

SUBCHAPTER XVI—ENERGY EMPLOYEES
OCCUPATIONAL ILLNESS COMPENSATION
PROGRAM

CODIFICATION

This subchapter was enacted as title XXXVI of div. C of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, known as the Energy Employees Occupational Illness Compensation Program Act of 2000, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 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, stud-

ies 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, §1 [div. C, title XXXVI, §3602], Oct. 30, 2000, 114 Stat. 1654, 1654A-495.)

SHORT TITLE

Pub. L. 106-398, §1 [div. C, title XXXVI, §3601], Oct. 30, 2000, 114 Stat. 1654, 1654A-495, provided that: "This title [enacting this subchapter] may be cited as the 'Energy Employees Occupational Illness Compensation Program Act of 2000'."

UPDATE OF REPORT ON RESIDUAL CONTAMINATION OF
FACILITIES

Pub. L. 108-375, div. C, title XXXI, §3169, Oct. 28, 2004, 118 Stat. 2191, provided that:

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

“(b) ELEMENTS.—The update shall—

“(1) for each facility for which such report found that insufficient information was available to determine whether significant residual contamination was present, determine whether significant residual contamination was present;

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

“(3) for each facility for which such report found that significant residual contamination was present but for which the Director has been unable to determine the extent to which such contamination is attributable to atomic weapons-related activities, identify the specific dates of coverage attributable to such activities and, in so identifying, presume that such contamination is attributable to such activities until there is evidence of decontamination of residual contamination identified with atomic weapons-related activities;

“(4) for each facility for which such report found significant residual contamination, determine whether it is at least as likely as not that such contamination could have caused an employee who was employed at such facility only during the residual contamination period to contract a cancer or beryllium illness compensable under subtitle B of the Energy Employees Occupational Illness Compensation Program Act of 2000 [42 U.S.C. 7384] et seq.; and

“(5) if new information that pertains to the report has been made available to the Director since that report was submitted, identify and describe such information.

“(c) PUBLICATION.—The Director shall ensure that the report referred to in subsection (a) is published in the Federal Register not later than 15 days after being released.”

STUDY OF RESIDUAL CONTAMINATION OF FACILITIES

Pub. L. 107-107, div. C, title XXXI, §3151(b), Dec. 28, 2001, 115 Stat. 1375, provided that:

“(1) The National Institute for Occupational Safety and Health shall, with the cooperation of the Department of Energy and the Department of Labor, carry out a study on the following matters:

“(A) Whether or not significant contamination remained in any atomic weapons employer facility or facility of a beryllium vendor after such facility discontinued activities relating to the production of nuclear weapons.

“(B) If so, whether or not such contamination could have caused or substantially contributed to the cancer of a covered employee with cancer or a covered beryllium illness, as the case may be.

“(2)(A) The National Institute for Occupational Safety and Health shall submit to the applicable congressional committees the following reports:

“(i) Not later than 180 days after the date of the enactment of this Act [Dec. 28, 2001], a report on the progress made as of the date of the report on the study required by paragraph (1).

“(ii) Not later than one year after the date of the enactment of this Act, a final report on the study required by paragraph (1).

“(B) In this paragraph, the term ‘applicable congressional committees’ means—

“(i) the Committee on Armed Services, Committee on Appropriations, Committee on the Judiciary, and Committee on Health, Education, Labor, and Pensions of the Senate; and

“(ii) the Committee on Armed Services, Committee on Appropriations, Committee on the Judiciary, and

Committee on Education and the Workforce of the House of Representatives.

“(3) Amounts for the study under paragraph (1) shall be derived from amounts authorized to be appropriated by section 3614(a) of the Energy Employees Occupational Illness Compensation Program Act of 2000 (114 Stat. 1654A-498) [42 U.S.C. 7384g(a)].

