

110TH CONGRESS  
1ST SESSION

# H. R. 268

To amend the Energy Employees Occupational Illness Compensation Program Act of 2000 to clarify the roles and responsibilities of the agencies and actors responsible for the administration of such compensation program, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 2007

Ms. JACKSON-LEE of Texas introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Energy Employees Occupational Illness Compensation Program Act of 2000 to clarify the roles and responsibilities of the agencies and actors responsible for the administration of such compensation program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; REFERENCES; EFFECTIVE DATE.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Energy Employees Occupational Illness Compensation  
6 Program Improvement Act of 2007”.

1 (b) REFERENCES.—Except as otherwise expressly  
2 provided, whenever in this Act an amendment or repeal  
3 is expressed in terms of an amendment to, or repeal of,  
4 a section or other provision, the reference shall be consid-  
5 ered to be made to a section or other provision of the En-  
6 ergy Employees Occupational Illness Compensation Pro-  
7 gram Act of 2000 (42 U.S.C. 7384 et seq.).

8 (c) EFFECTIVE DATE.—Except as otherwise ex-  
9 pressly provided, this Act and the amendments made by  
10 this Act shall take effect 30 days after the date of the  
11 enactment of this Act.

12 **SEC. 2. FINDINGS.**

13 The Congress finds as follows:

14 (1) The Energy Employees Occupational Illness  
15 Compensation Program Act of 2000 (42 U.S.C.  
16 7384 et seq.) (referred to in this Act as the  
17 “EEOICPA”) was intended to—

18 (A) ensure the payment of “timely, uni-  
19 form, adequate compensation” to covered em-  
20 ployees (and, where applicable, survivors of  
21 such employees) for occupational illnesses in-  
22 curred by such employees in the performance of  
23 duty for the Department of Energy and certain  
24 of its contractors, subcontractors, and vendors;  
25 and

1 (B) provide parity for uranium miners  
2 under the Radiation Exposure Compensation  
3 Act (42 U.S.C. 2210 note).

4 (2) Four Federal agencies (the Departments of  
5 Labor, Health and Human Services, Energy, and  
6 Justice), are assigned responsibilities under the  
7 EEOICPA pursuant to Executive Order 13179,  
8 “Providing Compensation to America’s Nuclear  
9 Weapons Workers” (December 7, 2000; 65 Fed.  
10 Reg. 77487).

11 (3) The Department of Labor began accepting  
12 claims under Subtitle B of the EEOICPA on July  
13 31, 2001.

14 (4) The Department of Health and Human  
15 Services (HHS), through the National Institute for  
16 Occupational Safety and Health (NIOSH), performs  
17 radiation dose reconstruction for cancer claims  
18 under the EEOICPA.

19 (5) Atomic workers served the Nation and im-  
20 proved national defense by building and testing nu-  
21 clear weapons, while putting their health in jeopardy  
22 from exposure to radiation, beryllium, and other  
23 toxic substances. Claims for radiation-related can-  
24 cers depend on credible and complete radiation  
25 records. Because the radiation exposure of some

1 workers was unmonitored, and in certain cir-  
2 cumstances it is not feasible to estimate radiation  
3 dose with sufficient accuracy, Congress provided  
4 that workers may petition to be members of the Spe-  
5 cial Exposure Cohort (SEC). Members of the SEC  
6 receive an automatic presumption that their cancer  
7 is the result of occupational exposure to ionizing ra-  
8 diation. Twenty-two cancers are covered under this  
9 presumption. Under subtitle B of the EEOICPA,  
10 covered claimants receive a \$150,000 lump sum ben-  
11 efit plus prospective medical costs.

12 (6) Executive Order 13179 directs the Sec-  
13 retary of Health and Human Services to promulgate  
14 regulations for establishing membership in the Spe-  
15 cial Exposure Cohort, and to consider and issue de-  
16 terminations on petitions by classes of employees re-  
17 questing recognition as members of the SEC.

18 (7) As prescribed by the EEOICPA, the Sec-  
19 retary of Health and Human Services may, subject  
20 to a recommendation by the Advisory Board on Ra-  
21 diation and Worker Health (referred to in this sec-  
22 tion as the “Advisory Board”), designate additional  
23 classes of workers as members of the Special Expo-  
24 sure Cohort without further legislative action, if—

1           (A) it is not feasible to estimate with suffi-  
2           cient accuracy the radiation dose that members  
3           of the class received; and

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

7           (8) There is a four-step administrative review  
8           process for evaluating SEC Petitions. The process is  
9           as follows:

10           (A) STEP ONE.—The National Institute  
11           for Occupational Safety and Health receives an  
12           SEC petition and determines whether the peti-  
13           tion meets the regulatory requirements for the  
14           petition to be evaluated, and then evaluates  
15           each qualified petition to determine whether it  
16           is feasible given the available radiation moni-  
17           toring data to estimate radiation dose with suf-  
18           ficient accuracy. Following such evaluation, the  
19           National Institute for Occupational Safety and  
20           Health issues a written recommendation to the  
21           petitioners and the Advisory Board.

