

31-52

1 (2) by redesignating paragraph (2) as para-
2 graph (3); and

3 (3) by inserting after paragraph (1) the fol-
4 lowing new paragraph (2):

5 “(2) notwithstanding paragraph (1) and the
6 agreement under subsection (e), convey, without con-
7 sideration, to the Board of Education of the Los Al-
8 amos Public Schools, New Mexico, within the Coun-
9 ty, fee title to the parcels of land identified by the
10 Department of Energy as Parcel A-8 and Parcel A-
11 15-1 that are currently located in Technical Area-
12 21 of Los Alamos National Laboratory upon the
13 entry of Los Alamos Public Schools and the County
14 into an agreement for the use of the parcel of land
15 identified as Parcel A-8; and”.

16 **Subtitle E—Energy Employees Oc-**
17 **cupational Illness Compensa-**
18 **tion Program**

19 **SEC. 3161. CONTRACTOR EMPLOYEE COMPENSATION.**

20 The Energy Employees Occupational Illness Com-
21 pensation Program Act of 2000 (title XXXVI of the Floyd
22 D. Spence National Defense Authorization Act for Fiscal
23 Year 2001 (as enacted into law by Public Law 106-398))
24 is amended by adding after subtitle D (42 U.S.C. 7385o)
25 the following new title:

1 **“Subtitle E—Contractor Employee**
2 **Compensation**

3 **“SEC. 3671. DEFINITIONS.**

4 “In this subtitle:

5 “(1) The term ‘covered DOE contractor em-
6 ployee’ means any Department of Energy contractor
7 employee determined under section 3675 to have
8 contracted a covered illness through exposure at a
9 Department of Energy facility.

10 “(2) The term ‘covered illness’ means an illness
11 or death resulting from exposure to a toxic sub-
12 stance.

13 “(3) The term ‘Secretary’ means the Secretary
14 of Labor.

15 **“SEC. 3672. COMPENSATION TO BE PROVIDED.**

16 “Subject to the other provisions of this subtitle:

17 “(1) CONTRACTOR EMPLOYEES.—A covered
18 DOE contractor employee shall receive contractor
19 employee compensation under this subtitle in accord-
20 ance with section 3673.

21 “(2) SURVIVORS.—After the death of a covered
22 DOE contractor employee, compensation referred to
23 in paragraph (1) shall not be paid. Instead, the sur-
24 vivor of that employee shall receive compensation as
25 follows:



31-54

1 “(A) Except as provided in subparagraph
2 (B), the survivor of that employee shall receive
3 contractor employee compensation under this
4 subtitle in accordance with section 3674.

5 “(B) In a case in which the employee’s
6 death occurred after the employee applied
7 under this subtitle and before compensation was
8 paid under paragraph (1), and the employee’s
9 death occurred from a cause other than the cov-
10 ered illness of the employee, the survivor of that
11 employee may elect to receive, in lieu of com-
12 pensation under subparagraph (A), the amount
13 of contractor employee compensation that the
14 employee would have received in accordance
15 with section 3673 if the employee’s death had
16 not occurred before compensation was paid
17 under paragraph (1).

18 **“SEC. 3673. COMPENSATION SCHEDULE FOR CONTRACTOR**
19 **EMPLOYEES.**

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



31-55

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

3 “(i) the minimum impairment rating of
4 that employee, expressed as a number of per-
5 centage points; and

6 “(ii) the number of those points that are
7 the result of any covered illness contracted by
8 that employee through exposure to a toxic sub-
9 stance at a Department of Energy facility.

10 “(B) The employee shall receive an amount
11 under this paragraph equal to \$2,500 multiplied by
12 the number referred to in clause (ii) of subpara-
13 graph (A).

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

16 “(i) the calendar month during which the
17 employee first experienced wage loss as the re-
18 sult of any covered illness contracted by that
19 employee through exposure to a toxic substance
20 at a Department of Energy facility;

21 “(ii) the average annual wage of the em-
22 ployee for the 36-month period immediately
23 preceding the calendar month referred to in
24 clause (i), excluding any portions of that period



31-56

1 during which the employee was unemployed;
2 and

3 “(iii) beginning with the calendar year that
4 includes the calendar month referred to in
5 clause (i), through and including the calendar
6 year during which the employee attained normal
7 retirement age (for purposes of the Social Secu-
8 rity Act)—

9 “(I) the number of calendar years
10 during which, as the result of any covered
11 illness contracted by that employee
12 through exposure to a toxic substance at a
13 Department of Energy facility, the employ-
14 ee’s annual wage exceeded 50 percent of
15 the average annual wage determined under
16 clause (ii), but did not exceed 75 percent
17 of the average annual wage determined
18 under clause (ii); and

19 “(II) the number of calendar years
20 during which, as the result of any covered
21 illness contracted by that employee
22 through exposure to a toxic substance at a
23 Department of Energy facility, the employ-
24 ee’s annual wage did not exceed 50 percent



31-57

1 of the average annual wage determined
2 under clause (ii).

