January 11, 2001

The Honorable Albert Gore, Jr.
President of the Senate
Washington, DC 20510

Dear Mr. President:

Enclosed for consideration of the Congress is proposed legislation to implement the Energy Employees Occupational Illness Compensation Program Act of 2000.

Under the Atomic Energy Act of 1954 (AEA) and the Occupational Safety and Health Act of 1970, the Department of Energy (DOE) is responsible for regulatory oversight of the health and safety of workers at DOE facilities covered by the AEA. These workers, most of whom were employees of private contractors, faithfully served the Nation during the Cold War, and in doing so, faced risks to their health. In many instances, state programs do not adequately address the needs of these workers when they incur certain occupational illnesses. Congress began to address these issues with the passage of the Energy Employees Occupational Illness Compensation Program Act of 2000. A number of issues remained, however, including determination of the roles the various responsible agencies would play in administering the program.

President Clinton, by Executive Order 13179 (December 7, 2000), designated the Department of Labor (DOL) as the lead agency for the new compensation program. He also directed that an interagency working group, comprised of representatives of DOL, DOE, the Department of Health and Human Services (HHS), the Department of Justice, and the Office of Management and Budget (OMB), develop a legislative proposal to ensure the fairness and efficiency of the program. The enclosed proposal is the result of that effort and addresses the issues left open in the initial legislation. Our two Departments, along with HHS, will be primarily responsible for implementing the Act.

The bill has two titles. Title I contains revisions and clarification to the compensation program as enacted. Under our legislation, a covered worker can choose to receive wage-loss compensation, the traditional workers' compensation remedy, as an alternative to the $150,000 lump sum payment. Current legislation allows only for a lump sum option. Both alternatives would pay medical expenses. Other changes in Title I are necessary to effectively administer the program. These include specifying agency responsibilities and providing for administrative and/or judicial review of eligibility and other determinations made in implementing this program. Title II contains various technical and conforming amendments.

It is important to note that Section 3613(a) of the National Defense Authorization Act for Fiscal Year 2000 directs the President to submit legislation to Congress to implement the Energy Employees Occupational Illness Compensation Program. Section 3613(a) is invalid under the Recommendations Clause of the U.S. Constitution, which provides that the President "shall from

time to time . . . recommend to [Congress] . . . such Measures as he shall judge necessary and expedient." U.S. Const. Art. II, § 3. Nevertheless, on his own accord, the President issued Executive Order 13179 establishing an Interagency Working Group and directing that Group to "develop a legislative proposal" to create a compensation program. We wish to clarify that we are transmitting this draft proposal in response to the Executive Order and not to fulfill a legal obligation imposed by Section 3613.

The Omnibus Budget Reconciliation Act requires that all revenue and direct spending legislation meet a pay-as-you-go (PAYGO) requirement. Specifically, no such bill should result in net budget costs; if it does, it could contribute to a sequester if the costs are not fully offset. The attached proposal affects direct spending, therefore, it is subject to the PAYGO requirement. The PAYGO effect of this bill is currently estimated to be an increase in direct spending of $690 million from FYs 2001- 2005, which is attributable to the changes it makes to the Radiation Exposure Compensation Act.

We look forward to working with Congress toward the enactment of this legislation. OMB advises that there is no objection to the presentation of this legislation to the Congress and that its enactment would be in accord with the program of the President.

Yours sincerely,

Bill Richardson
Secretary of Energy

Alexis M. Herman
Secretary of Labor

Enclosures: Legislation
Section-by-Section Analysis

Energy Employees Occupational Illness Compensation Amendments of 2001
Section-by-Section Analysis

SECTION 1. SHORT TITLE; TABLE OF CONTENTS

This section contains the short title and Table of Contents of the bill.

SECTION 2. FINDINGS

This section sets forth the findings of the bill.

Title I–Compensation Program

SECTION 101. APPROPRIATIONS AND COMPENSATION FUND

Subsection (a) would amend section 3614 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) to authorize appropriation of the sums necessary to administer the program and appropriate the sums necessary to make compensation payments. Those funds would be available until expended.

Subsection (b) would amend section 3612 of EEOICPA to eliminate transfer authority for the compensation fund and eliminate a requirement for amounts in the compensation fund to be invested and interest from the investment being deposited into the fund.

SECTION 102. EXPOSURE IN THE PERFORMANCE OF DUTY

Subsection (a) of this section would amend section 3623(a) of EEOICPA to provide that the presumption that a current or former employee of a beryllium vendor, or of a contractor or subcontractor of a beryllium vendor, who was employed 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 was exposed to beryllium in the performance of duty for purposes of the program can be overcome only by substantial evidence that such an employee was never exposed to dust, particles, or vapor of beryllium that was produced or processed for sale to, or use by, the Department of Energy.

Subsection (b) would amend section 3623(d) of EEOICPA to specify that the Secretary of Health and Human Services, after consultation with the Secretary of Energy, is to establish methods for arriving at reasonable estimates of radiation doses received by the types of employees covered by the program.

SECTION 103. DESIGNATION OF ADDITIONAL MEMBERS OF SPECIAL EXPOSURE COHORT

This section would amend section 3626 to specify that the Secretary of Health and Human Services will determine who will be new members of the Special Exposure Cohort.

SECTION 104. COMPENSATION PROGRAM

This section would make several changes to subtitle B of EEOICPA.

Subsection (a) would amend section 3628 of EEOICPA to provide that a covered employee could receive payment, as Federal employees receive payments under the Federal Employees' Compensation Act, for the employee's wages lost after the effective date of the amendments because of disability or death if the employee meets certain requirements. The employee also would be eligible for payment of medical expenses incurred after the effective date and for vocational rehabilitation services undertaken at the Secretary of Labor's direction.

Subsection (b) would amend section 3629 of EEOICPA to provide circumstances under which the employee or employee's survivor could elect to receive payment of a lump sum of $150,000 and medical benefits instead of any other compensation under this Act.

Subsection (c) would add sections 3632 through 3636 to EEOICPA:

- New section 3632 would provide for the manner of submitting claims for compensation to the Secretary of Labor and set time limitations for submitting claims.

- New section 3633 would establish the procedure for initial screening of a claim by the Secretary of Labor and calculation of an employee's radiation dose by the Secretary of Health and Human Services. This new section also would set forth methods for obtaining review of the initial screening and obtaining reconsideration and administrative review of the calculation.

- New section 3634 would establish procedures for the Secretary of Labor to follow in awarding compensation under EEOICPA. This new section also sets forth criteria for obtaining reconsideration of the Secretary of Labor's determinations concerning an award.

- New section 3635 would establish an Energy Employees Review Panel in the executive branch to review a radiation dose estimate calculation by the Secretary of Health and Human Services and final decision of the Secretary of Labor in making determinations and awards with respect to claims filed under EEOICPA.

- New section 3636 would list issues subject to judicial review, establish procedures and standards for judicial review, and preclude review of issues not specifically listed.

SECTION 105. GENERAL PROVISIONS

This section would amend subtitle C of EEOICPA.

- New section 3641 would provide that any compensation or benefits allowed, paid, or provided under EEOICPA: (1) be considered as paid under a workers' compensation law for the purposes of exclusion from gross income and wages under sections 104(a)(1), 3121(a)(2), and 3306(b)(2) of the Internal Revenue Code; (2) 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, United States Code, or the amount of those benefits; (3) not be subject to offset under chapter 37 of title 31, United States Code; (4) not be considered as either a form of compensation or as reimbursement for a loss that would make the individual who receives the compensation liable to repay an insurance carrier for insurance payments; and (5) not be treated as affecting any claim against an insurance carrier with respect to insurance. In addition, this section would provide that claims not be assigned or attached. Moreover, if a federal employee found to be disabled under EEOICPA resumes employment with the federal government, the employee would be entitled to the rights set forth in section 8151 of title 5, United States Code.

- New section 3642 would set forth circumstances under which convicted felons and their dependents would forfeit compensation under EEOICPA.

- New section 3643 would establish limitations on the right to receive benefits under EEOICPA.

- New section 3644 would provide for the coordination of benefits under state workers' compensation programs and benefits under EEOICPA. An individual must elect to receive either state workers' compensation benefits or compensation under EEOICPA. When workers' compensation benefits have been secured by a private insurance carrier, the Secretary of Labor may waive the election and enable the claimant to obtain more of his or her recovery under the state system.

- New section 3645 would provide for the coordination of benefits under federal workers' compensation system and benefits under EEOICPA. An individual must elect to receive either Federal Employees' Compensation Act benefits or compensation under EEOICPA.

- New section 3646 would require an individual to elect which benefits to receive if the individual is entitled to receive both compensation under EEOICPA for an illness or death of a covered employee and also benefits (except proceeds of an insurance policy) from the United States for the same illness or death under another statute whose benefits are provided because the employee served as an employee or a member of the armed forces.

