101st CONGRESS

2d Session

H. R. 5835

AN ACT

To provide for reconciliation pursuant to section 4 of the concurrent resolution on the budget for the fisal year 1991.

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To provide for reconciliation pursuant to section 4 of the concurrent resolution on the budget for fiscal year 1991.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the `Omnibus Budget Reconciliation Act of 1990'.

SEC. 2. TABLE OF TITLES

Title I. House Committee on Agriculture.

Title II. House Committee on Banking, Finance and Urban Affairs.

Title III. House Committee on Education and Labor.

Title IV. House Committee on Energy and Commerce.

Title V. House Committee on Interior and Insular Affairs.

Title VI. House Committee on the Judiciary.

Title VII. House Committee on Merchant Marine and Fisheries.

Title VIII. House Committee on Post Office and Civil Service.

Title IX. House Committee on Public Works and Transportation.

Title X. House Committee on Science, Space an logy.

Title XI. House Committee on Veterans Affairs.

Title XII. House Committee on Ways and Means: Spending.

Title XIII. House Committee on Ways and Means: Revenues.

TITLE I--COMMITTEE ON AGRICULTURE

SEC. 1001. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE- This title may be cited as the `Agricultural Reconciliation Act of 1990'.

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

Sec. 1001. Short title; table of contents.

Subtitle A--Commodity Programs

Sec. 1101. Triple base for deficiency payments.

Sec. 1102. Calculation of deficiency payments based on 12-month average.

Sec. 1103. Acreage reduction program for 1991 crop of wheat.

Sec. 1104. Acreage reduction programs for 1992 through 1995 crops of wheat, feed grains, upland cotton, and rice.

Sec. 1105. Soybean marketing loan.

Sec. 1106. Loan origination and program service fees.

Sec. 1107. Proven yields for 1991 through 1995 crops of feed grains.

Sec. 1108. End rows to meet acreage reduction requirements.

Sec. 1109. Surface reservoir encouragement program and other savings.

Subtitle B--Other Agricultural Programs

Sec. 1201. Authorization levels for REA loans.

Sec. 1202. Authorization levels for FmHA loans.

Sec. 1203. APHIS inspection user fee on international passengers.

Sec. 1204. Market promotion program.

Sec. 1205. Integrated farm management program option.

Sec. 1206. Other rural development programs.

Subtitle C--Food Stamp and Related Provisions

Sec. 1301. Food stamp program.

Sec. 1302. Commodity distribution and supplemental food programs.

Sec. 1303. Distribution of surplus commodities to special nutrition projects; processing agreements.

Sec. 1304. TEFAP reauthorizations.

Sec. 1305. Nutrition education authorization.

Subtitle D--Contingent Termination Date

Sec. 1401. Contingent termination date.

Subtitle A--Commodity Programs

SEC. 1101. TRIPLE BASE FOR DEFICIENCY PAYMENTS.

(a) IN GENERAL- The Secretary of Agriculture (hereafter in this title referred to as the `Secretary', unless the context otherwise requires), in making available to producers deficiency payments otherwise authorized by law for each of the 1992 through 1995 crops of wheat, feed grains, upland cotton, and rice, shall compute the amount of such payments by multiplying--

(1) the payment rate; by

(2) the payment acres for the crop (as determined under subsection (b)); by

(3) the farm program payment yield for the crop for the farm.

(b) PAYMENT ACRES- For purposes of subsection (a)(2), payment acres for a crop shall be--

(1) the number of acres planted to the crop for harvest within the number of acres obtained by multiplying--

(A) the crop acreage base for the crop for the farm; by

(B) the base reduction percentage (as determined under subsection (c)); less

(2) the quantity of reduced acreage (as determined under subsection (d)(1)).

(c) BASE REDUCTION PERCENTAGE- For purposes of subsection (b)(1)(B), the

base reduction percentage shall be--

(1) in the case of each of the 1992 and 1993 crops, 85 percent;

(2) in the case of the 1994 crop, 80 percent; and

(3) in the case of the 1995 crop, 75 percent.

(d) REDUCED AND PERMITTED ACREAGE-

(1) REDUCED ACREAGE- For purposes of subsection (b)(2), the quantity of reduced acreage for a crop shall be the number of acres devoted to conservation uses that is determined by multiplying--

(A) the crop acreage base; by

(B) the percentage reduction required by the Secretary under an acreage limitation program announced by the Secretary.

(2) PERMITTED ACREAGE- The remaining acreage is hereafter in this section referred to as `permitted acreage'.

(e) PLANTING COMMODITIES ON PERMITTED ACREAGE- The Secretary shall permit producers on a farm to plant on permitted acreage for which the producers do not receive deficiency payments--

(1) program crops (wheat, feed grains, cotton, or rice);

(2) oilseeds (soybeans, sunflower, canola, rapeseed, safflower, flaxseed, mustard seed, or any other oilseeds the Secretary may designate);

(3) sweet sorghum, popcorn, guar, sesame, castor beans, crambe, plantago ovato, triticale, rye, guayule, milkweed, mung bean, meadowfoam, jojoba, or kenaf;

(4) commodities grown for experimental purposes, as determined by the Secretary;

(5) commodities for which no substantial domestic production or market exists, as determined by the Secretary; or

(6) any experimental crop, including annual herbaceous, or short-rotation woody crops, the production of which the Secretary determines is necessary to meet demand or anticipated demand for ethanol or other biofuels production.

(f) Loan Eligibility-

(1) PROGRAM CROPS- Producers on a farm who devote permitted acreage (for which the producers do not receive deficiency payments) to program crops described in subsection (e)(1) shall be eligible for loans under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) with respect to the acreage.

(2) OILSEEDS- Producers on a farm who devoted permitted acreage (for which the producers do not receive deficiency payments) to oilseeds described in subsection (e)(2) shall not be eligible for loans under such Act with respect to the acreage.

SEC. 1102. CALCULATION OF DEFICIENCY PAYMENTS BASED ON 12-MONTH AVERAGE.

For purposes of calculating deficiency payments for each of the 1991 through 1995 crops of wheat, feed grains, and rice, the payment rate for a crop shall be the amount by which the established price for the crop exceeds--

(1) in the case of wheat and feed grains, the higher of--

(A) the lesser of--

(i) the national weighted average market price received by producers during the marketing year for the crop, as determined by the Secretary; or

(ii) the national weighted average market price received by producers during the first 5 months of the marketing year for the crop, as determined by the Secretary, plus 10 cents per bushel; or

(B) the loan level determined for the crop; and

(2) in the case of rice, the higher of--

(A) the national average market price received by producers during the marketing year for the crop, as determined by the Secretary; or

(B) the loan level determined for the crop.

SEC. 1103. ACREAGE REDUCTION PROGRAM FOR 1991 CROP OF WHEAT.

As soon as practicable after the date of enactment of this section, the Secretary shall announce an acreage limitation program for the 1991 crop of wheat under which the acreage planted to wheat for harvest on a farm would be limited to the wheat crop acreage base for the farm for the crop reduced by 15 percent.

SEC. 1104. ACREAGE REDUCTION PROGRAMS FOR 1992 THROUGH 1995 CROPS OF WHEAT, FEED GRAINS, UPLAND COTTON, AND RICE.

(a) IN GENERAL- Except as provided in subsection (b), the Secretary shall announce an acreage limitation program for each of the 1992 through 1995

crops of--

(1) wheat under which the acreage planted to wheat for harvest on a farm would be limited to the wheat crop acreage base for the farm for the crop reduced by--

(A) in the case of the 1992 crop of wheat, not less than 6 percent;

(B) in the case of the 1993 crop of wheat, not less than 5 percent;

(C) in the case of the 1994 crop of wheat, not less than 7 percent; and

(D) in the case of the 1995 crop of wheat, not less than 5 percent;

(2) corn, grain sorghum, barley, and oats under which the acreage planted to the respective feed grain for harvest on a farm would be limited to the respective feed grain crop acreage base for the farm for the crop reduced by not less than 7 1/2 percent;

(3) upland cotton under which the acreage planted to upland cotton for harvest on a farm would be limited to the upland cotton crop acreage base for the farm for the crop reduced by--

(A) in the case of the 1992 crop of upland cotton, not less than 15 percent; and

(B) in the case of each of the 1993, 1994, and 1995 crops of upland cotton, not less than 20 percent; and

(4) rice under which the acreage planted to rice for harvest on a farm would be limited to the rice crop acreage base for the farm for the crop reduced by--

(A) in the case of the 1992 crop of rice, not less than 18 1/2 percent;

(B) in the case of the 1993 crop of rice, not less than 15 percent;

(C) in the case of the 1994 crop of rice, not less than 14 percent; and

(D) in the case of the 1995 crop of rice, not less than 10 percent.

(b) STOCKS-TO-USE RATIO- Notwithstanding any other provision of law, subsection (a) shall not apply to a crop if the Secretary estimates for such crop that the stocks-to-use ratio will be less than--

(1) in the case of wheat, 34 percent;

(2) in the case of corn, grain sorghum, and barley, 20 percent;

(3) in the case of upland cotton, 30 percent; and

(4) in the case of rice, 16 percent.

SEC. 1105. SOYBEAN MARKETING LOAN.

(a) IN GENERAL- In providing loans for soybeans otherwise authorized by law, the Secretary shall support the price of soybeans in each of the 1991 through 1995 marketing years at a level of not less than $5.25 per bushel.

(b) Loan Origination Fees-

(1) IN GENERAL- The Secretary shall charge a producer a loan origination fee, in connection with making a loan under subsection (a), equal to not more 7 percent of the amount of the loan.

(2) LOAN DEFICIENCY PAYMENTS- If the Secretary charges a loan origination fee for loans made for a crop of soybeans under paragraph (1) and makes loan deficiency payments for the crop, the Secretary shall reduce the amount of any such loan deficiency payment by an amount equal to the amount of the loan origination fee.

(c) EFFECTIVE LOAN RATE- Notwithstanding any other provision of this section, the effective loan rate for a crop of soybeans (calculated as the loan level for the crop less any loan origination fees) under this section shall not be more than $4.87 per bushel.

SEC. 1106. LOAN ORIGINATION AND PROGRAM SERVICE FEES.

(a) SUGAR, HONEY, PEANUTS, AND TOBACCO- Effective for each of the 1991 through 1995 crops of sugarcane, sugar beets, honey, peanuts, and tobacco, the Secretary shall charge the producer a loan origination fee for a price support loan for such crops equal to not more 3 percent of the amount of the loan. The Secretary shall ensure that fees imposed for a loan for a crop of peanuts or tobacco under this subsection shall be shared equally between producers and purchasers.

(b) WOOL- Effective for each of the 1991 through 1995 marketing years for wool and mohair, in connection with making price support available for such marketing years, the Secretary may charge producers of wool and mohair a program service fee equal to not more 1 percent of the amount of payments made under the National Wool Act of 1954 (7 U.S.C. 1781 et seq.) for wool and mohair for such marketing year.

SEC. 1107. PROVEN YIELDS FOR 1991 THROUGH 1995 CROPS OF FEED GRAINS.

Notwithstanding any other provision of law, effective for each of the 1991 through 1995 crops of feed grains, the Secretary shall not calculate farm program payment yields on the basis of actual yields of feed grains, as provided in section 505(a) of the Agricultural Act of 1949 (as amended by

section 1131 of S. 2830 (as passed by the House of Representatives on August 3, 1990)).

SEC. 1108. END ROWS TO MEET ACREAGE REDUCTION REQUIREMENTS.

Notwithstanding any other provision of law, producers shall not be allowed to meet acreage limitation or set-aside requirements by idling end rows, as provided in section 1122 of S. 2830 (as passed by the House of Representatives on August 3, 1990).

SEC. 1109. SURFACE RESERVOIR ENCOURAGEMENT PROGRAM AND OTHER SAVINGS.

(a) SURFACE RESERVOIR- The Secretary shall not establish a program to encourage surface reservoirs, as provided in subtitle C of title XI of S. 2830 (as passed by the House of Representatives on August 3, 1990).

(b) OTHER SAVINGS- Section 201(d)(2)(B) of the Agricultural Act of 1949 (7 U.S.C. 1446(d)(2)(B)) is amended--

(1) in clause (i), by striking `the period beginning on April 1, 1986, and ending on December 31, 1986, 40 cents' and inserting `during calendar year 1991, 5 cents'; and

(2) in clause (ii), by striking `first 9 months of 1987, 25 cents' and inserting `calendar years 1992 through 1995, 11.25 cents'.

Subtitle B--Other Agricultural Programs

SEC. 1201. AUTHORIZATION LEVELS FOR REA LOANS.

(a) IN GENERAL- Subject to the other provisions of this section and notwithstanding any other provision of law, for each of fiscal years 1991 through 1995, loans may be insured in accordance with the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) from the Rural Electrification and Telephone Revolving Fund established under section 301 of such Act (7 U.S.C. 931) in amounts equal to the following levels:

(1) For fiscal year 1991, $896,000,000.

(2) For fiscal year 1992, $932,000,000.

(3) For fiscal year 1993, $969,000,000.

(4) For fiscal year 1994, $1,008,000,000.

(5) For fiscal year 1995, $1,048,000,000.

(b) REDUCTION- Notwithstanding any other provision of law, for each of fiscal

years 1991 through 1995, the Administrator of the Rural Electrification Administration shall reduce the amounts otherwise made available for insured loans made from the Rural Electrification and Telephone Revolving Fund by--

(1) $224,000,000 for fiscal year 1991;

(2) $234,000,000 for fiscal year 1992;

(3) $244,000,000 for fiscal year 1993;

(4) $256,000,000 for fiscal year 1994; and

(5) $267,000,000 for fiscal year 1995.

(c) MANDATORY LEVELS- Notwithstanding any other provision of law, the Administrator shall insure loans at the levels authorized by this section for each of fiscal years 1991 through 1995.

(d) GUARANTEED LOANS- Notwithstanding any other provision of law, in carrying out the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.), the Administrator shall increase the amounts otherwise made available to guarantee loans made by legally organized lending agencies. The loans shall be guaranteed at 90 percent of the principal amount of the loan.

SEC. 1202. AUTHORIZATION LEVELS FOR FmHA LOANS.

(a) IN GENERAL- Subject to the other provisions of this section and notwithstanding any other provision of law, for each of fiscal years 1991 through 1995, real estate and operating loans may be insured, made to be sold and insured, or guaranteed in accordance with subtitles A and B, respectively, of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) from the Agricultural Credit Insurance Fund established under section 309 of such Act (7 U.S.C. 1929) in amounts equal to the following levels:

(1) For fiscal year 1991, $4,175,000,000, of which not less than $827,000,000 shall be for farm ownership loans under subtitle A of such Act.

(2) For fiscal year 1992, $4,343,000,000, of which not less than $861,000,000 shall be for farm ownership loans under subtitle A of such Act.

(3) For fiscal year 1993, $4,516,000,000, of which not less than $895,000,000 shall be for farm ownership loans under subtitle A of such Act.

(4) For fiscal year 1994, $4,697,000,000, of which not less than $931,000,000 shall be for farm ownership loans under subtitle A of such Act.

(5) For fiscal year 1995, $4,885,000,000, of which not less than

$968,000,000 shall be for farm ownership loans under subtitle A of such Act.

(b) APPORTIONMENT OF INSURED AND GUARANTEED LOANS- Subject to subsection (c), the amounts set forth in subsection (a) shall be apportioned as follows:

(1) For fiscal year 1991--

(A) $1,019,000,000 for insured loans, of which not less than $83,000,000 shall be for farm ownership loans; and

(B) $3,156,000,000 for guaranteed loans, of which not less than $744,000,000 shall be for guarantees of farm ownership loans.

(2) For fiscal year 1992--

(A) $1,060,000,000 for insured loans, of which not less than $87,000,000 shall be for farm ownership loans; and

(B) $3,283,000,000 for guaranteed loans, of which not less than $774,000,000 shall be for guarantees of farm ownership loans.

(3) For fiscal year 1993--

(A) $1,102,000,000 for insured loans, of which not less than $90,000,000 shall be for farm ownership loans; and

(B) $3,414,000,000 for guaranteed loans, of which not less than $805,000,000 shall be for guarantees of farm ownership loans.

(4) For fiscal year 1994--

(A) $1,147,000,000 for insured loans, of which not less than $94,000,000 shall be for farm ownership loans; and

(B) $3,550,000,000 for guaranteed loans, of which not less than $837,000,000 shall be for guarantees of farm ownership loans.

(5) For fiscal year 1995--

(A) $1,192,000,000 for insured loans, of which not less than $97,000,000 shall be for farm ownership loans; and

(B) $3,693,000,000 for guaranteed loans, of which not less than $871,000,000 shall be for guarantees of farm ownership loans.

(c) TRANSFER OF FUNDS FROM INSURED TO GUARANTEED LOANS- Notwithstanding any other provision of law, for each of fiscal years 1991 through 1995, the Secretary shall--

(1) reduce the amounts otherwise made available for insured loans made from the Agricultural Credit Insurance Fund by--

(A) $432,000,000 for fiscal year 1991;

(B) $564,000,000 for fiscal year 1992;

(C) $710,000,000 for fiscal year 1993;

(D) $809,000,000 for fiscal year 1994; and

(E) $857,000,000 for fiscal year 1995; and

(2) use the funds made available from the reduction made in paragraph (1) in the available amount of insured loans in each of the fiscal years to guarantee loans made from the Fund.

(c) MANDATORY LEVELS- Notwithstanding any other provision of law, the Secretary shall make or insure loans at the levels authorized by this section for each of fiscal years 1991 through 1995.

SEC. 1203. APHIS INSPECTION USER FEE ON INTERNATIONAL PASSENGERS.

(a) IN GENERAL- The Secretary may prescribe and collect fees to cover the cost of providing agricultural quarantine and inspection services in connection with the arrival at a port in the customs territory of the United States, or the preclearance or preinspection at a site outside the customs territory of the United States, of an international passenger.

(b) TREASURY- Any person who collects a fee under this section shall remit the fee to the Treasury of the United States prior to the date that is 31 days after the close of the calendar quarter in which the fee is collected.

(c) Agricultural Quarantine Inspection User Fee Account-

(1) ESTABLISHMENT- There is established in the Treasury of the United States a no-year fund, to be known as the `Agricultural Quarantine Inspection User Fee Account' (hereafter in this section referred to as the `Account'), for the use of the Secretary of Agriculture for quarantine or inspection services under this section.

(2) Amounts in account-

(A) DEPOSITS- All fees collected under this subsection shall be deposited in the Account.

(B) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated amounts in the Fund for use by the Secretary of Agriculture for quarantine or inspection services.

(d) ADJUSTMENT IN FEE AMOUNTS- The Secretary shall adjust the amount of the fees to be assessed under this section to reflect the cost to the Secretary in--

(1) administering this section;

(2) carrying out the activities at ports in the customs territory of the United States and preclearance and preinspection sites outside the customs territory of the United States in connection with the provision of agricultural quarantine inspection services; and

(3) maintaining a reasonable balance in the Account.

SEC. 1204. MARKET PROMOTION PROGRAM.

Notwithstanding any other provision of law, the Commodity Credit Corporation shall not make available assistance to carry out the market promotion program established under section 202 of the Agricultural Trade Act of 1978 (as amended by section 1221(a) of S. 2830 (as passed by the House of Representatives on August 3, 1990)) at a level in excess of $200,000,000 for each of the fiscal years 1991 through 1995.

SEC. 1205. INTEGRATED FARM MANAGEMENT PROGRAM OPTION.

Notwithstanding any other provision of law, the Secretary shall only make such fair and equitable adjustments as the Secretary determines are appropriate in acreage limitation or set-aside requirements applicable to producers participating in the integrated farm management program option established under section 1611 of S. 2830 (as passed by the House of Representatives on August 3, 1990).

SEC. 1206. OTHER RURAL DEVELOPMENT PROGRAMS.

(a) PROHIBITION ON IMPLEMENTATION- Notwithstanding any other provision of law, the Secretary shall not expend any funds to implement the provisions of title XXV of S. 2830 (as passed by the House of Representatives on August 3, 1990).

(b) APPROPRIATIONS- Notwithstanding any other provision of law, titles XIX, XX, XXI, XXII, XXIII, XXIV, XXVI, XXVII, and XXVIII of S. 2830 (as passed by the House of Representatives on August 3, 1990), and the amendments made by such titles, shall be carried out only as provided in advance in appropriations Acts.

Subtitle C--Food Stamp and Related Provisions

SEC. 1301. FOOD STAMP PROGRAM.

(a) ALLOCATION FOR JOB TRAINING PROGRAM- Effective October 1, 1990, paragraph (1) of section 16(h) of the Food Stamp Act of 1977 (7 U.S.C. 2025(h)(1)) is amended to read as follows:

`(1) The Secretary shall allocate among the State agencies in each fiscal year, from funds appropriated for such fiscal year under section 18(a)(1), the amount of $75,000,000 for each of the fiscal years 1991 through 1995 to carry out the employment and training program under section 6(d)(4), except as provided in paragraph (3), during the fiscal year.'.

(b) EXTENSION OF PILOT PROJECTS- Section 17(b)(1) of such Act (7 U.S.C. 2026(b)(1)) is amended by striking `1990' and inserting `1995'.

(c) AUTHORIZATION OF APPROPRIATIONS- Section 18(a)(1) of such Act (7 U.S.C. 2027(a)(1)) is amended by striking the first two sentences and inserting the following new sentence: `To carry out this Act, there are authorized to be appropriated such sums as are necessary for each of fiscal years 1991 through 1995.'.

(d) BLOCK GRANT TO PUERTO RICO- Effective October 1, 1990, section 19(a)(1)(A) of such Act (7 U.S.C. 2028(a)(1)(A)) is amended by striking `$825,000,000' and all that follows through `September 30, 1990' and inserting `$974,000,000 for fiscal year 1991, $1,013,000,000 for fiscal year 1992, $1,051,000,000 for fiscal year 1993, $1,091,000,000 for fiscal year 1994, and $1,133,000,000 for fiscal year 1995'.

SEC. 1302. COMMODITY DISTRIBUTION AND SUPPLEMENTAL FOOD PROGRAMS.

Effective October 1, 1990, the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note) is amended--

(1) in section 4(a), by striking `1986, 1987, 1988, 1989, and 1990' and inserting `1991 through 1995'; and

(2) in section 5(a)(2), by striking `1986 through 1990' and inserting `1991 through 1995'.

SEC. 1303. DISTRIBUTION OF SURPLUS COMMODITIES TO SPECIAL NUTRITION PROJECTS; PROCESSING AGREEMENTS.

Section 1114(a)(2)(A) of the Agriculture and Food Act of 1981 (7 U.S.C. 1431e(a)(2)(A)) is amended by striking `1990' and inserting `1995'.

SEC. 1304. TEFAP REAUTHORIZATIONS.

The Temporary Emergency Food Assistance Act of 1983 (7 U.S.C. 612c note) is amended--

(1) effective October 1, 1990, in section 204--

(A) by striking subsections (a) and (b);

(B) by redesignating subsections (c) and (d) as subsections (a) and

(b), respectively; and

(C) in subsection (a)(1) (as so redesignated), by striking `ending September 30, 1986, through September 30, 1990,' and inserting `1991 through 1995'; and

(2) in section 212, by striking `1990' and inserting `1995'.

SEC. 1305. NUTRITION EDUCATION AUTHORIZATION.

Section 1588(a) of the Food Security Act of 1985 (7 U.S.C. 3175e) is amended by striking `$5,000,000' and all that follows through the period at the end and inserting `$8,000,000 for each of the fiscal years 1991 through 1995.'.

Subtitle D--Contingent Termination Date

SEC. 1401. CONTINGENT TERMINATION DATE.

Notwithstanding any other provision of this title, this title (other than subtitle D of this title) and the amendments made by this title shall cease to be effective on July 1, 1992, if legislation to implement an agreement of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) for international agricultural trade is not enacted on or before June 30, 1992.

TITLE II--COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

Subtitle A--Federal Deposit Insurance Premiums

SEC. 2001. ELIMINATION OF CEILINGS ON INSURANCE PREMIUMS AND ANNUAL PREMIUM INCREASES.

(a) BANK INSURANCE FUND- Clause (iv) of section 7(b)(1)(C) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)(C)) is amended by striking `and capitalization, except that--' and all that follows through the end of such clause and inserting `and capitalization; and'.

(b) SAVINGS ASSOCIATION INSURANCE FUND- Clause (v) of section 7(b)(1)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)(D)) is amended by striking `and capitalization, except that--' and all that follows through the end of such clause and inserting `and capitalization; and'.

SEC. 2002. FDIC AUTHORITY TO ADJUST ASSESSMENT RATES MORE FREQUENTLY THAN ANNUALLY.

(a) BANK INSURANCE FUND- Section 7(b)(1)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)(A)) is amended--

(1) by striking clause (i) and inserting the following new clause:

`(i) AUTHORITY TO ESTABLISH RATES- The Corporation shall set assessment rates for insured depository institutions at such times as the Corporation, in the sole discretion of the Corporation, determines to be appropriate.'; and

(2) by striking clause (iii) and inserting the following new clause:

`(iii) ANNOUNCEMENT OF RATE CHANGES- If the Corporation changes the assessment rate, the Corporation shall provide public notice of such change on or before the beginning of the 60-day period ending on the date such change takes effect.'.

(b) Technical and Conforming Amendments-

(1) Section 7(b)(1)(A)(ii) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)(A)(ii)) is amended by striking `annual'.

(2) Section 7(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)) is amended--

(A) in subparagraph (C)(iv) (as amended by section 2001(a) of this title)--

(i) by striking `on January 1 of a calendar year' and inserting `for any period'; and

(ii) by inserting `, in the sole discretion of such board,' after `rate determined by the Board of Directors'; and

(B) in subparagraph (D)(v) (as amended by section 2001(b) of this title)--

(i) by striking `on January 1 of a calendar year' and inserting `for any period'; and

(ii) by inserting `, in the sole discretion of such board,' after `rate determined by the Board of Directors'.

(3) Section 7(d)(1)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1817(d)(1)(A)) is amended--

(A) by striking `By September 30 of each calendar year,' and inserting `Before the beginning of the 60-day period ending on the 1st day of each semiannual period,'; and

(B) by striking `the succeeding calendar year' and inserting `such semiannual period'.

(4) Section 7(d)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(d)(2)) is amended--

(A) in subparagraph (A), by striking `in the coming year' and

inserting `in the coming semiannual period'; and

(B) in subparagraph (B)--

(i) by striking `succeeding year' each place such term appears and inserting `succeeding semiannual period'; and

(ii) by striking `succeeding calendar year' and inserting `succeeding semiannual period'.

(5) Section 7(d)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1817(d)(3)) is amended--

(A) in subparagraph (A), by striking `in the coming year' and inserting `in the coming semiannual period'; and

(B) in subparagraph (B)--

(i) by striking `succeeding year' each place such term appears and inserting `succeeding semiannual period'; and

(ii) by striking `succeeding calendar year' and inserting `succeeding semiannual period'.

Subtitle B--FHA Mortgage Insurance

SEC. 2101. INCREASE IN MORTGAGE LIMIT.

Section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)) is amended by striking `150 percent (185 percent until October 31, 1990) of the dollar amount specified' and inserting the following: `185 percent of the dollar amount specified'.

SEC. 2102. MORTGAGOR EQUITY.

Section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)) is amended by adding at the end the following new undesignated paragraph:

`Notwithstanding any other provision of this paragraph, a mortgage may not involve a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in excess of 98.75 percent of the appraised value of the property (97.75 percent, in the case of a mortgage with an appraised value in excess of $50,000), plus the amount of the mortgage insurance premium paid at the time the mortgage is insured. For purposes of the preceding sentence, the term `appraised value' means the amount set forth in the written statement required under section 226, or a similar amount determined by the Secretary if section 226 does not apply.'.

SEC. 2103. MORTGAGE INSURANCE PREMIUMS.

(a) PREMIUMS- Section 203(c) of the National Housing Act (12 U.S.C. 1709(c)) is amended--

(1) by inserting `(1)' after `(c)';

(2) by striking the last sentence; and

(3) by adding at the end the following new paragraph:

`(2) Notwithstanding any other provision of this section, each mortgage secured by a 1- to 4-family dwelling and insured on or after October 1, 1994, shall be subject to the following requirements:

`(A) The Secretary shall establish and collect, at the time of insurance, a single premium payment in an amount equal to 2.25 percent of the amount of the original insured principal obligation of the mortgage. Upon payment in full of the principal obligation of a mortgage prior to the maturity date of the mortgage, the Secretary shall refund all of the unearned premium charges paid on the mortgage pursuant to this subparagraph.

`(B) In addition to the premium under subparagraph (A), the Secretary shall establish and collect annual premium payments in an amount equal to 0.50 percent of the remaining insured principal balance for the following periods:

`(i) For any mortgage involving an original principal obligation that is less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the first 11 years of the mortgage term.

`(ii) For any mortgage involving an original principal obligation that is greater than or equal to 90 percent of such value, for the first 30 years of the mortgage term; except that notwithstanding the matter preceding clause (i), for any mortgage involving an original principal obligation that is greater than 95 percent of such value, the annual premium collected during the 30-year period under this clause shall be in an amount equal to 0.55 percent of the remaining insured principal balance.'.

(b) TRANSITION PROVISIONS- Notwithstanding section 203(c) of the National Housing Act (as amended by subsection (a)), mortgage insurance premiums on mortgages insured under section 203(b) of such Act during fiscal years 1991 through 1994 shall be subject to the following requirements:

(1) 1991 AND 1992- For mortgages insured during fiscal years 1991 and 1992 (but after the date of the effectiveness of regulations issued under subsection (c)), the Secretary shall establish and collect the following premiums:

(A) UP-FRONT- At the time of insurance, a single premium payment in an amount equal to 3.80 percent of the amount of the original

insured principal obligation of the mortgage.

(B) ANNUAL- In addition to the premium under subparagraph (A), annual premium payments in an amount equal to 0.50 percent of the remaining insured principal balance, for any mortgage involving an original principal obligation that is--

(i) less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the first 5 years of the mortgage term;

(ii) greater than or equal to 90 percent of such value but equal to or less than 95 percent of such value, for the first 8 years of the mortgage term; and

(iii) greater than 95 percent of such value, for the first 10 years of the mortgage term.

(2) 1993 AND 1994- For mortgages insured during fiscal years 1993 and 1994, the Secretary shall establish and collect the following premiums:

(A) UP-FRONT- At the time of insurance, a single premium payment in an amount equal to 3.00 percent of the amount of the original insured principal obligation of the mortgage.

(B) ANNUAL- In addition to the premium under subparagraph (A), annual premium payments in an amount equal to 0.50 percent of the remaining insured principal balance, for any mortgage involving an original principal obligation that is--

(i) less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the first 7 years of the mortgage term;

(ii) greater than or equal to 90 percent of such value but equal to or less than 95 percent of such value, for the first 12 years of the mortgage term; and

(iii) greater than 95 percent of such value, for the first 30 years of the mortgage term.

(3) REFUNDS- With respect to any mortgage subject to premiums under this subsection, the Secretary shall refund all of the unearned premium charges paid on a mortgage pursuant to paragraph (1)(A) or (2)(A) upon payment in full of the principal obligation of the mortgage prior to the maturity date.

(c) REGULATIONS- The Secretary shall issue regulations to carry out this section and the amendments made by this section not later than the expiration of the 90-day period beginning on the date of the enactment of this Act.

SEC. 2104. MUTUAL MORTGAGE INSURANCE FUND DISTRIBUTIONS.

Section 205 of the National Housing Act (12 U.S.C. 1711) is amended by adding at the end the following new subsection:

`(e) In determining whether there is a surplus for distribution to mortgagors under this section, the Secretary shall take into account the actuarial status of the entire Fund.'.

SEC. 2105. ACTUARIAL SOUNDNESS OF MUTUAL MORTGAGE INSURANCE FUND.

Section 205 of the National Housing Act (12 U.S.C. 1711), as amended by the preceding provisions of this Act, is further amended by adding at the end the following new subsections:

`(f)(1) The Secretary shall ensure that the Mutual Mortgage Insurance Fund attains a capital ratio of not less than 1.25 percent within 24 months after the date of the enactment of this subsection.

`(2) The Secretary shall ensure that the Mutual Mortgage Insurance Fund attains a capital ratio of not less than 2.0 percent within 10 years after the date of the enactment of this subsection, and shall ensure that the Fund maintains at least such capital ratio at all times thereafter.

`(3) Upon the expiration of the 24-month period beginning on the date of the enactment of this subsection, the Secretary shall submit to the Congress a report describing the actions the Secretary will take to ensure that the Mutual Mortgage Insurance Fund attains the capital ratio required under paragraph (2).

`(4) For purposes of this subsection:

`(A) The term `capital' means the economic net worth of the Mutual Mortgage Insurance Fund, as determined by the Secretary under the annual audit required under section 538.

`(B) The term `capital ratio' means the ratio of capital to unamortized insurance-in-force.

`(C) The term `economic net worth' means the current cash available to the Fund, plus the net present value of all future cash inflows and outflows expected to result from the outstanding mortgages in the Fund.

`(D) The term `unamortized insurance-in-force' means the remaining obligation on outstanding mortgages which are obligations of the Mutual Mortgage Insurance Fund, as estimated by the Secretary.

`(g) The Secretary shall provide for an independent actuarial study of the Mutual Mortgage Insurance Fund to be conducted annually and shall report

annually to the Congress regarding the financial status of the Fund.

`(h)(1) If, pursuant to the independent annual actuarial study of the Mutual Mortgage Insurance Fund required under subsection (g), the Secretary determines that the Mutual Mortgage Insurance Fund is not meeting the operational goals under paragraph (2), the Secretary may not issue distributions, and may, by regulation, propose and implement any adjustments to the insurance premiums under section 203(c) or section 2103(b) of the Omnibus Budget Reconciliation Act of 1990, or any other program requirements established by the Secretary necessary to achieve such goals. Upon determining that a premium or other change is appropriate under the preceding sentence, the Secretary shall immediately notify Congress of the proposed change and the reasons for the change. Any such premium change shall not take effect before the expiration of the 90-day period beginning upon such notification.

`(2) The operational goals referred to in paragraph (1) shall be--

`(A) maintaining an adequate capital ratio;

`(B) meeting the needs of homebuyers with low downpayments and first-time homebuyers by providing access to mortgage credit; and

`(C) minimizing the risk to the Fund and to homeowners from homeowner default.'.

SEC. 2106. PERIODIC MORTGAGE INSURANCE SAFETY AND SOUNDNESS PREMIUM.

Section 203(c) of the National Housing Act (12 U.S.C. 1709(c)), as amended by the preceding provisions of this Act, is further amended by adding at the end the following new paragraph:

`(3) Notwithstanding any other provision of law, the Secretary may require payment on all mortgages that are obligations of the Mutual Mortgage Insurance Fund of an additional premium charge on a periodic basis as determined by the Secretary to be consistent with sound actuarial practice. Such determination shall be in accordance with the findings of the annual actuarial study of the Mutual Mortgage Insurance Fund required under section 205(g). The additional premium charge for each mortgage may not exceed an amount equal to 0.50 percent per year of the remaining insured principal balance of the mortgage.'.

SEC. 2107. HOME EQUITY CONVERSION MORTGAGE INSURANCE DEMONSTRATION.

(a) TERMINATION DATE- The first sentence of section 225(g) of the National Housing Act (12 U.S.C. 1715z-20(g)) is amended by striking `September 30, 1991' and inserting `September 30, 1995'.

(b) NUMBER OF MORTGAGES INSURED- Section 255(g) of the National Housing Act (12 U.S.C. 1715z-20(g)) is further amended by striking the second sentence and inserting the following new sentence: `The total number of mortgages insured under this section may not exceed 25,000.'.

Subtitle C--Auction of Federally Insured Mortgages

SEC. 2201. AUCTION ALTERNATIVE TO ASSIGNMENT OF MORTGAGES.

(a) AUCTION- Section 221(g)(4) of the National Housing Act (12 U.S.C. 1715/(g)(4)) is amended by adding at the end the following new subparagraph:

`(C)(i) In lieu of accepting assignment of the original credit instrument and the mortgage securing the credit instrument under subparagraph (A) in exchange for receipt of debentures, the Secretary may provide for the sale under this subparagraph of the beneficial interests in the mortgage loan through auction and sale of the mortgage loan, participation certificates, or other mortgage-backed obligations in a form acceptable to the Secretary, unless the mortgagee can demonstrate to the satisfaction of the Secretary that such auction and sale will be less economically advantageous to the mortgagee than the receipt of debentures. The Secretary shall provide that any beneficial interest auctioned and sold under this subparagraph are sold at a price, to be paid to the mortgagee, of par plus accrued interest to the date of sale. The sale price shall also include the right to a subsidy payment described in clause (viii). The Secretary may, when appropriate, adjust the price paid to the mortgagee to equal the net present value of the debentures that the mortgagee would have received pursuant to assignment under subparagraph (A).

`(ii) The Government National Mortgage Association (in this subparagraph referred to as the `Association') shall conduct public auctions under this subparagraph on behalf of the Secretary to determine the lowest interest rate necessary to carry out a sale of the beneficial interests in the original credit instrument and mortgage securing the credit instrument.

`(iii) Any mortgagee who elects to assign a mortgage shall provide to the Association and persons bidding at an auction under this subparagraph a description of the characteristics of the original credit instrument and the mortgage securing the credit instrument, which shall include statements of the principal mortgage balance, the original stated interest rate, any service fees, the real estate and tenant characteristics of the property secured by the mortgage, the level and duration of any applicable Federal subsidies, the status of the property with respect to eligibility to prepay the mortgage under to the Emergency Low Income Housing Preservation Act of 1987, whether the owner has filed a notice of intent to prepay the mortgage under such Act or any other notice required under such Act, any incentives provided under such Act in lieu of prepayment, and any other

information determined by the Association to be appropriate.

`(iv) Upon receipt of the information under clause (iii) regarding a mortgage, the Association shall promptly provide notice of any auction with respect to the mortgage and publish such information in advance of the auction. To promote administrative efficiency, the Association may conduct the auction at any time during the 6-month period beginning upon notice by the mortgagee of election to assign the mortgage. Notwithstanding the preceding sentence, the Association may not conduct any auction before the expiration of the 2-month period beginning upon notice and publication under this clause.

`(v) In any auction under this subparagraph, the Association shall accept the lowest interest rate bid for purchase by any bidder determined by the Association to be acceptable. The Association shall cause the bid to be published in the Federal Register. Settlement for the sale of the credit instrument and the mortgage securing the credit instrument shall occur not later than 30 days (not including Saturdays, Sundays, and legal public holidays) after the date of the selection of the accepted bid.

`(vi) If no bids are received or the bids that are received are not accepted by the Association, the mortgagee shall retain all rights under this paragraph to assign the mortgage loan to the Secretary. The Association may determine that a bid is unacceptable if the Association determines that the bid is at a price that would result in costs to the Federal Government exceeding the costs incurred if the mortgage were to be assigned to the Secretary under subparagraph (A).

`(vii) The holder of a mortgage, representative of the holder of a mortgage, and entities affiliated with the holder of the mortgage may not participate in the auction under this subparagraph unless the holder, representative, or affiliate is also providing secondary financing for the project secured by the mortgage for the purpose of (I) resolving the physical and financial needs of the project, or (II) enabling a purchaser to acquire a project that is eligible low income housing (as such term is defined under the Emergency Low Income Housing Preservation Act of 1987) and preserve its use as housing affordable for low- and moderate-income families.

`(viii) In carrying out an auction under this subparagraph, the Secretary shall agree to provide a monthly interest subsidy payment from the General Insurance Fund to the holder of the original credit instrument and the mortgage securing the credit instrument (and any assigns of the holder who are approved by the Secretary). The subsidy payment shall be paid on the first day of each month in an amount equal to the difference between the stated interest due on the mortgage loan (less any servicing fee) and the lowest interest rate necessary to provide for sale of the participation certificate for the remaining unpaid principal balance plus accrued interest on the mortgage loan. Each interest subsidy payment shall be treated by the holder of the mortgage as interest paid on the mortgage. The interest subsidy payment shall be provided until the

earlier of--

`(I) the maturity date of the loan;

`(II) prepayment of the mortgage loan; or

`(III) default and full payment of insurance benefits on the mortgage loan by the Secretary.

`(ix) The Secretary, or the Association on behalf of the Secretary, may require that the loans auctioned under this subparagraph be sold together with servicing rights as whole loans if the Secretary determines that the inclusion of servicing rights will further the financial interests of the Federal Government. To further maximize the interest of the Federal Government, the Secretary may also acquire the servicing rights and hold a separate auction of the rights.

`(x) This subparagraph may not be construed to alter, limit, or impair any low income use restrictions applicable to any project under the original regulatory agreement for the project, any revised agreement entered into pursuant to the Emergency Low Income Housing Preservation Act of 1987, or any other agreement for the provision of Federal assistance to the housing or its tenants. This subparagraph may not be construed to alter the affordability and low income use restrictions agreed to by owners of projects insured with mortgages under this Act.

`(xi) The provisions of this subparagraph shall not apply after September 30, 1995.'.

(b) IMPLEMENTATION- The Secretary shall implement the provisions under the amendment made by subsection (a) not later than 30 days after the date of the enactment of this Act. The provisions shall not be subject to prior issuance of regulations and notice in the Federal Register. The Secretary shall issue regulations to carry out the provisions under the amendment not later than 6 months of the date of the enactment of this Act.

(c) REPORT- The Secretary of Housing and Urban Development shall submit a report to the Congress, not later than the expiration of the 1-year period beginning on the date of the enactment of this Act, regarding any actions taken under section 221(g)(4)(C) of the National Housing Act (as amended by this section). The report shall include information regarding the number of mortgages auctioned and sold and their value, the amount of subsidies committed under this program, the number of mortgages transferred to preferred mortgagees, the ability of the Secretary to coordinate this program with the incentives provided under the Emergency Low Income Housing Preservation Act of 1987, and the costs and benefits derived from this program for the Federal Government.

Subtitle D--Crime and Flood Insurance Programs

SEC. 2301. CRIME INSURANCE PROGRAM.

(a) EXTENSION OF GENERAL AUTHORITY- Section 1201(b) of the National Housing Act (12 U.S.C. 1749bbb(b)) is amended by striking `September 30, 1991' in the matter preceding paragraph (1) and inserting `September 30, 1995'.

(b) CONTINUATION OF EXISTING CONTRACTS- Section 1201(b)(1) of the National Housing Act (12 U.S.C. 1749bbb(b)(1)) is amended by striking `September 30, 1992' and inserting `September 30, 1996'.

(c) EXTENSION OF LIMITATION ON PREMIUMS- Section 542(c) of the Housing and Community Development Act of 1987 (12 U.S.C. 1749bbb-10c note) is amended by striking `September 30, 1991' and inserting `September 30, 1995'.

SEC. 2302. FLOOD INSURANCE PROGRAM.

(a) EXTENSION OF GENERAL AUTHORITY- Section 1319 of the National Flood Insurance Act of 1968 (42 U.S.C. 4026) is amended by striking `September 30, 1991' and inserting `September 30, 1995'.

(b) EXTENSION OF EMERGENCY PROGRAM- Section 1336(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4056(a)) is amended by striking `September 30, 1991' and inserting `September 30, 1995'.

(c) EXTENSION OF LIMITATION ON PREMIUMS- Section 541(d) of the Housing and Community Development Act of 1987 (42 U.S.C. 4015 note) is amended by striking `September 30, 1991' and inserting `September 30, 1995'.

(d) EXTENSION OF EROSION PROVISIONS- Section 1306(c)(7) of the National Flood Insurance Act of 1968 (42 U.S.C. 4013(c)(7)) is amended by striking `September 30, 1991' and inserting `September 30, 1995'.

(e) INCLUSION OF COSTS IN PREMIUMS-

(1) ESTIMATES OF PREMIUM RATES- Section 1307(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4014(a)) is amended--

(A) in paragraph (1)(B)(i), by striking `and' at the end;

(B) in paragraph (1)(B)(ii), by inserting `and' after the comma at the end;

(C) in paragraph (1)(B), by inserting at the end the following new clause:

`(iii) any remaining administrative expenses incurred in carrying out the flood insurance and floodplain management programs (including the costs of mapping activities under section 1360) not included under clause (ii), which shall be recovered by a fee charged to policyholders and such fee shall not be subject to any agents' commissions, company expense allowances, or

State or local premium taxes,'; and

(D) in paragraph (2), by inserting after `title' the following: `, and which, together with a fee charged to policyholders that shall not be not subject to any agents' commission, company expenses allowances, or State or local premium taxes, shall include any administrative expenses incurred in carrying out the flood insurance and floodplain management programs (including the costs of mapping activities under section 1360)'.

(2) ESTABLISHMENT OF CHARGEABLE PREMIUM RATES- Section 1308 of the National Flood Insurance Act of 1968 (42 U.S.C. 4015) is amended--

(A) in subsection (b)--

(i) by striking `and' at the end of paragraph (2);

(ii) by redesignating paragraph (3) as paragraph (4); and

(iii) by inserting after paragraph (2), the following new paragraph:

`(3) adequate, together with the fee under paragraph (1)(B)(iii) or (2) of section 1307(a), to provide for any administrative expenses of the flood insurance and floodplain management programs (including the costs of mapping activities under section 1360), and'; and

(B) by striking subsection (d) and inserting the following new subsection:

`(d) With respect to any chargeable premium rate prescribed under this section, a sum equal to the portion of the rate that covers any administrative expenses of carrying out the flood insurance and floodplain management programs which have been estimated under paragraphs (1)(B)(ii) and (1)(B)(iii) of section 1307(a) or paragraph (2) of such section (including the fees under such paragraphs), shall be paid to the Director. The Director shall deposit the sum in the National Flood Insurance Fund established under section 1310.'.

(3) NATIONAL FLOOD INSURANCE FUND- Section 1310(a)(4) of the National Flood Insurance Act of 1968 (42 U.S.C. 4017(a)(4)) is amended to read as follows:

`(4) to the extent approved in appropriations Acts, to pay any administrative expenses of the flood insurance and floodplain management programs (including the costs of mapping activities under section 1360); and'.

(4) ADMINISTRATIVE EXPENSES- Section 1375 of the National Flood Insurance Act of 1968 (42 U.S.C. 4126) is amended by striking `program' and all that follows and inserting the following: `and floodplain management programs authorized under this title may be paid with

amounts from the National Flood Insurance Fund (as provided under section 1310(a)(4)), subject to approval in appropriations Acts.'.

(5) EXCEPTION TO LIMITATION ON PREMIUM INCREASES- Notwithstanding section 541(d) of the Housing and Community Development Act of 1987 (42 U.S.C. 4015 note) (as amended by this section), the premium rates charged for flood insurance under any program established pursuant to the National Flood Insurance Act of 1968 may be increased by more than 10 percent during fiscal year 1991, except that any increase in such rates not resulting from the inclusion in chargeable premium rates of administrative expenses of the flood insurance and floodplain management programs (pursuant to the amendments made by this subsection) may not exceed 10 percent.

TITLE III--EDUCATION AND LABOR COMMITTEE

Subtitle A--Student Loan Program Savings

SEC. 3001. SHORT TITLE.

This subtitle may be cited as the `Student Loan Default Prevention Initiative Act of 1990'.

SEC. 3002. PRECLAIMS ASSISTANCE PAYMENTS.

(a) AMENDMENT- Section 428(f)(1)(A) of the Higher Education Act of 1965 (20 U.S.C. 1078(f)(1)(A)) is amended--

(1) by striking clause (iii); and

(2) by redesignating clauses (iv) and (v) as clauses (iii) and (iv), respectively.

SEC. 3003. INITIAL DISBURSEMENT AND ENDORSEMENT REQUIREMENTS.

(a) AMENDMENT- Section 428G(b)(1) of the Higher Education Act of 1965 (20 U.S.C. 1078-7(b)(1)) is amended to read as follows:

`(1) FIRST YEAR STUDENTS- The first installment of the proceeds of any loan made, insured, or guaranteed under this part that is made to a student borrower who is entering the first year of program of postsecondary education, and who has not previously obtained a loan under this part, shall not (regardless of the amount of such loan or the duration of the period of enrollment) be presented by the institution to the student for endorsement until 30 days after the borrower begins a course of study, but may be delivered to the eligible institution prior to the end of that 30-day period.'.

(b) EFFECTIVE DATE- The amendment made by this section shall be effective

for loans made on or after the date of enactment of this Act to cover the cost of instruction for periods of enrollment beginning on or after January 1, 1991.

SEC. 3004. INELIGIBILITY BASED ON HIGH DEFAULT RATES AND BANKRUPTCY.

(a) IN GENERAL- Section 435(a) of the Higher Education Act of 1965 (20 U.S.C. 1088(a)) is amended by adding at the end thereof the following new paragraph:

`(3) INELIGIBILITY BASED ON HIGH DEFAULT RATES- (A) An institution whose cohort default rate is equal to or greater than the threshold percentage specified in subparagraph (B) for each of the three most recent fiscal years for which data are available shall not be an eligible institution under this part unless, within 30 days of receiving notification from the Secretary of the loss of eligibility under this paragraph, the institution appeals the loss of its eligibility to the Secretary and--

`(i) the institution demonstrates to the satisfaction of the Secretary that the Secretary's calculation of its cohort default rate is not accurate, and that recalculation would reduce its cohort default rate for any of the three fiscal years below the threshold percentage specified in subparagraph (B); or

`(ii) there are, in the judgment of the Secretary, exceptional mitigating circumstances that would make the application of this paragraph inequitable.

During the pendency of an appeal, the Secretary shall suspend the eligibility of the institution in accordance with his authority to take emergency actions under section 487(c)(1)(E).

`(B) For purposes of determinations under subparagraph (A) for academic year 1991-1992 and any succeeding academic year, the threshold percentage is 35 percent.

`(C) This paragraph shall not apply to any institution that is--

`(i) a part B institution within the meaning of section 322(2) of this Act;

`(ii) a tribally controlled community college within the meaning of section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978; or

`(iii) a Navajo Community College under the Navajo Community College Act.'.

`(4) INELIGIBILITY BASED ON BANKRUPTCY- An institution shall cease to be an eligible institution under this part if that institution commences a voluntary case by filing a petition with a bankruptcy court under title 11,

United States Code.'.

(b) REFUSAL TO PROVIDE STATEMENT TO LENDER- Section 428(a)(2)(F) of such Act (20 U.S.C. 1078(a)(2)(F)) is amended by inserting before the period at the end thereof the following: `, except in individual cases where the institution determines that the portion of the student's expenses to be covered by the loan can be met more appropriately, either by the institution or directly by the student, from other sources'.

(c) EXTENSION OF DEFAULT RATE LIMITATIONS ON SLS LOANS- Section 2003(a)(3) of the Omnibus Budget Reconciliation Act of 1989 is amended by striking out `October 1, 1991' and inserting `October 1, 1996'.

(d) EFFECTIVE DATE- The amendments made by this section shall be effective July 1, 1991.

SEC. 3005. SPECIAL ALLOWANCES.

(a) REDUCTION OF RATE- Section 438(b)(2)(A)(iii) of the Higher Education Act of 1965 (20 U.S.C. 1087-1(b)(2)(A)(iii)) is amended by striking `3.25 percent' and inserting `3.0 percent'.

(b) ELIMINATION OF FLOOR ON ALLOWANCE FOR LOANS FROM TAX EXEMPT FUNDS- Section 438(b)(2)(B) of such Act (20 U.S.C. 1087-1(b)(2)(B)) is amended--

(1) by striking division (ii); and

(2) by redesignating division (iii) as division (ii).

(c) EFFECTIVE DATES- The amendments made by this section shall apply with respect to loans made on or after the date of enactment of this Act to cover periods of instruction beginning on or after November 1, 1990.

SEC. 3006. ABILITY TO BENEFIT.

(a) IN GENERAL- Section 484(d) of the Higher Education Act of 1965 (20 U.S.C. 1091(d)) is amended to read as follows:

`(d) ABILITY TO BENEFIT- In order for a student who is admitted on the basis of ability to benefit from the education or training offered to be eligible for any grant, loan, or work assistance under this title, the student shall, prior to enrollment, pass an independently administered examination approved by the Secretary.'.

(b) CONFORMING AMENDMENT- Section 481(b) of the Higher Education Act of 1965 (20 U.S.C. 1088(b)) is amended in the fourth sentence by inserting `, except in accordance with section 484(d) of this Act,' after `shall not'.

(c) EFFECTIVE DATE- The amendments made by this section shall apply to any grant, loan, or work assistance to cover the cost of instruction for periods of

enrollment beginning on or after January 1, 1991.

SEC. 3007. MAXIMUM SLS LOAN AMOUNTS.

(a) EFFECTIVE DATE EXTENSION- Section 2003(b)(2) of the Omnibus Budget Reconciliation Act of 1989 is amended by striking `1991' and inserting `1996'.

(b) PERIOD FOR DETERMINATION OF MAXIMUM LOAN AMOUNTS- Section 428A(b)(1) of the Higher Education Act of 1965 (20 U.S.C. 1078-1(b)) is amended by striking `9 consecutive' and inserting `7 consecutive'.

SEC. 3008. SUNSET PROVISION.

The amendments made by this subtitle shall cease to be effective on October 1, 1996.

Subtitle B--Amendments Relating to Employee Retirement Income Security Act of 1974

PART 1--TREATMENT OF REVERSIONS OF QUALIFIED PLAN ASSETS TO EMPLOYERS

SEC. 3101. ADDITIONAL TAX FOR FAILURE TO ESTABLISH REPLACEMENT PLAN OR TO INCREASE BENEFITS.

AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT-

(1) FIDUCIARY RESPONSIBILITY- Section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104) is amended by adding at the end thereof the following new subsection:

`(d)(1) If, in connection with the termination of a single-employer plan, an employer elects to establish or maintain a qualified replacement plan, or to increase benefits, as provided under section 4980(d) of the Internal Revenue Code of 1986, a fiduciary shall discharge the fiduciary's duties under this title and title IV in accordance with the following requirements:

`(A) In the case of a fiduciary of the terminated plan, any requirement--

`(i) under section 4980(d)(2)(B) of such Code with respect to the transfer of assets from the terminated plan to a qualified replacement plan, and

`(ii) under section 4980(d)(2)(B)(ii) or 4980(d)(3) of such Code with respect to any increase in benefits under the terminated plan.

`(B) In the case of a fiduciary of a qualified replacement plan, any requirement--

`(i) under section 4980(d)(2)(A) of such Code with respect to participation in the qualified replacement plan of active participants in the terminated plan,

`(ii) under section 4980(d)(2)(B) of such Code with respect to the receipt of assets from the terminated plan, and

`(iii) under section 4980(d)(2)(C) of such Code with respect to the allocation of assets to participants of the qualified replacement plan.

`(2) For purposes of this subsection--

`(A) any term used in this subsection which is also used in section 4980(d) of the Internal Revenue Code of 1986 shall have the same meaning as when used in such section, and

`(B) any reference in this subsection to the Internal Revenue Code of 1986 shall be a reference to such Code as in effect on January 1, 1991.'

(2) Conforming amendments-

(A) Section 404(a)(1)(D) of such Act (29 U.S.C. 1104(a)(1)(D)) is amended by striking `or title IV' and inserting `and title IV'.

(B) Section 4044(d)(1) of such Act (29 U.S.C. 1344(d)(1)) is amended by inserting `, section 404(d) of this Act, and section 4980(d) of the Internal Revenue Code of 1986 (as in effect on January 1, 1991)' after `paragraph (3)'.

(C) Section 3 of such Act (29 U.S.C. 1002) is amended by adding at the end the following new paragraph:

`(41) The term `single-employer plan' means a plan which is not a multiemployer plan.'.

SEC. 3102. EFFECTIVE DATE.

(a) IN GENERAL- Except as provided in subsection (b), the amendments made by this subpart shall apply to reversions occurring after September 30, 1990.

(b) EXCEPTION- The amendments made by this subpart shall not apply to any reversion after September 30, 1990, if--

(1) in the case of plans subject to title IV of the Employee Retirement Income Security Act of 1974, a notice of intent to terminate under such title was provided to participants (or if no participants, to the Pension Benefit Guaranty Corporation) before October 1, 1990, or

(2) in the case of plans subject to title I (and not to title IV) of such Act, a notice of intent to reduce future accruals under section 204(h) of such Act was provided to participants in connection with the termination

before October 1, 1990.

PART 2--TRANSFERS TO RETIREE HEALTH ACCOUNTS

SEC. 3111. APPLICATION OF ERISA TO TRANSFERS OF EXCESS PENSION ASSETS TO RETIREE HEALTH ACCOUNTS.

(a) EXCLUSIVE BENEFIT REQUIREMENT- Section 403(c)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1103(c)(1)) is amended by inserting `, or under section 420 of the Internal Revenue Code of 1986 (as in effect on January 1, 1991)' after `insured plans)'.

(b) FIDUCIARY DUTIES- Section 404(a)(1)(A) of such Act (29 U.S.C. 1104(a)(1)(A)) is amended by inserting `subject to section 420 of the Internal Revenue Code of 1986 (as in effect on January 1, 1991),' after `(A)'.

(c) EXEMPTIONS FROM PROHIBITED TRANSACTIONS- Section 408(b) of such Act (29 U.S.C. 1108(b)) is amended by adding at the end thereof the following new paragraph:

`(13) Any transfer in a taxable year beginning before January 1, 1996, of excess pension assets from a single-employer plan which is a defined benefit plan to a retiree health account in a qualified transfer permitted under section 420 of the Internal Revenue Code of 1986 (as in effect on January 1, 1991).'

(d) FUNDING LIMITATIONS- Section 302 of such Act (29 U.S.C. 1082) is amended by redesignating subsection (g) as subsection (h) and by adding at the end thereof the following new subsection:

`(g) QUALIFIED TRANSFERS TO HEALTH BENEFITS ACCOUNTS- For purposes of this section, in the case of a qualified transfer (as defined in section 420 of the Internal Revenue Code of 1986)--

`(1) any assets transferred in a plan year after the valuation date for such year (and any income allocable thereto) shall, for purposes of subsection (c)(7), be treated as assets in the plan as of the valuation date for the following year, and

`(2) the plan shall be treated as having a net experience loss under subsection (b)(2)(B)(iv) for the first plan year after the plan year in which such transfer occurs in an amount equal to the amount of such transfer (reduced by any amounts transferred back to the plan under section 420(c)(1)(B) of such Code), except that such subsection shall be applied to such amount by substituting `10 plan years' for `5 plan years'.'

