

108TH CONGRESS  
1ST SESSION

# H. R. 1758

To amend the Energy Employees Occupational Illness Compensation Program Act of 2000 to improve the program of benefits for contractor employees of the Department of Energy who were exposed to toxic substances at Department of Energy facilities, to provide coverage under subtitle B of that Act for certain additional individuals and illnesses, to establish an ombudsman, to make technical corrections, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 10, 2003

Mr. STRICKLAND (for himself, Mr. WHITFIELD, Mr. HOLDEN, Mr. KANJORSKI, Ms. SLAUGHTER, Mr. GIBBONS, Mr. BROWN of Ohio, Mrs. TAUSCHER, Ms. DEGETTE, Mr. UDALL of Colorado, Mr. COOPER, Mr. BEAUPREZ, Mr. MCGOVERN, Mr. MURTHA, Mr. INSLEE, Mr. DAVIS of Tennessee, Mr. FROST, Ms. BERKLEY, and Mr. UDALL of New Mexico) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Education and the Workforce, 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

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## A BILL

To amend the Energy Employees Occupational Illness Compensation Program Act of 2000 to improve the program of benefits for contractor employees of the Department of Energy who were exposed to toxic substances at Department of Energy facilities, to provide coverage under subtitle B of that Act for certain additional individuals and illnesses, to establish an ombudsman, to make technical corrections, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
 5 “Reform of Energy Workers Compensation Act”.

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

Sec. 1. Short title; table of contents.

Sec. 2. Findings; purpose.

TITLE I—AUTHORIZATION OF A THIRD-PARTY PAYOR FOR DOE  
 CONTRACTOR EMPLOYEES EXPOSED TO TOXIC SUBSTANCES

Sec. 101. Benefits.

Sec. 102. GAO report.

TITLE II—AMENDMENTS RELATING TO SUBTITLE B OF  
 PROGRAM

Sec. 201. Coverage for chronic renal disease.

Sec. 202. Coverage for lung cancer in covered beryllium employees.

Sec. 203. Time limits.

Sec. 204. Correcting problems in the radioepidemiologic model for determining  
 compensation.

Sec. 205. Additional specified cancers.

Sec. 206. Coverage for individuals employed by atomic weapons employers or  
 beryllium employees during period of residual contamination.

Sec. 207. Coordination with Radiation Exposure Compensation Act.

Sec. 208. Extension of coverage to certain workers.

Sec. 209. Report by National Institute for Occupational Safety and Health on  
 institute’s access to information relating to performing radi-  
 ation dose reconstructions.

Sec. 210. Technical corrections.

TITLE III—PROVISIONS RELATING TO EITHER SUBTITLE OF ACT

Sec. 301. Providing administrative relief in cases where medical records are not  
 available.

Sec. 302. Resource centers and outreach programs.

Sec. 303. Office of the Ombudsman.

Sec. 304. Assignment of claims.

Sec. 305. Memorandum of agreement.

8 **SEC. 2. FINDINGS; PURPOSE.**

9 (a) FINDINGS.—The Congress finds the following:

1           (1) The Energy Employees Occupational Illness  
2           Compensation Program Act of 2000 (42 U.S.C.  
3           7384 et seq.) (hereinafter in this section referred to  
4           as “EEOICPA”) was intended to ensure the pay-  
5           ment of timely, uniform, adequate compensation  
6           with respect to covered employees (and, where appli-  
7           cable, survivors of such employees) suffering from  
8           occupational illnesses incurred by such employees in  
9           the performance of duty for the Department of En-  
10          ergy and certain of its contractors, subcontractors,  
11          and vendors, and to provide parity for uranium min-  
12          ers under the Radiation Exposure Compensation Act  
13          (42 U.S.C. 2210 note).

14          (2) Four Federal agencies, the Departments of  
15          Labor, Health and Human Services, Energy, and  
16          Justice, have been assigned responsibilities under  
17          EEOICPA pursuant to Executive Order No. 13179,  
18          dated December 7, 2000 (42 U.S.C. 7384 note).

19          (3) The Department of Labor began accepting  
20          claims July 31, 2001, and the Department of Health  
21          and Human Services, through the National Institute  
22          for Occupational Safety and Health, will perform ra-  
23          diation dose reconstruction for cancer claims and  
24          evaluate petitions for Special Exposure Cohorts.

1           (4) The Department of Energy finalized its reg-  
2           ulations governing claims under Subtitle D of  
3           EEOICPA on August 14, 2002. Those regulations  
4           require claimants to use a State workers' compensa-  
5           tion system to secure benefits after receiving a posi-  
6           tive finding from a Department of Energy physi-  
7           cians panel. The Department of Energy has con-  
8           ceded, however, that it will not have a willing payor  
9           for as many as 50 percent of the claims that are  
10          meritorious. As a consequence, many deserving  
11          claimants with a positive determination from a De-  
12          partment of Energy physicians panel will nonetheless  
13          be denied benefits.

14          (5) The Department of Energy's regulations (at  
15          10 C.F.R. Part 852) direct contractors of the De-  
16          partment to adopt a non-adversarial posture in state  
17          workers' compensation proceedings, which, by virtue  
18          of State law, are structured as an adversarial forum.  
19          The policy of the Department of Energy requiring  
20          its contractors to adopt a non-adversarial posture  
21          within an adversarial State workers' compensation  
22          system should be remedied by utilizing a non-adver-  
23          sarial dispute resolution system. Taxpayers would  
24          also benefit from placing claimants in a non-adver-  
25          sarial system, such as the type of systems adminis-

1       tered by the Department of Labor under subtitle B  
2       of EEOICPA, as doing so would assure that disabili-  
3       ties related to occupational illnesses would be com-  
4       pensated proportional to the degree of injury.

5           (6) In order to assure that congressional intent  
6       is honored with respect to the Department of Ener-  
7       gy's program of worker assistance for occupational  
8       illnesses that arose out of the course of employment  
9       from exposure to toxic substances at Department of  
10      Energy facilities, the Department of Energy's imple-  
11      mentation of subtitle D of EEOICPA requires the  
12      creation of a third-party payor to assure payment of  
13      valid worker compensation claims.

14          (7) Certain renal diseases related to uranium  
15      exposure and cancers related to employment by be-  
16      ryllium vendors should be added to coverage under  
17      subtitle B.

18          (8) Congress intended that follow-up imple-  
19      menting legislation would be required when it passed  
20      EEOICPA in October 2000. Indeed, section 3613 of  
21      EEOICPA directed the administration to provide  
22      such follow-up implementing legislation. Although  
23      such draft legislation was forwarded to Congress on  
24      January 15, 2001, no action was taken. However, in  
25      December 2001, Congress adopted technical amend-

1       ments to EEOICPA. Since then, significant short-  
2       comings in EEOICPA have been identified as the 3  
3       Federal agencies have begun implementing  
4       EEOICPA.

5       (b) PURPOSE.—The purpose of this Act is to amend  
6 EEOICPA to—

7           (1) ensure that all meritorious claims for occu-  
8       pational illness caused by exposure to toxic sub-  
9       stances at Department of Energy facilities are  
10      promptly, equitably, and efficiently compensated  
11      under subtitle D of EEOICPA, through the estab-  
12      lishment of the Department of Labor as a third-  
13      party payor and the use of the Fund established  
14      under EEOICPA;

15          (2) enhance assistance to claimants through an  
16      ombudsman, outreach, and resource centers;

17          (3) ensure that there is parity in treatment of  
18      chronic renal disease between uranium-exposed De-  
19      partment of Energy employees (including employees  
20      of contractors, subcontractors, and atomic weapons  
21      employer facilities) and the uranium-exposed work-  
22      ers under the Radiation Exposure Compensation  
23      Act;

24          (4) provide coverage of lung cancer for beryl-  
25      lium-exposed workers;

1           (5) authorize the Secretary of Energy to expand  
2           dates of coverage for atomic energy weapons facili-  
3           ties, or beryllium vendors, beyond the dates for  
4           which such facilities were under contract to the  
5           Atomic Energy Commission and the Department of  
6           Energy, if specified by the National Institute for Oc-  
7           cupational Safety and Health in the reports required  
8           by section 3151(b)(2)(A)(ii) of the National Defense  
9           Authorization Act for Fiscal Year 2002 (42 U.S.C.  
10          7384 note) or any subsequent report;

11          (6) provide for an advisory committee for the  
12          Department of Energy; and

13          (7) make administrative improvements and  
14          technical corrections.