- New section 3647 would provide that, except to the extent specified in section 3630, an individual may not receive compensation under EEOICPA for cancer and also receive compensation under the Radiation Exposure Compensation Act as a result of the same cancer.

- New section 3648 would make minor stylistic changes to section 3644 of EEOICPA, which provides that the only method for recovering from the United States or a Department of Energy contractor for a condition covered by EEOICPA would be under EEOICPA. An individual would not be able to recover from the United States or a Department of Energy contractor through a lawsuit.

- New section 3649(a) would make minor stylistic changes to section 3643 of EEOICPA, which provides that the acceptance by an individual of payment of compensation under EEOICPA 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, a Department of Energy contractor or subcontractor, a beryllium vendor, an atomic weapons employer, or any person with respect to that entity or person's performance of a contract with the United States that arises out of the same harmful exposure. A new subsection (b) provides that subsection (a) does not apply to an administrative or judicial proceeding under a State or Federal workers' compensation statute. The amendment of subtitle C of EEOICPA would eliminate section 3645 of EEOICPA, which provides for election of remedy for beryllium employees and atomic weapons employees under certain conditions.

- New section 3650 would subrogate the United States to a claim that an individual who receives compensation under EEOICPA may have against a person other than the United States for the illness or death for which the compensation was received. In addition, for the purposes of this Act, the provision in section 8131 of title 5, United States Code, that provides that an employee who is required to appear as a party or witness in the prosecution of an action described in that section is in an active duty status while so engaged, applies only to a Federal employee.

- New section 3651 would provide that: (1) references in EEOICPA to a provision of another statute will be considered as references to that provision, as amended and as may be amended from time to time and (2) in applying a provision of chapter 81 of title 5, United States Code (except section 8101) under EEOICPA, the term "employee" in the provision means a covered employee and the term "Employees Compensation Fund" means the "Energy Employees Occupational Illness Compensation Fund."

Title II–Technical and Conforming Amendments

SECTION 201. CONFORMING AMENDMENTS

Subsection (a) would amend section 3611(a) of EEOICPA to eliminate a sentence requiring the President to carry out the compensation program through a federal agency. Other amendments assign particular agencies responsibility for carrying out various parts of the program.

Subsection (b) would delete subsection 3611(c) of EEOICPA, eliminating an unnecessary

provision concerning legislative modification of EEOICPA.

Subsection (c) would amend section 3621(7) to strike a redundant phrase in the definition of "covered beryllium employee."

Subsection (d) would amend section 3621(8) to permit the Secretary of Health and Human Services to provide another method for determining whether an employee has beryllium sensitivity besides the one specified in the section.

Subsection (e) would delete an unnecessary word from section 3621(8), the definition of "covered beryllium illness."

Subsection (f) would amend section 3621(9)(B) to simplify the wording of the definition of "covered employee with cancer."

Subsection (g) would amend section 3621(13) to eliminate an unnecessary word and permit the Secretary of Health and Human Services to provide another method for determining whether an employee has chronic beryllium disease.

Subsection (h) would amend section 3621(14)(A) to clarify that an employee can meet the 250-day requirement by working in more than one gaseous diffusion plant.

Subsection (i) would amend section 3621 (14)(C) to assign to the Secretary of Health and Human Services certain duties related to the Special Exposure Cohort.

Subsection (j) would amend section 3621 to delete the definition of "occupational illness" because the definition no longer is necessary in the amended EEOICPA.

Subsection (k) would redesignate the last paragraphs in section 3621 and add new paragraphs containing definitions that would: (1) clarify that terms defined in certain sections of the Federal Employees Compensation Act have the meaning given those terms in that statute when used in EEOICPA and (2) define "time of injury," "toxic illness," "toxic substance," and "compensation."

Subsection (l) would amend section 3622 of EEOICPA to allow the Secretary of Energy to designate an entity as an atomic weapons employer and the Secretary of Health and Human Services, in consultation with the Secretary of Energy, to specify additional means of establishing the existence of a covered beryllium illness.

Subsection (m) would amend section 3623(b) of EEOICPA to simplify the language regarding exposure in performance of duty in relation to contracting cancer.

Subsection (n) would amend section 3623(c)(1) of EEOICPA to make the Secretary of Health

and Human Services, after consultation with the Secretary of Energy, responsible for establishing guidelines for making determinations concerning whether cancer was sustained in the performance of duty.

Subsection (o) would amend section 3623(e) of EEOICPA to strike a requirement that the Secretary of Energy make available to an employee with cancer the estimated radiation dose of the employee. The Secretary of Health and Human Services is required to make the dose available by another amendment.

Subsection (p) would amend section 3624(b) of EEOICPA to require the Advisory Board on Radiation and Worker Health to advise the President concerning whether EEOICPA should be amended to provide benefits for chronic renal disease.

Subsection (q) would amend section 3627(e)(2)(A) of EEOICPA to substitute "pneumoconioses of category 1/0 or higher" for "pneumoconioses of category 1/1 or higher."

Subsection (r) would amend section 3627 of EEOICPA to provide that claimants seeking benefits under EEOICPA for chronic silicosis be reimbursed from the compensation fund for reasonable diagnostic medical expenses incurred in establishing their claims.

Subsection (s) would amend section 3630 of EEOICPA to clarify procedures for payment of an additional $50,000 to persons compensated under the Radiation Exposure Compensation Act.

Subsection (t) would amend section 3631 of EEOICPA to specify agencies which are to perform particular actions under EEOICPA.

Subsection (u) would amend section 3661(d) of EEOICPA to give the Secretary of Energy more responsibility for the physician panels used in the program that provides assistance to workers with State workers' compensation claims.

SECTION 202. TECHNICAL AMENDMENTS

Subsections (a), (b), and (c) make changes to other Acts necessitated by the amendments to EEOICPA.

Subsection (d) adds a new Office of Workers' Compensation Advocate to the Department of Energy to support implementation of EEOICPA.

SECTION 203. AMENDMENT TO THE RADIATION EXPOSURE COMPENSATION ACT

This section would appropriate the sums necessary to carry out the Radiation Exposure Compensation Act.

SECTION 204. EFFECTIVE DATE

This section provides that the effective date of the Act is the later of July 31, 2001, or the date of its enactment.

A BILL

To provide compensation and benefits to Department of Energy Federal and contractor employees for exposure to certain toxic substances, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS

(a) SHORT TITLE.—This Act may be cited as the "Energy Employees Occupational Illness Compensation Amendments of 2001".

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

Sec. 1. Short title; Table of Contents.
Sec. 2. Findings.

TITLE I–COMPENSATION PROGRAM

Sec. 101. Appropriations and compensation fund.
Sec. 102. Exposure in the performance of duty.
Sec. 103. Designation of additional members of Special Exposure Cohort.
Sec. 104. Compensation program.
Sec. 105. General provisions.

TITLE II –TECHNICAL AND CONFORMING AMENDMENTS

Sec. 201. Conforming amendments.
Sec. 202. Technical amendments.
Sec. 203. Amendment to the Radiation Exposure Compensation Act.
Sec. 204. Effective date

SEC. 2. FINDINGS.

1 Congress finds that--

2 (1) The Energy Employees Occupational Illness Compensation Program
3 Act of 2000, Title XXXVI of the Floyd D. Spence National Defense
4 Authorization Act for Fiscal Year 2001(P.L. 106-398), established the Energy
5 Employees Occupational Illness Compensation Program.

6 (2) Further legislation is required to enact provisions for adjudication of
7 claims and awarding of benefits.

8 (3) The provisions of this legislation further the purpose of the Energy
9 Employees Occupational Illness Compensation Program Act of 2000, to
10 establish a science-based compensation program for workers made ill by
11 exposure to toxic substances uniquely associated with the nuclear weapons
12 production and testing processes.

13 **TITLE I— COMPENSATION PROGRAM**

14 **SEC. 101. APPROPRIATIONS AND COMPENSATION FUND.**

15 (a) APPROPRIATIONS.—Section 3614 of the Energy Employees
16 Occupational Illness Compensation Program Act of 2000, Title XXXVI of the
17 Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (P.L.
18 106-398) (hereinafter referred to as "EEOICPA"), is amended to read as follows:

19 **"SEC. 3614. APPROPRIATIONS.**

20 "(a) IN GENERAL.—There is hereby authorized to be appropriated to
21 remain available until expended such sums as are necessary for administering the
22 compensation program.

23 "(b) AMOUNTS IN COMPENSATION FUND. Such sums as may be
24 necessary to make compensation payments under this Act are hereby appropriated
25 to the compensation fund established by section 3612.".

(b) COMPENSATION FUND.—Section 3612 of the EEOICPA is amended by—

(1) amending subsection (b) to read as follows:

"(b) AMOUNTS IN THE COMPENSATION FUND. The compensation fund shall consist of amounts appropriated to it under section 3614(b).";

(2) striking subsections (c) and (f) and redesignating subsections (d) and (e) as (c) and (d) respectively; and

(3) in new subsection (c), striking "(e)" and inserting "(d)".

