

106TH CONGRESS
1ST SESSION

H. R. 3478

To establish a compensation program for the contractors of the Departments of Energy and Defense and beryllium vendors who sustained a beryllium-related illness due to the performance of their duty, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 18, 1999

Ms. KAPTUR (for herself, Mr. KANJORSKI, Mr. GILLMOR, and Mr. HANSEN) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Education and the Workforce, and Armed 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 program for the contractors of the Departments of Energy and Defense and beryllium vendors who sustained a beryllium-related illness due to the performance of their duty, and for other purposes.

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

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Federal Beryllium Compensation Act”.

1 (b) TABLE OF SECTIONS.—The table of sections of
 2 this Act is as follows:

- Sec. 1. Short title and table of contents.
- Sec. 2. Findings.
- Sec. 3. Definitions.
- Sec. 4. Regulatory authority to revise definitions.
- Sec. 5. Exposure to beryllium in the performance of duty.
- Sec. 6. Compensation for disability or death, medical services, and vocational rehabilitation.
- Sec. 7. Computation of pay.
- Sec. 8. Limitations on right to receive compensation.
- Sec. 9. Coordination of benefits.
- Sec. 10. Retroactive compensation.
- Sec. 11. Exclusivity of remedy.
- Sec. 12. Claim.
- Sec. 13. Responsibilities of the Secretary of Energy and the Secretary of Defense.
- Sec. 14. Review of award.
- Sec. 15. Assignment of claim.
- Sec. 16. Administration and adjudication.
- Sec. 17. Subrogation of the United States.
- Sec. 18. Federal employees' beryllium compensation fund.
- Sec. 19. Forfeiture of benefits by convicted felons.
- Sec. 20. Regulations—Beryllium Compensation Appeals Panel.
- Sec. 21. Civil service retention rights.
- Sec. 22. Annual report.
- Sec. 23. Appropriations.
- Sec. 24. Construction.
- Sec. 25. Conforming amendments.
- Sec. 26. Effective date.

3 **SEC. 2. FINDINGS.**

4 The Congress finds the following:

5 (1) Employees of the Departments of Energy
 6 and Defense and their predecessor agencies and em-
 7 ployees of its contractors and vendors have been and
 8 currently are exposed to harmful substances, includ-
 9 ing beryllium, while performing their duties in the
 10 furtherance of the national interest.

11 (2) While linking exposure to occupational haz-
 12 ards with the development of occupational disease is

1 sometimes difficult, scientific evidence supports the
2 conclusion that occupational exposure to beryllium
3 causes, in certain individuals, beryllium sensitivity
4 and chronic beryllium disease.

5 (3) This Nation owes the men and women who
6 sustained our national defense for the last 50 years
7 efficient, uniform, and adequate compensation for
8 beryllium-related health conditions for which clear
9 scientific proof exists of causal connection to occupa-
10 tional exposure.

11 **SEC. 3. DEFINITIONS.**

12 For the purposes of this Act:

13 (1) BERYLLIUM VENDOR.—The term “beryl-
14 lium vendor” means—

15 (A) Atomics International;

16 (B) Brush Wellman, Inc.;

17 (C) General Atomics;

18 (D) General Electric Company;

19 (E) NKG Metals Corporation and its pred-
20 ecessors: Kiwiki-Berylco, Cabot Corporation,
21 BerylCo, and Beryllium Corporation of Amer-
22 ica;

23 (F) Nuclear Materials and Equipment Cor-
24 poration;

1 (G) StarMet Corporation, and its prede-
2 cessor, Nuclear Metals, Inc.;

3 (H) Wyman Gordan, Inc.; or

4 (I) any other vendor, processor, or pro-
5 ducer of beryllium or related products des-
6 igned as a beryllium vendor for the purposes
7 of this Act in regulations issued by the Sec-
8 retary of Energy pursuant to section 4.

9 (2) COMPENSATION.—The term “compensa-
10 tion” means the money allowance payable under this
11 Act and any other benefits paid for from the Federal
12 Beryllium Compensation Fund including the retro-
13 active compensation payable pursuant to section 10.

14 (3) CONFIRMED POSITIVE BLOOD BERYLLIUM
15 LYMPHOCYTE PROLIFERATION TEST.—The term
16 “confirmed positive blood beryllium lymphocyte pro-
17 liferation test” means a blood beryllium lymphocyte
18 proliferation test that was determined to be positive
19 at 2 different laboratories from the same blood draw
20 or at the same laboratory on consecutive blood
21 draws.

