

**TITLE 42—THE PUBLIC HEALTH AND WELFARE**

**CHAPTER 84—DEPARTMENT OF ENERGY**

**SUBCHAPTER XVI—ENERGY EMPLOYEES OCCUPATIONAL ILLNESS  
COMPENSATION PROGRAM**

**PART A—ESTABLISHMENT OF COMPENSATION PROGRAM AND  
COMPENSATION FUND**

**§ 7384. Findings; sense of Congress**

(a) FINDINGS—The Congress finds the following:

(1) Since World War II, Federal nuclear activities have been explicitly recognized under Federal law as activities that are ultra-hazardous. Nuclear weapons production and testing have involved unique dangers, including potential catastrophic nuclear accidents that private insurance carriers have not covered and recurring exposures to radioactive substances and beryllium that, even in small amounts, can cause medical harm.

(2) Since the inception of the nuclear weapons program and for several decades afterwards, a large number of nuclear weapons workers at sites of the Department of Energy and at sites of vendors who supplied the Cold War effort were put at risk without their knowledge and consent for reasons that, documents reveal, were driven by fears of adverse publicity, liability, and employee demands for hazardous duty pay.

(3) Many previously secret records have documented unmonitored exposures to radiation and beryllium and continuing problems at these sites across the Nation, at which the Department of Energy and its predecessor agencies have been, since World War II, self-regulating with respect to nuclear safety and occupational safety and health. No other hazardous Federal activity has been permitted to be carried out under such sweeping powers of self-regulation.

(4) The policy of the Department of Energy has been to litigate occupational illness claims, which has deterred workers from filing workers' compensation claims and has imposed major financial burdens for such employees who have sought compensation. Contractors of the Department have been held harmless and the employees have been denied workers' compensation coverage for occupational disease.

(5) Over the past 20 years, more than two dozen scientific findings have emerged that indicate that certain of such employees are experiencing increased risks of dying from cancer and non-malignant diseases. Several of these studies have also established a correlation between excess diseases and exposure to radiation and beryllium.

(6) While linking exposure to occupational hazards with the development of occupational disease is sometimes difficult, scientific evidence supports the conclusion that occupational exposure to dust particles or vapor of beryllium can cause beryllium sensitivity and chronic beryllium disease. Furthermore, studies indicate that 98 percent of radiation-induced cancers within the nuclear weapons complex have occurred at dose levels below existing maximum safe thresholds.

(7) Existing information indicates that State workers' compensation programs do not provide a uniform means of ensuring adequate compensation for the types of occupational illnesses and diseases that relate to the employees at those sites.

(8) To ensure fairness and equity, the civilian men and women who, over the past 50 years, have performed duties uniquely related to the nuclear weapons production and testing programs of the Department of Energy and its predecessor agencies should have efficient, uniform, and adequate compensation for beryllium-related health conditions and radiation-related health conditions.

(9) On April 12, 2000, the Secretary of Energy announced that the Administration intended to seek compensation for individuals with a broad range of work-related illnesses throughout the Department of Energy's nuclear weapons complex.

(10) However, as of October 2, 2000, the Administration has failed to provide Congress with the necessary legislative and budget proposals to enact the promised compensation program.

(b) SENSE OF CONGRESS—It is the sense of Congress that—

(1) a program should be established to provide compensation to covered employees;

(2) a fund for payment of such compensation should be established on the books of the Treasury;

(3) payments from that fund should be made only after—

(A) the identification of employees of the Department of Energy (including its predecessor agencies), and of contractors of the Department, who may be members of the group of covered employees;

(B) the establishment of a process to receive and administer claims for compensation for disability or death of covered employees;

(C) the submittal by the President of a legislative proposal for compensation of such employees that includes the estimated annual budget resources for that compensation; and

(D) consideration by the Congress of the legislative proposal submitted by the President; and

(4) payments from that fund should commence not later than fiscal year 2002.

Pub. L. 106-398, Title XXXVI, § 3602

### **Short Title**

Pub. L. 106-398, Title XXXVI, § 3601 provided that: "This title may be cited as the 'Energy Employees Occupational Illness Compensation Program Act of 2000'."

### **§ 7384d. Establishment of Energy Employees Occupational Illness Compensation Program**

(a) PROGRAM ESTABLISHED—There is hereby established a program to be known as the "Energy Employees Occupational Illness Compensation Program" (in this subchapter referred to as the "compensation program"). The President shall carry out the compensation program through one or more Federal agencies or officials, as designated by the President.

(b) **PURPOSE OF PROGRAM**—The purpose of the compensation program is to provide for timely, uniform, and adequate compensation of covered employees and, where applicable, survivors of such employees, suffering from illnesses incurred by such employees in the performance of duty for the Department of Energy and certain of its contractors and subcontractors.

(c) **ELIGIBILITY FOR COMPENSATION**—The eligibility of covered employees for compensation under the compensation program shall be determined in accordance with the provisions of part B of this subchapter as may be modified by a law enacted after the date of the submittal of the proposal for legislation required by section 7384f of this title.

Pub. L. 106-398, Title XXXVI, § 3611

**§ 7384e. Establishment of Energy Employees Occupational Illness Compensation Fund**

(a) **ESTABLISHMENT**—There is hereby established on the books of the Treasury a fund to be known as the “Energy Employees Occupational Illness Compensation Fund” (in this subchapter referred to as the “compensation fund”).

(b) **AMOUNTS IN COMPENSATION FUND**—The compensation fund shall consist of the following amounts:

- (1) Amounts appropriated to the compensation fund pursuant to the authorization of appropriations in section 7384g(b) of this title.
- (2) Amounts transferred to the compensation fund under subsection (c).

(c) **FINANCING OF COMPENSATION FUND**—Upon the exhaustion of amounts in the compensation fund attributable to the authorization of appropriations in section 7384g(b) of this title, the Secretary of the Treasury shall transfer directly to the compensation fund from the General Fund of the Treasury, without further appropriation, such amounts as are further necessary to carry out the compensation program.

(d) **USE OF COMPENSATION FUND**—Subject to subsection (e), amounts in the compensation fund shall be used to carry out the compensation program.

(e) **ADMINISTRATIVE COSTS NOT PAID FROM COMPENSATION FUND**—No cost incurred in carrying out the compensation program, or in administering the compensation fund, shall be paid from the compensation fund or set off against or otherwise deducted from any payment to any individual under the compensation program.

(f) **INVESTMENT OF AMOUNTS IN COMPENSATION FUND**—Amounts in the compensation fund shall be invested in accordance with section 9702 of title 31, United States Code, and any interest on, and proceeds from, any such investment shall be credited to and become a part of the compensation fund.

Pub. L. 106-398, Title XXXVI, § 3612

**§ 7384f. Legislative proposal**

(a) **LEGISLATIVE PROPOSAL REQUIRED**—Not later than March 15, 2001, the President shall submit to Congress a proposal for legislation to implement the compensation program. The proposal for legislation shall include, at a minimum, the specific recommendations (including draft legislation) of the President for the following:

- (1) The types of compensation and benefits, including lost wages, medical benefits, and any lump-sum settlement payments, to be provided under the compensation program.
- (2) Any adjustments or modifications necessary to appropriately administer the compensation program under part B of this subchapter.
- (3) Whether to expand the compensation program to include other illnesses associated with exposure to toxic substances.
- (4) Whether to expand the class of individuals who are members of the Special Exposure Cohort (as defined in section 7384l(14)) of this title.

(b) **ASSESSMENT OF POTENTIAL COVERED EMPLOYEES AND REQUIRED AMOUNTS**—The President shall include with the proposal for legislation under subsection (a) the following:

- (1) An estimate of the number of covered employees that the President determines were exposed in the performance of duty.
- (2) An estimate, for each fiscal year of the compensation program, of the amounts to be required for compensation and benefits anticipated to be provided in such fiscal year under the compensation program.

Pub. L. 106-398, Title XXXVI, § 3613

**§ 7384g. Authorization of appropriations**

(a) **IN GENERAL**—Pursuant to the authorization of appropriations in section 3103(a)\*, \$25,000,000 may be used for purposes of carrying out this subchapter.

(b) **COMPENSATION FUND**—There is hereby authorized to be appropriated \$250,000,000 to the Energy Employees Occupational Illness Compensation Fund established by section 7384e of this title.

Pub. L. 106-398, Title XXXVI, § 3614

\*Pub. L. 106-398, Title XXXI, § 3103(a).

**PART B—PROGRAM ADMINISTRATION**

**§ 7384l. Definitions for program administration**

In this subchapter:

- (1) The term “covered employee” means any of the following:
  - (A) A covered beryllium employee.
  - (B) A covered employee with cancer.
  - (C) To the extent provided in section 7384r of this title, a covered employee with chronic silicosis (as defined in that section).
  
- (2) The term “atomic weapon” has the meaning given that term in section 11 d.\* of the Atomic Energy Act of 1954 (42 U.S.C. 2014(d)).
  
