

106TH CONGRESS
2D SESSION

H. R. 4398

To establish a compensation and health care program for employees of the Department of Energy, its contractors, subcontractors, and certain vendors, who have sustained beryllium and radiation-related injury, illness, or death due to the performance of their duties, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 9, 2000

Mr. WHITFIELD (for himself, Mr. STRICKLAND, Mr. KANJORSKI, Mr. LUCAS of Kentucky, Mr. UDALL of Colorado, Mr. UDALL of New Mexico, Mr. GIBBONS, Mr. BROWN of Ohio, Mr. GORDON, Mr. CLEMENT, and Mr. HALL of Ohio) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Education and the Workforce, Ways and Means, Transportation and Infrastructure, and Banking and Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish a compensation and health care program for employees of the Department of Energy, its contractors, subcontractors, and certain vendors, who have sustained beryllium and radiation-related injury, illness, or death due to the performance of their duties, and for other purposes.

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

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

2 (a) **SHORT TITLE.**—This Act may be cited as the
 3 “Energy Employees Occupational Illness and Compensa-
 4 tion Act of 2000”.

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

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

TITLE I—ENERGY EMPLOYEES’ BERYLLIUM COMPENSATION

Sec. 101. Definitions.

Sec. 102. Regulatory authority to revise definitions.

Sec. 103. Administration.

Sec. 104. Exposure to beryllium in the performance of duty.

Sec. 105. Compensation for disability or death, medical services, and vocational
 rehabilitation.

Sec. 106. Computation of pay.

Sec. 107. Limitations on receiving compensation.

Sec. 108. Coordination of benefits.

Sec. 109. Alternative compensation.

Sec. 110. Payment in full settlement of claims against the United States and
 the employee’s employer.

Sec. 111. Filing of claim.

Sec. 112. Time limitation on filing a claim.

Sec. 113. Determination and award of claims.

Sec. 114. Review of award.

Sec. 115. Appeal.

Sec. 116. Reconsideration of denial of claim.

Sec. 117. Resolution of issues in the award or denial of compensation; costs of
 administration.

Sec. 118. Representation; fees for services.

Sec. 119. Status of award; certain claims not affected.

Sec. 120. Assignment of claim.

Sec. 121. Subrogation of the United States.

Sec. 122. Energy Employees’ Beryllium Compensation Fund.

Sec. 123. Civil Service retention rights.

Sec. 124. Annual report.

Sec. 125. Authorization of appropriations.

Sec. 126. Regulations.

Sec. 127. Construction.

Sec. 128. Conforming amendments.

Sec. 129. Effective date.

TITLE II—NUCLEAR EMPLOYEES’ RADIATION COMPENSATION

Sec. 201. Definitions.

Sec. 202. Administration.

Sec. 203. Occupational exposure to radiation and other hazardous substances.

- Sec. 204. Compensation for disability or death, medical services, and vocational rehabilitation.
- Sec. 205. Computation of pay.
- Sec. 206. Limitations on receiving compensation.
- Sec. 207. Coordination of benefits.
- Sec. 208. Right to alternative compensation.
- Sec. 209. Payment in full settlement of claims against the United States and the employee's employer.
- Sec. 210. Filing of claim.
- Sec. 211. Time limitation on filing a claim.
- Sec. 212. Determination and award of claims.
- Sec. 213. Review of award.
- Sec. 214. Appeal.
- Sec. 215. Reconsideration of denial of claim.
- Sec. 217. Representation; fees for services.
- Sec. 218. Status of award; certain claims not affected.
- Sec. 219. Assignment of claim.
- Sec. 220. Subrogation of the United States.
- Sec. 221. Nuclear Employees' Radiation Compensation Fund.
- Sec. 222. Civil Service retention rights.
- Sec. 223. Annual report.
- Sec. 224. Authorization of appropriations.
- Sec. 225. Regulations; regulatory authority.
- Sec. 226. Construction.
- Sec. 227. Conforming amendments.
- Sec. 228. Effective date.

TITLE III—EMPLOYEES EXPOSED TO TOXIC SUBSTANCES AND HEAVY METALS

- Sec. 301. Eligibility of employees exposed to other toxic substances and heavy metals.
- Sec. 302. Establishment of a physicians panel by the Secretary of Health and Human Services.
- Sec. 303. Eligibility determination.
- Sec. 304. Establishment of occupational disease presumptions.
- Sec. 305. Panel shall report determination to Secretary of Labor.

TITLE IV—COMPENSATION FUND

- Sec. 401. Energy Employees' Occupational Illness Compensation Fund.

TITLE V—ECONOMIC DEVELOPMENT ASSISTANCE

- Sec. 501. Eligibility of communities containing Department of Energy defense nuclear facilities.

1 **SEC. 2. FINDINGS.**

2 The Congress finds that—

- 3 (1) Since World War II Federal nuclear activi-
- 4 ties have been explicitly recognized by the United
- 5 States Government as an a ultra-hazardous activity

1 under Federal law. Nuclear weapons production in-
2 volved unique dangers, including potential cata-
3 strophic nuclear accidents that private insurance
4 carriers would not cover, as well as chronic expo-
5 sures to radioactive and hazardous substances, such
6 as beryllium, that even in small amounts could cause
7 medical harm.

8 (2) Since the inception of the nuclear weapons
9 program and for several decades afterwards, large
10 numbers of nuclear weapons workers at Department
11 of Energy and at vendor sites who supplied the Cold
12 War effort were put at risk without their knowledge
13 and consent for reasons that, documents reveal, were
14 driven by fears of adverse publicity, liability, and
15 employee demands for hazardous duty pay.

16 (3) Numerous previous secret records docu-
17 mented unmonitored radiation, beryllium, heavy
18 metals, and toxic substances' exposures and con-
19 tinuing problems at the Department of Energy and
20 vendor sites across the country, where since World
21 War II the Department of Energy and its prede-
22 cessors have been self-regulating with respect to nu-
23 clear safety and occupational safety and health. No
24 other hazardous Federal activity has been permitted
25 to have such sweeping self-regulatory powers.

1 (4) The Department of Energy policy to litigate
2 occupational illness claims regardless of merit has
3 deterred workers from filing workers compensation
4 claims and imposed major financial burdens for
5 workers who sought compensation. Department of
6 Energy contractors have been held harmless, even
7 for acts of negligence, while the Department of En-
8 ergy workers were denied workers compensation cov-
9 erage for occupational disease. The policy to avoid
10 legal liabilities at all costs has been in place for dec-
11 ades.

12 (5) Over the past 20 years more than two
13 dozen scientific findings have emerged that indicate
14 that Department of Energy workers are experiencing
15 increased risks of dying from cancer and non-malig-
16 nant diseases at numerous facilities that provided
17 for the nation's nuclear deterrent. Several of these
18 studies also establish a correlation between excess
19 diseases and exposure to radiation and beryllium.

20 (6) While linking exposure to occupational haz-
21 ards with the development of occupational disease is
22 sometimes difficult, scientific evidence supports the
23 conclusion that occupational exposure to dust par-
24 ticles or vapor of beryllium, even where there was
25 compliance with the standards in place at the time,

1 can cause beryllium sensitivity and chronic beryllium
2 disease. Furthermore, studies indicate than 98 per-
3 cent of radiation induced cancers within the Depart-
4 ment of Energy complex occur at dose levels below
5 existing legal thresholds for proof. Further, that
6 workers at Department of Energy sites were exposed
7 to heavy metals and toxic substances at levels that
8 will lead or contribute to illness and diseases.

9 (7) Existing information indicates that State
10 workers' compensation programs are not a uniform
11 means to provide adequate compensation for the
12 types of occupational illnesses and diseases related
13 to the prosecution of the Cold War effort.

14 (8) The civilian men and women who performed
15 duties uniquely related to the Department of Ener-
16 gy's nuclear weapons production program over the
17 last 50 years should have efficient, uniform, and
18 adequate compensation for beryllium-related health
19 conditions and radiation-related health conditions in
20 order to assure fairness and equity.

21 (9) This situation is sufficiently unique to the
22 Department of Energy's nuclear weapons production
23 program that it is appropriate for Congressional ac-
24 tion.

1 **TITLE I—ENERGY EMPLOYEES’**
2 **BERYLLIUM COMPENSATION**

3 **SEC. 101. DEFINITIONS.**

4 For the purpose of this title:

5 (1) DEPARTMENT OF ENERGY.—The term “De-
6 partment of Energy” includes the predecessor agen-
7 cies of the Department of Energy.

8 (2) SECRETARY.—The term “Secretary” unless
9 otherwise specified means the Secretary of Energy.

10 (3) DEPARTMENT OF ENERGY FACILITY.—The
11 term “Department of Energy facility” means any
12 building, structure, or premises, including the
13 grounds upon which they are located, in which oper-
14 ations are or were conducted by, or on behalf of, the
15 Department of Energy and with regard to which the
16 Department of Energy has a proprietary interest or
17 has entered into a contract with an entity to provide
18 management and operation, management and inte-
19 gration, or environmental remediation, but shall not
20 include any Naval Reactors facility.

21 (4) BERYLLIUM VENDOR.—The term “beryl-
22 lium vendor” means:

23 (A) Atomics International.

24 (B) Brush Wellman, Inc. and its prede-
25 cessor, Brush Beryllium Company.

1 (C) General Atomics.

2 (D) General Electric Company.

3 (E) NGK Metals Corporation and its pred-
4 ecessors: Kawecki-Berylco, Cabot Corporation,
5 BerylCo, and Beryllium Corporation of Amer-
6 ica.

7 (F) Nuclear Materials and Equipment Cor-
8 poration.

9 (G) StarMet Corporation, and its prede-
10 cessor, Nuclear Metals, Inc.

11 (H) Wyman Gordon, Inc.

12 (I) Any other vendor, processor, or pro-
13 ducer of beryllium or related products des-
14 igned as a beryllium vendor for the purposes
15 of this title in regulations issued by the Sec-
16 retary pursuant to section 104.

17 (5) COMPENSATION.—The term “compensa-
18 tion” means the money allowance payable under this
19 title and any other benefits paid for from the En-
20 ergy Employees’ Beryllium Compensation Fund, in-
21 cluding the retroactive compensation payable pursu-
22 ant to section 109.

23 (6) COVERED EMPLOYEE.—The term “covered
24 employee” means—

1 (A) an employee of any entity that con-
2 tracted or subcontracted with the Department
3 of Energy to provide management and oper-
4 ations, management and integration, produc-
5 tion, testing, research, development, environ-
6 mental remediation, waste management, con-
7 struction, uranium enrichment, or other services
8 at a Department of Energy facility or any enti-
9 ty that supplied uranium conversion or manu-
10 facturing services to, for, or on behalf of, the
11 Department of Energy, including, those entities
12 identified at section 201(3);

13 (B) an employee of a beryllium vendor dur-
14 ing a period of time when that entity was en-
15 gaged in activities related to beryllium that was
16 produced or processed for sale to, or use by, the
17 Department of Energy; or

18 (C) an individual defined as an employee
19 in section 8101(1) of title 5, United States
20 Code, who may have been exposed to beryllium
21 at a Department of Energy facility or at a facil-
22 ity owned, operated, or occupied by a beryllium
23 vendor.

24 (D) an individual who was a resident of
25 Lorain County, Ohio, before 1950 in the area

1 in which the Brush Beryllium Company was lo-
2 cated and who has been diagnosed with a cov-
3 ered illness.

4 An individual described in subparagraph (D) shall
5 for purposes of section 109 be considered to have
6 been exposed to beryllium in the performance of
7 duty.

8 (7) COVERED ILLNESS.—The term “covered ill-
9 ness” means any of the following conditions:

10 (A) Beryllium Sensitivity, established by
11 an abnormal beryllium lymphocyte proliferation
12 test performed on either blood or lung lavage
13 cells.

14 (B) Chronic Beryllium Disease, established
15 by—

16 (i) beryllium sensitivity, as defined in
17 subparagraph (A), and

18 (ii) lung pathology consistent with
19 Chronic Beryllium Disease, such as—

20 (I) a lung biopsy showing
21 granulomas or a lymphocytic process
22 consistent with Chronic Beryllium
23 Disease;

24 (II) a computerized axial tomog-
25 raphy scan showing changes con-

1 sistent with Chronic Beryllium Dis-
2 ease; or

3 (III) pulmonary function or exer-
4 cise testing showing pulmonary defi-
5 cits consistent with Chronic Beryllium
6 Disease;

7 (iii) for covered employees diagnosed
8 before 1993, the presence of subclause (I)
9 and at least 2 others—

10 (I) occupational or environmental
11 history or epidemiologic evidence of
12 beryllium;

13 (II) characteristic chest radio-
14 graphic (or computer tomography
15 (CT)) abnormalities;

16 (III) restrictive or obstructive
17 lung physiology testing of Diffusing
18 Lung Capacity (Dlco) defect;

19 (IV) lung pathology consistent
20 with Chronic Beryllium Disease;

21 (V) clinical course consistent with
22 a chronic respiratory disorder; or

23 (VI) immunologic tests showing
24 beryllium sensitivity (skin patch test
25 or beryllium blood test preferred).

1 (C) Any injury or illness sustained as a
2 consequence of a covered illness as defined in
3 subparagraph (A) or (B).

4 (8) MONTHLY PAY.—The term “monthly pay”
5 means—

6 (A) for covered employees employed at the
7 time of injury or inception of disability, the
8 monthly pay at the time of injury, the monthly
9 pay at the inception of disability, or the month-
10 ly pay at the time compensable disability re-
11 curs, if the recurrence begins more than 6
12 months after the covered employee resumes reg-
13 ular full-time employment, whichever is greater,
14 except when otherwise determined under section
15 8113(a) of title 5, United States Code;

16 (B) for covered employees who are unem-
17 ployed at the inception of disability, the month-
18 ly pay of the employee’s last covered employ-
19 ment calculated as if the employee were still
20 employed, or the monthly pay of other employ-
21 ees of the same or most similar class working
22 in the same or most similar employment in the
23 same or neighboring locality, whichever is great-
24 er.