15 **TITLE I—AUTHORIZATION OF A**  
16 **THIRD-PARTY PAYOR FOR**  
17 **DOE CONTRACTOR EMPLOY-**  
18 **EES EXPOSED TO TOXIC SUB-**  
19 **STANCES**

20 **SEC. 101. BENEFITS.**

21          Subtitle D of the Energy Employees Occupational Ill-  
22          ness Compensation Program Act of 2000 (42 U.S.C.  
23          7385o) is amended to read as follows:

1 **“Subtitle D—Third-Party Payor for**  
2 **DOE Contractor Employees Ex-**  
3 **posed to Toxic Substances**

4 **“SEC. 3661. DEFINITIONS.**

5 “In this subtitle:

6 “(1) The term ‘DOE contractor’ means any of  
7 the following:

8 “(A) A contractor (or subcontractor at any  
9 tier) of the Department of Energy.

10 “(B) A contractor (or subcontractor at any  
11 tier) of USEC, a Government-owned corpora-  
12 tion, during the period beginning on July 1,  
13 1993, and ending on July 28, 1998.

14 “(2) The term ‘DOE contractor employee’  
15 means any of the following:

16 “(A) An employee of a contractor (or sub-  
17 contractor at any tier) of the Department of  
18 Energy.

19 “(B) An employee of a contractor (or sub-  
20 contractor at any tier) of USEC, a Govern-  
21 ment-owned corporation, during the period be-  
22 ginning on July 1, 1993, and ending on July  
23 28, 1998.

24 “(3) The term ‘covered DOE contractor em-  
25 ployee’ means a DOE contractor employee, if a



1 claim relating to that employee is forwarded by the  
2 Secretary of Energy under section 3662(d)(3)(A) to  
3 the Secretary of Labor for payment under section  
4 3663.

5 “(4) The term ‘specified illness’ means, with re-  
6 spect to a covered DOE contractor employee, the ill-  
7 ness by reason of which the claim relating to that  
8 employee was forwarded by the Secretary of Energy  
9 under section 3662(d)(3)(A) to the Secretary of  
10 Labor for payment under section 3663.

11 **“SEC. 3662. DETERMINATIONS OF CAUSATION BY DEPART-**  
12 **MENT OF ENERGY.**

13 “(a) PROCEDURE FOR SUBMITTING CLAIMS.—

14 “(1) IN GENERAL.—The Secretary of Energy  
15 shall establish, by regulation, procedures under  
16 which an individual may submit a claim for benefits  
17 under this subtitle due to occupational illness from  
18 exposure to toxic substances. The procedures shall  
19 ensure that each such claim receives a determination  
20 by the Secretary of Energy not later than 180 days  
21 after the receipt of the claim.

22 “(2) NOTICE TO CLAIMANT.—Not later than 10  
23 days after the receipt of a claim under paragraph  
24 (1), the Secretary of Energy shall notify the claim-  
25 ant of the receipt of the claim and provide the name,

1 address, and phone number of a person capable of  
2 answering questions and providing additional infor-  
3 mation with respect to the procedures and benefits  
4 under this subtitle.

5 “(b) INITIAL REVIEW BY DOE.—

6 “(1) EVIDENCE REQUIRED.—The Secretary of  
7 Energy shall review each claim submitted under this  
8 section and, for each such claim, determine not later  
9 than 30 days after receipt of the claim whether the  
10 claimant submitted reasonable evidence of both of  
11 the following:

12 “(A) The claim was filed by or on behalf  
13 of a DOE contractor employee or such employ-  
14 ee’s estate.

15 “(B) The illness or death of the DOE con-  
16 tractor employee may have been related to em-  
17 ployment at a Department of Energy facility.

18 “(2) DETERMINATIONS.—

19 “(A) If the Secretary determines that the  
20 claimant did not submit reasonable evidence  
21 under either paragraph (1)(A) or (1)(B), or  
22 both, the Secretary shall, not later than 10 days  
23 after making such determination, notify the  
24 claimant of such determination and include the

1 claimant’s options for appeal or for submitting  
2 additional evidence.

3 “(B) If the Secretary determines that the  
4 claimant did submit reasonable evidence under  
5 both paragraphs (1)(A) and (1)(B), the Sec-  
6 retary shall—

7 “(i) not later than 10 days after mak-  
8 ing such determination, notify the claimant  
9 of such determination;

10 “(ii) ensure that the claimant is af-  
11 farded the opportunity to review the entire  
12 record, and to supplement the record with-  
13 in 30 days after the date on which infor-  
14 mation is provided by the DOE contractor,  
15 before the claim is submitted to a physi-  
16 cians panel;

17 “(iii) not later than 10 days after the  
18 claimant supplements the record under  
19 clause (ii), submit the claim to a physi-  
20 cians panel for review under subsection (c);  
21 and

22 “(iv) not later than 10 days after sub-  
23 mitting the claim to a physicians panel, no-  
24 tify the claimant of such submission.

25 “(c) REVIEW BY PHYSICIANS PANELS.—

1 “(1) COMPOSITION.—

2 “(A) The Secretary of Energy shall inform  
3 the Secretary of Health and Human Services of  
4 the number of physicians panels the Secretary  
5 of Energy has determined to be appropriate to  
6 administer this section, the number of physi-  
7 cians needed for each panel, and the area of ju-  
8 risdiction of each panel.

9 “(B) The Secretary of Health and Human  
10 Services shall appoint panel members with expe-  
11 rience and competency in diagnosing occupa-  
12 tional illnesses under section 3109 of title 5,  
13 United States Code. Each member of a panel  
14 shall be paid at a rate not to exceed 121 per-  
15 cent of the rate of pay payable for level I of the  
16 Executive Schedule for each day (including  
17 travel time) the member is engaged in the work  
18 of a panel.

19 “(C) A panel established under this sub-  
20 section shall not be subject to the Federal Advi-  
21 sory Committee Act (5 U.S.C. App.).

22 “(2) OPERATION.—

23 “(A) The Secretary of Energy shall assist  
24 the claimant in obtaining additional evidence  
25 within the control of the Department of Energy

1 or a DOE contractor who employed a DOE  
2 contractor employee and relevant to the panel’s  
3 deliberations.

4 “(B) At the request of a panel, the Sec-  
5 retary of Energy and a DOE contractor who  
6 employed a DOE contractor employee shall pro-  
7 vide additional information relevant to the pan-  
8 el’s deliberations. A panel may consult special-  
9 ists in relevant fields as it determines nec-  
10 essary.

11 “(C) In any case in which the panel finds  
12 that additional diagnostic testing or an expo-  
13 sure assessment is necessary to the panel’s de-  
14 liberations—

15 “(i) the panel shall so notify the Sec-  
16 retary of Energy and the claimant;

17 “(ii) the claimant may obtain such di-  
18 agnostic testing or exposure assessment  
19 using a qualified physician chosen by the  
20 claimant or a qualified occupational health  
21 expert (as applicable) or, if the claimant so  
22 desires, may obtain such diagnostic testing  
23 or exposure assessment using the program  
24 carried out under section 3162 of the Na-  
25 tional Defense Authorization Act for Fiscal

1 Year 1993 (42 U.S.C. 7274i) to monitor  
2 Department of Energy workers exposed to  
3 hazardous and radioactive substances; and  
4 “(iii) any costs of such diagnostic  
5 testing or exposure assessment shall be  
6 paid for from the Fund established under  
7 section 3612 and shall be provided by the  
8 Secretary of Energy through a method  
9 under which the claimant is not required  
10 to advance any amount toward payment of  
11 such costs.

12 “(D) The Secretary of Energy is author-  
13 ized to enter into or modify cooperative agree-  
14 ments with providers who are implementing the  
15 program carried out under section 3162 of the  
16 National Defense Authorization Act for Fiscal  
17 Year 1993 (42 U.S.C. 7274i) to provide addi-  
18 tional medical testing or assessments of expo-  
19 sures to toxic substances at Department of En-  
20 ergy facilities to claimants under circumstances  
21 covered by subparagraph (C).

22 “(3) DETERMINATION OF CAUSATION.—A panel  
23 shall review a claim submitted to it under this sub-  
24 section and shall determine, under guidelines estab-  
25 lished by the Secretary of Energy, by regulation,

1 whether the illness or death that is the subject of  
2 the claim arose out of and in the course of employ-  
3 ment by the Department of Energy and exposure to  
4 a toxic substance at a Department of Energy facil-  
5 ity. For purposes of the preceding sentence, illness  
6 or death shall be deemed to arise out of and in the  
7 course of employment by the Department of Energy  
8 and exposure to a toxic substance at a Department  
9 of Energy facility if—

10 “(A) exposure to the toxic substance (or  
11 substances, as the case may be) was a signifi-  
12 cant factor which aggravated, contributed to, or  
13 caused the illness or death; or

14 “(B) the illness was, or the death was  
15 caused by, a specified cancer under section  
16 3621(17), and the individual to which the claim  
17 relates is a member of the Special Exposure Co-  
18 hort who meets the requirements of subpara-  
19 graph (A) of section 3621(9).

20 “(4) MAJORITY VOTE.—A determination under  
21 paragraph (3) shall be made by majority vote.