“(4) In this subsection:

“(A) The terms ‘atomic weapons employer facility’, ‘beryllium vendor’, ‘covered employee with cancer’, and ‘covered beryllium illness’ have the meanings given those terms in section 3621 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (114 Stat. 1654A-498; 42 U.S.C. 7384).

“(B) The term ‘contamination’ means the presence of any—

“(i) material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling; or

“(ii) beryllium dust, particles, or vapor, exposure to which could cause or substantially contribute to the cancer of a covered employee with cancer or a covered beryllium illness, as the case may be.”

EX. ORD. NO. 13179. PROVIDING COMPENSATION TO AMERICA'S NUCLEAR WEAPONS WORKERS

Ex. Ord. No. 13179, Dec. 7, 2000, 65 F.R. 77487, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, including Public Law 106-398, the Energy Employees Occupational Illness Compensation Program Act of 2000 [42 U.S.C. 7384 et seq.] (Public Law 106-398, the “Act”), and to allocate the responsibilities imposed by that legislation and to provide for further legislative efforts, it is hereby ordered as follows:

SECTION 1. *Policy.* Since World War II, hundreds of thousands of men and women have served their Nation in building its nuclear defense. In the course of their work, they overcame previously unimagined scientific and technical challenges. Thousands of these courageous Americans, however, paid a high price for their service, developing disabling or fatal illnesses as a result of exposure to beryllium, ionizing radiation, and other hazards unique to nuclear weapons production and testing. Too often, these workers were neither adequately protected from, nor informed of, the occupational hazards to which they were exposed.

Existing workers' compensation programs have failed to provide for the needs of these workers and their families. Federal workers' compensation programs have generally not included these workers. Further, because of long latency periods, the uniqueness of the hazards to which they were exposed, and inadequate exposure data, many of these individuals have been unable to obtain State workers' compensation benefits. This problem has been exacerbated by the past policy of the Department of Energy (DOE) and its predecessors of encouraging and assisting DOE contractors in opposing the claims of workers who sought those benefits. This policy has recently been reversed.

While the Nation can never fully repay these workers or their families, they deserve recognition and compensation for their sacrifices. Since the Administration's historic announcement in July of 1999 that it intended to compensate DOE nuclear weapons workers who suffered occupational illnesses as a result of exposure to the unique hazards in building the Nation's nuclear defense, it has been the policy of this Administration to support fair and timely compensation for these workers and their survivors. The Federal Government should provide necessary information and otherwise help employees of the DOE or its contractors determine if their illnesses are associated with conditions of their nuclear weapons-related work; it should provide workers and their survivors with all pertinent and available information necessary for evaluating and processing claims; and it should ensure that this program minimizes the administrative burden on workers and their survivors, and respects their dignity and privacy. This

order sets out agency responsibilities to accomplish these goals, building on the Administration's articulated principles and the framework set forth in the Energy Employees Occupational Illness Compensation Program Act of 2000 [42 U.S.C. 7384 et seq.]. The Departments of Labor, Health and Human Services, and Energy shall be responsible for developing and implementing actions under the Act to compensate these workers and their families in a manner that is compassionate, fair, and timely. Other Federal agencies, as appropriate, shall assist in this effort.

SEC. 2. *Designation of Responsibilities for Administering the Energy Employees' Occupational Illness Compensation Program ("Program")*.

(a) *Secretary of Labor*. The Secretary of Labor shall have primary responsibility for administering the Program. Specifically, the Secretary shall:

(i) Administer and decide all questions arising under the Act not assigned to other agencies by the Act or by this order, including determining the eligibility of individuals with covered occupational illnesses and their survivors and adjudicating claims for compensation and benefits;

(ii) No later than May 31, 2001, promulgate regulations for the administration of the Program, except for functions assigned to other agencies pursuant to the Act or this order;

(iii) No later than July 31, 2001, ensure the availability, in paper and electronic format, of forms necessary for making claims under the Program; and

(iv) Develop informational materials, in coordination with the Secretary of Energy and the Secretary of Health and Human Services, to help potential claimants understand the Program and the application process, and provide these materials to individuals upon request and to the Secretary of Energy and the Attorney General for dissemination to potentially eligible individuals.

