

106TH CONGRESS
2D SESSION

H. R. 4263

To establish a compensation and health care program for employees and survivors at the Department of Energy facility in Los Alamos, New Mexico who have sustained beryllium, radiation-related, asbestos, and hazardous substances injury, illness, or death due to the performance of their duties, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 12, 2000

Mr. UDALL of New Mexico (for himself and Mr. UDALL of Colorado) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Education and the Workforce, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish a compensation and health care program for employees and survivors at the Department of Energy facility in Los Alamos, New Mexico who have sustained beryllium, radiation-related, asbestos, and hazardous substances injury, illness, or death due to the performance of their duties, and for other purposes.

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

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

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Atomic Workers’ Compensation Act”.

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

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

TITLE I—ENERGY EMPLOYEES’ BERYLLIUM COMPENSATION

Sec. 101. Definitions.

Sec. 102. Regulatory authority to revise definitions.

Sec. 103. Administration.

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

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

Sec. 106. Computation of pay.

Sec. 107. Limitations on receiving compensation.

Sec. 108. Coordination of benefits.

Sec. 109. Alternative compensation.

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

Sec. 111. Filing of claim.

Sec. 112. Time limitation on filing a claim.

Sec. 113. Determination and award of claims.

Sec. 114. Review of award.

Sec. 115. Appeal.

Sec. 116. Reconsideration of denial of claim.

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

Sec. 118. Representation; fees for services.

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

Sec. 120. Assignment of claim.

Sec. 121. Subrogation of the United States.

Sec. 122. Energy employees’ beryllium compensation fund.

Sec. 123. Forfeiture of benefits by convicted felons.

Sec. 124. Civil service retention rights.

Sec. 125. Annual report.

Sec. 126. Authorization of appropriations.

Sec. 127. Regulations.

Sec. 128. Construction.

Sec. 129. Conforming amendments.

Sec. 130. Effective date.

TITLE II—NUCLEAR EMPLOYEES RADIATION COMPENSATION

Sec. 201. Definitions.

Sec. 202. Administration.

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

- Sec. 204. Compensation for disability or death, medical services, and vocational rehabilitation.
- Sec. 205. Computation of pay.
- Sec. 206. Limitations on receiving compensation.
- Sec. 207. Coordination of benefits.
- Sec. 208. Right to alternative compensation.
- Sec. 209. Payment in full settlement of claims against the United States and the employee's employer.
- Sec. 210. Filing of claim.
- Sec. 211. Time limitation on filing a claim.
- Sec. 212. Determination and award of claims.
- Sec. 213. Review of award.
- Sec. 214. Appeal.
- Sec. 215. Reconsideration of denial of claim.
- Sec. 217. Representation; fees for services.
- Sec. 218. Status of award; certain claims not affected.
- Sec. 219. Assignment of claim.
- Sec. 220. Subrogation of the United States.
- Sec. 221. Nuclear employees' radiation compensation fund.
- Sec. 222. Forfeiture of benefits by convicted felons.
- Sec. 223. Civil service retention rights.
- Sec. 224. Annual report.
- Sec. 225. Authorization of appropriations.
- Sec. 226. Regulations; regulatory authority.
- Sec. 227. Construction.
- Sec. 228. Conforming amendments.
- Sec. 229. Effective date.

TITLE III—ASBESTOS COMPENSATION

Subtitle A—Establishment and Procedure

- Sec. 301. Establishment of the Office of Asbestos Compensation.
- Sec. 302. Medical eligibility review.
- Sec. 303. Election of administrative process; settlement offers.
- Sec. 304. Claimant's choice of forum.
- Sec. 305. Administrative adjudication.
- Sec. 306. Appeals; judicial review.
- Sec. 307. Gathering and maintenance of information.
- Sec. 308. Legal assistance program.
- Sec. 309. Time limits for dispositions.

Subtitle B—Law Applicable to Asbestos Adjudications

- Sec. 310. Medical eligibility.
- Sec. 311. Damages.
- Sec. 312. Statute of limitations or repose.
- Sec. 313. Come back rights.
- Sec. 314. Class actions, aggregations of claims and venue.
- Sec. 315. Joint and several liability.
- Sec. 316. Core claims.
- Sec. 317. Special rules applicable to section 305 adjudications.
- Sec. 318. Special rules applicable to the trustee.

Subtitle C—Eligible Medical Categories

- Sec. 320. Eligible medical categories.

- Sec. 321. Asbestos-related nonmalignant conditions with impairment.
- Sec. 322. Asbestos-related mesothelioma.
- Sec. 323. Asbestos-related lung cancer.
- Sec. 324. Asbestos-related other cancer.
- Sec. 325. Medical testing reimbursement.

Subtitle D—Funding

- Sec. 330. Assessment and enforcement.
- Sec. 331. Fiscal and financial management of the asbestos compensation fund.
- Sec. 332. Authorization for appropriations and offsetting collections.

Subtitle E—Transition

- Sec. 335. Applicability; transitional civil actions.

Subtitle F—Definitions

- Sec. 340. Definitions.

Subtitle G—Miscellaneous Provisions

- Sec. 345. Relationship to other laws.
- Sec. 346. Annual reports.
- Sec. 347. Enforcement.
- Sec. 348. Qualifying national settlement plan.
- Sec. 349. Severability.
- Sec. 350. Settlements.

TITLE IV—EMPLOYEES EXPOSED TO TOXIC SUBSTANCES AND HEAVY METALS

- Sec. 401. Eligibility of employees exposed to other toxic substances and heavy metals.
- Sec. 402. Establishment of a physicians panel by the Secretary of Health and Human Services.
- Sec. 403. Eligibility determination.
- Sec. 404. Establishment of occupational disease presumptions.
- Sec. 405. Panel shall report determination to Secretary of Labor.

1 **SEC. 2. FINDINGS.**

2 The Congress finds that—

- 3 (1) Since World War II Federal nuclear activi-
- 4 ties have been explicitly recognized by the United
- 5 States Government as an a ultra-hazardous activity
- 6 under Federal law. Nuclear weapons production in-
- 7 volved unique dangers, including potential cata-
- 8 strophic nuclear accidents that private insurance

1 carriers would not cover, as well as chronic expo-
2 sures to radioactive and hazardous substances, such
3 as beryllium, that even in small amounts could cause
4 medical harm.

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

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

24 (4) The Department of Energy policy to litigate
25 occupational illness claims regardless of merit has

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

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

18 (6) While linking exposure to occupational haz-
19 ards with the development of occupational disease is
20 sometimes difficult, scientific evidence supports the
21 conclusion that occupational exposure to dust par-
22 ticles or vapor of beryllium, even where there was
23 compliance with the standards in place at the time,
24 can cause beryllium sensitivity and chronic beryllium
25 disease. Furthermore, studies indicate than 98 per-

1 cent of radiation induced cancers within the Depart-
2 ment of Energy complex occur at dose levels below
3 existing legal thresholds for proof. Further, that
4 workers at Department of Energy sites were exposed
5 to heavy metals and toxic substances at levels that
6 will lead or contribute to illness and diseases.

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

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

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

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

3 **SEC. 101. DEFINITIONS.**

4 For the purpose of this title:

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

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

10 (3) DEPARTMENT OF ENERGY FACILITY.—The
11 term “Department of Energy facility” means any
12 building, structure, or premises, including the
13 grounds upon which they are located, in which oper-
14 ations are conducted by, or on behalf of, the Depart-
15 ment of Energy in Los Alamos, New Mexico and
16 with regard to which the Department of Energy has
17 a proprietary interest or has entered into a contract
18 with an entity to provide management and oper-
19 ation, management and integration, or environ-
20 mental remediation.

21 (4) COMPENSATION.—The term “compensa-
22 tion” means the money allowance payable under this
23 title and any other benefits paid for from the En-
24 ergy Employees’ Beryllium Compensation Fund, in-

cluding the retroactive compensation payable pursuant to section 109.

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

(A) an employee of any entity in Los Alamos, New Mexico, that contracted or subcontracted with the Department of Energy to provide management and operations, management and integration, production, testing, research, development, environmental remediation, waste management, construction, uranium enrichment, or other services at a Department of Energy facility or any entity that supplied uranium conversion or manufacturing services to, for, or on behalf of, the Department of Energy, including, those entities identified at section 201(3); or

(B) an individual defined as an employee in section 8101(1) of title 5, United States Code, who may have been exposed to beryllium at a Department of Energy facility in Los Alamos, New Mexico.

(6) COVERED ILLNESS.—The term “covered illness” means any of the following conditions:

1 (A) Beryllium Sensitivity, established by
2 an abnormal beryllium lymphocyte proliferation
3 test performed on either blood or lung lavage
4 cells.

5 (B) Chronic Beryllium Disease, established
6 by—

7 (i) beryllium sensitivity, as defined in
8 subparagraph (A), and

9 (ii) lung pathology consistent with
10 Chronic Beryllium Disease, such as—

11 (I) a lung biopsy showing
12 granulomas or a lymphocytic process
13 consistent with Chronic Beryllium
14 Disease,

15 (II) a computerized axial tomog-
16 raphy scan showing changes con-
17 sistent with Chronic Beryllium Dis-
18 ease, or

19 (III) pulmonary function or exer-
20 cise testing showing pulmonary defi-
21 cits consistent with Chronic Beryllium
22 Disease; or

23 (C) any injury or illness sustained as a
24 consequence of a covered illness as defined in
25 subparagraph (A) or (B).

1 (7) MONTHLY PAY.—The term “monthly pay”
2 means—

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

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

22 (8) TIME OF INJURY.—The term “time of in-
23 jury” means the last date on which a covered em-
24 ployee was exposed to beryllium in the performance
25 of duty as specified in section 104.

1 (9) INCEPTION OF DISABILITY.—The term “in-
2 ception of disability” means the date on which the
3 covered employee or claimant becomes aware, or in
4 the exercise of reasonable diligence or by reason of
5 medical advice should have been aware, of the rela-
6 tionship between the employment, the covered ill-
7 ness, and the death or disability.

8 (10) MISCELLANEOUS TERMS.—The following
9 terms have the meaning given those terms in section
10 8101 of title 5, United States Code:

11 (A) “physician”;

12 (B) “medical, surgical, and hospital serv-
13 ices and supplies”;

14 (C) “widow”;

15 (D) “parent”;

16 (E) “brother” and “sister”;

17 (F) “child”;

18 (G) “grandchild”;

19 (H) “widower”;

20 (I) “student”;

21 (J) “price index”;

22 (K) “organ”; and

23 (L) “United States medical officers and
24 hospitals”.

1 **SEC. 102. REGULATORY AUTHORITY TO REVISE DEFINI-**
2 **TIONS.**

3 (a) IN GENERAL.—Additional vendors, processors, or
4 producers of beryllium or related products may be des-
5 ignated as beryllium vendors for the purposes of this title
6 in regulations issued by the Secretary, upon finding that
7 such entities have been engaged in activities related to be-
8 ryllium that was produced or processed for sale to, or use
9 by, the Department of Energy in a manner similar to the
10 entities listed in section 101(4).

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

17 **SEC. 103. ADMINISTRATION.**

18 (a) IN GENERAL.—Within 120 days of enactment of
19 this title, the Secretary of Energy shall enter into an
20 agreement with the Secretary of Labor for the administra-
21 tion of this title, including utilization of Department of
22 Labor services and facilities and for the compensation by
23 the Department of Energy for such administration from
24 the Energy Employees Beryllium Compensation Fund es-
25 tablished pursuant to section 122. The Secretary of Labor
26 is authorized to enter into a reimbursable agreement with

1 the Secretary of Energy for the administration of this
2 title. Upon entry into such agreement, the Secretary of
3 Labor may delegate to any officer or employee of the De-
4 partment of Labor all powers and duties necessary for car-
5 rying out the purposes of this title.

6 (b) JOINT AUTHORITY.—To assist and facilitate ad-
7 ministration of this title and the adjudication of claims,
8 the Secretary of Energy and the Secretary of Labor
9 shall—

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

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

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

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

14 In carrying out paragraph (1), the examination of workers
15 who believe they have ailments related to the environ-
16 mental conditions at their places of work in Los Alamos
17 shall be conducted free of charge at the Veterans' Admin-
18 istration hospital nearest to their place of residence and
19 such workers shall receive free treatment for ailments and
20 illnesses identified by such physicians as potentially work-
21 related. Such workers shall also receive reimbursement for
22 travel and lodging expenses.

23 (c) INFORMATION.—The Secretary of Energy may re-
24 quire a Department of Energy contractor to provide infor-
25 mation concerning a claim filed under this title to the offi-

1 cers or employees with delegated responsibility for admin-
2 istering this title.

3 (d) PENALTY.—Failure or refusal to provide informa-
4 tion, or knowingly providing false information, in response
5 to a request pursuant to subsections (b) and (c) this sec-
6 tion may result in fine or imprisoned, or both, pursuant
7 to section 1922 of title 18, United States Code, as amend-
8 ed by section 129(c).

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

19 **SEC. 104. EXPOSURE TO BERYLLIUM IN THE PERFORM-**
20 **ANCE OF DUTY.**

21 In the absence of substantial evidence to the contrary,
22 a covered employee, as defined in subparagraphs (A), (B),
23 or (C) of section 101(6), shall be determined to have been
24 exposed to beryllium in the performance of duty for the
25 purposes of this title if, and only if, the covered employee

1 was employed at a Department of Energy facility, or was
2 present at the facility because of employment by the
3 United States or a contractor or subcontractor of the De-
4 partment of Energy, for any period of time, during a time
5 period when beryllium dust particles or vapor may have
6 been present at that facility.

7 **SEC. 105. COMPENSATION FOR DISABILITY OR DEATH,**
8 **MEDICAL SERVICES, AND VOCATIONAL REHA-**
9 **BILITATION.**

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

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

20 (2) pay the compensation specified in sections
21 8105–8110, 8111(a), 8112–13, 8115, 8117, 8133–
22 8135, and 8146a (a) and (b) of title 5, United
23 States Code, for the disability or death from a cov-
24 ered illness of a covered employee who was exposed

1 to beryllium while in the performance of duty as de-
2 termined in accordance with section 104;

3 (3) furnish the services and other benefits spec-
4 ified in section 8103 of title 5, United States Code,
5 to a covered employee who sustains a covered illness
6 as a result of exposure to beryllium while in the per-
7 formance of duty as determined in accordance with
8 section 104;

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

12 (5) advise a permanently disabled individual
13 whose disability is compensable under this title of
14 the availability of vocational rehabilitation and pro-
15 vide for furnishing vocational rehabilitation service
16 pursuant to the provisions of section 8104 and
17 8111(b) of title 5, United States Code;

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

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

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

5 **SEC. 106. COMPUTATION OF PAY.**

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

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

1 employment during the days employed within 1 year im-
2 mediately preceding the time of injury or inception of dis-
3 ability, whichever is greater.