(e) NOTICE REQUIREMENTS-

(1) IN GENERAL- Section 101 of such Act (29 U.S.C. 1021) is amended by

redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

`(e) Notice of Transfer of Excess Pension Assets to Health Benefits Accounts-

`(1) NOTICE TO PARTICIPANTS- Not later than 60 days before the date of a qualified transfer by an employee pension benefit plan of excess pension assets to a health benefits account, the administrator of the plan shall notify (in such manner as the Secretary may prescribe) each participant and beneficiary under the plan of such transfer. Such notice shall include information with respect to the amount of excess pension assets, the portion to be transferred, the amount of health benefits liabilities to be funded with the assets transferred, and the amount of pension benefits of the participant which will be vested immediately after the transfer.

`(2) Notice to secretaries, administrator, and employee organizations-

`(A) IN GENERAL- Not later than 60 days before the date of any qualified transfer by an employee pension benefit plan of excess pension assets to a health benefits account, the employer maintaining the plan from which the transfer is made shall provide the Secretary, the Secretary of the Treasury, the administrator, and each employee organization representing participants in the plan a written notice of such transfer. A copy of any such notice shall be available for inspection in the principal office of the administrator.

`(B) INFORMATION RELATING TO TRANSFER- Such notice shall identify the plan from which the transfer is made, the amount of the transfer, a detailed accounting of assets projected to be held by the plan immediately before and immediately after the transfer, and the current liabilities under the plan at the time of the transfer.

`(C) AUTHORITY FOR ADDITIONAL REPORTING REQUIREMENTS- The Secretary may prescribe such additional reporting requirements as may be necessary to carry out the purposes of this section.

`(3) DEFINITIONS- For purposes of paragraph (1), any term used in such paragraph which is also used in section 420 of the Internal Revenue Code of 1986 (as in effect on January 1, 1991) shall have the same meaning as when used in such section.'

(2) Penalties-

(A) Section 502(c)(1) of such Act (29 U.S.C. 1132(c)(1)) is amended by inserting `or section 101(e)(1)' after `section 606'.

(B) Section 502(c)(3) of such Act (29 U.S.C. 1132(c)(3)) is amended--

(i) by inserting `or who fails to meet the requirements of section 101(e)(2) with respect to any person' after `beneficiary'

the first place it appears, and

(ii) by inserting `or to such person' after `beneficiary' the second place it appears.

(f) EFFECTIVE DATE- The amendments made by this section shall apply to qualified transfers under section 420 of the Internal Revenue Code of 1986 made after the date of the enactment of this Act.

PART 3--PBGC PREMIUMS

SEC. 3121. INCREASE IN PREMIUM RATES.

(a) INCREASE IN BASIC PREMIUM-

(1) IN GENERAL- Clause (i) of section 4006(a)(3)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended by striking `for plan years beginning after December 31, 1987, an amount equal to the sum of $16' and inserting `for plan years beginning after December 31, 1990, an amount equal to the sum of $19'.

(2) CONFORMING AMENDMENT- Section 4006(c)(1)(A) of such Act (29 U.S.C. 1306(c)(1)(A)) is amended--

(A) in clause (ii), by striking `and' at the end;

(B) by adjusting the margination of clause (iii) so as to conform to the margination of clauses (i) and (ii); and

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

`(iv) with respect to each plan year beginning after December 31, 1987, and before January 1, 1991, an amount equal to $16 for each individual who was a participant in such plan during the plan year, and'.

(b) INCREASE IN ADDITIONAL PREMIUM- Section 4006(a)(3)(E) of such Act (29 U.S.C. 1306(a)(3)(E)) is amended--

(1) by striking `$6.00' in clause (ii) and inserting `$9.00', and

(2) by striking `$34' in clause (iv)(I) and inserting `$53'.

(c) EFFECTIVE DATE- The amendments made by this section shall apply to plan years beginning after December 31, 1990.

Subtitle C--Labor Civil Penalties and Fines

SEC. 3201. CIVIL PENALTIES AND FINES UNDER OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970.

(a) IN GENERAL- Section 17 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 666) is amended--

(1) in subsection (a), by striking out `$10,000 for each violation' and inserting in lieu thereof `$70,000 for each violation, but not less than $7,000 for each willful violation and not less than $1,000 for each repeated violation';

(2) in subsection (b), by striking out `$1,000 for each such violation' and inserting in lieu thereof `$7,000 for each such violation, but not less than $700 for each such violation';

(3) in subsection (c), by striking out `$1,000 for each such violation' and inserting in lieu thereof `$7,000 for each such violation, but not less than $700 for each such violation'; and

(4) in subsection (d), by striking out `$1,000' and inserting in lieu thereof `$7,000'.

(b) DEFINITION- Section 3 of such Act (29 U.S.C. 652) is amended by adding at the end the following new paragraph:

`(15) The term `serious bodily injury' means bodily injury that involves--

`(A) a substantial risk of death;

`(B) protracted unconsciousness;

`(C) protracted and obvious physical disfigurement; or

`(D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.'.

SEC. 3202. CIVIL PENALTIES UNDER FEDERAL MINE SAFETY AND HEALTH ACT OF 1977.

(a) SECTION 110(a)- Section 110(a) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 820(a)) is amended by striking out `$10,000 for each such violation' and inserting in lieu thereof `$50,000 for each such violation but not less than $1,000 for each such violation'.

(b) SECTION 110(b)- Section 110(b) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 820(b)) is amended--

(1) by striking out `1,000' and inserting in lieu thereof `$5,000', and

(2) by inserting before the period the following: `but not less than $1,000 for each day during which such failure or violation continues'.

SEC. 3203. CIVIL PENALTIES UNDER CHILD LABOR

PROVISIONS OF THE FAIR LABOR STANDARDS ACT OF 1938.

Section 16(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(e)) is amended--

(1) by striking out `not to exceed $1,000 for each such violation' and inserting in lieu thereof `not to exceed $10,000 for each employee who was the subject of such a violation but not less than $1,000 for each employee who was the subject of such a violation',

(2) by striking out `or any person who repeatedly or willfully violates section 6 or 7',

(3) by inserting after the first sentence the following: `Any person who repeatedly or willfully violates section 6 or 7 shall be subject to a civil penalty of not to exceed $1,000 for each such violation.',

(4) by striking out `such penalty' each place it occurs except after `appropriateness of' and insert in lieu thereof `any penalty under this subsection', and

(5) by striking out `, sums collected' and all that follows in such section and inserting in lieu thereof a period and `Civil penalties collected under this subsection shall be deposited in the general fund of the Treasury.'.

SEC. 3205. CIVIL PENALTIES FOR CERTAIN UNFAIR LABOR PRACTICES.

(a) PENALTIES- Section 10(b) of the National Labor Relations Act (29 U.S.C. 160(b)) is amended by inserting `(1)' after `(b)' and by adding at the end the following:

`(2)(A) If a complaint is issued under paragraph (1) stating that a person has engaged in an unfair labor practice within the meaning of section 8(a)(3) or 8(b)(2), such person shall be subject to a civil penalty of not more than $10,000 for each employee who is the subject of such unfair labor practice and not less than $1,000 for each employee who is the subject of such unfair labor practice.

`(B) If a complaint is issued under paragraph (1) stating that a person has engaged in an unfair labor practice within the meaning of section 8(a)(5) or 8(b)(3), such person shall be subject to a civil penalty of not more than $10,000 for each such unfair labor practice and not less than $1,000 for each such unfair labor practice.

`(C) The General Counsel shall assess civil penalties under subparagraphs (A) and (B). In determining the amount of a civil penalty, the General Counsel shall take into account the nature, circumstances, extent, and gravity of the unfair labor practice with respect to which the civil penalties are to be assessed and, with respect to the person who engaged in such unfair labor practice, ability to pay, effect on ability to continue to do business, any

history of prior such unfair labor practices, the degree of culpability, and such other matters as justice may require.

`(D) An assessment of civil penalties under subparagraph (C) shall be reviewable in the hearing held under paragraph (1) on the complaint referred to in subparagraph (A) or (B).

`(E) Civil penalties collected under subparagraphs (A) and (B) shall be deposited in the general fund of the Treasury.'.

(b) CONFORMING AMENDMENTS-

(1) Section 3(d) of the National Labor Relations Act (29 U.S.C. 153(d)) is amended by inserting after `section 10' the following: `and the assessment of civil penalties under section 10(b)(2)'.

(2) The third sentence of section 10(c) of the National Labor Relations Act (29 U.S.C. 160(c)) is amended by inserting after `such unfair labor practice' the following: `, to pay any civil penalty assessed under subsection (b)(2)'.

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Subpart A--Payment for Physicians' Services

SEC. 4001. CERTAIN OVERVALUED PROCEDURES.

(a) IN GENERAL- Section 1842(b)(14) of the Social Security Act (42 U.S.C. 1395u(b)(14)) is amended--

(1) by inserting `(i)' after `(14)(A)';

(2) by adding at the end of subparagraph (A) the following new clause:

`(ii) In determining the reasonable charge for a physicians' service specified in subparagraph (C)(i) and furnished during 1991, the prevailing charge for such service shall not exceed the prevailing charge otherwise recognized for such service for the period during 1990 beginning on April 1, reduced by 15 percent or, if less, 1/3 of the percent (if any) by which the prevailing charge otherwise recognized for the locality in that year exceeds the locally-adjusted reduced prevailing amount (as determined under subparagraph (B)(i)) for the service.';

(3) in subparagraph (B)(i)(II), by inserting `or (iv)' after `clause (iii)';

(4) in subparagraph (B)(iii), by inserting `for services furnished during the 9-month period beginning on April 1, 1990' after `locality' the first place it appears;

(5) by adding at the end of subparagraph (B) the following new clause:

`(iv) The `adjustment factor', for a physicians' service for a locality furnished in 1991, is the sum of--

`(I) the practice component percent (referred to as practice expense ratio), divided by 100, specified in appendix A (pages 187 through 194) of the Report of the Medicare and Medicaid Health Budget Reconciliation Amendments of 1989, prepared by the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, House of Representatives, (Committee Print 101-M, 101st Congress, 1st Session) for the service, multiplied by the geographic practice cost index (specified in subparagraph (C)(v)) for the locality, and

`(II) 1 minus the practice component percent, multiplied by the geographic physician work adjustment index value (specified in subparagraph (C)(vi)) for the locality.';

(6) by adding at the end of subparagraph (C)(ii), the following new sentence: `In computing the national weighted average in the previous sentence in applying this paragraph to services furnished in 1991, the prevailing charge in each locality shall first be deflated by the adjustment factor specified in subparagraph (B)(iv).'; and

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

`(v) The geographic practice cost index value specified in this clause for a locality is the Geographic Overhead Costs Index specified for the locality in table 1 of the August 1990 Supplement to the Geographic Medicare Economic Index: Alternative Approaches (prepared by the Urban Institute and the Center for Health Economics Research).

`(vi) The geographic physician work adjustment index value specified in this clause for a locality is the Geographic 1/4 Work Index specified for the locality in the table 1 referred to in clause (v).'.

SEC. 4002. RADIOLOGY SERVICES.

(a) REDUCTION IN FEE SCHEDULE- Section 1834(b)(4) of the Social Security Act (42 U.S.C. 1395m(b)(4)) is amended--

(1) by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively, and

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

`(D) 1991 FEE SCHEDULES- For radiologist services (other than portable X-ray services) furnished under this part during 1991, the conversion factors used in a locality under this subsection shall be determined as follows:

`(i) NATIONAL WEIGHTED AVERAGE CONVERSION FACTOR- The Secretary shall estimate the national weighted average of the conversion factors used under this subsection for services furnished during 1990 beginning on April 1, using the best available data. In computing the national weighted average in the previous sentence, the conversion factor in each locality shall first be deflated by the sum specified in clause (iv).

`(ii) REDUCED NATIONAL WEIGHTED AVERAGE- The national weighted average estimated under clause (i) shall be reduced by 11 percent.

`(iii) GEOGRAPHIC INDICES-

`(I) 1990 LOCALITY INDEX RELATIVE TO NATIONAL AVERAGE- The Secretary shall establish an index which reflects, for each locality, the ratio of the conversion factor used in the locality under this subsection to the national weighted average estimated under clause (i).

`(II) FEE SCHEDULE GEOGRAPHIC INDEX- The Secretary shall establish an index value, for each locality, equal to the geographic adjustment factor which would be established for the locality under section 1848(e)(2) if--

`(a) the work, overhead, and malpractice geographic practice cost indices

contained in Addendum C to the Model Fee Schedule for Physicians' Services (published on September 4, 1990, 55 Federal Register pp. 36238-36243) were used as the geographic physician work adjustment factor value, the geographic cost-of-practice index value, and the geographic malpractice index value, respectively, and

`(b) the proportions of the total relative value for the work component, practice expense component, and the malpractice component were the work, overhead, and malpractice percents, respectively, specified for the specialty of radiology in Table 2.1 of such Model Fee Schedule (55 F.R. 36188).

`(iv) LOCAL ADJUSTMENT- Subject to clause (v), the conversion factor to be applied in a locality is the national weighted average conversion factor (estimated under clause (i)), reduced under clause (ii), multiplied by the sum of--

`(I) 3/4 of the index value established under clause (iii)(I) for the locality, and

`(II) 1/4 of the index value established under clause (iii)(II) for the locality.

`(v) MAXIMUM REDUCTION- The conversion factor to be applied to a locality under this subparagraph shall not be less than 92 percent of the conversion factor applied in the locality under subparagraph (C).'.

(b) CONTINUING PHASE-IN OF GEOGRAPHIC ADJUSTMENT- Section 1848(e)(2) of such Act (42 U.S.C. 1395w-4(e)(2)) is amended by adding at the end the following: `In the case of radiology services described in subsection (b)(2)(A), the geographic adjustment factor for--

`(A) 1992, shall be 1/2 of the index value established under section 1834(b)(4)(D)(iii)(I) for the locality plus 1/2 of the geographic adjustment factor determined under the previous sentence, and

`(B) 1993, shall be 1/4 of the index value established under section 1834(b)(4)(D)(iii)(I) for the locality plus 3/4 of the geographic adjustment factor determined under the previous sentence.'.

(c) NONAPPLICATION OF COMPARABILITY PROVISIONS- Section 1834(b)(3) of such Act (42 U.S.C. 1395m(b)(3)) is amended--

(1) by striking `and' at the end of subparagraph (A),

(2) by striking the period at the end of subparagraph (B) and inserting `, and', and

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

`(C) shall not apply section 1842(b)(3)(B) insofar as it relates to requiring carriers to restrict payment to the charge applicable, for a comparable service and under comparable circumstances, to

policyholders and subscribers of the carrier.'.

(d) USE OF LOCALITIES- Section 1834(b)(1)(B) of such Act (42 U.S.C. 1395m(b)(1)(B)) is amended by inserting `locality,' after `statewide,'.

(e) CONTINUATION OF SPECIAL RULE FOR NUCLEAR MEDICINE PHYSICIANS- Section 6105(b) of the Omnibus Budget Reconciliation Act of 1989 is amended by striking all that follows `Social Security Act' the second place it appears and inserting the following: `beginning April 1, 1990, and ending December 31, 1991, there shall be substituted for the fee schedule otherwise applicable a fee schedule based 1/3 on the fee schedule computed under such section (without regard to this subsection) and 2/3 on 101 percent of the 1988 prevailing charge for such services.'.

(f) EXTENSION OF SPLIT BILLING RULE FOR INTERVENTIONAL RADIOLOGISTS- Section 6105(c) of the Omnibus Budget Reconciliation Act of 1989 is amended by inserting `or 1991' after `1990' each place it appears.

(g) EFFECTIVE DATES-

(1) Except as otherwise provided, the amendments made by this section shall apply to services furnished on or after January 1, 1991.

(2) The amendment made by subsection (d) shall apply to services performed on or after April 1, 1989.

SEC. 4003. ANESTHESIA SERVICES.

(a) REDUCTION IN FEE SCHEDULE- Section 1842(q)(1) of the Social Security Act (42 U.S.C. 1395u(q)(1)) is amended--

(1) by inserting `(A)' after `(q)(1)', and

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

`(B) For physician anesthesia services furnished under this part during 1991, the conversion factor used in a locality under this subsection shall be determined as follows:

`(i) The Secretary shall estimate the national weighted average of the conversion factors used under this subsection for services furnished during 1990 beginning on April 1, using the best available data. In computing the national weighted average in the previous sentence, the conversion factor in each locality shall first be deflated by the sum specified in clause (iv).

`(ii) The national weighted average estimated under clause (i) shall be reduced by 7 percent.

`(iii)(I) The Secretary shall establish an index which reflects, for each locality, the ratio of the conversion factor used in the locality under this subsection for services furnished under this part during 1990 beginning

on April 1 to the national weighted average estimated under clause (i).

`(II) The Secretary shall establish an index value, for each locality, equal to the geographic adjustment factor which would be established for the locality under section 1848(e)(2) if--

`(a) the work, overhead, and malpractice geographic practice cost indices contained in Addendum C to the Model Fee Schedule for Physicians' Services (published on September 4, 1990, 55 Federal Register pp. 36238-36243) were used as the geographic physician work adjustment factor value, the geographic cost-of-practice index value, and the geographic malpractice index value, respectively, and

`(b) the proportions of the total relative value for the work component, practice expense component, and the malpractice component were 55.9 percent, 33.4 percent, and 10.7 percent, respectively.

`(iv) Subject to clause (v), the conversion factor to be applied in a locality is the national weighted average conversion factor (estimated under clause (i)) reduced under clause (ii) multiplied by the sum of--

`(I) 1/2 of the index value established under clause (iii)(I) for the locality, and

`(II) 1/2 of the index value established under clause (iii)(II).

`(v) The conversion factor to be applied to a locality under this subparagraph shall not be less than 85 percent of the conversion factor applied in the locality during 1990 beginning on April 1.'.

(c) EXTENSION OF REDUCTION FOR SUPERVISION OF CONCURRENT SERVICES- Section 1842(b)(13) of such Act (42 U.S.C. 1395u(b)(13)) is amended by striking `1991' each place it appears and inserting `1996'.

SEC. 4004. PHYSICIAN PATHOLOGY SERVICES.

(a) REDUCTION IN PAYMENTS FOR PHYSICIAN PATHOLOGY SERVICES- Subsection (f) of section 1834 of the Social Security Act (42 U.S.C. 1395m) is amended to read as follows:

`(f) REDUCTION IN PAYMENTS FOR PHYSICIAN PATHOLOGY SERVICES DURING FISCAL YEAR 1991- For physician pathology services furnished under this part during 1991, the prevailing charges used in a locality under this part shall be 93 percent of the prevailing charges used in the locality under this part in 1990 beginning on April 1, 1990.'.

(b) CONFORMING AMENDMENTS-

(1) Section 1833(a)(1)(J) of such Act (42 U.S.C. 1395l(a)(1)) is amended by striking `or physician pathology services' and by striking `or section 1834(f), respectively'.

(2) Section 1848(a)(1) of such Act (42 U.S.C. 1395w-4(a)(1)) is amended by striking `or 1834(f)'.

(c) EFFECTIVE DATE- The amendments made by this section shall apply to services furnished on or after January 1, 1991.

SEC. 4005. PREVAILING CHARGES FOR MISCELLANEOUS PROCEDURES.

Section 1842(b) of the Social Security Act (42 U.S.C. 1395u(b)) is amended by adding at the end the following new paragraph:

`(16)(A) In determining the reasonable charge for physicians' services described in subparagraph (B) furnished during 1991, the prevailing charge otherwise recognized for a locality shall be reduced by 2 percent, or, in the case of surgical procedures which are paid for under this part on a global basis (including preoperative and postoperative services), 4 percent.

`(B) For purposes of this subparagraph, the physcians' service specified in this subparagraph are all physicians' services except the following:

`(i) Radiology, anesthesia, and physician pathology services, and physicians' services specified in clause (i) of paragraph (14)(C).

`(ii) Primary care services (specified in subsection (i)(4)), hospital inpatient medical services, consulations, preventive medicine visits, emergency care facility services, and critical care services.

`(iii) The procedure codes specified in the Joint Explanatory Statement of the Committee of Conference submitted with the Conference Report to accompany H.R. (the `Omnibus Budget Reconciliation Act of 1990') for tendon sheath injections and small joint arthrocentesis, femoral fracture and trochanteric fracture treatments, endotracheal intubation, thoracentesis, thoracostomy, and transurerethral fulguration and resection.'.

SEC. 4006. UPDATE FOR PHYSICIANS' SERVICES.

(a) PERCENTAGE INCREASE IN MEI FOR 1991 DURING 1991- Section 1842(b)(4)(E) of the Social Security Act (42 U.S.C. 1395u(b)(4)(E)) is amended by adding at the end the following new clause:

`(v) For purposes of this part for items and services furnished in 1991, the percentage increase in the MEI is--

`(I) 0 percent for services (other than primary care services), and

`(II) such percentage increase in the MEI (as defined in subsection (i)(3)) as would be otherwise determined for primary care services (as defined in subsection (i)(4)).'.

(b) INCREASE IN PREVAILING CHARGE FLOOR FOR PRIMARY CARE SERVICES-

(1) IN GENERAL- Section 1842(b)(4)(A)(vi) of such Act (42 U.S.C. 1395u(b)(4)(A)(vi)) is amended by striking `50 percent' and inserting `75 percent'.

(2) USE IN TRANSITION TO FULL FEE SCHEDULE- Section 1848(a)(2)(D) of such Act (42 U.S.C. 1395w-4(a)(2)(D)) is amended by adding at the end the following new clause:

`(iii) APPLICATION TO PRIMARY CHARGE FLOOR- In the case of services described in section 1842(b)(4)(A)(vi), the adjusted historical payment basis shall be determined as if `50 percent' were substituted for `75 percent' in such section; except that in no case shall the application of this clause result in the establishment of a fee schedule amount which is less than the prevailing charge level determined under such section for services furnished in 1991.'

(c) EFFECTIVE DATE- The amendments made by this section shall apply to services furnished on or after January 1, 1991.

SEC. 4007. NEW PHYSICIANS AND OTHER NEW HEALTH CARE PRACTITIONERS.

(a) IN GENERAL- Subparagraph (F) of section 1842(b)(4) of the Social Security Act (42 U.S.C. 1395u(b)(4)) is amended to read as follows:

`(F)(i) In the case of physicians' services and professional services of a health care practitioner (other than primary care services and other than services furnished in a rural area (as defined in section 1886(d)(2)(D)) that is designated, under section 332(a)(1)(A) of the Public Health Service Act, as a health manpower shortage area) furnished during the physician's or practitioner's first through fourth years of practice (if payment for those services is made separately under this part and on other than a cost-related basis), the prevailing charge or fee schedule amount to be applied under this part shall be 80 percent for the first year of practice, 85 percent for the second year of practice, 90 percent for the third year of practice, and 95 percent for the fourth year of practice, of the prevailing charge or fee schedule amount for that service under the other provisions of this part.

`(ii) For purposes of clause (i):

`(I) The term `health care practitioner' means a physician assistant, certified nurse-midwife, qualified psychologist, nurse practitioner, clinical social worker, physical therapist, occupational therapist, respiratory therapist, certified registered nurse anesthetist, or any other practitioner as may be specified by the Secretary.

`(II) The term `first year of practice' means, with respect to a physician

or practitioner, the first year during the first 6 months of which the physician or practitioner furnishes professional services for which payment is made under this part, and includes any period before such year.

`(III) The terms `second year of practice', `third year of practice', and `fourth year of practice' mean the second, third, and fourth years, respectively, following the first year of practice.'.

(b) CONFORMING AMENDMENT- Section 1848(a)(1)(B) of such Act (42 U.S.C. 1395w-4(a)(1)(B)) is amended by inserting `and section 1842(b)(4)(F)' after `of this section'.

(c) CONFORMING ADJUSTMENT IN CONVERSION FACTOR COMPUTATION- In computing the conversion factor under section 1848(d)(1)(B) for 1992, the Secretary of Health and Human Services shall determine the estimated aggregate amount of payments under part B for physicians' services in 1991 assuming that the amendments made by this section (notwithstanding subsection (d)) applied to all services furnished during such year.

(d) EFFECTIVE DATE- The amendments made by this section apply to services furnished after 1990, except that--

(1) the provisions concerning the third and fourth years of practice apply only to physicians' services furnished after 1991 and 1992, respectively, and

(2) the provisions concerning the second, third, and fourth years of practice apply only to services of a health care practitioner furnished after 1991, 1992, and 1993, respectively.

SEC. 4008. TECHNICAL COMPONENTS OF CERTAIN DIAGNOSTIC TESTS.

(a) IN GENERAL- Section 1842(b) of the Social Security Act (42 U.S.C. 1395u(b)), as amended by sections 4005, is further amended by adding at the end the following new paragraph:

`(17) With respect to payment under this part for the technical (as distinct from professional) component of diagnostic tests (other than clinical diagnostic laboratory tests and radiology services), the reasonable charge (or other payment basis) may not exceed the national median of such charges (or payment bases) for such tests or services.'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply to tests and services furnished on or after January 1, 1991.

SEC. 4009. RECIPROCAL BILLING ARRANGEMENTS.

(a) IN GENERAL- The first sentence of section 1842(b)(6) of the Social Security Act (42 U.S.C. 1395u(b)(6)) is amended--

(1) by striking `and' before `(C)', and

(2) by inserting before the period at the end the following: `, and (D) payment may be made to a physician who arranges for visit services (including emergency visits and related services) to be provided to an individual by a second physician on an occasional, reciprocal basis if (i) the first physician is unavailable to provide the visit services, (ii) the individual has arranged or seeks to receive the visit services from the first physician, (iii) the claim form submitted to the carrier includes the second physician's unique identifier (provided under the system established under subsection (r)) and indicates that the claim is for such a `covered visit service (and related services)', and (iv) the visit services are not provided by the second physician over a continuous period of longer than 30 days'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply to services furnished on or after the first day of the first month beginning more than 60 days after the date of the enactment of this Act.

SEC. 4010. AGGREGATION RULE FOR CLAIMS FOR SIMILAR PHYSICIANS' SERVICES.

(a) IN GENERAL- The second sentence of section 1869(b)(2) of the Social Security Act (42 U.S.C. 1395ff(b)(2)) is amended--

(1) by inserting `for services furnished during the same 12-month period' after `two or more claims',

(2) by inserting `(i)' after `if',

(3) by striking `or involve' and inserting `, (ii) the claims involve', and

(4) by inserting before the period at the end the following: `by the same entity, or (iii) the claims involve common issues of law and fact arising from physicians' services furnished in the same fee schedule area (as defined in section 1848(j)(2)) to two or more individuals by two or more physicians and the aggregate amount in controversy is at least $1,000 (in the case of a hearing under paragraph (1)(C) or (1)(D)) or $2,500 (in the case of judicial review)'.

(b) EFFECTIVE DATE- The amendments made by subsection (a) shall apply to physicians' services furnished on or after the first day of the first month beginning more than 60 days after the date of the enactment of this Act.

SEC. 4011. PRACTICING PHYSICIANS ADVISORY COUNCIL.

Title XVIII of the Social Security Act is amended by inserting after section 1867 the following new section:

` PRACTICING PHYSICIANS ADVISORY COUNCIL

`SEC. 1868. (a) The Secretary shall appoint, based upon nominations submitted by medical organizations representing physicians, a Practicing Physicians Advisory Council (in this section referred to as the `Council') to be composed of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under this title in the previous year. At least 11 of the members of the Council shall be physicians described in section 1861(r)(1) and the members of the Council shall include both participating and nonparticipating physicians and physicians practicing in rural areas and underserved urban areas.

`(b) The Secretary shall consult with the Council concerning proposed changes in regulations and carrier manual instructions. To the extent feasible and consistent with statutory deadlines, such consultation shall occur before the publication of such proposed changes.

`(c) The Council shall meet once during each calendar quarter.

`(d) Members of the Council shall be entitled to receive reimbursement of expenses and per diem in lieu of subsistence in the same manner as other members of advisory councils appointed by the Secretary are provided such reimbursement and per diem under this title.'.

SEC. 4012. RELEASE OF MEDICAL REVIEW SCREENS AND ASSOCIATED SCREENING PARAMETERS.

(a) CARRIERS- Section 1842(b)(3) of the Social Security Act (42 U.S.C. 1395u(b)(3)), as amended by section [4041(a)(3)], is amended--

(1) by striking `and' at the end of subparagraph (H),

(2) by adding `and' at the end of subparagraph (I), and

(3) by inserting after subparagraph (I) the following new subparagraph:

`(J) if it makes determinations or payments with respect to physicians' services, before sending a notice of denial of payment under this part for such services by reason of section 1862(a)(1) because a service otherwise covered under this title is not reasonable and necessary under the standards described in this section, the carrier has made available to the public the medical review screens, the associated screening parameters, and the criteria upon which the denial of payment may be made;'.

(b) EFFECTIVE DATE- The amendments made by this section shall apply to notices of denial sent on or after January 1, 1991.

SEC. 4013. TECHNICAL CORRECTIONS.

(a) OVERVALUED PROCEDURES-

(1) Section 1842(b)(14) of the Social Security Act (42 U.S.C. 1395u(b)(14)) is amended--

(A) in subparagraph (B)(iii)(I), by striking `practice expense ratio for the service (specified in table #1 in the Joint Explanatory Statement referred to in subparagraph (C)(i))' and inserting `practice component percent (referred to as practice expense ratio), divided by 100, specified in appendix A (pages 187 through 194) of the Report of the Medicare and Medicaid Health Budget Reconciliation Amendments of 1989, prepared by the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, House of Representatives, (Committee Print 101-M, 101st Congress, 1st Session) for the service';

(B) in subparagraph (B)(iii)(II), by striking `practice expense ratio' and inserting `practice component percent, divided by 100';

(C) in subparagraph (C)(i), by striking `physicians' services specified in table #2 in the Joint Explanatory Statement of the Committee of Conference submitted with the Conference Report to accompany H.R. 3299 (the `Omnibus Budget Reconciliation Act of 1989'), 101st Congress,' and inserting `procedures specified (by code and description) in the Overvalued Procedures List for Finance Committee, Revised September 20, 1989, prepared by the Physician Payment Review Commission';

(D) in subparagraph (C)(iii), by striking `The `percent change' specified in this clause, for a physicians' service specified in clause (i), is the percent change specified for the service in table #2 in the Joint Explanatory Statement' and inserting `The `percentage change' specified in this clause, for a physicians' service specified in clause (i), is the percent difference (but expressed as a positive number) specified for the service in the list'; and

(E) in subparagraph (C)(iv), by striking `such value specified for the locality in table #3 in the Joint Explanatory Statement referred to in clause (i)' and inserting `the Geographic Overhead Costs Index specified for the locality in table 1 of the September 1989 Supplement to the Geographic Medicare Economic Index: Alternative Approaches (prepared by the Urban Institute and the Center for Health Economics Research)'.

(2) Section 1842(b)(4)(E)(iv)(I) of such Act (42 U.S.C. 1395u(b)(4)(E)(iv)(I)) is amended by striking `Table #2' and all that follows through `101st Congress' and inserting `the list referred to in paragraph (14)(C)(i)'.

(3) The amendments made by paragraphs (1) and (2) apply to services furnished after March 1990.

(b) MISCELLANEOUS FEE SCHEDULE CORRECTIONS-

(1) CHANGES IN SECTION 1848- Section 1848 of the Social Security Act (42 U.S.C. 1395w-4) is amended--

(A) in subsection (a)(2)(D)(ii), by inserting `the weighted average of (I) such weighted average prevailing charge, and (II)' after `weighted average prevailing charge';

(B) in subsection (c)(1)(B), by striking the last sentence;

(C) in subsections (c)(3)(C)(ii)(II) and (c)(3)(C)(iii)(II), by striking `by' the first place it appears in each respective subsection,

(D) in subsection (c), by redesignating the second paragraph (3), and paragraphs (4) and (5), as paragraphs (4) through (6), respectively;

(E) in subsection (c)(4), as redesignated by subparagraph (C), is amended by striking `subsection' and inserting `section';

(F) in subsection (d)(1)(A), by striking `subparagraph (C)' and inserting `paragraph (3)';

(G) in the last sentence of subsection (d)(2)(A), by striking `proportion of HMO enrollees' and inserting `proportion of individuals who are enrolled under this part who are HMO enrollees';

(H) in subsection (d)(2)(E)(i), by inserting `the' after `as set forth in';

(I) in subsection (d)(2)(E)(ii)(I), by inserting `payments for' after `under this part for';

(J) in subsection (d)(3)(B)(ii)--

(i) by inserting `more than' after `decrease of', and

(ii) in subclause (I), by striking `more than';

(I) in paragraphs (1)(D)(i) and (2)(A)(i) of subsection (f), by striking `calendar years' and inserting `portions of calendar years';

(K) in subsection (f)(2)(A)--

(i) by striking `each performance standard rate of increase' and inserting `the performance standard rate of increase, for all physicians' services and for each category of physicians' services,',

(ii) in clause (i), by striking `physicians' services (as defined in subsection (f)(5)(A)' and inserting `all physicians' services or for the category of physicians' services, respectively,',

(iii) in clause (iii), by striking `physicians' services' and inserting `all physicians' services or of the category of physicians' services, respectively,', and

(iv) in clause (iv), by striking `physicians' services (as defined in subsection (f)(5)(A))' and inserting `all physicians' services or of the category of physicians' services, respectively,';

(L) in subsection (f)(4)(A), by striking `paragraph (B)' and inserting `subparagraph (B)';

(M) in subparagraphs (A) and (B) of subsection (g)(2), by inserting `other than radiologist services subject to section 1834(b),' after `during 1991,' and after `during 1992,', respectively; and

(N) in subsection (i)(1)(A), by striking `historical payment basis (as defined in subsection (a)(2)(C)(i))' and inserting `adjusted historical payment basis (as defined in subsection (a)(2)(D)(i))'.

(2) MISCELLANEOUS-

(A) Effective as if included in the Omnibus Budget Reconciliation Act of 1989, section 6102(e)(4) of such Act is amended by inserting `determined' after `prevailing charge rate'.

(B) Effective January 1, 1991, section 1842(b)(3)(G) of the Social Security Act, as amended by section 6102(e)(2) of Omnibus Budget Reconciliation Act of 1989, is amended by striking `subsection (j)(1)(C)' and inserting `section 1848(g)(2)'.

(C) Section 1842(b)(12)(A)(ii)(II) of the Social Security Act, as amended by section 6102(e)(4) of the Omnibus Budget Reconciliation Act of 1989, is amended by striking `, as the case may be'.

(D) Section 1833(a)(1)(H) of the Social Security Act, as amended by section 6102(e)(5) of the Omnibus Budget Reconciliation Act of 1989, is amended by striking `, as the case may be'.

(E) Section 6102(e)(11) of the Omnibus Budget Reconciliation Act of 1989 is amended by inserting `of Health and Human Services' after `Secretary'.

(F) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989, section 922(d)(1) of the Public Health Service Act (42 U.S.C. 299c-1(d)(1)) is amended--

(i) by inserting `(other than of dissemination activities)' after `evaluations', and

(ii) by inserting `research, demonstration projects, or evaluations of' after `applications with respect to'.

(c) REPEAL OF REPORTS NO LONGER REQUIRED-

(1) Subsection (b) of section 4043 of the Omnibus Budget Reconciliation Act of 1987 is repealed.

(2) Subsection (c) of section 4048 of such Act is repealed.

(3) Section 4049(b)(1) of such Act is amended by striking `, and shall report' and all that follows up to the period at the end.

(4) Subsection (d) of section 4050 of such Act is repealed.

(5) Section 4056(a)(1) of such Act, as redesignated by section 411(f)(14) of the Medicare Catastrophic Coverage Act of 1988, is amended by striking the last sentence.

(6) Section 4056(b)(2) of such Act is amended by striking the second sentence.

(d) ADJUSTMENT OF EFFECTIVE DATES- Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987--

(1) section 4048(b) of such Act is amended by striking `January 1, 1989' and inserting `March 1, 1989', and

(2) section 4049(b)(2) of such Act is amended by striking `January 1, 1989' and inserting `April 1, 1989'.

(e) TRANSFER OF PROVISION INTO TITLE XVIII-

(1) Section 1842 of the Social Security Act (42 U.S.C. 1395u) is amended by adding at the end the following new subsection:

`(r) The Secretary shall establish a system which provides for a unique identifier for each physician who furnishes services for which payment may be made under this title.'.

(2) Section 9202 of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by striking subsection (g).

Subpart B--Payment for Other Items and Services

SEC. 4021. HOSPITAL OUTPATIENT SERVICES.

(a) CONTINUATION OF REDUCTION IN PAYMENTS FOR CAPITAL-RELATED COSTS- Section 1861(v)(1)(S)(ii)(I) of the Social Security Act (42 U.S.C. 1395x(v)(1)(S)(ii)(I)) is amended by inserting before the period at the end the following: `, by 10 percent for payments attributable to portions of cost reporting periods occurring during fiscal year 1991 or 1992, by 7.5 percent for payments attributable to portions of cost reporting periods occurring during fiscal year 1993 or 1994, and by 5 percent for payments attributable to

portions of cost reporting periods occurring during fiscal year 1995'.

(b) REDUCTION IN AMOUNT OF PAYMENTS OTHERWISE DETERMINED-

(1) IN GENERAL- Section 1833(a)(2)(B)(i)(I) of such Act (42 U.S.C. 1395l(a)(2)(B)(i)(I)) is amended by striking `services,' and inserting `services (or, in the case of services furnished during portions of cost reporting periods beginning on or after October 1, 1990, other than services furnished by a hospital receiving an additional payment under section 1886(d)(5)(F) during such cost reporting period, 95 percent of the reasonable cost of such services),'.

(2) STANDARD OVERHEAD AMOUNTS FOR AMBULATORY SURGICAL CENTERS- Section 1833(i)(3)(B) of such Act (42 U.S.C. 1395l(i)(3)(B)) is amended by inserting after clause (ii) the following new clause:

`(iii) In determining the amount described in clause (i)(II) with respect to facility services furnished during portions of cost reporting periods beginning on or after October 1, 1990 (other than services furnished by a hospital receiving an additional payment under section 1886(d)(5)(F) during such cost reporting period), the Secretary shall reduce the standard overhead amount by 2.5 percent.'.

(c) PAYMENTS FOR AMBULATORY SURGICAL PROCEDURES-

(1) 2-YEAR FREEZE IN ALLOWANCE FOR INTRAOCULAR LENSES- Notwithstanding section 1833(i)(2)(A)(iii) of the Social Security Act, the amount of payment determined under such section for an intraocular lens inserted during or subsequent to cataract surgery furnished to an individual in an ambulatory surgical center on or after January 1, 1991, and on or before December 31, 1992, shall be equal to $200.

(2) DETERMINATION OF FEE SCHEDULES ON BASIS OF SURVEY OF COSTS- Section 1833(i)(2)(A)(i) of such Act (42 U.S.C. 1395l(i)(2)(A)(i)) is amended by striking the comma at the end and inserting the following: `, as determined in accordance with a survey (based upon a representative sample of procedures) taken not later than July 1, 1992, and every 5 years thereafter, of the actual audited costs incurred by such centers in providing such services,'.

(3) PROVIDING FOR REGULAR UPDATES TO FEE SCHEDULES- Section 1833(i)(2) of such Act (42 U.S.C. 1395l(i)(2)) is amended--

(A) in the second sentence of subparagraph (A) and the second sentence of subparagraph (B), by striking `and may be adjusted by the Secretary, when appropriate,'; and

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

`(C) Notwithstanding the second sentence of subparagraph (A) or the second sentence of subparagraph (B), if the Secretary has not updated amounts established under such subparagraphs with respect to facility services

furnished in a year, such amounts shall be increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the preceding year.'.

(4) EXPANSION OF PROCEDURES IN CONSULTATION WITH TRADE ORGANIZATIONS- The second sentence of section 1833(i)(1) of such Act (42 U.S.C. 1395l(i)(1)) is amended by striking the period and inserting the following: `, in consultation with appropriate trade and professional organizations.'.

(5) EFFECTIVE DATE- The amendments made by paragraph (2) shall take effect July 1, 1991.

SEC. 4022. DURABLE MEDICAL EQUIPMENT.

(a) ADDITIONAL 15 PERCENT REDUCTION IN PAYMENTS FOR SEAT-LIFT CHAIRS AND TRANSCUTANEOUS ELECTRICAL NERVE STIMULATORS- Section 1834(a)(1)(D) of the Social Security Act (42 U.S.C. 1395m(a)(1)(D)) is amended by inserting before the period at the end the following: `, and, if furnished on or after January 1, 1991, the Secretary shall further reduce such payment amount (as previously reduced) by 15 percent'.

(b) DEVELOPMENT AND APPLICATION OF NATIONAL LIMITS ON FEES-

(1) INEXPENSIVE AND ROUTINELY PURCHASED DURABLE MEDICAL EQUIPMENT AND ITEMS REQUIRING FREQUENT AND SUBSTANTIAL SERVICING- Paragraphs (2) and (3) of section 1834(a) of such Act (42 U.S.C. 1395m(a)) are each amended--

(A) in subparagraph (B)(i), by striking `or' at the end;

(B) by striking clause (ii) of subparagraph (B) and inserting the following:

`(ii) in 1991 is the sum of (I) 67 percent of the local payment amount for the item or device computed under subparagraph (C)(i)(I) for 1991, and (II) 33 percent of the national limited payment amount for the item or device computed under subparagraph (C)(ii) for 1991;

`(iii) in 1992 is the sum of (I) 33 percent of the local payment amount for the item or device computed under subparagraph (C)(i)(II) for 1992, and (II) 67 percent of the national limited payment amount for the item or device computed under subparagraph (C)(ii) for 1992; and

`(iv) in 1993 and each subsequent year is the national limited payment amount for the item or device computed under subparagraph (C)(ii) for that year.'; and

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

`(C) COMPUTATION OF LOCAL PAYMENT AMOUNT AND NATIONAL LIMITED PAYMENT AMOUNT- For purposes of subparagraph (B)--

`(i) the local payment amount for an item or device for a year is equal to--

`(I) for 1991, the amount specified in subparagraph (B)(i) for 1990 increased by the covered item increase for 1991, and

`(II) for 1992, the amount determined under this clause for the preceding year increased by the covered item increase for 1992; and

`(ii) the national limited payment amount for an item or device for a year is equal to--

`(I) for 1991 and 1992, the local payment amount determined under clause (i) for such item or device for that year, except that the national limited payment amount may not exceed 100 percent of the weighted average of all local payment amounts determined under such clause for such item for that year and may not be less than 85 percent of the weighted average of all local payment amounts determined under such clause for such item, and

`(II) for each subsequent year, the amount determined under this clause for the preceding year increased by the covered item increase for such subsequent year.'.

(2) MISCELLANEOUS ITEMS AND OTHER COVERED ITEMS- Section 1834(a)(8) of such Act (42 U.S.C. 1395m(a)(8)) is amended--

(A) in subparagraph (A)(ii)--

(i) by striking `or' at the end of subclause (I);

(ii) in subclause (II)--

(I) by striking `1991 or', and

(II) by striking `the percentage increase' and all that follows through the period and inserting `the covered item increase for the year.';

(iii) by redesignating subclause (II) as subclause (III); and

(iv) by inserting after subclause (I) the following new subclause:

`(II) in 1991, equal to the local purchase price computed under this clause for the previous year, increased by the

covered item increase for 1991, and decreased by the percentage by which the average of the purchase prices submitted exceeds the average of the reasonable charges on claims paid for the item during the 6-month period ending with December 1986; or';

(B) by amending subparagraph (B) to read as follows:

`(B) COMPUTATION OF NATIONAL LIMITED PURCHASE PRICE- With respect to the furnishing of a particular item in a year, the Secretary shall compute a national limited purchase price--

`(i) for 1991 and 1992, equal to the local purchase price computed under subparagraph (A)(ii) for the item for the year, except that such national limited purchase price may not exceed 100 percent of the weighted average of all local purchase prices for the item computed under such subparagraph for the year, and may not be less than 85 percent of the weighted average of all local purchase prices for the item computed under such subparagraph for the year; and

`(ii) for each subsequent year, equal to the amount determined under this subparagraph for the preceding year increased by the covered item increase for such subsequent year.';

(C) in subparagraph (C)--

(i) by striking `regional purchase price' each place it appears and inserting `national limited purchase price',

(ii) by striking `and subject to subparagraph (D)',

(iii) in clause (ii)--

(I) by striking `75' and inserting `67'; and

(II) by striking `25' and inserting `33', and

(iv) in clause (iii)--

(I) in subclause (I), by striking `50' and inserting `33'; and

(II) in subclause (II), by striking `50' and inserting `67'; and

(D) by striking subparagraph (D).

(3) OXYGEN AND OXYGEN EQUIPMENT- Section 1834(a)(9) of such Act (42 U.S.C. 1395m(a)(9)) is amended--

(A) in subparagraph (A)(ii)(II), by striking `the percentage increase' and all that follows through the period and inserting `the covered

item increase for the year.';

(B) by amending subparagraph (B) to read as follows:

`(B) COMPUTATION OF NATIONAL LIMITED MONTHLY PAYMENT RATE- With respect to the furnishing of an item in a year, the Secretary shall compute a national limited monthly payment rate equal to--

`(i) for 1991 and 1992, the local monthly payment rate computed under subparagraph (A)(ii)(II) for the item for the year, except that such national limited monthly payment rate may not exceed 100 percent of the weighted average of all local monthly payment rates computed for the item under such subparagraph for the year, and may not be less than 85 percent of the weighted average of all local monthly payment rates computed for the item under such subparagraph for the year; and

`(ii) for each subsequent year, equal to the amount determined under this subparagraph for the preceding year increased by the covered item increase for such subsequent year.';

(C) in subparagraph (C)--

(i) by striking `regional monthly payment rate' each place it appears and inserting `national limited monthly payment rate',

(ii) in clause (ii)--

(I) by striking `75' and inserting `67'; and

(II) by striking `25' and inserting `33', and

(iii) in clause (iii)--

(I) in subclause (I), by striking `50' and inserting `33'; and

(II) in subclause (II), by striking `50' and inserting `67'; and

(D) by striking subparagraph (D).

(4) DEFINITION- Section 1834(a) of such Act (42 U.S.C. 1395m(a)) is amended by adding at the end the following new paragraph:

`(14) COVERED ITEM INCREASE- In this subsection, the term `covered item increase' means, with respect to a year, the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year.'.

(5) DELAY IN ADJUSTMENTS FOR INHERENT REASONABLENESS- Section

1834(a)(10)(B) of such Act (42 U.S.C. 1395m(a)(10)(B)) is amended by striking `1991' and inserting `1992'.

(6) CONFORMING AMENDMENT- Section 1834(a)(12) of such Act (42 U.S.C. 1395m(a)(12)) is amended by striking `defined for purposes of paragraphs (8)(B) and (9)(B)'.

(c) TREATMENT OF `RENTAL CAP' ITEMS-

(1) LIMITATION ON MONTHLY RECOGNIZED RENTAL AMOUNTS FOR MISCELLANEOUS ITEMS- Section 1834(a)(7)(A)(i) of such Act (42 U.S.C. 1395m(a)(7)(A)(i)) is amended--

(A) by striking `for each such month' and inserting `for each of the first 3 months of such period'; and

(B) by striking the semicolon at the end and inserting the following: `, and for each of the remaining months of such period is 7.5 percent of such purchase price;'.

(2) OFFER OF OPTION TO PURCHASE FOR MISCELLANEOUS ITEMS; ESTABLISHMENT OF REASONABLE LIFETIME- Section 1834(a)(7) of such Act (42 U.S.C. 1395m(a)(7)(A)) is amended--

(A) in subparagraph (A)(i), by striking `15 months' and inserting `15 months, or, in the case of an item for which a purchase agreement has been entered into under clause (ii), a period of continuous use of longer than 13 months';

(B) in subparagraph (A)(ii)--

(i) by striking `(ii) during the succeeding 6-month period of medical need,' and inserting `(iii) in the case of an item for which a purchase agreement has not been entered into under clause (ii), during the first 6-month period of medical need that follows the period of medical need during which payment is made under clause (i),', and

(ii) by striking `and' at the end;

(C) in subparagraph (A)(iii)--

(i) by striking `(iii)' and inserting `(iv) in the case of an item for which a purchase agreement has not been entered into under clause (ii),', and

(ii) by striking the period at the end and inserting `; and';

(D) by inserting after clause (i) of subparagraph (A) the following new clause:

`(ii) during the 9th continuous month during which payment is

made for the rental of an item under clause (i), the supplier of such item shall offer the individual patient the option to enter into a purchase agreement under which, if the patient notifies the supplier not later than 1 month after the supplier makes such offer that the patient agrees to accept such offer and exercise such option--

`(I) the supplier shall transfer title to the item to the individual patient on the first day that begins after the 13th continuous month during which payment is made for the rental of the item under clause (i), and

`(II) after the supplier transfers title to the item under subclause (I), maintenance and servicing payments shall be made in accordance with clause (v);';

(E) by adding at the end of subparagraph (A) the following new clause:

`(v) in the case of an item for which a purchase agreement has been entered into under clause (ii), after the expiration of the 6-month period beginning on the day the supplier transfers title to the item to the patient under clause (ii)(I), a maintenance and servicing payment may be made (for parts and labor not covered by the supplier's or manufacturer's warranty, as determined by the Secretary to be appropriate for the particular type of durable medical equipment) during the first month of each succeeding 6-month period, and the amount recognized for each such period is the amount recognized for the item for such period under clause (iv).'; and

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

`(C) REPLACEMENT OF ITEMS-

`(i) ESTABLISHMENT OF REASONABLE USEFUL LIFETIME- The Secretary shall determine and establish a reasonable useful lifetime for items of durable medical equipment for which payment may be made under this paragraph.

`(ii) PAYMENT FOR REPLACEMENT ITEMS- If the reasonable lifetime of such an item, as so established, has been reached during a continuous period of medical need, or the carrier determines that the item is lost or irreparably damaged, payment for an item serving as a replacement for such item may be made on a monthly basis for the rental of the replacement item in accordance with subparagraph (A).'.

(4) TREATMENT OF POWER-DRIVEN WHEELCHAIRS AS MISCELLANEOUS ITEMS OF DURABLE MEDICAL EQUIPMENT-

(A) IN GENERAL- Section 1834(a)(2)(A) of such Act (42 U.S.C.

1395m(a)(2)(A)) is amended--

(i) in clause (i), by inserting `or' at the end;

(ii) in clause (ii), by striking `or' at the end; and

(iii) by striking clause (iii).

(B) OPTIONAL TREATMENT AS CUSTOMIZED ITEM- Section 1834(a)(4) of such Act (42 U.S.C. 1395m(a)(4)) is amended by striking `patient,' and inserting `patient (including a customized wheelchair classified as a customized item under this paragraph pursuant to criteria specified by the Secretary),'.

(d) FREEZE IN REASONABLE CHARGES FOR PARENTERAL AND ENTERAL NUTRIENTS, SUPPLIES, AND EQUIPMENT DURING 1991- In determining the amount of payment under part B of title XVIII of the Social Security Act for enteral and parenteral nutrients, supplies, and equipment furnished during 1991, the charges determined to be reasonable with respect to such nutrients, supplies, and equipment may not exceed the charges determined to be reasonable with respect to such items for 1990.

(e) REQUIRING PRIOR APPROVAL FOR POTENTIALLY OVERUSED ITEMS- Section 1834(a) of such Act (42 U.S.C. 1395m(a)), as amended by subsection (b)(4), is amended by adding at the end the following new paragraph:

`(15) CARRIER DETERMINATIONS OF POTENTIALLY OVERUSED ITEMS IN ADVANCE-

`(A) DEVELOPMENT OF LIST OF ITEMS BY SECRETARY- The Secretary shall develop and periodically update a list of items for which payment may be made under this subsection that the Secretary determines, on the basis of prior payment experience, are frequently subject to unnecessary utilization, and shall include in such list seat-lift chairs, trancutaneous electrical nerve stimulators, and motorized scooters.

`(B) DETERMINATIONS OF COVERAGE IN ADVANCE- A carrier shall determine in advance whether payment for an item included on the list developed by the Secretary under subparagraph (A) may not be made because of the application of section 1862(a)(1).'.

(f) PROHIBITION AGAINST DISTRIBUTION OF MEDICAL NECESSITY FORMS BY SUPPLIERS-

(1) IN GENERAL- Section 1834(a) of the Social Security Act (42 U.S.C. 1395m(a)), as amended by subsections (b)(4) and (e), is further amended by adding at the end the following new paragraph:

`(16) PROHIBITION AGAINST DISTRIBUTION BY SUPPLIERS OF FORMS DOCUMENTING MEDICAL NECESSITY-

`(A) IN GENERAL- A supplier of a covered item under this subsection may not distribute to physicians or to individuals entitled to benefits under this part for commercial purposes any completed or partially completed forms or other documents required by the Secretary to be submitted to show that a covered item is reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.

`(B) PENALTY- Any supplier of a covered item who knowingly and willfully distributes a form or other document in violation of subparagraph (A) is subject to a civil money penalty in an amount not to exceed $1,000 for each such form or document so distributed. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to civil money penalties under this subparagraph in the same manner as they apply to a penalty or proceeding under section 1128A(a).'.

(2) EFFECTIVE DATE- The amendment made by paragraph (1) shall apply to forms and documents distributed on or after January 1, 1991.

(g) LIMITING CHARGES OF NONPARTICIPATING SUPPLIERS- Section 1834(a) of such Act (42 U.S.C. 1395m(a)), as amended by subsections (b)(4), (e), and (f), is further amended by adding at the end the following new paragraph:

`(17) LIMITING CHARGES FOR NONPARTICIPATING SUPPLIERS-

`(A) IN GENERAL- In the case of covered items for which payment may be made under this subsection furnished on or after January 1, 1991, if a nonparticipating supplier furnishes the item to an individual entitled to benefits under this part, the supplier may not charge the individual more than the limiting charge (as defined in subparagraph (B)).

`(B) LIMITING CHARGE DEFINED- In subparagraph (A), the term `limiting charge' means, with respect to an item furnished--

`(i) in 1991, 125 percent of the payment amount specified for the item under this subsection,

`(ii) in 1992, 120 percent of the payment amount specified for the item under this subsection, and

`(iii) in a subsequent year, 115 percent of the payment amount specified for the item under this subsection.

`(C) ENFORCEMENT- If a supplier knowingly and willfully bills in violation of subparagraph (A), the Secretary may apply sanctions against such supplier in accordance with section 1842(j)(2) in the same manner as such sanctions may apply to a physician.'.

(h) RECERTIFICATION FOR CERTAIN PATIENTS RECEIVING HOME OXYGEN THERAPY SERVICES-

(1) IN GENERAL- Section 1834(a)(5) of such Act (42 U.S.C. 1395m(a)(5)) is amended--

(A) in subparagraph (A), by striking `(B) and (C)' and inserting `(B), (C), and (E)'; and

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

`(E) RECERTIFICATION FOR PATIENTS RECEIVING HOME OXYGEN THERAPY- In the case of a patient receiving home oxygen therapy services who, at the time such services are initiated, has an initial arterial blood gas value at or above a partial pressure of 55 or an arterial oxygen saturation at or above 89 percent, no payment may be made under this part for such services after the expiration of the 60-day period that begins on the date the patient first receives such services unless the patient's attending physician certifies that, on the basis of a follow-up test of the patient's arterial blood gas value or arterial oxygen saturation conducted during the final 15 days of such 60-day period, there is a medical need for the patient to continue to receive such services.'.

(2) EFFECTIVE DATE- The amendments made by paragraph (1) shall apply to patients who first receive home oxygen therapy services on or after January 1, 1991.

(i) STUDY OF SEPARATE FEE SCHEDULES FOR CERTAIN SUPPLIERS OF PROSTHETIC DEVICES, ORTHOTICS, AND PROSTHETICS-

(1) STUDY- The Secretary of Health and Human Services shall conduct a study of the feasibility and desirability of establishing a separate fee schedule for use in determining the amount of payments for covered items under section 1834(a) of the Social Security Act with respect to suppliers of prosthetic devices, orthotics, and prosthetics who provide professional services that would take into account the costs to such providers of providing such services.

(2) REPORT- By not later than 1 year after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the study conducted under paragraph (1).

(j) TECHNICAL CORRECTIONS- Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, section 4062(e) of such Act is amended--

(1) by inserting `(other than oxygen and oxygen equipment)' after `covered items', and

(2) by inserting before the period at the end the following: `and to oxygen and oxygen equipment furnished on or after June 1, 1989'.

(k) EFFECTIVE DATE- Except as provided in subsections (f)(2), (h)(2), and (j),

the amendments made by this section shall apply to items furnished on or after January 1, 1991.

SEC. 4023. CLINICAL DIAGNOSTIC LABORATORY TESTS.

(a) REDUCTION IN NATIONAL CAP ON FEE SCHEDULES-

(1) IN GENERAL- Section 1833(h)(4)(B) of the Social Security Act (42 U.S.C. 1395l(h)(4)(B)) is amended--

(A) in clause (ii), by striking `and' at the end;

(B) in clause (iii)--

(i) by inserting `and before January 1, 1991,' after `1989,', and

(ii) by striking the period at the end and inserting `, and'; and

(C) by adding at the end the following new clause:

`(iv) after December 31, 1990, is equal to 85 percent of the median of all the fee schedules established for that test for that laboratory setting under paragraph (1).'.

(2) EFFECTIVE DATE- The amendments made by paragraph (1) shall apply to tests furnished on or after January 1, 1991.

(b) Clarification of Mandatory Assignment for Tests Performed by a Physician Office Laboratory-

(1) IN GENERAL- (A) Section 1833(h)(5)(C) of such Act (42 U.S.C. 1395l(h)(5)(C)) is amended by striking `performed by a laboratory other than a rural health clinic' and inserting `(other than a test performed by a rural health clinic)'.

(B) Section 1833(h)(5)(A)(ii)(III) of such Act (42 U.S.C. 1395l(i)(5)(A)(iii)) is amended by striking `laboratory,' and inserting `laboratory (but not including a laboratory described in subclause (II)),'.

(C) Section 6111(b)(2) of the Omnibus Budget Reconciliation Act of 1989 is amended by striking `January 1, 1990' and inserting `May 1, 1990'.

(2) EFFECTIVE DATE- The amendments made by paragraph (1) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989.

(c) TECHNICAL CORRECTIONS-

(1)(A) Section 1833(h)(5)(A)(ii) of such Act (42 U.S.C. 1395l(h)(5)(A)(ii)) is amended--

(i) in subclause (II), by striking `a wholly-owned subsidiary of' and

inserting `wholly owned by'; and

(ii) in subclause (III), by striking `submits bills or requests for payment in any year' and inserting `receives requests for testing during the year in which the test is performed'.

(B) The amendments made by subparagraph (A) shall take effect January 1, 1991.

(2) The heading of section 1846 of such Act is amended by striking `OF' and inserting `OR'.

(3) Section 9339(b) of the Omnibus Budget Reconciliation Act of 1986 is amended by striking paragraph (3).