22 (4) COVERED EMPLOYEE.—The term “covered
23 employee” means—

24 (A) an employee of any contractor that
25 contracted with the Department of Energy or

1 Department of Defense to provide management
2 and operation, management and integration, or
3 environmental remediation of a Department of
4 Energy or Department of Defense facility or an
5 employee of any subcontractor that provided
6 services, including construction, at such facility;

7 (B) an employee of a beryllium vendor dur-
8 ing a period of time when that entity was en-
9 gaged in activities related to beryllium that was
10 produced or processed for sale to, or use by, the
11 Department of Energy; or

12 (C) an individual defined as an employee
13 in section 8101(1) of title 5, United States
14 Code, who may have been exposed to beryllium
15 at a Department of Energy or Department of
16 Defense facility or at a facility owned, operated,
17 or occupied by a beryllium vendor.

18 (5) COVERED ILLNESS.—The term “covered ill-
19 ness” means the following conditions:

20 (A) Beryllium sensitivity, established by 1
21 or more of the following criteria:

22 (i) A confirmed positive blood beryl-
23 lium lymphocyte proliferation test.

24 (ii) An unconfirmed positive blood be-
25 ryllium lymphocyte proliferation test with

1 more than 1 additional borderline, or a sin-
2 gle positive, result.

3 (iii) 3 or more unconfirmed positive
4 blood beryllium lymphocyte proliferation
5 tests.

6 (iv) a beryllium skin-patch test that is
7 positive.

8 (B) Chronic beryllium disease, established
9 by 1 or more of the following criteria:

10 (i) A confirmed positive blood beryl-
11 lium lymphocyte proliferation test, a posi-
12 tive lung beryllium lymphocyte prolifera-
13 tion test, and evidence of lung pathology,
14 such as—

15 (I) a lung biopsy showing
16 granulomas or a lymphocytic process
17 consistent with chronic beryllium dis-
18 ease;

19 (II) a computerized axial tomog-
20 raphy scan showing changes con-
21 sistent with chronic beryllium disease;
22 or

23 (III) pulmonary function or exer-
24 cise testing showing pulmonary defi-

1 cits consistent with chronic beryllium
2 disease.

3 (ii) A confirmed positive blood beryl-
4 lium lymphocyte proliferation test, a nega-
5 tive lung beryllium lymphocyte prolifera-
6 tion test, and a lung biopsy showing either
7 granulomas or other findings consistent
8 with chronic beryllium disease.

9 (iii) A negative blood beryllium lym-
10 phocyte proliferation test, a negative lung
11 beryllium lymphocyte proliferation test, a
12 beryllium skin-patch test that is positive,
13 and a lung biopsy showing either
14 granulomas or other findings consistent
15 with chronic beryllium disease.

16 (C) Any injury or illness sustained as a
17 consequence of a covered illness as defined in
18 section 3(5)(A) or (B).

19 (6) DEPARTMENT OF ENERGY.—The term “De-
20 partment of Energy” includes the predecessor agen-
21 cies of the Department of Energy.

22 (7) DEPARTMENT OF DEFENSE.—The term
23 “Department of Defense” includes the predecessor
24 agencies of the Department of Defense.

1 (8) DEPARTMENT OF ENERGY FACILITY.—The
2 term “Department of Energy facility” means any
3 building, structure, or premises, including the
4 grounds upon which such buildings or structures are
5 located, in which operations are conducted by, or on
6 behalf of, the Department of Energy and with re-
7 gard to which the Department of Energy has a pro-
8 prietary interest or has entered into a contract with
9 an entity to provide management and operation,
10 management and integration, or environmental re-
11 mediation.

12 (9) DEPARTMENT OF DEFENSE FACILITY.—The
13 term “Department of Defense facility” means any
14 building, structure, or premises, including the
15 grounds upon which such buildings or structures are
16 located, in which operations are conducted by, or on
17 behalf of, the Department of Defense and with re-
18 gard to which the Department of Defense has a pro-
19 prietary interest or has entered into a contract with
20 an entity to provide management and operation,
21 management and integration, or environmental re-
22 mediation.

23 (10) MONTHLY PAY.—The term “monthly pay”
24 means—

25 (A) the monthly pay at the time of injury,

1 (B) the monthly pay at the time disability
2 begins, or

3 (C) the monthly pay at the time compen-
4 sable disability recurs if the recurrence begins
5 more than 6 months after the covered employee
6 resumes regular full-time employment,

7 whichever is greater, except when otherwise deter-
8 mined under section 8113 of title 5, United States
9 Code;

10 (11) TIME OF INJURY.—“time of injury” means
11 the last date on which a covered employee was ex-
12 posed to beryllium in the performance of duty as
13 specified in section 5.