22           (B) STEP TWO.—The Advisory Board con-  
23           ducts an independent review of the evaluation  
24           by and recommendation from the National In-  
25           stitute for Occupational Safety and Health, and

1 makes a recommendation to the Secretary of  
2 Health and Human Services regarding the peti-  
3 tion. Subject to Advisory Board direction, a  
4 technical support contractor may be used to as-  
5 sess technical issues related to the petition,  
6 evaluation report, or recommendation.

7 (C) STEP THREE.—Not later than 30 days  
8 after receipt of the Advisory Board’s rec-  
9 ommendation, the Secretary of Health and  
10 Human Services issues a final agency decision  
11 to grant or deny the petition, and transmits  
12 such decision to Congress.

13 (D) STEP FOUR.—Congress has 30 days to  
14 review the Secretary’s decision. If Congress  
15 does not legislatively reverse the Secretary’s de-  
16 cision within 30 days, it will go into effect as  
17 ordered by the Secretary.

18 (9) In late 2005, the Office of Management and  
19 Budget issued a Passback communication to the De-  
20 partment of Labor that contained the following  
21 statement:

22 “ENERGY EMPLOYEES OCCUPATIONAL ILLNESS  
23 COMPENSATION PROGRAM ACT (EEOICPA) PART B.—  
24 ESA (Department of Labor’s Employment Standard’s Ad-  
25 ministration) is to be commended for identifying the po-

1 tential for a large expansion of EEOICPA Part B benefits  
2 through the designation of Special Exposure Cohorts  
3 (SEC). The Administration will convene a White House-  
4 led interagency work group including HHS and Energy  
5 to develop options for administrative procedures to contain  
6 growth in the cost of benefits provided by the program.  
7 Discussions are not limited to, but will involve, the fol-  
8 lowing five options.

9           “1. Require Administration clearance of SEC  
10       determination[s];

11           “2. Address any imbalance in membership of  
12       President’s Advisory Board on Radiation and Work-  
13       er Health;

14           “3. Require an expedited review by outside ex-  
15       perts of SEC recommendations by NIOSH;

16           “4. Require NIOSH to apply ‘conflict of inter-  
17       est’ rules and constraints to the Advisory Board’s  
18       contractor; and

19           “5. Require that NIOSH demonstrate that its  
20       site profiles and other dose reconstruction guidance  
21       are balance[d].”.

22           (10) Congress finds that the policies outlined in  
23       the Office of Management and Budget Passback  
24       statement referred to in paragraph (9), if imple-  
25       mented, will contravene Congressional intent and

1 weaken statutory checks and balances designed to  
2 ensure scientifically credible and fair decisions re-  
3 garding SEC designations. “Administration clear-  
4 ance” could result in the substitution of budget logic  
5 for scientific findings; addressing any “imbalance in  
6 the Advisory Board” could result in an Advisory  
7 Board tilted against SEC designations; imposing  
8 “constraints” could allow agency officials to inter-  
9 fere with the independence of the audit contractor  
10 supporting the Advisory Board; and “expedited re-  
11 views by outside experts” could lead to costly, time  
12 consuming, and extralegal reviews of Advisory Board  
13 recommendations.

14 (11) There is no evidence that unwarranted  
15 Special Exposure Cohort petitions have been grant-  
16 ed, or that any actions have been taken that would  
17 otherwise justify any of the five options outlined in  
18 the Office of Management and Budget Passback  
19 statement referred to in paragraph (9).

20 (12) Two Advisory Board members were re-  
21 moved by the President in 2006 without apparent  
22 cause, and currently the Advisory Board composition  
23 is not balanced, as required by EEOICPA and the  
24 Federal Advisory Committee Act.

1           (13) The amendments made by this Act to the  
2           Energy Employees Occupational Illness Compensa-  
3           tion Program Act of 2000 ensure that classes of em-  
4           ployees who apply for membership in the Special Ex-  
5           posure Cohort by reason of illnesses arising out of  
6           exposure to radiation while performing work in sup-  
7           port of the Nation’s nuclear weapons programs re-  
8           ceive a fair determination of their claims.

9   **SEC. 3. COMPENSATION PROGRAM AND COMPENSATION**  
10                                   **FUND.**

11           Section 3612(e) (42 U.S.C. 7384e(e)) is amended—

12           (1) in the heading of the subsection, by striking  
13           “NOT PAID FROM COMPENSATION FUND”;

14           (2) by striking “No costs incurred” and insert-  
15           ing “(1) IN GENERAL—No costs incurred”; and

16           (3) by adding at the end the following:

17           “(2) ADMINISTRATIVE COSTS AND ANNUAL  
18           BUDGET REQUIREMENTS OF AGENCIES.—

19           “(A) DEPARTMENT OF LABOR.—

20           “(i) The Secretary of the Department  
21           of Labor shall include as part of the an-  
22           nual budget request for the Department  
23           any administrative costs necessary to carry  
24           out its responsibilities under this Act. Ap-  
25           propriations shall be allocated in appro-

1            appropriations acts directly to the Department  
2            of Labor to carry out its responsibilities  
3            under this Act.

