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20 CFR Parts 1 and 30

Performance of Functions Under This Chapter; Claims for Compensation Under the Energy Employees Occupational Illness Compensation Program Act; Final Rule

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Parts 1 and 30

RIN 1215–AB32

Performance of Functions Under This Chapter; Claims for Compensation Under the Energy Employees Occupational Illness Compensation Program Act

AGENCY: Office of Workers' Compensation Programs, Employment Standards Administration, Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: This document contains the interim final regulations governing the administration of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA or Act), that provides lump-sum payments and medical benefits to covered employees and, where applicable, survivors of such employees, of the Department of Energy (DOE), its predecessor agencies and certain of its vendors, contractors and subcontractors. The Act also provides for the payment of smaller lump-sum payments and medical benefits to individuals already found eligible for benefits under section 5 of the Radiation Exposure Compensation Act and, where applicable, their survivors. The Department of Labor's (DOL) Office of Workers' Compensation Programs (OWCP) administers the adjudication of claims and payment of benefits under the EEOICPA, with the Department of Health and Human Services (HHS) calculating the amounts of radiation received by employees alleged to have sustained cancer as a result of such exposure and establishing guidelines to be followed in determining whether such cancers are at least as likely as not related to employment. The Department of Energy (DOE) and the Department of Justice (DOJ) are responsible for notifying potential claimants and submitting evidence necessary for DOL's adjudication of claims under the EEOICPA.

DATES: *Effective Date:* This interim final rule is effective July 24, 2001.

Compliance Dates: Affected parties do not have to comply with the information collection requirements in §§ 30.100, 30.101, 30.102, 30.111, 30.112, 30.206, 30.207, 30.213, 30.214, 30.216, 30.217, 30.401, 30.415, 30.416, 30.417, 30.420, 30.421, 30.505, 30.617, 30.700, 30.701 and 30.702 until the Department publishes in the **Federal Register** the control numbers assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control numbers notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

Comments: The Department invites written comments on the interim final rule from interested parties. Comments on the interim final rule must be received by August 23, 2001. Written comments on collections of information subject to the Paperwork Reduction Act must be received by July 24, 2001.

ADDRESSES: Submit written comments on the interim final rule to Shelby S. Hallmark, Acting Director, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Room S–3524, 200 Constitution Avenue, N.W., Washington, DC 20210.

Written comments on the collection of information requirements should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment Standards Administration, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Shelby S. Hallmark, Acting Director, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Room S–3524, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Telephone: 202–693–0036 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. What Is the Energy Employees Occupational Illness Compensation Program?

The Energy Employees Occupational Illness Compensation Program Act (EEOICPA), Public Law 106–398, 114 Stat. 1654, 1654A–1231 (October 30, 2000), was enacted as Title XXXVI of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001. The EEOICPA established a compensation program to provide a lump sum payment of $150,000 and medical benefits as compensation to covered employees suffering from designated illnesses incurred as a result of their exposure to radiation, beryllium, or silica while in the performance of duty for DOE and certain of its vendors, contractors and subcontractors. This legislation also provided for payment of compensation to certain survivors of these covered employees, as well as for payment of a smaller lump sum ($50,000) to individuals (who would also receive medical benefits), or their survivor(s), who were determined to be eligible for compensation under section 5 of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note).

The EEOICPA further instructed the President to designate one or more Federal agencies or officials to carry out the compensation program. Pursuant to this statutory provision, the President issued Executive Order 13179 ("Providing Compensation to America's Nuclear Weapons Workers") of December 7, 2000 (65 FR 77487) which assigned primary responsibility for administering the compensation program to DOL. This executive order also directed HHS to, among other things, develop guidelines to assess the likelihood that an employee with cancer developed that cancer in the performance of duty at a DOE facility or atomic weapons facility, to establish methods for calculating radiation dose estimates for individuals applying for benefits under this program for whom there are inadequate records of radiation exposure, and perform such calculations. The President's order instructed DOE to provide DOL and HHS all relevant information to which it may have access, and to assist in the development of claims under the EEOICPA and state workers' compensation programs. Finally, the executive order directed DOJ to identify and notify RECA beneficiaries of their possible entitlement to benefits under the EEOICPA and to assist DOL in the adjudication of those claims.

II. Issuance of Interim Final Rule

Section 3611(a) of the EEOICPA both establishes the Energy Employees Occupational Illness Compensation Program and provides that "[t]he President shall carry out the compensation program through one or more Federal agencies or officials, as designated by the President." Pursuant to this statutory provision, the President issued Executive Order 13179 section 2(a)(ii) of which directed the Secretary of Labor to "promulgate regulations for the administration of the Program, except for functions assigned to other agencies pursuant to the Act or this order;" no later than May 31, 2001. The Act further stipulates that its provisions for both lump-sum payments and medical benefits shall take effect "on July 31, 2001, unless Congress otherwise provides in an Act enacted before that date." The Department believes that Congress's explicit mandate in the Act that the provisions for both lump-sum payments and medical benefits take effect on July 31, 2001 contemplates displacement of Administrative

Procedure Act (APA) notice and comment procedures and requires the publication of an Interim Final Rule as an initial matter.

Therefore, the Department believes that the "good cause" exception to APA notice and comment rulemaking applies to this rule. Under that exception, no pre-adoption procedures are required "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). The EEOICPA was enacted to provide efficient, uniform and adequate compensation for radiation, beryllium, and silica related health conditions to the civilian men and women who, over the past 50 years, performed duties uniquely associated with the nuclear weapons production and testing programs of DOE and its predecessor agencies. The enactment of EEOICPA was, in part, the result of the failure of existing state workers' compensation programs to provide uniform and adequate compensation for these types of occupational illnesses. DOL cannot begin to accept and process claims under the EEOICPA until these regulations are promulgated. The steps necessary for the usual notice and comment under the APA could not be completed in time for the program to become effective by July 31, 2001: approval of the notice of proposed rulemaking by the Secretary and OMB; publication in the **Federal Register**; receipt of, consideration of, and response to the comments submitted by interested parties; modification of the proposed rules, if appropriate; final approval by the Secretary; clearance by OMB; and publication in the **Federal Register**. Moreover, completion of these steps will further delay the implementation of the program. Accordingly, the Department believes that under 5 U.S.C. 553(b)(B), good cause exists for waiver of Notice of Proposed Rulemaking since issuance of proposed rules would be impracticable and contrary to the public interest.

While notice of proposed rulemaking is being waived, the Department is interested in comments and advice regarding changes that should be made to these interim rules. We will fully consider any comments on these rules that we receive on or before August 23, 2001, and will publish the Final Rule with any necessary changes.

III. What Are the Paperwork Requirements (Subject to the Paperwork Reduction Act) Imposed Under EEOICPA and the Department's Regulations, and How Are Comments Submitted?

The new collections of information contained in this rulemaking have been submitted for review to OMB in accordance with the Paperwork Reduction Act of 1995. No person is required to respond to a collection of information request unless the collection of information displays a valid OMB control number. The new information collection requirements are in §§ 30.100, 30.101, 30.102, 30.111, 30.112, 30.206, 30.207, 30.213, 30.214, 30.216, 30.217, 30.415, 30.416, 30.417, 30.505, 30.617 and 30.702, and they relate to information required to be submitted by claimants, medical providers, and witnesses as part of the claims adjudication process, as well as to information required to be submitted by claimants in connection with the processing of bills. To implement all but one of these new collections, the Department is proposing to create eight new forms (see sections A through E and sections G through I below). One new collection will be implemented without any specific form (see section F below).

In addition, this rulemaking contains currently approved collections of information in §§ 30.401, 30.420, 30.421, 30.700, 30.701 and 30.702, which relate to information required to be submitted by claimants and medical providers in connection with the processing of bills (see OMB–1215–0055, OMB–1215–0176, and OMB–1215–0194). These collections (Forms OWCP–1500, UB–92 and 79–1A) will be revised to include EEOICPA respondents.

A. Employee's Claim: Form EE–1 (§§ 30.100 and 30.102)

Summary: The claims adjudication process for employees begins with a requirement that they file a written claim for benefits with the Department on or after July 31, 2001. Employees do not need to use the "Claim For Benefits Under Energy Employees Occupational Illness Compensation Program Act" (Form EE–1) to initiate this process since any written communication that requests benefits under the EEOICPA will be considered a claim. They will, however, be required to submit a Form EE–1 to insure that OWCP has the basic factual information necessary to begin adjudicating the claim. In Form EE–1, the employee is requested to provide information with respect to his or her identity, contact information, the type of illness being claimed (with date of diagnosis), the location or type of employment, whether he or she is a member of the Special Exposure Cohort, and whether he or she received an award letter under the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) or filed a lawsuit regarding the claimed illness. OWCP may also require employees to provide factual information in support of any responses made on Form EE–1. All employees will be required to swear or affirm that the information provided on the Form EE–1 is true.

Need: Pursuant to the EEOICPA, a claim for benefits is necessary to both initiate the claims adjudication process and to establish a commencement date for any possible entitlement to medical benefits.

Respondents and proposed frequency of response: It is estimated that 43,140 employees annually will file one Form EE–1.

Estimated total annual burden: The time required to review instructions, search existing data sources, gather the data needed, and complete and review each Form EE–1 is estimated to take an average of 15 minutes per employee for a total annual burden of 10,785 hours.

B. Survivor's Claim: Form EE–2 (§§ 30.101 and 30.102)

Summary: The claims adjudication process for survivors begins with a requirement that they file a written claim for survivor benefits with the Department on or after July 31, 2001. Survivors do not need to use the "Claim For Survivors Benefits Under Energy Employees Occupational Illness Compensation Program Act" (Form EE–2) to initiate this process since any written communication that requests benefits under the EEOICPA will be considered a claim. They will, however, be required to submit Form EE–2 to insure that OWCP has the basic factual information necessary to begin adjudicating the claim. In Form EE–2, the survivor is asked to provide information with respect to both his or her identity and the identity of the deceased employee, contact information, the type of illness being claimed (with date of diagnosis), the location or type of employment, whether the deceased employee was a member of the Special Exposure Cohort, and whether he or she (or the deceased employee) received an award letter under the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) or filed a lawsuit regarding the claimed illness. OWCP may also require survivors to provide factual information

in support of any responses made on Form EE–2. All survivors will be required to swear or affirm that the information provided on the Form EE–2 is true.

Need: Pursuant to the EEOICPA, a claim for survivor's benefits is necessary to initiate the claims adjudication process.

Respondents and proposed frequency of response: It is estimated that 28,760 survivors annually will file one Form EE–2.

Estimated total annual burden: The time required to review instructions, search existing data sources, gather the data needed, and complete and review each Form EE–2 is estimated to take an average of 15 minutes per survivor for a total annual burden of 7,190 hours.

C. Employment History: Form EE–3 (§§ 30.102, 30.111, 30.112, 30.206, 30.213 and 30.216)

Summary: Employees and/or survivors claiming benefits under the EEOICPA must establish, among other things, an employment history that includes at least one period of covered employment. Form EE–3 has been devised to elicit the basic factual information necessary to enable OWCP to make this particular finding of fact. In Form EE–3, the respondent (the employee or survivor) is asked to provide information with respect to his or her identity and contact information, the employee's identity, and the employee's complete employment history that includes dates of employment, the name and location of employers, position titles and descriptions of work performed, and information regarding any dosimetry badges worn. All respondents will be required to swear or affirm that the information provided on the Form EE–3 is true. Further, the employment history provided on Form EE–3 will be provided to DOE for verification.

Need: Documentation of a history of covered employment is one of the elements that must be met to establish entitlement to benefits under the EEOICPA.

Respondents and proposed frequency of response: It is estimated that 68,584 employees and/or survivors annually will file one Form EE–3.

Estimated total annual burden: The time required to review instructions, search existing data sources, gather the data needed, and complete and review each Form EE–3 is estimated to take an average of 1 hour per response for a total annual burden of 68,584 hours.

D. Employment History Affidavit: Form EE–4 (§§ 30.102, 30.111, 30.112, 30.206, 30.213 and 30.216)

Summary: As noted in section C above, employees and/or survivors claiming benefits under the EEOICPA must establish, among other things, an employment history that includes at least one period of covered employment. In situations where the use of Form EE–3 may not be practicable (e.g., due to a lack of available information), Form EE–4 may be used as an alternate method to provide OWCP with a basic employment history by affidavit. In Form EE–4, the respondent (someone other than the employee or survivor) is asked to provide information as to his or her identity and relationship to the employee, the employee's identity, and the employee's employment history that includes dates of employment, name and location of employers, descriptions of work performed, and an explanation of the basis for the employment history provided. All respondents will be required to swear or affirm that the factual information provided on the Form EE–4 is true. Further, the employment history provided on Form EE–4 will be provided to DOE for verification.

Need: Documentation of a history of covered employment is one of the elements that must be met to establish entitlement to benefits under the EEOICPA.

Respondents and proposed frequency of response: It is estimated that 17,146 respondents annually will file one Form EE–4.

Estimated total annual burden: The time required to review instructions, search existing data sources, gather the data needed, and complete and review each Form EE–4 is estimated to take an average of 30 minutes per response for a total annual burden of 8,573 hours.

E. Medical Requirements: Form EE–7 (§§ 30.102, 30.207, 30.214, 30.217, 30.415, 30.416 and 30.417)

Summary: Employees and/or survivors claiming benefits under the EEOICPA (except for those who have received an award under section 5 of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note)) must also establish, among other things, that the employee sustained a compensable occupational illness. Form EE–7 has been devised to elicit the type of medical evidence (prepared by medical providers) needed to enable OWCP to make this particular finding of fact. Claimants may also be required to submit additional medical evidence (prepared by medical providers) as necessary. Form EE–7 describes, in checklist format, both the general and specific requirements for medical evidence submitted in support of a claim for each of the occupational illnesses covered by the EEOICPA.

Need: Documentation of a covered occupational illness is one of the elements that must be met to establish entitlement to benefits under the EEOICPA.

Respondents and proposed frequency of response: It is estimated that 68,584 respondents annually will file one response to Form EE–7.

Estimated total annual burden: The time required to review instructions, search existing data sources, gather the data needed, and complete and review each collection of this information is estimated to take an average of 15 minutes per response for a total annual burden of 17,146 hours.

F. Supplemental Medical Evidence (§ 30.214)

Summary: Employees and/or survivors claiming that an injury, illness or disability was sustained as a consequence of a covered cancer must submit a narrative medical report from a medical provider which shows a causal relationship between the claimed injury, illness or disability and the covered cancer. A standardized form or format will not be used for the submission of this information, which will be collected on an as-needed basis.

Need: Documentation of a consequential injury is one of the elements that must be met to establish entitlement to benefits for such a condition under the EEOICPA.

Respondents and proposed frequency of response: It is estimated that 4,500 respondents annually will submit this collection of information once.

Estimated total annual burden: The time required to review instructions, search existing data sources, gather the data needed, and complete and review each collection of this information is estimated to take an average of 15 minutes per response for a total annual burden of 1,125 hours.

G. Pre-payment Affidavit: Form EE/EN–15 (§§ 30.505 and 30.617)

Summary: Once the claims adjudication process has been completed and a final decision finding coverage under the EEOICPA has been made, the claimant must still provide information to determine if he or she is entitled to receive a lump-sum payment, and if so, the amount of such lump-sum payment. In Form EE/EN–15, the claimant is requested to provide

information about any tort suits they may have filed against a beryllium vendor or atomic weapons employer, and whether they have been convicted on fraud charges in connection with the EEOICPA or another federal or state workers' compensation law. Form EE/EN–15 also requests information on third party settlements, other eligible survivors and corrections. All respondents will be required to certify that the information provided on Form EE/EN–15 is true.

Need: Documentation of entitlement to a lump-sum payment and the level of any such payment is required under the EEOICPA.

Respondents and proposed frequency of response: It is estimated that 10,926 employees and/or survivors annually will file one Form EE/EN–15.

Estimated total annual burden: The time required to review instructions, search existing data sources, gather the data needed, and complete and review each Form EE/EN–15 is estimated to take an average of 40 minutes per response for a total annual burden of 7,284 hours.

H. Acceptance of Payment: Form EE/EN–20 (§§ 30.505 and 30.617)

Summary: After Form EE/EN–15 is returned (and a determination that the claimant is entitled to a lump-sum payment is made and the amount of such entitlement has been calculated), the claimant will be informed of the award payable under the EEOICPA and that his or her acceptance of such payment will be in full satisfaction of all claims arising out of an occupational illness covered by the EEOICPA. The "Acceptance of Payment" (Form EE/EN–20) has been devised for this purpose, and requests that the claimant indicate whether he or she accepts or rejects the offered payment within 60 days.

Need: Documentation of a claimant's acceptance of a lump-sum payment is necessary to establish the full satisfaction of all claims arising out of an occupational illness covered by the EEOICPA.

Respondents and proposed frequency of response: It is estimated that 10,926 employees and/or survivors annually will file one Form EE/EN–20.

Estimated total annual burden: The time required to review instructions, search existing data sources, gather the data needed, and complete and review each Form EE/EN–20 is estimated to take an average of 5 minutes per response for a total annual burden of 911 hours.

I. Medical Reimbursement: Form EE–915 (§ 30.702)

Summary: Once a claim has been accepted, the Department will pay medical benefits retroactive to the date the claim was filed. The "Claim For Medical Reimbursement Under Energy Employees Occupational Illness Compensation Program Act" (Form EE–915) has been devised to enable claimants to seek reimbursement for out-of-pocket expenses pertaining to the medical treatment, prescription medication, and medical supplies obtained due to an accepted occupational illness or consequential injury.

Need: Documentation of a claimant's out-of-pocket expenses is necessary to establish the amount that is payable as medical benefits for an occupational illness or consequential injury covered by the EEOICPA.

Respondents and proposed frequency of response: It is estimated that 5,095 respondents annually will file four Forms EE–915.

Estimated total annual burden: The time required to review instructions, search existing data sources, gather the data needed, and complete and review each Form EE–915 is estimated to take an average of 15 minutes per response for a total annual burden of 5,096 hours.

Total public burden: The above information collections have a total public burden hour estimate of 126,693. Using the current National minimum wage of $5.15 per hour, the total annual public cost estimate for all new information collections is estimated to be $652,469.00. There are no recordkeeping or collection costs associated with the information collected on the EE–1, EE–2, EE–3, EE–4, EE/EN–15, EE/EN–20 or EE–915. Because the medical information requested by the other two information collections is kept as a usual and customary business practice, there is no additional recordkeeping or collection cost associated with those collections. The only operation and maintenance cost will be for postage and mailing. An estimated 50% of the EE–1 and EE–2 forms will involve postage and mailing costs; the remainder will be received directly by either DOL or DOE personnel. The EE–3 form always accompanies the EE–1 or EE–2, therefore no additional postage or mailing is required. An estimated annual total of 167,612 mailed responses at $0.34 (postage) + $0.03 (envelope) per response would be $62,016.44.

Request for comments: The public is invited to provide comments on the above-noted new information collection requirements so that the Department may:

(1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimates of the burdens of the collections of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Send comments regarding this burden estimate, or any other aspect of this new collection of information, including suggestions for reducing this burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment Standards Administration, Washington, DC 20503 no later than July 24, 2001.

IV. What Matters Do the Regulations Address?

Congress, in enacting the EEOICPA, created a new Energy Employees Occupational Illness Compensation Program to ensure an efficient, uniform, and adequate compensation system for certain employees of DOE, its vendors, contractors, and subcontractors, who contracted beryllium, silica, and radiation related health conditions as a result of their employment in the development of nuclear weapons. These regulations describe the process that DOL will use so that these employees, and, when applicable, their survivors, will receive the benefits provided by the EEOICPA in the efficient and uniform manner intended by Congress. The following discussion describes the regulations that will appear as 20 CFR parts 1 and 30.

20 CFR Part 1

This part is substantially the same as current part 1 (§§ 1.1 through 1.6), with the exception of the updated list of assigned functions contained in § 1.2, and is reprinted in full for the ease of the reader. This updated list of functions reflects that the Assistant Secretary for Employment Standards

has assigned the Department's responsibilities under the EEOICPA and E.O. 13179 to the Deputy Assistant Secretary for Workers' Compensation Programs.

20 CFR Part 30

Subpart A—General Provisions

This subpart briefly describes the types of benefits available under the EEOICPA and provides a summary of how the Department's regulations under the Act are organized. It also describes the effect of other general criminal and civil provisions on the EEOICPA claims process.

Introduction

Sections 30.1 and 30.2 briefly describe how the tasks involved in administering the EEOICPA have been assigned, both within the Department and among the Secretaries of Labor, Health and Human Services, and Energy, and the Attorney General, while § 30.3 summarizes how the regulations in this part are organized by subject area.

Definitions

This section of the regulation defines the principal terms used in this part. It includes terms specifically defined in the EEOICPA that, for the convenience of the user of this part, are repeated in this section. The Department seeks comments on all of the definitions used in the regulation, including, in particular, those addressed in the following paragraphs.

The § 30.5(g) definition of *benefit or compensation* includes the money DOL pays to or on behalf of a claimant as well as any other amounts paid for such things as medical treatment, monitoring, examinations, services and supplies and the transportation and other expenses incurred in securing such medical treatment. This section also distinguishes the meaning of the term "compensation" as it is used in EEOICPA section 3628(a)(1)—the $150,000 lump sum payment—and as it is used in EEOICPA section 3630(a)—the $50,000 lump sum payment to covered employees or their survivor(s) under section 5 of the RECA.

EEOICPA section 3630(a) describes a *covered uranium employee* as "an individual who receives, or has received, $100,000 under section 5 of the RECA for a claim made under that Act." Because either an eligible employee or that eligible employee's survivor(s) may receive $100,000 under section 5 of the RECA, interpreting the word "individual" in the section 3630(a) definition of "covered uranium employee" as either an employee or that employee's survivor(s) results in having to award $50,000 to the survivor of a deceased survivor. This would create a result that does not appear to have been intended by Congress and is inconsistent with the definitions of covered beryllium employees, covered employees with cancer, and covered employees with chronic silicosis under the EEOICPA. These definitions of covered employee include only persons who are or were employees, they do not include survivors as covered employees. Such an overly literal definition of "covered uranium employee" in the EEOICPA is inconsistent with the purpose of the EEOICPA "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 * * *." (see EEOICPA section 3611(b)). Furthermore, the conference report on the EEOICPA also notes that section 3630 establishes "an additional entitlement for certain uranium miners, millers, and transporters, or the survivor of any such employee if the employee is deceased, who receives, or has received, payment of a claim under the Radiation Exposure Compensation Act (42 U.S.C. 2210 note)." H.R. Conf. Rep. No. 96–945, at 982 (2000). To avoid compensation of survivors of survivors, the Department has defined a "covered uranium employee" as an employee who has been determined to be entitled to compensation under section 5 of the Radiation Exposure Compensation Act, as amended, (42 U.S.C. 2210 note) for a claim made under that Act.

The EEOICPA does not define *disability* but uses that term in section 3628(a) as a qualification for entitlement to the $150,000 lump sum payment. While other federally administered workers' compensation programs define "disability" to require a claimant to establish a loss of wage earning capacity or permanent impairment, it is clear from Congress' description of this compensation program in EEOICPA section 3611(b), that an employee need only establish, to OWCP's satisfaction, that he or she has or has had one of the covered occupational illnesses, without establishing a loss of wage earning capacity or permanent impairment as a result of that illness. The definition of "disability" in § 30.5(w) reflects this Congressional intent.

The EEOICPA defines *survivor* as any individual or individuals entitled to compensation under the survivor provisions of the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8133. Therefore, the definition of survivor in § 30.5(dd) identifies those individuals who would qualify as survivors of a deceased covered employee under section 8133 of the FECA. A significant feature of the FECA survivor provision is the limitation that the list of eligible individuals does not include a child over the age of 18 unless that child is a "student" as defined in section 8101(17) of the FECA, or is incapable of self-support. Similarly, non-dependent parents, siblings, grandparents and grandchildren do not qualify as survivors.

Information in Program Records

Sections 30.10 and 30.11 describe the Privacy Act system of records entitled DOL/ESA–49 that covers all OWCP records relating to claims filed under the EEOICPA. This system of records is both maintained by and under the control of OWCP. The records contained in DOL/ESA–49 are considered confidential and may not be disclosed except as provided by the Privacy Act of 1974. Section 30.12 describes the process that must be used to either obtain copies of or amend records contained in DOL/ESA–49.

Rights and Penalties

Section 30.16 makes reference to some of the criminal and civil proceedings that can result from filing a fraudulent or false claim or statement with OWCP in connection with a claim under the EEOICPA, and notes that the Department of Justice has the sole authority to initiate criminal proceedings. Section 30.17 sets out the Act's statutory requirement for permanent forfeiture of all benefits whenever a claimant defrauds the federal government in connection with a claim under the EEOICPA or any other federal or state workers' compensation law.

Subpart B—Filing Claims; Evidence and Burden of Proof; Special Procedures for Certain Cancer Claims

This subpart describes the early steps in OWCP's claims adjudication process and includes a general description of the evidence an employee or survivor must submit to meet his or her burden of proof. It also explains the special procedures used in the early adjudication of claims for cancer that do not involve members of the Special Exposure Cohort, which includes HHS's responsibility for calculating a reconstructed dose.

Claims for Occupational Illness—Employee or Survivor's Actions

Section 30.100 describes how an employee can file (or withdraw) a

written claim for benefits under the Act, and explains the three alternate methods that can be used to "file" such a claim for the purpose of establishing a commencement date for any possible entitlement to medical benefits should the claim ultimately be approved by OWCP. Since an employee's possible entitlement to any medical benefits under the Act commences on the date the written claim is filed, OWCP will choose the earliest filing date from among the three alternate methods—the date the claim is mailed to OWCP (as determined by postmark), the date the claim is actually received by OWCP, or the date the claim is actually received by DOE. Section 30.101 addresses these same topics in the context of claims of survivors.

Although use of the claim forms that appear in the list of forms contained in § 30.102 is not required to file a claim (a simple letter that contains words of claim is legally sufficient), claims should be filed using OWCP's official claim forms to ensure that all information necessary for the early stages of the claims adjudication process has been submitted. Form EE–1 (for an employee claiming for his or her own occupational illness) and Form EE–2 (for a survivor of such a deceased employee) are provided for these purposes.

Claims for Occupational Illness—Actions of DOE

In light of the broad range of employment situations that could lead to an exposure that might result in an occupational illness compensable under the Act, the Department has decided to seek the type of basic factual information that an employer would otherwise provide to OWCP from DOE. Therefore, § 30.105 indicates that DOE will have the responsibility to either concur or disagree (or indicate that it lacks sufficient information to either concur or disagree) with the employment history submitted by the employee in support of his or her claim. DOE will also be responsible for helping employees establish, through alternate methods, the necessary factual basis to support their employment histories when the usual documentary evidence is not available. Section 30.106 addresses these same DOE responsibilities in the context of claims of survivors.

Evidence and Burden of Proof

Section 30.110 lists the four classes of individuals who are entitled to compensation under sections 3623, 3627 and 3630 of the EEOICPA, and § 30.111 describes the burden of proof on these individuals to establish their entitlement to benefits under the Act. While every claimant must establish eligibility by a preponderance of the evidence, section 30.111(c) permits the use of written affidavits or declarations as evidence of employment history or survivor relationship where the claimant attests that actual records on these matters do not exist. DOL further assists claimants in the development of their claims by notifying the claimant of any deficiency and providing an opportunity for correction of the deficiency (section 30.111(b)).

Special Procedures for Certain Cancer Claims

E.O. 13179 assigns the "primary responsibility for administering" the compensation program to the Secretary of Labor. However, a portion of the adjudication process of claims for cancer that do not involve employees who are members of the Special Exposure Cohort (or a survivor of such an employee) is assigned to HHS. Accordingly, § 30.115 indicates that if OWCP determines that such an employee (or a survivor of such an employee) has established that he or she contracted cancer after beginning covered employment, OWCP will refer the claim to HHS for dose reconstruction. This package will include, among other things, any employment history compiled by OWCP. It will not, however, constitute a recommended or final decision by OWCP on the claim.