SEC. 102. EXPOSURE IN THE PERFORMANCE OF DUTY.

(a) BERYLLIUM.— Section 3623(a) of the EEOICPA is amended to read as follows:

"(a) BERYLLIUM.— (1) In the absence of substantial evidence to the contrary, a covered beryllium employee specified in section 3621 (7)(A) or (B) of this Act shall be determined to have been exposed to beryllium in the performance of duty for the purposes of this Act if, and only if, the covered beryllium employee was–

"(A) employed at a Department of Energy facility; or

"(B) present at a Department of Energy facility, or a facility owned and operated by a beryllium vendor, because of employment by the United States 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.

"(2) In the absence of substantial evidence that a covered beryllium employee specified in section 3621(7)(C) of this Act was never exposed to dust,

1 particles or vapor of beryllium that was produced or processed for sale to, or use
2 by, the Department of Energy, such an employee shall be determined to have been
3 exposed to beryllium in the performance of duty for the purposes of this Act.".
4 (b) DOSE RECONSTRUCTION.--Section 3623(d) of the EEOICPA is
5 amended to read is follows:
6 "(d) METHODS FOR RADIATION DOSE RECONSTRUCTION.—
7 The Secretary of Health and Human Services, after consultation with the
8 Secretary of Energy, shall establish by regulation methods for arriving at
9 reasonable estimates of the radiation doses that Department of Energy
10 employees or Department of Energy contractor employees received at a
11 Department of Energy facility and atomic weapons employees received at a
12 facility operated by an atomic weapons employer.".
13 **SEC. 103. DESIGNATION OF ADDITIONAL MEMBERS OF SPECIAL**
14 **EXPOSURE COHORT.**
15 Section 3626 of the EEOICPA is amended by striking "President" each
16 time it appears and inserting "Secretary of Health and Human Services".
17 **SEC. 104. COMPENSATION PROGRAM.**
18 (a) COMPENSATION AND OTHER ASSISTANCE.--Section 3628 of
19 the EEOICPA is amended to read as follows:
20 **"SEC. 3628. AUTHORITY TO PROVIDE COMPENSATION AND**
21 **OTHER ASSISTANCE.**
22 "(a) COMPENSATION.—Subject to the provisions of this Act, the
23 Secretary of Labor—
24 "(1) shall pay compensation in accordance with sections 8105
25 through 8110, 8112, 8113, 8115, 8117, 8133, 8134, 8146a(a), and
26 8146a(b) of title 5, United States Code, for the disability or death--

"(A) from a toxic illness of a covered employee who was exposed to a toxic substance while in the performance of duty as determined in accordance with section 3623(a) or 3627(c) of this Act; and

"(B) from cancer of a covered employee with cancer who is determined to have sustained that cancer in the performance of duty in accordance with section 3623(b) of this Act or from any injury suffered as a consequence of that cancer;

"(2) shall furnish the services and other benefits specified in section 8103 of title 5, United States Code, to--

"(A) a covered employee with a toxic illness who was exposed to a toxic substance in the performance of duty as determined in accordance with section 3623(a) or 3627(c) of this Act; and

"(B) a covered employee with cancer who is determined to have sustained that cancer in the performance of duty in accordance with section 3623(b) of this Act or to have suffered any injury as a consequence of that cancer; and

"(3) may direct a permanently disabled individual whose disability is compensable under this Act to undergo vocational rehabilitation and shall provide for furnishing such vocational rehabilitation services pursuant to the provisions of sections 8104, 8111(b), and 8113(b) of title 5, United States Code.

"(b) LIMITATIONS ON COMPENSATION.—

"(1) No compensation or benefits may be paid or provided under this Act for a cancer (including a specified cancer), a toxic illness, or

1 death if the cancer (including a specified cancer), toxic illness, or death
2 occurred under one of the circumstances set forth in paragraph (1), (2),
3 or (3) of section 8102(a) of title 5, United States Code.
4 "(2) No compensation may be paid under this Act for any period
5 before the effective date of this Act, except in the case of compensation
6 under sections 3629(a) or 3630(a) of this Act.
7 "(3) All compensation under this Act shall be paid from the
8 Energy Employees Occupational Illness Compensation Fund.
9 "(c) COMPUTATION OF PAY.--
10 "(1) Except as otherwise provided by this Act or by regulation,
11 computation of pay under this Act shall be determined in accordance
12 with section 8114 of title 5, United States Code.
13 "(2) If either of the methods of determining the average annual
14 earnings specified in section 8114(d)(1) and (2) of title 5, United States
15 Code, cannot be applied reasonably and fairly, the average annual
16 earnings are a sum that reasonably represents the annual earning capacity
17 of the covered employee in the employment in which the employee was
18 working at the time of injury having regard to the previous earnings of
19 the employee in similar employment, and of other employees of the same
20 employer in the same or most similar class working in the same or most
21 similar employment in the same or neighboring location, other previous
22 employment of the employee, or other relevant factors. However, the
23 average annual earnings may not be less than 150 times the average daily
24 wage the covered employee earned in the employment during the days
25 employed within 1 year immediately preceding the time of injury.".

1 (b) ALTERNATIVE COMPENSATION.--Section 3629 of the
2 EEOICPA is amended to read as follows:
3 **"SEC. 3629. ALTERNATIVE COMPENSATION.**
4 "(a) IN GENERAL.—Subject to the provisions of this Act, a covered
5 employee or the survivor of a deceased covered employee may elect to receive
6 alternative compensation in the amount of $150,000 in lieu of any other
7 compensation under sections 3628(a)(1) and 3628(a)(3) of this Act to which the
8 employee or the employee's survivors may be entitled.
9 "(b) DETERMINATION.—A covered employee or the survivor of a
10 deceased covered employee may elect to receive alternative compensation if,
11 and only if, the Secretary of Labor determines that the employee–
12 "(1)(A) was exposed to a toxic substance in the performance of
13 duty as determined in accordance with section 3623(a) of this Act;
14 "(B) sustained Chronic Beryllium Disease; and
15 "(C) demonstrates the existence of Chronic Beryllium Disease
16 and its diagnosis by medical documentation created during the
17 employee's lifetime or at the time of death or autopsy;
18 "(2)(A) contracted cancer after beginning employment as a
19 Department of Energy contractor employee or a Department of Energy
20 employee at a Department of Energy facility or as an atomic weapons
21 employee at an atomic weapons employer facility;
22 "(B) is determined to be a covered employee with cancer who
23 sustained that cancer in the performance of duty in accordance with
24 section 3623(b) of this Act; and

"(C) demonstrates the existence of that cancer and its diagnosis by medical documentation created during the employee's lifetime or at the time of death or autopsy; or

"(3)(A) was exposed to a toxic substance in the performance of duty as determined in accordance with section 3627(c) of this Act;

"(B) sustained a toxic illness as defined in section 3627(e) of this Act after being exposed in the performance of duty;

"(C) demonstrates the existence of a toxic illness as defined in section 3627(e) of this Act and its diagnosis by medical documentation created during the employee's lifetime or at the time of death or autopsy; and

"(D) has provided the medical documentation specified in section 5(b)(5)(A) and (B) of the Radiation Exposure Compensation Act (42 U.S.C 2210 note).

"(c) DEATH BEFORE ELECTION. —

"(1) Subject to the provisions of this Act, if a covered employee otherwise eligible to make an election provided by this section dies before the effective date of this Act, or before making the election, whether or not the death is a result of a cancer (including a specified cancer), or a toxic illness, a survivor of the covered employee on behalf of the survivor and any other survivors of the covered employee may make the election and receive the compensation provided for under this section.

"(2) The right to make an election and to receive compensation under this section shall be afforded to survivors in the order of precedence set forth in section 8109 of title 5, United States Code.

"(d) TIME LIMIT FOR ELECTION.—An election under this section may be made at any time after the submittal under this Act of the claim on which such compensation is based, but not later than 30 days after the later of the date of—

"(1) a determination by the Secretary of Labor that an employee is eligible for an award under this section; or

"(2) a determination by the Secretary of Labor under section 3628 of this Act awarding an employee or an employee's survivors compensation for total or partial disability or compensation in case of death.

"(e) IRREVOCABILITY OF ELECTION.—

"(1) An election under this section when made is irrevocable.

"(2) An election made by a covered employee or survivor under this section is binding on all survivors of the covered employee.".

(c) CLAIM ADMINISTRATION AND REVIEW.—Subtitle B of the EEOICPA is amended by adding, at the end thereof, new sections 3632 - 3636 as follows:

"SEC. 3632. SUBMITTAL OF CLAIMS.

"(a) CLAIM REQUIRED.—A claim for compensation under this Act shall be submitted to the Secretary of Labor in the manner specified in section 8121 of title 5, United States Code.