3 “(B) The employee shall receive an amount
4 under this paragraph equal to the sum of—

5 “(i) \$10,000 multiplied by the number re-
6 ferred to in clause (iii)(I) of subparagraph (A);
7 and

8 “(ii) \$15,000 multiplied by the number re-
9 ferred to in clause (iii)(II) of subparagraph (A).

10 “(b) DETERMINATION OF MINIMUM IMPAIRMENT
11 RATING.—For purposes of subsection (a), a minimum im-
12 pairment rating shall be determined in accordance with
13 the American Medical Association’s Guides to the Evalua-
14 tion of Permanent Impairment.

15 **“SEC. 3674. COMPENSATION SCHEDULE FOR SURVIVORS.**

16 “(a) CATEGORIES OF COMPENSATION.—The amount
17 of contractor employee compensation under this subtitle
18 for the survivor of a covered DOE contractor employee
19 shall be determined as follows:

20 “(1) CATEGORY ONE.—The survivor shall re-
21 ceive the amount of \$125,000, if the Secretary de-
22 termines that—

23 “(A) the employee would have been enti-
24 tled to compensation under section 3675 for a
25 covered illness; and



31-58

1 “(B) it is at least as likely as not that ex-
2 posure to a toxic substance at a Department of
3 Energy facility was a significant factor in ag-
4 gravating, contributing to, or causing the death
5 of such employee.

6 “(2) CATEGORY TWO.—The survivor shall re-
7 ceive the amount of \$150,000, if paragraph (1) ap-
8 plies to the employee and the Secretary also deter-
9 mines that there was an aggregate period of not less
10 than 10 years, before the employee attained normal
11 retirement age (for purposes of the Social Security
12 Act), during which, as the result of any covered ill-
13 ness contracted by that employee through exposure
14 to a toxic substance at a Department of Energy fa-
15 cility, the employee’s annual wage did not exceed 50
16 percent of the average annual wage of that em-
17 ployee, as determined under section
18 3673(a)(2)(A)(ii).

19 “(3) CATEGORY THREE.—The survivor shall re-
20 ceive the amount of \$175,000, if paragraph (1) ap-
21 plies to the employee and the Secretary also deter-
22 mines that there was an aggregate period of not less
23 than 20 years, before the employee attained normal
24 retirement age (for purposes of the Social Security
25 Act), during which, as the result of any covered ill-

31-59

1 ness contracted by that employee through exposure
2 to a toxic substance at a Department of Energy fa-
3 cility, the employee's annual wage did not exceed 50
4 percent of the average annual wage of that em-
5 ployee, as determined under section
6 3673(a)(2)(A)(ii).

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

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

14 “(1) If a covered spouse is alive at the time of
15 payment, such payment shall be made to such sur-
16 viving spouse.

17 “(2) If there is no covered spouse described in
18 paragraph (1), such payment shall be made in equal
19 shares to all covered children who are alive at the
20 time of payment.

21 “(3) Notwithstanding the other provisions of
22 this subsection, if there is—

23 “(A) a covered spouse described in para-
24 graph (1); and



31-60

1 “(B) at least one covered child of the em-
2 ployee who is living at the time of payment and
3 who is not a recognized natural child or adopt-
4 ed child of such covered spouse,

5 “then half of such payment shall be made to such
6 covered spouse, and the other half of such payment
7 shall be made in equal shares to each covered child
8 of the employee who is living at the time of pay-
9 ment.

10 “(d) DEFINITIONS.—In this section:

11 “(1) The term ‘covered spouse’ means a spouse
12 of the employee who was married to the employee
13 for at least one year immediately before the employ-
14 ee’s death.

15 “(2) The term ‘covered child’ means a child of
16 the employee who, as of the employee’s death—

17 “(A) had not attained the age of 18 years;

18 “(B) had not attained the age of 23 years

19 and was a full-time student who had been con-

20 tinuously enrolled as a full-time student in one

21 or more educational institutions since attaining

22 the age of 18 years; or

23 “(C) had been incapable of self-support.

24 “(3) The term ‘child’ includes a recognized nat-

25 ural child, a stepchild who lived with an individual



31-61

1 in a regular parent-child relationship, and an adopt-
2 ed child.

3 **"SEC. 3675. DETERMINATIONS REGARDING CONTRACTION**
4 **OF COVERED ILLNESSES.**

5 "(a) CASES DETERMINED UNDER SUBTITLE B.—A
6 determination under subtitle B that a Department of En-
7 ergy contractor employee is entitled to compensation
8 under that subtitle for an occupational illness shall be
9 treated for purposes of this subtitle as a determination
10 that the employee contracted that illness through exposure
11 at a Department of Energy facility.