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

5 (a) IN GENERAL.—While a covered employee as de-
6 fined in section 101(6)(C) is receiving compensation under
7 this title, or if the covered employee has been paid a lump
8 sum in commutation of installment payments until the ex-
9 piration of the period during which the installment pay-
10 ments would have continued pursuant to section 8135 of
11 title 5, United States Code, the covered employee may not
12 receive salary, pay, or remuneration of any type from the
13 United States, except

14 (1) in return for service actually performed;

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

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

21 (4) retired pay, retirement pay, retainer pay, or
22 equivalent pay for service in the Armed Forces or
23 other uniformed service; and

24 (5) retirement benefits under subchapter III of
25 chapter 83 of title 5, United States Code, or other

1 retirement system for employees of Federal or State
2 government.

3 However, eligibility for or receipt of benefits under sub-
4 chapter III of chapter 83 of title 5, United States Code,
5 or another retirement system for employees of Federal or
6 State government, does not impair the right of the em-
7 ployee to compensation for scheduled disabilities specified
8 by section 8107 of title 5, United States Code.

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

1 (c) ELECTION.—While a covered employee is receiv-
2 ing compensation under this title, or if the covered em-
3 ployee has been paid a lump sum commutation of install-
4 ment payments until the expiration of the period during
5 which the installment payments would have continued, the
6 covered employee may not receive payment of any benefits
7 under any other Federal workers' compensation system for
8 the same covered illness or the same death. Such an indi-
9 vidual shall elect which benefits to receive. The individual
10 shall make the election within the time allowed by the Sec-
11 retary of Labor by regulation. The election when made
12 is irrevocable, unless the level of compensation and other
13 benefits under the other Federal program or under this
14 title changes, in which event the individual is entitled to
15 make a new informed election.

16 (d) ELECTION.—An individual eligible to receive ben-
17 efits under this title because of a covered illness or death
18 of a covered employee who is also entitled to receive bene-
19 fits because of the same covered illness or death of the
20 covered employee from a State workers' compensation sys-
21 tem shall elect which benefits to receive, unless—

22 (1) at the time of injury the State workers'
23 compensation coverage for the covered employee was
24 secured by a policy or contract of insurance; and

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

3 An individual required to make the election specified in
4 this subsection shall make the election within the time al-
5 lowed by the Secretary of Labor by regulation. The elec-
6 tion when made is irrevocable, unless the level of com-
7 pensation and other benefits under the State program or
8 under this title changes, in which event the individual is
9 entitled to make a new informed election.

10 **SEC. 108. COORDINATION OF BENEFITS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 **SEC. 111. FILING OF CLAIM.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **SEC. 115. APPEAL.**

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

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

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

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

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

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

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

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

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

23 (b) RESOLVING DOUBT.—All reasonable doubt with
24 regard to whether a claim for compensation meets the re-
25 quirements of this title shall be resolved in favor of the
26 claimant.

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

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

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

1 lium Compensation Fund, or set off against, or otherwise
2 deducted from any payment to claimant under this title.

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

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

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

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

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

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

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

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

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

14 **SEC. 119. STATUS OF AWARD; CERTAIN CLAIMS NOT AF-**
 15 **FECTED.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 20 (1) sums that are appropriated for it,
21 (2) amounts that are transferred to it from
22 other Department of Energy accounts pursuant to
23 section 126(a), and
24 (3) amounts that would otherwise accrue to it
25 under this title.

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

8 (c) DETERMINATIONS.—

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

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

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

4 **SEC. 123. FORFEITURE OF BENEFITS BY CONVICTED FEL-**
5 **ONS.**

6 (a) IN GENERAL.—Any individual convicted of a vio-
7 lation of section 1920 of title 18, or any other Federal
8 or State criminal statute relating to fraud in the applica-
9 tion for or receipt of any benefit under this title or under
10 any other Federal or State workers' compensation Act,
11 shall forfeit (as of the date of such conviction) any benefit
12 such individual would otherwise be awarded to under this
13 title for any covered illness for which the time of injury
14 was on or before the date of such conviction. Such for-
15 feiture shall be in addition to any action the Secretary may
16 take pursuant to the provisions of sections 8106 or 8129
17 of title 5, United States Code.

18 (b) LIMITATION.—

19 (1) IN GENERAL.—Notwithstanding any other
20 provision of law (except as provided under para-
21 graph (2)), no benefits under this title shall be paid
22 or provided to any individual during any period dur-
23 ing which such individual is confined in a jail, pris-
24 on, or other penal institution or correctional facility,
25 pursuant to that individual's conviction of an offense

1 that constituted a felony under applicable law. Such
2 an individual shall not receive the benefits forfeited
3 during the period of incarceration described in this
4 paragraph, after the period of incarceration ends.

5 (2) EXCEPTION.—If an individual has one or
6 more dependents, as defined under section 8110(a)
7 of title 5, United States Code, the Secretary may,
8 during the period of incarceration, pay to these de-
9 pendents a percentage of the benefits that would
10 have been payable to such individual computed ac-
11 cording to the percentages set forth in section
12 8133(a) (1) through (5) of title 5, United States
13 Code.

14 (c) INFORMATION.—Notwithstanding the provision of
15 section 552a of title 5, United States Code, or any other
16 provision of Federal or State law, any agency of the
17 United States Government or of any State (or political
18 subdivision thereof) shall make available to the Secretary,
19 upon written request, the names and Social Security ac-
20 count numbers of individuals who are confined in a jail,
21 prison, or other penal institution or correctional facility
22 under the jurisdiction of that agency, pursuant to the indi-
23 viduals' conviction of an offense that constituted a felony
24 under applicable law, which the Secretary may require to
25 carry out the provisions of this section.

1 **SEC. 124. CIVIL SERVICE RETENTION RIGHTS.**

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

6 **SEC. 125. ANNUAL REPORT.**

7 The Secretary shall, at the end of each fiscal year,
8 prepare a report with respect to the administration of this
9 title.

10 **SEC. 126. AUTHORIZATION OF APPROPRIATIONS.**

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

21 (b) LIMITATION.—In any fiscal year, the Secretary
22 of Labor shall limit the amount of the compensation and
23 benefits payments under this title to an amount not in
24 excess of the sum of the appropriations to the Energy Em-
25 ployees' Beryllium Compensation Fund and amounts
26 made available by Department of Energy transfers to the

1 Fund. Notwithstanding any other provision, if in any fis-
2 cal year the Secretary of Labor finds that estimates of
3 amounts contained in reports pursuant to section
4 122(c)(1) for the payment of compensation, other benefits,
5 and administrative activities authorized by this title will
6 exceed the amounts in the Fund, the Secretary of Labor
7 is required to reduce compensation and benefits payments
8 to the extent necessary to make up any amounts by which
9 benefits and other costs authorized by this title exceed the
10 amount in the Fund calculated on a fiscal year basis.

11 (c) REGULATIONS.—The Secretary of Energy, in con-
12 sultation with the Secretary of Labor, shall promulgate
13 regulations to implement this section within 120 days of
14 enactment.

15 **SEC. 127. REGULATIONS.**

16 Not later than 120 days after the date of enactment,
17 the Secretary of Labor shall prescribe such rules and regu-
18 lations as may be necessary for the administration and
19 enforcement of this title.

20 **SEC. 128. CONSTRUCTION.**

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

1 **SEC. 129. CONFORMING AMENDMENTS.**

2 (a) SECTION 1920.—Section 1920 of title 18, United
3 States Code, is amended by inserting in the title “or En-
4 ergy employee in Los Alamos, New Mexico,” after “Fed-
5 eral employee’s” and by inserting “or the Energy Employ-
6 ees’ Compensation Act” after “title 5”.

7 (b) SECTION 1921.—Section 1921 of title 18, United
8 States Code, is amended by inserting in the title “or En-
9 ergy employees in Los Alamos, New Mexico,” after “Fed-
10 eral employees” and by inserting “or the Energy Employ-
11 ees’ Compensation Act” after “title 5”.

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

14 (1) by inserting in the section title “or Energy
15 employees in Los Alamos” after “Federal employ-
16 ees”;

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

18 (3) by striking “, neglects,” after “willfully
19 fails”; and

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

21 “(b) Whoever refuses to provide the information re-
22 ferred to in subsection (a), or knowingly provides false in-
23 formation, or induces, compels, or directs an injured em-
24 ployee to forego filing of any claim for compensation or
25 other benefits provided under the Energy Employees’
26 Compensation Act or any extension or application thereof,

1 or willfully retains any notice, report, claim, or paper
2 which is required to be filed under that Act or any exten-
3 sion or application thereof, or regulations prescribed
4 thereunder, shall be fined under this title or imprisoned
5 not more than one year, or both.”.

6 **SEC. 130. EFFECTIVE DATE.**

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

8 **TITLE II—NUCLEAR EMPLOYEES**
9 **RADIATION COMPENSATION**

10 **SEC. 201. DEFINITIONS.**

11 For purposes of this title:

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

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

17 (3) DEPARTMENT OF ENERGY FACILITY.—The
18 term “Department of Energy facility” means any
19 building, structure, or premises, including the
20 grounds upon which they are located, in Los Ala-
21 mos, New Mexico, in which operations are conducted
22 by, or on behalf of, the Department of Energy and
23 with regard to which the Department of Energy has
24 a proprietary interest or has entered into a contract
25 with an entity to provide management and oper-

1 ation, management and integration, or environ-
2 mental remediation.

3 (4) DEPARTMENT OF ENERGY CONTRACTOR.—
4 The term “Department of Energy contractor”
5 means—

6 (A) an entity in Los Alamos, New Mexico,
7 that contracted or subcontracted with the De-
8 partment of Energy to provide management
9 and operations, management and integration,
10 production, testing, research, development, envi-
11 ronmental remediation, waste management,
12 construction, or other services at a Department
13 of Energy facility.

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

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

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

24 (6) COMPENSATION.—The term “compensa-
25 tion” means the money allowance payable under this

1 title and any other benefits paid for from the Nu-
2 clear Employees' Radiation Compensation Fund, in-
3 cluding the compensation payable pursuant to sec-
4 tion 208.

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

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

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

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

23 (iii) for employees exposed to uranium
24 or uranium compounds, chronic renal dis-

1 ease (including nephritis and kidney tubal
2 necrosis);

3 (B) other medical conditions or illness as-
4 sociated with exposure to radiation or other
5 hazardous substances as determined by the Sec-
6 retary of Health and Human Services pursuant
7 to title III;

8 (C) any other medical condition or illness
9 whereby the claimant can establish, pursuant to
10 title III, that radiation or a hazardous sub-
11 stance significantly contributed to their illness,
12 disease or condition; or

13 (D) any injury or illness sustained as a
14 consequence of a covered illness as defined in
15 subparagraph (A), (B), or (C).

16 (8) HAZARDOUS SUBSTANCES.—The term “haz-
17 ardous substances” is used interchangeably with
18 hazardous materials and includes heavy metals,
19 chemicals, and other toxic substances to which cov-
20 ered employees are exposed at Department of En-
21 ergy facilities in Los Alamos.

22 (9) MONTHLY PAY.—The term “monthly pay”
23 means—

24 (A) for covered employees employed at the
25 time of injury or inception of disability, the

1 monthly pay at the time of injury, or the
2 monthly pay at the inception of disability, or
3 the monthly pay at the time compensable dis-
4 ability recurs, if the recurrence begins more
5 than 6 months after the covered employee re-
6 sumes regular full-time employment, whichever
7 is greater, except when otherwise determined
8 under section 8113(a) of title 5, United States
9 Code; or

10 (B) for covered employees who are unem-
11 ployed at the inception of disability, the month-
12 ly pay of the employee's last covered employ-
13 ment calculated as if the employee were still
14 employed, or the monthly pay of other employ-
15 ees of the same or most similar class working
16 in the same or most similar employment in the
17 same or neighboring locality, whichever is great-
18 er.

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

24 (11) INCEPTION OF DISABILITY.—The term
25 “inception of disability” means the date on which

1 the covered employee or claimant becomes aware, or
2 in the exercise of reasonable diligence or by reason
3 of medical advice should have been aware, of the re-
4 lationship between the employment, the covered ill-
5 ness, and the death or disability.

6 (12) MISCELLANEOUS TERMS.—The following
7 terms have the meaning given those terms in section
8 8101 of title 5, United States Code:

9 (A) “physician”;

10 (B) “medical, surgical, and hospital serv-
11 ices and supplies”;

12 (C) “widow”;

13 (D) “parent”;

14 (E) “brother” and “sister”;

15 (F) “child”;

16 (G) “grandchild”;

17 (H) “widower”;

18 (I) “student”;

19 (J) “price index”;

20 (K) “organ”; and

21 (L) “United States medical officers and
22 hospitals”.

23 **SEC. 202. ADMINISTRATION.**

24 (a) IN GENERAL.—Within 120 days of enactment of
25 this title, the Secretary of Energy shall enter into an

1 agreement with the Secretary of Labor for the administra-
2 tion of this title, including utilization of Department of
3 Labor services and facilities, and for the compensation by
4 the Department of Energy for such administration from
5 the Nuclear Employees Radiation Compensation Fund es-
6 tablished pursuant to section 221. The Secretary of Labor
7 is authorized to enter into a reimbursable agreement with
8 the Secretary of Energy for the administration of this
9 title. Upon entry into such agreement, the Secretary of
10 Labor may delegate to any officer or employee of the De-
11 partment of Labor all powers and duties necessary for car-
12 rying out the purposes of this title.

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

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

21 (2) ensure the ready availability, in paper and
22 electronic format, of forms necessary for making
23 claims, and provide employees and claimants with
24 necessary information under this title including,
25 medical protocols necessary for medical testing and

1 diagnosis to determine the existence of a covered ill-
2 ness, lists of approved vendors for use in obtaining
3 necessary laboratory services related to such medical
4 testing and diagnosis, and vouchers to cover costs
5 outlined in the medical protocols;

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

10 (4) upon a notification that a claimant has
11 made a claim for benefits under this title, provide
12 such information to the authority with delegated re-
13 sponsibility for the determination and award of
14 claims under section 212, or review thereof under
15 sections 213 and 214, as the authority may request
16 for purposes of determining eligibility for or amount
17 of benefits, or verifying other information with re-
18 spect thereto.

19 In carrying out paragraph (1), the examination of workers
20 who believe they have ailments related to the environ-
21 mental conditions at their places of work in Los Alamos
22 shall be conducted free of charge at the Veterans' Admin-
23 istration hospital nearest to their place of residence and
24 such workers shall receive free treatment for ailments and
25 illnesses identified by such physicians as potentially work-

1 related. Such workers shall also receive reimbursement for
2 travel and lodging expenses.

3 (c) INFORMATION.—The Secretary of Energy may re-
4 quire a Department of Energy contractor to provide infor-
5 mation concerning a claim filed under this title to the offi-
6 cers or employees with delegated responsibility for admin-
7 istering this title.