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

17 (A) physician;

18 (B) medical, surgical, and hospital services
19 and supplies;

20 (C) widow;

21 (D) parent;

22 (E) brother, sister;

23 (F) child;

24 (G) grandchild;

25 (H) widower;

- 1 (I) student;
2 (J) price index;
3 (K) organ; and
4 (L) United States medical officers and
5 hospitals.

6 **SEC. 4. REGULATORY AUTHORITY TO REVISE DEFINITIONS.**

7 (a) Additional vendors, processors, or producers of
8 beryllium or related products may be designated as beryl-
9 lium vendors for the purposes of this Act in regulations
10 issued by the Secretary of Energy or the Secretary of De-
11 fense, after consultation with the Secretary of Labor, upon
12 finding that such entities have been engaged in activities
13 related to beryllium that was produced or processed for
14 sale to, or use by, the Departments of Energy or Defense
15 in a manner similar to the entities listed in section 3(1).

16 (b) Additional criteria by which a claimant may es-
17 tablish the existence of a covered illness, as defined in sub-
18 paragraph (A) or (B) of section 3(5), may be specified
19 in regulations issued by the Secretary of Labor, after con-
20 sultation with the Secretaries of Energy and Defense.

21 **SEC. 5. EXPOSURE TO BERYLLIUM IN THE PERFORMANCE**
22 **OF DUTY.**

23 (a) In the absence of substantial evidence to the con-
24 trary, a covered employee, as defined in subparagraph (A)
25 or (C) of section 3(4), shall be determined to have been

1 exposed to beryllium in the performance of duty for the
2 purposes of this Act if, and only if, the covered employee
3 was employed at the Department of Energy facility or De-
4 partment of Defense facility, or was present at the facility
5 or at a facility owned or operated by a beryllium vendor,
6 because of employment by the United States or a con-
7 tractor or subcontractor of the Department of Energy or
8 Department of Defense, for any period during which beryl-
9 lium dust, particles, or vapor may have been present at
10 that facility.

11 (b) In order to be determined to have been exposed
12 to beryllium in the performance of duty for the purposes
13 of this Act, a covered employee, as defined by section
14 3(4)(B), must establish by substantial evidence that the
15 covered employee may have been exposed to dust, par-
16 ticles, or vapor of beryllium that was produced or proc-
17 essed for sale to, or use by, the Department of Energy
18 or the Department of Defense.

19 **SEC. 6. COMPENSATION FOR DISABILITY OR DEATH, MED-**
20 **ICAL SERVICES, AND VOCATIONAL REHABILI-**
21 **TATION.**

22 (a) Except to the extent specified in this Act, and
23 in accordance with the provisions of the following sections,
24 the United States—

1 (1) shall pay the compensation specified in sec-
2 tions 8105–8110, 8111(a), 8112–8113, 8115, 8117,
3 8133–8135, and 8146a (a) and (b) of title 5, United
4 States Code, for the disability or death from a cov-
5 ered illness, of a covered employee who was exposed
6 to beryllium while in the performance of duty as de-
7 termined in accordance with section 5;

8 (2) shall furnish the services and other benefits
9 specified in section 8103 of title 5, United States
10 Code, to a covered employee who sustains a covered
11 illness as a result of exposure to beryllium while in
12 the performance of duty as determined in accord-
13 ance with section 5; and

14 (3) may direct a permanently disabled indi-
15 vidual whose disability is compensable under this Act
16 to undergo vocational rehabilitation and shall pro-
17 vide for furnishing vocational rehabilitation services
18 pursuant to the provisions of sections 8104 and
19 8111(b) of title 5, United States Code,

20 unless the covered illness or death was caused by one of
21 the circumstances set forth in paragraphs (1) through (3)
22 of section 8102(a) of title 5, United States Code.

23 (b) All compensation under this Act shall be paid
24 from the Federal Beryllium Compensation Fund.

1 (c) No payment of compensation may be made under
2 this Act for any period prior to the effective date of this
3 Act, except for the retroactive compensation specified in
4 section 10.

5 **SEC. 7. COMPUTATION OF PAY.**

6 (a) Except as otherwise provided by this Act, or by
7 regulations of the Secretary of Labor, computation of pay
8 under this Act shall be determined in accordance with sec-
9 tion 8114 of title 5, United States Code.

10 (b) If either of the methods of determining the aver-
11 age annual earnings specified in paragraphs (1) and (2)
12 of section 8114(d) of title 5, United States Code, cannot
13 be applied reasonably and fairly, the average annual earn-
14 ings are a sum that reasonably represents the annual
15 earning capacity of the covered employee in the employ-
16 ment in which the employee was working at the time of
17 injury having regard to the previous earnings of the em-
18 ployee in similar employment, and of other employees of
19 the same employer in the same or most similar class work-
20 ing in the same or most similar employment in the same
21 or neighboring location, other previous employment of the
22 employee, or other relevant factors. However, the average
23 annual earnings may not be less than 150 times the aver-
24 age daily wage the covered employee earned in the employ-

1 ment during the days employed within 1 year immediately
2 preceding the time of injury.