12 "(b) CASES DETERMINED UNDER FORMER SUB-
13 TITLE D.—In the case of a covered illness of an employee
14 with respect to which a panel has made a positive deter-
15 mination under section 3661(d) and the Secretary of En-
16 ergy has accepted that determination under section
17 3661(e)(2), or with respect to which a panel has made
18 a negative determination under section 3661(d) and the
19 Secretary of Energy has found significant evidence to the
20 contrary under section 3661(e)(2), that determination
21 shall be treated for purposes of this subtitle as a deter-
22 mination that the employee contracted the covered illness
23 through exposure at a Department of Energy facility.

24 "(c) OTHER CASES.—(1) In any other case, a De-
25 partment of Energy contractor employee shall be deter-



31-63

1 “(2) a section 5 uranium worker determined
2 under section 3675(c) to have contracted a covered
3 illness through exposure to a toxic substance at a
4 section 5 mine or mill,
5 “(or to the survivor of that employee, as applicable) on
6 the same basis as it applies to a Department of Energy
7 contractor employee determined under section 3675 to
8 have contracted a covered illness through exposure to a
9 toxic substance at a Department of Energy facility (or to
10 the survivor of that employee, as applicable).

11 “(b) DEFINITIONS.—In this section:

12 “(1) The term ‘section 5 payment recipient’
13 means an individual who receives, or has received,
14 \$100,000 under section 5 of the Radiation Exposure
15 Compensation Act (42 U.S.C. 2210 note) for a claim
16 made under that Act.

17 “(2) The terms ‘section 5 exposure’, ‘section 5
18 facility’, and ‘section 5 illness’ mean the exposure,
19 facility, and illness, respectively, to which an individ-
20 ual’s status as a section 5 payment recipient relates.

21 “(3) The term ‘section 5 uranium worker’
22 means an individual to whom subsection (a)(1)(A)(i)
23 of section 5 of the Radiation Exposure Compensa-
24 tion Act applies (whether directly or by reason of
25 subsection (a)(2)).



31-64

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

4 **“SEC. 3677. ADMINISTRATIVE AND JUDICIAL REVIEW.**

5 “(a) JUDICIAL REVIEW.—A person adversely affected
6 or aggrieved by a final decision of the Secretary under
7 this subtitle may review that order in the United States
8 district court in the district in which the injury was sus-
9 tained, the employee lives, the survivor lives, or the Dis-
10 trict of Columbia, by filing in such court within 60 days
11 after the date on which that final decision was issued a
12 written petition praying that such decision be modified or
13 set aside. The person shall also provide a copy of the peti-
14 tion to the Secretary. Upon such filing, the court shall
15 have jurisdiction over the proceeding and shall have the
16 power to affirm, modify, or set aside, in whole or in part,
17 such decision. The court may modify or set aside such de-
18 cision only if the court determines that such decision was
19 arbitrary and capricious.

20 “(b) ADMINISTRATIVE REVIEW.—The Secretary shall
21 ensure that recommended decisions of the Secretary with
22 respect to a claim under this subtitle are subject to admin-
23 istrative review. The Secretary shall prescribe regulations
24 for carrying out such review or shall apply to this subtitle



31-65

1 the regulations applicable to recommended decisions under
2 subtitle B.

3 **“SEC. 3678. PHYSICIANS SERVICES.**

4 “(a) IN GENERAL.—The Secretary may utilize the
5 services of physicians for purposes of making determina-
6 tions under this subtitle.

7 “(b) PHYSICIANS.—Any physicians whose services
8 are utilized under subsection (a) of this section shall pos-
9 sess appropriate expertise and experience in the evaluation
10 and determination of the extent of permanent physical im-
11 pairments or in the evaluation and diagnosis of illnesses
12 or deaths aggravated, contributed to, or caused by expo-
13 sure to toxic substances.

14 “(c) ARRANGEMENT.—The Secretary may secure the
15 services of physicians utilized under subsection (a) of this
16 section through the appointment of physicians or by con-
17 tract.

18 **“SEC. 3679. MEDICAL BENEFITS.**

19 “A covered DOE contractor employee shall be fur-
20 nished medical benefits specified in section 3629 for the
21 covered illness to the same extent, and under the same
22 conditions and limitations, as an individual eligible for
23 medical benefits under that section is furnished medical
24 benefits under that section.



31-66

1 **“SEC. 3680. ATTORNEY FEES.**

2 “Section 3648 shall apply to a payment under this
3 subtitle to the same extent that it applies to a payment
4 under subtitle B.

5 **“SEC. 3681. ADMINISTRATIVE MATTERS.**

6 “(a) IN GENERAL.—The Secretary shall administer
7 this subtitle.

8 “(b) CONTRACT AUTHORITY.—The Secretary may
9 enter into contracts with appropriate persons and entities
10 to administer this subtitle.

11 “(c) RECORDS.—(1)(A) The Secretary of Energy
12 shall provide to the Secretary all records, files, and other
13 data, whether paper, electronic, imaged, or otherwise, de-
14 veloped by the Secretary of Energy that are applicable to
15 the administration of this subtitle, including records, files,
16 and data on facility industrial hygiene, employment of in-
17 dividuals or groups, exposure and medical records, and
18 claims applications.