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

14 (e) PENALTY.—Whoever induces, compels, or directs
15 an injured employee to forego filing of any claim for com-
16 pensation or other benefits provided under this title or any
17 extension or application thereof, or willfully retains any
18 notice, report, claim, or paper which is required to be filed
19 under this title or any extension or application thereof,
20 or regulations prescribed thereunder, may be subjected to
21 fine or imprisonment, or both, pursuant to section 1922
22 of title 18, United States Code, as amended by section
23 228(c).

1 **SEC. 203. OCCUPATIONAL EXPOSURE TO RADIATION AND**
2 **OTHER HAZARDOUS SUBSTANCES.**

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

13 (1) the individual was monitored through the
14 use of dosimetry badges for exposure to radiation or
15 should have been monitored for radiation exposure
16 based on requirements or standards in existence as
17 of the date of enactment of this title; or

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

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

1 (1) the individual was employed at a Depart-
2 ment of Energy facility, or was present at the facil-
3 ity because of employment by the United States or
4 a contractor or subcontractor of the Department of
5 Energy, for a period of at least one year; and

6 (2)(A) the individual was monitored for expo-
7 sure to hazardous substances or hazardous materials
8 or should have been monitored for such exposure, or

9 (B) provides a work history that, if verified,
10 demonstrated exposure to hazardous substances or
11 hazardous materials.

12 **SEC. 204. COMPENSATION FOR DISABILITY OR DEATH,**
13 **MEDICAL SERVICES, AND VOCATIONAL REHA-**
14 **BILITATION.**

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

18 (1) upon application for compensation pursuant
19 to section 210, furnish the costs of all medical test-
20 ing and diagnostic services necessary for the claim-
21 ant to determine the existence of a covered illness as
22 defined in section 201(7) and reimburse claimant for
23 any additional reasonable medical expenses incurred
24 in establishing the claimant's claim;

1 (2) pay the compensation specified in sections
2 8105–8110, 8111(a), 8112–13, 8115, 8117, 8133–
3 8135, and 8146a (a) and (b) of title 5, United
4 States Code, for the disability or death from a cov-
5 ered illness of a covered employee who was occupa-
6 tionally exposed while in the performance of duty as
7 determined in accordance with section 203;

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

14 (4) pay alternative compensation pursuant to
15 section 208 and attorneys fees as specified in section
16 217; and

17 (5) advise a permanently disabled individual
18 whose disability is compensable under this title of
19 the availability of vocational rehabilitation and pro-
20 vide for furnishing vocational rehabilitation service
21 pursuant to the provisions of section 8104 and
22 8111(b) of title 5, United States Code;

23 unless the covered illness or death was caused by one of
24 the circumstances set forth in paragraph (1), (2), or (3)

1 of subsection (a) of section 8102 of title 5, United States
2 Code.

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

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

11 **SEC. 205. COMPUTATION OF PAY.**

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

16 (b) AVERAGE ANNUAL EARNINGS.—If either of the
17 methods of determining the average annual earnings spec-
18 ified in sections 8114(d) (1) and (2) of title 5, United
19 States Code, cannot be applied reasonably and fairly, the
20 average annual earnings are a sum that reasonably rep-
21 resents the annual earning capacity of the covered em-
22 ployee in the employment in which the employee was work-
23 ing at the time of injury or inception of disability, which-
24 ever is greater, having regard to the previous earnings of
25 the employee in similar employment, and for other employ-

ees of the same employer in the same or most similar class working in the same or most similar employment in the same or neighboring location, other previous employment of the employee, or other relevant factors. However, the average annual earnings may not be less than 150 times the average daily wage the covered employee earned in the employment during the days employed within 1 year immediately preceding the date of injury or inception of disability, whichever is greater.

SEC. 206. LIMITATIONS ON RECEIVING COMPENSATION.

(a) IN GENERAL.—While a covered employee as defined in section 201(5)(B) is receiving compensation under this title, or if the covered employee has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued pursuant to section 8135 of title 5, United States Code, the covered employee may not receive salary, pay, or remuneration of any type from the United States, except—

- (1) in return for service actually performed;
- (2) pension for service in the Army, Navy, or Air Force;
- (3) other benefits administered by the Department of Veterans Affairs unless such benefits are

1 payable for the same covered illness or the same
2 death;

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

6 (5) retirement benefits under subchapter III of
7 chapter 83 of title 5, United States Code, or other
8 retirement system for employees of Federal or State
9 government.

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

16 (b) ELECTION OF BENEFITS.—An individual eligible
17 to receive benefits under this title because of a covered
18 illness or death of a covered employee as defined in section
19 201(5)(B), who also is entitled to receive from the United
20 States under a provision of statute other than this title
21 payments or benefits for that covered illness or death (ex-
22 cept proceeds of an insurance policy), because of service
23 by the covered employee (or in the case of death, by the
24 deceased) as an employee or in the armed forces, shall
25 elect which benefits to receive. The individual shall make

1 the election within the time allowed by the Secretary of
2 Labor by regulation. The election when made is irrev-
3 ocable, except as otherwise provided by statute, or unless
4 the level of compensation and other benefits under the
5 other statutory provision or under this title changes, in
6 which event the individual is entitled to make a new in-
7 formed election.

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

23 (d) ELECTION OF BENEFITS.—An individual eligible
24 to receive benefits under this title because of a covered
25 illness or death of a covered employee who is also entitled

1 to receive benefits because of the same covered illness or
2 death of the covered employee from a State workers' com-
3 pensation system shall elect which benefits to receive,
4 unless—

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

8 (2) the Secretary waives the requirement to
9 make such an election.

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

17 **SEC. 207. COORDINATION OF BENEFITS.**

18 Except where the Secretary issues a waiver pursuant
19 to section 206(d)(2), a claimant awarded benefits under
20 this title as a result of a covered illness or death of a cov-
21 ered employee who receives benefits because of the same
22 covered illness or death from any other State or Federal
23 workers compensation system and who has elected benefits
24 under this title pursuant to subsection (c) or (d) of section
25 206, shall receive compensation as specified in this title

1 for the covered illness or death, reduced by the amount
2 of any workers' compensation benefits that the claimant
3 receives or will receive on account of the covered illness
4 or death under any State or Federal workers' compensa-
5 tion system during the period that awarded benefits are
6 provided under this title, after deducting the reasonable
7 costs, as determined by the Secretary of Labor by regula-
8 tion, of obtaining such benefits.

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

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

24 (b) COVERED EMPLOYEE DIES.—If a covered em-
25 ployee who would have been eligible to make the election

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

12 (c) TIME FOR ELECTION.—The election to receive
13 compensation under this section in lieu of other compensa-
14 tion under this title shall be made at any time subsequent
15 to filing a claim pursuant to section 210, up to and includ-
16 ing 30 days after either the date of a decision determining
17 an award of compensation for total disability or partial
18 disability under this title or the date the Secretary informs
19 the employee or the employee's survivor of the right to
20 make such an election, whichever is later, unless the time
21 is extended upon request by the employee or the employ-
22 ee's survivor. The election when made by a covered em-
23 ployee or survivor is irrevocable and binding on all sur-
24 vivors.

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

6 **SEC. 209. PAYMENT IN FULL SETTLEMENT OF CLAIMS**
7 **AGAINST THE UNITED STATES AND THE EM-**
8 **PLOYEE’S EMPLOYER.**

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

20 (b) APPLICATION.—This section does not apply to an
21 administrative or judicial proceeding under a State or
22 Federal workers’ compensation statute subject to sections
23 206 and 207, nor to any litigation, whether arising out
24 of the employee’s exposure to radiation or other hazardous
25 substances in the performance of his or her duties or not,

1 in any state or Federal court as of the effective date of
2 this title.

3 **SEC. 210. FILING OF CLAIM.**

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

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

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

12 (1) 7 years after the effective date, or

13 (2) 7 years after the date the claimant first be-
14 comes aware of—

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

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

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

24 (c) TIMELY FILING.—The timely filing of a disability
25 claim because of a covered illness will satisfy the time re-

1 requirements for a death claim based on the same illness
2 or condition.

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

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

11 (1) considering the claim presented by the bene-
12 ficiary, the results of any medical test or diagnosis
13 undertaken to determine the existence of a covered
14 illness, and any requested report or data furnished
15 by the Department of Energy or a Physicians Panel
16 under title IV; and

17 (2) completing such investigation as the Sec-
18 retary or the Secretary’s designee considers nec-
19 essary.

20 (b) CLAIM DETERMINATION.—Except as otherwise
21 specified in this title, the determination of a claim for com-
22 pensation, and any award and payment of compensation
23 under this section shall be made in accordance with sec-
24 tion 8124(a) of title 5, United States Code. Unless a hear-
25 ing is requested pursuant to section 213(a), the deter-

1 mination, findings, and any award rendered hereunder
2 shall become final and conclusive at the expiration of the
3 thirtieth day after the date of the Secretary of Labor's
4 decision and service thereof upon claimant.

5 **SEC. 213. REVIEW OF AWARD.**

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

17 (b) ADMINISTRATIVE LAW JUDGE.—The administra-
18 tive law judge shall, in the conduct of a hearing requested
19 pursuant to subsection (a) of this section and in the eval-
20 uation and determination of claimant's claim, have those
21 powers, duties and responsibilities vested by section
22 8124(b) of title 5, United States Code, in the Secretary
23 of Labor, if the hearing is conducted in accordance with
24 the provisions of section 554 of title 5, United States
25 Code. Parties to a proceeding under this subsection shall

1 be strictly limited to the claimant and the Secretary of
2 Labor as represented by the Secretary of Labor's des-
3 ignee.

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

15 (d) PENALTY.—If any person in proceedings before
16 an administrative law judge under this section disobeys
17 or resists any lawful order or process, or misbehaves dur-
18 ing a hearing or so near the place thereof as to obstruct
19 the same, or neglects to produce, after having been or-
20 dered to do so, any pertinent book, paper, or document,
21 or refuses to appear after having been subpoenaed, or
22 upon appearing refuses to take the oath as a witness, or
23 after having taken the oath refuses to be examined accord-
24 ing to law, the administrative law judge shall certify the
25 facts to the district court having jurisdiction in the place

1 in which the administrative law judge is sitting (or to the
2 United States District Court for the District of Columbia
3 if the administrative law judge is sitting in such District)
4 which shall thereupon in a summary manner hear the evi-
5 dence as to the acts complained of, and, if the evidence
6 so warrants, punish such person in the same manner and
7 to the same extent as for a contempt committed before
8 the court, or commit such person upon the same condi-
9 tions as if the doing of the forbidden act had occurred
10 with reference to the process of or in the presence of the
11 court.

12 (e) RECORD.—The record shall close at the conclu-
13 sion of the hearing, except where the administrative law
14 judge grants, for good cause, an extension not to exceed
15 30 days for the submission of additional evidence and ar-
16 gument.

17 (f) DECISION NOTICE.—Within 45 days of the clos-
18 ing of the record, and no later than 180 days after receipt
19 of claimant's request for hearing, the administrative law
20 judge shall notify the claimant in writing of his decision
21 and any award he may make, and of the basis for such
22 decision and award. In accordance with the facts found
23 on review, the administrative law judge may end, decrease,
24 or increase the compensation previously awarded, or
25 award compensation previously refused or discontinued.

1 (g) EFFECTIVE DATE OF DECISION.—Unless ap-
2 pealed to the Benefits Review Board as provided in section
3 214, the decision by the administrative law judge, and any
4 award rendered as a result thereof, shall become effective
5 upon filing with the Secretary of Labor, or the Secretary
6 of Labor’s designee, and service upon the claimant, and
7 shall become final and conclusive at the expiration of the
8 thirtieth day thereafter.

9 **SEC. 214. APPEAL.**

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

20 (b) BOARD AUTHORITY.—The Benefits Review
21 Board is authorized to hear and determine an appeal
22 under this section in accordance with and pursuant to the
23 authority vested in the Board by section 921(b) of title
24 33, United States Code. The Board shall make its final
25 determination with regard to such appeal within 240 days

1 following receipt of claimant's request for review. Parties
2 to a proceeding under this subsection shall be strictly lim-
3 ited to the claimant and the Secretary of Labor as rep-
4 resented by the Secretary of Labor's designee.

5 (c) JUDICIAL REVIEW.—A claimant adversely af-
6 fected or aggrieved by a final determination and order of
7 the Benefits Review Board may obtain review thereof in
8 the United States court of appeals for the circuit in which
9 the claimant resides pursuant to section 21(c) of the
10 Longshore and Harbor Worker's Compensation Act (33
11 U.S.C. 921(c)).

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

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

20 (b) RECONSIDERATION.—Notwithstanding any other
21 provision, a claimant or eligible surviving beneficiary may
22 obtain reconsideration of a decision denying coverage
23 under this title based on new evidence or amendment in
24 the laws governing disposition of claims for benefits under
25 this title.

1 **SEC. 216. RESOLUTION OF ISSUES IN THE AWARD OR DE-**
2 **NIAL OF COMPENSATION; COSTS OF ADMINIS-**
3 **TRATION.**

4 (a) IN GENERAL.—Failure to render a determination
5 on a claim within any time period prescribed in section
6 212, 213, or 214 shall result in the award of the claim
7 as a matter of law.

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

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

17 (d) CONSTRUCTION.—Except as otherwise specified
18 in this title, the provisions of sections 8123, 8125–8127,
19 8129, 8133, 8134 and 8146a(a) of title 5, United States
20 Code, shall govern the adjudication, award and payment
21 of claims, and the resolution of issues under this title.

22 (e) SUIT.—A claimant may sue the Department of
23 Energy or its contractors in a district court of the United
24 States to compel the production of information or docu-
25 mentation requested by the Secretary of Labor, an admin-
26 istrative appeals judge, or the Benefits Review Board, as

1 the case may be, where the information or documentation
2 requested is not provided within 60 days from the date
3 the request is made. Upon successful resolution of any suit
4 brought pursuant to this subsection, the court shall award
5 claimant reasonable attorney's fees and costs, which shall
6 be considered costs incurred by the Secretary of Energy
7 and shall not be paid from the Nuclear Employees Radi-
8 ation Compensation Fund, or set off against, or otherwise
9 deducted from any payment to claimant under this title.

10 (f) CONSTRUCTION.—Sections 213 and 214 do not
11 confer the right to a hearing or of appeal on the Secretary
12 of Labor or the Secretary of Energy, although the Sec-
13 retary of Labor or the Secretary of Labor's designee may
14 appear before the administrative law judge, the Benefits
15 Review Board, or court, as the case may be, in explanation
16 of the Secretary of Labor's initial determination under
17 section 212 where the claimant has appealed therefrom.

18 (g) COSTS.—The costs incurred by the Secretary of
19 Labor, an administrative law judge, or the Benefits Re-
20 view Board in the administration and adjudication of
21 claims thereunder are chargeable against, and shall be
22 paid from, the Nuclear Employees Radiation Compensa-
23 tion Fund established pursuant to section 221.