- (3) The term “atomic weapons employee” means any of the following:
  - (A) An individual employed by an atomic weapons employer during a period when the employer was processing or producing, for the use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling.
  - (B) An individual employed—
    - (i) at a facility with respect to which the National Institute for Occupational Safety and Health, in its report dated October 2003 and titled “Report on Residual Radioactive and Beryllium Contamination at Atomic Weapons Employer Facilities and Beryllium Vendor Facilities”, or any update to that report, found that there is a potential for significant residual contamination outside of the period in which weapons-related production occurred;
    - (ii) by an atomic weapons employer or subsequent owner or operators of a facility described in clause (i); and
    - (iii) during a period, as specified in such report or any update to such report, of potential for significant residual radioactive contamination at such facility.
  
- (4) The term “atomic weapons employer” means an entity, other than the United States, that—
  - (A) processed or produced, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling; and
  - (B) is designated by the Secretary of Energy as an atomic weapons employer for purposes of the compensation program.
  
- (5) The term “atomic weapons employer facility” means a facility, owned by an atomic weapons employer, that is or was used to process or produce, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining or milling.
  
- (6) The term “beryllium vendor” means any of the following:
  - (A) Atomics International.
  - (B) Brush Wellman, Incorporated, and its predecessor, Brush Beryllium Company.

- (C) General Atomics.
- (D) General Electric Company.
- (E) NGK Metals Corporation and its predecessors, Kawecki-Berylco, Cabot Corporation, BerylCo, and Beryllium Corporation of America.
- (F) Nuclear Materials and Equipment Corporation.
- (G) StarMet Corporation and its predecessor, Nuclear Metals, Incorporated.
- (H) Wyman Gordan, Incorporated.
- (I) Any other vendor, processor, or producer of beryllium or related products designated as a beryllium vendor for purposes of the compensation program under section 7384m of this title.

(7) The term “covered beryllium employee” means the following, if and only if the employee is determined to have been exposed to beryllium in the performance of duty in accordance with section 7384n(a) of this title:

- (A) A current or former employee (as that term is defined in section 8101(1) of Title 5) who may have been exposed to beryllium at a Department of Energy facility or at a facility owned, operated, or occupied by a beryllium vendor.
- (B) A current or former employee of—
  - (i) any entity that contracted with the Department of Energy to provide management and operation, management and integration, or environmental remediation of a Department of Energy facility; or
  - (ii) any contractor or subcontractor that provided services, including construction and maintenance, at such a facility.
- (C) A current or former employee of a beryllium vendor, or of a contractor or subcontractor of a beryllium vendor, during a period when the vendor was engaged in activities related to the production or processing of beryllium for sale to, or use by, the Department of Energy.

(8) The term “covered beryllium illness” means any of the following:

- (A) Beryllium sensitivity as established by an abnormal beryllium lymphocyte proliferation test performed on either blood or lung lavage cells.
- (B) Established chronic beryllium disease.
- (C) Any injury, illness, impairment, or disability sustained as a consequence of a covered beryllium illness referred to in subparagraph (A) or (B).

(9) The term “covered employee with cancer” means any of the following:

- (A) An individual with a specified cancer who is a member of the Special Exposure Cohort, if and only if that individual contracted that specified cancer after beginning employment at a Department of Energy facility (in the case of a Department of Energy employee or Department of Energy contractor employee) or at an atomic weapons employer facility (in the case of an atomic weapons employee).
- (B)(i) An individual with cancer specified in subclause (I), (II), or (III) of clause (ii), if and only if that individual is determined to have sustained that cancer in the performance

of duty in accordance with section 7384n(b) of this title.

(ii) Clause (i) applies to any of the following:

(I) A Department of Energy employee who contracted that cancer after beginning employment at a Department of Energy facility.

(II) A Department of Energy contractor employee who contracted that cancer after beginning employment at a Department of Energy facility.

(III) An atomic weapons employee who contracted that cancer after beginning employment at an atomic weapons employer facility.

(10) The term “Department of Energy” includes the predecessor agencies of the Department of Energy, including the Manhattan Engineering District.

(11) The term “Department of Energy contractor employee” means any of the following:

(A) An individual who is or was in residence at a Department of Energy facility as a researcher for one or more periods aggregating at least 24 months.

(B) An individual who is or was employed at a Department of Energy facility by—

(i) an entity that contracted with the Department of Energy to provide management and operating, management and integration, or environmental remediation at the facility; or

(ii) a contractor or subcontractor that provided services, including construction and maintenance, at the facility.

(12) The term “Department of Energy facility” means any building, structure, or premise, including the grounds upon which such building, structure, or premise is located—

(A) in which operations are, or have been, conducted by, or on behalf of, the Department of Energy (except for buildings, structures, premises, grounds, or operations covered by Executive Order No. 12344, dated February 1, 1982 (42 U.S.C. 7158 note), pertaining to the Naval Nuclear Propulsion Program); and

(B) with regard to which the Department of Energy has or had—

(i) a proprietary interest; or

(ii) entered into a contract with an entity to provide management and operation, management and integration, environmental remediation services, construction, or maintenance services.

(13) The term “established chronic beryllium disease” means chronic beryllium disease as established by the following:

(A) For diagnoses on or after January 1, 1993, beryllium sensitivity (as established in accordance with paragraph (8)(A)), together with lung pathology consistent with chronic beryllium disease, including—

(i) a lung biopsy showing granulomas or a lymphocytic process consistent with chronic beryllium disease;

(ii) a computerized axial tomography scan showing changes consistent with chronic beryllium disease; or

- (iii) pulmonary function or exercise testing showing pulmonary deficits consistent with chronic beryllium disease.
- (B) For diagnoses before January 1, 1993, the presence of—
  - (i) occupational or environmental history, or epidemiologic evidence of beryllium exposure; and
  - (ii) any three of the following criteria:
    - (I) Characteristic chest radiographic (or computed tomography (CT)) abnormalities.
    - (II) Restrictive or obstructive lung physiology testing or diffusing lung capacity defect.
    - (III) Lung pathology consistent with chronic beryllium disease.
    - (IV) Clinical course consistent with a chronic respiratory disorder.
    - (V) Immunologic tests showing beryllium sensitivity (skin patch test or beryllium blood test preferred).

(14) The term “member of the Special Exposure Cohort” means a Department of Energy employee, Department of Energy contractor employee, or atomic weapons employee who meets any of the following requirements:

- (A) The employee was so employed for a number of work days aggregating at least 250 work days before February 1, 1992, at a gaseous diffusion plant located in Paducah, Kentucky, Portsmouth, Ohio, or Oak Ridge, Tennessee, and, during such employment—
  - (i) was monitored through the use of dosimetry badges for exposure at the plant of the external parts of employee’s body to radiation; or
  - (ii) worked in a job that had exposures comparable to a job that is or was monitored through the use of dosimetry badges.
- (B) The employee was so employed before January 1, 1974, by the Department of Energy or a Department of Energy contractor or subcontractor on Amchitka Island, Alaska, and was exposed to ionizing radiation in the performance of duty related to the Long Shot, Milrow, or Cannikin underground nuclear tests.
- (C)(i) Subject to clause (ii), the employee is an individual designated as a member of the Special Exposure Cohort by the President for purposes of the compensation program under section 7384q of this title.
- (ii) A designation under clause (i) shall, unless Congress otherwise provides, take effect on the date that is 30 days after the date on which the President submits to Congress a report identifying the individuals covered by the designation and describing the criteria used in designating those individuals.

(15) The term “occupational illness” means a covered beryllium illness, cancer referred to in section 7384l(9)(B) of this title, specified cancer, or chronic silicosis, as the case may be.

(16) The term “radiation” means ionizing radiation in the form of—

- (A) alpha particles;
- (B) beta particles;
- (C) neutrons;

- (D) gamma rays; or
- (E) accelerated ions or subatomic particles from accelerator machines.

(17) The term “specified cancer” means any of the following:

- (A) A specified disease, as that term is defined in section 4(b)(2) of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note).
- (B) Bone cancer.
- (C) Renal cancers.
- (D) Leukemia (other than chronic lymphocytic leukemia), if initial occupational exposure occurred before 21 years of age and onset occurred more than two years after initial occupational exposure.

**[(18) Repealed.]**

Pub. L. 106-398, Title XXXVI, § 3621; Pub. L. 107-20, § 2403(a); Pub. L. 107-107, §§ 3151(a)(1) and 3151(a)(4)(C); Pub. L. 108-375, §§ 3166(b)(2) and 3168(a)

\*So in original. Probably should be “section 11(d)”.

**§ 7384m. Expansion of list of beryllium vendors**

Not later than December 31, 2002, the President may, in consultation with the Secretary of Energy, designate as a beryllium vendor for purposes of section 7384l(6) of this title any vendor, processor, or producer of beryllium or related products not previously listed under or designated for purposes of such section 7384l(6) of this title if the President finds that such vendor, processor, or producer has been engaged in activities related to the production or processing of beryllium for sale to, or use by, the Department of Energy in a manner similar to the entities listed in such section 7384l(6) of this title.