22 “(5) REPORT TO SECRETARY.—Once a panel  
23 has made a determination under paragraph (3), it  
24 shall report to the Secretary of Energy its deter-  
25 mination and the basis for the determination.

1 “(d) REVIEW OF PANEL DETERMINATIONS.—

2 “(1) IN GENERAL.—The Secretary of Energy  
3 shall review a panel’s determination under sub-  
4 section (c)(3), information the panel considered in  
5 reaching its determination, any relevant new infor-  
6 mation not reasonably available at the time of the  
7 panel’s deliberations, and the basis for the panel’s  
8 determination.

9 “(2) ACCEPTANCE OF PANEL DETERMINA-  
10 TION.—As a result of the review under paragraph  
11 (1), the Secretary shall accept the panel’s deter-  
12 mination in the absence of a preponderance of evi-  
13 dence to the contrary.

14 “(3) ACTION UPON ACCEPTED CLAIMS.—If the  
15 panel has made a positive determination under sub-  
16 section (c)(3) and the Secretary accepts the deter-  
17 mination under paragraph (2), or the panel has  
18 made a negative determination under subsection  
19 (c)(3) and the Secretary finds significant evidence to  
20 the contrary—

21 “(A) the Secretary of Energy shall within  
22 10 days forward the claim to the Secretary of  
23 Labor for payment under section 3663, to-  
24 gether with information relating to—



1           “(i) the DOE contractor employee to  
2 whom the claim relates;

3           “(ii) the illness to which the claim re-  
4 lates;

5           “(iii) the determination of the panel  
6 and the basis for the determination;

7           “(iv) the acceptance of the Secretary  
8 and the basis for the acceptance;

9           “(v) the employment to which the  
10 claim relates, including available wage or  
11 salary information; and

12           “(vi) any other matter that the Sec-  
13 retary of Labor considers necessary; and

14           “(B) the Secretary of Energy thereafter—

15           “(i) shall not contest such claim;

16           “(ii) shall not contest an award made  
17 regarding such claim; and

18           “(iii) shall direct the DOE contractor  
19 who employed the DOE contractor em-  
20 ployee to which the claim relates not to  
21 contest such claim or such award in any  
22 administrative or judicial forum, and such  
23 obligation in no case shall be considered  
24 discretionary; and

1           “(C) any costs of contesting a claim or an  
2           award regarding the claim incurred by the  
3           DOE contractor who employed the DOE con-  
4           tractor employee who is the subject of the claim  
5           shall not be an allowable cost under a Depart-  
6           ment of Energy contract.

7           “(e) ACCESS TO INFORMATION.—

8           “(1) DUTY TO PROVIDE INFORMATION.—At the  
9           request of the Secretary of Energy, a DOE con-  
10          tractor who employed a DOE contractor employee  
11          and any other entity possessing information related  
12          to such employee relevant to deliberations under this  
13          section shall make such information available to the  
14          Secretary.

15          “(2) COPIES TO CLAIMANT.—The Secretary of  
16          Energy shall require that a DOE contractor who  
17          provides any information to the Secretary or a panel  
18          under this section shall simultaneously provide such  
19          information to the claimant.

20          “(f) ADMINISTRATIVE AND JUDICIAL REVIEW.—The  
21          Secretary of Energy shall establish a process under which  
22          a claimant may obtain prompt and independent adminis-  
23          trative review of any adverse determination by the Sec-  
24          retary under subsection (b) or (d) or by a panel under  
25          subsection (c). The results of any such administrative re-

1 view shall be deemed to be a final agency action subject  
2 to judicial review.

3 “(g) WORKER ADVOCACY ADVISORY COMMITTEE.—

4 “(1) ESTABLISHMENT.—(A) Not later than 90  
5 days after the date of the enactment of this section,  
6 the Secretary of Energy shall establish and appoint  
7 a Worker Advocacy Advisory Committee (hereinafter  
8 in this subsection referred to as the “Committee”).  
9 The Committee shall be comprised of not more than  
10 20 members.

11 “(B) The Secretary shall ensure that the mem-  
12 bership of the Committee reflects a balance of the  
13 following perspectives: claimants; Department of En-  
14 ergy contractor employees; Department of Energy  
15 contractors and subcontractors; State and Federal  
16 workers’ compensation programs; insurers; and indi-  
17 viduals with relevant medical and scientific expertise.

18 “(C) The Secretary shall make appointments to  
19 the Committee in consultation with organizations  
20 with expertise on worker health and worker com-  
21 pensation issues.

22 “(D) The Committee shall have a chair, who  
23 shall be designated by the Secretary from among the  
24 members of the Committee.

1           “(E) The Committee shall meet as often as nec-  
2           essary, but not less often than on a quarterly basis.

3           “(2) DUTIES.—The duty of the Committee  
4           shall be to advise the Secretary of Energy on the fol-  
5           lowing matters under this subtitle:

6                   “(A) The procedures for processing claims,  
7                   gathering data with respect to claims, and com-  
8                   municating with claimants with respect to  
9                   claims.

10                   “(B) The adequacy and effectiveness of the  
11                   exposure assessments and medical criteria used  
12                   in the resolution of claims.

13                   “(C) Interagency relations with the De-  
14                   partment of Labor and the National Institute  
15                   for Occupational Safety and Health and with  
16                   willing payors for claims approved by physicians  
17                   panels.

18                   “(D) The administrative procedures used  
19                   for the operations of physicians panels.

20                   “(E) The adequacy of physicians panel de-  
21                   terminations, reviewed in a manner consistent  
22                   with the requirements of the Privacy Act.

23                   “(F) The concerns raised by claimants and  
24                   the responses to those concerns.

1           “(G) Reforms and improvements that may  
2           require legislation.

3           “(H) Any other matters related to the op-  
4           erations and activities of the Office of Worker  
5           Advocacy that the Secretary considers appro-  
6           priate.

7           “(3) RECOMMENDATIONS.—Any recommenda-  
8           tions of the Committee shall be transmitted to the  
9           Secretary of Energy and made available to the pub-  
10          lic in electronic and paper form.

11          “(4) REPORTS.—Not later than once every 6  
12          months, the Committee shall transmit a report de-  
13          tailing the activities of the Committee, including its  
14          written recommendations and the Secretary’s re-  
15          sponse to such recommendations, to—

16                 “(A) the Committee on Armed Services,  
17                 Committee on Appropriations, Committee on  
18                 the Judiciary, and Committee on Health, Edu-  
19                 cation, Labor, and Pensions of the Senate; and

20                 “(B) the Committee on Armed Services,  
21                 Committee on Appropriations, Committee on  
22                 the Judiciary, and Committee on Education  
23                 and the Workforce of the House of Representa-  
24                 tives.

1           “(5) STAFF.—The Secretary of Energy shall  
2 provide the Committee with sufficient staff to facili-  
3 tate the work of the Committee.

4           “(6) EXPENSES.—Members of the Committee,  
5 other than full time employees of the United States,  
6 while attending or preparing for meetings of the  
7 Committee or while otherwise serving at the request  
8 of the Secretary, while serving away from their  
9 homes or regular places of businesses, shall be al-  
10 lowed travel and meal expenses including per diem  
11 in lieu of subsistence, as authorized by section 5703  
12 of title 5, United States Code, for individuals in the  
13 Government serving without pay.

14          “(h) REPORT TO CONGRESS.—Not later than Feb-  
15 ruary 1 of each year, the Secretary of Energy shall submit  
16 to Congress a report on the implementation and operation  
17 of this section. The report shall include, for the preceding  
18 calendar year—

19           “(1) the number of claims received under this  
20 subtitle;

21           “(2) the size of the backlog in processing such  
22 claims;

23           “(3) the number of such claims submitted to a  
24 physicians panel;

1           “(4) the number of such claims for which a  
2 panel made a determination, including the number  
3 of determinations that were positive and the number  
4 that were negative;

5           “(5) the number of determinations accepted  
6 and denied by the Secretary;

7           “(6) the number of claims denied under sub-  
8 section (b) for failure to submit reasonable evidence;

9           “(7) the number and type of diagnostic tests  
10 and exposure assessments requested by a panel, and  
11 the number and type of such tests and assessments  
12 that were carried out;

13           “(8) the number and type of claims appealed,  
14 and the dispositions of such appeals; and

15           “(9) the expenditures made, and staff and con-  
16 tractors employed, in carrying out the Department  
17 of Energy’s responsibilities under this section.

18           “(i) REGULATIONS.—Not later than 120 days after  
19 the date of the enactment of the Reform of Energy Work-  
20 ers Compensation Act, the Secretary of Energy shall pre-  
21 scribe new regulations to carry out that Act and the  
22 amendments to this title made by that Act. The new regu-  
23 lations may, to the extent not inconsistent with this title  
24 (as so amended), incorporate the regulations in effect be-  
25 fore the date of the enactment of that Act.