"(b) GENERAL TIME LIMITATIONS.—A claim for compensation under this Act shall be filed under this section not later than the later of–

1 "(1) seven years after the effective date of this Act;

2 "(2) seven years after the date the claimant first becomes aware
3 or should have become aware that a cancer (including a specified
4 cancer), toxic illness, or death from any of the foregoing of a covered
5 employee may be connected to the exposure of the covered employee to
6 radiation or a toxic substance in the performance of duty; or

7 "(3) in the case of a claim for benefits based upon an award
8 under section 5 of the Radiation Exposure Compensation Act, the later
9 of seven years after the date of that award or seven years after the
10 effective date of this Act.

11 "(c) NEW PERIOD FOR ADDITIONAL ILLNESSES AND
12 CONDITIONS. —A new period of limitation under subsection (b) shall
13 commence with each new diagnosis of a cancer (including a specified cancer) or
14 a toxic illness that is different from a previously diagnosed cancer (including a
15 specified cancer) or toxic illness.

16 "(d) DEATH CLAIM.—The timely filing of a disability claim for a
17 cancer (including a specified cancer) or a toxic illness shall satisfy the time
18 requirements of this section for death benefits for the same cancer (including a
19 specified cancer) or toxic illness.

20 **"SEC. 3633. INITIAL SCREENING AND PROCEDURE FOR DOSE**
21 **RECONSTRUCTION.**

22 "(a) REQUEST.—

23 "(1) A claimant seeking benefits under this Act based upon a
24 cancer sustained by a Department of Energy employee, a Department of

1 Energy contractor employee or an atomic weapons employee may elect to
2 have the Secretary of Labor determine whether such employee's cancer
3 was at least as likely as not related to employment, pursuant to section
4 3623(b) of this Act, based upon actual records of the radiation dose
5 received by that employee furnished by the Secretary of Energy or upon an
6 estimate of the radiation dose determined pursuant to this section.
7 "(2) Such an election shall be made in accordance with procedures
8 set forth by the Secretary of Labor and shall be irrevocable. An election
9 made by a covered employee or survivor under this section is binding on
10 all survivors of the covered employee.
11 "(3) The Secretary of Labor, in consultation with the Secretary of
12 Health and Human Services, shall specify in regulations the manner in
13 which a claimant may request that an estimate of an employee's radiation
14 dose be calculated.
15 "(b) INITIAL SCREENING.—Upon receipt of a request for a calculation
16 of an estimate of the radiation dose received by an employee, the Secretary of
17 Labor shall determine whether:
18 "(1) the claimant filed a timely claim; and
19 "(2) the employee at issue is an individual specified in section

1 3621(9)(B) of this Act.

2 If the Secretary of Labor determines that a claim meets those requirements, the
3 Secretary of Labor shall forward to the Secretary of Health and Human Services a
4 request that an estimate of the radiation dose received by the relevant employee be
5 calculated.

6 "(c) APPEAL OF INITIAL SCREENING DETERMINATION.—A
7 claimant whose claim is determined not to meet the criteria set forth in subsection
8 (b) of this section may appeal that determination to the Energy Employees
9 Review Panel pursuant to the procedures set forth in section 3635 of this Act.

10 "(d) CALCULATION.—Upon receipt of a request from the Secretary of
11 Labor, pursuant to section 3634(b) of this Act, for the preparation of an estimate
12 of the radiation dose received by an employee, the Secretary of Health and Human
13 Services shall calculate an estimate of the radiation dose received by such
14 employee, pursuant to the methods established pursuant to section 3623(d) of this
15 Act, and shall transmit the calculation to the claimant.

16 "(e) RECONSIDERATION.—A claimant may obtain reconsideration of
17 the calculation of an estimate of the radiation dose received by such employee if
18 the claimant provides to the Secretary of Health and Human Services new
19 evidence that:

1 "(1) was not reasonably available at the time that a previous
2 estimate of the radiation dose received by such employee was issued; and
3 "(2) would likely lead to a revision of that calculation to an extent
4 sufficient to result in a determination pursuant to section 3623(b) of this
5 Act that such employee's cancer was at least as likely as not related to
6 employment
7 "(f) REVIEW.—A claimant may obtain review of the calculation of the
8 estimate of the radiation dose by the Energy Employees Review Panel, pursuant
9 to the procedures set forth in section 3635 of this Act.
10 "(g) FINALITY.—A claimant who fails to seek review before the Energy
11 Employees Review Panel within the time limit specified in section 3635(e) of this
12 Act of the calculation by the Secretary of Health and Human Services of the
13 estimate of a radiation dose received by an employee shall be deemed to have
14 waived all objections to the use of that estimated dose by the Secretary of Labor
15 in proceedings under this Act.
16 **"SEC. 3634. ADJUDICATION AND ADMINISTRATION.**
17 "(a) IN GENERAL.—
18 "(1) The Secretary of Labor shall determine and make a finding
19 of facts and make an award for or against payment of compensation
20 under this Act after–

"(A) considering the claim presented by the claimant, the results of any medical test or diagnosis undertaken to establish the existence of a cancer (including a specified cancer) or a toxic illness, and any report furnished by the Secretary of Energy or the Secretary of Health and Human Services with respect to the claim; and

"(B) completing such investigation as the Secretary of Labor considers necessary.

"(2) The Secretary may allow or deny a claim, in whole or in part.

"(b) AVAILABLE AUTHORITIES.—

"(1) Except as provided in paragraph (2), in carrying out activities under this Act, the Secretary of Labor may utilize the authorities available to the Secretary under sections 8123, 8124(b), 8125, 8126, 8128(a), and 8129 of title 5, United States Code.

"(2) If there is a disagreement under section 8123(a) of title 5, United States Code, between the physician making the examination for the United States and the physician of the employee, the Secretary of Labor shall appoint a third physician from a roster of physicians with relevant expertise maintained by the Secretary of Health and Human Services.

"(c) RIGHTS OF CLAIMANT.—

"(1) Except as provided by paragraph (2), the provisions of section 8127 of title 5, United States Code, shall apply.

"(2) A claimant may commence an action in the appropriate district court of the United States against a beryllium vendor, or other

1 contractor or subcontractor of the Department of Energy, to compel the
2 production of information or documents requested by the Secretary of
3 Labor under this Act if such information or documents are not provided
4 within 180 days of the date of the request. Upon successful resolution
5 of any action brought under this paragraph, the court shall award the
6 claimant reasonable attorney fees and costs to be paid by the defendant
7 in such action.
8 "(d) EVIDENCE IN EQUIPOISE.—Except as provided in subsection
9 (b)(2), in determining whether a claimant meets the requirements of this Act,
10 the Secretary of Labor shall find in favor of the claimant in circumstances
11 where the evidence supporting the claim of the claimant and the evidence
12 controverting the claim of the claimant is in equipoise.
13 "(e) RECONSIDERATION BASED ON NEW CRITERIA OR
14 EVIDENCE.—
15 "(1) A claimant may obtain reconsideration of a decision
16 awarding or denying coverage under this Act within one year after the
17 effective date of regulations setting forth—
18 "(A) new criteria for establishing a covered beryllium
19 illness pursuant to section 3622(c) of this Act, or
20 "(B) additional or revised methods for determining
21 whether a cancer was at least as likely as not related to
22 employment pursuant to section 3623(c) of this Act
23 by submitting evidence that is relevant and pertinent to the new
24 regulations.
25 "(2) A claimant may obtain reconsideration of a decision
26 awarding or denying benefits under this Act within 90 days of receiving

1 a new estimate, pursuant to section 3633(e) of this Act, of the radiation
2 dose received by an employee.
3 "(f) REGULATORY AUTHORITY.—Except as otherwise provided in
4 this Act, the Secretary of Labor may prescribe regulations necessary for the
5 administration and enforcement of this Act.
6 **"SEC. 3635. ENERGY EMPLOYEES REVIEW PANEL.**
7 "(a) ESTABLISHMENT--The Energy Employees Review Panel is hereby
8 established in the Executive Branch of the United States. The Panel shall consist
9 of not less than three nor more than five members and such additional temporary
10 members as the President determines are necessary, appointed by the President,
11 with the advice and consent of the Senate, from among persons who by reason of
12 training, education, or experience are qualified to carry out the functions of the
13 Panel under this Act. The President shall designate one of the members of the
14 Panel to serve as Chairman. The Chairman, members and employees of the Panel
15 shall be considered 'employees' within the meaning of section 2105 of title 5,
16 United States Code.
17 "(b) TERMS AND PERSONNEL.—The terms of the members of the
18 Panel shall be six years, except that –
19 "(1) members of the Panel first taking office after the effective
20 date of this title, shall serve, as designated by the President at the time of

1 appointment, not more than one for a term of two years, not more than two
2 for a term of four years and not more than two for a term of six years;
3 "(2) a vacancy caused by the death, resignation, or removal of any
4 member prior to the expiration of the term for which he was appointed
5 shall be filled only for the remainder of such unexpired term; and
6 "(3) temporary members of the Panel shall serve for a term of two
7 years.
8 Any member of the Panel may be removed by the President for inefficiency,
9 neglect of duty, or malfeasance in office.
10 "(c) CHAIRMAN.--The Chairman shall be responsible on behalf of the
11 Panel for the administrative operations of the Panel. The Panel shall appoint such
12 employees as it deems necessary to assist in the performance of the Panel's
13 functions and fix their compensation in accordance with the provisions of chapter
14 51 and subchapter III of chapter 53 of title 5, relating to classification and general
15 pay rates.
16 "(d) DELEGATION OF POWERS.—The Panel is authorized to delegate
17 to any group of three members any or all of the powers of the Panel, except that
18 two members shall constitute a quorum of any group designated pursuant to this
19 subsection. The Panel may provide procedures for seeking review by the entire

1 Panel sitting en banc of a decision of a group of three members.

2 "(e) PROCEEDINGS BEFORE THE PANEL.—

3 "(1)(A) Notwithstanding section 3636(a)(1), a person who receives
4 a radiation dose estimate calculation by the Secretary of Health and
5 Human Services pursuant to section 3633(d) may file and serve a petition
6 for review by the Panel of such calculation within 60 days after receipt of
7 the calculation.