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

25 “(2) The Secretary of Energy and the Secretary shall
26 jointly undertake such actions as are appropriate to re-



31-67

1 retrieve records applicable to the claims of Department of
2 Energy contractor employees for contractor employee com-
3 pensation under this subtitle, including employment
4 records, records of exposure to beryllium, radiation, silica,
5 or other toxic substances, and records regarding medical
6 treatment.

7 “(d) INFORMATION.—At the request of the Secretary,
8 the Secretary of Energy and any contractor who employed
9 a Department of Energy contractor employee shall, within
10 time periods specified by the Secretary, provide to the Sec-
11 retary and to the employee information or documents in
12 response to the request.

13 “(e) REGULATIONS.—The Secretary shall prescribe
14 regulations necessary for the administration of this sub-
15 title. The initial regulations shall be prescribed not later
16 than 210 days after the date of the enactment of this sub-
17 title. The Secretary may prescribe interim final regula-
18 tions necessary to meet the deadlines specified in this sub-
19 title.

20 “(f) TRANSITION PROVISIONS.—(1) The Secretary
21 shall commence the administration of the provisions of
22 this subtitle not later than 210 days after the date of the
23 enactment of this subtitle.

24 “(2) Until the commencement of the administration
25 of this subtitle, the Department of Energy Physicians



31-68

1 Panels appointed pursuant to subtitle D shall continue to
2 consider and issue determinations concerning any cases
3 pending before such Panels immediately before the date
4 of the enactment of this subtitle.

5 “(3) The Secretary shall take such actions as are ap-
6 propriate to identify other activities under subtitle D that
7 will continue until the commencement of the administra-
8 tion of subtitle E.

9 “(g) PREVIOUS APPLICATIONS.—Upon the com-
10 mencement of the administration of this subtitle, any ap-
11 plication previously filed with the Secretary of Energy pur-
12 suant to subtitle D shall be considered to have been filed
13 with the Secretary as a claim for benefits pursuant to this
14 subtitle.

15 **“SEC. 3682. COORDINATION OF BENEFITS WITH RESPECT**
16 **TO STATE WORKERS COMPENSATION.**

17 “(a) IN GENERAL.—An individual who has been
18 awarded compensation under this subtitle, and who has
19 also received benefits from a State workers compensation
20 system by reason of the same covered illness, shall receive
21 compensation specified in this subtitle reduced by the
22 amount of any workers compensation benefits, other than
23 medical benefits and benefits for vocational rehabilitation,
24 that the individual has received under the State workers
25 compensation system by reason of the covered illness, after



31-69

1 deducting the reasonable costs, as determined by the Sec-
2 retary, of obtaining those benefits under the State workers
3 compensation system.

4 “(b) WAIVER.—The Secretary may waive the provi-
5 sions of subsection (a) if the Secretary determines that
6 the administrative costs and burdens of implementing sub-
7 section (a) with respect to a particular case or class of
8 cases justifies such a waiver.

9 “(c) INFORMATION.—Notwithstanding any other pro-
10 vision of law, each State workers compensation authority
11 shall, upon request of the Secretary, provide to the Sec-
12 retary on a quarterly basis information concerning work-
13 ers compensation benefits received by any covered DOE
14 contractor employee entitled to compensation or benefits
15 under this subtitle, which shall include the name, Social
16 Security number, and nature and amount of workers com-
17 pensation benefits for each such employee for which the
18 request was made.

19 **“SEC. 3683. MAXIMUM AGGREGATE COMPENSATION.**

20 “For each individual whose illness or death serves as
21 the basis for compensation or benefits under this subtitle,
22 the total amount of compensation (other than medical ben-
23 efits) paid under this subtitle, to all persons, in the aggre-
24 gate, on the basis of that illness or death shall not exceed
25 \$250,000.



31-70

1 **“SEC. 3684. FUNDING OF ADMINISTRATIVE COSTS.**

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

5 **“SEC. 3685. PAYMENT OF COMPENSATION AND BENEFITS**
6 **FROM COMPENSATION FUND.**

7 “The compensation and benefits provided under this
8 title, when authorized or approved by the President, shall
9 be paid from the compensation fund established under sec-
10 tion 3612.

11 **“SEC. 3686. OFFICE OF OMBUDSMAN.**

12 “(a) ESTABLISHMENT.—There is established in the
13 Department of Labor an office to be known as the ‘Office
14 of the Ombudsman’ (in this section referred to as the ‘Of-
15 fice’).

16 “(b) HEAD.—The head of the Office shall be the Om-
17 budsman. The individual serving as Ombudsman shall be
18 either of the following:

19 “(1) An officer or employee of the Department
20 of Labor designated by the Secretary for purposes of
21 this section from among officers and employees of
22 the Department who have experience and expertise
23 necessary to carry out the duties of the Office speci-
24 fied in subsection (c).

