

RADIATION EXPOSURE COMPENSATION ACT
AMENDMENTS OF 1999

—————
JUNE 26, 2000.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed
—————

Mr. HYDE, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany S. 1515]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (S. 1515) amending the Radiation Exposure Compensation Act, and for other purposes, having considered the same, reports favorably thereon with technical amendments and recommends that the bill as amended do pass.

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The technical amendments (stated in terms of the page and line numbers of the reported bill) are as follows:

Strike "1999" each place it appears and insert "2000".

Page 9, line 24, insert "and" after "'corpulmonale'".

Page 10, line 4, strike "pneumoconiosis"; and" and insert "pneumoconiosis;".

Page 10, strike lines 6 and 7.

PURPOSE AND SUMMARY

S. 1515, "The Radiation Exposure Compensation Act Amendments of 1999" updates the 1990 law that currently compensates individuals exposed to radiation from either being downwind of a nuclear test blast or involved in the mining of uranium ore during the Cold War. Uranium is used by our Government in the production of nuclear weapons. This legislation increases the number of radiogenic and chronic diseases compensable under the Act. The bill also increases the number of individuals and States eligible for compensation based on scientific and medical information gathered over the past decade.

BACKGROUND AND NEED FOR THE LEGISLATION

During the 1980's, large bodies of evidence were presented before Congress, documenting two groups of individuals who had been directly harmed by the failure of the Federal Government to take necessary precautions during the planning, experimentation and execution of the government's program to create a nuclear arsenal. The first group were either present at the atomic test sites in Nevada during the 1950's and early 1960's when above-ground nuclear tests were performed, or were "downwind" of the test sites and were bombarded by radioactive fallout. These individuals developed a variety of diseases caused by radiation, primarily cancers. Prior to 1990, Commissions on the Biological Effects of Ionizing Radiation (BEIR) had issued three reports, which were used to define cancers that arose at higher numbers among members of these groups than among individuals exposed to only normal background radiation. A standard of proof was established by which individuals deemed eligible for compensation had to demonstrate that they were in specified locations during the specific time periods of nuclear fallout, and that they contracted specified diseases. This burden of proof became the basis for the 1990 legislation, which instructed the Department of Justice (DOJ) to administer the Radiation Exposure Compensation Program (RECP) to aid in the compensation of eligible individuals. In brief, individuals who were present in specified counties of Utah, Nevada, Colorado, and New Mexico from January 21, 1951, to October 31, 1958, or from June 30, 1962, to July 31, 1962, and could provide medical documentation to support the basis of disease as defined in the Act, are eligible for \$50,000 if they were downwind from a test site or \$75,000 if they were an on-site participant during the atomic testing.

In addition, the Radiation Exposure Compensation Act (RECA) of 1990 offered compassionate compensation in the amount of \$100,000 to underground uranium miners who extracted the uranium/vanadium radioactive ore, which was the primary fuel source for the atomic bombs. The U.S. government purchased ore and

sponsored mining operations from 1942 through 1971. During the early portion of this period, few attempts were made to forewarn or protect miners from the known dangers of exposure to radiation. For the most part, workers were unskilled laborers, often of Native American heritage, who were unaware of the potential health hazards of working in and around the uranium mines. The radioactive dust and subsequent exposure to radioactive particles (radium and radon gas) has been recognized as a cause of disease, particularly of lung diseases and cancers for decades. Information from studies of mines outside the U.S. documented carcinogenic rates of about 1 percent per year of lung carcinoma among uranium mine workers (10,000 times normal) and that approximately 70 percent of all deaths of mine workers were due to primary cancer of the respiratory system¹. In August 1949, the Public Health Service (PHS) was commissioned to study the effects of exposure to radiation on mine workers. It concluded that there was not enough information known on the potential health hazards from radiation in the uranium mining and milling industry². In 1950, a PHS study of uranium mines began epidemiological studies and general physical examinations (including chest x-rays and blood and urine analyses) of on-site participants to determine the relationship between exposures to radioactivity and the biological effects on the miners. During the course of a decade, consensual studies were performed on miners who were told that the examinations were part of a study of the health of uranium miners. It was not until 1964/1965 that the results of these studies and the Federal guidelines were established for the conduct of federally-funded research projects involving radioactive substances. On July 27, 1967, the President approved the Federal Regulatory Commission's proposal (Tr. 1555–1559; Def.Ex. 414; 507) for a uniform Federal radiation standard for underground uranium mines. By 1970, the regulations concerning the safety procedures that were to be maintained in mining were in place. In 1979, in *Begay et al.*, and *Anderson, et al.*, suits were filed against the United States of America on behalf of Navajo uranium miners asserting various negligence claims arising from decisions of the Federal Government in the 1940's through the 1960's with respect to safety in uranium mines sponsored by the U.S. In a 1984 decision, the U.S. District Court in Arizona dismissed the suits ruling that there was no subject-matter jurisdiction to proceed since the alleged acts and omissions of government officials were shielded from tort liability by the discretionary function exception to the Federal Tort Claims Act³. In *Begay v. United States* the court highlighted several pieces of information that had not been analyzed in public prior to the court hearing and “concluded that the plight of the uranium miners calls for redress.”⁴ The evidence was used as the basis for hearings held by the Congress in 1987–1989 that laid the groundwork for RECA. The Radiation Exposure Compensation Act of 1990 was signed into law on October 15, 1990 as Public Law 101–426.

¹Faden, R.R. (Chair) Advisory Committee on Human Radiation Experiments. October 1995, p. 565.

²Ibid. p.569.

³*John N. Begay v. United States*, 591 F. Supp. 991 (1984).

⁴Op.Cit. Advisory Committee on Human Radiation Experiments. October 1995, p. 577.

After the passage of RECA in 1990 and the implementation of the Department of Justice's regulations in 1992, complaints began to be registered with congressional offices. The major complaints fell into three categories which became the basis for the amendments contained in S. 1515. The first complaint was over the limited number of diseases for the basis for compensation under the Act and those diseases being so narrowly defined that many people are excluded. The second complaint was over narrow or hypertechnical constructions of the DOJ regulations that imposed limitations on individuals never intended by Congress. Third, complaints were registered from numerous individuals and groups concerning the exclusion of other workers involved in the mining of uranium. Over the past decade there were also complaints about DOJ delay in the processing of claims (Delays were also often caused by the work of lawyers representing applicants who file incomplete or inaccurate claims). Congressional review of the situation has found that, by and large, the Program has been administered as well as could be expected given budget constraints. Frustrations, disappointments and perceived injustices have resulted from either lack of statutory coverage or from a perceived lack of compassion in the administration of the Program. S. 1515 attempts to broaden the covered individuals and diseases while giving the DOJ greater latitude to implement the Program.

Presently, RECA 1990 sets forth a list of 13 "compensable diseases" that form the basis for compensation for downwinders who resided in specific geographical areas within specific times during nuclear tests. RECA's list of compensable diseases was originally designed to mirror the diseases covered under the Radiation Exposed Veterans Compensation Act of 1988 (REVCA), which provides for compassionate compensation for service-based radiation exposure. The 13 diseases covered under RECA and REVCA were based on the findings of the 1980 report of the Commission on the Biological Effects of Ionizing Radiation (BIER).⁵ Late in 1990, after the passage of RECA into law, the BIER V report was released providing a great deal of additional information on which cancers could truly be deemed as radiogenic. Commissioned by the Office of Science and Technology Policy's Committee on Interagency Radiation Research and Policy Coordination (CIRRPC) of the National Research Council, the expert panel provided a detailed summary of the current understanding of radiation-induced genetic effects, cellular radiobiology and carcinogenic mechanisms, radiation carcinogenesis, the effects of radiation on the fetus, and radiation epidemiology and risk modeling. The report became the principal framework by which requests were made to change RECA 1990 eligibility requirements. A representative of the Navajo Nation (per 1993 testimony before the Senate Labor and Human Resources Committee) and the National Association of Radiation Survivors, along with the Department of Justice, offered recommendations for changes in the list of compensable diseases and changes within the restrictions on the current statutory list.