Pub. L. 106-398, Title XXXVI, § 3622

**§ 7384n. Exposure in the performance of duty**

(a) BERYLLIUM—A covered beryllium employee shall, in the absence of substantial evidence to the contrary, be determined to have been exposed to beryllium in the performance of duty for the purposes of the compensation program if, and only if, the covered beryllium employee was—

- (1) employed at a Department of Energy facility; or
- (2) present at a Department of Energy facility, or a facility owned and operated by a beryllium vendor, because of employment by the United States, a beryllium vendor, or a contractor or subcontractor of the Department of Energy;

during a period when beryllium dust, particles, or vapor may have been present at such facility.

(b) CANCER—An individual with cancer specified in subclause (I), (II), or (III) of section

73841(9)(B)(ii) of this title shall be determined to have sustained that cancer in the performance of duty for purposes of the compensation program if, and only if, the cancer specified in that subclause was at least as likely as not related to employment at the facility specified in that subclause, as determined in accordance with the guidelines established under subsection (c).

(c) GUIDELINES—(1) For purposes of the compensation program, the President shall by regulation establish guidelines for making the determinations required by subsection (b).

(2) The President shall establish such guidelines after technical review by the Advisory Board on Radiation and Worker Health under section 7384o of this title.

(3) Such guidelines shall—

(A) be based on the radiation dose received by the employee (or a group of employees performing similar work) at such facility and the upper 99 percent confidence interval of the probability of causation in the radioepidemiological tables published under section 7(b) of the Orphan Drug Act (42 U.S.C. 241 note), as such tables may be updated under section 7(b)(3) of such Act from time to time;

(B) incorporate the methods established under subsection (d); and

(C) take into consideration the type of cancer, past health-related activities (such as smoking), information on the risk of developing a radiation-related cancer from workplace exposure, and other relevant factors.

(4) In the case of an atomic weapons employee described in section 73841(3)(B), the following doses of radiation shall be treated, for purposes of paragraph (3)(A) of this subsection, as part of the radiation dose received by the employee at such facility:

(A) Any dose of ionizing radiation received by that employee from facilities, materials, devices, or byproducts used or generated in the research, development, production, dismantlement, transportation, or testing of nuclear weapons, or from any activities to research, produce, process, store, remediate, or dispose of radioactive materials by or on behalf of the Department of Energy (except for activities covered by Executive Order No. 12344, dated February 1, 1982 (42 U.S.C. 7158 note) pertaining to the Naval Nuclear Propulsion Program).

(B) Any dose of ionizing radiation received by that employee from a source not covered by subparagraph (A) that is not distinguishable through reliable documentation from a dose covered by subparagraph (A).

(d) METHODS FOR RADIATION DOSE RECONSTRUCTIONS—(1) The President shall, through any Federal agency (other than the Department of Energy) or official (other than the Secretary of Energy or any other official within the Department of Energy) that the President may designate, establish by regulation methods for arriving at reasonable estimates of the radiation doses received by an individual specified in subparagraph (B) of section 73841(9) of this title at a facility specified in that subparagraph by each of the following employees:

(A) An employee who was not monitored for exposure to radiation at such facility.

(B) An employee who was monitored inadequately for exposure to radiation at such

facility.

(C) An employee whose records of exposure to radiation at such facility are missing or incomplete.

(2) The President shall establish an independent review process using the Advisory Board on Radiation and Worker Health to—

(A) assess the methods established under paragraph (1); and

(B) verify a reasonable sample of the doses established under paragraph (1).

(e) INFORMATION ON RADIATION DOSES—(1) The Secretary of Energy shall provide, to each covered employee with cancer specified in section 7384l(9)(B) of this title, information specifying the estimated radiation dose of that employee during each employment specified in section 7384l(9)(B) of this title, whether established by a dosimetry reading, by a method established under subsection (d), or by both a dosimetry reading and such method.

(2) The Secretary of Health and Human Services and the Secretary of Energy shall each make available to researchers and the general public information on the assumptions, methodology, and data used in establishing radiation doses under subsection (d). The actions taken under this paragraph shall be consistent with the protection of private medical records.

Pub. L. 106-398, Title XXXVI, § 3623; Pub. L. 108-375, § 3168(b)

#### **§ 7384o. Advisory board on radiation and worker health**

(a) ESTABLISHMENT—(1) Not later than 120 days after October 30, 2000, the President shall establish and appoint an Advisory Board on Radiation and Worker Health (in this section referred to as the “Board”).

(2) The President shall make appointments to the Board in consultation with organizations with expertise on worker health issues in order to ensure that the membership of the Board reflects a balance of scientific, medical, and worker perspectives.

(3) The President shall designate a Chair for the Board from among its members.

(b) DUTIES—The Board shall advise the President on—

(1) the development of guidelines under section 7384n(c) of this title;

(2) the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and

(3) such other matters related to radiation and worker health in Department of Energy facilities as the President considers appropriate.

(c) STAFF—(1) The President shall appoint a staff to facilitate the work of the Board. The staff shall be headed by a Director who shall be appointed under subchapter VIII of chapter 33 of Title 5.

(2) The President may accept as staff of the Board personnel on detail from other Federal agencies. The detail of personnel under this paragraph may be on a nonreimbursable basis.

(d) EXPENSES—Members of the Board, other than full-time employees of the United States, while attending meetings of the Board or while otherwise serving at the request of the President, while serving away from their homes or regular places of business, shall be allowed travel and meal expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5, for individuals in the Government serving without pay.

(e) SECURITY CLEARANCES—(1) The Secretary of Energy shall ensure that the members and staff of the Board, and the contractors performing work in support of the Board, are afforded the opportunity to apply for a security clearance for any matter for which such a clearance is appropriate. The Secretary should, not later than 180 days after receiving a completed application, make a determination whether or not the individual concerned is eligible for the clearance.

(2) For fiscal year 2007 and each fiscal year thereafter, the Secretary of Energy shall include in the budget justification materials submitted to Congress in support of the Department of Energy budget for that fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) a report specifying the number of applications for security clearances under this subsection, the number of such applications granted, and the number of such applications denied.

(f) INFORMATION—The Secretary of Energy shall, in accordance with law, provide to the Board and the contractors of the Board access to any information that the Board considers relevant to carry out its responsibilities under this title, including information such as Restricted Data (as defined in section 11 y\* of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y))) and information covered by the Privacy Act.

Pub. L. 106-398, Title XXXVI, § 3624; Pub. L. 108-375, § 3166(a)

\*So in original. Probably should be “section 11(y)”.

#### **§ 7384p. Responsibilities of Secretary of Health and Human Services**

The Secretary of Health and Human Services shall carry out that Secretary’s responsibilities with respect to the compensation program with the assistance of the Director of the National Institute for Occupational Safety and Health.

Pub. L. 106-398, Title XXXVI, § 3625

#### **§ 7384q. Designation of additional members of Special Exposure Cohort**

(a) ADVICE ON ADDITIONAL MEMBERS—(1) The Advisory Board on Radiation and Worker Health under section 7384o of this title shall advise the President whether there is a class of employees at any Department of Energy facility who likely were exposed to radiation at that

facility but for whom it is not feasible to estimate with sufficient accuracy the radiation dose they received.

(2) The advice of the Advisory Board on Radiation and Worker Health under paragraph (1) shall be based on exposure assessments by radiation health professionals, information provided by the Department of Energy, and such other information as the Advisory Board considers appropriate.

(3) The President shall request advice under paragraph (1) after consideration of petitions by classes of employees described in that paragraph for such advice. The President shall consider such petitions pursuant to procedures established by the President.

(b) DESIGNATION OF ADDITIONAL MEMBERS—Subject to the provisions of section 7384l(14)(C) of this title, the members of a class of employees at a Department of Energy facility, or at an atomic weapons employer facility, may be treated as members of the Special Exposure Cohort for purposes of the compensation program if the President, upon recommendation of the Advisory Board on Radiation and Worker Health, determines that—

(1) it is not feasible to estimate with sufficient accuracy the radiation dose that the class received; and

(2) there is a reasonable likelihood that such radiation dose may have endangered the health of members of the class.

(c) DEADLINES—(1) Not later than 180 days after the date on which the President receives a petition for designation as members of the Special Exposure Cohort, the Director of the National Institute for Occupational Safety and Health shall submit to the Advisory Board on Radiation and Worker Health a recommendation on that petition, including all supporting documentation.

(2)(A) Upon receipt by the President of a recommendation of the Advisory Board on Radiation and Worker Health that the President should determine in the affirmative that paragraphs (1) and (2) of subsection (b) apply to a class, the President shall have a period of 30 days in which to determine whether such paragraphs apply to the class and to submit that determination (whether affirmative or negative) to Congress.

(B) If the determination submitted by the President under subparagraph (A) is in the affirmative, the President shall also submit a report meeting the requirements of section 7384l(14)(C)(ii).