25 “(2) An individual employed by the Secretary
26 from the private sector from among individuals in



31-71

1 the private sector who have experience and expertise
2 necessary to carry out the duties of the Office speci-
3 fied in subsection (c).

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

6 “(1) To provide information on the benefits
7 available under this subtitle and on the requirements
8 and procedures applicable to the provision of such
9 benefits.

10 “(2) To make recommendations to the Sec-
11 retary regarding the location of centers (to be known
12 as ‘resource centers’) for the acceptance and devel-
13 opment of claims for benefits under this subtitle.

14 “(3) To carry out such other duties with re-
15 spect to this subtitle as the Secretary shall specify
16 for purposes of this section.

17 “(d) INDEPENDENT OFFICE.—The Secretary shall
18 take appropriate actions to ensure the independence of the
19 Office within the Department of Labor, including inde-
20 pendence from other officers and employees of the Depart-
21 ment engaged in activities relating to the administration
22 of the provisions of this subtitle.

23 “(e) ANNUAL REPORT.—(1) Not later than February
24 15 each year, the Ombudsman shall submit to Congress
25 a report on activities under this subtitle.



31-72

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

3 “(A) The number and types of complaints,
4 grievances, and requests for assistance received by
5 the Ombudsman under this subtitle during the pre-
6 ceding year.

7 “(B) An assessment of the most common dif-
8 ficulties encountered by claimants and potential
9 claimants under this subtitle during the preceding
10 year.

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

13 “(f) OUTREACH.—The Secretary of Labor and the
14 Secretary of Health and Human Services shall each under-
15 take outreach to advise the public of the existence and du-
16 ties of the Office.

17 “(g) SUNSET.—Effective on the date that is 3 years
18 after the date of the enactment of this section, this section
19 shall have no further force or effect.”.

20 **SEC. 3162. CONFORMING AMENDMENTS.**

21 “(a) OFFSET FOR CERTAIN PAYMENTS.—Section
22 3641 of the Energy Employees Occupational Illness Com-
23 pensation Program Act of 2000 (42 U.S.C. 7385) is
24 amended—



31-73

1 (1) by striking “subtitle B” and inserting “this
2 title”; and

3 (2) by striking “on account of” and all that fol-
4 lows through the period at the end and inserting “on
5 account of the exposure for which compensation is
6 payable under this title.”.

7 (b) SUBROGATION OF THE UNITED STATES.—Sec-
8 tion 3642 of such Act (42 U.S.C. 7385a) is amended by
9 striking “subtitle B” and inserting “this title”.

10 (c) PAYMENT IN FULL SETTLEMENT OF CLAIMS.—
11 Section 3643 of such Act (42 U.S.C. 7385b) is amended
12 by striking “The acceptance” and inserting “Except as
13 provided in subtitle E, the acceptance”.

14 (d) EXCLUSIVITY OF REMEDY.—Section 3644 of
15 such Act (42 U.S.C. 7385c(a)) is amended by adding at
16 the end the following new subsection:

17 “(d) APPLICABILITY TO SUBTITLE E.—This section
18 applies with respect to subtitle E to the covered medical
19 condition or covered illness or death of a covered DOE
20 contractor employee on the same basis as it applies with
21 respect to subtitle B to the cancer (including a specified
22 cancer), chronic silicosis, covered beryllium illness, or
23 death of a covered employee.”.

24 (e) CERTIFICATION OF TREATMENT OF PAYMENTS
25 UNDER OTHER LAWS.—Section 3646 of such Act (42



31-74

1 U.S.C. 7385e) is amended by striking “subtitle B” and
2 inserting “this title”.

3 (f) CLAIMS NOT ASSIGNABLE OR TRANSFERABLE.—
4 Section 3647(a) of such Act (42 U.S.C. 7385f(a)) is
5 amended by striking “subtitle B” and inserting “this
6 title”.

7 (g) CERTAIN CLAIMS NOT AFFECTED BY AWARDS
8 OF DAMAGES.—Section 3649 of such Act (42 U.S.C.
9 7385h) is amended by striking “subtitle B” both places
10 such term appears and inserting “this title”.

11 (h) FORFEITURE OF BENEFITS BY CONVICTED FEL-
12 ONS.—Section 3650 of such Act (42 U.S.C. 7385i) is
13 amended by striking “subtitle B” each place such term
14 appears and inserting “this title”.

15 (i) REPEAL OF SUBTITLE D.—Subtitle D of the En-
16 ergy Employees Occupational Illness Compensation Pro-
17 gram Act of 2000 (title XXXVI of the Floyd D. Spence
18 National Defense Authorization Act for Fiscal Year 2001
19 (as enacted into law by Public Law 106-398); 42 U.S.C.
20 7385o) is repealed.