1 (9) TIME OF INJURY.—The term “time of in-
2 jury” means the last date on which a covered em-
3 ployee was exposed to beryllium in the performance
4 of duty as specified in section 104.

5 (10) INCEPTION OF DISABILITY.—The term
6 “inception of disability” means the date on which
7 the covered employee or claimant becomes aware, or
8 in the exercise of reasonable diligence or by reason
9 of medical advice should have been aware, of the re-
10 lationship between the employment, the covered ill-
11 ness, and the death or disability.

12 (11) MISCELLANEOUS TERMS.—The following
13 terms have the meaning given those terms in section
14 8101 of title 5, United States Code:

15 (A) “physician”;

16 (B) “medical, surgical, and hospital serv-
17 ices and supplies”;

18 (C) “widow”;

19 (D) “parent”;

20 (E) “brother” and “sister”;

21 (F) “child”;

22 (G) “grandchild”;

23 (H) “widower”;

24 (I) “student”;

25 (J) “price index”;

1 (K) “organ”; and

2 (L) “United States medical officers and
3 hospitals”.

4 **SEC. 102. REGULATORY AUTHORITY TO REVISE DEFINI-**
5 **TIONS.**

6 (a) IN GENERAL.—Additional vendors, processors, or
7 producers of beryllium or related products may be des-
8 ignated as beryllium vendors for the purposes of this title
9 in regulations issued by the Secretary of Labor, upon find-
10 ing that such entities have been engaged in activities re-
11 lated to beryllium that was produced or processed for sale
12 to, or use by, the Department of Energy in a manner simi-
13 lar to the entities listed in section 101(4).

14 (b) ADDITIONAL CRITERIA.—Additional criteria by
15 which a claimant may establish the existence of a covered
16 illness, as defined in subparagraph (A) or (B) of section
17 101(7), may be specified in regulations issued by the Sec-
18 retary of Labor, after consultation with the agency that
19 contracts to administer this title.

20 **SEC. 103. ADMINISTRATION.**

21 (a) IN GENERAL.—Within 120 days of enactment of
22 this title, the Secretary of Energy shall enter into an
23 agreement with the Secretary of Labor for the administra-
24 tion of this title, including utilization of Department of
25 Labor services and facilities and for the compensation by

1 the Department of Energy for such administration from
2 the Energy Employees Beryllium Compensation Fund es-
3 tablished pursuant to section 122. The Secretary of Labor
4 is authorized to enter into a reimbursable agreement with
5 the Secretary of Energy for the administration of this
6 title. Upon entry into such agreement, the Secretary of
7 Labor may delegate to any officer or employee of the De-
8 partment of Labor all powers and duties necessary for car-
9 rying out the purposes of this title.

10 (b) JOINT AUTHORITY.—To assist and facilitate ad-
11 ministration of this title and the adjudication of claims,
12 the Secretary of Energy and the Secretary of Labor
13 shall—

14 (1) provide assistance to employees and claim-
15 ants in connection with this title, including assist-
16 ance in securing medical testing and diagnostic serv-
17 ices necessary to determine the existence of a cov-
18 ered illness as defined in section 101(7);

19 (2) ensure the ready availability, in paper and
20 electronic format, of forms necessary for making
21 claims, and provide employees and claimants with
22 necessary information under this title including,
23 among other things, medical protocols necessary for
24 medical testing and diagnosis to determine the exist-
25 ence of a covered illness, lists of approved vendors

1 for use in obtaining necessary laboratory services re-
2 lated to such medical testing and diagnosis, and
3 vouchers to cover costs outlined in the medical pro-
4 tocols;

5 (3) provide such further assistance to employees
6 and claimants as necessary for the development of
7 the facts pertinent to the employee's claim or poten-
8 tial claim;

9 (4) upon a notification that a claimant has
10 made a claim for benefits under this title, provide
11 such information to the authority with delegated re-
12 sponsibility for the determination and award of
13 claims under section 113, or review thereof under
14 sections 114 and 115, as the authority may request
15 for purposes of determining eligibility for or amount
16 of benefits, or verifying other information with re-
17 spect thereto.

18 (c) INFORMATION.—The Secretary of Energy may re-
19 quire a beryllium vendor or Department of Energy con-
20 tractor to provide information concerning a claim filed
21 under this title to the officers or employees with delegated
22 responsibility for administering this title.

23 (d) PENALTY.—Failure or refusal to provide informa-
24 tion, or knowingly providing false information, in response
25 to a request pursuant to subsections (b) and (c) this sec-

1 tion may result in fine or imprisoned, or both, pursuant
2 to section 1922 of title 18, United States Code, as amend-
3 ed by section 129(c).

4 (e) PENALTY.—Whoever induces, compels, or directs
5 an injured employee to forego filing of any claim for com-
6 pensation or other benefits provided under this title or any
7 extension or application thereof, or willfully retains any
8 notice, report, claim, or paper which is required to be filed
9 under this title or any extension or application thereof,
10 or regulations prescribed thereunder, may be subjected to
11 fine or imprisonment, or both, pursuant to section 1922
12 of title 18, United States Code, as amended by section
13 129(c).

14 **SEC. 104. EXPOSURE TO BERYLLIUM IN THE PERFORM-**
15 **ANCE OF DUTY.**

16 In the absence of substantial evidence to the contrary,
17 a covered employee, as defined in subparagraphs (A), (B),
18 or (C) of section 101(6), shall be determined to have been
19 exposed to beryllium in the performance of duty for the
20 purposes of this title if, and only if, the covered employee
21 was employed at a Department of Energy facility, or was
22 present at the facility or at a facility owned or operated
23 by a beryllium vendor because of employment by the
24 United States, a beryllium vendor, or a contractor or sub-
25 contractor of the Department of Energy, for any period

1 of time, during a time period when beryllium dust particles
2 or vapor may have been present at that facility.

3 **SEC. 105. COMPENSATION FOR DISABILITY OR DEATH,**
4 **MEDICAL SERVICES, AND VOCATIONAL REHA-**
5 **BILITATION.**

6 (a) COMPENSATION.—In accordance with, and except
7 as otherwise provided in this title, the United States is
8 authorized to—

9 (1) upon application for compensation pursuant
10 to section 111, furnish the costs of all medical test-
11 ing and diagnostic services necessary for the claim-
12 ant to determine the existence of a covered illness as
13 defined in section 101(7), and reimburse claimant
14 for any additional reasonable medical expenses in-
15 curred in establishing the claimant's claim;

16 (2) pay the compensation specified in sections
17 8105–8110, 8111(a), 8112–13, 8115, 8117, 8133–
18 8135, and 8146a(a) and (b) of title 5, United States
19 Code, for the disability or death from a covered ill-
20 ness of a covered employee who was exposed to be-
21 ryllium while in the performance of duty as deter-
22 mined in accordance with section 104;

23 (3) furnish the services and other benefits spec-
24 ified in section 8103 of title 5, United States Code,
25 to a covered employee who sustains a covered illness

1 as a result of exposure to beryllium while in the per-
2 formance of duty as determined in accordance with
3 section 104;

4 (4) pay alternative compensation pursuant to
5 section 109, and attorneys fees as specified in sec-
6 tion 118; and

7 (5) advise a permanently disabled individual
8 whose disability is compensable under this title of
9 the availability of vocational rehabilitation and pro-
10 vide for furnishing vocational rehabilitation service
11 pursuant to the provisions of section 8104 and
12 8111(b) of title 5, United States Code;

13 unless the covered illness or death was caused by one of
14 the circumstances set forth in paragraph (1) or (3) of sub-
15 section (a) of section 8102 of title 5, United States Code.

16 (b) PAYMENT FROM FUND.—All compensation and
17 awards under this title shall be paid from the Energy Em-
18 ployees' Beryllium Compensation Fund.

19 (c) PAYMENT AND EFFECTIVE DATE.—No payment
20 of compensation may be made under this title for any pe-
21 riod prior to the effective date of this title, except for the
22 alternative compensation specified in section 109.

23 **SEC. 106. COMPUTATION OF PAY.**

24 (a) IN GENERAL.—Except as otherwise provided by
25 this title, computation of pay under this title shall be de-

1 terminated in accordance with section 8114 of title 5,
2 United States Code.

3 (b) AVERAGE ANNUAL EARNINGS.—If either of the
4 methods of determining the average annual earnings spec-
5 ified in sections 8114(d) (1) and (2) of title 5, United
6 States Code, cannot be applied reasonably and fairly, the
7 average annual earnings are a sum that reasonably rep-
8 resents the annual earning capacity of the covered em-
9 ployee in the employment in which the employee was work-
10 ing at the time of injury or inception of disability, which-
11 ever is greater, having regard to the previous earnings of
12 the employee in similar employment, and for other employ-
13 ees of the same employer in the same or most similar class
14 working in the same or most similar employment in the
15 same or neighboring location, other previous employment
16 of the employee, or other relevant factors. However, the
17 average annual earnings may not be less than 150 times
18 the average daily wage the covered employee earned in the
19 employment during the days employed within 1 year im-
20 mediately preceding the time of injury or inception of dis-
21 ability, whichever is greater.

22 **SEC. 107. LIMITATIONS ON RECEIVING COMPENSATION.**

23 (a) IN GENERAL.—While a covered employee as de-
24 fined in section 101(6)(C) is receiving compensation under
25 this title, or if the covered employee has been paid a lump

1 sum in commutation of installment payments until the ex-
2 piration of the period during which the installment pay-
3 ments would have continued pursuant to section 8135 of
4 title 5, United States Code, the covered employee may not
5 receive salary, pay, or remuneration of any type from the
6 United States, except

7 (1) in return for service actually performed;

8 (2) pension for service in the Army, Navy, or
9 Air Force;

10 (3) other benefits administered by the Depart-
11 ment of Veterans Affairs unless such benefits are
12 payable for the same covered illness or the same
13 death;

14 (4) retired pay, retirement pay, retainer pay, or
15 equivalent pay for service in the Armed Forces or
16 other uniformed service; and

17 (5) retirement benefits under subchapter III of
18 chapter 83 of title 5, United States Code, or other
19 retirement system for employees of Federal or State
20 government.

21 However, eligibility for or receipt of benefits under sub-
22 chapter III of chapter 83 of title 5, United States Code,
23 or another retirement system for employees of Federal or
24 State government, does not impair the right of the em-

1 ployee to compensation for scheduled disabilities specified
2 by section 8107 of title 5, United States Code.

3 (b) OTHER FEDERAL BENEFITS RELATED TO
4 ARMED FORCES.—An individual eligible to receive bene-
5 fits under this title because of a covered illness or death
6 of a covered employee as defined in section 101(6)(C), who
7 also is entitled to receive from the United States under
8 a provision of statute other than this title payments of
9 benefits for that covered illness or death (except proceeds
10 of an insurance policy), because of service by the covered
11 employee (or in the case of death, by the deceased) as an
12 employee or in the armed forces, shall elect which benefits
13 to receive. The individual shall make the election within
14 the time allowed by the Secretary of Labor by regulation.
15 The election when made is irrevocable, except as otherwise
16 provided by statute, or unless the level of compensation
17 and other benefits under the other statutory provision or
18 under this title changes, in which event the individual is
19 entitled to make a new informed election.

20 (c) OTHER WORKERS' COMPENSATION BENEFITS.—
21 While a covered employee is receiving compensation under
22 this title, or if the covered employee has been paid a lump
23 sum commutation of installment payments until the expi-
24 ration of the period during which the installment pay-
25 ments would have continued, the covered employee may

1 not receive payment of any benefits under any other Fed-
2 eral workers' compensation system for the same covered
3 illness or the same death. Such an individual shall elect
4 which benefits to receive. The individual shall make the
5 election within the time allowed by the Secretary of Labor
6 by regulation. The election when made is irrevocable, un-
7 less the level of compensation and other benefits under
8 the other Federal program or under this title changes, in
9 which event the individual is entitled to make a new in-
10 formed election.

11 **SEC. 108. COORDINATION OF BENEFITS.**

12 Except where the Secretary issues a waiver pursuant
13 to section 107(d)(2), a claimant awarded benefits under
14 this title as a result of a covered illness or death of a cov-
15 ered employee who receives benefits because of the same
16 covered illness or death from any other State or Federal
17 workers compensation system and who has elected benefits
18 under this title pursuant to subsection (c) or (d) of section
19 107, shall receive compensation as specified in this title
20 for the covered illness or death, reduced by the amount
21 of any workers' compensation benefits that the claimant
22 receives or will receive on account of the covered illness
23 or death under any State or Federal workers' compensa-
24 tion system during the period that awarded benefits are
25 provided under this title, after deducting the reasonable

1 costs, as determined by the Secretary of Labor by regula-
2 tion, of obtaining such benefits.

3 **SEC. 109. ALTERNATIVE COMPENSATION.**

4 (a) IN GENERAL.—A covered employee, who was ex-
5 posed to beryllium in the performance of duty, as deter-
6 mined in accordance with section 104, and who, in
7 addition—

8 (1) was diagnosed as having a beryllium-related
9 pulmonary condition, whether or not based upon the
10 criteria necessary to establish the existence of a cov-
11 ered illness under section 101(7), that was deter-
12 mined, either contemporaneously or at any time
13 later, to be consistent with Chronic Beryllium Dis-
14 ease, as defined in section 101(7)(B), and

15 (2) demonstrates the existence of a beryllium-
16 related pulmonary condition, and its diagnosis, by
17 medical documentation created during the covered
18 employee's lifetime or at the time of death or au-
19 topsy,

20 may elect to receive alternative compensation in the
21 amount of \$200,000, subject to adjustment pursuant to
22 section 8146a(a) of title 5, United States Code, together
23 with those medical services and benefits specified in sec-
24 tion 8103 of title 5, United States Code, in lieu of any
25 other compensation to which the covered employee or the

1 employee's survivors might otherwise be awarded under
2 this title.