After completing such further development of the employment history as it may deem necessary, HHS will reconstruct the radiation dose and notify the claimant directly of its findings. At the same time, HHS will also inform OWCP of its findings regarding the radiation dose, at which point OWCP will resume adjudication of the claim (based on the reconstructed dose calculated by HHS) and determine whether the claimant has met the eligibility criteria set forth in subpart C.

Subpart C—Eligibility Criteria

Eligibility Criteria for Claims Relating to Covered Beryllium Illness

Section 30.205 describes the criteria, set forth in sections 3621(7) and 3621(8) of the EEOICPA, that a claimant must satisfy to qualify for compensation for a covered beryllium illness—that he or she was (or is a survivor of) a "covered beryllium employee" who has a covered beryllium illness. Consistent with other federally administered workers' compensation laws, this section also provides compensation (medical benefits only) for any injury, illness, impairment, or disability sustained as a consequence of a covered beryllium illness.

To establish the status as a "covered beryllium employee," a claimant may submit any trustworthy contemporaneous record that establishes proof of employment or presence at a covered facility during a period when beryllium dust, particles or vapor was present (§ 30.206(a)). Section 30.206(b) describes the type of records that may be considered as evidence of employment or presence at a covered facility. Section 30.207 describes the type of medical evidence required to establish beryllium sensitivity and chronic beryllium disease as set forth in sections 3621(8) and 3621(13) of the EEOICPA, and explains the claimant's burden in establishing a consequential injury or illness.

Eligibility Criteria for Claims Relating to Cancer

Section 30.210 describes the two types of employees with cancer for whom the EEOICPA provides compensation. To be eligible for compensation for cancer, an employee either must be: (1) A member of the Special Exposure Cohort (SEC) who was a DOE employee, a DOE contractor employee, or an atomic weapons employee who contracted a specified cancer after beginning such employment; or (2) a DOE employee, a DOE contractor employee, or an atomic weapons employee who contracted cancer (that has been determined, pursuant to guidelines promulgated by HHS, "to be at least as likely as not related to such employment"), after beginning such employment. Consistent with other federally administered workers' compensation laws, this section also provides compensation (medical benefits only) for any injury, illness, impairment, or disability sustained as a consequence of a covered cancer.

Section 30.213(a) describes the criteria set out in section 3621(14) of the EEOICPA for establishing eligibility as a member of the SEC. To satisfy the EEOICPA requirement that an eligible employee must have worked at a designated gaseous diffusion plant for a number of workdays aggregating at least 250 workdays before February 1, 1992, § 30.213(b) allows the claimant to aggregate the days of service at more than one gaseous diffusion plant. Section 30.213(c) describes the type of evidence a claimant may submit to establish his employment with a covered employer under this section. A written medical report that includes a

diagnosis and the date of diagnosis is sufficient to establish either a specified cancer, in the case of SEC members, or cancer for other covered employees, under § 30.214(a). Section 30.214(b) describes the medical evidence required to establish an injury or disease that occurs as a consequence of a covered cancer.

Eligibility Criteria for Chronic Silicosis

Section 30.215 sets forth the EEOICPA section 3627 requirements for entitlement to compensation for chronic silicosis. To be eligible for benefits, the employee must establish employment with the DOE or with a DOE contractor and presence for a number of work days aggregating at least 250 work days during the mining of tunnels at a DOE facility located in Nevada or Alaska, which were used for atomic weapon tests or experiments. Section 30.216(c) allows the claimant to aggregate the days of service at more than one qualifying site. The employee must have been diagnosed with chronic silicosis, supported by medical evidence set forth in § 30.217.

Eligibility of Certain Uranium Employees

Section 30.220 describes how beneficiaries of $100,000 under section 5 of the RECA establish entitlement to an additional $50,000 and medical benefits provided by section 3630 of the EEOICPA. Since RECA claimants may receive payment under RECA in the form of a promise to pay at a future date, the Department has interpreted the requirement in section 3630 of the Act that a claimant "receives or has received $100,000" under RECA to include claimants who receive or have received a promise of subsequent payment.

Subpart D—Adjudicatory Process

This subpart describes the adjudicatory process OWCP will follow when it issues decisions on claims under the Act. It contains information about filing objections following a recommended decision and requesting a hearing before OWCP's Final Adjudication Branch (FAB), and describes the manner in which the FAB will issue decisions on claims after a hearing, a review of the written record, or on a summary basis. This subpart also indicates when decisions of the FAB will become final, and describes the process whereby OWCP may exercise its discretion to modify a final decision, either on its own motion or upon the motion of a claimant.

Recommended Decisions on Claims

Sections 30.305 through 30.307 contain a basic description of a "recommended" decision on a claim, which will contain both findings of fact and conclusions of law, as appropriate. These sections also describe the general process OWCP will use when it issues a recommended decision, and indicate to whom OWCP will send the recommended decision. It is important to recognize that a recommended decision does not constitute a final decision by OWCP on a claim; instead, it only represents an initial recommendation made by an OWCP claims examiner. Therefore, since a recommended decision will not be OWCP's final decision on a claim under the EEOICPA, a claimant may not seek review of such decision in federal court.

Hearings and Final Decisions on Claims

Section 30.310 indicates that when the district office issues a recommended decision on a claim, it will also forward the record of such claim to the FAB, whether the recommended decision was favorable or unfavorable to the claimant. Within 60 days of the date the district office issues the recommended decision (unless this period is extended by the FAB), the claimant must object to specific findings of fact and/or conclusions of law contained in the recommended decision to trigger either a hearing (upon specific request) or a review of the written record by the FAB. In the absence of any specific objections, § 30.311(a) provides that the FAB will summarily affirm the recommended decision without conducting any further review of such decision. The Department believes that bringing the claims adjudication process to an end when a claimant does not raise any specific objections is appropriate, even if the claimant asks for a hearing, since the expenditure of administrative resources needed to conduct further review of a claim under these circumstances will most likely serve no useful purpose given the non-adversarial nature of the claims adjudication process. Section 30.311(b) provides that the FAB will also summarily affirm the recommended decision, in whole or in part, if the claimant waives any objection to all or part of such decision.

If a claimant files specific objections to a recommended decision with the FAB, but does not request a hearing on his or her claim, § 30.312 states that the FAB will consider the objections by means of a review of the written record of the claim. If the claimant only objects to a part of the recommended decision (for example, the claimant objects to OWCP's rejection of the claim with respect to one occupational disease, but does not object to OWCP's acceptance of the claim for a different occupational disease), this section notes that the FAB has the discretionary authority to issue a decision summarily affirming the uncontested part, if such action is appropriate. Section 30.313 describes the process a FAB reviewer will follow when he or she conducts a written review of the record, which provides for the submission of additional evidence or argument from the claimant, or at the request of the FAB reviewer.

If the claimant files objections and requests a hearing within the 60-day period referred to above, § 30.314 sets out the general procedural framework that a FAB reviewer will follow through the completion of the informal hearing process. This section describes a FAB reviewer's wide discretion in matters of scheduling and in the conduct of the hearing itself. Consistent with the provision in § 30.312 allowing partial decisions, § 30.314 also provides that if the claimant only objects to a part of the recommended decision, a FAB reviewer has the discretionary authority to issue a decision that summarily affirms the uncontested part. Section 30.315 completes the description of the hearing process by indicating that a claimant may only postpone a scheduled hearing in certain limited circumstances, and if the hearing cannot be rescheduled in such a way as to prevent delay, a review of the written record will be conducted instead. It also indicates that a claimant may request a change to a review of the written record at any time after requesting a hearing, and that once such a change is made, no further opportunity for a hearing will be provided.

The varied processes by which the FAB issues decisions on claims (or parts of claims) are described in § 30.316. Subsection (a) provides for summary affirmance (in whole or in part) of a recommended decision when no specified objections have been raised, subsection (b) provides for the issuance of a decision on a claim at the conclusion of either a hearing or a review of the written record, and subsection (c) provides for the automatic affirmance of any recommended decision that is pending either a hearing or a review of the written record at the FAB for more than one year. Subsection (d) indicates that decisions of the FAB issued pursuant to § 30.316(a), (b) or (c) will become final upon expiration of 30 days from the date they are issued, unless the claimant files a timely request for reconsideration

under § 30.319, and subsection (e) indicates to whom the FAB will send its decision. Section 30.317 further provides that at any point in time prior to issuing a decision on a claim, the FAB may request that a claimant submit additional evidence or argument and may, in the exercise of its discretion, remand a claim to the district office for further development without issuing a decision under § 30.316.

Finally, § 30.319 sets out the process whereby a claimant may request reconsideration of a decision of the FAB before such decision becomes final, and notes that if the request is granted, the FAB will review the district office's recommended decision again and issue a new decision on the claim without holding a hearing. This section also points out that if the FAB denies the request for reconsideration, the decision at issue will become final on the date the request is denied. In § 30.319(c), the Department describes the point at which a decision on a claim under the EEOICPA becomes final for purposes of seeking judicial review, which occurs when all administrative review opportunities have been exhausted.

Modification

In order to accommodate those rare instances when OWCP may wish to reopen a final decision of the FAB, § 30.320 describes OWCP's discretionary authority to modify such a decision at any time on its own motion. This section also provides that a claimant can move for modification within one year of the date the FAB decision became final, provided that he or she can establish a mistake of fact in the final decision or changed circumstances. If OWCP determines that modification is warranted, this section notes that it may issue a new recommended decision modifying the prior final decision on a claim. It also notes that while any new recommended decision issued on modification will be subject to the adjudicatory process described in subpart D, the scope of review at the FAB will be limited to the merits of the new recommended decision; OWCP's discretionary determination to modify the prior final decision will not be reviewable. Subsection (c) completes the description of the adjudicatory process by noting that the time limitations in § 30.320 will not prevent a claimant from filing another claim for a new occupational disease or consequential injury not already considered by OWCP, and that regardless of the number of claims OWCP accepts, no claimant can receive more than one award of monetary compensation under sections 3628(a)(1) or 3630(a) of the Act.

Subpart E—Medical and Related Benefits

This subpart contains a description of the medical benefits that are provided to employees under the EEOICPA, the general rules for obtaining medical care, and information regarding an employee's initial choice of physician. It also describes the manner in which OWCP may direct an employee to be examined by another physician of its choosing, and how OWCP resolves conflicts in the medical evidence that may arise as a result of such an examination. Finally, subpart E describes the general requirements for medical reports to be submitted to OWCP, and the process to be used by employees to seek reimbursement for medical expenses they have paid.

Medical Treatment and Related Issues

Section 30.400 reflects the basic entitlement to medical benefits contained in section 3629 of the Act, including the provision that an employee's entitlement to such benefits commences upon the date the claim is filed. This section also indicates that medical treatment that was provided to an employee who dies before the claim is accepted will be paid for if the claim is accepted, as long as such treatment was provided on or after the date the employee filed his or her claim. Section 30.400 indicates that any qualified medical provider may provide appropriate services, appliances and supplies.

Consistent with OWCP's definition of "physician" set out in subpart A, which is the same as the definition set forth in section 8101(2) of the FECA, §§ 30.401 and 30.402 describe the special rules that will apply to medical services provided by chiropractors and clinical psychologists. Generally, chiropractors are limited to providing treatment to correct a spinal subluxation, and a diagnosis of spinal subluxation as demonstrated by x-ray to exist must appear in the chiropractors report before payment of the bill will be considered. Clinical psychologists cannot serve as physicians for conditions that include a physical component unless they are authorized to do so under the applicable state law.

Section 30.403 indicates that the personal care services of a home health aide, licensed practical nurse or similarly trained individual will be paid for as a medical benefit, so long as such services are medically necessary. In addition, § 30.404 indicates that transportation and other reasonable and necessary expenses needed to obtain authorized medical treatment will be paid for as a medical benefit.

Since section 3629(b)(2) of the Act specifically provides employees with the right to select an initial treating physician, § 30.405 indicates that OWCP will provide them with an opportunity to designate a treating physician when it accepts the claim. The physician so selected can refer the employee to a specialist without first seeking approval from OWCP, but in all other situations the employee must make a written request to OWCP before he or she changes treating physicians.

Directed Medical Examinations

On occasion, OWCP may need to have an employee examined by a physician of its own choosing for a second opinion. Section 30.410 addresses this need (in a manner consistent with OWCP's practices under section 8123 of the FECA) and indicates that an employee may not have anyone else present at the examination, other than a physician paid by him or her, unless OWCP decides that exceptional circumstances exist. This section also indicates that where an actual examination is not needed, OWCP may send the case file for a second opinion review.

Also consistent with section 8123 of the FECA, § 30.411 describes what OWCP will do once it receives the report from the second opinion physician. OWCP will base its determination on entitlement on the report that has greater probative value, unless there is a conflict in the medical evidence between the second opinion physician and the employee's physician. A conflict only occurs when two reports of virtually equal weight and rationale reach opposing conclusions. When this occurs, OWCP will appoint a third physician to make a referee examination, and the report of this physician will be entitled to special weight sufficient to resolve the conflict if it has sufficient probative value. An employee may not have anyone else present at the referee examination, unless OWCP decides that exceptional circumstances exist, and OWCP may send the case file for review by a referee physician if an actual examination is not needed.

Section 30.412 indicates that the costs of the directed medical examinations described in §§ 30.410 and 30.411 will be paid for out of the fund as medical benefits. In addition, OWCP will reimburse the employee for necessary and reasonable expenses incident to such directed medical examinations out of the fund.

Medical Reports

Section 30.415 contains a general description of what a medical report submitted to OWCP from an attending physician should contain, and § 30.416 indicates that Form EE–7 should be used as a guide in the preparation of medical reports. For cases requiring hospital treatment or prolonged care, § 30.417 indicates that periodic narrative reports from the attending physician are required, and that OWCP may ask the physician to respond to questions regarding continuing medical treatment for the accepted occupational illness.

Medical Bills

Medical providers should submit medical bills directly for payment out of the compensation fund. However, in those instances where an employee pays a medical bill and claims for reimbursement out of the fund, § 30.420 refers the employee to the itemized bill procedures described in § 30.702, while § 30.421 sets out the standard industry practice of requiring submission of medical bills by the later of the end of the calendar year after the year the expense was incurred, or the end of the calendar year after the year OWCP accepted the claim.

Since the OWCP fee schedule sets maximum limits on amounts payable for many medical services, § 30.422 notes that an employee may be only partially reimbursed for medical expenses because the amount he or she paid exceeds the maximum allowable charge. When this happens, OWCP will advise the employee of his or her responsibility to ask the provider to refund the excess charge paid to the employee, or to credit the employee's account. If the provider refuses to do so, OWCP may authorize reasonable reimbursement to the employee after reviewing the facts and circumstances involved.

Subpart F—Survivors; Payments and Offsets; Overpayments

Survivors

Sections 30.500 through 30.502 address the identification of persons entitled to receive monetary compensation based on their relationship to a deceased covered employee under the Act. The class of persons who may be a "survivor" under the EEOICPA is taken from section 8133 of the FECA, as required by section 3621(18) of the EEOICPA. Any reference to section 8133 of the FECA is solely for the purpose of identifying the individuals who may be survivors under EEOICPA. Section 8109 of the FECA provides the order of precedence and proportion of monetary compensation to be paid to the eligible surviving beneficiaries, if any, under sections 3628(e)(2) and 3630(e)(2) of the EEOICPA. These regulations specifically detail who may be entitled to receive compensation based upon their survivor status. It should be noted that widows, widowers and minor children are the only persons who need not be dependent upon the deceased covered employee to receive monetary compensation as a survivor. The remaining persons, who may be survivors under section 8133 of FECA, must have been "dependent" upon the deceased covered employee at his or her time of death. The result of this provision is that adult children of deceased covered employees, as well as other remaining family members, such as "non-dependent" parents, siblings, grandparents or grandchildren, will not be eligible to receive any monetary compensation under this Act. Finally, OWCP will take all necessary steps to determine the identity and correct amount of compensation to be paid to each and every eligible surviving beneficiary.

Payments and Offsets

Sections 30.505 through 30.507 address the rules for the payment of monetary compensation to claimants under the EEOICPA. No vested right exists to receive compensation under the EEOICPA, thus claimants must be alive to receive the compensation for which they filed a claim. In cases where the claimant is deceased, OWCP will pay the eligible surviving beneficiaries or their legal guardian, if any. In making payment on a claim OWCP will take all necessary and reasonable steps in determining the entitlement and identity of the claimant and/or the eligible surviving beneficiaries related to a claim for benefits, as well as any offset required by section 3641 of the EEOICPA to such an amount awarded. OWCP will attempt to ensure that the correct person will receive payment in the correct amount by reserving the right to conduct any investigation, including requiring any claimant or eligible surviving beneficiary to provide or execute an affidavit, record or document, or authorize the release of any information deemed necessary for purposes of payment. No payment will be processed unless an "Acceptance of Payment" form is signed and returned by the beneficiary. Furthermore, any failure by the claimant or eligible surviving beneficiary to cooperate with an investigation or provide information to OWCP may be deemed a rejection of the payment, unless the claimant or eligible surviving beneficiary does not have the legal authority to provide, release or authorize access to the requested information or documents. Any rejected compensation payment, or shares of compensation payment, will not be distributed to the remaining eligible surviving beneficiaries, rather, the payment will be returned to the Fund. With respect to the "offset" provisions within § 30.505, OWCP is requiring claimants and eligible surviving beneficiaries who receive money awards or settlements based on injuries suffered, for which they have also filed a claim under the EEOICPA, to declare such amounts received for purposes of subtracting that amount from the total award to be paid on the EEOICPA claim. For purposes of OWCP's offset calculations, such claims as state workers' compensation benefits, life insurance or health insurance contracts will not be included in the analysis. The provisions in this section concerning multiple payments are set forth to provide notice to claimants and survivors that a covered employee's injuries due to any of the occupational illnesses recognized under the EEOICPA give rise to only one lump-sum payment of monetary compensation per covered employee. However, a claimant who is a covered employee and who also qualifies as an eligible surviving beneficiary may receive more than one payment; similarly, an eligible surviving beneficiary may receive payment or a portion of a payment each time he or she qualifies as an eligible surviving beneficiary.

Finally, the provisions in §§ 30.505 and 30.506 regarding "beryllium sensitivity" make clear that no lump-sum monetary compensation will be paid for such illness, rather "monitoring" will be the form of compensation afforded to such covered employees in accordance with section 3628(a)(2) of the Act. Monitoring shall consist of regular medical examinations and diagnostic testing to determine if the covered employee has developed "established chronic beryllium disease." Once the individual develops and has diagnosed the established chronic beryllium disease, he or she may then submit evidence of such diagnosis to OWCP and request appropriate benefits under the EEOICPA.

Overpayments

Sections 30.510 through 30.513 detail the process of how OWCP will identify and pursue collection of overpayments of compensation for purposes of the EEOICPA. These sections have been written to highlight and clarify OWCP's

process to identify, notify, resolve and collect any overpayments made to EEOICPA beneficiaries. Specifically, OWCP will notify each recipient of any compensation payment by including with each check a narrative description indicating the reasons for payment. For those payments sent via electronic funds transfer (EFT) clear notification of the date and amount of payment will appear on the recipient's bank statement. When OWCP initially identifies an overpayment it will notify the recipient of its existence and attempt to clarify and resolve the dispute through an informal process. Specifically, OWCP will notify the beneficiary of the overpayment and allow the beneficiary 30 days to submit comments in writing and documentation contesting the overpayment. Upon the end of that 30-day period, OWCP will notify the beneficiary of its determination of whether a debt is owed to OWCP. If this informal process fails to resolve the dispute, OWCP will then advise the recipient of its intentions to collect the overpayment using the Department's debt collection procedures set forth in 29 CFR part 20. Finally, if the Department's own procedures fail to procure the repayment of the debt, such overpayment is subject to the provisions of the Federal Claims Collection Act of 1996 (as amended) and the debt may be referred to the Department of Justice, or a debt collection agency.

Subpart G—Special Provisions

This subpart addresses some additional matters that can arise in connection with a claim under the EEOICPA. It contains provisions describing representation of claimants before OWCP and also describes the subrogation rights the United States has upon payment of compensation under the Act, as well as the statutory election of remedies for claimants who file tort suits against beryllium vendors or atomic weapons employers.

Representation

Section 30.600 notes that while the claims process established by this part is informal and non-adversarial, a claimant may appoint one individual at a time to represent his or her interests before OWCP. Such appointments must be in writing, and OWCP will only recognize one individual at a time as the duly appointed representative for the claimant. Section 30.601 sets out the legal restrictions on who may serve as a representative, and when a federal employee can be appointed to act as a claimant's representative. Finally, § 30.602 indicates that the claimant is solely responsible for paying any representative's fee for services and costs associated with the representation; OWCP is in no way liable for any portion of the representative's fee. EEOICPA section 3648 limits the attorneys fees that can be charged a claimant and provides a $5000 fine for exceeding those limits. Since DOJ is responsible for deciding whether to seek the imposition of a fine, the Department defers to DOJ's interpretation of the statutory limitation.

Third Party Liability

Section 3642 of the Act provides that upon payment of compensation to a claimant, the United States is subrogated to any right or claim that the claimant may have on account of his or her injuries, for the amount of such payment of compensation. Sections 30.605 through 30.611 describe the manner in which the United States will exercise this statutory authority. These sections require claimants who have received EEOICPA benefits to inform OWCP if they receive money or other property as a result of a settlement or judgment related to their claims, and provide advice regarding the method of valuing structured settlements and the amount to which the United States is subrogated. These sections also note that a settlement or judgment received as a result of allegations of medical malpractice in treating an illness covered by the EEOICPA is a recovery that must be reported to OWCP, while payments to an employee or eligible surviving beneficiary as a result of an insurance policy which the employee or eligible surviving beneficiary has purchased is not. They also provide guidance on how the amount paid on a single EEOICPA claim is attributed to different conditions for purposes of calculating the amount to which the United States is subrogated.

Election of Remedy Against Beryllium Vendors and Atomic Weapons Employers

Based on the explicit language of section 3645 of the EEOICPA, §§ 30.615 and 30.616 describe the severe limitations on the receipt of compensation under the Act that arise when a claimant files a tort suit against either a beryllium vendor or an atomic weapons employer. Section 30.615 provides that if a claimant filed such a tort suit on or prior to October 30, 2000, he or she will not be eligible to receive compensation unless the suit is dismissed no later than December 31, 2003.

Section 30.616 notes that if a claimant files such a tort suit after October 30, 2000, he or she will not be eligible to receive compensation unless the suit is dismissed no later than April 30, 2003, or 30 months after the date the claimant first became aware that his or her illness may be connected to the exposure covered by the EEOICPA, whichever is later. If a claimant files such a tort suit after the later of either April 30, 2003, or 30 months after the date the claimant first became aware that his or her illness may be connected to the exposure covered by the EEOICPA, he or she also will not be entitled to any benefits under subtitle B of the EEOICPA. For both of these provisions, "the date the claimant first became aware" will be deemed to be the date he or she received either a reconstructed dose from HHS, or a diagnosis of a covered beryllium illness, as applicable.

Section 30.617 indicates that prior to authorizing any payment under § 30.505, OWCP will require the claimant or each surviving beneficiary to execute and provide an affidavit showing whether he or she complied with the filing and dismissal requirements of §§ 30.615 or 30.616, if applicable. This section also authorizes OWCP to require the submission of supporting evidence to confirm the particulars of any affidavit provided thereunder.

Subpart H—Information for Medical Providers

This subpart contains the information that will be needed by medical providers of services and supplies to employees with approved claims under the EEOICPA. It also contains the rules for the submission of medical bills from providers and employees, and describes the fee schedule OWCP will apply to charges for certain medical procedures and services. The process described in this subpart is similar to that used by medical providers submitting bills for services provided to claimants under other federal programs, including the FECA program administered by OWCP.

Medical Records and Bills

Section 30.701 sets out the process medical providers must follow when they submit bills for medical and surgical treatment, appliances or supplies furnished to employees, except for treatment and supplies provided by nursing homes. The provider must itemize the charges on the standard Health Insurance Claim Form, HCFA 1500 or OWCP 1500 (for professional charges), the UB–92 (for hospitals), or the Universal Claim Form (for pharmacies), identify each service performed using the Physician's Current Procedural Terminology (CPT) code, the

Health Care Financing Administration Common Procedure Coding System (HCPCS) code, the National Drug Code (NDC), or the Revenue Center Code (RCC), and state each diagnosed condition and furnish the corresponding diagnostic code using the "International Classification of Disease, 9th Edition, Clinical Modification" (ICD–9–CM).

Hospitals must submit charges for medical and surgical treatment or supplies on the UB–92 and identify each outpatient radiology service, outpatient pathology service and physical therapy service performed using HCPCS/CPT codes with a brief narrative description. Other outpatient hospital services for which HCPCS/CPT codes exist must also be coded individually using the coding scheme noted in § 30.701. Services for which there are no HCPCS/CPT codes available may be identified using the RCCs described in the current edition of the "National Uniform Billing Data Elements Specifications." The hospital must also furnish the diagnostic code using the ICD–9–CM, and if outpatient hospital services include surgical and/or invasive procedures, the hospital must code each procedure using the proper CPT/HCPCS codes and furnishing the corresponding diagnostic codes using the ICD–9–CM.

Pharmacies must itemize charges for prescription medications, appliances, or supplies on the Universal Claim Form. Bills for prescription medications must include the NDC assigned to the product, the generic or trade name of the drug provided, the prescription number, the quantity provided, and the date the prescription was filled. Nursing homes must itemize charges for appliances, supplies or services on the provider's billhead stationery.

Section 30.701(d) expressly indicates that by submitting a bill and/or accepting payment, the provider signifies that the service for which payment is sought was performed as described and was necessary. The provider also agrees to comply with the provisions of subpart H that address the rendering of treatment and/or the process for seeking reimbursement for medical services, including the limitation imposed on the amount to be paid for such services.

Section 30.702 describes the similar process to be followed by employees seeking reimbursement. If an employee has paid bills for medical, surgical or other services, supplies or appliances due to an accepted occupational illness, he or she should submit an itemized bill on the HCFA 1500 or OWCP 1500. The provider of such service must list each diagnosed condition and furnish the applicable ICD–9–CM code, and identify each service performed using the applicable HCPCS/CPT code. The bill must be accompanied by evidence that the employee paid the provider for the service and a statement of the amount paid. Copies of bills will not be accepted for reimbursement unless they bear the original signature of the provider, with evidence of payment.

An employee will be only partially reimbursed for a medical expense if the amount he or she paid to a provider for the service exceeds the maximum allowable charge set by OWCP's schedule. If this happens, OWCP will advise the employee of the maximum allowable charge for the service in question, and that it is his or her responsibility to ask the provider to refund the amount paid that exceeds the maximum allowable charge. If the provider does not comply with this request within 60 days, OWCP will begin the process of excluding the provider from further participation in the program. OWCP also has the discretion to authorize reimbursement to the employee for the excess amount.

The time limitation that will apply to payment of medical bills submitted by both providers and employees is described in § 30.703. This section provides that no bill will be paid if it is submitted more than one year beyond the end of the calendar year in which the expense was incurred or the service or supply was provided, or more than one year beyond the end of the calendar year in which the employee's claim was first accepted as compensable by OWCP, whichever is later.

Medical Fee Schedule

Sections 30.705 through 30.710 describe the cost containment methods that will be used when payment is made for medical and other health services furnished by physicians, hospitals and other providers. These methods will not be applied to charges for non-medical services provided in nursing homes, or to charges for appliances, supplies, services or treatment furnished by medical facilities of the U.S. Public Health Service or the Departments of the Army, Navy, Air Force and Veterans Affairs.

For professional medical services, OWCP will maintain a schedule of maximum allowable fees for procedures performed in a given locality. The fee schedule consists of an assignment of a value to procedures identified by HCPCS/CPT code representing the relative skill, effort, risk and time required to perform the procedure, an index based on a relative value scale that considers skill, labor, overhead, malpractice insurance and other related costs, and a monetary value assignment (conversion factor) for one unit of value in each of the categories of service. Generally, payment for a listed procedure will not exceed the amount derived by multiplying the relative values for that procedure by the geographic indices for services in that area and by the dollar amount assigned to one unit in that category of service. However, where the time, effort and skill required to perform a particular procedure vary widely from one occasion to the next, OWCP may choose not to assign a relative value to that procedure and instead make individual determinations of the amount to be paid. OWCP may also set fees without regard to schedule limits for specially authorized consultant examinations, directed medical examinations, and other specially authorized services.

