

Stat. 1771, and is classified to section 2652 of Title 50, War and National Defense.

Section 7383d, Pub. L. 106-65, div. C, title XXXI, §3150, Oct. 5, 1999, 113 Stat. 939, which related to notice to congressional committees of certain security and counterintelligence failures within nuclear energy defense programs, was renumbered section 4505 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(h)(6), Nov. 24, 2003, 117 Stat. 1773, and is classified to section 2656 of Title 50, War and National Defense.

§ 7383e. Repealed. Pub. L. 114-113, div. M, title VII, § 701(e), Dec. 18, 2015, 129 Stat. 2930

Section, Pub. L. 106-65, div. C, title XXXI, §3151, Oct. 5, 1999, 113 Stat. 939, related to annual report by the President on espionage by the People's Republic of China.

§§ 7383f to 7383h-1. Transferred

CODIFICATION

Section 7383f, Pub. L. 106-65, div. C, title XXXI, §3152, Oct. 5, 1999, 113 Stat. 940, which related to the submission of annual reports on counterintelligence and security practices at national laboratories, was renumbered section 4507 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(h)(8)(A)-(C), Nov. 24, 2003, 117 Stat. 1773, and was classified to section 2658 of Title 50, War and National Defense, prior to repeal by Pub. L. 113-66, div. C, title XXXI, §3132(a)(1), Dec. 26, 2013, 127 Stat. 1068.

Section 7383g, Pub. L. 106-65, div. C, title XXXI, §3153, Oct. 5, 1999, 113 Stat. 940, which related to the submission of annual reports on security vulnerabilities of national laboratory computers, was renumbered section 4508 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(h)(9)(A)-(C), Nov. 24, 2003, 117 Stat. 1774, and was classified to section 2659 of Title 50, War and National Defense, prior to repeal by Pub. L. 114-113, div. M, title VII, §701(f), Dec. 18, 2015, 129 Stat. 2930.

Section 7383h, Pub. L. 106-65, div. C, title XXXI, §3154, Oct. 5, 1999, 113 Stat. 941; Pub. L. 106-398, §1 [div. C, title XXXI, §3135], Oct. 30, 2000, 114 Stat. 1654, 1654A-456, which related to a counterintelligence polygraph program for defense-related activities of the Department of Energy, was renumbered section 4504A of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(h)(5)(B)(i)-(iii), Nov. 24, 2003, 117 Stat. 1773, and is classified to section 2655 of Title 50, War and National Defense.

Section 7383h-1, Pub. L. 107-107, div. C, title XXXI, §3152, Dec. 28, 2001, 115 Stat. 1376, which related to a new counterintelligence polygraph program for the Department of Energy, was renumbered section 4504 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(h)(5)(A)(i)-(iii), Nov. 24, 2003, 117 Stat. 1772, and is classified to section 2654 of Title 50, War and National Defense.

§ 7383i. Definitions of national laboratory and nuclear weapons production facility

For purposes of this subchapter:

(1) The term “national laboratory” means any of the following:

(A) The Lawrence Livermore National Laboratory, Livermore, California.

(B) The Los Alamos National Laboratory, Los Alamos, New Mexico.

(C) The Sandia National Laboratories, Albuquerque, New Mexico and Livermore, California.

(2) The term “nuclear weapons production facility” means any of the following:

(A) The Kansas City Plant, Kansas City, Missouri.

(B) The Pantex Plant, Amarillo, Texas.

(C) The Y-12 Plant, Oak Ridge, Tennessee.

(D) The tritium operations at the Savannah River Site, Aiken, South Carolina.

(E) The Nevada Test Site, Nevada.

(Pub. L. 106-65, div. C, title XXXI, §3155, Oct. 5, 1999, 113 Stat. 942.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this subtitle”, meaning subtitle D of title XXXI of div. C of Pub. L. 106-65, Oct. 5, 1999, 113 Stat. 931, which is classified principally to this subchapter. For complete classification of subtitle D to the Code, see Short Title note set out under section 7383 of this title and Tables.

§ 7383j. Definition of Restricted Data

In this subchapter, the term “Restricted Data” has the meaning given that term in section 2014(y) of this title.

(Pub. L. 106-65, div. C, title XXXI, §3156, Oct. 5, 1999, 113 Stat. 942.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this subtitle”, meaning subtitle D of title XXXI of div. C of Pub. L. 106-65, Oct. 5, 1999, 113 Stat. 931, which is classified principally to this subchapter. For complete classification of subtitle D to the Code, see Short Title note set out under section 7383 of this title and Tables.

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, studies indicate that 98 percent of radiation-induced cancers within the nuclear weapons complex have occurred at dose levels below existing maximum safe thresholds.

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

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

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

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

(b) Sense of Congress

It is the sense of Congress that—

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

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

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

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

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

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

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

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

(Pub. L. 106-398, §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. 7384f 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. 7384l).

“(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)(i)(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 assistance 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. 7384(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. 7384(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, 2019, by Ex. Ord. No. 13811, Sept. 29, 2017, 82 F.R. 46363, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

Previous extension of term of Advisory Board on Radiation and Worker Health was contained in the following prior Executive Order:

Ex. Ord. No. 13708, Sept. 30, 2015, 80 F.R. 60271, extended term until Sept. 30, 2017.

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 subchapter referred to as the "compensation program"). The President shall carry out the compensation program through one or more Federal agencies or officials, as designated by the President.

(b) Purpose of program

The purpose of the compensation program is to provide for timely, uniform, and adequate compensation of covered employees and, where applicable, survivors of such employees, suffering from illnesses incurred by such employees in the performance of duty for the Department of Energy and certain of its contractors and sub-contractors.

(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).

(c) Financing of compensation fund

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

(d) Use of compensation fund

Subject to subsection (e), amounts in the compensation fund shall be used to carry out the compensation program.

(e) Administrative costs not paid from compensation fund

No cost incurred in carrying out the compensation program, or in administering the compensation fund, shall be paid from the compensation fund or set off against or otherwise deducted from any payment to any individual under the compensation program.

(f) Investment of amounts in compensation fund

Amounts in the compensation fund shall be invested in accordance with section 9702 of title 31, and any interest on, and proceeds from, any such investment shall be credited to and become a part of the compensation fund.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3612], Oct. 30, 2000, 114 Stat. 1654, 1654A-497.)

§ 7384f. Legislative proposal

(a) Legislative proposal required

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

(1) The types of compensation and benefits, including lost wages, medical benefits, and any lump-sum settlement payments, to be provided under the compensation program.

(2) Any adjustments or modifications necessary to appropriately administer the compensation program under part B.

(3) Whether to expand the compensation program to include other illnesses associated with exposure to toxic substances.

(4) Whether to expand the class of individuals who are members of the Special Exposure

Cohort (as defined in section 7384l(14) of this title).

(b) Assessment of potential covered employees and required amounts

The President shall include with the proposal for legislation under subsection (a) the following:

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

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3613], Oct. 30, 2000, 114 Stat. 1654, 1654A-498.)

