) the weighted average (as determined under paragraph (4)) of such eligible persons,**

**which have accepted or rejected applicable percentage determinations under this subsection. If more than 15 percent of the eligible persons on such list or more than a weighted average of 15 percent of such eligible persons have rejected such determinations, the provisions of this title and the insurance fee provisions of title IX shall cease to have any force and effect, and any fees paid by insurance companies which have not been utilized for administration of the Fund shall be refunded to those companies.**

**(4) WEIGHTED AVERAGE.—The weighted average of eligible persons accepting or rejecting applicable percentage determinations shall be determined by multiplying the acceptances or rejections by eligible persons listed under paragraph (1) times the number of each such person's eligible facilities (without regard to**

**whether or not any such is the subject of any lawsuit).**

**SEC. 817. TERMINATION OF AUTHORITY TO OFFER AND ACCEPT RESOLUTION.**

**(a) AUTHORITY TO ACCEPT REQUEST FOR RESOLUTION.—The authority of the Fund to accept requests for resolution shall terminate on the date 10 years after the enactment of this Act.**

**(b) AUTHORITY TO OFFER RESOLUTIONS.—The authority of the Fund to offer resolutions to eligible persons shall terminate after the date 10 years and 180 days after the date of the enactment of this Act.**

**(c) CONTINUING OBLIGATIONS.—Until termination of the Fund, the Fund shall continue to—**

**(1) make payments pursuant to resolution offers for any eligible facility which is identified at the time of acceptance of the resolution offer or within 10 years after the enactment of this Act; or**

**(2) reimburse insurers with respect to litigation commenced or continued in connection with a resolution offer made**

on or before the date 10 years after the date of the enactment of this Act, where the resolution offer was rejected by an eligible person or not acted upon by an eligible person.

SEC. 818. TERMINATION OF FUND.

If, during any two-year calendar period commencing after the date 10 years after the date of the enactment of this Act, no eligible person makes a claim to the Fund for payment of eligible costs, the Fund shall terminate, and all amounts remaining in the Fund shall be deposited in the General Fund of the Treasury.

# TITLE IX—TAXES

SEC. 901. AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.

(a) Section 59A(e)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 59A(e)(1)) is amended by striking "January 1, 1996" and inserting instead "January 1, 2001".

(b) Section 4611(e) of the Internal Revenue Code of 1986 (26 U.S.C. 4611(e)) is amended—

**(1) in paragraph (1), by striking "December 31, 1986" and inserting instead "December 31, 1995";**

**(2) in paragraph (2)—**

**(A) by striking "December 31, 1993 or December 31, 1994" and inserting instead "December 31, 1998 or December 31, 1999";**

**(B) by striking "December 31, of 1994 or 1995, respectively" and inserting instead "December 31 of 1999 or 2000, respectively"; and**

**(C) by striking "1994 or 1995" the last place it appears and inserting instead "1999 or 2000";**

**(3) in paragraph (3)(A), by striking "January 1, 1987, and ending December 31, 1995" and inserting instead "January 1, 1996, and ending December 31, 2000"; and**

**(4) in paragraph (3)(B)—**

**(A) in the title thereof, by striking "January 1, 1996" and inserting "January 1, 2001"; and**

**(B) by striking "Fund before January 1, 1996" and inserting instead "Fund before January 1, 2001".**

**SEC. 902. ENVIRONMENTAL FEES AND ASSESSMENTS ON INSURANCE COMPANIES.**

**(a) IN GENERAL.—The Internal Revenue Code of 1986 is amended by inserting after section ____ the following new section:**

**"SEC. . ENVIRONMENTAL FEES AND ASSESSMENTS ON INSURANCE COMPANIES.**

**[RESERVED]**

**(b) CLERICAL AMENDMENTS.—The table of sections for chapter ____ of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section ____ the following:**

**"Sec. . Environmental fees and assessments on insurance companies.".**

**SEC. 903. FUNDING PROVISIONS FOR ENVIRONMENTAL INSURANCE RESOLUTION FUND.**

**(A) IN GENERAL.—**

**(1) Except as provided in section 802(f)(7) of this Act, all expenditures of the Resolution Fund shall be paid out of the fees and assessments imposed by section ____ of the Internal Revenue Code.**

**(2) Except as may be expressly authorized by the Secretary of the Treasury, all funds of the Resolution Fund shall be maintained in the Treasury of the United States. The Secretary may provide for the disbursement of such funds to the Resolution Fund or on behalf of the Resolution Fund under such procedures, terms and conditions as the Secretary may prescribe.**

**(b) TRANSFER TO RESOLUTION FUND.—The Secretary of the Treasury shall transfer to the Resolution Fund on October 1 of fiscal year 1995, 1996, 1997, 1998 and 1999, an amount equal to the fees and assessments anticipated to be collected pursuant to section ____ of the Internal Revenue Code of 1986 during the then current fiscal year.**

**(c) ADJUSTMENTS.—In each succeeding fiscal year the Secretary of the Treasury shall adjust the amounts transferred pursuant to paragraph (2) to reflect actual collections of fees and assessments during the prior fiscal year, except that with respect to the transfer made on October 1, 1999, the Resolution Fund**

**shall reimburse the Secretary the amount of such transfer subsequently determined by the Secretary to have exceeded actual collections of fees and assessments during such fiscal year.**

**SEC. 904. RESOLUTION FUND NOT SUBJECT TO TAX.**

**The Resolution Fund, including its capital, reserves, surplus, security holdings, and income shall be exempt from all taxation now or hereafter imposed by the United States (including any territory, dependency or possession thereof) or any State, county, municipality or local taxing authority.**

## ~~TITLE IX—TAXES~~

**~~SEC. 901. AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.~~**

~~(a) Section 59A(e)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 59A(e)(1)) is amended by striking ''January 1, 1996'' and inserting instead ''January 1, 2001''.~~

~~(b) Section 4611(e) of the Internal Revenue Code of 1986 (26 U.S.C. 4611(e)) is amended—~~

~~(1) in paragraph (1), by striking ''December 31, 1986'' and inserting instead ''December 31, 1995'';~~

~~(2) in paragraph (2)—~~

~~(A) by striking ''December 31, 1993 or December 31, 1994'' and inserting instead ''December 31, 1998 or December 31, 1999'';~~

~~(B) by striking ''December 31, of 1994 or 1995, respectively'' and inserting instead ''December 31 of 1999 or 2000, respectively''; and~~

~~(C) by striking ''1994 or 1995'' the last place it appears and inserting instead ''1999 or 2000'';~~

~~(3) in paragraph (3)(A), by striking ''January 1, 1987, and ending December 31, 1995'' and inserting instead ''January 1, 1996, and ending December 31, 2000''; and~~

~~(4) in paragraph (3)(B)—~~

~~(A) in the title thereof, by striking ''January 1, 1996'' and inserting ''January 1, 2001''; and~~

~~(B) by striking ''Fund before January 1, 1996'' and inserting instead ''Fund before January 1, 2001''.~~

**~~SEC. 902. ENVIRONMENTAL FEES AND ASSESSMENTS ON INSURANCE COMPANIES.~~**

~~(a) IN GENERAL.—The Internal Revenue Code of 1986 is amended by inserting after section ____ the following new section:~~