1       “(j) TRANSITION.—Until the new regulations under  
2 subsection (i) are in effect, the Secretary of Energy shall,  
3 to the extent not inconsistent with this title (as amended  
4 by the Reform of Energy Workers Compensation Act) and  
5 without prejudicing any claimant, continue to process  
6 claims under this title (as so amended).

7       **“SEC. 3663. PAYMENT OF BENEFITS BY DEPARTMENT OF**  
8                               **LABOR ACTING AS A THIRD-PARTY ADMINIS-**  
9                               **TRATOR FOR THE DEPARTMENT OF ENERGY.**

10       “(a) IN GENERAL.—

11               “(1) PAYMENTS.—In each case in which section  
12 3662(d)(3) provides for the Secretary of Energy to  
13 forward a claim to the Secretary of Labor for pay-  
14 ments to be made with respect to a covered DOE  
15 contractor employee, such payments shall be made in  
16 accordance with this section by the Secretary of  
17 Labor.

18               “(2) MEDICAL BENEFITS.—Each covered DOE  
19 contractor employee shall receive medical benefits  
20 under section 3629 for that employee’s specified ill-  
21 ness.

22               “(3) PAYMENT FROM FUND.—The compensa-  
23 tion provided under this section shall be paid from  
24 the Fund established under section 3612.



1       “(b) DUTY OF SECRETARY OF LABOR.—The Sec-  
2 retary of Labor shall have the duty to carry out this sec-  
3 tion.

4       “(c) NATURE AND AMOUNT OF PAYMENTS.—

5           “(1) IN GENERAL.—The following provisions of  
6 subchapter I of chapter 81 of title 5, United States  
7 Code, apply to a covered DOE contractor employee  
8 (including the regulations prescribed with respect to  
9 those provisions, adapted as appropriate), and the  
10 Secretary of Labor shall provide, with respect to  
11 that employee and that employee’s specified illness,  
12 payments determined in accordance with those provi-  
13 sions: Sections 8102(a), 8105, 8106, 8107, 8108,  
14 8109, 8110, 8111(a), 8112, 8114, 8115, 8116,  
15 8117, 8133, 8134, and 8146a.

16           “(2) ORGANS AND PHYSIOLOGICAL SYSTEMS.—  
17 For purposes of carrying out this subtitle, the Sec-  
18 retary of Labor shall prescribe additional regulations  
19 for resolving claims under this subtitle of partial or  
20 total loss of use of function of organs or physio-  
21 logical systems that are not already covered by exist-  
22 ing regulations. Such additional regulations shall  
23 cover the liver, brain, stomach, heart, esophagus,  
24 bladder, thyroid, pancreas, and nervous system, and  
25 such additional organs and physiological systems as

1 the Secretary considers appropriate. The Secretary  
2 shall issue such regulations not later than 90 days  
3 after the date of the enactment of the Reform of  
4 Energy Workers Compensation Act.

5 “(d) ADMINISTRATIVE AND JUDICIAL REVIEW.—

6 “(1) IN GENERAL.—The Secretary of Labor  
7 shall establish a process, utilizing the process that  
8 applies under subtitle B of this title to the maximum  
9 extent practicable, under which a claimant may ob-  
10 tain administrative review of any adverse determina-  
11 tion by the Secretary of Labor under this section.  
12 Such process shall not apply to any adverse deter-  
13 mination by the Secretary of Energy.

14 “(2) JUDICIAL REVIEW.—The results of any  
15 such administrative review shall be deemed to be a  
16 final agency action subject to judicial review in the  
17 United States district court for the district in which  
18 the claimant resides.

19 “(3) ATTORNEY FEES.—In any proceeding pur-  
20 suant to this subsection, attorney fees shall be avail-  
21 able on the same basis as such fees are available  
22 under section 28 of the Longshore and Harbor  
23 Workers’ Compensation Act (33 U.S.C. 928).

1 **“SEC. 3664. GENERAL PROVISIONS RELATING TO RESOLU-**  
2 **TION OF CLAIMS.**

3 “(a) NONADVERSARIAL.—The Secretary of Energy  
4 and the Secretary of Labor shall each ensure that claims  
5 under this subtitle are resolved in a nonadversarial man-  
6 ner.

7 “(b) NO STATUTE OF LIMITATIONS.—A claim under  
8 this subtitle shall not be barred by any statute of limita-  
9 tions.

10 **“SEC. 3665. OFFSET FOR CERTAIN PAYMENTS.**

11 “(a) IN GENERAL.—A claimant awarded benefits  
12 under this subtitle as a result of a specified illness or  
13 death of a DOE contractor employee who receives benefits  
14 because of the same illness or death from any State work-  
15 ers’ compensation system shall receive the benefits speci-  
16 fied in this subtitle for such illness or death, reduced by  
17 the amount of any workers’ compensation benefits that the  
18 claimant receives or will receive on account of such illness  
19 or death under any State workers’ compensation system  
20 during the period that awarded benefits are provided  
21 under this subtitle, after deducting the reasonable costs,  
22 as determined by the Secretary of Labor by regulation,  
23 of obtaining such benefits.

24 “(b) REIMBURSEMENT TO STATES WITH EXCLUSIVE  
25 STATE FUNDS.—In a case referred to in subsection (a)  
26 that relates to a State workers’ compensation system with

1 an exclusive State fund, the Secretary of Labor shall pro-  
2 vide reimbursement to such State workers' compensation  
3 system for the amount of workers' compensation benefits  
4 from such State workers' compensation system that the  
5 claimant receives after the date of the Secretary's deter-  
6 mination that the claimant is entitled to benefits under  
7 this subtitle.

8 **“SEC. 3666. SUBROGATION OF THE UNITED STATES NOT AP-**  
9 **PLICABLE.**

10 “Notwithstanding any other provision of law, the  
11 United States has no right of subrogation against any per-  
12 son by reason of payments or other benefits provided  
13 under this subtitle.

14 **“SEC. 3667. CERTIFICATION OF TREATMENT OF PAYMENTS**  
15 **UNDER OTHER LAWS.**

16 “Compensation or benefits provided to an individual  
17 under this subtitle—

18 “(1) shall be treated for purposes of the inter-  
19 nal revenue laws of the United States as damages  
20 for human suffering; and

21 “(2) shall not be included as income or re-  
22 sources for purposes of determining eligibility to re-  
23 ceive benefits described in section 3803(c)(2)(C) of  
24 title 31, United States Code, or the amount of such  
25 benefits.

1 **“SEC. 3668. CERTAIN CLAIMS NOT AFFECTED BY AWARDS**  
2 **OF DAMAGES.**

3 “A payment under this subtitle shall not be consid-  
4 ered as any form of compensation or reimbursement for  
5 a loss for purposes of imposing liability on any individual  
6 receiving such payment, on the basis of such receipt, to  
7 repay any insurance carrier for insurance payments; and  
8 a payment under this subtitle shall not affect any claim  
9 against an insurance carrier with respect to insurance.

10 **“SEC. 3669. FORFEITURE OF BENEFITS BY CONVICTED FEL-**  
11 **ONS.**

12 “(a) FORFEITURE OF COMPENSATION.—Any indi-  
13 vidual convicted of a violation of section 1920 of title 18,  
14 United States Code, or any other Federal or State crimi-  
15 nal statute relating to fraud in the application for or re-  
16 ceipt of any benefit under this title or under any other  
17 Federal or State workers’ compensation law, shall forfeit  
18 (as of the date of such conviction) any entitlement to any  
19 compensation or benefit under this subtitle such individual  
20 would otherwise be awarded for any injury, illness or death  
21 covered by this subtitle for which the time of injury was  
22 on or before the date of the conviction.

23 “(b) INFORMATION.—Notwithstanding section 552a  
24 of title 5, United States Code, or any other Federal or  
25 State law, an agency of the United States, a State, or a  
26 political subdivision of a State shall make available to the

1 Secretary of Labor, upon written request from the Sec-  
2 retary and if the Secretary requires the information to  
3 carry out this section, the names and Social Security ac-  
4 count numbers of individuals confined, for conviction of  
5 a felony, in a jail, prison, or other penal institution or cor-  
6 rectional facility under the jurisdiction of that agency.

7 **“SEC. 3670. EXCLUSIVITY OF REMEDY.**

8       “The liability of the United States or a DOE con-  
9 tractor in its capacity as an employer of a DOE contractor  
10 employee under this subtitle with respect to the specified  
11 illness or death of a DOE contractor employee for which  
12 compensation is made under this subtitle is exclusive and  
13 instead of all other liability of the United States or DOE  
14 contractor in such capacity to the employee, his legal rep-  
15 resentative, spouse, dependents, next of kin, and any other  
16 person otherwise entitled to recover damages from the  
17 United States or DOE contractor in such capacity because  
18 of the specified illness or death in a direct judicial pro-  
19 ceeding, in a civil action, or in admiralty, except for a  
20 State workers’ compensation proceeding or a State inten-  
21 tional tort liability proceeding. However, this section shall  
22 not apply to illness or death for which compensation under  
23 this subtitle is not made.