Payment for medicinal drugs prescribed by physicians may not exceed the amount derived by multiplying the average wholesale price of the medication by the quantity or amount provided, plus a dispensing fee. All prescription medications identified by NDC will be assigned an average wholesale price representing the product's nationally recognized wholesale price as determined by surveys of manufacturers and wholesalers. OWCP will establish the dispensing fee. Payment for inpatient medical services will be made using condition-specific rates based on the Prospective Payment System devised by HCFA (42 CFR parts 412, 413, 424, 485, and 489). Using this system, payment is derived by multiplying the diagnosis-related group weight assigned to the hospital discharge by the provider-specific factors.

Sections 30.711 through 30.713 describe the process that will be followed when a fee for a billed procedure or cost is reduced, and what the medical provider can do following such a reduction. If the charge submitted exceeds the maximum amount according to the schedule, payment will be made in the amount allowed by the schedule for that service and the provider will be notified that payment was reduced in accordance with the schedule. The provider will have 30 days to request reconsideration of the fee determination by the district office with jurisdiction over the employee's claim. OWCP will only reevaluate the paid amount if the request is accompanied by evidence showing that the code incorrectly identified the procedure, that the presence of a severe or concomitant medical condition made treatment

especially difficult, or that the provider possessed unusual qualifications (board certification in a specialty is not sufficient evidence of unusual qualifications). Within 30 days of receiving the request, the district office will respond stating whether or not an additional amount will be allowed. If the district office continues to disallow the contested amount, the provider may apply to the Regional Director of the region with jurisdiction over the district office within 30 days. Within 60 days of an application, the Regional Director will issue a decision whether or not an additional amount will be allowed. A provider whose fee is partially paid may not request reimbursement from the employee for additional amounts.

Exclusion of Providers

Sections 30.715 through 30.726 describe the procedures OWCP will use to exclude providers from payment under this subpart to protect the EEOICPA program from fraud and abuse. After completing such inquiry he or she deems appropriate, the Regional Director may initiate the process of excluding the provider from participation in the EEOICPA program. The Regional Director begins the process by sending the provider a letter, by certified mail and with return receipt requested, containing a statement of the grounds upon which exclusion will be based, a summary of the information the Regional Director relied on in reaching an initial decision that exclusion proceedings should begin, an invitation to the provider to either resign voluntarily from participation in the EEOICPA program or to request a decision on exclusion, a notice of the provider's right to request a formal hearing before an administrative law judge, and a notice that if the provider fails to answer the letter of intent within 30 days, the Regional Director may deem the allegations it contains to be true and may order exclusion of the provider without conducting any further proceedings. If the provider submits an answer, the Regional Director will issue a written decision and will send a copy of the decision to the provider by certified mail, return receipt requested. The decision will advise the provider of his or her right to request, within 30 days of the date of the decision, a formal hearing before an administrative law judge.

Any request for a hearing must identify the issues to be addressed and must include any request for a more definite statement by OWCP, any request for the presentation of oral argument or evidence, and any request for a certification of questions concerning professional medical standards, medical ethics or medical regulation for an advisory opinion from a competent recognized professional organization or federal, state or local regulatory body. The Chief Administrative Law Judge of the Department of Labor will assign the matter for an expedited hearing, and the administrative law judge assigned to the matter will consider the request for hearing, act on all requests therein, and issue a Notice of Hearing and Hearing Schedule for the conduct of the hearing. To the extent appropriate, proceedings before the administrative law judge will be governed by 29 CFR part 18. At the conclusion of the hearing, the administrative law judge will issue a written decision and serve it on all parties to the proceeding, their representatives and OWCP. An aggrieved party may, within 30 days of the issuance of such decision, file a petition for discretionary review with the Director for Energy Employees Occupational Illness Compensation on one or more of the following grounds: a finding or conclusion of material fact is not supported by substantial evidence; a necessary legal conclusion is erroneous; the decision is contrary to law or to the duly promulgated rules or decisions of OWCP; a substantial question of law, policy, or discretion is involved; or a prejudicial error of procedure was committed. If a petition is granted, review will be limited to the questions raised by the petition, and a petition not granted within 20 days after receipt of the petition is deemed denied.

After completing the exclusion process, OWCP will notify all district offices, the HCFA, and all employees who are known to have had treatment, services or supplies from the excluded provider within the six-month period immediately preceding the order of exclusion. However, OWCP will not refuse to reimburse an employee for otherwise reimbursable medical treatment, services or supplies if they were rendered in an emergency, or if the employee could not reasonably have been expected to have known of the exclusion. When an employee is notified that his or her attending physician has been excluded, OWCP will provide the employee with an opportunity to select a new attending physician. An excluded provider may apply for reinstatement one year after the exclusion, unless the order provides for a shorter period. An application for reinstatement must be addressed to the Director for Energy Employees Occupational Illness Compensation, and contain a statement of the basis for the application. The Director for Energy Employees Occupational Illness Compensation will only order reinstatement where reinstatement is clearly consistent with the goal of this subpart to protect the EEOICPA program against fraud and abuse. To satisfy this requirement the provider will have to provide reasonable assurances that the basis for the exclusion will not be repeated.

V. Statutory Authority

Section 3611 of the Energy Employees Occupational Illness Compensation Program Act provides the general statutory authority, which Executive Order 13179 allocates to the Secretary, to prescribe rules and regulations necessary for the administration and enforcement of the Act. Sections 3629 and 3630 provide specific authority regarding medical treatment and care, including determining the appropriateness of charges. The Debt Collection Act of 1982, as amended, authorizes imposition of interest charges and collection of debts by withholding funds due the debtor.

VI. Executive Order 12866

This rule is being treated as a "significant regulatory action," within the meaning of Executive Order 12866, because it is economically significant, as defined in section 3(f)(1) of E.O. 12866. The payment of the benefits provided for by the EEOICPA, through the program administered pursuant to this regulatory action will have an annual effect on the economy of $100 million or more. However, the rule will not adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or State, local, or tribal governments or communities, as required by section 3(f)(1) of E.O. 12866. The proposed rule is also a "significant regulatory action" because it meets the criteria of Section 3(f)(4) of that Order in that it raises novel or legal policy issues arising out of the legal mandate established by the EEOICPA.

Based upon the factors and assumptions set forth below, DOL's estimate of the aggregate cost of benefits and administrative expenses of this regulatory action implementing the EEOICPA is, in millions of dollars (estimates for FY2003, FY2004 and FY2005 are preliminary and will be reviewed during the budget formulation process):

	FY2001	FY2002	FY2003	FY2004	FY2005
Admin.	$50	$136	$100	$55	$50
Benefits	358	597	477	253	222

The Department's estimate of the benefits to be paid pursuant to the EEOICPA and of its administrative costs of providing those benefits is based on data collected from other Federal agencies, assumptions regarding the incidence of cancer, beryllium disease and silicosis in the covered population, life expectancy tables, and its experience in estimating administrative and medical costs of workers' compensation programs. Specifically, benefit estimates for cancer claims are based on figures provided by DOE concerning the number of DOE/contractor employees, known cancer incidence and survival rates in the general population obtained from the National Cancer Institute. Based on the number of claims likely to be accepted, the cost of lump-sum payments to these claimants is relatively easily determined. These benefit estimates further reflect contemplated medical costs of $1500 per year for 90% of the covered claimants, while the remaining 10% incur $125,000 medical costs for the year because they are undergoing intensive in-hospital medical treatment.

Benefits estimates for beryllium exposure are based on known incidence rates, known numbers of claimants with beryllium disease, exposed population figures (all of which were obtained from DOE), and medical costs of $3000 per year for beryllium sensitivity, $4000 per year for mild chronic beryllium disease, and $9000 per year for more severe chronic beryllium disease. Benefit estimates for silicosis are based upon figures obtained from DOE concerning the number of exposed employees and the expected incidence of silicosis, and medical costs of $4000 per year. Benefit estimates for the claims based upon receipt of an award by uranium employees pursuant to § 5 of the Radiation Exposure Compensation Act are based on figures for the number of claims provided by DOJ, and $4000 per year in medical costs.

Because the statute provides benefits for covered workers and their survivors who were exposed to radiation, beryllium and silica during a period of almost 60 years, an assumption was made that DOL would receive thousands of claims in the initial few years after the effective date of the statute, and that the number of claims would decrease substantially after the first few years. Administrative cost estimates were developed based upon DOL's experience in administering other workers' compensation programs, using calculations of the number of incoming claims and forecasting the necessary full-time equivalents and other resources necessary to efficiently administer the program.

No more extensive economic impact analysis is necessary because the regulatory action only addresses the transfer of funds from the federal government to individuals who qualify under the EEOICPA and to providers of medical services in that program. This regulatory action has no affect on the functioning of the economy and private markets, on the health and safety of the general population, or on the natural environment. In addition, because this regulation implements a statutory mandate, there are no feasible alternatives to this regulatory action. Finally, to the extent that policy choices have been made in interpreting the statutory terms, those choices have no significant impact on the cost of this regulatory action. Such policy choices may affect who is entitled to receive benefits (as in the case of potential survivors), but will not have a significant impact on the number of eligible recipients or the level of benefits to which they are entitled.

OMB has reviewed the rule for consistency with the President's priorities and the principles set forth in E.O. 12866.

VII. Small Business Regulatory Enforcement Fairness Act

As required by Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the Department will report to Congress promulgation of this rule prior to its effective date. The report will state that the Department has concluded that this rule is a "major rule" because it will likely result in an annual effect on the economy of $100 million or more.

VIII. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector, "other than to the extent that such regulations incorporate requirements specifically set forth in law." For purposes of the Unfunded Mandates Reform Act, this rule does not include any Federal mandate that may result in increased annual expenditures in excess of $100 million by State, local or tribal governments in the aggregate, or by the private sector.

IX. Regulatory Flexibility Act

The Department believes that this interim final rule will have "no significant economic impact upon a substantial number of small entities" within the meaning of the RFA. The provisions of this rule applying cost control measures to payments for medical expenses are the only ones that may have a monetary effect on small businesses. That effect will not be significant for a substantial number of those businesses, however, for no single business will bill a significant amount to OWCP for EEOICPA-related services, and the effect on those bills which are submitted, while a worthwhile savings for the Government in the aggregate, will be not be significant for individual businesses affected.

The cost containment provisions are: (1) a set schedule of maximum allowable fees for professional medical services; (2) a set schedule for payment of pharmacy bills; and (3) a prospective payment system for hospital inpatient services. The methodologies used for the first two of these provisions are explained in the text of the preamble to this interim final rule, which essentially adopts payment systems that are commonplace in the industry. Their adoption by OWCP for use in connection with its administration of the EEOICPA program will therefore result in efficiencies for the Government and providers. The Government will benefit because OWCP did not develop new cost containment measures, but rather adopted existing and well-recognized measures that were already in place. The providers benefit because submitting a bill and receiving a payment will be almost the same as submitting it to Medicare, a program with which they are already familiar and have existing systems in place for billing—they will not have to incur unnecessary administrative costs to learn a new process because the EEOICPA bill process will not be readily distinguishable from the Medicare process. Similarly, pharmacies are used to billing through clearing houses and having their charges subject to limits by

private insurers. By adopting the uniform billing statement and a familiar cost control methodology, OWCP has kept close to the billing environment with which pharmacies are already familiar. The methods chosen, therefore, represent systems familiar to the providers. The third of these three provisions will not have an effect on a substantial number of "small entities" under SBA standards, since most hospitals providing services for EEOICPA-covered conditions will have annual receipts that exceed the set maximum.

The implementation of these cost containment methods will have no significant effect on any single medical professional or pharmacy since they are already used by Medicare, CHAMPUS, and the Departments of Labor and Veterans Affairs, among Government entities, and by private insurance carriers. In actual terms, the amount by which these provider bills might be reduced will not have a significant impact on any one small entity since these charges are currently being processed by other payers applying similar cost containment provisions. The costs to providers whose charges may be reduced also will be relatively small because EEOICPA bills simply will not represent a large share of any single provider's total business. Since the small universe of potential claimants is spread across the United States and this bill processing system will cover only those employees who have sustained a covered illness and require medical treatment on or after July 31, 2001 (out of the projected total of 23,201 claims the Department estimates it will accept over the next five years, only about 14,000 of these will involve payment for medical treatment), the number of bills submitted by any one small entity which may be subject to these provisions is likely to be very small. Therefore, the "cost" of this rule to any one pharmacy or medical professional will be negligible. On the other hand, OWCP will see substantial aggregate cost savings that will benefit both OWCP (by strengthening the integrity of the program) and the taxpayers to whom the ultimate costs of the program are eventually charged through appropriations.

The Assistant Secretary for Employment Standards has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant impact on a substantial number of small entities. The factual basis for this certification has been provided above. Accordingly, no regulatory impact analysis is required.

X. Executive Order 12988 (Civil Justice)

This regulation has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform and will not unduly burden the Federal court system. While the EEOICPA does not provide any specific procedures claimants must follow in order to seek review of decisions on their claims, substantial numbers of claimants will likely seek review of adverse decisions in the United States district courts pursuant to the Administrative Procedure Act. This regulation should minimize the burden placed upon the courts by litigation seeking to challenge decisions under EEOICPA by providing claimants an opportunity to seek administrative review of adverse decisions and by providing a clear legal standard for affected conduct. It has been reviewed carefully to eliminate drafting errors and ambiguities.

XI. Executive Order 13132 (Federalism)

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have "federalism implications." The rule does not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

XII. Executive Order 13045 (Protection of Children From Environmental, Health Risks and Safety Risks)

In accordance with Executive Order 13045, OWCP has evaluated the environmental health and safety effects of this rule on children. The agency has determined that the final rule will have no effect on children.

XIII. Submission to Congress and the General Accounting Office

In accordance with the Small Business Regulatory Enforcement Fairness Act, the Department will submit to each House of the Congress and to the Comptroller General a report regarding the issuance of this final rule prior to the effective date set forth at the outset of this notice. The report will note that this rule constitutes a "major rule" as defined by 5 U.S.C. 804(2).

XIV. Catalog of Federal Domestic Assistance Number

This program is not listed in the Catalog of Federal Domestic Assistance.

List of Subjects

20 CFR Part 1

Administrative practice and procedure, Claims, Government Employees, Labor, Workers' Compensation.

20 CFR Part 30

Administrative practice and procedure, Cancer, Claims, Kidney Diseases, Leukemia, Lung Diseases, Miners, Radioactive Materials, Tort claims, Underground mining, Uranium, Workers' Compensation.

Text of the Rule

For the reasons set forth in the preamble, 20 CFR Chapter 1 is amended as follows:

Subchapter A—Organization and Procedures

1. Part 1 is revised to read as follows:

PART 1—PERFORMANCE OF FUNCTIONS UNDER THIS CHAPTER

Sec.
1.1 Under what authority was the Office of Workers' Compensation Programs established?
1.2 What functions are assigned to OWCP?
1.3 What rules are contained in this chapter?
1.4 Where are other rules concerning OWCP functions found?
1.5 When was the former Bureau of Employees' Compensation abolished?
1.6 How were many of OWCP's current functions administered in the past?

Authority: 5 U.S.C. 301, 8145, 8149 (Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263); Executive Order 13179, 65 FR 77487, 3 CFR, 2000 Comp., p. 321; Secretary of Labor's Order No. 13–71, 36 FR 8155; Employment Standards Order No. 2–74, 39 FR 34722.

§ 1.1 Under what authority was the Office of Workers' Compensation Programs established?

The Assistant Secretary of Labor for Employment Standards, by authority vested in him by the Secretary of Labor in Secretary's Order No. 13–71, 36 FR 8755, established in the Employment Standards Administration an Office of Workers' Compensation Programs (OWCP) by Employment Standards Order No. 2–74, 39 FR 34722. The Assistant Secretary subsequently designated as the head thereof a Deputy Assistant Secretary for Workers' Compensation Programs who, under the general supervision of the Assistant Secretary, administers the programs assigned to that Office by the Assistant Secretary.

§ 1.2 What functions are assigned to OWCP?

The Assistant Secretary has delegated authority and assigned responsibility to the Deputy Assistant Secretary for Workers' Compensation Programs for the Department of Labor's programs under the following statutes:

(a) The Federal Employees' Compensation Act, as amended and extended (5 U.S.C. 8101 *et seq.*), except 5 U.S.C. 8149 as it pertains to the Employees' Compensation Appeals Board.

(b) The War Hazards Compensation Act (42 U.S.C. 1701 *et seq.*).

(c) The War Claims Act (50 U.S.C. App. 2003).

(d) The Energy Employees Occupational Illness Compensation Program Act, Title XXXVI of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Pub. L. 106–398 (114 Stat. 1654, 1654A–1231), except activities, pursuant to Executive Order 13179 ("Providing Compensation to America's Nuclear Weapons Workers") of December 7, 2000, assigned to the Secretary of Health and Human Services, the Secretary of Energy and the Attorney General.

(e) The Longshore and Harbor Workers' Compensation Act, as amended and extended (33 U.S.C. 901 *et seq.*), except: 33 U.S.C. 919(d) with respect to administrative law judges in the Office of Administrative Law Judges; 33 U.S.C. 921(b) as it pertains to the Benefits Review Board; and activities, pursuant to 33 U.S.C. 941, assigned to the Assistant Secretary for Occupational Safety and Health.

(f) The Black Lung Benefits Act, as amended (30 U.S.C. 901 *et seq.*).

§ 1.3 What rules are contained in this chapter?

The rules in this chapter are those governing the OWCP functions under the Federal Employees' Compensation Act, the War Hazards Compensation Act, the War Claims Act and the Energy Employees Occupational Illness Compensation Program Act.

§ 1.4 Where are other rules concerning OWCP functions found?

(a) The rules of the OWCP governing its functions under the Longshore and Harbor Workers' Compensation Act and its extensions are set forth in subchapter A of chapter VI of this title.

(b) The rules of the OWCP governing its functions under the Black Lung Benefits Act program are set forth in subchapter B of chapter VI of this title.

(c) The rules and regulations of the Employees' Compensation Appeals Board are set forth in chapter IV of this title.

(d) The rules and regulations of the Benefits Review Board are set forth in Chapter VII of this title.

§ 1.5 When was the former Bureau of Employees' Compensation abolished?

By Secretary of Labor's Order issued September 23, 1974, 39 FR 34723, issued concurrently with Employment Standards Order 2–74, 39 FR 34722, the Secretary revoked the prior Secretary's Order No. 18–67, 32 FR 12979, which had delegated authority and assigned responsibility for the various workers' compensation programs enumerated in § 1.2, except the Black Lung Benefits program and the Energy Employees Occupational Illness Compensation program not then in existence, to the Director of the former Bureau of Employees' Compensation.

§ 1.6 How were many of OWCP's current functions administered in the past?

(a) Administration of the Federal Employees' Compensation Act and the Longshore and Harbor Workers' Compensation Act was initially vested in an independent establishment known as the U.S. Employees' Compensation Commission. By Reorganization Plan No. 2 of 1946 (3 CFR 1943–1949 Comp., p. 1064; 60 Stat. 1095, effective July 16, 1946), the Commission was abolished and its functions were transferred to the Federal Security Agency to be performed by a newly created Bureau of Employees' Compensation within such Agency. By Reorganization Plan No. 19 of 1950 (15 FR 3178, 64 Stat. 1263) said Bureau was transferred to the Department of Labor (DOL), and the authority formerly vested in the Administrator, Federal Security Agency, was vested in the Secretary of Labor. By Reorganization Plan No. 6 of 1950 (15 FR 3174, 64 Stat. 1263), the Secretary of Labor was authorized to make from time to time such provisions as he shall deem appropriate, authorizing the performance of any of his functions by any other officer, agency, or employee of the DOL.

(b) In 1972, two separate organizational units were established within the Bureau: an Office of Workmen's Compensation Programs (37 FR 20533) and an Office of Federal Employees' Compensation (37 FR 22979). In 1974, these two units were abolished and one organizational unit, the Office of Workers' Compensation Programs (OWCP), was established in lieu of the Bureau of Employees' Compensation (39 FR 34722).

2. Subchapter C consisting of Part 30 is added to read as follows:

Subchapter C—Energy Employees Occupational Illness Compensation Program Act

PART 30—CLAIMS FOR COMPENSATION UNDER THE ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT

Subpart A—General Provisions

Introduction

Sec.
30.0 What are the provisions of the EEOICPA, in general?
30.1 What rules govern the administration of the EEOICPA and this chapter?
30.2 In general, how have the tasks associated with the administration of the EEOICPA claims process been assigned?
30.3 What do these regulations contain?

Definitions

30.5 What are the definitions used in this part?

Information in Program Records

30.10 Are all OWCP records relating to claims filed under the EEOICPA considered confidential?
30.11 Who maintains custody and control of claim records?
30.12 What process is used by a person who wants to obtain copies of or amend EEOICPA claim records?

Rights and Penalties

30.15 May EEOICPA benefits be assigned or transferred?
30.16 What penalties may be imposed in connection with a claim under the EEOICPA?
30.17 Is a beneficiary who defrauds the government in connection with a claim for benefits still entitled to those benefits?

Subpart B—Filing Claims; Evidence and Burden of Proof; Special Procedures for Certain Cancer Claims

Claims for Occupational Illness—Employee or Survivor's Actions

30.100 In general, how does an employee file for benefits?
30.101 In general, how is a survivor's claim filed?
30.102 How does a claimant make sure the OWCP has the evidence necessary to process the claim?

Claims for Occupational Illness—Actions of DOE

30.105 What must DOE do after an employee files a claim for an occupational illness?
30.106 What should DOE do when an employee with a claim for an occupational disease dies?

Evidence and Burden of Proof

30.110 Who is entitled to compensation under the Act?
30.111 What is the claimant's responsibility with respect to burden of proof, production of documents, presumptions, and affidavits?

30.112 What are the requirements for written medical documentation, contemporaneous records, and other records or documents?

Special Procedures for Certain Cancer Claims

30.115 What does OWCP do once it determines that a covered employee who is not a member of the Special Exposure Cohort (or a survivor of such an employee) has established that he or she contracted cancer under § 30.211(b)?

Subpart C—Eligibility Criteria

General Provisions

30.200 What is the scope of this subpart?

Eligibility Criteria for Claims Relating to Covered Beryllium Illness

30.205 What are the criteria for eligibility for benefits relating to covered beryllium illness?
30.206 How does a claimant prove that the employee was a "covered beryllium employee" exposed to beryllium dust, particles or vapor in the performance of duty?
30.207 How does a claimant prove diagnosis of a covered beryllium disease?

Eligibility Criteria for Claims Relating to Cancer

30.210 What are the criteria for eligibility for benefits relating to cancer?
30.211 How does a claimant establish that the employee has or had contracted cancer?
30.212 How does a claimant establish that the cancer was at least as likely as not related to the employment at the DOE facility or the atomic weapons employer facility?
30.213 How does a claimant establish that the employee is a member of the Special Exposure Cohort?
30.214 How does a claimant establish that the employee has been diagnosed with cancer or has sustained a consequential injury, illness or disease?

Eligibility Criteria for Chronic Silicosis

30.215 What are the criteria for eligibility for benefits relating to chronic silicosis?
30.216 How does a claimant prove exposure to silica in the performance of duty?
30.217 How does a claimant prove the covered employee's diagnosis of chronic silicosis?

Eligibility of Certain Uranium Employees

30.220 What are the criteria for eligibility for benefits for certain uranium employees?

Subpart D—Adjudicatory Process

30.300 What process will OWCP use to decide claims and to provide for administrative review of those decisions?

Recommended Decisions on Claims

30.305 How does OWCP determine entitlement to EEOICPA compensation?
30.306 What does the recommended decision contain?
30.307 To whom is the recommended decision sent?

Hearings and Final Decisions on Claims

30.310 How does a claimant object to a recommended decision on a claim?
30.311 What action will the FAB take if the claimant does not file objections to the recommended decision?
30.312 What action will the FAB take if the claimant files objections but does not request a hearing?
30.313 How is a review of the written record conducted?
30.314 How is a hearing conducted?
30.315 May a claimant postpone a hearing?
30.316 How does the FAB issue a final decision on a claim?
30.317 Can the FAB request a further response from the claimant or remand a claim to the district office?
30.318 Can the FAB review a determination by HHS with respect to an employee's dose reconstruction?
30.319 May a claimant request reconsideration of a decision to the FAB?

Modification

30.320 Can a final decision be modified once the period for requesting reconsideration has expired?

Subpart E—Medical and Related Benefits

Medical Treatment and Related Issues

30.400 What are the basic rules for obtaining medical care?
30.401 What are the special rules for the services of chiropractors?
30.402 What are the special rules for the services of clinical psychologists?
30.403 Will OWCP pay for the services of an attendant?
30.404 Will OWCP pay for transportation to obtain medical treatment?
30.405 After selecting a treating physician, may an employee choose to be treated by another physician instead?
30.406 Are there any exceptions to these procedures for obtaining medical care?

Directed Medical Examinations

30.410 Can OWCP require an employee to be examined by another physician?
30.411 What happens if the opinion of the physician selected by OWCP differs from the opinion of the physician selected by the employee?
30.412 Who pays for second opinion and referee examinations?

Medical Reports

30.415 What are the requirements for medical reports?
30.416 How and when should the medical report be submitted?
30.417 What additional medical information may OWCP require to support continuing payment of benefits?

Medical Bills

30.420 How are medical bills submitted?
30.421 What are the time frames for submitting bills?
30.422 If OWCP reimburses an employee only partially for a medical expense, must the provider refund the balance of the amount paid to the employee?

Subpart F—Survivors; Payments and Offsets; Overpayments

Survivors

30.500 What special statutory definitions apply to survivors under the EEOICPA?
30.501 How will OWCP apply that order of precedence to determine what survivors are entitled to receive under the EEOICPA?
30.502 When is entitlement for survivors determined for purposes of EEOICPA?

Payment of Claims and Offset for Certain Payments

30.505 What are the procedures for payment of claims?
30.506 What compensation will be provided to claimants who only establish beryllium sensitivity?
30.507 What is beryllium sensitivity monitoring?

Overpayments

30.510 How does OWCP notify an individual of a payment made on a claim?
30.511 What is an "overpayment" for purposes of the EEOICPA?
30.512 How does OWCP determine that a beneficiary owes a debt as the result of the creation of an overpayment?
30.513 How are overpayments collected?

Subpart G—Special Provisions

Representation

30.600 May a claimant designate a representative?
30.601 Who may serve as a representative?
30.602 Who is responsible for paying the representative's fee?

Third Party Liability

30.605 What rights does the United States have upon payment of compensation under the EEOICPA?
30.606 Under what circumstances must a recovery of money or other property in connection with an illness for which benefits are payable under the EEOICPA be reported to OWCP?
30.607 How is a structured settlement (that is, a settlement providing for receipt of funds over a specified period of time) treated for purposes of reporting the recovery?
30.608 How does the United States calculate the amount to which it is subrogated?
30.609 Is a settlement or judgment received as a result of allegations of medical malpractice in treating an illness covered by the EEOICPA a recovery that must be reported to OWCP?
30.610 Are payments to an employee or eligible surviving beneficiary as a result of an insurance policy which the employee or eligible surviving beneficiary has purchased a recovery that must be reported to OWCP?
30.611 If a settlement or judgment is received for more than one medical condition, can the amount paid on a single EEOICPA claim be attributed to different conditions for purposes of calculating the amount to which the United States is subrogated?

Election of Remedy Against Beryllium Vendors and Atomic Weapons Employers

30.615 Can a claimant receive benefits under the EEOICPA if he or she filed a tort suit against either a beryllium vendor or an atomic weapons employer on or prior to October 30, 2000?
30.616 Can a claimant receive benefits under the EEOICPA if he or she filed a tort suit against either a beryllium vendor or an atomic weapons employer after October 30, 2000?
30.617 How will OWCP ascertain whether a claimant filed a tort suit against either a beryllium vendor or an atomic weapons employer and whether such claimant is entitled to benefits under the EEOICPA?