§ 7384g. Authorization of appropriations

(a) In general

Pursuant to the authorization of appropriations in section 3103(a),¹ \$25,000,000 may be used for purposes of carrying out this subchapter.

(b) Compensation fund

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

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3614], Oct. 30, 2000, 114 Stat. 1654, 1654A-498.)

REFERENCES IN TEXT

Section 3103(a), referred to in subsec. (a), means section 1 [div. C, title XXXVI, §3103(a)] of Pub. L. 106-398, Oct. 30, 2000, 114 Stat. 1654, 1654A-449, which is not classified to the Code.

PART B—PROGRAM ADMINISTRATION

§ 7384l. Definitions for program administration

In this subchapter:

(1) The term “covered employee” means any of the following:

- (A) A covered beryllium employee.
- (B) A covered employee with cancer.
- (C) To the extent provided in section 7384r of this title, a covered employee with chronic silicosis (as defined in that section).

(2) The term “atomic weapon” has the meaning given that term in section 2014(d) of this title.

(3) The term “atomic weapons employee” means any of the following:

- (A) An individual employed by an atomic weapons employer during a period when the employer was processing or producing, for the use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling.
- (B) An individual employed—

- (i) at a facility with respect to which the National Institute for Occupational Safety and Health, in its report dated October 2003 and titled “Report on Residual Radioactive and Beryllium Contamination at

Atomic Weapons Employer Facilities and Beryllium Vendor Facilities”, or any update to that report, found that there is a potential for significant residual contamination outside of the period in which weapons-related production occurred;

(ii) by an atomic weapons employer or subsequent owner or operators of a facility described in clause (i); and

(iii) during a period, as specified in such report or any update to such report, of potential for significant residual radioactive contamination at such facility.

(4) The term “atomic weapons employer” means an entity, other than the United States, that—

(A) processed or produced, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling; and

(B) is designated by the Secretary of Energy as an atomic weapons employer for purposes of the compensation program.

(5) The term “atomic weapons employer facility” means a facility, owned by an atomic weapons employer, that is or was used to process or produce, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining or milling.

(6) The term “beryllium vendor” means any of the following:

(A) Atomics International.

(B) Brush Wellman, Incorporated, and its predecessor, Brush Beryllium Company.

(C) General Atomics.

(D) General Electric Company.

(E) NGK Metals Corporation and its predecessors, Kawecki-Beryllco, Cabot Corporation, BerylCo, and Beryllium Corporation of America.

(F) Nuclear Materials and Equipment Corporation.

(G) StarMet Corporation and its predecessor, Nuclear Metals, Incorporated.

(H) Wyman Gordan, Incorporated.

(I) Any other vendor, processor, or producer of beryllium or related products designated as a beryllium vendor for purposes of the compensation program under section 7384m of this title.

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

(A) A current or former employee (as that term is defined in section 8101(1) of title 5) who may have been exposed to beryllium at a Department of Energy facility or at a facility owned, operated, or occupied by a beryllium vendor.

(B) A current or former employee of—

(i) any entity that contracted with the Department of Energy to provide management and operation, management and integration, or environmental remediation of a Department of Energy facility; or

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

¹ See References in Text note below.

(C) A current or former employee of a beryllium vendor, or of a contractor or subcontractor of a beryllium vendor, during a period when the vendor was engaged in activities related to the production or processing of beryllium for sale to, or use by, the Department of Energy.

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

(A) Beryllium sensitivity as established by an abnormal beryllium lymphocyte proliferation test performed on either blood or lung lavage cells.

(B) Established chronic beryllium disease.

(C) Any injury, illness, impairment, or disability sustained as a consequence of a covered beryllium illness referred to in subparagraph (A) or (B).

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

(A) An individual with a specified cancer who is a member of the Special Exposure Cohort, if and only if that individual contracted that specified cancer after beginning employment at a Department of Energy facility (in the case of a Department of Energy employee or Department of Energy contractor employee) or at an atomic weapons employer facility (in the case of an atomic weapons employee).

(B)(i) An individual with cancer specified in subclause (I), (II), or (III) of clause (i), if and only if that individual is determined to have sustained that cancer in the performance of duty in accordance with section 7384n(b) of this title.

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) a proprietary interest; or

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

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

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

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

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

(iii) pulmonary function or exercise testing showing pulmonary deficits consistent with chronic beryllium disease.

(B) For diagnoses before January 1, 1993, the presence of—

(i) occupational or environmental history, or epidemiologic evidence of beryllium exposure; and

(ii) any three of the following criteria:

(I) Characteristic chest radiographic (or computed tomography (CT)) abnormalities.

(II) Restrictive or obstructive lung physiology testing or diffusing lung capacity defect.

(III) Lung pathology consistent with chronic beryllium disease.

(IV) Clinical course consistent with a chronic respiratory disorder.

(V) Immunologic tests showing beryllium sensitivity (skin patch test or beryllium blood test preferred).

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

(A) The employee was so employed for a number of work days aggregating at least 250 work days before February 1, 1992, at a gaseous diffusion plant located in Paducah, Kentucky, Portsmouth, Ohio, or Oak Ridge, Tennessee, and, during such employment—

(i) was monitored through the use of dosimetry badges for exposure at the plant of the external parts of employee’s body to radiation; or

(ii) worked in a job that had exposures comparable to a job that is or was monitored through the use of dosimetry badges.

(B) The employee was so employed before January 1, 1974, by the Department of Energy or a Department of Energy contractor or subcontractor on Amchitka Island, Alaska, and was exposed to ionizing radiation in the performance of duty related to the Long Shot, Milrow, or Cannikin underground nuclear tests.

(C)(i) Subject to clause (ii), the employee is an individual designated as a member of the Special Exposure Cohort by the President for purposes of the compensation program under section 7384q of this title.

(ii) A designation under clause (i) shall, unless Congress otherwise provides, take effect on the date that is 30 days after the date on which the President submits to Congress a report identifying the individuals covered by the designation and describing the criteria used in designating those individuals.

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

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

- (A) alpha particles;
- (B) beta particles;
- (C) neutrons;
- (D) gamma rays; or
- (E) accelerated ions or subatomic particles from accelerator machines.

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

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

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3621], Oct. 30, 2000, 114 Stat. 1654, 1654A-498; Pub. L. 107-20, title II, §2403(a), July 24, 2001, 115 Stat. 175; Pub. L. 107-107, div. C, title XXXI, §3151(a)(1), (4)(C), Dec. 28, 2001, 115 Stat. 1371, 1374; Pub. L. 108-375, div. C, title XXXI, §§3166(b)(2), 3168(a), Oct. 28, 2004, 118 Stat. 2189, 2190.)

REFERENCES IN TEXT

Executive Order No. 12344, referred to in par. (12)(A), is set out as a note under section 2511 of Title 50, War and National Defense.

Section 4(b)(2) of the Radiation Exposure Compensation Act, referred to in par. (17)(A), is section 4(b)(2) of Pub. L. 101-426, which is set out in a note under section 2210 of this title.