⁵The National Research Council's Committees on the Biological Effects of Ionizing Radiation (BIER) have prepared a series of reports to advise the U.S. government on the health consequences of radiation exposure. The committee may be convened at the request of the Office of Science and Technology Policy to conduct a comprehensive review of the biological effects of ionizing radiation focusing on specific elements of interest.

In 1995, the President's Advisory Committee on Human Radiation Experiments presented its report to President Clinton summarizing the experiments involving human subjects and ionizing radiation conducted from 1944 through 1974. Chapter 18 of the report dealt specifically with considerations of the uranium miners' and downwinders' exposure. The report offered specific recommendations with respect to: lowering the stringent requirements for compensation of exposed miners; eliminating the distinction between smokers and non-smokers in any amendments to RECA 1990; and using length of employment instead of exposure levels to verify miner eligibility requirements. The suggestions were supported by the President's Advisory Committee's finding that no exposure measurements are available for 90 percent of the years covered for government-sponsored mines and that the extrapolation used to calculate "reconstructed exposure times" are quite uncertain. Furthermore, the President's Advisory Committee found that statutory requirement for 200 Working Level Months (WLM) was far in excess of the "probability of causation" and, that if these criteria were to remain, it should be lowered.

In 1997, at the request of Senator Orrin Hatch three experts provided specific recommendations on changes to RECA based on the advances in medical knowledge concerning radiation induced-disease. Dr. Arthur C. Upton (Chairman, Dept. of Environmental Medicine, New York University Medical Center and Chair of the BEIR V Committee), Dr. John M. Samet (Professor and Chairman, Department of Epidemiology, Johns Hopkins University and Chair of the National Research Council) and Dr. Duncan C. Thomas (Professor, Department of Preventive Medicine, University of Southern California, Los Angeles and member of the BIER V Committee) recommended that the "list of compensable diseases for downwinders be expanded to include lung, colon, brain, urinary bladder, salivary gland and ovarian...[which] will help bring compensation restrictions into line with current scientific understanding."⁶ In addition, it was recommended that the following restrictions on eligibility for downwinders be eliminated based on current scientific evidence:

- 1) with regard to leukemia, eliminate requirement that initial exposure occur after the age of 20, and retain 2-year minimum latency period between first-exposure and onset of disease, but eliminate the requirement that onset of the disease occur 30 years after first exposure;
- 2) with regard to primary cancer of the thyroid, eliminate exclusion for initial exposures after age 40;
- 3) with regard to breast cancer, eliminate exclusion for initial exposures, and include male and female;
- 4) with regard to cancer of the esophagus, remove restrictions for alcohol consumption and smoking;
- 5) with regard to cancer of the stomach, eliminate requirement that initial exposure occur before age 30;

⁶Duncan C. Thomas, Ph.D., Professor and Director, Biostatistics Division, University of Southern California School of Medicine, Los Angeles, CA. letter to from Senator Orrin G. Hatch, July 11, 1997.

- 6) with regard to cancer of the pharynx, eliminate smoking restrictions;
- 7) with regard to cancer of the pancreas, eliminate smoking and coffee consumption restrictions; and
- 8) with regard to cancer of the liver, remove restrictions related to cirrhosis and hepatitis B.

The experts also supported reducing the exposure threshold for uranium miners to approximately 40 WLM or using a 1-year minimum duration of employment criteria for millers. Drs. Samet and Thomas recommended extending the uranium miners' provision regarding compensation for non-malignant respiratory diseases to all former uranium miners (not just those who worked in mines on an Indian reservation.)

In a letter dated January 24, 2000, Robert Raben, Assistant Attorney General, U.S. Department of Justice wrote to the Judiciary Committee with the views of that Department on S. 1515. The Department of Justice had been actively involved in drafting many of the amendments to RECA 1990 and supports many of the provisions offered in S. 1515. The Department supports:

1. the extension of compensation for silicosis or pneumoconiosis to all eligible claimants (previously limited only to miners employed on an Indian reservation);
2. the inclusion of *in situ* lung cancers for compensation;
3. the use of pathology reports of tissue biopsies as supportive medical documentation for establishing a non-malignant respiratory disease or lung cancer;
4. the use of written affidavits by a personal physician as evidence of a disease state;
5. the use of affidavits to substantiate employment history for purposes of determining working levels months of exposure; and
6. the ability to use Native American law, tradition, and custom with respect to the submission and processing of claims filed by Native Americans.

In the January 24, 2000 letter, three significant concerns were raised which have been addressed in S. 1515.

First, the Department believed that expanding compensation to include uranium millers and ore transporters was premature and should await the results of a National Institute of Occupational Safety and Health (NIOSH) study commissioned by Congress in 1993. The letter states that this "ongoing study promises to offer meaningful information concerning the health effects of radiation on uranium millers."⁷ This committee believes that S. 1515 should not be delayed to await a study that may never be completed. This study, commissioned in 1993, was to be completed within 2 years. Whatever the cause for its delay, the report is not finished, no preliminary data are available, and an exact date of completion has yet to be established. Furthermore, given the extremely small groups of millers being studied, it is projected that the data will have limited statistical significance and will therefore be merely

⁷Robert Raben, Assistant Attorney General, U.S. Department of Justice, letter to Congressman Henry J. Hyde, January 24, 2000.

anecdotal in nature. It is deemed unnecessary and cruel to tell victims awaiting compensation, some near death, to wait for a study that may never come or may be inadequate. S. 1515, well-grounded in scientific principles, represents an intent to apologize and offer compassionate compensation to an expanded list of individuals who were not included in the 1990 Act but who, nonetheless, deserve restitution.

The Department objected to the expansion of downwinder's areas to regions not defined by the National Cancer Institute (NCI). However, the NCI has no studies ongoing specifically monitoring the downwinders' cancer epidemiology. To ignore the written and personal testimonies of the hundreds of victims themselves or survivors concerning their illnesses is unwarranted. The strong evidence they have supplied is sufficient to provide relief.

The Department of Justice objected to lowering the radiation exposure threshold requirements for uranium miners to 40 Working Level Months and the imposition of a 1-year duration of employment requirement for millers and transport workers. The Department argues that "no single exposure figure is appropriate to establish a point at which it is more likely than not that all uranium miners' exposure was the cause of subsequent lung disease." The Department statement argues that, even the current level of exposure, imposed in RECA 1990, of 200 WLMs is insufficient to warrant compensation. Based upon the thousands of individuals who have been denied compensation because of inaccurately counted WLMs and the testimony of experts in radiation oncology mentioned earlier in this report, the committee determined that a level of 40 WLMs was an appropriate resolution between abolishing the exposure limits and the current standard. The Department's letter states that "ignoring the relative risk variables and compensation criteria that the RECA Committee's scientists determined were 'significant' fails to demonstrate a sound, scientifically-based approach." DOJ has suggested the implementation of a multi-scale criteria using either the exposure-based or duration of employment models. These models involve computing the WLMs, age, time since exposure, smoking habits, and other factors for each individual prior to evaluating the disease status of the claimant. The major objection to such an approach is that for the vast majority of claimants, data will be incomplete (e.g. a worker might have a WLM value but no documentation of smoking habits). Many workers in the 1940's, 50's, and early 60's worked in loosely regulated mines or for mines whose records are no longer accessible or interpretable. To impose additional levels of proof onto an already burdensome claims process under such circumstances does not further the intent of Congress to provide expanded relief.