Subpart H—Information for Medical Providers

Medical Records and Bills

30.700 What kind of medical records must providers keep?
30.701 How are medical bills to be submitted?
30.702 How should an employee prepare and submit requests for reimbursement for medical expenses, transportation costs, loss of wages, and incidental expenses?
30.703 What are the time limitations on OWCP's payment of bills?

Medical Fee Schedule

30.705 What services are covered by the OWCP fee schedule?
30.706 How are the maximum fees defined?
30.707 How are payments for particular services calculated?
30.708 Does the fee schedule apply to every kind of procedure?
30.709 How are payments for medicinal drugs determined?
30.710 How are payments for inpatient medical services determined?
30.711 When and how are fees reduced?
30.712 If OWCP reduces a fee, may a provider request reconsideration of the reduction?
30.713 If OWCP reduces a fee, may a provider bill the employee for the balance?

Exclusion of Providers

30.715 What are the grounds for excluding a provider for payment under this part?
30.716 What will cause OWCP to automatically exclude a physician or other provider of medical services and supplies?
30.717 When are OWCP's exclusion procedures initiated?
30.718 How is a provider notified of OWCP's intent to exclude him or her?
30.719 What requirements must the provider's reply and OWCP's decision meet?
30.720 How can an excluded provider request a hearing?
30.721 How are hearings assigned and scheduled?
30.722 How are advisory opinions obtained?
30.723 How will the administrative law judge conduct the hearing and issue the recommended decision?
30.724 How can a party request review by OWCP of the administrative law judge's recommended decision?
30.725 What are the effects of non-automatic exclusion?
30.726 How can an excluded provider be reinstated?

Authority: 5 U.S.C. 301; Executive Order 13179, 65 FR 77487, 3 CFR, 2000 Comp., p. 321.

Subpart A—General Provisions

Introduction

§ 30.0 What are the provisions of the EEOICPA, in general?

The Energy Employees Occupational Illness Compensation Program Act (EEOICPA), Pub. L. 106–398 (114 Stat. 1654, 1654A–1231), provides for the payment of compensation benefits to covered employees and, where applicable, survivors of such employees, of the United States Department of Energy, its predecessor agencies and certain of its contractors and subcontractors. It also provides for the payment of compensation to certain persons already found eligible for benefits under section 5 of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) and, where applicable, survivors of such employees. The regulations in this part describe the rules for filing, processing, and paying claims for benefits under the EEOICPA.

(a) The EEOICPA provides for the payment of either monetary compensation for the disability of a covered employee due to an occupational illness or for monitoring for beryllium sensitivity, as well as for medical and related benefits for such illness.

(b) All types of benefits and conditions of eligibility listed in this section are subject to the provisions of the EEOICPA and of this part.

§ 30.1 What rules govern the administration of the EEOICPA and this chapter?

In accordance with the EEOICPA and E.O. 13179, the Secretary of Labor has delegated the primary responsibility for administering the EEOICPA, except for those activities assigned to the Secretary of Health and Human Services, the Secretary of Energy and the Attorney General, to the Assistant Secretary for Employment Standards. The Assistant Secretary, in turn, has delegated the responsibility for administering the EEOICPA to the Deputy Assistant Secretary for Workers' Compensation Programs. Except as otherwise provided by law, the Deputy Assistant Secretary for Workers' Compensation Programs and his or her designees have the exclusive authority to administer, interpret and enforce the provisions of the EEOICPA.

§ 30.2 In general, how have the tasks associated with the administration of the EEOICPA claims process been assigned?

(a) In E.O. 13179, the President assigned various tasks associated with the administration of the EEOICPA claims process among the Secretaries of Labor, Health and Human Services and Energy, and the Attorney General. In light of the fact that the Secretary of Labor has been assigned primary responsibility for administering the EEOICPA, almost the entire claims process is within the exclusive control of OWCP. This means that claimants file their claims with OWCP, and OWCP is responsible for granting or denying compensation under the Act (see §§ 30.100, 30.101, and 30.505 through 30.513). OWCP also provides an administrative review process for claimants who disagree with its recommended and final adverse decisions (see §§ 30.300 through 30.320).

(b) However, HHS has exclusive control of a portion of the claims process involving certain cancer claims, and is therefore responsible for providing reconstructed doses for these claims (see § 30.115). HHS is also responsible for promulgating regulations establishing the guidelines that will be used by OWCP to assess the likelihood that an individual with cancer sustained the cancer in the performance of duty (see § 30.210). DOE and DOJ are responsible for, among other tasks, notifying potential claimants and submitting evidence that OWCP deems necessary for its adjudication of claims under the EEOICPA (see §§ 30.105, 30.106, and 30.111).

§ 30.3 What do these regulations contain?

This part 30 sets forth the regulations governing administration of all claims filed under the EEOICPA, except to the extent specified in certain provisions. Its provisions are intended to assist persons seeking benefits under the EEOICPA, as well as personnel in the various federal agencies and the DOL who process claims filed under the EEOICPA or who perform administrative functions with respect to the EEOICPA. The various subparts of this part contain the following:

(a) Subpart A: the general statutory and administrative framework for processing claims under the EEOICPA. It contains a statement of purpose and scope, together with definitions of terms, information regarding the disclosure of OWCP records, and a description of rights and penalties

under the EEOICPA, including convictions for fraud.

(b) Subpart B: the rules for filing claims for benefits under the EEOICPA. It also addresses general standards regarding necessary evidence and the burden of proof, descriptions of basic forms and special procedures for certain cancer claims.

(c) Subpart C: the eligibility criteria for conditions covered by the EEOICPA.

(d) Subpart D: the rules governing the adjudication process leading from recommended to final decisions made on claims filed under the EEOICPA. It also describes the OWCP hearing and modification processes.

(e) Subpart E: the rules governing medical care, second opinion and referee medical examinations directed by OWCP, and medical reports and records in general. It also addresses the kinds of treatment that may be authorized and how medical bills are paid.

(f) Subpart F: the rules relating to the payment of monetary compensation. It includes the provisions for identifying and processing overpayments of compensation.

(g) Subpart G: the rules concerning legal representation, subrogation of the United States, and the election of remedies against beryllium vendors and atomic weapons employers.

(h) Subpart H: information for medical providers. It includes rules for medical reports, medical bills, and the OWCP medical fee schedule, as well as the provisions for exclusion of medical providers.

Definitions

§ 30.5 What are the definitions used in this part?

(a) *Act or EEOICPA* means the Energy Employees Occupational Illness Compensation Program Act of 2000, Public Law 106–398.

(b) *Atomic weapon* means any device utilizing atomic energy, exclusive of the means for transporting or propelling the device (where such means is a separable and divisible part of the device), the principle purpose of which is for use as, or for development of, a weapon, a weapon prototype, or a weapon test device.

(c) *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.

(d) *Atomic weapons employer* means any entity, other than the United States, that:

(1) 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

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

(e) *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.

(f) *Attorney General* means the Attorney General of the United States or the United States Department of Justice (DOJ).

(g) *Benefit or Compensation* means the money the Department pays to or on behalf of a covered employee from the Energy Employees Occupational Illness Compensation Fund. However, the term "compensation" used in section 3647(b) of the EEOICPA (with respect to entitlement to only one payment of compensation) means only the payments specified in section 3628(a)(1) ($150,000 lump sum payment), and in section 3630(a) ($50,000 payment to beneficiaries under section 5 of the RECA). Except as used in section 3647(b), these two terms also include any other amounts paid out of the Fund for such things as medical treatment, monitoring, examinations, services, appliances and supplies as well as for transportation and expenses incident to the securing of such medical treatment, monitoring, examinations, services, appliances, and supplies.

(h) *Beryllium sensitization or sensitivity* means that the individual has an abnormal beryllium lymphocyte proliferation test (LPT) on either blood or lung lavage cells.

(i) *Beryllium vendor* includes any of the facilities designated as such in the list periodically published in the **Federal Register** by the DOE.

(j) *Chronic silicosis* means a non-malignant 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:

(i) 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 1/1 or higher;

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

(iii) Lung biopsy findings consistent with silicosis.

(k) *Claim* means a written assertion of an individual's entitlement to benefits under the EEOICPA, submitted in a manner authorized by this part.

(l) *Claimant* means the individual who is alleged to satisfy the criteria for compensation under the Act.

(m) *Compensation fund or fund* means the fund established on the books of the Treasury for payment of benefits and compensation under the Energy Employees Occupational Illness Compensation Program Act.

(n) *Contemporaneous record* means any document created at or around the time of the event that is recorded in the document.

(o) *Covered beryllium illness* means any of the following:

(1) Beryllium sensitivity as established by an abnormal LPT performed on either blood or lung lavage cells.

(2) Established chronic beryllium disease (see § 30.207(c)).

(3) Any injury, illness, impairment, or disability sustained as a consequence of a covered beryllium illness referred to in paragraph (o)(1) or (2) of this section.

(p) *Covered employee* means a covered beryllium employee (see § 30.205), a covered employee with cancer (see § 30.210), a covered employee with chronic silicosis (see § 30.215), or a covered uranium employee (see paragraph (q) of this section).

(q) *Covered uranium employee* means an employee who has been informed by the Department of Justice that he or she has been determined to be entitled to compensation under section 5 of the Radiation Exposure Compensation Act, as amended, (42 U.S.C. 2210 note) for a claim made under that Act.

(r) *Current or former employee as defined in* 5 U.S.C. 8101(1) as used in § 30.205 means an individual who fits within one of the following listed groups:

(1) A civil officer or employee in any branch of the Government of the United States, including an officer or employee of an instrumentality wholly owned by the United States;

(2) An individual rendering personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay, when a statute authorizes the acceptance or use of the service, or

authorizes payment of travel or other expenses of the individual;

(3) An individual, other than an independent contractor or individual employed by an independent contractor, employed on the Menominee Indian Reservation in Wisconsin in operations conducted under a statute relating to tribal timber and logging operations on that reservation;

(4) An individual appointed to a position on the office staff of a former President; or

(5) An individual selected and serving as a Federal petit or grand juror.

(s) *Department (DOL)* means the United States Department of Labor.

(t) *Department of Energy (DOE)* includes the predecessor agencies of the DOE, including the Manhattan Engineering District.

(u) *Department of Energy contractor employee* means any of the following:

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

(2) An individual who is or was employed at a DOE facility by:

(i) An entity that contracted with the DOE 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.

(v) *Department of Energy facility* means any building, structure, or premise, including the grounds upon which such building, structure, or premise is located:

(1) In which operations are, or have been, conducted by, or on behalf of, the DOE (except for buildings, structures, premises, grounds, or operations covered by Executive Order 12344, dated February 1, 1982, pertaining to the Naval Nuclear Propulsion Program); and

(2) With regard to which the DOE 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; and

(3) Is designated by the Secretary of Energy as an atomic weapons employer for purposes of this program.

(w) *Disability* means, for purposes of determining entitlement to payment under EEOICPA sections 3628(a)(1), having been determined by OWCP to have or have had established chronic beryllium disease, cancer, or chronic silicosis.

(x) *Eligible surviving beneficiary* means any individual who is entitled under section 3628(e) of the Act to receive a payment on behalf of a deceased covered employee.

(y) *Employee* means either a current or former employee.

(z) *Occupational illness* means a covered beryllium illness, cancer sustained in the performance of duty as defined in § 30.210(b), specified cancer, or chronic silicosis.

(aa) *OWCP* means the Office of Workers' Compensation Programs, United States Department of Labor.

(bb) *Physician* includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. The term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.

(cc) *Qualified physician* means any physician who has not been excluded under the provisions of subpart H of this part. Except as otherwise provided by regulation, a qualified physician shall be deemed to be designated or approved by OWCP.

(dd) *Specified cancer* (as defined in section 4(b) of the Radiation Exposure Compensation Act Amendments of 2000 (42 U.S.C. 2210 note) and the Act) means:

(1) Leukemia (other than chronic lymphocytic leukemia) provided that initial exposure occurred after the age of 20 and the onset of the disease was at least 2 years after first exposure;

(2) Lung cancer (other than in situ lung cancer that is discovered during or after a post-mortem exam);

(3) The following diseases, provided onset was at least 5 years after first exposure:

(i) Multiple myeloma;

(ii) Lymphomas (other than Hodgkin's disease);

(4) Primary cancer of the:

(i) Thyroid;

(ii) Male or female breast;

(iii) Esophagus;

(iv) Stomach;

(v) Pharynx;

(vi) Small intestine;

(vii) Pancreas;

(viii) Bile ducts;

(ix) Gall bladder;

(x) Salivary gland;

(xi) Urinary bladder;

(xii) Brain;

(xiii) Colon;

(xiv) Ovary; or

(xv) Liver (except if cirrhosis or hepatitis B is indicated); and

(5) Bone cancer.

(6) The specified diseases designated in paragraphs (dd) (2), (3), and (4) of this section mean the physiological condition or conditions that are recognized by the National Cancer Institute under those names or nomenclature, or under any previously accepted or commonly used names or nomenclature.

(ee) *Survivor* means:

(1) Subject to paragraph (ee)(2) of this section, a widow or widower, child, parent, brother, sister, grandparent and grandchild of a deceased covered employee.

(2) Those individuals listed in paragraph (ee)(1) of this section do not include:

(i) A child, a brother, a sister, or a grandchild who, at the time of the death, was married, or was 18 years of age or older, unless incapable of self-support; or

(ii) A parent or grandparent who, at the time of the death, was not dependent on the deceased covered employee.

(3) Notwithstanding paragraph (ee)(2)(i) of this section, an unmarried child, brother, sister, or grandchild is a survivor if he/she was, at the time of the death, a student as defined by section 8101 of Title 5, United States Code.

(ff) *Time of injury* means:

(1) In regard to a claim arising out of exposure to beryllium or silica, the last date on which a covered employee was exposed to such substance in the performance of duty in accordance with sections 3623(a) or 3627(c) of the EEOICPA; or

(2) In regard to a claim arising out of exposure to radiation, the last date on which a covered employee was exposed to radiation in the performance of duty in accordance with section 3623(b) of the EEOICPA or, in the case of a member of the Special Exposure Cohort, the last date on which the member of the Special Exposure Cohort was employed at the Department of Energy facility at which the member was exposed to radiation.

(gg) *Widow or widower* means the wife or husband living with or dependent for support on the decedent at the time of his or her death, or living apart for reasonable cause or because of his or her desertion.

(hh) *Workday* means a single workshift whether or not it occurred on more than one calendar day.

Information in Program Records

§ 30.10 Are all OWCP records relating to claims filed under the EEOICPA considered confidential?

All OWCP records relating to claims for benefits under the EEOICPA are considered confidential and may not be released, inspected, copied or otherwise disclosed except as provided in the Freedom of Information Act and the Privacy Act of 1974.

§ 30.11 Who maintains custody and control of claim records?

All OWCP records relating to claims for benefits filed under the EEOICPA are covered by the Privacy Act system of records entitled DOL/ESA–49 (Office of Workers' Compensation Programs, Energy Employees Occupational Illness Compensation Program Act File). This system of records is maintained by and under the control of OWCP, and, as such, all records covered by DOL/ESA–49 are official records of OWCP. The protection, release, inspection and copying of records covered by DOL/ESA–49 shall be accomplished in accordance with the rules, guidelines and provisions of this part, as well as those contained in 29 CFR parts 70 and 71, and with the notice of the system of records and routine uses to be published in the **Federal Register**. All questions relating to access, disclosure, and/or amendment of EEOICPA records maintained by OWCP are to be resolved in accordance with this section.

§ 30.12 What process is used by a person who wants to obtain copies of or amend EEOICPA claim records?

(a) A claimant seeking copies of his or her official EEOICPA file should address a request to the District Director of the OWCP office having custody of the file.

(b) Any request to amend a record covered by DOL/ESA–49 should be directed to the district office having custody of the official file.

(c) Any administrative appeal taken from a denial issued by OWCP under this section shall be filed with the Solicitor of Labor in accordance with 29 CFR 71.7 and 71.9.

Rights and Penalties

§ 30.15 May EEOICPA benefits be assigned or transferred?

No claim for EEOICPA benefits may be assigned or transferred.

§ 30.16 What penalties may be imposed in connection with a claim under the EEOICPA?

(a) Other statutory provisions make it a crime to file a false or fraudulent claim or statement with the federal government in connection with a claim under the EEOICPA. Included among these provisions is section 1001 of title 18, United States Code. Enforcement of criminal provisions that may apply to claims under the EEOICPA are within the jurisdiction of the Department of Justice.

(b) In addition, administrative proceedings may be initiated under the Program Fraud Civil Remedies Act of 1986 (PFCRA), 31 U.S.C. 3801–12, to impose civil penalties and assessments against persons or entities who make, submit, or present, or cause to be made, submitted or presented, false, fictitious or fraudulent claims or written statements to OWCP in connection with a claim under the EEOICPA. The Department of Labor's regulations implementing the PFRCA are found at 29 CFR part 22.

§ 30.17 Is a beneficiary who defrauds the government in connection with a claim for benefits still entitled to those benefits?

When a beneficiary either pleads guilty to or is found guilty on either federal or state criminal charges of defrauding the federal government in connection with a claim for benefits under the EEOICPA or any other federal or state workers' compensation law, the beneficiary's entitlement to any further benefits will terminate effective the date either the guilty plea is accepted or a verdict of guilty is returned after trial, for any occupational disease for which the time of injury was on or before the date of such guilty plea or verdict. Any subsequent change in or recurrence of the beneficiary's medical condition does not affect termination of entitlement under this section.

Subpart B—Filing Claims; Evidence and Burden of Proof; Special Procedures for Certain Cancer Claims

Claims for Occupational Illness—Employee or Survivor's Actions

§ 30.100 In general, how does an employee file for benefits?

(a) To claim benefits under the EEOICPA, an employee must file a claim in writing on or after July 31, 2001. Form EE–1 should be used for this purpose, but any written communication that requests benefits under the EEOICPA will be considered a claim. It will, however, be necessary for a claimant to submit a Form EE–1 for OWCP to adjudicate the claim. Copies of Form EE–1 may be obtained from OWCP, from DOE, or from OWCP's home page on the Internet at www.dol.gov/dol/esa/public/owcp_org.htm. The employee must file his or her claim with OWCP, or another person may do so on the employee's behalf.

(b) The employee may withdraw his or her claim by so requesting in writing to OWCP at any time before OWCP determines eligibility for benefits.

(c) A claim is considered to be "filed" on the date that the employee mails his or her claim to OWCP, as determined by postmark, or on the date that the claim is received by OWCP or DOE, whichever is the earliest determinable date, but in no event earlier than July 31, 2001.

(1) Form EE–1 shall be sworn to by the employee, or by the person filing the claim on behalf of the employee.

(2) Except for a covered uranium employee, the employee is responsible for submitting, or arranging for the submission of, medical evidence to OWCP that establishes that he or she sustained an occupational illness.

§ 30.101 In general, how is a survivor's claim filed?

(a) Any survivor of an employee who sustained an occupational illness may file a claim for compensation in writing on or after July 31, 2001. Form EE–2 should be used for this purpose, but any written communication that requests benefits under the EEOICPA will be considered a claim. It will, however, be necessary for a claimant to submit a Form EE–2 for OWCP to adjudicate the claim. Copies of Form EE–2 may be obtained from OWCP, from DOE, or from OWCP's home page on the Internet at www.dol.gov/dol/esa/public/owcp_org.htm. The claiming survivor must file his or her claim with OWCP, or another person may do so on the survivor's behalf. Although only one survivor need file a claim under this section to initiate the adjudication process, OWCP will distribute any monetary benefits paid among all eligible surviving beneficiaries pursuant to the terms of § 30.501.

(b) A survivor may withdraw his or her claim by so requesting in writing to OWCP at any time before OWCP determines eligibility for benefits.

(c) A survivor must be alive to receive any payment; there is no vested right to such payment.

(d) A survivor's claim is considered to be "filed" on the date that the survivor mails his or her claim to OWCP, as determined by postmark, or the date that the claim is received by OWCP or DOE, whichever is the earliest determinable date, but in no event earlier than July 31, 2001.

(1) Form EE–2 shall be sworn to by the survivor, or by the person filing the claim on behalf of the survivor.

(2) Except for the survivor of a covered uranium employee, the survivor

is responsible for submitting, or arranging for the submission of, evidence to OWCP that establishes that the employee upon whom the survivor's claim is based was eligible for such benefits, including medical evidence that establishes that the employee sustained an occupational illness.

§ 30.102 How does a claimant make sure that OWCP has the evidence necessary to process the claim?

(a) Claim forms and certain required submissions should be made on forms prescribed by OWCP. Persons submitting forms shall not modify these forms or use substitute forms. DOE is expected to maintain an adequate supply of the basic forms needed for filing claims under the EEOICPA.

Form No.	Title
(1) EE–1	Claim for Benefits Under Energy Employees Occupational Illness Compensation Program Act.
(2) EE–2	Claim for Survivor Benefits Under Energy Employees Occupational Illness Compensation Program Act.
(3) EE–3	Employment History for Claim Under Energy Employees Occupational Illness Compensation Program Act.
(4) EE–4	Employment History Affidavit for Claim Under the Energy Employees Occupational Illness Compensation Program Act.
(5) EE–5	Department of Energy's Response to Employment History for Claim Under the Energy Employees Occupational Illness Compensation Program Act.
(6) EE–7	Medical Requirements Under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

(b) Copies of the forms listed in this section are available for public inspection at the Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. They may also be obtained from OWCP district offices, from DOE, and from OWCP's home page on the Internet at www.dol.gov/dol/esa/public/owcp_org.htm.

Claims for Occupational Illness—Actions of DOE

§ 30.105 What must DOE do after an employee files a claim for an occupational illness?

(a) DOE shall complete Form EE–5 as soon as possible and transmit the completed form to OWCP. On this form, DOE shall certify that it concurs with the employment information provided by the employee, or that it disagrees with such information, or that it can neither concur nor disagree after making a reasonable search of its records and also making a reasonable effort to locate pertinent records not already in its possession.

(b) Upon request of a claimant, DOE shall also assist such claimant in completing Form EE–4 and transmit the completed form to OWCP.

(c) DOE should not wait for the employee to submit the necessary supporting medical evidence before it forwards any Form EE–1 (or other document containing an employee's claim) it has received to OWCP.

§ 30.106 What should DOE do when an employee with a claim for an occupational illness dies?

(a) When possible, DOE shall furnish a Form EE–2 to all survivors likely to be entitled to compensation after the death of an employee. DOE should also supply information about completing and filing the form.

(b) DOE shall complete Form EE–5 as soon as possible and transmit the completed form to OWCP. On this form, DOE shall certify that it concurs with the employment information provided by the survivor, or that it disagrees with such information, or that it can neither concur nor disagree after making a reasonable search of its records and also making a reasonable effort to locate pertinent records not already in its possession.

(c) Upon request of a survivor, DOE shall also assist such survivor in completing Form EE–4 and transmit the completed form to OWCP.

(d) DOE should not wait for the claiming survivor to submit the necessary supporting medical evidence before it forwards any Form EE–2 (or other document containing a survivor's claim) it has received to OWCP.

Evidence and Burden of Proof

§ 30.110 Who is entitled to compensation under the Act?

(a) Compensation is payable to the following covered employees, or their survivors:

(1) A "covered beryllium employee" (as described § 30.205(a) who has been diagnosed with a covered beryllium illness (as defined in § 30.5(o)) and was exposed to beryllium in the performance of duty (in accordance with § 30.206).

(2) A "covered employee with cancer" (as described in § 30.210).

(3) A "covered employee with chronic silicosis" (as described in § 30.215).

(4) A "covered uranium employee" (as defined in § 30.5(q)).

(b) Any claim that does not meet all of the criteria for at least one of these categories, as set forth in these regulations, must be denied.

(c) All claims for benefits under the Act must comply with the claims procedures and requirements set forth in subpart B of this part before any payment can be made from the Fund.

§ 30.111 What is the claimant's responsibility with respect to burden of proof, production of documents, presumptions, and affidavits?

(a) Except where otherwise provided in the Act and these regulations, the claimant bears the burden of proving by a preponderance of the evidence the existence of each and every criterion necessary to establish eligibility under any compensable claim category set forth in § 30.110. Proof by a preponderance of the evidence means that it is more likely than not that the proposition to be proved is true. Subject to the exceptions expressly provided in the Act and regulations, the claimant also bears the burden of providing to the OWCP all written medical documentation, contemporaneous records, or other records and documents necessary to establish any and all criteria for benefits set forth in these regulations.

(b) In the event that the claim lacks required information or supporting documentation, DOL will notify the employee, survivor, and/or DOE of the deficiencies and provide an opportunity for correction of the deficiencies.

(c) Written affidavits or declarations, subject to penalty for perjury, by the employee, survivor, or any other person, will be accepted as evidence of employment history and survivor relationship for purposes of establishing eligibility and may be relied on in determining whether a claim meets the requirements of the Act for benefits if, and only if, such person attests that due diligence was used to obtain records in support of the claim, but that no records exist.

(d) A claimant will not be entitled to any presumption otherwise provided for in these regulations if substantial evidence exists that rebuts the existence of the fact that is the subject of the presumption. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. When such evidence exists, the covered employee or his or her survivor shall be notified and afforded the opportunity to submit additional written medical documentation or records.

§ 30.112 What are the requirements for written medical documentation, contemporaneous records, and other records or documents?

(a) All written medical documentation, contemporaneous records, and other records or documents submitted by an employee or his or her survivor to prove any criteria provided for in these regulations must be originals, a certified copy or a clear readable copy of the document or record.

(b) To establish eligibility, the employee or his or her survivor may be required to provide, where appropriate, additional contemporaneous records to the extent they exist or an authorization to release additional contemporaneous records or a statement by the custodian(s) of the record(s) certifying that the requested record(s) no longer exist. Nothing in the regulation in this section shall be construed to limit OWCP's ability to require additional documentation.

Special Procedures for Certain Cancer Claims

§ 30.115 What does OWCP do once it determines that a covered employee who is not a member of the Special Exposure Cohort (or a survivor of such an employee) has established that he or she contracted cancer under § 30.211(b)?

(a) OWCP will forward any such claimant's application package (including, but not limited to, Forms EE–1, EE–2, EE–3, EE–4 and EE–5, as appropriate) to HHS for dose reconstruction. At that point in time, adjudication of the claim by OWCP is suspended.

(1) This package will include OWCP's initial findings in regard to the covered employee's diagnosis and date of diagnosis, as well as any employment history compiled by OWCP (including information such as dates and locations worked, and job titles). The package, however, does not constitute a recommended or final decision by OWCP on the claim.

(2) HHS will then reconstruct the covered employee's radiation dose, following such further development of the employment history as it may deem necessary, and notify the claimant of its findings. At that same time, HHS will also inform OWCP that it has so notified the claimant and provide OWCP with a copy of the information provided to the claimant.

(b) In special circumstances, i.e., where there is clear evidence showing a sufficient level of radiation exposure to qualify a claimant for benefits, OWCP may waive the above procedure for dose reconstruction.

(c) Following its receipt of the reconstructed dose from HHS, OWCP will consider whether the claimant has met the eligibility criteria set forth in subpart C.

Subpart C—Eligibility Criteria

General Provisions

§ 30.200 What is the scope of this subpart?

The regulations in this subpart describe the criteria for eligibility for benefits for claims relating to covered beryllium illness under sections 3621, 3623, 3628 and 3629 of the Act; for claims relating to employees with cancer under sections 3621, 3623, 3626 and 3629 of the Act; for claims relating to chronic silicosis disease under sections 3621, 3627, 3628 and 3629; and for claims relating to covered uranium employees under sections 3629 and 3630. This subpart describes the type and extent of evidence that will be accepted as evidence of the various criteria for eligibility for compensation for each of these illnesses.

Eligibility Criteria for Claims Relating to Covered Beryllium Illness

§ 30.205 What are the criteria for eligibility for benefits relating to covered beryllium illness?