4            “(ii) To ensure the timely transfer of  
5            records and information needed by the De-  
6            partment of Labor and the Department of  
7            Health and Human Services for claims ad-  
8            judication, the Secretary of the Depart-  
9            ment of Labor may transfer funds to the  
10           Department of Energy, if appropriations  
11           made available to the Department of En-  
12           ergy under other appropriation Acts are in-  
13           sufficient for the Department of Energy to  
14           carry out its responsibilities under this  
15           Act.

16           “(B) NATIONAL INSTITUTE FOR OCCUPA-  
17           TIONAL SAFETY AND HEALTH.—The Secretary  
18           of Health and Human Services shall include as  
19           part of the annual budget request for the Na-  
20           tional Institute for Occupational Safety and  
21           Health any administrative costs necessary for  
22           the National Institute for Occupational Safety  
23           and Health to carry out its responsibilities  
24           under this Act.Appropriations shall be allocated  
25           in appropriations acts directly to the Depart-

1           ment of Health and Human Services to carry  
2           out its responsibilities under this Act.

3                   “(C) ADVISORY BOARD ON RADIATION AND  
4           WORKER HEALTH.—

5                   “(i) The Secretary of the Department  
6           of Health and Human Services shall in-  
7           clude as part of the annual budget request  
8           for the Department any administrative  
9           costs and any staff and contract support  
10          costs necessary for the Advisory Board on  
11          Radiation and Worker Health (in this sec-  
12          tion referred to as the ‘Advisory Board’) to  
13          carry out its responsibilities under this  
14          Act. Appropriations shall be allocated in  
15          appropriations Acts directly to the Depart-  
16          ment of Health and Human Services for  
17          the Advisory Board to carry out its respon-  
18          sibilities under this Act. Appropriations  
19          Acts shall also designate a line item for the  
20          Advisory Board, separate from the budget  
21          for the Department of Health and Human  
22          Services, for the activities of the Advisory  
23          Board related to the compensation pro-  
24          gram under this Act.

1           “(ii) An annual budget request for the  
2           Advisory Board shall be prepared by the  
3           Advisory Board, in consultation with the  
4           Designated Federal official appointed  
5           under section 3624(c)(1)(B), and sub-  
6           mitted to the Secretary of the Department  
7           of Health and Human Services on a sched-  
8           ule to be established by the Secretary. If  
9           the amount requested by the Advisory  
10          Board is modified by the Secretary, the  
11          amount requested by the Advisory Board  
12          and any modifications shall be identified  
13          and explained in the budget request.”.

14 **SEC. 4. SUBCONTRACTORS OF ATOMIC WEAPONS EMPLOY-**  
15 **ERS.**

16          Section 3621(3)(A) (42 U.S.C. 7384l(3)(A)) is  
17          amended by inserting “, or a subcontractor of an atomic  
18          weapons employer,” after “an atomic weapons employer”.

19 **SEC. 5. EXPANSION OF LIST OF BERYLLIUM VENDORS.**

20          Section 3622 (42 U.S.C. 7384m) is amended—

21                 (1) by striking “Not later than December 31,  
22                 2002, the President may, in consultation with the  
23                 Secretary of Energy,” and inserting “The Secretary  
24                 of Energy shall, on or before December 31, 2007,

1 and annually thereafter until December 31, 2011,”;

2 and

3 (2) by striking “the President finds” and in-

4 serting “the Secretary of Energy finds”.

5 **SEC. 6. ALLOCATION OF RESPONSIBILITIES FOR PROGRAM**

6 **ADMINISTRATION.**

7 (a) DEFINITION.—Paragraph (14) of section 3621  
8 (42 U.S.C. 7384l) is amended by striking “the President”  
9 each place it appears in subparagraph (C) and inserting  
10 “the Secretary of Health and Human Services”.

11 (b) EXPOSURE IN THE PERFORMANCE OF DUTY.—  
12 Section 3623 (42 U.S.C. 7384n) is amended—

13 (1) in subsection (c)—

14 (A) in paragraph (1), by striking “the  
15 President” and inserting “the Secretary of  
16 Health and Human Services”;

17 (B) in paragraph (2), by striking “The  
18 President” and inserting “The Secretary of  
19 Health and Human Services”; and

20 (C) in paragraph (3)(C), by striking “past  
21 health-related activities (such as smoking),”;

22 and

23 (2) in subsection (d)—

24 (A) in paragraph (1), by striking “The  
25 President shall” through “President may des-

1           ignite,” and inserting “The Secretary of  
2           Health and Human Services shall”; and

3                   (B) in paragraph (2), by striking “the  
4           President” and inserting “the Secretary of  
5           Health and Human Services”.