(C) If the President does not submit a determination required by subparagraph (A) within the period required by subparagraph (A), then upon the day following the expiration of that period, it shall be deemed for purposes of section 7384l(14)(C)(ii) that the President submitted the report under that provision on that day.

(d) ACCESS TO INFORMATION—The Secretary of Energy shall provide, in accordance with law, the Secretary of Health and Human Services and the members and staff of the Advisory Board on Radiation and Worker Health access to relevant information on worker exposures, including access to Restricted Data (as defined in section 11 y.\* of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y))).

Pub. L. 106-398, Title XXXVI, § 3626; Pub. L. 107-107, § 3151(a)(2); Pub. L. 108-375, § 3166(b)(1)

\*So in original. Probably should be “section 11(y)”.

#### **§ 7384r. Separate treatment of chronic silicosis**

(a) SENSE OF CONGRESS—The Congress finds that employees who worked in Department of Energy test sites and later contracted chronic silicosis should also be considered for inclusion in the compensation program. Recognizing that chronic silicosis resulting from exposure to silica is not a condition unique to the nuclear weapons industry, it is not the intent of Congress with this subchapter to establish a precedent on the question of chronic silicosis as a compensable occupational disease. Consequently, it is the sense of Congress that a further determination by the President is appropriate before these workers are included in the compensation program.

(b) CERTIFICATION BY PRESIDENT—A covered employee with chronic silicosis shall be treated as a covered employee (as defined in section 7384l(1)) of this title for the purposes of the compensation program required by section 7384d of this title unless the President submits to Congress not later than 180 days after October 30, 2000 the certification of the President that there is insufficient basis to include such employees. The President shall submit with the certification any recommendations about the compensation program with respect to covered employees with chronic silicosis as the President considers appropriate.

(c) EXPOSURE TO SILICA IN THE PERFORMANCE OF DUTY—A covered employee shall, in the absence of substantial evidence to the contrary, be determined to have been exposed to silica in the performance of duty for the purposes of the compensation program if, and only if, the employee was present for a number of work days aggregating at least 250 work days during the mining of tunnels at a Department of Energy facility located in Nevada or Alaska for tests or experiments related to an atomic weapon.

(d) COVERED EMPLOYEE WITH CHRONIC SILICOSIS—For purposes of this subchapter, the term “covered employee with chronic silicosis” means a Department of Energy employee, or a Department of Energy contractor employee, with chronic silicosis who was exposed to silica in the performance of duty as determined under subsection (c).

(e) CHRONIC SILICOSIS—For purposes of this subchapter, the term “chronic silicosis” means a non- malignant lung disease if—

- (1) the initial occupational exposure to silica dust preceded the onset of silicosis by at least 10 years; and
- (2) a written diagnosis of silicosis is made by a medical doctor and is accompanied by—
  - (A) a chest radiograph, interpreted by an individual certified by the National Institute for Occupational Safety and Health as a B reader, classifying the existence of pneumoconioses of category 1/0 or higher;
  - (B) results from a computer assisted tomograph or other imaging technique that are consistent with silicosis; or

(C) lung biopsy findings consistent with silicosis.

Pub. L. 106-398, Title XXXVI, § 3627; Pub. L. 107-107, § 3151(a)(3)

**§ 7384s. Compensation and benefits to be provided**

(a) COMPENSATION PROVIDED—(1) Except as provided in paragraph (2), a covered employee, or the survivor of that covered employee if the employee is deceased, shall receive compensation for the disability or death of that employee from that employee's occupational illness in the amount of \$150,000.

(2) A covered employee shall, to the extent that employee's occupational illness is established beryllium sensitivity, receive beryllium sensitivity monitoring under subsection (c) in lieu of compensation under paragraph (1).

(b) MEDICAL BENEFITS—A covered employee shall receive medical benefits under section 7384t of this title for that employee's occupational illness.

(c) BERYLLIUM SENSITIVITY MONITORING—An individual receiving beryllium sensitivity monitoring under this subsection shall receive the following:

(1) A thorough medical examination to confirm the nature and extent of the individual's established beryllium sensitivity.

(2) Regular medical examinations thereafter to determine whether that individual has developed established chronic beryllium disease.

(d) PAYMENT FROM COMPENSATION FUND—The compensation provided under this section, when authorized or approved by the President, shall be paid from the compensation fund established under section 7384e of this title.

(e) PAYMENTS IN THE CASE OF DECEASED PERSONS—(1) In the case of a covered employee who is deceased at the time of payment of compensation under this section, whether or not the death is the result of the covered employee's occupational illness, such payment may be made only as follows:

(A) If the covered employee is survived by a spouse who is living at the time of payment, such payment shall be made to such surviving spouse.

(B) If there is no surviving spouse described in subparagraph (A), such payment shall be made in equal shares to all children of the covered employee who are living at the time of payment.

(C) If there is no surviving spouse described in subparagraph (A) and if there are no children described in subparagraph (B), such payment shall be made in equal shares to the parents of the covered employee who are living at the time of payment.

(D) If there is no surviving spouse described in subparagraph (A), and if there are no children described in subparagraph (B) or parents described in subparagraph (C), such

payment shall be made in equal shares to all grandchildren of the covered employee who are living at the time of payment.

(E) If there is no surviving spouse described in subparagraph (A), and if there are no children described in subparagraph (B), parents described in subparagraph (C), or grandchildren described in subparagraph (D), then such payment shall be made in equal shares to the grandparents of the covered employee who are living at the time of payment.

(F) Notwithstanding the other provisions of this paragraph, if there is—

(i) a surviving spouse described in subparagraph (A); and

(ii) at least one child of the covered employee who is living and a minor at the time of payment and who is not a recognized natural child or adopted child of such surviving spouse,

then half of such payment shall be made to such surviving spouse, and the other half of such payment shall be made in equal shares to each child of the covered employee who is living and a minor at the time of payment.

(2) If a covered employee eligible for payment dies before filing a claim under this title, a survivor of that employee who may receive payment under paragraph (1) may file a claim for such payment.

(3) For purposes of this subsection—

(A) the “spouse” of an individual is a wife or husband of that individual who was married to that individual for at least one year immediately before the death of that individual;

(B) a “child” includes a recognized natural child, a stepchild who lived with an individual in a regular parent-child relationship, and an adopted child;

(C) a “parent” includes fathers and mothers through adoption;

(D) a “grandchild” of an individual is a child of a child of that individual; and

(E) a “grandparent” of an individual is a parent of a parent of that individual.

(f) EFFECTIVE DATE—This section shall take effect on July 31, 2001, unless Congress otherwise provides in an Act enacted before that date.

Pub. L. 106-398, Title XXXVI, § 3628; Pub. L. 107-107, § 3151(a)(4)(A)

#### **§ 7384t. Medical benefits**

(a) MEDICAL BENEFITS PROVIDED—The United States shall furnish, to an individual receiving medical benefits under this section for an illness, the services, appliances, and supplies prescribed or recommended by a qualified physician for that illness, which the President considers likely to cure, give relief, or reduce the degree or the period of that illness.

(b) PERSONS FURNISHING BENEFITS—(1) These services, appliances, and supplies shall be furnished by or on the order of United States medical officers and hospitals, or, at the individual’s option, by or on the order of physicians and hospitals designated or approved by the

President.

(2) The individual may initially select a physician to provide medical services, appliances, and supplies under this section in accordance with such regulations and instructions as the President considers necessary.

(c) TRANSPORTATION AND EXPENSES—The individual may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances, and supplies.

(d) COMMENCEMENT OF BENEFITS—An individual receiving benefits under this section shall be furnished those benefits as of the date on which that individual submitted the claim for those benefits in accordance with this subchapter.

(e) PAYMENT FROM COMPENSATION FUND—The benefits provided under this section, when authorized or approved by the President, shall be paid from the compensation fund established under section 7384e of this title.

(f) EFFECTIVE DATE—This section shall take effect on July 31, 2001, unless Congress otherwise provides in an Act enacted before that date.

Pub. L. 106-398, Title XXXVI, § 3629

#### **§ 7384u. Separate treatment of certain uranium employees**

(a) COMPENSATION PROVIDED—An individual who receives, or has received, \$100,000 under section 5 of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) for a claim made under that Act (hereinafter in this section referred to as a “covered uranium employee”), or the survivor of that covered uranium employee if the employee is deceased, shall receive compensation under this section in the amount of \$50,000.

(b) MEDICAL BENEFITS—A covered uranium employee shall receive medical benefits under section 7384t of this title for the illness for which that employee received \$100,000 under section 5 of that Act.

(c) COORDINATION WITH RECA—The compensation and benefits provided in subsections (a) and (b) are separate from any compensation or benefits provided under that Act.

(d) PAYMENT FROM COMPENSATION FUND—The compensation provided under this section and the compensation provided under section 5 of the Radiation Exposure Compensation Act, when authorized or approved by the President, shall be paid from the compensation fund established under section 7384e of this title.