3 **SEC. 8. LIMITATIONS ON RIGHT TO RECEIVE COMPENSA-**
4 **TION.**

5 (a) While a covered employee as defined in section
6 3(4)(C) is receiving compensation under this Act, or if the
7 covered employee has been paid a lump sum in commuta-
8 tion of installment payments until the expiration of the
9 period during which the installment payments would have
10 continued, the covered employee may not receive salary,
11 pay, or remuneration of any type from the United States,
12 except—

13 (1) in return for service actually performed;

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

16 (3) other benefits administered by the Depart-
17 ment of Veterans Affairs unless such benefits are
18 payable for the same covered illness or the same
19 death; and

20 (4) retired pay, retirement pay, retainer pay, or
21 equivalent pay for service in the Armed Forces or
22 other uniformed service, subject to the reduction of
23 such pay in accordance with section 5532(b) of title
24 5, United States Code.

1 However, eligibility for or receipt of benefits under sub-
2 chapter III of chapter 83 of title 5, United States Code,
3 or another retirement system for employees of the Govern-
4 ment, does not impair the right of the employee to com-
5 pensation for scheduled disabilities specified by section
6 8107 of title 5, United States Code.

7 (b) An individual entitled to benefits under this Act
8 because of a covered illness, or because of the death of
9 a covered employee as defined in section 3(4)(C), who also
10 is entitled to receive from the United States under a provi-
11 sion of a statute other than this Act payments or benefits
12 for that covered illness or death (except proceeds of an
13 insurance policy), because of service by the covered em-
14 ployee (or in the case of death, by the deceased) as an
15 employee or in the Armed Forces, shall elect which bene-
16 fits to receive. The individual shall make the election with-
17 in the time allowed by the Secretary of Labor. The election
18 when made is irrevocable, except as otherwise provided by
19 statute.

20 (c) While a covered employee is receiving compensa-
21 tion under this Act, or if the covered employee has been
22 paid a lump sum in commutation of installment payments
23 until the expiration of the period during which the install-
24 ment payments would have continued, the covered em-
25 ployee may not receive payment of any benefits under any

1 other Federal workers' compensation system for the same
2 covered illness or the same death. Such an individual shall
3 elect which benefits to receive. The individual shall make
4 the election within the time allowed by the Secretary of
5 Labor. The election when made is irrevocable.

6 (d) An individual entitled to receive benefits under
7 this Act because of a covered illness or death of a covered
8 employee who is also entitled to receive benefits because
9 of the covered illness or death of the covered employee
10 from a State workers' compensation system shall elect
11 which benefits to receive, unless—

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

15 (2) the Secretary of Labor waives the require-
16 ment to make such an election.

17 (e) An individual required to make the election speci-
18 fied in subsection (d) shall make the election within the
19 time allowed by the Secretary of Labor. The election when
20 made is irrevocable.

21 (f) A widow or widower who has entitlements to bene-
22 fits under this Act or under subchapter I or III of chapter
23 81 of title 5, United States Code, derived from more than
24 1 husband or wife shall elect 1 entitlement to be utilized.

1 **SEC. 9. COORDINATION OF BENEFITS.**

2 (a) A claimant, except as specified in subsection (b),
3 entitled to receive benefits under this Act as a result of
4 a covered illness or death of a covered employee who has
5 received benefits because of the covered illness or death
6 from any other State or Federal workers' compensation
7 system and who has elected benefits under this Act pursu-
8 ant to subsection (c) or (d) of section 8 shall receive com-
9 pensation as specified in this Act for the covered illness
10 or death, reduced by the amount of any workers' com-
11 pensation benefits, that the claimant has received or will
12 receive on account of the covered illness or death under
13 any State or Federal workers' compensation system, after
14 deducting the reasonable costs, as determined by the Sec-
15 retary of Labor, of obtaining such benefits.

16 (b) A claimant entitled to receive benefits under this
17 Act as a result of a covered illness or death of a covered
18 employee who has received benefits from a State workers'
19 compensation system because of the covered illness or
20 death and who has received a waiver, pursuant to section
21 8(d)(2), of the requirement to elect between benefits under
22 this Act and benefits under a State workers' compensation
23 system shall receive compensation as specified in this Act
24 for the covered illness or death, reduced by 80 percent
25 of the net amount of any workers' compensation benefits
26 that the claimant has received or will receive on account

1 of the covered illness or death under a State workers' com-
2 pensation system, after deducting the reasonable costs, as
3 determined by the Secretary of Labor, of obtaining such
4 benefits.