To establish eligibility for benefits under this section, the claimant must establish the criteria set forth in pargraphs (a) and (b) of this section:

(a) The employee is a covered beryllium employee by establishing:

(1) The employee is a "current or former employee as defined in 5 U.S.C. 8101(1)" (see § 30.5(r) of this subpart) who may have been exposed to beryllium at a DOE facility or at a facility owned, operated, or occupied by a beryllium vendor; or

(2) The employee is a current or former employee of:

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

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

(iii) 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 DOE; and

(3) The employee was exposed to beryllium in the performance of duty by establishing that he or she was:

(i) Employed at a DOE facility (as defined in § 30.5(o) of this subpart); or

(ii) Present at a DOE facility, or a facility owned and operated by a beryllium vendor, because of his or her employment by the United States, a beryllium vendor, or a contractor or subcontractor of the DOE; during a period when beryllium dust, particles, or vapor may have been present at such a facility.

(b) The employee has one of the following:

(1) Beryllium sensitivity as established by an abnormal beryllium LPT performed on either blood or lung lavage cells.

(2) Established chronic beryllium disease.

(3) Any injury, illness, impairment, or disability sustained as a consequence of the conditions specified in paragraphs (b), (1) and (2) of this section.

§ 30.206 How does a claimant prove that the claimant was a "covered beryllium employee" exposed to beryllium dust, particles or vapor in the performance of duty?

(a) Proof of employment at or physical presence at a DOE 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 DOE during a period when beryllium dust, particles, or vapor may have been present at such a facility, may be made by the submission of any trustworthy contemporaneous records that, on their face or in conjunction with other such records, establish that the employee was employed or present at a covered facility and the time period of such employment or presence.

(b) Contemporaneous records from the following sources may be considered as evidence for purposes of establishing employment or presence at a covered facility:

(1) Records or documents created by any federal government agency (including verified information submitted for security clearance), any tribal government, or any state, county, city or local government office, agency, department, board or other entity, or other public agency or office.

(2) Records or documents created by any vendor, processor, or producer of beryllium or related products designated as a beryllium vendor by the DOE in accordance with section 3622 of the Act.

(3) Records or documents created by any regularly conducted business activity or entity that acted as a contractor or subcontractor to the DOE.

§ 30.207 How does a claimant prove diagnosis of a covered beryllium disease?

(a) Written medical documentation is required in all cases to prove that the employee developed a covered beryllium illness. Proof that the employee developed a covered beryllium illness must be made by using the procedures outlined in paragraphs (b), (c), (d), or (e) of this section.

(b) Beryllium sensitivity or sensitization is established with an abnormal LPT performed on either blood or lung lavage cells.

(c) Chronic beryllium disease is established in the following manner:

(1) For diagnoses on or after January 1, 1993, beryllium sensitivity (as established in accordance with paragraph (b) of this section), together with lung pathology consistent with chronic beryllium disease, including the following:

(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.

(2) For diagnoses before January 1, 1993, the presence of the following:

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

(ii) Any three of the following criteria:

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

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

(C) Lung pathology consistent with chronic beryllium disease.

(D) Clinical course consistent with chronic respiratory disorder.

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

(d) An injury, illness, impairment or disability sustained as a consequence of beryllium sensitivity or established chronic beryllium disease must be established with a fully rationalized medical report by a physician that shows the relationship between the injury, illness, impairment or disability and the beryllium sensitivity or established chronic beryllium disease. Neither the fact that the injury, illness, impairment or disability manifests itself after a diagnosis of beryllium sensitivity or established chronic beryllium disease, nor the belief of the claimant that the injury, illness, impairment or disability was caused by the beryllium sensitivity or established chronic beryllium disease is sufficient in itself to prove a causal relationship.

(e) The Secretary of Health and Human Services may, from time to time, and in consultation with the DOE, specify additional means of establishing the existence of a covered beryllium illness.

Eligibility Criteria for Claims Relating to Cancer

§ 30.210 What are the criteria for eligibility for benefits relating to cancer?

To establish eligibility for benefits for cancer, an employee or his or her survivor must show that:

(a) The employee has been diagnosed with one of the forms of cancer specified in section 4(b)(2) of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) and set forth in § 30.5(dd) of this subpart; and

(1) Is a member of the Special Exposure Cohort (as described in § 30.213(a) of this subpart) who, as a DOE employee or DOE contractor employee, contracted the specified cancer after beginning employment at a DOE facility; or

(2) Is a member of the Special Exposure Cohort (as described in § 30.213(a) of this subpart) who, as an atomic weapons employee, contracted the specified cancer after beginning employment at an atomic weapons employer facility (as defined in § 30.5(e)); or

(b) The employee has been diagnosed with cancer; and

(1) Is/was a DOE employee who contracted that cancer after beginning employment at a DOE facility; or

(2) Is/was a DOE contractor employee who contracted that cancer after beginning employment at a DOE facility; or

(3) Is/was an atomic weapons employee who contracted that cancer after beginning employment at an atomic weapons employer facility; and

(4) That the cancer was at least as likely as not related to the employment at the DOE facility or atomic weapons employer facility; or

(c) The employee has been diagnosed with an illness or disease that arose as a consequence of the accepted cancer.

§ 30.211 How does a claimant establish that the employee has or had contracted cancer?

A claimant establishes that the employee has or had contracted cancer with medical evidence that sets forth the diagnosis of cancer and the date on which that diagnosis was made.

§ 30.212 How does a claimant establish that the cancer was at least as likely as not related to the employment at the DOE facility or the atomic weapons employer facility?

HHS, with the advice of the Advisory Board on Radiation and Worker Health, will issue guidelines for making the determination whether cancer was at least as likely as not related to the employment at the DOE facility or the atomic weapons employer facility. Claimants should consult those guidelines for information regarding the type of evidence that will be considered by DOL, in addition to the employee's radiation dose reconstruction that will be provided by HHS, in making this determination.

§ 30.213 How does a claimant establish that the employee is a member of the Special Exposure Cohort?

(a) For purposes of establishing eligibility as a member of the Special Exposure Cohort (SEC) under § 30.210, the employee must have been a DOE employee, DOE contractor employee, or an atomic weapons employee who meets any of the following requirements:

(1) The employee was so employed for a number of workdays aggregating at least 250 workdays 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 the 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.

(2) The employee was so employed before January 7, 1974, by DOE or a DOE 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.

(3) The employee is a member of a group or class of employees subsequently designated as additional members of the SEC by HHS.

(b) For purposes of satisfying the 250 workday requirement of paragraph (a)(1) of this section, the claimant may aggregate the days of service at more than one gaseous diffusion plant.

(c) Proof of employment by the DOE or a DOE contractor, or atomic weapons employer for the requisite time periods set forth in paragraph (a) of this section, may be made by the submission of any trustworthy contemporaneous records

that, on their face or in conjunction with other such records, establish that the employee was so employed and the time period(s) of such employment.

(d) Contemporaneous records from the following sources may be considered as evidence for purposes of establishing employment or presence at a covered facility:

(1) Records or documents created by any federal government agency (including verified information submitted for security clearance), any tribal government, or any state, county, city or local government office, agency, department, board or other entity, or other public agency or office.

(2) Records or documents created as a byproduct of any regularly conducted business activity or by an entity that acted as a contractor or subcontractor to the DOE.

§ 30.214 How does a claimant establish that the employee has been diagnosed with cancer or has sustained a consequential injury, illness or disease?

(a) Evidence that the employee contracted a specified cancer (in the case of SEC members) or other cancer should include a written medical document that contains an explicit statement of diagnosis and the date on which that diagnosis was first made.

(b) An injury, illness, impairment or disability sustained as a consequence of a diagnosed cancer covered by the provisions of § 30.210(a) and (b) must be established with a fully rationalized medical report by a physician that shows the relationship between the injury, illness, impairment or disability and the covered cancer. Neither the fact that the injury, illness, impairment or disability manifests itself after a diagnosis of a covered cancer, nor the belief of the claimant that the injury, illness, impairment or disability was caused by the covered cancer is sufficient in itself to prove a causal relationship.

Eligibility Criteria for Chronic Silicosis

§ 30.215 What are the criteria for eligibility for benefits relating to chronic silicosis?

To establish eligibility for benefits for chronic silicosis, a claimant must show that the employee was a covered employee with chronic silicosis by establishing that:

(a) The employee is a DOE employee, or a DOE contractor employee, who was present for a number of work days aggregating at least 250 work days during the mining of tunnels at a DOE facility (as defined in § 30.5(v)) located in Nevada or Alaska for tests or experiments related to an atomic weapon; and

(b) Has been diagnosed with chronic silicosis (as defined in § 30.5(j)).

§ 30.216 How does a claimant prove exposure to silica in the performance of duty?

(a) Proof of the employee's employment and presence for the requisite days during the mining of tunnels at a DOE facility located in Nevada or Alaska for tests of experiments related to an atomic weapon may be by the submission of any trustworthy contemporaneous records that, on their face or in conjunction with other such records, establish that the employee was so employed and present at these sites and the time period(s) of such employment and presence.

(b) Contemporaneous records from the following sources may be considered as evidence for purposes of establishing proof of employment or presence at a covered facility:

(1) Records or documents created by any federal government agency (including verified information submitted for security clearance), any tribal government, or any state, county, city or local government office, agency, department, board or other entity, or other public agency or office.

(2) Records or documents created as a byproduct of any regularly conducted business activity or by an entity that acted as a contractor or subcontractor to the DOE.

(c) For purposes of satisfying the 250 workday requirement of § 30.215(a), the claimant may aggregate the days of service at more than one qualifying site.

§ 30.217 How does a claimant prove the covered employee's diagnosis of chronic silicosis?

A written diagnosis of the employee's chronic silicosis (as defined in § 30.5(j)) shall be made by a medical doctor and 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 1/1 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.

Eligibility of Certain Uranium Employees

§ 30.220 What are the criteria for eligibility for benefits for certain uranium employees?

(a) In order to be eligible for compensation under this section, the Attorney General must have determined that a claimant is a covered uranium employee or surviving eligible beneficiary of such employee who is entitled to payment of $100,000 as compensation due under section 5 of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) for a claim made under that Act.

(b) There is no requirement that the claimant or surviving eligible beneficiary has actually received payment pursuant to the RECA.

Subpart D—Adjudicatory Process

§ 30.300 What process will OWCP use to decide claims and to provide for administrative review of those decisions?

OWCP district offices will issue recommended decisions with respect to claims. All recommended decisions, including those granting and denying benefits under the Act, will be forwarded to the Final Adjudication Branch (FAB). Claimants will be given an opportunity to object to all or part of the recommended decision. The FAB will consider any objections filed by a claimant and conduct a hearing, if requested to do so by the claimant, before issuing a final decision on the claim.

Recommended Decisions on Claims

§ 30.305 How does OWCP determine entitlement to EEOICPA compensation?

(a) In reaching a recommended decision with respect to EEOICPA compensation, OWCP considers the claim presented by the claimant, the factual and medical evidence of record, the dose reconstruction report calculated by HHS (if any), the report submitted by DOE and the results of such investigation as OWCP may deem necessary.

(b) The OWCP claims staff applies the law, the regulations and its procedures to the facts as reported or obtained upon investigation.

§ 30.306 What does the recommended decision contain?

The recommended decision shall contain findings of fact and conclusions of law. The recommended decision may accept or reject the claim in its entirety, or it may accept or reject a portion of the claim presented. It is accompanied by information about the claimant's right to file specific objections with, and request a hearing before, the FAB.

§ 30.307 To whom is the recommended decision sent?

A copy of the recommended decision will be mailed to the claimant's last known address. However, if the claimant has a designated representative before OWCP, the copy of the

recommended decision will be mailed to the representative. Notification to either the claimant or the representative will be considered notification to both parties.

Hearings and Final Decisions on Claims

§ 30.310 How does a claimant object to a recommended decision on a claim?

(a) At the same time it issues a recommended decision on a claim, the OWCP district office will forward the record of such claim to the FAB. Any new evidence submitted to the district office following the issuance of the recommended decision will also be forwarded to the FAB for consideration.

(b) In a notice accompanying the recommended decision, the district office will request that the claimant specify, within 60 days from the date of issuance of such decision, whether he or she objects to any of the findings of fact and/or conclusions of law contained in the recommended decision, and whether a hearing is desired. Any objection, as well as any related request for a hearing, should be sent to the FAB at the address indicated in the notice.

(1) All objections to the recommended decision must be identified as specifically as possible by the date described above in paragraph (b) of this section, unless that date is extended by the FAB, or the FAB reviewer permits further objections at the hearing.

(2) Any objection not presented to the FAB within the time period described in this section, including any objection to HHS's reconstruction of the radiation dose to which the employee was exposed, whether or not the issue was previously presented to the district office, is deemed waived for all purposes.

§ 30.311 What action will the FAB take if the claimant does not file objections to the recommended decision?

(a) If no objections to specific findings of fact or conclusions of law are filed within the period of time allotted in § 30.310(b), the FAB will issue a decision affirming the recommended decision as provided in § 30.316, even if the claimant requests a hearing.

(b) If the recommended decision accepts all or part of a claim for compensation, the FAB may issue a decision at any time after receiving written notice from the claimant that he or she waives any objection to all or part of the recommended decision.

§ 30.312 What action will the FAB take if the claimant files objections but does not request a hearing?

If the claimant specifies objections to the recommended decision within the appropriate time period but does not request a hearing, the FAB will consider such objections by means of a review of the written record. If the claimant's objections only refer to part of the recommended decision, the FAB may issue a decision affirming the remaining part of the recommended decision without first reviewing the written record (see § 30.316).

§ 30.313 How is a review of the written record conducted?

(a) The FAB reviewer will review the record forwarded by the district office and any additional evidence and/or argument submitted by the claimant. The reviewer may also conduct whatever investigation is deemed necessary.

(b) The claimant should submit, with his or her statement specifying the findings of fact and/or conclusions of law contained in the district office's recommended decision to which he or she objects, all evidence or argument that he or she wants to present to the reviewer. However, evidence or argument may be submitted at any time up to the date specified by the reviewer for the submission of such evidence or argument.

§ 30.314 How is a hearing conducted?

(a) The FAB reviewer retains complete discretion to set the time and place of the hearing, including the amount of time allotted for the hearing, considering the issues to be resolved. At the discretion of the reviewer, the hearing may be conducted by telephone or teleconference. In addition to the evidence of record, the claimant may submit new evidence to the reviewer.

(b) Unless otherwise directed in writing by the claimant, the FAB reviewer will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date. This notice will also include a listing of the issues to be addressed during the hearing. If the claimant only objects to a part of the recommended decision, the FAB reviewer may issue a decision affirming the remaining part of the recommended decision without first holding a hearing (see § 30.316).

(c) The hearing is an informal process, and the reviewer is not bound by common law or statutory rules of evidence, or by technical or formal rules of procedure. The reviewer may conduct the hearing in such manner as to best ascertain the rights of the claimant. During the hearing process, the claimant may state his or her arguments and present new written evidence and/or testimony in support of the claim.

(d) Testimony at hearings is recorded, then transcribed and placed in the record. Oral testimony shall be made under oath.

(e) The FAB reviewer will furnish a transcript of the hearing to the claimant, who has 20 days from the date it is sent to submit any comments to the reviewer.

(f) The claimant will have 30 days after the hearing is held to submit additional evidence or argument, unless the reviewer, in his or her sole discretion, grants an extension. Only one such extension may be granted.

(g) The reviewer determines the conduct of the hearing and may terminate the hearing at any time he or she determines that all relevant evidence has been obtained, or because of misbehavior on the part of the claimant and/or representative at or near the place of the oral presentation.

§ 30.315 May a claimant postpone a hearing?

(a) The FAB will entertain any reasonable request for scheduling the hearing, but such requests should be made at the time of the hearing request described in § 30.310(b). Scheduling is at the sole discretion of the FAB reviewer, and is not reviewable. Once the hearing is scheduled and appropriate written notice has been mailed, the hearing cannot be postponed at the claimant's request for any reason except those stated in paragraph (b) of this section, unless the FAB reviewer can reschedule the hearing on the same docket (that is, during the same hearing trip). When the request to postpone a scheduled hearing does not meet the test of paragraph (b) of this section and cannot be accommodated on the docket, no further opportunity for a hearing will be provided. Instead, the claimant's specified objections will be considered by means of a review of the written record. In the alternative, a teleconference may be substituted for the hearing at the discretion of the reviewer.

(b) Where the claimant is hospitalized for a reason which is not elective, or where the death of the claimant's parent, spouse, or child prevents attendance at the hearing, a postponement may be granted upon proper documentation.

(c) At any time after requesting a hearing, the claimant can request a change to a review of the written record by making a written request to the FAB. Once such a change is made, no further opportunity for a hearing will be provided.

§ 30.316 How does the FAB issue a final decision on a claim?

(a) If the 60-day period specified in the notice accompanying the recommended decision (plus any extension of such period granted by the FAB) for filing objections to the recommended decision expires and no objections have been filed, or if the claimant waives any objections to all or part of the recommended decision, the FAB will issue a decision affirming the recommended decision, either in whole or in part (see §§ 30.311, 30.312 and 30.314(a)).

(b) If the claimant files objections to all or part of the recommended decision, the FAB reviewer will issue a decision on the claim after either the hearing or the review of the written record, and after completing such further development of the case as he or she may deem necessary.

(c) Any recommended decision (or part thereof) that is pending either a hearing or a review of the written record for more than one year from the date the FAB receives the record from the district office shall be considered affirmed by the FAB on the one-year anniversary of such date.

(d) The decision of the FAB, whether issued pursuant to paragraph (a), (b) or (c) of this section, shall be final upon the expiration of 30 days from the date of issuance of such decision, unless a timely request for reconsideration under § 30.319 has been filed.

(e) A copy of the decision of the FAB will be mailed to the claimant's last known address. However, if the claimant has a designated representative before OWCP, the copy of the decision will be mailed to the representative. Notification to either the claimant or the representative will be considered notification to both parties.

§ 30.317 Can the FAB request a further response from the claimant or remand a claim to the district office?

At any time before the issuance of its decision, the FAB may request that the claimant submit additional evidence or argument, or remand the claim to the district office for further development without issuing a decision, whether or not requested to do so by the claimant.

§ 30.318 Can the FAB review a determination by HHS with respect to an employee's dose reconstruction?

(a) The FAB will review the factual determinations upon which HHS based its decision. Factual findings that do not appear to be supported by substantial evidence will be remanded to the district office for referral to HHS for further consideration.

(b) The methodology used by HHS in arriving at reasonable estimates of the radiation doses received by an employee, established by regulations issued by HHS, is binding on the FAB. The FAB reviewer may determine, however, that arguments concerning the application of that methodology should be considered by HHS and may remand the case to the district office for referral to HHS for such consideration.

§ 30.319 May a claimant request reconsideration of a decision of the FAB?

(a) A claimant may request reconsideration of a decision of the FAB by making a written request to the FAB within 30 days from the date of issuance of such decision.

(b) If the FAB grants the request for reconsideration, it will review the district office's recommended decision again and issue a new decision on the claim. A hearing is not available as part of the reconsideration process. If the FAB denies the request for reconsideration, the decision in question shall be final on the date the request is denied.

(c) A claimant may not seek judicial review of a decision on his or her claim under the Act until all administrative review opportunities have been exhausted and OWCP's decision on the claim is final pursuant to § 30.316(d).

Modification

§ 30.320 Can a final decision be modified once the period for requesting reconsideration has expired?

A final decision issued by the FAB may be modified at any time on OWCP's own motion. A final decision may also be modified on the motion of the claimant within one year of the date on which such decision became final, provided that the claimant can establish a mistake of fact in the decision, or changed conditions. Modification may be granted without regard to whether new evidence or information is presented or obtained. If OWCP determines that modification is warranted, it may issue a new recommended decision modifying the prior final decision.

(a) The decision whether or not to modify a final decision under this section is solely within the discretion of OWCP.

(b) Where OWCP grants modification of a final decision, any resulting recommended decision is subject to the adjudicatory process described in this subpart. However, the scope of review at the FAB will be limited to review of the merits of the recommended decision. OWCP's discretionary determination to modify the prior final decision is not reviewable.

(c) Nothing in this section shall prevent a claimant from filing another claim under the EEOICPA for compensation for an occupational illness or a consequential injury for which he or she has not previously sought compensation under the EEOICPA. In any event, however, no claimant may receive more than one award of monetary compensation under sections 3628(a)(1) or 3630(a) of the EEOICPA.

Subpart E—Medical and Related Benefits

Medical Treatment and Related Issues

§ 30.400 What are the basic rules for obtaining medical care?

(a) The covered employee who fits into at least one of the compensable claim categories is entitled to receive all medical services, appliances or supplies that a qualified physician prescribes or recommends and that OWCP considers necessary to treat his or her occupational illness, retroactive to the date the employee filed a claim for benefits under the EEOICPA (see § 30.100(c)). The employee need not be disabled to receive such treatment, and OWCP will pay for such treatment even if the covered employee dies before the claim is accepted. If there is any doubt as to whether a specific service, appliance or supply is necessary to treat the occupational illness, the employee should consult OWCP prior to obtaining it.

(b) Any qualified physician or qualified hospital may provide such services, appliances and supplies. A qualified provider of medical support services may also furnish appropriate services, appliances, and supplies. OWCP may apply a test of cost-effectiveness to appliances and supplies. With respect to prescribed medications, OWCP may require the use of generic equivalents where they are available.

§ 30.401 What are the special rules for the services of chiropractors?

(a) The services of chiropractors that may be reimbursed by OWCP are limited to treatment to correct a spinal subluxation. The costs of physical and related laboratory tests performed by or required by a chiropractor to diagnose such a subluxation are also payable.

(b) A diagnosis of spinal subluxation as demonstrated by x-ray to exist must appear in the chiropractor's report before OWCP can consider payment of a chiropractor's bill.

(c) A chiropractor may interpret his or her x-rays to the same extent as any other physician. To be given any weight, the medical report must state that x-rays support the finding of spinal subluxation. OWCP will not necessarily require submission of the x-ray, or a report of the x-ray, but the report must be available for submission on request.

(d) A chiropractor may also provide services in the nature of physical therapy under the direction of a qualified physician.

§ 30.402 What are the special rules for the services of clinical psychologists?

A clinical psychologist may serve as a physician within the scope of his or her practice as defined by state law. Therefore, a clinical psychologist may not serve as a physician for conditions that include a physical component unless the applicable state law allows clinical psychologists to treat physical conditions. A clinical psychologist may also perform testing, evaluation, and other services under the direction of a qualified physician.

§ 30.403 Will OWCP pay for the services of an attendant?

OWCP will authorize payment for personal care services under section 3629 of the EEOICPA, whether or not such care includes medical services, so long as the personal care services have been determined to be medically necessary and are provided by a home health aide, licensed practical nurse, or similarly trained individual.

§ 30.404 Will OWCP pay for transportation to obtain medical treatment?

The employee is entitled to reimbursement of reasonable and necessary expenses, including transportation needed to obtain authorized medical services, appliances or supplies. To determine what is a reasonable distance to travel, OWCP will consider the availability of services, the employee's condition, and the means of transportation. Generally, 25 miles from the work site or the employee's home is considered a reasonable distance to travel. The standard form designated for federal employees to claim travel expenses should be used to seek reimbursement under this section.

§ 30.405 After selecting a treating physician, may an employee choose to be treated by another physician instead?

(a) OWCP will provide the employee with an opportunity to designate a treating physician when it accepts the claim. When the physician originally selected to provide treatment for an occupational illness refers the employee to a specialist for further medical care, the employee need not consult OWCP for approval. In all other instances, however, the employee must submit a written request to OWCP with his or her reasons for desiring a change of physician.

(b) OWCP will approve the request if it determines that the reasons submitted are sufficient. Requests that are often approved include those for transfer of care from a general practitioner to a physician who specializes in treating occupational illnesses covered by the EEOICPA, or the need for a new physician when an employee has moved.

§ 30.406 Are there any exceptions to these procedures for obtaining medical care?

In cases involving emergencies or unusual circumstances, OWCP may authorize treatment in a manner other than as stated in this subpart.

Directed Medical Examinations

§ 30.410 Can OWCP require an employee to be examined by another physician?

OWCP sometimes needs a second opinion from a medical specialist. The employee must submit to examination by a qualified physician as often and at such times and places as OWCP considers reasonably necessary. The employee may have a qualified physician, paid by him or her, present at such examination. However, the employee is not entitled to have anyone else present at the examination unless OWCP decides that exceptional circumstances exist. For example, where a hearing-impaired employee needs an interpreter, the presence of an interpreter would be allowed. Also, OWCP may send a case file for second opinion review where actual examination is not needed, or where the employee is deceased.

§ 30.411 What happens if the opinion of the physician selected by OWCP differs from the opinion of the physician selected by the employee?

(a) If one medical opinion holds more probative value, OWCP will base its determination of entitlement on that medical conclusion. A difference in medical opinion sufficient to be considered a conflict occurs when two reports of virtually equal weight and rationale reach opposing conclusions.

(b) If a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser or consultant, OWCP shall appoint a third physician to make an examination. This is called a referee examination. OWCP will select a physician who is qualified in the appropriate specialty and who has had no prior connection with the case. The employee is not entitled to have anyone present at the examination unless OWCP decides that exceptional circumstances exist. For example, where a hearing-impaired employee needs an interpreter, the presence of an interpreter would be allowed. Also, a case file may be sent for referee medical review where there is no need for an actual examination, or where the employee is deceased.

§ 30.412 Who pays for second opinion and referee examinations?

OWCP will pay second opinion and referee medical specialists directly. OWCP will reimburse the employee all necessary and reasonable expenses incident to such an examination, including transportation costs and actual wages lost for the time needed to submit to an examination required by OWCP.

Medical Reports

§ 30.415 What are the requirements for medical reports?

In all cases reported to OWCP, a medical report from the attending physician is required. This report should include:

(a) Dates of examination and treatment;

(b) History given by the employee;

(c) Physical findings;

(d) Results of diagnostic tests;

(e) Diagnosis;

(f) Course of treatment;

(g) A description of any other conditions found due to the claimed occupational illness;

(h) The treatment given or recommended for the claimed occupational illness; and

(i) All other material findings.

§ 30.416 How and when should the medical report be submitted?

(a) The initial medical report (and any subsequent reports) should be made in narrative form on the physician's letterhead stationery. The physician should use the EE–7 as a guide for the preparation of his or her initial medical report. The report should bear the physician's signature or signature stamp. OWCP may require an original signature on the report.

(b) The report shall be submitted directly to OWCP as soon as possible after medical examination or treatment is received, either by the employee or the physician.

§ 30.417 What additional medical information may OWCP require to support continuing payment of benefits?

In all cases requiring hospital treatment or prolonged care, OWCP will request detailed narrative reports from the attending physician at periodic intervals. The physician will be asked to describe continuing medical treatment for the occupational illness accepted by OWCP, a prognosis, and the physician's opinion as to the continuing causal relationship between the need for additional treatment and the covered occupational illness.

Medical Bills

§ 30.420 How are medical bills submitted?

Usually, medical providers submit bills directly for processing. The rules for submitting and processing bills are stated in subpart H of this part. An employee claiming reimbursement of medical expenses should submit an itemized bill as described in § 30.702.

§ 30.421 What are the time frames for submitting bills?

To be considered for payment, bills must be submitted by the end of the calendar year after the year when the expense was incurred, or by the end of the calendar year after the year when OWCP first accepted the claim as compensable, whichever is later.

§ 30.422 If OWCP reimburses an employee only partially for a medical expense, must the provider refund the balance of the amount paid to the employee?

(a) The OWCP fee schedule sets maximum limits on the amounts payable for many services. The employee may be only partially reimbursed for medical expenses because the amount he or she paid to the medical provider for a service exceeds the maximum allowable charge set by the OWCP fee schedule.

(b) If this happens, OWCP shall advise the employee of the maximum allowable charge for the service in question and of his or her responsibility to ask the provider to refund to the employee, or credit to the employee's account, the amount he or she paid that exceeds the maximum allowable charge. The provider may request reconsideration of the fee determination as set forth in § 30.712.

(c) If the provider does not refund to the employee or credit to his or her account the amount of money paid in excess of the charge that OWCP allows, the employee should submit documentation of the attempt to obtain such refund or credit to OWCP. OWCP may authorize reasonable reimbursement to the employee after reviewing the facts and circumstances of the case.