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

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

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

21 (c) DENIAL SET ASIDE.—In the event an administra-
22 tive law judge, the Benefits Review Board, or the court,
23 as the case may be, sets aside the denial of a claim under
24 this title as arbitrary and capricious, claimant shall be
25 awarded, separate and apart from and in addition to any
26 award of attorney's fees under subsection (b) of this sec-

1 tion, reasonable attorney's fees and costs incurred with re-
2 spect to the appeal and review necessitated thereby. In the
3 event that claimant subsequently prevails upon remand on
4 the claimant's claim, claimant shall be awarded, in addi-
5 tion to the award to which the claimant is otherwise enti-
6 tled under this title, 10 percent per annum on the claim-
7 ant's claim from the date of the original denial of the
8 claim. Attorney's fees, costs, and interest awarded pursu-
9 ant to this subsection shall be considered costs incurred
10 by the Secretary of Labor and shall not be paid from the
11 Nuclear Employees Radiation Compensation Fund, or set
12 off against, or otherwise deducted from any payment to
13 claimant under this title.

14 (d) AWARD OF FEES.—Where an award of attorney's
15 fees for services is allowed under this section, the attorney
16 receiving such award shall be prohibited from charging
17 claimant, directly or indirectly, for the same services. A
18 violation of this subsection shall result in a fine of not
19 more than \$5,000 assessed by the Secretary against the
20 offending attorney.

21 **SEC. 218. STATUS OF AWARD; CERTAIN CLAIMS NOT AF-**
22 **FECTED.**

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

1 (1) shall not be considered income for purposes
2 of the Internal Revenue Code of 1986 and shall not
3 be subject to Federal income tax under the Internal
4 Revenue Code of 1986;

5 (2) shall not be included as income or resources
6 for purposes of determining eligibility to receive ben-
7 efits described in section 3803(c)(2)(C) of title 31,
8 United States Code, or the amount of those benefits;
9 and

10 (3) shall not be subject to offset under chapter
11 37 of title 31, United States Code.

12 (b) PAYMENT.—A payment made under this title
13 shall not be considered as any form of compensation or
14 reimbursement for a loss for purposes of imposing liability
15 on the individual receiving the payment to repay any in-
16 surance carrier for insurance payments made. A payment
17 under this title does not affect any claim against an insur-
18 ance carrier with respect to insurance.

19 **SEC. 219. ASSIGNMENT OF CLAIM.**

20 A claim cognizable under this title is not assignable
21 or transferable. Any assignment or transfer of a claim for
22 compensation under this title is void. Compensation and
23 claims for compensation are exempt from claims of credi-
24 tors.

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

2 (a) IN GENERAL.—If a covered illness or death for
3 which compensation is payable under this title is caused
4 under circumstances creating a legal liability in a person
5 other than the United States to pay damages, sections
6 8131 and 8132 of title 5, United States Code, shall apply,
7 except to the extent specified in this title.

8 (b) FUND REFERENCE.—For purposes of this sec-
9 tion, references in sections 8131 and 8132 of title 5,
10 United States Code, to the Employees' Compensation
11 Fund shall mean the Nuclear Employees' Radiation Com-
12 pensation Fund.

13 (c) APPLICATION OF SECTION 8131.—For the pur-
14 poses of this title, the provision in section 8131 of title
15 5, United States Code, that provides that an employee re-
16 quired to appear as a party or witness in the prosecution
17 of an action described in that section is in an active duty
18 status while so engaged shall only apply to a covered em-
19 ployee as defined in section 201(5)(B).

20 **SEC. 221. NUCLEAR EMPLOYEES' RADIATION COMPENSA-**
21 **TION FUND.**

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

26 (1) sums that are appropriated for it;

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

4 (3) amounts that would otherwise accrue to it
5 under this title.

6 (b) FUND USE.—Amounts in the Nuclear Employees’
7 Radiation Compensation Fund are authorized to be used
8 for the payment of compensation and other benefits and
9 expenses authorized by this title and for payment of all
10 expenses incurred in administering this title. Such funds
11 are authorized to be appropriated to remain available until
12 expended.

13 (c) QUARTERLY DETERMINATIONS.—

14 (1) IN GENERAL.—Within 45 days of the end of
15 every quarter of every fiscal year, the Secretary shall
16 determine the total costs of benefits, administrative
17 expenses, and other payments made from the Nu-
18 clear Employees’ Radiation Compensation Fund dur-
19 ing the quarter just ended; the end-of-quarter bal-
20 ance in the Fund; and the amount anticipated to be
21 needed during the immediately succeeding two quar-
22 ters for the payment of benefits and administrative
23 expenses under this title.

24 (2) DETERMINATION IN LAST QUARTER.—Each
25 cost determination made in the last quarter of the

1 fiscal year under paragraph (1) shall show, in addi-
2 tion, the total costs of benefits and expenses and
3 other payments from the Fund during the preceding
4 twelve-month expense period and an estimate of the
5 expenditures from the Nuclear Employees' Radiation
6 Compensation Fund for the payment of benefits and
7 expenses and other payments for each of the imme-
8 diately succeeding two fiscal years.

9 **SEC. 222. FORFEITURE OF BENEFITS BY CONVICTED FEL-**
10 **ONS.**

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

23 (b) LIMITATIONS.—

24 (1) IN GENERAL.—Notwithstanding any other
25 provision of law (except as provided under para-

1 graph (2)), no benefits under this title shall be paid
2 or provided to any individual during any period dur-
3 ing which such individual is confined in a jail, pris-
4 on, or other penal institution or correctional facility,
5 pursuant to that individual's conviction of an offense
6 that constituted a felony under applicable law. Such
7 an individual shall not receive the benefits forfeited
8 during such period of incarceration, after the period
9 of incarceration ends.

10 (2) EXCEPTION.—If an individual has one or
11 more dependents as defined under section 8110(a) of
12 title 5, United States Code, the Secretary may, dur-
13 ing the period of incarceration, pay to these depend-
14 ents a percentage of the benefits that would have
15 been payable to such individual computed according
16 to the percentages set forth in paragraphs (1)
17 through (5) of section 8133(a) of title 5, United
18 States Code.

19 (c) INFORMATION.—Notwithstanding the provision of
20 section 552a of title 5, United States Code, or any other
21 provision of Federal or State law, any agency of the
22 United States Government or of any State (or political
23 subdivision thereof) shall make available to the Secretary,
24 upon written request, the names and Social Security ac-
25 count numbers of individuals who are confined in a jail,

1 prison, or other penal institution or correctional facility
2 under the jurisdiction of that agency, pursuant to the indi-
3 viduals' conviction of an offense that constituted a felony
4 under applicable law, which the Secretary may require to
5 carry out the provisions of this section.

6 **SEC. 223. CIVIL SERVICE RETENTION RIGHTS.**

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

11 **SEC. 224. ANNUAL REPORT.**

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

15 **SEC. 225. AUTHORIZATION OF APPROPRIATIONS.**

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

1 (b) COMPENSATION AND BENEFITS LIMITATION.—In
2 any fiscal year, the Secretary of Labor shall limit the
3 amount of the compensation and benefits payments under
4 this title to an amount not in excess of the sum of the
5 appropriations to the Nuclear Employees Radiation Com-
6 pensation Fund and amounts made available by Depart-
7 ment of Energy transfers to the Fund. Notwithstanding
8 any other provision, if in any fiscal year the Secretary of
9 Labor finds that estimates of amounts contained in re-
10 ports pursuant to section 221(c)(1) for the payment of
11 compensation, other benefits, and administrative activities
12 authorized by this title will exceed the amounts in the
13 Fund, the Secretary of Labor is required to reduce com-
14 pensation and benefits payments to the extent necessary
15 to make up any amounts by which benefits and other costs
16 authorized by this title exceed the amount in the Fund
17 calculated on a fiscal year basis.

18 (c) SECRETARY OF ENERGY REGULATIONS.—The
19 Secretary of Energy, in consultation with the Secretary
20 of Labor, shall promulgate regulations to implement this
21 section within 120 days of enactment.

22 **SEC. 226. REGULATIONS; REGULATORY AUTHORITY.**

23 (a) IN GENERAL.—Not later than 120 days after the
24 date of enactment of this title, the Secretary of Labor

1 shall prescribe such rules and regulations as may be nec-
 2 essary for the administration and enforcement of this title.

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

9 **SEC. 227. CONSTRUCTION.**

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

13 **SEC. 228. CONFORMING AMENDMENTS.**

14 (a) **SECTION 1920.**—Section 1920 of title 18, United
 15 States Code, is amended by inserting in the title “or En-
 16 ergy employee’s” after “Federal employee’s” and by in-
 17 serting “or the Energy Employees’ Compensation Act”
 18 after “title 5”.

19 (b) **SECTION 1921.**—Section 1921 of title 18, United
 20 States Code, is amended by inserting in the title “or En-
 21 ergy employees” after “Federal employees” and by insert-
 22 ing “or the Energy Employees’ Compensation Act” after
 23 “title 5”.

24 (c) **SECTION 1922.**—Section 1922 of title 18, United
 25 States Code, is amended—

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

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

4 (3) by striking “, neglects,” after “willfully
5 fails”; and

6 (4) inserting a new subsection as follows:

7 “(b) Whoever is charged with the responsibility for
8 providing information pursuant to sections 302(b) and
9 302(c) of title III of the Energy Employees’ Compensation
10 Act and who willfully fails or refuses to provide this infor-
11 mation, or knowingly provides false information, or in-
12 duces, compels, or directs an injured employee to forego
13 filing of any claim for compensation or other benefits pro-
14 vided under the Energy Employees’ Compensation Act or
15 any extension or application thereof, or willfully retains
16 any notice, report, claim, or paper which is required to
17 be filed under that Act or any extension or application
18 thereof, or regulations prescribed thereunder, shall be
19 fined under this title or imprisoned not more than one
20 year, or both.”.

21 **SEC. 229. EFFECTIVE DATE.**

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

1 **TITLE III—ASBESTOS**
2 **COMPENSATION**
3 **Subtitle A—Establishment and**
4 **Procedure**

5 **SEC. 301. ESTABLISHMENT OF THE OFFICE OF ASBESTOS**
6 **COMPENSATION.**

7 (a) ESTABLISHMENT OF PROGRAM; ADMINIS-
8 TRATOR.—There is established in the Department of
9 Labor the Office of Asbestos Compensation (OAC) to be
10 headed by an Administrator. The Administrator shall be
11 appointed by the President by and with the advice and
12 consent of the Senate. The Administrator shall serve for
13 a term of 10 years, and may be removed by the Attorney
14 General only for good cause. The Administrator shall have
15 authority to promulgate all procedural and substantive
16 rules necessary to administer this title. All claims and
17 other filings under this title shall be lodged with the office
18 designated by the Administrator.

19 (b) EXCLUSIVE JURISDICTION.—Except as otherwise
20 provided in this title, the OAC shall have exclusive juris-
21 diction over proceedings to determine if a claimant in Los
22 Alamos, New Mexico, is entitled to compensation for an
23 asbestos claim and the amount of such compensation. The
24 foregoing shall not apply to any claim brought under any
25 workers' compensation law or veterans' benefits program.

1 (c) MEDICAL DIRECTOR.—The Administrator shall
2 appoint the Medical Director and may remove the Medical
3 Director for good cause. The Medical Director shall, under
4 the supervision of the Administrator, manage the medical
5 review process under section 302 and shall have the au-
6 thority to appoint or to contract for the services of claims
7 examiners, physicians, and such other personnel as may
8 be necessary or appropriate for the efficient conduct of
9 the medical review process and to create the exceptional
10 medical claims panel.

11 (d) ASBESTOS COMPENSATION FUND.—There is es-
12 tablished in the OAC an Asbestos Compensation Fund for
13 the purpose of providing payments to claimants in Los Al-
14 amos, New Mexico, under this title. The Administrator
15 shall appoint the Trustee of the Asbestos Compensation
16 Fund and may remove the Trustee for good cause.

17 (e) OFFICE OF ADMINISTRATIVE LAW JUDGES.—
18 There is established in the OAC an Office of Administra-
19 tive Law Judges for the purpose of providing expedited
20 administrative adjudication of asbestos claims pursuant to
21 section 305. The Administrator shall have authority to ap-
22 point Administrative Law Judges on a temporary or emer-
23 gency basis and to remove such judges for good cause.

24 (f) MEDICAL ADVISORY COMMITTEE.—The Adminis-
25 trator shall appoint a Medical Advisory Committee which

1 shall periodically evaluate this title's medical review proc-
2 ess and medical eligibility criteria. The Administrator shall
3 set a term of appointment for members of the Medical Ad-
4 visory Committee. The Committee shall make appropriate
5 recommendations as and when it deems appropriate and
6 shall submit an annual report to the Administrator and
7 the Congress.

8 **SEC. 302. MEDICAL ELIGIBILITY REVIEW.**

9 (a) DETERMINATION OF ELIGIBILITY.—All claims
10 when filed shall be immediately referred to the Medical
11 Director. The Medical Director shall determine whether
12 the claimant meets the requirements for medical eligibility
13 in section 320 or the requirements for medical testing re-
14 imbursement in section 325.

15 (b) INFORMATION FOR MEDICAL REVIEW.—The Ad-
16 ministrator shall issue rules for the expeditious conduct
17 of the medical review process. Such rules at a minimum
18 shall provide for the following:

19 (1) Submission of the following information
20 where relevant and feasible: smoking history; occu-
21 pational history; description of the circumstances,
22 intensity, time, and duration of exposure; medical
23 test results necessary for a decision as to whether an
24 exposed person meets the requirements for one or
25 more medically eligible categories under sections

1 320, 321, 322, 323, 324, or 325, including all of the
2 supporting data for any pulmonary function tests on
3 which the claimant relies (including all flow volume
4 loops, spirographs, and any other tracings for any
5 test that is performed). The claimant shall also pro-
6 vide such medical releases as the Administrator may
7 require allowing the OAC to obtain any and all med-
8 ical information relevant to the determination of
9 medical eligibility.

10 (2) The Medical Director may require addi-
11 tional noninvasive medical tests at the expense of the
12 OAC if necessary for a determination of medical eli-
13 gibility.

14 (c) PROCEDURES.—Upon receipt of a complete med-
15 ical application, the Medical Director shall send notice to
16 the claimant confirming the OAC's receipt of the claim.
17 The Medical Director shall make an initial decision within
18 30 days of such receipt. If the application is initially de-
19 nied, the claimant shall be so notified and, at the claim-
20 ant's request, the application shall be immediately referred
21 to—

22 (1) a review panel of 2 qualified physicians,
23 with a third qualified physician available to resolve
24 any disagreement between the initial 2 qualified phy-
25 sicians; or

1 (2) an exceptional medical claims panel.

2 The Medical Director shall be bound by a panel's decision.

3 The rules shall also provide for the prioritization of claims,

4 including enhanced priority for claimants who have meso-

5 thelioma, and set a time limit for a determination by the

6 review panel.