**~~"SEC. . ENVIRONMENTAL FEES AND ASSESSMENTS ON INSURANCE COMPANIES.~~**

~~[RESERVED]~~

~~(b) CLERICAL AMENDMENTS.—The table of sections for chapter ____ of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section ____ the following:~~

~~''Sec. . Environmental fees and assessments on insurance companies.''.~~

**~~SEC. 903. FUNDING PROVISIONS FOR ENVIRONMENTAL INSURANCE RESOLUTION FUND.~~**

~~(A) IN GENERAL.—~~

~~(1) Except as provided in section 802(f)(7) of this Act, all expenditures of the Resolution Fund shall be paid out of the fees and assessments imposed by section ____ of the Internal Revenue Code.~~

~~(2) Except as may be expressly authorized by the Secretary of the Treasury, all funds of the Resolution Fund shall be maintained in the Treasury of the United States. The Secretary may provide for the disbursement of such funds to the Resolution~~

~~Fund or on behalf of the Resolution Fund under such procedures, terms and conditions as the Secretary may prescribe.~~

~~(b) TRANSFER TO RESOLUTION FUND.—The Secretary of the Treasury shall transfer to the Resolution Fund on October 1 of fiscal year 1995, 1996, 1997, 1998 and 1999, an amount equal to the fees and assessments anticipated to be collected pursuant to section ____ of the Internal Revenue Code of 1986 during the then current fiscal year.~~

~~(c) ADJUSTMENTS.—In each succeeding fiscal year the Secretary of the Treasury shall adjust the amounts transferred pursuant to paragraph (2) to reflect actual collections of fees and assessments during the prior fiscal year, except that with respect to the transfer made on October 1, 1999, the Resolution Fund shall reimburse the Secretary the amount of such transfer subsequently determined by the Secretary to have exceeded actual collections of fees and assessments during such fiscal year.~~

**~~SEC. 904. RESOLUTION FUND NOT SUBJECT TO TAX.~~**

~~The Resolution Fund, including its capital, reserves, surplus, security holdings, and income shall be exempt from all taxation now or hereafter imposed by the United States (including any territory, dependency or possession~~

~~thereof) or any State, county, municipality or local taxing authority.~~

# *TITLE IX—ENVIRONMENTAL INSURANCE RESOLUTION TAXES AND TRUST FUND; 5-YEAR EXTENSION OF HAZARDOUS SUBSTANCE SUPERFUND*

## *Subtitle A—Environmental Insurance Resolution Taxes and Trust Fund*

### *SEC. 901. ENVIRONMENTAL INSURANCE RESOLUTION TAXES.*

***(a) GENERAL RULE.—Chapter 38 of the Internal Revenue Code of 1986 (relating to environmental taxes) is amended by adding at the end the following new subchapter:***

***"Subchapter E—Environmental Insurance Resolution Taxes***

*"Part I. Tax on persons with base-period exposure.*
*"Part II. Tax on current-year premiums.*
*"Part III. Assessment on insurers resolving claims with Environmental Insurance Resolution Trust Fund.*
*"Part IV. Termination; administrative provisions.*

***"PART I—TAX ON PERSONS WITH BASE-PERIOD EXPOSURE***

*"Sec. 4691. Imposition of tax.*

*"Sec. 4692. Adjusted base-period commercial premiums.*
*"Sec. 4693. Commercial net premiums.*
*"Sec. 4694. Other definitions and special rules.*

1 *"SEC. 4691. IMPOSITION OF TAX.*

2 *"(a) GENERAL RULE.—There is hereby im-*
3 *posed on each assessable person engaged in*
4 *any trade or business during any calendar*
5 *year a tax for such calendar year equal to the*
6 *sum of—*

7 *"(1)(A) such person's adjusted base-pe-*
8 *riod commercial direct premiums, multi-*
9 *plied by*

10 *"(B) the applicable direct funding*
11 *rate, and*

12 *"(2)(A) such person's adjusted base-pe-*
13 *riod commercial reinsurance premiums,*
14 *multiplied by*

15 *"(B) the applicable reinsurance fund-*
16 *ing rate.*

17 *"(b) APPLICABLE FUNDING RATES.—For pur-*
18 *poses of subsection (a)—*

19 *"(1) APPLICABLE DIRECT FUNDING*
20 *RATE.—The applicable direct funding rate*
21 *is—*

22 *"(A) 0.22 percent for 1995, 1996,*
23 *1997, and 1998, and*

*"(B) zero thereafter.*

*"(2) APPLICABLE REINSURANCE FUNDING RATE.—The applicable reinsurance funding rate is—*

*"(A) 0.83 percent for 1995, 1996, 1997, and 1998, and*

*"(B) 0.14 percent thereafter.*

*"(c) ADJUSTED DIRECT AND REINSURANCE PREMIUMS.—For purposes of subsection (a)—*

*"(1) ADJUSTED BASE-PERIOD COMMERCIAL DIRECT PREMIUMS.—The term 'adjusted base-period commercial direct premiums' means an amount equal to the percentage of the aggregate adjusted base-period commercial premiums which is the same percentage as the percentage of the sum described in section 4692(a)(1) which is attributable to net premiums written from qualified commercial policies (other than reinsurance policies).*

*"(2) ADJUSTED BASE-PERIOD COMMERCIAL REINSURANCE PREMIUMS.—The term 'adjusted base-period commercial reinsurance premiums' means adjusted base-period commercial premiums which are not*

*adjusted base-period commercial direct premiums.*

*"(d) TIME FOR PAYMENT OF TAX.—*

*"(1) MONTHLY INSTALLMENTS.—The tax imposed by subsection (a) on any assessable person for any calendar year shall be paid in equal monthly installments during such calendar year.*

*"(2) DUE DATE FOR INSTALLMENT.—Any installment under paragraph (1) for any month shall be paid on or before the last day of such month.*

*"(e) ASSESSABLE PERSON.—For purposes of this part, the term 'assessable person' means any person—*

*"(1) which has commercial net premiums for any base-period year; and*

*"(2) which is—*

*"(A) a United States person, or*

*"(B) a person (other than a United States person) if—*

*"(i) such person, during the calendar year for which the tax would be assessed, is engaged in*

*any trade or business within the United States, and*

*"(ii) such person's taxable income which is effectively connected with the conduct of such business is taxed under section 871(b) or 882(a) and is not exempt from such tax under a treaty obligation of the United States.*

*"SEC. 4692. ADJUSTED BASE-PERIOD COMMERCIAL PREMIUMS.*

*"(a) GENERAL RULE.—For purposes of this part, the adjusted base-period commercial premiums of any person is the excess (if any) of—*

*"(1) the sum of the inflation-adjusted commercial premiums of such person for each base-period year, over*

*"(2) the exemption amount.*

*"(b) INFLATION-ADJUSTED COMMERCIAL PREMIUMS.—For purposes of this part, the inflation-adjusted commercial premiums of any person for any base-period year shall be an amount equal to the commercial net premiums of such person for such base-period year multi-*