5 **SEC. 10. RETROACTIVE COMPENSATION.**

6 (a) A covered employee, who was exposed to beryllium
7 in the performance of duty, as determined in accordance
8 with section 5, and who, in addition—

9 (1) was diagnosed, before the date of enactment
10 of this Act, as having a beryllium-related pulmonary
11 condition, whether or not based upon the criteria
12 necessary to establish the existence of a covered ill-
13 ness under section 3(5); and

14 (2) demonstrates the existence of the diagnosis
15 and condition by medical documentation created
16 during the covered employee's lifetime or at the time
17 of death or autopsy,

18 may elect to receive retroactive compensation in the
19 amount of \$200,000, in lieu of any other compensation
20 to which the covered employee or the employee's survivor
21 may be entitled under this Act and payment of medical
22 expenses for the beryllium-related pulmonary condition.

23 (b) If a covered employee who would have been eligi-
24 ble to make the election provided by this section dies be-
25 fore the effective date of this Act, or before making the

1 election, whether or not the death is the result of a beryl-
2 lium-related condition, the employee's survivor or sur-
3 vivors may make the election to receive retroactive com-
4 pensation in the amount of \$200,000 in lieu of any other
5 compensation to which either the covered employee or the
6 employee's survivors might otherwise have been entitled
7 under this Act. The right to make an election pursuant
8 to this section shall be afforded to survivors in the order
9 of precedence set forth in section 8109 of title 5, United
10 States Code.

11 (c) The election to receive retroactive compensation
12 in lieu of other compensation under this statute shall be
13 made within 30 days after the date of a decision by the
14 Secretary of Labor determining an entitlement to an
15 award of compensation for total disability or partial dis-
16 ability under this Act or the date that the Secretary of
17 Labor informs the employee or the employee's survivor of
18 the entitlement to make such an election, whichever is
19 later, unless the time is extended by the Secretary of
20 Labor. The election when made by a covered employee or
21 survivor is irrevocable and binding on all survivors.

22 (d) When a covered employee, or the employee's sur-
23 vivor, has made an election to receive retroactive com-
24 pensation pursuant to this section, no other payment of
25 compensation under this Act may be made on account of

1 the same or any other covered illness or beryllium-related
2 pulmonary condition of that employee for any period of
3 time or for any service received before the date of enact-
4 ment of this Act.

5 (e) Determination by the Secretary of Labor that a
6 covered employee or a survivor of a covered employee has
7 established a beryllium-related pulmonary condition, pur-
8 suant to subsection (a), does not constitute a determina-
9 tion that the covered employee, or a survivor of the cov-
10 ered employee, has established the existence of a covered
11 illness.

12 (f) The retroactive compensation payable under this
13 section shall not be subject to the cost-of-living adjustment
14 set forth in section 8146a(a) of title 5, United States
15 Code.

16 **SEC. 11. EXCLUSIVITY OF REMEDY.**

17 (a) The liability of the United States or an instru-
18 mentality thereof under this Act or any extension thereof
19 with respect to a covered illness, beryllium-related pul-
20 monary condition, or death of a covered employee is exclu-
21 sive and instead of all other liability of the United States,
22 the instrumentality, or of any employer that employed a
23 covered employee to—

24 (1) the covered employee;

1 (2) the covered employee's legal representative,
2 spouse, dependents, and next of kin; and

3 (3) any other person otherwise entitled to re-
4 cover damages from the United States, the instru-
5 mentality, or of any employer that employed the cov-
6 ered employee,
7 because of the covered illness, beryllium-related pulmonary
8 condition or death in any proceeding or action including
9 a direct judicial proceeding, a civil action, a proceeding
10 in admiralty, or an administrative or judicial proceeding
11 under a workers' compensation statute, a tort liability
12 statute, or the common law.

13 (b) For the purposes of this section, the employer of
14 a covered employee shall be any corporation, person, orga-
15 nization, or other entity that employed the covered em-
16 ployee when the employee was exposed to beryllium in the
17 performance of duty as specified in section 5 and any cor-
18 poration, person, organization, or other entity that hired,
19 contracted, or employed the immediate employer of the
20 covered employee when the covered employee was exposed
21 to beryllium in the performance of duty as specified in
22 section 5 and any employees, agents, or assigns of such
23 persons, corporations, organizations, or other entities.

1 **SEC. 12. CLAIM.**

2 A claim for compensation under this Act shall be
3 made in the manner specified in section 8121 of title 5,
4 United States Code, except that a claim for compensation
5 under this Act may be filed by a claimant at any time.