1 **“SEC. 3671. COORDINATION WITH BENEFITS UNDER SUB-**  
2 **TITLE B.**

3 “(a) RECEIPT OF SUBTITLE B BENEFITS NO BAR  
4 TO APPLICATION UNDER THIS SUBTITLE.—An individual  
5 may apply for benefits under this subtitle without regard  
6 to whether the individual received a lump sum payment  
7 under subtitle B.

8 “(b) OFFSET FOR BENEFITS PAID ON SAME ILLNESS  
9 OF SAME PERSON.—If a lump sum payment is made  
10 under subtitle B by reason of a specified illness of a per-  
11 son, any payment (excluding medical costs) made under  
12 this subtitle by reason of the same specified illness of the  
13 same person shall be offset by the amount of such lump  
14 sum payment.”.

15 **SEC. 102. GAO REPORT.**

16 Not later than February 1, 2004, the Comptroller  
17 General shall submit to Congress a report on the imple-  
18 mentation by the Department of Energy and the Depart-  
19 ment of Labor of subtitle D of the Energy Employees Oc-  
20 cupational Illness Compensation Program Act of 2000 (42  
21 U.S.C. 7385o et seq.), as amended by section 101, and  
22 of the effectiveness of such subtitle in assisting DOE con-  
23 tractor employees in obtaining compensation for occupa-  
24 tional illness.

1 **TITLE II—AMENDMENTS RELAT-**  
2 **ING TO SUBTITLE B OF PRO-**  
3 **GRAM**

4 **SEC. 201. COVERAGE FOR CHRONIC RENAL DISEASE.**

5 (a) DEFINITIONS FOR PROGRAM ADMINISTRATION.—

6 Section 3621 of the Energy Employees Occupational Ill-  
7 ness Compensation Program Act of 2000 (42 U.S.C.  
8 7384l) is amended—

9 (1) in paragraph (1), by adding at the end the  
10 following new subparagraph:

11 “(D) A covered employee with chronic  
12 renal disease.”;

13 (2) in paragraph (15), by striking “or chronic  
14 silicosis” and inserting “, chronic silicosis, or chronic  
15 renal disease”; and

16 (3) by adding at the end the following new  
17 paragraphs:

18 “(19) The term ‘chronic renal disease’ includes  
19 nephritis and kidney tubal tissue injury and related  
20 illnesses of the urogenitoury tract.

21 “(20) The term ‘covered employee with chronic  
22 renal disease’ means an individual determined to  
23 have sustained chronic renal disease in the perform-  
24 ance of duty in accordance with section 3623(f).”.



1 (b) EXPOSURE IN THE PERFORMANCE OF DUTY.—  
2 Section 3623 of such Act (42 U.S.C. 7384n) is amended  
3 by adding at the end the following new subsection:

4 “(f) CHRONIC RENAL DISEASE.—(1) An individual  
5 with chronic renal disease shall, in the absence of substan-  
6 tial evidence to the contrary, be determined to have sus-  
7 tained chronic renal disease in the performance of duty  
8 for purposes of the compensation program if the indi-  
9 vidual—

10 “(A) was employed in a Department of Energy  
11 facility (in the case of a Department of Energy em-  
12 ployee or a Department of Energy contractor em-  
13 ployee) or an atomic weapons employer facility (in  
14 the case of an atomic weapons employee) that con-  
15 ducted uranium processing, converting, refining, en-  
16 riching, extruding, calcining, machining, or rolling,  
17 or that operated as a uranium foundry;

18 “(B) carried out job functions while so em-  
19 ployed that resulted in the potential for exposure, in-  
20 halation, or uptake of uranium or uranium com-  
21 pounds for at least 250 days; and

22 “(C) submits medical evidence that the indi-  
23 vidual, after commencing the employment specified  
24 in subparagraph (A), contracted chronic renal dis-  
25 ease.

1           “(2) Not later than 60 days after the date of the en-  
2 actment of the Reform of Energy Workers Compensation  
3 Act, the Secretary of Energy shall designate a list of De-  
4 partment of Energy facilities and atomic weapons em-  
5 ployer facilities that were engaged in uranium processing,  
6 converting, refining, enriching, extruding, calcining, ma-  
7 chining, or rolling, including the dates such activities were  
8 performed. The list of facilities shall not include facilities  
9 for which uranium millers and transporters are already  
10 covered under the Radiation Exposure Compensation Act  
11 (42 U.S.C. 2210 note).

12           “(3) Not later than 90 days after the date of the en-  
13 actment of the Reform of Energy Workers Compensation  
14 Act, the Secretary of Labor, in consultation with the Sec-  
15 retary of Health and Human Services, shall establish, by  
16 regulation, procedures to be followed and medical evidence  
17 to be submitted by claimants for chronic renal disease  
18 claims.”.

19           (c) OFFSET FOR CERTAIN PAYMENTS.—Section  
20 3641 of such Act (42 U.S.C. 7385) is amended—

21           (1) by striking “or covered uranium employee  
22           (as defined in section 3630),” and inserting “cov-  
23           ered uranium employee (as defined in section 3630),  
24           or covered employee with chronic renal disease,”;  
25           and

1           (2) by striking “or radiation,” and inserting  
2           “radiation, or uranium,”.

3           (d) CONFORMING AMENDMENTS.—The following pro-  
4 visions of such Act are amended by inserting “chronic  
5 renal disease,” after “chronic silicosis,” each place such  
6 term appears:

7           (1) Subsections (a)(1) and (b)(2)(C) of section  
8           3631 (42 U.S.C. 7384v).

9           (2) Section 3644(a) (42 U.S.C. 7385c(a))—  
10           (A) in the matter preceding paragraph (1);  
11           (B) in paragraph (2)(C); and  
12           (C) in the matter following paragraph  
13           (2)(C).

14 **SEC. 202. COVERAGE FOR LUNG CANCER IN COVERED BE-**  
15 **RYLLIUM EMPLOYEES.**

16           Section 3621(8) of the Energy Employees Occupa-  
17 tional Illness Compensation Program Act of 2000 (42  
18 U.S.C. 7384l(8)) is amended—

19           (1) by redesignating subparagraph (C) as sub-  
20           paragraph (D) and, in that subparagraph, by strik-  
21           ing “or (B)” and inserting “(B), or (C)”; and

22           (2) by inserting after subparagraph (B) the fol-  
23           lowing new subparagraph:

24                   “(C) Lung cancer, if such cancer occurs at  
25           least 15 years after the date on which the em-

1            ployee is determined to have been first exposed  
2            to beryllium in the performance of duty in ac-  
3            cordance with section 3623(a).”.

4 **SEC. 203. TIME LIMITS.**

5            (a) TIME TO PROCESS SPECIAL EXPOSURE COHORT  
6 PETITIONS.—Section 3626 of the Energy Employees Oc-  
7 cupational Illness Compensation Program Act of 2000 (42  
8 U.S.C. 7384q) is amended—

9            (1) by redesignating subsection (c) as sub-  
10            section (d); and

11            (2) by inserting after subsection (b) the fol-  
12            lowing new subsection:

13            “(c) TIME TO PROCESS SPECIAL EXPOSURE COHORT  
14 PETITIONS.—

15            “(1) 180 DAYS.—If a class of employees de-  
16            scribed in subsection (a)(1) petitions to be treated as  
17            members of the Special Exposure Cohort under sub-  
18            section (a)(3), the Secretary of Health and Human  
19            Services shall approve or deny the petition within  
20            180 days after the date on which the petition was  
21            received.

22            “(2) REPORT TO CONGRESS.—If the Secretary  
23            of Health and Human Services fails to approve or  
24            deny the petition within such 180 days, the Sec-  
25            retary shall, on the 181st day, submit to the con-

1 gressional committees specified in paragraph (3) and  
2 individual Members in the House and Senate who  
3 represent the district or State in which the covered  
4 facility is located a report on the failure. The report  
5 shall provide notice of the failure, an explanation of  
6 the reasons for the failure, an assessment of whether  
7 the petition can be approved or denied promptly,  
8 and a schedule for completing all remaining steps  
9 necessary to approve or deny the petition.

10 “(3) The congressional committees referred to  
11 in paragraph (2) are the following committees:

12 “(A) The Committee on Armed Services,  
13 Committee on the Judiciary, Committee on En-  
14 ergy and Commerce, and Committee on Edu-  
15 cation and the Workforce of the House of Rep-  
16 resentatives.

17 “(B) The Committee on Armed Services,  
18 Committee on the Judiciary, Committee on En-  
19 ergy and Natural Resources, and Committee on  
20 Health, Education, Labor, and Pensions of the  
21 Senate.”.