8 "(B) Notwithstanding section 3636(a)(2), any person adversely
9 affected or aggrieved by a final decision of the Secretary of Labor in
10 issuing determinations and awards with respect to claims filed pursuant to
11 this Act may file and serve a petition for review by the Panel of such
12 decision within 60 days after the issuance of such decision.

13 "(2) Petitions for review shall specify the issue or issues upon
14 which such review is sought.

15 "(3) Each issue shall be separately numbered and plainly and
16 concisely stated, and shall be supported by detailed citations to the
17 decision for which review is sought and any relevant evidence entered into
18 the record prior to issuance of that decision.

19 "(4) The jurisdiction of the Panel is limited to review of

1 calculations and decisions specified in paragraph (1). Review by the Panel
2 shall be limited to the questions raised by the petition.
3 "(5) In any proceeding before the Panel challenging a calculation
4 or decision issued by the Secretary of Labor or the Secretary of Health and
5 Human Services, such Secretary may, in his or her discretion, choose
6 either to participate or not to participate.
7 "(f) STANDARD OF REVIEW.—A calculation or decision specified in
8 paragraph (1) that is subject to review by the Panel shall be affirmed unless
9 arbitrary and capricious.
10 **"SEC. 3636 JUDICIAL REVIEW.**
11 "(a) PRECLUSION.—
12 "(1) Determinations of the Secretary of Health and Human
13 Services in providing an estimate, pursuant to section 3633 of this Act, of
14 the radiation dose received by an employee, and decisions of the Energy
15 Employees Review Panel in review thereof, shall be final and conclusive
16 for all purposes and with respect to all questions of law and fact and not
17 subject to review by another official of the United States or by a court by
18 mandamus or otherwise.
19 "(2) Decisions of the Secretary of Labor in allowing or denying a

1 payment under this Act, and decisions of the Energy Employees Review
2 Panel in review thereof, shall be final and conclusive for all purposes and
3 with respect to all questions of law and fact and not subject to review by
4 another official of the United States or by a court by mandamus or
5 otherwise, except to the extent provided in subsection (b) of this section.
6 "(b) ISSUES SUBJECT TO JUDICIAL REVIEW.—A person adversely
7 affected or aggrieved by a final order of the Energy Employees Review Panel
8 reviewing —
9 "(1) an Initial Screening determination made by the Secretary of
10 Labor pursuant to section 3633(b) of this Act;
11 "(2) a decision made by the Secretary of Labor that—
12 "(A) a claim was not timely filed;
13 "(B) an employee was not a covered employee;
14 "(C) an employee did not sustain a toxic illness in the
15 performance of duty in accordance with sections 3623(a) or
16 3627(c) of this Act;
17 "(D) an employee did not sustain cancer in the
18 performance of duty in accordance with section 3623(b) of this
19 Act; or

1 "(E) a claimant was not entitled to compensation pursuant
2 to section 3630(a) of this Act
3 may obtain a review of that order in any United States Court of Appeals specified
4 in subsection (d) of this section. The Secretary of Labor shall have the power to
5 petition any United States Court of Appeals specified in subsection (d) of this
6 section to review any order of the Energy Employees Review Panel specified in
7 subsection (b) of this section, and to raise any legal argument, notwithstanding
8 subsection (e) of this section.
9 "(c) PROCEDURE.—In order to obtain such review, the Secretary of
10 Labor or an individual adversely affected or aggrieved by a final order of the
11 Energy Employees Review Panel must file a written petition praying that the
12 order be modified or set aside in such court within 60 days following the issuance
13 of such order. A copy of such petition shall be forthwith transmitted by the clerk
14 of the court to the Energy Employees Review Panel and to the Secretary of Labor
15 and thereupon the Energy Employees Review Panel shall file in the court the
16 record in the proceedings as provided in section 2112 of title 28, United States
17 Code. Upon filing of a petition for review, the court shall have jurisdiction over
18 the proceeding and shall have the power to give a decree affirming, modifying, or
19 setting aside, in whole or part, the order of the Energy Employees Review Panel

1 and enforcing same to the extent that such order is affirmed or modified. The
2 order, writs and processes of the court in such proceedings may run, be served and
3 be returnable anywhere in the United States.
4 "(d) VENUE.—A petition seeking review of an order of the Energy
5 Employees Review Panel may be filed in the United States Court of Appeals for
6 any circuit in which the claimant lives at the time of the issuance of the order for
7 which appeal is sought or for any circuit in which the covered employee at issue is
8 alleged to have been exposed to hazards in the performance of duty pursuant to
9 sections 3623 or 3627(c) of this Act.
10 "(e) STANDARD OF REVIEW.—No objection that has not been urged
11 before the Energy Employees Review Panel shall be considered by the court,
12 unless the failure or neglect to urge such objection shall be excused because of
13 extraordinary circumstances. No new evidence may be adduced in proceedings
14 before the court. The order of the Energy Employees Review Panel shall be
15 affirmed unless arbitrary and capricious. In reviewing an order of the Energy
16 Employees Review Panel interpreting a provision of this Act or of a regulation
17 promulgated pursuant to it, deference shall be afforded by the court to the
18 Secretary of Labor's interpretation of such provision.
19 "(f) LIMITATION.—No proceeding in any court may be brought seeking

1 review of any action or failure to act by the Secretaries of Health and Human
2 Services or Labor or the Energy Employees Review Panel except as provided this
3 section.
4 "(g) REPRESENTATION.—Attorneys appointed by the Secretary of
5 Labor shall represent the Secretary of Labor in any court proceeding arising out of
6 this Act except for proceedings in the Supreme Court of the United States.".
7 **SEC. 105. GENERAL PROVISIONS.**
8 Subtitle C of the EEOICPA is amended to read as follows:
9 **"Subtitle C— Treatment and Coordination of Compensation and Benefits**
10 **"SEC. 3641. TREATMENT OF COMPENSATION AND BENEFITS.**
11 "(a) IN GENERAL.—Any compensation or benefits allowed, paid, or
12 provided under this Act–
13 "(1) shall be considered paid under a workers' compensation law
14 for the purposes of sections 104(a)(1), 3121(a)(2), and 3306(b)(2) of the
15 Internal Revenue Code;
16 "(2) shall not be included as income or resources for purposes of
17 determining eligibility to receive benefits described in section
18 3803(c)(2)(C) of title 31, United States Code, or the amount of those
19 benefits; and
20 "(3) shall not be subject to offset under chapter 37 of title 31,
21 United States Code.
22 "(b) INSURANCE.— (1) Compensation or benefits paid or provided
23 under this Act shall not be considered as any form of compensation or
24 reimbursement for a loss for purposes of imposing liability on an individual

1 receiving the compensation or benefits to repay any insurance carrier for
2 insurance payments made.
3 "(2) The payment or provision of compensation or benefits under this
4 Act shall not be treated as affecting any claim against an insurance carrier with
5 respect to insurance.
6 "(c) PROHIBITION ON ASSIGNMENT OR ATTACHMENT OF
7 CLAIMS.—The provisions of section 8130 of title 5, United States Code, shall
8 apply to claims and compensation under this Act.
9 "(d) RETENTION OF CIVIL SERVICE RIGHTS.—If a Federal
10 employee found to be disabled under this Act resumes employment with the
11 Federal government, the employee shall be entitled to the rights set forth in
12 section 8151 of title 5, United States Code.
13 **"SEC. 3642. FORFEITURE OF BENEFITS BY CONVICTED FELONS.**
14 "(a) FORFEIT COMPENSATION.—Any individual convicted of a
15 violation of section 1920 of title 18, or any other Federal or State criminal
16 statute relating to fraud in the application for or receipt of any benefit under this
17 Act or under any other Federal or State workers' compensation law, shall forfeit
18 (as of the date of such conviction) any entitlement to any benefit under this Act
19 such individual would otherwise be awarded for any injury, illness or death
20 covered by this Act for which the time of injury was on or before the date of the
21 conviction. This forfeiture shall be in addition to any action the Secretary of
22 Labor takes under sections 8106 or 8129 of title 5, United States Code.
23 "(b) DEPENDENTS.— (1) Notwithstanding any other provision of
24 law, except as provided under paragraph (2), compensation under this Act shall
25 not be paid or provided to an individual during any period during which such
26 individual is confined in a jail, prison, or other penal institution or correctional