SEC. 4024. COVERAGE OF NURSE PRACTITIONERS IN RURAL AREAS.

(a) IN GENERAL- Section 1861(s)(2)(K) of the Social Security Act (42 U.S.C. 1395x(s)(2)(K)) is amended--

(1) in clause (ii), by striking `and' at the end;

(2) in clause (iii), by striking `(i) or (ii)' and inserting `(i), (ii), or (iii)';

(3) by redesignating clause (iii) as clause (iv); and

(4) by inserting after clause (ii) the following new clause:

`(iii) services which would be physicians' services if furnished by a physician (as defined in subsection (r)(1)) and which are performed by a nurse practitioner or clinical nurse specialist (as defined in subsection (aa)(3)) working in collaboration (as defined in subsection (aa)(4)) with a physician (as defined in subsection (r)(1)) in a rural area (as defined in section 1886(d)(2)(D)) which the nurse practitioner or clinical nurse specialist is authorized to perform by the State in which the services are performed, and'.

(b) PAYMENT-

(1) DIRECT PAYMENT- Section 1832(a)(2)(B) of such Act (42 U.S.C. 1395k(a)(2)(B)) is amended--

(A) in clause (ii), by striking `and' at the end;

(B) in clause (iii), by striking the semicolon and inserting a comma; and

(C) by adding at the end the following new clause:

`(iv) services of a nurse practitioner or clinical nurse specialist provided in a rural area (as defined in section 1886(d)(2)(D));

and'.

(2) AMOUNT- Section 1833(a)(1) of such Act (42 U.S.C. 1395l(a)(1)) is amended--

(A) by striking `and' at the end of subparagraph (K); and

(B) by inserting after subparagraph (L) the following new subparagraph: `(M) with respect to services described in section 1861(s)(2)(K)(iii) (relating to nurse practitioner or clinical nurse specialist services provided in a rural area), the amounts paid shall be 80 percent of the lesser of the actual charge or the prevailing charge that would be recognized (or, for services furnished on or after January 1, 1992, the fee schedule amount provided under section 1848, as the case may be) if the services had been performed by a physician (subject to the limitation described in subsection (r)(2)), and'.

(3) CAP ON PREVAILING CHARGE; BILLING ONLY ON ASSIGNMENT-RELATED BASIS- Section 1833 of such Act (42 U.S.C. 1395l) is amended by adding at the end the following new subsection:

`(r)(1) With respect to services described in section 1861(s)(2)(K)(iii) (relating to nurse practitioner or clinical nurse specialist services provided in a rural area), payment may be made on the basis of a claim or request for payment presented by the nurse practitioner or clinical nurse specialist furnishing such services, or by a hospital, rural primary care hospital, physician, group practice, ambulatory surgical center, or rural health clinic with which the nurse practitioner or clinical nurse specialist has an employment or contractual relationship that provides for payment to be made under this part for such services to such hospital, physician, group practice, ambulatory surgical center, or rural health clinic.

`(2)(A) For purposes of subsection (a)(1)(M), the prevailing charge for services described in section 1861(s)(2)(K)(iii) may not exceed the applicable percentage (as defined in subparagraph (B)) of the prevailing charge rate determined for such services performed by physicians who are not specialists.

`(B) In subparagraph (A), the term `applicable percentage' means--

`(i) 75 percent in the case of services performed in a hospital, and

`(ii) 85 percent in the case of other services.

`(3)(A) Payment under this part for services described in section 1861(s)(2)(K)(iii) may be made only on an assignment-related basis, and any such assignment agreed to by a nurse practitioner or clinical nurse specialist shall be binding upon any other person presenting a claim or request for payment for such services.

`(B) Except for deductible and coinsurance amounts applicable under this section, any person who knowingly and willfully presents, or causes to be

presented, to an individual enrolled under this part a bill or request for payment for services described in section 1861(s)(2)(K)(iii) in violation of subparagraph (A) is subject to a civil money penalty of not to exceed $2,000 for each such bill or request. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

`(4) No hospital or rural primary care hospital that presents a claim or request for payment under this part for services described in section 1861(s)(2)(K)(iii) may treat any uncollected coinsurance amount imposed under this part with respect to such services as a bad debt of such hospital for purposes of this title.'.

(c) CONFORMING AMENDMENT- Section 1842(b) of such Act (42 U.S.C. 1395u(b)) is amended by striking `section 1861(s)(2)(K)' each place it appears in paragraphs (6) and (12) and inserting `clauses (i) and (ii) of section 1861(s)(2)(K)'.

(d) DEFINITION- Section 1861(aa)(3) of the Social Security Act (42 U.S.C. 1395x(aa)(3)) is amended by striking `The term' and all that follows through `who performs' and inserting the following: `The term `physician assistant', the term `nurse practitioner', and the term `clinical nurse specialist' mean, for purposes of this Act, a physician assistant, nurse practitioner, or clinical nurse specialist who performs'.

(e) EFFECTIVE DATE- The amendments made by this section shall apply to services furnished on or after January 1, 1991.

SEC. 4025. CLARIFYING COVERAGE OF EYEGLASSES PROVIDED WITH INTRAOCULAR LENSES FOLLOWING CATARACT SURGERY.

(a) COVERAGE AS A PROSTHETIC DEVICE- Section 1861(s)(8) of the Social Security Act (42 U.S.C. 1395x(s)(8)) is amended by inserting before the semicolon at the end the following: `and including corrective eyeglasses provided with intraocular lenses following cataract surgery (but not including replacement for such eyeglasses)'.

(b) CLARIFICATION OF EXCLUSION- Section 1862(a)(7) of such Act (42 U.S.C. 1395y(a)(7)) is amended by inserting `(other than eyeglasses described in section 1861(s)(8))' after `eyeglasses' the first place it appears.

(c) EFFECTIVE DATE- The amendments made by this section shall apply to items and services furnished before, on, or after the date of the enactment of this Act.

SEC. 4026. COVERAGE OF INJECTABLE DRUGS FOR TREATMENT OF OSTEOPOROSIS.

(a) IN GENERAL- Section 1861 of the Social Security Act (42 U.S.C. 1395x) is

amended--

(1) in subsection (s)(2)--

(A) by striking `and' at the end of subparagraph (M),

(B) by inserting `and' at the end of subparagraph (N), and

(C) by inserting after subparagraph (N) the following new subparagraph:

`(O) a covered osteoporosis drug and its administration (as defined in subsection (jj)) furnished on or after January 1, 1991, and on or before December 31, 1992; and'; and

(2) by inserting after subsection (ii) the following new subsection:

`Covered Osteoporosis Drug

`(jj) The term `covered osteoporosis drug' means an injectable drug approved for the treatment of a bone fracture related to post-menopausal osteoporosis provided to a patient if, in accordance with regulations promulgated by the Secretary--

`(1) the patient's attending physician certifies that the patient is unable to learn the skills needed to self-administer such drug or is otherwise physically or mentally incapable of self-administering such drug; and

`(2) the patient meets the requirements for coverage of home health services described in section 1814(a)(2)(C).'.

(b) STUDY OF EFFECTS OF COVERAGE-

(1) IN GENERAL- The Secretary of Health and Human Services shall conduct a study analyzing the effects of coverage of osteoporosis drugs under part B of title XVIII of the Social Security Act (as amended by subsection (a)) on patient health and the utilization of inpatient hospital and extended care services.

(2) REPORT- By not later than March 1, 1992, the Secretary shall submit a report to Congress on the study conducted under paragraph (1), and shall include in such report such recommendations regarding expansion of coverage under the medicare program of items and services for individuals with post-menopausal osteoporosis as the Secretary considers appropriate.

SEC. 4027. CONDITIONS FOR CATARACT SURGERY ALTERNATIVE PAYMENT DEMONSTRATION PROJECT.

In carrying out any demonstration project to evaluate the effectiveness of alternative methods of payment for cataract surgery under title XVIII of the

Social Security Act, the Secretary of Health and Human Services--

(1) may not select providers to participate in such demonstration project solely on the basis of the number of cataract surgeries performed;

(2) shall monitor the quality of services provided under such demonstration project; and

(3) shall develop criteria for the selection of providers to participate in such demonstration project in consultation with physicians specializing in the care and treatment of conditions of the eyes.

Subpart C--Miscellaneous Provisions

SEC. 4031. MEDICARE CARRIER NOTICE TO STATE MEDICAL BOARDS.

(a) IN GENERAL- Section 1842(b)(3) of the Social Security Act (42 U.S.C. 1395u(b)(3)) is amended by inserting after subparagraph (H) the following new subparagraph:

`(I) will refer cases of physician unethical or unprofessional conduct to the State medical board or boards responsible for the licensing of the physician involved;'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply to cases of unethical or unprofessional conduct that a carrier becomes aware of more than 60 days after the date of the enactment of this Act. The Secretary of Health and Human Services shall provide for such modification of contracts under section 1842 of the Social Security Act as may be necessary to incorporate the additional requirement imposed by the amendment made by subsection (a) on a timely basis.

SEC. 4032. TECHNICAL AND MISCELLANEOUS PROVISIONS RELATING TO PART B.

(a) Section 1833(o)(2)(D) of the Social Security Act (42 U.S.C. 1395l(o)(2)(D)) is amended by striking `one (or more, as specified by the Secretary) pairs' and inserting `one pair (or more pairs, as specified by the Secretary)'.

(b) Section 1839(a)(4) of such Act (42 U.S.C. 1395r(a)(4)) is amended by striking `which' after `age 65' the second place it appears.

(c) Section 1842(b)(3) of such Act (42 U.S.C. 1395u(b)(3)) is amended--

(1) by striking `and' at the end of subparagraph (H),

(2) by inserting `and' at the end of subparagraph (I), and

(3) by redesignating subparagraph (L) as subparagraph (J).

(d) Section 1861(s)(2)(B) of such Act (42 U.S.C. 1395x(s)(2)(B)) is amended by striking `and partial hospital services incident to such services' and by inserting `and partial hospitalization services' after `hospital services'.

(e) Section 1861(ii) of such Act (42 U.S.C. 1395x(ii)) is amended--

(1) by inserting `furnished by a clinical psychologist (as defined by the Secretary)' after `means such services', and

(2) by striking `his service furnished by a clinical psychologist (as defined by the Secretary)' and inserting `such services'.

PART 2--PROVISIONS RELATING TO PARTS A AND B

Subpart A--Peer Review Organizations

SEC. 4101. PRO COORDINATION WITH CARRIERS.

(a) IN GENERAL- Section 1154 of the Social Security Act (42 U.S.C. 1320c-3) is amended by adding at the end the following new subsection:

`(g) In carrying out coordinating activities under subsection (a)(10)(A) with carriers under section 1842, each organization shall provide, in a manner specified by the Secretary, for--

`(1) information exchange in accordance with specifications of the Secretary,

`(2) development of common utilization and quality review claim edits and specific medical review criteria used to identify individual claims for review, and

`(3) collaboration on the analysis of utilization trends and on the results of medical reviews and collaboration on the development of claim edit standards and review criteria.'.

(b) CARRIER COORDINATION- Section 1842(b)(3) of such Act (42 U.S.C. 1395u(b)(3)) is amended by inserting after subparagraph (H) the following new subparagraph:

`(I) will coordinate its activities with those of utilization and quality control peer review organizations, in the manner specified by the Secretary in order to carry out section 1154(g); and'.

(c) REPORT- By not later than January 1, 1992, the Secretary of Health and Human Services shall submit a report to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate on the implementation of the

amendments made by this section.

SEC. 4102. CONFIDENTIALITY OF PEER REVIEW DELIBERATIONS.

(a) IN GENERAL- Section 1160(d) of the Social Security Act (42 U.S.C. 1320c-9(d)) is amended by adding at the end the following: `No document or other information produced by such an organization in connection with its deliberations in making determinations under section 1154(a)(1)(B) or 1156(a)(2) shall be subject to subpena or discovery in any administrative or civil proceeding; except that such an organization shall provide, upon request of a practitioner or other person adversely affected by such a determination, a summary of the organization's findings and conclusions in making the determination.'.

(b) EFFECTIVE DATE- The amendments made by subsection (a) shall apply to all proceedings as of the date of the enactment of this Act.

SEC. 4103. ROLE OF PEER REVIEW ORGANIZATIONS IN REVIEW OF HOSPITAL TRANSFERS.

(a) IN GENERAL- Section 1867(d) of the Social Security Act (42 U.S.C. 1395dd(d)) is amended by adding at the end the following new paragraph:

`(4) CONSULTATION WITH PEER REVIEW ORGANIZATIONS-

`(A) IN GENERAL- In considering allegations concerning violations of the requirements of this section in imposing sanctions under paragraph (1) or (2) in cases in which the concerns described in subparagraph (B) are raised, the Secretary shall request the appropriate utilization and quality control peer review organization (with a contract under part B of title XI) to review the medical condition of the individual involved and provide a report concerning its findings and professional opinions with respect to such concerns. Except in the case in which a delay would immediately jeopardize the health or safety of individuals, the Secretary shall request such a review before effecting a sanction under paragraph (1) or paragraph (2) and shall provide a period of at least 60 days for such review.

`(B) CONCERNS- The concerns described in this subparagraph are--

`(i) whether the individual had an emergency medical condition which had not been stabilized, and

`(ii) if the individual was transferred, (I) whether, based upon the information available at the time of the transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweighed the increased risks to the individual (and, in the

case of labor, to the unborn child) from effecting the transfer, and (II) whether the transfer was an appropriate transfer (as defined in subsection (c)(2)).'.

(b) CONFORMING AMENDMENT- Section 1154(a) of such Act (42 U.S.C. 1320c-4(a)) is amended by adding at the end the following new paragraph:

`(16) The organization shall provide for a review and report to the Secretary when requested by the Secretary under section 1867(d)(4)(A). The organization shall provide reasonable notice of the review to the physician and hospital involved. Within the time period permitted by the Secretary, the organization shall provide a reasonable opportunity for discussion with the physician and hospital involved, and an opportunity for the physician and hospital to submit additional information, before issuing its report to the Secretary under such section.'.

(c) EFFECTIVE DATE- The amendment made by subsection (a) shall take effect on the first day of the first month beginning more than 60 days after the date of the enactment of this Act. The amendment made by subsection (b) shall apply to contracts under part B of title XI of the Social Security Act as of the first day of the first month beginning more than 60 days after the date of the enactment of this Act.

SEC. 4104. PEER REVIEW NOTICE.

(a) REQUIREMENT- Section 1154(a)(9) of the Social Security Act (42 U.S.C. 1320c-3(a)(9)) is amended--

(1) by inserting `(A)' after `(9)', and

(2) by adding at the end the following:

`(B) The organization shall notify the State board or boards responsible for the licensing or disciplining of any physician when the organization submits a report and recommendations to the Secretary with respect to such physician under section 1156(b)(1).'.

(b) DISCLOSURE- Section 1160(b)(1) of such Act (42 U.S.C. 1320c-9(b)(1)) is amended--

(1) by striking `and' at the end of subparagraph (B),

(2) by adding `and' at the end of subparagraph (C), and

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

`(D) to provide notice to the State medical board in accordance with section 1154(a)(9)(B) when the organization submits a report and recommendations to the Secretary under section 1156(b)(1) with respect to a physician whom the board is responsible for licensing;'.

(c) EFFECTIVE DATE- The amendments made by this section shall apply to

notices of proposed sanctions issued more than 60 days after the date of the enactment of this Act.

SEC. 4105. NOTICE TO STATE MEDICAL BOARDS WHEN ADVERSE ACTIONS TAKEN.

(a) IN GENERAL- Section 1156(b) of the Social Security Act (42 U.S.C. 1320c-5(b)) is amended by adding at the end the following new paragraph:

`(6) When the Secretary effects an exclusion of a physician under paragraph (2), the Secretary shall notify the State board responsible for the licensing of the physician of the exclusion.'.

(b) EFFECTIVE DATE- The amendments made by this section shall apply to sanctions effected more than 60 days after the date of the enactment of this Act.

SEC. 4106. TREATMENT OF OPTOMETRISTS AND PODIATRISTS.

(a) IN GENERAL- Section 1154 of the Social Security Act (42 U.S.C. 1320c-3) is amended--

(1) in subsection (a)(7)(A)(i), by inserting `, optometry, or podiatry' after `dentistry'; and

(2) in subsection (c), by striking `or dentistry' each place it appears and inserting `dentistry, optometry, or podiatry'.

(b) EFFECTIVE DATE- The amendments made by paragraph (1) shall apply to contracts entered into or renewed on or after the date of the enactment of this Act.

Subpart B--Other Provisions

SEC. 4121. EXTENSION OF SECONDARY PAYOR PROVISIONS.

(a) EXTENSION OF RENAL DISEASE PERIOD FROM 12 TO 18 MONTHS- Section 1862(b)(1)(C) of the Social Security Act (42 U.S.C. 1395y(b)(1)(C)) is amended by striking `12-month period' each place it appears and inserting `18-month period'.

(b) ELIMINATION OF SUNSET FOR TRANSFER OF DATA PROVISION- Section 1862(b)(5)(C) of such Act (42 U.S.C. 1395y(b)(5)(C)) is amended by striking clause (iii).

(c) ELIMINATION OF SUNSET ON APPLICATION TO DISABLED BENEFICIARIES-

(1) IN GENERAL- Section 1862(b)(1)(B) of such Act (42 U.S.C. 1395y(b)(1)(B)) is amended--

(A) in clause (i), by striking `(iv)(II)' and `(iv)(I)' and inserting `(iii)(II)' and `(iii)(I)', respectively,

(B) by striking clause (iii), and

(C) by redesignating clause (iv) as clause (iii).

(2) CONFORMING AMENDMENTS- Paragraphs (1), (2), and (3)(B) of section 1837(i) of such Act (42 U.S.C. 1395p(i)) and section 1839(b) of such Act (42 U.S.C. 1395r(b)) are each amended by striking `1862(b)(1)(B)(iv)' and inserting `1862(b)(1)(B)(iii)'.

(d) EFFECTIVE DATES-

(1) The amendment made by subsection (a) shall apply to group health plans for plan years beginning on or after January 1, 1991.

(2) The amendments made by subsections (b) and (c) shall take effect on the date of the enactment.

SEC. 4122. HEALTH MAINTENANCE ORGANIZATIONS.

(a) PERMITTING RETROACTIVE ENROLLMENT OF CERTAIN RETIREES-

(1) IN GENERAL- Section 1876(c)(3)(B) of the Social Security Act (42 U.S.C. 1395mm(c)(3)(B)) is amended--

(A) by inserting `(i)' after `(B)', and

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

`(ii) Regulations under clause (i) shall provide that, in the case of an individual who, at the time of retirement from employment, is enrolled with an eligible organization (which has a risk-sharing contract under this section) under a health benefit plan operated, sponsored, or contributed to, by the individual's employer or former employer, the enrollment may be made effective as of the first month of such retirement if such enrollment occurs not later than 3 months after the date of the retirement.

`(iii) Such regulations shall provide that, in the case of an individual who, at the time the individual's spouse retires from employment, is enrolled with an eligible organization (which has a risk-sharing contract under this section) under a health benefit plan operated, sponsored, or contributed to, by the employer or former employer of the individual's spouse, the enrollment may be made effective as of the first month of such retirement if such enrollment occurs not later than 3 months after the date of the retirement of the individual's spouse.'.

(2) EFFECTIVE DATE- The amendments made by paragraph (1) shall take effect on the date of the enactment of this Act.

(b) PROHIBITING CERTAIN EMPLOYER MARKETING ACTIVITIES-

(1) IN GENERAL- Section 1862(b)(3) of such Act (42 U.S.C. 1395y(b)(3)) is amended by adding at the end the following new subparagraph:

`(C) PROHIBITION OF FINANCIAL INCENTIVES NOT TO ENROLL IN A GROUP HEALTH PLAN- It is unlawful for an employer or other entity to offer any financial or other incentive for an individual not to enroll (or to terminate enrollment) under a group health plan which would (in the case of such enrollment) be a primary plan (as defined in paragraph (2)(A)), unless such incentive is also offered to all individuals who are eligible for coverage under the plan. Any entity that violates the previous sentence is subject to a civil money penalty of not to exceed $5,000 for each such violation. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).'.

(2) EFFECTIVE DATE- The amendment made by paragraph (1) shall apply to incentives offered on or after the date of the enactment of this Act.

(c) PATIENT'S RIGHT TO PARTICIPATE IN AND DIRECT HEALTH CARE DECISIONS-

(1) REQUIREMENT FOR ELIGIBLE ORGANIZATIONS- Section 1876(c) of the Social Security Act (42 U.S.C. 1395mm(c)) is amended--

(A) in subsection (c), by adding at the end the following new paragraph:

`(8) A contract under this section shall provide that the eligible organization shall meet the requirement of subsection (k) (relating to maintaining written policies and procedures respecting advance directives).', and

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

`(k)(1) For purposes of subsection (c)(8), the requirement of this subsection is that an eligible organization maintain written policies and procedures with respect to all adult individuals receiving medical care by or through the organization--

`(A) to provide written information to each such individual concerning--

`(i) an individual's rights under State law (whether statutory or as recognized by the courts of the State) to make decisions concerning such medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives (as defined in paragraph (3)), and

`(ii) the written policies of the organization respecting the implementation of such rights;

`(B) to document in the individual's medical record whether or not the individual has executed an advance directive;

`(C) not to condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive;

`(D) to ensure compliance with requirements of State law respecting advance directives at facilities of the organization; and

`(E) to provide (individually or with others) for education for staff and the community on issues concerning advance directives.

Subparagraph (C) shall not be construed as requiring the provision of care which conflicts with an advance directive.

`(2) The written information described in paragraph (1)(A) shall be provided to an adult individual at the time of enrollment of the individual with the organization.

`(3) In this subsection, the term `advance directive' means a written instruction, such as a living will or durable power of attorney for health care, recognized under State law and relating to the provision of such care when the individual is incapacitated.'.

(2) APPLICATION TO OTHER PREPAID ORGANIZATIONS- Section 1833 of such Act (42 U.S.C. 1395l) is amended by adding at the end the following new subsection:

`(r) The Secretary may not provide for payment under subsection (a)(1)(A) with respect to an organization unless the organization provides assurances satisfactory to the Secretary that the organization meets the requirement of section 1876(k) (relating to maintaining written policies and procedures respecting advance directives).'.

(3) EFFECTIVE DATE- The amendments made by this subsection shall apply to contracts under section 1876 of the Social Security Act and payments under section 1833(a)(1)(A) of such Act as of first day of the first month beginning more than 1 year after the date of the enactment of this Act.

SEC. 4123. DEMONSTRATION PROJECT FOR PROVIDING STAFF ASSISTANTS TO HOME DIALYSIS PATIENTS.

(a) ESTABLISHMENT- Not later than 6 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall establish and carry out a demonstration project to determine whether the services of a home dialysis aide providing medical assistance to a patient during hemodialysis treatment at the patient's home may be covered under the medicare program in a cost-effective manner that ensures patient safety.

(b) PAYMENTS TO PARTICIPATING PROVIDERS AND FACILITIES-

(1) SERVICES FOR WHICH PAYMENT MAY BE MADE- Under the demonstration project established under subsection (a), the Secretary shall make payments for 2 years under title XVIII of the Social Security Act to a provider of services (other than a skilled nursing facility) or a renal dialysis facility located in an urban area and to a provider of services (other than a skilled nursing facility) or a renal dialysis facility located in a rural area for services of a qualified home dialysis aide providing medical assistance to an individual described in subsection (c) during hemodialysis treatment at the individual's home in an amount determined under paragraph (2).

(2) AMOUNT OF PAYMENT- (A) Subject to subparagraph (B), payment to a provider of services or renal dialysis facility participating in the demonstration project established under subsection (a) for the services described in paragraph (1) shall be equal to a rate prospectively determined by the Secretary and shall be made on a per treatment basis.

(B) The per treatment amount of payment made under the demonstration project for services provided to a patient may not exceed the amount of payment that would be made under title XVIII of the Social Security Act for ambulance service provided to the patient for transportation to and from the provider of services or renal dialysis facility.

(c) INDIVIDUALS ELIGIBLE TO RECEIVE SERVICES UNDER PROJECT- An individual may receive services from a provider of services or renal dialysis facility participating in the demonstration project if--

(1) the individual is an end stage renal disease patient entitled to benefits under title XVIII of the Social Security Act;

(2) the individual's attending physician certifies that the individual suffers from a permanent, serious medical condition (as specified by the Secretary) that precludes travel to and from a provider of services or renal dialysis facility; and

(3) no family member or other individual is available or able to provide such assistance to the individual.

(d) QUALIFICATIONS FOR HOME DIALYSIS AIDES- For purposes of subsection (b), a home dialysis aide is qualified if the aide--

(1) meets requirements developed by the Secretary for home dialysis aides providing medical assistance during hemodialysis treatment at an individual patient's home; or

(2) meets any applicable standards established by the State in which the aide is providing such assistance.

(e) REPORT- Not later than 6 months after the expiration of the demonstration project established under subsection (a), the Secretary shall

submit to Congress a report on the results of the project, and shall include in such report recommendations regarding appropriate eligibility criteria and cost-control mechanisms for medicare coverage of the services of a home dialysis aide providing medical assistance to a patient during hemodialysis treatment at the patient's home.

(f) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated not more than $2,000,000 to carry out the demonstration project established under subsection (a).

SEC. 4124. EXTENSION OF REPORTING DEADLINE FOR ALZHEIMER'S DISEASE DEMONSTRATION PROJECT.

Section 9342(d)(2) of the Omnibus Budget Reconciliation Act of 1986 is amended by striking `upon completion' and inserting `not later than 1 year after completion'.

SEC. 4125. MISCELLANEOUS TECHNICAL CORRECTIONS.

Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, section 1891(a)(3)(D)(iii) of the Social Security Act (42 U.S.C. 1395bbb(a)(3)(D)(iii)) is amended--

(1) by inserting `, within the previous 2 years,' after `which has been determined'; and

(2) by striking `the requirements specified in or pursuant to section 1861(o) or subsection (a) within the previous 2 years' and inserting `(I) subparagraph (A), (B), or (C), or (II) has been subject to an extended (or partial extended) survey under subsection (c)(2)(D)'.

Part 3--Provisions Relating to Beneficiaries

SEC. 4201. PART B PREMIUM.

(a) $1 INCREASE IN PREMIUM FOR 1991- Notwithstanding any other provision of law, but subject to subsections (b) and (f) of section 1839 of the Social Security Act, the amount of the monthly premium under such section, applicable for individuals enrolled under part B of title XVIII of such title for 1991, shall be increased by $1 above the amount of such premium otherwise determined under section 1839(a)(3) of such Act.

(b) PREMIUM FOR YEARS 1992 THROUGH 1995- Section 1839(e) of the Social Security Act (42 U.S.C. 1395r(e)) is amended--

(1) in paragraph (1), by inserting `and for each month after December 1991 and prior to January 1996' after `January 1991', and

(2) in paragraph (2), by striking `1991' and inserting `1996'.

SEC. 4202. PART B DEDUCTIBLE.

Effective beginning with 1991, section 1833(b) of the Social Security Act (42 U.S.C. 1395l) is amended by striking `$75' and inserting `$100'.

Part 4--Standards for Medicare Supplemental Insurance Policies

SEC. 4301. SIMPLIFICATION OF MEDICARE SUPPLEMENTAL POLICIES.

(a) IN GENERAL- Section 1882 of the Social Security Act (42 U.S.C. 1395ss) is amended--

(1) in subsection (b)(1)(B), by striking `through (4)' and inserting `through (5)';

(2) in subsection (c)--

(A) by striking `and' at the end of paragraph (3),

(B) by striking the period at the end of paragraph (4) and inserting `; and', and

(C) by inserting after paragraph (4) the following new paragraph:

`(5) meets the requirements of subsection (o).'; and

(3) by adding at the end the following new subsections:

`(o) The requirements of this subsection are as follows:

`(1)(A) Each medicare supplemental policy shall provide for coverage of a group of benefits consistent with subsection (p)(1).

`(B) If the medicare supplemental policy provides for coverage of a group of benefits other than the core group of basic benefits described in subsection (p)(2)(B), the issuer of the policy must make available to the individual a medicare supplemental policy with only such core group of basic benefits.

`(C) The issuer of the policy has provided, before the sale of the policy, a summary information sheet which describes--

`(i) the benefits and premium under the policy, and

`(ii) the average ratio of benefits provided to premiums collected for the most recent 3-year period in which the policy is in effect (or, for a policy that has not been in effect for 3 years, the average ratio of benefits provided to premiums collected that is expected during the 3rd year of the policy).

Such summary information shall be on a standard form approved by the State (in consultation with the Secretary) consistent with the subsection (d)(3)(D).

`(2)(A) Each medicare supplemental policy shall be guaranteed renewable and--

`(i) the issuer may not cancel or nonrenew the policy solely on the ground of health status of the individual; and

`(ii) the issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

`(B) If the medicare supplemental policy is terminated by the group policyholder and is not replaced as provided under subparagraph (D), the issuer shall offer certificateholders an individual medicare supplemental policy which (at the option of the certificateholder)--

`(i) provides for continuation of the benefits contained in the group policy, or

`(ii) provides for such benefits as otherwise meets the requirements of this section.

`(C) If an individual is a certificateholder in a group medicare supplemental policy and the individual terminates membership in the group, the issuer shall--

`(i) offer the certificateholder the conversion opportunity described in subparagraph (B), or

`(ii) at the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

`(D) If a group medicare supplemental policy is replaced by another group medicare supplemental policy purchased by the same policyholder, the succeeding issuer shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

`(3)(A) Each medicare supplemental policy shall provide that benefits and premiums under the policy shall be suspended for any period in which the policyholder has applied for and is determined to be entitled to medical assistance under title XIX of the Social Security Act, but only if the policyholder notifies the issuer of such policy within 90 days after the date the individual becomes entitled to such assistance. If such suspension occurs and if the policyholder loses entitlement to such medical assistance, such policy shall be automatically reinstated as of the termination of such entitlement if the policyholder provides notice of

loss of such entitlement within 90 days after the date of such loss.

`(B) Nothing in this section shall be construed as affecting the authority of a State, under title XIX of the Social Security Act, to purchase a medicare supplemental policy for an individual otherwise entitled to assistance under such title.

`(p)(1)(A) If, within 9 months after the date of the enactment of this subsection, the National Association of Insurance Commissioners (in this subsection referred to as the `Association') promulgates--

`(i) limitations on the groups or packages of benefits that may be offered under a medicare supplemental policy consistent with paragraphs (2) and (3) of this subsection,

`(ii) uniform language and definitions to be used with respect to such benefits,

`(iii) uniform format to be used in the policy with respect to such benefits, and

`(iv) transitional requirements consistent with paragraph (4),

(such limitations, language, definitions, format, and requirements referred to collectively in this subsection as `NAIC simplification standards'), subsection (g)(2)(A) shall be applied in each State, effective for policies issued to policyholders on and after the date specified in subparagraph (C), as if the reference to the Model Regulation adopted on June 6, 1979, included a reference to the NAIC simplification standards.

`(B) If the Association does not promulgate NAIC simplification standards within the 9-month period specified in subparagraph (A), the Secretary shall promulgate, not later than 9 months after the end of such period, limitations, language, definitions, format, and requirements described in clauses (i) through (iv) of such subparagraph (in this subsection referred to collectively as `Federal simplification standards') and subsection (g)(2)(A) shall be applied in each State, effective for policies issued to policyholders on and after the date specified in subparagraph (C), as if the reference to the Model Regulation adopted on June 6, 1979, included a reference to the Federal simplification standards.

`(C)(i) Subject to clause (ii), the date specified in this subparagraph for a State is the date the State adopts the NAIC simplification standards or the Federal simplification standards or 1 year after the date the Association or the Secretary first adopts such standards, whichever is earlier.

`(ii) In the case of a State which the Secretary identifies, in consultation with the Association, as--

`(I) requiring State legislation (other than legislation appropriating funds) in order for medicare supplemental policies to meet the NAIC or Federal simplification standards, but

`(II) having a legislature which is not scheduled to meet in 1992 in a legislative session in which such legislation may be considered,

the date specified in this subparagraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1992. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

`(D) Notwithstanding any other provision of this section, no medicare supplemental policy may be sold, issued, or renewed in a State unless--

`(i) the State's regulatory program under subsection (b)(1) provides for the application and enforcement of the standards and requirements set forth in such subsection (including the NAIC simplification standards or the Federal simplification standards (as the case may be)) by the date specified in subparagraph (C); or

`(ii) if the State's program does not provide for the application and enforcement of such standards and requirements, the Secretary has determined that the policy meets the standards and requirements set forth in subsection (c) (including such applicable simplification standards) by such date.

Any person who issues or sells a medicare supplemental policy, after the effective date of the NAIC or Federal simplification standards with respect to the policy, in violation of this subparagraph is subject to a civil money penalty of not to exceed $25,000 for each such violation. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

`(E) In promulgating simplification standards under this paragraph, the Association or Secretary shall consult with a working group composed of representatives of issuers of medicare supplemental policies, consumer groups, medicare beneficiaries, and other qualified individuals. Such representatives shall be selected in a manner so as to assure balanced representation among the interested groups.

`(F) If benefits (including deductibles and coinsurance) under this title are changed and the Secretary determines, in consultation with the Association, that changes in the NAIC or Federal simplification standards are needed to reflect such changes, the preceding provisions of this paragraph shall apply to the modification of simplification standards previously established in the same manner as they applied to the original establishment of such standards.

`(2) The benefits under the NAIC or Federal simplification standards shall provide--

`(A) for such groups or packages of benefits as may be appropriate taking into account the considerations specified in paragraph (4) and the requirements of the succeeding subparagraphs;

`(B)(i) for identification of a core group of basic benefits (not including payment of any deductibles), common to all policies, and

`(ii) for identification of a group of benefits including the core group of basic benefits and common additional benefits; and

`(C) that, subject to paragraph (5), the total number of different benefit packages (counting the core group of basic benefits described in subparagraph (B)(i), the group of benefits identified in subparagraph (B)(ii), and each other combination of benefits that may be offered as a separate benefit package) that may be established in all the States and by all issuers shall not exceed 10.

`(3) The benefits under paragraph (2) shall, to the extent possible--

`(A) provide for benefits that offer consumers the ability to purchase the benefits that are available in the market as of the date of the enactment of this subsection; and

`(B) balance the objectives of (i) simplifying the market to facilitate comparisons among policies, (ii) avoiding adverse selection, (iii) providing consumer choice, (iv) providing market stability, and (v) promoting competition.

`(4) For purposes of paragraph (1)(A)(iv), the transitional requirements of this paragraph are that, in the case of a medicare supplemental policy which was issued to a policyholder before the effective date of the NAIC or Federal simplification standards and which do not meet such standards, any renewal of such policy shall be deemed to be the issuance of a policy in violation of this subsection unless the issuer offers to the policyholder, not later than 60 days before the effective date of the renewal, 2 medicare supplemental policies each of which--

`(A) complies with such standards,

`(B) waives any time periods applicable to preexisting conditions, waiting period, elimination periods and probationary periods in the policy for similar benefits to the extent such time was spent under the policy being replaced, and

`(C) provides for classification of premiums on terms that are at least as favorable to the policyholder as the premium classification terms that applied to the policyholder as of such effective date,

and one of which provides for the core group of basic benefits described in paragraph (2)(B)(i) and the other of which provides benefits described in paragraph (2)(B)(ii).

`(5)(A) The Secretary may, upon application by a State, waive the requirements of this subsection to permit the issuance and sale of a medicare supplemental policy which does not comply with the respective NAIC or Federal simplification standards for a period of up to 3 years in order to demonstrate the offering of new or innovative benefits as part of the policy. Such new or innovative benefits may include managed care features.

`(B) In the case of any such waiver, the Secretary shall evaluate the appropriateness of the new or innovative benefits offered and determine if the addition of a new group of such benefits to the NAIC or Federal simplification standards previously established would further the purposes of this subsection. If such determination is made, subject to subparagraph (C), the Secretary shall request the Association to modify the NAIC simplification standards or to recommend modification of the Federal simplification standards to include such an additional group of benefits (and accompanying language, definitions, and format with respect to such benefits) as may be appropriate. If the Association fails to make such a modification in a timely manner, the Secretary may make such a modification.

`(C) Not more than 3 additional groups of benefits may be added under subparagraph (B).

`(6)(A) Except as provided in subparagraph (B), this subsection shall not be construed as preventing a State from restricting the groups or packages of benefits (of those meeting the standards) that may be offered in medicare supplemental policies in the State.

`(B) A State may not restrict under subparagraph (A) the offering of a medicare supplemental policy in which the benefits consist only of the core group of basic benefits described in paragraph (2)(B)(i) or the group of benefits described in paragraph (2)(B)(ii).

`(C) This subsection shall not be construed as preventing an issuer of a medicare supplemental policy from providing, through an arrangement with a vendor, for discounts from that vendor to policyholder or certificateholders for the purchase of items or services not covered under its medicare supplemental policies.

`(8) The Secretary shall request the Association to establish an educational program in order to educate consumers on the simplification standards developed and applied under this subsection.

`(9) The Comptroller General shall examine the effectiveness of the medicare supplemental policy simplification program established under this subsection and the impact of the program on consumer protection, health benefit innovation, consumer choice, and health care costs. By not later than 4 years after the date of the enactment of this subsection, the Comptroller General shall submit to Congress a report on such examination and shall include in the report such recommendations on the appropriate roles of the National Association of Insurance Commissioners, States, and the Secretary in carrying out such a program as he deems appropriate.'.

(b) PERIODIC REVIEW OF STATE REGULATORY PROGRAMS- Section 1882(b) of such Act is amended--

(1) in paragraph (1), by striking `Supplemental Health Insurance Panel (established under paragraph (2))' and inserting `the Secretary',

(2) in paragraph (1), by striking `the Panel' and inserting `the Secretary',

(3) in subparagraphs (A) and (D) of paragraph (1), by inserting `and enforcement' after `application', and

(4) by amending paragraph (2) to read as follows:

`(2) The Secretary periodically shall review State regulatory programs to determine if they continue to meet the standards and requirements specified in paragraph (1). If the Secretary finds that a State regulatory program no longer meets the standards and requirements, before making a final determination, the Secretary shall provide the State an opportunity to adopt such a plan of correction as would permit the State regulatory program to continue to meet such standards and requirements. If the Secretary makes a final determination that the State regulatory program, after such an opportunity, fails to meet such standards and requirements, the program shall no longer be considered to have in operation a program meeting such standards and requirements.'.

SEC. 4302. REQUIRING APPROVAL OF STATE FOR SALE IN THE STATE.

(a) IN GENERAL- Section 1882(d)(4)(B) of the Social Security Act (42 U.S.C. 1395ss(d)(4)(B)) is amended--

(1) in the first sentence, by inserting before the period at the end the following: `(in the case of a State with an approved regulatory program) or (in the case of a State without such a program) has not been approved by the Secretary', and

(2) by amending the second sentence to read as follows: `Nothing in this section shall be construed as to affect the right of any State to regulate medicare supplemental policies which, under the provisions of this section, are considered to be issued in another State.'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply to policies mailed, or caused to be mailed, on and after July 1, 1991.

SEC. 4303. PREVENTING DUPLICATION.

(a) IN GENERAL- Subsection (d)(3) of section 1882 of the Social Security Act (42 U.S.C. 1395ss) is amended--

(1) in subparagraph (A)--

(A) by striking `Whoever knowingly sells' and inserting `It is unlawful for a person to sell or issue',

(B) by striking `substantially',

(C) by striking `, shall be fined' and inserting `. Whoever violates the previous sentence shall be fined',

(D) in subparagraph (A), by inserting `or title XIX' after `other than this title',

(E) in subparagraph (A), by striking `$5,000' and inserting `$25,000', and

(F) in subparagraph (A), by adding at the end the following: `Any person aggrieved by a violation of this subsection may in a civil action recover threefold the damages such person sustained as a result of such violation, any other appropriate relief (including punitive damages), and the costs of the suit (including reasonable attorney's fees).';

(2) by amending subparagraph (B) to read as follows:

`(B)(i) It is unlawful for a person to issue or sell a medicare supplemental policy to an individual entitled to benefits under part A or enrolled under part B, whether directly, through the mail, or otherwise, unless--

`(I) the person obtains from the individual, as part of the application for the issuance or purchase and on a form described in subclause (II), a written statement signed by the individual stating, to the best of the individual's knowledge, what health insurance policies the individual has, from what source, and whether the individual is entitled to any medical assistance under title XIX, whether as a qualified medicare beneficiary or otherwise, and

`(II) the written statement is accompanied by a written acknowledgment, signed by the seller of the policy, of the request for and receipt of such statement.

`(ii) The statement required by clause (i) shall be made on a form that--

`(I) states (in a prominent manner described by the Secretary) the following: `A medicare beneficiary does not need more than one medicare supplemental policy. If you are 65 years of age or older, you may be eligible for benefits under your State medicaid program. If you are eligible for medicaid benefits, you do not need a medicare supplemental policy. If you are enrolled with the medicaid program and have a medicare supplemental policy, you can suspend your medicare supplemental policy (including premium payments) while receiving medicaid benefits if you provide notice to the insurer within 90 days of becoming eligible for medicaid. If you lose medicaid benefits, you may resume coverage under your medicare supplemental policy by providing

notice to the insurer within 90 days of the date you lost medicaid benefits.'; and

`(II) states that counseling services may be available in the State to provide advice concerning the purchase of medicare supplemental policies and enrollment under the medicaid program, and may provide the telephone number for such services.

`(iii)(I) Except as provided in subclause (II), if the statement required by clause (i) is not obtained or indicates that the individual has another medicare supplemental policy or indicates that the individual is entitled to any medical assistance under title XIX, it is unlawful to sell or issue such a policy.

`(II) Subclause (I) shall not apply in the case of an individual who has another medicare supplemental policy and who is not entitled to medicaid benefits, if the individual indicates in writing, as part of the application for purchase, that the policy being purchased replaces such other policy and indicates an intent to terminate the policy being replaced when the new policy becomes effective.

`(iv) Whoever issues or sells a medicare supplemental policy in violation of this subparagraph shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, is subject to a civil money penalty of not to exceed $25,000 for each such failure.'; and

(3) by adding at the end the following:

`(D)(i) Anyone who sells a medicare supplemental policy to an individual shall make available for sale to the individual both a medicare supplemental policy with only the core group of basic benefits (described in subsection (p)(2)(B)(i)) and a medicare supplemental policy with the benefits described in subsection (p)(2)(B)(ii).

`(ii) Anyone who sells a medicare supplemental policy to an individual shall provide the individual, before the sale of the policy, a summary information sheet which describes the benefits under the policy. Such summary information shall be on a standard form approved by the State regulatory program or the Secretary (as the case may be) consistent with the NAIC or Federal simplification standards under subsection (p)(1).

`(iii) Whoever sells a medicare supplemental policy in violation of this subparagraph is subject to a civil money penalty of not to exceed $25,000 for each such violation.'.

(b) CONFORMING AMENDMENT- Section 1882(d)(5) of such Act is amended by inserting `(3)(B), (3)(D),' after `(3)(A),'.

(c) INCREASE IN OTHER CIVIL MONEY PENALTIES- Paragraphs (1) and (4)(A) of section 1882(d) of such Act are amended by striking `$5,000' and inserting `$25,000'.

(d) EFFECTIVE DATE- The amendments made by this section shall apply to policies issued or sold more than 1 year after the date of the enactment of this Act.

SEC. 4304. LOSS RATIOS.

(a) IN GENERAL- Section 1882 of the Social Security Act (42 U.S.C. 1395ss) is amended--

(1) in subsection (c), by amending paragraph (2) to read as follows:

`(2) meets the requirements of subsection (q);';

(2) by striking the last sentence of subsection (c); and

(3) by adding at the end the following new subsection:

`(q)(1) A medicare supplemental policy or health insurance policy that is an indemnity policy or a dread disease policy (as defined by the Secretary in consultation with the National Association of Insurance Commissioners) may not be issued or sold in any State unless--

`(A) the policy has returned (as determined for the most recent 3-year period ending with the year in which the policy is issued or renewed, on the basis of incurred claims experience and earned premiums for such periods and in accordance with accepted actuarial principles and practices and standards developed by the National Association of Insurance Commissioners) to policyholders in the form of aggregate benefits provided under the policy, at least 75 percent of the aggregate amount of premiums collected in the case of group medicare supplemental policies, at least 70 percent in the case of individual medicare supplemental policies, and 60 percent in the case of group and individual health insurance policies that are indemnity policies or dread disease policies;

`(B) any premium increase (or the initial establishment of the premium) is made in a manner consistent with paragraph (2); and

`(C) the issuer of the policy (i) annually submits to the State information with respect to the actual ratio of aggregate benefits provided to aggregate premiums on forms conforming to those developed by the National Association of Insurance Commissioners for such purpose, and (ii) annually provides a proportional credit, based on the premium paid and in accordance with paragraph (3), of the amount of premiums received necessary to assure that the ratio of aggregate benefits to the aggregate premiums collected (net of such credits) complies with the requirement of subparagraph (A).

`(2) It is unlawful for an insurer to increase the premiums charged for a medicare supplemental policy (or to issue a policy and charge premiums) unless--

`(A) the issuer has submitted to the State (at such time as the State may specify, but not earlier than 90 days in advance of such proposed effective date) the proposed premium amounts in advance of the proposed effective date of the premiums; and

`(B) the issuer has included, as part of the submission under subparagraph (B), information, certified as accurate by an actuary, that establishes that the premium amounts are reasonable in relation to the benefits and that the resulting ratio of benefits to premiums will meet the requirement specified in paragraph (1)(A).

`(3)(A) Paragraph (1)(C) shall be applied with respect to each type of policy by policy number. Paragraph (1)(C) shall not apply to a policy with respect to the first 2 years in which it is in effect. The National Association of Insurance Commissioners is requested to submit to Congress a report containing recommendations on adjustments in the percentages under paragraph (1)(A) that may be appropriate in order to apply paragraph (1)(C) to the first 2 years in which policies are effective.

`(B) A credit required under paragraph (1)(C) shall be made to each individual who continues to be a policyholder or certificateholder not later than the first premium charged more than 6 months after the close of the year involved. The total amount of such credits shall be sufficient to meet the requirement of paragraph (1)(A).

`(C) Such a credit shall include interest from the end of the policy year involved until the date of the credit at a rate, specified by the Secretary for this purpose from time to time, that is not less than the average rate of interest for 13-week Treasury notes.

`(4) The provisions of this subsection do not preempt a State from--

`(A) requiring a higher percentage than that specified in paragraph (1)(A), or

`(B) requiring the review or approval of premiums not otherwise required to be reviewed or approved under paragraph (2) or providing additional requirements for the approval of premiums.

`(5)(A) The Comptroller General shall periodically, not less often than once every 3 years, perform audits with respect to the compliance of medicare supplemental policies with the requirements of paragraph (1) and shall report the results of such audits to the State involved and to the Secretary.

`(B) The Secretary may independently perform such compliance audits.

`(6)(A) A person who issues or sells a policy in violation of paragraph (1) is subject to a civil money penalty of not to exceed $25,000 for each such violation. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

`(B) Each issuer of a policy subject to the requirements of paragraph (1)(C) shall be liable to policyholders for credits required under such paragraph.'.

(b) ASSURING ACCESS TO LOSS RATIO INFORMATION- Section 1882(b)(1)(C) of such Act (42 U.S.C. 1395ss(b)(1)(C)) is amended by striking the semicolon at the end and inserting a comma and the following:

`and that a copy of each such policy, the most recent premium for each such policy, and a listing of the ratio of benefits provided to premiums collected for the most recent 3-year period for each such policy issued or sold in the State is maintained and made available to interested persons;'.

(c) EFFECTIVE DATE- The amendments made by this section shall apply to policies sold or issued more than 1 year after the date of the enactment of this Act.

SEC. 4305. LIMITATIONS ON CERTAIN SALES COMMISSIONS.

(a) IN GENERAL- Section 1882(d) of the Social Security Act is amended--

(1) in paragraph (5)--

(A) by striking `and (4)(A)' and inserting `(4)(A), and (5)(A)', and

(B) by redesignating such paragraph as paragraph (6); and

(2) by inserting after paragraph (4) the following new paragraph:

`(5)(A) It is unlawful for a person who provides for a commission or other compensation to an agent or other representative with respect to the sale of a medicare supplemental policy (or certificate)--

`(i) to provide for a first year commission or other first year compensation that exceeds 200 percent of the commission or other compensation for the selling or servicing of the policy or certificate in a second or subsequent year, or

`(ii) to provide for compensation with respect to replacement of such a policy or certificate that is greater than the compensation that would apply to the renewal of the policy or certificate.

Whoever violates the previous sentence shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, is subject to a civil money penalty of not to exceed $25,000 for each such prohibited act.

`(B) In this paragraph the term `compensation' includes pecuniary and nonpecuniary compensation of any kind relating to the sale or renewal of a policy or certificate and specifically includes bonuses, gifts, prizes, awards, and finders' fees.'.

(b) EFFECTIVE DATE- The amendments made by subsection (a) shall apply to compensation provided on or after 1 year after the date of the enactment of this Act.

SEC. 4306. CLARIFICATION OF TREATMENT OF PLANS OFFERED BY HEALTH MAINTENANCE ORGANIZATIONS.

(a) IN GENERAL- The first sentence of section 1882(g)(1) of the Social Security Act is amended by inserting before the period at the end the following: `and does not include a policy or plan of a health maintenance organization or other direct service organization which offers benefits under this title, including such services under a contract under section 1833 or 1876'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 4307. PROHIBITION OF CERTAIN DISCRIMINATORY PRACTICES.

(a) IN GENERAL- Section 1882(o) of the Social Security Act, as added by section 4111(a)(2) of this Act, is amended by inserting after paragraph (4) the following new paragraph:

`(5)(A) Except as provided in this paragraph, an entity that issues medicare supplemental policies in a State shall offer any individual who is 65 years of age or older and who resides in the State, upon request of the individual made during the 6-month period beginning with the first month in which the individual has attained such age and is enrolled under part B, the opportunity of enrolling in a medicare supplemental policy which provides for a core group of basic benefits (described in subsection (p)(2)(B)(i)) and a medicare supplemental policy which offers the group of benefits described in subsection (p)(2)(B)(ii), without conditioning the issuance or effectiveness of such a policy on, and without discriminating in the price of such a policy based on, the medical or health status or the receipt of health care by the individual.

`(B)(i) Subject to clause (ii), paragraph (1) shall not be construed as preventing the exclusion of benefits under a policy, during its first 6 months, based on a pre-existing condition for which the policyholder received treatment or was otherwise diagnosed during the 6 months before it became effective.

`(ii) If a medicare supplemental policy or certificate replaces another such policy or certificate which has been in effect for 6 months or longer, the replacing policy may not provide any time period applicable to pre-existing conditions, waiting periods, elimination periods, and probationary periods in the new policy or certificate for similar benefits.'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall take effect 1 year after the date of the enactment of this Act.

SEC. 4308. HEALTH INSURANCE ADVISORY SERVICE FOR MEDICARE BENEFICIARIES.

(a) IN GENERAL- The Secretary of Health and Human Services shall establish a health insurance advisory service program (in this section referred to as the `beneficiary assistance program') to assist medicare-eligible individuals with the receipt of services under the medicare and medicaid programs and other health insurance programs.

(b) OUTREACH ELEMENTS- The beneficiary assistance program shall provide assistance--

(1) through operation using local Federal offices that provide information on the medicare program,

(2) using community outreach programs, and

(3) using a toll-free telephone information service.

(c) ASSISTANCE PROVIDED- The beneficiary assistance program shall provide for information, counseling, and assistance for medicare-eligible individuals with respect to at least the following:

(1) With respect to the medicare program--

(A) eligibility,

(B) benefits (both covered and not covered),

(C) the process of payment for services,

(D) rights and process for appeals of determinations,

(E) other medicare-related entities (such as peer review organizations, fiscal intermediaries, and carriers), and

(F) recent legislative and administrative changes in the medicare program.

(2) With respect to the medicaid program--

(A) eligibility, benefits, and the application process,

(B) linkages between the medicaid and medicare programs, and

(C) referral to appropriate State and local agencies involved in the medicaid program.

(3) With respect to medicare supplemental policies--

(A) the program under section 1882 of the Social Security Act and

standards required under such program,

(B) how to make informed decisions on whether to purchase such policies and on what criteria to use in evaluating different policies,

(C) appropriate Federal, State, and private agencies that provide information and assistance in obtaining benefits under such policies, and

(D) other issues deemed appropriate by the Secretary.

The beneficiary assistance program also shall provide such other services as the Secretary deems appropriate to increase beneficiary understanding of, and confidence in, the medicare program and to improve the relationship between beneficiaries and the program.

(d) EDUCATIONAL MATERIAL- The Secretary, through the Administrator of the Health Care Financing Administration, shall develop appropriate educational materials and other appropriate techniques to assist employees in carrying out this section.

(e) NOTICE TO BENEFICIARIES- The Secretary shall take such steps as are necessary to assure that medicare-eligible beneficiaries and the general public are made aware of the beneficiary assistance program.

(f) REPORT- The Secretary shall include, in an annual report transmitted to the Congress, a report on the beneficiary assistance program and on other health insurance informational and counseling services made available to medicare-eligible individuals. The Secretary shall include in the report recommendations for such changes as may be desirable to improve the relationship between the medicare program and medicare-eligible individuals.

SEC. 4309. ADDITIONAL ENFORCEMENT THROUGH PUBLIC HEALTH SERVICE ACT.

(a) IN GENERAL- The Public Health Service Act (42 U.S.C. 201 et seq.) is amended--

(1) by redesignating title XXVII as title XXVIII;

(2) by redesignating sections 2701 through 2714 as sections 2801 through 2814, respectively; and

(3) by inserting after title XXV the following new title:

`TITLE XXVII--ENFORCEMENT OF CERTAIN HEALTH INSURANCE STANDARDS

`SEC. 2701. ENFORCEMENT OF CERTAIN HEALTH INSURANCE STANDARDS.

`(a) ENFORCEMENT OF UNDERWRITING- A person that fails to meet the requirements of section 1882(o)(5) of the Social Security Act (relating to discriminatory practices) is subject to a civil money penalty of not to exceed $25,000 for each such violation. The provisions of section 1128A of the Social Security Act (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a) of such Act.

`(b) ENFORCEMENT OF LOSS-RATIO REQUIREMENTS- A person who issues or sells a medicare supplemental policy or a health insurance policy that is an indemnity or dread disease policy (as defined by the Secretary of Health and Human Services under section 1882(q)(1) of the Social Security Act) in violation of such section is subject to a civil money penalty of not to exceed $25,000 for each such violation. The provisions of section 1128A of the Social Security Act (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a) of such Act.

`(c) ENFORCEMENT OF LIMITATIONS ON SALES COMMISSIONS- Whoever violates section 1882(o)(5)(A) of the Social Security Act (relating to sales commissions) shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, is subject to a civil money penalty of not to exceed $25,000 for each prohibited act under such section.'.

(b) TECHNICAL AND CONFORMING AMENDMENTS- The Public Health Service Act (42 U.S.C. 201 et seq.) is further amended--

(1) in section 406(a)(2), by striking `2701' and inserting `2801';

(2) in section 465(f), by striking `2701' and inserting `2801';

(3) in section 480(a)(2), by striking `2701' and inserting `2801';

(4) in section 485(a)(2), by striking `2701' and inserting `2801';

(5) in section 497, by striking `2701' and inserting `2801';

(6) in section 505(a)(2), by striking `2701' and inserting `2801'; and

(7) in section 926(b), by striking `2711' each place such term appears and inserting `2811'.

Subtitle B--Medicaid Program

PART 1--REDUCTIONS IN SPENDING

SEC. 4401. REIMBURSEMENT FOR PRESCRIBED DRUGS.

(a) IN GENERAL-

(1) DENIAL OF FEDERAL FINANCIAL PARTICIPATION UNLESS REBATE AGREEMENTS AND DRUG USE REVIEW IN EFFECT- Section 1903(i) of the Social Security Act (42 U.S.C. 1396b(i)) is amended--

(A) by striking the period at the end of paragraph (9) and inserting `; or', and

(B) by inserting after paragraph (9) the following new paragraph:

`(10) with respect to covered outpatient drugs of a manufacturer dispensed in any of the 50 States or the District of Columbia unless, except as provided in section 1927(a)(3), the manufacturer complies in all such States and District with the rebate requirements of section 1927(a) with respect to the drugs so dispensed.'.

(2) STATE PLAN DRUG ACCESS LIMITATIONS FOR DRUGS COVERED UNDER A REBATE AGREEMENT- Section 1902(a) of such Act (42 U.S.C. 1396a(a)) is amended--

(A) by striking `and' at the end of paragraph (52),

(B) by striking the period at the end of paragraph (53) and inserting `; and', and

(C) by inserting after paragraph (53) the following new paragraph:

`(54)(A) provide that, in the case of a manufacturer which has entered into and complies with an agreement under section 1927(a), the plan shall permit the coverage of covered outpatient drugs of the manufacturer which are prescribed (on or after April 1, 1991) for a medically accepted indication (as defined in section 1927(f)(6)),

`(B) comply with the reporting requirements of section 1927(b)(2)(A) and the requirements of section 1927(d), and

`(C) effective January 1, 1993, provide for drug use review in accordance with section 1927(d). '.

(3) REBATE AGREEMENTS FOR COVERED OUTPATIENT DRUGS, DRUG USE REVIEW, AND RELATED PROVISIONS- Title XIX of the Social Security Act is amended by redesignating section 1927 as section 1928 and by inserting after section 1926 the following new section:

`PAYMENT FOR PRESCRIBED DRUGS

`SEC. 1927. (a) REQUIREMENT FOR REBATE AGREEMENT-

`(1) IN GENERAL- In order for payment to be available under section 1903(a) for covered outpatient drugs of a manufacturer, the manufacturer

must have entered into and have in effect a rebate agreement described in subsection (b) with the Secretary, on behalf of all the States. If a manufacturer has not entered into such an agreement before February 1, 1991, such an agreement, subsequently entered into, shall not be effective until the first day of the calendar quarter that begins more than 60 days after the date the agreement is entered into.

`(2) EFFECTIVE DATE- Paragraph (1) shall first apply to drugs dispensed under this title on or after February 1, 1991, except that and any agreement entered into under this section on or before February 1, 1991, shall be effective with respect to drugs dispensed on or after January 1, 1991.

`(3) EFFECT ON EXISTING AGREEMENTS- In the case of a rebate agreement in effect between a State and a manufacturer on October 1, 1990, such agreement may remain in effect, and shall be considered to be a rebate agreement in compliance with this section with respect to that State, if the State establishes to the satisfaction of the Secretary that the agreement can reasonably be expected to provide in any 12-month period for rebates that are at least as large as the rebates otherwise required under this section.