6 **SEC. 7. ADVISORY BOARD ON RADIATION AND WORKER**  
7                   **HEALTH.**

8           Section 3624 (42 U.S.C. 7384o) is amended—

9                   (1) by amending subsection (a) to read as fol-  
10          lows:

11          “(a) MEMBERSHIP.—

12                   “(1) Not later than 90 days after the date of  
13          the enactment of the Energy Employees Occupa-  
14          tional Illness Compensation Program Improvement  
15          Act of 2007, the members of the Advisory Board on  
16          Radiation and Worker Health (referred to in this  
17          section as the ‘Board’), as of the day before the date  
18          of enactment of such Act, shall be removed from  
19          their positions on the Board, and new members of  
20          the Board shall be appointed in accordance with  
21          paragraph (2). Any individual who is a member of  
22          the Board on the day before the date of enactment  
23          of such Act, and who is removed in accordance with  
24          this paragraph, may be reappointed to the Board in  
25          accordance with paragraph (2).

1           “(2) The Board shall be made up of 12 mem-  
2           bers, and the members shall be appointed as follows:

3                   “(A) Three members shall be appointed by  
4                   the Speaker of the House of Representatives.

5                   “(B) Three members shall be appointed by  
6                   the President of the Senate.

7                   “(C) Three members shall be appointed by  
8                   the minority leader of the House of Representa-  
9                   tives.

10                  “(D) Three members shall be appointed by  
11                  the minority leader of the Senate.

12                  “(3) The three members appointed by each ap-  
13                  pointing authority described in paragraph (2) shall  
14                  include one representative of the scientific commu-  
15                  nity, one worker representative, and one representa-  
16                  tive of the medical community.

17                  “(4) For each appointment to the Board, the  
18                  appropriate appointing authority shall—

19                          “(A) comply with all legal requirements re-  
20                          lated to Special Government Employees and the  
21                          appointment of such employees, as determined  
22                          by the Secretary of Health and Human Serv-  
23                          ices;

1           “(B) consult with organizations with ex-  
2           pertise on worker health issues about such ap-  
3           pointment; and

4           “(C) ensure that such appointment con-  
5           tributes to a balance of viewpoints and perspec-  
6           tives held by members of the Board.

7           “(5) The term of office of each member of the  
8           Board shall be three years. No member shall serve  
9           more than two terms. A vacancy on the Board shall  
10          be filled in the manner in which the original appoint-  
11          ment was made. Upon expiration of a term, a mem-  
12          ber of the Board shall continue to serve until the  
13          successor to such member has been appointed. The  
14          appointment of the replacement member shall be  
15          made not later than 60 days after the date on which  
16          the vacancy occurs. The Secretary of Health and  
17          Human Services shall—

18                  “(A) prepare a schedule for vacancies and  
19                  appointments, and make such schedule available  
20                  to the public in paper and electronic forms;

21                  “(B) identify the appropriate appointing  
22                  authority listed in paragraph (2) who is respon-  
23                  sible for appointing a member for each vacancy;

24                  “(C) not later than 90 days before the end  
25                  of a term of any member of the Board, provide

1 each appointing authority responsible for ap-  
2 pointing a replacement member for a vacancy  
3 with—

4 “(i) the number of vacancies and ex-  
5 pected vacancies, based on member res-  
6 ignations and the scheduled expiration of  
7 member terms; and

8 “(ii) the representative category (sci-  
9 entific, worker, or medical representative)  
10 of each member whose position on the  
11 Board has been, or is scheduled to be, va-  
12 cated.

13 “(6) A chair for the Board shall be selected  
14 from among its members by an annual vote of the  
15 members who are on the Board as of January 1 of  
16 each year.

17 “(7) The Secretary of Health and Human Serv-  
18 ices may recommend to the appropriate Congres-  
19 sional appointing authority described in paragraph  
20 (2) that a member of the Board be removed as the  
21 result of neglect of duty, malfeasance in office, a vio-  
22 lation of the conditions of the waivers provided  
23 under section 208 of title 18, United States Code,  
24 or a violation of the laws, regulations, policies, or

1 procedures related to the activities carried out under  
2 this Act.”;

3 (2) in subsection (b), by striking “the Presi-  
4 dent” each place it appears and inserting “the Sec-  
5 retary of Health and Human Services”;

6 (3) in subsection (c)—

7 (A) by amending paragraph (1) to read as  
8 follows:

9 “(1)(A) The Secretary of Health and Human  
10 Services shall provide administrative support to the  
11 Board, and shall assign staff, as necessary, to facili-  
12 tate the work of the Board. The Board shall have  
13 the authority to select contractors and consultants,  
14 issue task orders, and make budget requests  
15 (through the Secretary of Health and Human Serv-  
16 ices) for the annual budget of the Board and its  
17 staff.