Subpart F—Survivors; Payments and Offsets; Overpayments Survivors

§ 30.500 What special statutory definitions apply to survivors under the EEOICPA?

(a) EEOICPA provides that the classes of individuals listed as eligible "survivors" in section 8133 of title 5, United States Code, may also be eligible survivors under the EEOICPA. Those classes of individuals are specified in § 30.5(ee) of these regulations.

(b) EEOICPA adopts the order of precedence and proportions to be afforded to survivors as set forth in section 8109 of title 5, United States Code (see § 30.501).

§ 30.501 How will OWCP apply that order of precedence to determine what survivors are entitled to receive under the EEOICPA?

If OWCP determines that survivors are entitled to receive compensation under EEOICPA because a covered employee who would otherwise have been entitled to benefits is deceased, that compensation will be disbursed as follows, subject to the qualifications set forth in § 30.5(ee)(2) of these regulations:

(a) If there is no child, all to the widow or widower.

(b) If there are both a widow or widower and a child or children, one-half to the widow or widower and one-half to the child or children in equal shares.

(c) If there is no widow or widower, to the child or children in equal shares.

(d) If there is no survivor in the above classes, to the wholly or partly dependent parent or parents, and wholly dependent brother, sister, grandparent, or grandchild, in equal shares.

§ 30.502 When is entitlement for survivors determined for purposes of EEOICPA?

Entitlement to any lump-sum payment for survivor(s) under the EEOICPA will be determined as of the date of death of the covered employee.

Payment of Claims and Offset for Certain Payments

§ 30.505 What are the procedures for payment of claims?

(a) Except with respect to claims related to beryllium sensitivity, payment shall be made to the claimant, or to the legal guardian of the claimant, unless the claimant is deceased at the time of the payment. In cases involving a claimant who is deceased, payment shall be made to an eligible surviving beneficiary, or to the legal guardian acting on behalf of the eligible surviving beneficiary, in accordance with the terms and conditions specified in section 3628(e) of the EEOICPA.

(b) In cases involving the approval of a claim, OWCP shall take all necessary and appropriate steps to determine the correct amount of any offset to be made to the amount awarded under the EEOICPA, and to verify the identity of the claimant or the existence of any eligible surviving beneficiaries who allege to be entitled by the EEOICPA to receive all or part of the payment the claimant would have received. OWCP may conduct any investigation, require any claimant or eligible surviving beneficiary to provide or execute any affidavit, record, or document, or authorize the release of any information as OWCP deems necessary to ensure that the compensation payment is made in the correct amount and to the correct person(s). If the claimant or eligible surviving beneficiary fails or refuses to execute an affidavit or release of information, or provide a requested record or document, or fails to provide access to information, such failure or refusal may be deemed to be a rejection of the payment, unless the claimant or eligible surviving beneficiary of the claimant does not have and cannot obtain the legal authority to provide, release, or authorize access to the required information, records, or documents.

(c) Prior to authorizing payment, OWCP shall require the claimant or each eligible surviving beneficiary of a claim filed under these regulations to execute and provide an affidavit (or declaration under oath on the standard claim form) setting forth the amount of any payment made pursuant to a final award or settlement on a claim (other than a claim for workers' compensation), against any person, that is based on injuries incurred by the claimant for which his/her claim under the EEOICPA was submitted. For purposes of this subsection, a "claim" includes, but is not limited to, any request or demand for money made or sought in a civil action, or made or sought in anticipation of the filing of a civil action, but shall not include requests or demands made pursuant to a life insurance or health insurance contract. If any such award or settlement payment was made, OWCP shall subtract the sum of such award or settlement payments from the payment to be made under the EEOICPA. Prior to authorizing payment, OWCP shall also require the claimant or each surviving beneficiary to execute and provide any necessary affidavit described in § 30.617 of these regulations.

(d) Except as provided in paragraph (e) of this section, when OWCP has verified the identity of the claimant or each eligible surviving beneficiary who is entitled to the compensation payment, or to a share of the compensation payment, and determined the correct amount of the payment or the share of the payment, OWCP shall notify the claimant or each eligible surviving beneficiary, or his/her legal guardian, and require such person(s) to sign an Acceptance of Payment Form. Such form shall be signed and returned within sixty days of the date of the form or such greater period as may be allowed by OWCP. Failure to return the signed form within the required time may be deemed to be a rejection of the payment. Signing and returning the form within the required time shall constitute acceptance of the payment, unless the individual who has signed the form dies prior to receiving the actual payment, in which case the person who possesses the payment shall return it to OWCP for redetermination of the correct disbursement of the payment. No payment shall be made until OWCP has made a determination concerning the survivors related to a respective claim for benefits.

(e) Compensation for consequential illness or disease is limited to payment of medical benefits for that illness or disease.

(f) Rejected compensation payments, or shares of compensation payments, shall not be distributed to other eligible surviving beneficiaries, but shall be returned to the Fund for use in paying other claims.

(g) Upon receipt of the Acceptance of Payment Form, OWCP shall authorize the appropriate authorities to issue a check to the claimant or each surviving eligible beneficiary who has accepted payment out of the funds appropriated for this purpose.

(h) Multiple payments:

(1) No claimant may receive more than one lump-sum payment under these regulations for any occupational illnesses he or she contracted. However, he or she may also receive one lump-sum payment for each claimant for whom he or she qualifies as an eligible surviving beneficiary.

(2) An eligible surviving beneficiary, who is not also a claimant, may receive one lump-sum payment for each claimant for whom he or she qualifies as an eligible surviving beneficiary.

§ 30.506 What compensation will be provided to claimants who only establish beryllium sensitivity?

A covered employee whose sole occupational illness is beryllium sensitivity shall receive beryllium sensitivity monitoring. The establishment of beryllium sensitivity does not entitle the covered employee to any lump-sum payment or other medical benefits provided for under the EEOICPA.

§ 30.507 What is beryllium sensitivity monitoring?

Beryllium sensitivity monitoring shall consist of medical examinations to confirm and monitor the extent and nature of the individual's beryllium sensitivity. Monitoring shall also include regular medical examinations, including diagnostic testing to determine whether the individual has established chronic beryllium disease.

Overpayments

§ 30.510 How does OWCP notify an individual of a payment made on a claim?

(a) In addition to providing narrative descriptions to recipients of benefits paid or payable, OWCP includes on each check a clear indication of the reason the payment is being made. For payments sent by electronic funds transfer (EFT), a notification of the date and amount of payment appears on the statement from the recipient's financial institution.

(b) By these means, OWCP puts the recipient on notice that a payment was made and the amount of the payment. If the amount received differs from the amount indicated on the written notice or bank statement, the recipient is responsible for notifying OWCP of the difference. Absent affirmative evidence to the contrary, the beneficiary will be presumed to have received the notice of payment, whether mailed or transmitted electronically.

§ 30.511 What is an "overpayment" for purposes of the EEOICPA?

An "overpayment" is any amount of compensation paid under sections 3628(a)(1) or 3630(a) of the EEOICPA to a recipient that constitutes:

(a) Payment where no amount is payable under this part; or

(b) Payment in excess of the correct amount determined by OWCP.

§ 30.512 How does OWCP determine that a beneficiary owes a debt as the result of the creation of an overpayment?

OWCP will notify the beneficiary of the existence and amount of any overpayment, and request the beneficiary to voluntarily return the overpaid amount or provide OWCP with evidence and/or argument contesting the existence or amount of an overpayment. Within 30 days of the issuance of such notification, a beneficiary who believes that OWCP made a mistake in determining the fact or amount of an overpayment may submit written comments and documentation in support of his or her position contesting the existence or amount of such overpayment to OWCP. After considering any written documentation or argument submitted to OWCP within the 30-day period, OWCP will issue a determination on the question of whether a debt is owed to OWCP. If OWCP determines that a debt is owed by the beneficiary, it will forward a copy of that determination to the beneficiary and advise him or her that unless the debt is voluntarily repaid it will pursue collection of the overpayment through DOL's debt collection procedures found at 29 CFR part 20.

§ 30.513 How are overpayments collected?

The overpaid individual shall refund to OWCP the amount of the overpayment as soon as possible. The overpayment is subject to the provisions of the Federal Claims Collection Act of 1966 (as amended) and may be reported to the Internal Revenue Service as income. If the individual fails to make such refund, OWCP may recover the same through any available means, including offset of salary, annuity benefits, or other Federal payments, including tax refunds as authorized by the Tax Refund Offset Program, or referral of the debt to a collection agency or to the Department of Justice.

Subpart G—Special Provisions

Representation

§ 30.600 May a claimant designate a representative?

(a) The claims process under this part is informal, and OWCP acts as an impartial evaluator of the evidence. A claimant need not be represented to file a claim or receive a payment. Nevertheless, a claimant may appoint one individual to represent his or her interests, but the appointment must be in writing.

(b) There can be only one representative at any one time, so after one representative has been properly appointed, OWCP will not recognize another individual as representative until the claimant withdraws the authorization of the first individual. In addition, OWCP will recognize only certain types of individuals (see § 30.601).

(c) A properly appointed representative who is recognized by OWCP may make a request or give direction to OWCP regarding the claims process, including a hearing. This

authority includes presenting or eliciting evidence, making arguments on facts or the law, and obtaining information from the case file, to the same extent as the claimant. Any notice requirement contained in this part or the EEOICPA is fully satisfied if served on the representative, and has the same force and effect as if sent to the claimant.

§ 30.601 Who may serve as a representative?

A claimant may authorize any individual to represent him or her in regard to a claim under the EEOICPA, unless that individual's service as a representative would violate any applicable provision of law (such as 18 U.S.C. 205 and 208). A federal employee may act as a representative only:

(a) On behalf of immediate family members, defined as a spouse, children, parents, and siblings of the representative, provided no fee or gratuity is charged; or

(b) While acting as a union representative, defined as any officially sanctioned union official, and no fee or gratuity is charged.

§ 30.602 Who is responsible for paying the representative's fee?

A representative may charge the claimant a fee for services and for costs associated with the representation before OWCP. The claimant is solely responsible for paying the fee and other costs. OWCP will not reimburse the claimant, nor is it in any way liable for the amount of the fee and costs.

Third Party Liability

§ 30.605 What rights does the United States have upon payment of compensation under the EEOICPA?

If an illness for which compensation is payable under the EEOICPA is caused, wholly or partially, by someone other than a federal employee acting within the scope of his or her employment, a DOE contractor, or subcontractor, a beryllium vendor or atomic weapons employer, the United States is subrogated for the full amount of any payment of compensation under the EEOICPA to any right or claim that the individual to whom the payment was made may have against any person or entity on account of such illness.

§ 30.606 Under what circumstances must a recovery of money or other property in connection with an illness for which benefits are payable under the EEOICPA be reported to OWCP?

Any person who has filed an EEOICPA claim that has been accepted by OWCP (whether or not compensation has been paid), or who has received EEOICPA benefits in connection with a claim filed by another, is required to notify OWCP of the receipt of money or other property as a result of a settlement or judgment in connection with the circumstances of that claim.

§ 30.607 How is a structured settlement (that is, a settlement providing for receipt of funds over a specified period of time) treated for purposes of reporting the recovery?

In this situation, the recovery to be reported is the present value of the right to receive all of the payments included in the structured settlement, allocated in the case of multiple recipients in the same manner as single payment recoveries.

§ 30.608 How does the United States calculate the amount to which it is subrogated?

The subrogated amount of a specific claim consists of the total money paid by OWCP from the Energy Employees Occupational Illness Compensation Fund with respect to that claim to or on behalf of an employee or eligible surviving beneficiary, less charges for any medical file review (i.e., the physician does not examine the employee) done at the request of OWCP. Charges for medical examinations also may be subtracted if the employee or eligible surviving beneficiary establishes that the examinations were required to be made available to the employee under a statute other than the EEOICPA.

§ 30.609 Is a settlement or judgment received as a result of allegations of medical malpractice in treating an illness covered by the EEOICPA a recovery that must be reported to OWCP?

Since an injury caused by medical malpractice in treating an illness covered by the EEOICPA is also covered under the EEOICPA, any recovery in a suit alleging such an injury is treated as a recovery that must be reported to OWCP.

§ 30.610 Are payments to an employee or eligible surviving beneficiary as a result of an insurance policy which the employee or eligible surviving beneficiary has purchased a recovery that must be reported to OWCP?

Since payments received by an employee or eligible surviving beneficiary pursuant to an insurance policy purchased by someone other than a liable third party are not payments in satisfaction of liability for causing an illness covered by the EEOICPA, they are not considered a recovery that must be reported to OWCP.

§ 30.611 If a settlement or judgment is received for more than one medical condition, can the amount paid on a single EEOICPA claim be attributed to different conditions for purposes of calculating the amount to which the United States is subrogated?

(a) All medical conditions accepted by OWCP in connection with a single claim are treated as the same illness for the purpose of computing the amount to which the United States is subrogated in connection with the receipt of a recovery from a third party, except that an injury caused by medical malpractice in treating an illness covered under the EEOICPA will be treated as a separate injury.

(b) If an illness covered under the EEOICPA is caused under circumstances creating a legal liability in more than one person, other than the United States, a DOE contractor or subcontractor, a beryllium vendor or an atomic weapons employer, to pay damages, OWCP will determine whether recoveries received from one or more third parties should be attributed to separate conditions for which compensation is payable in connection with a single EEOICPA claim. If such an attribution is both practicable and equitable, as determined by OWCP, in its discretion, the conditions will be treated as separate injuries for purposes of calculating the amount to which the United States is subrogated.

Election of Remedy Against Beryllium Vendors and Atomic Weapons Employers

§ 30.615 Can a claimant receive benefits under the EEOICPA if he or she filed a tort suit against either a beryllium vendor or an atomic weapons employer on or prior to October 30, 2000?

A claimant who filed a tort suit against either a beryllium vendor or an atomic weapons employer on or prior to October 30, 2000, shall not be eligible to receive benefits under subtitle B of the EEOICPA unless he or she dismisses such suit no later than December 31, 2003.

§ 30.616 Can a claimant receive benefits under the EEOICPA if he or she filed a tort suit against either a beryllium vendor or an atomic weapons employer after October 30, 2000?

(a) Unless a tort suit filed under paragraphs (b) and (c) of this section is dismissed prior to the time limitations described in those subsections, the plaintiff shall not be eligible to receive benefits under subtitle B of the EEOICPA.

(b) If a claimant files a tort suit against either a beryllium vendor or an atomic weapons employer after October 30,

2000, such a suit must be filed by the later of:

(1) April 30, 2003; or

(2) 30 months after the date the plaintiff first became aware that his or her illness may be connected to the exposure covered by subtitle B of the EEOICPA.

(c) For purposes of this section only, "the date the plaintiff first became aware" will be deemed to be the date he or she received either a reconstructed dose from the HHS, or a diagnosis of a covered beryllium illness, as applicable.

(d) If a claimant files a tort suit against either a beryllium vendor or an atomic weapons employer after the later of the dates described in paragraphs (b) and (c) of this section, he or she is not entitled to any benefits under subtitle B of the EEOICPA.

§ 30.617 How will OWCP ascertain whether a claimant filed a tort suit against either a beryllium vendor or an atomic weapons employer and whether such claimant is entitled to benefits under the EEOICPA?

Prior to authorizing any payment on a claim under § 30.505 of these regulations, OWCP will require the claimant or each surviving beneficiary to execute and provide an affidavit stating whether he or she filed a tort suit against either a beryllium vendor or an atomic weapons employer, and if so, the date such tort suit was dismissed. OWCP may require the submission of such supporting evidence as may be necessary to confirm the particulars of any affidavit provided under this section.

Subpart H—Information for Medical Providers

Medical Records and Bills

§ 30.700 What kinds of medical records must providers keep?

Federal government medical officers, private physicians and hospitals are required to keep records of all cases treated by them under the EEOICPA so they can supply OWCP with a history of the claimed occupational illness, a description of the nature and extent of the claimed occupational illness, the results of any diagnostic studies performed, and the nature of the treatment rendered.

§ 30.701 How are medical bills to be submitted?

(a) All charges for medical and surgical treatment, appliances or supplies furnished to employees, except for treatment and supplies provided by nursing homes, shall be supported by medical evidence as provided in § 30.700. The physician or provider shall itemize the charges on the standard Health Insurance Claim Form, HCFA 1500 or OWCP 1500 (for professional charges), the UB–92 (for hospitals), the Universal Claim Form (for pharmacies), or other form as warranted, and submit the form promptly for processing.

(b) The provider shall identify each service performed using the Physician's Current Procedural Terminology (CPT) code, the Health Care Financing Administration Common Procedure Coding System (HCPCS) code, the National Drug Code (NDC), or the Revenue Center Code (RCC), with a brief narrative description. Where no code is applicable, a detailed description of services performed should be provided.

(c) The provider shall also state each diagnosed condition and furnish the corresponding diagnostic code using the "International Classification of Disease, 9th Edition, Clinical Modification" (ICD–9–CM), or as revised. A separate bill shall be submitted when the employee is discharged from treatment or monthly, if treatment for the occupational illness is necessary for more than 30 days.

(1)(i) Hospitals shall submit charges for medical and surgical treatment or supplies promptly on the UB–92. The provider shall identify each outpatient radiology service, outpatient pathology service and physical therapy service performed, using HCPCS/CPT codes with a brief narrative description. The charge for each individual service, or the total charge for all identical services, should also appear in the UB–92.

(ii) Other outpatient hospital services for which HCPCS/CPT codes exist shall also be coded individually using the coding scheme noted in this section. Services for which there are no HCPCS/CPT codes available can be presented using the RCCs described in the "National Uniform Billing Data Elements Specifications," current edition. The provider shall also furnish the diagnostic code using the ICD–9–CM. If the outpatient hospital services include surgical and/or invasive procedures, the provider shall code each procedure using the proper CPT/HCPCS codes and furnishing the corresponding diagnostic codes using the ICD–9–CM.

(2) Pharmacies shall itemize charges for prescription medications, appliances, or supplies on the Universal Claim Form and submit them promptly for processing. Bills for prescription medications must include the NDC assigned to the product, the generic or trade name of the drug provided, the prescription number, the quantity provided, and the date the prescription was filled.

(3) Nursing homes shall itemize charges for appliances, supplies or services on the provider's billhead stationery and submit them promptly for processing.

(d) By submitting a bill and/or accepting payment, the provider signifies that the service for which reimbursement is sought was performed as described and was necessary. In addition, the provider thereby agrees to comply with all regulations set forth in this subpart concerning the rendering of treatment and/or the process for seeking reimbursement for medical services, including the limitation imposed on the amount to be paid for such services.

(e) In summary, bills submitted by providers must: be itemized on the Health Insurance Claim Form (for physicians), the UB–92 (for hospitals), or the Universal Claim Form (for pharmacies); contain the signature or signature stamp of the provider; and identify the procedures using HCPCS/CPT codes, RCCs, or NDCs. Otherwise, the bill may be returned to the provider for correction and resubmission.

§ 30.702 How should an employee prepare and submit requests for reimbursement for medical expenses, transportation costs, loss of wages, and incidental expenses?

(a) If an employee has paid bills for medical, surgical or other services, supplies or appliances due to an occupational illness, he or she may submit an itemized bill on the Health Insurance Claim Form, HCFA 1500 or OWCP 1500, together with a medical report as provided in § 30.700, for consideration.

(1) The provider of such service shall state each diagnosed condition and furnish the applicable ICD–9–CM code and identify each service performed using the applicable HCPCS/CPT code, with a brief narrative description of the service performed, or, where no code is applicable, a detailed description of that service.

(2) The bill must be accompanied by evidence that the provider received payment for the service from the employee and a statement of the amount paid. Acceptable evidence that payment was received includes, but is not limited to, a signed statement by the provider, a mechanical stamp or other device showing receipt of payment, a copy of the employee's canceled check (both front and back) or a copy of the employee's credit card receipt.

(b) If a hospital, pharmacy or nursing home provided services, the employee should submit the bill in accordance with the provisions of § 30.701(a). Any request for reimbursement must be accompanied by evidence, as described

in paragraph (a) of this section, that the provider received payment for the service from the employee and a statement of the amount paid.

(c) The requirements of paragraphs (a) and (b) of this section may be waived if extensive delays in the filing or the adjudication of a claim make it unusually difficult for the employee to obtain the required information.

(d) Copies of bills submitted for reimbursement will not be accepted unless they bear the original signature of the provider, with evidence of payment. Payment for medical and surgical treatment, appliances or supplies shall in general be no greater than the maximum allowable charge for such service determined by OWCP, as set forth in § 30.705.

(e) An employee will be only partially reimbursed for a medical expense if the amount he or she paid to a provider for the service exceeds the maximum allowable charge set by OWCP's schedule. If this happens, OWCP will advise the employee of the maximum allowable charge for the service in question and of his or her responsibility to ask the provider to refund to the employee, or credit to the employee's account, the amount he or she paid which exceeds the maximum allowable charge. The provider may request reconsideration of the fee determination as set forth in § 30.712.

(f) If the provider fails to make appropriate refund to the employee, or to credit the employee's account, within 60 days after the employee requests a refund of any excess amount, or the date of a subsequent reconsideration decision which continues to disallow all or a portion of the appealed amount, OWCP will initiate exclusion procedures as provided by § 30.715.

(g) If the provider does not refund to the employee or credit to his or her account the amount of money paid in excess of the allowed charge, the employee should submit documentation of the attempt to obtain such refund or credit to OWCP. OWCP may authorize reasonable reimbursement to the employee after reviewing the facts and circumstances of the case.

§ 30.703 What are the time limitations on OWCP's payment of bills?

OWCP will pay providers and reimburse employees promptly for all bills received on an approved form and in a timely manner. However, no bill will be paid for expenses incurred if the bill is submitted more than one year beyond the end of the calendar year in which the expense was incurred or the service or supply was provided, or more than one year beyond the end of the calendar year in which the claim was first accepted as compensable by OWCP, whichever is later.

Medical Fee Schedule

§ 30.705 What services are covered by the OWCP fee schedule?

(a) Payment for medical and other health services furnished by physicians, hospitals and other providers for occupational illnesses shall not exceed a maximum allowable charge for such service as determined by OWCP, except as provided in this section.

(b) The schedule of maximum allowable charges does not apply to charges for services provided in nursing homes, but it does apply to charges for treatment furnished in a nursing home by a physician or other medical professional.

(c) The schedule of maximum allowable charges also does not apply to charges for appliances, supplies, services or treatment furnished by medical facilities of the U.S. Public Health Service or the Departments of the Army, Navy, Air Force and Veterans Affairs.

§ 30.706 How are the maximum fees defined?

For professional medical services, OWCP shall maintain a schedule of maximum allowable fees for procedures performed in a given locality. The schedule shall consist of: an assignment of a value to procedures identified by HCPCS/CPT code which represents the relative skill, effort, risk and time required to perform the procedure, as compared to other procedures of the same general class; an index based on a relative value scale that considers skill, labor, overhead, malpractice insurance and other related costs; and a monetary value assignment (conversion factor) for one unit of value in each of the categories of service.

§ 30.707 How are payments for particular services calculated?

Payment for a procedure identified by a HCPCS/CPT code shall not exceed the amount derived by multiplying the relative values for that procedure by the geographic indices for services in that area and by the dollar amount assigned to one unit in that category of service.

(a) The "locality" which serves as a basis for the determination of average cost is defined by the Bureau of Census Metropolitan Statistical Areas. OWCP shall base the determination of the relative per capita cost of medical care in a locality using information about enrollment and medical cost per county, provided by the Health Care Financing Administration (HCFA).

(b) OWCP shall assign the relative value units (RVUs) published by HCFA to all services for which HCFA has made assignments, using the most recent revision. Where there are no RVUs assigned to a procedure, OWCP may develop and assign any RVUs considered appropriate. The geographic adjustment factor shall be that designated by Geographic Practice Cost Indices for Metropolitan Statistical Areas as devised for HCFA and as updated or revised by HCFA from time to time. OWCP will devise conversion factors for each category of service, and in doing so may adapt HCFA conversion factors as appropriate using OWCP's processing experience and internal data.

(c) For example, if the unit values for a particular surgical procedure are 2.48 for physician's work (W), 3.63 for practice expense (PE), and 0.48 for malpractice insurance (M), and the dollar value assigned to one unit in that category of service (surgery) is $61.20, then the maximum allowable charge for one performance of that procedure is the product of the three RVUs times the corresponding geographical indices for the locality times the conversion factor. If the geographic indices for the locality are 0.988(W), 0.948 (PE), and 1.174 (M), then the maximum payment calculation is:

$$[(2.48)(0.988) + (3.63)(0.948) + (0.48)(1.174)] \times \$61.20$$
$$[2.45 + 3.44 + .56] \times \$61.20$$
$$6.45 \times \$61.20 = \$394.74$$

§ 30.708 Does the fee schedule apply to every kind of procedure?

Where the time, effort and skill required to perform a particular procedure vary widely from one occasion to the next, OWCP may choose not to assign a relative value to that procedure. In this case the allowable charge for the procedure will be set individually based on consideration of a detailed medical report and other evidence. At its discretion, OWCP may set fees without regard to schedule limits for specially authorized consultant examinations, for directed medical examinations, and for other specially authorized services.

§ 30.709 How are payments for medicinal drugs determined?

Payment for medicinal drugs prescribed by physicians shall not exceed the amount derived by multiplying the average wholesale price of the medication by the quantity or amount provided, plus a dispensing fee.

(a) All prescription medications identified by National Drug Code (NDC) will be assigned an average wholesale price representing the product's

nationally recognized wholesale price as determined by surveys of manufacturers and wholesalers. OWCP will establish the dispensing fee.

(b) The NDCs, the average wholesale prices, and the dispensing fee shall be reviewed from time to time and updated as necessary.

§ 30.710 How are payments for inpatient medical services determined?

(a) OWCP will pay for inpatient medical services according to pre-determined, condition-specific rates based on the Prospective Payment System (PPS) devised by HCFA (42 CFR parts 412, 413, 424, 485, and 489). Using this system, payment is derived by multiplying the diagnosis-related group (DRG) weight assigned to the hospital discharge by the provider-specific factors.

(1) All hospital discharges will be classified according to the DRGs prescribed by the HCFA in the form of the DRG Grouper software program. On this list, each DRG represents the average resources necessary to provide care in a case in that DRG relative to the national average of resources consumed per case.

(2) The provider-specific factors will be provided by HCFA in the form of their PPS Pricer software program. The software takes into consideration the type of facility, census division, actual geographic location (MSA) of the hospital, case mix cost per discharge, number of hospital beds, intern/beds ratio, operating cost to charge ratio, and other factors used by HCFA to determine the specific rate for a hospital discharge under their PPS. OWCP may devise price adjustment factors as appropriate using OWCP's processing experience and internal data.

(3) OWCP will base payments to facilities excluded from HCFA's PPS on consideration of detailed medical reports and other evidence.

(4) OWCP shall review the pre-determined hospital rates at least once a year, and may adjust any or all components when OWCP deems it necessary or appropriate.

(b) OWCP shall review the schedule of fees at least once a year, and may adjust the schedule or any of its components when OWCP deems it necessary or appropriate.

§ 30.711 When and how are fees reduced?

(a) OWCP shall accept a provider's designation of the code to identify a billed procedure or service if the code is consistent with medical reports and other evidence. Where no code is supplied, OWCP may determine the code based on the narrative description of the procedure on the billing form and in associated medical reports. OWCP will pay no more than the maximum allowable fee for that procedure.

(b) If the charge submitted for a service supplied to an employee exceeds the maximum amount determined to be reasonable according to the schedule, OWCP shall pay the amount allowed by the schedule for that service and shall notify the provider in writing that payment was reduced for that service in accordance with the schedule. OWCP shall also notify the provider of the method for requesting reconsideration of the balance of the charge.

§ 30.712 If OWCP reduces a fee, may a provider request reconsideration of the reduction?

(a) A physician or other provider whose charge for service is only partially paid because it exceeds a maximum allowable amount set by OWCP may, within 30 days, request reconsideration of the fee determination.