1 *plied by the inflation adjustment factor for*
2 *such base-period year.*
3 *"(c) INFLATION ADJUSTMENT FACTOR.—*

| *"In the case of the following base-period years:* | *The inflation adjustment factor is:* |
|---|---|
| *1968* | *3.09* |
| *1969* | *2.93* |
| *1970* | *2.77* |
| *1971* | *2.66* |
| *1972* | *2.57* |
| *1973* | *2.42* |
| *1974* | *2.18* |
| *1975* | *2.00* |
| *1976* | *1.89* |
| *1977* | *1.78* |
| *1978* | *1.65* |
| *1979* | *1.48* |
| *1980* | *1.31* |
| *1981* | *1.18* |
| *1982* | *1.12* |
| *1983* | *1.08* |
| *1984* | *1.04* |
| *1985* | *1.00* |

4 *"(d) EXEMPTION AMOUNT.—For purposes of*
5 *this section—*
6 *"(1) IN GENERAL.—The exemption*
7 *amount for any person is $50,000,000.*
8 *"(2) AGGREGATION RULES.—For pur-*
9 *poses of paragraph (1)—*
10 *"(A) IN GENERAL.—All persons*
11 *treated as a single employer as of Feb-*
12 *ruary 2, 1994, under subsection (a) or*
13 *(b) of section 52 shall be treated as 1*
14 *person.*
15 *"(B) JOINT UNDERWRITING.—*

*"(i) IN GENERAL.—In the case of any joint underwriting operation of insurance or reinsurance—*

*"(I) under which the participating persons assume a portion of the business written and share pro rata in the premiums, losses, expenses, and profits, and*

*"(II) which is under the management of 1 or more managing underwriters,*

*such participating persons as of February 2, 1994, shall be treated as 1 person.*

*"(ii) COMMONLY GOVERNED UNDERWRITING OPERATIONS.—If more than 1 operation referred to in clause (i) is governed by a common board of directors, council, or similar body, all such operations shall be treated as 1 operation for purposes of clause (i).*

*"(iii) CERTAIN CLOSING AGREEMENTS.—If any person participat-*

*ing in a joint underwriting operation is subject to a closing agreement as of February 2, 1994, with respect to such operation, such person and all other persons subject to such agreement shall be treated as 1 person.*

*"(C) ALLOCATION OF EXEMPTION AMOUNT.—The exemption amount determined under paragraph (1) shall be allocated among persons treated as 1 person—*

*"(i) under subparagraph (A) or (B)(i) in proportion to each such person's respective share of the aggregate of the amounts described in subsection (a)(1) of all such persons, and*

*"(ii) in any other case, using any other method prescribed by the Secretary.*

*"SEC. 4693. COMMERCIAL NET PREMIUMS.*

*"(a) GENERAL RULE.—For purposes of this part, the commercial net premiums of any person for any base-period year is the sum of—*

*"(1) the net premiums written for such base-period year from qualified commercial policies (other than reinsurance policies),*

*"(2) the net premiums written for such year from allocated reinsurance of qualified commercial policies, and*

*"(3) 21 percent of the net premiums written for such year from unallocated reinsurance.*

*Commercial net premiums shall be determined by taking into account only premiums attributable to insurance or reinsurance against, or with respect to, hazards, risks, losses, or liabilities within the United States.*

*"(b) QUALIFIED COMMERCIAL POLICIES.—For purposes of this subchapter—*

*"(1) IN GENERAL.—The term 'qualified commercial policy' means any insurance policy against, or with respect to, hazards, risks, losses, or liabilities within the United States if premiums or liabilities under such policy—*

*"(A) are of a type required to be reported in the line of the underwrit-*

*ing and investment exhibit of the annual statement relating to the commercial multiple peril line of business, or*

*"(B) are of a type required to be reported in the line of the underwriting and investment exhibit of the annual statement relating to the other liability line of business.*

*"(2) EXCLUSION OF CERTAIN TYPES OF POLICIES.—Subparagraph (B) of paragraph (1) shall not apply to—*

*"(A) any policy providing only noncommercial coverage, or*

*"(B) any other policy which provides neither comprehensive general liability coverage nor environmental liability coverage.*

*"(c) ALLOCATED REINSURANCE.—For purposes of this part, the term 'allocated reinsurance' means any reinsurance the net premiums written for which were reported on the underwriting and investment exhibit of the annual statement by the line of business related to the underlying policies covered by such rein-*

*surance (or, in the case of a person not filing an annual statement, would have been required to be so reported) and were not reported as part of the reinsurance line of business.*

*"(d) UNALLOCATED REINSURANCE.—For purposes of this part, the term 'unallocated reinsurance' means any reinsurance the net premiums written for which were reported in the line of the underwriting and investment exhibit of the annual statement relating to the reinsurance line of business (or, in the case of a person not filing an annual statement, would have been required to be so reported).*

*"(e) REINSURANCE BY RELATED PARTY TREATED AS NOT REINSURANCE.—For purposes of this part, if, with respect to a policy of reinsurance, the reinsurer and the reinsured are members of the same controlled group, premiums written on such reinsurance shall be treated as premiums described in section 4693(a)(1) and not as premiums written on reinsurance. For purposes of the preceding sentence, the term 'controlled group' means all persons treated as a single employer under section 52(a), and, to the extent provided by the*

*Secretary, all persons who are commonly managed by the same corporation.*

*"SEC. 4694. OTHER DEFINITIONS AND SPECIAL RULES.*

*"(a) GENERAL DEFINITIONS.—For purposes of this part—*

*"(1) BASE PERIOD.—*

*"(A) IN GENERAL.—The term 'base period' means the 18-calendar year period beginning with calendar year 1968 and ending with calendar year 1985.*

*"(B) BASE-PERIOD YEAR.—The term 'base-period year' means any calendar year in the base period.*

*"(2) NET PREMIUMS WRITTEN.—*

*"(A) IN GENERAL.—The determination of the net premiums written of any person for any year shall be made on the basis of the underwriting and investment exhibit of the annual statement filed by such person for such year (or, if such person did not file such a statement, the determination shall be made on a basis consistent*

*with the annual statement requirements applicable to such year).*

*"(B) AMOUNTS MAY BE LESS THAN ZERO.—The amount taken into account as the net premiums written with respect to any type of policy for any year may be less than zero.*

*"(3) ANNUAL STATEMENT.—The term 'annual statement' means the annual statement approved by the National Association of Insurance Commissioners which is required to be filed with the insurance regulatory authorities of a State. If any person was required to file an annual statement with the authorities of 2 or more different States for any base-period year, the annual statement used for purposes of this part shall be the annual statement in which the net premiums written related to reinsurance were reported and identified in the most specific manner in the underwriting and investment exhibit.*

*"(4) POLICY.—The term 'policy' includes any policy or other instrument by*

*whatever name called whereby a contract of insurance or reinsurance is made, continued, or renewed.*

*"(5) UNITED STATES.—*

*"(A) IN GENERAL.—The term 'United States', when used in a geographical sense, has the meaning given such term by section 4612(a)(4).*

*"(B) UNITED STATES PERSON.—Subparagraph (A) shall not apply for purposes of determining whether any person is a United States person.*

*"(b) SPECIAL RULE FOR INSURERS NOT REQUIRED TO FILE ANNUAL STATEMENT.—If any person—*

*"(1) was not required to file an annual statement for any year,*

*"(2) establishes to the satisfaction of the Secretary that, despite the best efforts of such person, such person has inadequate records to make determinations consistent with the annual statement reporting requirements of this part for such year, and*