22 (b) TIME TO PROCESS INDIVIDUAL CLAIMS.—Sec-  
23 tion 3623 of that Act (42 U.S.C. 7384n) is amended by  
24 adding at the end of subsection (d) the following new para-  
25 graph:

1           “(3) DEADLINES FOR COMPLETING RADIATION DOSE  
2 RECONSTRUCTION ESTIMATES.—

3                   “(A) Not later than 150 days after the  
4 date on which the Secretary of Labor transmits  
5 to the National Institute for Occupational Safe-  
6 ty and Health a claim for which an estimate re-  
7 ferred to in paragraph (1) is required, the Insti-  
8 tute shall obtain, from the Department of En-  
9 ergy, contractors and subcontractors of the De-  
10 partment, atomic energy weapons employers,  
11 and any other available sources, information  
12 necessary to complete the estimate.

13                   “(B) Not later than 180 days after the  
14 date on which the Secretary of Labor transmits  
15 to the Institute such a claim, the Institute shall  
16 complete the estimate.

17                   “(C) If the Institute fails to carry out the  
18 requirements of either subparagraph (A) or (B)  
19 within the period specified in such subpara-  
20 graph—

21                           “(i) it shall be deemed, for purposes  
22 of section 3626(b)(1), that it is not fea-  
23 sible to estimate with sufficient accuracy  
24 the radiation dose received by the indi-  
25 vidual to which the claim relates; and

1                   “(ii) the Institute shall, not later than  
2                   5 days after clause (i) applies to a claim,  
3                   provide the claimant with written notice  
4                   that such clause applies to that claim and  
5                   appropriate information and materials to  
6                   enable the claimant to petition to be treat-  
7                   ed as a member of the Special Exposure  
8                   Cohort.”.

9 **SEC. 204. CORRECTING PROBLEMS IN THE**  
10 **RADIOEPIDEMIOLOGIC MODEL FOR DETER-**  
11 **MINING COMPENSATION.**

12           Subsection (c)(3) of section 3623 of the Energy Em-  
13 ployees Occupational Illness Compensation Program Act  
14 of 2000 (42 U.S.C. 7384n) is amended—

15           (1) in subparagraph (B), by striking “and” at  
16           the end;

17           (2) in subparagraph (C)—

18                   (A) by striking “past health-related activi-  
19                   ties (such as smoking),”; and

20                   (B) by striking the period at the end and  
21                   inserting “; and”; and

22           (3) by adding at the end the following new sub-  
23           paragraph:

24                   “(D) provide the benefit of the doubt to  
25                   the claimant wherever there is reasonable sci-

1           entific evidence to justify compensation, includ-  
2           ing such factors as dose rate effectiveness of  
3           low dose radiation, bias due to selection effects,  
4           and increasing risks from radiation with in-  
5           creasing age at exposure.”.

6 **SEC. 205. ADDITIONAL SPECIFIED CANCERS.**

7           (a) ANNUAL REPORT.—The National Institute for  
8 Occupational Safety and Health shall prepare, on an an-  
9 nual basis, a report that identifies each type of cancer  
10 (other than specified cancers, as already defined in section  
11 3621(17) of the Energy Employees Occupational Illness  
12 Compensation Program Act of 2000 (42 U.S.C.  
13 7384l(17))) that the Institute has determined, from Spe-  
14 cial Exposure Cohort petitions or from epidemiology stud-  
15 ies of workers or atomic bomb survivors, to be radiosensi-  
16 tive to any degree and, for each cancer so identified, pro-  
17 vides a basis for that determination.

18           (b) SUBMISSION TO CONGRESS AND AGENCIES.—Not  
19 later than 90 days after the date of the enactment of this  
20 Act, and thereafter not later than February 1 of each  
21 year, the Institute shall submit the report to Congress,  
22 the Secretary of Labor, and the Advisory Board on Radi-  
23 ation and Worker Health, and shall publish the report in  
24 the Federal Register, for public review and comment.  
25 Each report shall, taking into account comments received



1 in response to any previous reports under this section,  
2 identify each type of cancer that is appropriate to be  
3 deemed an additional specified cancer for purposes of the  
4 Special Exposure Cohort under the Energy Employees Oc-  
5 cupational Illness Compensation Program Act of 2000.

6 **SEC. 206. COVERAGE FOR INDIVIDUALS EMPLOYED BY**  
7 **ATOMIC WEAPONS EMPLOYERS OR BERYL-**  
8 **LIUM EMPLOYEES DURING PERIOD OF RE-**  
9 **SIDUAL CONTAMINATION.**

10 (a) ATOMIC WEAPONS EMPLOYEES.—Paragraph (3)  
11 of section 3621 of the Energy Employees Occupational Ill-  
12 ness Compensation Program Act of 2000 (42 U.S.C.  
13 7384l) is amended by inserting before the period at the  
14 end the following: “, or during a period when, as specified  
15 by the National Institute for Occupational Safety and  
16 Health in the final report required by section  
17 3151(b)(2)(A)(ii) of the National Defense Authorization  
18 Act for Fiscal Year 2002 (42 U.S.C. 7384 note) or any  
19 supplement thereto, significant radioactive contamination  
20 remained in a facility of the employer after such facility  
21 discontinued activities relating to the production of nu-  
22 clear weapons and such contamination could have caused  
23 or substantially contributed to the cancer of a covered em-  
24 ployee with cancer”.

1 (b) BERYLLIUM EMPLOYEES.—Paragraph (7)(C) of  
2 section 3621 of that Act (42 U.S.C. 7384l) is amended  
3 by inserting before the period at the end the following:  
4 “, or during a period when, as specified by the National  
5 Institute for Occupational Safety and Health in the final  
6 report required by section 3151(b)(2)(A)(ii) of the Na-  
7 tional Defense Authorization Act for Fiscal Year 2002 (42  
8 U.S.C. 7384 note) or any supplement thereto, significant  
9 beryllium contamination remained in a facility of the em-  
10 ployer after such facility discontinued activities relating to  
11 the production of nuclear weapons and such contamination  
12 could have caused or substantially contributed to a covered  
13 beryllium illness”.

14 (c) SUPPLEMENTAL REPORTS.—(1) In each of 2004,  
15 2005, and 2006, the National Institute for Occupational  
16 Safety and Health shall prepare a supplement to the final  
17 report required by subsection (b)(2)(A)(ii) of section 3151  
18 of the National Defense Authorization Act for Fiscal Year  
19 2002 (42 U.S.C. 7384 note). Each such supplement  
20 shall—

21 (A) complete the study on whether there is sig-  
22 nificant residual contamination at atomic energy  
23 weapons employer facilities or beryllium vendors, for  
24 facilities where more evaluation is required as of the  
25 date of such final report;

1 (B) identify the date as of which significant re-  
2 sidual contamination was or will be removed from an  
3 atomic energy weapons employer facility or beryllium  
4 vendor for those facilities at which such contamina-  
5 tion remained present as of May 31, 2003, according  
6 to such final report; and

7 (C) if new information has been made available  
8 to the Institute after submitting such final report  
9 that warrants a revision to an evaluation of residual  
10 contamination set forth in such final report—

11 (i) describe such new information; and

12 (ii) specify each such revision.

13 (2) The reports required by paragraph (1) shall, not  
14 later than May 31 of the year in which the report was  
15 required to be prepared—

16 (A) be submitted to the congressional commit-  
17 tees specified in subsection (b)(2)(B) of section 3151  
18 of that Act; and

19 (B) made available to the public in paper and  
20 electronic form.

21 **SEC. 207. COORDINATION WITH RADIATION EXPOSURE**  
22 **COMPENSATION ACT.**

23 (a) IN GENERAL.—Section 3651 of the Energy Em-  
24 ployees Occupational Illness Compensation Program Act  
25 of 2000 (42 U.S.C. 7385j) is amended to read as follows:

1 **“SEC. 3651. COORDINATION WITH OTHER FEDERAL RADI-**  
2 **ATION COMPENSATION LAWS.**

3 “(a) IN GENERAL.—Except in accordance with sec-  
4 tion 3630 and except as provided in subsection (b), an  
5 individual may not receive compensation or benefits under  
6 the compensation program for cancer and also receive  
7 compensation under either of the following:

8 “(1) The Radiation Exposure Compensation  
9 Act (42 U.S.C. 2210 note).

10 “(2) Section 1112(c) of title 38, United States  
11 Code.

12 “(b) COMPENSATION AVAILABLE, SUBJECT TO OFF-  
13 SET, TO INDIVIDUALS WHO PARTICIPATED ON-SITE IN  
14 AN ATMOSPHERIC NUCLEAR TEST.—An individual who  
15 files a claim after July 31, 2001, for compensation for  
16 cancer under subtitle B may receive such compensation  
17 even though payment has been made for that cancer under  
18 the Radiation Exposure Compensation Act, but the  
19 amount of such compensation shall be offset by the  
20 amount of any payment made for that cancer under either  
21 of the following paragraphs of section 4(a) of that Act:

22 “(1) Paragraph (1)(A)(i)(III).