In conclusion, S. 1515 addresses the problems that have been identified in the last 10 years with the Act's applicability to uranium miners and other individuals.

The committee wishes to recognize the tireless efforts of the late Mr. Paul Hicks on behalf of those who served in the uranium mines and mills throughout the nation. Mr. Hicks fought passionately to improve upon the Radiation Exposure Compensation Act. The result of his efforts, and those of the Navajo Nation and countless others, is the Radiation Exposure Compensation Act Amendments of 1999."

HEARINGS

The committee's Subcommittee on Immigration and Claims held a June 25, 1998, hearing on H.R. 3539, a similar measure introduced in the 105th Congress. Testimony was received from Honorable Bill Redmond; Donald M. Remy, Deputy Assistant Attorney General, Civil Division, Department of Justice; Lawrence J. Fine, M.D., Dr. P.H., Director, Division of Surveillance, Hazard Evaluations and Field Studies, National Institute for Occupational Safety and Health, Center for Disease Control and Prevention, Department of Health and Human Services; Dr. David Coultos, Health Science Center, University of New Mexico; Dr. Susan E. Dawson, Department of Sociology, Utah State University, accompanied by Dr. Gary E. Madsen, Utah State University; Mr. Paul Robinson, S.W. Research & Information Center; Honorable Thomas Atcitty, President, The Navajo Nation, accompanied by George Arthur, Counsel Delegate, Navajo National Counsel, and E. Cooper Brown, Esquire; Honorable Roland Johnson, Governor, Pueblo of Laguna, accompanied by Tribal Councilman Larry Lente; Honorable Reginald Pascual, Governor, Pueblo of Acoma, accompanied by Tribal Councilman David Villo; Mr. Paul Hicks, New Mexico Uranium Workers Council, accompanied by Kevin Martinez, Esquire; Earl Chavez, Chairman, Cibola County Commission; and Curtis Freeman, Utah Uranium Workers Council with additional material submitted by the Honorable Jeff Bingaman; the Honorable Chris Cannon; and Brandon Reed.

COMMITTEE CONSIDERATION

On May 24, 2000, the committee met in open session and ordered favorably reported the bill S. 1515 without amendment by voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the committee reports that the findings and recommendations of the committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM FINDINGS

No findings or recommendations of the Committee on Government Reform were received as referred to in clause 3(c)(4) of rule XIII of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the committee sets forth, with respect to

the bill, S. 1515, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 31, 2000.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1515, the Radiation Exposure Compensation Act Amendments of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Cynthia Dudzinski (for costs to the Department of Health and Human Services), who can be reached at 226-9010; Mark Grabowicz (for all other federal costs), who can be reached at 226-2860; Lisa Cash Driskill (for the state and local impact), who can be reached at 225-3220; and John Harris (for the private-sector impact), who can be reached at 226-2618.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers Jr.
Ranking Democratic Member

S. 1515—Radiation Exposure Compensation Act Amendments of 1999.

SUMMARY

S. 1515 would broaden the population covered by the Radiation Exposure Compensation Act, which authorizes monetary compensation to individuals who were present, or nearby when nuclear weapons tests were conducted, or who worked in uranium mines, and later developed certain diseases. The legislation also would authorize the appropriation of such sums as may be necessary for each of the fiscal years 2000 through 2009 for the Department of Health and Human Services (HHS) to make grants to states to combat radiogenic cancers and diseases.

CBO estimates that implementing S. 1515 would result in additional discretionary spending of about \$750 million over the 2000-2005 period, assuming appropriation of the necessary amounts. About \$650 million of this total would be for compensation payments to individuals for radiation exposure, and the remainder would be spent on HHS grant programs. Because S. 1515 would not affect direct spending or receipts, pay-as-you-go procedures would not apply.

Current law restricts compensation for radiation exposure only to individuals who were present in certain western states between 1947 and 1971, and who meet certain requirements relating to radiation exposure and medical conditions. S. 1515 would increase the number of persons eligible for compensation payments, by:

- Adding more qualifying occupations relating to uranium production,

- Increasing the number of states covered and extending the time period considered for radiation exposure,
- Adding more diseases which may qualify individuals for compensation,
- Decreasing the level of radiation exposure that is necessary to qualify, and
- Making certain medical criteria less stringent for potential claimants.

S. 1515 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments. This legislation would create a new private-sector mandate that would reduce the fees paid to claimants' attorneys, but CBO estimates that the total costs of the mandate would fall below the threshold established in UMRA (\$109 million in 2000, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of S. 1515 is shown in the following table. The costs of this legislation fall within budget functions 550 (health) and 050 (national defense).

By Fiscal Year, in Millions of Dollars

	2000	2001	2002	2003	2004	2005
SPENDING SUBJECT TO APPROPRIATION						
Compensation Under Current Law ¹						
Budget Authority/Estimated Authorization Level ²	3	10	10	5	5	5
Estimated Outlays	12	10	10	5	5	5
Proposed Changes						
Additional Radiation Exposure Compensation						
Estimated Authorization Level	0	20	120	200	200	106
Estimated Outlays	0	20	120	200	200	106
HHS Grants						
Estimated Authorization Level	20	21	21	21	22	22
Estimated Outlays	1	19	23	22	21	21
Total Changes						
Estimated Authorization Level	20	41	141	221	222	128
Estimated Outlays	1	39	143	222	221	127
Spending Under S. 1515						
Estimated Authorization Level	23	51	151	226	227	133
Estimated Outlays	13	49	153	227	226	132

¹ Over the 1991–1999 period, total appropriations of about \$238 million were provided for radiation exposure compensation.

² The 2000 level is the amount appropriated for that year. The 2001–2005 levels are CBO estimates of compensation payments under current law for those years.

BASIS OF ESTIMATE

For this cost estimate, CBO assumes that funds will be appropriated for each fiscal year as they are needed to pay valid claims and to provide the HHS grants.

Additional Radiation Exposure Compensation

CBO expects that spending authorized by S. 1515 would follow a pattern similar to the payments authorized by the Radiation Exposure Compensation Act, but probably would occur somewhat faster because potential claimants are more familiar with the program. Most payments probably would occur within two to four years after enactment and virtually all payments would be made within 10 years of enactment. We estimate that compensation payments that would be authorized by this legislation total about \$650 million over the 2000–2005 period, and an additional \$200 million over the following five years.

Uranium Miners. CBO estimates that most of the payments under S. 1515 would be made to individuals who have worked in underground uranium mines. Based on information from the National Institute of Occupational Safety and Health, we estimate that there are about 20,000 former uranium miners in the United States (some of whom may be deceased, but whose families could receive payments). Under the Radiation Exposure Compensation Act, about 3,000 of these miners have filed claims and about half of them were successful. Because S. 1515 would cover more diseases that these miners may have developed and mining operations in more states over a longer time period, CBO estimates that roughly 1,775 additional miners would file claims for the first time from 2000 through 2005 and that 75 percent of these claims would be approved. In addition, we expect that most of the 1,500 miners whose claims were previously denied would refile and that about 75 percent of these claims would be approved, resulting in a total of about 2,500 successful claims from 2000 through 2005. CBO expects approval rates under S. 1515 to be higher than under current law because this legislation eases the requirements for approval. Each eligible uranium miner would be authorized to be paid \$100,000 under S. 1515. Thus, implementing these provisions would cost about \$250 million over the 2001–2005 period.

Other Groups Covered by S. 1515. Five other groups of individuals may be eligible for compensation under this act, including people who:

- Worked in uranium mills,
- Worked in above-ground uranium mines,
- Transported uranium ore from mines to mills,
- Participated in atmospheric nuclear tests conducted by the federal government (“on-site participants”), and
- Were present in certain areas close to such tests (known as “down-winders”).