18 “(B) The Director of the National Institute for  
19 Occupational Safety and Health shall appoint a Des-  
20 ignated Federal official and an Executive Secretary  
21 for the Board. The Designated Federal official and  
22 the Executive Secretary shall be independent of the  
23 Federal officials responsible for managing and im-  
24 plementing radiation dose reconstruction activities  
25 and Special Exposure Cohort evaluations under this

1 Act. The Designated Federal official shall have the  
2 same authorities and responsibilities as the des-  
3 ignated officer or employee of the Federal Govern-  
4 ment described in section 10 of the Federal Advisory  
5 Committee Act (5 U.S.C. App.).”; and

6 (B) in paragraph (2), by striking “The  
7 President” inserting “The Secretary of Health  
8 and Human Services”;

9 (4) in subsection (d), by striking “the Presi-  
10 dent” and inserting “the Secretary of Health and  
11 Human Services”; and

12 (5) by adding at the end the following new sub-  
13 sections:

14 “(g) LEGAL COUNSEL.—The Board may secure the  
15 services of independent legal counsel, in addition to or in  
16 lieu of any legal counsel provided to the Board by the Gen-  
17 eral Counsel of the Department of Health and Human  
18 Services.

19 “(h) APPLICABILITY OF THE FEDERAL ADVISORY  
20 COMMITTEE ACT.—Unless otherwise provided in this Act,  
21 the Board shall operate under the provisions of the Fed-  
22 eral Advisory Committee Act (5 U.S.C. App.), and mem-  
23 bers of the Board shall be compensated at a daily rate  
24 of pay for level IV of the Executive Schedule under section  
25 5315 of title 5, United States Code.”.

1 **SEC. 8. SPECIAL EXPOSURE COHORT.**

2 Section 3626 (42 U.S.C. 7384q) is amended—

3 (1) by striking “the President” each place it  
4 appears and inserting “the Secretary of Health and  
5 Human Services”;

6 (2) by striking “The President” each place it  
7 appears and inserting “The Secretary of Health and  
8 Human Services”;

9 (3) in subsection (a)(1) by inserting “any atom-  
10 ic weapons employer facility, or any combination of  
11 such facilities,” after “any Department of Energy  
12 facility”;

13 (4) in subsection (a)(2), by adding at the end  
14 the following sentence: “An executive branch agency  
15 may submit a review of a petition described in para-  
16 graph (3), or comments or recommendations relating  
17 to such a petition, to the Advisory Board on Radi-  
18 ation and Worker Health, and such Advisory Board  
19 may consider any such review, comments, or rec-  
20 ommendations in determining its advice under para-  
21 graph (1), as such Advisory Board considers appro-  
22 priate.”;

23 (5) in subsection (b)(1), by inserting “, based  
24 exclusively on information relating to the facility or  
25 facilities which are the subject of a petition de-

1 scribed in paragraph (a)(3),” after “it is not fea-  
2 sible”;

3 (6) in subsection (c)(1), by adding at the end  
4 the following sentence: “The Advisory Board on Ra-  
5 diation and Worker Health shall transmit to the  
6 Secretary of the Department of Health and Human  
7 Services, not later than 21 days after the date on  
8 which such Advisory Board votes on a recommenda-  
9 tion to the Secretary relating to the petition of the  
10 class of employees being considered for designation  
11 as a member of the Special Exposure Cohort, the  
12 formal recommendation of such Advisory Board, and  
13 the complete administrative record, relating to such  
14 petition.”;

15 (7) in subsection (c)(2)(A) (as amended by  
16 paragraph (1) of this section)—

17 (A) by striking “Upon receipt by” and in-  
18 serting “(1) Upon receipt by”;

19 (B) by inserting “, based solely on the rec-  
20 ommendation of such Advisory Board and the  
21 complete administrative record,” after “in  
22 which to determine”; and

23 (C) by adding at the end of subparagraph  
24 (A) the following sentences: “During such 30-  
25 day period the Secretary shall not consider any

1 review, comment, or recommendation relating to  
2 the petition by any other executive branch agen-  
3 cy, unless such review, comment, or rec-  
4 ommendation was submitted to the Advisory  
5 Board on Radiation and Worker Health in ac-  
6 cordance with subsection (a)(2), and appears on  
7 the administrative record of such Advisory  
8 Board. The determination by the Secretary  
9 shall be the same as the recommendation by  
10 such Advisory Board, unless, not later than 30  
11 days after the determination, the Secretary  
12 issues a formal finding of facts responding to  
13 the rationale outlined by such Advisory Board,  
14 and using information supported by the admin-  
15 istrative record.”;

16 (8) by redesignating subsection (d) as sub-  
17 section (h); and

18 (9) by inserting after subsection (c) the fol-  
19 lowing new subsections:

20 “(d) ENFORCEMENT OF DEADLINES.—If the Direc-  
21 tor of the National Institute of Occupational Safety and  
22 Health fails to submit a recommendation after receipt of  
23 a petition to the Advisory Board on Radiation and Worker  
24 Health in accordance with subsection (c)(1) within the  
25 180-day period required by such subsection, the Director

1 of the National Institute of Occupational Safety and  
2 Health shall promptly notify the petitioner, such Advisory  
3 Board, the appropriate Congressional committees of juris-  
4 diction, and the Congressional delegation of the State in  
5 which the facility that is the subject of the petition is lo-  
6 cated of the delay. Such notification shall include—

7           “(1) an explanation for the delay;

8           “(2) the date on which the evaluation will be  
9 completed;

10           “(3) the reasons why a delay is necessary; and

11           “(4) any adverse consequences of the delay for  
12 the petitioner.