*"(3) provides, in a manner acceptable to the Secretary, a reasonable estimate of such determinations,*

*then such person shall be treated as meeting such requirements for such year.*

*"(c) ADJUSTMENT FOR CERTAIN ACQUISITIONS, ETC.—Except as otherwise provided by the Secretary—*

*"(1) ACQUISITIONS.—If, after the beginning of the base period, a person acquires any portion of a commercial insurance business of another person (hereinafter in this subsection referred to as the 'predecessor'), the inflation-adjusted commercial premiums of the acquiring person shall include the inflation-adjusted commercial premiums of such predecessor which are attributable to the portion of such insurance business so acquired.*

*"(2) DISPOSITIONS.—If, after the beginning of the base period—*

*"(A) a person disposes of any portion of a commercial insurance business in a transaction to which paragraph (1) applies, and*

*"(B) such person furnishes the acquiring person with such information as is necessary for the application of paragraph (1),*

*then the inflation-adjusted commercial premiums of the person making such disposition shall be reduced by the portion of such premiums attributable to the portion of such insurance business involved in such disposition.*

*"(3) TREATMENT OF REINSURANCE TRANSACTIONS.—For purposes of this subsection—*

*"(A) IN GENERAL.—Except as otherwise provided in this paragraph, a reinsurance transaction shall not be treated as the disposition of a portion of an insurance business by the reinsured nor as an acquisition of such a portion by the reinsurer if, as a result of such transaction, there is—*

*"(i) a reduction in the net premiums written of the reinsured, and*

*"(ii) an increase (in an amount equal to the amount of such reduction) in the net premiums written of the reinsurer.*

*"(B) TREATMENT OF CERTAIN REINSURANCE TRANSACTIONS.—If, after December 31, 1985, and before February 2, 1994, any person transferred any insurance business in an assumption reinsurance transaction with respect to qualified commercial policies that were issued during the base period whereby the reinsurer becomes directly liable on the qualified commercial policies transferred, such transaction shall be treated for purposes of paragraphs (1) and (2) as a disposition of a portion of a commercial insurance business by the reinsured and as an acquisition of such a portion by the reinsurer.*

*"(C) TREATMENT OF CERTAIN TERMINATIONS OF REINSURANCE TRANSACTIONS.—If, after the beginning of the base period and before February 2,*

*1994, a reinsurance transaction with respect to qualified commercial policies is terminated in accordance with a commutation agreement whereby the reinsurer is no longer liable for any potential claim under the reinsurance agreement, the determination of the adjusted base-period commercial premiums of the reinsured and the reinsurer shall be made as if such reinsurance transaction had not occurred.*

*"(4) SPECIAL RULES.—*

*"(A) ADJUSTMENT OF ADJUSTED BASE-PERIOD PREMIUMS FOR ACQUISITIONS AND DISPOSITIONS ON OR AFTER FEBRUARY 2, 1994.—In the case of an acquisition or disposition on or after February 2, 1994, paragraphs (1) and (2) shall be applied by substituting 'adjusted base-period commercial premiums' for 'inflation-adjusted commercial premiums' each place it appears.*

*"(B) TIMING OF EFFECT OF TRANSACTIONS ON COMPUTATION OF TAXES.—If*

*any acquisition or disposition referred to in paragraph (1) or (2) occurs after December 31, 1994, the provisions of this subsection shall apply only for purposes of determining the amount of the tax imposed by section 4691 for calendar years beginning after the date of such transaction.*

*"(C) DETERMINATION OF PREMIUMS ATTRIBUTABLE TO PORTION OF INSURANCE BUSINESS.—The determination of inflation-adjusted commercial premiums and adjusted base-period commercial premiums attributable to the transferred portion of a commercial insurance business shall be made based on the ratio of assets transferred in connection with the commercial insurance business to total assets of the transferor immediately before such transfer.*

*"(D) TRANSFERORS REMAIN SECONDARILY LIABLE.—Notwithstanding any reduction in the inflation-adjusted commercial premiums or ad-*

*justed base-period commercial premiums of any person by reason of the disposition of any portion of such person's commercial insurance business, such person shall be secondarily liable for the tax imposed by section 4691 with respect to the adjusted base-period commercial premiums attributable to such portion.*

*"(E) COMMERCIAL INSURANCE BUSINESS.—For purposes of this subsection, the term 'commercial insurance business' means any liability or potential liability under any policy with respect to which commercial net premiums were written and the assets associated with such a liability.*

*"(d) TREATMENT OF FOREIGN INSURERS.—*

*"(1) IN GENERAL.—There is hereby imposed a tax on any policy described in paragraph (2) on which any premium is written by a foreign person. Such tax shall be an amount equal to 0.50 percent of the maximum limit of liability of such person under such policy.*

*"(2) POLICIES SUBJECT TO TAX.—For purposes of paragraph (1), a policy is described in this paragraph if such policy is—*

*"(A) a policy of casualty insurance against, or with respect to, hazards, risks, losses, or liabilities wholly or partly within the United States, or*

*"(B) a policy of reinsurance with respect to a policy described in subparagraph (A).*

*"(3) EXCEPTIONS.—*

*"(A) IN GENERAL.—Paragraph (1) shall not apply to any policy if the foreign person writing the premium on such policy is an assessable person (as defined in section 4691(e)) as of the withholding date.*

*"(B) PRIOR TRANSACTIONS.—Paragraph (1) shall not apply to any policy if, as of the withholding date, the foreign person writing the premium on such policy demonstrates that the tax imposed by paragraph (1) has been paid on a policy covering the same*

*hazards, risks, losses, or liabilities within the United States as those covered by such policy.*

*"(C) CLOSING AGREEMENT.—*

*"(i) IN GENERAL.—Paragraph (1) shall not apply to any policy if, as of the withholding date, the foreign person writing the premium on such policy has in effect an agreement with the Secretary which—*

*"(I) provides that such person shall be treated as an assessable person for purposes of this part, and*

*"(II) contains such provisions as the Secretary determines to be necessary to ensure proper computation and payment of the tax imposed by section 4691 and the assessment imposed by section 4696.*

*"(ii) PERIOD OF AGREEMENT.—Any closing agreement entered into under clause (i) shall take ef-*

*fect on the date specified in such agreement and shall apply for all subsequent periods unless revoked by the Secretary or revoked by the foreign person with the consent of the Secretary.*

*"(iii) TREATMENT OF RELATED PERSONS.—The Secretary shall not enter into an agreement under clause (i) with any foreign person unless such foreign person establishes to the satisfaction of the Secretary that all persons which are, or become, related persons to such foreign person and which have commercial net premiums for any base-period year are subject to such an agreement.*

*"(iv) CLOSING AGREEMENT NOT REQUIRED IN CERTAIN CASES.—No closing agreement shall be required to be filed by any person filing a statement referred to in subparagraph (E).*

*"(D) PERIOD BEFORE CLOSING AGREEMENT.—Paragraph (1) shall not apply to any policy if, as of the withholding date, the foreign person writing the premium on such policy—*

*"(i) has in effect an election to be treated as an assessable person for purposes of this part,*