Based on information about these groups from the Department of Justice, CBO estimates that roughly 9,600 persons would file claims during the 2000–2005 period, and that about 60 percent would gain approval and receive payments of \$50,000 (for down-winders), \$75,000 (for on-site participants), or \$100,000 (for other individuals). CBO estimates that, in total, the other groups targeted by this legislation would be authorized to receive payments of \$400 million over the 2001–2005 period.

HHS Grants

S. 1515 would authorize the appropriation of funds for state programs to screen individuals for cancer, provide referrals and follow-up services, develop and disseminate public information for the detection, prevention, and treatment of radiogenic cancers and diseases, and assist applicants in the documentation of compensation claims. Based on information from HHS, we estimate this work would cost about \$20 million annually.

PAY-AS-YOU-GO CONSIDERATIONS:

None.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

S. 1515 contains no intergovernmental mandates as defined in UMRA and could benefit state, local, and tribal governments. The act would provide competitive grants to entities, including state and local governments, that carry out certain programs relating to radiation-related diseases.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

S. 1515 would create a new private-sector mandate by reducing the limit on attorneys' fees under the Radiation Exposure Compensation Act. Current law limits attorneys' fees to 10 percent of the payment by the government to the claimant, but S. 1515 would set the maximum allowable fee at 2 percent. The mandate would primarily affect lawyers representing uranium miners and their survivors with claims pending under current law. For a successful claim of this type, S. 1515 could cost the miner's attorney up to \$6,000. CBO anticipates, however, that the number of successful claims would be quite low. The limit on fees also applies to other types of claims under S. 1515, but because such claims are difficult to pursue under current law costs related to them would not be significant. Consequently, the total costs of the mandate would fall below the threshold established in UMRA (\$109 million in 2000, adjusted annually for inflation).

PREVIOUS CBO ESTIMATE

On April 5, 2000, CBO transmitted a cost estimate for S. 1515, the Radiation Exposure Compensation Act Amendments of 1999, as passed by the Senate on November 19, 1999. The two versions of the legislation are identical, as are the cost estimates.

ESTIMATE PREPARED BY:

Federal Costs (Health and Human Services): Cynthia Dudzinski
(226-9010)

Federal Costs (all other costs): Mark Grabowicz (226-2860)

Impact on State, Local, and Tribal Governments: Lisa Cash
Driskill (225-3220)

Impact on the Private Sector: John Harris (226-2618)

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the committee finds the authority for this legislation in Article 1, section 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short Title

Section 1 contains the short title, the “Radiation Exposure Compensation Act Amendments of 1999.”

Section 2. Findings

Section 2 contains the findings, purpose, and apology. A new statement of findings is added. This new statement finds that since the enactment of the initial Act regulatory burdens have made it too difficult for some deserving individuals to be fairly and efficiently compensated. The findings also note the need to extend eligibility to States in which the Federal Government sponsored uranium mining and milling from 1941 to 1971, and that scientific data has provided medical validation for the extension of compensable radiogenic diseases. The findings also add that above-ground uranium miners, millers, and transporters of ore should be compensated in a manner similar to underground uranium miners when injured by radiation exposure. Finally, there is a finding that the Federal Government should work with State and local governments and healthcare organizations to provide programs for early detection, prevention, and education on radiogenic diseases to aid the individuals adversely affected by uranium mining and nuclear weapons testing.

Section 3. Amendments to the Radiation Exposure Compensation Act

Section 3 terminates the Trust Fund 22 years after the enactment of the RECA Amendments of 1999.

Section 3 also amends Section 4 of RECA 1990 with regard to claims relating to leukemia and other radiogenic diseases as a result of atmospheric nuclear testing.

An individual who was physically present in the affected area for at least 1 year during the period from 1/21/51 to 10/31/58, or who was physically present in the affected area for the period beginning on 6/30/62 and ending on 7/31/62 and submits written documentation that they developed leukemia after the applicable periods of exposure described above more than 2 years after the first exposure to fallout are eligible for \$50,000. An individual who participated in an on-site atmospheric nuclear test and submits written documentation that they contracted leukemia more than 2 years following the nuclear test is eligible for \$75,000. Further conditions for leukemia claims are that initial exposure to radiation from atmospheric testing occurred prior to age 21, that the claim for payment is filed with the Attorney General by or on behalf of the individual, and that the Attorney General determines in accordance with Section 6 of the Act that the claim meets the requirements of the Act.

An individual who was physically present in the affected area for at least 2 years between 1/15/51 and 10/31/58 or was present in the

affected area between 6/30/62 and 7/31/62 and submits written documentation of the development of a specified radiogenic disease is eligible for \$50,000. An individual who participated in an onsite atmospheric nuclear test, and submits written documentation that he or she developed a specified radiogenic disease more than 2 years after the first exposure to fallout is eligible for \$75,000. These individuals are eligible if the claim for such payment is filed with the Attorney General by or on behalf of the individual and if the Attorney General determines in accordance with Section 6 of RECA that the claim meets the requirements of the Act.

Affected areas for purposes of the Act in which individuals were exposed to radiation between 1/15/51–10/31/58 or 6/30/62–7/31/62 are as follows: Washington, Iron, Kane, Garfield, Sevier, Beaver, Milliard, Wayne, San Juan and Piute counties in Utah, White Pine, Nye, Lander, Lincoln, Eureka, and Clark counties in Nevada, and Coconino, Yavapai, Navajo, Apache, and Gila counties in Arizona.

The specified radiogenic diseases that would qualify individuals for compensation are leukemia (other than chronic lymphocytic leukemia) provided that initial exposure occurred after the age of 20 and the onset of the disease was at least 2 years after first exposure; lung cancer (other than in situ lung cancer that is discovered during or after a post-mortem exam); and the following diseases provided onset was at least 5 years after first exposure: multiple myeloma, lymphomas (other than Hodgkin's disease), and primary cancer of the thyroid, male or female breast, esophagus, stomach (provided initial exposure occurred before age 30), pharynx, small intestine, pancreas, bile ducts, gall bladder, salivary gland, urinary bladder, brain, colon, ovary, or liver (except if cirrhosis or hepatitis B is indicated).

Section 3 also amends Section 5 of RECA which deals with claims relating to uranium mining. An individual is eligible for \$100,000 if that individual was employed in a uranium mine or mill, or transported uranium ore or vanadium-uranium ore between 1/1/42 and 12/31/71. If an individual was a miner exposed to 40 or more working level months of radiation, he or she qualifies for compensation if written medical documentation is submitted that the individual developed lung cancer or a nonmalignant respiratory disease. If the individual was a miller or ore transporter, he or she qualifies for compensation if they worked for at least 1 year between 1/1/42 and 12/31/71 and submits written medical documentation that they developed lung cancer or a nonmalignant respiratory disease or renal cancers and other chronic renal disease including nephritis and kidney tubal tissue injury. Individuals are eligible if they worked at a mill in Colorado, New Mexico, Arizona, Wyoming, South Dakota, Washington, Utah, Idaho, North Dakota, Oregon, Texas, or any other State if an Atomic Energy Commission uranium mine was operated in such State between 1/1/42 and 12/31/71, the State submits an application to DOJ to include such a State, and the Attorney General determines to include said State. These individuals can receive payment if the claim is filed with the Attorney General by them or on their behalf, and if the Attorney General determines that the claim meets the requirements of the Act in accordance with Section 6.