`(4) APPLICATION IN CERTAIN STATES AND TERRITORIES-

`(A) APPLICATION IN STATES OPERATING UNDER DEMONSTRATION PROJECTS- In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1115, the Secretary shall require the State to meet the requirements of section 1902(a)(54) and of this section in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this title.

`(B) NO APPLICATION IN COMMONWEALTHS AND TERRITORIES- This section, and sections 1902(a)(54) and 1903(i)(10), shall only apply to a State that is one of the 50 States or the District of Columbia.

`(b) TERMS OF REBATE AGREEMENT-

`(1) QUARTERLY REBATES-

`(A) TIMING-

`(i) In general- A rebate agreement under this subsection shall require the manufacturer to provide, to each State plan approved under this title, a rebate each calendar quarter in the amount specified in subsection (c) for covered outpatient drugs of the manufacturer dispensed under the plan during the quarter. Except as provided in clause (ii), such a rebate shall be paid to each State by the manufacturer not later than 30 days after the date of receipt of the information described in paragraph (2) for that quarter.

`(ii) SPECIAL PAYMENT RULE FOR THE CALENDAR QUARTER BEGINNING JULY 1, 1991- With respect to the calendar quarter beginning July 1, 1991, such a rebate shall be paid to each State by the manufacturer by not later than September 30, 1991, based on the amount of the rebate payable by the manufacturer for the previous quarter. The amount of the rebate payment for the quarter beginning October 1, 1991, shall be increased or decreased to the extent that the rebate payment for the quarter beginning July 1, 1991, was less than, or exceeded, the amount of the rebate otherwise required to be made under the agreement without regard to this clause.

`(B) OFFSET AGAINST MEDICAL ASSISTANCE- Amounts received by a State as rebates under this section in any quarter shall be considered to be a reduction in the amount expended under the State plan in the quarter for medical assistance for purposes of section 1903(a)(1).

`(2) STATE PROVISION OF INFORMATION-

`(A) STATE RESPONSIBILITY- Each State agency under this title shall report to the Secretary, not later than 60 days after the end of each calendar quarter and in a form consistent with a standard reporting format established by the Secretary, information on the total number of units of each dosage form and strength of each covered outpatient drug of a manufacturer dispensed under the plan during the quarter, and shall promptly transmit such information to the manufacturer.

`(B) AUDIT BY MANUFACTURERS- A manufacturer has the right to audit only such data of the States as are reasonably necessary to verify information provided (or required to be provided) under subparagraph (A). Adjustments to rebates shall be made to the extent that information indicates that utilization was greater or less than the amount previously specified.

`(C) NOTICE TO SECRETARY- Each State agency shall notify the Secretary within 30 days after the date each rebate is received under this section.

`(3) MANUFACTURER PROVISION OF PRICE INFORMATION-

`(A) IN GENERAL- Each manufacturer with an agreement in effect under this section shall report to the Secretary (and make available upon request to each State agency)--

`(i) not later than 30 days after the last day of each quarter (beginning on or after April 1, 1991), on the average manufacturer price (as defined in subsection (f)(1)) and (for single source drugs and innovator multiple source drugs) the manufacturer's best price (as defined in subsection (c)(3)(A)) for covered outpatient drugs for the quarter, and

`(ii) not later than 30 days after the date of entering into an agreement under this section on the best price (as defined in subsection (c)(3)(B)) as of September 1, 1990 for each of the manufacturer's covered outpatient drugs.

`(B) VERIFICATION SURVEYS OF AVERAGE MANUFACTURER PRICE- The Secretary may survey wholesalers and manufacturers that directly distribute their covered outpatient drugs, when necessary to verify average manufacturer prices reported under subparagraph (A). The Secretary may impose a civil monetary penalty in an amount not to exceed $10,000 on a wholesaler, manufacturer, or direct seller, if the wholesaler, manufacturer, or direct seller of a covered outpatient drug refuses a written request for information about charges or prices by the Secretary in connection with a survey authorized under this subparagraph or knowingly provides false information in response to such a request. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

`(C) PENALTIES-

`(i) FAILURE TO PROVIDE TIMELY INFORMATION- If a manufacturer with an agreement under this section fails to provide information required under subparagraph (A) on a timely basis, the amount of the rebates next required to be paid for a calendar quarter under the agreement shall be increased by 2 percent, and, if such information is not reported within 90 days of the deadline imposed, the agreement shall be suspended for services furnished after the end of such 90-day period and until the date such information is reported (but in no case shall such suspension be for a period of less than 30 days).

`(ii) FALSE INFORMATION- Any manufacturer with an agreement under this section that knowingly provides false information to the Secretary under this paragraph is subject to a civil money penalty in an amount not to exceed $100,000 for each item of false information. Such civil money penalties are in addition to other penalties as may be prescribed by law (including exclusion under section 1128(b)(11)). The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

`(D) CONFIDENTIALITY OF INFORMATION- Information disclosed by manufacturers or wholesalers under subparagraph (A) or (B) is confidential and shall not be disclosed by the Secretary or a State agency (or contractor therewith) in a form which discloses the identity of a specific manufacturer, wholesaler, or product, except as

the Secretary determines to be necessary to carry out this section and to permit the Comptroller General and the Inspector General of the Department to review the information provided.

`(4) LENGTH OF AGREEMENT-

`(A) IN GENERAL- A rebate agreement shall be effective for an initial period of 1 year and shall be automatically renewed for an additional 1-year period unless terminated under subparagraph (B).

`(B) TERMINATION-

`(i) BY THE SECRETARY- The Secretary may provide for termination of a rebate agreement for violation of the requirements of the agreement. Such termination shall not be effective earlier than 60 days after the date of notice of such termination. The Secretary shall provide, upon request, a manufacturer with a hearing concerning such a termination, but such hearing shall not delay the effective date of the termination.

`(ii) BY A MANUFACTURER- A manufacturer may terminate a rebate agreement under this section for any reason. Any such termination shall not be effective until such period (of not more than 1 year, specified by the Secretary in regulation) after the date of the manufacturer provides notice of such termination to the Secretary.

`(iii) EFFECTIVENESS OF TERMINATION- Any termination under this subparagraph shall not affect rebates due under the agreement before the effective date of its termination.

`(C) DELAY BEFORE REENTRY- In the case of any rebate agreement with a manufacturer under this section which is terminated, a new such agreement with the manufacturer (or a successor manufacturer) may not be entered into until a period of 1 year has elapsed since the date of the termination, unless the Secretary finds good cause for an earlier reinstatement of such an agreement.

`(c) AMOUNT OF REBATE-

`(1) IN GENERAL-

`(A) SINGLE SOURCE DRUGS AND INNOVATOR MULTIPLE SOURCE DRUGS- Except as provided in this subsection and subsection (b)(3)(C)(i), the amount of the rebate to a State during a calendar quarter with respect to single source drugs and innovator multiple source drugs shall be equal to the product of--

`(i) the amount by which (I) the average manufacturer price to wholesalers during the quarter for each dosage form and strength of a covered outpatient drug, exceeds (II) the

manufacturer's best price (as defined in paragraph (3)) for such form and strength; and

`(ii) the number of units of such form and strength dispensed under the plan under this title in the State in the quarter (as reported by the State under subsection (b)(2)).

`(B) OTHER DRUGS- Except as provided in subsection (b)(3)(C)(i), the amount of the rebate to a State during a calendar quarter with respect to covered outpatient drugs (other than single source drugs and innovator multiple source drugs) shall be equal to the product of--

`(i) 10 percent of the average manufacturer price to wholesalers during the quarter for each dosage form and strength of a covered outpatient drug (after deducting customary prompt payment discounts); and

`(ii) the number of units of such form and dosage dispensed under the plan under this title in the State in the quarter (as reported by the State under subsection (b)(2).

`(2) MINIMUM AND MAXIMUM REBATE RATES FOR SINGLE SOURCE DRUGS AND INNOVATOR MULTIPLE SOURCE DRUGS- In no case shall the amount of the rebate described in paragraph (1)(A) for a manufacturer for a calendar quarter with respect to single source drugs and innovator multiple source drugs--

`(A) be less than 10 percent, or

`(B) for calendar quarters beginning before April 1, 1995, be more than--

`(i) 25 percent (for each quarter during the 8-calendar-quarter period beginning April 1, 1991), or

`(ii)) 50 percent (for each quarter during the 8-calendar-quarter period beginning April 1, 1993),

of the product of the price described in paragraph (1)(A)(i)(I) and the number of units described in paragraph (1)(A)(ii) for the quarter.

`(3) BEST PRICE DEFINED-

`(A) IN GENERAL- In this subsection, the term `best price' means, for a covered outpatient drug of a manufacturer dispensed in a calendar quarter--

`(i) the lowest price available for the drug from the manufacturer to any wholesaler, retailer, provider, nonprofit entity, or governmental entity within the United States during the quarter, or

`(ii) the lowest price in effect for the drug from the manufacturer to any wholesaler, retailer, provider, nonprofit entity, or governmental entity within the United States in effect on September 1, 1990, increased (for calendar quarters beginning on or after January 1, 1991) by the percentage increase in the Consumer Price Index for All Urban Consumers (all items; U.S. city average) from September 1990 to the month before the beginning of the calendar quarter involved,

whichever is lower.

`(B) TREATMENT OF NEW DRUGS- In the case of a covered outpatient drug approved for marketing after September 1, 1990, any reference in subparagraph (A)(ii) to `September 1, 1990' or `September 1990' shall be a reference to the first day of the first month, and the first month, respectively, during which the drug was marketed and any reference in subsection (b)(3)(A)(ii) to `30 days after the date of entering into an agreement under this section on the best price described in paragraph (3)(B) as of September 1, 1990' shall be a reference to `30 days after the date the drug is first marketed in the United States'.

`(C) COMPUTATION OF LOWEST PRICE- The lowest price described in this paragraph shall be inclusive of cash discounts, free goods, volume discounts, and rebates, shall be determined without regard to special packaging, labeling, or identifiers on the dosage form or product or package, and shall not take into account prices that are merely nominal in amount.

`(d) DRUG USE REVIEW-

`(1) IN GENERAL- In order to meet the requirement of section 1902(a)(54)(C), a State shall provide, by not later than January 1, 1993, for a drug use review program described in paragraph (2) for covered outpatient drugs (other than psychopharmacologic drugs described in section 1919(c)(2)(D) dispensed to residents of nursing facilities) in order to assure, in accordance with any guidelines developed by the Agency for Health Care Policy and Research, that prescriptions (A) are appropriate and (B) are medically necessary.

`(2) DESCRIPTION OF PROGRAM- Each drug use review program shall meet the following requirements for covered outpatient drugs and other prescription drugs for which payment may be made under this title:

`(A) PROSPECTIVE DRUG REVIEW- The State plan shall provide for a review of drug therapy before each prescription is filled or delivered to the patient, typically at the point-of-sale or point-of-distribution. Each pharmacist shall use the compendia (referred to in subsection (f)(6)) as the pharmacist's source of standards for such review.

`(B) RETROSPECTIVE DRUG USE REVIEW- The program shall provide,

through its mechanized drug claims processing and information retrieval systems (approved by the Secretary under section 1903(r)) or otherwise, for the periodic examination of claims data and other records in order to identify patterns of fraud, abuse, gross overuse or underuse, or inappropriate or medically unnecessary care, among physicians, pharmacies, and patients, or associated with specific drugs or groups of drugs.

`(C) EDUCATIONAL PROGRAM- The program shall educate physicians and pharmacists to identify and reduce the frequency of patterns of fraud, abuse, gross overuse or underuse, or inappropriate or medically unnecessary care, among physicians, pharmacies, and patients, or associated with specific drugs or groups of drugs, as well as potential and actual severe adverse reactions to drugs.

`(e) MISCELLANEOUS-

`(1) LIMITATIONS ON COVERAGE OF OUTPATIENT DRUGS- Nothing in section 1902(a)(54)(A) shall be construed as preventing a State from restricting the amount, duration, and scope of coverage of covered outpatient drugs consistent with section 1902(a)(30).

`(2) RELATION TO MAXIMUM ALLOWABLE COST LIMITATIONS- This section shall not supercede or affect provisions relating to maximum allowable cost limitations for payment by States for covered outpatient drugs, and rebates under this section shall be made without regard to whether or not payment by the State for such drugs are subject to such limitations or the amount of such cost limitations.

`(3) EXCLUSION OF CERTAIN DRUG ASSOCIATED WITH EXCLUSIVE PATIENT MONITORING SERVICES- Nothing in this title shall be construed as requiring a State to provide medical assistance for covered outpatient drugs of a manufacturer which requires, as a condition for the purchase of the drugs, that the manufacturer be paid for associated services or tests (such as patient monitoring systems) provided only by the manufacturer or its designee.

`(f) DEFINITIONS- In this section:

`(1) AVERAGE MANUFACTURER PRICE- The term `average manufacturer price' means, with respect to a covered outpatient drug of a manufacturer for a calendar quarter, the average price paid (taking into account customary prompt payment discounts) to the manufacturer for the drug by retail pharmacies or by wholesalers for drugs distributed to the retail pharmacy class of trade.

`(2) COVERED OUTPATIENT DRUG- Subject to the exceptions in paragraph (3), the term `covered outpatient drug' means--

`(A) of those drugs which are treated as prescribed drugs for purposes of section 1905(a)(12), a drug which may be dispensed only upon prescription (except as provided in paragraph (4)), and--

`(i) which is approved as a prescription drug under sections 505 or 507 of the Federal Food, Drug, and Cosmetic Act;

`(ii)(I) which was commercially used or sold in the United States before the date of the enactment of the Federal Food, Drug, and Cosmetic Act and if at such time its labeling contained the same representations concerning its conditions of use as in its current labeling, or which is identical, similar, or related (within the meaning of section 310.6(b)(1) of title 21 of the Code of Federal Regulations) to such a drug, and (II) which has not been the subject of a final determination by the Secretary that it is a `new drug' (within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act) or an action brought by the Secretary under sections 301, 302(a), or 304(a) of such Act to enforce sections 502(f) or 505(a) of such Act; or

`(iii)(I) which is described in section 107(c)(3) of the Drug Amendments of 1962 and for which the Secretary has determined there is a compelling justification for its medical need, or is identical, similar, or related (within the meaning of section 310.6(b)(1) of title 21 of the Code of Federal Regulations) to such a drug, and (II) for which the Secretary has not issued a notice of an opportunity for a hearing under section 505(e) of the Federal Food, Drug, and Cosmetic Act on a proposed order of the Secretary to withdraw approval of an application for such drug under such section because the Secretary has determined that the drug is less than effective for all conditions of use prescribed, recommended, or suggested in its labeling;

`(B) a biological product which--

`(i) may only be dispensed upon prescription,

`(ii) is licensed under section 351 of the Public Health Service Act, and

`(iii) is produced at an establishment licensed under such section to produce such product; and

`(C) insulin certified under section 506 of the Federal Food, Drug, and Cosmetic Act.

`(3) LIMITING DEFINITION- The term `covered outpatient drug' does not include any drug, biological product, or insulin provided as part of, or as incident to, and in the same setting as, any of the following (and for which payment is made under this title as part of payment for the following and not as direct reimbursement for the drug):

`(A) Inpatient hospital services.

`(B) Hospice services.

`(C) Dental services, except that drugs for which the State plan authorizes direct reimbursement to the dispensing dentist are covered outpatient drugs.

`(D) Physician office visits.

`(E) Outpatient hospital emergency room visits.

`(F) Outpatient surgical procedures.

`(4) NONPRESCRIPTION DRUGS- If a State plan for medical assistance under this title includes coverage of prescribed drugs as described in section 1905(a)(12) and permits coverage of drugs which may be sold without a prescription (commonly referred to as `over-the-counter' drugs), if they are prescribed by a physician (or other person authorized to prescribe under State law), such a drug may be regarded as a covered outpatient drug.

`(5) MANUFACTURER- The term `manufacturer' means, with respect to a covered outpatient drug,--

`(A) the entity (if any) that both manufactures and distributes the drug, or

`(B) if no such entity exists, the entity that distributes the drug.

Such term does not include a wholesale distributor of the drug or a retail pharmacy licensed under State law.

`(6) MEDICALLY ACCEPTED INDICATION- The term `medically accepted indication' means any use for a covered outpatient drug which is approved under the Federal Food, Drug, and Cosmetic Act or which is accepted by one or more of the following compendia: the American Hospital Formulary Service-Drug Information, the American Medical Association Drug Evaluations, and the United States Pharmacopeia-Drug Information.

`(7) MULTIPLE SOURCE DRUG; INNOVATOR MULTIPLE SOURCE DRUG; NONINNOVATOR MULTIPLE SOURCE DRUG; SINGLE SOURCE DRUG-

`(A) DEFINITIONS-

`(i) MULTIPLE SOURCE DRUG- The term `multiple source drug' means, with respect to a calendar quarter, a covered outpatient drug (not including any drug described in paragraph (4)) for which there are 2 or more drug products which--

`(I) are rated as therapeutically equivalent (under the Food and Drug Administration's most recent publication of `Approved Drug Products with Therapeutic Equivalence

Evaluations'),

`(II) except as provided in subparagraph (B), are pharmaceutically equivalent and bioequivalent, as defined in subparagraph (C) and as determined by the Food and Drug Administration, and

`(III) are sold or marketed in the State during the period.

`(ii) INNOVATOR MULTIPLE SOURCE DRUG- The term `innovator multiple source drug' means a multiple source drug that was originally marketed under an original new drug application approved by the Food and Drug Administration.

`(iii) NONINNOVATOR MULTIPLE SOURCE DRUG- The term `noninnovator multiple source drug' means a multiple source drug that is not an innovator multiple source drug.

`(iv) SINGLE SOURCE DRUG- The term `single source drug' means a covered outpatient drug which is not a multiple source drug.

`(B) EXCEPTION- Subparagraph (A)(i)(II) shall not apply if the Food and Drug Administration changes by regulation (after an opportunity for public comment of 90 days) the requirement that, for purposes of the publication described in subparagraph (A)(i)(I), in order for drug products to be rated as therapeutically equivalent, they must be pharmaceutically equivalent and bioequivalent, as defined in subparagraph (C).

`(C) DEFINITIONS- For purposes of this paragraph--

`(i) drug products are pharmaceutically equivalent if the products contain identical amounts of the same active drug ingredient in the same dosage form and meet compendial or other applicable standards of strength, quality, purity, and identity;

`(ii) drugs are bioequivalent if they do not present a known or potential bioequivalence problem, or, if they do present such a problem, they are shown to meet an appropriate standard of bioequivalence; and

`(iii) a drug product is considered to be sold or marketed in a State if it appears in a published national listing of average wholesale prices selected by the Secretary, provided that the listed product is generally available to the public through retail pharmacies in that State.

`(8) STATE AGENCY- The term `State agency' means the agency designated under section 1902(a)(5) to administer or supervise the administration of the State plan for medical assistance.'.

(c) FUNDING-

(1) DRUG USE REVIEW PROGRAMS- Section 1903(a)(3) of such Act (42 U.S.C. 1396b(a)(3)) is amended--

(A) by striking `plus' at the end of subparagraph (C) and inserting `and', and

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

`(D) 75 percent of so much of the sums expended by the State plan during a quarter in 1991, 1992, or 1993, as the Secretary determines is attributable to the statewide adoption of a drug use review program which conforms to the requirements of section 1927(e); plus'.

(2) TEMPORARY INCREASE IN FEDERAL MATCH FOR ADMINISTRATIVE COSTS- The per centum to be applied under section 1903(a)(7) of the Social Security Act for amounts expended during calendar quarters in fiscal year 1991 which are attributable to administrative activities necessary to carry out section 1927 (other than subsection (d)) of such Act shall be 75 percent, rather than 50 per centum.

SEC. 4402. REQUIRING MEDICAID PAYMENT OF PREMIUMS AND COST-SHARING FOR ENROLLMENT UNDER GROUP HEALTH PLANS WHERE COST-EFFECTIVE.

(a) IN GENERAL- Title XIX of the Social Security Act is amended--

(1) in section 1902(a)(25) (42 U.S.C. 1396a(a)(25))--

(A) by striking `and' at the end of subparagraph (E),

(B) by adding `and' at the end of subparagraph (F), and

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

`(G) that the State plan shall meet the requirements of section 1906 (relating to enrollment of individuals under group health plans in certain cases);'; and

(2) by inserting after section 1905 the following new section:

`ENROLLMENT OF INDIVIDUALS UNDER GROUP HEALTH PLANS

`SEC. 1906. (a) For purposes of section 1902(a)(25)(G) and subject to subsection (d), each State plan--

`(1) shall establish guidelines, consistent with subsection (b), to identify those cases in which enrollment of an individual otherwise entitled to medical assistance under this title in a group health plan (in which the individual is otherwise eligible to be enrolled) is cost-effective (as defined in subsection (e)(2));

`(2) shall require, in case of an individual so identified and as a condition of the individual being or remaining eligible for medical assistance under this title and subject to subsection (b)(2), notwithstanding any other provision of this title, that the individual (or in the case of a child, the child's parent) apply for enrollment in the group health plan; and

`(3) in the case of such enrollment, shall provide for payment of all enrollee premiums for such enrollment and all deductibles, coinsurance, and similar costs for items and services otherwise covered under the State plan under this title (exceeding the amount otherwise permitted under section 1916), and shall treat coverage under the group health plan as a third party liability (under section 1902(a)(25)).

`(b)(1) In establishing guidelines under subsection (a)(1), each State shall take into account that an individual may only be eligible to enroll in group health plans at limited times and only if other individuals (not entitled to medical assistance under the plan) are also enrolled in the plan simultaneously.

`(2) If a parent of a child fails to enroll the child in a group health plan in accordance with subsection (a)(2), such failure shall not affect the child's eligibility for benefits under this title.

`(c)(1)(A) In the case of payments of premiums, deductibles, coinsurance, and similar expenses under this section shall be considered, for purposes of section 1903(a), to be payments for medical assistance.

`(B) If all members of a family are not eligible for medical assistance under this title and enrollment of the members so eligible in a group health plan is not possible without also enrolling members not so eligible--

`(i) payment of premiums for enrollment of such other members shall be treated as payments for medical assistance for eligible individuals, if it would be cost-effective (taking into account payment of all such premiums), but

`(ii) payment of deductibles, coinsurance, and similar expenses for such other members shall not be treated as payments for medical assistance for eligible individuals.

`(2) In the case of a hospital, physician, or other provider that provides care covered under the State plan under a group health plan in which an individual entitled to medical assistance for such care is enrolled under this section, the provider is deemed to have agreed--

`(A) to accept as payment in full the payment amount recognized under

the State plan (or, if greater, the payment amount provided under the plan), and

`(B) not to charge the individual or the State any amounts that would result in aggregate payment (including payments under the plan) exceeding the payment amount so recognized under the State plan.

`(3) The fact that an individual is enrolled in a group health plan under this section shall not change the individual's eligibility for benefits under the State plan, except insofar as section 1902(a)(25) provides that payment for such benefits shall first be made by such plan.

`(d)(1) Any different benefits made available, through enrollment under this section, to eligible individuals shall not, by reason of section 1902(a)(10), require such benefits be made available to other individuals.

`(2)(A) In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1115, the Secretary shall require the State to meet the requirements of this section in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this title.

`(B) This section, and section 1902(a)(25)(G), shall only apply to a State that is one of the 50 States or the District of Columbia.

`(e) In this section:

`(1) The term `group health plan' has the meaning given such term in section 5000(b)(1) of the Internal Revenue Code of 1986, and includes the provision of continuation coverage by such a plan pursuant to title XXII of the Public Health Service Act, section 4980B of the Internal Revenue Code of 1986, or title VI of the Employee Retirement Income Security Act of 1974.

`(2) The term `cost-effective' means that the reduction in expenditures under this title with respect to an individual who is enrolled in a group health plan is likely to be greater than the additional expenditures for premiums and cost-sharing required under this section with respect to such enrollment.'.

(b) TREATMENT OF ERRONEOUS EXCESS PAYMENTS FOR MEDICAL ASSISTANCE- Section 1903(u)(1)(C)(iv) of such Act (42 U.S.C. 1396b(u)(1)(C)) is amended by inserting before the period at the end the following: `or with respect to payments made in violation of section 1906'.

(c) OPTIONAL MINIMUM 6-MONTH ELIGIBILITY- Section 1902(e) of such Act (42 U.S.C. 1396a(e)) is amended by adding at the end the following new subsection:

`(11)(A) In the case of an individual who is enrolled with a group health plan under section 1906 and who would (but for this paragraph) lose eligibility for benefits under this title before the end of the minimum enrollment period

(defined in subparagraph (B)), the State plan may provide, notwithstanding any other provision of this title, that the individual shall be deemed to continue to be eligible for such benefits until the end of such minimum period, but only with respect to such benefits provided to the individual as an enrollee of such plan.

`(B) For purposes of subparagraph (A), the term `minimum enrollment period' means, with respect to an individual's enrollment with a group health plan, a period established by the State, of not more than 6 months beginning on the date the individual's enrollment under the plan becomes effective.'.

(d) CONFORMING AMENDMENTS-

(1) Section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)) is amended by adding at the end the following: `The payment described in the first sentence may include expenditures for medicare cost-sharing and for premiums under part B of title XVIII for individuals who are eligible for medical assistance under the plan and (A) are receiving aid or assistance under any plan of the State approved under title I, X, XIV, or XVI, or part A of title IV, or with respect to whom supplemental security income benefits are being paid under title XVI, or (B) with respect to whom there is being paid a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1902(a)(10)(A), and, except in the case of individuals 65 years of age or older and disabled individuals entitled to health insurance benefits under title XVIII who are not enrolled under part B of title XVIII, other insurance premiums for medical or any other type of remedial care or the cost thereof.'.

(2) Section 1903(a)(1) of such Act (42 U.S.C. 1396b(a)(1)) is amended by striking `(including expenditures for' and all that follows through `or the cost thereof)'.

(e) EFFECTIVE DATE- (1) The amendments made by this section apply (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after January 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation authorizing or appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by subsection (a), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to

be a separate regular session of the State legislature.

SEC. 4403. COMPUTER MATCHING AND PRIVACY REVISIONS.

(a) VERIFICATION REQUIREMENTS- Subsection (p) of section 552a of title 5, United States Code, is amended to read as follows:

`(p) VERIFICATION AND OPPORTUNITY TO CONTEST FINDINGS- (1) In order to protect any individual whose records are used in a matching program, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual, as a result of information produced by such matching program, until--

`(A)(i) the agency has independently verified the information; or

`(ii) the Data Integrity Board of the agency, or in the case of a non-Federal agency the Data Integrity Board of the source agency, determines in accordance with guidance issued by the Director of the Office of Management and Budget that--

`(I) the information is limited to identification and amount of benefits paid by the source agency under a Federal benefit program; and

`(II) there is a high degree of confidence that the information provided to the recipient agency is accurate;

`(B) the individual receives a notice from the agency containing a statement of its findings and informing the individual of the opportunity to contest such findings; and

`(C)(i) the expiration of any time period established for the program by statute or regulation for the individual to respond to that notice; or

`(ii) in the case of a program for which no such period is established, the end of the 30-day period beginning on the date on which notice under subparagraph (B) is mailed or otherwise provided to the individual.

`(2) Independent verification referred to in paragraph (1) requires investigation and confirmation of specific information relating to an individual that is used as a basis for an adverse action against the individual, including where applicable investigation and confirmation of--

`(A) the amount of any asset or income involved;

`(B) whether such individual actually has or had access to such asset or income for such individual's own use; and

`(C) the period or periods when the individual actually had such asset or income.

`(3) Notwithstanding paragraph (1), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely affected or significantly threatened during any notice period required by such paragraph.'.

(b) ISSUANCE OF GUIDANCE BY DIRECTOR OF OMB- Not later than 90 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall publish guidance under subsection (p)(1)(A)(ii) of section 552a of title 5, United States Code, as amended by this section.

(c) LIMITATION ON APPLICATION OF VERIFICATION REQUIREMENT- Section 552a(p)(1)(A)(ii)(II) of title 5, United States Code, as amended by subsection (a), shall not apply to a program referred to in paragraph (1), (2), or (4) of section 1137(b) of the Social Security Act (42 U.S.C. 1320b-7), until the earlier of--

(1) the date on which the Data Integrity Board of the Federal agency which administers that program determines that there is not a high degree of confidence that information provided by that agency under Federal matching programs is accurate; or

(2) 30 days after the date of publication of guidance under subsection (b).

PART 2--PROTECTION OF LOW-INCOME MEDICARE BENEFICIARIES

SEC. 4411. EXTENDING MEDICAID PAYMENT FOR MEDICARE PREMIUMS FOR CERTAIN INDIVIDUALS WITH INCOME BELOW 125 PERCENT OF THE OFFICIAL POVERTY LINE.

(a) ENTITLEMENT- Section 1902(a)(10)(E)(ii) of the Social Security Act (42 U.S.C. 1395b(a)(10)(E)(ii)) is amended by inserting `(I)' before `for qualified' and by inserting before the comma the following: `and (II) subject to section 1905(p)(4), for individuals who would be qualified medicare beneficiaries described in section 1905(p)(1) but for the fact that their income exceeds the income level established by the State under section 1905(p)(2) but is less than 125 percent of the official poverty line (referred to in such section) for a family of the size involved'.

(b) FEDERAL PAYMENT OF FULL COSTS OF ADDITIONAL MEDICAL ASSISTANCE- The last sentence of section 1905(b) of such Act (42 U.S.C. 1396d(b)) is amended by inserting before the period at the end the following: `and with respect to amounts expended for medicare cost-sharing described in subsection (p)(3)(A)(i) for individuals described in section 1902(a)(10)(E)(ii)(II)'.

(c) APPLICATION IN CERTAIN STATES AND TERRITORIES- Section 1905(p)(4)

of such Act (42 U.S.C. 1396d(p)(4)) is amended--

(1) in subparagraph (B), by inserting `or 1902(a)(10)(E)(ii)(II)' after `subparagraph (B)', and

(2) by adding at the end the following:

`In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1115, the Secretary shall require the State to meet the requirement of section 1902(a)(10)(E) in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this title.'

(d) CONFORMING AMENDMENT- Section 1843(h) of such Act (42 U.S.C. 1395v(h)) is amended by adding at the end the following new paragraph:

`(3) In this subsection, the term `qualified medicare beneficiary' also includes an individual described in section 1902(a)(10)(E)(ii)(II).'.

(e) DELAY IN COUNTING SOCIAL SECURITY COLA INCREASES UNTIL NEW POVERTY GUIDELINES PUBLISHED-

(1) IN GENERAL- Section 1905(p) of such Act is amended--

(A) in paragraph (1)(B), by inserting `, except as provided in paragraph (2)(D)' after `supplementary social security income program', and

(B) by adding at the end of paragraph (2) the following new subparagraph:

`(D)(i) In determining under this subsection the income of an individual who is entitled to monthly insurance benefits under title II for a transition month (as defined in clause (ii)) in a year, such income shall not include any amounts attributable to an increase in the level of monthly insurance benefits payable under such title which have occurred pursuant to section 215(i) for benefits payable for months beginning with December of the previous year.

`(ii) For purposes of clause (i), the term `transition month' means each month in a year through the month following the month in which the annual revision of the official poverty line, referred to in subparagraph (A), is published.'.

(2) CONFORMING AMENDMENTS- Section 1902(m) of such Act (42 U.S.C. 1396a(m)) is amended--

(A) in paragraph (1)(B), by inserting `, except as provided in paragraph (2)(C)' after `supplemental security income program', and

(B) by adding at the end of paragraph (2) the following new subparagraph:

`(C) The provisions of section 1905(p)(2)(D) shall apply to determinations of

income under this subsection in the same manner as they apply to determinations of income under section 1905(p).'.

(f) EFFECTIVE DATE- The amendments made by this section shall apply to calendar quarters beginning on or after January 1, 1991, without regard to whether or not regulations to implement such amendments are promulgated by such date; except that the amendments made by subsection (d) shall apply to determinations of income for months beginning with January 1991.

PART 3--IMPROVEMENTS IN CHILD HEALTH

SEC. 4421. PHASED-IN MANDATORY COVERAGE OF CHILDREN UP TO 100 PERCENT OF POVERTY LEVEL.

(a) IN GENERAL- Section 1902 of the Social Security Act (42 U.S.C. 1396a), as amended by section 6401(a) of the Omnibus Budget Reconciliation Act of 1989, is amended--

(1) in subsection (a)(10)(A)(i)--

(A) by striking `or' at the end of subclause (V),

(B) by striking the semicolon at the end of subclause (VI) and inserting `, or', and

(C) by adding at the end the following new subclause:

`(VII) who are described in subparagraph (D) of subsection (l)(1) and whose family income does not exceed the income level the State is required to establish under subsection (l)(2)(C) for such a family;';

(2) in subsection (a)(10)(A)(ii)(IX), by striking `or clause (i)(VI)' and inserting `, clause (i)(VI), or clause (i)(VII)';

(3) in subsection (l)--

(A) by amending subparagraph (D) of paragraph (1) to read as follows:

`(D) children born after September 30, 1983, who have attained one year of age but have not attained 13 years of age,';

(B) by striking subparagraph (C) of paragraph (2) and inserting the following:

`(C) For purposes of paragraph (1) with respect to individuals described in subparagraph (D) of that paragraph, the State shall establish an income level which is equal to the 100 percent of the income official poverty line described in subparagraph (A) applicable to a family of the size involved.';

(C) in paragraph (3)--

(i) by inserting `, (a)(10)(A)(i)(VII),' after `(a)(10)(A)(i)(VI)', and

(ii) in subparagraph (E), by striking `the methodology employed' and inserting `a methodology which is no more restrictive than the methodology employed';

(D) in paragraph (4)(A), by inserting `or subsection (a)(10)(A)(i)(VII)' after `(a)(10)(A)(i)(VI)'; and

(E) in paragraph (4)(B), by striking `or (a)(10)(A)(i)(VI)' after `, (a)(10)(A)(i)(VI), or (a)(10)(A)(i)(VII)'; and

(4) in subsection (r)(2)(A), by inserting `(a)(10)(A)(i)(VII),' after `(a)(10)(A)(i)(VI),'.

(b) ADDITIONAL CONFORMING AMENDMENTS-

(1) Section 1903(f)(4) of such Act (42 U.S.C. 1396b(f)(4)) is amended--

(A) by striking `1902(a)(10)(A)(i)(IV),' and inserting `1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(i)(IV), 1902(a)(10)(A)(i)(V),', and

(B) by inserting after `1902(a)(10)(A)(i)(VI),' the following: `1902(a)(10)(A)(i)(VII), 1902(a)(1)(A)(ii)(I),'.

(2) Subsections (a)(3)(C) and (b)(3)(C)(i) of section 1925 of such Act (42 U.S.C. 1396r-6), as amended by section 6411(i)(3) of the Omnibus Budget Reconciliation Act of 1989, are each amended by inserting `(i)(VII),' after `(i)(VI)'.

(c) EFFECTIVE DATE- (1) The amendments made by this section apply (except as otherwise provided in this subsection) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2)(A) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation authorizing or appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

(B) In the case of the State of Texas, the State plan shall not be regarded as failing to comply with the requirements of title XIX of the Social Security Act solely on the basis of its failure to meet the additional requirements imposed by the amendments made by this section before September 1, 1991.

SEC. 4422. MANDATORY CONTINUATION OF BENEFITS THROUGHOUT PREGNANCY OR FIRST YEAR OF LIFE.

(a) IN GENERAL- Section 1902(e) of the Social Security Act (42 U.S.C. 1396a(e)) is amended--

(1) in the first sentence of paragraph (4), by inserting `(or would remain if pregnant)' after `remains'; and

(2) in paragraph (6)--

(A) by striking `At the option of a State, in' and inserting `In';

(B) by striking `the State plan may nonetheless treat the woman as being' and inserting `the woman shall be deemed to continue to be'; and

(C) by adding at the end the following new sentence: `The preceding sentence shall not apply in the case of a woman who has been provided ambulatory prenatal care pursuant to section 1920 during a presumptive eligibility period and is then, in accordance with such section, determined to be ineligible for medical assistance under the State plan.'.

(b) EFFECTIVE DATE-

(1) INFANTS- The amendment made by subsection (a)(1) shall apply to individuals born on or after January 1, 1991, without regard to whether final regulations to carry out such amendment have been promulgated by such date.

(2) PREGNANT WOMEN- The amendments made by subsection (a)(2) shall apply with respect to determinations to terminate the eligibility of women, based on change of income, made on or after January 1, 1991, without regard to whether final regulations to carry out such amendments have been promulgated by such date.

SEC. 4423. MANDATORY USE OF OUTREACH LOCATIONS OTHER THAN WELFARE OFFICES.

(a) IN GENERAL- Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)), as amended by section 4401(a)(2) of this title, is amended--

(1) by striking `and' at the end of paragraph (53),

(2) by striking the period at the end of paragraph (54) and inserting `; and', and

(3) by inserting after paragraph (54) the following new paragraph:

`(55) provide for receipt and initial processing of applications of individuals for medical assistance under subsections (a)(10)(A)(i)(IV), (a)(10)(A)(i)(VI), (a)(10)(A)(i)(VII), or (a)(10)(A)(ii)(IX)--

`(A) at locations which are other than those used for the receipt and processing of applications for aid under part A of title IV and which include facilities defined as disproportionate share hospitals under section 1923(a)(1)(A) and Federally-qualified health centers described in section 1905(l)(2)(B), and

`(B) using applications which are other than those used for applications for aid under such part.'.

(b) EFFECTIVE DATE- The amendments made by subsection (a) apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

SEC. 4424. PRESUMPTIVE ELIGIBILITY.

(a) EXTENSION OF PRESUMPTIVE ELIGIBILITY PERIOD- Section 1920 of the Social Security Act (42 U.S.C. 1396r-1) is amended--

(1) in subsection (b)(1)(B)--

(A) by adding `or' at the end of clause (i),

(B) by striking clause (ii), and

(C) by amending clause (iii) to read as follows:

`(ii) in the case of a woman who does not file an application by the last day of the month following the month during which the provider makes the determination referred to in subparagraph (A), such last day; and'; and

(2) in subsections (c)(2)(B) and (c)(3), by striking `within 14 calendar days after the date on which' and inserting `by not later than the last day of the month following the month during which'.

(b) FLEXIBILITY IN APPLICATION- Section 1920(c)(3) of such Act (42 U.S.C. 1396r-1(c)(3)) is amended by inserting before the period at the end the following: `, which application may be the application used for the receipt of medical assistance by individuals described in section 1902(l)(1)(A)'.

(c) EFFECTIVE DATES-

(1) The amendments made by subsection (a) apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) The amendment made by subsection (b) shall be effective as if included in the enactment of section 9407(b) of the Omnibus Budget Reconciliation Act of 1986.

SEC. 4425. ROLE IN PATERNITY DETERMINATIONS.

(a) IN GENERAL- Section 1912(a)(1)(B) of the Social Security Act (42 U.S.C. 1396k(a)(1)(B)) is amended by inserting `the individual is described in section 1902(l)(1)(A) or' after `unless (in either case)'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 4426. REPORT AND TRANSITION ON ERRORS IN ELIGIBILITY DETERMINATIONS.

(a) REPORT- The Secretary of Health and Human Services shall report to Congress, by not later than July 1, 1991, on error rates by States in determining eligibility of individuals described in subparagraph (A) or (B) of section 1902(l)(1) of the Social Security Act for medical assistance under plans approved under title XIX of such Act. Such report may include data for medical assistance provided before July 1, 1989.

(b) ERROR RATE TRANSITION- There shall not be taken into account, for purposes of section 1903(u) of the Social Security Act, payments and expenditures for medical assistance which--

(1) are attributable to medical assistance for individuals described in subparagraph (A) or (B) of section 1902(l)(1) of such Act, and

(2) are made on or after July 1, 1989, and before the first calendar quarter that begins more than 12 months after the date of submission of the report under subsection (a).

PART 4--NURSING HOME REFORM PROVISIONS

SEC. 4431. MEDICAID NURSING HOME REFORM.

(a) NURSE AIDE TRAINING-

(1) NO COMPLIANCE ACTIONS BEFORE EFFECTIVE DATE OF GUIDELINES- The Secretary of Health and Human Services shall not take (and shall not continue) any action against a State under section 1904 of the Social Security Act on the basis of the State's failure to meet the requirement of

section 1919(e)(1)(A) of such Act before the effective date of guidelines, issued by the Secretary, establishing requirements under section 1919(f)(2)(A)(ii)(I) of such Act, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirement before such effective date.

(2) CLARIFICATION OF GRACE PERIOD FOR NURSE TRAINING OF INDIVIDUALS- Section 1919(b)(5)(A) of the Social Security Act (42 U.S.C. 1396r(b)(5)(A)) is amended--

(A) by striking `for more than 4 months', and

(B) by striking the period at the end and inserting a semicolon and the following:

`except that such requirement shall not apply to an individual who has been used (on a full-time, temporary, per diem, or other basis) as a nurse aide for less than 90 days in any nursing facility.'.

(3) CLARIFICATION OF NURSE AIDES NOT SUBJECT TO CHARGES- Section 1919(f)(2)(A)(iv)(II) of such Act (42 U.S.C. 1396r(f)(2)(A)(iv)(II)) is amended by inserting after `nurse aide' the following: `who is employed by (or who has entered into an employment agreement with) a facility'.

(4) MODIFICATION OF NURSING FACILITY DEFICIENCY STANDARDS- Section 1919(f)(2)(B)(iii)(I) of such Act (42 U.S.C. 1396r(f)(2)(B)(iii)(I)) is amended to read as follows:

`(I) offered by or in a nursing facility which, within the previous 2 years, has operated under a waiver under subsection (b)(4)(C)(ii) or has been subject to an extended (or partial extended) survey under subsection (g)(2)(B)(i), or'.

(5) CLARIFICATION OF STATE RESPONSIBILITY TO DETERMINE COMPETENCY- Section 1919(f)(2)(B) of such Act (42 U.S.C. 1396r(f)(2)(B)) is amended, in the second sentence, by inserting `(through subcontract or otherwise)' after `may not delegate'.

(6) EFFECTIVE DATE- The amendments made by this subsection shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987.

(b) PREADMISSION SCREENING AND ANNUAL RESIDENT REVIEW-

(1) NO COMPLIANCE ACTIONS BEFORE EFFECTIVE DATE OF GUIDELINES- The Secretary of Health and Human Services shall not take (and shall not continue) any action against a State under section 1904 or section 1919(e)(7)(D) of the Social Security Act on the basis of the State's failure to meet the requirement of section 1919(e)(7)(A) of such Act before the effective date of guidelines, issued by the Secretary, establishing minimum criteria under section 1919(f)(8)(A) of such Act, if the State

demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirement before such effective date.

(2) CLARIFICATION WITH RESPECT TO ADMISSIONS AND READMISSION FROM A HOSPITAL- Section 1919 of the Social Security Act (42 U.S.C. 1396r) is amended--

(A) in subsection (b)(3)(F), by striking `A nursing facility' and by inserting `Except as provided in clauses (ii) and (iii) of subsection (e)(7)(A), a nursing facility'; and

(B) in subsection (e)(7)(A)--

(i) by redesignating the first 2 sentences as clause (i) with the following heading (and appropriate indentation):

`(i) IN GENERAL- ', and

(ii) by adding at the end the following:

`(ii) CLARIFICATION WITH RESPECT TO CERTAIN READMISSIONS- The preadmission screening program under clause (i) need not provide for determinations in the case of the readmission to a nursing facility of an individual who, after being admitted to the nursing facility, was transferred for care in a hospital.

`(iii) EXCEPTION FOR CERTAIN HOSPITAL DISCHARGES- The preadmission screening program under clause (i) shall not apply to the admission to a nursing facility of an individual--

`(I) who is admitted to the facility directly from a hospital after receiving acute inpatient care at the hospital,

`(II) who requires nursing facility services for the condition for which the individual received care in the hospital, and

`(III) whose attending physician has certified, before admission to the facility, that the individual is likely to require less than 30 days of nursing facility services.'.

(3) DELAY IN APPLICATION TO PRIVATE PAY RESIDENTS-

(A) IN GENERAL- Section 1919(e)(7) of such Act (42 U.S.C. 1396r(e)(7)) is amended--

(i) in subparagraph (A), as amended by paragraph (2)(B) of this subsection--

(I) in clause (i), by inserting `except as provided in clause (iv),' after `January 1, 1989,', and

(II) by adding at the end the following new clause:

`(iv) DELAY IN APPLICATION OF PREADMISSION SCREENING FOR PRIVATE PAY RESIDENTS- In the case of an individual who, at the time of admission to a nursing facility, is not entitled to benefits under this title, the preadmission screening requirements of this subparagraph shall not apply until such time as the resident is so entitled and, in such case, the preadmission screening requirements shall apply as of the end of the day following the date on which the individual is determined to be so entitled. The previous sentence shall not be construed as prohibiting a State from imposing such a preadmission screening requirement with respect to individuals not so entitled at the time of admission.'; and

(ii) in subparagraph (B)--

(I) in clauses (i) and (ii), by inserting `except as provided in clause (iv),' after `April 1, 1990,' each place it appears,

(II) in clause (iii)(III), by inserting `, except as provided in clause (iv)' after `April 1, 1990', and

(III) by adding at the end the following new clause:

`(iv) DELAY IN APPLICATION OF ANNUAL RESIDENT REVIEW FOR PRIVATE PAY RESIDENTS- In the case of an individual who, at the time of admission to a nursing facility, is not entitled to benefits under this title, the annual resident review requirements of this subparagraph shall not apply until such time as the resident is so entitled. The previous sentence shall not be construed as prohibiting a State from imposing such an annual resident review requirement with respect to individuals not so entitled at the time of admission.'.

(B) NO COMPLIANCE ACTION FOR PREVIOUS NONCOMPLIANCE- The Secretary of Health and Human Services may not impose any sanction against a State under section 1904 or section 1919(e)(7)(D) of the Social Security Act due to the State's failure to comply with the preadmission screening requirements of section 1919(e)(7)(A) of such Act insofar as such requirements applied with respect to individuals not entitled to benefits under title XIX of such Act at the time of their admission.

(4) DENIAL OF PAYMENTS FOR CERTAIN RESIDENTS NOT REQUIRING NURSING FACILITY SERVICES- Section 1919(e)(7) of such Act (42 U.S.C. 1395r(e)(7)) is amended--

(A) in subparagraph (D)--

(i) in the heading, by striking `WHERE FAILURE TO CONDUCT PREADMISSION SCREENING',

(ii) by designating the first sentence as clause (i) with the following heading (and appropriate indentation):

`(i) FOR FAILURE TO CONDUCT PREADMISSION SCREENING OR ANNUAL REVIEW- ', and

(iii) by adding at the end the following new clause:

`(ii) FOR CERTAIN RESIDENTS NOT REQUIRING NURSING FACILITY LEVEL OF SERVICES- No payment may be made under section 1903(a) with respect to nursing facility services furnished to an individual (other than an individual described in subparagraph (C)(i)) who does not require the level of services provided by a nursing facility.'; and

(B) in subparagraph (E), by striking `the requirement of this paragraph' and inserting `the requirements of subparagraphs (A) through (C) of this paragraph'.

(5) NO DELEGATION OF AUTHORITY TO CONDUCT SCREENING AND REVIEWS- Section 1919 of such Act is further amended--

(A) in subsection (b)(3)(F), by adding at the end the following:

`A State mental health authority and a State mental retardation or developmental disability authority may not delegate (by subcontract or otherwise) their responsibilities under this subparagraph to a nursing facility (or to an entity that has a direct or indirect affiliation or relationship with such a facility).'; and

(B) in subsection (e)(7)(B), as amended by paragraph (3)(A)(ii) of this subsection, by adding at the end the following new clause:

`(v) PROHIBITION OF DELEGATION- A State mental health authority, a State mental retardation or developmental disability authority, and a State may not delegate (by subcontract or otherwise) their responsibilities under this subparagraph to a nursing facility (or to an entity that has a direct or indirect affiliation or relationship with such a facility).'.

(6) ANNUAL REPORTS-

(A) STATE REPORTS- Section 1919(e)(7)(C) of such Act (42 U.S.C. 1396r(e)(7)(C)) is amended by adding at the end the following new clause:

`(iv) ANNUAL REPORT- Each State shall report to the Secretary annually concerning the number and disposition of residents described in each of clauses (ii) and (iii).'.

(B) SECRETARIAL REPORT- Section 4215 of the Omnibus Budget

Reconciliation Act of 1987 is amended by adding at the end the following new sentence: `Each such report shall also include a summary of the information reported by States under section 1919(e)(7)(C)(iv) of such Act.'.

(7) REVISION OF ALTERNATIVE DISPOSITION PLANS- Section 1919(e)(7)(E) of the Social Security Act (42 U.S.C. 1396r(e)(7)(E)) is amended by adding at the end the following: `The State may revise such an agreement, subject to the approval of the Secretary, before October 1, 1991, but only if, under the revised agreement, all residents subject to the agreement who do not require the level of services of such a facility are discharged from the facility by not later than April 1, 1994.'.

(8) DEFINITION OF MENTALLY ILL- Section 1919(e)(7)(G)(i) of such Act (42 U.S.C. 1396r(e)(7)(G)(i)) is amended by striking `primary or secondary' and all that follows through `3rd edition)' and inserting `serious mental illness (as defined by the Secretary)'.

(9) SUBSTITUTION OF `SPECIALIZED SERVICES' FOR `ACTIVE TREATMENT'- Sections 1919(b)(3)(F) and 1919(e)(7) of such Act (42 U.S.C. 1396r(b)(3)(F), 1396r(e)(7)) are each amended by striking `active treatment' and `ACTIVE TREATMENT' each place either appears and inserting `specialized services' and `SPECIALIZED SERVICES', respectively.

(10) EFFECTIVE DATES-

(A) IN GENERAL- Except as provided in subparagraph (B), the amendments made by this subsection shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987.

(B) EXCEPTION- The amendments made by paragraphs (3), (5), (7), and (9) shall take effect on the date of the enactment of this Act, without regard to whether or not regulations to implement such amendments have been promulgated.

(c) ENFORCEMENT PROCESS- The Secretary of Health and Human Services shall not take (and shall not continue) any action against a State under section 1904 of the Social Security Act on the basis of the State's failure to meet the requirements of section 1919(h)(2) of such Act before the effective date of guidelines, issued by the Secretary, regarding the establishment of remedies by the State under such section, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirements before such effective date.

(d) SUPERVISION OF HEALTH CARE OF RESIDENTS OF NURSING FACILITIES BY NURSE PRACTITIONERS AND CLINICAL NURSE SPECIALISTS ACTING IN COLLABORATION WITH PHYSICIANS-

(1) IN GENERAL- Section 1919(b)(6)(A) of such Act (42 U.S.C. 1396r(b)(6)(A)) is amended by inserting `(or, at the option of a State, under the

supervision of a nurse practitioner or clinical nurse specialist who is not an employee of the facility but who is working in collaboration with a physician)' after `physician'.

(2) EFFECTIVE DATE- The amendment made by paragraph (1) applies with respect to nursing facility services furnished on or after October 1, 1990, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date.

(e) OTHER AMENDMENTS-

(1) ASSURANCE OF APPROPRIATE PAYMENT AMOUNTS-

(A) IN GENERAL- Section 1902(a)(13)(A) of the Social Security Act (42 U.S.C. 1396a(a)(13)(A)) is amended by inserting `(including the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for benefits under this title)' after `take into account the costs'.

(B) DETAILS IN PLAN AMENDMENT- Section 4211(b)(2) of the Omnibus Budget Reconciliation Act of 1987 is amended by inserting after the first sentence the following: `Each such amendment shall include a detailed description of the specific methodology to be used in determining the appropriate adjustment in payment amounts for nursing facility services.'.

(2) DISCLOSURE OF INFORMATION OF QUALITY ASSESSMENT AND ASSURANCE COMMITTEES- Section 1919(b)(1)(B) of the Social Security Act (42 U.S.C. 1396r(b)(1)(B)) is amended by adding at the end the following new sentence: `A State or the Secretary may not require disclosure of the records of such committee except insofar as such disclosure is related to the compliance of such committee with the requirements of this subparagraph.'.

(3) PERIOD FOR RESIDENT ASSESSMENT- Section 1919(b)(3)(C)(i)(I) of such Act (42 U.S.C. 1396r(b)(3)(C)(i)(I)) is amended by striking `4 days' and inserting `14 days'.

(4) CLARIFICATION OF RESPONSIBILITY FOR SERVICES FOR MENTALLY ILL AND MENTALLY RETARDED RESIDENTS- Section 1919(b)(4)(A) of such Act (42 U.S.C. 1396r(b)(4)(A)) is amended--

(A) by striking `and' at the end of clause (v),

(B) by striking the period at the end of clause (vi) and inserting `; and', and

(C) by inserting after clause (vi) the following new clause:

`(vii) treatment and services required by mentally ill and mentally retarded residents not otherwise provided or arranged

for (or required to be provided or arranged for) by the State.'.

(5) CLARIFICATION OF EXTENT OF STATE WAIVER AUTHORITY- Section 1919(b)(4)(C)(ii) of such Act (42 U.S.C. 1396r(b)(4)(C)(ii)) is amended by striking `A State' and all that follows through `a facility if' and inserting `To the extent that a facility is unable to meet the requirements of clause (i), a State may waive such requirements with respect to the facility if'.

(6) CLARIFICATION OF DEFINITION OF NURSE AIDE- Section 1919(b)(5)(F)(i) of such Act (42 U.S.C. 1396r(b)(5)(F)(i)) is amended by striking `(G)),' and inserting `(G)) or a registered dietician,'.

(7) CLARIFICATION OF REQUIREMENTS FOR SOCIAL SERVICES STAFF- Section 1919(b)(7) of such Act (42 U.S.C. 1396r(b)(7)) is amended by striking `one social worker' and all that follows and inserting the following: `one individual employed full-time to provide or assure the provision of social services who--

`(A) is a social worker with at least a bachelor's degree in social work or similar professional qualifications; or

`(B) is provided with on-going consultation and assistance in providing such services by a social worker (with the qualifications described in subparagraph (A)) employed by the facility.'.

(8) CHARGES APPLICABLE IN CASES OF CERTAIN MEDICAID-ELIGIBLE INDIVIDUALS-

(A) IN GENERAL- Section 1919(c) of such Act (42 U.S.C. 1396r(c)) is amended--

(i) by redesignating paragraph (7) as paragraph (8), and

(ii) by inserting after paragraph (6) the following new paragraph:

`(7) LIMITATION ON CHARGES IN CASE OF MEDICAID-ELIGIBLE INDIVIDUALS-

`(A) IN GENERAL- A nursing facility may not impose charges, for certain medicaid-eligible individuals for nursing facility services covered by the State under its plan under this title, that exceed the payment amounts established by the State for such services under this title.

`(B) CERTAIN MEDICAID INDIVIDUALS DEFINED- In subparagraph (A), the term `certain medicaid-eligible individual' means an individual who is entitled to medical assistance for nursing facility services in the facility under this title but with respect to whom such benefits are not being paid because, in determining the amount of the individual's income to be applied monthly to payment for the

costs of such services, the amount of such income exceeds the payment amounts established by the State for such services under this title.'.

(B) EFFECTIVE DATE- The amendments made by subparagraph (A) shall take effect on the date of the enactment of this Act, without regard to whether or not regulations to implement such amendments have been promulgated.

(9) RESIDENTS' RIGHTS TO REFUSE INTRA-FACILITY TRANSFERS TO MOVE THE RESIDENT TO A MEDICARE-QUALIFIED PORTION- Section 1919(c)(1)(A) of such Act (42 U.S.C. 1396r(c)(1)(A)) is amended--

(A) by redesignating clause (x) as clause (xi) and by inserting after clause (ix) the following new clause:

`(x) REFUSAL OF CERTAIN TRANSFERS- The right to refuse a transfer to another room within the facility, if a purpose of the transfer is to relocate the resident from a portion of the facility that is not a skilled nursing facility (for purposes of title XVIII) to a portion of the facility that is such a skilled nursing facility.'; and

(B) by adding at the end the following: `A resident's exercise of a right to refuse transfer under clause (x) shall not affect the resident's eligibility or entitlement to medical assistance under this title or a State's entitlement to Federal medical assistance under this title with respect to services furnished to such a resident.'.

(10) RESIDENTS' RIGHTS REGARDING ADVANCE DIRECTIVES- Section 1919(c)(1) of such Act (42 U.S.C. 1396r(c)(1)), as amended by paragraph (9), is amended--

(A) in subparagraph (A)--

(i) by redesignating clause (xi) as clause (xii), and

(ii) by inserting after clause (x) the following new clause:

`(xi) ADVANCE DIRECTIVES- The right to compliance by the facility with the provisions of an advance directive.'; and

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

`(E) DEFINITION- In this paragraph, the term `advance directive' means a written instruction, such as a living will or durable power of attorney for health care, recognized under State law and relating to the provision of such care when the individual is incapacitated.'.

(11) RESIDENT ACCESS TO CLINICAL RECORDS- Section 1919(c)(1)(A)(iv) of such Act (42 U.S.C. 1396r(c)(1)(A)(iv)) is amended by inserting before the period at the end the following: `and to access to current clinical

records of the resident promptly upon request by the resident'.

(12) INCLUSION OF STATE NOTICE OF RIGHTS IN FACILITY NOTICE OF RIGHTS- Section 1919(c)(1)(B)(ii) of such Act (42 U.S.C. 1396r(c)(1)(B)(ii)) is amended by inserting `including the notice (if any) of the State developed under subsection (e)(6)' after `in such rights)'.

(13) REMOVAL OF DUPLICATIVE REQUIREMENT FOR QUALIFICATIONS OF NURSING HOME ADMINISTRATORS- Effective October 1, 1990--

(A) paragraph (29) of section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is repealed, and

(B) section 1908 of such Act (42 U.S.C. 1396g) is repealed.

(14) CLARIFICATION OF NURSE AIDE REGISTRY REQUIREMENTS- Section 1919(e)(2) of such Act (42 U.S.C. 1396r(e)(2)) is amended--

(A) in subparagraph (A), by striking the period and inserting the following: `, or any individual described in subsection (f)(2)(B)(ii) or in subparagraph (B) or (C) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989.' and

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

`(C) PROHIBITION AGAINST CHARGES- A State may not impose any charges on a nurse aide relating to the registry established and maintained under subparagraph (A).'.

(15) CLARIFICATION ON FINDINGS OF NEGLECT- Section 1919(g)(1)(C) of such Act (42 U.S.C. 1396r(g)(1)(C)) is amended by adding at the end the following: `A State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.'.