AMENDMENTS

2004—Par. (3). Pub. L. 108-375, §3168(a), amended par. (3) generally. Prior to amendment, par. (3) read as fol-

lows: “The term ‘atomic weapons employee’ means an individual employed by an atomic weapons employer during a period when the employer was processing or producing, for the use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling.”

Par. (14)(C)(ii). Pub. L. 108-375, §3166(b)(2), substituted “30 days” for “180 days”.

2001—Par. (17)(C). Pub. L. 107-20 added subpar. (C).

Par. (17)(D). Pub. L. 107-107, §3151(a)(1), added subpar. (D).

Par. (18). Pub. L. 107-107, §3151(a)(4)(C), struck out par. (18) which read as follows: “The term ‘survivor’ means any individual or individuals eligible to receive compensation pursuant to section 8133 of title 5.”

EFFECTIVE DATE OF 2001 AMENDMENTS

Pub. L. 107-107, div. C, title XXXI, §3151(a)(4)(D), Dec. 28, 2001, 115 Stat. 1374, provided that: “The amendments made by this paragraph [amending this section and sections 7384s and 7384u of this title] shall take effect on July 1, 2001.”

Pub. L. 107-20, title II, §2403(b), July 24, 2001, 115 Stat. 175, provided that: “This section [amending this section] shall be effective on October 1, 2001.”

§ 7384m. Expansion of list of beryllium vendors

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

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3622], Oct. 30, 2000, 114 Stat. 1654, 1654A-502.)

DELEGATION OF FUNCTIONS

For delegation of certain functions of the President under this section, see Ex. Ord. No. 13179, Dec. 7, 2000, 65 F.R. 77487, set out as a note under section 7384 of this title.

§ 7384n. Exposure in the performance of duty

(a) Beryllium

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

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

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

(b) Cancer

An individual with cancer specified in subclause (I), (II), or (III) of section 7384l(9)(B)(ii) of this title shall be determined to have sustained

that cancer in the performance of duty for purposes of the compensation program if, and only if, the cancer specified in that subclause was at least as likely as not related to employment at the facility specified in that subclause, as determined in accordance with the guidelines established under subsection (c).

(c) Guidelines

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

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

(3) Such guidelines shall—

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

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

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

(4) In the case of an atomic weapons employee described in section 7384l(3)(B) of this title, the following doses of radiation shall be treated, for purposes of paragraph (3)(A) of this subsection, as part of the radiation dose received by the employee at such facility:

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

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

(d) Methods for radiation dose reconstructions

(1) The President shall, through any Federal agency (other than the Department of Energy) or official (other than the Secretary of Energy or any other official within the Department of Energy) that the President may designate, establish by regulation methods for arriving at reasonable estimates of the radiation doses received by an individual specified in subparagraph (B) of section 7384l(9) of this title at a facility specified in that subparagraph by each of the following employees:

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

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

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

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

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

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

(e) Information on radiation doses

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

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

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3623], Oct. 30, 2000, 114 Stat. 1654, 1654A-502; Pub. L. 108-375, div. C, title XXXI, §3168(b), Oct. 28, 2004, 118 Stat. 2190.)

REFERENCES IN TEXT

Section 7(b) of the Orphan Drug Act, referred to in subsec. (c)(3)(A), is section 7(b) of Pub. L. 97-414, which is set out in a note under section 241 of this title.

AMENDMENTS

2004—Subsec. (c)(4). Pub. L. 108-375 added par. (4).

DELEGATION OF FUNCTIONS

For delegation of certain functions of the President under this section, see Ex. Ord. No. 13179, Dec. 7, 2000, 65 F.R. 77487, set out as a note under section 7384 of this title.

§ 7384o. Advisory Board on Radiation and Worker Health

(a) Establishment

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

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

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

(b) Duties

The Board shall advise the President on—

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

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

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

(c) Staff

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

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

(d) Expenses

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

(e) Security clearances

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

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

(f) Information

The Secretary of Energy shall, in accordance with law, provide to the Board and the contractors of the Board access to any information that the Board considers relevant to carry out its responsibilities under this subchapter, including information such as Restricted Data (as defined in section 2014(y) of this title) and information covered by the Privacy Act [5 U.S.C. 552a].

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3624], Oct. 30, 2000, 114 Stat. 1654, 1654A-504; Pub. L. 108-375, div. C, title XXXI, §3166(a), Oct. 28, 2004, 118 Stat. 2188.)

REFERENCES IN TEXT

The Privacy Act, referred to in subsec. (f), is probably a reference to section 552a of Title 5, Government Orga-

nization and Employees. See Short Title note set out under section 552a of Title 5.

AMENDMENTS

2004—Subsecs. (e), (f). Pub. L. 108-375 added subsecs. (e) and (f).

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

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

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

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3625], Oct. 30, 2000, 114 Stat. 1654, 1654A-504.)

§ 7384q. Designation of additional members of special exposure cohort

(a) Advice on additional members

(1) The Advisory Board on Radiation and Worker Health under section 7384o of this title shall advise the President whether there is a class of employees at any Department of Energy facility who likely were exposed to radiation at that facility but for whom it is not feasible to estimate with sufficient accuracy the radiation dose they received.

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

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

(b) Designation of additional members

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

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

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

(c) Deadlines

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

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

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

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

(d) Access to information

The Secretary of Energy shall provide, in accordance with law, the Secretary of Health and Human Services and the members and staff of the Advisory Board on Radiation and Worker Health access to relevant information on worker exposures, including access to Restricted Data (as defined in section 2014(y) of this title).¹

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3626], Oct. 30, 2000, 114 Stat. 1654, 1654A-504; Pub. L. 107-107, div. C, title XXXI, §3151(a)(2), Dec. 28, 2001, 115 Stat. 1372; Pub. L. 108-375, div. C, title XXXI, §3166(b)(1), Oct. 28, 2004, 118 Stat. 2188.)

AMENDMENTS

2004—Subsecs. (c), (d). Pub. L. 108-375 added subsec. (c) and redesignated former subsec. (c) as (d).

2001—Subsec. (b). Pub. L. 107-107 inserted “, or at an atomic weapons employer facility,” after “Department of Energy facility” in introductory provisions.

§ 7384r. Separate treatment of chronic silicosis**(a) Sense of Congress**

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

¹ So in original. A closing parenthesis should probably follow “title”.

prate before these workers are included in the compensation program.

(b) Certification by President

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

(c) Exposure to silica in the performance of duty

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

(d) Covered employee with chronic silicosis

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

(e) Chronic silicosis

For purposes of this subchapter, the term “chronic silicosis” means a nonmalignant lung disease if—

(1) the initial occupational exposure to silica dust preceded the onset of silicosis by at least 10 years; and

(2) a written diagnosis of silicosis is made by a medical doctor and is accompanied by—

(A) a chest radiograph, interpreted by an individual certified by the National Institute for Occupational Safety and Health as a B reader, classifying the existence of pneumoconioses of category 1/0 or higher;

(B) results from a computer assisted tomograph or other imaging technique that are consistent with silicosis; or

(C) lung biopsy findings consistent with silicosis.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3627], Oct. 30, 2000, 114 Stat. 1654, 1654A-505; Pub. L. 107-107, div. C, title XXXI, §3151(a)(3), Dec. 28, 2001, 115 Stat. 1372.)