13           “(e) APPEALS.—

14           “(1) SEC APPEALS BOARD ESTABLISHED.—

15 There is established, within the Department of  
16 Health and Human Services, a 3-member Special  
17 Exposure Cohort Appeals Board (referred to in this  
18 section as the ‘SEC Board’), to which a petitioner  
19 may appeal an adverse Special Exposure Cohort des-  
20 ignation. The SEC Board shall be appointed by the  
21 Secretary of Health and Human Services, and shall  
22 hear appeals, schedule hearings, take evidence, and  
23 issue decisions affirming or reversing the adverse  
24 Special Exposure Cohort designations.

1           “(2) PROCEDURES.—The SEC Board shall re-  
2 view appeals de novo. Unless the petitioner waives  
3 the right to a formal adjudication and elects an in-  
4 formal proceeding, appeals reviewed by the SEC  
5 Board shall be conducted on the record, in accord-  
6 ance with the Administrative Procedures Act. Not  
7 later than 90 days after the date of enactment of  
8 the Energy Employees Occupational Illness Com-  
9 pensation Program Improvement Act of 2007, the  
10 SEC Board shall issue Rules of Procedure for the  
11 appeals proceedings conducted by such SEC Board.  
12 Parties to any appeals proceeding under this sub-  
13 section shall be limited to the Secretary of Health  
14 and Human Services and the petitioner.

15           “(3) DECISIONS.—Decisions by the SEC Board  
16 shall be final agency actions. In the event that the  
17 SEC Board renders a decision reversing the adverse  
18 designation of a petition by the Secretary of Health  
19 and Human Services, the petition shall be remanded  
20 to the Secretary to carry out the decision of the  
21 Board and it shall be the duty of the Secretary to  
22 review such decision and, within 30 days of receipt  
23 of the remand, to issue a new determination regard-  
24 ing the Special Exposure Cohort designation of the  
25 petitioner upon the basis of the proceedings already

1 had and the record upon which said appeal was  
2 heard and determined.

3 “(4) WAIVER AND APPEAL OF SEC BOARD DECI-  
4 SIONS.—A petitioner may waive the right to appeal  
5 to the SEC Board, and may seek judicial review of  
6 the Secretary’s decision under this paragraph. Deci-  
7 sions by the Secretary of Health and Human Serv-  
8 ices relating to a petition for designation as a mem-  
9 ber of the Special Exposure Cohort may be appealed  
10 to the appropriate district court in the jurisdiction  
11 in which the facility that is the subject of the Special  
12 Exposure Cohort petition is located, or in the juris-  
13 diction where the petitioner resides.

14 “(f) AVAILABILITY OF PETITIONER INFORMATION.—  
15 The Director of the National Institute of Occupational  
16 Safety and Health shall, upon request, make available to  
17 the general public the name and contact information of  
18 each petitioner under this section.

19 “(g) SPECIAL EXPOSURE COHORT PETITION ASSIST-  
20 ANCE.—

21 “(1) IN GENERAL.—Not later than 120 days  
22 after the date of enactment of the Energy Employ-  
23 ees Occupational Illness Compensation Program Im-  
24 provement Act of 2007, the Director of the National  
25 Institute of Occupational Safety and Health shall

1 provide for independent technical assistance for peti-  
2 tioners and prospective petitioners with respect to  
3 preparing and qualifying Special Exposure Cohort  
4 petitions, and reviewing Special Exposure Cohort  
5 evaluation reports. Technical assistance may be pro-  
6 vided through a cooperative agreement or contract  
7 with a nonprofit organization or institution of higher  
8 education that has expertise in occupational safety  
9 and health, and that does not have a conflict of in-  
10 terest, as defined in section 3634.

11 “(2) NOTICE.—The Director of the National  
12 Institute of Occupational Safety and Health shall  
13 notify petitioners and prospective petitioners for des-  
14 ignation as members of the Special Exposure Cohort  
15 of the assistance available under this subsection.

16 “(3) FUNDING.—In any fiscal year, not more  
17 than \$250,000 of the funds authorized and provided  
18 for the administration of this Act in such fiscal year  
19 shall be used to carry out this subsection.”.