7 (d) EXCEPTIONAL MEDICAL CLAIMS.—The rules of
8 the medical review process shall provide the claimant with
9 an opportunity to apply to an exceptional medical claims
10 panel for a determination of whether the exposed person
11 meets the requirements under section 320(b) for an excep-
12 tional medical claim for any category. This opportunity
13 shall be provided both at the initial filing of a claim and
14 after a claim has been denied under this subsection. The
15 exceptional medical claims panel shall decide whether the
16 claimant qualifies as an exceptional medical claim within
17 30 days of receipt of the claim. This time limit may be
18 extended by the Administrator only for good cause. The
19 Medical Director shall be bound by the decision of the ex-
20 ceptional medical claims panel. The Medical Director shall
21 issue a final denial, along with a brief statement of rea-
22 sons, if the claimant is found ineligible following an oppor-
23 tunity to submit the claim to a medical review panel and
24 an exceptional medical claims panel.

1 (e) MEDICAL EXAMINATIONS.—Assistance shall be
2 provided to employees and claimants in connection with
3 this title, including assistance in securing medical testing
4 and diagnostic services necessary to determine the exist-
5 ence of a covered illness. In carrying out this subsection,
6 the examination of workers who believe they have ailments
7 related to the environmental conditions at their places of
8 work in Los Alamos shall be conducted free of charge at
9 the Veterans' Administration hospital nearest to their
10 place of residence and such workers shall receive free
11 treatment for ailments and illnesses identified by such
12 physicians as potentially work-related. Such workers shall
13 also receive reimbursement for travel and lodging ex-
14 penses.

15 (f) MONITORING ACCURACY OF DETERMINATIONS.—
16 The Medical Director shall establish audit and personnel
17 review procedures for evaluating the accuracy of medical
18 eligibility determinations, including both erroneous ap-
19 provals and erroneous denials.

20 (g) OPT-OUT.—After receiving a certificate of eligi-
21 bility, a claimant may opt out of settlement proceedings
22 provided for under sections 303 and 304 and elect to file
23 suit in any State or Federal court of competent jurisdic-
24 tion.

1 **SEC. 303. ELECTION OF ADMINISTRATIVE PROCESS; SET-**
2 **TLEMENT OFFERS.**

3 (a) NAMING AND NOTIFICATION OF DEFENDANTS.—
4 Medically eligible claimants, other than those who elect to
5 file suit in court under section 302(f), shall name defend-
6 ants. Defendants shall receive notice from the Adminis-
7 trator.

8 (1) IDENTIFICATION OF DEFENDANTS ASSOCI-
9 ATED WITH WORK SITES.—At the claimant's re-
10 quest, the Administrator will provide information
11 concerning any person in Los Alamos, New Mexico
12 who may have provided asbestos or asbestos-con-
13 taining products or materials to work sites named by
14 the claimant and when such asbestos or asbestos-
15 containing products or materials may have been pro-
16 vided as well as the time such products or materials
17 were located at the named work sites. The Adminis-
18 trator may implement this paragraph through rule-
19 making.

20 (2) VERIFIED PARTICULARIZED STATEMENT.—
21 Within such time after receiving a certificate of med-
22 ical eligibility as may be provided by rule, a claimant
23 shall provide, with respect to each person that the
24 claimant alleges is responsible for the injury claimed,
25 a verified particularized statement of the basis for
26 the allegation that the person is or may be respon-

1 sible for the injury. The particularized statement
2 shall include such information as the Administrator
3 may require for the purpose of providing the defend-
4 ant with a reasonable basis for making an offer of
5 settlement. The claimant may incorporate by ref-
6 erence any information required by this paragraph
7 that may already have been submitted to the OAC.

8 (3) NOTICE.—Upon finding that the claimant’s
9 particularized statement meets the requirements of
10 paragraph (2), the Administrator shall provide no-
11 tice to each named defendant. The defendant shall
12 at the same time be furnished with a copy of all par-
13 ticularized statements submitted by the claimant
14 under paragraph (2) and, subject to reasonable rules
15 protecting the confidentiality of information provided
16 by the claimant, a copy of all information submitted
17 by the claimant, records and other information ob-
18 tained by the Medical Director relating to the claim
19 and the results of any medical tests administered at
20 the direction of the Medical Director. Any defendant
21 may provide any information relevant to the amount
22 of any recommended settlement under subsection
23 (b), including information regarding product identi-
24 fication, exposure, and damages.

1 (4) THIRD-PARTY PRACTICE.—Defendants may
2 assert third-party claims in accordance with rules
3 adopted by the Administrator. Third-party claimants
4 shall provide a verified particularized statement,
5 meeting the requirements of paragraph (2), substan-
6 tiating the allegation that the third-party defendant
7 may be liable to the third-party plaintiff, wholly or
8 in part, for the claimant’s injury. For good cause
9 shown and subject to reasonable limitations, an Ad-
10 ministrative Law Judge may allow discovery for the
11 purpose of obtaining information necessary to allow
12 the claimant or any third-party plaintiff to provide
13 a particularized statement under paragraph (2) or
14 this paragraph.

15 (b) SETTLEMENT OFFERS; OFFER OF COMPENSA-
16 TION BY THE TRUSTEE.—

17 (1) MANDATORY OFFER FROM DEFENDANTS.—
18 Within 21 days following the naming of all defend-
19 ants, each defendant shall provide to the claimant in
20 writing a good faith settlement offer, and shall pro-
21 vide a copy to the Trustee.

22 (2) MANDATORY OFFER FROM ASBESTOS COM-
23 PENSATION FUND.—Within 10 days of receiving all
24 of the defendants’ offers, the Trustee shall make an
25 offer of compensation to the claimant, based on a

1 compensation grid which shall be established and
2 regularly revised by rule.

3 **SEC. 304. CLAIMANT'S CHOICE OF FORUM.**

4 (a) IN GENERAL.—The claimant shall notify each de-
5 fendant and the Trustee whether the claimant accepts or
6 rejects the defendant's settlement offer under section
7 303(b)(1). If the claimant accepts any such offer, or any
8 other settlement offer, the Trustee's offer of compensation
9 shall be automatically reduced by the amount of such set-
10 tlements.

11 (b) NOTICE.—The claimant shall notify the Trustee
12 and any defendant within 60 days whether the claimant
13 accepts or rejects an offer that has been provided pursuant
14 to section 303(b)(1) or 303(b)(2).

15 (c) ORPHAN SHARES.—The Trustee shall not make
16 an offer to the claimant under section 303(b) if no solvent
17 defendant has been named.

18 (d) ACCEPTANCE.—If the claimant accepts the Trust-
19 ee's offer of compensation, the Trustee shall assume the
20 claim. The Trustee may accept any defendant's settlement
21 offer under section 303(b)(1) or may prosecute the claim
22 against any defendant as provided in section 305, or may
23 prosecute the claim in any State or Federal court.

24 (e) REJECTION.—If the claimant rejects any defend-
25 ant's settlement offer and also rejects the Trustee's offer

1 of compensation, the claimant may elect an administrative
2 adjudication under section 305 or opt out of further ad-
3 ministrative proceedings and file suit in a State or Federal
4 court.

5 **SEC. 305. ADMINISTRATIVE ADJUDICATION.**

6 If a claimant elects adjudication under this section,
7 the OAC shall assign an Administrative Law Judge to
8 conduct a hearing on the record and to determine whether
9 compensation is to be provided and the amount of such
10 compensation. The Administrative Law Judge shall ad-
11 here to the law applicable to asbestos adjudications as con-
12 tained in sections 310 through 318. The Administrative
13 Law Judge shall issue a decision, containing findings of
14 fact and conclusions of law, as expeditiously as possible,
15 but not later than 90 days after the case is assigned.

16 **SEC. 306. APPEALS; JUDICIAL REVIEW.**

17 Any person aggrieved by a final decision of the Ad-
18 ministrator under section 305 or a final denial by the
19 Medical Director under section 302, may seek review of
20 that decision or denial in the United States Court of Fed-
21 eral Claims, which shall uphold the decision or denial if
22 it is supported by substantial evidence and is not contrary
23 to law. A decision by the Medical Director that a claimant
24 has an eligible medical condition is not a final decision
25 under this section. Decisions of the United States Court

1 of Federal Claims are appealable, without regard to the
2 amount in controversy or the citizenship of the parties,
3 to a United States Court of Appeals for a judicial circuit.

4 **SEC. 307. GATHERING AND MAINTENANCE OF INFORMA-**
5 **TION.**

6 (a) **PRODUCT IDENTIFICATION.**—The OAC shall col-
7 lect and regularly update information regarding product
8 identification and shall make such information publicly
9 available. The data base maintained by the OAC under
10 this section is for information purposes only, and the pres-
11 ence of information in that database shall not lead to any
12 presumption.

13 (b) **SETTLEMENTS, JUDGMENTS, AND AWARDS.**—
14 The OAC shall collect data on settlements, judgments, and
15 awards in connection with asbestos claims and shall make
16 such data publicly available. The OAC may require this
17 data to be reported in such form as it may prescribe.

18 (c) **SUBPOENA POWER.**—The OAC may compel, by
19 subpoena or other appropriate process, information from
20 any person regarding past settlements or product identi-
21 fication for purposes of developing and maintaining a com-
22 pensation grid under section 303(b)(2) and maintaining
23 a database for purposes of naming defendants under sec-
24 tion 303(a)(1). In addition, the subpoena power under this

1 subsection may be used by the OAC in order to secure
2 financial information from any defendant.

3 (d) CONFIDENTIALITY.—Any information or docu-
4 mentary material concerning settlements which is specific
5 to a company, law firm, or plaintiff that is provided to
6 the OAC pursuant to subsection (b) or (c), whether by
7 subpoena or otherwise, shall be exempt from disclosure
8 under section 552 of title 5, United States Code, and the
9 disclosure of such information by the OAC or any person
10 is prohibited.

11 **SEC. 308. LEGAL ASSISTANCE PROGRAM.**

12 (a) IN GENERAL.—The OAC shall implement a legal
13 assistance program for the purpose of providing legal rep-
14 resentation to claimants. The OAC shall maintain a roster
15 of qualified counsel who agree to provide services to claim-
16 ants under rules, practices, and procedures established by
17 the Administrator.

18 (b) FREE CHOICE OF COUNSEL.—Claimants shall
19 not be required to use counsel provided or recommended
20 by the OAC, but shall retain their right to be assisted by
21 counsel of their choice.

22 (c) LEGAL ASSISTANCE.—The OAC shall adopt rules
23 concerning the reasonableness of fees, and all legal rep-
24 resentation of persons asserting asbestos claims shall com-
25 ply with such rules.

1 **SEC. 309. TIME LIMITS FOR DISPOSITIONS.**

2 (a) IN GENERAL.—If the Medical Director fails to
3 meet the time limits for an initial decision provided under
4 this title with respect to more than 30 percent of claims,
5 then the Administrator shall take such action as may be
6 necessary, including increasing staff and administrative
7 assessments under section 330, to ensure compliance with
8 such time limit with regard to at least 70 percent of
9 claims.

10 (b) NO OFFER.—If the Trustee fails to make an offer
11 within 120 days after the Administrator's receipt of a
12 complete application under section 302 with respect to
13 more than 30 percent of claims, then the Administrator
14 shall take such action as may be necessary, including in-
15 creasing staff and administrative assessments under sec-
16 tion 330, to ensure compliance with such time limit with
17 regard to at least 70 percent of claims.

18 (c) DUTIES.—The duties established by subsections
19 (a) and (b) shall be nondiscretionary and enforceable by
20 an order of mandamus from any judge of the United
21 States Court of Federal Claims.

22 (d) EXCEPTIONS.—The Administrator may by rule
23 establish exceptions to the time limits in this section. Such
24 rules shall take into consideration the complexity of the
25 case, the extent to which delays are attributable to the

1 fault or neglect of the claimant or the claimant's attorney
2 and other factors that are beyond the control of the OAC.

3 **Subtitle B—Law Applicable to**
4 **Asbestos Adjudications**

5 **SEC. 310. MEDICAL ELIGIBILITY.**

6 A claimant may recover compensation for damages
7 caused by an eligible medical condition only if the claimant
8 presents a certificate of medical eligibility establishing its
9 existence. A certificate of medical eligibility shall be con-
10 clusive unless rebutted by clear and convincing evidence.
11 However, a certificate of medical eligibility shall not be
12 conclusive as to allegations regarding exposure to asbestos
13 or when medical eligibility is established pursuant to sec-
14 tion 323(b).

15 **SEC. 311. DAMAGES.**

16 A claimant who establishes an eligible medical condi-
17 tion shall be entitled to compensatory damages to the ex-
18 tent provided by applicable law, including damages for
19 emotional distress, pain and suffering, and medical moni-
20 toring where authorized. Such damages shall not include
21 punitive damages or damages solely for enhanced risk of
22 a future condition, except as provided in section 308(d).

23 **SEC. 312. STATUTE OF LIMITATIONS OR REPOSE.**

24 No defense to an asbestos claim based on a statute
25 of limitations or statute of repose, laches, or any other

1 defense based on the timeliness of the claim shall be recog-
2 nized or allowed, unless such claim was untimely as of the
3 date of enactment of this title. No claim shall be deemed
4 to have accrued until and unless the claimant's condition
5 would have qualified as an eligible medical condition under
6 section 321, 322, 323, or 324.

7 **SEC. 313. COME BACK RIGHTS.**

8 Notwithstanding any other provision of law, a judg-
9 ment or settlement of an asbestos claim for a nonmalignant
10 disease shall not preclude a subsequent claim with
11 respect to the same exposed person for an eligible medical
12 condition pursuant to section 320(b), 322, 323, or 324.

13 **SEC. 314. CLASS ACTIONS, AGGREGATIONS OF CLAIMS AND**
14 **VENUE.**

15 (a) CONSOLIDATIONS.—No joinder of parties, aggregation
16 of claims, consolidation of actions, extrapolation,
17 or other device to determine multiple asbestos claims on
18 a collective basis shall be permitted without the consent
19 of all parties, except as provided in subsection (b) or unless
20 the court, pursuant to an exercise of judicial authority
21 to promote the just and efficient conduct of asbestos civil
22 actions, orders such procedures, including the transfer for
23 consolidation, to determine multiple asbestos claims on a
24 collective basis.

1 (b) CLASS ACTION SUITS.—In any civil action assert-
2 ing an asbestos claim, a class action may be allowed with-
3 out the consent of all parties if the requirements of Rule
4 23, Federal Rules of Civil Procedure are satisfied.

5 (c) VENUE.—At the election of the claimant, an as-
6 bestos claim may be filed in any jurisdiction where the
7 claimant is alleging that the claimant was exposed to as-
8 bestos or where the claimant is currently domiciled.

9 (d) REMOVAL.—Any party in a civil action that in-
10 volves a violation of subsection (a), (b) or (c) of this sec-
11 tion may remove such action to an appropriate district
12 court of the United States. The district courts of the
13 United States shall have jurisdiction of all civil actions re-
14 moved pursuant to this section without regard to diversity
15 of citizenship or amount in controversy.