The term "medical written documentation" is defined as including ABGs and a chest X-ray read by two certified "B" readers or

an interpreted HRCT scan, or pathology reports of tissue biopsies, or pulmonary function tests. Under this criteria, written documentation is considered conclusive and subject to a fair and random audit procedure established by the Attorney General. Written documentation provided by a physician must be provided by a physician who is employed by the Indian Health Service, the Department of Veterans Affairs, or is a board certified physician, and has a documented ongoing physician-patient relationship with the claimant.

The term “uranium mine” is defined as any underground excavation as well as open pit, strip, rim, surface, or other aboveground mines where uranium ore or vanadium-uranium was mined and extracted, and the term “uranium mill” is defined to include milling operations involving the processing of uranium ore or vanadium-uranium ore.

Section 3 changes Section 6 of RECA by first amending the establishment of filing procedures to require the Attorney General to take into account and make allowances for the law, tradition, and customs of Indian tribes and members of Indian tribes to the maximum extent possible when establishing these procedures. In the determination of claims, all reasonable doubt with regard to whether a claim meets the requirements of the Act will be resolved in favor of the claimant. Payments to individuals or survivors on a claim relating to presence at an on-site nuclear test shall be offset by any payment made pursuant to a final award or settlement on a claim (other than a claim for workers’ compensation), or any payment made by the Department of Veterans Affairs based on injuries incurred as a result of their exposure, based on the actuarial present value of such payments. In the case of deceased persons, the determination of those individuals eligible to receive compensation by virtue of marriage, relationship, or survivorship shall take into consideration the laws, traditions, and customs of affected Indian tribes.

With regard to action on claims, the Attorney General shall determine each claim no later than 12 months after the claim is received. If the claim is denied, the claimant has a reasonable period in which to seek administrative review of the denial of the claim, after which the Attorney General will make a final determination within 90 days of receipt of the claimant’s request for review. If the Attorney General fails to render a determination within 12 months after receipt of such request, the claim will be awarded as a matter of law and paid. The Attorney General may request any reasonable additional information or documentation to determine the claim in accordance with the established procedures. The period starting when the Attorney General makes a request for additional information and ending when the claimant provides that additional information or documentation, or notifies the Attorney General that they will not or cannot provide the information does not fall under the 12-month limitation.

The Attorney General shall ensure that approved claims are paid within 6 weeks of approval. Any procedures on claims shall take into consideration and incorporate Native American law, tradition, and custom with respect to the claims of Native Americans. Not later than 180 days after the date of the enactment of the RECA Amendments of 1999, the Attorney General shall issue revised reg-

ulations to carry out the Act. It should be noted that the DOJ has indicated that they feel, due to the nature of this expansion of the Act, that 180 days will not be sufficient to thoroughly revise the regulations. In addition to any other material that substantiates employment history for determining working level months, an individual filing a claim may make a substantiation by affidavit that meets requirements established by the Attorney General which is made by a person other than the individual filing a claim attesting to the claimant's employment history.

After the date of enactment of the RECA Amendments of 1999, any claimant who has been denied compensation may resubmit a claim for consideration by the Attorney General a maximum of 3 times. Any resubmittal made prior to the date of enactment does not apply to the limitation. The time limit to file a claim is extended to 22 years following the enactment of the 1999 RECA Amendments.

Attorney fee limitations are reduced from a 10% limit to a 2% limit of a claimant's payment.

GAO is directed to submit a report to Congress 18 months following the enactment of this Act and every 18 months thereafter detailing the administration of RECA by DOJ, analyzing claims, awards, and administrative costs and the budget of DOJ relating to the Act.

Section 4. Establishment of Program of Grants to States for Education, Prevention, and Early Detection of Radiogenic Cancers and Diseases

Section 4 establishes a program of grants to States for education, prevention, and early detection of radiogenic cancers and diseases. Section 4 amends the Public Health Service Act (42 U.S.C. § 285) by adding Section 417C. This amendment enables the Secretary of Health and Human Services to make grants to any National Cancer Institute-designated cancer center, Department of Veterans Affairs hospital or medical center, Federally Qualified Health Center, community health center, or hospital, or an agency of any State or local government, including any State department of health, or nonprofit organization. The purpose of these will be to carry out programs to screen individuals having been exposed to radiation for cancer as a preventive health measure, to provide referrals for medical treatment of such individuals, to ensure that follow-up services are available, to develop and disseminate public information programs for the detection, prevention and treatment of radiogenic cancers and diseases, and to assist applicants in the documentation of claims. This includes programs provided through Indian Health Service or through tribal contracts, compacts, grants, or agreements with the Indian Health Service which are determined appropriate to raising the health status of Indians. These grants do not affect any coverage obligation of a government or private health plan or program relating to an individual .

Beginning on October 1 following the first appropriation of this section and annually on October 1 thereafter, the Secretary is to submit a report to the Senate Committees on the Judiciary and Health, Education, Labor, and Pensions, and the House Judiciary and Commerce Committees summarizing the expenditures and programs funded under this section. This Act authorizes \$20 million

in appropriations to carry out this section for fiscal year 1999 and such sums as may be necessary for fiscal years 2000–2009.

AGENCY VIEWS

DEPARTMENT OF JUSTICE,
Washington, DC, January 24, 2000.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This provides the views of the Department of Justice on S. 1515, the “Radiation Exposure Compensation Act Amendments of 1999,” as passed by the Senate on November 19, 1999, to amend the Radiation Exposure Compensation Act (RECA), 42 U.S.C. § 2210 note (1994). Although the Department of Justice supports many provisions of S. 1515, we do have concerns about several others, as outlined in more detail below, and consequently oppose the bill as it is currently drafted.

As an initial matter, the Department supports Section 3(c)(2)(A)(ii), which would amend RECA to extend compensation for silicosis or pneumoconiosis to all eligible claimants. Currently, RECA limits compensation for silicosis and pneumoconiosis to miners employed in mines on “an Indian reservation.” 42 U.S.C. § 2210, Section 5(b). Additionally, the Department supports Section 3(c)(2)(C), which would allow claimants to satisfy the eligibility requirements of RECA through the submission of pathology reports of tissue biopsies as medical documentation for purposes of establishing a non-malignant respiratory disease or lung cancer in cases in which the claimant is living. Pursuant to our revised regulations, the Department has expanded the use of pathology reports of tissue biopsies as proof of a non-malignant respiratory disease. See 28 C.F.R. § 79.36(d)(ii). The Department also supports that part of Section 3(c)(2)(C) of S. 1515 that would provide compensation for *in situ* lung cancers. Recent revisions to the Department’s implementing regulations include *in situ* cancers in the definition of “primary lung cancer.” See 28 C.F.R. § 79.31(h). Section 3(c)(3) would permit a claimant’s treating physician to submit a written diagnosis of a non-malignant respiratory disease or lung cancer accompanied by written documentation as conclusive evidence of that disease. We would support such a provision, provided that it were amended to require that the accompanying written documentation included medical records substantiating the treating physician’s diagnosis.

The Department also supports the offset provisions contained in Section 3(d) of S. 1515 and the provisions contained in Section 3(d)(4), which would provide for the consideration and incorporation, to the fullest extent feasible, of Native American law, tradition, and custom with respect to the submission and processing of claims filed by Native Americans. Finally, the Department supports Section 3(e)(2)(A), which would allow, under certain circumstances, affidavits to substantiate employment history for purposes of determining working level months. As you know, the regulations implementing the Act permit claimants to set forth under oath on the standard claim form the name of each mine in which

the claimant worked, as well as the actual time period worked in each mine. *See* 28 C.F.R. § 79.33(b)(2).