*"(ii) gives such bond or other security as the Secretary may require for the collection of any tax imposed by section 4691 and any assessment imposed by section 4696, and*

*"(iii) meets such other requirements as the Secretary may require.*

*If such person fails to enter into an agreement referred to in subparagraph (C)(i) in a timely manner after making such election, such election shall be treated as never being in effect.*

*"(E) NO ADJUSTED BASE-PERIOD COMMERCIAL PREMIUMS.—Paragraph*

*(1) shall not apply to any policy if, as of the withholding date, the foreign person writing the premium on such policy has filed with the Secretary a statement (which meets such requirements as may be prescribed by the Secretary) certifying under penalties of perjury that it has no adjusted base-period commercial premiums. Any such statement shall remain in effect only so long as such person does not have any adjusted base-period commercial premiums.*

*"(F) WITHHOLDING DATE.—The term 'withholding date' means the date as of which an amount would otherwise be required to be deducted or withheld under paragraph (5) with respect to any policy.*

*"(4) DEFINITIONS.—For purposes of this subsection—*

*"(A) FOREIGN PERSON.—The term 'foreign person' means any person which is not a United States person.*

*"(B) POLICY OF CASUALTY INSURANCE.—The term 'policy of casualty insurance' means any policy other than a policy of life, sickness, or accident insurance, or annuity contract (as defined in section 4372(e)).*

*"(C) RELATED PERSON.—The term 'related person' has the meaning given such term by section 954(d)(3), except that such section shall be applied by substituting 'the person with respect to whom the determination is being made' for 'controlled foreign corporation' each place it appears.*

*"(D) MAXIMUM LIMIT OF LIABILITY.—The term 'maximum limit of liability' means the total amount for which the foreign person would be liable—*

*"(i) in the case of a policy described in paragraph (2)(A), if each person insured under such policy were simultaneously entitled to the maximum recovery allowed under the policy, and*

*"(ii) in the case of a policy described in paragraph (2)(B), if each person insured under a policy described in paragraph (2)(A) which is directly or indirectly reinsured by the policy described in paragraph (2)(B) were simultaneously entitled to the maximum recovery allowed under the policy described in paragraph (2)(A).*

*Such maximum limit of liability shall not be reduced by any liability which is reinsured.*

*"(5) COLLECTION OF TAX.—All persons, in whatever capacity acting, having control, receipt, custody, disposal, or payment of any premium or other amount for any policy on which a tax is imposed under paragraph (1) shall deduct and withhold from such premium or other amount the amount of such tax. Every person required to so deduct and withhold such tax is hereby made liable for such tax and is hereby indemnified against the claims*

*and demands of any person for the amount so deducted and withheld.*

*"(e) CERTAIN PERSONS TREATED AS ENGAGED IN TRADE OR BUSINESS.—For purposes of this part, a person shall be treated as engaged in a trade or business if any other person, who with such person is treated as a single employer under subsection (a) or (b) of section 52, is engaged in a trade or business.*

*"PART II—TAX ON CURRENT-YEAR PREMIUMS*

*"Sec. 4695. Tax on current-year premiums.*

*"SEC. 4695. TAX ON CURRENT-YEAR PREMIUMS.*

*"(a) IMPOSITION OF TAX.—There is hereby imposed on each policy described in subsection (b) a tax equal to—*

*"(1) the direct premiums written under such policy, multiplied by*

*"(2) the applicable funding rate.*

*"(b) POLICIES SUBJECT TO TAX.—*

*"(1) IN GENERAL.—A policy is described in this subsection if—*

*"(A) such policy is issued against, or with respect to, hazards, risks, losses, or liabilities wholly or partly*

***within the United States (as defined in section 4612(a)(4)), and***

***"(B) the premiums or liabilities under such policy are of a type required to be reported in the line of the exhibit of premiums and losses of the annual statement relating to any of the following lines of business:***

***"(i) Fire.***

***"(ii) Commercial multiple peril.***

***"(iii) Other liability.***

***"(iv) Products liability.***

***"(v) Allied lines.***

***"(vi) Inland marine.***

***"(vii) Commercial auto no-fault.***

***"(viii) Other commercial auto liability.***

***"(ix) Commercial auto physical damage.***

***"(x) Farmowners multiple peril.***

***"(xi) Ocean marine.***

***"(xii) Financial guaranty.***

*"(xiii) Aircraft.*

*"(xiv) Fidelity.*

*"(xv) Surety.*

*"(xvi) Glass.*

*"(xvii) Burglary and theft.*

*"(xviii) Boiler and machinery.*

*"(xix) Any other line designated by the Secretary.*

*"(2) EXCEPTION.—Paragraph (1) shall not apply to any policy which the issuer establishes is of any of the following types of insurance:*

*"(A) Directors and officers liability insurance.*

*"(B) Professional liability insurance.*

*"(C) Fire insurance on residential or farm owner-occupied housing units.*

*"(3) ANNUAL STATEMENT; POLICY.—For purposes of this section, the terms 'annual statement' and 'policy' have the respective meanings given such terms by section 4694(a). The provisions of section 4694(b) shall apply for purposes of this section.*

*"(c) APPLICABLE FUNDING RATE.—For purposes of this section, the applicable funding rate is—*

*"(1) 0.33 percent for direct premiums written during 1995, 1996, 1997, or 1998, and*

*"(2) 0.63 percent thereafter.*

*"(d) EXEMPTION AMOUNT.—*

*"(1) IN GENERAL.—No tax shall be imposed by subsection (a) on any premium under a policy to which subsection (b) applies which is included in direct premiums written during any calendar year to the extent that the amount of such premium, when added to the aggregate amount of all prior direct premiums written on such policies during such calendar year, does not exceed the exemption amount.*

*"(2) EXEMPTION AMOUNT.—For purposes of paragraph (1)—*

*"(A) IN GENERAL.—The exemption amount for any person is $5,000,000.*

*"(B) CONTROLLED GROUP RULES.—For purposes of subparagraph (A)—*

*"(i) IN GENERAL.—The rules of subparagraphs (A) and (B)(i) of section 4692(d)(2) shall apply (determined without regard to the date therein).*

*"(ii) REGULATIONS.—The Secretary may by regulations treat multiple arrangements (including multiple joint underwriting operations) as 1 arrangement where the separate operation of such arrangements is without a substantial business purpose.*

*"(e) DIRECT PREMIUMS WRITTEN.—For purposes of this section, the determination of the direct premiums written of any person for any year shall be made on the basis of the exhibit of premiums and losses of the annual statement filed by such person for such year (or, if such person did not file such a statement, the determination shall be made on a basis consistent with the annual statement requirements applicable to such year). Notwithstanding the preceding sentence, direct premiums written shall include the gross amount of pre-*

*miums and other consideration (including advance premiums, deposits, fees, and assessments) arising from policies issued by a person acting as the direct writer, adjusted for any return or additional premiums arising from endorsements, cancellations, premium audits, or retrospective rating. Amounts returned where the amount is not fixed in the contract by formula or otherwise but depends on the experience of the insurer or the discretion of management shall not be included in return premiums.*

*"(f) LIABILITY FOR TAX.—*

*"(1) IN GENERAL.—Except as provided in paragraph (2)—*

*"(A) TAX PAID BY ISSUER.—The tax imposed by subsection (a) shall be paid by the person issuing the policy.*