3 (b) DEATH OF COVERED EMPLOYEE.—If a covered
4 employee who would have been eligible to make the elec-
5 tion provided by this section dies before the effective date
6 of this title, or before making the election, whether or not
7 the death is the result of a beryllium-related condition, the
8 employee's survivor or survivors may make the election to
9 receive the alternative compensation specified in sub-
10 section (a) of this section in lieu of any other compensa-
11 tion that either the covered employee or the employee's
12 survivors might otherwise have been awarded under this
13 title. The right to make an election pursuant to this sec-
14 tion shall be afforded to survivors in the order of prece-
15 dence set forth in section 8109 of title 5, United States
16 Code.

17 (c) ELECTION TO RECEIVE RETROACTIVE COM-
18 PENSATION.—The election to receive retroactive com-
19 pensation under this section in lieu of other compensation
20 under this title shall be made at any time subsequent to
21 filing a claim pursuant to section 111, up to and including
22 30 days after either the date of a decision determining
23 an award of compensation for total disability or partial
24 disability under this title or the date that the Secretary
25 informs the employee or the employee's survivor of the

1 right to make such an election, whichever is later, unless
2 the time is extended upon request by the employee or his
3 or her survivor. The election when made by a covered em-
4 ployee or survivor is irrevocable and binding on all sur-
5 vivors.

6 (d) LIMITATION.—When a covered employee, or the
7 employee’s survivor, has made an election to receive alter-
8 native compensation pursuant to this section, no other
9 payment of compensation under this title may be made
10 on account of the same or any other covered illness or
11 beryllium-related pulmonary condition of that employee.

12 (e) DETERMINATION.—A determination that a cov-
13 ered employee or a survivor of a covered employee has es-
14 tablished a beryllium-related pulmonary condition pursu-
15 ant to subsection (a) of this section does not constitute
16 a determination that the covered employee, or a survivor
17 of the covered employee, has established the existence of
18 a covered illness.

19 **SEC. 110. PAYMENT IN FULL SETTLEMENT OF CLAIMS**
20 **AGAINST THE UNITED STATES AND THE EM-**
21 **PLOYEE’S EMPLOYER.**

22 (a) IN GENERAL.—If an individual elects to accept
23 payment under this title with respect to a covered illness,
24 beryllium-related pulmonary condition, or death of a cov-
25 ered employee, that acceptance of payment shall be in full

1 settlement of all claims against the United States under
2 the tort claims procedures of chapter 171 of title 28,
3 United States Code or against the covered employee's em-
4 ployer (with the exception of intentional torts), that arise
5 out of the employee's exposure to beryllium in the per-
6 formance of his or her duties within the meaning of section
7 104.

8 (b) APPLICATION.—This section does not apply to an
9 administrative or judicial proceeding under a State or
10 Federal workers' compensation statute subject to sections
11 107 and 108, nor to any litigation, whether arising out
12 of the employee's exposure to beryllium in the performance
13 of the employee's duties or not, in State or Federal court.

14 **SEC. 111. FILING OF CLAIM.**

15 A claim for compensation under this title shall be
16 submitted to the Secretary of Labor, or the Secretary of
17 Labor's designee, in the manner specified in section 8121
18 of title 5, United States Code, for determination pursuant
19 to section 113.

20 **SEC. 112. TIME LIMITATION ON FILING A CLAIM.**

21 (a) IN GENERAL.—A claim for compensation under
22 this title must be filed within the later of—

23 (1) 7 years after the effective date of this title,
24 or

1 (2) 7 years after the date the claimant first be-
2 comes aware of—

3 (A) a diagnosis of a covered illness or a be-
4 ryllium-related pulmonary condition, or death
5 resulting from such illness or condition; and

6 (B) the causal connection of that illness,
7 condition, or death to exposure to beryllium in
8 the performance of duty as a covered employee.

9 (b) **NEW LIMITATION PERIOD.**—A new limitations
10 period commences with each later diagnosis of a covered
11 illness or beryllium-related pulmonary condition different
12 from that previously diagnosed.

13 (c) **TIMELY FILING.**—The timely filing of a disability
14 claim because of a covered illness or beryllium-related pul-
15 monary condition will satisfy the time requirements for a
16 death claim based on the same illness or condition.

17 **SEC. 113. DETERMINATION AND AWARD OF CLAIMS.**

18 (a) **IN GENERAL.**—Upon entry into the agreement
19 with the Secretary of Energy authorized by section 103(a),
20 the Secretary of Labor, or the Secretary's designee, shall
21 determine and make findings of fact and make an award
22 for or against payment of compensation under this title
23 within 120 days of the filing of a claim pursuant to section
24 111, after—

1 (1) considering the claim presented by the bene-
2 ficiary, the results of any medical test or diagnosis
3 undertaken to determine the existence of a covered
4 illness, and any report furnished by the Department
5 of Energy; and

6 (2) completing such investigation as the Sec-
7 retary or the Secretary's designee considers nec-
8 essary.

9 (b) CONSTRUCTION.—Except as otherwise specified
10 in this title, the determination of a claim for compensa-
11 tion, and any award and payment of compensation under
12 this section shall be made in accordance with section
13 8124(a) of title 5, United States Code. Unless a hearing
14 is requested pursuant to section 114(a), the determina-
15 tion, findings, and any award rendered hereunder shall be-
16 come final and conclusive at the expiration of the thirtieth
17 day after the date of the Secretary of Labor's decision and
18 service thereof upon claimant.

19 **SEC. 114. REVIEW OF AWARD.**

20 (a) IN GENERAL.—A claimant for compensation is
21 entitled to a hearing on his or her claim before an adminis-
22 trative law judge qualified under section 3105 of title 5,
23 United States Code, upon request made by claimant with-
24 in 30 days after the date of issuance and service of the
25 Secretary of Labor's findings and decision under section

1 113, and to the presentation at such hearing of evidence
2 in further support of the claim. The administrative law
3 judge may extend the period for requesting a hearing
4 under this section upon petition of the claimant and good
5 cause shown.

6 (b) HEARING.—The administrative law judge shall,
7 in the conduct of a hearing requested pursuant to sub-
8 section (a) of this section and in the evaluation and deter-
9 mination of claimant's claim, have those powers, duties
10 and responsibilities vested by section 8124(b) of title 5,
11 United States Code, in the Secretary of Labor, provided
12 however, that the hearing shall be conducted in accordance
13 with the provisions of section 554 of title 5, United States
14 Code. Parties to a proceeding under this subsection shall
15 be strictly limited to the claimant and the Secretary of
16 Labor as represented by his or her designee.

17 (c) ORDERS.—The administrative law judge shall
18 have power to preserve and enforce order during any pro-
19 ceeding under this section; to issue subpoenas for, to ad-
20 minister oaths to, and to compel the attendance and testi-
21 mony of witnesses, or the production of books, papers,
22 documents, and other evidence, or the taking of deposi-
23 tions before any designated individual competent to ad-
24 minister oaths; to examine witnesses; and to do all things
25 conformable to law which may be necessary to enable the

1 administrative law judge effectively to discharge his duties
2 under this title.

3 (d) PENALTY.—If any person in proceedings before
4 an administrative law judge under this section disobeys
5 or resists any lawful order or process, or misbehaves dur-
6 ing a hearing or so near the place thereof as to obstruct
7 the same, or neglects to produce, after having been or-
8 dered to do so, any pertinent book, paper, or document,
9 or refuses to appear after having been subpoenaed, or
10 upon appearing refuses to take the oath as a witness, or
11 after having taken the oath refuses to be examined accord-
12 ing to law, the administrative law judge shall certify the
13 facts to the district court having jurisdiction in the place
14 in which he is sitting (or to the United States District
15 Court for the District of Columbia if the administrative
16 law judge is sitting in such District) which shall thereupon
17 in a summary manner hear the evidence as to the acts
18 complained of, and, if the evidence so warrants, punish
19 such person in the same manner and to the same extent
20 as for a contempt committed before the court, or commit
21 such person upon the same conditions as if the doing of
22 the forbidden act had occurred with reference to the proc-
23 ess of or in the presence of the court.

24 (e) RECORD.—The record shall close at the conclu-
25 sion of the hearing, except where the administrative law

1 judge grants, for good cause, an extension not to exceed
2 30 days for the submission of additional evidence and ar-
3 gument.

4 (f) **DECISION NOTICE.**—Within 45 days of the clos-
5 ing of the record, and no later than 180 days after receipt
6 of claimant’s request for hearing, the administrative law
7 judge shall notify the claimant in writing of the adminis-
8 trative law judge’s decision and any award the administra-
9 tive law judge may make, and of the basis for such deci-
10 sion and award. In accordance with the facts found on
11 review, the administrative law judge may end, decrease,
12 or increase the compensation previously awarded, or
13 award compensation previously refused or discontinued.

14 (g) **EFFECT OF DECISION.**—Unless appealed to the
15 Benefits Review Board as provided in section 115, the de-
16 cision by the administrative law judge, and any award ren-
17 dered as a result thereof, shall become effective upon filing
18 with the Secretary of Labor, or the Secretary of Labor’s
19 designee, and service upon the claimant, and shall become
20 final and conclusive at the expiration of the thirtieth day
21 thereafter.

22 **SEC. 115. APPEAL.**

23 (a) **IN GENERAL.**—Within 30 days of the effective
24 date of a decision rendered by an administrative law judge
25 under section 114, an aggrieved claimant may seek review

1 of such determination before the Benefits Review Board
2 established pursuant to section 921(b) of title 33, United
3 States Code. The Benefits Review Board may extend the
4 period for requesting review under this section, not to ex-
5 ceed an additional 30 days, upon petition of the claimant
6 and good cause shown.

7 (b) AUTHORITY OF BENEFITS REVIEW BOARD.—The
8 Benefits Review Board is authorized to hear and deter-
9 mine an appeal under this section in accordance with and
10 pursuant to the authority vested in the Board by section
11 921(b) of title 33, United States Code. The Board shall
12 make its final determination with regard to such appeal
13 within 240 days following receipt of claimant’s request for
14 review. Parties to a proceeding under this subsection shall
15 be strictly limited to the claimant and the Secretary of
16 Labor as represented by the Secretary of Labor’s des-
17 ignee.

18 (c) COURT REVIEW.—A claimant adversely affected
19 or aggrieved by a final determination and order of the
20 Benefits Review Board may obtain review thereof in the
21 United States court of appeals for the circuit in which the
22 claimant resides pursuant to section 921(c) of title 33,
23 United States Code.

1 **SEC. 116. RECONSIDERATION OF DENIAL OF CLAIM.**

2 (a) IN GENERAL.—Notwithstanding any other provi-
3 sion of this title, a claimant or eligible surviving bene-
4 ficiary may obtain reconsideration of a decision denying
5 coverage under this title after the promulgation by the
6 Secretary, pursuant to section 102, of regulations desig-
7 nating additional vendors, processors or producers of be-
8 ryllium or related products, or regulations identifying ad-
9 ditional criteria for establishing the existence of a covered
10 illness.

11 (b) RECONSIDERATION.—Notwithstanding any other
12 provision of this title, a claimant or eligible surviving bene-
13 ficiary may obtain reconsideration of a decision denying
14 coverage under this title based on new evidence or amend-
15 ment in the laws governing disposition of claims for bene-
16 fits under this title.

17 **SEC 117. RESOLUTION OF ISSUES IN THE AWARD OR DE-**
18 **NIAL OF COMPENSATION; COSTS OF ADMINIS-**
19 **TRATION.**

20 (a) IN GENERAL.—Failure to render a determination
21 on a claim within any time period prescribed in sections
22 113, 114 or 115 shall result in the award of the claim
23 as a matter of law.

24 (b) RESOLVING DOUBT.—All reasonable doubt with
25 regard to whether a claim for compensation meets the re-

1 requirements of this title shall be resolved in favor of the
2 claimant.

3 (c) PHYSICIAN.—In securing medical testing and di-
4 agnostic services to determine the existence of a covered
5 illness compensable under this title, the claimant may uti-
6 lize a physician of the claimant’s choice, or a Department
7 of Energy funded or sponsored medical program or em-
8 ployer-provided program, if available.

9 (d) APPLICATION OF TITLE 5.—Except as otherwise
10 specified in this title, the provisions of sections 8123,
11 8125–8127, 8129, 8133, 8134 and 8146a(a) of title 5,
12 United States Code, shall govern the adjudication, award
13 and payment of claims, and the resolution of issues under
14 this title.

15 (e) SUIT.—A claimant may sue the Department of
16 Energy or its contractors in a district court of the United
17 States to compel the production of information or docu-
18 mentation requested by the Secretary of Labor, an admin-
19 istrative appeals judge, or the Benefits Review Board, as
20 the case may be, where the information or documentation
21 requested is not provided within 60 days from the date
22 the request is made. Upon successful resolution of any suit
23 brought pursuant to this subsection, the court shall award
24 claimant reasonable attorney’s fees and costs, which shall
25 be considered costs incurred by the Secretary of Energy

1 and shall not be paid from the Energy Employees Beryl-
2 lium Compensation Fund, or set off against, or otherwise
3 deducted from any payment to claimant under this title.

4 (f) CONSTRUCTION.—Sections 114 and 115 do not
5 confer the right to a hearing or of appeal on the Secretary
6 of Labor or the Secretary of Energy, although the Sec-
7 retary of Labor or the Secretary of Labor’s designee may
8 appear before the administrative law judge, the Benefits
9 Review Board, or court, as the case may be, in explanation
10 of the Secretary of Labor’s initial determination under
11 section 113 where the claimant has appealed therefrom.