16 (e) ADMINISTRATIVE PROCEEDINGS.—In any pro-
17 ceeding under section 105, the Administrative Law Judge
18 may order adjudication of claims on a collective basis.

19 **SEC. 315. JOINT AND SEVERAL LIABILITY.**

20 This title shall not be construed to limit joint and
21 several liability under applicable Federal or New Mexico
22 law. In any core claim that is successfully asserted against
23 a defendant, such defendant shall be held jointly and sev-
24 erally liable for full compensatory damages to the claimant
25 notwithstanding any contrary provision of law.

1 **SEC. 316. CORE CLAIMS.**

2 In any core claim, the issues to be decided shall be
3 limited to—

4 (1) whether the exposed person with respect to
5 whom a claim is made has or had an eligible medical
6 condition;

7 (2) whether the exposure of the exposed person
8 to the product of the defendant was a substantial
9 contributing factor in causing that eligible medical
10 condition; and

11 (3) the amount of compensation to be provided.

12 **SEC. 317. SPECIAL RULES APPLICABLE TO SECTION 305 AD-**
13 **JUDICATIONS.**

14 (a) **APPLICABLE LAW.**—Unless otherwise provided in
15 this title, in claims based on New Mexico law, the Admin-
16 istrative Law Judge shall, with respect to each defendant,
17 apply the substantive law of New Mexico.

18 (b) **FULL COMPENSATORY DAMAGES IN WRONGFUL**
19 **DEATH CASES.**—Notwithstanding any contrary provision
20 of New Mexico law, full compensatory damages, including
21 damages for noneconomic loss, shall be awarded in wrong-
22 ful death claims involving mesothelima. In all other cases,
23 damages for noneconomic loss may be awarded to the ex-
24 tent that they are available pursuant to applicable law.

25 (c) **PENALTY FOR INADEQUATE OFFER.**—In any pro-
26 ceeding against a defendant by a claimant under section

1 305, and in any proceeding by the Trustee, if the final
2 offer made by any defendant is less than the share of the
3 total liability awarded against that defendant, a penalty
4 shall be added to the award equal to 100 percent of the
5 difference between the defendant's settlement offer under
6 section 303(b) and the lesser of—

7 (1) the defendant's share of the offer made by
8 the Trustee under section 303(b); or

9 (2) the defendant's share of the award made
10 under section 305.

11 (d) PUNITIVE DAMAGES.—Punitive damages may be
12 awarded against a defendant if the claimant establishes
13 by clear and convincing evidence that the conduct carried
14 out by the defendant with a conscious, flagrant indiffer-
15 ence to the rights or safety of others was the proximate
16 cause of the harm that is the subject of the asbestos claim.
17 Punitive damages may not exceed 3 times the amount of
18 the award pursuant to a section 305 adjudication plus any
19 penalties added to that award pursuant to subsection (c).

20 **SEC. 318. SPECIAL RULES APPLICABLE TO THE TRUSTEE.**

21 In an action by the Trustee as assignee of the claim-
22 ant, the award under section 304(c) shall include compen-
23 satory damages for the claimant's injury and all punitive
24 damages under section 317(d), any penalties for inad-
25 equate offers by defendants, and the Trustee's costs in

1 establishing the claim, including reasonable attorneys' fees
 2 and expenses and an allowance for interest on the amount
 3 paid by the Fund to the claimant under section 304. Inter-
 4 est shall be calculated from the time of such payments,
 5 and in accordance with subtitle D. All economic and non-
 6 economic damages recovered by the Fund in excess of 200
 7 percent of the amount paid to the claimant pursuant to
 8 section 304 and all punitive damages under section 317(d)
 9 shall be paid to the settling claimant. The fact that the
 10 claimant has accepted an offer of compensation by the
 11 Trustee, and the amount and terms of such offer, shall
 12 not be admissible in any adjudication of a claim brought
 13 by the Trustee against any defendant.

14 **Subtitle C—Eligible Medical** 15 **Categories**

16 **SEC. 320. ELIGIBLE MEDICAL CATEGORIES.**

17 (a) IN GENERAL.—The eligible medical categories
 18 under this title are asbestos-related nonmalignant condi-
 19 tions with impairment, asbestos-related mesothelioma, as-
 20 bestos-related lung cancer, and asbestos-related other can-
 21 cer.

22 (b) ESTABLISHING EXISTENCE.—A claimant may es-
 23 tablish the existence of an eligible medical condition either
 24 by demonstrating that the exposed person meets the
 25 standard criteria provided in sections 321, 322, 323, and

1 324 or by demonstrating to an exceptional medical claims
2 panel, through reliable evidence, that the exposed person
3 has an asbestos-related impairment that is substantially
4 comparable to the condition of an exposed person who
5 would satisfy the requirements of a given medical cat-
6 egory. The Administrator, after consultation with the
7 Medical Advisory Committee, may adopt rules consistent
8 with this section to assure consistency and efficiency in
9 the designation of claims as exceptional medical claims.

10 **SEC. 321. ASBESTOS-RELATED NONMALIGNANT CONDI-**
11 **TIONS WITH IMPAIRMENT.**

12 (a) IN GENERAL.—The standard criteria for asbes-
13 tos-related nonmalignant conditions with impairment shall
14 include—

- 15 (1) clinical evidence of asbestosis,
16 (2) pathological evidence of asbestosis, or
17 (3) evidence of bilateral pleural thickening with
18 impairment.

19 (b) OBSTRUCTIVE LUNG DISEASE.—A claimant shall
20 not be disqualified from compensation under this category
21 solely because an exposed person who otherwise meets the
22 requirements for impairment has a reduced FEV1/FVC
23 ratio indicating obstructive lung disease. In that event, the
24 exceptional medical claims panel shall determine, giving
25 due regard to the evidence that any impairment is related

1 to obstructive disease and taking into consideration all
2 available evidence, whether an asbestos-related restrictive
3 disease substantially contributes to the impairment of the
4 exposed person. Such a contribution shall be presumed if
5 the panel concludes, based upon the findings of a certified
6 B-reader, that the exposed person's chest x-ray is ILO
7 Grade 2/1 or more.

8 **SEC. 322. ASBESTOS-RELATED MESOTHELIOMA.**

9 The standard criteria for asbestos-related mesothe-
10 lioma shall include a diagnosis by a qualified physician of
11 a malignant mesothelioma caused or contributed to by ex-
12 posure to asbestos with a primary site in the pleura, peri-
13 toneum, or like tissue, or reasonably equivalent clinical di-
14 agnosis in the absence of adequate tissue for pathological
15 diagnosis.

16 **SEC. 323. ASBESTOS-RELATED LUNG CANCER.**

17 (a) IN GENERAL.—The standard criteria for asbes-
18 tos-related lung cancer shall include—

19 (1) a diagnosis by a qualified physician of lung
20 cancer that the physician concludes was caused or
21 contributed to by exposure to asbestos;

22 (2) a latency period of at least 10 years; and

23 (3) either—

24 (A) evidence of asbestosis or bilateral pleu-
25 ral thickening with impairment sufficient to

1 meet the requirements of section 321 or to
2 qualify as an exceptional medical claim under
3 section 320(b); or

4 (B) chest x-rays which, in the opinion of a
5 certified B-reader, demonstrate asbestos-related
6 bilateral pleural plaques or thickening, and 7.5
7 equivalent-years of exposure to asbestos-con-
8 taining materials in employment regularly re-
9 quiring work in the immediate area of visible
10 asbestos dust.

11 (b) HISTORY OF SMOKING.—If a finding of asbestos-
12 related lung cancer is made pursuant to paragraph (3)(B)
13 and the exposed person has a substantial history of smok-
14 ing, which shall be defined by rule, the claimant shall be
15 medically eligible for compensation, but the finding of as-
16 bestos-related lung cancer shall not be conclusive as to
17 causation for purposes of section 310.

18 **SEC. 324. ASBESTOS-RELATED OTHER CANCER.**

19 The standard criteria for asbestos-related other can-
20 cer shall include a diagnosis by a qualified physician of
21 a malignant primary tumor of the larynx, oral-pharynx,
22 gastro-intestinal tract, or stomach, caused or contributed
23 to by exposure to asbestos, together with evidence of a
24 condition sufficient to meet the requirements of section

1 321 or to qualify as an exceptional medical claim under
2 section 320(b).

3 **SEC. 325. MEDICAL TESTING REIMBURSEMENT.**

4 (a) LEVEL A.—A claimant with at least 4 equivalent-
5 years of heavy exposure to asbestos, whose chest x-ray
6 shows either small irregular opacities of ILO Grade 1/0
7 or bilateral pleural thickening of ILO Grade B/2, shall be
8 eligible for reimbursement of 100 percent of out-of-pocket
9 expenses for any medical testing required under section
10 302, up to a ceiling of \$1,500. Level A claimants shall
11 be eligible at 3 year intervals for similar reimbursement
12 of future medical testing expenses for up to 2 additional
13 occasions. Level A reimbursements shall be treated as ad-
14 ministrative expenses of the OAC and paid for by defend-
15 ants under section 401.

16 (b) LEVEL B.—The Administrator shall, subject to
17 the availability of appropriated funds, reimburse up to 100
18 percent of the out-of-pocket expenses for any medical test-
19 ing required under section 102, up to a ceiling established
20 by rule, with the approval of the Trustee, for any claimant
21 with at least one equivalent-year of heavy exposure to as-
22 bestos who meets the medical but not the exposure re-
23 quirements of Level A. Level B claimants may be eligible
24 for similar reimbursement of future medical testing ex-
25 penses for up to 2 additional occasions at least 3 years

1 apart. The Administrator shall adjust periodically the
2 amount of the cash payment to reflect changes in medical
3 costs. Level B reimbursements shall be treated as adminis-
4 trative expenses of the OAC and paid for by defendants
5 under section 401.

6 (c) CERTIFIED LABS.—The Administrator is author-
7 ized to establish a program for the certification of labora-
8 tories to provide medical testing under this section.

9 (d) EXPOSURE VERIFICATION.—The Administrator
10 shall establish audit and other procedures to provide rea-
11 sonable assurance that statements concerning exposure
12 made by claimants seeking medical testing reimbursement
13 under this section are accurate.

14 **Subtitle D—Funding**

15 **SEC. 330. ASSESSMENT AND ENFORCEMENT.**

16 (a) RULES.—The Administrator shall adopt rules for
17 calculating and collecting from defendants all costs associ-
18 ated with the determination of claims and payments to
19 claimants.

20 (b) TRUSTEE.—The Trustee shall have authority to
21 bring an action in the district courts of the United States
22 to enforce any obligation imposed on any person by this
23 section and such courts shall have exclusive jurisdiction
24 of such actions without regard to the amount in con-
25 troversy or citizenship of the parties. The district court

1 shall not entertain any defense other than lack of jurisdic-
2 tion in any action by the Trustee under this subsection.

3 (c) TRUSTEE PREVAILS.—In any action under sub-
4 section (b) in which the Trustee prevails, the Trustee shall
5 be entitled to costs, including reasonable attorneys' fees,
6 and interest on any unpaid amount.

7 (d) JUDICIAL REVIEW.—A defendant may challenge
8 the legality or amount of any assessment only by seeking
9 judicial review in the United States Court of Federal
10 Claims after paying the disputed amount. If successful,
11 the defendant shall be awarded interest.

12 **SEC. 331. FISCAL AND FINANCIAL MANAGEMENT OF THE**
13 **ASBESTOS COMPENSATION FUND.**

14 (a) APPLICABILITY OF CREDIT REFORM ACT PRIN-
15 CIPLES; FISCAL MANAGEMENT RULES.—Except as pro-
16 vided in this section, the operations of the Fund related
17 to settlement payments under section 304, and associated
18 recoveries from defendants, shall be governed by the Fed-
19 eral Credit Reform Act of 1990 (2 U.S.C. 661 et seq.),
20 notwithstanding the status of the Fund as a governmental
21 entity. The Administrator shall promulgate rules, ap-
22 proved by the Office of Management and Budget, for the
23 fiscal management of the Fund. Such rules and their ap-
24 plication shall not be subject to judicial review and shall,
25 as regards payments under section 304—

1 (1) provide all reasonable assurance that, over
2 an appropriate time period, the subsidy rate associ-
3 ated with the net litigation risk of the Fund is zero;

4 (2) provide all reasonable assurance that, in
5 any given year, the subsidy rate associated with the
6 net litigation risk of the Fund is no more than 2
7 percent;

8 (3) provide for the allocation of receipts from
9 defendants to various Fund accounts, including the
10 Fund's financing account, program account, and an
11 account for salaries and expenses (which shall in-
12 clude litigation costs); and

13 (4) provide specific instructions for the Trustee
14 to reduce payments by the Fund when necessary to
15 meet the solvency requirements of this subsection.

16 (b) FINANCING OF THE FUND, SETTLEMENT PAY-
17 MENTS TO CLAIMANTS.—

18 (1) CREDIT REFORM PRINCIPLES.—The Fund
19 is authorized to receive from defendants, as offset-
20 ting receipts, any amounts related to settlements or
21 judgments, including damages, interest, litigation
22 costs, specific administrative costs that may be re-
23 quired by the Administrator through rulemaking,
24 and interest costs incurred by the Fund in connec-
25 tion with payment of settlement offers made under

1 section 103. Amounts received from defendants as
2 interest shall be sufficient to pay interest costs due
3 to the United States Treasury from the financing
4 account, plus the subsidy costs of the program ac-
5 count, provided that the latter amounts may not ex-
6 ceed 3 percent of the amount of any settlement or
7 award. Recoveries on a claim by the Fund in excess
8 of the settlement amount paid to the claimant and
9 other costs of the Fund which are not paid to the
10 claimant under section 209 shall be available to the
11 program account as a reduction to subsidy costs in
12 the current or any subsequent year.

13 (2) AUTHORITY.—The program account shall
14 have permanent indefinite authority, not subject to
15 further appropriation, to transfer funds to the fi-
16 nance account in accordance with principles of the
17 Credit Reform Act.

18 **SEC. 332. AUTHORIZATION FOR APPROPRIATIONS AND OFF-**
19 **SETTING COLLECTIONS.**

20 (a) IN GENERAL.—There are authorized to be
21 appropriated—

22 (1) to the OAC such sums as may be required
23 to perform responsibilities under this title;

1 (2) to the United States Court of Federal
2 Claims, such sums as may be required to carry out
3 its responsibilities under this title; and

4 (3) to the OAC an amount not to exceed \$100
5 million, for a one-time loan to the Fund in connec-
6 tion with startup expenses, such loan to be repaid by
7 the Fund with interest;

8 The total of appropriations provided under this subsection
9 in the first year after the date of enactment not exceed
10 \$250 million and in any subsequent year not exceed \$150
11 million.

12 (b) OFFSETTING COLLECTIONS OF ADMINISTRATIVE
13 ASSESSMENTS.—The OAC is authorized to receive and to
14 expend in any year, as offsetting collections, all adminis-
15 trative assessments or prepaid administrative assessments
16 and all costs and penalties paid to it.