21 **SEC. 3163. TECHNICAL AMENDMENTS.**

22 (a) SUBPOENAS.—Subtitle B of such Act is amended
23 by adding after section 3631 (42 U.S.C. 7384v) the fol-
24 lowing new section:

31-75

1 **“SEC. 3632. SUBPOENAS; OATHS; EXAMINATION OF WIT-**
2 **NESSES.**

3 “The Secretary of Labor, with respect to any matter
4 under this subtitle, may—

5 “(1) issue subpoenas for and compel the attend-
6 ance of witnesses;

7 “(2) administer oaths;

8 “(3) examine witnesses; and

9 “(4) require the production of books, papers,
10 documents, and other evidence.”.

11 (b) **SOCIAL SECURITY EARNINGS INFORMATION.**—

12 Subtitle C of such Act is amended by adding after section
13 3651 (42 U.S.C. 7385j) the following new section:

14 **“SEC. 3652. SOCIAL SECURITY EARNINGS INFORMATION.**

15 “Notwithstanding the provision of section 552a of
16 title 5, United States Code, or any other provision of Fed-
17 eral or State law, the Social Security Administration shall
18 make available to the Secretary of Labor, upon written
19 request, the Social Security earnings information of living
20 or deceased employees who may have sustained an illness
21 that is the subject of a claim under this title, which the
22 Secretary of Labor may require to carry out the provisions
23 of this title.”.

24 (c) **RECOVERY OF OVERPAYMENT.**—Subtitle C of
25 such Act is further amended by adding after section 3652
26 (as added by subsection (b)) the following new section:

31-76

1 **“SEC. 3653. RECOVERY AND WAIVER OF OVERPAYMENTS.**

2 “(a) IN GENERAL.—When an overpayment has been
3 made to an individual under this title because of an error
4 of fact or law, recovery shall be made under regulations
5 prescribed by the Secretary of Labor by decreasing later
6 payments to which the individual is entitled. If the indi-
7 vidual dies before the recovery is completed, recovery shall
8 be made by decreasing later benefits payable under this
9 title with respect to the individual’s death.

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

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

21 **SEC. 3164. TRANSFER OF FUNDS FOR FISCAL YEAR 2005.**

22 Of the funds appropriated to the Secretary of Energy
23 for fiscal year 2005 for the Energy Employees Occupa-
24 tional Illness Compensation Program, the Secretary of
25 Energy shall transfer to the Secretary of Labor the
26 amount of funds that the Secretary of Energy, in consulta-



31-79

1 “(f) INFORMATION.—The Secretary of Energy shall,
2 in accordance with law, provide to the Board and the con-
3 tractors of the Board access to any information that the
4 Board considers relevant to carry out its responsibilities
5 under this title, including information such as Restricted
6 Data (as defined in section 11 y. of the Atomic Energy
7 Act of 1954 (42 U.S.C. 2014(y))) and information covered
8 by the Privacy Act.”.

9 (b) DEADLINES FOR SPECIAL EXPOSURE COHORT
10 ACTIONS.—(1) Section 3626 of the Energy Employees Oc-
11 cupational Illness Compensation Program Act of 2000 (42
12 U.S.C. 7384q) is amended—

13 (A) by redesignating subsection (c) as sub-
14 section (d); and

15 (B) by inserting after subsection (b) the fol-
16 lowing new subsection:

17 “(c) DEADLINES.—(1) Not later than 180 days after
18 the date on which the President receives a petition for des-
19 ignation as members of the Special Exposure Cohort, the
20 Director of the National Institute for Occupational Safety
21 and Health shall submit to the Advisory Board on Radi-
22 ation and Worker Health a recommendation on that peti-
23 tion, including all supporting documentation.

24 “(2)(A) Upon receipt by the President of a rec-
25 ommendation of the Advisory Board on Radiation and



31-80

1 Worker Health that the President should determine in the
2 affirmative that paragraphs (1) and (2) of subsection (b)
3 apply to a class, the President shall have a period of 30
4 days in which to determine whether such paragraphs apply
5 to the class and to submit that determination (whether
6 affirmative or negative) to Congress.

7 “(B) If the determination submitted by the President
8 under subparagraph (A) is in the affirmative, the Presi-
9 dent shall also submit a report meeting the requirements
10 of section 3621(14)(C)(ii).

11 “(C) If the President does not submit a determina-
12 tion required by subparagraph (A) within the period re-
13 quired by subparagraph (A), then upon the day following
14 the expiration of that period, it shall be deemed for pur-
15 poses of section 3621(14)(C)(ii) that the President sub-
16 mitted the report under that provision on that day.”.

17 (2) Section 3621(14)(C)(ii) of that Act (42 U.S.C.
18 7384l(14)(C)(ii)) is amended by striking “180 days” and
19 inserting “30 days”.

20 (c) **SITE PROFILES.**—Subtitle B of that Act is
21 amended by adding after section 3632 (as added by sec-
22 tion 3163(a)) the following new section:

23 **“SEC. 3633. COMPLETION OF SITE PROFILES.**

24 “(a) **IN GENERAL.**—To the extent that the Secretary
25 of Labor determines it useful and practicable, the Sec-

31-81

1 retary of Labor shall direct the Director of the National
2 Institute for Occupational Safety and Health to prepare
3 site profiles for a Department of Energy facility based on
4 the records, files, and other data provided by the Secretary
5 of Energy and such other information as is available, in-
6 cluding information available from the former worker
7 medical screening programs of the Department of Energy.