6 **SEC. 13. RESPONSIBILITIES OF THE SECRETARY OF EN-**
7 **ERGY AND THE SECRETARY OF DEFENSE.**

8 (a) To assist and facilitate administration of this Act,
9 the Secretaries of Energy and Defense shall—

10 (1) ensure the ready availability, in paper or
11 electronic format, of forms necessary for making
12 claims and providing information under this Act;

13 (2) provide assistance to workers in connection
14 with this Act; and

15 (3) inform the Secretary of Labor of advances
16 in testing, diagnosis, and treatment of chronic beryl-
17 lium disease and beryllium sensitivity.

18 (b) Upon receipt of notification from the Secretary
19 of Labor that a claimant has made a claim for benefits
20 under this Act, the Secretary of Energy or the Secretary
21 of Defense shall provide information concerning the claim,
22 as requested by the Secretary of Labor, and provide such
23 additional information as the Secretary of Labor deems
24 necessary.

25 (c) The Secretary of Energy or the Secretary of De-
26 fense may require a beryllium vendor to provide the Sec-

1 retary of Energy or the Secretary of Defense with infor-
2 mation concerning the claim requested by the Secretary
3 of Labor under subsection (b).

4 (d) The alleged failure of the Secretary of Energy or
5 the Secretary of Defense to comply with this section shall
6 not provide a basis for review of any action of the Sec-
7 retary of Energy, the Secretary of Defense, or the Sec-
8 retary of Labor by another official of the United States
9 or by a court by mandamus or otherwise.

10 (e) Powers conferred upon the Secretary of Energy
11 or the Secretary of Defense by this Act may be delegated
12 to any employee of the Department of Energy or Depart-
13 ment of Defense.

14 **SEC. 14. REVIEW OF AWARD.**

15 The action of the Secretary of Labor, or the Sec-
16 retary's designee, in allowing or denying a payment under
17 this Act is—

18 (1) final and conclusive for all purposes and
19 with respect to all questions of law and facts; and

20 (2) not subject to review by another official of
21 the United States or by a court by mandamus or
22 otherwise.

1 **SEC. 15. ASSIGNMENT OF CLAIM.**

2 An assignment of a claim for compensation under
3 this Act is void. Compensation and claims for compensa-
4 tion are exempt from claims of creditors.

5 **SEC. 16. ADMINISTRATION AND ADJUDICATION.**

6 (a) The Secretary of Labor shall administer, and de-
7 cide all questions arising under, this Act, except to the
8 extent that specific authority is accorded to the Secretary
9 of Energy or the Secretary of Defense by section 4. The
10 Secretary of Labor may appoint employees to administer
11 this Act.

12 (b) Powers conferred upon the Secretary of Labor by
13 this Act may be delegated to any employee of the Depart-
14 ment of Labor.

15 (c) A claimant may obtain reconsideration of a deci-
16 sion of the Secretary of Labor awarding or denying cov-
17 erage under this Act after the promulgation by the Sec-
18 retary of Labor, pursuant to section 4, of new criteria for
19 establishing coverage of a covered illness by submitting
20 evidence that is relevant and pertinent to the new criteria.

21 (d) Except to the extent specified in this Act, the ad-
22 ministration and adjudication of this Act shall be con-
23 ducted in accordance with the provisions of section 8123–
24 8127, 8128(a), and 8129 of title 5, United States Code.

25 (e) For the purposes of this Act, references in section
26 8124(a)(1) of title 5, United States Code, to the report

1 furnished by the immediate superior shall be considered
2 references to the information furnished to the Secretary
3 of Labor by the Secretary of Energy pursuant to section
4 13.

5 **SEC. 17. SUBROGATION OF THE UNITED STATES.**

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

13 (b) For purposes of this section, references in sec-
14 tions 8131 and 8132 of title 5, United States Code, to
15 the Employees' Compensation Fund shall mean the Fed-
16 eral Beryllium Compensation Fund.

17 (c) For purposes of this Act, the provision in section
18 8131 of title 5, United States Code, that provides that
19 an employee required to appear as a party or witness in
20 the prosecution of an action described in such section is
21 in an active duty status while so engaged shall only apply
22 to a covered employee, as defined in section 3(4)(C).

23 **SEC. 18. FEDERAL BERYLLIUM COMPENSATION FUND.**

24 (a) There is created in the Treasury of the United
25 States the Federal Beryllium Compensation Fund which

1 shall consist of sums that, from time to time, may be ap-
2 propriated for or transferred or advanced to it, and
3 amounts that may otherwise accrue to it under this Act
4 or any other statute. Notwithstanding any other provision
5 of law, funds in the Federal Beryllium Compensation
6 Fund remain available until expended for the payment of
7 compensation and other benefits and expenses authorized
8 by this Act or any extension or application thereof, and
9 for payment of all expenses of the Department of Labor
10 in administering this Act.