(16) TIMING OF PUBLIC DISCLOSURE OF SURVEY RESULTS- Section 1919(g)(5)(A)(i) of such Act (42 U.S.C. 1396r(g)(5)(A)(i)) is amended by striking `deficiencies and plans' and inserting `deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans'.

(17) DENIAL OF PAYMENT OF LEGAL FEES FOR FRIVOLOUS LITIGATION- Section 1903(i) of such Act (42 U.S.C. 1396b(i)), as amended by section 4401(a)(1)(B) of this title, is amended--

(A) by striking `or' at the end of paragraph (9);

(B) by striking the period at the end of paragraph (10) and inserting `; or'; and

(C) by inserting after paragraph (10) the following new paragraph:

`(11) with respect to any amount expended to reimburse (or otherwise compensate) a nursing facility for payment of legal expenses associated with any action initiated by the facility that is dismissed on the basis that no reasonable legal ground existed for the institution of such action.'

(18) EFFECTIVE DATES- The amendments made by this subsection (other than by paragraphs (8) and (13)) shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987.

PART 5--MISCELLANEOUS

Subpart A--Payments

SEC. 4441. STATE MEDICAID MATCHING PAYMENTS THROUGH VOLUNTARY CONTRIBUTIONS AND STATE TAXES.

(a) VOLUNTARY CONTRIBUTIONS- Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended by adding at the end the following new subsection:

`(s)(1)(A) Subject to subparagraphs (B) and (C), financial participation described in subsection (a)(2) may include the application of private funds donated by hospitals to, and subject to the unrestricted control of, the State.

`(B) Financial participation--

`(i) may not include donations to the extent their aggregate amount exceeds in any Federal fiscal year 10 percent of the non-Federal portion of expenditures under the plan in the year, and

`(ii) may not include donations made by, or on behalf of, or with respect to, any particular hospital, to the extent that their aggregate amount in an annual cost reporting period exceeds 10 percent of the gross revenues of the hospital (not taking into account any Federal revenues under this title or under title V or title XVIII).

`(C) For purposes of this paragraph, the fact that a hospital may receive some benefit from a transfer of funds to a State shall not prevent the transfer from being treated as the donation of funds, unless the amount of benefit to the hospital is directly related, in timing and amount, to the timing and amount of the transfer.'.

(b) STATE TAX CONTRIBUTIONS- Section 1902(s) of such Act, added by the amendment made by subsection (a), is amended by adding at the end the following new paragraph:

`(2) Nothing in this title (including sections 1903(a) and 1905(a)) shall be construed as authorizing the Secretary to deny or limit payments to a State for expenditures, for medical assistance for items or services, attributable to

taxes (whether or not of general applicability) imposed with respect to the provision of such items or services.'.

(c) EFFECTIVE DATES-

(1) VOLUNTARY CONTRIBUTION- The amendment made by subsection (a) shall apply to funds donated on or after January 1, 1991.

(2) STATE TAX CONTRIBUTION- The amendment made by subsection (b) shall take effect on January 1, 1991.

SEC. 4442. DISPROPORTIONATE SHARE HOSPITALS: COUNTING OF INPATIENT DAYS AND TREATMENT OF CAPITAL PASS-THROUGHS.

(a) CLARIFICATION OF MEDICAID DISPROPORTIONATE SHARE ADJUSTMENT CALCULATION- Section 1923(b)(2) of the Social Security Act (42 U.S.C. 1396r-4(b)(2)) is amended by adding at the end the following new sentence: `In this paragraph, the term `inpatient day' includes each day in which an individual (including a newborn) is an inpatient in the hospital, whether or not the individual is in a specialized ward and whether or not the individual remains in the hospital for lack of suitable placement elsewhere.'.

(b) FEDERAL FINANCIAL PARTICIPATION FOR MEDICAID CAPITAL PAYMENTS- Section 1902(h) of such Act (42 U.S.C. 1396a(h)) is amended by inserting `(including pass-through payments for capital costs)' after `payment adjustments'.

(c) EFFECTIVE DATES-

(1) CLARIFICATION OF INPATIENT DAYS- The amendment made by subsection (a) shall take effect on July 1, 1990.

(2) FEDERAL FINANCIAL PARTICIPATION- The amendment made by subsection (b) shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1981.

SEC. 4443. DISPROPORTIONATE SHARE HOSPITALS: ALTERNATIVE STATE PAYMENT ADJUSTMENTS AND SYSTEMS.

(a) ALTERNATIVE STATE PAYMENT ADJUSTMENTS- Section 1923(c) of the Social Security Act (42 U.S.C. 1396r-4(c)) is amended--

(1) by striking `or' at the end of paragraph (1);

(2) by adding `or' at the end of paragraph (2); and

(3) by inserting after paragraph (2) the following new paragraph:

`(3) provide for a minimum specified additional payment amount (or

increased percentage payment) based on a formula that takes into account the characteristics of patients of categories of disproportionate share hospitals in the State and that does not take into account (and is not related in timing or amount to) the amount or timing of any voluntary contribution directly or indirectly by such a hospital;'.

(b) CLARIFICATION OF SPECIAL RULE FOR STATE USING HEALTH INSURING ORGANIZATION- Section 1923(e)(2) of such Act (42 U.S.C. 1396r-4(e)(2)) is amended by striking `during the 3-year period'.

(c) EFFECTIVE DATE- The amendments made by this section shall take effect as if included in the enactment of section 412(a)(2) of the Omnibus Budget Reconciliation Act of 1987.

SEC. 4444. DISPROPORTIONATE SHARE HOSPITALS: MINIMUM PAYMENT ADJUSTMENT FOR CERTAIN HOSPITALS.

Section 1923 of the Social Security Act (42 U.S.C. 1396r-4) is amended--

(1) in subsection (c), by striking `In order' and inserting `Except as provided in subsection (f), in order'; and

(2) by adding at the end the following new subsection:

`(f) MINIMUM PAYMENT ADJUSTMENT FOR CERTAIN HOSPITALS-

`(1) AMOUNT OF PAYMENT- In the case of a hospital described in paragraph (2), the appropriate increase in the rate or amount of payments required under subsection (a)(1)(B) shall be equal to at least one-half of the amount paid under the State plan to the hospital for operating costs for inpatient hospital services (of the kind described in section 1886(a)(4)), except that the aggregate payments made to such a hospital by a State during a fiscal year under the plan may not exceed the reasonable costs to such hospital of providing inpatient and outpatient hospital services to individuals eligible for benefits under this title during the year.

`(2) DESCRIPTION OF HOSPITAL- A hospital described in this paragraph is a hospital that--

`(A) is a nonprofit, private entity which is not a teaching hospital;

`(B) has a medicaid inpatient utilization rate (as defined in subsection (b)(2)) of at least 45 percent;

`(C) has a private pay utilization rate (as defined in paragraph (3)) of not more than 8 percent; and

`(D) is located in a health manpower shortage area (as defined in section 332 of the Public Health Service Act) in a State which had a waiver approved and in effect under section 1915(b)(4) as of the

date of the enactment of this subsection.

`(3) DEFINITION- In paragraph (2)(C), the term `private pay utilization rate' means, for a hospital, a fraction (expressed as a percentage), the numerator of which is the hospital's number of inpatient days attributable to patients who (for such days) have private third party coverage of health benefits in a period, and the denominator of which is the total number of the hospital's inpatient days in that period.'.

(b) CONFORMING AMENDMENT- Section 1923(b)(2) of such Act (42 U.S.C. 1396r-4(b)(2)) is amended by striking `(1)(A)' and inserting `(1)(A) and subsection (f)'.

(c) EFFECTIVE DATE- The amendments made by this section shall apply to calendar quarters beginning on or after January 1, 1991, and before October 1, 1993, without regard to whether or not regulations to implement such amendments have been promulgated by such date.

SEC. 4445. FEDERALLY-QUALIFIED HEALTH CENTERS.

(a) CLARIFICATION OF USE OF MEDICARE PAYMENT METHODOLOGY- Section 1902(a)(13)(E) of the Social Security Act (42 U.S.C. 1396a(a)(13)(E)) is amended--

(1) by striking `may prescribe' the first place it appears and inserting `prescribes', and

(2) by striking `on such tests of reasonableness as the Secretary may prescribe in regulations under this subparagraph' and inserting `on the same methodology used under section 1833(a)(3)'.

(b) MINIMUM PAYMENT RATES BY HEALTH MAINTENANCE ORGANIZATIONS- Section 1903(m)(2)(A) of such Act (42 U.S.C. 1396b(m)(2)(A)) is amended--

(1) by striking `and' at the end of clause (vii),

(2) by striking the period at the end of clause (viii) and inserting `, and', and

(3) by adding at the end the following new clause:

`(ix) such contract provides, in the case of an entity that is a Federally-qualified health center or that provides for services through arrangements with such a center, that (I) rates of prepayment from the State are adjusted to reflect fully the rates of payment specified in section 1902(a)(13)(E), and (II) payments made by the entity to such a center for services described in 1905(a)(2)(C) are made at the rates of payment specified in section 1902(a)(13)(E).'.

(c) CLARIFICATION IN TREATMENT OF OUTPATIENTS- Section 1905(l)(2) of such Act (42 U.S.C. 1396d(l)(2)) is amended--

(1) in subparagraph (A), by striking `outpatient' and inserting `patient (other than an inpatient)', and

(2) in subparagraph (B), by striking `facility' and inserting `entity'.

(d) TREATMENT OF INDIAN TRIBES- The first sentence of section 1905(l)(2)(B) of such Act (42 U.S.C. 1396d(l)(2)(B)) is amended--

(1) by striking the period at the end and inserting a comma, and

(2) by adding, after and below clause (ii), the following:

`and includes an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act (Public Law 93-638).'.

(e) TECHNICAL CORRECTION- Section 6402 of the Omnibus Budget Reconciliation Act of 1989 is amended--

(1) by striking subsection (c), and

(2) by amending subsection (d) to read as follows:

`(c) EFFECTIVE DATE- The amendments made by this section (except as otherwise provided in such amendments) shall take effect on the date of the enactment of this Act.'.

(f) EFFECTIVE DATE- The amendments made by this section shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989.

SEC. 4446. HOSPICE PAYMENTS.

(a) IN GENERAL- Section 1905(o)(3) of the Social Security Act (42 U.S.C. 1396d(o)(3)) is amended--

(1) by striking `a State which elects' and all that follows through `with respect to' the first place it appears,

(2) by striking `skilled nursing or intermediate care facility' in subparagraphs (A) and (C) and inserting `nursing facility or intermediate care facility for the mentally retarded';

(3) by striking `the amounts allocated under the plan for room and board in the facility, in accordance with the rates established under section 1902(a)(13),' and inserting `the additional amount described in section 1902(a)(13)(D)', and

(4) by striking the last sentence.

(b) EFFECTIVE DATE- The amendments made by subsection (a) shall be effective as if included in the amendments made by section 6408(c)(1) of the

Omnibus Budget Reconciliation Act of 1989.

SEC. 4447. LIMITATIONS ON DISALLOWANCE OF CERTAIN INPATIENT PSYCHIATRIC HOSPITAL SERVICES.

(a) IN GENERAL- The Secretary of Health and Human Services may not disallow or defer Federal financial participation under section 1903(a) of the Social Security Act for inpatient psychiatric hospital services for individuals under age 21 under paragraph (16) of section 1905(a) of such Act in a State in which the Inspector General of the Department of Health and Human Services has initiated or completed reviews or audits of such services (but for which services the Secretary has not issued a disallowance notice) as of October 11, 1990, on the ground that the facilities in the State did not meet the requirement of section 1905(h)(1)(B)(ii) of such Act, except as provided in subsection (b).

(b) LIMITATIONS ON DISALLOWANCE- With respect to services described in subsection (a)--

(1) the Secretary may disallow or defer Federal financial participation only for services provided to an individual eligible under title XIX of the Social Security Act before the date the facility is able to document (through plan of care or utilization review procedures) that the services in the facility on an inpatient basis are necessary (as described in section 1905(h)(1)(B)(ii) of the Social Security Act);

(2) the Secretary may disallow or defer Federal financial participation only for services for which facilities in the State did not meet the requirement of section 1905(h)(1)(B)(ii) of such Act during the 3-year period ending on the date an audit is initiated with respect to such services; and

(3) the disallowance of Federal financial participation during the period in which the requirement of section 1905(h)(1)(B)(ii) of such Act was not met by facilities in the State with respect to such services may not exceed 25 percent of the amount of the disallowance that would otherwise be made in accordance with this section.

(c) EFFECTIVENESS- This section shall apply to disallowance actions that are pending or for which there has not been a final judicial decision as of the date of the enactment of this Act.

SEC. 4448. TREATMENT OF INTEREST ON INDIANA DISALLOWANCE.

With respect to any disallowance of Federal financial participation under section 1903(a) of the Social Security Act for intermediate care facility services, intermediate care facility services for the mentally retarded, or skilled nursing facility services on the ground that the facilities in the State of Indiana were not certified in accordance with law during the period beginning June 1, 1982, and ending September 30, 1984, payment of such disallowance

may be deferred without interest that would otherwise accrue without regard to this subsection, until every opportunity to appeal has been exhausted.

Subpart B--Eligibility and Coverage

SEC. 4451. PROVIDING FEDERAL MEDICAL ASSISTANCE FOR PAYMENTS FOR PREMIUMS FOR `COBRA' CONTINUATION COVERAGE WHERE COST EFFECTIVE.

(a) OPTIONAL PAYMENT OF COBRA PREMIUMS FOR QUALIFIED COBRA CONTINUATION BENEFICIARIES- Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended--

(1) in subsection (a)(10)--

(A) by striking `and' at the end of subparagraph (D),

(B) by adding `and' at the end of subparagraph (E),

(C) by inserting after subparagraph (E) the following new subparagraph:

`(F) at the option of a State, for making medical assistance available for COBRA premiums (as defined in subsection (t)(2)) for qualified COBRA continuation beneficiaries described in section 1902(t)(1);', and

(D) in the matter following subparagraph (E), by striking `and' before `(X)' and by inserting before the semicolon at the end the following: `, and (XI) the medical assistance made available to an individual described in subsection (t)(1) who is eligible for medical assistance only because of subparagraph (F) shall be limited to medical assistance for COBRA continuation premiums (as defined in subsection (t)(2))'; and

(2) by adding after the subsection added by section 4441(a) the following new subsection:

`(t)(1) Individuals described in this paragraph are individuals--

`(A) who are entitled to elect COBRA continuation coverage (as defined in paragraph (3)),

`(B) whose income (as determined under section 1612 for purposes of the supplemental security income program) does not exceed 100 percent of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved,

`(C) whose resources (as determined under section 1613 for purposes of the supplemental security income program) do not exceed twice the maximum amount of resources that an individual may have and obtain benefits under that program, and

`(D) with respect to whose enrollment for COBRA continuation coverage the State has determined that the savings in expenditures under this title resulting from such enrollment is likely to exceed the amount of payments for COBRA premiums made.

`(2) For purposes of subsection (a)(10)(F) and this subsection, the term `COBRA premiums' means the applicable premium imposed with respect to COBRA continuation coverage.

`(3) In this subsection, the term `COBRA continuation coverage' means coverage under a group health plan provided pursuant to title XXII of the Public Health Service Act, section 4980B of the Internal Revenue Code of 1986, or title VI of the Employee Retirement Income Security Act of 1974.

`(4) Notwithstanding subsection (a)(17), for individuals described in paragraph (1) who are covered under the State plan by virtue of subsection (a)(10)(A)(ii)(XI)--

`(A) the income standard to be applied is the income standard described in paragraph (1)(B), and

`(B) except as provided in section 1612(b)(4)(B)(ii), costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(10)(B) or (a)(17), require or permit such treatment for other individuals.'.

(b) CONFORMING AMENDMENT- Section 1905(a) of such Act (42 U.S.C. 1396d(a)) is amended--

(1) by striking `or' at the end of clause (viii),

(2) by adding `or' at the end of clause (ix), and

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

`(x) individuals described in section 1902(t)(1),'.

(c) EFFECTIVE DATE- The amendments made by this section shall apply to medical assistance furnished on or after January 1, 1991.

SEC. 4452. PROVISIONS RELATING TO SPOUSAL IMPOVERISHMENT.

(a) CLARIFICATION OF NON-APPLICATION OF STATE COMMUNITY PROPERTY

LAWS- Section 1924(b)(2) of the Social Security Act (42 U.S.C. 1396r-5(b)(2)) is amended in the matter preceding subparagraph (A) by striking `spouse,' and inserting `spouse for purposes of this section,'.

(b) CLARIFICATION OF TRANSFER OF RESOURCES TO COMMUNITY SPOUSE- Section 1924(f)(1) of such Act (42 U.S.C. 1396r-5(f)(1)) is amended by striking `section 1917' and inserting `section 1917(c)(1)'.

(c) CLARIFICATION OF PERIOD OF CONTINUOUS ELIGIBILITY- Section 1924(c)(1) of such Act (42 U.S.C. 1396r-1(c)(1)) is amended by striking `the beginning of a continuous period of institutionalization of the institutionalized spouse' each place it appears and inserting `the beginning of the first continuous period of institutionalization (beginning on or after September 30, 1989) of the institutionalized spouse'.

(d) EFFECTIVE DATE- The amendments made this section shall take effect as if included in the enactment of section 303 of the Medicare Catastrophic Coverage Act of 1988.

SEC. 4453. DISREGARDING GERMAN REPARATION PAYMENTS FROM POST-ELIGIBILITY TREATMENT OF INCOME UNDER THE MEDICAID PROGRAM.

(a) IN GENERAL- Section 1902(r)(1) of the Social Security Act (42 U.S.C. 1396a) is amended by inserting `there shall be disregarded reparation payments made by the Federal Republic of Germany and' after `under such a waiver'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply to treatment of income for months beginning more than 30 days after the date of the enactment of this Act.

SEC. 4454. AMENDMENTS RELATING TO MEDICAID TRANSITION PROVISION.

(a) REPEAL OF SUNSET- Subsection (f) of section 1925 of the Social Security Act (42 U.S.C. 1396s) is repealed.

(b) ADDITIONAL AMENDMENTS- Such section is further amended--

(1) in subsection (b)(2)(B)(i), by inserting at the end the following: `A State may permit such additional extended assistance under this subsection notwithstanding a failure to report under this clause if the family has established, to the satisfaction of the State, good cause for the failure to report on a timely basis.';

(2) in subsection (b)(2)(B), by adding at the end the following new clause:

`(iii) CLARIFICATION ON FREQUENCY OF REPORTING- A State

may not require that a family receiving extended assistance under this subsection or subsection (a) report more frequently than as required under clause (i) or (ii).'; and

(3) in subsection (b)(3)(B), by adding at the end the following: `No such termination shall be effective earlier than 10 days after the date of mailing of such notice.'.

(c) EFFECTIVE DATE- The amendments made by subsection (b) shall be effective as if included in the enactment of the Family Support Act of 1988.

SEC. 4455. CLARIFYING EFFECT OF HOSPICE ELECTION.

Section 1905(o)(1)(A) of the Social Security Act (42 U.S.C. 1396d(o)(1)(A)) is amended by inserting `and for which payment may otherwise be made under title XVIII' after `described in section 1812(d)(2)(A)'.

SEC. 4456. CLARIFICATION OF APPLICATION OF 133 PERCENT INCOME LIMIT TO MEDICALLY NEEDY.

(a) IN GENERAL- Section 1903(f) of the Social Security Act (42 U.S.C. 1396b(f)(4)) is amended--

(1) in paragraph (1), by striking `Except as provided in paragraph (4)' and inserting `Subject to paragraph (4)', and

(2) in paragraph (4), by striking `shall not apply' and all that follows through the end and inserting `shall only apply with respect to any amount expended by a State as medical assistance for an individual who is only eligible for such assistance as an individual described in section 1902(a)(10)(C) at the time of the provision of the medical assistance giving rise to such expenditure.'.

(b) CONFORMING AMENDMENTS- Section 1902(a)(10)(A)(ii) of such Act (42 U.S.C. 1396a(a)(10)(A)(ii)) is amended--

(1) in subclause (V), by striking `whose income does not exceed a separate income standard established by the State which is consistent with the limit established under section 1903(f)(4)(C)' and inserting `whose income does not exceed a separate income standard established by the State, which income (as determined under section 1612, but without regard to subsection (b) thereof) does not exceed 300 percent of the supplemental security income benefit rate established by section 1611(b)(1)', and

(2) in subclauses (VI) and (VII), by inserting `(applying the resource and income standards applicable under subclause (V))' after `in a medical institution'.

(c) ADDITIONAL CONFORMING AMENDMENT- Effective as if included in the enactment of section 303(e) of the Medicare Catastrophic Coverage Act of

1988, section 1902(f) of the Social Security Act (42 U.S.C. 1396a(f)) is amended by striking `subsection (e)' and inserting `subsections (e) and (r)(2)'.

(d) MEDICALLY NEEDY INCOME LEVELS FOR CERTAIN 1-MEMBER FAMILIES-

(1) IN GENERAL- For purposes of section 1903(f)(1)(B) of the Social Security Act, for payments made before, on, or after the date of the enactment of this Act, a State described in subparagraph (B) may use, in determining the `highest amount which would ordinarily be paid to a family of the same size' (under the State's plan approved under part A of title IV of such Act) in the case of a family consisting only of one individual and without regard to whether or not such plan provides for aid to families consisting only of one individual, an amount reasonably related to the highest money payment which would ordinarily be made under such a plan to a family of two without income or resources.

(2) STATES COVERED- Paragraph (1) shall only apply to a State the State plan of which (under title XIX of the Social Security Act) as of June 1, 1989, provided for the policy described in such paragraph. For purposes of the previous sentence, a State plan includes all the matter included in a State plan under section 2373(c)(5) of the Deficit Reduction Act of 1984 (as amended by section 9 of the Medicare and Medicaid Patient and Program Protection Act of 1987).

(e) EFFECTIVE DATE- The amendments made by subsections (a) and (b) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986.

SEC. 4457. CODIFICATION OF COVERAGE OF REHABILITATION SERVICES.

(a) IN GENERAL- Section 1905(a)(13) of the Social Security Act (42 U.S.C. 1396d(a)(13)) is amended by inserting before the semicolon at the end the following: `, including any medical or remedial services (provided in a facility, a home, or other setting) recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under State law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 4458. PERSONAL CARE SERVICES FOR MINNESOTA.

(a) CLARIFICATION OF COVERAGE- In applying section 1905 of the Social Security Act with respect to Minnesota, medical assistance shall include payment for personal care services described in subsection (b).

(b) PERSONAL CARE SERVICES DEFINED- For purposes of this section, the

term `personal care services' means services--

(1) prescribed by a physician for an individual in accordance with a plan of treatment,

(2) provided by a person who is qualified to provide such services who is not a member of the individual's family,

(3) supervised by a registered nurse, and

(4) furnished in a home or other location;

but does not include such services furnished to an inpatient or resident of a hospital or nursing facility.

(c) EFFECTIVE DATE- This section shall take effect on the date of the enactment of this Act and shall also apply to personal care services furnished before such date pursuant to regulations in effect as of July 1, 1989.

Subpart C--Health Maintenance Organizations

SEC. 4461. REQUIREMENTS FOR RISK-SHARING HEALTH MAINTENANCE ORGANIZATIONS UNDER MEDICAID.

(a) HMO MINIMUM MEMBERSHIP REQUIREMENTS- Section 1903(m)(2)(A) of the Social Security Act (42 U.S.C. 1396b(m)(2)(A)) is amended--

(1) by striking `, and' at the end of clause (vii) and inserting a semicolon;

(2) by striking the period at the end of clause (viii) and inserting `; and'; and

(3) by adding at the end the following new clause:

`(ix) such entity has at least 5,000 members, except that the Secretary may make payment under this title for services provided by an entity that has fewer members if the entity primarily serves members residing in a rural area.'.

(b) APPLICATION OF MINIMUM ENROLLMENT, PATIENT MIX, AND FINANCIAL SOLVENCY REQUIREMENTS TO RISK-SHARING SUBCONTRACTORS- Section 1903(m)(2)(A) of such Act (42 U.S.C. 1396b(m)(2)(A)), as amended by subsection (a), is further amended--

(1) by striking `and' at the end of clause (viii);

(2) by striking the period at the end of clause (ix) and inserting `; and'; and

(3) by adding at the end the following new clause:

`(x) in the case of services provided by an entity that has entered into an agreement for the provision of such services with another entity (other than an entity described in subparagraph (B)) under which payment to the other entity for such services is determined under a prepaid capitation basis or under any other risk basis--

`(I) the other entity meets the requirements of clauses (ii) and (ix), and

`(II) if the other entity is not a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act), such other entity meets the requirements of paragraph (1)(A)(ii) and paragraph (4).'.

(c) DELAY IN IMPLEMENTATION OF PROHIBITION AGAINST PHYSICIAN INCENTIVE PAYMENTS- Section 1128A(b) of such Act (42 U.S.C. 1320a-7a(b)) is amended by adding at the end the following new paragraph:

`(3) With respect to an entity with a contract under section 1903(m), paragraph (1) shall apply to payments made by such an entity on or after April 1, 1992.'.

(d) EFFECTIVE DATE- The amendments made by subsections (a) and (b) shall apply to contract years beginning on or after January 1, 1991.

SEC. 4462. SPECIAL RULES.

(a) WAIVER OF 75 PERCENT RULE FOR PUBLIC ENTITIES- Section 1903(m)(2)(D) of the Social Security Act (42 U.S.C. 1396b(m)(2)(D)) is amended by striking `(i) special circumstances warrant such modification or waiver, and (ii)'.

(b) EXTENDING SPECIAL TREATMENT TO MEDICARE COMPETITIVE MEDICAL PLANS-

(1) 6-MONTH MINIMUM ENROLLMENT PERIOD OPTION- Section 1902(e)(2)(A) of such Act (42 U.S.C. 1396a(e)(2)(A)) is amended by inserting `or with an eligible organization with a contract under section 1876' after `1903(m)(2)(A)'.

(2) ENROLLMENT LOCK-IN- Section 1903(m)(2)(F)(i) of such Act (42 U.S.C. 1396b(m)(2)(F)(i)) is amended--

(A) by striking `(G) or' and inserting `(G),', and

(B) adding at the end the following: `or with an eligible organization with a contract under section 1876 which meets the requirement of subparagraph (A)(ii), or'.

(c) AUTOMATIC 1-MONTH REENROLLMENT FOR SHORT PERIODS OF INELIGIBILITY- Section 1903(m)(2) of such Act is amended by adding at the

end the following new subparagraph:

`(H) In the case of an individual who--

`(i) in a month is eligible for benefits under this title and enrolled with a health maintenance organization with a contract under this paragraph,

`(ii) in the next month (or in the next 2 months) is not eligible for such benefits, but

`(iii) in the succeeding month is again eligible for such benefits,

the State plan, subject to subparagraph (A)(vi), may enroll the individual for that succeeding month with the health maintenance organization described in clause (i) if the organization continues to have a contract under this paragraph with the State.'.

(d) ELIMINATION OF PROVISIONAL QUALIFICATION FOR HMOS- Section 1903(m) of such Act is amended--

(1) in paragraph (2)(A)(i), by striking `(or the State as authorized by paragraph (3))', and

(2) by striking paragraph (3).

(e) EFFECTIVE DATE- The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 4463. EXTENSION AND EXPANSION OF MINNESOTA PREPAID MEDICAID DEMONSTRATION PROJECT.

Section 507 of the Family Support Act of 1988 is amended--

(1) by striking `1991' and inserting `1996'; and

(2) by striking the period at the end and inserting the following: `, and shall amend such waiver to permit the State to expand such demonstration project to other counties if the amount of medical assistance provided under title XIX of such Act after such expansion will not exceed the amount of medical assistance provided under such title had the project not been expanded to other counties.'.

SEC. 4464. TREATMENT OF DAYTON AREA HEALTH PLAN.

Section 9517(c)(2)(C) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by adding at the end the following: `In the case of the Dayton Area Health Plan, clause (ii) of section 1903(m)(2)(A) of the Social Security Act shall not apply during the 5-year period beginning on the date the Secretary of Health and Human Services has granted the plan a waiver under section 1915(b) of such Act of certain requirements of section 1902 of such Act.'.

SEC. 4465. TREATMENT OF CERTAIN COUNTY-OPERATED HEALTH INSURING ORGANIZATIONS.

Section 9517(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended--

(A) in paragraph (2)(A), by inserting `and in paragraph (3)' after `subparagraph (B)', and

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

`(3)(A) Subject to subparagraph (C), in the case of up to 3 health insuring organizations which are described in subparagraph (B), which first become operational on or after January 1, 1986, and which are designated by the Governor, and approved by the Legislature, of California, the amendments made by paragraph (1) shall not apply.

`(B) A health insuring organization described in this subparagraph is one that--

`(i) is operated directly by a public entity established by a county government in the State of California under a State enabling statute;

`(ii) enrolls all medicaid beneficiaries residing in the county in which it operates;

`(iii) meets the requirements for health maintenance organizations under the Knox-Keene Act (Cal. Health and Safety Code, section 1340 et seq.) and the Waxman-Duffy Act (Cal. Welfare and Institutions Code, section 14450 et seq.);

`(iv) assures a reasonable choice of providers, which includes providers that have historically served medicaid beneficiaries and which does not impose any restriction which substantially impairs access to covered services of adequate quality where medically necessary;

`(v) provides for a payment adjustment for a disproportionate share hospital (as defined under State law consistent with section 1923 of the Social Security Act) in a manner consistent with the requirements of such section; and

`(vi) provides for payment, in the case of childrens' hospital services provided to medicaid beneficiaries who are under 21 years of age, who are children with special health care needs under title V of the Social Security Act, and who are receiving care coordination services under such title, at rates determined by the California Medical Assistance Commission.

`(C) Subparagraph (A) shall not apply with respect to any period for which the Secretary of Health and Human Services determines that the number of medicaid beneficiaries enrolled with health insuring organizations described in

subparagraph (B) exceeds 10 percent of the number of such beneficiaries in the State of California.

`(D) In this paragraph, the term `medicaid beneficiary' means an individual who is entitled to medical assistance under the State plan under title XIX of the Social Security Act, other than a qualified medicare beneficiary who is only entitled to such assistance because of section 1902(a)(10)(E) of such title.'.

Subpart D--Demonstration Projects and Home and Community-Based Waivers

SEC. 4471. MEDICAID LONG-TERM CARE INSURANCE DEMONSTRATION PROJECT.

(a) AUTHORIZATION OF PROJECTS-

(1) IN GENERAL- The Secretary of Health and Human Services (in this section referred to as the `Secretary'), upon application by any State may approve demonstration projects (each in this section referred to as a `project') under which covered long-term care beneficiaries (as defined in paragraph (3)(A)) who are 65 years of age or older and who have exhausted benefits under the qualified long-term care insurance policy are made eligible under the special rules specified in paragraph (2) to receive benefits with respect to long-term care services (as defined in paragraph (3)(B)) under the State medicaid plan. Expenditures with respect to such benefits shall be considered to be medical assistance for purposes of section 1903(a) of the Social Security Act.

(2) SPECIAL ELIGIBILITY PROVISIONS-

(A) INITIAL ELIGIBILITY- In determining the initial eligibility for medical assistance with respect to long-term care services under the State medicaid plan--

(i) the income of each covered long-term care beneficiary who is 65 years of age or older and who has exhausted benefits under the qualified long-term care insurance policy shall be disregarded, and

(ii) subject to subparagraph (D), the valuation of the assets of such beneficiary shall be reduced by the amount of protection provided under the long-term care insurance policy recognized under the project.

(B) POST-ELIGIBILITY- The amount such a beneficiary is required to contribute toward the cost of long-term care services shall be the same as other individuals entitled to such services under the State plan, except that, subject to subparagraph (D), the valuation of the assets of the beneficiary shall be reduced by the amount of protection provided under the long-term care insurance policy

recognized under the project.

(C) NONDISCRIMINATION- Except as specified in this paragraph, a State medicaid plan may not discriminate, in the services covered or otherwise, against any individual based on whether or not the individual participates in a project under this section.

(D) MAXIMUM LEVEL OF ASSET PROTECTION-

(i) IN GENERAL- In no case shall the valuation of assets of a beneficiary be reduced by more than the maximum benefit level of the qualified long-term care insurance policy or the amount specified in clause (ii), whichever is less.

(ii) INDEXED LIMIT- The amount specified in this clause is $75,000 increased by the same percentage as the percentage increase in the Consumer Price Index for All Urban Consumers (all items; U.S. city average) from December 1991 to December of the year preceding the year involved.

(3) DEFINITIONS- In this section:

(A) The term `covered long-term care beneficiary' means an individual who at any time purchases benefits under a qualified long-term care insurance policy, and who voluntarily elects, at the time of purchase of such policy, to participate in the project.

(B) The term `long-term care services' means medical assistance for the following items and services, to the extent the State medicaid plan otherwise makes medical assistance available to individuals entitled to benefits under the plan:

(i) Nursing facility services.

(ii) Home health care services (described in section 1905(a)(7) of the Social Security Act).

(iii) Private duty nursing services.

(iv) Case management services.

(v) Homemaker/home health aide services.

(vi) Personal care services.

(vii) Adult day health services.

(viii) Respite care.

(C) The term `State medicaid plan' means the plan of medical assistance of a State approved under title XIX of the Social Security Act.

(D) The term `qualified long-term care insurance policy' means a long-term care insurance policy that meets the requirements of subsection (e).

(b) TERMS OF PROJECTS-

(1) IN GENERAL- The Secretary may not approve a project of a State under this section unless the Secretary finds that the project meets the following requirements:

(A) The terms of the project are disclosed to each individual before the individual is enrolled under the project.

(B) Subject to subsection (e)(8)(C), any qualified long-term care insurance policy made available in conjunction with the project cannot condition, or otherwise limit, payment under the policy in any manner because the insured is eligible for, or payment may be made, for services under any public program (including the medicare or medicaid programs).

(2) LIMIT ON NUMBER OF LIVES INSURED UNDER ALL PROJECTS- The Secretary shall approve projects under this section in a manner that assures that there are never more than 25,000 covered long-term care beneficiaries under all the projects. The Secretary, consistent with the previous sentence, may require that a project of a State must permit enrollment of a minimum number of covered long-term care beneficiaries.

(3) WAIVER OF CERTAIN REQUIREMENTS- The Secretary may waive the following requirements in title XIX of the Social Security Act with respect to covered long-term care beneficiaries who are 65 years of age or older and who have exhausted benefits under a qualified long-term care insurance policy to the extent required to carry out a project:

(A) Sections 1901, 1902(a)(1), 1902(a)(10) (other than subparagraph (B)), 1902(a)(17), and 1903(f), relating to required eligibility and benefits.

(B) Sections 1902(a)(14) and 1916(b), relating to premiums and cost-sharing.

(c) LIMITATION ON PAYMENTS- Notwithstanding section 1903 of the Social Security Act, payment may not be made under such section for Federal financial participation for medical assistance with respect to long-term care services under a State medicaid plan for individuals 65 years of age or older during a year in which the project is in effect under this section in a State to the extent that such expenditures exceed the projected amount (determined by the Secretary at the time of approval of the project) that the State would have spent for such services for such individuals during such year if this section had not been in effect.

(d) STATE ASSURANCES- The Secretary shall not approve an application of a State under this section unless the State provides assurance satisfactory to

the Secretary that--

(1) aggregate expenditures under the plan for long-term care services for individuals 65 years of age or older in any fiscal year under the project will not exceed the aggregate expenditures under the plan for such services for such individuals in the fiscal year in the absence of such project;

(2) there will be no reduction or limitation of benefits to any individual eligible for medical assistance under the State medicaid plan as a result of operation of the project;

(3) the State will continue to make long-term care services available under the plan, at least to the extent such services are made available under the plan as in effect before the date of such approval and could continue to be provided consistent with law;

(4) the State will not permit the sale of any qualified long-term care insurance policy under the project unless the State has determined that the policy meets requirements specified in subsection (e) and meets standards at least as stringent as those set forth in the NAIC Long-Term Care Insurance Model Act (as of June 1989) and the NAIC regulations implementing the Act (to the extent not inconsistent with the requirements of subsection (e));

(5) in the sale of long-term care insurance policies not covered under the project, the State will require, at or before the time of sale of such a policy, that there be a disclosure of the fact that purchase of such a policy will not provide potential benefits under title XIX of the Social Security Act, unlike such policies covered under the project;

(6) the State will guarantee the payment of benefits under qualified long-term care insurance policies sold under the project;

(7) the percentage, of the income official poverty line, established by the State under section 1902(l)(2)(A)(i) of the Social Security Act is 185 percent;

(8) the State is in compliance with the requirements of section 1902(a)(28);

(9) nursing facilities under the medicaid plan establish and maintain identical policies and practices regarding admission for all individuals regardless of whether or not the individuals are participating in the project;

(10) the State has actuarial guidelines regarding, and actuaries capable of evaluating, actuarial submissions of companies seeking to offer qualified long-term care insurance policies under the project; and

(11) the State has provided for a program of counseling residents of the State with respect to the purchase of long-term care insurance policies

and alternative financial options for protection of assets.

No payments shall be made under section 1903(a) of the Social Security Act with respect to a State's performance of the guarantee required under paragraph (6).

(e) REQUIREMENTS FOR QUALIFIED LONG-TERM CARE INSURANCE POLICIES- The requirements specified in this subsection (respecting qualified long-term care insurance policies offered under the project in the State) are as follows:

(1) STANDARD FORMAT AND DISCLOSURE-

(A) POLICY AND APPLICATION- Each such long-term care insurance policy, and application for such a policy, shall be written in simple, easily understood English in a standard format (established by the State) providing standardized terms and disclosure.

(B) MARKETING MATERIAL- Marketing materials used with respect to such a policy shall be written or otherwise stated in simple, easily understood English.

(C) REQUIRED DISCLOSURE- No such long-term care insurance policy may be sold (or offered for sale) unless there is disclosed in writing, no later than the time of sale of the policy--

(i) the proportion of premiums collected (and interest and other revenues derived therefrom) which will be applied to payment of benefits, and

(ii) the potential benefits under title XIX of the Social Security Act associated under the project with purchase of such a policy.

(2) MINIMUM LOSS-RATIO- Such a policy must guarantee over time, using generally accepted actuarial standards, that at least 70 percent of the amount of the premiums (and interest and other revenues derived therefrom) will be paid on benefits under the policy.

(3) STANDARD MINIMUM BENEFITS- Each such long-term care insurance policy shall provide at least the following benefits, up to the maximum dollar level of benefits provided under (and specified on the face of) the plan under paragraph (4):

(A) NURSING FACILITY SERVICES- Coverage of, and payment for, nursing facility services for individuals determined (in accordance with paragraph (5)) to require an institutional level of care.

(B) HOME AND COMMUNITY-BASED SERVICES- Personal care services (including home health aide and homemaker services), home health services, and respite care in the individual's place of residence for individuals determined to be at risk of institutionalization without such services.

The policy may not impose any limits on the duration of the period of services under the policy, other than the maximum dollar level of benefits (which shall apply uniformly to all services). The payment levels established for services under the plan shall be adjusted at least annually to reflect the percentage increase in the Consumer Price Index for All Urban Consumers (all items; U.S. city average).

(4) SPECIFICATION OF MAXIMUM DOLLAR LEVEL OF BENEFITS- Each such long-term care insurance policy shall specify a maximum dollar level of benefits. Such maximum dollar level of benefits shall be increased, in each year after the year following the year of its issuance, by the same percentage as the percentage increase in the Consumer Price Index for All Urban Consumers (all items; U.S. city average) from December of the year before the year of issuance to December of the year preceding the year involved.

(5) DETERMINATION OF BENEFIT ELIGIBILITY-

(A) CASE MANAGEMENT REQUIRED- Each long-term care insurance policy shall use a standard formula, set by the State and based on a uniform assessment instrument specified by the State, to determine the level of care appropriate for each case. Such formula must be applied by the State or a case-management agency which is independent of the issuer of the policy.

(B) NO HIGHER LEVEL OF CARE REQUIREMENT- A long-term care insurance policy may not condition or limit eligibility for benefits--

(i) for noninstitutional benefits to the need for or receipt of institutional services,

(ii) for home care services to the need for or receipt of nursing care, or

(iii) for any benefits on the medical necessity for such benefits.

(C) APPEAL RIGHTS- Each long-term care insurance policy shall provide for and specify procedures (meeting reasonable standards specified by the State) for the appeal of determinations of level of care made under subparagraph (A).

(6) LIMITATION BASED ON PRE-EXISTING CONDITION-

(A) IN GENERAL- Except as permitted under subparagraph (B), a long-term care insurance policy may not limit or delay an individual's eligibility for benefits based on a pre-existing condition.

(B) EXCEPTION- A long-term care insurance policy may deny payments during the first 6 months of coverage for treatment respecting any condition that existed during the 6 months before the date of purchase of the policy.

(7) NO POST-CLAIMS CONDITIONING AND GUARANTEED RENEWABLE- After a long-term care insurance policy has been issued, the issuer may not deny claims under the policy on any grounds other than fraud or a knowing misrepresentation in the application for the policy or deny renewal of the coverage other than on such grounds or the failure to make timely payment of premiums.

(8) MEDICAL UNDERWRITING, PREMIUMS, AND COST-SHARING-

(A) NO MEDICAL UNDERWRITING-

(i) IN GENERAL- Except as provided in clauses (ii) and (iii), an individual may not be discriminated against in the offering, renewal, or benefits under such a long-term care insurance policy based on the individual's medical condition.

(ii) TREATMENT OF INDIVIDUALS RECEIVING BENEFITS- The issuer of a long-term care insurance policy may deny initial issuance of such a policy to an individual receiving long-term care services at the time of the application for issuance of the policy.

(iii) VARYING PREMIUMS BY AGE CLASSIFICATION- Clause (i) shall not be construed as preventing the issuer of a long-term care insurance policy from varying the premiums based on the age classification of individuals at the time of issuance of the policy.

(B) LEVEL PREMIUMS- Each such policy shall have periodic premiums that are the same for all individuals in the same age group who purchased such a policy when they were in the same age group. The premiums rates must be guaranteed for the duration of the policy and must be suspended during any period in which benefits are payable under the policy.

(C) NONDUPLICATION OF MEDICARE BENEFITS- Each such policy shall provide that, to the extent not required under section 1862(b) of the Social Security Act, benefits are not payable under the policy for services for which payment may be made under title XVIII of such Act.

(D) REDUCED PAID-UP PROVISION- Each long-term care insurance policy shall have a provision under which, if the policy lapses after 5 or more years of coverage, the policy will provide, without payment of any additional premiums, benefits equal to at least 30 percent of the maximum dollar level of benefits available at term, and, after subsequent periods of coverage, the policy will provide, without payment of any additional premium, benefits equal to at least an increased percentage (established by the Secretary) of the maximum dollar level of benefits available at term.

(E) ADDITIONAL CONSUMER PROTECTIONS- Each long-term care

policy meets such standards relating to compensation arrangements, advertising, marketing, and appropriateness of purchase which the Secretary finds are equal to, or more stringent than, the requirements specified in sections 12, 15, 16, and 17 of Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Act (as adopted by the National Association of Insurance Commissioners as of December 7, 1989).

(9) ACCESS TO INFORMATION- The issuer of the long-term care policy will make available to the State and the Secretary (upon request) information respecting the utilization of benefits (and payments) under the policy, the health status of individuals purchasing such policies, and such other information as the Secretary may require, including information on lapse rates, rescissions, application denials, payment denials, and complaints received.

(f) PROHIBITED SALES PRACTICES-

(1) DUTY OF GOOD FAITH AND FAIR DEALING- Each individual who is selling or offering for sale a long-term care insurance policy under the demonstration project has a duty of good faith and fair dealing to the purchaser or potential purchaser of such a policy.

(2) SPECIFIC PRACTICES- An individual who is selling or offering for sale such a long-term care insurance policy--

(A) may not complete the medical history portion of an application;

(B) may not knowingly sell such a policy to provide benefits to an individual who is eligible for benefits under a State plan approved under title XIX of the Social Security Act (other than only because of the operation of the demonstration project); and

(C) may not sell such a policy knowing that the policy provides coverage that duplicates coverage already provided and may not sell a long-term care insurance policy for the benefit of an individual unless the individual (or a representative of the individual) provides a written statement to the effect that the coverage does not duplicate other coverage in effect.

(3) CIVIL MONEY PENALTY- Any person who sells a long-term care insurance policy under the demonstration project in violation of requirements imposed under subsection (e) or who violates paragraph (1) or (2) of this subsection is subject to a civil money penalty of not to exceed $25,000 for each such violation. The provisions of section 1128A of the Social Security Act (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a) of such Act.

(g) APPLICATION, DURATION, AND ELIGIBILITY-

(1) An application to the Secretary from the State for approval of the project shall be deemed granted unless the Secretary, within 90 days after the date of its submission to the Secretary, either denies such application in writing or informs the State in writing with respect to any additional information which is needed in order to make a final determination with respect to the application. After the date the Secretary receives such additional information, the application shall be deemed granted unless the Secretary, within 90 days of such date, denies such application.

(2) Any termination of a project shall not affect covered long-term care beneficiaries who purchased qualified long-term care insurance policies before the termination date.

(h) ANNUAL STATE REPORTS- The State shall annually (during the duration of such project) report to the Secretary on--

(1) the number of individuals enrolled in the demonstration project in such State;

(2) the number of enrollees actually receiving long-term care services under such demonstration project (whether through long-term care insurance or medical assistance under title XIX of the Social Security Act);

(3) the number of enrollees actually receiving long-term care in the form of medical assistance;

(4) the average income, age, and assets of each enrollee; and

(5) the number and characteristics of private insurers with policies approved by the State under the demonstration project.

(i) SECRETARY'S REPORTS- The Secretary shall submit to Congress reports on projects under this section. The first such report shall be submitted in 1997 and subsequent reports shall be submitted each 6th year thereafter until 2021. Each such report shall summarize and analyze information reported by the State under subsection (h), and shall evaluate the cost effectiveness of the projects.

SEC. 4472. TIMELY PAYMENT UNDER WAIVERS OF FREEDOM OF CHOICE OF HOSPITAL SERVICES.

(a) IN GENERAL- Section 1915(b)(4) of the Social Security Act (42 U.S.C. 1396n(b)(4)) is amended by inserting before the period at the end the following: `and if providers under such restriction are paid on a timely basis in the same manner as health care practitioners must be paid under section 1902(a)(37)(A)'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall take effect as of the first calendar quarter beginning more than 30 days after the date of

the enactment of this Act.

SEC. 4473. HOME AND COMMUNITY-BASED SERVICES WAIVERS.

(a) CLARIFYING DEFINITION OF ROOM AND BOARD-

(1) IN GENERAL- Subsections (c)(1) and (d)(1) of section 1915 of the Social Security Act (42 U.S.C. 1396n) are each amended by adding at the end the following: `For purposes of this subsection, the term `room and board' shall not include the portion of costs of rent and food attributable to an unrelated personal caregiver who is residing in the same household with an individual who, but for the assistance of such caregiver, would require admission to a hospital, nursing facility, or intermediate care facility for the mentally retarded.'.

(2) EFFECTIVE DATE- The amendments made by paragraph (1) shall apply to services furnished on or after the date of the enactment of this Act.

(b) TREATMENT OF PERSONS WITH MENTAL RETARDATION OR A RELATED CONDITION IN A DECERTIFIED FACILITY-

(1) IN GENERAL- Section 1915(c)(7) of such Act (42 U.S.C. 1396n(c)(7)) is amended by adding at the end the following new subparagraph:

`(C) In making estimates under paragraph (2)(D) in the case of a waiver to the extent that it applies to individuals with mental retardation or a related condition who are resident in an intermediate care facility for the mentally retarded the participation of which under the State plan is terminated, the State may determine the average per capita expenditures that would have been made in a fiscal year for those individuals without regard to any such termination.'.

(2) EFFECTIVE DATE- The amendment made by paragraph (1) shall apply as if included in the enactment of the Omnibus Budget Reconciliation Act of 1981, but shall only apply to facilities the participation of which under a State plan under title XIX of the Social Security Act is terminated on or after the date of the enactment of this Act.

(c) SCOPE OF RESPITE CARE-

(1) IN GENERAL- Section 1915(c)(4) of such Act is amended by adding at the end the following:

`Except as provided under paragraph (2)(D), the Secretary may not restrict the number of hours or days of respite care in any period which a State may provide under a waiver under this subsection.'.

(2) EFFECTIVE DATE- The amendment made by paragraph (1) shall apply as if included in the enactment of the Omnibus Budget Reconciliation Act of 1981.

(d) PERMITTING ADJUSTMENT IN ESTIMATES TO TAKE INTO ACCOUNT PREADMISSION SCREENING REQUIREMENT- In the case of a waiver under section 1915(c) of the Social Security Act for individuals with mental retardation or a related condition in a State, the Secretary of Health and Human Services shall permit the State to adjust the estimate of average per capita expenditures submitted under paragraph (2)(D) of such section, with respect to such expenditures made on or after January 1, 1989, to take into account increases in expenditures for, or utilization of, intermediate care facilities for the mentally retarded resulting from implementation of section 1919(e)(7)(A) of such Act.

SEC. 4474. PROVISIONS RELATING TO FRAIL ELDERLY DEMONSTRATION PROJECT WAIVERS.

(a) EXPANSION OF WAIVERS- Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 is amended--

(1) in paragraph (1), by striking `10' and inserting `15'; and

(2) by adding at the end the following new paragraph:

`(3) In the case of an organization receiving an initial waiver under this subsection on or after October 1, 1990, the Secretary (at the request of the organization) shall not require the organization to provide services under title XVIII of the Social Security Act on a capitated or other risk basis during the first 2 years of the waiver.'.

(b) APPLICATION OF SPOUSAL IMPOVERISHMENT RULES- (1) Section 1924(a) of the Social Security Act (42 U.S.C. 1396r-5(a)) is amended by adding at the end the following new paragraph:

`(5) APPLICATION TO INDIVIDUALS RECEIVING SERVICES FROM ORGANIZATIONS RECEIVING CERTAIN WAIVERS- This section applies to individuals receiving services from any organization receiving a frail elderly demonstration project waiver under section 9412(b) of the Omnibus Budget Reconciliation Act of 1986.'.

(2) Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986, as amended by subsection (a), is amended by adding at the end the following new paragraph:

`(4) Section 1924 of the Social Security Act shall apply to any individual receiving services from an organization receiving a waiver under this subsection.'.

Subpart E--Miscellaneous

SEC. 4481. MEDICAID STATE PLANS ASSURING THE IMPLEMENTATION OF A PATIENT'S RIGHT TO PARTICIPATE IN

AND DIRECT HEALTH CARE DECISIONS AFFECTING THE PATIENT.

(a) IN GENERAL- Section 1902 of the Social Security Act (42 U.S.C. 1396a(a)), as amended by sections 4401(a)(2) and 4423(a) of this title, is amended--

(1) in subsection (a)--

(A) by striking `and' at the end of paragraph (54),

(B) by striking the period at the end of paragraph (55) and inserting `; and', and

(C) by inserting after paragraph (55) the following new paragraph:

`(56) provide that each hospital, nursing facility, provider of home health care or personal care services, hospice program, or health maintenance organization (as defined in section 1903(m)(1)(A)) receiving funds under the plan shall comply with the requirement of subsection (u).'; and

(2) by adding, after the subsections added by sections 4441(a) and 4451(a)(2) of this title, the end the following new subsection:

`(u)(1) For purposes of subsection (a)(56) and sections 1903(m)(1)(A) and 1919(c)(2)(E), the requirement of this subsection is that a provider or organization (as the case may be) maintain written policies and procedures with respect to all adult individuals receiving medical care by or through the provider or organization--

`(A) to provide written information to each such individual concerning--

`(i) an individual's rights under State law (whether statutory or as recognized by the courts of the State) to make decisions concerning such medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives (as defined in paragraph (3)), and

`(ii) the provider's or organization's written policies respecting the implementation of such rights;

`(B) to document in the individual's medical record whether or not the individual has executed an advance directive;

`(C) not to condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive;

`(D) to ensure compliance with requirements of State law respecting advance directives; and

`(E) to provide (individually or with others) for education for staff and the community on issues concerning advance directives.

Subparagraph (C) shall not be construed as requiring the provision of care which conflicts with an advance directive.

`(2) The written information described in paragraph (1)(A) shall be provided to an adult individual--

`(A) in the case of a hospital, at the time of the individual's admission as an inpatient,

`(B) in the case of a nursing facility, at the time of the individual's admission as a resident,

`(C) in the case of a provider of home health care or personal care services, in advance of the individual coming under the care of the provider,

`(D) in the case of a hospice program, at the time of initial receipt of hospice care by the individual from the program, and

`(E) in the case of a health maintenance organization, at the time of enrollment of the individual with the organization.

`(3) In this subsection, the term `advance directive' means a written instruction, such as a living will or durable power of attorney for health care, recognized under State law and relating to the provision of such care when the individual is incapacitated.'.

(b) CONFORMING AMENDMENTS-

(1) Section 1903(m)(1)(A) of such Act (42 U.S.C. 1396b(m)(1)(A)) is amended--

(A) by inserting `meets the requirement of section 1902(s)' after `which' the first place it appears, and

(B) by inserting `meets the requirement of section 1902(a) and' after `which' the second place it appears.

(2) Section 1919(c)(2) of such Act (42 U.S.C. 1396r(c)(2)) is amended by adding at the end the following new subparagraph:

`(E) INFORMATION RESPECTING ADVANCE DIRECTIVES- A nursing facility must comply with the requirement of section 1902(u) (relating to maintaining written policies and procedures respecting advance directives).'.

(c) EFFECTIVE DATE- The amendments made by this section shall apply with respect to services furnished on or after the first day of the first month beginning more than 1 year after the date of the enactment of this Act.

(d) STUDY TO ASSESS IMPLEMENTATION OF A PATIENT'S RIGHT TO

PARTICIPATE IN AND DIRECT HEALTH CARE DECISIONS AFFECTING THE PATIENT-

(1) IN GENERAL- The Secretary of Health and Human Services shall (subject to paragraph (2)) enter into an agreement with the Institute of Medicine of the National Academy of Sciences to conduct a study with respect to the context in which directed health care decisions (including advance directives) are made and carried out, including the incidence and processes of decision-making about life-sustaining treatment that occur with and without advance directives.

(2) ARRANGEMENTS FOR STUDY- The Secretary shall request the Institute of Medicine of the National Academy of Sciences to submit an application to conduct the study described in paragraph (1). If the Institute submits an acceptable application, the Secretary shall enter into an appropriate arrangement with the Academy for the conduct of the study within 28 days of the date the application is received. If the Institute does not submit an acceptable application to conduct the study, the Secretary may request one or more appropriate nonprofit private entities to submit an application to conduct the study and may enter into an appropriate arrangement for the conduct of the study by the entity which submits the best acceptable application.

(3) REPORT- The results of the study shall be reported to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate and the Secretary by not later than 4 years after the date of the enactment of this Act. Such report shall include such recommendations for legislation as may be appropriate to carry out further the purpose of this section.

(e) PUBLIC EDUCATION DEMONSTRATION PROJECT- The Secretary of Health and Human Services, no later than 6 months after the date of the enactment of this Act, shall develop and implement a demonstration project in selected States to inform the public of the option to execute advance directives and of a patient's right to participate and direct health care decisions. The Secretary shall report to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate on the results of the project and on whether such project should be extended.

SEC. 4482. IMPROVEMENT IN QUALITY OF PHYSICIAN SERVICES.

(a) USE OF UNIQUE PHYSICIAN IDENTIFIERS-

(1) ESTABLISHMENT OF SYSTEM-

(A) IN GENERAL- Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended by adding after the subsections added by sections 4441(a), 4451(a)(2), and 4481(a)(2) of this title, the following new subsection:

`(v) The Secretary shall establish a system, for implementation by not later than July 1, 1991, which provides for a unique identifier for each physician who furnishes services for which payment may be made under a State plan approved under this title.'.

(B) DEADLINE AND CONSIDERATIONS- The system established under the amendment made by subparagraph (A) may be the same as, or different from, the system established under section 9202(g) of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(2) REQUIRING INCLUSION WITH CLAIMS- Section 1903(i) of the Social Security Act (42 U.S.C. 1396b(i)), as amended by sections 4401(a)(1)(B) and 4431(e)(17) of this title, is amended--

(A) by striking the period at the end of paragraph (11) and inserting `; or', and

(B) by inserting after paragraph (11) the following new paragraph:

`(12) with respect to any amount expended for physicians' services furnished on or after the first day of the first quarter beginning more than 60 days after the date of establishment of the physician identifier system under section 1902(v), unless the claim for the services includes the unique physician identifier provided under such system.'.

(b) MAINTENANCE OF ENCOUNTER DATA BY HEALTH MAINTENANCE ORGANIZATIONS-

(1) IN GENERAL- Section 1903(m)(2)(A) of such Act (42 U.S.C. 1396b(m)(2)(A)), as amended by sections 4461(a) and 4461(b) of this title, is amended--

(A) by striking `and' at the end of clause (ix),

(B) by striking the period at the end of clause (x) and inserting `; and', and

(C) by adding at the end the following new clause:

`(xi) such contract provides for maintenance of sufficient patient encounter data to identify the physician who delivers services to patients.'.

(2) EFFECTIVE DATE- The amendments made by paragraph (1) shall apply to contract years beginning after the date of the establishment of the system described in section 1902(v) of the Social Security Act.

(c) MAINTENANCE OF LIST OF PHYSICIANS BY STATES-

(1) IN GENERAL- Section 1902(a) of such Act (42 U.S.C. 1396a(a)), as amended by sections 4401(a)(2), 4423(a), and 4481(a) of this title, is amended--

(A) by striking `and' at the end of paragraph (55),

(B) by striking the period at the end of paragraph (56) and inserting `; and', and

(C) by inserting after paragraph (56) the following new paragraph:

`(57) maintain a list (updated not less often than monthly, and containing each physician's unique identifier provided under the system established under subsection (v)) of all physicians who are certified to participate under the State plan.'.

(2) EFFECTIVE DATE- The amendments made by paragraph (1) shall apply to medical assistance for calendar quarters beginning more than 60 days after the date of establishment of the physician identifier system under section 1902(v) of the Social Security Act.

(d) FOREIGN MEDICAL GRADUATE CERTIFICATION-

(1) PASSAGE OF FMGEMS EXAMINATION IN ORDER TO OBTAIN IDENTIFIER- The Secretary of Health and Human Service shall provide, in the identifier system established under section 1902(v) of the Social Security Act, that no foreign medical graduate (as defined in section 1886(h)(5)(D) of such Act) shall be issued an identifier under such system unless the individual--

(A) has passed the FMGEMS examination (as defined in section 1886(h)(5)(E) of such Act); or

(B) has previously received certification from, or has previously passed the examination of, the Educational Commission for Foreign Medical Graduates.