(1) The provider should make such a request to the district office with jurisdiction over the employee's claim. The request must be accompanied by documentary evidence that the procedure performed was incorrectly identified by the original code, that the presence of a severe or concomitant medical condition made treatment especially difficult, or that the provider possessed unusual qualifications. In itself, board certification in a specialty is not sufficient evidence of unusual qualifications to justify an exception. These are the only three circumstances that will justify reevaluation of the paid amount.

(2) A list of district offices and their respective areas of jurisdiction is available upon request from the U.S. Department of Labor, Office of Workers' Compensation Programs, Washington, DC 20210, or from OWCP's home page on the Internet at www.dol.gov/dol/esa/public/owcp_org.htm. Within 30 days of receiving the request for reconsideration, the district office shall respond in writing stating whether or not an additional amount will be allowed as reasonable, considering the evidence submitted.

(b) If the district office issues a decision that continues to disallow a contested amount, the provider may apply to the Regional Director of the region with jurisdiction over the district office. The application must be filed within 30 days of the date of such decision, and it may be accompanied by additional evidence. Within 60 days of receipt of such application, the Regional Director shall issue a decision in writing stating whether or not an additional amount will be allowed as reasonable, considering the evidence submitted.

§ 30.713 If OWCP reduces a fee, may a provider bill the employee for the balance?

A provider whose fee for service is partially paid by OWCP as a result of the application of its fee schedule or other tests for reasonableness in accordance with this part shall not request reimbursement from the employee for additional amounts.

(a) Where a provider's fee for a particular service or procedure is lower to the general public than as provided by the schedule of maximum allowable charges, the provider shall bill at the lower rate. A fee for a particular service or procedure which is higher than the provider's fee to the general public for that same service or procedure will be considered a charge "substantially in excess of such provider's customary charges" for the purposes of § 30.715(d).

(b) A provider whose fee for service is partially paid by OWCP as the result of the application of the schedule of maximum allowable charges and who collects or attempts to collect from the employee, either directly or through a collection agent, any amount in excess of the charge allowed by OWCP, and who does not cease such action or make appropriate refund to the employee within 60 days of the date of the decision of OWCP, shall be subject to the exclusion procedures provided by § 30.715(h).

Exclusion of Providers

§ 30.715 What are the grounds for excluding a provider from payment under this part?

A physician, hospital, or provider of medical services or supplies shall be excluded from payment under this part if such physician, hospital or provider has:

(a) Been convicted under any criminal statute of fraudulent activities in connection with any federal or state program for which payments are made to providers for similar medical, surgical or hospital services, appliances or supplies;

(b) Been excluded or suspended, or has resigned in lieu of exclusion or suspension, from participation in any federal or state program referred to in paragraph (a) of this section;

(c) Knowingly made, or caused to be made, any false statement or misrepresentation of a material fact in connection with a determination of the right to reimbursement under this part, or in connection with a request for payment;

(d) Submitted, or caused to be submitted, three or more bills or requests for payment within a 12-month period under this subpart containing charges which OWCP finds to be substantially in excess of such provider's customary charges, unless OWCP finds there is good cause for the bills or requests containing such charges;

(e) Knowingly failed to timely reimburse employees for treatment, services or supplies furnished under this subpart and paid for by OWCP;

(f) Failed, neglected or refused on three or more occasions during a 12-month period to submit full and accurate medical reports, or to respond to requests by OWCP for additional reports or information, as required by § 30.700 of this part;

(g) Knowingly furnished treatment, services or supplies which are substantially in excess of the employee's needs, or of a quality which fails to meet professionally recognized standards; or

(h) Collected or attempted to collect from the employee, either directly or through a collection agent, an amount in excess of the charge allowed by OWCP for the procedure performed, and has failed or refused to make appropriate refund to the employee, or to cease such collection attempts, within 60 days of the date of the decision of OWCP.

§ 30.716 What will cause OWCP to automatically exclude a physician or other provider of medical services and supplies?

(a) OWCP shall automatically exclude a physician, hospital, or provider of medical services or supplies who has been convicted of a crime described in § 30.715(a), or has been excluded or suspended, or has resigned in lieu of exclusion or suspension, from participation in any program as described in § 30.715(b).

(b) The exclusion applies to participating in the program and to seeking payment under this part for services performed after the date of the entry of the judgment of conviction or order of exclusion, suspension or resignation, as the case may be, by the court or agency concerned. Proof of the conviction, exclusion, suspension or resignation may consist of a copy thereof authenticated by the seal of the court or agency concerned.

§ 30.717 When are OWCP's exclusion procedures initiated?

Upon receipt of information indicating that a physician, hospital or provider of medical services or supplies (hereinafter the provider) has engaged in activities enumerated in paragraphs (c) through (h) of § 30.715, the Regional Director, after completion of inquiries he or she deems appropriate, may initiate procedures to exclude the provider from participation in the EEOICPA program. For the purposes of these procedures, "Regional Director" may include any officer designated to act on his or her behalf.

§ 30.718 How is a provider notified of OWCP's intent to exclude him or her?

The Regional Director shall initiate the exclusion process by sending the provider a letter, by certified mail and with return receipt requested, which shall contain the following:

(a) A concise statement of the grounds upon which exclusion shall be based;

(b) A summary of the information, with supporting documentation, upon which the Regional Director has relied in reaching an initial decision that exclusion proceedings should begin;

(c) An invitation to the provider to:

(1) Resign voluntarily from participation in the EEOICPA program without admitting or denying the allegations presented in the letter; or

(2) Request that the decision on exclusion be based upon the existing record and any additional documentary information the provider may wish to furnish;

(d) A notice of the provider's right, in the event of an adverse ruling by the Regional Director, to request a formal hearing before an administrative law judge;

(e) A notice that should the provider fail to answer (as described in § 30.719) the letter of intent within 30 calendar days of receipt, the Regional Director may deem the allegations made therein to be true and may order exclusion of the provider without conducting any further proceedings; and

(f) The name and address of the OWCP representative who shall be responsible for receiving the answer from the provider.

§ 30.719 What requirements must the provider's reply and OWCP's decision meet?

(a) The provider's answer shall be in writing and shall include an answer to OWCP's invitation to resign voluntarily. If the provider does not offer to resign, he or she shall request that a determination be made upon the existing record and any additional information provided.

(b) Should the provider fail to answer the letter of intent within 30 calendar days of receipt, the Regional Director may deem the allegations made therein to be true and may order exclusion of the provider.

(c) By arrangement with the official representative, the provider may inspect or request copies of information in the record at any time prior to the Regional Director's decision.

(d) The Regional Director shall issue his or her decision in writing, and shall send a copy of the decision to the provider by certified mail, return receipt requested. The decision shall advise the provider of his or her right to request, within 30 days of the date of the adverse decision, a formal hearing before an administrative law judge under the procedures set forth in § 30.720. The filing of a request for a hearing within the time specified shall stay the effectiveness of the decision to exclude.

§ 30.720 How can an excluded provider request a hearing?

A request for a hearing shall be sent to the official representative named under § 30.718(f) and shall contain:

(a) A concise notice of the issues on which the provider desires to give evidence at the hearing;

(b) Any request for a more definite statement by OWCP;

(c) Any request for the presentation of oral argument or evidence; and

(d) Any request for a certification of questions concerning professional medical standards, medical ethics or medical regulation for an advisory opinion from a competent recognized professional organization or federal, state or local regulatory body.

§ 30.721 How are hearings assigned and scheduled?

(a) If the designated OWCP representative receives a timely request for hearing, the OWCP representative shall refer the matter to the Chief Administrative Law Judge of the Department of Labor, who shall assign it for an expedited hearing. The administrative law judge assigned to the matter shall consider the request for hearing, act on all requests therein, and issue a Notice of Hearing and Hearing Schedule for the conduct of the hearing. A copy of the hearing notice shall be served on the provider by certified mail, return receipt requested. The Notice of Hearing and Hearing Schedule shall include:

(1) A ruling on each item raised in the request for hearing;

(2) A schedule for the prompt disposition of all preliminary matters, including requests for more definite statements and for the certification of questions to advisory bodies; and

(3) A scheduled hearing date not less than 30 days after the date the schedule is issued, and not less than 15 days after the scheduled conclusion of preliminary matters, provided that the specific time and place of the hearing may be set on 10 days' notice.

(b) The purpose of the designation of issues is to provide for an effective hearing process. The provider is entitled to be heard on any matter placed in issue by his or her response to the Notice of Intent to Exclude, and may designate "all issues" for purposes of hearing. However, a specific designation of issues is required if the provider wishes to interpose affirmative defenses or request the certification of questions for an advisory opinion.

§ 30.722 How are advisory opinions obtained?

A certification of a request for an advisory opinion concerning professional medical standards, medical ethics or medical regulation to a competent recognized or professional organization or federal, state or local regulatory agency may be made:

(a) As to an issue properly designated by the provider, in the sound discretion of the administrative law judge, provided that the request will not unduly delay the proceedings;

(b) By OWCP on its own motion either before or after the institution of proceedings, and the results thereof shall be made available to the provider at the time that proceedings are instituted or, if after the proceedings are instituted, within a reasonable time after receipt. The opinion, if rendered by the organization or agency, is advisory only and not binding on the administrative law judge.

§ 30.723 How will the administrative law judge conduct the hearing and issue the recommended decision?

(a) To the extent appropriate, proceedings before the administrative law judge shall be governed by 29 CFR part 18.

(b) The administrative law judge shall receive such relevant evidence as may be adduced at the hearing. Evidence shall be presented under oath, orally or in the form of written statements. The administrative law judge shall consider the Notice and Response, including all pertinent documents accompanying them, and may also consider any evidence which refers to the provider or to any claim with respect to which the provider has provided medical services, hospital services, or medical services and supplies, and such other evidence as the administrative law judge may determine to be necessary or useful in evaluating the matter.

(c) All hearings shall be recorded and the original of the complete transcript shall become a permanent part of the official record of the proceedings.

(d) In conjunction with the hearing, the administrative law judge may:

(1) Administer oaths; and

(2) Examine witnesses.

(e) At the conclusion of the hearing, the administrative law judge shall issue a written decision and cause it to be served on all parties to the proceeding, their representatives and OWCP.

§ 30.724 How can a party request review by OWCP of the administrative law judge's recommended decision?

(a) Any party adversely affected or aggrieved by the decision of the administrative law judge may file a petition for discretionary review with the Director for Energy Employees Occupational Illness Compensation within 30 days after issuance of such decision. The administrative law judge's decision, however, shall be effective on the date issued and shall not be stayed except upon order of the Director.

(b) Review by the Director for Energy Employees Occupational Illness Compensation shall not be a matter of right but of the sound discretion of the Director.

(c) Petitions for discretionary review shall be filed only upon one or more of the following grounds:

(1) A finding or conclusion of material fact is not supported by substantial evidence;

(2) A necessary legal conclusion is erroneous;

(3) The decision is contrary to law or to the duly promulgated rules or decisions of OWCP;

(4) A substantial question of law, policy, or discretion is involved; or

(5) A prejudicial error of procedure was committed.

(d) Each issue shall be separately numbered and plainly and concisely stated, and shall be supported by detailed citations to the record when assignments of error are based on the record, and by statutes, regulations or principal authorities relied upon. Except for good cause shown, no assignment of error by any party shall rely on any question of fact or law upon which the administrative law judge had not been afforded an opportunity to pass.

(e) A statement in opposition to the petition for discretionary review may be filed, but such filing shall in no way delay action on the petition.

(f) If a petition is granted, review shall be limited to the questions raised by the petition.

(g) A petition not granted within 20 days after receipt of the petition is deemed denied.

§ 30.725 What are the effects of non-automatic exclusion?

(a) OWCP shall give notice of the exclusion of a physician, hospital or provider of medical services or supplies to:

(1) All OWCP district offices;

(2) The HCFA; and

(3) All employees who are known to have had treatment, services or supplies from the excluded provider within the six-month period immediately preceding the order of exclusion.

(b) Notwithstanding any exclusion of a physician, hospital, or provider of medical services or supplies under this subpart, OWCP shall not refuse an employee reimbursement for any otherwise reimbursable medical treatment, service or supply if:

(1) Such treatment, service or supply was rendered in an emergency by an excluded physician; or

(2) The employee could not reasonably have been expected to know of such exclusion.

(c) An employee who is notified that his or her attending physician has been excluded shall have a new right to select a qualified physician.

§ 30.726 How can an excluded provider be reinstated?

(a) If a physician, hospital, or provider of medical services or supplies has been automatically excluded pursuant to § 30.716, the provider excluded will automatically be reinstated upon notice to OWCP that the conviction or exclusion which formed the basis of the automatic exclusion has been reversed or withdrawn. However, an automatic reinstatement shall not preclude OWCP from instituting exclusion proceedings based upon the underlying facts of the matter.

(b) A physician, hospital, or provider of medical services or supplies excluded from participation as a result of an order issued pursuant to this subpart may apply for reinstatement one year after the entry of the order of exclusion, unless the order expressly provides for a shorter period. An application for reinstatement shall be addressed to the Director for Energy Employees Occupational Illness Compensation, and shall contain a concise statement of the basis for the application. The application should be accompanied by supporting documents and affidavits.

(c) A request for reinstatement may be accompanied by a request for oral argument. Oral argument will be allowed only in unusual circumstances where it will materially aid the decision process.

(d) The Director for Energy Employees Occupational Illness Compensation shall order reinstatement only in instances where such reinstatement is clearly consistent with the goal of this subpart to protect the EEOICPA program

against fraud and abuse. To satisfy this requirement the provider must provide reasonable assurances that the basis for the exclusion will not be repeated.

Signed at Washington, DC., this 18th day of May, 2001.

Elaine L. Chao,

Secretary of Labor.

Note: The following appendix will not appear in the Code of Federal Regulations.

BILLING CODE 4510–CH–P

Appendix I.—Forms EE–1, EE–2, EE–3, EE–4, EE–7, EE/EN–15, EE/EN–20 and EE–915.

Claim for Benefits under Energy Employees Occupational Illness Compensation Program Act

U.S. Department of Labor
Employment Standards Administration
Office of Workers' Compensation Programs

Provide all information requested below. **DO NOT FILL IN SHADED AREAS.** Disclosure of your social security number is voluntary. Failure to disclose this number will not result in the denial of any right, benefit or privilege to which you may be entitled.

OMB No.:
Expires:

EMPLOYEE INFORMATION

1. Name *(Last, First, Middle Initial)*
2. Social Security Number
3. Sex ☐ Male ☐ Female
4. Address *(Street, Apt #, P.O. Box)*
5. Date of Birth (Month Day Year)
6. Telephone Number ( ) –

(City, State, ZIP Code)

7. Dependents ☐ Spouse ☐ Child ☐ Other_____

ILLNESS BEING CLAIMED

8. Identify Diagnosed Condition(s) Being Claimed		9. Date of Diagnosis Month	Day	Year	FOR DOL USE ONLY
☐ Cancer	Specify Type				
☐ Beryllium Sensitivity					
☐ Chronic Beryllium Disease					
☐ Chronic Silicosis					
☐ Other Lung Condition	Specify Type				
☐ Renal Disease	Specify Type				

EMPLOYMENT CLASSIFICATION

10. Identify location or type of employment *(Mark any that apply)*:

☐ **Department of Energy Facility**
This is defined as any building, structure or premise in which the activities of federal employees, contractors or subcontractors have been conducted by or on behalf of the Department of Energy.

☐ **Atomic Weapons Facility**
This is defined as a privately-owned facility in which radioactive material has been processed for use by the United States in the manufacture of atomic weapons. (Excludes mining, milling, or transporting uranium ore.)

☐ **Beryllium Vendor**
This is defined as any privately operated entity engaged in producing or processing beryllium for sale or use by the Department of Energy.

☐ **Uranium Worker**
This is defined as employment activity associated with the mining, milling or transportation of uranium ore for use in the manufacture of atomic weapons.

SPECIAL EXPOSURE COHORT

11. Prior to February 1, 1992, did you work at a gaseous diffusion plant in Paducah, Kentucky; Portsmouth, Ohio; or Oak Ridge, Tennessee?
☐ YES If yes, which site(s)_____ ☐ NO

12. Prior to January 7, 1974, did you work at the Long Shot, Milrow, or Cannikin underground nuclear tests on Amchitka Island, Alaska?
☐ YES If yes, which site(s)_____ ☐ NO

13. Are you a member of a group added to the Special Exposure Cohort by the Department of Health and Human Services?
☐ YES List group designation_____ ☐ NO ☐ DON'T KNOW

RADIATION EXPOSURE COMPENSATION ACT AWARD & CIVIL LAWSUIT

14. Have you received an award letter under the Radiation Exposure Compensation Act?
☐ YES If yes, submit a copy of your award letter ☐ NO

15. Have you filed a civil lawsuit regarding your claimed condition(s)?
☐ YES If yes, submit a copy of court documentation ☐ NO

EMPLOYEE DECLARATION

16. Any person who knowingly makes any false statement, misrepresentation, concealment of fact, or any other act of fraud to obtain compensation as provided under the EEOICPA or who knowingly accepts compensation to which that person is not entitled is subject to civil or administrative remedies as well as felony criminal prosecution and may, under appropriate criminal provisions, be punished by a fine or imprisonment or both.

I hereby make a claim for benefits under the Energy Employees Occupational Illness Compensation Program Act and affirm that the information I have provided on this form is true. Furthermore, I authorize any physician or hospital (or any other person, institution, corporation, or government agency) to furnish any desired information to the U.S. Department of Labor, Office of Worker's Compensation Programs.

Claimant Signature_____ Date_____

BENEFITS UNDER THE ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT

The Energy Employees Occupational Illness Compensation Program Act (EEOICPA) provides for a lump sum payment of $150,000 and medical benefits to covered employees suffering from designated illnesses incurred as a result of their exposure to radiation, beryllium, or silica while in the performance of duty for the Department of Energy and certain of its vendors, contractors and subcontractors. This legislation also provides for payment of compensation to certain survivors of these covered employees, as well as for a $50,000 lump sum payment and medical benefits to individuals, or their survivor(s), who have been found eligible for compensation under the Radiation Exposure Compensation Act (RECA).

INSTRUCTIONS FOR COMPLETING FORM EE-1

Complete all items on the form. If additional space is required to explain or clarify any point, attach a supplemental statement to the form. If the requested information is not submitted, the responsible party should explain the reason for the delay and indicate when the information will be forthcoming. Submit the completed claim form and all other pertinent documentation to the appropriate District Office administering the EEOIPCA in the region where your most recent Energy employer is/was located.

Illness Being Claimed

Item #8 — Identify the diagnosed condition(s) being claimed. If you have a claim for a cancer, unspecified lung condition or renal disease, you must list the particular diagnosis.

Item #9 — List the date a qualified physician first diagnosed your claimed condition(s).

Employment Classification

Item #10 — Check the box for the location and/or the type of work activities that best describes your employment situation. Mark all that apply. The Department of Energy has compiled a list of facilities categorized by location and employment designation. The list is available at the Department of Energy's web page ***http://tis.eh.doe.gov***, or by contacting the OWCP District Office.

Special Exposure Cohort

Items #11–12 — The Act allows for employees who have met particular criteria and have been employed at certain facilities to be designated as members of the Special Exposure Cohort. If you worked at any of the listed locations prior to the dates indicated, mark YES and identify the site name.

Item #13 — The Act permits the Department of Health and Human Services (HHS) to include new groups of employees in the Special Exposure Cohort. If you can identify yourself as a member of a designated group that has been added to the Special Exposure Cohort, mark YES and describe the group in which you belong.

Radiation Exposure Compensation Act Award & Civil Lawsuit

Item #14 — If you have been found entitled to an award under the Radiation Exposure Compensation Act, you may be eligible for additional payment under the EEOICPA. Please indicate whether or not you have received a notice of award under the RECA. If you mark YES, you will need to submit a copy of the award letter.

Item #15 — Indicate whether you have filed a civil lawsuit in regard to your claimed condition. If you mark YES, provide copies of all court documentation.

PRIVACY ACT

In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), you are hereby notified that: (1) The Energy Employees Occupational Illness Compensation Program Act (P.L. 106-398) (EEOICPA) is administered by the Office of Workers' Compensation Programs of the U.S. Department of Labor, which receives and maintains personal information on claimants and their immediate families. (2) Information which the Office has received will be used to determine eligibility for, and the amount of, benefits payable under the EEOICPA, and may be verified through computer matches or other appropriate means. (3) Information may be given to the Federal agencies or private entities which employed the claimant at the time of injury in order to verify statements made, answer questions concerning the status of the claim, verify billing, and to consider other relevant matters. (4) Information may be disclosed to physicians and other health care providers for use in providing treatment or medical rehabilitation, making evaluations for the Office of Workers' Compensation and for other purposes related to the medical management of the claim. (5) Information may be given to Federal, state, and local agencies for law enforcement purposes, to obtain information relevant to a decision under the EEOICPA, to determine whether benefits are being paid properly, including whether prohibited payments have been made, and, where appropriate, to pursue salary/administrative offset and debt collections actions required or permitted by the Debt Collection Act. (6) Failure to disclose all requested information may delay the processing of the claim or the payment of benefits, or may result in an unfavorable decision. This notice applies to all forms requesting information that you might receive from the Office in connection with the processing and adjudication of the claim you filed under the EEOICPA.

PUBLIC BURDEN STATEMENT

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information. If you have any comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Office of Workers' Compensation Programs, U.S. Department of Labor, Room S3524, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Do not submit the completed claim form to this address. Completed claims are to be submitted to the appropriate regional District Office of Workers' Compensation Programs. Persons are not required to respond to the information collected on this form unless it displays a currently valid OMB number.

Claim for Survivor Benefits under Energy Employees Occupational Illness Compensation Program Act

U.S. Department of Labor
Employment Standards Administration
Office of Workers' Compensation Programs

Provide all information requested below. **DO NOT FILL IN SHADED AREAS.** Disclosure of your social security number is voluntary. Failure to disclose this number will not result in the denial of any right, benefit or privilege to which you may be entitled.

OMB No.:
Expires:

SURVIVOR INFORMATION

1. Name *(Last, First, Middle Initial)*
2. Social Security Number
3. Date of Birth (Month Day Year)
4. Address *(Street, Apt #, P.O. Box)*
5. Sex ☐ Male ☐ Female
6. Telephone Number ( ) -

(City, State, ZIP Code)

7. What was your relationship to the deceased employee at the time of his/her death? (Spouse, dependent child, grandparent, sibling, etc.)

DECEASED EMPLOYEE INFORMATION

8. Name *(Last, First, Middle Initial)*
9. Social Security Number
10. Sex ☐ Male ☐ Female
11. Date of Birth (Month Day Year)
12. Date of Death (Month Day Year)
13. Was an autopsy performed on the employee? ☐ YES List medical facility _____ ☐ NO

14. Identify Claimed Condition(s) Present at Date of Death

		15. Date of Diagnosis Month	Day	Year	FOR DOL USE ONLY	
☐ Cancer	Specify Type					
☐ Chronic Beryllium Disease						
☐ Chronic Silicosis						
☐ Other Lung Condition	Specify Type					
☐ Renal Disease	Specify Type					

16. Identify location or type of employment performed by the deceased employee *(Mark any that apply)*:

☐ **Department of Energy Facility**
This is defined as any building, structure or premise in which the activities of federal employees, contractors or subcontractors have been conducted by or on behalf of the Department of Energy.

☐ **Atomic Weapons Facility**
This is defined as a privately-owned facility in which radioactive material has been processed for use by the United States in the manufacture of atomic weapons. (Excludes mining, milling, or transporting uranium ore.)

☐ **Beryllium Vendor**
This is defined as any privately operated entity engaged in producing or processing beryllium for sale or use by the Department of Energy.

☐ **Uranium Worker**
This is defined as employment activity associated with the mining, milling or transportation of uranium ore for use in the manufacture of atomic weapons.

SPECIAL EXPOSURE COHORT

17. Prior to February 1, 1992, did the deceased work at a gaseous diffusion plant in Paducah, Kentucky; Portsmouth, Ohio; or Oak Ridge, Tennessee? ☐ NO
☐ YES If yes, which site(s) _____

18. Prior to January 7, 1974, did the deceased work at the Long Shot, Milrow, or Cannikin underground nuclear tests on Amchitka Island, Alaska? ☐ NO
☐ YES If yes, which site(s) _____

19. Was the deceased a member of a group added to the Special Exposure Cohort by the Department of Health and Human Services? ☐ NO ☐ DON'T KNOW
☐ YES List group designation _____

RADIATION EXPOSURE COMPENSATION ACT AWARD & LAWSUIT

20. Have you or the deceased received an award letter under the Radiation Exposure Compensation Act?
☐ YES If yes, submit a copy of your award letter ☐ NO

21. Did the deceased or you file a civil lawsuit regarding the claimed condition(s)?
☐ YES If yes, submit a copy of court documentation ☐ NO

SURVIVOR DECLARATION

22. Any person who knowingly makes any false statement, misrepresentation, concealment of fact, or any other act of fraud to obtain compensation as provided under the EEOICPA or who knowingly accepts compensation to which that person is not entitled is subject to civil or administrative remedies as well as felony criminal prosecution and may, under appropriate criminal provisions, be punished by a fine or imprisonment or both. I hereby make a claim for benefits under the Energy Employees' Occupational Illness Compensation Program Act and affirm that the information I have provided on this form is true. Furthermore, I authorize any physician or hospital (or any other person, institution, corporation, or government agency) to furnish any desired information to the United States Department of Labor, Office of Workers' Compensation Program.

Claimant Signature _____ Date _____

EE-2
May 2001

BENEFITS FOR SURVIVORS UNDER ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT

The Energy Employees Occupational Illness Compensation Program Act (EEOICPA) provides for a lump sum payment of $150,000 to eligible survivors of a covered employee who at the time of death had a designated illness incurred as a result of exposure to radiation, beryllium, or silica while in the performance of duty for the Department of Energy and certain of its vendors, contractors and subcontractors. This legislation also provides for a lump sum payment of $50,000 to certain survivors of deceased covered employees, who were found eligible for compensation under the Radiation Exposure Compensation Act.

DEFINITION OF SURVIVOR UNDER THE ACT

Entitlement to any lump-sum payment for survivor(s) under the EEOICPA will be determined as of the time of death of the covered employee. In order to be considered an eligible survivor under the EEOICPA, you must be a widow or widower, child, parent, brother, sister, grandparent or grandchild of a deceased covered employee. ***(Attach a copy of marriage license; birth certificate; or adoption papers demonstrating proof of relationship to deceased.)*** This does not include:

a. a child, brother, sister, or grandchild who, at the time of death, was married or 18 years of age (unless incapable of self support); or

b. a parent or grandparent who, at the time of death, was not dependent on the deceased covered employee.

An unmarried child, brother, sister, or grandchild is a survivor if he/she was, at the time of death, enrolled as a full-time student at an accredited college or university and under the age of 23.

INSTRUCTIONS FOR COMPLETING FORM EE-2

Complete all items on the form. If additional space is required to explain or clarify any point, attach a supplemental statement to the form. If the requested information is not submitted, the responsible party should explain the reason for the delay and indicate when the information will be forthcoming. Submit the completed claim form and all other pertinent documentation to the appropriate District Office administering the EEOIPCA in the region where your most recent energy employer is/was located.

Deceased Employee Information

Item # 14 — Identify the condition the deceased employee suffered prior to their death (Attach a copy of the employee's death certificate to the claim form). It is not necessary to establish that the death was caused by the claimed condition. Rather, the evidence must demonstrate a qualified physician diagnosed a covered condition prior to death.

Item #16 — Mark location or type of work activities that best describe the deceased employee's work situation. If more than one of the listed categories applies, indicate such on the form. The Department of Energy has also compiled a list of covered facilities. The list is available at ***http://tis.eh.doe.gov*** or by contacting the Office of Workers' Compensation Programs.

If you are aware of any person who may qualify as a survivor of the deceased, notify the Office of Workers' Compensation in writing.

Special Exposure Cohort

Items #17–18 — The Act allows for employees who have met particular criteria and have been employed at certain facilities to be designated as members of the Special Exposure Cohort. If the deceased employee worked at any of the listed locations prior to the dates indicated, mark YES and identify the site name.