*"(B) DUE DATE.—Any tax payable under subparagraph (A) shall be paid on or before the 14th day after the close of the calendar quarter in which the premium is included in direct premiums written.*

*"(C) DEPOSITS REQUIRED.—Any issuer liable for tax payable under subparagraph (A) shall make monthly deposits of such tax on or before the 14th day after the close of the month in which the premium is included in direct premiums written.*

*"(2) SPECIAL RULES FOR FOREIGN INSURERS.—*

*"(A) IN GENERAL.—If any premium is written by a foreign person (as defined in section 4694(d)(4)) on any policy described in subsection (b), all persons, in whatever capacity acting, having control, receipt, custody, disposal, or payment of any premium or other amount for such policy shall deduct and withhold from such premium or other amount the amount of the tax imposed by subsection (a). Every person required to so deduct and withhold such tax is hereby made liable for such tax and is hereby indemnified against the claims and de-*

*mands of any person for the amount so deducted and withheld.*

*"(B) EXCEPTION.—Subparagraph (A) shall not apply with respect to any premium or other amount the income from which is effectively connected with the conduct of a trade or business within the United States, unless such income is exempt from the application of sections 871(b) and 882(a) pursuant to a treaty obligation of the United States.*

*"PART III—ASSESSMENT ON INSURERS RESOLVING CLAIMS WITH ENVIRONMENTAL INSURANCE RESOLUTION TRUST FUND*

*"Sec. 4696. Imposition of assessment.*

*"SEC. 4696. IMPOSITION OF ASSESSMENT.*

*"(a) IN GENERAL.—There is hereby imposed on each insurer to which this section applies an assessment for each calendar year in the amount determined under subsection (c).*

*"(b) INSURERS TO WHICH SECTION APPLIES.—This section shall apply to any insurer for any calendar year if such insurer issued any policy which, for such calendar year, is —*

*"(1) an assessable direct policy, or*

*"(2) an assessable reinsurance policy.*

*"(c) AMOUNT OF ASSESSMENT.—*

*"(1) IN GENERAL.—The assessment imposed by this section on any insurer for any calendar year shall be an amount equal to the sum of—*

*"(A) such insurer's EIRF-certified percentage of the direct insurance limit, and*

*"(B) such insurer's EIRF-certified percentage of the reinsurance limit.*

*"(2) LIMITS.—For purposes of paragraph (1)—*

*"(A) the direct insurance limit for each calendar year is $81,000,000, and*

*"(B) the reinsurance limit for each calendar year is $167,000,000.*

*"(d) TIME FOR PAYMENT OF ASSESSMENT.—The assessment imposed by subsection (a) for any calendar year shall be paid on or before September 30 of such calendar year.*

*"(e) DEFINITIONS.—For purposes of this section—*

*"(1) ASSESSABLE DIRECT POLICY.—The term 'assessable direct policy' means, for any calendar year, any policy if—*

*"(A) the Environmental Insurance Resolution Fund determined that such policy was a valid insurance contract of an eligible person,*

*"(B) such contract (or documentary evidence of such contract) was submitted (whether or not within the calendar year or the applicable period with respect thereto) under section 804 of the Superfund Reform Act of 1994 to such Fund by or for such eligible person, and*

*"(C) such Fund, during the applicable period with respect to such calendar year, made 1 or more payments to such eligible person under title VIII of such Act.*

*"(2) ASSESSABLE REINSURANCE POLICY.—The term 'assessable reinsurance policy' means, for any calendar year, any policy if—*

*"(A) such contract is identified under paragraph (5)(G)(ii) as reinsuring a policy which is an assessable direct policy for such calendar year,*

*"(B) the Environmental Insurance Resolution Fund notifies the issuer of such policy that it has been so identified,*

*"(C) such issuer is an assessable person (as defined in section 4692(e)) or is treated as such for purposes of part I, and*

*"(D) such Fund determines (after affording such insurer an opportunity to contest such reinsurance) that such contract reinsures an assessable direct policy.*

*"(3) EIRF-CERTIFIED PERCENTAGE.—*

*"(A) APPLICATION WITH DIRECT LIMIT.—The term 'EIRF-certified percentage' means, with respect to the direct limit of any insurer for any calendar year, the percentage determined by the Environmental Insurance Resolution Fund which—*

*"(i) the aggregate of the coverage limits contained in assessable direct policies issued by such insurer, bears to*

*"(ii) the aggregate of the coverage limits contained in all assessable direct policies issued by all insurers.*

*"(B) APPLICATION WITH REINSURANCE LIMIT.—The term 'EIRF-certified percentage' means, with respect to the reinsurance limit of any insurer for any calendar year, the percentage determined by the Environmental Insurance Resolution Fund which—*

*"(i) the aggregate of the coverage limits contained in assessable reinsurance policies issued by such insurer, bears to*

*"(ii) the aggregate of the coverage limits contained in all assessable reinsurance policies issued by all insurers.*

*"(4) APPLICABLE PERIOD.—The term 'applicable period' means, with respect to*

*any calendar year, the period of the 4 calendar years preceding such year.*

*"(5) COVERAGE LIMIT.—*

*"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'coverage limit' means, with respect to any policy, the aggregate limit on coverage under the policy.*

*"(B) ANNUAL LIMIT.—If the limit on coverage under any policy is an annual limit, the term 'coverage limit' means, with respect to such policy, an amount equal to such annual limit multiplied by the number of years such contract was in effect.*

*"(C) PER OCCURRENCE LIMITS.—If the limit on coverage under an insurance policy is expressed on a per occurrence basis without an aggregate or annual limit, the term 'coverage limit' means, with respect to such policy, an amount equal to—*

*"(i) the limit on coverage under the policy for 1 occurrence, multiplied by*

*"(ii) the number of eligible facilities of the eligible person that were taken into account in determining the applicable percentage under section 806 of the Superfund Reform Act of 1994 of such person, multiplied by*

*"(iii) the number of years such contract was in effect.*

*"(D) EXCESS COVERAGE.—If the policy provides excess coverage without an aggregate, annual, or per occurrence limit, the term 'coverage limit' means, with respect to such policy, an amount equal to—*

*"(i) 10 times the amount that must be paid by an insurer to the eligible person before such person is entitled to submit a claim for such excess coverage, multiplied by*

*"(ii) the number of years such contract was in effect.*

*"(E) OTHER CASES.—If the coverage limit under any policy is not deter-*

*minable under the preceding provisions of this paragraph, such limit shall be determined by the Environmental Insurance Resolution Fund under a method prescribed by the Secretary.*

*"(F) DEDUCTIBLES DISREGARDED.—The determination under this paragraph of any coverage limit under any assessable direct policy shall be made without regard to any deductible or self-insured retention of an eligible person.*

*"(G) TREATMENT OF REINSURANCE.—*

*"(i) IN GENERAL.—The coverage limit (determined without regard to this clause) under—*

*"(I) any assessable direct policy, and*

*"(II) any assessable reinsurance policy,*

*shall be reduced by 80 percent of the portion of such limit which is reinsured, but only if the reinsurer and the reinsured are not*