11 (b) The Secretary of Energy shall assure that the
12 Federal Beryllium Compensation Fund contains sufficient
13 funds for the Secretary of Labor to make all required pay-
14 ments from such Fund. Upon receipt of a quarterly state-
15 ment furnished under subsection (e)(1) by the Secretary
16 of Labor reporting a projected deficiency in the balance
17 of the Federal Beryllium Compensation Fund, the Sec-
18 retary of Energy is authorized to and shall—

19 (1) cause a transfer or advance of funds to the
20 Federal Beryllium Compensation Fund from any
21 Department of Energy appropriation;

22 (2) cause a transfer to the Federal Beryllium
23 Compensation Fund to be charged to the subsequent
24 year appropriation; or

1 (3) cause any combination thereof, of such
2 amounts as may be necessary to eliminate said pro-
3 jected deficiency.

4 (c) The Federal Beryllium Compensation Fund is au-
5 thorized to receive for deposit any funds transferred or
6 advanced by or through the Secretary of Energy under
7 subsection (b) and any amounts that may otherwise accrue
8 to it under this Act or any other statute. The Federal Be-
9 ryllium Compensation Fund is authorized to and shall
10 repay all advances under subsection (b) upon enactment
11 of its next annual appropriation and receipt of sufficient
12 funds for the payment of benefits and expenses, and of
13 all expenses of the Department of Labor in administering
14 this Act through the end of the quarter immediately fol-
15 lowing the quarter in which the repayment is approved.

16 (d) The Secretary of Labor is authorized to draw
17 upon and expend any funds in the Federal Beryllium Com-
18 pensation Fund to make any payments authorized pursu-
19 ant to subsection (a).

20 (e) QUARTERLY STATEMENTS.—

21 (1) Within 45 days of the end of every quarter
22 of every fiscal year, the Secretary of Labor shall fur-
23 nish to the Secretary of Energy a statement
24 showing—

1 (A) the total costs of benefits and other
2 payments made from the Federal Beryllium
3 Compensation Fund during the quarter just
4 ended;

5 (B) the end-of-quarter balance in such
6 fund;

7 (C) the anticipated draw of the Secretary
8 of Labor upon such Fund during the imme-
9 diately succeeding 2 quarters; and

10 (D) any resulting projected deficiency in
11 the balance of such Fund during the imme-
12 diately succeeding 2 quarters.

13 (2) Each such statement issued in August shall
14 show, in addition, the total costs of benefits and ex-
15 penses and other payments from such Fund during
16 the preceding July 1 through June 30 expense pe-
17 riod and an estimate of the expenditures from the
18 Federal Beryllium Compensation Fund for the pay-
19 ment of benefits and expenses and other payments
20 for each of the immediately succeeding 2 fiscal
21 years.

22 (3) Within 30 days of receipt of any quarterly
23 statement under subsection (a) showing such a re-
24 sulting projected deficiency, the Secretary of Energy
25 shall—

1 (A) eliminate such projected deficiency in
2 accordance with subsection (b); and

3 (B) furnish a statement to the Secretary of
4 Labor which includes a record of the amounts
5 transferred or advanced to the Federal Beryl-
6 lium Compensation Fund from Department of
7 Energy appropriations or transferred to the
8 Federal Beryllium Compensation Fund to be
9 charged to the subsequent year appropriation.

10 **SEC. 19. FORFEITURE OF BENEFITS BY CONVICTED FEL-**
11 **ONS.**

12 (a) Any individual convicted of a violation of section
13 1920 of title 18, or any other Federal or State criminal
14 statute relating to fraud in the application for or receipt
15 of any benefit under this Act or under any other Federal
16 or State workers' compensation Act, shall forfeit (as of
17 the date of such conviction) any entitlement to any benefit
18 such individual would otherwise be entitled to under this
19 Act for any covered illness for which the time of injury
20 was on or before the date of such conviction. Such for-
21 feiture shall be in addition to any action the Secretary of
22 Labor may take pursuant to the provisions of section 8106
23 or 8129 of title 5, United States Code.

24 (b)(1) Notwithstanding any other provision of law
25 (except as provided under paragraph (3)), no benefits

1 under this Act shall be paid or provided to any individual
2 during any period during which such individual is confined
3 in a jail, prison, or other penal institution or correctional
4 facility, pursuant to that individual's conviction of an of-
5 fense that constituted a felony under applicable law.

6 (2) Such individual shall not be entitled to receive the
7 benefits forfeited during the period of incarceration under
8 paragraph (1) after such period of incarceration ends.