12 (g) PAYMENT OF COSTS.—The costs incurred by the
13 Secretary of Labor, an administrative law judge, or the
14 Benefits Review Board in the administration of this title
15 and adjudication of claims thereunder are chargeable
16 against, and shall be paid from, the Energy Employees
17 Beryllium Compensation Fund established pursuant to
18 section 122.

19 **SEC. 118. REPRESENTATION; FEES FOR SERVICES.**

20 (a) IN GENERAL.—A claimant may authorize an at-
21 torney to represent the claimant in any proceeding under
22 this title.

23 (b) AMOUNT.—If the Secretary of Labor, or the Sec-
24 retary of Labor’s designee, declines to pay compensation,
25 in whole or in part, under section 113, and the person

1 seeking benefits under this title thereafter utilizes the
2 services of an attorney at law in the successful prosecution
3 of the claimant's claim under section 114 or 115, there
4 shall be awarded, in addition to the award of compensa-
5 tion, a reasonable attorney's fee, and costs, for the services
6 provided by the attorney under sections 113 and 114, in
7 an amount approved by the administrative law judge, the
8 Benefits Review Board, or court, as the case may be. The
9 award of attorney's fees under this subsection shall be
10 paid by the Secretary from the Energy Employees' Beryl-
11 lium Compensation Fund directly to the attorney for the
12 claimant in a lump sum after the compensation order be-
13 comes final.

14 (c) ARBITRARY OR CAPRICIOUS CONDUCT.—In the
15 event an administrative law judge, the Benefits Review
16 Board, or the court, as the case may be, sets aside the
17 denial of a claim under this title as arbitrary and capri-
18 cious, claimant shall be awarded, separate and apart from
19 and in addition to any award of attorney's fees under sub-
20 section (b) of this section, reasonable attorney's fees and
21 costs incurred with respect to the appeal and review neces-
22 sitated thereby. In the event that claimant subsequently
23 prevails upon remand on the claimant's claim, claimant
24 shall be awarded, in addition to the award to which the
25 claimant is otherwise entitled under this title, 10 percent

1 per annum on the claimant's claim from the date of the
2 original denial of the claim. Attorney's fees, costs, and in-
3 terest awarded pursuant to this subsection shall be consid-
4 ered costs incurred by the Secretary of Labor and shall
5 not be paid from the Energy Employees Beryllium Com-
6 pensation Fund, or set off against, or otherwise deducted
7 from any payment to claimant under this title.

8 (d) LIMITATION.—Where an award of attorney's fees
9 for services is allowed under this section, the attorney re-
10 ceiving such award shall be prohibited from charging
11 claimant, directly or indirectly, for the same services. A
12 violation of this subsection shall result in a fine of not
13 more than \$5,000 assessed by the Secretary against the
14 offending attorney.

15 **SEC. 119. STATUS OF AWARD; CERTAIN CLAIMS NOT**
16 **AFFECTED.**

17 (a) IN GENERAL.—Any award ordered or amount
18 paid pursuant to this title—

19 (1) shall not be considered income for purposes
20 of the Internal Revenue Code of 1986 and shall not
21 be subject to Federal income tax under the Internal
22 Revenue Code of 1986;

23 (2) shall not be included as income or resources
24 for purposes of determining eligibility to receive ben-
25 efits described in section 3803(c)(2)(C) of title 31,

1 United States Code, or the amount of those benefits;
2 and

3 (3) shall not be subject to offset under chapter
4 37 of title 31, United States Code.

5 (b) PAYMENT UNDER THIS TITLE.—A payment
6 made under this title shall not be considered as any form
7 of compensation or reimbursement for a loss for purposes
8 of imposing liability on the individual receiving the pay-
9 ment to repay any insurance carrier for insurance pay-
10 ments made. A payment under this title does not affect
11 any claim against an insurance carrier with respect to in-
12 surance.

13 **SEC. 120. ASSIGNMENT OF CLAIM.**

14 A claim cognizable under this title is not assignable
15 or transferable. Any assignment or transfer of a claim for
16 compensation under this title is void. Compensation and
17 claims for compensation are exempt from claims of credi-
18 tors.

19 **SEC. 121. SUBROGATION OF THE UNITED STATES.**

20 (a) IN GENERAL.—If a covered illness, death, or be-
21 ryllium-related pulmonary condition for which compensa-
22 tion is payable under this title is caused under cir-
23 cumstances creating a legal liability in a person other than
24 the United States to pay damages, sections 8131 and

1 8132 of title 5, United States Code, shall apply, except
2 to the extent specified in this title.

3 (b) REFERENCES.—For purposes of this section, ref-
4 erences in sections 8131 and 8132 of title 5, United States
5 Code, to the Employees' Compensation Fund shall mean
6 the Energy Employees' Beryllium Compensation Fund.

7 (c) APPLICATION.—For the purposes of this title, the
8 provision in section 8131 of title 5, United States Code,
9 that provides that an employee required to appear as a
10 party or witness in the prosecution of an action described
11 in that section is in an active duty status while so engaged
12 shall only apply to a covered employee, as defined in sec-
13 tion 101(4)(C).

14 **SEC. 122. ENERGY EMPLOYEES' BERYLLIUM COMPENSA-**
15 **TION FUND.**

16 (a) IN GENERAL.—To carry out this title, there is
17 established in the Treasury of the United States the En-
18 ergy Employees' Beryllium Compensation Fund, which
19 shall consist of

20 (1) sums that are appropriated for it,

21 (2) amounts that are transferred to it from
22 other Department of Energy accounts pursuant to
23 section 126(a), and

24 (3) amounts that would otherwise accrue to it
25 under this title.

1 (b) USE.—Amounts in the Energy Employees’ Beryl-
2 lium Compensation Fund are authorized to be used for
3 the payment of compensation and other benefits and ex-
4 penses authorized by this title and for payment of all ex-
5 penses incurred in administering this title. Such funds are
6 authorized to be appropriated to remain available until ex-
7 pended.

8 (c) DETERMINATIONS.—

9 (1) QUARTERLY.—Within 45 days of the end of
10 every quarter of every fiscal year, the Secretary shall
11 determine the total costs of benefits, administrative
12 expenses, and other payments made from the En-
13 ergy Employees’ Beryllium Compensation Fund dur-
14 ing the quarter just ended, the end-of-quarter bal-
15 ance in the Fund, and the amount anticipated to be
16 needed during the immediately succeeding 2 quar-
17 ters for the payment of benefits and administrative
18 expenses under this title.

19 (2) CONTENT.—Each cost determination made
20 in the last quarter of the fiscal year under para-
21 graph (1) shall show, in addition, the total costs of
22 benefits and expenses and other payments from the
23 Fund during the preceding 12-month expense period
24 and an estimate of the expenditures from the En-
25 ergy Employees’ Beryllium Compensation Fund for

1 the payment of benefits and expenses and other pay-
2 ments for each of the immediately succeeding two
3 fiscal years.

4 **SEC. 123. CIVIL SERVICE RETENTION RIGHTS.**

5 In the event that a covered employee, as defined in
6 section 101(4)(C), resumes employment with the Federal
7 Government, the individual shall be entitled to the rights
8 set forth in section 8151 of title 5, United States Code.

9 **SEC. 124. ANNUAL REPORT.**

10 The Secretary shall, at the end of each fiscal year,
11 prepare a report with respect to the administration of this
12 title.

13 **SEC. 125. AUTHORIZATION OF APPROPRIATIONS.**

14 (a) IN GENERAL.—There is authorized to be appro-
15 priated to the Department of Energy for deposit into the
16 Energy Employees' Beryllium Compensation Fund such
17 sums as are necessary to carry out the purposes of this
18 title, including the administration thereof. In addition, the
19 Department is authorized, to the extent provided in ad-
20 vance in appropriations Acts, to transfer amounts to the
21 Fund from other Department of Energy appropriations
22 accounts, to be merged with amounts in the Fund and
23 available for the same purposes.

24 (b) LIMITATION.—In any fiscal year, the Secretary
25 of Labor shall limit the amount of the compensation and

1 benefits payments under this title to an amount not in
2 excess of the sum of the appropriations to the Energy Em-
3 ployees' Beryllium Compensation Fund and amounts
4 made available by Department of Energy transfers to the
5 Fund. Notwithstanding any other provision, if in any fis-
6 cal year the Secretary of Labor finds that estimates of
7 amounts contained in reports pursuant to section
8 122(c)(1) for the payment of compensation, other benefits,
9 and administrative activities authorized by this title will
10 exceed the amounts in the Fund, the Secretary of Labor
11 is required to reduce compensation and benefits payments
12 to the extent necessary to make up any amounts by which
13 benefits and other costs authorized by this title exceed the
14 amount in the Fund calculated on a fiscal year basis.

15 (c) REGULATIONS.—The Secretary of Energy, in con-
16 sultation with the Secretary of Labor, shall promulgate
17 regulations to implement this section within 120 days of
18 enactment.

19 **SEC. 126. REGULATIONS.**

20 Not later than 120 days after the date of enactment,
21 the Secretary of Labor shall prescribe such rules and regu-
22 lations as may be necessary for the administration and
23 enforcement of this title.

1 **SEC. 127. CONSTRUCTION.**

2 References in this title to a provision of another stat-
3 ute shall be considered references to such provision, as
4 amended and as may be amended from time to time.

5 **SEC. 128. CONFORMING AMENDMENTS.**

6 (a) SECTION 1920.—Section 1920 of title 18, United
7 States Code, is amended by inserting in the title “or En-
8 ergy employee” after “Federal employee’s” and by insert-
9 ing “or the Energy Employees’ Compensation Act” after
10 “title 5”.

11 (b) SECTION 1921.—Section 1921 of title 18, United
12 States Code, is amended by inserting in the title “or En-
13 ergy employees” after “Federal employees” and by insert-
14 ing “or the Energy Employees’ Compensation Act” after
15 “title 5”.

16 (c) SECTION 1922.—Section 1922 of title 18, United
17 States Code, is amended—

18 (1) by inserting in the section title “or Energy
19 employees” after “Federal employees”;

20 (2) by inserting “(a)” before “Whoever,”;

21 (3) by striking “, neglects,” after “willfully
22 fails”; and

23 (4) by inserting a new subsection as follows:

24 “(b) Whoever refuses to provide the information re-
25 ferred to in subsection (a), or knowingly provides false in-
26 formation, or induces, compels, or directs an injured em-

1 ployee to forego filing of any claim for compensation or
2 other benefits provided under the Energy Employees'
3 Compensation Act or any extension or application thereof,
4 or willfully retains any notice, report, claim, or paper
5 which is required to be filed under that Act or any exten-
6 sion or application thereof, or regulations prescribed
7 thereunder, shall be fined under this title or imprisoned
8 not more than one year, or both.”.

9 (d) WHISTLEBLOWERS.—Section 211(a)(1) of the
10 Energy Reorganization Act of 1974 (42 U.S.C. 5851(a))
11 is amended—

12 (1) in subparagraph (E), by striking “or”

13 (2) in subparagraph (F), by striking the period
14 and inserting “; or”; and

15 (3) by inserting after subparagraph (F) the fol-
16 lowing:

17 “(G) filed an application for benefits or assist-
18 ance under title XXXI of the Energy Policy Act of
19 1992.”.

20 **SEC. 129. EFFECTIVE DATE.**

21 This title is effective upon the date of its enactment.

22 **TITLE II—NUCLEAR EMPLOYEES’**
23 **RADIATION COMPENSATION**

24 **SEC. 201. DEFINITIONS.**

25 For purposes of this title:

1 (1) DEPARTMENT OF ENERGY.—The term “De-
2 partment of Energy” includes the predecessor agen-
3 cies of the Department of Energy.

4 (2) SECRETARY.—The term “Secretary” unless
5 otherwise specified means the Secretary of Energy.

6 (3) DEPARTMENT OF ENERGY FACILITY.—The
7 term “Department of Energy facility” means any
8 building, structure, or premises, including the
9 grounds upon which they are located, in which oper-
10 ations are conducted by, or on behalf of, the Depart-
11 ment of Energy and with regard to which the De-
12 partment of Energy has a proprietary interest or
13 has entered into a contract with an entity to provide
14 management and operation, management and inte-
15 gration, or environmental remediation, but shall not
16 include any Naval Reactors Facility covered under
17 Executive Order 12344.

18 (4) DEPARTMENT OF ENERGY CONTRACTOR.—
19 The term “Department of Energy contractor”
20 means—

21 (A) the U.S. Enrichment Corporation (or
22 any successor thereto) which has contracted or
23 subcontracted with the Department of Energy
24 to provide management and operations, man-
25 agement and integration, production, testing,

1 research, development, environmental remedi-
2 ation, waste management, construction, or
3 other services at a Department of Energy facil-
4 ity, including the following:

5 (i) Portsmouth Plant, Piketon, Ohio.

6 (ii) Paducah Plant, Paducah, Ken-
7 tucky.

8 (iii) K-25 (now ETTP), Oak Ridge,
9 Tennessee.

10 (iv) Y-12, Oak Ridge, Tennessee.

11 (v) X-10, Oak Ridge, Tennessee.

12 (vi) Hanford Works, Richland, Wash-
13 ington.

14 (vii) Idaho National Engineering Lab-
15 oratory, Idaho Falls, Idaho.

16 (viii) Rocky Flats Plant, Golden, Colo-
17 rado.

18 (ix) Fernald Feed Materials Produc-
19 tion Center (now FEMP), Fernald, Ohio.

20 (x) Mound Facility, Miamisburg,
21 Ohio.

22 (xi) Los Alamos National Laboratory,
23 Los Alamos, New Mexico.