23 “(2) Paragraph (2)(C).”.

24 (b) PROCEDURES REQUIRED.—The Secretary of  
25 Labor, in coordination with the Attorney General, shall  
26 establish procedures to identify and notify each individual

1 who may be entitled to compensation by reason of section  
2 3651(b) of that Act (as added by subsection (a)) of the  
3 availability of such compensation.

4 **SEC. 208. EXTENSION OF COVERAGE TO CERTAIN WORK-**  
5 **ERS.**

6 Section 3621 of the Energy Employees Occupational  
7 Illness Compensation Program Act of 2000 is amended  
8 in each of paragraphs (11)(B)(i) and (12)(B) by inserting  
9 after “Department of Energy” the following: “(or other  
10 Federal agency carrying out functions with respect to that  
11 facility that formerly were carried out by the Department  
12 of Energy)”.

13 **SEC. 209. REPORT BY NATIONAL INSTITUTE FOR OCCUPA-**  
14 **TIONAL SAFETY AND HEALTH ON INSTI-**  
15 **TUTE’S ACCESS TO INFORMATION RELATING**  
16 **TO PERFORMING RADIATION DOSE RECON-**  
17 **STRUCTIONS.**

18 Not later than 90 days after the date of the enact-  
19 ment of this Act, the National Institute for Occupational  
20 Safety and Health shall submit to Congress a report on  
21 the ability of the Institute to obtain, in a timely, accurate,  
22 and complete manner, information that the Institute has  
23 requested from any element of the Department of Energy  
24 for the purpose of carrying out radiation dose reconstruc-  
25 tions under the Energy Employees Occupational Illness

1 Compensation Program Act of 2000. The report shall in-  
2 clude the following:

3 (1) An identification of each matter adversely  
4 affecting the ability of the Institute to obtain such  
5 information in such manner.

6 (2) For each facility with respect to which the  
7 Institute is carrying out one or more such dose re-  
8 constructions—

9 (A) a specification of the number of work-  
10 ers for whom dose reconstruction has been ad-  
11 versely affected by any matter identified under  
12 paragraph (1); and

13 (B) An identification of each claim requir-  
14 ing dose reconstruction for which, because of  
15 any matter identified under paragraph (1), dose  
16 reconstruction has not been completed within  
17 150 days after the date on which the Secretary  
18 of Labor submitted the claim to the Secretary  
19 of Health and Human Services.

20 (3) For each facility with respect to which the  
21 Institute is carrying out 10 or more such dose recon-  
22 structions, a comparison on a facility-by-facility  
23 basis of the ability of the Institute to obtain such in-  
24 formation in such manner, including—

1 (A) an identification of the average time to  
2 obtain such information;

3 (B) a description of the degree of respon-  
4 siveness and cooperation from the Department  
5 of Energy in providing such information; and

6 (C) an assessment of whether, and to what  
7 extent, the ability of the Institute to obtain  
8 such information in such manner differs from  
9 facility to facility.

10 **SEC. 210. TECHNICAL CORRECTIONS.**

11 (a) FINDINGS.—Section 3602(a)(6) of the Energy  
12 Employees Occupational Illness Compensation Program  
13 Act of 2000 is amended by striking the second sentence  
14 and inserting the following: “Furthermore, studies indi-  
15 cate that 98 percent of radiation-induced cancers within  
16 the Department of Energy nuclear weapons complex occur  
17 at dose levels below the existing thresholds for establishing  
18 proof of causation. Studies further indicate that workers  
19 at Department of Energy sites were exposed to levels of  
20 silica, heavy metals, and toxic substances that will cause,  
21 contribute to, or aggravate illnesses or diseases.”.

22 (b) PAYMENTS IN THE CASE OF DECEASED PER-  
23 SONS.—Section 3628(e)(3)(A) (42 U.S.C. 7384s(e)(3)(A))  
24 of such Act is amended by inserting before the semicolon  
25 the following: “, or a wife or husband of that individual

1 who was married to that individual immediately before the  
2 death of that individual and filed, on or before December  
3 28, 2001, a claim in that capacity under this subtitle”.

4 **TITLE III—PROVISIONS RELAT-**  
5 **ING TO EITHER SUBTITLE OF**  
6 **ACT**

7 **SEC. 301. PROVIDING ADMINISTRATIVE RELIEF IN CASES**  
8 **WHERE MEDICAL RECORDS ARE NOT AVAIL-**  
9 **ABLE.**

10 Subtitle C of the Energy Employees Occupational Ill-  
11 ness Compensation Program Act of 2000 (42 U.S.C. 7385  
12 et seq.) is amended by adding at the end the following  
13 new section:

14 **“SEC. 3652. PROOF WHEN MEDICAL RECORDS NOT AVAIL-**  
15 **ABLE.**

16 “For any claim under any subtitle of this title, if the  
17 Department of Energy, a contractor of the Department  
18 of Energy (including a DOE contractor, as defined in sec-  
19 tion 3661), an atomic energy weapons employer, or a be-  
20 ryllium vendor is unable to locate medical records nec-  
21 essary for the processing of that claim that it possessed  
22 or was required to possess within 120 days after receiving  
23 a written request from the claimant to locate such records,  
24 an affidavit of the employee as to the contents of those  
25 records, together with any medical records possessed by



1 the claimant or otherwise made available, shall be consid-  
2 ered in determining the medical evidence relating to the  
3 claim.”.

4 **SEC. 302. OUTREACH PROGRAMS.**

5 Subtitle C of such Act is further amended by adding  
6 after section 3652 (as added by section 301) the following  
7 new section:

8 **“SEC. 3653. OUTREACH PROGRAMS AND RESOURCE CEN-**  
9 **TERS.**

10 “(a) PROGRAM REQUIRED.—Not later than 60 days  
11 after the date of the enactment of this section, the Sec-  
12 retary of Labor and the Secretary of Energy shall com-  
13 mence a comprehensive program of outreach which pro-  
14 vides both information about the availability of benefits  
15 to potential claimants and assistance to claimants in pre-  
16 paring their claims for submission to the appropriate  
17 agency. Such outreach shall be directed to potential claim-  
18 ants for all types of facilities covered under subtitles B  
19 and D. Such program shall utilize fixed resource centers,  
20 mobile outreach, mailings, and contracts with labor orga-  
21 nizations with access to potential claimants. The Secretary  
22 of Labor and the Secretary of Energy shall conduct out-  
23 reach and coordination of efforts with—

24 “(1) DOE contractors, atomic weapons employ-  
25 ers, and beryllium vendors (and their successors);

1           “(2) labor and community organizations that  
2           represent workers at atomic weapons employer facili-  
3           ties, beryllium vendors, federal employees, and DOE  
4           contractors and subcontractors;

5           “(3) former worker medical screening programs  
6           carried out under section 3162 of the National De-  
7           fense Authorization Act for Fiscal Year 1993 (42  
8           U.S.C. 7274i);

9           “(4) health and welfare plans;

10          “(5) local health care providers; and

11          “(6) appropriate State agencies and units of  
12          local government.

13          “(b) OUTREACH CENTERS.—(1) In carrying out the  
14          program required by subsection (a), the Secretary of  
15          Labor and the Secretary of Energy shall maintain the  
16          resource centers in existence as of the date of the enact-  
17          ment of this section and shall establish new resource cen-  
18          ters. Each such resource center shall be tasked with con-  
19          ducting outreach to covered facilities and covered employ-  
20          ees in the geographic region served by the center, and shall  
21          assist claimants with the filing of their claims.

22          “(2) In establishing new resource centers as required  
23          by paragraph (1), the Secretary of Labor and the Sec-  
24          retary of Energy shall ensure that for every Department  
25          of Energy facility at which 7,000 or more employees cur-

1 rently employed, a new resource center is located in a com-  
2 munity adjacent to the locality of that facility, unless there  
3 is an existing resource center within 50 miles of that facil-  
4 ity.

5       “(3) At each new and existing resource center, the  
6 Secretary of Labor and the Secretary of Energy shall  
7 maintain staffing proportional to both demand for claim-  
8 ant assistance services and the need for thorough outreach  
9 to potential claimants related to atomic energy weapons  
10 employer facilities, beryllium vendors, and DOE facilities.

11       “(c) DURATION.—The program required by sub-  
12 section (a) shall be carried out, and the centers required  
13 by subsection (b) shall be maintained, through December  
14 31, 2004, and for such a period beyond that date as de-  
15 mand for claimant assistance warrants.