(e) PAYMENTS IN THE CASE OF DECEASED PERSONS—(1) In the case of a covered employee who is deceased at the time of payment of compensation under this section, whether or

not the death is the result of the covered employee's occupational illness, such payment may be made only as follows:

- (A) If the covered employee is survived by a spouse who is living at the time of payment, such payment shall be made to such surviving spouse.
- (B) If there is no surviving spouse described in subparagraph (A), such payment shall be made in equal shares to all children of the covered employee who are living at the time of payment.
- (C) If there is no surviving spouse described in subparagraph (A) and if there are no children described in subparagraph (B), such payment shall be made in equal shares to the parents of the covered employee who are living at the time of payment.
- (D) If there is no surviving spouse described in subparagraph (A), and if there are no children described in subparagraph (B) or parents described in subparagraph (C), such payment shall be made in equal shares to all grandchildren of the covered employee who are living at the time of payment.
- (E) If there is no surviving spouse described in subparagraph (A), and if there are no children described in subparagraph (B), parents described in subparagraph (C), or grandchildren described in subparagraph (D), then such payment shall be made in equal shares to the grandparents of the covered employee who are living at the time of payment.
- (F) Notwithstanding the other provisions of this paragraph, if there is—
  - (i) a surviving spouse described in subparagraph (A); and
  - (ii) at least one child of the covered employee who is living and a minor at the time of payment and who is not a recognized natural child or adopted child of such surviving spouse,then half of such payment shall be made to such surviving spouse, and the other half of such payment shall be made in equal shares to each child of the covered employee who is living and a minor at the time of payment.

(2) If a covered employee eligible for payment dies before filing a claim under this title, a survivor of that employee who may receive payment under paragraph (1) may file a claim for such payment.

(3) For purposes of this subsection—

- (A) the “spouse” of an individual is a wife or husband of that individual who was married to that individual for at least one year immediately before the death of that individual;
- (B) a “child” includes a recognized natural child, a stepchild who lived with an individual in a regular parent-child relationship, and an adopted child;
- (C) a “parent” includes fathers and mothers through adoption;
- (D) a “grandchild” of an individual is a child of a child of that individual; and
- (E) a “grandparent” of an individual is a parent of a parent of that individual.

(f) PROCEDURES REQUIRED—The President shall establish procedures to identify and notify each covered uranium employee, or the survivor of that covered uranium employee if that

employee is deceased, of the availability of compensation and benefits under this section.

(g) EFFECTIVE DATE—This section shall take effect on July 31, 2001, unless Congress otherwise provides in an Act enacted before that date.

Pub. L. 106-398, Title XXXVI, § 3630; Pub. L. 107-107, § 3151(a)(4)(B); Pub. L. 108-375, § 3165(a)

#### **§ 7384v. Assistance for claimants and potential claimants**

(a) ASSISTANCE FOR CLAIMANTS—The President shall, upon the receipt of a request for assistance from a claimant under the compensation program, provide assistance to the claimant in connection with the claim, including—

- (1) assistance in securing medical testing and diagnostic services necessary to establish the existence of a covered beryllium illness, chronic silicosis, or cancer; and
- (2) such other assistance as may be required to develop facts pertinent to the claim.

(b) ASSISTANCE FOR POTENTIAL CLAIMANTS—The President shall take appropriate actions to inform and assist covered employees who are potential claimants under the compensation program, and other potential claimants under the compensation program, of the availability of compensation under the compensation program, including actions to—

- (1) ensure the ready availability, in paper and electronic format, of forms necessary for making claims;
- (2) provide such covered employees and other potential claimants with information and other support necessary for making claims, including—
  - (A) medical protocols for medical testing and diagnosis to establish the existence of a covered beryllium illness, chronic silicosis, or cancer; and
  - (B) lists of vendors approved for providing laboratory services related to such medical testing and diagnosis; and
- (3) provide such additional assistance to such covered employees and other potential claimants as may be required for the development of facts pertinent to a claim.

(c) INFORMATION FROM BERYLLIUM VENDORS AND OTHER CONTRACTORS—As part of the assistance program provided under subsections (a) and (b), and as permitted by law, the Secretary of Energy shall, upon the request of the President, require a beryllium vendor or other Department of Energy contractor or subcontractor to provide information relevant to a claim or potential claim under the compensation program to the President.

Pub. L. 106-398, Title XXXVI, § 3631

#### **§ 7384w. Subpoenas; oaths; examination of witnesses**

The Secretary of Labor, with respect to any matter under this part, may—

- (1) issue subpoenas for and compel the attendance of witnesses;
- (2) administer oaths;
- (3) examine witnesses; and
- (4) require the production of books, papers, documents, and other evidence.

Pub. L. 106-398, Title XXXVI, § 3632, as added by Pub. L. 108-375, § 3163(a)

#### **§ 7384w-1. Completion of site profiles**

(a) **IN GENERAL.**—To the extent that the Secretary of Labor determines it useful and practicable, the Secretary of Labor shall direct the Director of the National Institute for Occupational Safety and Health to prepare site profiles for a Department of Energy facility based on the records, files, and other data provided by the Secretary of Energy and such other information as is available, including information available from the former worker medical screening programs of the Department of Energy.

(b) **INFORMATION.**—The Secretary of Energy shall furnish to the Secretary of Labor any information that the Secretary of Labor finds necessary or useful for the production of such site profiles, including records from the Department of Energy former worker medical screening program.

(c) **DEFINITION.**—In this section, the term “site profile” means an exposure assessment of a facility that identifies the toxic substances or processes that were commonly used in each building or process of the facility, and the time frame during which the potential for exposure to toxic substances existed.

(d) **TIME FRAMES.**—The Secretary of Health and Human Services shall establish time frames for completing site profiles for those Department of Energy facilities for which a site profile has not been completed. Not later than March 1, 2005, the Secretary of Health and Human Services shall submit to Congress a report setting forth those time frames.

Pub. L. 106-398, Title XXXVI, § 3633, as added by Pub. L. 108-375, § 3166(c)

### **PART C—TREATMENT, COORDINATION, AND FORFEITURE OF COMPENSATION AND BENEFITS**

#### **§ 7385. Offset for certain payments**

A payment of compensation to an individual, or to a survivor of that individual, under this subchapter shall be offset by the amount of any payment made pursuant to a final award or settlement on a claim (other than a claim for worker’s compensation), against any person, that is based on injuries incurred by that individual on account of the exposure for which compensation is payable under this subchapter.

Pub. L. 106-398, Title XXXVI, § 3641; Pub. L. 108-375, § 3162(a)

**§ 7385a. Subrogation of the United States**

Upon payment of compensation under this subchapter, the United States is subrogated for the amount of the payment to a right or claim that the individual to whom the payment was made may have against any person on account of injuries referred to in section 7385 of this title.

Pub. L. 106-398, Title XXXVI, § 3642; Pub. L. 108-375, § 3162(b)

**§ 7385b. Payment in full settlement of claims**

Except as provided in part E, the acceptance by an individual of payment of compensation under part B of this subchapter with respect to a covered employee shall be in full satisfaction of all claims of or on behalf of that individual against the United States, against a Department of Energy contractor or subcontractor, beryllium vendor, or atomic weapons employer, or against any person with respect to that person's performance of a contract with the United States, that arise out of an exposure referred to in section 7385 of this title.

Pub. L. 106-398, Title XXXVI, § 3643; Pub. L. 108-375, § 3162(c)

**§ 7385c. Exclusivity of remedy against the United States and against contractors and subcontractors**

(a) IN GENERAL—The liability of the United States or an instrumentality of the United States under this subchapter with respect to a cancer (including a specified cancer), chronic silicosis, covered beryllium illness, or death related thereto of a covered employee is exclusive and instead of all other liability—

(1) of—

- (A) the United States;
- (B) any instrumentality of the United States;
- (C) a contractor that contracted with the Department of Energy to provide management and operation, management and integration, or environmental remediation of a Department of Energy facility (in its capacity as a contractor);
- (D) a subcontractor that provided services, including construction, at a Department of Energy facility (in its capacity as a subcontractor); and
- (E) an employee, agent, or assign of an entity specified in subparagraphs (A) through (D);

(2) to—

- (A) the covered employee;
- (B) the covered employee's legal representative, spouse, dependents, survivors and next of kin; and
- (C) any other person, including any third party as to whom the covered employee, or the covered employee's legal representative, spouse, dependents,

survivors, or next of kin, has a cause of action relating to the cancer (including a specified cancer), chronic silicosis, covered beryllium illness, or death, otherwise entitled to recover damages from the United States, the instrumentality, the contractor, the subcontractor, or the employee, agent, or assign of one of them;

because of the cancer (including a specified cancer), chronic silicosis, covered beryllium illness, or death in any proceeding or action including a direct judicial proceeding, a civil action, a proceeding in admiralty, or a proceeding under a tort liability statute or the common law.

(b) **APPLICABILITY**—This section applies to all cases filed on or after October 30, 2000.