(2) EFFECTIVE DATE- Paragraph (1) shall apply with respect to issuance of an identifier applicable to services furnished on or after January 1, 1992.

(e) MINIMUM QUALIFICATIONS FOR BILLING FOR PHYSICIANS' SERVICES TO CHILDREN AND PREGNANT WOMEN- Section 1903(i) of the Social Security Act (42 U.S.C. 1396b(i)), as amended by sections 4401(a)(1)(B) and 4431(e)(17) of this title and subsection (a)(2) of this section, is further amended--

(1) by striking the period at the end of paragraph (13) and inserting `; or'; and

(2) by inserting after paragraph (13) the following new paragraph:

`(14) with respect to any amount expended for physicians' services furnished by a physician on or after January 1, 1992, to--

`(A) a child under 21 years of age, unless the physician--

`(i) is certified in family practice or pediatrics by the medical specialty board recognized by the American Board of Medical Specialties for family practice or pediatrics,

`(ii) is employed by, or affiliated with, a Federally-qualified health center (as defined in section 1905(l)(2)(B)),

`(iii) holds admitting privileges at a hospital participating in a State plan approved under this title,

`(iv) is a member of the National Health Service Corps, or

`(v) documents a current, formal, consultation and referral arrangement with a pediatrician or family practitioner who has the certification described in clause (i) for purposes of specialized treatment and admission to a hospital; or

`(B) to a pregnant woman (or during the 60 day period beginning on the date of termination of the pregnancy) unless the physician--

`(i) is certified in family practice or obstetrics by the medical specialty board recognized by the American Board of Medical Specialties for family practice or obstetrics,

`(ii) is employed by, or affiliated with, a Federally-qualified health center (as defined in section 1905(l)(2)(B)),

`(iii) holds admitting privileges at a hospital participating in a State plan approved under this title,

`(iv) is a member of the National Health Service Corps, or

`(v) documents a current, formal, consultation and referral arrangement with an obstetrician or family practitioner who has the certification described in clause (i) for purposes of specialized treatment and admission to a hospital.'.

(f) REPORTING OF MISCONDUCT OR SUBSTANDARD CARE-

(1) IN GENERAL- Section 1921(a) of such Act (42 U.S.C. 1396r-2(a)) is amended--

(A) in paragraph (1), in the matter before subparagraph (A), by inserting `(or any peer review organization or private accreditation entity reviewing the services provided by health care practitioners)' after `health care practitioners'; and

(B) in paragraph (1), by adding at the end the following new subparagraph:

`(D) Any negative action or finding by such authority, organization, or entity regarding the practitioner or entity.'.

(2) EFFECTIVE DATE- The amendments made by paragraph (1) shall apply to State information reporting systems as of January 1, 1992, without regard to whether or not the Secretary of Health and Human Services has promulgated any regulations to carry out such amendments by such date.

SEC. 4483. CLARIFICATION OF AUTHORITY OF INSPECTOR GENERAL.

Section 1128A(j) of the Social Security Act (42 U.S.C. 1320a-7a(j)) is amended--

(1) by striking `(j)' and inserting `(j)(1)'; and

(2) by adding at the end the following new paragraph:

`(2) The Secretary may delegate authority granted under this section and under section 1128 to the Inspector General of the Department of Health and Human Services.'.

SEC. 4184. NOTICE TO STATE MEDICAL BOARDS WHEN ADVERSE ACTIONS TAKEN.

(a) IN GENERAL- Section 1902(a)(41) of the Social Security Act (42 U.S.C. 1396a(a)(41)) is amended by inserting `and, in the case of a physician and notwithstanding paragraph (7), the State medical licensing board' after `shall promptly notify the Secretary'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply to sanctions effected more than 60 days after the date of the enactment of this Act.

SEC. 4485. MISCELLANEOUS PROVISIONS.

(a) PSYCHIATRIC HOSPITALS-

(1) CLARIFICATION OF COVERAGE OF INPATIENT PSYCHIATRIC HOSPITAL SERVICES-

(A) IN GENERAL- Section 1905(h)(1)(A) of the Social Security Act (42 U.S.C. 1396d(h)(1)(A)), as amended by section 2340(b) of the Deficit Reduction Act of 1984, is amended by inserting `or in another inpatient setting that the Secretary has specified in regulations' after `1861(f)'.

(B) EFFECTIVE DATE- The amendment made by subparagraph (A) shall be effective as if included in the enactment of the Deficit Reduction Act of 1984.

(2) INTERMEDIATE SANCTIONS FOR PSYCHIATRIC HOSPITALS- Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended by adding

after the subsections added by sections 4441(a), 4451(a)(2), 4481(a)(2) and 4482(a)(1), the following new subsection:

`(w)(1) In addition to any other authority under State law, where a State determines that a psychiatric hospital which is certified for participation under its plan no longer meets the requirements for a psychiatric hospital (referred to in section 1905(h)) and further finds that the hospital's deficiencies--

`(A) immediately jeopardize the health and safety of its patients, the State shall terminate the hospital's participation under the State plan; or

`(B) do not immediately jeopardize the health and safety of its patients, the State may terminate the hospital's participation under the State plan, or provide that no payment will be made under the State plan with respect to any individual admitted to such hospital after the effective date of the finding, or both.

`(2) Except as provided in paragraph (3), if a psychiatric hospital described in paragraph (1)(B) has not complied with the requirements for a psychiatric hospital under this title--

`(A) within 3 months after the date the hospital is found to be out of compliance with such requirements, the State shall provide that no payment will be made under the State plan with respect to any individual admitted to such hospital after the end of such 3-month period, or

`(B) within 6 months after the date the hospital is found to be out of compliance with such requirements, no Federal financial participation shall be provided under section 1903(a) with respect to further services provided in the hospital until the State finds that the hospital is in compliance with the requirements of this title.

`(3) The Secretary may continue payments, over a period of not longer than 6 months from the date the hospital is found to be out of compliance with such requirements, if--

`(A) the State finds that it is more appropriate to take alternative action to assure compliance of the hospital with the requirements than to terminate the certification of the hospital,

`(B) the State has submitted a plan and timetable for corrective action to the Secretary for approval and the Secretary approves the plan of corrective action, and

`(C) the State agrees to repay to the Federal Government payments received under this paragraph if the corrective action is not taken in accordance with the approved plan and timetable.'.

(b) STATE UTILIZATION REVIEW SYSTEMS- Section 9432 of the Omnibus Budget Reconciliation Act of 1986 is amended--

(1) in subsection (a)--

(A) by inserting `(1)' after `IN GENERAL- ',

(B) by striking `, during the period' and all that follows through `Congress,', and

(C) by adding at the end the following new paragraph:

`(2) The Secretary may not, during the period beginning on the date of the enactment of the Omnibus Budget Reconciliation Act of 1990 and ending on the date that is 180 days after the date on which the report required by subsection (d) is submitted to the Congress, publish final or interim final regulations requiring a State plan approved under title XIX of the Social Security Act to include a program for ambulatory surgery, preadmission testing, or same-day surgery.';

(2) in subsection (b)(4), by inserting `and subsection (d)' after `In this subsection'; and

(3) by adding at the end the following new subsection:

`(d) REPORT- The Secretary shall report to Congress, by not later than January 1, 1993, for each State in a representative sample of States--

`(1) an analysis of the procedures for which programs for ambulatory surgery, preadmission testing, and same-day surgery are appropriate for patients who are covered under the State medicaid plan, and

`(2) the effects of such programs on access of such patients to necessary care, quality of care, and costs of care.

In selecting such a sample of States, the Secretary shall include some States with medicaid plans that include such programs.'.

(c) ADDITIONAL MISCELLANEOUS PROVISIONS-

(1) Effective July 1, 1990--

(A) section 1902(a)(10)(C)(iv) of the Social Security Act is amended by striking `through (20)' and inserting `through (21)', and

(B) section 1902(j) of such Act is amended by striking `through (21)' and inserting `through (22)'.

(2) Effective as if included in subtitle D of title VI of the Omnibus Budget Reconciliation Act of 1989, section 301(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(j) is amended by adding at the end the following: `This paragraph does not authorize the withholding of information from either House of Congress or from, to the extent of matter within its jurisdiction, any committee or subcommittee of such committee or any joint committee of Congress or any subcommittee of such joint committee.'.

(3) Section 505(b) of the Social Security Act (42 U.S.C. 705(b)) is amended in the matter preceding paragraph (1) by striking `requirement' and inserting `requirements'.

Subtitle C--Energy and Miscellaneous User Fees

PART 1--ENERGY

SEC. 4501. SOLAR, WIND, WASTE, AND GEOTHERMAL POWER PRODUCTION INCENTIVES.

(a) AMENDMENTS TO PURPA- Section 210 of the Public Utility Regulatory Policies Act of 1978 is amended as follows:

(1) In subsection (a), strike out `, and to encourage geothermal small power production facilities of not more than 80 megawatts capacity,'.

(2) In subsection (e)(2), insert `(other than a qualifying small power production facility which is a solar, wind, waste, or geothermal facility as defined in section 3(17)(E) of the Federal Power Act)' after `facility' where it first appears, and strike out `, or 80 megawatts for a qualifying small power production facility using geothermal energy as its primary energy source,'.

(b) AMENDMENT OF FEDERAL POWER ACT- Section 3(17) of the Federal Power Act is amended as follows:

(1) In subparagraph (A), insert `a facility which is a solar, wind, waste, or geothermal facility, or' after ` `small power production facility' means'.

(2) Insert at the end thereof the following new subparagraph--

`(E) `solar, wind, waste or geothermal facility' means a facility which produces electric energy solely by the use, as a primary energy source, of solar energy, wind energy, waste, or geothermal resources;'.

(c) REGULATIONS- Unless the Federal Energy Regulatory Commission otherwise specifies, by rule, after the enactment of this Act, any solar, wind, waste, or geothermal facility (as defined in section 3(17)(E) of the Federal Power Act as amended by this Act), which is a qualifying small power production facility (as defined in subparagraph (C) of section 3(17) of the Federal Power Act as amended by this Act)--

(1) shall be considered a qualifying small power production facility for purposes of part 292 of title 18, Code of Federal Regulations, notwithstanding any size limitations contained in such part, and

(2) shall not be subject to the size limitation contained in section 292.601(b) of such part.

SEC. 4502. NRC USER FEES AND ANNUAL CHARGES.

(a) ANNUAL ASSESSMENT-

(1) AMOUNT- The Nuclear Regulatory Commission (hereafter in this section referred to as the `Commission') shall annually assess and collect such fees and charges as are described in subsections (b) and (c) in an amount that approximates 100 percent of the budget authority of the Commission in the fiscal year in which such assessment is made less any amount appropriated to the Commission from the Nuclear Waste Fund in such fiscal year.

(2) FIRST ASSESSMENT- The first such assessment shall be made not later than September 30, 1991, and shall be based on the budget authority of the Commission for fiscal year 1991.

(b) FEES FOR SERVICE OR THING OF VALUE- Pursuant to section 9701 of title 31, United States Code, any person who receives a service or thing of value from the Commission shall pay fees to cover the Commission's costs in providing any such service or thing of value.

(c) ANNUAL CHARGES-

(1) PERSONS SUBJECT TO CHARGE- Any person who holds a license issued under section 103 or 104 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134(b)) that authorizes such person to operate a utilization facility with a rated thermal capacity in excess of 50,000,000 watts shall pay, in addition to the fees set forth in subsection (b), an annual charge.

(2) AGGREGATE AMOUNT OF CHARGES- The aggregate amount of the annual charge collected from all persons described in paragraph (1) shall equal an amount that approximates 100 percent of the budget authority of the Commission in the fiscal year in which such charge is collected, less any amount appropriated to the Commission from the Nuclear Waste Fund and the amount of fees collected under subsection (b) in such fiscal year.

(3) AMOUNT PER LICENSEE- The Commission shall establish, by rule, a schedule of charges fairly and equitably allocating the aggregate amount of charges described in paragraph (2) among the licensees described in paragraph (1). The charges shall have a reasonable relationship to the cost of providing regulatory services and may be based on the allocation of the Commission's resources among licensees or classes of licensees described in paragraph (1).

(d) DEFINITION- As used in this section, `Nuclear Waste Fund' means the fund established pursuant to section 302(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(c)).

(e) REPEAL- Title VII of the Consolidated Omnibus Budget Reconciliation Act

of 1985 (Public Law 99-272) is amended by striking subtitle G. This repeal shall become effective upon promulgation of the Nuclear Regulatory Commission's final rule implementing this section.

PART 2--RAILROAD USER FEES

SEC. 4511. AMENDMENTS TO FEDERAL RAILROAD SAFETY ACT OF 1970.

(a) USER FEES- The Federal Railroad Safety Act of 1970 (45 U.S.C. 431 et seq.) is amended by adding at the end the following new section:

`SEC. 216. USER FEES.

`(a)(1) The Secretary shall establish a schedule of fees to be assessed equitably to railroads, in reasonable relationship to an appropriate combination of criteria such as revenue ton-miles, track miles, passenger miles, or other relevant factors, but shall not be based on the proportion of industry revenues attributable to a railroad or class of railroads.

`(2) The Secretary shall establish procedures for the collection of such fees. The Secretary may use the services of any Federal, State, or local agency or instrumentality to collect such fees, and may reimburse such agency or instrumentality a reasonable amount for such services.

`(3) Fees established under this section shall be assessed to railroads subject to this Act and shall cover the costs of administering this Act, other than activities described in section 202(a)(2).

`(b) The Secretary shall assess and collect fees described in subsection (a) with respect to each fiscal year before the end of such fiscal year.

`(c) All fees collected under subsection (b) shall be deposited into the General Fund of the United States Treasury as offsetting receipts and shall be used, to the extent provided in advance in appropriations Acts, only to carry out activities under this Act.

`(d) Fees established under subsection (a) shall be assessed in an amount sufficient to cover activities described in subsection (c) beginning on March 1, 1991, but at no time shall the aggregate of fees received for any fiscal year under this section exceed 105 percent of the aggregate of appropriations made for such fiscal year for activities to be funded by such fees.

`(e)(1) Within 90 days after the end of each fiscal year in which fees are collected pursuant to this section, the Secretary shall report to the Congress--

`(A) the amount of fees collected during that fiscal year;

`(B) the impact of such fee collections on the financial health of the railroad industry and its competitive position relative to each competing

mode of transportation; and

`(C) the total cost of Federal safety activities for each such other mode of transportation, including the portion of that total cost, if any, defrayed by Federal user fees.

`(2) With respect to any fiscal year for which the Secretary's report submitted under paragraph (1) finds--

`(A) any impact of fees collected under this section either on the financial health of the railroad industry, or on its competitive position relative to competing modes of transportation; or

`(B) any significant difference in the burden of Federal user fees borne by the railroad industry and those applicable to competing modes of transportation,

the Secretary shall, within 90 days after submission of such report, prepare and submit to the Congress specific recommendations for legislation to correct any such impact or difference.

`(f) This section shall expire on September 30, 1995.'.

(b) AUTHORIZATION OF APPROPRIATIONS- Section 214(a) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 444(a)) is amended to read as follows:

`(a) There are authorized to be appropriated to carry out this Act not to exceed $46,884,000 for fiscal year 1991.'.

PART 3--EPA USER FEES

SEC. 4521. RADON TESTING FEES.

For provisions of law providing for the charging by the Environmental Protection Agency of fees relating to radon testing fees, see section 305(e)(2) of the Toxic Substances Control Act.

SEC. 4522. MOTOR VEHICLE COMPLIANCE PROGRAM FEES.

For provisions providing for the charging by the Environmental Protection Agency of motor vehicle compliance program fees, see section 217 of H.R. 3030 (`Clean Air Act Amendments of 1990', as passed the House of Representatives (101st Congress).

TITLE V--COMMITTEE ON INTERIOR AND INSULAR AFFAIRS.

Subtitle A--Nuclear Regulatory Commission User Fees

SEC. 5101. USER FEES AND ANNUAL CHARGES.

(a) AMENDMENT TO ATOMIC ENERGY ACT- Chapter 19 of the Atomic Energy Act of 1954 (42 U.S.C. 2015 et seq.) is amended by adding at the end the following new section:

`SEC. 292. USER FEES AND ANNUAL CHARGES.

`(a) Annual Assessment-

`(1) AMOUNT- The Nuclear Regulatory Commission (hereafter in this section referred to as the `Commission') shall annually assess and collect such fees and charges as are described in subsections (b) and (c) in an amount that approximates 100 percent of the budget authority of the Commission in the fiscal year in which such assessment is made less any amount appropriated to the Commission from the Nuclear Waste Fund in such fiscal year.

`(2) FIRST ASSESSMENT- The first such assessment shall be made not later than September 30, 1991, and shall be based on the budget authority of the Commission for fiscal year 1991.

`(b) FEES FOR SERVICE OR THING OF VALUE- Pursuant to section 9701 of title 31, United States Code, any person who receives a service or thing of value from the Commission shall pay fees to cover the Commission's costs in providing any such service or thing of value.

`(c) ANNUAL CHARGES-

`(1) PERSONS SUBJECT TO CHARGE- Any person who holds a license issued under section 103 or 104 b. that authorizes such person to operate a utilization facility with a rated thermal capacity in excess of 50,000,000 watts shall pay, in addition to the fees set forth in subsection (b), an annual charge.

`(2) AGGREGATE AMOUNT OF CHARGES- The aggregate amount of the annual charge collected from all persons described in paragraph (1) shall equal an amount that approximates 100 percent of the budget authority of the Commission in the fiscal year in which such charge is collected, less any amount appropriated to the Commission from the Nuclear Waste Fund and the amount of fees collected under subsection (b) in such fiscal year.

`(3) AMOUNT PER LICENSEE- The Commission shall establish, by rule, a schedule of charges fairly and equitably allocating the aggregate amount of charges described in paragraph (2) among the licensees described in paragraph (1). The charges shall have a reasonable relationship to the cost of providing regulatory services and may be based on the allocation of the Commission's resources among licensees or classes of licensees described in paragraph (1).

`(d) DEFINITION- As used in this section, `Nuclear Waste Fund' means the fund established pursuant to section 302 (c) of the Nuclear Waste Policy Act

of 1982 (42 U.S.C. 10222 (c)).'.

(b) REPEAL- Title VII of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272) is amended by striking subtitle G. This repeal shall become effective upon promulgation of the Nuclear Regulatory Commission's final rule implementing section 292 of the Atomic Energy Act of 1954.

(c) TABLE OF CONTENTS- The table of contents of the Atomic Energy Act of 1954 is amended by adding after the item relating to section 291 the following new item:

`Sec. 292. User fees and annual charges.'.

Subtitle B--Tongass Timber Reform

SEC. 5201. SHORT TITLE.

This subtitle may be cited as the `Tongass Timber Reform Act'.

CHAPTER 1--ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT AMENDMENTS

SEC. 5211. TO REQUIRE ANNUAL APPROPRIATIONS FOR TIMBER MANAGEMENT AND RESOURCE CONSERVATION ON THE TONGASS NATIONAL FOREST.

Section 705(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 539d(a)) is repealed effective October 1, 1990.

SEC. 5212. IDENTIFICATION OF LANDS UNSUITABLE FOR TIMBER PRODUCTION.

Section 705(d) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 539d(d)) is hereby repealed.

SEC. 5213. FUTURE REPORTS ON THE TONGASS NATIONAL FOREST.

(a) MONITORING- Section 706(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 539e(a)) is amended--

(1) by striking `the Committee on Interior and Insular Affairs' and inserting `the Committee on Agriculture and the Committee on Interior and Insular Affairs'; and

(2) by striking the second sentence and inserting the following new sentence: `This report shall include a complete analysis of the losses or

gains sustained by the United States Government with respect to long-term, short-term and total sales of timber from the Tongass National Forest using information from the statement on revenues and expenses of the Timber Sale Program Information Reporting System and shall display total costs, unit costs (per thousand board feet of timber sold or released) and associated revenues, for the current and previous two years of operations.'.

(b) STATUS- Section 706(b) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 539e(b)) is amended as follows:

(1) Strike out `and (4)' and insert in lieu thereof `(4)'.

(2) Strike the period at the end of the section and insert `, (5) the impact of timber management on subsistence resources, wildlife, and fisheries habitats, and (6) the steps taken by the Secretary of Agriculture under section 5241(c) of the Tongass Timber Reform Act.'.

(c) CONSULTATION- Section 706(c) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 539e(c)) is amended by striking out `and the Alaska Land Use Council' and inserting in lieu thereof `the southeast Alaska commercial fishing industry, and the Alaska Land Use Council'.

SEC. 5214. ADMINISTRATION.

Section 705 (16 U.S.C. 539d) of the Alaska National Interest Lands Conservation Act is amended by adding at the end thereof the following:

`(e) FISHERIES PROTECTION- In order to assure protection of riparian habitat, the Secretary of Agriculture shall maintain a buffer zone of a minimum of 100 feet in width within which logging shall be prohibited on each side of all anadromous fish streams in the Tongass National Forest, and their tributaries, except those tributaries with no resident fish populations which are intermittent in flow, or have flow of inadequate magnitude to directly influence downstream fish habitat.

`(f) TENAKEE SPRINGS ROAD PROHIBITION- A vehicular access road connecting the Indian River and Game Creek roads may not be constructed, and the Secretary of Agriculture shall not engage in any further efforts to connect the city of Tenakee Springs with the logging road system on Chichagof Island.'.

CHAPTER 2--TERMINATION OF LONG-TERM TIMBER SALE CONTRACTS IN ALASKA

SEC. 5221. TERMINATION.

Title V of the Alaska National Interest Lands Conservation Act is amended by adding at the end thereof the following new section:

` SEC. 508. TERMINATION OF LONG-TERM TIMBER SALE CONTRACTS IN ALASKA.

` (a) FINDING- The Congress hereby finds and declares that it is in the national interest to assure that valuable public resources in the Tongass National Forest are protected and wisely managed. Termination of the long-term timber sale contracts is necessary because the contracts prevent proper Forest Service management, allow the holders to concentrate logging in the rare, high-volume old growth forest most valuable for fish and wildlife habitat, threaten natural resource dependent communities and industries, and undermine competition within the southeast Alaska timber industry.

` (b) TERMINATION OF LONG-TERM TIMBER SALE CONTRACTS- Not later than 90 days after the date of enactment of this section, the Secretary of Agriculture shall terminate the long-term timber sale contracts numbered 12-11-010-1545 and A10fs-1042 between the United States and Alaska Pulp Corporation, and between the United States and Ketchikan Pulp Company, respectively.

` (c) SUBSTITUTION OF SHORT-TERM TIMBER SALES- The Secretary of Agriculture is authorized to make available sufficient volumes of timber to meet actual market demand as determined pursuant to planning process specified in section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 and other applicable laws. Timber sales shall be offered for competitive bid and administered consistent with standard, short-term timber sales on other national forests.'.

CHAPTER 3--WILDERNESS

SEC. 5231. ADDITIONAL WILDERNESS AREAS.

(a) DESIGNATION- Section 703 of the Alaska National Interest Lands Conservation Act is amended by adding at the end thereof the following:

` (c) DESIGNATION OF ADDITIONAL WILDERNESS ON THE TONGASS NATIONAL FOREST- In furtherance of the purposes of the Wilderness Act (16 U.S.C. 1131-1136), the following lands within the Tongass National Forest in the State of Alaska are hereby designated as wilderness and therefore as components of the National Wilderness Preservation System:

` (1) ANAN CREEK WILDERNESS- Certain lands which comprise approximately 38,415 acres, as generally depicted on a map entitled ` Anan Creek Wilderness--Proposed' and dated May 1989, which shall be known as the Anan Creek Wilderness.

` (2) BERNERS BAY WILDERNESS- Certain lands which comprise approximately 46,135 acres, as generally depicted on a map entitled ` Berners Bay Wilderness--Proposed' and dated May 1989, which shall be known as the Berners Bay Wilderness.

`(3) CALDER-HOLBROOK WILDERNESS- Certain lands which comprise approximately 68,693 acres, as generally depicted on a map entitled `Calder-Holbrook Wilderness--Proposed' and dated May 1989, which shall be known as the Calder-Holbrook Wilderness.

`(4) CHICHAGOF WILDERNESS- Certain lands which comprise approximately 347,733 acres, as generally depicted on a map entitled `Chichagof Wilderness--Proposed' and dated May 1989, which shall be known as the Chichagof Wilderness.

`(5) CHUCK RIVER WILDERNESS- Certain lands which comprise approximately 124,539 acres, as generally depicted on a map entitled `Chuck River Wilderness--Proposed' and dated May 1989, which shall be known as the Chuck River Wilderness.

`(6) KADASHAN WILDERNESS- Certain lands which comprise approximately 34,044 acres, as generally depicted on a map entitled `Kadashan Wilderness--Proposed' and dated May 1989, which shall be known as the Kadashan Wilderness.

`(7) KARTA RIVER WILDERNESS- Certain lands which comprise approximately 39,886 acres, as generally depicted on a map entitled `Karta River Wilderness--Proposed' and dated May 1989, which shall be known as the Karta River Wilderness.

`(8) KEGAN LAKE WILDERNESS- Certain lands which comprise approximately 24,655 acres, as generally depicted on a map entitled `Kegan Lake Wilderness--Proposed' and dated May 1989, which shall be known as the Kegan Lake Wilderness.

`(9) NAHA RIVER WILDERNESS- Certain lands which comprise approximately 31,794 acres, as generally depicted on a map entitled `Naha River Wilderness--Proposed' and dated May 1989, which shall be known as the Naha River Wilderness.

`(10) NUTKWA WILDERNESS- Certain lands which comprise approximately 52,654 acres, as generally depicted on a map entitled `Nutkwa Wilderness--Proposed' and dated May 1989, which shall be known as the Nutkwa Wilderness.

`(11) OUTSIDE ISLANDS WILDERNESS- Certain lands which comprise approximately 98,572 acres, as generally depicted on a map entitled `Outside Islands Wilderness--Proposed' and dated May 1989, which shall be known as the Outside Islands Wilderness.

`(12) PLEASANT-LEMESURIER-INIAN ISLANDS WILDERNESS- Certain lands which comprise approximately 23,140 acres, as generally depicted on a map entitled Pleasant-Lemesurier-Inian Islands Wilderness--Proposed' and dated May 1989, which shall be known as the Pleasant-Lemesurier-Inian Islands Wilderness.

`(13) POINT ADOLPHUS-MUD BAY WILDERNESS- Certain lands which

comprise approximately 73,346 acres, as generally depicted on a map entitled `Point Adolphus-Mud Bay Wilderness--Proposed' and dated May 1989, which shall be known as the Point Adolphus-Mud Bay Wilderness.

`(14) PORT HOUGHTON-SANBORN CANAL WILDERNESS- Certain lands which comprise approximately 58,915 acres, as generally depicted on a map entitled `Port Houghton-Sanborn Canal Wilderness--Proposed' and dated May 1989, which shall be known as the Port Houghton-Sanborn Canal Wilderness.

`(15) ROCKY PASS WILDERNESS- Certain lands which comprise approximately 75,734 acres, as generally depicted on a map entitled `Rocky Pass Wilderness--Proposed' and dated May 1989, which shall be known as the Rocky Pass Wilderness.

`(16) SARKAR LAKES WILDERNESS- Certain lands which comprise approximately 25,650 acres, as generally depicted on a map entitled `Sarkar Lakes Wilderness--Proposed' and dated May 1989, which shall be known as the Sarkar Lakes Wilderness.

`(17) SOUTH ETOLIN ISLAND WILDERNESS- Certain lands which comprise approximately 83,642 acres, as generally depicted on a map entitled `South Etolin Island Wilderness--Proposed' and dated May 1989, which shall be known as the South Etolin Island Wilderness.

`(18) SOUTH KUIU WILDERNESS- Certain lands which comprise approximately 191,532 acres, as generally depicted on a map entitled `South Kuiu Wilderness--Proposed' and dated May 1989, which shall be known as the South Kuiu Wilderness.

`(19) SULLIVAN ISLAND WILDERNESS- Certain lands which comprise approximately 4,032 acres, as generally depicted on a map entitled `Sullivan Island Wilderness--Proposed' and dated May 1989, which shall be known as the Sullivan Island Wilderness.

`(20) TRAP BAY WILDERNESS- Certain lands which comprise approximately 6,667 acres, as generally depicted on a map entitled `Trap Bay Wilderness--Proposed' and dated May 1989, which shall be known as the Trap Bay Wilderness.

`(21) WEST DUNCAN CANAL WILDERNESS- Certain lands which comprise approximately 134,627 acres, as generally depicted on a map entitled `West Duncan Canal Wilderness--Proposed' and dated May 1989, which shall be known as the West Duncan Canal Wilderness.

`(22) YAKUTAT FORELANDS WILDERNESS- Certain lands which comprise approximately 220,268 acres, as generally depicted on a map entitled `Yakutat Forelands Wilderness--Proposed' and dated May 1989, which shall be known as the Yakutat Forelands Wilderness.

`(23) YOUNG LAKE WILDERNESS ADDITION TO ADMIRALTY ISLAND NATIONAL MONUMENT- Certain lands which comprise approximately

18,702 acres, as generally depicted on a map entitled `Young Lake Wilderness--Proposed' and dated May 1989, which shall be managed as an addition to the Admiralty Island National Monument.

`(d) APPLICATION OF SECTION 1315(e)- Section 1315(e) of this Act (16 U.S.C. 3203(e)) shall not apply to the wilderness designated by subsection (c).'.

(b) ADMINISTRATION- Section 707 of the Alaska National Interest Lands Conservation Act is amended by adding the following at the end thereof: `Subject to valid existing rights, the wilderness areas designated in amendments made to section 703(c) of this Act by the Tongass Timber Reform Act shall be administered by the Secretary of Agriculture in accordance with this section, except that, in the case of such areas, any reference in the provisions of the Wilderness Act to the effective date of the Wilderness Act (or any similar reference) shall be deemed to be a reference to the date of enactment of the Tongass Timber Reform Act.'.

CHAPTER 4--IMPROVEMENT OF THE MANAGEMENT OF THE TONGASS NATIONAL FOREST

SEC. 5241. MANAGEMENT OF THE TONGASS NATIONAL FOREST.

(a) FINDINGS- The Congress finds that--

(1) the commercial fishing, recreation, timber, and tourism industries each make a substantial contribution to the economy of southeast Alaska and their ability to contribute in the future depends upon balanced planning and management of the Tongass National Forest; and

(2) the Secretary of Agriculture should plan and manage the Tongass National Forest in a manner that adequately protects and enhances fish, wildlife, and recreation resources, as well as timber, and should act in the long-term best interests of all natural resources dependent industries and subsistence communities in southeast Alaska.

(b) PURPOSES- The purposes of this section are to require the Secretary of Agriculture to--

(1) assess the extent to which planning and management of the Tongass National Forest prior to the enactment of this Act has differed from planning for, and management of, other national forests; and

(2) change, in conformance with laws applicable to the National Forest System, planning and management priorities regarding the Tongass National Forest so as to assure that greater emphasis is given to the long-term best interests of the commercial fishing, recreation, and tourism industries, subsistence communities in southeast Alaska, and the national interest in the fish and wildlife and other natural resources of the Tongass National Forest.

(c) DIRECTIVE- The Secretary of Agriculture is authorized and directed to take

such steps as are necessary in current management practices and in revisions of the Tongass land management plan to achieve the purposes described in subsection (b).

(d) OLD-GROWTH FOREST MANAGEMENT- In developing the land management plan for the Tongass National Forest pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, the Secretary shall--

(1) provide for sustained production of old-growth forest resources within the Tongass National Forest; and

(2) upon completion of the draft of such plan, which shall be completed in any event not later than one year after the date of enactment of this Act, report to the Committees on Agriculture and on Interior and Insular Affairs of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on provisions incorporated into such plan to meet the objective set forth in paragraph (1). The report shall include--

(A) the definition of the term `old-growth forest' used for purposes of such plan;

(B) the quantity and distribution of old-growth forest in the Tongass National Forest;

(C) the management objectives and guidelines incorporated into such plan to provide for sustained production of old-growth forest resources;

(D) the criteria used to determine how to integrate old-growth forest management objectives into the plan; and

(E) the relationship between old-growth forest management objectives and other resource management goals affecting timber, fish and wildlife, water quality, recreation, subsistence uses, and aesthetics.

Subtitle C--Oil Shale Claims Reform

SEC. 5301. FINDINGS.

The Congress finds that:

(1) Certain oil shale mining claims were located pursuant to the General Mining Act of May 10, 1872, before enactment of the Mineral Leasing Act of February 25, 1920, which provides for the leasing of that mineral.

(2) Section 37 of the Mineral Leasing Act permitted oil shale claims that were `maintained in compliance with the laws under which initiated' to be perfected under such laws.

(3) The holders of those oil shale claims that have not been patented have been afforded ample opportunity to apply for patents over the last 70 years but have failed to take such action.

(4) Both the Mining Act of 1872 and the Mineral Leasing Act were intended to accomplish the development of the mineral resources of the Nation, including oil shale.

(5) Almost none of the oil shale claims have been developed for their oil shale in the intervening 70 years.

(6) The continued existence of these oil shale claims restricts the lands from the development of other minerals which may exist on the claimed lands.

(7) The continued existence of these oil shale claims interferes with the effective management of Federal lands.

(8) Issuing patents at this time for claims for which a right to patent has not vested would likely result in nonmineral development contrary to the intent of the Mining Act of 1872 and the Mineral Leasing Act.

(9) The lands embraced in an unpatented claim remain subject to the disposing power of the Congress until all conditions imposed by law for issuance of a patent are fully satisfied.

(10) Either the conversion of valid oil shale claims to leases or requiring diligent work toward production on such claims, together with the cancellation of invalid claims, would promote mineral development including for oil shale.

(11) It is in the public interest for these claims to be brought to some final resolution so that Federal lands affected may be properly managed for their mineral and other values in accordance with the laws and policies of the United States.

SEC. 5302. AMENDMENT TO THE MINERAL LEASING ACT.

Section 37 of the Mineral Leasing Act (30 U.S.C. 193) is amended by inserting `(a)' before the first sentence and by adding the following new subsections at the end thereof:

`(b)(1) The Secretary of the Interior shall undertake an expedited program to determine the validity of all unpatented oil shale claims referred to in subsection (a). The expedited program shall include an examination of all unpatented oil shale claims, including those for which a patent application has not been filed. If a claim is determined to be invalid, the Secretary shall promptly declare the claim to be null and void and cancel it.

`(2) Not later than 30 days after the enactment of this subsection the Secretary shall publish proposed regulations in the Federal Register containing

standards and criteria for determining the validity of all unpatented oil shale claims referred to in subsection (a). Final regulations shall be promulgated within 180 days after the date such proposed regulations are published. The Secretary shall make a determination with respect to the validity of each such claim within 2 years after the promulgation of such final regulations. In making such determinations the Secretary shall give priority to those claims which meet the requirements of paragraphs (1) and (2) of subsection (c) and subsection (f).

`(c) Except as provided in subsection (f), after January 24, 1989, no patent shall be issued by the United States for any oil shale claim referred to in subsection (a) unless the Secretary of the Interior determines that, for the claim concerned--

`(1) a patent application was filed with the Secretary on or before January 24, 1989, and

`(2) all requirements established under sections 2329, 2330, 2331, and 2333 of the Revised Statutes (30 U.S.C. 35, 36, and 37) were fully complied with by that date.

`(d)(1) The holder of each oil shale claim for which no patent may be issued by reason of subsection (c) shall make an election under paragraph (2) or paragraph (3) of this subsection. Not later than 30 days after the enactment of this subsection, the Secretary shall notify the holder of each such claim of the requirement to make such election. The holder shall make the election by certified mail within 60 days after receiving such notification. Failure to make an election within such period, shall be deemed conclusively to constitute a forfeiture of the claim and the claim shall be null and void.

`(2) The holder of a claim required to make an election under this subsection may elect to apply to the Secretary for a lease under section 21. The Secretary shall promptly provide a lease application to any claimholder who makes such election and the claimholder shall file an application for a lease within 90 days after receiving such application. Upon receiving such an application the Secretary shall issue a lease to the holder of such claim for the area covered by the claim if the claim is determined to be valid. A lease under this paragraph shall be issued in accordance with the provisions of section 21 except as follows:

`(A) The term of the lease shall be 20 years and for so long thereafter as oil shale or associated minerals are produced annually in commercial quantities from the lease.

`(B) The acreage limitations contained in section 21(a) shall not apply.

`(C) The first and second provisos of section 21(a) shall not apply.

`(D) The limitation on the number of leases to be granted to any one person, association, or corporation contained in section 21(a) shall not apply.

`(E) The phrase `oil shale and gilsonite' in the first sentence of section 21(a) shall be construed to include oil shale and all other associated minerals.

`(3)(A) The holder of a claim making an election under this subsection may elect to maintain the claim by complying with such requirements as the Secretary shall prescribe, by rule, to assure that, during each year that oil shale or associated minerals are not being produced from the claim in commercial quantities, the holder of such claim either makes payments in lieu of diligent development under subparagraph (B) or expends an amount annually which--

`(i) represents diligent efforts toward the production of oil shale or associated minerals (or both),

`(ii) includes substantial work on the claim, and

`(iii) represents not less than $5,000 worth of expenditure on the claim.

`(B) In lieu of making the expenditure described in clauses (i), (ii), and (iii) in any year, the holder of such claim may pay the Secretary an amount equal to $5,000 for the claim for that year. Moneys received by the Secretary under this subparagraph shall be disposed of in the same manner as moneys received pursuant to section 35, except that 50 percent of such moneys shall be transferred to the States and 50 percent shall be deposited in the General Fund of the Treasury.

`(C) The Secretary shall promulgate a final rule under this paragraph within 90 days after the enactment of this subsection. The annual expenditure requirement under such rule shall take effect on the first day of the first month of September which occurs more than 90 days after the enactment of this subsection.

`(D) The Secretary shall review the expenditures made for each such claim not less frequently than annually.

`(E) In applying the provisions of section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744), the holder of a claim for which an election under this paragraph has been made shall comply with the provisions of subsection (a)(1) thereof only by filing (as provided in such provisions) an affidavit that the annual expenditure (or annual payments in lieu of diligent development) requirements of this paragraph have been met with respect to such claim or that oil shale or associated minerals are being produced from the claim in commercial quantities.

`(F) Failure to comply with the requirements of this paragraph and the requirements of such section 314(a)(1) shall be deemed conclusively to constitute a forfeiture of the claim and the claim shall be null and void. In addition, the Secretary shall declare a claim to be null and void and cancel it on the earlier of the following:

`(i) The date on which the Secretary determines that oil shale and

associated minerals are exhausted.

`(ii) The date 100 years after the date of location of the claim.

On the date referred to in clause (ii), the Secretary shall make a determination under this subparagraph and if the Secretary determines that oil shale or associated minerals are being produced in commercial quantities there shall be substituted for such date the date on which the Secretary determines that oil shale or associated minerals cease to be produced from the claim in commercial quantities.

`(G) The provisions of sections 4 and 6 of the Act of August 13, 1954 (30 U.S.C. 524 and 526), popularly known as the Multiple Minerals Development Act, and the provisions of section 4 of the Act of July 23, 1955 (30 U.S.C. 612), popularly known as the Surface Resources Act, shall apply to claims for which an election under this paragraph has been made in the same manner and to the same extent as such provisions apply to the mining claims referred to therein.

`(e) In addition to other applicable requirements, any person who holds a lease pursuant to paragraph (2) of subsection (d) or who maintains a claim pursuant to paragraph (3) of subsection (d) or pursuant to subsection (f) shall be required, by regulation, to reclaim the site subject to such lease or claim and to post a surety bond or provide other types of financial guarantee satisfactory to the Secretary before disturbance of the site to ensure such reclamation. The Secretary shall promulgate such regulations as may be necessary to implement this subsection.

`(f)(1) If a patent application was filed with the Secretary before January 24, 1989, for an oil shale claim referred to in subsection (a) but all requirements established under sections 2329, 2330, 2331, and 2333 of the Revised Statutes (30 U.S.C. 35, 36, and 37) were not fully complied with by that date, the Secretary may issue a patent under this subsection notwithstanding the failure to meet those requirements by that date if such requirements are subsequently met and the Secretary determines the claim to be valid (after review as provided in subsection (c)). The patent shall be limited to the oil shale and associated minerals on such claim. Upon compliance with such requirements, such patent may be issued upon payment to the Secretary of $2,000 per acre.

`(2) Any patent under this subsection shall be subject to an express reservation of the surface of the affected lands, and the provisions of sections 4 and 6 of the Act of August 13, 1954 (30 U.S.C. 524 and 526), popularly known as the Multiple Minerals Development Act, and of section 4 of the Act of July 23, 1955 (30 U.S.C. 612), popularly known as the Surface Resources Act, shall apply to such claim in the same manner and to the same extent as such provisions apply to the unpatented mining claims referred to in such provisions.

`(3) No claimholder having a claim described in this subsection shall be required to make an election under subsection (d).'.

Subtitle D--RECLAMATION FEES.

SEC. 5401. ABANDONED MINE RECLAMATION FUND.

(a) SOURCES OF DEPOSITS- Section 401(b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231(b)) is amended as follows:

(1) Amend paragraph (1) to read as follows:

`(1) the reclamation fees levied under section 402;'.

(2) Strike `and' at the end of paragraph (3); strike the period at the end of paragraph (4) and insert `; and'; and add the following new paragraph at the end:

`(5) interest credited to the fund under subsection (e).'.

(b) USE OF MONEYS- Section 401(c) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231(c)) is amended as follows:

(1) In paragraph (1), strike `402(g)(2)' and insert `402(g)(1)'.

(2) Amend paragraph (2) to read as follows:

`(2) for transfer on an annual basis to the Secretary of Agriculture for use under section 406;'.

(3) In paragraph (6), strike `by contract' and insert `conducted in accordance with section 3501 of the Omnibus Budget Reconciliation Act of 1986' after `projects'.

(4) Strike `and' at the end of paragraph (9).

(5) Strike paragraph (10) and insert the following:

`(10) for use under section 411;

`(11) for the purpose of section 507(c), except that not more than $10,000,000 shall annually be available for such purpose; and

`(12) all other necessary expenses to accomplish the purposes of this subtitle.'.

(c) INTEREST- Section 401 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231) is amended by adding the following new subsection at the end:

`(e) INTEREST- The Secretary of the Interior shall invest such portion of the fund as is not, in his judgment, required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable for the needs of such fund and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding

marketable obligations of the United States of comparable maturities. The income on such investments shall be credited to, and form a part of, the fund.'.

SEC. 5402. RECLAMATION FEES.

(a) RATE- Section 402(a) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(a)) is amended by adding the following at the end: `The rate at which such fee is imposed shall be modified as provided in section 411(a) in the case of any State or Indian tribe certified under section 411(a).'.

(b) DUE DATE- Section 402(b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(b)) is amended by striking `fifteen years after the date of enactment of this Act unless extended by an Act of Congress' and inserting `ending September 30, 2007'.

(c) STATEMENT- Section 402(c) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(c)) is amended by adding the following at the end thereof: `Such statement shall include an identification of the permittee of the coal mining operation if different from the operator, the owner of the coal, the preparation plant, tipple, or loading point for the coal, and the person purchasing the coal from the operator. The report shall also specify the number of the permit required under section 510 and the mine safety and health identification number. Each quarterly report shall contain a notification of any changes in the information required by this subsection since the date of the preceding quarterly report. The information contained in the quarterly reports under this subsection shall be maintained by the Secretary in a computerized database.'.

(d) AUDITS- Section 402(d) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(d)) is amended by inserting `(1)' after `(d)' and by adding the following at the end thereof:

`(2) The Secretary shall conduct such audits of coal production and the payment of fees under this subtitle as may be necessary to ensure full compliance with the provisions of this subtitle. For purposes of performing such audits the Secretary (or any duly designated officer, employee, or representative of the Secretary) shall, at all reasonable times, upon request, have access to, and may copy, all books, papers, and other documents of any person subject to the provisions of this subtitle. The Secretary may at any time conduct audits of any coal mining and reclamation operation, including without limitation, tipples and preparation plants, as may be necessary in the judgment of the Secretary to ensure full and complete payment of the fees under this subtitle.'.

(e) NOTICE- Section 402(f) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(f)) is amended by adding the following at the end thereof: `Whenever the Secretary believes that any person has not paid the full amount of the fee payable under subsection (a) the Secretary shall notify the Federal agency responsible for ensuring compliance with the provisions of section 4121 of the Internal Revenue Code of 1986.'.

SEC. 5403. ALLOCATION OF FUNDS.

Section 402(g) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(g)) is amended to read as follows:

`(g) ALLOCATION OF FUNDS- (1) Moneys deposited into the fund shall be allocated by the Secretary to accomplish the purposes of this subtitle as follows:

`(A) 50 percent of the reclamation fees collected annually in any State (other than fees collected with respect to Indian lands) shall be allocated annually by the Secretary to the State, subject to such State having each of the following--

`(i) An approved abandoned mine reclamation program pursuant to section 405.

`(ii) Lands, waters, and facilities which are eligible pursuant to section 404 (in the case of a State not certified under section 411(a)) or pursuant to section 411(b) (in the case of a State certified under section 411(a)).

`(B) 50 percent of the reclamation fees collected annually with respect to Indian lands shall be allocated annually by the Secretary to the Indian tribe having jurisdiction over such lands, subject to such tribe having each of the following--

`(i) An approved abandoned mine reclamation program pursuant to section 405.

`(ii) Lands, waters, and facilities which are eligible pursuant to section 404 (in the case of an Indian tribe not certified under section 411(a)) or pursuant to section 411(b) (in the case of a tribe certified under section 411(a)).

`(C) The funds allocated by the Secretary under this paragraph to States and Indian tribes shall only be used for annual reclamation project construction and program administration grants.

`(D) To the extent not expended within 3 years after the date of any grant award under this paragraph, such grant shall be available for expenditure by the Secretary in any area under paragraph (2), (3), (4), or (5).

`(2) 20 percent of the amounts available in the fund in any fiscal year which are not allocated under paragraph (1) in that fiscal year (including that interest accruing as provided in section 401(e) and including funds available for reallocation pursuant to paragraph (1)(C)), shall be allocated to the Secretary only for the purpose of making the annual transfer to the Secretary of Agriculture under section 401(c)(2).

`(3) Amounts available in the fund which are not allocated to States and Indian tribes under paragraph (1) or allocated under paragraph (2) and paragraph (5) are authorized to be expended by the Secretary for any of the following:

`(A) For the purpose of section 507(c), either directly or through grants to the States, subject to the limitation contained in section 401(c)(11).

`(B) For the purpose of section 410 (relating to emergencies).

`(C) For the purpose of meeting the objectives of the fund set forth in section 403(a) for eligible lands, waters, and facilities pursuant to section 404 in States and on Indian lands where the State or Indian tribe does not have an approved abandoned mine reclamation program pursuant to section 405.

`(D) For the administration of this subtitle by the Secretary.

`(4)(A) Amounts available in the fund which are not allocated under paragraphs (1), (2), and (5) or expended under paragraph (3) in any fiscal year are authorized to be expended by the Secretary under this paragraph for the reclamation or drainage abatement of lands and waters within unreclaimed sites which were mined for coal or which were affected by such mining, wastebanks, coal processing or other coal mining processes and left in an inadequate reclamation status.

`(B) Funds made available under this paragraph may be used for reclamation or drainage abatement at a site referred to in subparagraph (A) if the Secretary makes either of the following findings:

`(i) A finding that the coal mining operation occurred during the period beginning on August 4, 1977, and ending on or before the date on which the Secretary approved a State program pursuant to section 503 for State in which the site is located, and that any funds for reclamation or abatement which are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site.

`(ii) A finding that the surety of the mining operator became insolvent prior to the date of enactment of this paragraph, and as of such date, funds immediately available from proceedings relating to such insolvency, or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement at the site.

`(C) In determining which sites to reclaim pursuant to this paragraph, the Secretary shall follow the priorities stated in paragraphs (1) and (2) of section 403(a). The Secretary shall ensure that priority is given to those sites which are in the immediate vicinity of a residential area or which have an adverse economic impact upon a local community.

`(D) Amounts collected from the assessment of civil penalties under section 518 are authorized to be appropriated to carry out this paragraph.

`(E) Any State may expend grants made available under paragraphs (1) and (5) for reclamation and abatement of any site referred to in subparagraph (A) if the State, with the concurrence of the Secretary, makes either of the findings referred to in clause (i) or (ii) of subparagraph (B) and if the State determines that the reclamation priority of the site is the same or more urgent than the reclamation priority for eligible lands and waters pursuant to section 404 under the priorities stated in paragraphs (1) and (2) of section 403(a).

`(F) For the purposes of the certification referred to in section 411(a), sites referred to in subparagraph (A) of this paragraph shall be considered as having the same priorities as those stated in section 403(a) for eligible lands and waters pursuant to section 404. All sites referred to in subparagraph (A) of this paragraph within any State shall be reclaimed prior to such State making the certification referred to in section 411(a).

`(5) The Secretary shall allocate 40 percent of the amount in the fund after making the allocation referred to in paragraph (1) for making additional annual grants to States and Indian tribes which are not certified under section 411(a) to supplement grants received by such States and Indian tribes pursuant to paragraph (1)(C) until the priorities stated in paragraphs (1) and (2) of section 403(a) have been achieved by such State or Indian tribe. The allocation of such funds for the purpose of making such expenditures shall be through a formula based on the amount of coal historically produced in the State or from the Indian lands concerned prior to August 3, 1977. Funds allocated or expended by the Secretary under paragraph (2), (3), or (4) of this subsection for any State or Indian tribe shall not be deducted against any allocation of funds to the State or Indian tribe under paragraph (1) or under this paragraph.

`(6) Any State may receive and retain, without regard to the 3-year limitation referred to in paragraph (1)(D), up to 10 percent of the total of the grants made annually to such State under paragraphs (1) and (5) if such amounts are deposited into either--

`(A) a special trust fund established under State law pursuant to which such amounts (together with all interest earned on such amounts) are expended by the State solely to achieve the priorities stated in section 403(a) after the year 2007, or

`(B) an acid mine drainage abatement and treatment fund established under State law as provided in paragraph (7).

`(7)(A) Any State may establish under State law an acid mine drainage abatement and treatment fund from which amounts (together with all interest earned on such amounts) are expended by the State to implement, in consultation with the Soil Conservation Service, acid mine drainage abatement and treatment plans approved by the Secretary. Such plans shall provide for the comprehensive abatement of the causes and treatment of the effects of acid mine drainage within qualified hydrologic units affected by coal mining practices.

`(B) The plan shall include, but shall not be limited to, each of the following:

`(i) An identification of the qualified hydrologic unit.

`(ii) The extent to which acid mine drainage is affecting the water quality and biological resources within the hydrologic unit.

`(iii) An identification of the sources of acid mine drainage within the hydrologic unit.

`(iv) An identification of individual projects and the measures proposed to be undertaken to abate and treat the causes or effects of acid mine drainage with the hydrologic unit.

`(v) The cost of undertaking the proposed abatement and treatment measures.

`(vi) An identification of existing and proposed sources of funding for such measures.

`(vii) An analysis of the cost-effectiveness and environmental benefits of abatement and treatment measures.

`(C) The Secretary may approve any plan under this paragraph only after determining that such plan meets the requirements of this paragraph. In conducting an analysis of the items referred to in clauses (iv), (v), and (vii) the Director of the Office of Surface Mining shall obtain the comments of the Director of the Bureau of Mines. In approving plans under this paragraph, the Secretary shall give a priority to those plans which will be implemented in coordination with measures undertaken by the Secretary of Agriculture under section 406.

`(D) For purposes of this paragraph the term `qualified hydrologic unit' means a hydrologic unit--

`(i) in which the water quality has been significantly affected by acid mine drainage from coal mining practices in a manner which adversely impacts biological resources; and

`(ii) which contains lands and waters which are--

`(I) eligible pursuant to section 404 and include any of the priorities stated in section 403(a); and

`(II) proposed to be the subject of the expenditures by the State (from amounts available from the forfeiture of bonds required under section 509 or from other State sources) to mitigate acid mine drainage.

`(8) Of the funds available for expenditure under this subsection in any fiscal year the Secretary shall allocate annually not less than $2,000,000 for expenditure in each State, and for each Indian tribe, having an approved

abandoned mine reclamation program pursuant to section 405 and, eligible lands, waters, and facilities pursuant to section 404 so long as an allocation of funds to such State or such tribe is necessary to achieve the priorities stated in paragraphs (1) and (2) of section 403(a).'.

SEC. 5404. FUND OBJECTIVES.

Section 403 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1233) is amended as follows:

(1) Insert `(a) PRIORITIES- ' after `SEC. 403.'.

(2) Strike `lands and water' and insert `lands, waters, and facilities'.

(3) Insert `, except as provided for under section 411,' after `title'.

(4) Insert `and' after paragraph (2).

(5) Strike paragraphs (4), (5), and (6).

(6) Add at the end the following new subsections:

`(b) UTILITIES AND OTHER FACILITIES- (1) Reclamation projects involving the protection, repair, replacement, construction or enhancement of utilities, such as those relating to water supply, roads and such other facilities serving the public adversely affected by coal mining practices shall be deemed part of the objectives set forth, and undertaken as they relate to, the priorities stated in subsection (a).

`(2) Any State or Indian tribe not certified under section 411(a) may expend up to 30 percent of the funds allocated to such State or Indian tribe in any year through the grants made available under paragraphs (1) and (5) of section 402(g) for the purpose of protecting, repairing, replacing, constructing, or enhancing facilities relating to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal mining practices.

`(3) If the adverse effect on water supplies referred to in this subsection occurred both prior to and after August 3, 1977, section 404 shall not be construed to prohibit a State or Indian tribe referred to in paragraph (2) from using funds referred to in such paragraph for the purposes of this subsection if the State or Indian tribe determines that such adverse effects occurred predominantly prior to August 3, 1977.

`(c) INVENTORY- For the purposes of assisting in the planning and evaluation of reclamation projects pursuant to section 405, and assisting in making the certification referred to in section 411(a), the Secretary shall maintain an inventory of eligible lands and waters pursuant to section 404 which meet the priorities stated in paragraphs (1) and (2) of subsection (a). Under standardized procedures established by the Secretary, States and Indian tribes with approved reclamation programs pursuant to section 405 may offer

amendments to update the inventory as it applies to eligible lands and waters under the jurisdiction of such States or tribes. The Secretary shall provide such States and tribes with the financial and technical assistance necessary for the purpose of making inventory amendments. The Secretary shall compile and maintain an inventory for States and Indian lands in the case when a State or Indian tribe does not have an approved reclamation program pursuant to section 405. On a regular basis, but not less than annually, the projects completed under this subtitle shall be so noted on the inventory under standardized procedures established by the Secretary.'.

SEC. 5405. ELIGIBLE LANDS AND WATERS.

Section 404 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1234) is amended by inserting `, except as provided for under section 411' after `processes', and by adding the following at the end thereof: `For other provisions relating to lands and waters eligible for such expenditures, see section 402(g)(4), section 403(b)(2), and section 409.'.

SEC. 5406. STATE RECLAMATION PROGRAMS.

Section 405 of of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1235) is amended by adding the following at the end thereof:

`(l) No State shall be liable under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out a State abandoned mine reclamation plan approved under this section. This subsection shall not preclude liability for cost or damages as a result of gross negligence or intentional misconduct by the State. For purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.'.

SEC. 5407. CLARIFICATION.

Section 406(d) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1236(d)) is amended by striking `experimental'.

SEC. 5408. VOIDS AND TUNNELS.

Section 409 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1239) is amended--

(1) in subsection (a) by striking `chairman of any tribe' and inserting in lieu thereof `the governing body of an Indian tribe';

(2) in subsection (b), by striking `or Indian reservations under the provisions of subsection 402(g)' and inserting `or Indian tribes under the provisions of paragraphs (1) and (5) of section 402(g)'; and

(3) by amending subsection (c) to read as follows:

`(c)(1) The Secretary may make expenditures and carry out the purposes of this section in such States where requests are made by the Governor or governing body of an Indian tribe for those reclamation projects which meet the priorities stated in section 403(a)(1), except that for the purposes of this section the reference to coal in section 403(a)(1) shall not apply.

`(2) The provisions of section 404 shall apply to this section, with the exception that such mined lands need not have been mined for coal.

`(3) The Secretary shall not make any expenditures for the purposes of this section in those States which have made the certification referred to in section 411(a).'.

SEC. 5409. EMERGENCY PROGRAM.

Section 410 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1240) is amended as follows:

(1) In the third sentence of subsection (b), strike `such land and shall' and insert `such land to the extent necessary to'.

(2) Add at the end the following new subsection:

`(c) In making expenditures from the fund to undertake reclamation projects for the purposes of this section, the Secretary shall ensure that all adverse effects of coal mining practices meeting the priorities stated in paragraphs (1) and (2) of section 403(a) which exist at such reclamation projects are abated through such expenditure.'.

SEC. 5410. CERTIFICATION.

Title IV of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231 et seq.) is amended as follows:

(1) Redesignate sections 411, 412, and 413 as sections 412, 413, and 414, respectively.

(2) Insert after section 410 the following new section:

`SEC. 411. CERTIFICATION.

`(a) MODIFICATION OF FEES- Where the Governor of a State, or the head of a governing body of an Indian tribe, with an approved abandoned mine reclamation program under section 405 certifies to the Secretary that all of the priorities stated in section 403(a) for eligible lands, waters, and facilities pursuant to section 404 have been achieved, and the Secretary, after notice in the Federal Register and opportunity for public comment, concurs with such certification, the rate at which the reclamation fees are applicable to such State or tribe under section 402(a) shall be modified. The modified fees shall be at a rate of 18 cents per ton of coal produced by surface coal mining and 8 cents per ton of coal produced by underground coal mining, or 10 percent of

the value of the coal at the mine, as determined by the Secretary, whichever is less, except that the reclamation fee for lignite coal shall be at a rate of 2 percent of the value of the coal of the mine, or 5 cents per ton, whichever is less. A certification under this section may be issued by the Secretary on his own motion after consultation with the State or Indian tribe concerned and after notice in the Federal Register and opportunity for public comment. Certification under this subsection as it relates to the modified fees may not take place until after 1992. The Secretary may concur with any certification by a State or Indian tribe in any region or certify any such State or tribe on his own motion, but may not concur with the modified fees or modify such fees on his own motion if, upon a motion made by a State or Indian tribe within the same region, the Secretary determines that such modified fees would result in a significant competitive disadvantage in the production and marketing of coal for the State or Indian tribe which made such motion.