*members of the same controlled group (as defined in section 4693(e)).*

*"(ii) REINSURER MUST BE IDENTIFIED.—A policy shall be treated as not reinsured for any period unless the Environmental Insurance Resolution Fund is notified of such reinsurance (in such form and manner, and at such time or times, as is specified by such Fund).*

*"(6) ELIGIBLE FACILITY; ELIGIBLE PERSON; VALID INSURANCE CONTRACT.—The terms 'eligible facility', 'eligible person', and 'valid insurance contract' have the respective meanings given to such terms by section 802 of the Superfund Reform Act of 1994.*

*"(7) POLICY.—The term 'policy' has the meaning given such term by section 4694(a)(4).*

*"(f) NO REVIEW OF EIRF-CERTIFIED PERCENTAGES.—*

*"(1) IN GENERAL.—No court of the United States shall have jurisdiction to hear any action, whether legal or equitable, brought to review any final determination of any percentage under subsection (e)(3). No such final determination shall be subject to review by the Secretary in an administrative proceeding.*

*"(2) FINAL DETERMINATION.—For purposes of paragraph (1), the percentages determined under subsection (e)(3) by the Environmental Insurance Resolution Fund as of August 1st of any calendar year shall be treated as final determinations of such percentages for such year.*

*"(g) SECTION 4694(d) TAX TO APPLY TO CERTAIN ASSESSABLE INSURERS WITHOUT CLOSING AGREEMENT.—If—*

*"(1) paragraph (1) of section 4694(d) does not apply to any foreign person solely by reason of paragraph (3)(E) thereof, and*

*"(2) any policy issued by such person is an assessable direct policy or an assess-*

*able reinsurance policy under this section,*

*subparagraphs (C)(iv) and (E) of section 4694(d)(3) shall cease to apply to such person with respect to such policy.*

*"(h) ADMINISTRATIVE PROVISIONS.—*

*"(1) IN GENERAL.—All assessments imposed by this section are excise taxes, and shall be assessed and collected in the same manner as other excise taxes imposed by this chapter.*

*"(2) CERTAIN PROVISIONS MADE APPLICABLE.—All provisions of law, including penalties and provisions providing for interest, shall apply to the assessments imposed by this section in the same manner as other excise taxes imposed by this chapter.*

*"(i) APPLICATION OF SECTION.—This section shall apply to calendar years after 1998.*

*"PART IV—TERMINATION; ADMINISTRATIVE PROVISIONS*

*"Sec. 4697. Termination.*
*"Sec. 4698. Return requirements; regulations.*

*"SEC. 4697. TERMINATION.*

*"(a) IN GENERAL.—Except as provided in subsection (b), this subchapter shall not apply to any calendar year after 2004.*

*"(b) PART I TAX ON CERTAIN FOREIGN INSURERS.—The tax imposed by section 4694(d) shall not apply to premiums and other amounts paid after the close of the 10-year period beginning on the date such tax takes effect.*

*"SEC. 4698. RETURN REQUIREMENTS; REGULATIONS.*

*"(a) RETURN REQUIREMENTS.—*

*"(1) IN GENERAL.—Each person liable for any tax or assessment under this subchapter shall make such returns, and furnish such other statements and information to the Secretary, as the Secretary determines to be necessary to carry out the purposes of this subchapter.*

*"(2) INITIAL RETURN.—The initial return made with respect to the tax imposed by section 4691 shall include such information as the Secretary shall by forms require for purposes of computing the adjusted base-period commercial premiums of the person making such return.*

*"(b) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subchapter, including such regulations as may be appropriate to prevent the avoidance of any tax or assessment imposed by this subchapter."*

*(b) CLERICAL AMENDMENT.—The table of subchapters for chapter 38 of such Code is amended by adding at the end the following new item:*

*"Subchapter E. Environmental insurance resolution taxes."*

*(c) STUDY OF FINANCING.—During 2003, the Secretary of the Treasury or his delegate shall prepare and submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a study of the financing for the Environmental Insurance Resolution Fund, including in such study any recommendations that the Secretary may have with respect to such financing.*

*SEC. 902. ENVIRONMENTAL INSURANCE RESOLUTION TRUST FUND.*

*(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relat-*

*ing to trust fund code) is amended by adding at the end the following new section:*

*"SEC. 9513. ENVIRONMENTAL INSURANCE RESOLUTION TRUST FUND.*

*"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Environmental Insurance Resolution Trust Fund', consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).*

*"(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Environmental Insurance Resolution Trust Fund amounts equivalent to—*

*"(1) the taxes received in the Treasury under subchapter E of chapter 38 (relating to environmental insurance resolution taxes), and*

*"(2) amounts recovered by, and fees paid to, the Environmental Insurance Resolution Fund under title VIII of the Superfund Reform Act of 1994.*

*"(c) EXPENDITURES FROM TRUST FUND.—Amounts in the Environmental Insurance Res-*

*olution Trust Fund shall be available for purposes of making expenditures to carry out title VIII of the Superfund Reform Act of 1994 (as in effect on the date of the enactment of such Act) and only for such purposes.*

*"(d) LIABILITY OF UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—*

*"(1) IN GENERAL.—Any expenditure or obligation incurred by the Environmental Insurance Resolution Fund may be paid only out of the Environmental Insurance Resolution Trust Fund.*

*"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in the Superfund Reform Act of 1994 or in any other provision of law shall authorize the payment by the United States Government of any amount with respect to any such expenditure or obligation out of any source other than the Environmental Insurance Resolution Trust Fund, and the United States Government shall not be liable for any such expenditure or obligation to the extent not paid from such Trust Fund.*

*"(3) FINAL YEAR.—If, as of December 31, 2004, the Secretary estimates that the Environmental Insurance Resolution Trust Fund has insufficient funds to pay all of the amounts payable out of the such Trust Fund, amounts payable out of such Trust Fund after such date shall be proportionately reduced to reflect such insufficiency.".*

*(b) CLERICAL AMENDMENT.—The table of sections for such subchapter A is amended by adding at the end thereof the following new item:*

*"Sec. 9513. Environmental Insurance Resolution Trust Fund."*

*SEC. 903. EXEMPTION FROM INCOME TAX FOR ENVIRONMENTAL INSURANCE RESOLUTION FUND.*

*Subsection (l) of section 501 of the Internal Revenue Code of 1986 (relating to exemption from tax on corporations, certain trusts, etc.) is amended by adding at the end the following new paragraph:*

*"(4) The Environmental Insurance Resolution Fund established by section 803 of the Superfund Reform Act of 1994.".*

***SEC. 904. EFFECTIVE DATES.***

***(a) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this subtitle shall take effect on January 1, 1995.***

***(b) CURRENT YEAR PREMIUMS.—The amendments made by this subtitle to the extent related to section 4695 of the Internal Revenue Code of 1986, as added by such amendments, shall apply to premiums written after December 31, 1994.***

***(c) CONTINGENCY PERIOD.—***

***(1) IN GENERAL.—The amendments made by this subtitle (other than section 903) shall not take effect unless, as of August 15, 1995—***

***(A) title VIII of this Act is in effect, and***

***(B) the contingency period has expired.***

***(2) DELAY IN DUE DATE FOR TAXES.—If the due date for any tax imposed by subchapter E of chapter 38 of the Internal Revenue Code of 1986 would, but for this paragraph, be on or before the close of the contingency period, such due date shall be***