(c) **WORKERS' COMPENSATION**—This section does not apply to an administrative or judicial proceeding under a State or Federal workers' compensation law.

(d) **APPLICABILITY TO PART E**.—This section applies with respect to part E to the covered medical condition or covered illness or death of a covered DOE contractor employee on the same basis as it applies with respect to part B to the cancer (including a specified cancer), chronic silicosis, covered beryllium illness, or death of a covered employee.

Pub. L. 106-398, Title XXXVI, § 3644; Pub. L. 108-375, § 3162(d)

#### **§ 7385d. Election of remedy for beryllium employees and atomic weapons employees**

(a) **EFFECT OF TORT CASES FILED BEFORE ENACTMENT OF ORIGINAL LAW**—(1) Except as provided in paragraph (2), if an otherwise eligible individual filed a tort case specified in subsection (d) before October 30, 2000, such individual shall be eligible for compensation and benefits under part B.

(2) If such tort case remained pending as of the date of the enactment of the National Defense Authorization Act for Fiscal Year 2002\*, and such individual does not dismiss such tort case before December 31, 2003, such individual shall not be eligible for such compensation or benefits.

(b) **EFFECT OF TORT CASES FILED BETWEEN ENACTMENT OF ORIGINAL LAW AND ENACTMENT OF 2001 AMENDMENTS**—(1) Except as provided in paragraph (2), if an otherwise eligible individual filed a tort case specified in subsection (d) during the period beginning on October 30, 2000, and ending on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2002\*, such individual shall not be eligible for such compensation or benefits.

(2) If such individual dismisses such tort case on or before the last permissible date specified in paragraph (3), such individual shall be eligible for such compensation or benefits.

(3) The last permissible date referred to in paragraph (2) is the later of the following dates:

(A) April 30, 2003.

(B) The date that is 30 months after the date the individual first becomes aware that an illness covered by part B of a covered employee may be connected to the exposure of the covered employee in the performance of duty under section 7384n.

(c) EFFECT OF TORT CASES FILED AFTER ENACTMENT OF 2001 AMENDMENTS—

(1) If an otherwise eligible individual files a tort case specified in subsection (d) after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2002\*, such individual shall not be eligible for such compensation or benefits if a final court decision is entered against such individual in such tort case.

(2) If such a final court decision is not entered, such individual shall nonetheless not be eligible for such compensation or benefits, except as follows: If such individual dismisses such tort case on or before the last permissible date specified in paragraph (3), such individual shall be eligible for such compensation and benefits.

(3) The last permissible date referred to in paragraph (2) is the later of the following dates:

(A) April 30, 2003.

(B) The date that is 30 months after the date the individual first becomes aware that an illness covered by part B of a covered employee may be connected to the exposure of the covered employee in the performance of duty under section 7384n.

(d) COVERED TORT CASES—A tort case specified in this subsection is a tort case alleging a claim referred to in section 7385b against a beryllium vendor or atomic weapons employer.

(e) WORKERS' COMPENSATION—This section does not apply to an administrative or judicial proceeding under a State or Federal workers' compensation law.

Pub. L. 106-398, Title XXXVI, § 3645; Pub. L. 107-107, § 3151(a)(5)

\*December 28, 2001.

**§ 7385e. Certification of treatment of payments under other laws**

Compensation or benefits provided to an individual under this subchapter—

(1) shall be treated for purposes of the internal revenue laws of the United States as damages for human suffering; and

(2) shall not be included as income or resources for purposes of determining eligibility to receive benefits described in section 3803(c)(2)(C) of Title 31, or the amount of such benefits.

Pub. L. 106-398, Title XXXVI, § 3646; Pub. L. 108-375, § 3162(e)

**§ 7385f. Claims not assignable or transferable; choice of remedies**

(a) CLAIMS NOT ASSIGNABLE OR TRANSFERABLE—No claim cognizable under this subchapter shall be assignable or transferable.

(b) CHOICE OF REMEDIES—No individual may receive more than one payment of compensation under part B of this subchapter.

Pub. L. 106-398, Title XXXVI, § 3647; Pub. L. 108-375, § 3162(f)

**§ 7385g. Attorney fees**

(a) GENERAL RULE—Notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with the claim of an individual for payment of lump-sum compensation under part B of this subchapter, more than that percentage specified in subsection (b) of a payment made under part B of this subchapter on such claim.

(b) APPLICABLE PERCENTAGE LIMITATIONS—The percentage referred to in subsection (a) is—

- (1) 2 percent for the filing of an initial claim for payment of lump-sum compensation; and
- (2) 10 percent with respect to objections to a recommended decision denying payment of lump-sum compensation.

(c) INAPPLICABILITY TO OTHER SERVICES—This section shall not apply with respect to services rendered that are not in connection with such a claim for payment of lump-sum compensation.

(d) PENALTY—Any such representative who violates this section shall be fined not more than \$5,000.

Pub. L. 106-398, Title XXXVI, § 3648; Pub. L. 107-107, § 3151(a)(6)

**§ 7385h. Certain claims not affected by awards of damages**

A payment under this subchapter shall not be considered as any form of compensation or reimbursement for a loss for purposes of imposing liability on any individual receiving such payment, on the basis of such receipt, to repay any insurance carrier for insurance payments, or to repay any person on account of workers' compensation payments; and a payment under this subchapter shall not affect any claim against an insurance carrier with respect to insurance or against any person with respect to workers' compensation.

Pub. L. 106-398, Title XXXVI, § 3649; Pub. L. 108-375, § 3162(g)

**§ 7385i. Forfeiture of benefits by convicted felons**

(a) FORFEITURE OF COMPENSATION—Any individual convicted of a violation of section

1920 of Title 18, or any other Federal or State criminal statute relating to fraud in the application for or receipt of any benefit under this subchapter or under any other Federal or State workers' compensation law, shall forfeit (as of the date of such conviction) any entitlement to any compensation or benefit under this subchapter such individual would otherwise be awarded for any injury, illness or death covered by this subchapter for which the time of injury was on or before the date of the conviction.

(b) INFORMATION—Notwithstanding section 552a of Title 5, or any other Federal or State law, an agency of the United States, a State, or a political subdivision of a State shall make available to the President, upon written request from the President and if the President requires the information to carry out this section, the names and Social Security account numbers of individuals confined, for conviction of a felony, in a jail, prison, or other penal institution or correctional facility under the jurisdiction of that agency.

Pub. L. 106-398, Title XXXVI, § 3650; Pub. L. 108-375, § 3162(h)

### **§ 7385j. Coordination with other Federal radiation compensation laws**

Except in accordance with section 7384u of this title, an individual may not receive compensation or benefits under the compensation program for cancer and also receive compensation under the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) or section 1112(c) of Title 38.

Pub. L. 106-398, Title XXXVI, § 3651

### **§ 7385j-1. Social security earnings information**

Notwithstanding the provision of section 552a of title 5, United States Code, or any other provision of Federal or State law, the Social Security Administration shall make available to the Secretary of Labor, upon written request, the Social Security earnings information of living or deceased employees who may have sustained an illness that is the subject of a claim under this subchapter, which the Secretary of Labor may require to carry out the provisions of this subchapter.

Pub. L. 106-398, Title XXXVI, § 3652, as added by Pub. L. 108-375, § 3163(b)

### **§ 7385j-2. Recovery and waiver of overpayments**

(a) IN GENERAL.—When an overpayment has been made to an individual under this subchapter because of an error of fact or law, recovery shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled. If the individual dies before the recovery is completed, recovery shall be made by decreasing later benefits payable under this subchapter with respect to the individual's death.

(b) **WAIVER.**—Recovery by the United States under this section may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience.

(c) **LIABILITY.**—A certifying or disbursing official is not liable for an amount certified or paid by him when recovery of the amount is waived under subsection (b) of this section, or when recovery under subsection (a) of this section is not completed before the death of all individuals against whose benefits deductions are authorized.

Pub. L. 106-398, Title XXXVI, § 3653, as added by Pub. L. 108-375, § 3163(c)

## **PART D—ASSISTANCE IN STATE WORKERS’ COMPENSATION PROCEEDINGS**

**[§ 7385o. Repealed.]**

Pub. L. 106-398, Title XXXVI, § 3661; Pub. L. 108-375, § 3162(i)

## **PART E—CONTRACTOR EMPLOYEE COMPENSATION**

### **§ 7385s. Definitions**

In this part:

(1) The term “covered DOE contractor employee” means any Department of Energy contractor employee determined under section 7385s-4 to have contracted a covered illness through exposure at a Department of Energy facility.

(2) The term “covered illness” means an illness or death resulting from exposure to a toxic substance.

(3) The term “Secretary” means the Secretary of Labor.

Pub. L. 106-398, Title XXXVI, § 3671, as added by Pub. L. 108-375, § 3161

### **§ 7385s-1. Compensation to be provided**

Subject to the other provisions of this part:

(1) **CONTRACTOR EMPLOYEES.**—A covered DOE contractor employee shall receive contractor employee compensation under this part in accordance with section 7385s-2.