(b) *Secretary of Health and Human Services*. The Secretary of Health and Human Services shall:

(i) No later than May 31, 2001, promulgate regulations establishing:

(A) guidelines, pursuant to section 3623(c) of the Act [42 U.S.C. 7384n(c)], to assess the likelihood that an individual with cancer sustained the cancer in the performance of duty at a Department of Energy facility or an atomic weapons employer facility, as defined by the Act; and

(B) methods, pursuant to section 3623(d) of the Act, for arriving at and providing reasonable estimates of the radiation doses received by individuals applying for assistance under this program for whom there are inadequate records of radiation exposure;

(ii) In accordance with procedures developed by the Secretary of Health and Human Services, consider and issue determinations on petitions by classes of employees to be treated as members of the Special Exposure Cohort;

(iii) With the assistance of the Secretary of Energy, apply the methods promulgated under subsection (b)(1)(B) to estimate the radiation doses received by individuals applying for assistance;

(iv) Upon request from the Secretary of Energy, appoint members for a physician panel or panels to consider individual workers' compensation claims as part of the Worker Assistance Program under the process established pursuant to subsection (c)(v); and

(v) Provide the Advisory Board established under section 4 of this order with administrative services, funds, facilities, staff, and other necessary support services and perform the administrative functions of the President under the Federal Advisory Committee Act, as amended (5 U.S.C. App.), with respect to the Advisory Board.

(c) *Secretary of Energy*. The Secretary of Energy shall:

(i) Provide the Secretary of Health and Human Services and the Advisory Board on Radiation and Worker Health access, in accordance with law, to all relevant information pertaining to worker exposures, including access to restricted data, and any other technical as-

sistance needed to carry out their responsibilities under subsection (b)(ii) and section 4(b), respectively.

(ii) Upon request from the Secretary of Health and Human Services or the Secretary of Labor, and as permitted by law, require a DOE contractor, subcontractor, or designated beryllium vendor, pursuant to section 3631(c) of the Act [42 U.S.C. 7384v(c)], to provide information relevant to a claim under this Program;

(iii) Identify and notify potentially eligible individuals of the availability of compensation under the Program;

(iv) Designate, pursuant to sections 3621(4)(B) and 3622 of the Act [42 U.S.C. 7384l(4)(B), 7384m], atomic weapons employers and additions to the list of designated beryllium vendors;

(v) Pursuant to Subtitle D of the Act [42 U.S.C. 7385o], negotiate agreements with the chief executive officer of each State in which there is a DOE facility, and other States as appropriate, to provide assistance to a DOE contractor employee on filing a State workers' compensation system claim, and establish a Worker Assistance Program to help individuals whose illness is related to employment in the DOE's nuclear weapons complex, or the individual's survivor if the individual is deceased, in applying for State workers' compensation benefits. This assistance shall include:

(1) Submittal of reasonable claims to a physician panel, appointed by the Secretary of Health and Human Services and administered by the Secretary of Energy, under procedures established by the Secretary of Energy, for determination of whether the individual's illness or death arose out of and in the course of employment by the DOE or its contractors and exposure to a toxic substance at a DOE facility; and

(2) For cases determined by the physician panel and the Secretary of Energy under section 3661(d) and (e) of the Act [42 U.S.C. 7385o(d), (e)] to have arisen out of and in the course of employment by the DOE or its contractors and exposure to a toxic substance at a DOE facility, provide assistance to the individual in filing for workers' compensation benefits. The Secretary shall not contest these claims and, to the extent permitted by law, shall direct a DOE contractor who employed the applicant not to contest the claim;

(vi) Report on the Worker Assistance Program by making publicly available on at least an annual basis claims-related data, including the number of claims filed, the number of illnesses found to be related to work at a DOE facility, job location and description, and number of successful State workers' compensation claims awarded; and

(vii) No later than January 15, 2001, publish in the Federal Register a list of atomic weapons employer facilities within the meaning of section 3621(5) of the Act [42 U.S.C. 7384l(5)], Department of Energy employer facilities within the meaning of section 3621(12) of the Act, and a list of facilities owned and operated by a beryllium vendor, within the meaning of section 3621(6) of the Act.