17 **Subtitle E—Transition**

18 **SEC. 335. APPLICABILITY; TRANSITIONAL CIVIL ACTIONS.**

19 (a) IN GENERAL.—This title shall be effective upon
20 its date of enactment with respect to any civil action as-
21 serting an asbestos claim in which trial has not com-
22 menced as of that date.

23 (b) PENDING CLAIM.—A claimant with a pending
24 civil claim on the date of enactment shall not be required
25 to obtain a certificate of medical eligibility or otherwise

1 exhaust the procedures set forth in subtitle A if trial com-
2 mences within 6 months of the date of enactment of this
3 title. This 6-month period may be extended by the Attor-
4 ney General for up to an additional 6 months if required
5 for the orderly implementation of this title, and after re-
6 porting to the Congress the reasons for any such exten-
7 sion.

8 (c) RIGHT TO SUE LETTER.—If a claimant with—

9 (1) a pending civil action on the date of enact-
10 ment of this title, and

11 (2) a scheduled trial date within one year after
12 the date of enactment of this title

13 does not receive an initial decision on medical eligibility
14 within the time period prescribed in section 302(c), the
15 claimant may request a right-to sue letter from the Ad-
16 ministrator at any time prior to the issuance of that initial
17 decision. If the Attorney General determines that the 6-
18 month period in subsection (b) should be extended, the
19 one-year period in the preceding sentence shall be similarly
20 extended. The Administrator shall issue a right-to-sue let-
21 ter or an initial decision under section 102 within 10 days
22 following the receipt of the claimant's request. A claimant
23 who receives a right-to-sue letter may assert the claimant's
24 asbestos claim in any competent forum notwithstanding
25 section 301(b).

1 (d) CLAIM IN ANOTHER FORUM.—Any claimant who
2 asserts his claim in a forum other than the OAC under
3 subsections (b) or (c) must demonstrate that the exposed
4 person has qualified for medical eligibility under section
5 320, 321, 322, 323, 324, or 325.

6 **Subtitle F—Definitions**

7 **SEC. 340. DEFINITIONS.**

8 In this title:

9 (1) ASBESTOS CLAIM.—The term “asbestos
10 claim” means any claim for damages or other relief,
11 arising out of, based on, or related to the health ef-
12 fects of occupational exposure to asbestos, including
13 any claim for personal injury, death, mental or emo-
14 tional injury, risk of disease or other injury, or the
15 costs of medical monitoring or surveillance, and in-
16 cluding any claim made by or on behalf of any ex-
17 posed person or any representative, spouse, parent,
18 child, or other relative of any exposed person. The
19 term does not include any claim for workers’ com-
20 pensation benefits, or any claim by an employer or
21 insurer for reimbursement from a third-party for
22 benefits paid under a workers’ compensation plan, or
23 any claim for benefits under a veterans’ benefits pro-
24 gram.

1 (2) ASBESTOS TRUST.—The term “asbestos
2 trust” means a court-supervised trust established to
3 resolve asbestos claims arising directly or indirectly
4 from exposure to asbestos or asbestos-containing
5 products, including a trust created pursuant to the
6 bankruptcy laws of the United States or Rule 23 of
7 the Federal Rules of Civil Procedure.

8 (3) CERTIFICATE OF MEDICAL ELIGIBILITY.—
9 The term “certificate of medical eligibility” means a
10 certificate issued to a claimant pursuant to this title
11 certifying that an exposed person meets the require-
12 ments of one or more eligible medical categories or
13 qualifies as an exceptional medical claim.

14 (4) CERTIFIED B-READER.—The term “cer-
15 tified B-reader” means an individual qualified as a
16 “final” or “B-reader” under 42 C.F.R. 37.51(b)
17 (1997) (and any subsequent revisions thereof) whose
18 certification is current.

19 (5) CHEST X-RAYS.—The term “chest x-rays”
20 means chest radiographs taken in at least 2 views
21 (Posterior-Anterior and Lateral) and graded quality
22 1 for reading according to the criteria established by
23 the ILO. If the claimant is unable to provide quality
24 1 chest x-rays because of death or because of an in-

1 ability to have new chest x-rays taken, chest x-rays
2 graded quality 2 will be acceptable.

3 (6) CIVIL ACTION.—The term “civil action”
4 means any action, lawsuit, or proceeding in any New
5 Mexico, Federal, or tribal court, but does not
6 include—

7 (A) a criminal action; or

8 (B) an action relating to New Mexico or
9 Federal workers’ compensation laws, or a pro-
10 ceeding for benefits under any veterans’ bene-
11 fits program.

12 (7) CLAIMANT.—The term “claimant” means
13 any exposed person in Los Alamos, New Mexico, or
14 the person’s legal representative, and any relative of
15 an exposed person or their legal representative, who
16 asserts an asbestos claim.

17 (8) CLINICAL EVIDENCE OF ASBESTOSIS.—The
18 term “clinical evidence of asbestosis” means a diag-
19 nosis of pulmonary asbestosis by a qualified physi-
20 cian based on the minimum objective criteria of—

21 (A) Chest x-rays for which a B-reader re-
22 port is furnished showing small irregular opac-
23 ities of ILO Grade 1/0 and pulmonary function
24 testing and physical examination that show
25 either—

1 (i) FVC <80% of predicted value
2 with FEV1/FVC \geq 75% (actual value); or

3 (ii) TLC <80% of predicted value,
4 with either DLCO \leq 76% of predicted value
5 or bilateral basilar crackles, and also the
6 absence of any probable explanation for
7 this DLCO result or crackles finding other
8 than the presence of asbestos lung disease;
9 or

10 (B) Chest x-rays for which a B-reader re-
11 port is furnished showing small irregular opac-
12 ities of ILO Grade 1/1 or greater and pul-
13 monary function testing that shows either—

14 (i) FVC <80% of predicted value
15 with FEV1/FVC \geq 72% (actual value) or, if
16 the individual tested is at least 68 years
17 old at the time of the testing, with FEV1/
18 FVC \geq 65% (actual value); or

19 (ii) TLC <80% of predicted value.

20 (9) COMPENSATORY DAMAGES.—The term
21 “compensatory damages” means damages awarded
22 for economic loss, such as medical expenses, as well
23 as noneconomic loss. Noneconomic loss includes sub-
24 jective, nonpecuniary loss, such as pain, suffering,

1 inconvenience, emotional distress, loss of society and
2 companionship, and loss of consortium.

3 (10) CORE CLAIM.—The term “core claim”
4 means an asbestos claim against a defendant who
5 either—

6 (A) manufactured any asbestos-containing
7 product which released asbestos fibers to which
8 the exposed person was exposed, and paid out
9 \$50,000,000 in respect of such claims cumula-
10 tively over the 10 year period preceding the fil-
11 ing of the claim; or

12 (B) was not a manufacturer but paid out
13 \$100,000,000 in respect of such claims cumula-
14 tively over the 10 year period preceding the fil-
15 ing of the claim; provided that the alleged liabil-
16 ity is not based upon the control or ownership
17 of property.

18 (11) DEFENDANT.—The term “defendant”
19 means any person in Los Alamos, New Mexico, who
20 is or may be responsible for the asbestos-related con-
21 dition of the exposed person and who is so notified
22 by the Administrator pursuant to subtitle A. The
23 term does not include—

24 (A) an asbestos trust in existence as of the
25 date of enactment of this title unless the trust

1 elects to be covered by this title under section
2 345(b); or

3 (B) the United States Government or the
4 government of New Mexico.

5 (12) DLCO.—The term “DLCO” means single-
6 breath diffusing capacity of the lung (carbon mon-
7 oxide), which is a measure of the volume of carbon
8 monoxide transferred from the alveoli to blood in the
9 pulmonary capillaries for each unit of driving pres-
10 sure of the carbon monoxide.

11 (13) EQUIVALENT-YEAR.—The term “equiva-
12 lent-year” means a measure of exposure to asbestos
13 adjusted to reflect varying exposure levels typical of
14 different occupations. Each year of exposure in
15 which an exposed person’s primary occupation in-
16 volved the direct installation, repair, or removal of
17 asbestos-containing products, shall count as one
18 year. Each year of such occupational exposure in
19 which the exposed person’s primary occupation in-
20 volved either the direct manufacture of asbestos-con-
21 taining products using raw asbestos fiber or the di-
22 rect installation, repair, or removal of asbestos-con-
23 taining products shall count as 2 years. Each year
24 of exposure in occupations not described above shall
25 count as one-half year.

1 (14) EVIDENCE OF BILATERAL PLEURAL
2 THICKENING WITH IMPAIRMENT.—The term “evi-
3 dence of bilateral pleural thickening with impair-
4 ment” means a diagnosis of bilateral pleural thick-
5 ening by a qualified physician based on the min-
6 imum objective criteria of either—

7 (A) Chest x-rays for which a B-reader re-
8 port is furnished showing bilateral pleural
9 thickening of ILO Grade B/2 with pulmonary
10 function testing and physical examination that
11 show either—

12 (i) FVC <80% of predicted value
13 with FEV1/FVC \geq 75% (actual value); or

14 (ii) TLC <80% of predicted value,
15 with either DLCO \leq 76% of predicted value
16 or bilateral basilar crackles, and also the
17 absence of any probable explanation for
18 this DLCO result or crackles finding other
19 than the presence of asbestos lung disease;
20 or

21 (B) Chest x-rays for which a B-reader re-
22 port is furnished showing bilateral pleural
23 thickening of ILO Grade C/2 or greater; and
24 pulmonary function testing that shows either—

- 1 (i) FVC <80% of predicted value
2 with FEV1/FVC \geq 72% (actual value) or, if
3 the individual tested is at least 68 years
4 old at the time of the testing, with FEV1/
5 FVC \geq 65% (actual value); or
6 (ii) TLC <80% of predicted value.

7 (15) EXPOSED PERSON.—The term “exposed
8 person” means any person who has been exposed in
9 Los Alamos, New Mexico to asbestos or to asbestos-
10 containing products.

11 (16) FEV1.—The term “FEV1” means forced
12 expiratory volume (1 second), which is the maximal
13 volume of air expelled in one second during perform-
14 ance of the spirometric test for forced vital capacity
15 (FVC).

16 (17) FUND.—The term “Fund” means the As-
17 bestos Compensation Fund.

18 (18) FVC.—The term “FVC” means forced
19 vital capacity, which is the maximal volume of air
20 expired with a maximally forced effort from a posi-
21 tion of maximal inspiration.

22 (19) ILO.—The term “ILO” means the Inter-
23 national Labour Organization.

24 (20) ILO GRADE.—The term “ILO grade”
25 means the radiological ratings for the presence of

1 lung or pleural changes by chest x-ray as established
2 from time to time by the ILO.

3 (21) LATENCY PERIOD.—The term “latency pe-
4 riod” means the period from the date of the exposed
5 person’s first exposure to asbestos or an asbestos-
6 containing product to the date of manifestation of
7 the condition claimed.

8 (22) LUNG CANCER.—The term “lung cancer”
9 means a primary malignant bronchogenic tumor, of
10 any cell type, caused or contributed to by exposure
11 to asbestos.

12 (23) MANIFESTATION.—The term “manifesta-
13 tion” means either the date of the actual diagnosis
14 of the condition claimed, or the date upon which the
15 clinical records and available tests indicate that the
16 condition could reasonably have been diagnosed by a
17 qualified physician.

18 (24) NET LITIGATION RISK.—The term “net
19 litigation risk” means the risk to the Asbestos Com-
20 pensation Fund that amounts paid out to claimants,
21 plus associated interest and litigation expenses, will
22 exceed amounts recovered from defendants, ex-
23 pressed as a percentage of sums expended, and esti-
24 mated for a specific cohort of transactions. Losses

1 on particular claims are netted against excess recov-
2 eries on other claims.

3 (25) OAC.—The term “OAC” means the Office
4 of Asbestos Compensation.

5 (26) OCCUPATIONAL HISTORY.—The term “oc-
6 cupational history” means a listing of all employ-
7 ment positions, providing for the dates and location
8 of employment, the employer, and a description of
9 job responsibilities and activities.

10 (27) PARTY.—The term “party” does not in-
11 clude the United States Government or the govern-
12 ment of New Mexico.

13 (28) PATHOLOGICAL EVIDENCE OF ASBES-
14 TOSIS.—The term “pathological evidence of asbes-
15 tosis” means diagnosis of pulmonary asbestosis by a
16 qualified physician based on a finding that more
17 than one representative section of lung tissue other-
18 wise uninvolved with any other process (e.g., cancer
19 or emphysema) demonstrates a pattern of
20 peribronchiolar or parenchymal scarring in the pres-
21 ence of characteristic asbestos bodies, and also that
22 there is no other more likely explanation for the
23 presence of the fibrosis.

24 (29) PERSON.—The term “person” means an
25 individual, trust, firm, corporation, association, part-

1 nership, or joint venture. The term does not
2 include—

3 (A) an asbestos trust in existence as of the
4 date of enactment of this title unless the trust
5 elects to be covered by this title under section
6 345(b); or

7 (B) the United States Government or the
8 government of New Mexico.

9 (30) PHYSICIAN.—The term “physician” means
10 a medical doctor or doctor of osteopathy currently li-
11 censed to practice medicine in any State who has
12 not, within the 5-year period prior to the date of en-
13 actment of this title, spent more than one half of the
14 doctor’s professional time, or derived more than one-
15 half of the doctor’s professional income, either annu-
16 ally or in total, either reviewing or testifying in any
17 forum on medical-legal issues related to asbestos.

18 (31) PREDICTED VALUE.—The term “predicted
19 value” means a published reference to the normal
20 breathing capacity of healthy populations based on
21 age, height, and gender, as approved by the Medical
22 Director, pursuant to a rule, issued within 120 days
23 of the date of enactment. For the purposes of this
24 title, the use of any published, predicted values that
25 are generally accepted in the medical community

1 shall be acceptable and such values may not be ad-
2 justed for race.

3 (32) PULMONARY FUNCTION TESTING.—The
4 term “pulmonary function testing” means tests for
5 forced vital capacity, lung volume, and diffusing
6 studies using equipment, tests and standards gen-
7 erally accepted in the medical community, as ap-
8 proved by the Medical Director, pursuant to a rule,
9 issued within 120 days of enactment of this title.
10 Such pulmonary function test shall not be adjusted
11 for race.

12 (33) PUNITIVE DAMAGES.—The term “punitive
13 damages” means damages, in addition to compen-
14 satory damages, awarded against any person to pun-
15 ish past conduct or deter that person, or others,
16 from engaging in similar conduct in the future.

17 (34) QUALIFIED PHYSICIAN.—The term “quali-
18 fied physician” means, with respect to a diagnosis or
19 other medical judgment or procedure under this
20 title, an internist, pulmonary specialist, pathologist,
21 radiologist, oncologist, or specialist in occupational
22 medicine with an appropriate subspecialty, as appro-
23 priate, who is certified by the relevant medical spe-
24 cialty board.