(2) **SURVIVORS.**—After the death of a covered DOE contractor employee, compensation referred to in paragraph (1) shall not be paid. Instead, the survivor of that employee shall receive compensation as follows:

(A) Except as provided in subparagraph (B), the survivor of that employee shall receive contractor employee compensation under this part in accordance with section 7385s-3.

(B) In a case in which the employee's death occurred after the employee applied under this part and before compensation was paid under paragraph (1), and the employee's death occurred from a cause other than the covered illness of the employee, the survivor of that employee may elect to receive, in lieu of compensation under subparagraph (A), the amount of contractor employee compensation that the employee would have received in accordance with section 7385s-2 if the employee's death had not occurred before compensation was paid under paragraph (1).

Pub. L. 106-398, Title XXXVI, § 3672, as added by Pub. L. 108-375, § 3161

### **§ 7385s-2. Compensation schedule for contractor employees**

(a) COMPENSATION PROVIDED.—The amount of contractor employee compensation under this part for a covered DOE contractor employee shall be the sum of the amounts determined under paragraphs (1) and (2), as follows:

(1) IMPAIRMENT.—(A) The Secretary shall determine—

(i) the minimum impairment rating of that employee, expressed as a number of percentage points; and

(ii) the number of those points that are the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility.

(B) The employee shall receive an amount under this paragraph equal to \$2,500 multiplied by the number referred to in clause (ii) of subparagraph (A).

(2) WAGE LOSS.—(A) The Secretary shall determine—

(i) the calendar month during which the employee first experienced wage loss as the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility;

(ii) the average annual wage of the employee for the 36-month period immediately preceding the calendar month referred to in clause (i), excluding any portions of that period during which the employee was unemployed; and

(iii) beginning with the calendar year that includes the calendar month referred to in clause (i), through and including the calendar year during which the employee attained normal retirement age (for purposes of the Social Security Act)—

(I) the number of calendar years during which, as the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility, the employee's annual wage exceeded 50 percent of the average annual wage determined under clause (ii), but did not exceed 75 percent of the average annual wage determined under clause (ii); and

(II) the number of calendar years during which, as the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility, the employee's

annual wage did not exceed 50 percent of the average annual wage determined under clause (ii).

- (B) The employee shall receive an amount under this paragraph equal to the sum of—
- (i) \$10,000 multiplied by the number referred to in clause (iii)(I) of subparagraph (A); and
  - (ii) \$15,000 multiplied by the number referred to in clause (iii)(II) of subparagraph (A).

(b) DETERMINATION OF MINIMUM IMPAIRMENT RATING.—For purposes of subsection (a), a minimum impairment rating shall be determined in accordance with the American Medical Association’s Guides to the Evaluation of Permanent Impairment.

Pub. L. 106-398, Title XXXVI, § 3673, as added by Pub. L. 108-375, § 3161

### **§ 7385s-3. Compensation schedule for survivors**

(a) CATEGORIES OF COMPENSATION.—The amount of contractor employee compensation under this part for the survivor of a covered DOE contractor employee shall be determined as follows:

(1) CATEGORY ONE.—The survivor shall receive the amount of \$125,000, if the Secretary determines that—

(A) the employee would have been entitled to compensation under section 7385s-4 for a covered illness; and

(B) it is at least as likely as not that exposure to a toxic substance at a Department of Energy facility was a significant factor in aggravating, contributing to, or causing the death of such employee.

(2) CATEGORY TWO.—The survivor shall receive the amount of \$150,000, if paragraph (1) applies to the employee and the Secretary also determines that there was an aggregate period of not less than 10 years, before the employee attained normal retirement age (for purposes of the Social Security Act), during which, as the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility, the employee’s annual wage did not exceed 50 percent of the average annual wage of that employee, as determined under section 7385s-2(a)(2)(A)(ii).

(3) CATEGORY THREE.—The survivor shall receive the amount of \$175,000, if paragraph (1) applies to the employee and the Secretary also determines that there was an aggregate period of not less than 20 years, before the employee attained normal retirement age (for purposes of the Social Security Act), during which, as the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility, the employee’s annual wage did not exceed 50 percent of the average annual wage of that employee, as determined under section 7385s-2(a)(2)(A)(ii).

(b) ONE AMOUNT ONLY.—The survivor of a covered DOE contractor employee to whom more than one amount under subsection (a) applies shall receive only the highest such amount.

(c) DETERMINATION AND ALLOCATION OF SHARES.—The amount under subsection (a) shall be paid only as follows:

- (1) If a covered spouse is alive at the time of payment, such payment shall be made to such surviving spouse.
- (2) If there is no covered spouse described in paragraph (1), such payment shall be made in equal shares to all covered children who are alive at the time of payment.
- (3) Notwithstanding the other provisions of this subsection, if there is—
  - (A) a covered spouse described in paragraph (1); and
  - (B) at least one covered child of the employee who is living at the time of payment and who is not a recognized natural child or adopted child of such covered spouse,then half of such payment shall be made to such covered spouse, and the other half of such payment shall be made in equal shares to each covered child of the employee who is living at the time of payment.

(d) DEFINITIONS.—In this section:

- (1) The term “covered spouse” means a spouse of the employee who was married to the employee for at least one year immediately before the employee’s death.
- (2) The term “covered child” means a child of the employee who, as of the employee’s death—
  - (A) had not attained the age of 18 years;
  - (B) had not attained the age of 23 years and was a full-time student who had been continuously enrolled as a full-time student in one or more educational institutions since attaining the age of 18 years; or
  - (C) had been incapable of self-support.
- (3) The term “child” includes a recognized natural child, a stepchild who lived with an individual in a regular parent-child relationship, and an adopted child.

Pub. L. 106-398, Title XXXVI, § 3674, as added by Pub. L. 108-375, § 3161

#### **§ 7385s-4. Determinations regarding contraction of covered illnesses**

(a) CASES DETERMINED UNDER PART B.—A determination under part B that a Department of Energy contractor employee is entitled to compensation under that part for an occupational illness shall be treated for purposes of this part as a determination that the employee contracted that illness through exposure at a Department of Energy facility.

(b) CASES DETERMINED UNDER FORMER PART D.—In the case of a covered illness of an employee with respect to which a panel has made a positive determination under section 7385o(d) and the Secretary of Energy has accepted that determination under section 7385o(e)(2), or with respect to which a panel has made a negative determination under section 7385o(d) and the Secretary of Energy has found significant evidence to the contrary under section 7385o(e)(2), that determination shall be treated for purposes of this part as a determination that the employee contracted the covered illness through exposure at a Department of Energy facility.

(c) OTHER CASES.—(1) In any other case, a Department of Energy contractor employee shall be determined for purposes of this part to have contracted a covered illness through exposure at a Department of Energy facility if—

(A) it is at least as likely as not that exposure to a toxic substance at a Department of Energy facility was a significant factor in aggravating, contributing to, or causing the illness; and

(B) it is at least as likely as not that the exposure to such toxic substance was related to employment at a Department of Energy facility.

(2) A determination under paragraph (1) shall be made by the Secretary.

(d) APPLICATIONS BY SPOUSES AND CHILDREN.—If a spouse or child of a Department of Energy contractor employee applies for benefits under this part, the Secretary shall make a determination under this section with respect to that employee without regard to whether the spouse is a “covered spouse”, or the child is a “covered child”, under this part.

Pub. L. 106-398, Title XXXVI, § 3675, as added by Pub. L. 108-375, § 3161

#### **§ 7385s-5. Applicability to certain uranium employees**

(a) IN GENERAL.—This part shall apply to—

(1) a section 5 payment recipient who contracted a section 5 illness through a section 5 exposure at a section 5 facility, or

(2) a section 5 uranium worker determined under section 7385s-4(c) to have contracted a covered illness through exposure to a toxic substance at a section 5 mine or mill (or to the survivor of that employee, as applicable), on the same basis as it applies to a Department of Energy contractor employee determined under section 7385s-4 to have contracted a covered illness through exposure to a toxic substance at a Department of Energy facility (or to the survivor of that employee, as applicable).

(b) DEFINITIONS.—In this section:

(1) The term “section 5 payment recipient” means an individual who receives, or has received, \$100,000 under section 5 of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) for a claim made under that Act.

(2) The terms “section 5 exposure”, “section 5 facility”, and “section 5 illness” mean the exposure, facility, and illness, respectively, to which an individual’s status as a section 5 payment recipient relates.

(3) The term “section 5 uranium worker” means an individual to whom subsection (a)(1)(A)(i) of section 5 of the Radiation Exposure Compensation Act applies (whether directly or by reason of subsection (a)(2)).

(4) The term “section 5 mine or mill” means the mine or mill to which an individual’s status as a section 5 uranium worker relates.