(d) *Attorney General*. The Attorney General shall:

(i) Develop procedures to notify, to the extent possible, each claimant (or the survivor of that claimant if deceased) whose claim for compensation under section 5 of the Radiation Exposure Compensation Act [Pub. L. 101-426, 42 U.S.C. 2210 note] has been or is approved by the Department of Justice, of the availability of supplemental compensation and benefits under the Energy Employees Occupational Illness Compensation Program;

(ii) Identify and notify eligible covered uranium employees or their survivors of the availability of supplemental compensation under the Program; and

(iii) Upon request by the Secretary of Labor, provide information needed to adjudicate the claim of a covered uranium employee under this Program.

SEC. 3. *Establishment of Interagency Working Group*.

(a) There is hereby established an Interagency Working Group to be composed of representatives from the Office of Management and Budget, the National Economic Council, and the Departments of Labor, Energy, Health and Human Services, and Justice.

(b) The Working Group shall:

(i) By January 1, 2001, develop a legislative proposal to ensure the Program's fairness and efficiency, including provisions to assure adequate administrative resources and swift dispute resolution; and

(ii) Address any impediments to timely and coordinated Program implementation.

SEC. 4. *Establishment of Advisory Board on Radiation and Worker Health.*

(a) Pursuant to Public Law 106-398, there is hereby established an Advisory Board on Radiation and Health (Advisory Board). The Advisory Board shall consist of no more than 20 members to be appointed by the President. Members shall include affected workers and their representatives, and representatives from scientific and medical communities. The President shall designate a Chair for the Board among its members.

(b) The Advisory Board shall:

(i) Advise the Secretary of Health and Human Services on the development of guidelines under section 2(b)(i) of this order;

(ii) Advise the Secretary of Health and Human Services on the scientific validity and quality of dose reconstruction efforts performed for this Program; and

(iii) Upon request by the Secretary of Health and Human Services, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is a reasonable likelihood that such radiation dose may have endangered the health of members of the class.

SEC. 5. *Reporting Requirements.* The Secretaries of Labor, Health and Human Services, and Energy shall, as part of their annual budget submissions, report to the Office of Management and Budget (OMB) on their activities under this Program, including total expenditures related to benefits and program administration. They shall also report to the OMB, no later than March 1, 2001, on the manner in which they will carry out their respective responsibilities under the Act and this order. This report shall include, among other things, a description of the administrative structure established within their agencies to implement the Act and this order. In addition, the Secretary of Labor shall annually report on the total number and types of claims for which compensation was considered and other data pertinent to evaluating the Federal Government's performance fulfilling the requirements of the Act and this order.

SEC. 6. *Administration and Judicial Review.* (a) This Executive Order shall be carried out subject to the availability of appropriations, and to the extent permitted by law.

(b) This Executive Order does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers or employees, or any other person.

WILLIAM J. CLINTON.

EXTENSION OF TERM OF ADVISORY BOARD ON RADIATION AND WORKER HEALTH

Term of Advisory Board on Radiation and Worker Health extended until Sept. 30, 2017, by Ex. Ord. No. 13708, Sept. 30, 2015, 80 F.R. 60271, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

PART A—ESTABLISHMENT OF COMPENSATION PROGRAM AND COMPENSATION FUND

§ 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 sub-

chapter 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 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, §1 [div. C, title XXXVI, §3611], Oct. 30, 2000, 114 Stat. 1654, 1654A-497.)

§ 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) of this section.

(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) of this section, 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,