20 **SEC. 9. CONFLICTS OF INTEREST.**

21 Subtitle B (42 U.S.C. 3621 et seq.) is further amend-  
22 ed by adding at the end of the subtitle the following new  
23 section:

1 **“SEC. 3634. PROHIBITION ON ENTITIES WITH CONFLICTS**  
2 **OF INTEREST.**

3 “(a) CONFLICT OF INTEREST POLICY.—The Sec-  
4 retary of Health and Human Services shall prohibit an  
5 entity from participating in or performing any of the ac-  
6 tivities described in subsection (b), if such entity—

7 “(1) has, or has had, a personal, organizational,  
8 or professional conflict of interest relating to any ac-  
9 tivity carried out under this Act; or

10 “(2) has, or has had, previous employment or  
11 a personal or financial relationship that could bias  
12 the performance of activities under this Act.

13 “(b) PROHIBITED ACTIVITIES.—An entity described  
14 in paragraph (1) or (2) of subsection (a) shall not be em-  
15 ployed by the National Institute for Occupational Safety  
16 and Health (or by its contractors or subcontractors of any  
17 tier)—

18 “(1) to perform the following program activi-  
19 ties, if such entity performed work at or for a De-  
20 partment of Energy or atomic weapons employer fa-  
21 cility (or for a contractor or subcontractor per-  
22 forming work at such facility)—

23 “(A) prepare, conduct, approve, revise, or  
24 internally peer review individual radiation dose  
25 estimates at a Department of Energy or atomic  
26 weapons employer facility;

1           “(B) research, develop, prepare, author,  
2           lead a team preparing, serve as a site expert  
3           for, approve, revise, or internally peer review  
4           technical basis documents, technical information  
5           bulletins, site profiles, or other dose reconstruc-  
6           tion guidance; and

7           “(C) research, evaluate, make a rec-  
8           ommendation relating to, serve as a site expert  
9           for, assess, or review a Special Exposure Cohort  
10          petition, or a revision thereto; or

11          “(2) to perform any other activities the Sec-  
12          retary of Health and Human Services determines  
13          are prohibited by reason of a conflict of interest de-  
14          scribed in subsection (a)(1) or (2).

15          “(c) REPORT AND DISCLOSURE OF CONFLICT INFOR-  
16          MATION.—

17          “(1) IN GENERAL.—Each contractor, subcon-  
18          tractor, and consultant involved with radiation dose  
19          reconstruction, technical basis documents, technical  
20          information bulletins, site profiles, Special Exposure  
21          Cohort evaluations, epidemiologic research, or devel-  
22          opment of dose reconstruction methods conducted  
23          under this Act shall report to the Director of the  
24          National Institute for Occupational Safety and  
25          Health the following:

1           “(A) The name of the entity, and the em-  
2           ployer of such entity at the time of the initial  
3           report under this subsection, if any.

4           “(B) Functions performed under this Act,  
5           educational background, a biographical descrip-  
6           tion of past and present work at or for the De-  
7           partment of Energy or an atomic weapons em-  
8           ployer facility (or for a contractor or subcon-  
9           tractor performing work at such facility), in-  
10          cluding a list of responsibilities while employed  
11          at such facility.

12          “(C) A list of each workers’ compensation  
13          claim or lawsuit (identified by name) in which  
14          any individual who is an entity under this sec-  
15          tion was an expert witness (including as a non-  
16          testifying expert), and the position such indi-  
17          vidual held or represented in such claim or law-  
18          suit.

19          “(D) A list of facilities and positions for  
20          which the entity has a conflict of interest and  
21          is prohibited from carrying out activities re-  
22          quired by this Act.

23          “(E) Any change in the information re-  
24          quired by this paragraph during the time such

1           entity is involved with the activities described in  
2           this subsection.

3           “(2) INITIAL AND PERIODIC REPORTS.—A con-  
4           tractor, subcontractor, or consultant required to re-  
5           port information to the Director of the National In-  
6           stitute for Occupational Safety and Health under  
7           paragraph (1) shall—

8                   “(A) initially report such information—

9                           “(i) not later than 15 days after the  
10                           date of enactment of the Energy Employ-  
11                           ees Occupational Illness Compensation  
12                           Program Improvement Act of 2007; or

13                           “(ii) in the case of such an entity that  
14                           is not involved with an activity described in  
15                           paragraph (1) as of the date of the enact-  
16                           ment of such Act, on the date that such  
17                           entity becomes involved with such an activ-  
18                           ity; and

19                           “(B) shall periodically report any changes  
20                           or updates to such information, as the Director  
21                           may require.

22           “(3) DISCLOSURE AND REVISION BY THE DI-  
23           RECTOR.—The Director of the National Institute for  
24           Occupational Safety and Health shall disclose to the  
25           general public, in paper and electronic format, the

1 information reported to the Director under para-  
2 graph (1). The Director shall require contractors,  
3 subcontractors, and consultants to periodically revise  
4 the information reported under paragraph (1) to in-  
5 clude any changes to such information. The Director  
6 shall ensure that the information disclosed to the  
7 general public under this paragraph contains the  
8 most recent information available to the Director.