AMENDMENTS

2001—Subsec. (e)(2)(A). Pub. L. 107-107 substituted “category 1/0” for “category 1/1”.

§ 7384s. Compensation and benefits to be provided**(a) Compensation provided**

(1) Except as provided in paragraph (2), a covered employee, or the survivor of that covered

employee if the employee is deceased, shall receive compensation for the disability or death of that employee from that employee's occupational illness in the amount of \$150,000.

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

(b) Medical benefits

A covered employee shall receive medical benefits under section 7384t of this title for that employee's occupational illness.

(c) Beryllium sensitivity monitoring

An individual receiving beryllium sensitivity monitoring under this subsection shall receive the following:

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

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

(d) Payment from compensation fund

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

(e) Payments in the case of deceased persons

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

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

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

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

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

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

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

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

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

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

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

(3) For purposes of this subsection—

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

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

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

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

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

(f) Effective date

This section shall take effect on July 31, 2001, unless Congress otherwise provides in an Act enacted before that date.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3628], Oct. 30, 2000, 114 Stat. 1654, 1654A-506; Pub. L. 107-107, div. C, title XXXI, §3151(a)(4)(A), Dec. 28, 2001, 115 Stat. 1372.)

AMENDMENTS

2001—Subsec. (e). Pub. L. 107-107 amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows:

"(1) Subject to the provisions of this section, if a covered employee dies before the effective date specified in subsection (f) of this section, whether or not the death is a result of that employee's occupational illness, a survivor of that employee may, on behalf of that survivor and any other survivors of that employee, receive the compensation provided for under this section.

"(2) The right to receive compensation under this section shall be afforded to survivors in the same order of precedence as that set forth in section 8109 of title 5."

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-107 effective July 1, 2001, see section 3151(a)(4)(D) of Pub. L. 107-107, set out as a note under section 7384t of this title.

§ 7384t. Medical benefits

(a) Medical benefits provided

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

(b) Persons furnishing benefits

(1) These services, appliances, and supplies shall be furnished by or on the order of United

States medical officers and hospitals, or, at the individual's option, by or on the order of physicians and hospitals designated or approved by the President.

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

(c) Transportation and expenses

The individual may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances, and supplies.

(d) Commencement of benefits

An individual receiving benefits under this section shall be furnished those benefits as of the date on which that individual submitted the claim for those benefits in accordance with this subchapter.

(e) Payment from compensation fund

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

(f) Effective date

This section shall take effect on July 31, 2001, unless Congress otherwise provides in an Act enacted before that date.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3629], Oct. 30, 2000, 114 Stat. 1654, 1654A-507.)

§ 7384u. Separate treatment of certain uranium employees

(a) Compensation provided

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

(b) Medical benefits

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

(c) Coordination with RECA

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

(d) Payment from compensation fund

The compensation provided under this section and the compensation provided under section 5 of the Radiation Exposure Compensation Act, when authorized or approved by the President, shall be paid from the compensation fund established under section 7384e of this title.

(e) Payments in the case of deceased persons

(1) In the case of a covered employee who is deceased at the time of payment of compensation under this section, whether or not the

death is the result of the covered employee's occupational illness, such payment may be made only as follows:

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

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

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

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

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

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

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

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

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

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

(3) For purposes of this subsection—

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

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

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

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

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

(f) Procedures required

The President shall establish procedures to identify and notify each covered uranium em-

ployee, or the survivor of that covered uranium employee if that employee is deceased, of the availability of compensation and benefits under this section.

(g) Effective date

This section shall take effect on July 31, 2001, unless Congress otherwise provides in an Act enacted before that date.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3630], Oct. 30, 2000, 114 Stat. 1654, 1654A-507; Pub. L. 107-107, div. C, title XXXI, §3151(a)(4)(B), Dec. 28, 2001, 115 Stat. 1373; Pub. L. 108-375, div. C, title XXXI, §3165(a), Oct. 28, 2004, 118 Stat. 2187.)

REFERENCES IN TEXT

The Radiation Exposure Compensation Act, referred to in subsecs. (a) to (d), is Pub. L. 101-426, Oct. 15, 1990, 104 Stat. 920, as amended, which is set out as a note under section 2210 of this title.

AMENDMENTS

2004—Subsec. (d). Pub. L. 108-375 inserted “and the compensation provided under section 5 of the Radiation Exposure Compensation Act” after “The compensation provided under this section”.

2001—Subsec. (e). Pub. L. 107-107 amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows:

“(1) Subject to the provisions of this section, if a covered uranium employee dies before the effective date specified in subsection (g) of this section, whether or not the death is a result of the illness specified in subsection (b) of this section, a survivor of that employee may, on behalf of that survivor and any other survivors of that employee, receive the compensation provided for under this section.

“(2) The right to receive compensation under this section shall be afforded to survivors in the same order of precedence as that set forth in section 8109 of title 5.”

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-107 effective July 1, 2001, see section 3151(a)(4)(D) of Pub. L. 107-107, set out as a note under section 7384f of this title.

§ 7384v. Assistance for claimants and potential claimants

(a) Assistance for claimants

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

(1) assistance in securing medical testing and diagnostic services necessary to establish the existence of a covered beryllium illness, chronic silicosis, or cancer; and

(2) such other assistance as may be required to develop facts pertinent to the claim.

(b) Assistance for potential claimants

The President shall take appropriate actions to inform and assist covered employees who are potential claimants under the compensation program, and other potential claimants under the compensation program, of the availability of compensation under the compensation program, including actions to—

(1) ensure the ready availability, in paper and electronic format, of forms necessary for making claims;

(2) provide such covered employees and other potential claimants with information and

other support necessary for making claims, including—

(A) medical protocols for medical testing and diagnosis to establish the existence of a covered beryllium illness, chronic silicosis, or cancer; and

(B) lists of vendors approved for providing laboratory services related to such medical testing and diagnosis; and

(3) provide such additional assistance to such covered employees and other potential claimants as may be required for the development of facts pertinent to a claim.

(c) Information from beryllium vendors and other contractors

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

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3631], Oct. 30, 2000, 114 Stat. 1654, 1654A-508.)

DELEGATION OF FUNCTIONS

For delegation of certain functions of the President under this section, see Ex. Ord. No. 13179, Dec. 7, 2000, 65 F.R. 77487, set out as a note under section 7384 of this title.

§ 7384w. Subpoenas; oaths; examination of witnesses

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

(1) issue subpoenas for and compel the attendance of witnesses;

(2) administer oaths;

(3) examine witnesses; and

(4) require the production of books, papers, documents, and other evidence.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3632], as added Pub. L. 108-375, div. C, title XXXI, §3163(a), Oct. 28, 2004, 118 Stat. 2186.)

§ 7384w-1. Completion of site profiles

(a) In general

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

(b) Information

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

(c) Definition

In this section, the term “site profile” means an exposure assessment of a facility that identi-

fies the toxic substances or processes that were commonly used in each building or process of the facility, and the time frame during which the potential for exposure to toxic substances existed.