1 facility, pursuant to that individual's conviction of an offense that constituted a
2 felony under applicable law. After this period of incarceration ends, the
3 individual shall not receive compensation forfeited during the period of
4 incarceration.
5 "(2) If an individual has one or more dependents as defined under
6 section 8110(a) of title 5, United States Code, the Secretary of Labor may,
7 during the period of incarceration, pay to such dependents a percentage of the
8 compensation under section 3628 that would have been payable to the individual
9 computed according to the percentages set forth in section 8133(a)(1) through
10 (5) of title 5, United States Code.
11 "(c) INFORMATION.—Notwithstanding section 552a of title 5, United
12 States Code, or any other Federal or State law, an agency of the United States,
13 a State, or a political subdivision of a State shall make available to the Secretary
14 of Labor, upon written request from the Secretary of Labor and if the Secretary
15 of Labor requires the information to carry out this section, the names and Social
16 Security account numbers of individuals confined, for conviction of a felony, in
17 a jail, prison, or other penal institution or correctional facility under the
18 jurisdiction of that agency.
19 **"SEC. 3643. LIMITATION ON RIGHT TO RECEIVE BENEFITS.**
20 "(a) CLAIMANT.—A claimant who receives compensation under
21 section 3629(a) of this Act shall not receive compensation for any other claim
22 under this Act, except for compensation provided under the authority of section
23 8103(b) of title 5, United States Code.
24 "(b) SURVIVOR.—If a survivor receives compensation under section
25 3629(a) of this title for any claim under this Act derived from a covered

1 employee, except for compensation provided under the authority of section
2 8103(b) of title 5, United States Code, such survivor shall not receive
3 compensation for any other claim under this Act derived from the same covered
4 employee. A survivor of a claimant who receives compensation for any claim
5 under this Act, except for compensation provided under the authority of section
6 8103(b) of title 5, United States Code, shall not receive compensation for any
7 other claim under this Act derived from the same covered employee.
8 "(c) WIDOW OR WIDOWER.--A widow or widower who is eligible
9 for benefits under this Act derived from more than one husband or wife shall
10 elect one benefit to receive.
11 **"SEC. 3644. COORDINATION OF BENEFITS - STATE WORKERS'**
12 **COMPENSATION.**
13 "(a) IN GENERAL.—An individual who is eligible to receive
14 compensation under this Act, because of a cancer (including a specified cancer)
15 or a toxic illness, or death and who is also entitled to receive benefits because of
16 the same cancer (including a specified cancer), toxic illness, or death from a
17 State workers' compensation system shall elect which benefits to receive, unless-
18 -
19 "(1) at the time of injury, workers' compensation coverage for
20 the employee was secured by a policy or contract of insurance; and
21 "(2) the Secretary of Labor waives the requirement to make such
22 an election.
23 "(b) ELECTION.—The individual shall make the election within the
24 time allowed by the Secretary of Labor. The election when made is irrevocable
25 and binding on all survivors of that individual.

1 "(c) COORDINATION.—Except as provided in paragraph (d), an
2 individual who has been awarded compensation under this Act and who also has
3 received benefits from a State workers' compensation system because of the
4 same cancer (including a specified cancer), toxic illness, or death, shall receive
5 compensation as specified under this Act reduced by the amount of any
6 workers' compensation benefits that the individual has received under the State
7 workers' compensation system as a result of the cancer (including a specified
8 cancer), toxic illness, or death attributable to the period subsequent to the
9 effective date of this Act, after deducting the reasonable costs, as determined by
10 the Secretary of Labor, of obtaining benefits under the State workers'
11 compensation system.
12 "(d) WAIVER.—An individual described in paragraph (a) who has also
13 received, under paragraph (a)(2), a waiver of the requirement to elect between
14 compensation under this Act and benefits under a State workers' compensation
15 system shall receive compensation as specified in this Act for the cancer
16 (including a specified cancer), toxic illness, or death, reduced by eighty percent
17 of the net amount of any workers' compensation benefits that the claimant has
18 received under a State workers' compensation system attributable to the period
19 subsequent to the effective date of this Act, after deducting the reasonable costs,
20 as determined by the Secretary of Labor, of obtaining benefits under the State
21 workers' compensation system.
22 **"SEC. 3645. COORDINATION OF BENEFITS – FEDERAL WORKERS'**
23 **COMPENSATION.**
24 "(a) IN GENERAL.--An individual who is eligible to receive
25 compensation under this Act because of a cancer (including a specified cancer),
26 toxic illness, or death and who is also entitled to receive benefits because of the

1 same cancer (including a specified cancer), toxic illness, or death from another
2 Federal workers' compensation system shall elect which such benefits to
3 receive.
4 "(b) ELECTION.—The individual shall make the election within the
5 time allowed by the Secretary of Labor. The election when made is irrevocable
6 and binding on all survivors of that individual.
7 "(c) COORDINATION.— An individual who has been awarded
8 compensation under this Act and who also has received benefits from another
9 Federal workers' compensation system because of the same cancer (including a
10 specified cancer), toxic illness, or death, shall receive compensation as specified
11 under this Act reduced by the amount of any workers' compensation benefits
12 attributable to the period subsequent to the effective date of this Act that the
13 individual has received under the other Federal workers' compensation system
14 as a result of the cancer (including a specified cancer), toxic illness, or death.
15 **"SEC. 3646. DUAL COMPENSATION - OTHER EMPLOYEES.**
16 "An individual entitled to receive compensation under this Act because of
17 a cancer (including a specified cancer), toxic illness, or death covered by this Act
18 of a covered employee, who also is entitled to receive from the United States
19 under a provision of a statute other than this Act payments or benefits for that
20 injury, illness or death (except proceeds of an insurance policy), because of
21 service by such employee (or in the case of death, by the deceased) as an
22 employee or in the armed forces, shall elect which benefits to receive. The
23 individual shall make the election within the time allowed by the Secretary of
24 Labor. The election when made is irrevocable, except as otherwise provided by
25 statute.
26 **"SEC. 3647. RECEIPT OF BENEFITS - OTHER STATUTES.**

1 "Except to the extent specified in section 3630 of this Act, an individual
2 may not receive compensation under this Act for cancer and also receive
3 compensation under the Radiation Exposure Compensation Act (42 U.S.C. 2210
4 note) as a result of the same cancer.

5 **"SEC. 3648. EXCLUSIVITY OF REMEDY AGAINST THE UNITED**
6 **STATES, CONTRACTORS, AND SUBCONTRACTORS.**

7 "(a) IN GENERAL.--The liability of the United States or an
8 instrumentality of the United States under this Act with respect to a cancer
9 (including a specified cancer), an illness defined in sections 3621(8) and 3627(e)
10 of this Act, or death related thereto of a covered employee is exclusive and
11 instead of all other liability--

12 "(1) of--

13 "(A) the United States;

14 "(B) any instrumentality of the United States;

15 "(C) a contractor that contracted with the Department of
16 Energy to provide management and operation, management and
17 integration, or environmental remediation of a Department of
18 Energy facility (in its capacity as a contractor);

19 "(D) a subcontractor that provided services, including
20 construction, at a Department of Energy facility (in its capacity
21 as a subcontractor); and

22 "(E) an employee, agent, or assign of an entity specified
23 in subparagraphs (A) through (D)--

24 "(2) to--

25 "(A) the covered employee;

1 "(B) the covered employee's legal representative, spouse,
2 dependents, survivors, and next of kin, and
3 "(C) any other person, including any third party as to
4 whom the covered employee or the covered employee's legal
5 representative, spouse, dependents, survivors, or next of kin has
6 a cause of action relating to the cancer (including a specified
7 cancer), an illness defined in sections 3621(8) and 3627(e) of this
8 Act, or death, otherwise entitled to recover damages from the
9 United States, the instrumentality, the contractor, the
10 subcontractor, or the employee, agent, or assign of one of
11 them—
12 because of the cancer (including a specified cancer), an illness defined in
13 sections 3621(8) and 3627(e) of this Act, or death in any proceeding or action
14 including a direct judicial proceeding, a civil action, a proceeding in admiralty,
15 or a proceeding under a tort liability statute or the common law.
16 "(b) APPLICABILITY.—This section applies to all cases filed on or
17 after October 30, 2000.
18 "(c) WORKERS' COMPENSATION.—This section does not apply to
19 an administrative or judicial proceeding under a State or Federal workers'
20 compensation statute.
21 **"SEC. 3649. PAYMENT IN FULL SETTLEMENT OF CLAIMS.**
22 "(a) SATISFACTION.—The acceptance by an individual of payment of
23 compensation under this Act with respect to a covered employee shall be in full
24 satisfaction of all claims of or on behalf of that individual against the United
25 States, a Department of Energy contractor or subcontractor, a beryllium vendor,