Pub. L. 106-398, Title XXXVI, § 3676, as added by Pub. L. 108-375, § 3161

**§ 7385s-6. Administrative and judicial review**

(a) JUDICIAL REVIEW.—A person adversely affected or aggrieved by a final decision of the Secretary under this part may review that order in the United States district court in the district in which the injury was sustained, the employee lives, the survivor lives, or the District of Columbia, by filing in such court within 60 days after the date on which that final decision was issued a written petition praying that such decision be modified or set aside. The person shall also provide a copy of the petition to the Secretary. Upon such filing, the court shall have jurisdiction over the proceeding and shall have the power to affirm, modify, or set aside, in whole or in part, such decision. The court may modify or set aside such decision only if the court determines that such decision was arbitrary and capricious.

(b) ADMINISTRATIVE REVIEW.—The Secretary shall ensure that recommended decisions of the Secretary with respect to a claim under this part are subject to administrative review. The Secretary shall prescribe regulations for carrying out such review or shall apply to this part the regulations applicable to recommended decisions under part B.

Pub. L. 106-398, Title XXXVI, § 3677, as added by Pub. L. 108-375, § 3161

**§ 7385s-7. Physicians services**

(a) IN GENERAL.—The Secretary may utilize the services of physicians for purposes of making determinations under this part.

(b) PHYSICIANS.—Any physicians whose services are utilized under subsection (a) of this section shall possess appropriate expertise and experience in the evaluation and determination of the extent of permanent physical impairments or in the evaluation and diagnosis of illnesses or deaths aggravated, contributed to, or caused by exposure to toxic substances.

(c) ARRANGEMENT.—The Secretary may secure the services of physicians utilized under subsection (a) of this section through the appointment of physicians or by contract.

Pub. L. 106-398, Title XXXVI, § 3678, as added by Pub. L. 108-375, § 3161

**§ 7385s-8. Medical benefits**

A covered DOE contractor employee shall be furnished medical benefits specified in section 7384t for the covered illness to the same extent, and under the same conditions and limitations, as an individual eligible for medical benefits under that section is furnished medical benefits under that section.

Pub. L. 106-398, Title XXXVI, § 3679, as added by Pub. L. 108-375, § 3161

**§ 7385s-9. Attorney fees**

Section 7385g shall apply to a payment under this part to the same extent that it applies to a payment under part B.

Pub. L. 106-398, Title XXXVI, § 3680, as added by Pub. L. 108-375, § 3161

**§ 7385s-10. Administrative matters**

(a) IN GENERAL.—The Secretary shall administer this part.

(b) CONTRACT AUTHORITY.—The Secretary may enter into contracts with appropriate persons and entities to administer this part.

(c) RECORDS.—(1)(A) The Secretary of Energy shall provide to the Secretary all records, files, and other data, whether paper, electronic, imaged, or otherwise, developed by the Secretary of Energy that are applicable to the administration of this part, including records, files, and data on facility industrial hygiene, employment of individuals or groups, exposure and medical records, and claims applications.

(B) In providing records, files, and other data under this paragraph, the Secretary of Energy shall preserve the current organization of such records, files, and other data, and shall provide such description and indexing of such records, files, and other data as the Secretary considers appropriate to facilitate their use by the Secretary.

(2) The Secretary of Energy and the Secretary shall jointly undertake such actions as are appropriate to retrieve records applicable to the claims of Department of Energy contractor employees for contractor employee compensation under this part, including employment records, records of exposure to beryllium, radiation, silica, or other toxic substances, and records regarding medical treatment.

(d) INFORMATION.—At the request of the Secretary, the Secretary of Energy and any contractor who employed a Department of Energy contractor employee shall, within time periods specified by the Secretary, provide to the Secretary and to the employee information or documents in response to the request.

(e) REGULATIONS.—The Secretary shall prescribe regulations necessary for the administration of this part. The initial regulations shall be prescribed not later than 210 days after the date of the enactment of this part.\* The Secretary may prescribe interim final regulations necessary to meet the deadlines specified in this part.

(f) TRANSITION PROVISIONS.—(1) The Secretary shall commence the administration of the provisions of this part not later than 210 days after the date of the enactment of this part.\*

(2) Until the commencement of the administration of this part, the Department of Energy Physicians Panels appointed pursuant to part D shall continue to consider and issue determinations concerning any cases pending before such Panels immediately before the date of the enactment of this part.\*

(3) The Secretary shall take such actions as are appropriate to identify other activities under part D that will continue until the commencement of the administration of part E.

(g) PREVIOUS APPLICATIONS.—Upon the commencement of the administration of this part, any application previously filed with the Secretary of Energy pursuant to part D shall be considered to have been filed with the Secretary as a claim for benefits pursuant to this part.

Pub. L. 106-398, Title XXXVI, § 3681, as added by Pub. L. 108-375, § 3161

\*October 28, 2004.

### **§ 7385s-11. Coordination of benefits with respect to state workers' compensation**

(a) IN GENERAL.—An individual who has been awarded compensation under this part, and who has also received benefits from a State workers' compensation system by reason of the same covered illness, shall receive compensation specified in this part reduced by the amount of any workers' compensation benefits, other than medical benefits and benefits for vocational rehabilitation, that the individual has received under the State workers' compensation system by reason of the covered illness, after deducting the reasonable costs, as determined by the Secretary, of obtaining those benefits under the State workers' compensation system.

(b) WAIVER.—The Secretary may waive the provisions of subsection (a) if the Secretary determines that the administrative costs and burdens of implementing subsection (a) with respect to a particular case or class of cases justifies such a waiver.

(c) INFORMATION.—Notwithstanding any other provision of law, each State workers' compensation authority shall, upon request of the Secretary, provide to the Secretary on a quarterly basis information concerning workers' compensation benefits received by any covered DOE contractor employee entitled to compensation or benefits under this part, which shall include the name, Social Security number, and nature and amount of workers' compensation benefits for each such employee for which the request was made.

Pub. L. 106-398, Title XXXVI, § 3682, as added by Pub. L. 108-375, § 3161

### **§ 7385s-12. Maximum aggregate compensation**

For each individual whose illness or death serves as the basis for compensation or benefits under this part, the total amount of compensation (other than medical benefits) paid under this part, to all persons, in the aggregate, on the basis of that illness or death shall not exceed \$250,000.

Pub. L. 106-398, Title XXXVI, § 3683, as added by Pub. L. 108-375, § 3161

### **§ 7385s-13. Funding of administrative costs**

There is authorized and hereby appropriated to the Secretary for fiscal year 2005 and thereafter such sums as may be necessary to carry out this part.

Pub. L. 106-398, Title XXXVI, § 3684, as added by Pub. L. 108-375, § 3161

**§ 7385s-14. Payment of compensation and benefits from compensation fund**

The compensation and benefits provided under this part, when authorized or approved by the President, shall be paid from the compensation fund established under section 7384e.

Pub. L. 106-398, Title XXXVI, § 3685, as added by Pub. L. 108-375, § 3161

**§ 7385s-15. Office of ombudsman**

(a) ESTABLISHMENT.—There is established in the Department of Labor an office to be known as the “Office of the Ombudsman” (in this section referred to as the “Office”).

(b) HEAD.—The head of the Office shall be the Ombudsman. The individual serving as Ombudsman shall be either of the following:

- (1) An officer or employee of the Department of Labor designated by the Secretary for purposes of this section from among officers and employees of the Department who have experience and expertise necessary to carry out the duties of the Office specified in subsection (c).
- (2) An individual employed by the Secretary from the private sector from among individuals in the private sector who have experience and expertise necessary to carry out the duties of the Office specified in subsection (c).

(c) DUTIES.—The duties of the Office shall be as follows:

- (1) To provide information on the benefits available under this part and on the requirements and procedures applicable to the provision of such benefits.
- (2) To make recommendations to the Secretary regarding the location of centers (to be known as “resource centers”) for the acceptance and development of claims for benefits under this part.
- (3) To carry out such other duties with respect to this part as the Secretary shall specify for purposes of this section.

(d) INDEPENDENT OFFICE.—The Secretary shall take appropriate actions to ensure the independence of the Office within the Department of Labor, including independence from other officers and employees of the Department engaged in activities relating to the administration of the provisions of this part.

(e) ANNUAL REPORT.—(1) Not later than February 15 each year, the Ombudsman shall submit to Congress a report on activities under this part.

(2) Each report under paragraph (1) shall set forth the following:

(A) The number and types of complaints, grievances, and requests for assistance received by the Ombudsman under this part during the preceding year.

(B) An assessment of the most common difficulties encountered by claimants and potential claimants under this part during the preceding year.

(3) The first report under paragraph (1) shall be the report submitted in 2006.

(f) OUTREACH.—The Secretary of Labor and the Secretary of Health and Human Services shall each undertake outreach to advise the public of the existence and duties of the Office.

(g) SUNSET.—Effective October 28, 2012, this section shall have no further force or effect.

Pub. L. 106-398, Title XXXVI, § 3686, as added by Pub. L. 108-375, § 3161; Pub. L. 110-181, § 3116