9 (3) If an individual has one or more dependents as
10 defined under section 8110(a) of title 5, United States
11 Code, the Secretary of Labor may, during the period of
12 incarceration, pay to such dependents a percentage of the
13 benefits that would have been payable to such individual
14 computed according to the percentages set forth in section
15 8133(a)(1) through (5) of title 5, United States Code.

16 (c) Notwithstanding the provision of section 552a of
17 title 5, United States Code, or any other provision of Fed-
18 eral or State law, any agency of the United States Govern-
19 ment or of any State (or political subdivision thereof) shall
20 make available to the Secretary of Labor, upon written
21 request, the names and Social Security account numbers
22 of individuals who are confined in a jail, prison, or other
23 penal institution or correctional facility under the jurisdic-
24 tion of such agency, pursuant to such individuals' convic-
25 tion of an offense that constituted a felony under applica-

1 ble law, which the Secretary of Labor may require to carry
2 out the provisions of this section.

3 **SEC. 20. REGULATIONS—BERYLLIUM COMPENSATION AP-**
4 **PEALS PANEL.**

5 The Secretary of Labor may prescribe rules and regu-
6 lations necessary for the administration and enforcement
7 of this Act, including rules and regulations for the conduct
8 of hearings under this Act. The rules and regulations shall
9 provide for a Beryllium Compensation Appeals Panel of
10 3 individuals designated or appointed by the Secretary of
11 Labor with authority to hear and, subject to applicable
12 law and the rules and regulations of the Secretary of
13 Labor, make final decisions on appeals taken from deter-
14 minations and awards with respect to claims of covered
15 employees.

16 **SEC. 21. CIVIL SERVICE RETENTION RIGHTS.**

17 In the event that a covered employee, as defined in
18 section 3(4)(C), resumes employment with the Federal
19 Government, such individual shall be entitled to the rights
20 set forth in section 8151 of title 5, United States Code.

21 **SEC. 22. ANNUAL REPORT.**

22 The Secretary of Labor shall, at the end of each fiscal
23 year, prepare a report with respect to the administration
24 of this Act. Such report shall be submitted to Congress
25 in accordance with the requirement with respect to sub-

1 mission under section 42 of the Longshore and Harbor
2 Workers' Compensation Act (33 U.S.C. 942).

3 **SEC. 23. APPROPRIATIONS.**

4 (a) There is authorized to be appropriated to the De-
5 partment of Energy for deposit into the Federal Beryllium
6 Compensation Fund the sum of \$200,000,000 for fiscal
7 year 2001, which, notwithstanding any other provision of
8 law, shall remain available until expended.

9 (b) For succeeding fiscal years there are authorized
10 to be appropriated to the Department of Energy for de-
11 posit into the Federal Beryllium Compensation Fund such
12 sums as may be necessary to carry out this Act, which,
13 notwithstanding any other provision of law, shall remain
14 available until expended.

15 (c) Budget estimates for the Department of Energy
16 submitted to the Committees on Appropriations shall—

17 (1) request amounts for the Federal Beryllium
18 Compensation Fund required to make all payments
19 authorized by section 18 for the period covered by
20 the budget estimate; and

21 (2) report all amounts deposited in the Energy
22 Employee's Compensation Fund under subsection
23 (b) of section 18 since submission of the prior budg-
24 et estimates.

1 **SEC. 24. CONSTRUCTION.**

2 References in this Act 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. 25. CONFORMING AMENDMENTS.**

6 (a) Section 1920 of title 18 is amended by inserting
7 “or the Federal Beryllium Compensation Act” after “of
8 title 5”.

9 (b) Section 1921 of title 18 is amended by inserting
10 “or the Federal Beryllium Compensation Act” after “of
11 title 5”.

12 (c) Section 1922 of title 18 is amended by—

13 (1) inserting “(a)” before “Whoever,”; and

14 (2) inserting a new subsection as follows:

15 “(b) Whoever, being charged with the responsibility
16 for providing information pursuant to section 13(b) of the
17 Federal Beryllium Compensation Act, willfully fails, ne-
18 glects, or refuses to provide such information, or know-
19 ingly provides false information, or induces, compels, or
20 directs an injured employee to forego filing of any claim
21 for compensation or other benefits provided under the
22 Federal Beryllium Compensation Act or any extension or
23 application thereof, or willfully retains any notice, report,
24 claim, or paper which is required to be filed under that
25 Act or any extension or application thereof, or regulations

1 prescribed thereunder, shall be fined under this title or
2 imprisoned not more than 1 year, or both.”.

3 **SEC. 26. EFFECTIVE DATE.**

4 This Act is effective upon enactment, and shall apply
5 to all claims, civil actions, and proceedings pending on,
6 or filed on or after, the date of the enactment of this Act.

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