Nevertheless, the Department does have concerns about S. 1515 and therefore opposes enactment of the bill as it is currently drafted. We would be pleased to work with the Committee to make appropriate revisions to address our concerns. In particular, Section 3(c)(1) of the bill proposes to expand compensation under RECA to include uranium millers, but does not define what constitutes a “mill,” or who will be considered a “miller.” We believe these fundamental questions should be addressed before Congress expands RECA coverage to this subset of workers. An ongoing study conducted by experts at the U.S. Department of Health and Human Services, National Institute of Occupational Safety and Health (NIOSH), upon whom the Department of Justice relies for scientific advice and expertise, may yield meaningful information concerning the health effects of radiation on uranium millers. While the Administration recognizes that this study has been ongoing for a longer period than initially expected, results are anticipated within a year. It is important that any expansion of the entitlements in the Act be supported by scientific evidence. Accordingly, we believe that changes in this area should await the completion of the NIOSH study.

Similar concerns exist with respect to that part of Section 3(c)(1) which proposes to compensate transport workers. There is little scientific information about this particular category of workers. Because uranium ore was transported by truck, rail, and even occasionally river barge, the extent of this claimant population could be quite extensive. Further, the scarcity of existing documentary evidence to establish a work history could make administration of this provision problematic. The potential cost could be very large. A detailed study of this potential group of claimants would likely resolve some of the questions concerning eligibility criteria.

Section 3(b) of S. 1515 would also add several new “Downwinder” and “Onsite Participant” diseases. Similarly, S. 1515 would increase the Downwinder “affected area” to include Wayne and San Juan counties in Utah and the counties of Coconino, Yavapai, Navajo, Apache, and Gila in Arizona. The National Cancer Institute (NCI), the experts in the field, advises us that, at this time, NCI cannot offer any scientific support for the expansion of the RECA program to include these additional diseases, nor are there radiodosimetric studies or other scientific findings to support the inclusion of the proposed areas.

We also have concerns about that part of Section 3(c) of S. 1515 that would reduce the radiation exposure threshold requirements for uranium miners to 40 Working Level Months and impose a one-year duration of employment requirement for millers and transport workers. We object to this provision. The Radiation Exposure Compensation Act Committee (“RECA Committee”), chartered by the Human Radiation Interagency Working Group in 1996, found that no single exposure figure is appropriate to establish a point at which it is more likely than not that all uranium miners’ exposure was the cause of subsequent lung disease, and that individual history factors must be considered in determining if an illness in a particular case is in fact caused by radiation exposure. The RECA Committee recommended, alternatively, an exposure-based model

and a duration of employment model. Both of these are based on the relative risk models developed by the National Research Council's Committee on the Biological Effects of Ionizing Radiation, and applied to updated cohorts of Colorado Plateau and New Mexico underground uranium miners.

In the exposure-based model, compensation is conditioned on risk variables that the latest data indicate most significantly affect the risk of lung cancer in underground uranium miners: cumulative exposure to radon progeny, attained age (the age at which the claimants developed cancer), and time since the miner's last exposure to radon in the mines. Alternatively, the duration of employment model contains criteria that are dependent on attained age, time since last exposure and the calendar year of first employment. (This last factor is significant because the mean level of radon in the mines declined appreciably over the years.) In both sets of criteria, the miner's smoking status is retained, providing assurances that miners are being compensated for the effects of exposure to radon, not smoking. Ignoring the relative risk variables and compensation criteria that the RECA Committee's scientists determined were "significant," fails to demonstrate a sound, scientifically-based approach for compensation. Finally, we note that expansion of the RECA eligibility criteria, as proposed in S. 1515, would require a significant commitment of additional resources.

The Department is proud of the Radiation Exposure Compensation Act Program and we look forward to working with Congress to improve this unique statute. The Department has granted nearly 50 percent of all claims filed, for a total amount of \$241,192,606.

We would be pleased to meet with you to discuss these issues in more detail, and to discuss how we might work together to craft appropriate legislation. Thank you for the opportunity to comment on this bill. We hope you find this information helpful. Please do not hesitate to contact this office if you have additional questions or concerns. The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the presentation of this letter.

Sincerely,

ROBERT RABEN, *Assistant Attorney General.*

cc: The Honorable John Conyers
Ranking Minority Member

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

RADIATION EXPOSURE COMPENSATION ACT

* * * * *

SEC. 3. TRUST FUND.

(a) * * *

* * * * *

(d) **TERMINATION.**—The Fund shall terminate 22 years after the **[date of the enactment of this Act]** *date of enactment of the Radiation Exposure Compensation Act Amendments of 1999*. If all of the amounts in the Fund have not been expended by the end of that 22-year period, investments of amounts in the Fund shall be liquidated and receipts thereof deposited in the Fund and all funds remaining in the Fund shall be deposited in the miscellaneous receipts account in the Treasury.

* * * * *

SEC. 4. CLAIMS RELATING TO ATMOSPHERIC NUCLEAR TESTING.(a) **CLAIMS.**—

[(1) CLAIMS RELATING TO CHILDHOOD LEUKEMIA.—Any individual who was physically present in the affected area for a period of at least 1 year during the period beginning on January 21, 1951, and ending on October 31, 1958, or was physically present in the affected area for the period beginning on June 30, 1962, and ending on July 31, 1962, and who submits written medical documentation that he or she, after such period of physical presence and between 2 and 30 years after first exposure to the fallout, contracted leukemia (other than chronic lymphocytic leukemia), shall receive \$50,000 if—

[(A) initial exposure occurred prior to age 21,

[(B) the claim for such payment is filed with the Attorney General by or on behalf of such individual, and

[(C) the Attorney General determines, in accordance with section 6, that the claim meets the requirements of this Act.]

(1) **CLAIMS RELATING TO LEUKEMIA.**—

(A) **IN GENERAL.**—*An individual described in this subparagraph shall receive an amount specified in subparagraph (B) if the conditions described in subparagraph (C) are met. An individual referred to in the preceding sentence is an individual who—*

(i)(I) was physically present in an affected area for a period of at least 1 year during the period beginning on January 21, 1951, and ending on October 31, 1958;

(II) was physically present in the affected area for the period beginning on June 30, 1962, and ending on July 31, 1962; or

(III) participated onsite in a test involving the atmospheric detonation of a nuclear device; and

(ii) submits written documentation that such individual developed leukemia—

(I) after the applicable period of physical presence described in subclause (I) or (II) of clause (i) or onsite participation described in clause (i)(III) (as the case may be); and

(II) more than 2 years after first exposure to fallout.

(B) **AMOUNTS.**—*If the conditions described in subparagraph (C) are met, an individual—*

(i) who is described in subclause (I) or (II) of subparagraph (A)(i) shall receive \$50,000; or

(ii) who is described in subclause (III) of subparagraph (A)(i) shall receive \$75,000.

(C) CONDITIONS.—The conditions described in this subparagraph are as follows:

(i) Initial exposure occurred prior to age 21.

(ii) The claim for a payment under subparagraph (B) is filed with the Attorney General by or on behalf of the individual.

(iii) The Attorney General determines, in accordance with section 6, that the claim meets the requirements of this Act.

* * * * *

(b) DEFINITIONS.—For purposes of this section, the term—

(1) “affected area” means—

(A) in the State of Utah, the counties of Washington, Iron, Kane, Garfield, Sevier, Beaver, Millard, *Wayne*, *San Juan*, and Piute;

* * * * *

[(C) that part of Arizona that is north of the Grand Canyon and west of the Colorado River; and]

(C) in the State of Arizona, the counties of Coconino, *Yavapai*, *Navajo*, *Apache*, and *Gila*; and

(2) “specified disease” means leukemia (other than chronic lymphocytic leukemia), provided that initial exposure occurred after the age of 20 and [the onset of the disease was between 2 and 30 years of first exposure,] *the onset of the disease was at least 2 years after first exposure, lung cancer (other than in situ lung cancer that is discovered during or after a post-mortem exam)*, and the following diseases, provided onset was at least 5 years after first exposure: multiple myeloma, lymphomas (other than Hodgkin’s disease), and primary cancer of the: thyroid [(provided initial exposure occurred by the age of 20)], *male or female breast [(provided initial exposure occurred prior to age 40)]*, esophagus [(provided low alcohol consumption and not a heavy smoker)], stomach [(provided initial exposure occurred before age 30)], pharynx [(provided not a heavy smoker)], small intestine, pancreas [(provided not a heavy smoker and low coffee consumption)], bile ducts, gall bladder, *salivary gland, urinary bladder, brain, colon, ovary*, or liver (except if cirrhosis or hepatitis B is indicated).