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

14 “(c) DEFINITION.—In this section, the term ‘site pro-
15 file’ means an exposure assessment of a facility that iden-
16 tifies the toxic substances or processes that were com-
17 monly used in each building or process of the facility, and
18 the time frame during which the potential for exposure
19 to toxic substances existed.

20 “(d) TIME FRAMES.—The Secretary of Health and
21 Human Services shall establish time frames for completing
22 site profiles for those Department of Energy facilities for
23 which a site profile has not been completed. Not later than
24 March 1, 2005, the Secretary of Health and Human Serv-



31-82

1 ices shall submit to Congress a report setting forth those
2 time frames.”.

3 **SEC. 3167. EMERGENCY SPECIAL EXPOSURE COHORT**
4 **MEETING AND REPORT.**

5 (a) MEETING OF ADVISORY BOARD.—(1) For pur-
6 poses of carrying out section 3626 of the Energy Employ-
7 ees Occupational Illness Compensation Program Act of
8 2000 (42 U.S.C. 7384q), the President shall require the
9 Advisory Board on Radiation and Worker Health to con-
10 vene a meeting of the Board at which the Board considers
11 each petition for designation as members of the Special
12 Exposure Cohort—

13 (A) that was filed not later than October 1,
14 2004; and

15 (B) the evaluation of which (by the Director of
16 the National Institute of Occupational Safety and
17 Health) was completed more than 10 days before a
18 previously scheduled meeting of the Board.

19 (2) Effective March 1, 2005, this subsection shall
20 have no further force or effect.

21 (b) REPORT TO CONGRESS.—Not later than March
22 15, 2005, the President shall submit to Congress a report
23 on the status of the petitions referred to in subsection (a).
24 The report shall include, for each petition, the estimated
25 time to complete the consideration of that petition and any



1 anticipated actions or circumstances that could preclude
2 the Board from acting upon that petition before the end
3 of fiscal year 2005.

4 **SEC. 3168. COVERAGE OF INDIVIDUALS EMPLOYED AT**
5 **ATOMIC WEAPONS EMPLOYER FACILITIES**
6 **DURING PERIODS OF RESIDUAL CONTAMINA-**
7 **TION.**

8 (a) **COVERAGE.**—Paragraph (3) of section 3621 of
9 the Energy Employees Occupational Illness Compensation
10 Program Act of 2000 (title XXXVI of the Floyd D.
11 Spence National Defense Authorization Act for Fiscal
12 Year 2001 (as enacted into law by Public Law 106-398);
13 42 U.S.C. 7384*l*) is amended to read as follows:

14 “(3) The term ‘atomic weapons employee’
15 means any of the following:

16 “(A) An individual employed by an atomic
17 weapons employer during a period when the
18 employer was processing or producing, for the
19 use by the United States, material that emitted
20 radiation and was used in the production of an
21 atomic weapon, excluding uranium mining and
22 milling.

23 “(B) An individual employed—

24 “(i) at a facility with respect to which
25 the National Institute for Occupational



31-84

1 Safety and Health, in its report dated Oc-
2 tober 2003 and titled 'Report on Residual
3 Radioactive and Beryllium Contamination
4 at Atomic Weapons Employer Facilities
5 and Beryllium Vendor Facilities', or any
6 update to that report, found that there is
7 a potential for significant residual contami-
8 nation outside of the period in which weap-
9 ons-related production occurred;

10 “(ii) by an atomic weapons employer
11 or subsequent owner or operators of a fa-
12 cility described in clause (i); and

13 “(iii) during a period, as specified in
14 such report or any update to such report,
15 of potential for significant residual radio-
16 active contamination at such facility.”.

17 (b) RADIATION DOSE FOR CERTAIN ATOMIC WEAP-
18 ONS EMPLOYEES.—Section 3623 of that Act (42 U.S.C.
19 7384n) is amended by adding at the end of subsection (c)
20 the following new paragraph:

21 “(4) In the case of an atomic weapons employee de-
22 scribed in section 3621(3)(B), the following doses of radi-
23 ation shall be treated, for purposes of paragraph (3)(A)
24 of this subsection, as part of the radiation dose received
25 by the employee at such facility:



31-85

1 “(A) Any dose of ionizing radiation received by
2 that employee from facilities, materials, devices, or
3 byproducts used or generated in the research, devel-
4 opment, production, dismantlement, transportation,
5 or testing of nuclear weapons, or from any activities
6 to research, produce, process, store, remediate, or
7 dispose of radioactive materials by or on behalf of
8 the Department of Energy (except for activities cov-
9 ered by Executive Order No. 12344, dated February
10 1, 1982 (42 U.S.C. 7158 note) pertaining to the
11 Naval Nuclear Propulsion Program).