1 atomic weapons employer or against any person with respect to that person's
2 performance of a contract with the United States that arise out of the exposure of a
3 covered beryllium employee, a covered employee with cancer, covered employee
4 exposed to the toxic substance for which a test of exposure in the performance of
5 duty is set forth in section 3627(c) or a covered uranium employees (as defined in
6 section 3630 of this Act), while so employed, to beryllium, radiation, the toxic
7 substance for which a test of exposure in the performance of duty is set forth in
8 section 3627(c), or radiation, respectively.
9 "(b) WORKERS' COMPENSATION.—This section does not apply to an
10 administrative or judicial proceeding under a State or Federal workers'
11 compensation statute.
12 **"SEC. 3650. SUBROGATION OF THE UNITED STATES.**
13 "(a) IN GENERAL.—If a cancer (including a specified cancer), toxic
14 illness or death for which compensation is payable under this Act is caused
15 under circumstances creating a legal liability in a person other than the United
16 States to pay damages, sections 8131 and 8132 of title 5, United States Code,
17 shall apply, except to the extent specified in this Act.
18 "(b) APPEARANCE OF EMPLOYEE.—For the purposes of this Act,
19 the provision in section 8131 of title 5, United States Code, that provides that
20 an employee required to appear as a party or witness in the prosecution of an
21 action described in that section is in an active duty status while so engaged shall
22 only apply to a Federal employee.
23 **"SEC. 3651. CONSTRUCTION WITH OTHER LAWS.**
24 "(a) IN GENERAL.—References in this Act to a provision of another
25 statute shall be considered as references to such provision, as amended and as
26 may be amended from time to time.

1 "(b) EMPLOYEE.—In applying any provision of chapter 81 of title 5,
2 United States Code (except section 8101), under this title, the term 'employee'
3 in such provision shall mean a covered employee.
4 "(c) EMPLOYEES COMPENSATION FUND.—In applying any
5 provision of chapter 81 of title 5, United States Code, under this Act, the term
6 'Employees Compensation Fund' in such provision shall mean the 'Energy
7 Employees Occupational Illness Compensation Fund'.".
8 **TITLE II TECHNICAL AND CONFORMING AMENDMENTS**
9 **SEC. 201 CONFORMING AMENDMENTS.**
10 (a) DELEGATION.—Section 3611(a) of the EEOICPA is amended by
11 striking the second sentence.
12 (b) ELIGIBILITY.—Section 3611 of the EEOICPA is amended by
13 striking subsection (c).
14 (c) COVERED BERYLLIUM EMPLOYEE.—Section 3621(7) of the
15 EEOICPA is amended by striking ", if and only if the employee is determined
16 to have been exposed to beryllium in the performance of duty in accordance
17 with section 3623(a)".
18 (d) COVERED BERYLLIUM ILLNESS.—Section 3621(8)(A) of the
19 EEOICPA is amended by inserting "or by other means designated by the
20 Secretary of Health and Human Services pursuant to section 3622 of this Act"
21 after "cells".
22 (e) CHRONIC BERYLLIUM DISEASE.— Section 3621(8)(B) of the
23 EEOICPA is amended by striking "Established chronic" and inserting
24 "Chronic".
25 (f) COVERED EMPLOYEE WITH CANCER.—Section 3621(9)(B) of
26 the EEOICPA is amended to read as follows:

1 "(B) An individual specified in clauses (i), (ii), or (iii):

2 "(i) A Department of Energy employee who contracted
3 cancer after beginning employment at a Department of Energy
4 facility.

5 "(ii) A Department of Energy contractor employee who
6 contracted cancer after beginning employment at a Department of
7 Energy facility.

8 "(iii) An atomic weapons employee who contracted cancer
9 after beginning employment at an atomic weapons employer
10 facility.".

11 (g) BERYLLIUM DISEASE.—Section 3621(13) of the EEOICPA is
12 amended by striking "established" the first time it appears and by inserting a
13 new subparagraph at the end as follows:

14 "(C) Other means designated by the Secretary of Health and
15 Human Services pursuant to section 3622 of this Act.".

16 (h) GASEOUS DIFFUSION PLANT.—Subsection 3621(14)(A) of the
17 EEOICPA is amended by striking "a gaseous diffusion plant" and replacing it
18 with "one or more of the gaseous diffusion plants".

19 (i) SPECIAL EXPOSURE COHORT.—Section 3621(14)(C) of the
20 EEOICPA is amended by striking "President" each time it appears and
21 inserting "Secretary of Health and Human Services".

22 (j) RADIATION.— Section 3621(15) of the EEOICPA is deleted.

1 (k) NEW DEFINITIONS.—Section 3621 of EEOICPA is amended by
2 redesignating paragraphs (16), (17), and (18) as (15), (16), and (17)
3 respectively and by inserting at the end, the following:
4 "(18) Each of the terms defined in subsections 8101(2), (3), (5)
5 – (11) and (17) – (20) of title 5, United States Code has the meaning
6 given that term in that statute when used in this Act.
7 "(19) The term 'time of injury' means–
8 "(A) in regard to a claim arising out of exposure to a
9 toxic substance, the last date on which a covered employee was
10 exposed to such toxic substance in the performance of duty in
11 accordance with sections 3623(a) or 3627(c) of this Act; or
12 "(B) in regard to a claim arising out of exposure to
13 radiation, the last date on which a covered employee was exposed
14 to radiation in the performance of duty in accordance with section
15 3623(b) of this Act or, in the case of a member of the Special
16 Exposure Cohort, the last date on which the member of the
17 Special Exposure Cohort was employed at the Department of
18 Energy facility at which the member was exposed to radiation.
19 "(20) The term 'toxic illness' means those illnesses defined in
20 sections 3621(8) and 3627(e) of this Act.
21 "(21) The term 'toxic substance' means a substance for which a
22 test of exposure in the performance of duty is set forth in section 3623(a)
23 or 3627(c) of this Act.

1 "(22) The term 'compensation' means the money allowance
2 payable under this Act and any other benefits paid for from the Energy
3 Employees Occupational Illness Compensation Fund, including the
4 alternative compensation payable pursuant to section 3629 of this Act,
5 and payments made pursuant to section 3630 of this Act.".
6 (l) ADDITIONAL DESIGNATIONS.—Section 3622 of the EEOICPA
7 is amended by--
8 (1) striking the title of the section and inserting "ADDITIONAL
9 DESIGNATIONS" in its place;
10 (2) striking "Not" and inserting "(a) BERYLLIUM
11 VENDORS.—Not" in its place, striking "President" each time it
12 appears and inserting "Secretary of Energy", striking "in consultation
13 with the Secretary of Energy;"; and
14 (3) inserting at the end new subsections (b) and (c) as follows:
15 "(b) ATOMIC WEAPONS EMPLOYERS.—The Secretary of
16 Energy may, from time to time, designate an entity as an atomic
17 weapons employer for the purposes of this Act if such entity meets the
18 definition of atomic weapons employer set forth in section 3621(4)(A) of
19 this Act.

1 "(c) MEANS OF ESTABLISHING COVERED BERYLLIUM
2 ILLNESSES.—The Secretary of Health and Human Services may from
3 time to time, and in consultation with the Secretary of Energy, specify
4 means of establishing the existence of a covered beryllium illness
5 referred to in section 3621(8)(A) or section 3621(13) of this Act, in
6 addition to the means already specified in such sections.".
7 (m) CANCER.—Section 3623(b) of the EEOICPA is amended by--
8 (1) inserting (1) before "An";
9 (2) striking "with cancer specified in subclause (I), (II), or (III)"
10 and inserting "specified in clause (i), (ii), or (iii)";
11 (3) striking "that" after "sustained";
12 (4) striking "cancer specified in that subclause" and inserting
13 "cancer was contracted after beginning employment as a Department of
14 Energy contractor employee or Department of Energy employee at a
15 Department of Energy facility or as an atomic weapons employee at an
16 atomic weapons employer facility and"; and
17 (5) inserting a new paragraph after paragraph (1) as follows:
18 "(2) A member of the Special Exposure Cohort shall be
19 determined to have sustained a specified cancer in the performance of
20 duty if, and only if, such individual contracted a specified cancer after
21 beginning employment at a Department of Energy facility for a
22 Department of Energy contractor or an atomic weapons employer facility

1 for an atomic weapons employer.".