1 (35) QUALIFYING NATIONAL SETTLEMENT
2 PLAN.—The term “Qualifying National Settlement
3 Plan” means a written agreement or related series
4 of written agreements with claimants or with attor-
5 neys or law firms representing claimants, pursuant
6 to which a person who is or may be responsible for
7 such claims has resolved or agreed to resolve at least
8 50 percent of the asbestos claims that were pending
9 against such person.

10 (36) TLC.—The term “TLC” means total lung
11 capacity, which is the volume of air in the lung after
12 maximal inspiration.

13 (37) TRUSTEE.—The term “Trustee” means
14 the Trustee of the Asbestos Compensation Fund.

15 (38) VETERANS’ BENEFITS PROGRAM.—The
16 term “veterans’ benefits program” means any pro-
17 gram for benefits in connection with military service
18 administered by the Veterans’ Administration under
19 Title 38, United States Code.

20 (39) WORKERS’ COMPENSATION LAW.—The
21 term “workers’ compensation law” means a law re-
22 specting a program administered by New Mexico or
23 the United States to provide benefits, funded by a
24 responsible employer or its insurance carrier, for oc-
25 cupational diseases or injuries or for disability or

1 death caused by occupational diseases or injuries.
2 The term includes the Longshore and Harbor Work-
3 ers' Compensation Act (33 U.S.C. 901–944, 948–
4 950), but does not include the Employer's Liability
5 Act (45 U.S.C. chapter 2).

6 **Subtitle G—Miscellaneous** 7 **Provisions**

8 **SEC. 345. RELATIONSHIP TO OTHER LAWS.**

9 (a) **APPLICABILITY OF OTHER FEDERAL LAWS.—**
10 The OAC may, with the approval of the Director of the
11 Office of Management and Budget, waive the applicability
12 in whole or in part of personnel and procurement laws and
13 regulations, provided that any such waiver must be spe-
14 cific, must be subject to periodic review and evaluation,
15 and must be reasonably related to the goals of expeditious,
16 professional, efficient, cost-effective and fair resolution of
17 asbestos claims.

18 (b) **APPLICATION TO EXISTING ASBESTOS**
19 **TRUSTS.—**

20 (1) **IN GENERAL.—**This title shall not apply to
21 any asbestos trust in existence as of the date of en-
22 actment of this title, except as provided in para-
23 graph (2).

24 (2) **ELECTION.—**An asbestos trust may elect to
25 be subject to this title by providing written notice of

1 such election to the OAC, in which case the trust
2 will have the same rights and responsibilities under
3 this title as any person who is not a trust. A valid
4 election under this paragraph shall be irrevocable.

5 (c) SETTLEMENTS PRESERVED.—Nothing in this
6 title—

7 (1) invalidates any settlement of asbestos
8 claims entered into prior to the date of enactment
9 of this title; or

10 (2) revokes or negates any asbestos defendant's
11 standing offer to settle existing asbestos claims.

12 (d) OTHER COMPENSATION.—This title shall not be
13 construed to affect the scope or operation of any workers'
14 compensation law or veterans' disability benefit program,
15 to affect the exclusive remedy provisions of any such law,
16 or to authorize any lawsuit which is barred by any such
17 provision of law.

18 (e) SUCCESSOR LIABILITY.—Nothing in this title is
19 intended to displace otherwise applicable law governing
20 any liability arising from the defendants' status as trans-
21 feree or successor with respect to a change in ownership
22 of corporate assets.

23 **SEC. 346. ANNUAL REPORTS.**

24 The Administrator shall submit an annual report to
25 the President and Congress.

1 **SEC. 347. ENFORCEMENT.**

2 The Administrator may enforce any obligation im-
3 posed on any person by this title in a district court of
4 the United States, and such courts shall have exclusive
5 jurisdiction over such actions without regard to the
6 amount in controversy or citizenship of the parties. The
7 Administrator, if successful, shall be entitled to costs, in-
8 cluding attorney's fees.

9 **SEC. 348. QUALIFYING NATIONAL SETTLEMENT PLAN.**

10 Any defendant which is party to a Qualifying Na-
11 tional Settlement Plan may elect to defer the application
12 of this title (other than sections 310 through 316 and sec-
13 tion 335) to asbestos claims against that defendant for
14 a period not exceeding 7 years from a date relative to the
15 commencement of the Qualified National Settlement Plan.
16 The Administrator shall, by rule, adopt procedures for
17 processing requests for deferral under this section. If the
18 request for deferral is accepted, the deferred defendant
19 and any asbestos claims or third party asbestos claims
20 against the deferred defendant shall not be subject to the
21 provisions of this title (other than sections 310 through
22 316 and section 335).

23 **SEC. 349. SEVERABILITY.**

24 If any provision of this title or the application of such
25 provision to any person or circumstance is held invalid,
26 it is the intent of Congress that the remainder of this title

1 and application of such provision to other persons or cir-
2 cumstances shall not be affected thereby.

3 **SEC. 350. SETTLEMENTS.**

4 For a period of 7 years after the date of enactment
5 of this title, a claimant or a defendant may specifically
6 enforce, in any applicable Federal or State court where
7 the claimant is alleging that the claimant was exposed to
8 asbestos or where the claimant is currently domiciled, any
9 written settlement agreement which was agreed to by the
10 claimant or the claimant's attorney and the defendant be-
11 fore such date of enactment.

12 **TITLE IV—EMPLOYEES EXPOSED**
13 **TO TOXIC SUBSTANCES AND**
14 **HEAVY METALS**

15 **SEC 401. ELIGIBILITY OF EMPLOYEES EXPOSED TO OTHER**
16 **TOXIC SUBSTANCES AND HEAVY METALS.**

17 (a) IN GENERAL.—A claim may be submitted under
18 this title for compensation for illnesses, impairments, dis-
19 eases, or death for which the claimant can establish that
20 exposure to a hazardous substance occurred while a cov-
21 ered employee, as defined under section 201(5), while em-
22 ployed at a Department of Energy facility listed under sec-
23 tion 201(4), and that such exposure was a contributing
24 factor to the illness, disease, or death. Claims shall be sub-
25 mitted in the manner specified under section 8121 of title

1 5, United States Code, for a determination pursuant to
 2 section 212. Except as provided in this title, claims shall
 3 be administered and compensation paid pursuant to the
 4 terms and conditions of this title. Claims for occupational
 5 illness, disease or death shall not be covered under this
 6 title which are specifically covered under title I (beryllium
 7 diseases), title II (radiogenic diseases), or title III (asbes-
 8 tos diseases).

9 (b) QUESTIONNAIRE.—The Secretary of Labor shall
 10 develop a questionnaire for the claimant to identify the
 11 history of employment hazards to a covered employee at
 12 a Department of Energy facility and to provide docu-
 13 mentation to support the claim. The Secretary of Labor
 14 shall provide the claimant with an opportunity to identify
 15 documents and information in the possession of the De-
 16 partment of Energy or its contractors which the claimant
 17 believes will support their claim.

18 **SEC 402. ESTABLISHMENT OF A PHYSICIANS PANEL BY THE**
 19 **SECRETARY OF HEALTH AND HUMAN SERV-**
 20 **ICES.**

21 (a) IN GENERAL.—The Secretary of Health and
 22 Human Services shall, in consultation with the Association
 23 of Occupational Health Clinics, appoint one or more 3-
 24 member Physicians Panels, depending on geographic
 25 needs and the size of the caseload, composed of physicians

1 with experience and competency in diagnosing occupa-
2 tional illnesses. Each member shall be paid at the rate
3 of pay payable for Level III of the Executive Schedule for
4 each day (including travel time) the member is engaged
5 in the work of the panel. The Secretary shall also provide
6 necessary administrative support for the panel to conduct
7 its work.

8 (b) DEEMED EXPERT PANEL.—The Secretary of
9 Labor shall deem the panel appointed under subsection
10 (a) to be an expert panel for purposes of medical rec-
11 ommendation. However, a claimant may seek and present
12 a second opinion to the Secretary of Labor in the event
13 that a claimant disputes a determination or recommenda-
14 tion by a panel.

15 (c) COSTS.—Costs of operating the panels shall be
16 reimbursed by the Secretary of Energy from the Energy
17 Employees Occupational Illness Act Fund.

18 **SEC. 403. ELIGIBILITY DETERMINATION.**

19 (a) IN GENERAL.—The Secretary of Labor shall for-
20 ward claims to the Secretary of Health and Human Serv-
21 ices when there is a need for a determination whether oc-
22 cupational exposure to a hazardous substance was a con-
23 tributing factor to the illness, impairment, disease, or
24 death of a claimant, and the Secretary of Labor is unable

1 to make an affirmative determination based on the infor-
2 mation submitted by the claimant.

3 (b) PANEL AND CLAIMS.—Upon receipt of a claim
4 from the Secretary of Labor, the Secretary of Health and
5 Human Services shall forward such claims within 7 days
6 to a physicians panel. The Secretary shall, upon passage,
7 develop procedures for receiving, tracking, and returning
8 recommendations to the Secretary of Labor, and for em-
9 ploying and providing services to the panels.

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

20 (d) EXPOSURE INFORMATION.—Where exposure in-
21 formation is insufficient or non existent, the panels shall
22 evaluate exposure risks by determining the nature of the
23 job hazards by identifying job titles held by the employee,
24 length of employment, type of work activities, types of oc-
25 cupational hazards, length of time exposed to these haz-

ards, whether there was adequate protective equipment, whether there was full knowledge by employee of exposure to hazards, whether more than one hazard presents an additive or multiplicative effect, whether employee was involved in accidental release or accident, and whether similarly situated employees have contracted similar diseases that are attributable to occupational exposure.

(e) ADDITIONAL INFORMATION.—Upon request, the claimant shall have the opportunity to present additional medical or exposure information to the panel through the Secretary of Labor. If additional information is required to render a recommendation, the panel may request, through the Secretary of Labor, that a claimant undergo specified diagnostic tests, or that the Department of Energy or its contractors supply additional information. A copy of the recommendation shall be provided to the claimant by the Secretary of Labor upon request.

(f) MEDICAL EXAMINATIONS.—The Secretary of Labor shall provide assistance to employees and claimants in connection with this title, including assistance in securing medical testing and diagnostic services necessary to determine the existence of a covered illness. In carrying out this subsection, the examination of workers who believe they have ailments related to the environmental conditions at their places of work in Los Alamos shall be con-

1 ducted free of charge at the Veterans' Administration hos-
2 pital nearest to their place of residence and such workers
3 shall receive free treatment for ailments and illnesses iden-
4 tified by such physicians as potentially work-related. Such
5 workers shall also receive reimbursement for travel and
6 lodging expenses.

7 **SEC 404. ESTABLISHMENT OF OCCUPATIONAL DISEASE**
8 **PRESUMPTIONS.**

9 (a) IN GENERAL.—In addition to the occupational
10 disease presumptions established in titles I and II, the
11 Secretary of Health and Human Services shall direct that
12 a panel establish a list of illnesses and diseases which,
13 based on occupational exposure to certain hazardous sub-
14 stances or based on employment in certain industrial or
15 laboratory processes, are potentially attributable to em-
16 ployment at Department of Energy facilities. This list of
17 presumptions shall serve as guidance to the panels in expe-
18 diting and improving the quality of recommendations, and
19 shall be provided to the Secretary of Labor for use in de-
20 veloping guidance for making claims determinations. Such
21 list shall be published 12 months after the establishment
22 of this program, updated on an annual basis thereafter,
23 and provided as a report to Congress.

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

1 (1) identify and categorize the types and pat-
2 terns of diseases which are potentially attributable
3 to employment at a listed Department of Energy fa-
4 cility, including those illnesses, impairments, dis-
5 eases, and deaths identified through medical screen-
6 ing programs conducted through the Department of
7 Energy's Office of Environment, Safety and Health,
8 (including the former worker medical program au-
9 thorized under Section 3162 of the Fiscal Year 93
10 Defense Authorization Act (42 USC 7274(i))), Na-
11 tional Institute of Occupational Safety and Health
12 health studies, peer reviewed epidemiology studies,
13 and Department of Energy medical programs;

14 (2) identify and apply presumptions that are
15 supported in the scientific and medical literature
16 and in standards established by the Committee on
17 the Biological Effects of Ionizing Radiation of the
18 National Academy of Sciences, and where there are
19 biological indicators that can be used, a panel shall
20 specify diagnostic tests required to establish a pre-
21 sumption that exposure or ingestion of a particular
22 substance or compound will significantly contribute
23 to illness, impairments, disease, or death;

24 (3) evaluate site specific history of working con-
25 ditions at certain types of facilities (such as gaseous

1 diffusion plants, calcining facilities, reactors, etc.),
2 and the adequacy of protective measures provided to
3 exposed workers over the history of operations;

4 (4) determine whether patterns of diseases exist
5 that are potentially attributable linked to workplace
6 exposures;

7 (5) determine whether workers were adequately
8 informed of exposure hazards;

9 (6) determine whether there are presumptions
10 of workplace causation that have been established
11 for workers similarly exposed in other hazardous in-
12 dustries or occupations (such as firefighters);

13 (7) determine whether workers were involved in
14 accidents where excessive exposures occurred;

15 (8) determine whether workers exposed to haz-
16 ardous substances received adequate follow-on emer-
17 gency medical treatment and monitoring and subse-
18 quent medical attention to determine health impair-
19 ment; and

20 (9) evaluate other factors that a panel deems
21 prudent and necessary.

22 Moreover, in addition to the 9 forgoing factors, a panel
23 shall evaluate those circumstances where covered employ-
24 ees, without their knowledge and consent, were placed at
25 undue risk to hazardous substances without adequate pro-

1 tectations or monitoring and shall recommend whether fair-
2 ness and equity require that a presumption be established
3 in favor of employees for eligibility for compensation for
4 illnesses, impairments and diseases. Such recommendation
5 shall be incorporated in the annual report and transmitted
6 to Congress.

7 (d) REVIEW OF DATA.—The Department of Energy
8 shall submit reports to the Secretary of Health and
9 Human Services who shall, in turn, provide panels with
10 information on (1) historic exposure assessments and (2)
11 reports on ES&H practices, and (3) medical findings and
12 data on the Department of Energy Medical Surveillance
13 Program carried out under section 3162 of the 1993 De-
14 fense Authorization Act.

15 **SEC. 405. PANEL SHALL REPORT DETERMINATION TO SEC-**
16 **RETARY OF LABOR.**

17 Once a panel has made a recommendation on a claim
18 referred by the Secretary of Labor, it shall report its rec-
19 ommendation to the Secretary of Labor within 7 days of
20 approving a recommendation with an outline of the rea-
21 sons for the determination. The panel shall make its rec-
22 ommendation on the basis of whether workplace exposures
23 to hazardous substances were a substantial contributing
24 factor to the illness, impairment, disease, or death.

○