*the 14th day of the first month beginning after the close of such period.*

*(d) PART I TAX ON CERTAIN FOREIGN INSURERS.—The tax imposed by section 4694(d) of the Internal Revenue Code of 1986, as added by this title, shall apply to a policy for which any premium is written after the close of the contingency period.*

*(e) CONTINGENCY PERIOD.—For purposes of this section, the term "contingency period" means the period specified in section 816 of the Superfund Reform Act of 1994 during which title VIII of such Act is in effect on a contingent basis.*

## *Subtitle B—5-Year Extension of Hazardous Substance Superfund*

*SEC. 911. 5-YEAR EXTENSION OF HAZARDOUS SUBSTANCE SUPERFUND.*

*(a) EXTENSION OF TAXES.—*

*(1) The following provisions of the Internal Revenue Code of 1986 are each amended by striking "January 1, 1996" each place it appears and inserting "January 1, 2001":*

*(A) Section 59A(e)(1) (relating to application of environmental tax).*

*(B) Paragraphs (1) and (3) of section 4611(e) (relating to application of Hazardous Substance Superfund financing rate).*

*(2) Paragraph (2) of section 4611(e) of such Code is amended—*

*(A) by striking "1993" and inserting "1998",*

*(B) by striking "1994" each place it appears and inserting "1999", and*

*(C) by striking "1995" each place it appears and inserting "2000".*

*(b) INCREASE IN AGGREGATE TAX WHICH MAY BE COLLECTED.—Paragraph (3) of section 4611(e) of such Code is amended by striking "$11,970,000,000" each place it appears and inserting "$22,000,000,000" and by striking "December 31, 1995" and inserting "December 31, 2000".*

*(c) EXTENSION OF REPAYMENT DEADLINE FOR SUPERFUND BORROWING.—Subparagraph (B) of section 9507(d)(3) of such Code is amended by*

*striking "December 31, 1995" and inserting "December 31, 2000".*

*(d) EXTENSION OF TRUST FUND PURPOSES.—Subparagraph (A) of section 9507(c)(1) of such Code is amended—*

*(1) by striking clause (i) and inserting the following:*

*"(i) paragraphs (1), (2), (5), (6), (7), (8), and (9) of section 111(a) of CERCLA as in effect on the date of the enactment of the Superfund Reform Act of 1994,", and*

*(2) by striking clause (iii) and inserting the following:*

*"(iii) subsections (m), (n), (q), and (r) of section 111 of CERCLA (as so in effect), or".*

*(e) EXTENSION OF AUTHORIZATION OF APPROPRIATIONS TO TRUST FUND.—Subsection (b) of section 517 of the Superfund Revenue Act of 1986 (26 U.S.C. 9507 note) is amended by striking "and" at the end of paragraph (8), by striking the period at the end of paragraph (9) and*

*inserting a comma, and by adding at the end the following new paragraphs:*

*"(10) 1996, $250,000,000,*

*"(11) 1997, $250,000,000,*

*"(12) 1998, $250,000,000, and*

*"(13) 1999, $250,000,000,".*

*(f) COORDINATION WITH OTHER PROVISIONS.—Paragraph (2) of section 9507(e) of the Internal Revenue Code of 1986 is amended by striking "CERCLA" and all that follows through "Acts)" and inserting "CERCLA, the Superfund Amendments and Reauthorization Act of 1986, and the Superfund Reform Act of 1994 (or in any amendment made by any of such Acts)".*

## *Subtitle C—Report by Environmental Protection Agency*

*SEC. 921. REPORT.*

*(a) IN GENERAL.—The Administrator of the Environmental Protection Agency shall prepare and submit to the Congress an annual report on its assessment of the effectiveness of the Superfund Reform Act of 1994 liability and enforcement reforms, including the reduction*

*of litigation, delay and costs, and other performance measures including the following:*

*(1) HAZARDOUS SUBSTANCE SUPERFUND FINANCIAL INTEGRITY.—*

*(A) A breakdown of Hazardous Substance Superfund obligations by type of activities.*

*(B) An accounting of such obligations (such as remedial actions, studies, and enforcement), by site.*

*(C) A list of companies and associated amounts in the accounts receivable inventory, including the date the receivable was established, by site.*

*(D) The amount of cost recoveries paid into such fund.*

*(E) Projected future clean-up costs (all sites) for Federal Government and private parties.*

*(F) Projected trust fund obligations and receipts.*

*(2) CLEAN-UP EFFICIENCY AND EFFECTIVENESS (BOTH PRIVATE AND PUBLIC-LEAD SITES).—*

***(A) The number of sites cleaned-up, broken down by the type and level of clean-up.***

***(B) The time taken to clean-up each site, broken down by phase.***

***(C) The cost of each clean-up.***

***(D) The percentage of Agency for Toxic Substances and Disease Registry health assessments completed timely.***

***(E) The number of people protected from hazardous substance threats.***

***(F) Expected number of human deaths prevented by work performed at National Priority List sites.***

***(G) The number and cost of all studies conducted at each site, and the extent of any restudies.***

***(H) The amount of attorney, contractor, and engineering fees expended, broken down by site.***

***(I) Effect of the Superfund Reform Act of 1994 on Hazardous Substance Superfund remedy selection, litiga-***

*tion, and other transaction costs, and on clean-up costs.*

*(3) LIABILITY ALLOCATION PROCESS.—*

*(A) The number of parties who are eligible for an expedited settlement and the number to whom the Environmental Protection Agency makes a timely offer.*

*(B) The number of settlements with municipal solid waste generators and transporters, limited-ability-to-pay parties, and the size of the orphan share generated.*

*(C) The percent of potentially responsible parties who accept the Environmental Protection Agency's allocation of liability.*

*(D) The percent of allocations completed within the statutory deadline.*

*(E) The percent of nonsettling allocation parties subject to an Environmental Protection Agency cost recovery action.*

*(F) The total number of potentially responsible parties identified by the Environmental Protection Agency at each site, broken down by those who settle as de minimis, municipal solid waste generators and transporters, and limited-ability-to-pay parties, and by those who settle as a result of the allocation process and those who do not settle.*

*(G) Percentage of clean-up costs allocated to identified-but-not-viable potentially responsible parties, unidentified potentially responsible parties, and the Federal Government, and the percentage of the orphan shares attributable to each.*

*(4) ENVIRONMENTAL INSURANCE RESOLUTION TRUST FUND.—*

*(A) Total and annual actual receipts.*

*(B) Total and annual obligations.*

*(C) Projected receipts and outlays for each fiscal year for the remaining life of such Trust Fund.*

***(D) The number and percentage of potentially responsible parties who have accepted offers made by such Trust Fund, weighted by size of offer.***

***(E) Outlays by such Trust Fund to insurance companies for settlements with parties not accepting offers from such Trust Fund, and the size of the offers not accepted.***

***(b) PERIOD REPORTS REQUIRED.—The annual reports required by subsection (a) shall be for each of the fiscal years 1995, 1996, 1997, 1998, and 1999 and shall be due on the 31st of December following the close of each such fiscal year.***

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