(d) Time frames

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

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3633], as added Pub. L. 108-375, div. C, title XXXI, §3166(c), Oct. 28, 2004, 118 Stat. 2189.)

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

§ 7385. Offset for certain payments

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

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3641], Oct. 30, 2000, 114 Stat. 1654, 1654A-509; Pub. L. 108-375, div. C, title XXXI, §3162(a), Oct. 28, 2004, 118 Stat. 2186.)

AMENDMENTS

2004—Pub. L. 108-375 substituted “this subchapter” for “part B” and “on account of the exposure for which compensation is payable under this subchapter” for “on account of the exposure of a covered beryllium employee, covered employee with cancer, covered employee with chronic silicosis (as defined in section 7384r of this title), or covered uranium employee (as defined in section 7384u of this title), while so employed, to beryllium, radiation, silica, or radiation, respectively”.

§ 7385a. Subrogation of the United States

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

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3642], Oct. 30, 2000, 114 Stat. 1654, 1654A-509; Pub. L. 108-375, div. C, title XXXI, §3162(b), Oct. 28, 2004, 118 Stat. 2186.)

AMENDMENTS

2004—Pub. L. 108-375 substituted “this subchapter” for “part B”.

§ 7385b. Payment in full settlement of claims

Except as provided in part E, the acceptance by an individual of payment of compensation under part B with respect to a covered employee shall be in full satisfaction of all claims of or on

behalf of that individual against the United States, against a Department of Energy contractor or subcontractor, beryllium vendor, or atomic weapons employer, or against any person with respect to that person's performance of a contract with the United States, that arise out of an exposure referred to in section 7385 of this title.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3643], Oct. 30, 2000, 114 Stat. 1654, 1654A-509; Pub. L. 108-375, div. C, title XXXI, §3162(c), Oct. 28, 2004, 118 Stat. 2186.)

AMENDMENTS

2004—Pub. L. 108-375 substituted “Except as provided in part E, the acceptance” for “The acceptance”.

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

(a) In general

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

(1) of—

(A) the United States;

(B) any instrumentality of the United States;

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

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

(E) an employee, agent, or assign of an entity specified in subparagraphs (A) through (D);

(2) to—

(A) the covered employee;

(B) the covered employee's legal representative, spouse, dependents, survivors, and next of kin; and

(C) any other person, including any third party as to whom the covered employee, or the covered employee's legal representative, spouse, dependents, survivors, or next of kin, has a cause of action relating to the cancer (including a specified cancer), chronic silicosis, covered beryllium illness, or death, otherwise entitled to recover damages from the United States, the instrumentality, the contractor, the subcontractor, or the employee, agent, or assign of one of them,

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

(b) Applicability

This section applies to all cases filed on or after October 30, 2000.

(c) Workers' compensation

This section does not apply to an administrative or judicial proceeding under a Federal or State workers' compensation law.

(d) Applicability to part E

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

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3644], Oct. 30, 2000, 114 Stat. 1654, 1654A-509; Pub. L. 108-375, div. C, title XXXI, §3162(d), Oct. 28, 2004, 118 Stat. 2186.)

AMENDMENTS

2004—Subsec. (d). Pub. L. 108-375 added subsec. (d).

§ 7385d. Election of remedy for beryllium employees and atomic weapons employees**(a) Effect of tort cases filed before enactment of original law**

(1) Except as provided in paragraph (2), if an otherwise eligible individual filed a tort case specified in subsection (d) before October 30, 2000, such individual shall be eligible for compensation and benefits under part B.

(2) If such tort case remained pending as of December 28, 2001, and such individual does not dismiss such tort case before December 31, 2003, such individual shall not be eligible for such compensation or benefits.

(b) Effect of tort cases filed between enactment of original law and enactment of 2001 amendments

(1) Except as provided in paragraph (2), if an otherwise eligible individual filed a tort case specified in subsection (d) during the period beginning on October 30, 2000, and ending on December 28, 2001, such individual shall not be eligible for such compensation or benefits.

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

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

(A) April 30, 2003.

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

(c) Effect of tort cases filed after enactment of 2001 amendments

(1) If an otherwise eligible individual files a tort case specified in subsection (d) after December 28, 2001, such individual shall not be eligible for such compensation or benefits if a final court decision is entered against such individual in such tort case.

(2) If such a final court decision is not entered, such individual shall nonetheless not be eligible for such compensation or benefits, except as follows: If such individual dismisses such tort case

on or before the last permissible date specified in paragraph (3), such individual shall be eligible for such compensation and benefits.

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

(A) April 30, 2003.

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

(d) Covered tort cases

A tort case specified in this subsection is a tort case alleging a claim referred to in section 7385b of this title against a beryllium vendor or atomic weapons employer.

(e) Workers' compensation

This section does not apply to an administrative or judicial proceeding under a State or Federal workers' compensation law.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3645], Oct. 30, 2000, 114 Stat. 1654, 1654A-510; Pub. L. 107-107, div. C, title XXXI, §3151(a)(5), Dec. 28, 2001, 115 Stat. 1374.)

AMENDMENTS

2001—Subsecs. (a) to (d). Pub. L. 107-107 amended headings and text of subsecs. (a) to (d) generally, substituting present provisions for provisions relating to election to file suit in subsec. (a), applicable time limits in subsec. (b), dismissal of claims in subsec. (c), and dismissal of pending suit in subsec. (d).

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

Compensation or benefits provided to an individual under this subchapter—

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

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

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3646], Oct. 30, 2000, 114 Stat. 1654, 1654A-510; Pub. L. 108-375, div. C, title XXXI, §3162(e), Oct. 28, 2004, 118 Stat. 2186.)

AMENDMENTS

2004—Pub. L. 108-375 substituted “this subchapter” for “part B”.

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

No claim cognizable under this subchapter shall be assignable or transferable.

(b) Choice of remedies

No individual may receive more than one payment of compensation under part B.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3647], Oct. 30, 2000, 114 Stat. 1654, 1654A-511; Pub. L. 108-375, div. C, title XXXI, §3162(f), Oct. 28, 2004, 118 Stat. 2186.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108-375 substituted “this subchapter” for “part B”.

§ 7385g. Attorney fees**(a) General rule**

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

(b) Applicable percentage limitations

The percentage referred to in subsection (a) is—

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

(c) Inapplicability to other services

This section shall not apply with respect to services rendered that are not in connection with such a claim for payment of lump-sum compensation.

(d) Penalty

Any such representative who violates this section shall be fined not more than \$5,000.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3648], Oct. 30, 2000, 114 Stat. 1654, 1654A-511; Pub. L. 107-107, div. C, title XXXI, §3151(a)(6), Dec. 28, 2001, 115 Stat. 1375.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107-107, §3151(a)(6)(A), inserted “for payment of lump-sum compensation” after “the claim of an individual”.

Subsec. (b)(1). Pub. L. 107-107, §3151(a)(6)(B), inserted “for payment of lump-sum compensation” after “initial claim”.