SEC. 5. CLAIMS RELATING TO URANIUM MINING.

[(a) ELIGIBILITY OF INDIVIDUALS.—Any individual who was employed in a uranium mine located in Colorado, New Mexico, Arizona, Wyoming, or Utah at any time during the period beginning on January 1, 1947, and ending on December 31, 1971, and who, in the course of such employment—

[(1)(A) if a nonsmoker, was exposed to 200 or more working level months of radiation and submits written medical documentation that he or she, after such exposure, developed lung cancer, or

[(B) if a smoker, was exposed to 300 or more working level months of radiation and cancer incidence occurred before age

45 or was exposed to 500 or more working level months of radiation, regardless of age of cancer incidence, and submits written medical documentation that he or she, after such exposure, developed lung cancer; or

[(2)(A) if a nonsmoker, was exposed to 200 or more working level months of radiation and submits written medical documentation that he or she, after such exposure, developed a nonmalignant respiratory disease, or

[(B) if a smoker, was exposed to 300 or more working level months of radiation and the nonmalignant respiratory disease developed before age 45 or was exposed to 500 or more working level months of radiation, regardless of age of disease incidence, and submits written medical documentation that he or she, after such exposure, developed a nonmalignant respiratory disease,

shall receive \$100,000, if—

[(i) the claim for such payment is filed with the Attorney General by or on behalf of such individual, and

[(ii) the Attorney General determines, in accordance with section 6, that the claim meets the requirements of this Act.

Payments under this section may be made only in accordance with section 6.]

(a) *ELIGIBILITY OF INDIVIDUALS.*—

(1) *IN GENERAL.*—*An individual shall receive \$100,000 for a claim made under this Act if—*

(A) *that individual—*

(i) *was employed in a uranium mine or uranium mill (including any individual who was employed in the transport of uranium ore or vanadium-uranium ore from such mine or mill) located in Colorado, New Mexico, Arizona, Wyoming, South Dakota, Washington, Utah, Idaho, North Dakota, Oregon, and Texas at any time during the period beginning on January 1, 1942, and ending on December 31, 1971; and*

(ii) *(I) was a miner exposed to 40 or more working level months of radiation and submits written medical documentation that the individual, after that exposure, developed lung cancer or a nonmalignant respiratory disease; or*

(II) was a miller or ore transporter who worked for at least 1 year during the period described under clause (i) and submits written medical documentation that the individual, after that exposure, developed lung cancer or a nonmalignant respiratory disease or renal cancers and other chronic renal disease including nephritis and kidney tubal tissue injury;

(B) the claim for that payment is filed with the Attorney General by or on behalf of that individual; and

(C) the Attorney General determines, in accordance with section 6, that the claim meets the requirements of this Act.

(2) *INCLUSION OF ADDITIONAL STATES.*—*Paragraph (1)(A)(i) shall apply to a State, in addition to the States named under such clause, if—*

(A) *an Atomic Energy Commission uranium mine was operated in such State at any time during the period beginning on January 1, 1942, and ending on December 31, 1971;*

(B) *the State submits an application to the Department of Justice to include such State; and*

(C) *the Attorney General makes a determination to include such State.*

(3) *PAYMENT REQUIREMENT.—Each payment under this section may be made only in accordance with section 6.*

(b) *DEFINITIONS.—For purposes of this section—*

(1) * * *

* * * * *

(3) *the term “nonmalignant respiratory disease” means fibrosis of the lung, pulmonary fibrosis, [and] corpulmonale related to fibrosis of the lung[; and if the claimant, whether Indian or non-Indian, worked in a uranium mine located on or within an Indian Reservation, the term shall also include moderate or severe silicosis or pneumoconiosis; and], silicosis, and pneumoconiosis;*

(4) *the term “Indian tribe” means any Indian tribe, band, nation, pueblo, or other organized group or community, that is recognized as eligible for special programs and services provided by the United States to Indian tribes because of their status as Indians[.];*

(5) *the term “written medical documentation” for purposes of proving a nonmalignant respiratory disease or lung cancer means, in any case in which the claimant is living—*

(A)(i) *an arterial blood gas study; or*

(ii) *a written diagnosis by a physician meeting the requirements of subsection (c)(1); and*

(B)(i) *a chest x-ray administered in accordance with standard techniques and the interpretive reports of a maximum of 2 National Institute of Occupational Health and Safety certified “B” readers classifying the existence of the nonmalignant respiratory disease of category 1/0 or higher according to a 1989 report of the International Labor Office (known as the “ILO”), or subsequent revisions;*

(ii) *high resolution computed tomography scans (commonly known as “HRCT scans”) (including computer assisted tomography scans (commonly known as “CAT scans”), magnetic resonance imaging scans (commonly known as “MRI scans”), and positron emission tomography scans (commonly known as “PET scans”)) and interpretive reports of such scans;*

(iii) *pathology reports of tissue biopsies; or*

(iv) *pulmonary function tests indicating restrictive lung function, as defined by the American Thoracic Society;*

(6) *the term “lung cancer”—*

(A) *means any physiological condition of the lung, trachea, or bronchus that is recognized as lung cancer by the National Cancer Institute; and*

(B) *includes in situ lung cancers;*

(7) *the term “uranium mine” means any underground excavation, including “dog holes”, as well as open pit, strip, rim,*

surface, or other aboveground mines, where uranium ore or vanadium-uranium ore was mined or otherwise extracted; and

(8) the term "uranium mill" includes milling operations involving the processing of uranium ore or vanadium-uranium ore, including both carbonate and acid leach plants.

(c) WRITTEN DOCUMENTATION.—

(1) DIAGNOSIS ALTERNATIVE TO ARTERIAL BLOOD GAS STUDY.—

(A) IN GENERAL.—For purposes of this Act, the written diagnosis and the accompanying interpretive reports described in subsection (b)(5)(A) shall—

(i) be considered to be conclusive; and

(ii) be subject to a fair and random audit procedure established by the Attorney General.

(B) CERTAIN WRITTEN DIAGNOSES.—

(i) IN GENERAL.—For purposes of this Act, a written diagnosis made by a physician described under clause (ii) of a nonmalignant pulmonary disease or lung cancer of a claimant that is accompanied by written documentation shall be considered to be conclusive evidence of that disease.

(ii) DESCRIPTION OF PHYSICIANS.—A physician referred to under clause (i) is a physician who—

(I) is employed by the Indian Health Service or the Department of Veterans Affairs; or

(II) is a board certified physician; and

(III) has a documented ongoing physician patient relationship with the claimant.

(2) CHEST X-RAYS.—

(A) IN GENERAL.—For purposes of this Act, a chest x-ray and the accompanying interpretive reports described in subsection (b)(5)(B) shall—

(i) be considered to be conclusive; and

(ii) be subject to a fair and random audit procedure established by the Attorney General.

(B) CERTAIN WRITTEN DIAGNOSES.—

(i) IN GENERAL.—For purposes of this Act, a written diagnosis made by a physician described in clause (ii) of a nonmalignant pulmonary disease or lung cancer of a claimant that is accompanied by written documentation that meets the definition of that term under subsection (b)(5) shall be considered to be conclusive evidence of that disease.