24 (xii) Pinellas Plant, St. Petersburg,
25 Florida.

- 1 (xiii) Pantex Plant, Amarillo, Texas.
- 2 (xiv) Nevada Test Site, Mercury, Ne-
3 vada.
- 4 (xv) Brookhaven National Laboratory,
5 Upton, New York.
- 6 (xvi) Lawrence Livermore Laboratory,
7 Livermore, California.
- 8 (xvii) Sandia National Laboratory,
9 New Mexico.
- 10 (xviii) Iowa Army Ammunition Plant
11 (AEC portion), Burlington, Iowa.
- 12 (xix) Fermi Nuclear Laboratory, Ba-
13 tavia, Illinois.
- 14 (xx) Weldon Spring, Weldon Spring,
15 Missouri.
- 16 (xxi) Savannah River, South Carolina.
- 17 (xxii) Argonne National Laboratory,
18 Illinois and Idaho.
- 19 (xxiii) Amchitka Island Test Site, Am-
20 chitka, Alaska.
- 21 (xxiv) Santa Susanna Facilities,
22 Santa Susanna, California.
- 23 (xxv) Marshall Island's Nuclear
24 Weapons Test Site, Hawaii (Post-1958 en-
25 vironmental remediation workers).

1 (B) an entity that supplied uranium con-
2 version or manufacturing services, including the
3 following:

4 (i) Honeywell Uranium Hexafluoride
5 Facility, Metropolis, Illinois.

6 (ii) Nuclear Fuels Services, Erwin,
7 Tennessee.

8 (iii) Linde Air Products, Tonowanda,
9 New York.

10 (iv) Reactive Metals, Ashtabula, Ohio.

11 (v) Malinckrodt Chemical Works, St.
12 Louis, Mo.

13 (5) COVERED EMPLOYEE.—The term “covered
14 employee” means—

15 (A) an employee of any Department of En-
16 ergy contractor; or

17 (B) an individual defined as an employee
18 in section 8101(1) of title 5, United States
19 Code, who may have been exposed to radiation
20 at a Department of Energy facility or at a facil-
21 ity owned, operated, or occupied by a Depart-
22 ment of Energy contractor.

23 (6) COMPENSATION.—The term “compensa-
24 tion” means the money allowance payable under this
25 title and any other benefits paid for from the Nu-

1 clear Employees' Radiation Compensation Fund, in-
2 cluding the compensation payable pursuant to sec-
3 tion 208.

4 (7) COVERED ILLNESS.—The term “covered ill-
5 ness” means—

6 (A) the following medical conditions or dis-
7 eases, if the onset of the condition or disease
8 was at least 2 years after first exposure:

9 (i) leukemia (other than chronic
10 lymphocytic leukemia), multiple myeloma,
11 lymphoma, or Hodgkins disease;

12 (ii) primary cancer of the bone, thy-
13 roid, male or female breast, esophagus,
14 stomach, pharynx, small intestine, pan-
15 creas, bile ducts, gall bladder, salivary
16 gland, urinary bladder, brain, colon, ovary,
17 liver (except if cirrhosis or hepatitis B is
18 indicated), larynx, prostate, kidney, or lung
19 (other than in situ lung cancer that is dis-
20 covered during or after a post-mortem
21 exam);

22 (iii) for employees exposed to uranium
23 or uranium compounds, chronic renal dis-
24 ease (including nephritis and kidney tubal
25 necrosis);

1 (B) chronic silicosis if—

2 (i) a covered employee working or
3 worked for at least one year at a Depart-
4 ment of Energy facility where the covered
5 employee is or was employed in a work set-
6 ting with known or probable silica exposure
7 and 10 years have elapsed since initial ex-
8 posure, whenever that exposure occurred;
9 and

10 (ii) a chest X-ray with the following
11 findings according to the International
12 Labor Organization classification system:
13 any combination of rounded opacities of
14 type p/q/r, with or without irregular opac-
15 ities, present in at least both upper lung
16 zones and of profusion 1/0 or greater;

17 (C) other medical conditions or illness as-
18 sociated with exposure to radiation or other
19 hazardous substances as determined by the Sec-
20 retary of Health and Human Services pursuant
21 to title III;

22 (D) any other medical condition or illness
23 whereby the claimant can establish, pursuant to
24 title III, that radiation or a hazardous sub-

1 stance significantly contributed to their illness,
2 disease or condition; or

3 (E) any injury or illness sustained as a
4 consequence of a covered illness as defined in
5 subparagraph (A), (B), or (C).

6 (8) HAZARDOUS SUBSTANCES.—The term “haz-
7 ardous substances” is used interchangeably with
8 hazardous materials and includes heavy metals,
9 chemicals, minerals, and other toxic substances to
10 which covered employees are exposed at Department
11 of Energy facilities.

12 (9) MONTHLY PAY.—The term “monthly pay”
13 means—

14 (A) for covered employees employed at the
15 time of injury or inception of disability, the
16 monthly pay at the time of injury, or the
17 monthly pay at the inception of disability, or
18 the monthly pay at the time compensable dis-
19 ability recurs, if the recurrence begins more
20 than 6 months after the covered employee re-
21 sumes regular full-time employment, whichever
22 is greater, except when otherwise determined
23 under section 8113(a) of title 5, United States
24 Code; or

1 (B) for covered employees who are unem-
2 ployed at the inception of disability, the month-
3 ly pay of the employee's last covered employ-
4 ment calculated as if the employee were still
5 employed, or the monthly pay of other employ-
6 ees of the same or most similar class working
7 in the same or most similar employment in the
8 same or neighboring locality, whichever is great-
9 er.

10 (10) TIME OF INJURY.—The term “time of in-
11 jury” means the last date on which a covered em-
12 ployee was exposed to radiation or other hazardous
13 substance in the performance of duty as specified in
14 section 203.

15 (11) INCEPTION OF DISABILITY.—The term
16 “inception of disability” means the date on which
17 the covered employee or claimant becomes aware, or
18 in the exercise of reasonable diligence or by reason
19 of medical advice should have been aware, of the re-
20 lationship between the employment, the covered ill-
21 ness, and the death or disability.

22 (12) MISCELLANEOUS TERMS.—The following
23 terms have the meaning given those terms in section
24 8101 of title 5, United States Code:

25 (A) “physician”;

- 1 (B) “medical, surgical, and hospital serv-
2 ices and supplies”;
- 3 (C) “widow”;
- 4 (D) “parent”;
- 5 (E) “brother” and “sister”;
- 6 (F) “child”;
- 7 (G) “grandchild”;
- 8 (H) “widower”;
- 9 (I) “student”;
- 10 (J) “price index”;
- 11 (K) “organ”; and
- 12 (L) “United States medical officers and
13 hospitals”.

14 **SEC. 202. ADMINISTRATION.**

15 (a) IN GENERAL.—Within 120 days of enactment of
16 this title, the Secretary of Energy shall enter into an
17 agreement with the Secretary of Labor for the administra-
18 tion of this title, including utilization of Department of
19 Labor services and facilities, and for the compensation by
20 the Department of Energy for such administration from
21 the Nuclear Employees’ Radiation Compensation Fund es-
22 tablished pursuant to section 221. The Secretary of Labor
23 is authorized to enter into a reimbursable agreement with
24 the Secretary of Energy for the administration of this
25 title. Upon entry into such agreement, the Secretary of

1 Labor may delegate to any officer or employee of the De-
2 partment of Labor all powers and duties necessary for car-
3 rying out the purposes of this title.

4 (b) AUTHORITY.—To assist and facilitate administra-
5 tion of this title and the adjudication of claims, the Sec-
6 retary of Energy shall—

7 (1) provide assistance to employees and claim-
8 ants in connection with this title, including assist-
9 ance in securing medical testing and diagnostic serv-
10 ices necessary to determine the existence of a cov-
11 ered illness as defined in section 201(7);

12 (2) ensure the ready availability, in paper and
13 electronic format, of forms necessary for making
14 claims, and provide employees and claimants with
15 necessary information under this title including,
16 medical protocols necessary for medical testing and
17 diagnosis to determine the existence of a covered ill-
18 ness, lists of approved vendors for use in obtaining
19 necessary laboratory services related to such medical
20 testing and diagnosis, and vouchers to cover costs
21 outlined in the medical protocols;

22 (3) provide such further assistance to employees
23 and claimants as necessary for the development of
24 the facts pertinent to the claimant's claim or poten-
25 tial claim; and

1 (4) upon a notification that a claimant has
2 made a claim for benefits under this title, provide
3 such information to the authority with delegated re-
4 sponsibility for the determination and award of
5 claims under section 212, or review thereof under
6 sections 213 and 214, as the authority may request
7 for purposes of determining eligibility for or amount
8 of benefits, or verifying other information with re-
9 spect thereto.

10 (c) INFORMATION.—The Secretary of Energy may re-
11 quire a Department of Energy contractor to provide infor-
12 mation concerning a claim filed under this title to the offi-
13 cers or employees with delegated responsibility for admin-
14 istering this title.

15 (d) PENALTY.—Failure or refusal to provide informa-
16 tion, or knowingly providing false information, in response
17 to a request pursuant to subsections (b) and (c) this sec-
18 tion may result in fine or imprisonment, or both, pursuant
19 to section 1922 of title 18, United States Code, as amend-
20 ed by section 228(e).

21 (e) PENALTY.—Whoever induces, compels, or directs
22 an injured employee to forego filing of any claim for com-
23 pensation or other benefits provided under this title or any
24 extension or application thereof, or willfully retains any
25 notice, report, claim, or paper which is required to be filed

1 under this title or any extension or application thereof,
2 or regulations prescribed thereunder, may be subjected to
3 fine or imprisonment, or both, pursuant to section 1922
4 of title 18, United States Code, as amended by section
5 228(c).

6 **SEC. 203. OCCUPATIONAL EXPOSURE TO RADIATION AND**
7 **OTHER HAZARDOUS SUBSTANCES.**

8 (a) IN GENERAL.—In the absence of substantial evi-
9 dence to the contrary, a covered employee, as defined in
10 subparagraph (A) or (B) of section 201(5), shall be deter-
11 mined to have been exposed to radiation in the perform-
12 ance of duty for the purposes of this title if the individual
13 was employed at a Department of Energy facility, or was
14 present at the facility because of employment by the
15 United States or a contractor or subcontractor of the De-
16 partment of Energy, for an aggregate period of at least
17 one year and—

18 (1) the individual was monitored through the
19 use of dosimetry badges for exposure to radiation or
20 should have been monitored for radiation exposure
21 based on requirements or standards in existence as
22 of the date of enactment of this title; or

23 (2) worked in a job that, as determined by reg-
24 ulation, resulted in exposure to radiation.

1 (b) CONSTRUCTION.—In the absence of substantial
2 evidence to the contrary, a covered employee, as defined
3 in section 201(5) (A) or (B), shall be determined to have
4 been exposed to a hazardous substance or hazardous mate-
5 rial in the performance of duty for the purposes of this
6 title if—

7 (1) the individual was employed at a Depart-
8 ment of Energy facility, or was present at the facil-
9 ity because of employment by the United States or
10 a contractor or subcontractor of the Department of
11 Energy, for a period of at least one year; and

12 (2)(A) the individual was monitored for expo-
13 sure to hazardous substances or hazardous materials
14 or should have been monitored for such exposure, or

15 (B) provides a work history that, if verified,
16 demonstrated exposure to hazardous substances or
17 hazardous materials.

18 **SEC. 204. COMPENSATION FOR DISABILITY OR DEATH,**
19 **MEDICAL SERVICES, AND VOCATIONAL REHA-**
20 **BILITATION.**

21 (a) IN GENERAL.—In accordance with this title and
22 except as otherwise provided in this Act, the United States
23 is authorized to—

24 (1) upon application for compensation pursuant
25 to section 210, furnish the costs of all medical test-

1 ing and diagnostic services necessary for the claim-
2 ant to determine the existence of a covered illness as
3 defined in section 201(7) and reimburse claimant for
4 any additional reasonable medical expenses incurred
5 in establishing the claimant's claim;

6 (2) pay the compensation specified in sections
7 8105–8110, 8111(a), 8112–13, 8115, 8117, 8133–
8 8135, and 8146a (a) and (b) of title 5, United
9 States Code, for the disability or death from a cov-
10 ered illness of a covered employee who was occupa-
11 tionally exposed while in the performance of duty as
12 determined in accordance with section 203;

13 (3) furnish the services and other benefits,
14 specified in section 8103 of title 5, United States
15 Code, to a covered employee who sustains a covered
16 illness as a result of occupational exposure while in
17 the performance of duty as determined in accord-
18 ance with section 203;

19 (4) pay alternative compensation pursuant to
20 section 208 and attorneys fees as specified in section
21 217; and

22 (5) advise a permanently disabled individual
23 whose disability is compensable under this title of
24 the availability of vocational rehabilitation and pro-
25 vide for furnishing vocational rehabilitation service

1 pursuant to the provisions of section 8104 and
2 8111(b) of title 5, United States Code;
3 unless the covered illness or death was caused by one of
4 the circumstances set forth in paragraph (1), (2), or (3)
5 of subsection (a) of section 8102 of title 5, United States
6 Code.

7 (b) FUND.—All compensation and awards under this
8 title shall be paid from the Nuclear Employees' Radiation
9 Compensation Fund.

10 (c) COMPENSATION BEFORE EFFECTIVE DATE.—No
11 payment of compensation may be made under this title
12 for any period prior to the effective date of this title, ex-
13 cept for the alternative compensation specified in section
14 208.

15 **SEC. 205. COMPUTATION OF PAY.**

16 (a) IN GENERAL.—Except as otherwise provided by
17 this title, computation of pay under this title shall be de-
18 termined in accordance with section 8114 of title 5,
19 United States Code.