Subsec. (b)(2). Pub. L. 107-107, §3151(a)(6)(C), substituted “with respect to objections to a recommended decision denying payment of lump-sum compensation” for “with respect to any claim with respect to which a representative has made a contract for services before October 30, 2000”.

Subsecs. (c), (d). Pub. L. 107-107, §3151(a)(6)(D), (E), added subsec. (c) and redesignated former subsec. (c) as (d).

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

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

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3649], Oct. 30, 2000, 114 Stat. 1654, 1654A-511; Pub. L. 108-375, div. C, title XXXI, §3162(g), Oct. 28, 2004, 118 Stat. 2186.)

AMENDMENTS

2004—Pub. L. 108-375 substituted “this subchapter” for “part B” in two places.

§ 7385i. Forfeiture of benefits by convicted felons**(a) Forfeiture of compensation**

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

(b) Information

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

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3650], Oct. 30, 2000, 114 Stat. 1654, 1654A-511; Pub. L. 108-375, div. C, title XXXI, §3162(h), Oct. 28, 2004, 118 Stat. 2186.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108-375 substituted “this subchapter” for “part B” wherever appearing.

§ 7385j. Coordination with other Federal radiation compensation laws

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

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3651], Oct. 30, 2000, 114 Stat. 1654, 1654A-512.)

REFERENCES IN TEXT

The Radiation Exposure Compensation Act, referred to in text, is Pub. L. 101-426, Oct. 15, 1990, 104 Stat. 920, as amended, which is set out as a note under section 2210 of this title.

§ 7385j-1. Social Security earnings information

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

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3652], as added Pub. L. 108-375, div. C, title XXXI, §3163(b), Oct. 28, 2004, 118 Stat. 2187.)

§ 7385j-2. Recovery and waiver of overpayments**(a) In general**

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

(b) Waiver

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

(c) Liability

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

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3653], as added Pub. L. 108-375, div. C, title XXXI, §3163(c), Oct. 28, 2004, 118 Stat. 2187.)

PART D—ASSISTANCE IN STATE WORKERS'
COMPENSATION PROCEEDINGS

§ 7385o. Repealed. Pub. L. 108-375, div. C, title XXXI, §3162(i), Oct. 28, 2004, 118 Stat. 2186

Section, Pub. L. 106-398, §1 [div. C, title XXXVI, §3661], Oct. 30, 2000, 114 Stat. 1654, 1654A-512, authorized Secretary of Energy to enter agreements with States to provide assistance to Department of Energy contractor employees in filing claims under the appropriate State workers' compensation system.

PART E—CONTRACTOR EMPLOYEE COMPENSATION

§ 7385s. Definitions

In this part:

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

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

(3) The term "Secretary" means the Secretary of Labor.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3671], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2178.)

§ 7385s-1. Compensation to be provided

Subject to the other provisions of this part:

(1) Contractor employees

A covered DOE contractor employee shall receive contractor employee compensation

under this part in accordance with section 7385s-2 of this title.

(2) Survivors

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

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

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

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3672], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2178.)

§ 7385s-2. Compensation schedule for contractor employees**(a) Compensation provided**

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

(1) Impairment

(A) The Secretary shall determine—

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

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

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

(2) Wage loss

(A) The Secretary shall determine—

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

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

(iii) beginning with the calendar year that includes the calendar month referred to in clause (i), through and including the calendar year during which the employee attained normal retirement age (for purposes of the Social Security Act [42 U.S.C. 301 et seq.]—

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

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

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

(i) \$10,000 multiplied by the number referred to in clause (iii)(I) of subparagraph (A); and

(ii) \$15,000 multiplied by the number referred to in clause (iii)(II) of subparagraph (A).

(b) Determination of minimum impairment rating

For purposes of subsection (a), a minimum impairment rating shall be determined in accordance with the American Medical Association's Guides to the Evaluation of Permanent Impairment.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3673], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2179.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(2)(A)(iii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

§ 7385s-3. Compensation schedule for survivors

(a) Categories of compensation

The amount of contractor employee compensation under this part for the survivor of a covered DOE contractor employee shall be determined as follows:

(1) Category one

The survivor shall receive the amount of \$125,000, if the Secretary determines that—

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

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

(2) Category two

The survivor shall receive the amount of \$150,000, if paragraph (1) applies to the employee and the Secretary also determines that there was an aggregate period of not less than 10 years, before the employee attained normal retirement age (for purposes of the Social Security Act [42 U.S.C. 301 et seq.]), during which, as the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility, the employee's annual wage did not exceed 50 percent of the average annual wage of that employee, as determined under section 7385s-2(a)(2)(A)(ii) of this title.

(3) Category three

The survivor shall receive the amount of \$175,000, if paragraph (1) applies to the employee and the Secretary also determines that there was an aggregate period of not less than 20 years, before the employee attained normal retirement age (for purposes of the Social Security Act [42 U.S.C. 301 et seq.]), during which, as the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility, the employee's annual wage did not exceed 50 percent of the average annual wage of that employee, as determined under section 7385s-2(a)(2)(A)(ii) of this title.

(b) One amount only

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

(c) Determination and allocation of shares

The amount under subsection (a) shall be paid only as follows:

(1) If a covered spouse is alive at the time of payment, such payment shall be made to such surviving spouse.

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

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

(A) a covered spouse described in paragraph (1); and

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

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

(d) Definitions

In this section:

(1) The term "covered spouse" means a spouse of the employee who was married to the employee for at least one year immediately before the employee's death.

(2) The term "covered child" means a child of the employee who, as of the employee's death—

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

(B) had not attained the age of 23 years and was a full-time student who had been continuously enrolled as a full-time student in one or more educational institutions since attaining the age of 18 years; or

(C) had been incapable of self-support.

(3) The term “child” includes a recognized natural child, a stepchild who lived with an individual in a regular parent-child relationship, and an adopted child.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3674], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2180.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(2), (3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

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

(a) Cases determined under part B

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

(b) Cases determined under former part D

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

(c) Other cases

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

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

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

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

(d) Applications by spouses and children

If a spouse or child of a Department of Energy contractor employee applies for benefits under this part, the Secretary shall make a determination under this section with respect to that em-

ployee without regard to whether the spouse is a “covered spouse”, or the child is a “covered child”, under this part.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3675], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2181.)

REFERENCES IN TEXT

Section 7385o of this title, referred to in subsec. (b), was repealed by Pub. L. 108-375, div. C, title XXXI, §3162(i), Oct. 28, 2004, 118 Stat. 2186.

§ 7385s-5. Applicability to certain uranium employees

(a) In general

This part shall apply to—

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

(2) a section 5 uranium worker determined under section 7385s-4(c) of this title to have contracted a covered illness through exposure to a toxic substance at a section 5 mine or mill,

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

(b) Definitions

In this section:

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

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

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

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

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3676], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2182.)

REFERENCES IN TEXT

The Radiation Exposure Compensation Act, referred to in subsec. (b), is Pub. L. 101-426, Oct. 15, 1990, 104 Stat. 920, as amended, which is set out as a note under section 2210 of this title.