(ii) DESCRIPTION OF PHYSICIANS.—A physician referred to under clause (i) is a physician who—

(I) is employed by—

(aa) the Indian Health Service; or

(bb) the Department of Veterans Affairs;

and

(II) has a documented ongoing physician patient relationship with the claimant.

SEC. 6. DETERMINATION AND PAYMENT OF CLAIMS.

(a) ESTABLISHMENT OF FILING PROCEDURES.—The Attorney General shall establish procedures whereby individuals may submit claims for payments under this Act. *In establishing procedures*

under this subsection, the Attorney General shall take into account and make allowances for the law, tradition, and customs of Indian tribes (as that term is defined in section 5(b)) and members of Indian tribes, to the maximum extent practicable.

(b) DETERMINATION OF CLAIMS.—

(1) IN GENERAL.—The Attorney General shall, in accordance with this subsection, determine whether each claim filed under this Act meets the requirements of this Act. *All reasonable doubt with regard to whether a claim meets the requirements of this Act shall be resolved in favor of the claimant.*

* * * * *

(c) PAYMENT OF CLAIMS.—

(1) * * *

(2) OFFSET FOR CERTAIN PAYMENTS.—(A) * * *

(B) A payment to an individual, or to a survivor of that individual, under this section on a claim under section 4(a)(2)(C) shall be offset by the amount of—

(i) any payment made pursuant to a final award or settlement on a claim (*other than a claim for workers' compensation*), against any person, or

(ii) any payment made by the **【Federal Government】** Department of Veterans Affairs,

* * * * *

(4) PAYMENTS IN THE CASE OF DECEASED PERSONS.—

(A) * * *

* * * * *

(D) APPLICATION OF NATIVE AMERICAN LAW.—*In determining those individuals eligible to receive compensation by virtue of marriage, relationship, or survivorship, such determination shall take into consideration and give effect to established law, tradition, and custom of the particular affected Indian tribe.*

(d) ACTION ON CLAIMS.—

(1) IN GENERAL.—The Attorney General shall complete the determination on each claim filed in accordance with the procedures established under subsection (a) not later than twelve months after the claim is so filed. *For purposes of determining when the 12-month period ends, a claim under this Act shall be deemed filed as of the date of its receipt by the Attorney General. In the event of the denial of a claim, the claimant shall be permitted a reasonable period in which to seek administrative review of the denial by the Attorney General. The Attorney General shall make a final determination with respect to any administrative review within 90 days after the receipt of the claimant's request for such review. In the event the Attorney General fails to render a determination within 12 months after the date of the receipt of such request, the claim shall be deemed awarded as a matter of law and paid.*

(2) ADDITIONAL INFORMATION.—*The Attorney General may request from any claimant under this Act, or from any individual or entity on behalf of any such claimant, any reasonable additional information or documentation necessary to complete*

the determination on the claim in accordance with the procedures established under subsection (a).

(3) TREATMENT OF PERIOD ASSOCIATED WITH REQUEST.—

(A) IN GENERAL.—The period described in subparagraph (B) shall not apply to the 12-month limitation under paragraph (1).

(B) PERIOD.—The period described in this subparagraph is the period—

(i) beginning on the date on which the Attorney General makes a request for additional information or documentation under paragraph (2); and

(ii) ending on the date on which the claimant or individual or entity acting on behalf of that claimant submits that information or documentation or informs the Attorney General that it is not possible to provide that information or that the claimant or individual or entity will not provide that information.

(4) PAYMENT WITHIN 6 WEEKS.—The Attorney General shall ensure that an approved claim is paid not later than 6 weeks after the date on which such claim is approved.

(5) NATIVE AMERICAN CONSIDERATIONS.—Any procedures under this subsection shall take into consideration and incorporate, to the fullest extent feasible, Native American law, tradition, and custom with respect to the submission and processing of claims by Native Americans.

* * * * *

(i) USE OF EXISTING RESOURCES.—The Attorney General should use funds and resources available to the Attorney General to carry out his or her functions under this Act. Not later than 180 days after the date of enactment of the Radiation Exposure Compensation Act Amendments of 1999, the Attorney General shall issue revised regulations to carry out this Act.

* * * * *

SEC. 8. LIMITATIONS ON CLAIMS.

(a) IN GENERAL.—A claim to which this Act applies shall be barred unless the claim is filed within [20 years after the date of the enactment of this Act] 22 years after the date of enactment of the Radiation Exposure Compensation Act Amendments of 1999.

(b) RESUBMITTAL OF CLAIMS.—After the date of enactment of the Radiation Exposure Compensation Act Amendments of 1999, any claimant who has been denied compensation under this Act may resubmit a claim for consideration by the Attorney General in accordance with this Act not more than 3 times. Any resubmittal made before the date of enactment of the Radiation Exposure Compensation Act Amendments of 1999 shall not be applied to the limitation under the preceding sentence.

SEC. 9. ATTORNEY FEES.

Notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with the claim of an individual under this Act, more than [10 per centum] 2 percent of a payment made under this Act on such claim. Any

such representative who violates this section shall be fined not more than \$5,000.

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SECTION 417C OF THE PUBLIC HEALTH SERVICE ACT

SEC. 417C. GRANTS FOR EDUCATION, PREVENTION, AND EARLY DETECTION OF RADIOGENIC CANCERS AND DISEASES.

(a) *DEFINITION.*—In this section the term “entity” means any—

- (1) National Cancer Institute-designated cancer center;
- (2) Department of Veterans Affairs hospital or medical center;
- (3) Federally Qualified Health Center, community health center, or hospital;
- (4) agency of any State or local government, including any State department of health; or
- (5) nonprofit organization.

(b) *IN GENERAL.*—The Secretary, acting through the Administrator of the Health Resources and Services Administration in consultation with the Director of the National Institutes of Health and the Director of the Indian Health Service, may make competitive grants to any entity for the purpose of carrying out programs to—

- (1) screen individuals described under section 4(a)(1)(A)(i) or 5(a)(1)(A) of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) for cancer as a preventative health measure;
- (2) provide appropriate referrals for medical treatment of individuals screened under paragraph (1) and to ensure, to the extent practicable, the provision of appropriate follow-up services;
- (3) develop and disseminate public information and education programs for the detection, prevention, and treatment of radiogenic cancers and diseases; and
- (4) facilitate putative applicants in the documentation of claims as described in section 5(a) of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note).

(c) *INDIAN HEALTH SERVICE.*—The programs under subsection (a) shall include programs provided through the Indian Health Service or through tribal contracts, compacts, grants, or cooperative agreements with the Indian Health Service and which are determined appropriate to raising the health status of Indians.

(d) *GRANT AND CONTRACT AUTHORITY.*—Entities receiving a grant under subsection (b) may expend the grant to carry out the purpose described in such subsection.

(e) *HEALTH COVERAGE UNAFFECTED.*—Nothing in this section shall be construed to affect any coverage obligation of a governmental or private health plan or program relating to an individual referred to under subsection (b)(1).

(f) *REPORT TO CONGRESS.*—Beginning on October 1 of the year following the date on which amounts are first appropriated to carry out this section and annually on each October 1 thereafter, the Secretary shall submit a report to the Committee on the Judiciary and the Committee on Health, Education, Labor, and Pensions of the Senate and to the Committee on the Judiciary and the Committee

on Commerce of the House of Representatives. Each report shall summarize the expenditures and programs funded under this section as the Secretary determines to be appropriate.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the purpose of carrying out this section \$20,000,000 for fiscal year 1999 and such sums as may be necessary for each of the fiscal years 2000 through 2009.