16       “(d) REPORT.—(1) Not later than 180 days after the  
17 date of the enactment of this section, the Secretary of  
18 Labor and the Secretary of Energy shall submit to the  
19 congressional committees specified in paragraph (2) a plan  
20 on carrying out the outreach activities required by this  
21 section. Such plan shall identify the universe of potential  
22 claimants for all types of facilities, the methods used to  
23 reach such individuals to date, the universe of individuals  
24 not contacted, and the plan for reaching such potential  
25 claimants.

1       “(2) The congressional committees referred to in  
2 paragraph (1) are the following committees:

3           “(A) The Committee on Armed Services, Com-  
4 mittee on the Judiciary, Committee on Energy and  
5 Commerce, and Committee on Education and the  
6 Workforce of the House of Representatives.

7           “(B) The Committee on Armed Services, Com-  
8 mittee on the Judiciary, Committee on Energy and  
9 Natural Resources, and Committee on Health, Edu-  
10 cation, Labor, and Pensions of the Senate.”.

11 **SEC. 303. OFFICE OF THE OMBUDSMAN.**

12       (a) IN GENERAL.—Subtitle C of such Act is further  
13 amended by adding after section 3653 (as added by sec-  
14 tion 302) the following new section:

15 **“SEC. 3654. OFFICE OF THE OMBUDSMAN.**

16       “(a) ESTABLISHMENT.—There is established within  
17 the Office of the Secretary of Labor an office, to be known  
18 as the Office of the Ombudsman for Occupational Illness  
19 Compensation, to assist claimants under this title.

20       “(b) OMBUDSMAN.—

21           “(1) APPOINTMENT.—At the head of the Office  
22 shall be an Ombudsman. The Ombudsman shall be  
23 appointed by the Secretary of Labor, after consulta-  
24 tion with claimants or claimant advocates, worker  
25 compensation experts, and members of the advisory

1 committees to Federal agencies implementing this  
2 title, from among individuals with at least one of the  
3 following qualifications:

4 “(A) Experience or training as an advo-  
5 cate.

6 “(B) Training as a health care provider  
7 with knowledge of occupational illness and dis-  
8 ease.

9 “(C) Experience in assisting claimants  
10 with worker compensation claims.

11 “(2) REMOVAL.—The Secretary of Labor may  
12 remove the Ombudsman for just cause and shall, in  
13 such a case, communicate to the Congress the cir-  
14 cumstances forming the basis of such just cause.

15 “(c) DUTIES.—The duties of the Ombudsman are as  
16 follows:

17 “(1) To direct the operations of the Office.

18 “(2) To report to the Secretary of Labor with  
19 respect to the activities of the Office.

20 “(3) To assist claimants under this title with  
21 claims filed with the Department of Labor or the  
22 Department of Energy.

23 “(4) To receive and investigate complaints or  
24 inquiries regarding the status of a claim under this  
25 title.

1           “(5) To provide claimants under this title with  
2           contacts at agencies with responsibilities under this  
3           title.

4           “(6) To offer informal advice on options avail-  
5           able to claimants under this title.

6           “(7) To identify whether claimants under this  
7           title are encountering systematic difficulties or  
8           delays with respect to claims under this title, and to  
9           make recommendations for improvement, with re-  
10          spect to such claims, in speed, equity, fairness, or  
11          compliance with statutes and regulations.

12          “(8) With respect to individuals filing com-  
13          plaints or requests for information under this title—

14                 “(A) to respond within 30 days after re-  
15                 ceiving such a complaint or request;

16                 “(B) to maintain reasonable communica-  
17                 tion with the individual until the matter is re-  
18                 solved; and

19                 “(C) to maintain, as confidential and privi-  
20                 leged, the identity of the individual, unless such  
21                 confidentiality or privilege is otherwise waived.

22          “(9) To maintain and publish a telephone num-  
23          ber, facsimile number, electronic mail address, and  
24          post office address for the Office.

1       “(d) LIMITATION.—The Ombudsman may not re-  
2 verse or make decisions regarding any claim under this  
3 title.

4       “(e) AUTHORITY.—The Ombudsman is authorized to  
5 carry out the following activities:

6           “(1) Investigate questions regarding a claim  
7 under this title, or procedures or systems for proc-  
8 essing such claims, with the offices of the Depart-  
9 ment of Energy, Department of Labor, and Depart-  
10 ment of Health and Human Services (including the  
11 National Institute for Occupational Safety and  
12 Health), and any contractor of any such department,  
13 that has responsibility under this title.

14           “(2) Contract for expert advice with respect to  
15 the Ombudsman’s responsibilities under this title.

16           “(3) Access any material relating to a matter  
17 under investigation under paragraph (1).

18           “(4) Request explanations from any Federal  
19 agency with responsibilities under this title about the  
20 activities of that agency under this title.

21           “(5) Enter and inspect places in order to carry  
22 out an investigation under paragraph (1).

23           “(6) Refer any matter within the responsibility  
24 of the Ombudsman to an appropriate inspector gen-  
25 eral.

1       “(f) COOPERATION WITH FEDERAL AGENCIES.—  
2 Federal agencies and the officials responsible for the im-  
3 plementation of this title shall assist the Ombudsman in  
4 carrying out this section and shall promptly make avail-  
5 able to the Ombudsman all information requested by the  
6 Ombudsman. The Ombudsman shall cooperate with such  
7 agencies and officials.

8       “(g) COORDINATION.—The Ombudsman shall coordi-  
9 nate the activities of the Office with the activities of the  
10 Secretaries of Energy, Health and Human Services, and  
11 Labor in carrying out this title. Such coordination shall  
12 be carried out pursuant to memoranda of agreement en-  
13 tered into among and between the Ombudsman and such  
14 Secretaries.

15       “(h) ANNUAL REPORT.—Not later than January 1  
16 of each year, the Ombudsman shall submit a report on  
17 this title to the President, the Congress, and the Secre-  
18 taries of Energy, Health and Human Services, and Labor.  
19 No official outside the Office may require such outside of-  
20 ficial’s approval before submitting the report. The report  
21 shall contain the following:

22               “(1) The number and types of complaints,  
23               grievances, and requests for assistance received by  
24               the ombudsman in the previous year.



1           “(2) Identification of the most common difficul-  
2           ties encountered by claimants under this title.

3           “(3) Recommended changes to the administra-  
4           tive practices of the Federal agencies with responsi-  
5           bility under this title.

6           “(4) Recommended legislative changes that may  
7           be appropriate to mitigate problems with the imple-  
8           mentation of this title.

9           “(i) PUBLICATION.—The Secretaries of Energy,  
10          Health and Human Services, and Labor shall publicize the  
11          availability of the services of the Office.

12          “(j) SEPARATE LINE ITEM.—The budget of the  
13          President under section 1105(a) of title 31, United States  
14          Code, shall include funding for the Office as a separate  
15          line item.

16          “(k) AUTHORIZATION OF APPROPRIATIONS.—There  
17          are authorized to be appropriated to carry out this section  
18          \$800,000 for each of fiscal years 2003 through 2007.”.

19          (b) INITIAL APPOINTMENT.—Not later than 60 days  
20          after the date of the enactment of this Act, the Secretary  
21          of Labor shall appoint the Ombudsman required by sec-  
22          tion 3654 of the Energy Employees Occupational Illness  
23          Compensation Program Act of 2000 (as added by sub-  
24          section (a)).

1 (c) MEMORANDA OF AGREEMENT.—Not later than  
2 90 days after the date of the enactment of this Act, the  
3 Ombudsman shall enter into the memoranda of agreement  
4 required by such section 3654 (as added by subsection  
5 (a)).

6 **SEC. 304. ASSIGNMENT OF CLAIMS.**

7 Section 3647 of such Act (42 U.S.C. 7385f) is  
8 amended—

9 (1) in subsection (a), by striking “No claim  
10 cognizable” and all that follows through the period  
11 at the end and inserting “No claim cognizable under  
12 any subtitle of this title shall be assignable or trans-  
13 ferable. Compensation and claims for compensation  
14 under any subtitle of this title are exempt from  
15 claims of creditors.”; and

16 (2) in subsection (b), by striking “subtitle B”  
17 and inserting “any subtitle of this title”.

18 **SEC. 305. MEMORANDUM OF AGREEMENT.**

19 (a) MOA AUTHORIZED.—The Secretary of Energy  
20 and the Secretary of Labor may enter into a memorandum  
21 of agreement under which the Department of Labor car-  
22 ries out claims processing services under subtitle D of the  
23 Energy Employees Occupational Illness Compensation  
24 Program Act of 2000 (as amended by this Act). The Sec-  
25 retary of Energy may transfer to the Secretary of Labor

1 amounts made available to the Secretary of Energy for  
2 carrying out such services.

3 (b) PUBLICATION.—A memorandum of agreement  
4 entered into under subsection (a) shall be promptly pub-  
5 lished in the Federal Register.

○