`(b) ELIGIBLE LANDS, WATERS, AND FACILITIES- If the Secretary has concurred in a State or tribal certification under subsection (a), for purposes of determining the eligibility of lands, waters, and facilities for annual grants under section 402(g)(1), section 404 shall not apply, and eligible lands, waters, and facilities shall be those--

`(1) which were mined or processed for minerals or which were affected by such mining or processing, and abandoned or left in an inadequate reclamation status prior to August 3, 1977; and

`(2) for which there is no continuing reclamation responsibility under State or other Federal laws.

In determining the eligibility under this subsection of Federal lands, waters, and facilities under the jurisdiction of the Forest Service or Bureau of Land Management, in lieu of the August 3, 1977, date referred to in paragraph (1) the applicable date shall be August 28, 1974, and November 26, 1980, respectively.

`(c) PRIORITIES- Expenditures of moneys for lands and waters referred to in subsection (b) shall reflect the following objectives and priorities in the order stated (in lieu of the priorities set forth in section 403):

`(1) The protection of public health, safety, general welfare, and property from extreme danger of adverse effects of mineral mining and processing practices.

`(2) The protection of public health, safety, and general welfare from adverse effects of mineral mining and processing practices.

`(3) The restoration of land and water resources and the environment previously degraded by the adverse effects of mineral mining and processing practices.

`(d) SPECIFIC SITES AND AREAS NOT ELIGIBLE- Sites and areas designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 and following) or which have been listed for remedial

action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601 and following) shall not be eligible for expenditures from the Fund under this section.

`(e) UTILITIES AND OTHER FACILITIES- Reclamation projects involving the protection, repair, replacement, construction, or enhancement of utilities, such as those relating to water supply, roads, and such other facilities serving the public adversely affected by mineral mining and processing practices, and the construction of public facilities in communities impacted by coal or other mineral mining and processing practices, shall be deemed part of the objectives set forth, and undertaken as they relate to, the priorities stated in subsection (c).

`(f) APPLICATION OF OTHER PROVISIONS- The provisions of sections 407 and 408 shall apply to this section, except that for purposes of this section the references to coal in sections 407 and 408 shall not apply.'.

SEC. 5411. SMALL OPERATOR ASSISTANCE.

Section 507(c) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1257(c)) is amended by striking `100,000' and inserting `300,000'.

SEC. 5412. TECHNICAL AND CONFORMING AMENDMENTS.

(a) TABLE OF CONTENTS- The table of contents in the first section of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201) is amended as follows:

(1) Redesignate the items relating to sections 411, 412, and 413 as items 412, 413, and 414, respectively.

(2) Insert after the item relating to section 410 the following:

`Sec. 411. Certification.'.

(b) REFERENCE- Section 712(b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1302(b)) is amended to read as follows:

`(b) For the implementation and funding of section 507(c), see the provisions of section 401(c)(11).'.

(c) REPEAL- Section 406(i) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1236(i)) is repealed.

(d) TECHNICAL CORRECTIONS- The following provisions of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231 and following) are amended as follows:

(1) Section 405(a) is amended by striking out `perparation' and inserting `preparation'.

(2) Section 405(h) is amended by striking out `Upon approved' and inserting `Upon approval'.

(3) Section 406(a) is amended by striking out `including owners' and inserting `(including owners'.

(4) Section 407(a)(4) is amended by striking out the period and inserting a semicolon.

(5) Section 407(a) is amended by striking out `Then' and inserting `then'.

(6) Section 407(e) is amended by striking out `paragraph (1), of this subsection' and inserting `paragraph (1) of subsection (c)'.

(7) Section 407(g)(2) is amended by striking out `the use of' and inserting `the use or'.

SEC. 5413. SAVINGS CLAUSE.

Nothing in this subtitle shall be construed to affect the certification made by the State of Wyoming to the Secretary of the Interior prior to the date of enactment of this Act that such State has completed the reclamation of eligible abandoned coal mine lands, except that for the purposes of the amendments made by this subtitle, the State of Wyoming shall not be deemed to have made the certification as it relates to the modified fees referred to in subsection (a) of section 411, as added by this subtitle, until the date referred to in such subsection.

SEC. 5414. ABANDONED MINERALS AND MINERAL MATERIALS MINE RECLAMATION FUND.

(a) NEW SUBTITLE- Title IV of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231) is amended by inserting

`Subtitle A--Abandoned Mine Reclamation Fund'

immediately before section 401 and by adding the following new subtitle at the end thereof:

`Subtitle B--Abandoned Minerals and Mineral Materials Mine Reclamation Fund

`SEC. 421. ABANDONED MINERALS AND MINERAL MATERIALS MINE RECLAMATION.

`(a) ESTABLISHMENT- There is established on the books of the Treasury of the United States a trust fund to be known as the Abandoned Minerals and Mineral Materials Mine Reclamation Fund (hereinafter in this subtitle referred to as the `Fund'). The Fund shall be administered by the Secretary of the

Interior acting through the Director, Office of Surface Mining Reclamation and Enforcement.

`(b) AMOUNTS- The following amounts shall be credited to the Fund for the purposes of this Act:

`(1) All moneys received (after the commencement of the first fiscal year beginning after the enactment of this subtitle) from the disposal of mineral materials pursuant to section 3 of the Act of July 31, 1947 (30 U.S.C. 603) to the extent such moneys are not specifically dedicated to other purposes under other authority of law.

`(2) Donations by persons, corporations, associations, and foundations for the purposes of this subtitle.

`(3) Such other amounts as may be appropriated to the Fund.

`SEC. 422. USE AND OBJECTIVES OF THE FUND.

`(a) IN GENERAL- The Secretary is authorized to use moneys in the Fund for the reclamation and restoration of land and water resources adversely affected by past minerals and mineral materials mining, including but not limited to, any of the following:

`(1) Reclamation and restoration of abandoned surface mined areas.

`(2) Reclamation and restoration of abandoned milling and processing areas.

`(3) Sealing and filling abandoned deep mine entries.

`(4) Planting of land adversely affected by past mining to prevent erosion and sedimentation.

`(5) Prevention, abatement, treatment, and control of water pollution created by abandoned mine drainage.

`(6) Control of surface subsidence due to abandoned deep mines.

`(7) Such expenses as may be necessary to accomplish the purposes of this subtitle.

`(b) PRIORITIES- Expenditure of moneys from the Fund shall reflect the following priorities in the order stated:

`(1) The protection of public health, safety, general welfare and property from extreme danger from the adverse effects of past minerals and mineral materials mining practices.

`(2) The protection of public health, safety, and general welfare from the adverse effects of past minerals and mineral materials mining practices.

`(3) The restoration of land and water resources previously degraded by the adverse effects of past minerals and mineral materials mining practices.

`(c) UTILITIES AND OTHER FACILITIES- Reclamation projects involving the protection, repair, replacement, construction, or enhancement of utilities, such as those relating to water supply, roads, and such other facilities serving the public adversely affected by mineral and mineral materials mining and processing practices, and the construction of public facilities in communities impacted by mineral and mineral materials mining and processing practices, shall be deemed part of the objectives set forth, and undertaken as they relate to, the priorities stated in subsection (b).

`SEC. 423. ELIGIBLE AREAS.

`(a) ELIGIBILITY- Lands, waters, and facilities eligible for reclamation expenditures under this Act shall be those--

`(1) which were mined or processed for minerals and mineral materials or which were affected by such mining or processing, and abandoned or left in an inadequate reclamation status prior to the date of enactment of this subtitle; and

`(2) for which there is no continuing reclamation responsibility under State or Federal laws.

In determining the eligibility under this subsection of Federal lands, waters, and facilities under the jurisdiction of the Forest Service or Bureau of Land Management in lieu of the date referred to in paragraph (1), the applicable date shall be August 28, 1974, and November 26, 1980, respectively.

`(b) SPECIFIC SITES AND AREAS NOT ELIGIBLE- Sites and areas designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 and following) or which have been listed for remedial action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601 and following) shall not be eligible for expenditures from the Fund under this subtitle.

`SEC. 424. FUND ALLOCATION AND EXPENDITURES.

`(a) ALLOCATIONS- (1) Moneys available for expenditure from the Fund shall be allocated on an annual basis by the Secretary in the form of grants to eligible States, or in the form of expenditures under subsection (b), to accomplish the purposes of this subtitle. Such moneys may also be provided pursuant to cooperative agreements between such States and the Bureau of Land Management, the Forest Service, or the National Park Service for such purposes.

`(2) The Secretary shall distribute moneys from the Fund to eligible States and to the entities described under subsection (b) based on the greatest need for such moneys pursuant to the priorities stated in section 422(b). In

determining the greatest need for the distribution of moneys from the Fund, the Secretary shall give priority to those eligible States which do not receive grants under subtitle A.

`(b) DIRECT FEDERAL EXPENDITURES- Where a State is not eligible, or in instances where the purposes of this subtitle may best be accomplished otherwise, moneys available from the Fund may be:

`(1) Expended directly by the Secretary through the Director, Office of Surface Mining Reclamation and Enforcement.

`(2) Expended through grants made by the Secretary through the Director of the Bureau of Land Management.

`(3) Expended through grants made by the Secretary to the Chief of United States Forest Service.

`(4) Expended through grants made by the Secretary through the Director of the National Park Service.

`SEC. 425. STATE RECLAMATION PROGRAMS.

`(a) ELIGIBLE STATES- For the purpose of section 424(a), an `eligible State' is one which the Secretary determines to meet each of the following requirements:

`(1) Within the State there are mined lands, waters, and facilities eligible for reclamation pursuant to section 423.

`(2) The State has developed an inventory of such areas following the priorities established under section 422(b).

`(3) The State has established, and the Secretary has approved, a State abandoned minerals and mineral materials mine reclamation program for the purpose of receiving and administering grants under this subtitle. Any State with an approved abandoned mine reclamation program pursuant to section 405 shall be deemed to have met the requirements of this paragraph.

`(b) MONITORING- The Secretary shall monitor the expenditure of State grants to ensure they are being utilized to accomplish the purposes of this subtitle.

`(c) SUPPLEMENTAL GRANTS- In the case of any State with an approved abandoned mine reclamation program pursuant to section 405, grants to such State made pursuant to this subtitle may be made as a supplement to grants received by such State pursuant to section 402(g)(1).

`(d) STATE PROGRAMS- (1) The Secretary shall approve any State abandoned minerals and mineral materials mine reclamation program submitted to the Secretary by a State under this subtitle if the Secretary finds that the State has the ability and necessary State legislation to implement such program and

that the program complies with the provisions of this subtitle and the regulations of the Secretary under this subtitle.

`(2) No State shall be liable under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out an approved State abandoned minerals and mineral materials mine reclamation program under this section. This paragraph shall not preclude liability for cost or damages as a result of gross negligence or intentional misconduct by the State. For purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

`SEC. 426. AUTHORIZATION OF APPROPRIATIONS; TERMINATION.

`(a) AUTHORIZATION OF APPROPRIATIONS- Amounts credited to the Fund are authorized to be appropriated for the purpose of this subtitle without fiscal year limitations.

`(b) TERMINATION- The Fund established under this subtitle and the authorities provided in this subtitle shall terminate September 30, 2007.'.

(b) RULEMAKING- The Secretary of the Interior shall promulgate such rules as may be necessary to implement the amendments made by this section within 180 days after the enactment of this Act.

(c) CONFORMING CHANGE- All references to `this title' in sections 401 through 413 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231 and following) are amended to read `this subtitle'.

(d) TABLE OF CONTENTS- The table of contents for title IV of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231 and following) is amended by inserting

`Subtitle A--Abandoned Mine Reclamation Fund'

immediately before the item relating to section 401 and by adding the following at the end thereof:

`Subtitle B--Abandoned Minerals and Mineral Materials Mine Reclamation Fund

`Sec. 421. Abandoned minerals and mineral materials mine reclamation.

`Sec. 422. Use and objectives of fund.

`Sec. 423. Eligible areas.

`Sec. 424. Fund allocation and expenditures.

`Sec. 425. State reclamation programs.

`Sec. 426. Authorization of appropriations; termination.'.

SEC. 5415. ENVIRONMENTAL STANDARDS.

(a) NEW SECTION- Title IV of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231) is amended by adding the following new section after section 414:

`SEC. 415. ENVIRONMENTAL STANDARDS.

`The Secretary shall, within one year after the enactment of this section, establish by regulation reasonable and effective environmental standards for abandoned coal mine reclamation projects funded under this subtitle, and shall develop and implement procedures to ensure that such standards are met. In promulgating the standards, the Secretary shall incorporate the standards set forth in section 515 and section 516 to the extent he deems such standards appropriate for purposes of this subtitle.'.

(b) CONFORMING AMENDMENT- The table of contents in the first section of the Surface Mining Control and Reclamation Act of 1977 is amended by adding the following new item after the item relating to section 414:

`Sec. 415. Environmental standards.'.

SEC. 5416. EFFECTIVE DATE.

The amendments made by this subtitle shall take effect at the beginning of the first fiscal year immediately following the fiscal year in which this subtitle is enacted.

TITLE VI--COMMITTEE ON THE JUDICIARY

SEC. 601. PATENT AND TRADEMARK OFFICE USER FEES.

(a) SURCHARGES- There shall be a surcharge, during fiscal years 1991 through 1995, of 56 percent, rounded by standard arithematic rules, on all fees authorized by subsections (a) and (b) of section 41 of title 35, United States Code.

(b) USE OF FEES AND SURCHARGES- Notwithstanding section 3302 of title 31, United States Code, beginning in fiscal year 1991, all fees and surcharges collected by the Patent and Trademark Office--

(1) shall be credited to the `Salaries and Expenses' account of the Patent and Trademark Office,

(2) shall be available to the Patent and Trademark Office without appropriation, for all authorized activities and operations of the office, including all direct and indirect costs of services provided by the office, and

(3) shall remain available until expended.

(c) REVISIONS- In fiscal years 1992 through 1995, surcharges established under subsection (a) may be revised periodically by the Commissioner of Patents and Trademarks, subject to the provisions of section 553 of title 5, United States Code, in order to ensure that the following amounts, but not more than the following amounts, of patent and trademark user fees are collected:

(1) $91,000,000 in fiscal year 1991.

(2) $95,000,000 in fiscal year 1992.

(3) $99,000,000 in fiscal year 1993.

(4) $103,000,000 in fiscal year 1994.

(5) $107,000,000 in fiscal year 1995.

(d) REPEAL- Section 105(a) of Public Law 100-703 (102 Stat. 4675) is repealed.

(e) REPORT ON FEES- The Commissioner of Patents and Trademarks shall study the structure of all fees collected by the Patent and Trademark Office and, not later than May 1, 1991, shall submit to the Congress a report on all fees to be collected by the office in fiscal years 1992 through 1995. The report shall include a proposed schedule of fees that would distribute the surcharges provided by subsection (a) among all fees collected by the office, and recommendations for any statutory changes that may be necessary to implement the proposals contained in the report.

SEC. 602. FEDERAL AGENCY STATUS.

For the purposes of Federal law, the Patent and Trademark Office shall be considered a Federal agency. In particular, the Patent and Trademark Office shall be subject to all Federal laws pertaining to the procurement of goods and services that would apply to a Federal agency using appropriated funds, including the Federal Property and Administrative Services Act of 1949 and the Office of Federal Procurement Policy Act.

SEC. 603. EFFECT ON OTHER LAW.

Except for section 601(d), nothing in this title affects the provisions of Public Law 100-703 (102 Stat. 4674 and following).

TITLE VII--MERCHANT MARINE AND FISHERIES COMMITTEE PROVISIONS

Subtitle A--Miscellaneous

SEC. 7101. AMOUNT OF TONNAGE CHARGES.

(a) INCREASE IN CHARGES- Section 4219 of the Revised Statutes of the United States (46 App. U.S.C. 121) is amended in the second paragraph--

(1) by striking `2 cents per ton, not to exceed in the aggregate 10 cents per ton in any 1 year,' and inserting `27 cents per ton, not to exceed in the aggregate $1.35 per ton in any 1 year,'; and

(2) by striking `6 cents per ton, not to exceed 30 cents per ton per annum,' and inserting `81 cents per ton, not to exceed $4.05 per ton per annum,'.

(b) TREATMENT OF INCREASED CHARGES- Increased tonnage charges collected as a result of the amendments made by subsection (a) shall be deposited in the general fund of the Treasury as offsetting receipts of the department in which the Coast Guard is operating and ascribed to Coast Guard activities.

SEC. 7102. COAST GUARD USER FEES.

(a) REPEAL OF PROHIBITION- Section 2110 of title 46, United States Code, is repealed.

(b) CLERICAL AMENDMENT- The analysis for chapter 21 of title 46, United States Code, is amended by striking the item relating to section 2110.

SEC. 7103. ENVIRONMENTAL PROTECTION AGENCY USER FEES.

(a) ESTABLISHMENT AND COLLECTION OF FEES- The Administrator of the Environmental Protection Agency shall establish and collect fees for services and things of value provided by the Environmental Protection Agency with respect to--

(1) issuing permits under section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342);

(2) issuing registrations under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a);

(3) reviewing notifications under section 5, and operating a radon proficiency program under section 305, of the Toxic Substances Control Act (15 U.S.C. 2604, 2665);

(4) issuing vehicle and engine certificates of conforming under section 206 of the Clean Air Act (42 U.S.C. 7525); and

(5) testing fuel economy under section 503 and 506 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2003, 2006).

(b) AMOUNT OF FEES- Fees established and collected by the Administrator under this section shall be in such amounts as are necessary to collect not

less than--

(1) $22,000,000 in fiscal year 1991; and

(2) $33,000,000 in each of fiscal years 1992, 1993, 1994, and 1995.

(c) FUNCTIONS, POWERS, RESPONSIBILITIES, AND LIABILITY OF U.S. NOT AFFECTED- The establishment, assessment, and collection of fees under this section--

(1) shall not alter or expand the functions, powers, responsibilities, and liability of the United States for the performance of services for which such fees are established; and

(2) does not constitute an expressed or implied promise by the United States to provide any service or perform any activity in a particular manner, or at a particular time or place.

(d) RECEIPTS CREDITED TO ENVIRONMENTAL PROTECTION AGENCY- Amounts collected by the Administrator in the form of fees under this section shall be deposited in the general fund of the Treasury as proprietary receipts ascribed to Environmental Protection Agency activities.

Subtitle B--Coastal Zone Management

SEC. 7201. SHORT TITLE.

This subtitle may be cited as the `Coastal Zone Act Reauthorization Amendments of 1990'.

SEC. 7202. FINDINGS AND PURPOSES.

(a) FINDINGS- The Congress finds the following:

(1) The Coastal Zone Management Act of 1972 has not been subject to comprehensive review and amendment since 1980.

(2) The pressures of population growth are steadily increasing in the coastal zone, as illustrated by the fact that--

(A) over one-half of the people of the United States live and work within coastal counties which encompass less than 10 percent of the United States land mass;

(B) the population density of coastal counties is 5 times greater than noncoastal counties nationwide; and

(C) growth around sensitive coastal ecosystems will continue;

(3) population growth in the coastal zone manifests itself in various ways, including--

(A) increased pollution of coastal waters, particularly from nonpoint sources such as parking lots, roads, and farms;

(B) loss of wetlands and other vital habitat;

(C) diminishing opportunities for public access to shorelines; and

(D) heightened vulnerability of coastal communities to natural hazards and sea level rise; and

(4) because global warming may cause a substantial rise in sea level with serious adverse affects on the coastal zone, coastal States should be encouraged and assisted in planning for such occurrences.

(b) PURPOSES- The purposes of this subtitle are to--

(1) establish the improvement of coastal resource protection as a priority national goal under the Coastal Zone Management Act of 1972;

(2) establish improved incentives for State and local action to achieve better coastal resource protection;

(3) revitalize the Federal coastal management program by establishing a mandate for Federal leadership and technical and financial assistance in support of improved coastal zone management at the regional, State, and local levels; and

(4) encourage voluntary participation by all eligible coastal States in programs established under title II of this Act, by setting a goal of 100 percent State participation by the end of fiscal year 1995.

SEC. 7203. REAUTHORIZATION OF COASTAL ZONE MANAGEMENT ACT OF 1972.

The Coastal Zone Management Act of 1972 (16 U.S.C. 1451-1464) is amended to read as follows:

`TITLE III--MANAGEMENT OF THE COASTAL ZONE

`SEC. 301. SHORT TITLE.

`This title may be cited as the `Coastal Zone Management Act'.

`SEC. 302. FINDINGS.

`The Congress finds the following:

`(1) It is in the national interest of the United States to manage, protect, and develop with proper environmental safeguards, the coastal zone.

`(2) The coastal zone is rich in a variety of natural, commercial, recreational, ecological, historical, cultural, industrial, and esthetic resources of importance to the United States.

`(3) The increasing and competing demands upon the lands and waters of the coastal zone occasioned by population growth and economic development, including requirements for industry, commerce, residential development, recreation, extraction of mineral resources and fossil fuels, transportation and navigation, waste disposal, and harvesting of fish, shellfish, and other living coastal resources, have resulted in severe degradation of coastal water quality, the decline of living coastal resources and wildlife, permanent and adverse changes to ecological systems, decreasing open space for public use, and shoreline erosion.

`(4) The coastal zone, and the fish, shellfish, other living coastal resources, and wildlife therein, are ecologically fragile and consequently extremely vulnerable to destruction by human alteration.

`(5) Important ecological, cultural, historic, and esthetic values of the coastal zone which are essential to the well-being of all citizens of the United States must be protected.

`(6) New and expanding demands for food, energy, minerals, defense needs, recreation, waste disposal, transportation, and industrial activities in the Great Lakes, territorial sea, Exclusive Economic Zone, and Outer Continental Shelf are damaging these areas and create the need for resolution of conflicts among competing uses and values in coastal and ocean waters.

`(7) Special natural and scenic characteristics of the coastal zone are being damaged by ill-planned development that threatens these values;

`(8) In view of competing demands and the urgent need to protect and give priority to maintaining natural systems in the coastal zone, present State and local capabilities to plan for and regulate land and water uses in these areas are inadequate.

`(9) The key to more effective protection of the land and water resources of the coastal zone is to encourage coastal States to exercise their full authority over the lands and waters in the coastal zone by assisting coastal States, in cooperation with the Federal and local governments and other vitally affected interests, in developing land and water use programs for the coastal zone, including unified policies, criteria, standards, methods, and processes for managing land and water uses in the coastal zone, as well as uses which, although outside of the coastal zone, will affect natural resources, land uses, or water uses in the coastal zone.

`(10) Beneficial use of the land and water resources of the coastal zone requires consideration of activities which are of more than local significance.

`(11) Land use in the coastal zone, and the use of adjacent lands which drain into the coastal zone, may significantly affect the quality of coastal waters and habitat, and efforts to control coastal water pollution from land use activities must be improved.

`(12) Expeditious and environmentally sound development of offshore energy resources is best achieved through coordination of that development with State coastal zone management programs.

`(13) The attainment by the United States of a greater degree of energy self-sufficiency will be advanced by providing Federal financial assistance to meet State and local needs resulting from energy activity in or affecting the coastal zone.

`(14) Implementation of the public trust doctrine through federally-approved State coastal zone management plans will ensure that coastal States exercise their full authority over the lands, waters, and resources within their coastal zones fully and in accordance with that doctrine.

`SEC. 303. DECLARATION OF POLICY.

`The Congress declares that it is the policy of the United States--

`(1) to preserve, protect, develop with proper environmental safeguards, and where possible restore or enhance, the resources of the coastal zone for this and succeeding generations;

`(2) to encourage and assist coastal States to exercise effectively their responsibilities in the coastal zone through the development, implementation and continual improvement of management programs to achieve wise use of the air, land, water, mineral, and living resources of the coastal zone, giving full consideration to ecological, cultural, historic, and esthetic values and to needs for economic development;

`(3) that the management programs approved under section 306 shall include provisions for--

`(A) protecting natural resources, including wetlands, floodplains, estuaries, beaches, dunes, maritime forests, barrier islands, coral reefs, and fish and wildlife and their habitat, within the coastal zone;

`(B) managing coastal development to minimize--

`(i) the loss of life and property caused by improper development in flood-prone, storm surge, geologically hazardous, and erosion-prone areas; and in areas likely to be affected by sea level rise, land subsidence, and saltwater intrusion; and

`(ii) the destruction of natural protective features, such as

beaches, dunes, wetlands, maritime forests, and barrier islands;

`(C) managing coastal development to protect and restore the quality of coastal waters and to prevent the impairment of existing uses of those waters;

`(D) giving priority to water-dependent uses adjacent to coastal waters over other uses;

`(E) orderly processes for--

`(i) siting major facilities related to national defense, energy, fisheries development, recreation, ports, and transportation; and

`(ii) locating new commercial and industrial development, to the maximum extent practicable, in or adjacent to areas where such development already exists;

`(F) public access to the coasts for recreation purposes;

`(G) assisting in the redevelopment of deteriorating urban waterfronts and ports, and preservation and restoration of historic, cultural, and esthetic coastal features;

`(H) coordinating and simplifying of procedures to ensure expedited governmental decisionmaking for the management of coastal resources;

`(I) continued consultation and coordination with, and the giving of adequate consideration to, the views of affected Federal agencies;

`(J) timely and effective notification of, and opportunities for public and local government participation in, coastal management decisionmaking;

`(K) assistance to support comprehensive planning, conservation, and management for living coastal resources, including planning for the siting of pollution control and aquaculture facilities within the coastal zone, and improved coordination between State and Federal coastal zone management agencies, and State water quality and fish and wildlife agencies;

`(L) where the Under Secretary considers appropriate, the study, development and implementation of management plans to address the adverse impacts of sea level rise and Great Lakes level rise on the coastal zone, including coastal drinking water supplies, coastal infrastructure, ports and harbors, energy facilities, coastal wetlands and other critical coastal habitat, housing, and storm surge protection; and

`(M) an inventory and designation of areas that contain one or more coastal resources of national significance, including criteria and procedures for public nomination of such areas;

`(4) to encourage the preparation of special area management plans which provide for increased specificity in protecting--

`(A) significant natural resources;

`(B) reasonable water-dependent economic growth;

`(C) improved protection of life and property in hazardous areas, including specifically those areas likely to be affected by sea level rise; and

`(D) improved predictability in governmental decisionmaking; and

`(5) to encourage the participation and cooperation of the public, State and local governments, interstate and other regional agencies, and Federal agencies having programs affecting the coastal zone, in carrying out the purposes of this title.

`SEC. 304. DEFINITIONS.

`For the purposes of this title--

`(1) COASTAL RESOURCE OF NATIONAL SIGNIFICANCE- The term `coastal resource of national significance' means any area in the coastal zone which is determined by a coastal State to provide ecological, esthetic, recreational, historical, or natural storm protective values which are of greater than local significance.

`(2) COASTAL STATE- The term `coastal State' means a State in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or any of the Great Lakes, and includes the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the United States Trust Territory of the Pacific Islands.

`(3) COASTAL WATERS- The term `coastal waters' means--

`(A) in the Great Lakes area, the waters within the territorial jurisdiction of the United States consisting of the Great Lakes, their connecting waters, harbors, roadsteads, and estuary-type areas such as bays, shallows, and marshes; and

`(B) in other areas, those waters adjacent to the shoreline of any coastal State, which contain a measurable quantity or percentage of sea water, including sounds, bays, lagoons, bayous, ponds, and estuaries.

The term includes wetlands adjacent to coastal waters.

`(4) COASTAL WETLANDS- The term `coastal wetlands' means wetlands within the coastal zone of any coastal State. The Under Secretary shall, not later than June 1, 1991, promulgate a rule in accordance with the procedures in section 553 of title 5, United States Code, defining the term `wetlands'. In connection with the rulemaking required by this paragraph, the Under Secretary shall--

`(A) hold not less than 4 public hearings, including one in each of the Gulf of Mexico, Atlantic, Pacific, and Great Lakes coastal areas; and

`(B) consult with the heads of other Federal agencies to ensure that the definition of the term `wetlands' established by the rule is, to the maximum extent possible, consistent with definitions of that term applied by other Federal agencies.

`(5) COASTAL ZONE- The term `coastal zone' means coastal waters (including lands therein and thereunder) and adjacent lands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal States, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. The coastal zone extends, in Great Lakes waters, to the international boundary between the United States and Canada, and in other areas, seaward to the outer limit of State title and ownership under the Submerged Lands Act (43 U.S.C. 1301 et seq.), the Act of March 2, 1917 (48 U.S.C. 749), the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as approved by the Act of March 24, 1976 (48 U.S.C. 1681 note), or section 1 of the Act of November 20, 1963 (48 U.S.C. 1705), as applicable. The coastal zone extends inland from the shoreline to the extent necessary to control lands, the uses of which have a direct and significant impact on coastal waters. The coastal zone does not include lands the use of which is by law subject solely to the discretion of, or which is held in trust by, the Federal Government or its officers or agents.

`(6) CRITICAL COASTAL AREA- The term `critical coastal area' means an area identified on the basis of geological, hydrological, and ecological factors and proximity to sensitive coastal waters, wetlands and habitats, to be an area for which there is a significant likelihood that any new or expanded land use will have an adverse effect on coastal waters, either directly or through cumulative or secondary effects, unless appropriate land use management measures are employed.

`(7) ENFORCEABLE POLICY- The term `enforceable policy' means State policies which are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions, by which a State exerts control over private and public land and water uses and natural resources in the coastal zone.

`(8) ESTUARINE AREA- The term `estuarine area' includes any part or all

of an estuary, and any island, transitional area, or upland in, adjoining, or adjacent to that estuary.

`(9) ESTUARY- The term `estuary' means a semienclosed body of coastal water, connected to the ocean, where sea water is mixed with and measurably diluted by fresh water. The term includes estuary-type areas of the Great Lakes.

`(10) LAND USE- The term `land use' means a use, activity, or project conducted on lands within the coastal zone.

`(11) LOCAL GOVERNMENT- The term `local government' means any political subdivision of, or any special entity created by, any coastal State, which (in whole or part) is located in, or has authority over, such State's coastal zone and which--

`(A) has authority to levy taxes, or to establish and collect user fees; or

`(B) provides any public facility or public service which is financed in whole or part by taxes or user fees.

The term includes any school district, fire district, transportation authority, and any other special purpose district or authority.

`(12) MANAGEMENT PROGRAM- The term `management program' means a comprehensive statement in words, maps, illustrations, or other media of communication, prepared and adopted by a coastal State in accordance with the provisions of this title, setting forth objectives, policies, and standards to guide public and private uses of natural resources, lands, and waters in the coastal zone.

`(13) PERSON- The term `person' means any individual; any corporation, partnership, association, or other entity organized or existing under the laws of any State; the Federal Government; any State, regional, or local government; and any entity of any Federal, State, regional, or local government.

`(14) SEA LEVEL RISE- The term `sea level rise' means an increase in the level of the sea relative to the level of adjacent land.

`(15) SPECIAL AREA MANAGEMENT PLAN- The term `special area management plan' means a comprehensive plan providing for natural resource protection and reasonable water-dependent economic growth containing a detailed and comprehensive statement of policies; standards and criteria to guide public and private uses of natural resources, lands, and waters; and mechanisms for timely implementation in specific geographic areas within the coastal zone.

`(16) UNDER SECRETARY- The term `Under Secretary' means the Under Secretary of Commerce for Oceans and Atmosphere.

`(17) WATER-DEPENDENT USE- The term `water-dependent use' means a use, activity, or project that requires direct physical siting on, or proximity or access to, an adjacent body of coastal water. The term includes industrial or commercial activities related to port and harbor operation and commercial fishing, and activities related to water recreation. A use, activity, or project shall not be considered to be a water-dependent use solely because of economic advantages that may be gained from a coastal waterfront location.

`(18) WATER USE- The term `water use' means a use, activity, or project conducted in or on waters within the coastal zone.

`SEC. 305. MANAGEMENT PROGRAM DEVELOPMENT GRANTS.

`(a) DEVELOPMENT GRANTS- In fiscal years 1991, 1992, and 1993, the Under Secretary may make a grant annually to any coastal State without an approved program from sums available to the Under Secretary under section 309, if the coastal State demonstrates to the satisfaction of the Under Secretary that the grant will be used to develop a management program consistent with the requirements set forth in section 306. The amount of any such grant shall not exceed $200,000 in any fiscal year, and shall require State matching funds according to a 4-to-one ratio of Federal-to-State contributions. After an initial grant is made to a coastal State pursuant to this subsection, no subsequent grant shall be made to that coastal State pursuant to this subsection unless the Under Secretary finds that the coastal State is satisfactorily developing its management program. No coastal State is eligible to receive more than 2 grants pursuant to this subsection.

`(b) SUBMITTAL OF PROGRAM- Any coastal State which has completed the development of its management program shall submit such program to the Under Secretary for review and approval pursuant to section 306.

`SEC. 306. ADMINISTRATIVE GRANTS.

`(a) GENERAL- The Under Secretary may make grants to any coastal State for the purpose of administering that State's management program, if the State matches any such grant according to the following ratios of Federal-to-State contributions for the applicable fiscal year:

`(1) EXISTING PROGRAMS- For those States for which programs were approved prior to enactment of the Coastal Zone Act Reauthorization Amendments of 1990, one to one for any fiscal year.

`(2) DEVELOPING PROGRAMS- For States for which programs are approved after the date of the enactment of the Coastal Zone Act Reauthorization Amendments of 1990, 4 to one for the first fiscal year, 2.3 to one for the second fiscal year, 1.5 to one for the third fiscal year, and one to one for each fiscal year thereafter.

`(b) GRANT CONDITIONS- The Under Secretary may make a grant to a coastal State under subsection (a) only if the Under Secretary finds that the

management program of the coastal State meets all applicable requirements of this title and has been approved in accordance with subsection (d).

`(c) GRANT ALLOCATION- Grants under this section shall be allocated to coastal States with approved programs based on rules and regulations promulgated by the Under Secretary which shall take into account the extent and nature of the shoreline and area covered by the program, population of the area, and other relevant factors. The Under Secretary shall establish, after consulting with the coastal States, maximum and minimum grants for any fiscal year to promote equity between coastal States and effective coastal management.

`(d) PROGRAM APPROVAL REQUIREMENTS- Before approving a management program submitted by a coastal State, the Under Secretary shall find the following:

`(1) IN GENERAL- The State has developed and adopted a management program for its coastal zone in accordance with rules and regulations promulgated by the Under Secretary, after notice, and with the opportunity of full participation by relevant Federal agencies, State agencies, local governments, regional organizations, port authorities, and other interested parties and individuals, public and private, which is adequate to carry out the purposes of this title and is consistent with the policy declared in section 303.

`(2) REQUIRED PROGRAM ELEMENTS- The management program includes each of the following:

`(A) An identification of the boundaries of the coastal zone subject to the management program.

`(B) A definition of permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal waters.

`(C) An inventory and designation of areas of particular concern within the coastal zone.

`(D) An identification of the means by which the State proposes to exert control over the land uses and water uses referred to in subparagraph (B), including a list of relevant State constitutional provisions, laws, regulations, and judicial decisions.

`(E) Broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority.

`(F) A description of the organizational structure proposed to implement the management program, including the responsibilities and interrelationships of local, areawide, State, regional, and interstate agencies in the management process.

`(G) A definition of the term `beach' and a planning process for the

protection of, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological, or cultural value.

`(H) A planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zone, including a process for anticipating and managing the impacts from such facilities.

`(I) A planning process for assessing the effects of, and studying and evaluating ways to control, or lessen the impact of, shoreline erosion, and to restore areas adversely affected by such erosion.

`(3) REQUIRED PROCEDURES- The State has--

`(A) coordinated its program with local, areawide, and interstate plans applicable to areas within the coastal zone--

`(i) existing on January 1 of the year in which the State's management program is submitted to the Under Secretary; and

`(ii) which have been developed by a local government, an areawide agency, a regional agency, or an interstate agency; and

`(B) established an effective mechanism for continuing consultation and coordination among the management agency designated pursuant to paragraph (6), local governments, interstate agencies, regional agencies, and areawide agencies within the coastal zone to assure the full participation of those local governments and agencies in carrying out the purposes of this title; except that the Under Secretary shall not find any mechanism to be effective for purposes of this subparagraph unless it requires that--

`(i) the management agency, before implementing any management program decision which would conflict with any local zoning ordinance, decision, or other action, shall send a notice of the management program decision to any local government whose zoning authority is affected;

`(ii) within the 30-day period commencing on the date of receipt of the notice, the local government may submit to the management agency written comments on the management program decision, and any recommendation for alternatives; and

`(iii) the management agency, if any comments are submitted to it within the 30-day period by any local government--

`(I) shall consider the comments;

`(II) may, in its discretion, hold a public hearing on the

comments; and

`(III) may not take any action within the 30-day period to implement the management program decision.

`(4) PUBLIC HEARINGS- The State has held public hearings in the development of the management program.

`(5) GUBERNATORIAL APPROVAL- The management program and any amendment, modification, or other change thereto have been reviewed and approved by the Governor of the State.

`(6) DESIGNATION OF LEAD AGENCY- The Governor of the State has designated a single State agency to receive and administer grants for implementing the management program.

`(7) ORGANIZATION- The State is organized to implement the management program.

`(8) NATIONAL INTEREST- The management program provides for adequate consideration of the national interest involved in planning for, and managing the coastal zone, including the siting of facilities such as energy facilities which are of greater than local significance. In the case of energy facilities, the Under Secretary shall find that the State has given consideration to any applicable national or interstate energy plan or program.

`(9) AREA DESIGNATIONS- The management program includes procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological, historical, or esthetic values.

`(10) AUTHORITY TO IMPLEMENT PROGRAM- The State, acting through its chosen agency or agencies (including local governments, areawide agencies, regional agencies, or interstate agencies) has authority for the management of the coastal zone in accordance with the management program. Such authority shall include power--

`(A) to administer land use and water use regulations to control development to ensure compliance with the management program, and to resolve conflicts among competing uses; and

`(B) to acquire fee simple and less than fee simple interests in land, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.

`(11) CONTROL OF USES- The management program provides for any one or a combination of the following general techniques for control of land uses and water uses within the coastal zone:

`(A) State establishment of criteria and standards for local

implementation, subject to administrative review and enforcement.

`(B) Direct State land and water use planning and regulation.

`(C) State administrative review for consistency with the management program of all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any State or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings.

`(12) USES OF REGIONAL BENEFIT- The management program contains a method of assuring that local land use and water use regulations within the coastal zone do not unreasonably restrict or exclude land uses and water uses of regional benefit.

`(13) PROTECTION OF NATIONALLY SIGNIFICANT RESOURCES- The management program provides for--

`(A) the inventory and designation of areas that contain one or more coastal resources of national significance; and

`(B) specific and enforceable standards to protect such resources.

`(14) PUBLIC PARTICIPATION- The management program provides for public participation in permitting processes, consistency determinations, and other similar decisions.

`(15) INTRASTATE COMPLIANCE- The management program provides a mechanism to ensure that all State agencies will adhere to the program.

`(e) PROGRAM AMENDMENTS AND MODIFICATIONS-

`(1) IN GENERAL- A coastal State may amend, modify, or otherwise change its approved management program as provided in this subsection.

`(2) NOTIFICATION REQUIRED- A coastal State shall promptly notify the Under Secretary of any proposed amendment, modification, or change in its management program and submit it to the Under Secretary for his or her approval. The Under Secretary may suspend all or part of any grant made to the State under this section pending submission of the proposed amendment, modification, or change by the State.

`(3) REVIEW AND APPROVAL BY UNDER SECRETARY- (A) Within 30 days after the date the Under Secretary receives any amendment, modification, or other change proposed by a coastal State to its management program, the Under Secretary shall approve or disapprove the proposal, unless the Under Secretary finds it is necessary to extend the period for reviewing the proposal. Upon such a finding, the Under Secretary may extend the period for review to not later than 120 days after the date the Under Secretary received the proposal. The Under Secretary may further extend the period for review only as necessary to

meet the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

`(B) If the Under Secretary does not approve or disapprove an amendment, modification, or other change proposed by a coastal State to its management program within 120 days after the date the proposal is received by the Under Secretary, the proposal is deemed to be approved by the Under Secretary unless the Under Secretary has extended the period for review for purposes of meeting the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

`(4) APPROVAL REQUIRED FOR IMPLEMENTATION- (A) Except as provided in subparagraph (B), a coastal State may not implement any amendment, modification, or other change as part of its approved management program unless the amendment, modification, or other change is approved by the Under Secretary under this subsection.

`(B) The Under Secretary, after determining on a preliminary basis, that an amendment, modification, or other change which has been submitted for approval under this subsection is likely to meet the program approval standards in this section, may permit the State to expend funds awarded under this section to begin implementing the proposed amendment, modification, or change. This preliminary approval shall not extend for more than 6 months and may not be renewed. A proposed amendment, modification, or change which is subject to preliminary approval under this paragraph shall not be considered an enforceable policy for purposes of section 307(m).

`SEC. 306A. RESOURCE MANAGEMENT IMPROVEMENT GRANTS.

`(a) DEFINITIONS- For purposes of this section--

`(1) the term `eligible coastal State' means a coastal State that for any fiscal year for which a grant is applied for under this section--

`(A) has a management program approved under section 306; and

`(B) in the judgment of the Under Secretary, is making continual and satisfactory progress in improving its approved coastal zone management program in compliance with section 310; and

`(2) the term `urban waterfront and port' means any developed area that is densely populated and is being used for, or has been used for, urban residential, recreational, commercial, shipping, or industrial purpose.

`(b) GRANTS AND RESOURCE IMPROVEMENTS- The Under Secretary may make grants to any eligible coastal State to assist that State in meeting one or more of the following objectives:

`(1) PRESERVATION OR RESTORATION- Preserving or restoring specific areas of the coastal zone--

`(A) that are designated under the management program procedures required by section 306(d)(9) because of their conservation, recreational, ecological, historic, or esthetic value;

`(B) under a comprehensive restoration program adopted under section 310(a)(1);

`(C) that contain one or more coastal resources of national significance; or

`(D) for the purpose of restoring and enhancing shellfish production by the purchase and distribution of clutch material on publicly owned reefs and bottom lands.

`(2) REDEVELOPMENT- Redeveloping deteriorating and underutilized urban waterfronts and ports that are designated under section 306(d)(2)(C) in the State's management program as areas of particular concern.

`(3) PUBLIC ACCESS- Providing access to public beaches and other public coastal areas and to coastal waters in accordance with the planning process required under section 306(d)(2)(G).

`(c) GRANT RESTRICTIONS-

`(1) TERMS AND CONDITIONS- Each grant under this section shall be subject to any terms and conditions as may be appropriate to ensure that the grant is used for purposes consistent with this section.

`(2) ELIGIBLE USES- Grants under this section may be used for--

`(A) acquiring fee simple and other interests in land;

`(B) low-cost construction projects determined by the Under Secretary to be consistent with the purposes of this section, including construction of paths, walkways, fences, parks, and oyster beds and the rehabilitation of historic buildings and structures, except that not more than 50 percent of any grant under this section may be used for such construction projects;

`(C) in the case of grants for objectives described in subsection (b)(2)--

`(i) the rehabilitation or acquisition of piers to provide increased public use, including compatible commercial activity;

`(ii) the establishment of shoreline stabilization measures, including the installation or rehabilitation of bulkheads for the purpose of public safety or increasing public access and use;

`(iii) the removal or replacement of pilings where such action will provide increased recreational use of urban waterfront areas, except that activities provided for under this paragraph

shall not be treated as construction projects subject to the limitations in subparagraph (B);

`(D) engineering designs, specifications, and other appropriate reports; and

`(E) educational, interpretive, and management costs and such other related costs as the Under Secretary determines to be consistent with the purposes of this section.

`(d) MATCHING REQUIREMENTS-

`(1) IN GENERAL- The Under Secretary shall require a coastal State to match a grant under this section in a ratio of at least one to one of Federal to State contribution.

`(2) USE FOR OTHER MATCHING REQUIREMENTS- A coastal State may use a grant under this section to pay the State's share of costs required under any other Federal program that is consistent with the purposes of this section.

`SEC. 306B. MANAGING LAND USES THAT AFFECT COASTAL WATERS.

`(a) IN GENERAL-

`(1) PROGRAM DEVELOPMENT- Not later than 3 years after the effective date of this section, the management agency designated pursuant to section 306(d)(6) by each coastal State for which a management program has been approved pursuant to section 306 (hereinafter in this section referred to as the `coastal management agency'), shall prepare and submit to the Under Secretary a Coastal Water Quality Protection Program (hereinafter in this section referred to as the `program') for approval pursuant to this section. The purpose of the program shall be to develop and implement coastal land use management measures for nonpoint source pollution, working in close conjunction with other State and local authorities. For purposes of this section, the term `land use' shall include uses of adjacent water areas as well.

`(2) PROGRAM COORDINATION- (A) In developing and carrying out the program, the coastal management agency shall coordinate closely with State and local water quality plans and programs developed pursuant to sections 208, 303, 319, and 320 of the Federal Water Pollution Control Act (33 U.S.C. 1288, 1313, 1329, and 1330).

`(B) The program shall serve as an update and expansion of the State nonpoint source management program developed under section 319 of the Federal Water Pollution Control Act, as the program under that section relates to land and water uses affecting the coastal zone. The program shall be prepared in close consultation with the State authority responsible for implementation of the program prepared under section

319 of that Act, in order to assure full coordination in each participating State.

`(b) PROGRAM CONTENTS- The Under Secretary in consultation with the Administrator of the Environmental Protection Agency, shall approve a program under this section if it provides for the following:

`(1) IDENTIFYING LAND USES- The identification of, and a continuing process for identifying, land uses which, individually or cumulatively, may cause or contribute significantly to a degradation of--

`(A) those coastal waters where there is a failure to attain or maintain applicable water quality standards or protect designated uses, as determined by the State pursuant to its water quality planning processes;

`(B) those coastal waters that are threatened by reasonably foreseeable increases in pollution loadings from new or expanding sources; or

`(C) outstanding resource waters designated pursuant to paragraph (4).

`(2) IDENTIFYING CRITICAL COASTAL AREAS- The identification of, and a continuing process for identifying, critical coastal areas within which any new land uses or substantial expansion of existing land uses will be subject to land use management measures that are determined necessary by the coastal management agency, in cooperation with the State water quality authorities and other State or local authorities, as appropriate, to protect and restore coastal water quality and designated uses.

`(3) COASTAL LAND USE MANAGEMENT MEASURES- (A) The implementation and continuing revision from time to time of land use management measures applicable to the land uses and areas identified pursuant to paragraphs (1) and (2) that the coastal management authority, working in conjunction with the State water pollution control agency and other State and local authorities, determines are necessary to achieve applicable water quality standards and protect designated uses.

`(B) Coastal land use management measures under this paragraph may include, among other measures, the use of--

`(i) buffer strips;

`(ii) setbacks;

`(iii) density restrictions;

`(iv) techniques for identifying and protecting critical coastal areas and habitats;

`(v) soil erosion and sedimentation control; and

`(vi) siting and design criteria for water uses, including marinas.

`(4) OUTSTANDING RESOURCE WATERS- The continuing identification and designation (after periodic nominations, notice, and public comments) of coastal waters which, because of their special ecological, recreational, or esthetic characteristics, are determined by the State to constitute outstanding resource waters. Such designations may include, but not be limited to, waters identified by the State water pollution control agency as being of special biological significance pursuant to its water quality planning processes. Outstanding resource waters may include--

`(A) areas adjacent to national or State parks or wildlife refuges;

`(B) national estuarine research reserves and national marine sanctuaries;

`(C) waters adjacent to units of the Coastal Barrier Resources System established by the Coastal Barrier Resources Act (16 U.S.C. 3501 et seq.); or

`(D) shellfish harvesting areas or fish spawning areas of particular State or local importance.

`(5) TECHNICAL ASSISTANCE- The provision of technical and financial assistance to local governments and the public for implementing the measures referred to in paragraph (3), including assistance in developing ordinances and regulations, technical guidance, and modeling to predict and assess the effectiveness of such measures, training, financial incentives, demonstration projects, and other innovations to protect coastal water quality and designated uses.

`(6) PUBLIC PARTICIPATION- Opportunities for public participation in all aspects of the program, including the use of public notices and opportunities for comment, nomination procedures, public hearings, technical and financial assistance, public education, and other means.

`(7) ADMINISTRATIVE COORDINATION- The establishment of mechanisms to improve coordination among State agencies and between State and local officials responsible for land use programs and permitting, water quality permitting and enforcement, habitat protection, and public health and safety, through the use of joint project review, interagency certifications, memoranda of agreement, and other mechanisms.

`(8) STATE COASTAL ZONE BOUNDARY MODIFICATION- Modification of the boundaries of the State coastal zone as the coastal management agency determines is necessary to manage the land uses identified pursuant to paragraph (1) and to implement, as may be required, the

recommendations made pursuant to subsection (e). If the coastal management agency does not have the authority to modify such boundaries, the program shall include recommendations for such modifications to the appropriate State authority.

`(c) PROGRAM SUBMISSION AND APPROVAL-

`(1) PROCEDURES- The submission and approval of a proposed program shall be governed by the procedures established by section 306(e).

`(2) ELIGIBILITY FOR AND WITHDRAWING ASSISTANCE- If the Under Secretary finds that a coastal State has failed to submit an approvable program as required by this section, the State shall not be eligible for any funds under this section or section 603 of the Coastal Defense Initiative of 1990, and the Under Secretary shall withdraw a portion of grants otherwise available to the State under section 306 of this Act as follows:

`(A) 10 percent after 3 years after the date of the enactment of this section.

`(B) 15 percent after 4 years after the date of the enactment of this section.

`(C) 20 percent after 5 years after the date of the enactment of this section.

`(D) 30 percent after 6 years after the date of the enactment of this section and thereafter.

The Under Secretary shall make amounts withdrawn under this paragraph available to coastal States having programs approved under this section.

`(d) TECHNICAL ASSISTANCE- The Under Secretary and the Administrator of the Environmental Protection Agency shall provide technical assistance to coastal States and local governments in developing and implementing programs under this section. Such assistance shall include--

`(1) methods for assessing water quality impacts associated with coastal land uses;

`(2) methods for assessing the cumulative water quality effects of coastal development;

`(3) maintaining and from time to time revising an inventory of model ordinances, and providing other assistance to coastal States and local governments in identifying, developing, and implementing pollution control measures; and

`(4) methods to predict and assess the effects of coastal land use management measures on coastal water quality and designated uses.

`(e) INLAND BOUNDARIES-

`(1) REVIEW- The Under Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall, within 18 months after the date of enactment of this title, review the inland coastal zone boundary of each coastal State program which has been approved or is proposed for approval under section 306 and evaluate whether the State's coastal zone boundary extends inland to the extent necessary to control the land and water uses that have a significant impact on coastal waters of the State.

`(2) RECOMMENDATION- If the Under Secretary finds that modifications to the inland boundaries of a State's coastal zone are necessary for that State to more effectively manage land and water uses to protect coastal waters, the Under Secretary shall recommend appropriate modifications in writing to the affected State.

`(f) FINANCIAL ASSISTANCE- With sums appropriated pursuant to section 318(a)(2), the Under Secretary shall provide grants to each coastal State to assist in fulfilling the requirements of this section if the coastal State matches any such grant according to a 4 to 1 ratio of Federal to State contribution. Funds available for implementing this section shall be allocated according to the regulations issued under section 306(c), except that the Under Secretary may use not more than 30 percent of any such funds to provide grants to assist those States which the Under Secretary finds are making exemplary progress in complying with the requirements of this section.

`(g) LONG ISLAND SOUND CONSERVANCY DEMONSTRATION- Notwithstanding any other provision of law and within one year after the effective date of this subsection, the Under Secretary shall establish an office, to be known as the Long Island Sound Conservancy, in the immediate vicinity of Long Island Sound. The office shall provide assistance to the States of Connecticut and New York in developing and implementing the plan described in subsection (a) and in demonstrating the most effective means of coordinating the implementation of coastal zone management and water quality programs. The Conservancy shall be eligible for grants under subsection (f) without regard to the matching requirement of that subsection.

`SEC. 307. COORDINATION AND COOPERATION.

`(a) GENERAL- In carrying out the functions and responsibilities of this title, the Under Secretary shall consult with, cooperate with, and, to the maximum extent practicable, coordinate these activities with other interested Federal agencies.

`(b) FEDERAL AGENCY CONSULTATION- The Under Secretary shall not approve the management program submitted by a State pursuant to section 306, or any amendment, modification, or other change to the management program, unless the views of Federal agencies principally affected by such program or amendments have been adequately considered.

`(c) FEDERAL AGENCY ACTIVITIES-

`(1) IN GENERAL- Each Federal agency activity, in or outside of the coastal zone, affecting any natural resources, land uses, or water uses in the coastal zone, shall be carried out in a manner which is, to the maximum extent practicable, consistent with approved State management programs.

`(2) PRESIDENTIAL EXEMPTION- After any final judgment, decree, or order of any Federal court that is appealable under section 1291 or 1292 of title 28, United States Code, or under any other applicable provision of Federal law, that a specific Federal agency activity is not in compliance with subsection (c)(1), and certification by the Under Secretary that mediation under subsection (h) is not likely to result in such compliance, the President may, upon written request from the Under Secretary, exempt from compliance those elements of the Federal agency activity that are found by the Federal court to be inconsistent with an approved State program, if the President determines that the activity is in the paramount interest of the United States. No such exemption shall be granted due to a lack of appropriations unless the President has specifically requested such appropriations as part of the budgetary process, and the Congress has failed to make available the requested appropriations.

`(3) CONSISTENCY DETERMINATION REQUIRED- Each Federal agency carrying out an activity subject to paragraph (1) shall provide a consistency determination to the relevant State agency designated under section 306(d)(6) at the earliest practicable time, but in no case later than 90 days before final approval of the Federal activity unless both the Federal agency and the State agency agree to a different schedule.

`(d) FEDERALLY LICENSED OR PERMITTED ACTIVITIES-

`(1) IN GENERAL- Any applicant for a required Federal license or permit to conduct an activity in or outside the coastal zone, affecting any natural resources, land uses, or water uses in the coastal zone of a State, shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the State's approved program and that the activity will be conducted in a manner consistent with the program. At the same time, the applicant shall furnish to the State or its designated agency a copy of the certification, with all necessary information and data, and with any fee which may be required pursuant to subsection (i). Each coastal State shall establish procedures for public notice in the case of all certifications and, to the extent it deems appropriate, procedures for public hearings. At the earliest practicable time, the State or its designated agency shall notify the Federal agency concerned that the State concurs with or objects to the applicant's certification. If the State or its designated agency fails to furnish the required notification within 6 months after receipt of its copy of the applicant's certification, the State's concurrence with the certification shall be conclusively presumed. No license or permit shall be

granted by the Federal agency until the State or its designated agency has concurred with the applicant's certification or until, by the State's failure to act, the concurrence is conclusively presumed, unless the Under Secretary, on his or her own initiative or upon appeal by the applicant, finds, after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the State, that the activity is consistent with (A) the requirements of this title, and (B) the findings and policies of this title or is otherwise necessary in the interest of national security.

`(2) OUTER CONTINENTAL SHELF EXPLORATION, DEVELOPMENT, OR PRODUCTION- Any person who submits to the Secretary of the Interior any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) and regulations under such Act shall, with respect to any exploration, development, or production described in such plan and affecting any natural resources, land uses, or water uses in the coastal zone of a State, attach to such plan a certification that each activity which is described in detail in such plan complies with such State's approved management program and will be carried out in a manner consistent with such program. No Federal official or agency shall grant such person any license or permit for any activity described in detail in such plan until such State or its designated agency receives a copy of such certification and plan, together with any other necessary data and information, and with any fee which may be required pursuant to subsection (i), and until--

`(A) the State or its designated agency, in accordance with the procedures required to be established by the State pursuant to paragraph (1), concurs with the certification and notifies the Under Secretary and the Secretary of the Interior of the concurrence;

`(B) concurrence by the State with such certification is conclusively presumed as provided for in paragraph (1). If the State fails to concur with or objects to the certification within 3 months after receipt of its copy of the certification and supporting information, the State shall provide the Under Secretary, the appropriate Federal agency, and the person with a written statement describing the status of review and the basis for further delay in issuing a final decision, and if the statement is not so provided, concurrence by such State with the certification shall be conclusively presumed; or

`(C) the Under Secretary finds, pursuant to paragraph (1), that each activity which is described in detail in such plan is consistent with (i) the requirements of this title, and (ii) the findings and policies of this title or is otherwise necessary in the interest of national security.

If a State concurs or is conclusively presumed to concur, or if the Under Secretary makes such a finding, the provisions of paragraph (1) do not apply to the person, the State, and any Federal license or permit which is

required to conduct any activity affecting natural resources, land uses, or water uses in the coastal zone of the State which is described in detail in the plan to which the concurrence or finding applies. If the State objects to the certification and if the Under Secretary fails to make a finding under subparagraph (C) or if the person fails substantially to comply with the plan as submitted, the person shall submit an amendment to the plan, or a new plan, to the Secretary of the Interior. With respect to any amendment or new plan submitted to the Secretary of the Interior pursuant to the preceding sentence, the applicable time period for purposes of concurrence by conclusive presumption under paragraph (1) is 3 months.

`(e) FEDERAL ASSISTANCE PROGRAMS- State and local governments submitting applications for Federal assistance under other Federal programs, for activities in or outside the coastal zone affecting any natural resources, land uses, or water uses in the coastal zone, shall include the views of the agency designated pursuant to section 306(d)(6) as to the relationship of the activities to the approved management program. The applications shall be submitted and coordinated in accordance with the provisions of title IV of the Intergovernmental Coordination Act of 1968 (82 Stat. 1098). Federal agencies shall not provide assistance for any activity that is inconsistent with a coastal State's management program, unless the Under Secretary, on his or her own initiative or upon appeal by the applicant, finds, after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the State, that the activity is consistent with the findings and policies of this title or is (1) the requirements of this title, and (2) otherwise necessary in the interest of national security.

`(f) RELATIONSHIP TO OTHER FEDERAL LAWS- Nothing in this title shall be construed--

`(1) to diminish either Federal or State jurisdiction, responsibility, or rights in the field of planning, development, or control of water resources, submerged lands, or navigable waters; nor to displace, supersede, limit, or modify any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of 2 or more States or of 2 or more States and the Federal Government; nor to limit the authority of the Congress to authorize and fund projects;

`(2) as superseding, modifying, or repealing any laws applicable to the various Federal agencies; nor to affect the jurisdiction, powers, or prerogatives of the International Joint Commission, United States and Canada; the Permanent Engineering Board; the United States operating entity or entities established pursuant to the Columbia River Basin Treaty, signed at Washington, January 17, 1961; or the International Boundary and Water Commission, United States and Mexico.