20 (b) AVERAGE ANNUAL EARNINGS.—If either of the
21 methods of determining the average annual earnings spec-
22 ified in sections 8114(d) (1) and (2) of title 5, United
23 States Code, cannot be applied reasonably and fairly, the
24 average annual earnings are a sum that reasonably rep-
25 resents the annual earning capacity of the covered em-

1 ployee in the employment in which the employee was work-
2 ing at the time of injury or inception of disability, which-
3 ever is greater, having regard to the previous earnings of
4 the employee in similar employment, and for other employ-
5 ees of the same employer in the same or most similar class
6 working in the same or most similar employment in the
7 same or neighboring location, other previous employment
8 of the employee, or other relevant factors. However, the
9 average annual earnings may not be less than 150 times
10 the average daily wage the covered employee earned in the
11 employment during the days employed within 1 year im-
12 mediately preceding the date of injury or inception of dis-
13 ability, whichever is greater.

14 **SEC. 206. LIMITATIONS ON RECEIVING COMPENSATION.**

15 (a) IN GENERAL.—While a covered employee as de-
16 fined in section 201(5)(B) is receiving compensation under
17 this title, or if the covered employee has been paid a lump
18 sum in commutation of installment payments until the ex-
19 piration of the period during which the installment pay-
20 ments would have continued pursuant to section 8135 of
21 title 5, United States Code, the covered employee may not
22 receive salary, pay, or remuneration of any type from the
23 United States, except—

24 (1) in return for service actually performed;

1 (2) pension for service in the Army, Navy, or
2 Air Force;

3 (3) other benefits administered by the Depart-
4 ment of Veterans Affairs unless such benefits are
5 payable for the same covered illness or the same
6 death;

7 (4) retired pay, retirement pay, retainer pay, or
8 equivalent pay for service in the Armed Forces or
9 other uniformed service; and

10 (5) retirement benefits under subchapter III of
11 chapter 83 of title 5, United States Code, or other
12 retirement system for employees of Federal or State
13 government.

14 However, eligibility for or receipt of benefits under sub-
15 chapter III of chapter 83 of title 5, United States Code,
16 or another retirement system for employees of Federal or
17 State government, does not impair the right of the em-
18 ployee to compensation for scheduled disabilities specified
19 by section 8107 of title 5, United States Code.

20 (b) ELECTION OF BENEFITS.—An individual eligible
21 to receive benefits under this title because of a covered
22 illness or death of a covered employee as defined in section
23 201(5)(B), who also is entitled to receive from the United
24 States under a provision of statute other than this title
25 payments or benefits for that covered illness or death (ex-

1 cept proceeds of an insurance policy), because of service
2 by the covered employee (or in the case of death, by the
3 deceased) as an employee or in the armed forces, shall
4 elect which benefits to receive. The individual shall make
5 the election within the time allowed by the Secretary of
6 Labor by regulation. The election when made is irrev-
7 ocable, except as otherwise provided by statute, or unless
8 the level of compensation and other benefits under the
9 other statutory provision or under this title changes, in
10 which event the individual is entitled to make a new in-
11 formed election.

12 (c) LIMITATION.—While a covered employee is receiv-
13 ing compensation under this title, or if the covered em-
14 ployee has been paid a lump sum commutation of install-
15 ment payments until the expiration of the period during
16 which the installment payments would have continued, the
17 covered employee may not receive payment of any benefits
18 under any other Federal workers' compensation system for
19 the same covered illness or the same death. Such an indi-
20 vidual shall elect which benefits to receive. The individual
21 shall make the election within the time allowed by the Sec-
22 retary of Labor by regulation. The election when made
23 is irrevocable, unless the level of compensation and other
24 benefits under the other Federal program or under this

1 title changes, in which event the individual is entitled to
2 make a new informed election.

3 (d) ELECTION OF BENEFITS.—An individual eligible
4 to receive benefits under this title because of a covered
5 illness or death of a covered employee who is also entitled
6 to receive benefits because of the same covered illness or
7 death of the covered employee from a State workers' com-
8 pensation system shall elect which benefits to receive,
9 unless—

10 (1) at the time of injury, the State workers'
11 compensation coverage for the covered employee was
12 secured by a policy or contract of insurance; and

13 (2) the Secretary waives the requirement to
14 make such an election.

15 An individual required to make such an election shall
16 make the election within the time allowed by the Secretary
17 of Labor by regulation. The election when made is irrev-
18 ocable, unless the level of compensation and other benefits
19 under the State program or under this title changes, in
20 which event the individual is entitled to make a new in-
21 formed election.

22 **SEC. 207. COORDINATION OF BENEFITS.**

23 Except where the Secretary issues a waiver pursuant
24 to section 206(d)(2), a claimant awarded benefits under
25 this title as a result of a covered illness or death of a cov-

1 ered employee who receives benefits because of the same
2 covered illness or death from any other State or Federal
3 workers compensation system and who has elected benefits
4 under this title pursuant to subsection (c) or (d) of section
5 206, shall receive compensation as specified in this title
6 for the covered illness or death, reduced by the amount
7 of any workers' compensation benefits that the claimant
8 receives or will receive on account of the covered illness
9 or death under any State or Federal workers' compensa-
10 tion system during the period that awarded benefits are
11 provided under this title, after deducting the reasonable
12 costs, as determined by the Secretary of Labor by regula-
13 tion, of obtaining such benefits.

14 **SEC. 208. RIGHT TO ALTERNATIVE COMPENSATION.**

15 (a) IN GENERAL.—A covered employee, who was ex-
16 posed to radiation or other hazardous substance in the
17 performance of duty, as determined in accordance with
18 section 203, and who, in addition, demonstrates the exist-
19 ence of a covered illness, and its diagnosis, by medical doc-
20 umentation created during the covered employee's lifetime
21 or at the time of death or autopsy, may elect to receive
22 compensation in the amount of \$200,000, subject to ad-
23 justment pursuant to section 8146a(a) of title 5, United
24 States Code, together with those services and benefits
25 specified in section 8103 of title 5, United States Code,

1 in lieu of any other compensation to which the covered
2 employee or the employee's survivors might otherwise be
3 awarded under this title.

4 (b) COVERED EMPLOYEE DIES.—If a covered em-
5 ployee who would have been eligible to make the election
6 provided by this section dies before the effective date of
7 this title, or before making the election, whether or not
8 the death is the result of a covered illness, the employee's
9 survivor or survivors may make the election to receive the
10 compensation specified in subsection (a) of this section in
11 lieu of any other compensation that either the covered em-
12 ployee or the employee's survivors might otherwise have
13 been awarded under this title. The right to make an elec-
14 tion pursuant to this section shall be afforded to survivors
15 in the order of precedence set forth in section 8109 of
16 title 5, United States Code.

17 (c) TIME FOR ELECTION.—The election to receive
18 compensation under this section in lieu of other compensa-
19 tion under this title shall be made at any time subsequent
20 to filing a claim pursuant to section 210, up to and includ-
21 ing 30 days after either the date of a decision determining
22 an award of compensation for total disability or partial
23 disability under this title or the date the Secretary informs
24 the employee or the employee's survivor of the right to
25 make such an election, whichever is later, unless the time

1 is extended upon request by the employee or the employ-
2 ee's survivor. The election when made by a covered em-
3 ployee or survivor is irrevocable and binding on all sur-
4 vivors.

5 (d) LIMITATION.—When a covered employee, or the
6 employee's survivor, has made an election to receive com-
7 pensation pursuant to this section, no other payment of
8 compensation under this title may be made on account of
9 the same or any other covered illness of that employee.

10 **SEC. 209. PAYMENT IN FULL SETTLEMENT OF CLAIMS**

11 **AGAINST THE UNITED STATES AND THE EM-**

12 **PLOYEE'S EMPLOYER.**

13 (a) IN GENERAL.—If an individual elects to accept
14 payment under this title with respect to a covered illness,
15 or death of a covered employee, that acceptance of pay-
16 ment shall be in full settlement of all claims against the
17 United States under chapter 171 of title 28, United States
18 Code, relating to tort procedures, or against the covered
19 employee's employer (with the exception of intentional
20 torts), that arise out of the employee's exposure to radi-
21 ation or other hazardous substances in the performance
22 of the employee's duties within the meaning of section
23 104.

24 (b) APPLICATION.—This section does not apply to an
25 administrative or judicial proceeding under a State or

1 Federal workers' compensation statute subject to sections
2 206 and 207, nor to any litigation, whether arising out
3 of the employee's exposure to radiation or other hazardous
4 substances in the performance of his or her duties or not,
5 in any state or Federal court.

6 **SEC. 210. FILING OF CLAIM.**

7 A claim for compensation under this title shall be
8 submitted to the Secretary of Labor, or the Secretary of
9 Labor's designee, in the manner specified in section 8121
10 of title 5, United States Code, for determination pursuant
11 to section 212.

12 **SEC. 211. TIME LIMITATION ON FILING A CLAIM.**

13 (a) IN GENERAL.—A claim for compensation under
14 this title must be filed within the later of—

15 (1) 7 years after the effective date, or

16 (2) 7 years after the date the claimant first be-
17 comes aware of—

18 (A) a diagnosis of a covered illness, or
19 death resulting from such illness; and

20 (B) the causal connection of that illness,
21 condition, or death to exposure to radiation of
22 other hazardous substance in the performance
23 of duty as a covered employee.

1 (b) LIMITATIONS PERIOD.—A new limitations period
2 commences with each later diagnosis of a covered illness
3 different from that previously diagnosed.

4 (c) TIMELY FILING.—The timely filing of a disability
5 claim because of a covered illness will satisfy the time re-
6 quirements for a death claim based on the same illness
7 or condition.

8 **SEC. 212. DETERMINATION AND AWARD OF CLAIMS.**

9 (a) IN GENERAL.—Upon entry into the agreement
10 with the Secretary of Energy authorized by section 202(a)
11 of this title, the Secretary of Labor, or the Secretary of
12 Labor’s designee, shall determine and make findings of
13 fact and make an award for or against payment of com-
14 pensation under this title within 120 days of the filing of
15 a claim pursuant to section 210 after—

16 (1) considering the claim presented by the bene-
17 ficiary, the results of any medical test or diagnosis
18 undertaken to determine the existence of a covered
19 illness, and any requested report or data furnished
20 by the Department of Energy or a Physicians Panel
21 under title III; and

22 (2) completing such investigation as the Sec-
23 retary or the Secretary’s designee considers nec-
24 essary.

1 (b) CLAIM DETERMINATION.—Except as otherwise
2 specified in this title, the determination of a claim for com-
3 pensation, and any award and payment of compensation
4 under this section shall be made in accordance with sec-
5 tion 8124(a) of title 5, United States Code. Unless a hear-
6 ing is requested pursuant to section 213(a), the deter-
7 mination, findings, and any award rendered hereunder
8 shall become final and conclusive at the expiration of the
9 thirtieth day after the date of the Secretary of Labor’s
10 decision and service thereof upon claimant.

11 **SEC. 213. REVIEW OF AWARD.**

12 (a) IN GENERAL.—A claimant for compensation is
13 entitled to a hearing on the claimant’s claim before an
14 administrative law judge qualified under section 3105 of
15 title 5, United States Code, upon request made by claim-
16 ant within 30 days after the date of issuance and service
17 of the Secretary of Labor’s findings and decision under
18 section 212, and to the presentation at such hearing of
19 evidence in further support of the claim. The administra-
20 tive law judge may extend the period for requesting a
21 hearing under this section upon petition of the claimant
22 and good cause shown.

23 (b) ADMINISTRATIVE LAW JUDGE.—The administra-
24 tive law judge shall, in the conduct of a hearing requested
25 pursuant to subsection (a) of this section and in the eval-

1 uation and determination of a claimant's claim, have those
2 powers, duties and responsibilities vested by section
3 8124(b) of title 5, United States Code, in the Secretary
4 of Labor, if the hearing is conducted in accordance with
5 the provisions of section 554 of title 5, United States
6 Code. Parties to a proceeding under this subsection shall
7 be strictly limited to the claimant and the Secretary of
8 Labor as represented by the Secretary of Labor's des-
9 ignee.

10 (c) The administrative law judge shall have power to
11 preserve and enforce order during any proceeding under
12 this section, to issue subpoenas for, to administer oaths
13 to, and to compel the attendance and testimony of wit-
14 nesses, or the production of books, papers, documents, and
15 other evidence, or the taking of depositions before any des-
16 ignated individual competent to administer oaths, to ex-
17 amine witnesses, and to do all things conformable to law
18 which may be necessary to enable the administrative law
19 judge effectively to discharge the administrative law
20 judge's duties under this title.

21 (d) PENALTY.—If any person in proceedings before
22 an administrative law judge under this section disobeys
23 or resists any lawful order or process, or misbehaves dur-
24 ing a hearing or so near the place thereof as to obstruct
25 the same, or neglects to produce, after having been or-

1 dered to do so, any pertinent book, paper, or document,
2 or refuses to appear after having been subpoenaed, or
3 upon appearing refuses to take the oath as a witness, or
4 after having taken the oath refuses to be examined accord-
5 ing to law, the administrative law judge shall certify the
6 facts to the district court having jurisdiction in the place
7 in which the administrative law judge is sitting (or to the
8 United States District Court for the District of Columbia
9 if the administrative law judge is sitting in such District)
10 which shall thereupon in a summary manner hear the evi-
11 dence as to the acts complained of, and, if the evidence
12 so warrants, punish such person in the same manner and
13 to the same extent as for a contempt committed before
14 the court, or commit such person upon the same condi-
15 tions as if the doing of the forbidden act had occurred
16 with reference to the process of or in the presence of the
17 court.

18 (e) RECORD.—The record shall close at the conclu-
19 sion of the hearing, except where the administrative law
20 judge grants, for good cause, an extension not to exceed
21 30 days for the submission of additional evidence and ar-
22 gument.