2 (n) GUIDELINES.—Section 3623(c) of the EEOICPA is amended by—

3 (1) in paragraph (1), striking "President" and inserting

4 "Secretary of Health and Human Services"; and

5 (2) amending paragraph (2) to read as follows:

6 "(2) The Secretary of Health and Human Services shall establish

7 such guidelines after consultation with the Secretary of Energy and after

8 technical review by the Advisory Board on Radiation and Worker

9 Health.".

10 (o) INFORMATION.—Section 3623(e) of the EEOICPA is amended

11 by striking paragraph (1) and "(2)".

12 (p) CHRONIC RENAL DISEASE.— Section 3624(b) of the EEOICPA

13 is amended by striking "and" the third time it appears, striking "(3)" and

14 inserting "(4)", and inserting after paragraph (2) the following new paragraph:

15 "(3) whether this Act should be amended to provide benefits for chronic

16 renal disease; and".

17 (q) PNEUMOCONIOSES.— Section 3627(e)(2)(A) of the EEOICPA is

18 amended by striking "pneumoconioses of category 1/1 or higher" and inserting

19 "pneumoconioses of category 1/0 or higher".

20 (r) MEDICAL DOCUMENTATION.— Section 3627 of the EEOICPA

21 is amended by adding a new subsection (f) at the end as follows:

22 "(f) MEDICAL DOCUMENTATION.—Claimants seeking benefits

23 under this Act for the disease specified in subsection (e) of this section shall be

24 reimbursed from the compensation fund for reasonable diagnostic medical

25 expenses incurred by them in establishing their claims.".

1 (s) URANIUM EMPLOYEES AWARD.—Section 3630 of the
2 EEOICPA is amended to read as follows:
3 **"SEC. 3630. SEPARATE TREATMENT OF CERTAIN URANIUM**
4 **EMPLOYEES.**
5 "(a) COMPENSATION PROVIDED.—An individual who has been
6 awarded $100,000 under section 5 of the Radiation Exposure Compensation Act
7 (42 U.S.C. 2210 note) for a claim made under that Act shall receive
8 compensation under this section in the amount of $50,000. In the event an
9 individual who sustained an illness for which $100,000 was awarded under
10 section 5 of the Radiation Exposure Compensation Act dies before collecting
11 compensation pursuant to this subsection, the right to receive compensation under
12 this subsection shall be afforded to survivors in the order of precedence set forth
13 in section 8109 of title 5, United States Code.
14 "(b) OTHER BENEFITS.—An individual who sustained an illness for
15 which he or she received an award under section 5 of the Radiation Exposure
16 Compensation Act shall receive the compensation provided in subsection
17 3628(a)(2) of this Act as a result of that illness.
18 "(c) COORDINATION.—The compensation provided in subsections
19 (a) and (b) of this section is in addition to any payments received pursuant to the
20 Radiation Exposure Compensation Act. Sections 3643-3644 of this Act do not
21 apply to the compensation received pursuant to subsections (a) and (b) of this
22 section.
23 "(d) PAYMENT FROM COMPENSATION FUND.—The
24 compensation provided under this section, when authorized or approved by the

1 President, shall be paid from the compensation fund established under section
2 3612.
3 "(e) PROCEDURES REQUIRED.—The Attorney General shall
4 establish procedures to identify and notify each covered uranium employee, or
5 the survivor of that covered uranium employee if that employee is deceased, of
6 the availability of compensation and benefits under this section.".
7 (t) CLAIMANTS.—Section 3631of the EEOICPA is amended by—
8 (1) in subsection (a), striking "President" and inserting
9 "Secretary of Labor";
10 (2) in subsection (b), striking "President" and inserting
11 "Secretary of Energy in consultation with the Secretary of Labor"; and
12 (3) in subsection (c), striking "President" and inserting
13 "Secretary of Health and Human Services or the Secretary of Labor".
14 (u) PANEL.—Subsections (d)(1) and (d)(2)(A) of section 3661 of the
15 EEOICPA are amended to read as follows:
16 "(d) PANEL.—
17 "(1) NUMBER OF PANELS.—The Secretary shall establish
18 one or more physicians panels to administer this section. The Secretary,
19 in consultation with the Secretary of Health and Human Services, shall
20 determine the number of physicians panels appropriate to administer this
21 section, the number of physicians needed for each panel, and the area of
22 jurisdiction of each panel.
23 "(2) APPOINTMENT.
24 "(A) IN GENERAL.—The Secretary of Health and
25 Human Services shall nominate panel members with experience
26 and competency in diagnosing occupational illnesses, and

1 pursuant to section 3109 of title 5, United States Code, the
2 Secretary shall appoint the individuals nominated by the
3 Secretary of Health and Human Services.".
4 **SEC. 202 TECHNICAL AMENDMENTS.**
5 (a) CONFORMING CHANGE.—Section 1920 of title 18 is amended
6 by inserting in the title "or Energy employee's" after "Federal employee's"
7 and by inserting "or the Energy Employees Occupational Illness Compensation
8 Program Act of 2000" after "title 5".
9 (b) CONFORMING CHANGE.—Section 1921 of title 18 is amended
10 by inserting in the title "or Energy employees" after "Federal employees" and
11 by inserting "or the Energy Employees Occupational Illness Compensation
12 Program Act of 2000" after "title 5".
13 (c) ERA.—Section 211(a)(1) of the Energy Reorganization Act of 1974
14 (42 U.S.C. 5851(a)(1)) is amended by–
15 (1) in subparagraph (E), striking "or",
16 (2) in subparagraph (F), striking the period and inserting "; or",
17 and
18 (3) after subparagraph (F) inserting a new subparagraph as
19 follows:
20 "(G) filed an application for benefits or assistance under
21 the Energy Employees Occupational Illness Compensation
22 Program Act of 2000.".
23 (d) OFFICE OF WORKERS' COMPENSATION ADVOCATE.—Title
24 II of the Department of Energy Organization Act (42 U.S.C. 7131, et seq.) is
25 amended by adding at the end of the title the following:
26 "OFFICE OF WORKERS' COMPENSATION ADVOCATE

1 "SEC. 217. (a) There is established within the Department an Office of
2 Workers' Compensation Advocate. The Office shall be headed by a Director
3 who shall be appointed by the Secretary. The Director shall be compensated at
4 the rate provided for in level IV of the Executive Schedule under section 5315
5 of title 5, United States Code.
6 "(b) The Director shall be responsible for providing information,
7 research reports, and studies to support the implementation of the Energy
8 Employees Occupation Illness Compensation Program Act of 2000. Not later
9 than 90 days after the effective date of this section, the Director shall enter into
10 memoranda of agreement to provide for coordination of the efforts of the Office
11 with the Department of Labor and the Department of Health and Human
12 Services.
13 "(c) The Director shall coordinate efforts within the Department to
14 collect and make available to present and former employees of the Department
15 and its predecessor agencies, present and former employees of contractors and
16 subcontractors of the Department and its predecessor agencies, and other
17 individuals who are or were present at facilities owned or operated by the
18 Department or its predecessor agencies information on occupational conditions
19 and exposures to health hazards. This information shall include information on
20 substances and their chemical forms to which employees may have been
21 exposed, records and studies relevant to determining occupational hazards, raw
22 dosimetry and industrial hygiene data, results from medical screening programs,
23 accident and other relevant occurrence reports, and reports, assessments, or
24 reviews by contractors, consultants, or external entities relevant to assessing
25 risk of occupational hazards or illness.
26 "(d) If the Director determines that–

1 "(1) an entity within the Department or an entity that is the
2 recipient of a Departmental grant, contract, or cooperative agreement
3 possesses information necessary to carry out the Energy Employees
4 Occupation Illness Compensation Program Act of 2000, and
5 "(2) the production and sharing of that information under the
6 Energy Employees Occupation Illness Compensation Program Act of
7 2000 is being unreasonably delayed --
8 the Director, notwithstanding section 3213 of the National Nuclear Security
9 Administration Act, may direct the entity to produce the information
10 expeditiously in accordance with this section and the Energy Employees
11 Occupation Illness Compensation Program Act of 2000.
12 "(e) The Director shall inform and assist potential claimants under the
13 section 3631(c) of Energy Employees Occupation Illness Compensation
14 Program Act of 2000.".
15 **SEC. 203. AMENDMENT TO THE RADIATION EXPOSURE**
16 **COMPENSATION ACT.**
17 (a) APPROPRIATIONS.—Section 3 of the Radiation Exposure
18 Compensation Act (42 U.S.C. 2210 note) is amended by adding at its end a new
19 subsection (f) to read as follows:
20 "(f) Such sums as may be necessary to carry out the purposes of this
21 Act are hereby appropriated to the Fund.".
22 (b) COMPENSATION.—Section 6(e) of the Radiation Exposure
23 Compensation Act (42 U.S.C. 2210 note) is amended by adding "Except as
24 otherwise authorized by law," to the beginning of that subsection.
25 **SEC. 204. EFFECTIVE DATE**

1 The effective date of this Act is the later of July 31, 2001, or the date of
2 enactment of this Act.