`(g) INCORPORATION OF AIR AND WATER STANDARDS- Notwithstanding any other provision of this title, nothing in this title shall in any way affect any requirement (1) established by the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) or the Clean Air Act (42 U.S.C. 7401 et seq.), or (2)

established by the Federal Government or by any State or local government pursuant to such Acts. Such requirements shall be incorporated in any program developed pursuant to this title and shall be the water pollution control and air pollution control requirements applicable to such program.

`(h) MEDIATION- In case of serious disagreement between any Federal agency and a coastal State or between 2 or more States--

`(1) in the development or the initial implementation of a management program under section 305; or

`(2) in the administration of a management program approved under section 306;

the Under Secretary shall seek to mediate the disagreement.

`(i) STATE FEE- Each coastal State may establish, collect, and expend, without regard to any other requirement of this title, a fee to recover the reasonable costs of administering subsection (d). Such fee may recover the full costs of administration, including the reasonable costs of required research, monitoring, and enforcement.

`(j) FEDERAL FEE- With respect to appeals under subsection (d) which are submitted after the date of the enactment of the Coastal Zone Act Reauthorization Amendments of 1990, the Under Secretary shall collect an application fee of not less than $200 for minor appeals and not less than $500 for major appeals. The Under Secretary shall collect such other fees as are necessary to recover the full costs of administering and processing such appeals under subsection (d).

`(k) WAIVING RIGHT TO APPEAL- An applicant may waive the right to an appeal pursuant to subsection (d)(1)(B), (d)(2)(C)(i) or (e)(2) if written notification of the waiver is received by the coastal State and the Under Secretary within 60 days after the date on which the coastal State objected to the applicant's certification under that subsection.

`(l) RESTRICTION OF STATE AUTHORITY- A coastal State may not exercise the requirements of subsection (c), (d), or (e)--

`(1) unless the coastal State's management program has been approved pursuant to section 306; or

`(2) if approval of the coastal State's management program has been withdrawn pursuant to section 312(d).

`(m) CONSISTENCY WITH ENFORCEABLE POLICIES REQUIRED- In complying with the provisions of subsections (c), (d), and (e), activities of Federal agencies and applicants shall be carried out consistent with the enforceable policies of the State management program. Federal agencies shall give adequate consideration to program provisions which are in the nature of recommendations.

` SEC. 308. COASTAL ENERGY IMPACT PROGRAM.

`(a) IN GENERAL- Not later than January 1, 1993, the Under Secretary shall recommend to the Congress a coastal energy impact program. These recommendations shall include provision of financial and technical assistance to meet the needs of coastal States and local governments resulting from energy facilities and related activities affecting natural resources, land uses, or water uses in the coastal zone. The program shall identify the major energy activities which are affecting natural resources, land uses, or water uses in the coastal zone and the major obstacles, if any, to effective management of such activities under this title.

`(b) OUTER CONTINENTAL SHELF STATE PARTICIPATION-

`(1) IN GENERAL- Beginning in fiscal year 1991, the Under Secretary shall implement a program to assist coastal States in fulfilling their responsibilities under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.).

`(2) PARTICIPATION GRANTS- The Under Secretary shall make grants under this paragraph to any coastal State which the Under Secretary finds is likely to be affected by Outer Continental Shelf energy activities, if the State matches the grant according to a 4 to 1 ratio of Federal to State contribution. The grants shall be used to assist the State in carrying out its responsibilities under the Outer Continental Shelf Lands Act.

`(c) LOAN REPAYMENT OBLIGATIONS UNAFFECTED- The obligations of any coastal State or unit of general purpose local government to repay loans made pursuant to section 308(d)(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456a(d)(1)), as in effect before the date of the enactment of the Coastal Zone Act Reauthorization Amendments of 1990, and any repayment schedule established pursuant to that Act, are not altered by any provision of this title. Such loans shall be repaid under authority of this subsection and the Under Secretary may issue regulations governing such repayment. If the Under Secretary finds that any coastal State or unit of local government is unable to meet its obligations pursuant to this subsection because the actual increases in employment and related population resulting from coastal energy activity and the facilities associated with such activity do not provide adequate revenues to enable such State or unit to meet such obligations in accordance with the appropriate repayment schedule, the Under Secretary shall, after review of the information submitted by such State or unit take any of the following actions:

`(1) Modify the terms and conditions of such loan.

`(2) Refinance the loan.

`(3) Recommend to the Congress that legislation be enacted to forgive the loan.

`(d) OFFSETTING COLLECTIONS- Loan repayments made pursuant to

subsection (c) shall be retained by the Under Secretary as offsetting collections, and shall be deposited into the Coastal Zone Management Fund established under section 309.

`SEC. 309. COASTAL ZONE MANAGEMENT FUND.

`(a) ESTABLISHMENT- The Under Secretary shall establish and maintain a fund, to be known as the `Coastal Zone Management Fund' (hereinafter in this section referred to as the `Fund'), which shall consist of amounts retained and deposited into the Fund under section 308(d).

`(b) USE- Subject to amounts provided in Appropriation Acts, amounts in the Fund shall be available to the Under Secretary for use for the following:

`(1) ADMINISTRATION- Expenses incident to the administration of this title, in an amount not to exceed--

`(A) $5,000,000 for fiscal year 1991;

`(B) $5,225,000 for fiscal year 1992;

`(C) $5,460,125 for fiscal year 1993;

`(D) $5,705,830 for fiscal year 1994; and

`(E) $5,962,593 for fiscal year 1995.

`(2) OTHER USES- After use under paragraph (1)--

`(A) projects to address management issues which are regional in scope, including interstate projects;

`(B) demonstration projects which have high potential for improving coastal zone management, especially at the local level;

`(C) emergency grants to State coastal zone management agencies to address unforeseen or disaster-related circumstances;

`(D) appropriate awards recognizing excellence in coastal zone management as provided in section 314;

`(E) program development grants as authorized by section 305;

`(F) State participation grants under section 308(b); and

`(G) to provide financial support to coastal States for use for investigating and applying the public trust doctrine to implement State management programs approved under section 306.

`(c) REPORT- On December 1 of each year, the Under Secretary shall transmit to the Congress an annual report on the Fund, including the balance of the Fund and an itemization of all deposits into and disbursements from the Fund

in the preceding fiscal year.

`SEC. 310. NATIONAL INTEREST IMPROVEMENTS.

`(a) IN GENERAL- Beginning in fiscal year 1991, the Under Secretary shall implement an ongoing program to encourage each coastal State to make continual improvements in its management program in specified national interest areas. This program shall encourage and monitor improvements in one or more of the following special national interest areas:

`(1) COASTAL WETLANDS MANAGEMENT AND PROTECTION- Coastal wetlands management and protection, consistent with the interim goal to achieve no overall net loss of the Nation's remaining wetlands base, including adoption of--

`(A) enforceable policies to manage and protect coastal wetlands; and

`(B) a comprehensive restoration program for coastal wetlands for the purpose of attaining increases in functioning wetlands communities.

`(2) NATURAL HAZARDS MANAGEMENT- Management of development and redevelopment in hazardous areas, including enforceable policies and management strategies to--

`(A) reduce the threat to life and the destruction of property by discouraging development and redevelopment in high hazard areas;

`(B) properly manage development and redevelopment in other hazard areas including such mechanisms as setbacks, requirements that buildings be suitable for relocation and other special building code standards, and acquisition and relocation programs; and

`(C) anticipate and manage the effects of potential sea level or Great Lakes level rise and land subsidence by--

`(i) requiring consideration of sea level or Great Lakes level rise and land subsidence in the siting of new public infrastructure investments and new large-scale developments with long life expectancies, such as sewage treatment plants, industrial plants, and hazardous waste facilities;

`(ii) establishing and protecting buffer zones for wetlands which are likely to migrate landward in response to sea level or Great Lakes level rise;

`(iii) ensuring that protection of natural resources is a feature of both structural and nonstructural responses to sea level or Great Lakes level rise or land subsidence; and

`(iv) requiring building setbacks and standards that minimize

the adverse effects of sea level or Great Lakes level rise or land subsidence.

`(3) PUBLIC ACCESS- Providing public access to coastal areas, including development of a program to increase public access to coastal areas of recreational, historical, esthetic, ecological, or cultural value, based on assessments of long-term public access needs. This program shall include enforceable policies necessary to meet public needs for access, including appropriate regulatory means and programs to obtain access sites through donation, dedication, and acquisition, and shall include a process for public nomination of areas to be acquired for public access purposes.

`(4) CUMULATIVE AND SECONDARY IMPACTS- Development and adoption of procedures to assess, consider, and control cumulative and secondary impacts of coastal growth and development, including the collective effect of various individual uses or activities on coastal resources, such as coastal wetlands, and the cumulative effect of nonpoint pollution from individual land uses or water uses.

`(5) COASTAL ENERGY DEVELOPMENT- Adoption of procedures and enforceable policies to help facilitate the siting of energy facilities and accommodate energy-related activities which may be of greater than local significance, including--

`(A) mitigation policies and guidelines which will be applicable to energy development activities;

`(B) procedures to coordinate Federal energy policies and programs with State coastal zone management programs; and

`(C) consolidation of permitting and regulatory reviews.

`(b) NATIONAL INTEREST IMPROVEMENTS PROGRAMS- To implement the program required under subsection (a), the Under Secretary shall assess, for each coastal State, the priority needs for improvement in each of the special national interest areas, and based on that assessment, shall seek to negotiate a National Interest Improvements Program (hereinafter in this section referred to as a `program') for each coastal State with an approved management program. Each program shall cover a period of at least 3 years and shall include specific, measurable goals and milestones to facilitate effective oversight by the Under Secretary pursuant to subsection (e).

`(c) NOTIFICATION- In negotiating each program, the coastal State shall notify and consult with appropriate Federal agencies, State agencies, local governments, regional organizations, port authorities, and the public, and where appropriate shall establish a citizens advisory group to assist in development and implementation of the program.

`(d) PHASED IMPLEMENTATION- If necessary for effective administration, the Under Secretary may stagger implementation of programs required under subsection (a) such that no less than one-third of the participating coastal States are negotiating a program in any single year.

`(e) EVALUATION-

`(1) ANNUAL REVIEW- The Under Secretary shall continually monitor progress in implementing each program negotiated under this section and shall provide each State with an annual evaluation of progress. Unless the Under Secretary finds, for each one-year period, that the coastal State is making continual and satisfactory progress in implementing each component of the program, the Under Secretary shall notify the coastal State and the public and shall specify additional actions required to ensure satisfactory implementation.

`(2) REASSESSMENT AND SUSPENSION- Six months after notifying a State under paragraph (1), the Under Secretary shall reassess the State's progress. Unless the Under Secretary finds that the State is making satisfactory progress in undertaking the actions required under paragraph (1), the Under Secretary shall suspend that State's eligibility for further funding under this section for at least one year.

`(3) WAIVER- The Under Secretary may waive the requirements of this section only by finding that a lack of satisfactory progress by a State is due to factors which are beyond the control of the State and which were unforeseen at the time the plan was negotiated. The Under Secretary shall notify the Congress and the public before granting any waiver under this subsection.

`(f) FUNDING- Beginning in fiscal year 1991, at least 10 percent, but not more than 20 percent, of the amounts appropriated under section 318(a)(1) to implement sections 306 and 306A shall be used by the Under Secretary to implement this section.

`(g) NO STATE MATCH REQUIRED- No State match is required for activities funded under this section.

`(h) GRANT ALLOCATION- Funds available to implement this section shall be distributed among eligible States as follows:

`(1) FORMULA GRANTS- Fifty percent according to regulations promulgated pursuant to section 306(c).

`(2) DISCRETIONARY GRANTS- Fifty percent for discretionary awards according to guidelines or regulations issued by the Under Secretary pursuant to section 317.

`(i) REGULATIONS- The Under Secretary shall issue regulations under section 317 providing guidance for any program negotiated under this section.

`SEC. 311. PUBLIC HEARINGS AND MEETINGS.

`All public hearings and meetings required under this title shall be announced at least 45 days prior to the hearing or meeting date. At the time of the announcement, all materials of the agency conducting a hearing or meeting

and pertinent to the hearing or meeting, including documents, studies, and other data, shall be made available to the public for review and study. As similar materials are subsequently developed, they shall be made available to the public as they become available to the agency.

`SEC. 312. REVIEW OF PERFORMANCE.

`(a) PERIODIC REVIEW OF STATE PROGRAMS- The Under Secretary shall conduct a continuing review of the performance of coastal States with respect to coastal management. Each review shall include a written evaluation with an assessment and detailed findings concerning the extent to which each coastal State has implemented and enforced a program of the State approved by the Under Secretary under this Act (including regarding adherence by State agencies and units of local government to the program), furthered the coastal management program requirements identified in section 303(3), satisfactorily complied with any national interest improvement program under section 310, and adhered to the terms of any grant, loan, or cooperative agreement funded under this title.

`(b) PUBLIC PARTICIPATION- For the purpose of evaluating pursuant to subsection (a) a coastal State's performance, the Under Secretary shall conduct public meetings and provide opportunity for oral and written comments by the public. Each such evaluation shall be prepared in report form, shall contain written response to all written comments received, and shall be available to the public.

`(c) PROBATIONARY PERIOD- The Under Secretary may place a coastal State on probation for not more than 2 years if the Under Secretary, on the basis of an evaluation which has been completed pursuant to subsection (b), finds substantial evidence that the State is failing to adequately implement or enforce important components of its approved program but that such evidence or failure constitutes insufficient grounds for action pursuant to subsection (d). If the Under Secretary makes the finding authorized in this subsection--

`(1) the Under Secretary shall notify the coastal State of--

`(A) the effective date of the probation;

`(B) the portion or portions of the program to which the probation is effective; and

`(C) written recommendations for corrective actions; and

`(2) the Under Secretary shall withdraw up to 25 percent of the funds available to the State pursuant to this title for use in assisting the State in implementing the recommendations under paragraph (1)(C), and any funds withdrawn but not used to implement recommendations under paragraph (1)(C) shall be added to amounts appropriated under section 318(a)(1).

`(d) PROGRAM DISAPPROVAL- The Under Secretary shall withdraw approval of

the management program of any coastal State, and shall withdraw any financial assistance available to that State under this title as well as any unexpended portion of such assistance, if the Under Secretary determines that the State is failing to adhere to, and is not justified in deviating from--

`(1) the management program approved by the Under Secretary, or

`(2) the terms of any grant or cooperative agreement funded under this title, and refuses to remedy the deviation.

Upon the withdrawal of management program approval under this subsection, the Under Secretary shall provide the coastal State with written specifications of the actions that should be taken, or not engaged in, by the State in order that such withdrawal may be canceled by the Under Secretary.

`(e) ADVANCE NOTIFICATION REQUIRED- Prior to taking any action required under subsection (c) or (d), the Under Secretary shall notify the coastal State and provide an opportunity for a public hearing on the proposed action.

`SEC. 313. RECORDS AND AUDIT.

`(a) RECORDS- Each recipient of financial assistance under this title shall keep any records as the Under Secretary shall prescribe, including records which fully disclose the amount and disposition of the funds received and of the proceeds of the assistance, the portion of the total cost of any project or undertaking supplied by other sources, and other records as will facilitate an effective audit.

`(b) ACCESS TO RECORDS- The Under Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall--

`(1) after any financial assistance is provided under this title; and

`(2) until the expiration of 3 years after--

`(A) completion of the project, program, or other undertaking for which financial assistance was made or used, or

`(B) repayment of the loan or guaranteed indebtedness for which financial assistance was provided;

have access to audit and examine any record, book, document, and paper which belongs to or is used or controlled by, any recipient of the financial assistance and which is pertinent for purposes of determining if the financial assistance is being, or was, used in accordance with this title.

`SEC. 314. WALTER B. JONES EXCELLENCE IN COASTAL MANAGEMENT AWARDS.

`(a) IN GENERAL- The Under Secretary shall, using sums in the Coastal Zone Management Fund established under section 309, implement a program to

promote excellence in coastal zone management by identifying and acknowledging outstanding accomplishments in the field.

`(b) AWARD CATEGORIES AND SELECTION- The Under Secretary shall select annually--

`(1) one individual, other than an employee or officer of the Federal Government, whose contribution to the field of coastal zone management has been the most significant;

`(2) 5 local governments which have made the most progress in developing and implementing the coastal zone management principles embodied in this title; and

`(3) up to 10 graduate students whose academic study promises to contribute materially to development of new or improved approaches to coastal zone management.

`(c) LOCAL GOVERNMENT NOMINATIONS- In making selections under subsection (b)(2) the Under Secretary shall solicit nominations from the coastal States, and shall consult with experts in local government planning and land use.

`(d) GRADUATE STUDENT NOMINATIONS- In making selections under subsection (b)(3) the Under Secretary shall solicit nominations from coastal States and the National Sea Grant College Program.

`(e) WALTER B. JONES AWARDS- Using sums in the Coastal Zone Management Fund established under section 309, the Under Secretary shall establish and execute appropriate awards, to be known as the `Walter B. Jones Awards', including--

`(1) cash awards in an amount not to exceed $5,000 each;

`(2) research grants; and

`(3) public ceremonies to acknowledge such awards.

`SEC. 315. NATIONAL ESTUARINE RESEARCH RESERVE SYSTEM.

`(a) ESTABLISHMENT OF SYSTEM- There is established the National Estuarine Research Reserve System (hereinafter in this section referred to as the `System'), consisting of--

`(1) each estuarine sanctuary designated under this section as in effect before the date of the enactment of the Coastal Zone Management Reauthorization Act of 1985; and

`(2) each estuarine area designated as a national estuarine research reserve under subsection (b).

Each estuarine sanctuary referred to in paragraph (1) is hereby designated as a national estuarine research reserve.

`(b) DESIGNATION OF NATIONAL ESTUARINE RESEARCH RESERVES- The Under Secretary may designate an estuarine area as a national estuarine research reserve if--

`(1) the area constitutes, to the extent feasible, a natural unit which can be set aside to provide scientists and students the opportunity to examine over a period of time the ecological relationship within the area;

`(2) the Governor of the coastal State in which the area is located nominates the area for that designation; and

`(3) the Under Secretary finds that--

`(A) the area is a representative estuarine ecosystem that is suitable for long-term monitoring and research and contributes to the biogeographical and typological balance of the System;

`(B) the laws of the coastal State provide long-term protection for reserve resources to ensure a stable environment for research;

`(C) designation of the area as a reserve will serve to enhance public awareness and understanding of estuarine areas, and provide suitable opportunities for public education and interpretation; and

`(D) the coastal State in which the area is located has complied with the requirements of any regulations issued by the Under Secretary to implement this section.

`(c) ESTUARINE RESEARCH GUIDELINES- The Under Secretary shall develop guidelines for the conduct of research within the System that shall include the following:

`(1) IDENTIFYING PRIORITIES- A mechanism for identifying and establishing priorities among the coastal management issues that should be addressed through coordinated research within the System.

`(2) RESEARCH OBJECTIVES- The establishment of common research principles and objectives to guide the development of research programs within the System.

`(3) COMMON METHODS- The identification of uniform research methodologies which will ensure comparability of data, the broadest application of research results, and the maximum use of the System for research purposes.

`(4) MONITORING- The conduct of monitoring activities within the System, including the monitoring of physical, chemical, and biological parameters and criteria associated with the estuarine ecosystem.

`(5) STANDARDS- The establishment of performance standards by which the effectiveness of the research efforts and the value of reserves within the System may be measured in addressing and coastal management issues identified in paragraph (1).

`(6) OUTSIDE FUNDING SOURCES- The consideration of sources of funds for estuarine research in addition to amounts authorized under this title, and strategies for encouraging the use of these funds within the System, with particular emphasis on mechanisms established under subsection (d).

In developing the guidelines under this subsection, the Under Secretary shall consult with prominent members of the estuarine research community.

`(d) PROMOTION AND COORDINATION OF ESTUARINE RESEARCH- The Under Secretary shall take such action as is necessary to promote and coordinate the use of the System for research purposes, including the following:

`(1) DATA MANAGEMENT- Developing a data base accessible to the public for information derived from monitoring and research activities within the System.

`(2) TECHNICAL TRANSFER- Providing for the exchange of information and data among national estuarine research reserves and between the reserves and estuarine and coastal resource managers.

`(3) PRIORITY CONSIDERATION- Requiring the Department of Commerce, in conducting or supporting estuarine research, to give priority consideration to research that uses the System.

`(4) PROMOTING RESEARCH- Consulting with other Federal and State agencies to promote use by such agencies of one or more national estuarine research reserves within the System when conducting estuarine research.

`(e) EDUCATION- The Under Secretary shall--

`(1) develop guidelines providing for education activities in national estuarine research reserves;

`(2) promote the use of national estuarine research reserves by educational institutions and by programs of the United States Department of Education; and

`(3) establish and implement a program to exchange educational information throughout the System.

`(f) FINANCIAL ASSISTANCE-

`(1) IN GENERAL- The Under Secretary may, in accordance with such rules and regulations as the Under Secretary shall promulgate, make grants--

`(A) to a coastal State entity--

`(i) to acquire lands and waters, and any property interests therein, necessary to ensure the appropriate long-term management of an area as a national estuarine research reserve,

`(ii) to operate or manage a national estuarine research reserve and to construct appropriate reserve facilities, or

`(iii) for educational or interpretive activities; and

`(B) to any coastal State entity or public or private institution or person to support research and monitoring within a national estuarine research reserve that are consistent with the research guidelines developed under subsection (c).

`(2) TERMS AND CONDITIONS- Financial assistance provided under paragraph (1) shall be subject to any terms and conditions the Under Secretary considers necessary or appropriate to protect the interests of the United States, including requiring coastal States to execute suitable title documents setting forth the property interests of the United States in any lands and waters acquired in whole or in part with financial assistance under this section.

`(3) MATCHING FUNDS- (A) The amount of financial assistance provided under paragraph (1)(A)(i) for any one national estuarine research reserve may not exceed an amount equal to 50 percent of the costs of the lands, waters, and interests therein, or $6,000,000, whichever amount is less.

`(B) The amount of the financial assistance provided under paragraphs (1)(A) (ii) and (iii) and paragraph (1)(B) may not exceed 50 percent of the costs incurred to achieve the purposes described in those paragraphs with respect to a national estuarine research reserve.

`(C) For purposes of this section, the term `coastal State entity' means any legal entity established by legislative or executive act or order of a coastal State's government, including State universities, colleges, commissions, consortia, boards, or other institutions established for purposes, including research, education, or resource management.

`(g) EVALUATION OF SYSTEM PERFORMANCE-

`(1) IN GENERAL- The Under Secretary shall periodically evaluate the operation and management of each national estuarine research reserve, including educational and interpretive activities, and the research being conducted within the reserve.

`(2) SUSPENSION OF FUNDING- If evaluation under paragraph (1) reveals that the operations and management of national estuarine research reserve is deficient, or that the research being conducted within the reserve is not consistent with the research guidelines developed under

subsection (c), the Under Secretary may suspend the eligibility of that reserve for financial assistance under subsection (f) until the deficiency or inconsistency is remedied.

`(3) WITHDRAWAL OF DESIGNATION- The Under Secretary may withdraw the designation of an estuarine area as a national estuarine research reserve if evaluation under paragraph (1) reveals that--

`(A) the basis for any of the findings made under subsection (b)(3) no longer exists; or

`(B) a substantial portion of the research conducted within the reserve, over a period of years, has not been consistent with the research guidelines developed under subsection (c).

`(h) REPORT- The Under Secretary shall include in the report required under section 316 information regarding--

`(1) new designations of national estuarine research reserves;

`(2) any expansion of existing national estuarine research reserves;

`(3) the status of the research program being conducted within the System; and

`(4) a summary of the evaluations made under subsection (g).

`(i) COOPERATIVE AGREEMENTS AND DONATIONS-

`(1) COOPERATIVE AGREEMENTS- The Under Secretary may enter into cooperative agreements with any nonprofit organization or institution of higher learning--

`(A) to aid and promote interpretive, historical, scientific, and educational activities within any national estuarine research reserve; and

`(B) for the solicitation of private donations for the support of such activities.

`(2) DONATIONS- The Under Secretary may accept donations of funds, property, and services for use in designating and administering national estuarine research reserves under this section. Such donations shall be considered to be a gift or bequest to, or for the use of, the United States.

`SEC. 316. COASTAL ZONE MANAGEMENT REPORT.

`(a) IN GENERAL- The Under Secretary shall transmit to the Congress reports summarizing the administration of this title during each period of 2 consecutive fiscal years. Each report shall be transmitted to the Congress not later than April 1 of the year following the close of the biennial period to

which it pertains, and shall include the following:

`(1) RECENTLY APPROVED PROGRAMS- An identification of the State programs approved pursuant to this title during the preceding fiscal year and a description of those programs.

`(2) PARTICIPATING STATES- A list of the coastal States participating under this title and a description of the status of each State's program and its accomplishments during the preceding fiscal year.

`(3) NONPARTICIPATING STATES- A list of the coastal States not participating under this title, a description of efforts by the Under Secretary to encourage their participation, and additional action or incentives needed to secure participation.

`(4) FUNDING SUMMARY- An itemization of the allocation of funds to the various coastal States and a breakdown of the major projects and areas in which these funds were expended.

`(5) PROGRAM PROBATIONS AND DISAPPROVALS- An identification of any coastal State program which has been reviewed and placed on probation or disapproved, and a statement of the reasons for that action.

`(6) EVALUATION SUMMARY- A summary of evaluation findings prepared in accordance with section 312(a).

`(7) INCONSISTENT ACTIVITIES AND PROJECTS- A list of all activities and projects which are not consistent with an applicable approved State management program.

`(8) REVISED REGULATIONS- A summary of the regulations issued by the Under Secretary during the biennial period covered by the report.

`(9) PRIORITY PROBLEMS- A summary of outstanding problems arising in the administration of this title, in order of priority.

`(10) MISCELLANEOUS- Any other information as may foster effective oversight by the Congress.

`(11) STATE VIEWS- Summary views and recommendations from each coastal State, including recommendations for additional legislation, necessary to achieve the objectives of this title and enhance its effective operation.

`(b) GUIDELINES- For the purposes of paragraph (11), the Under Secretary shall issue guidelines to the coastal States which outline the format for submitting summary views and recommendations.

`SEC. 317. RULES AND REGULATIONS.

`The Under Secretary shall develop and promulgate, pursuant to section 553 of title 5, United States Code, after issuance of notice and opportunity for full

participation by relevant Federal agencies, State agencies, local governments, regional organizations, port authorities, and other interested parties, both public and private, any rules and regulations as may be necessary to carry out the provisions of this title.

`SEC. 318. AUTHORIZATION OF APPROPRIATIONS.

`(a) AUTHORIZATIONS- There are authorized to be appropriated to the Under Secretary--

`(1) for grants under sections 306 and 306A, not to exceed $46,670,000 for fiscal year 1991, $48,770,000 for fiscal year 1992, $50,965,000 for fiscal year 1993, $53,258,000 for fiscal year 1994, and $55,655,000 for fiscal year 1995, to remain available until expended;

`(2) for grants under section 306B, not to exceed $10,000,000 for fiscal year 1991, $20,000,000 for fiscal year 1992, $30,000,000 for fiscal year 1993, $35,000,000 for fiscal year 1994, and $40,000,000 for fiscal year 1995, to remain available until expended; and

`(3) for grants under section 315, not to exceed $7,000,000 for fiscal year 1991, $7,355,000 for fiscal year 1992, $7,710,000 for fiscal year 1993, $8,065,000 for fiscal year 1994, and $8,420,000 for fiscal year 1995, to remain available until expended.

`(b) LIMITATION ON MATCHING FUNDS- Federal funds received from other sources shall not be used to pay a coastal State's share of costs under section 306.

`(c) UNOBLIGATED GRANTS- The amount of any grant, or portion of a grant, made to a coastal State under any section of this Act which is not obligated by the State during the fiscal year, for which it was first authorized to be obligated by the State, or during the next fiscal year, shall revert to the Under Secretary. The Under Secretary shall add the reverted amount to those funds available for grants under the section for which the reverted amount was originally made available.

`(d) PASSTHROUGH OF GRANT FUNDS- With the approval of the Under Secretary, a coastal State may allocate to a local government, an area-wide agency designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency, a portion of any grant made under this title. An allocation of grant funds shall not relieve a State of the responsibility for ensuring that any funds so allocated are used in conformance with applicable grant terms and conditions and to further the State's approved management program.

`SEC. 319. INTERSTATE AGREEMENTS AND COMPACTS.

`The consent of the Congress is hereby given to 2 or more coastal States to negotiate, and to enter into, agreements or compacts, which do not conflict with any law or treaty of the United States, for--

`(1) developing and administering coordinated coastal zone planning, policies, and programs pursuant to sections 305 and 306; and

`(2) establishing executive instrumentalities or agencies which such States deem desirable for the effective implementation of such agreements or compacts. Such agreements or compacts shall be binding and obligatory upon any State or party thereto without further approval by the Congress.'.

SEC. 7204. DEADLINES FOR COMPLIANCE.

(a) NEW REQUIREMENTS- Each State which submits a management program for approval under section 306 of the Coastal Zone Management Act of 1972, as amended by this Act (including a State which submitted such a program before the date of the enactment of this Act), shall demonstrate to the Under Secretary of Commerce for Oceans and Atmosphere compliance with the requirements of section 306(d) (14) and (15) of that Act by not later than 2 years after the date of the enactment of this Act.

(b) LAND USE MANAGEMENT PROGRAM GUIDELINES AND REGULATIONS- Within 180 days after the date of the enactment of this Act, the Under Secretary of Commerce for Oceans and Atmosphere shall issue guidelines for coastal States to follow in developing a program under section 306B of the Coastal Zone Management Act of 1972, as amended by this Act. Within 18 months after that date of enactment, the Under Secretary shall promulgate regulations governing the receipt, review, and approval of programs under that section.

SEC. 7205. PACIFIC ISLAND STATE DEMONSTRATION PROJECT.

(a) AUTHORIZATION- There is authorized to be appropriated not more than $100,000 for each of fiscal years 1991 through 1995 for use by one Pacific island coastal State to develop a draft joint Federal-State resource management plan for ocean resources lying 3 to 12 miles from the baseline from which its territorial sea is measured. Amounts appropriated under this section may not be used to develop a plan affecting fishery resources subject to management under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(b) REPORT- At the end of fiscal year 1995, the Pacific island coastal State which develops a management plan pursuant to subsection (a) shall transmit the plan to the Congress.

SEC. 7206. REFERENCE.

A reference in any law, regulation, record, map, or paper or other document to the Coastal Zone Management Act of 1972 may be construed to be a reference to such Act, as amended by this Act.

SEC. 7207. FEDERAL AGENCY CONSISTENCY.

The consistency requirements of section 307 of the Coastal Zone Management Act (16 U.S.C. 1456) shall apply to Federal agency activities or federally permitted activities under title I of the Marine Protection, Research, and Sanctuaries Act of 1972, if the Federal activity or permitted activity affects land uses, water uses, or natural resources of the coastal zone.

TITLE VIII--COMMITTEE ON POST OFFICE AND CIVIL SERVICE

Subtitle A--Civil Service

SEC. 8001. ELIMINATION OF LUMP-SUM RETIREMENT BENEFIT.

(a) LUMP-SUM BENEFIT- (1) Sections 8343a and 8420a of title 5, United States Code, are each amended by adding at the end the following:

`(f)(1) Notwithstanding any other provision of this section, and except as provided in paragraph (2), an alternative form of annuity under this section may not be elected if the commencement date of the annuity would be later than November 1, 1990.

`(2) Nothing in this subsection shall prevent an election from being made by an employee or Member who, at the time of retiring under this subchapter, is at least 65 years of age and has completed at least 30 years of service.

`(3) This subsection shall cease to be effective as of October 1, 1995.'.

(2) Section 4005 of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101-239; 103 Stat. 2135) is amended--

(A) in subsection (a), by striking `October 1, 1990.' and inserting `November 2, 1990.'; and

(B) by adding at the end the following:

`(f) CONTINUED APPLICABILITY- The preceding provisions of this section (disregarding the provision in subsection (a) limiting this section's applicability to annuities commencing before the date specified in such provision) shall also apply in the case of any employee or Member whose election of an alternative form of annuity would not have been allowable under section 8343a(f) or 8420a(f) of title 5, United States Code (as the case may be), but for paragraph (2) thereof.'.

(C)(i) Section 6001(b)(2) of the Omnibus Budget Reconciliation Act of 1987 (5 U.S.C. 8343a note) and section 4005(b)(2) of the Omnibus Budget Reconciliation Act of 1989 (103 Stat. 2135) are each amended by striking `described in paragraph (1).' and inserting `on which the payment described in paragraph (1) is paid.'.

(ii) The amendments made by clause (i) shall not apply in any case in

which the first half of the lump-sum payment involved was paid before the beginning of the 11-month period which ends on the date of the enactment of this Act.

(D) Section 2 of Public Law 101-227 (103 Stat. 1943) is repealed.

(3) Section 8348(a)(1)(B) of title 5, United States Code, is amended by inserting `in administering alternative forms of annuities under sections 8343a and 8420a (and related provisions of law),' before `and in withholding'.

(b) PRIOR REFUNDS- (1) Section 8334(d) of title 5, United States Code, is amended--

(A) by striking `(d)' and inserting `(d)(1)'; and

(B) by adding at the end the following:

`(2)(A) This paragraph applies with respect to any employee or Member who--

`(i) separates before October 1, 1990, and receives (or elects, in accordance with applicable provisions of this subchapter, to receive) a refund (described in paragraph (1)) which relates to a period of service ending before October 1, 1990;

`(ii) retires on or after November 1, 1990, entitled to an annuity under this subchapter (other than a disability annuity) based on service of such employee or Member; and

`(iii) does not make the deposit (described in paragraph (1)) required in order to receive credit for the period of service with respect to which the refund relates.

`(B) Notwithstanding the second sentence of paragraph (1), the annuity to which an employee or Member under this paragraph is entitled shall (subject to adjustment under section 8340) be equal to an amount which, when taken together with the unpaid amount referred to in subparagraph (A)(iii), would result in the present value of the total being actuarially equivalent to the present value of the annuity which would otherwise be provided the employee or Member under this subchapter, as computed under subsections (a)-(i) and (n) of section 8339 (treating, for purposes of so computing the annuity which would otherwise be provided under this subchapter, the deposit referred to in subparagraph (A)(iii) as if it had been timely made).

`(C) The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out this paragraph.'.

(2)(A) Section 8334 of title 5, United States Code, is amended in paragraphs (1) and (2) of subsection (e), and in subsection (h), by striking `(d),' and inserting `(d)(1),'.

(B) Section 8334(f) and section 8339(i)(1) of title 5, United States Code, are amended by striking `(d)' and inserting `(d)(1)'.

(C) Section 8339(e) of title 5, United States Code, is amended by striking `8334(d)' and inserting `8334(d)(1)'.

(D) The second sentence of section 8342(a) of title 5, United States Code, is amended by inserting `or 8334(d)(2)' after `8343a'.

(3) The amendments made by this subsection shall be effective with respect to any annuity having a commencement date later than November 1, 1990.

SEC. 8002. REFORMS IN THE HEALTH BENEFITS PROGRAM.

(a) HOSPITALIZATION-COST-CONTAINMENT MEASURES- Section 8902 of title 5, United States Code, is amended by adding at the end the following:

`(n) A contract for a plan described by section 8903(1), (2), or (3), or section 8903a, shall require the carrier--

`(1) to implement hospitalization-cost-containment measures, including measures--

`(A) for verifying the medical necessity of any proposed treatment or surgery;

`(B) for determining the feasibility or appropriateness of providing services on an outpatient rather than on an inpatient basis;

`(C) for determining the appropriate length of stay (through concurrent review or otherwise) in cases involving inpatient care; and

`(D) involving case management, if the circumstances so warrant; and

`(2) to establish incentives to encourage compliance with measures under paragraph (1).'.

(b) IMPROVED CASH MANAGEMENT- Section 8909(a) of title 5, United States Code, is amended by adding at the end (as a flush left sentence) the following:

`Payments from the Fund to a plan participating in a letter-of-credit arrangement under this chapter shall, in connection with any payment or reimbursement to be made by such plan for a health service or supply, be made only on a checks-presented basis (as defined under regulations of the Department of the Treasury).'.

(c) EXEMPTION FROM STATE PREMIUM TAXES- Section 8909 of title 5, United States Code, is amended by adding at the end the following:

`(f)(1) No tax, fee, or other monetary payment may be imposed, directly or indirectly, on a carrier or an underwriting or plan administration subcontractor

of an approved health benefits plan by any State, the District of Columbia, or the Commonwealth of Puerto Rico, or by any political subdivision or other governmental authority thereof, with respect to any payment made from the Fund.

`(2) Paragraph (1) shall not be construed to exempt any carrier or underwriting or plan administration subcontractor of an approved health benefits plan from the imposition, payment, or collection of a tax, fee, or other monetary payment on the net income or profit accruing to or realized by such carrier or underwriting or plan administration subcontractor from business conducted under this chapter, if that tax, fee, or payment is applicable to a broad range of business activity.'.

(d) IMPROVED COORDINATION WITH MEDICARE- Section 8910 of title 5, United States Code, is amended by adding at the end the following:

`(d) The Office, in consultation with the Department of Health and Human Services, shall develop and implement a system through which the carrier for an approved health benefits plan described by section 8903 or 8903a will be able to identify those annuitants or other individuals covered by such plan who are entitled to benefits under part A or B of title XVIII of the Social Security Act in order to ensure that payments under coordination of benefits with Medicare do not exceed the statutory maximums which physicians may charge Medicare enrollees.'.

(e) EFFECTIVE DATE- The amendments made by this section shall be effective as of January 1, 1991, and shall apply with respect to contract years beginning on or after that date.

Subtitle B--Postal Service

SEC. 8101. FUNDING OF COLAS FOR POSTAL SERVICE ANNUITANTS AND SURVIVOR ANNUITANTS.

(a) EXPANDED SCOPE OF COVERAGE; CHANGE IN PRORATION RULE- Section 8348(m) of title 5, United States Code, is amended--

(1) in paragraph (1), by striking `October 1, 1986,' each place it appears and inserting `July 1, 1971,'; and

(2) in paragraph (3), by striking `civilian service performed after June 30, 1971,' and inserting `service performed as an employee of the United States Postal Service,'.

(b) REPEAL OF PROVISION RELATING TO CERTAIN EARLIER COLAS- Section 4002(b) of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101-239; 103 Stat. 2134) is repealed.

(c) PROVISION RELATING TO PRE-1991 COLAS- (1) For the purpose of this subsection--

(A) the term `pre-1991 COLA' means a cost-of-living adjustment which took effect in any of the fiscal years specified in subparagraphs (A)-(N) of paragraph (3);

(B) the term `post-1990 fiscal year' means a fiscal year after fiscal year 1990; and

(C) the term `pre-1991 fiscal year' means a fiscal year before fiscal year 1991.

(2) Notwithstanding any other provision of law, an installment (equal to an amount determined by reference to paragraph (3)) shall be payable by the United States Postal Service in a post-1990 fiscal year, with respect to a pre-1991 COLA, if such fiscal year occurs within the 15-fiscal-year period which begins with the first fiscal year in which that COLA took effect, subject to section 8104.

(3) Notwithstanding any provision of section 8348(m) of title 5, United States Code, or any determination thereunder (including any made under such provision, as in effect before October 1, 1990), the estimated increase in the unfunded liability referred to in paragraph (1) of such section 8348(m) shall be payable, in accordance with this subsection, based on annual installments equal to--

(A) $6,500,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1977;

(B) $7,000,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1978;

(C) $10,400,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1979;

(D) $20,500,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1980;

(E) $26,100,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1981;

(F) $28,100,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1982;

(G) $30,600,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1983;

(H) $5,700,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1984;

(I) $19,400,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1985;

(J) $7,400,000 each, with respect to the cost-of-living adjustment which

took effect in fiscal year 1986;

(K) $8,400,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1987;

(L) $38,000,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1988;

(M) $36,600,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1989; and

(N) $41,900,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1990.

(4) Any installment payable under this subsection shall be paid by the Postal Service at the same time as when it pays any installments due in that same fiscal year under section 8348(m) of title 5, United States Code.

(5) An installment payable under this subsection in a fiscal year, with respect to a pre-1991 COLA, shall be in lieu of any other installment for which the Postal Service might otherwise be liable in such fiscal year, with respect to such COLA, under section 8348(m) of title 5, United States Code.

(d) EFFECTIVE DATE- This section and the amendments made by this section shall take effect on October 1, 1990.

SEC. 8102. FUNDING OF HEALTH BENEFITS FOR POSTAL SERVICE RETIREES AND SURVIVORS OF POSTAL SERVICE EMPLOYEES OR RETIREES.

(a) EXPANDED SCOPE OF COVERAGE- Section 8906(g)(2) of title 5, United States Code, is amended by striking `October 1, 1986,' each place it appears and inserting `July 1, 1971,'.

(b) CONTRIBUTIONS TO BE PRORATED- Section 8906(g)(2) of title 5, United States Code, as amended by subsection (a), is further amended--

(1) by striking `(2)' and inserting `(2)(A)'; and

(2) by adding at the end the following:

`(B) In determining any amount for which the Postal Service is liable under this paragraph, the amount of the liability shall be prorated to reflect only that portion of total service which is attributable to service performed (by the former postal employee or by the deceased individual referred to in subparagraph (A), as the case may be) as an employee of the United States Postal Service, as estimated by the Office of Personnel Management.'.

(c) EFFECTIVE DATE- The amendments made by this section shall take effect on October 1, 1990, and shall apply with respect to amounts payable for periods beginning on or after that date.

SEC. 8103. PAYMENTS RELATING TO AMOUNTS WHICH WOULD HAVE BEEN DUE BEFORE FISCAL YEAR 1987.

(a) DEFINITION- For the purpose of this section, the term `pre-1987 fiscal year' means a fiscal year before fiscal year 1987.

(b) FOR PAST RETIREMENT COLAS- As payment for any amounts which would have been due in any pre-1987 fiscal year under the provisions of section 8348(m) of title 5, United States Code (as amended by section 8101) if such provisions had been in effect as of July 1, 1971, the United States Postal Service shall pay into the Civil Service Retirement and Disability Fund--

(1) $253,300,000, not later than September 30, 1991;

(2) $566,200,000, not later than September 30, 1992;

(3) $548,600,000, not later than September 30, 1993;

(4) $530,200,000, not later than September 30, 1994; and

(5) $510,900,000, not later than September 30, 1995.

(c) FOR PAST HEALTH BENEFITS- As payment for any amounts which would, for any period ending before the start of fiscal year 1987, have been payable under the provisions of section 8906(g)(2) of title 5, United States Code (as amended by section 8102) if such provisions had been in effect as of July 1, 1971, the United States Postal Service shall pay into the Employees Health Benefits Fund--

(1) $88,900,000, not later than September 30, 1991;

(2) $198,700,000, not later than September 30, 1992;

(3) $192,600,000, not later than September 30, 1993;

(4) $186,100,000, not later than September 30, 1994; and

(5) $179,300,000, not later than September 30, 1995.

SEC. 8104. TERMINATION OF CONTRIBUTION REQUIREMENTS.

(a) RETIREMENT COLAS- Section 8348(m) of title 5, United States Code, and section 8101(c) shall cease to be effective at the close of the fiscal year ending on September 30, 1995, and the United States Postal Service shall not be liable for any amount which would first have come due under such section 8348(m) or section 8101(c) after that date.

(b) HEALTH BENEFITS- The provisions of section 8906(g)(2) of title 5, United States Code, shall not be effective with respect to any amount which (but for this subsection) would otherwise have been payable under such provisions for any period beginning after September 30, 1995.

SEC. 8105. TREATMENT OF CONTRIBUTION REQUIREMENTS FOR POSTAL RATEMAKING PURPOSES.

(a) DEFINITIONS- For the purpose of this section--

(1) the term `total estimated costs' has the meaning given such term by section 3621 of title 39, United States Code;

(2) the term `pre-1992 fiscal year' means a fiscal year before fiscal year 1992; and

(3) the term `amount required to be paid by the United States Postal Service pursuant to the Omnibus Budget Reconciliation Act of 1990' means an amount payable under section 8348(m) or section 8906(g)(2) of title 5, United States Code (as amended by this title), section 8101(c), or section 8103.

(b) RULES- (1) In making a recommended decision under section 3624 of title 39, United States Code, with respect to a request which was made under section 3622 of such title and which is pending as of the date of enactment of this Act, the Postal Rate Commission shall be governed by the following:

(A) Any amount required to be paid by the United States Postal Service pursuant to the Omnibus Budget Reconciliation Act of 1990 in fiscal year 1992--

(i) shall be treated as a separate and distinct addition to the total estimated costs for such fiscal year; and

(ii) shall not result in the diminution of any other amount which is part of the total estimated costs for such fiscal year.

(B) Any amount required to be paid by the United States Postal Service pursuant to the Omnibus Budget Reconciliation Act of 1990 in a pre-1992 fiscal year shall be taken into account to the same extent and in the same manner as any other cost (comprising part of the total estimated costs) incurred by the Postal Service in that same fiscal year.

(C) The deadline by which the Postal Rate Commission must transmit its recommended decision to the Governors shall be the same as would otherwise apply if this section had not been enacted.

(2) Any recommended decision under section 3624 of title 39, United States Code, subsequent to the one as to which paragraph (1) applies, and which relates to a request under section 3622(a) of such title, shall be made in a manner consistent with the requirements of paragraph (1).

Subtitle A--Coordination

SEC. 8201. COORDINATION.

For purposes of section 202 of the Balanced Budget and Emergency Deficit Reaffirmation Act of 1987, this title and the amendments made by this title shall be considered an exception under subsection (b) of such section.

TITLE IX--PUBLIC WORKS AND TRANSPORTATION

Subtitle A--Sense of the House of Representatives

SEC. 9001. SENSE OF THE HOUSE OF REPRESENTATIVES.

It is the sense of the House of Representatives that, if any Senate amendment to H.R. 5835 provides for any increase in motor fuel excise taxes or aviation taxes that would be deposited in the Highway Trust Fund or Aviation Trust Fund, respectively, then the managers on the part of the House for the conference on the reconciliation bill should consider provisions which ensure that an amount equal to the estimated tax payments from any such increases enacted shall be made available in the fiscal year collected for highway and aviation purposes, respectively. Such provisions may include provisions similar to those included in the reconciliation submission of the Committee on Public Works and Transportation, dated October 12, 1990, to the Committee on the Budget.

Subtitle B--Aviation Safety and Capacity Expansion

SEC. 9101. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE- This subtitle may be cited as the `Aviation Safety and Capacity Expansion Act of 1990'.

(b) Table of Contents-

Sec. 9101. Short title; table of contents.

Sec. 9102. Construction of firefighting training facilities.

Sec. 9103. Declaration of policy.

Sec. 9104. Airport improvement program.

Sec. 9105. Airway improvement program.

Sec. 9106. FAA operations.

Sec. 9107. Operation and maintenance of aviation system.

Sec. 9108. Weather service.

Sec. 9109. Military airport program.

Sec. 9110. Passenger facility charges.

Sec. 9111. Reduction in airport improvement program apportionments for large and medium hub airports imposing passenger facility charges.

Sec. 9112. Use of PFC reduced apportionment funds.

Sec. 9113. Small community air service program.

Sec. 9114. State block grant pilot program.

Sec. 9115. Auxiliary flight service station program.

Sec. 9116. Airport and airway improvements for the Virgin Islands.

Sec. 9117. Engine condition monitoring systems.

Sec. 9118. Procurement authority.

Sec. 9119. Expanded east coast plan.

Sec. 9120. Transfer of format of geodetic navigation information.

Sec. 9121. Severability.

Sec. 9122. Buy America.

Sec. 9123. Prohibition against fraudulent use of `made in America' labels.

Sec. 9124. Restrictions on contract awards.

Sec. 9125. Buy America.

SEC. 9102. CONSTRUCTION OF FIREFIGHTING TRAINING FACILITIES.

Section 503(a)(2) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2202(a)(2)) is amended--

(1) by striking `and' at the end of subparagraph (B);

(2) by striking the period at the end of subparagraph (C) and inserting `; and'; and

(3) by inserting after subparagraph (C) the following new subparagraph:

`(D) any acquisition of land for, or work involved to construct, a burn area training structure on or off the airport for the purpose of providing live fire drill training for aircraft rescue and firefighting personnel required to receive such training by a regulation of the Department of Transportation, including basic equipment and minimum structures to support such training in accordance with standards of the Federal Aviation Administration.'.

SEC. 9103. DECLARATION OF POLICY.

Section 502(a) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2201(a)) is amended--

(1) in paragraph (5) by inserting `, including as they may be applied between category and class of aircraft' after `discriminatory practices'; and

(2) in paragraph (13) by inserting `and should not unjustly discriminate between categories and classes of aircraft' after `attempted'.

SEC. 9104. AIRPORT IMPROVEMENT PROGRAM.

Section 505 of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2204) is amended--

(1) in subsection (a) by striking `13,816,700,000' and inserting `$13,916,700,000'; and

(2) in subsection (b) by striking `September 30, 1987' and inserting `September 30, 1992'.

SEC. 9105. AIRWAY IMPROVEMENT PROGRAM.

(a) RENAMING OF AIRWAY PLAN- Section 504(b)(1) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2203(b)(1)) is amended by inserting after the second sentence the following new sentence: `For fiscal year 1991 and thereafter, the revised plan shall be known as the `Airway Capital Investment Plan'.'.

(b) AIRWAY FACILITIES AND EQUIPMENT- The first sentence of section 506(a)(1) of such Act (49 U.S.C. App. 2205(a)(1)) is amended by striking `September 30, 1981,' and all that follows through the period and inserting the following: `September 30, 1990, aggregate amounts not to exceed $2,500,000,000 for fiscal year 1991 and $5,500,000,000 for the fiscal years ending before October 1, 1992.'.

SEC. 9106. FAA OPERATIONS.

Section 106 of title 49, United States Code, is amended by adding at the end the following new subsection:

`(k) AUTHORIZATION OF APPROPRIATIONS FOR OPERATIONS- There is authorized to be appropriated for operations of the Administration $4,088,000,000 for fiscal year 1991 and $4,412,600,000 for fiscal year 1992.'.

SEC. 9107. OPERATION AND MAINTENANCE OF AVIATION SYSTEM.

(a) ELIMINATION OF PENALTY- Section 506(c)(3)(B)(i) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2205(c)(3)(B)(i)) is amended--

(1) by inserting `and' after `1989'; and

(2) by striking `$3,770,000,000' and all that follows through `1992,'.

(b) FUNDING- Section 506(c) of such Act (49 U.S.C. App. 2205(c)) is amended by adding at the end the following new paragraph:

`(4) FISCAL YEARS 1991-1992- The amount appropriated from the Trust Fund for the purposes of clauses (A) and (B) of paragraph (1) of this subsection for each of fiscal years 1991 and 1992 may not exceed--

`(A) 75 percent of the amount of funds made available under section 505, subsections (a) and (b) of this section, and section 106(k) of title 49, United States Code, for such fiscal year; less

`(B) the amount of funds made available under section 505 and subsections (a) and (b) of this section for such fiscal year.'.

SEC. 9108. WEATHER SERVICE.

The second sentence of section 506(d) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2205(d)) is amended--

(1) by striking `and' the first place it appears and inserting a comma; and

(2) by inserting before the period the following: `, $34,521,000 for fiscal year 1991, and $35,389,000 for fiscal year 1992'.

SEC. 9109. MILITARY AIRPORT PROGRAM.

(a) DECLARATION OF POLICY- Section 502(a) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2201(a)) is further amended--

(1) by striking `and' at the end of paragraph (12);

(2) by striking the period at the end of paragraph (13) and inserting `; and'; and

(3) by adding at the end the following:

`(14) special emphasis should be placed on the conversion of appropriate former military air bases to civil use and on the identification and improvement of additional joint-use facilities.'.

(b) SET-ASIDE- Section 508(d) of such Act (49 U.S.C. App. 2204(d)) is amended by striking paragraph (5) and inserting the following:

`(5) MILITARY AIRPORT SET-ASIDE- Not less than 1.5 percent of the funds made available under section 505 in each of fiscal years 1991 and 1992 shall be distributed during such fiscal year to sponsors of current or former military airports designated by the Secretary under subsection (f) for the purpose of developing current and former military airports to improve the capacity of the national air transportation system.

`(6) REALLOCATION- If the Secretary determines that he will not be able to distribute the amount of funds required to be distributed under paragraph (1), (2), (3), (4), or (5) of this subsection for any fiscal year because the number of qualified applications submitted in compliance with this title is insufficient to meet such amount, the portion of such amount the Secretary determines will not be distributed shall be available for obligation during such fiscal year for other airports and for other purposes authorized by section 505 of this title.'.

(c) DESIGNATION OF FORMER MILITARY AIRPORTS- Section 508 of such Act is further amended by adding at the end the following new subsection:

`(f) Designation of Current or Former Military Airports-

`(1) DESIGNATION- The Secretary shall designate not more than 8 current or former military airports for participation in the grant program established under subsection (d)(5) and this subsection. At least 2 such airports shall be designated within 6 months after the date of the enactment of this subsection and the remaining airports shall be designated for participation no later than September 30, 1992.

`(2) SURVEY- The Secretary shall conduct a survey of current and former military airports to identify which ones have the greatest potential to improve the capacity of the national air transportation system. The survey shall also identify the capital development needs of such airports in order to make them part of the national air transportation system and shall identify which capital development needs are eligible for grants under section 505. The survey shall be completed by September 30, 1991.

`(3) LIMITATION- In selecting airports for participation in the program established under subsection (d)(5) and this subsection and in conducting the survey under paragraph (2), the Secretary shall consider only those current or former military airports whose conversion in whole or in part to civilian commercial or reliever airport as part of the national air transportation system would enhance airport and air traffic control system capacity in major metropolitan areas and reduce current and projected flight delays.

`(4) PERIOD OF ELIGIBILITY- An airport designated by the Secretary under this subsection shall remain eligible to participate in the program under subsection (d)(5) and this subsection for the 5 fiscal years following such designation. An airport that does not attain a level of enplaned passengers during such 5 fiscal year period which qualifies it as

a small hub airport as defined as of January 1, 1990, or reliever airport may be redesignated by the Secretary for participation in the program for such additional fiscal years as may be determined by the Secretary.

`(5) ADDITIONAL FUNDING- Notwithstanding the provisions of section 513(b), not to exceed $5,000,000 per airport of the sums to be distributed at the discretion of the Secretary under section 507(c) for any fiscal year may be used by the sponsor of a current or former military airport designated by the Secretary under this subsection for construction, improvement, or repair of terminal building facilities, including terminal gates used by aircraft for enplaning and deplaning revenue passengers. Under no circumstances shall any gates constructed, improved, or repaired with Federal funding under this paragraph be subject to long-term leases for periods exceeding 10 years or majority in interest clauses.'.

SEC. 9110. PASSENGER FACILITY CHARGES.

Section 1113 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1513) is amended--

(1) in subsection (a) by inserting `except as provided in subsection (e) and' before `except that'; and

(2) by adding at the end the following new subsection:

`(e) Authority for Imposition of Passenger Facility Charges-

`(1) IN GENERAL- Subject to the provisions of this subsection, the Secretary may grant a public agency which controls a commercial service airport authority to impose a fee of $1.00, $2.00, or $3.00 for each paying passenger of an air carrier enplaned at such airport to finance eligible airport-related projects to be carried out in connection with such airport or any other airport which such agency controls. For purposes of this subsection, financing an eligible airport-related project includes making payments for debt service on bonds and other indebtedness incurred to carry out such project.

`(2) USE OF REVENUES AND RELATIONSHIP BETWEEN FEES AND REVENUES- The Secretary may grant a public agency which controls a commercial service airport authority to impose a fee under this subsection to finance specific projects only if the Secretary finds, on the basis of an application submitted for such authority--

`(A) that the amount and duration of the proposed fee will result in revenues (including interest and other returns on such revenues) which do not exceed amounts necessary to finance the specific projects; and

`(B) that each of the specific projects is an eligible airport-related project which will--

`(i) preserve or enhance capacity, safety, or security of the national air transportation system,

`(ii) reduce noise resulting from an airport which is part of such system, or

`(iii) furnish opportunities for enhanced competition between or among air carriers.

`(3) LIMITATION REGARDING PASSENGERS OF AIR CARRIERS RECEIVING ESSENTIAL AIR SERVICE COMPENSATION- If a passenger of an air carrier is being provided air service to an eligible point under section 419 for which compensation is being paid under such section, a public agency which controls any other airport may not impose a fee pursuant to this subsection for enplanement of such passenger with respect to such air service.

`(4) LIMITATION REGARDING OBLIGATIONS- No fee may be imposed pursuant to this subsection for a project which is not approved by the Secretary under this subsection on or before September 30, 1992--

`(A) if, during fiscal years 1991 and 1992, the amount available for obligation, in the aggregate, under section 505 of Airport and Airway Improvement Act of 1982 is less than $3,700,000,000; or

`(B)(i) if, during fiscal year 1991, the amount available for obligation, in the aggregate, under section 419 is less than $26,600,000; or

`(ii) if, during fiscal year 1992, the amount available for obligation, in the aggregate, under section 419 is less than $38,600,000.

`(5) TWO ENPLANEMENTS PER TRIP LIMITATION- Enplaned passengers on whom a fee may be imposed by a public agency pursuant to this subsection include passengers of air carriers originating or connecting at the commercial service airport which the agency controls. A fee may not be collected pursuant to this subsection from a passenger with respect to any enplanement of such passenger, on a one-way trip and on a trip in each direction of a round trip, after the second enplanement for which a fee has been collected pursuant to this subsection from such passenger.

`(6) TREATMENT OF REVENUES- Revenues derived from collection of a fee by a public agency pursuant to this subsection shall not be treated as airport revenues for the purposes of any contract between such agency and an air carrier.

`(7) EXCLUSIVITY OF AUTHORITY- No State or political subdivision or agency thereof which is not a public agency controlling a commercial service airport shall prohibit, limit, or regulate the imposition of fees by the public agency pursuant to this subsection, collection of such fees, or use of revenues derived therefrom. No contract between an air carrier and a public agency which controls a commercial service airport entered into

before, on, or after the date of the enactment of this subsection shall affect the authority of the public agency to impose fees pursuant to this subsection and to use the revenues derived from such fees in accordance with this subsection.

`(8) NONEXCLUSIVITY OF CONTRACTUAL AGREEMENTS- No project carried out through the use of a fee collected pursuant to this subsection may be subject to an exclusive long-term lease or use agreement of an air carrier, as defined by the Secretary by regulation. Any lease or use agreement of an air carrier with respect to a facility con

END

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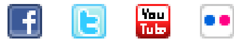

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