23 (f) DECISION NOTICE.—Within 45 days of the clos-
24 ing of the record, and no later than 180 days after receipt
25 of claimant's request for hearing, the administrative law

1 judge shall notify the claimant in writing of his decision
2 and any award he may make, and of the basis for such
3 decision and award. In accordance with the facts found
4 on review, the administrative law judge may end, decrease,
5 or increase the compensation previously awarded, or
6 award compensation previously refused or discontinued.

7 (g) EFFECTIVE DATE OF DECISION.—Unless ap-
8 pealed to the Benefits Review Board as provided in section
9 214, the decision by the administrative law judge, and any
10 award rendered as a result thereof, shall become effective
11 upon filing with the Secretary of Labor, or the Secretary
12 of Labor’s designee, and service upon the claimant, and
13 shall become final and conclusive at the expiration of the
14 thirtieth day thereafter.

15 **SEC. 214. APPEAL.**

16 (a) IN GENERAL.—Within 30 days of the effective
17 date of a decision rendered by an administrative law judge
18 under section 213, an aggrieved claimant may seek review
19 of such determination before the Benefits Review Board
20 established pursuant to section 21(b) of the Longshore
21 and Harbor Worker’s Compensation Act (33 U.S.C.
22 921(b)). The Benefits Review Board may extend the pe-
23 riod for requesting review under this section, not to exceed
24 an additional 30 days, upon petition of the claimant and
25 good cause shown.

1 (b) BOARD AUTHORITY.—The Benefits Review
2 Board is authorized to hear and determine an appeal
3 under this section in accordance with and pursuant to the
4 authority vested in the Board by section 921(b) of title
5 33, United States Code. The Board shall make its final
6 determination with regard to such appeal within 240 days
7 following receipt of claimant’s request for review. Parties
8 to a proceeding under this subsection shall be strictly lim-
9 ited to the claimant and the Secretary of Labor as rep-
10 resented by the Secretary of Labor’s designee.

11 (c) JUDICIAL REVIEW.—A claimant adversely af-
12 fected or aggrieved by a final determination and order of
13 the Benefits Review Board may obtain review thereof in
14 the United States court of appeals for the circuit in which
15 the claimant resides pursuant to section 21(e) of the
16 Longshore and Harbor Worker’s Compensation Act (33
17 U.S.C. 921(e)).

18 **SEC. 215. RECONSIDERATION OF DENIAL OF CLAIM.**

19 (a) IN GENERAL.—Notwithstanding any other provi-
20 sion of this title, a claimant or eligible surviving bene-
21 ficiary may obtain reconsideration of a decision denying
22 coverage under this title after the promulgation by the
23 Secretary, pursuant to section 226(b), of regulations iden-
24 tifying additional criteria for establishing the existence of
25 a covered illness.

1 (b) RECONSIDERATION.—Notwithstanding any other
2 provision, a claimant or eligible surviving beneficiary may
3 obtain reconsideration of a decision denying coverage
4 under this title based on new evidence or amendment in
5 the laws governing disposition of claims for benefits under
6 this title.

7 **SEC 216. RESOLUTION OF ISSUES IN THE AWARD OR DE-**
8 **NIAL OF COMPENSATION; COSTS OF ADMINIS-**
9 **TRATION.**

10 (a) IN GENERAL.—Failure to render a determination
11 on a claim within any time period prescribed in section
12 212, 213, or 214 shall result in the award of the claim
13 as a matter of law.

14 (b) DOUBT.—All reasonable doubt with regard to
15 whether a claim for compensation meets the requirements
16 shall be resolved in favor of the claimant.

17 (c) MEDICAL SERVICES.—In securing medical testing
18 and diagnostic services to determine the existence of a cov-
19 ered illness compensable under this title, the claimant may
20 utilize a physician of the claimant's choice, or a Depart-
21 ment of Energy funded or sponsored medical screening
22 program or employer-provided program, if available.

23 (d) CONSTRUCTION.—Except as otherwise specified
24 in this title, the provisions of sections 8123, 8125–8127,
25 8129, 8133, 8134, and 8146a(a) of title 5, United States

1 Code, shall govern the adjudication, award and payment
2 of claims, and the resolution of issues under this title.

3 (e) SUIT.—A claimant may sue the Department of
4 Energy or its contractors in a district court of the United
5 States to compel the production of information or docu-
6 mentation requested by the Secretary of Labor, an admin-
7 istrative appeals judge, or the Benefits Review Board, as
8 the case may be, where the information or documentation
9 requested is not provided within 60 days from the date
10 the request is made. Upon successful resolution of any suit
11 brought pursuant to this subsection, the court shall award
12 claimant reasonable attorney’s fees and costs, which shall
13 be considered costs incurred by the Secretary of Energy
14 and shall not be paid from the Nuclear Employees’ Radi-
15 ation Compensation Fund, or set off against, or otherwise
16 deducted from any payment to claimant under this title.

17 (f) CONSTRUCTION.—Sections 213 and 214 do not
18 confer the right to a hearing or of appeal on the Secretary
19 of Labor or the Secretary of Energy, although the Sec-
20 retary of Labor or the Secretary of Labor’s designee may
21 appear before the administrative law judge, the Benefits
22 Review Board, or court, as the case may be, in explanation
23 of the Secretary of Labor’s initial determination under
24 section 212 where the claimant has appealed therefrom.

1 (g) COSTS.—The costs incurred by the Secretary of
2 Labor, an administrative law judge, or the Benefits Re-
3 view Board in the administration and adjudication of
4 claims thereunder are chargeable against, and shall be
5 paid from, the Nuclear Employees' Radiation Compensa-
6 tion Fund established pursuant to section 221.

7 **SEC. 217. REPRESENTATION; FEES FOR SERVICES.**

8 (a) IN GENERAL.—A claimant may authorize an at-
9 torney to represent the claimant in any proceeding under
10 this title.

11 (b) FEE AWARD.—If the Secretary of Labor, or the
12 Secretary of Labor's designee, declines to pay compensa-
13 tion, in whole or in part, under section 212, and the per-
14 son seeking benefits under this title thereafter utilizes the
15 services of an attorney at law in the successful prosecution
16 of the claimant's claim under section 213 or 214, there
17 shall be awarded, in addition to the award of compensa-
18 tion, a reasonable attorney's fee, and costs, for the services
19 provided by the attorney under section 213 or 214, in an
20 amount approved by the administrative law judge, the
21 Benefits Review Board, or court, as the case may be. The
22 award of attorney's fees under this subsection shall be
23 paid by the Secretary from the Nuclear Employees' Radi-
24 ation Compensation Fund directly to the attorney for the

1 claimant in a lump sum after the compensation order be-
2 comes final.

3 (c) DENIAL SET ASIDE.—In the event an administra-
4 tive law judge, the Benefits Review Board, or the court,
5 as the case may be, sets aside the denial of a claim under
6 this title as arbitrary and capricious, claimant shall be
7 awarded, separate and apart from and in addition to any
8 award of attorney’s fees under subsection (b) of this sec-
9 tion, reasonable attorney’s fees and costs incurred with re-
10 spect to the appeal and review necessitated thereby. In the
11 event that claimant subsequently prevails upon remand on
12 the claimant’s claim, claimant shall be awarded, in addi-
13 tion to the award to which the claimant is otherwise enti-
14 tled under this title, 10 percent per annum on the claim-
15 ant’s claim from the date of the original denial of the
16 claim. Attorney’s fees, costs, and interest awarded pursu-
17 ant to this subsection shall be considered costs incurred
18 by the Secretary of Labor and shall not be paid from the
19 Nuclear Employees’ Radiation Compensation Fund, or set
20 off against, or otherwise deducted from any payment to
21 claimant under this title.

22 (d) AWARD OF FEES.—Where an award of attorney’s
23 fees for services is allowed under this section, the attorney
24 receiving such award shall be prohibited from charging
25 claimant, directly or indirectly, for the same services. A

1 violation of this subsection shall result in a fine of not
2 more than \$5,000 assessed by the Secretary against the
3 offending attorney.

4 **SEC. 218. STATUS OF AWARD; CERTAIN CLAIMS NOT**
5 **AFFECTED.**

6 (a) IN GENERAL.—Any award ordered or amount
7 paid pursuant to this title—

8 (1) shall not be considered income for purposes
9 of the Internal Revenue Code Of 1986 and shall not
10 be subject to Federal income tax under the Internal
11 Revenue Code of 1986;

12 (2) shall not be included as income or resources
13 for purposes of determining eligibility to receive ben-
14 efits described in section 3803(c)(2)(C) of title 31,
15 United States Code, or the amount of those benefits;
16 and

17 (3) shall not be subject to offset under chapter
18 37 of title 31, United States Code.

19 (b) PAYMENT.—A payment made under this title
20 shall not be considered as any form of compensation or
21 reimbursement for a loss for purposes of imposing liability
22 on the individual receiving the payment to repay any in-
23 surance carrier for insurance payments made. A payment
24 under this title does not affect any claim against an insur-
25 ance carrier with respect to insurance.

1 **SEC. 219. ASSIGNMENT OF CLAIM.**

2 A claim cognizable under this title is not assignable
3 or transferable. Any assignment or transfer of a claim for
4 compensation under this title is void. Compensation and
5 claims for compensation are exempt from claims of credi-
6 tors.

7 **SEC. 220. SUBROGATION OF THE UNITED STATES.**

8 (a) IN GENERAL.—If a covered illness or death for
9 which compensation is payable under this title is caused
10 under circumstances creating a legal liability in a person
11 other than the United States to pay damages, sections
12 8131 and 8132 of title 5, United States Code, shall apply,
13 except to the extent specified in this title.

14 (b) FUND REFERENCE.—For purposes of this sec-
15 tion, references in sections 8131 and 8132 of title 5,
16 United States Code, to the Employees' Compensation
17 Fund shall mean the Nuclear Employees' Radiation Com-
18 pensation Fund.

19 (c) APPLICATION OF SECTION 8131.—For the pur-
20 poses of this title, the provision in section 8131 of title
21 5, United States Code, that provides that an employee re-
22 quired to appear as a party or witness in the prosecution
23 of an action described in that section is in an active duty
24 status while so engaged shall only apply to a covered em-
25 ployee as defined in section 201(5)(B).

1 **SEC. 221. NUCLEAR EMPLOYEES' RADIATION COMPENSA-**
2 **TION FUND.**

3 (a) IN GENERAL.—To carry out this title, there is
4 established in the Treasury of the United States the Nu-
5 clear Employees' Radiation Compensation Fund, which
6 shall consist of—

7 (1) sums that are appropriated for it;

8 (2) amounts that are transferred to it from
9 other Department of Energy accounts pursuant to
10 section 225(a); and

11 (3) amounts that would otherwise accrue to it
12 under this title.

13 (b) FUND USE.—Amounts in the Nuclear Employees'
14 Radiation Compensation Fund are authorized to be used
15 for the payment of compensation and other benefits and
16 expenses authorized by this title and for payment of all
17 expenses incurred in administering this title. Such funds
18 are authorized to be appropriated to remain available until
19 expended.

20 (c) QUARTERLY DETERMINATIONS.—

21 (1) IN GENERAL.—Within 45 days of the end of
22 every quarter of every fiscal year, the Secretary shall
23 determine the total costs of benefits, administrative
24 expenses, and other payments made from the Nu-
25 clear Employees' Radiation Compensation Fund dur-
26 ing the quarter just ended; the end-of-quarter bal-

1 ance in the Fund; and the amount anticipated to be
2 needed during the immediately succeeding two quar-
3 ters for the payment of benefits and administrative
4 expenses under this title.

5 (2) DETERMINATION IN LAST QUARTER.—Each
6 cost determination made in the last quarter of the
7 fiscal year under paragraph (1) shall show, in addi-
8 tion, the total costs of benefits and expenses and
9 other payments from the Fund during the preceding
10 twelve-month expense period and an estimate of the
11 expenditures from the Nuclear Employees' Radiation
12 Compensation Fund for the payment of benefits and
13 expenses and other payments for each of the imme-
14 diately succeeding two fiscal years.

15 **SEC. 222. CIVIL SERVICE RETENTION RIGHTS.**

16 In the event that a covered employee, as defined in
17 section 201(5)(B), resumes employment with the Federal
18 Government, the individual shall be entitled to the rights
19 set forth in section 8151 of title 5, United States Code.

20 **SEC. 223. ANNUAL REPORT.**

21 The Secretary shall, at the end of each fiscal year,
22 prepare a report with respect to the administration of this
23 title.

1 **SEC. 224. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) IN GENERAL.—There is authorized to be appro-
3 priated to the Department of Energy for deposit into the
4 Nuclear Employees' Radiation Compensation Fund such
5 sums as are necessary to carry out the purposes of this
6 title, including the administration thereof. In addition, the
7 Department is authorized, to the extent provided in ad-
8 vance in appropriations Acts, to transfer amounts to the
9 Fund from other Department of Energy appropriations
10 accounts, to be merged with amounts in the Fund and
11 available for the same purposes.

12 (b) COMPENSATION AND BENEFITS LIMITATION.—In
13 any fiscal year, the Secretary of Labor shall limit the
14 amount of the compensation and benefits payments under
15 this title to an amount not in excess of the sum of the
16 appropriations to the Nuclear Employees' Radiation Com-
17 pensation Fund and amounts made available by Depart-
18 ment of Energy transfers to the Fund. Notwithstanding
19 any other provision, if in any fiscal year the Secretary of
20 Labor finds that estimates of amounts contained in re-
21 ports pursuant to section 221(c)(1) for the payment of
22 compensation, other benefits, and administrative activities
23 authorized by this title will exceed the amounts in the
24 Fund, the Secretary of Labor is required to reduce com-
25 pensation and benefits payments to the extent necessary
26 to make up any amounts by which benefits and other costs

1 authorized by this title exceed the amount in the Fund
2 calculated on a fiscal year basis.