§ 7385s-6. Administrative and judicial review

(a) Judicial review

A person adversely affected or aggrieved by a final decision of the Secretary under this part may review that order in the United States district court in the district in which the injury

was sustained, the employee lives, the survivor lives, or the District of Columbia, by filing in such court within 60 days after the date on which that final decision was issued a written petition praying that such decision be modified or set aside. The person shall also provide a copy of the petition to the Secretary. Upon such filing, the court shall have jurisdiction over the proceeding and shall have the power to affirm, modify, or set aside, in whole or in part, such decision. The court may modify or set aside such decision only if the court determines that such decision was arbitrary and capricious.

(b) Administrative review

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

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3677], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2182.)

§ 7385s-7. Physicians services

(a) In general

The Secretary may utilize the services of physicians for purposes of making determinations under this part.

(b) Physicians

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

(c) Arrangement

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

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3678], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2182.)

§ 7385s-8. Medical benefits

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

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3679], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2183.)

§ 7385s-9. Attorney fees

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

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3680], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2183.)

§ 7385s-10. Administrative matters

(a) In general

The Secretary shall administer this part.

(b) Contract authority

The Secretary may enter into contracts with appropriate persons and entities to administer this part.

(c) Records

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

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

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

(d) Information

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

(e) Regulations

The Secretary shall prescribe regulations necessary for the administration of this part. The initial regulations shall be prescribed not later than 210 days after October 28, 2004. The Secretary may prescribe interim final regulations necessary to meet the deadlines specified in this part.

(f) Transition provisions

(1) The Secretary shall commence the administration of the provisions of this part not later than 210 days after October 28, 2004.

(2) Until the commencement of the administration of this part, the Department of Energy Physicians Panels appointed pursuant to part D shall continue to consider and issue determinations concerning any cases pending before such Panels immediately before October 28, 2004.

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

(g) Previous applications

Upon the commencement of the administration of this part, any application previously

filed with the Secretary of Energy pursuant to part D shall be considered to have been filed with the Secretary as a claim for benefits pursuant to this part.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3681], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2183.)

REFERENCES IN TEXT

Part D, referred to in subsecs. (f)(2), (3) and (g), was repealed by Pub. L. 108-375, div. C, title XXXI, §3162(i), Oct. 28, 2004, 118 Stat. 2186.

§ 7385s-11. Coordination of benefits with respect to State workers compensation

(a) In general

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

(b) Waiver

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

(c) Information

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

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3682], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2184.)

§ 7385s-12. Maximum aggregate compensation

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

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3683], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2184.)

§ 7385s-13. Funding of administrative costs

There is authorized and hereby appropriated to the Secretary for fiscal year 2005 and there-

after such sums as may be necessary to carry out this part.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3684], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2184.)

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

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

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3685], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2185.)

§ 7385s-15. Office of Ombudsman

(a) Establishment

There is established in the Department of Labor an office to be known as the "Office of the Ombudsman" (in this section referred to as the "Office").

(b) Head

The head of the Office shall be the Ombudsman. The individual serving as Ombudsman shall be either of the following:

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

(2) An individual employed by the Secretary from the private sector from among individuals in the private sector who have experience and expertise necessary to carry out the duties of the Office specified in subsection (c).

(c) Duties

The duties of the Office shall be as follows:

(1) To provide information on the benefits available under this part and part B and on the requirements and procedures applicable to the provision of such benefits.

(2) To make recommendations to the Secretary regarding the location of centers (to be known as "resource centers") for the acceptance and development of claims for benefits under this part and part B.

(3) To carry out such other duties with respect to this part and part B as the Secretary shall specify for purposes of this section.

(d) Independent Office

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

(e) Annual report

(1) Not later than July 30 each year, the Ombudsman shall submit to Congress a report on activities under this part and part B.

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

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

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

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

(4) Not later than 180 days after the submission to Congress of the annual report under paragraph (1), the Secretary shall submit to Congress in writing, and post on the public Internet website of the Department of Labor, a response to the report that—

(A) includes a statement of whether the Secretary agrees or disagrees with the specific issues raised by the Ombudsman in the report;

(B) if the Secretary agrees with the Ombudsman on those issues, describes the actions to be taken to correct those issues; and

(C) if the Secretary does not agree with the Ombudsman on those issues, describes the reasons the Secretary does not agree.

(f) Outreach

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

(g) National Institute for Occupational Safety and Health Ombudsman

In carrying out the duties of the Ombudsman under this section, the Ombudsman shall work with the individual employed by the National Institute for Occupational Safety and Health to serve as an ombudsman to individuals making claims under part B.

(h) Sunset

Effective October 28, 2019, this section shall have no further force or effect.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3686], as added Pub. L. 108–375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2185; amended Pub. L. 110–181, div. C, title XXXI, §3116, Jan. 28, 2008, 122 Stat. 578; Pub. L. 111–84, div. C, title XXXI, §3142(a), Oct. 28, 2009, 123 Stat. 2715; Pub. L. 113–291, div. C, title XXXI, §3141(b), Dec. 19, 2014, 128 Stat. 3899.)

AMENDMENTS

2014—Subsec. (e)(1). Pub. L. 113–291, §3141(b)(1)(A), substituted “July 30” for “February 15”.

Subsec. (e)(4). Pub. L. 113–291, §3141(b)(1)(B), added par. (4).

Subsec. (h). Pub. L. 113–291, §3141(b)(2), substituted “2019” for “2012”.

2009—Subsecs. (c) to (e). Pub. L. 111–84, §3142(a)(1)–(3), inserted “and part B” after “this part” wherever appearing.

Subsecs. (g), (h). Pub. L. 111–84, §3142(a)(4), (5), added subsec. (g) and redesignated former subsec. (g) as (h).

2008—Subsec. (g). Pub. L. 110–181 substituted “October 28, 2012” for “on the date that is 3 years after October 28, 2004”.

CONSTRUCTION

Pub. L. 111–84, div. C, title XXXI, §3142(b), Oct. 28, 2009, 123 Stat. 2716, provided that: “Except as specifically provided in subsection (g) of section 3686 of the

Energy Employees Occupational Illness Compensation Program Act of 2000 [42 U.S.C. 7385s–15(g)], as amended by subsection (a) of this section, nothing in the amendments made by such subsection (a) shall be construed to alter or affect the duties and functions of the individual employed by the National Institute for Occupational Safety and Health to serve as an ombudsman to individuals making claims under subtitle B of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384f et seq.).”

§ 7385s–16. Advisory Board on Toxic Substances and Worker Health

(a) Establishment

(1) Not later than 120 days after December 19, 2014, the President shall establish and appoint an Advisory Board on Toxic Substances and Worker Health (in this section referred to as the “Board”).

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

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

(b) Duties

The Board shall—

(1) advise the Secretary of Labor with respect to—

(A) the site exposure matrices of the Department of Labor;

(B) medical guidance for claims examiners for claims under this part with respect to the weighing of the medical evidence of claimants;

(C) evidentiary requirements for claims under part B related to lung disease; and

(D) the work of industrial hygienists and staff physicians and consulting physicians of the Department and reports of such hygienists and physicians to ensure quality, objectivity, and consistency; and

(2) coordinate exchanges of data and findings with the Advisory Board on Radiation and Worker Health established under section 7384o of this title to the extent necessary.