12 “(B) Any dose of ionizing radiation received by
13 that employee from a source not covered by subpara-
14 graph (A) that is not distinguishable through reli-
15 able documentation from a dose covered by subpara-
16 graph (A).”.

17 **SEC. 3169. UPDATE OF REPORT ON RESIDUAL CONTAMINA-**
18 **TION OF FACILITIES.**

19 (a) **UPDATE OF REPORT.**—Not later than December
20 31, 2006, the Director of the National Institute for Occu-
21 pational Safety and Health shall submit to Congress an
22 update to the report required by section 3151(b) of the
23 National Defense Authorization Act for Fiscal Year 2002
24 (Public Law 107-107; 42 U.S.C. 7384 note).

25 (b) **ELEMENTS.**—The update shall—



1 (1) for each facility for which such report found
2 that insufficient information was available to deter-
3 mine whether significant residual contamination was
4 present, determine whether significant residual con-
5 tamination was present;

6 (2) for each facility for which such report found
7 that significant residual contamination remained
8 present as of the date of the report, determine the
9 date on which such contamination ceased to be
10 present;

11 (3) for each facility for which such report found
12 that significant residual contamination was present
13 but for which the Director has been unable to deter-
14 mine the extent to which such contamination is at-
15 tributable to atomic weapons-related activities, iden-
16 tify the specific dates of coverage attributable to
17 such activities and, in so identifying, presume that
18 such contamination is attributable to such activities
19 until there is evidence of decontamination of residual
20 contamination identified with atomic weapons-re-
21 lated activities;

22 (4) for each facility for which such report found
23 significant residual contamination, determine wheth-
24 er it is at least as likely as not that such contamina-
25 tion could have caused an employee who was em-



31-87

1 employed at such facility only during the residual con-
2 tamination period to contract a cancer or beryllium
3 illness compensable under subtitle B of the Energy
4 Employees Occupational Illness Compensation Pro-
5 gram Act of 2000; and

6 (5) if new information that pertains to the re-
7 port has been made available to the Director since
8 that report was submitted, identify and describe
9 such information.

10 (c) PUBLICATION.—The Director shall ensure that
11 the report referred to in subsection (a) is published in the
12 Federal Register not later than 15 days after being re-
13 leased.

14 **SEC. 3170. SENSE OF CONGRESS ON RESOURCE CENTER**
15 **FOR ENERGY EMPLOYEES UNDER ENERGY**
16 **EMPLOYEE OCCUPATIONAL ILLNESS COM-**
17 **PENSATION PROGRAM IN WESTERN NEW**
18 **YORK AND WESTERN PENNSYLVANIA RE-**
19 **GION.**

20 (a) FINDINGS.—Congress makes the following find-
21 ings:

22 (1) New York has 36 current or former Depart-
23 ment of Energy facilities involved in nuclear weap-
24 ons production-related activities statewide, mostly
25 atomic weapons employer facilities, and 14 such fa-



1 facilities in western New York. Despite having one of
2 the greatest concentrations of such facilities in the
3 United States, western New York, and abutting
4 areas of Pennsylvania, continue to be severely under-
5 served by the Energy Employees Occupational Ill-
6 ness Compensation Program under the Energy Em-
7 ployees Occupational Illness Compensation Program
8 Act of 2000 (title XXXVI of the Floyd D. Spence
9 National Defense Authorization Act for Fiscal Year
10 2001 (as enacted into law by Public Law 106-398);
11 42 U.S.C. 7384 et seq.).

12 (2) The establishment of a permanent resource
13 center in western New York would represent a sub-
14 stantial step toward improving services under the
15 Energy Employees Occupational Illness Compensa-
16 tion Program for energy employees in this region.

17 (3) The number of claims submitted to the De-
18 partment under subtitle B of the Energy Employees
19 Occupational Illness Compensation Program Act of
20 2000 from the western New York region, including
21 western Pennsylvania, exceeds the number of such
22 claims filed at resource centers in Hanford, Wash-
23 ington, Portsmouth, Ohio, Los Alamos, New Mexico,
24 the Nevada Test Site, Nevada, the Rocky Flats En-
25 vironmental Technology Site, Colorado, the Idaho



31-89

1 National Engineering Laboratory, Idaho, and the
2 Amchitka Test Site, Alaska.

3 (4) Energy employees in the western New York
4 region, including western Pennsylvania, deserve as-
5 sistance under subtitle B of the Energy Employees
6 Occupational Illness Compensation Program Act of
7 2000 commensurate with the assistance provided en-
8 ergy employees at other locations in the United
9 States.

10 (b) SENSE OF CONGRESS.—It is the sense of Con-
11 gress that the Secretary of Labor should—

12 (1) review the availability of assistance under
13 subtitle B of the Energy Employees Occupational
14 Illness Compensation Program Act of 2000 for en-
15 ergy employees in the western New York region, in-
16 cluding western Pennsylvania; and

17 (2) recommend a location in that region for a
18 resource center to provide such assistance to such
19 energy employees.