9 “(d) CONTRACTS WITH NIOSH.—

10 “(1) No entity that is performing work for the  
11 National Institute for Occupational Safety and  
12 Health or that has entered into and is obligated  
13 under a contracting arrangement with the National  
14 Institute for Occupational Safety and Health to con-  
15 duct activities related to this Act shall, at any time  
16 during which the entity is performing such work or  
17 is so obligated—

18 “(A) perform work at or for the Depart-  
19 ment of Energy or an atomic weapons employer  
20 facility (or for a contractor or subcontractor  
21 performing work at a Department of Energy or  
22 an atomic weapons employer facility) which in-  
23 volves radiation protection, dose estimation, or  
24 health physics; or

1           “(B) solicit new work related to radiation  
2           protection, dose estimation, or health physics  
3           from the Department of Energy or an atomic  
4           weapons employer (or from contractors or sub-  
5           contractors performing work at a Department  
6           of Energy or an atomic weapons employer facil-  
7           ity).

8           “(2) Any contractor or subcontractor per-  
9           forming work for or obligated under a contracting  
10          arrangement with the National Institute for Occupa-  
11          tional Safety and Health shall disclose in electronic  
12          and paper form all past contracts that the con-  
13          tractor or subcontractor has entered into for per-  
14          forming work at or for the Department of Energy or  
15          an atomic weapons employer facility (or for a con-  
16          tractor or subcontractor performing work at such fa-  
17          cility) which involves radiation protection, dose esti-  
18          mation, or health physics.

19          “(e) DISALLOWANCE OF COSTS.—Any work product  
20          performed under a contracting arrangement with the De-  
21          partment of Health and Human Services (or any agency  
22          or instrumentality thereof) by a contractor, subcontractor,  
23          or consultant in violation of this section, an agency conflict  
24          of interest policy, or a contract requirement related to con-  
25          flict of interest shall constitute a breach of such contract,

1 and the costs incurred by such contractor, subcontractor,  
2 or consultant as a result of the performance of such work  
3 shall not be allowable costs for purposes of any cost reim-  
4 bursement contract, task order contract, or any other type  
5 of contracting arrangement.

6 “(f) NO WAIVERS.—The Secretary of Health and  
7 Human Services shall not issue any waivers to this section.

8 “(g) DEFINITION OF ENTITY.—For purposes of this  
9 section and section 3635, the term ‘entity’—

10 “(1) means—

11 “(A) any individual—

12 “(i) who is or was employed by the  
13 Department of Energy or an atomic weap-  
14 ons employer (or by a contractor or sub-  
15 contractor to the Department of Energy or  
16 an atomic weapons employer); or

17 “(ii) who served as an expert witness  
18 (including as a nontestifying witness) in  
19 any legal proceeding defending a workers’  
20 compensation claim related to radiation ex-  
21 posure against the Department of Energy  
22 (or a contractor or subcontractor of any  
23 tier of such agency), or an atomic weapons  
24 employer; or

1           “(B) any organization, contractor, subcon-  
2           tractor, or consultant (including any employee,  
3           agent, or official of an organization, contractor,  
4           subcontractor, or consultant); and

5           “(2) does not include the Advisory Board on  
6           Radiation and Worker Health, or any member or  
7           employee of such Advisory Board.

8   **“SEC. 3635. EFFECTS OF CONFLICTS OF INTEREST ON USE**  
9                           **OF WORK PERFORMED.**

10          “Any dose reconstruction, site profile, technical bul-  
11          letin, or Special Exposure Cohort petition research per-  
12          formed by an entity in violation of any provision of section  
13          3634, an agency conflict of interest policy, or a contract  
14          requirement related to conflict of interest shall not be con-  
15          sidered or used for any purpose relating to—

16                 “(1) the adjudication of any claim concerning  
17          dose reconstruction of radiation doses received by  
18          any individual; or

19                 “(2) the consideration or determination of  
20          whether members of a class of employees may be  
21          treated as members of the Special Exposure Cohort  
22          under section 3626.”.

23   **SEC. 10. DUTIES OF THE OFFICE OF OMBUDSMAN.**

24          Section 3686(c) (42 U.S.C. 7385s–15(c)) is amend-  
25          ed—

1           (1) in paragraph (1), by inserting “subtitle B  
2 and” after “available under”;

3           (2) by redesignating paragraph (3) as para-  
4 graph (5); and

5           (3) by inserting after paragraph (2) the fol-  
6 lowing new paragraphs:

7           “(3) To assist individuals in making claims  
8 under this subtitle.

9           “(4) To act as advocate on behalf of individuals  
10 seeking benefits under this subtitle.”.

11 **SEC. 11. REGULATIONS.**

12       Not later than 90 days after the date of enactment  
13 of this Act, the Secretary of Health and Human Services  
14 shall publish rules to modify the regulations and proce-  
15 dures of the Department of Health and Human Services  
16 relating to the Energy Employees Occupational Illness  
17 Compensation Program Act of 2000 (42 U.S.C. 7384 et  
18 seq.), to conform the regulations and procedures to the  
19 amendments made by this Act.

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