3 (c) SECRETARY OF ENERGY REGULATIONS.—The
4 Secretary of Energy, in consultation with the Secretary
5 of Labor, shall promulgate regulations to implement this
6 section within 120 days of enactment.

7 **SEC. 225. REGULATIONS; REGULATORY AUTHORITY.**

8 (a) IN GENERAL.—Not later than 120 days after the
9 date of enactment of this title, the Secretary of Labor
10 shall prescribe such rules and regulations as may be nec-
11 essary for the administration and enforcement of this title.

12 (b) ADDITIONAL CRITERIA.—Additional criteria by
13 which a claimant may establish the existence of a covered
14 illness, as defined in subparagraph (A), (B), or (C) of sec-
15 tion 201(7), may be specified in regulations issued by the
16 Secretary, after consultation with the agency that con-
17 tracts to administer this title.

18 **SEC. 226. CONSTRUCTION.**

19 References in this title to a provision of another stat-
20 ute shall be considered references to such provision, as
21 amended and as may be amended from time to time.

22 **SEC. 227. CONFORMING AMENDMENTS.**

23 (a) SECTION 1920.—Section 1920 of title 18, United
24 States Code, is amended by inserting in the title “or En-
25 ergy employee’s” after “Federal employee’s” and by in-

1 serting “or the Energy Employees’ Compensation Act”
2 after “title 5”.

3 (b) SECTION 1921.—Section 1921 of title 18, United
4 States Code, is amended by inserting in the title “or En-
5 ergy employees” after “Federal employees” and by insert-
6 ing “or the Energy Employees’ Compensation Act” after
7 “title 5”.

8 (c) SECTION 1922.—Section 1922 of title 18, United
9 States Code, is amended—

10 (1) by inserting in the title “or Energy employ-
11 ees” after “Federal employees”;

12 (2) by inserting “(a)” before “Whoever,”;

13 (3) by striking “, neglects,” after “willfully
14 fails”; and

15 (4) inserting a new subsection as follows:

16 “(b) Whoever is charged with the responsibility for
17 providing information pursuant to sections 302(b) and
18 302(c) of title III of the Energy Employees’ Compensation
19 Act and who willfully fails or refuses to provide this infor-
20 mation, or knowingly provides false information, or in-
21 duces, compels, or directs an injured employee to forego
22 filing of any claim for compensation or other benefits pro-
23 vided under the Energy Employees’ Compensation Act or
24 any extension or application thereof, or willfully retains
25 any notice, report, claim, or paper which is required to

1 be filed under that Act or any extension or application
2 thereof, or regulations prescribed thereunder, shall be
3 fined under this title or imprisoned not more than one
4 year, or both.”.

5 (d) WHISTLEBLOWERS.—Section 211(a)(1) of the
6 Energy Reorganization Act of 1974 (42 U.S.C. 5851(a))
7 is amended—

8 (1) in subparagraph (E), by striking “or”

9 (2) in subparagraph (F), by striking the period
10 and inserting “; or”; and

11 (3) by inserting after subparagraph (F) the fol-
12 lowing:

13 “(G) filed an application for benefits or assist-
14 ance under title XXXI of the Energy Policy Act of
15 1992.”.

16 **SEC. 228. EFFECTIVE DATE.**

17 This title is effective upon the date of its enactment.

18 **TITLE III—EMPLOYEES EXPOSED**
19 **TO TOXIC SUBSTANCES AND**
20 **HEAVY METALS**

21 **SEC 301. ELIGIBILITY OF EMPLOYEES EXPOSED TO OTHER**
22 **TOXIC SUBSTANCES AND HEAVY METALS.**

23 (a) IN GENERAL.—A claim may be submitted under
24 this title for compensation for illnesses, impairments, dis-
25 eases, or death for which the claimant can establish that

1 exposure to a hazardous substance occurred while a cov-
2 ered employees, as defined under section 201(5), while em-
3 ployed at a Department of Energy facility listed under sec-
4 tion 201(4), and that such exposure was a contributing
5 factor to the illness, disease, or death. Claims shall be sub-
6 mitted in the manner specified under section 8121 of title
7 5, United States Code, for a determination pursuant to
8 section 212. Except as provided in this title, claims shall
9 be administered and compensation paid pursuant to the
10 terms and conditions of this title. Claims for occupational
11 illness, disease or death shall not be covered under this
12 title which are specifically covered under title I (beryllium
13 diseases) or title II (radiogenic diseases).

14 (b) QUESTIONNAIRE.—The Secretary of Labor shall
15 develop a questionnaire for the claimant to identify the
16 history of employment hazards to a covered employee at
17 a DEPARTMENT OF ENERGY facility and to provide
18 documentation to support the claim. The Secretary of
19 Labor shall provide the claimant with an opportunity to
20 identify documents and information in the possession of
21 the Department of Energy or its contractors which the
22 claimant believes will support their claim.

1 **SEC 302. ESTABLISHMENT OF A PHYSICIANS PANEL BY THE**
2 **SECRETARY OF HEALTH AND HUMAN**
3 **SERVICES.**

4 (a) IN GENERAL.—The Secretary of Health and
5 Human Services shall, in consultation with the Association
6 of Occupational Health Clinics, appoint one or more 3-
7 member Physicians Panels, depending on geographic
8 needs and the size of the caseload, composed of physicians
9 with experience and competency in diagnosing occupa-
10 tional illnesses. Each member shall be paid at the rate
11 of pay payable for Level III of the Executive Schedule for
12 each day (including travel time) the member is engaged
13 in the work of the panel. The Secretary shall also provide
14 necessary administrative support for the panel to conduct
15 its work.

16 (b) DEEMED EXPERT PANEL.—The Secretary of
17 Labor shall deem the panel appointed under subsection
18 (a) to be an expert panel for purposes of medical rec-
19 ommendation. However, a claimant may seek and present
20 a second opinion to the Secretary of Labor in the event
21 that a claimant disputes a determination or recommenda-
22 tion by a panel.

23 (c) COSTS.—Costs of operating the panels shall be
24 reimbursed by the Secretary of Energy from the Energy
25 Employees Occupational Illness Act Fund.

1 **SEC. 303. ELIGIBILITY DETERMINATION.**

2 (a) IN GENERAL.—The Secretary of Labor shall for-
3 ward claims to the Secretary of Health and Human Serv-
4 ices when there is a need for a determination whether oc-
5 cupational exposure to a hazardous substance was a con-
6 tributing factor to the illness, impairment, disease, or
7 death of a claimant, and the Secretary of Labor is unable
8 to make an affirmative determination based on the infor-
9 mation submitted by the claimant.

10 (b) PANEL AND CLAIMS.—Upon receipt of a claim
11 from the Secretary of Labor, the Secretary of Health and
12 Human Services shall forward such claims within 7 days
13 to a physicians panel. The Secretary shall, upon passage,
14 develop procedures for receiving, tracking, and returning
15 recommendations to the Secretary of Labor, and for em-
16 ploying and providing services to the panels.

17 (c) PANEL ACTION.—The panels shall promptly re-
18 view claims, including medical records and work history,
19 submitted by the Secretary of Labor, and determine
20 whether exposure to a hazardous substances was a con-
21 tributing factor to the employee's illness, disease, or death.
22 Claims shall be reviewed and determinations issued, when-
23 ever practical, within 60 days. If a determination shall
24 take more than 60 days, the Secretary of Labor and the
25 claimant shall be notified of the date by which a deter-
26 mination shall be issued.

1 (d) EXPOSURE INFORMATION.—Where exposure in-
2 formation is insufficient or non existent, the panels shall
3 evaluate exposure risks by determining the nature of the
4 job hazards by identifying job titles held by the employee,
5 length of employment, type of work activities, types of oc-
6 cupational hazards, length of time exposed to these haz-
7 ards, whether there was adequate protective equipment,
8 whether there was full knowledge by employee of exposure
9 to hazards, whether more than one hazard presents an ad-
10 ditive or multiplicative effect, whether employee was in-
11 volved in accidental release or accident, and whether simi-
12 larly situated employees have contracted similar diseases
13 that are attributable to occupational exposure.

14 (e) ADDITIONAL INFORMATION.—Upon request, the
15 claimant shall have the opportunity to present additional
16 medical or exposure information to the panel through the
17 Secretary of Labor. If additional information is required
18 to render a recommendation, the panel may request,
19 through the Secretary of Labor, that a claimant undergo
20 specified diagnostic tests, or that the Department of En-
21 ergy or its contractors supply additional information. A
22 copy of the recommendation shall be provided to the claim-
23 ant by the Secretary of Labor upon request.

1 **SEC 304. ESTABLISHMENT OF OCCUPATIONAL DISEASE**
2 **PRESUMPTIONS.**

3 (a) IN GENERAL.—In addition to the occupational
4 disease presumptions established in titles I and II, the
5 Secretary of Health and Human Services shall direct that
6 a panel establish a list of illnesses and diseases which,
7 based on occupational exposure to certain hazardous sub-
8 stances or based on employment in certain industrial or
9 laboratory processes, are potentially attributable to em-
10 ployment at Department of Energy facilities or Depart-
11 ment of Energy vendors listed in section 201. This list
12 of presumptions shall serve as guidance to the panels in
13 expediting and improving the quality of recommendations,
14 and shall be provided to the Secretary of Labor for use
15 in developing guidance for making claims determinations.
16 Such list shall be published 12 months after the establish-
17 ment of this program, updated on an annual basis there-
18 after, and provided as a report to Congress.

19 (b) LIST OF PRESUMPTIONS.—In establishing a list
20 of presumptions, a panel shall—

21 (1) identify and categorize the types and pat-
22 terns of diseases which are potentially attributable
23 to employment at a listed Department of Energy fa-
24 cility, including those illnesses, impairments, dis-
25 eases, and deaths identified through medical screen-
26 ing programs conducted through the Department of

1 Energy's Office of Environment, Safety and Health,
2 (including the former worker medical program au-
3 thorized under Section 3162 of the Fiscal Year 93
4 Defense Authorization Act (42 U.S.C. 7274(i))), Na-
5 tional Institute of Occupational Safety and Health
6 health studies, peer reviewed epidemiology studies,
7 and Department of Energy medical programs.

8 (2) identify and apply presumptions that are
9 supported in the scientific and medical literature,
10 and where there are biological indicators that can be
11 used, a panel shall specify diagnostic tests required
12 to establish a presumption that exposure or inges-
13 tion of a particular substance or compound will sig-
14 nificantly contribute to illness, impairments, disease,
15 or death.

16 (3) evaluate site specific history of working con-
17 ditions at certain types of facilities (such as gaseous
18 diffusion plants, calcining facilities, reactors, etc.),
19 and the adequacy of protective measures provided to
20 exposed workers over the history of operations;

21 (4) determine whether patterns of diseases exist
22 that are potentially attributable linked to workplace
23 exposures;

24 (5) determine whether workers were adequately
25 informed of exposure hazards;

1 (6) determine whether there are presumptions
2 of workplace causation that have been established
3 for workers similarly exposed in other hazardous in-
4 dustries or occupations (such as firefighters);

5 (7) determine whether workers were involved in
6 accidents where excessive exposures occurred;

7 (8) determine whether workers exposed to haz-
8 arduous substances received adequate follow-on emer-
9 gency medical treatment and monitoring and subse-
10 quent medical attention to determine health impair-
11 ment; and

12 (9) evaluate other factors that a panel deems
13 prudent and necessary.

14 Moreover, in addition to the 9 forgoing factors, a panel
15 shall evaluate those circumstances where covered employ-
16 ees, without their knowledge and consent, were placed at
17 undue risk to hazardous substances without adequate pro-
18 tections or monitoring and shall recommend whether fair-
19 ness and equity require that a presumption be established
20 in favor of employees for eligibility for compensation for
21 illnesses, impairments and diseases. Such recommendation
22 shall be incorporated in the annual report and transmitted
23 to Congress.

24 (d) REVIEW OF DATA.—The Department of Energy
25 shall submit reports to the Secretary of Health and

1 Human Services who shall, in turn, provide panels with
2 information on (1) historic exposure assessments and (2)
3 reports on ES&H practices, and (3) medical findings and
4 data on the Department of Energy Medical Surveillance
5 Program carried out under section 3162 of the 1993 De-
6 fense Authorization Act.

7 **SEC. 305. PANEL SHALL REPORT DETERMINATION TO SEC-**
8 **RETARY OF LABOR.**

9 Once a panel has made a recommendation on a claim
10 referred by the Secretary of Labor, it shall report its rec-
11 ommendation to the Secretary of Labor within 7 days of
12 approving a recommendation with an outline of the rea-
13 sons for the determination. The panel shall make its rec-
14 ommendation on the basis of whether workplace exposures
15 to hazardous substances were a substantial contributing
16 factor to the illness, impairment, disease, or death.

17 **TITLE IV—ECONOMIC**
18 **DEVELOPMENT ASSISTANCE**

19 **SEC. 401. ELIGIBILITY OF COMMUNITIES CONTAINING DE-**
20 **PARTMENT OF ENERGY DEFENSE NUCLEAR**
21 **FACILITIES.**

22 Section 302(a) of the Public Works and Economic
23 Development Act of 1965 (42 U.S.C. 3161(a)) is amended
24 by adding at the end the following:

1 “(4) DEPARTMENT OF ENERGY DEFENSE NU-
2 CLEAR FACILITIES.—The area contains a Depart-
3 ment of Energy defense nuclear facility, as defined
4 by section 3163 of the National Defense Authoriza-
5 tion Act for Fiscal Year 1993 (42 U.S.C. 7274j).”.

○