(c) Staff and powers

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

(2) The President may authorize the detail of employees of Federal agencies to the Board as necessary to enable the Board to carry out its duties under this section. The detail of such personnel may be on a nonreimbursable basis.

(3) The Secretary may employ outside contractors and specialists to support the work of the Board.

(d) Conflicts of interest

No member, employee, or contractor of the Board shall have any financial interest, employment, or contractual relationship (other than a routine consumer transaction) with any person that has provided, or sought to provide during the two years preceding the appointment or dur-

ing the service of the member, employee, or contractor under this section, goods or services related to medical benefits under this subchapter.

(e) Expenses

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

(f) Security clearances

(1) The Secretary of Energy shall ensure that the members and staff of the Board, and the contractors performing work in support of the Board, are afforded the opportunity to apply for a security clearance for any matter for which such a clearance is appropriate.

(2) The Secretary of Energy should, not later than 180 days after receiving a completed application for a security clearance for an individual under this subsection, make a determination of whether or not the individual is eligible for the clearance.

(3) For fiscal year 2016 and each fiscal year thereafter, the Secretary of Energy shall include in the budget justification materials submitted to Congress in support of the Department of Energy budget for that fiscal year (as submitted with the budget of the President under section 1105(a) of title 31) a report specifying the number of applications for security clearances under this subsection, the number of such applications granted, and the number of such applications denied.

(g) Information

The Secretary of Energy shall, in accordance with law, provide to the Board and the contractors of the Board, access to any information that the Board considers relevant to carry out its responsibilities under this section, including information such as Restricted Data (as defined in section 2014(y) of this title) and information covered by section 552a of title 5 (commonly known as the “Privacy Act”).

(h) Authorization of appropriations

(1) In general

There are authorized to be appropriated such sums as may be necessary to carry out this section.

(2) Treatment as discretionary spending

Amounts appropriated to carry out this section—

(A) shall not be appropriated to the account established under subsection (a) of section 151 of title I of division B of Appendix D of the Consolidated Appropriations Act, 2001 (Public Law 106-554; 114 Stat. 2763A-251); and

(B) shall not be subject to subsection (b) of that section.

(i) Sunset

The Board shall terminate on the date that is 10 years after December 19, 2014.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3687], as added Pub. L. 113-291, div. C, title XXXI, §3141(a), Dec. 19, 2014, 128 Stat. 3897; Pub. L. 115-91, div. C, title XXXI, §3120, Dec. 12, 2017, 131 Stat. 1892.)

REFERENCES IN TEXT

Section 151 of title I of division B of Appendix D of the Consolidated Appropriations Act, 2001, referred to in subsec. (h)(2)(A), (B), is Pub. L. 106-554, §1(a)(4) [div. B, title I, §151], Dec. 21, 2000, 114 Stat. 2763, 2763A-251, which is not classified to the Code.

AMENDMENTS

2017—Subsec. (i). Pub. L. 115-91 substituted “10 years” for “5 years”.

EX. ORD. NO. 13699. ESTABLISHING THE ADVISORY BOARD ON TOXIC SUBSTANCES AND WORKER HEALTH

Ex. Ord. No. 13699, June 26, 2015, 80 F.R. 37529, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291), and to allocate the responsibilities imposed by that Act, it is hereby ordered as follows:

SECTION 1. *Establishment.* There is established within the Department of Labor the Advisory Board on Toxic Substances and Worker Health (Advisory Board).

SEC. 2. *Membership.* (a) The Advisory Board shall reflect a proper balance of perspectives from the scientific, medical, and claimant communities.

(b) The Advisory Board shall consist of no more than 15 members to be appointed by the Secretary of Labor in consultation with organizations with expertise on worker health issues. Members shall serve without compensation as Special Government Employees, but shall be allowed travel and meal expenses, including per diem in lieu of subsistence, to the extent permitted by law for persons serving intermittently in the Government service (5 U.S.C. 5701-5707).

(c) The Secretary of Labor shall designate a Chair of the Board from among its members.

SEC. 3. *Functions.* (a) The Advisory Board shall advise the Secretary of Labor with respect to:

(i) the site exposure matrices of the Department of Labor;

(ii) medical guidance for claims examiners for claims under subtitle E of the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) with respect to the weighing of the medical evidence of claimants;

(iii) evidentiary requirements for claims under EEOICPA subtitle B related to lung disease; and

(iv) the work of industrial hygienists, staff physicians, and consulting physicians of the Department of Labor and reports of such hygienists and physicians to ensure quality, objectivity, and consistency.

(b) To the extent necessary, the Advisory Board also shall coordinate exchanges of data and findings with the Advisory Board on Radiation and Worker Health, which was authorized by EEOICPA and established by Executive Order 13179 of December 7, 2000.

SEC. 4. *Administration.* (a) The Secretary of Labor shall provide the Advisory Board with funding and administrative support, including the appointment of staff and, as the Secretary determines appropriate, authorization for the detail of Federal employees from within the Department of Labor and employment of outside contractors and specialists, to the extent permitted by law and within existing appropriations. The Secretary also shall perform the administrative functions of the President under the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2), with respect to the Advisory Board.

(b) The Secretary of Labor shall designate a senior officer of the Department of Labor to serve as the Director of the staff of the Advisory Board.

SEC. 5. *Termination.* The Advisory Board shall terminate on the date that is 5 years after the enactment of the National Defense Authorization Act for Fiscal Year 2015.

SEC. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

SUBCHAPTER XVII—[Repealed]

CODIFICATION

Pub. L. 108-136, div. C, title XXXI, §3141(m)(1), Nov. 24, 2003, 117 Stat. 1787, struck out heading for subchapter XVII “Department of Energy National Security Authorizations General Provisions”.

§§ 7386 to 7386k. Transferred

CODIFICATION

Sections 7386 to 7386k, Pub. L. 107-314, div. C, title XXXVI, §§3620-3631, Dec. 2, 2002, 116 Stat. 2756-2762, were renumbered sections 4701 to 4712, respectively, of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(j)(2)(A)-(C), Nov. 24, 2003, 117 Stat. 1781, and are classified to sections 2741 to 2752, respectively, of Title 50, War and National Defense.

Section 7386 related to definitions for purposes of former sections 7386 to 7386k of this title.

Section 7386a related to reprogramming of amounts appropriated pursuant to a Department of Energy national security authorization.

Section 7386b related to minor construction projects.

Section 7386c related to limits on construction projects.

Section 7386d related to fund transfer authority.

Section 7386e related to conceptual and construction design.

Section 7386f related to authority for emergency planning, design, and construction activities.

Section 7386g related to scope of authority to carry out plant projects.

Section 7386h related to availability of funds.

Section 7386i related to transfer of defense environmental management funds.

Section 7386j related to transfer of weapons activities funds.

Section 7386k related to funds available for all national security programs of the Department of Energy.

CHAPTER 85—AIR POLLUTION PREVENTION AND CONTROL

SUBCHAPTER I—PROGRAMS AND ACTIVITIES

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