Item #19 — The Act permits the Department of Health and Human Services (HHS) to include new groups of employees in the Special Exposure Cohort. If you can identify the deceased employee as a member of a designated group that has been added to the Special Exposure Cohort, mark YES and describe the group in which he/she belonged.

Radiation Exposure Compensation Act Award & Civil Lawsuit

Item #20 — If you or the deceased have been found entitled to an award under the Radiation Exposure Compensation Act, you may be eligible for additional payment under the EEOICPA. Please indicate whether or not you or the deceased have received a notice of award under the RECA. If you mark YES, you will need to submit a copy of the award letter.

Item #21 — Indicate whether you or the deceased ever filed a civil lawsuit in regards to the claimed condition. If you mark YES, provide copies of all court documentation.

PRIVACY ACT

In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), you are hereby notified that: (1) The Energy Employees Occupational Illness Compensation Program Act (P.L. 106-398) (EEOICPA) is administered by the Office of Workers' Compensation Programs of the U.S. Department of Labor, which receives and maintains personal information on claimants and their immediate families. (2) Information which the Office has will be used to determine eligibility for, and the amount of, benefits payable under the EEOICPA, and may be verified through computer matches or other appropriate means. (3) Information may be given to the Federal agencies or private entities which employed the claimant at the time of injury in order to verify statements made, answer questions concerning the status of the claim, verify billing, and to consider other relevant matters. (4) Information may be disclosed to physicians and other health care providers for use in providing treatment or medical rehabilitation, making evaluations for the Office and for other purposes related to the medical management of the claim. (5) Information may be given to Federal, state, and local agencies for law enforcement purposes, to obtain information relevant to a decision under the EEOICPA, to determine whether benefits are being paid properly, including whether prohibited payments have been made, and, where appropriate, to pursue salary/administrative offset and debt collections actions required or permitted by the Debt Collection Act. (6) Failure to disclose all requested information may delay the processing of the claim or the payment of benefits, or may result in an unfavorable decision. This notice applies to all forms requesting information that you might receive from the Office in connection with the processing and adjudication of the claim you filed under the EEOICPA.

PUBLIC BURDEN STATEMENT

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering data needed, and completing and reviewing the collection of information. If you have any comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Office of Workers' Compensation Programs, U.S. Department of Labor, Room S3524, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Do not submit the completed claim to this address. Completed claims are to be submitted to the appropriate regional District Office of Workers' Compensation Programs. Persons are not required to respond to this information collection unless it displays a currently valid OMB number.

Employment History for Claim Under Energy Employees Occupational Illness Compensation Program Act

U.S. Department of Labor
Employment Standards Administration
Office of Workers Compensation Programs

Disclosure of social security number is voluntary. Failure to disclose this number will not result in the denial of any right, benefit or privilege to which you may be entitled. **DO NOT FILL IN SHADED AREAS**

OMB No.:
Expires:

EMPLOYEE INFORMATION

Print Name
Last First M.I.

Social Security Number

Former Name (i.e. maiden name/legal name change/other)
Last First M.I.

Employee Number(if known)

In the following section, list the complete employment history of the employee named above in chronological order. Begin with the most recent period of employment. If you require additional space to explain or clarify any point, attach a supplemental statement to this form.

EMPLOYER 1

Dates of Employment | Start Date / / | End Date / /

Employer (Name/Address/Location where work was performed)

Position Title & Description of Work Performed

Describe all factor(s) believed to have contributed to the development of the claimed illness. (N/A for none)

Was a dosimetry badge worn while employed?
☐ YES Dosimetry Badge Number ☐ NO

EMPLOYER 2

Dates of Employment | Start Date / / | End Date / /

Employer (Name/Address/Location where work was performed)

Position Title & Description of Work Performed

Describe all factor(s) believed to have contributed to the development of the claimed illness. (N/A for none)

Was a dosimetry badge worn while employed?
☐ YES Dosimetry Badge Number ☐ NO

Form EE-3
May 2001

EMPLOYER 3

Dates of Employment	Start Date / /	End Date / /

Employer (Name/Address/Location where work was performed)

Position Title & Description of Work Performed

Describe all factor(s) believed to have contributed to the development of the claimed illness. (N/A for none)

Was a dosimetry badge worn while employed?

☐ YES Dosimetry Badge Number _____ ☐ NO

EMPLOYER 4

Dates of Employment	Start Date / /	End Date / /

Employer (Name/Address/Location where work was performed)

Position Title & Description of Work Performed

Describe all factor(s) believed to have contributed to the development of the claimed illness. (N/A for none)

Was a dosimetry badge worn while employed?

☐ YES Dosimetry Badge Number _____ ☐ NO

DECLARATION OF PERSON COMPLETING FORM

Any person who knowingly makes any false statement, misrepresentation, concealment of fact or any other act of fraud to obtain compensation as provided under the EEOICPA or who knowingly accepts compensation to which that person is not entitled is subject to civil or administrative remedies as well as felony criminal prosecution and may, under appropriate criminal provisions, be punished by a fine or imprisonment or both.

Print Name _____

Street Address _____

City/State/ Zip _____ Phone _____

I affirm that the employment history provided on this form is accurate and true.

Signature _____ Date _____

Form EE-3
May 2001

INSTRUCTIONS FOR COMPLETING FORM EE-3

This form is used to gather information regarding an Energy employees work history. If additional space is required, attach a supplemental statement to this form. **YOU MAY USE AS MANY COPIES OF THE EE-3 FORM AS NECESSARY IN ORDER TO PROVIDE A COMPLETE EMPLOYMENT HISTORY FOR THE EMPLOYEE.**

Dates of Employment
Beginning with the most recent period of employment and working backward, list the the period of employment for each job held.

Employer (Name/Address/Location where work was performed)
Identify the name, address or any other type of descriptive information regarding the employer for each period claimed. Contractor and subcontractors should list the name of the company that held contract with the United States government. In addition, identify the location where employment activities were conducted. This can include the name of the facility, site, laboratory, building, mine etc.

Position Title & Description of Work Performed
Identify the job title and the type of work activities performed during the listed period of employment.

Describe All Factors(s) Believed to have Contributed to the Development of the Claimed Illness.
Provide a brief statement explaining the date and circumstance of all factors believed to have contributed to the claimed illness.

Was a Dosimetry Badge Worn While Employed?
Indicate whether or not the employer required a dosimetry badge to be worn. If yes, provide the dosimetry badge identification number.

PRIVACY ACT

In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), you are hereby notified that: (1) The Energy Employees Occupational Illness Compensation Program Act (P.L. 106-398) (EEOICPA) is administered by the Office of Workers' Compensation Programs of the U.S. Department of Labor, which receives and maintains personal information on claimants and their immediate families. (2) Information which the Office has will be used to determine eligibility for, and the amount of, benefits payable under the EEOICPA, and may be verified through computer matches or other appropriate means. (3) Information may be given to the Federal agencies or private entities which employed the claimant at the time of injury in order to verify statements made, answer questions concerning the status of the claim, verify billing, and to consider other relevant matters. (4) Information may be disclosed to physicians and other health care providers for use in providing treatment or medical rehabilitation, making evaluations for the Office and for other purposes related to the medical management of the claim. (5) Information may be given to Federal, state, and local agencies for law enforcement purposes, to obtain information relevant to a decision under the EEOICPA, to determine whether benefits are being paid properly, including whether prohibited payments have been made, and, where appropriate, to pursue salary/administrative offset and debt collections actions required or permitted by the Debt Collection Act. (6) Failure to disclose all requested information may delay the processing of the claim or the payment of benefits, or may result in an unfavorable decision. This notice applies to all forms requesting information that you might receive from the Office in connection with the processing and adjudication of the claim you filed under the EEOICPA.

PUBLIC BURDEN STATEMENT

Public reporting burden for this collection of information is estimated to average 1 hour per response, including time for reviewing instructions, searching existing data sources, gathering data needed, and completing and reviewing the collection of information. If you have any comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, sent them to the Office of Workers' Compensation Programs, U.S. Department of Labor, Room S3524, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Do not submit the completed claim to this address. Completed claims are to be submitted to the appropriate regional District Office of Workers' Compensation Programs. Persons are not required to respond to this information collection unless it displays a currently valid OMB number.

Employment History Affidavit for Claim Under the Energy Employees Occupational Illness Compensation Program Act

U.S. Department of Labor
Employment Standards Administration
Office of Workers Compensation Programs

Note: This form is used to affirm the employment history of a living or deceased individual who incurred a designated illness as a result of their exposure to radiation, beryllium, or silica while in the performance of duty for the Department of Energy and certain of its vendors, contractors, and subcontractors. PROVIDE RESPONSE IN SHADED AREAS. Disclosure of a social security number is voluntary. Failure to disclose this number will not result in the denial of any right, benefit or privilege to which you may be entitled.	OMB No.: Expires:

1. NAME OF THE PERSON COMPLETING AFFIDAVIT:

a.) Print Full Name	
b.) Street Address	
c.) City, State, Zip Code	

2. AFFIRMING THE EMPLOYMENT HISTORY OF THE FOLLOWING PERSON:

a.) Print Full Name	
b.) Maiden/Former Name	
c.) Social Security Number (Optional)	

3. RELATIONSHIP BETWEEN THE TWO INDIVIDUALS NAMED ABOVE:

☐ Spouse ☐ Son/Daughter ☐ Parent ☐ Grandparent
☐ Friend ☐ Work Associate ☐ Other

4. EMPLOYMENT HISTORY OF THE PERSON NAMED IN ITEM 2a:

In chronological order, starting with the most recent period of employment, describe your knowledge of the employment history of the person named in item 2a. Provide as much identifying information as possible concerning the name and location of the employer.

EMPLOYER 1

Dates of Employment	Start Date / /	End Date / /
Employer name and work site location		
Describe the type of work performed		
Explain how you know the person named in 2a worked for this employer		

Form EE-4
May 2001

EMPLOYER 2		
Dates of Employment	Start Date / /	End Date / /
Employer name and work site location		
Describe the type of work performed		
Explain how you know the person named in 2a worked for this employer		

EMPLOYER 3		
Dates of Employment	Start Date / /	End Date / /
Employer name and work site location		
Describe the type of work performed		
Explain how you know the person named in 2a worked for this employer		

EMPLOYER 4		
Dates of Employment	Start Date / /	End Date / /
Employer name and work site location		
Describe the type of work performed		
Explain how you know the person named in 2a worked for this employer		

5. Any person who knowingly makes any false statement, misrepresentation, concealment of fact or any other act of fraud to obtain compensation as provided under the EEOICPA or who knowingly accepts compensation to which that person is not entitled is subject to civil or administrative remedies as well as felony criminal prosecution and may, under appropriate criminal provisions, be punished by a fine or imprisonment or both. I affirm that the information provided on this form is accurate and true.

Signature _____ Date _____

Form EE-4
May 2001

FORM EE-4

This form is used to affirm the employment history of a living or deceased energy employee. It may be completed by anyone who has knowledge of the employment activities of an energy employee. Use as many EE-4 forms as needed. If you require additional space to provide comments, attach a signed supplemental statement.

PRIVACY ACT

In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), you are hereby notified that: (1) The Energy Employees Occupational Illness Compensation Program Act (P.L. 106-398) (EEOICPA) is administered by the Office of Workers' Compensation Programs of the U.S. Department of Labor, which receives and maintains personal information on claimants and their immediate families. (2) Information which the Office has will be used to determine eligibility for, and the amount of, benefits payable under the EEOICPA, and may be verified through computer matches or other appropriate means. (3) Information may be given to the Federal agencies or private entities which employed the claimant at the time of injury in order to verify statements made, answer questions concerning the status of the claim, verify billing, and to consider other relevant matters. (4) Information may be disclosed to physicians and other health care providers for use in providing treatment or medical rehabilitation, making evaluations for the Office and for other purposes related to the medical management of the claim. (5) Information may be given to Federal, state, and local agencies for law enforcement purposes, to obtain information relevant to a decision under the EEOICPA, to determine whether benefits are being paid properly, including whether prohibited payments have been made, and, where appropriate, to pursue salary/administrative offset and debt collections actions required or permitted by the Debt Collection Act. (6) Failure to disclose all requested information may delay the processing of the claim or the payment of benefits, or may result in an unfavorable decision. This notice applies to all forms requesting information that you might receive from the Office in connection with the processing and adjudication of the claim you filed under the EEOICPA.

PUBLIC BURDEN STATEMENT

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering data needed, and completing and reviewing the collection of information. If you have any comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, sent them to the Office of Workers' Compensation Programs, U.S. Department of Labor, Room S3524, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Do not submit the completed claim to this address. Completed claims are to be submitted to the appropriate regional District Office of Workers' Compensation Programs.

Medical Requirements under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA)

U.S. Department of Labor
Employment Standards Administration
Office of Workers' Compensation Programs

OMB No.:
Expires:

The information in this document is intended to inform an employee, survivor or physician of the medical evidence necessary to establish a diagnosis of the following conditions under the EEOICPA: **Beryllium Sensitivity, Chronic Beryllium Disease, Chronic Silicosis and Cancer**. Medical evidence may include narrative reports, physician notes, diagnostic test results, imaging studies, laboratory work-ups, pathology reports, operative reports, pulmonary function assessments, autopsy evaluations, death certificates, etc. The completed medical report package should be submitted to the appropriate District Office. Decisions regarding coverage under the EEOICPA are contingent on the submission of appropriate medical and factual evidence. This form provides information regarding medical requirements only. Maintain a copy of all documents for your records.

GENERAL REQUIREMENTS

Any claim filed under the EEOICPA has to include a medical report(s) providing:

- A history of the illness or condition
- A physical examination and its findings
- The clinical laboratory tests performed and discussion of the results
- A diagnosis (ICD-9 coded, if possible) and the date when it was first documented

REQUIREMENTS FOR A DIAGNOSIS OF BERYLLIUM SENSITIVITY

- Abnormal Beryllium Lymphocyte Proliferation Test (LPT) that has been performed on the blood or lung lavage cells

REQUIREMENTS FOR A DIAGNOSIS OF CHRONIC BERYLLIUM DISEASE

If the initial date of diagnosis was made **on or after January 1, 1993**, medical documentation must include an Abnormal Beryllium Lymphocyte Proliferation Test (LPT) and one or more of the following:

- Lung biopsy showing a process consistent with chronic beryllium disease
- A computerized axial tomography scan showing changes consistent with chronic beryllium disease
- A pulmonary function study or exercise tolerance test showing pulmonary deficits consistent with chronic beryllium disease

If the initial date of diagnois was made **before January 1, 1993**, medical documenation must include at least three or more of the following:

- Characteristic chest radiograph or computed tomography denoting abnormalities
- A restrictive or obstructive lung physiology test or diffusion lung capacity defect
- Lung pathology consistent with chronic beryllium disease
- Clinical course consistent with chronic respiratory disease disorder
- Immunologic tests showing beryllium sensitivity (skin patch test or beryllium test)

REQUIREMENTS FOR A DIAGNOSIS OF CHRONIC SILICOSIS

One or more of the following:

- A chest radiograph, interpreted by a National Institute for Occupational Safety and Health certified B reader, confirming the existence of pneumoconiosis with a 1/1 ILO category or higher
- Results from a computer-assisted tomograph or other imaging technique consistent with silicosis
- A lung biopsy consistent with silicosis

REQUIREMENTS FOR A DIAGNOSIS OF CANCER

- The pathology report(s) (e.g. tissue biopsy or blood test) that forms the basis for the diagnosis of cancer and identifies the malignant neoplasm present
- A narrative report that addresses whether there are metastases present and the affected anatomic sites, as well as the presence of any cancer-related syndromes or other complications

Public Burden Statement

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering data needed, and completing and reviewing the collection of information. If you have any comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Office of Workers' Compensation Programs, U.S. Department of Labor, Room S3524, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Do not submit the completed claim to this address. Completed claims are to be submitted to the appropriate regional District Office of Workers' Compensation Programs.

Date

Telephone number

File Number:
Claimant:
Social Security Number:

JOHN Q. CLAIMANT
1111 MAIN STREET
OAK RIDGE, TN 44444

Dear Mr. Claimant:

The information requested in the attached enclosure is required in connection with your claim for benefits under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), Pub. L. 106-398. This information will be used to decide if you are entitled to receive these benefits, and if so, the level of benefits you may receive.

You must completely answer all questions and return the enclosure within 30 days of the date of this letter. Otherwise, OWCP will not be able to process your claim for benefits under the EEOICPA. Pub. L. 100-503 provides that the statements on the enclosure and other information in your claim file may be verified through computer matches. OWCP may also request that you submit any factual evidence it deems necessary to support your statements.

READ ALL INSTRUCTIONS CAREFULLY BEFORE FILLING OUT THE ENCLOSURE. YOU MUST ANSWER ALL OF THE QUESTIONS. IF THE QUESTION DOES NOT APPLY TO YOUR CLAIM, STATE "NOT APPLICABLE (N/A)" OR "NONE."

If you need more space to fully answer any of the questions, use another sheet of paper with your name and claim number at the top. Sign and date each extra sheet.

WARNING

A FALSE OR EVASIVE ANSWER TO ANY QUESTION, OR THE OMISSION OF AN ANSWER, MAY BE GROUNDS FOR FORFEITING YOUR BENEFITS AND SUBJECT YOU TO CIVIL LIABILITY. A FRAUDULENT ANSWER MAY RESULT IN CRIMINAL PROSECUTION. ALL STATEMENTS ARE SUBJECT TO INVESTIGATION FOR VERIFICATION.

When you have completed the enclosure, **sign it and return it to the address shown at the top of this letter**. Your signature certifies that you have supplied all information requested by the enclosure. If you have any questions about completing the enclosure, call or write to the district office.

Sincerely,

****
CLAIMS EXAMINER

Enclosure: EN-15

NOTICE TO RECIPIENT

Public reporting burden for this collection of information is estimated to average 40 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, OWCP, Room S3524, 200 Constitution Avenue, NW, Washington, DC 20210. DO NOT SEND THE COMPLETED FORM TO THIS ADDRESS. Persons are not required to complete this form unless it displays a currently valid OMB number.

File Number:
Claimant:

PART A -- TORT SUITS FILED AGAINST BERYLLIUM VENDORS OR ATOMIC WEAPONS EMPLOYERS

1. Have you filed a tort suit (other than an administrative or judicial proceeding for worker's compensation) against a beryllium vendor or atomic weapons employer in connection with either an occupational illness or a consequential injury for which you would be eligible to receive compensation under the EEOICPA? Yes or No: _____

2. If Yes, state:

Date of filing:_____
Party or parties involved:_____
Date tort suit was dismissed:_____

List any other tort suits on an extra sheet.

PART B -- THIRD PARTY SETTLEMENTS

1. Have you received any settlement or award from a claim or suit (other than a claim for worker's compensation) against a third party (other than a beryllium vendor or atomic weapons employer listed in Part A above) in connection with either an occupational illness or a consequential injury for which you would be eligible to receive compensation under the EEOICPA? Yes or No: _____

2. If Yes, state:

Date of judgment or settlement:_____
Party or parties involved:_____
Type of suit or settlement:_____
Amount of judgment or settlement:_____

List any other third party settlements on an extra sheet.

PART C -- SURVIVORS OF DECEASED EMPLOYEES

1. Are you claiming compensation under the EEOICPA as a survivor of a deceased employee who sustained a covered occupational illness? Yes or No:_____

2. If Yes, state:

If widow or widower, date of marriage to deceased employee:_____
If child, sibling or grandchild of deceased employee, date of birth:_____
If parent or grandparent of deceased employee, were you dependent on the deceased employee at the time of his or her death? State Yes or No:_____

3. Do you know of any other persons who may also be eligible to receive compensation under the EEOICPA as a survivor of the deceased employee upon whom your claim is based? Yes or No:_____

4. If Yes, state:

Name of other survivor:_____
Relationship of other survivor to deceased employee:_____
Address and/or telephone number of other survivor:_____

List any other survivors on an extra sheet.

PART D -- FRAUD CHARGES

1. Have you either pled guilty to or been convicted on any charges of having committed fraud in connection with an application for or receipt of benefits under the EEOICPA or any other federal or state worker's compensation law? Yes or No: _____

2. If Yes, state:

Date of conviction or guilty plea:_____
Jurisdiction where fraud charges were brought:_____

PART E -- CORRECTIONS

If the name, address, file number, or Social Security number (SSN) shown at the top of the first page of the accompanying letter is incorrect, provide the correct information in the space provided below. (Do not complete if the information is correct).

Name: _____ File Number: _____
Address: _____ SSN: _____

PART F -- CERTIFICATION

I know that anyone who fraudulently conceals or fails to report information that would have an effect on benefits, or who makes a false statement or misrepresentation of a material fact in claiming a payment or benefit under the Energy Employees Occupational Illness Compensation Program Act may be subject to criminal prosecution, from which a fine and/or imprisonment may result.

I understand that I must immediately report to OWCP any third party settlement I receive, any tort suit I file against a beryllium vendor or atomic weapons employer, any change in the status of a survivor, and any conviction for fraud against this program or any other federal or state workers' compensation law.

I certify that all the statements made in response to questions on this enclosure are true, complete and correct to the best of my knowledge and belief. I have placed "Not Applicable (N/A)" or "None" next to those questions that do not apply to me or my claim.

Signature	Date
Street Address	Telephone
City, State and Zip Code	

Acceptance of Payment Under the Energy Employees Occupational Illness Compensation Program Act

U.S. Department of Labor
Employment Standards Administration
Office of Workers' Compensation Programs

File Number:
Claimant Name:
Social Security Number:

JOHN Q. CLAIMANT
1111 MAIN STREET
OAK RIDGE, TN 44444

Dear Mr. Claimant:

I am pleased to inform you that your claim for benefits under the Energy Employees Occupational Illness Compensation Program Act has been approved in the amount of:

$

Enclosed is the EN-20 Acceptance of Payment form (EN-20) which you or your legal guardian must complete, sign and return before OWCP can send the compensation payment to you.

You must sign and return the Acceptance of Payment form to OWCP within 60 days from the date of this letter. **Failure to return the signed form within this period may be deemed to be a rejection of the payment.** If you have any questions about completing the enclosure, call your district office.

Sincerely,

CLAIMS EXAMINER

Enclosures: EN-20

NOTICE TO RECIPIENT

Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, OWCP, Room S3229, 200 Constitution Avenue, NW, Washington, DC 20210. DO NOT SEND THE COMPLETED FORM TO THIS ADDRESS. Persons are not required to complete this form unless it displays a currently valid OMB number.

OMB No. Expiration Date EE-20

Directions: Provide all of the information requested below. If you choose to accept the authorized payment, you must mail this form to OWCP within 60 days from the date of the letter.

AUTHORIZED PAYMENT

$

DIRECT DEPOSIT INFORMATION

1. Name Financial Institution		
2. Street Address		
3. City & Zip Code		
4. Phone Number		
6. Routing Number or ID#		
7. Account Number		
8. Type of Account	☐ CHECKING	☐ SAVINGS

CORRECTIONS

If the name, address, file number, or Social Security number (SSN) shown at the top of the first page of the accompanying letter is incorrect, provide the correct information in the space provided below. (Do not complete if already correct).

Name _____ SSN _____

Street Address _____

City, State and Zip Code _____

CERTIFICATION

I hereby certify that I have reported to OWCP any third party settlement I have received, any tort suit I have filed against a beryllium vendor or an atomic weapons employer, any information I have regarding survivors (if applicable), and any conviction for fraud against this program or any other federal or state workers' compensation law.

I understand that my acceptance of this compensation payment will be in full satisfaction of all claims I have against the United States, a Department of Energy contractor or subcontractor, a beryllium vendor, an atomic weapons employer, or any person with respect to that person's performance of a contract with the United States, arising out of an occupational illness covered by the EEOICPA.

Print Name _____

Signature _____ Date _____

Street Address _____ Current Telephone Number _____

City, State and Zip Code _____

EN-20

Claim for Medical Reimbursement Under Energy Employees Occupational Illness Compensation Program Act

U.S. Department of Labor
Employment Standards Administration
Office of Workers Compensation Programs

Provide all information requested below. **DO NOT FILL IN SHADED AREAS.** Read the attached information in order to ensure the submission of all required documentation. Maintain a copy of all documentation for your records.

OMB No.:
Expires:

PERSONAL INFORMATION

Name

Last First M.I.

EEOICPA Case File Number

Address

Street/P.O. Box/Apt No.

City State Zip Code

Telephone Number

( )

FOR DOL USE ONLY

PROVIDER INFORMATION

Name of Doctor's Office, Hospital, Pharmacy or Medical Supply Company where expense was incurred. (A separate EE-915 must be filed for each provider)

Description of Charge (Medical appointment, name of prescription drug, description of medical product/ supply)	Date of Service (MM, DD, YY)		Amount Paid by Claimant	Have you included Proof of Payment for each item?	
	From	To		YES	NO
				☐	☐
				☐	☐
				☐	☐
				☐	☐
				☐	☐
				☐	☐
				☐	☐
				☐	☐

Total Reimbursement
$

I certify that the information above is correct and that the reimbursement requested is for expenses paid by me for the treatment of my covered illness or disease. I am aware that any person who knowingly makes any false statement or misrepresentation to obtain compensation under the EEOICPA is subject to civil penalties and/or criminal prosecution.

I authorize any provider named above to release information to the US Department of Labor, OWCP if necessary for the proper adjudication of this claim.

Signature _____ Date _____

Form EE-915
May 2001

CLAIM FOR MEDICAL REIMBURSEMENT

- Under EEOICPA, you are eligible to seek reimbursement for out of pocket medical expenses pertaining to the treatment of an accepted covered illness or disease. The EE-915 form can be used to seek reimbursement for expenses in regard to medical treatment, prescription medication and medical supplies.
- Please submit a separate reimbursement claim for each provider where an out of pocket expense was incurred.
- Please print clearly and legibly. Reference your EEOICPA claim file number on all documentation submitted to the District Office. Maintain a copy of the completed EE-915 form and supporting documentation for your records.

DOCUMENTATION REQUIRED FOR MEDICAL REIMBURSEMENT

Prescription Medication

1. Completed EE-915
2. A Universal Health Claim form (NCPDP Form 79-1A) or equivalent, which must be attached to the EE-915 and must include the following information:
   a. Name, address and telephone number of pharmacy
   b. Tax identification number for pharmacy
   c. Name of doctor issuing prescription
   d. Name of medication
   e. Date of purchase
   f. Eleven Digit National Drug Code (NDC#)
   g. New prescription or refill number
   h. Quantity of medication (e.g. # of pills or ml/cc)
   i. Amount paid by employee per medication
3. Proof of payment indicating that the employee or authorized payee rendered payment for the claimed charges (Proof of payment can include cash receipt, cancelled check or credit card slip)

Medical Expense for Treatment of Accepted EEOICPA Condition (Other than prescription medication)

1. Completed EE-915
2. Physicians and other health care providers (i.e. physical therapists) must complete form HCFA 1500. Hospitals and other facilities, such as ambulatory surgical centers, skilled nursing facilities, etc. must submit their bills on Form UB 92. Every form must be completed in its entirety in the same manner as bills submitted by the provider directly to the EEOICPA. The amount paid by the claimant must be indicated. The HCFA-1500 or UB-92 must be attached to this form. It is the responsibility of the person submitting a claim for reimbursement to obtain a completed HCFA-1500 or UB-92 from the provider rendering service. *Without a fully completed HCFA-1500 or UB-92, the OWCP is not able to process a reimbursement.*
3. Proof of payment indicating that the employee or authorized payee rendered payment for the claimed charges (Proof of payment can include cash receipt, cancelled check or credit card slip)

Travel

Do not use form EE-915 to submit a claim for travel reimbursement. Claims for travel reimbursement should be submitted on SF-1012, "Travel Voucher."

Public Burden Statement

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gather and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding the burden estimate or any other aspect to this collection of information, including suggestions for reducing this burden, sent them to the Office of Workers' Compensation Programs, U.S. Department of Labor, Room S3524, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Do not submit the completed claim form to this address. Completed claims are to be submitted to the appropriate regional District Office of Workers' Compensation Programs. Persons are not required to respond to this information collection unless it displays a currently valid OMB number.

Form EE-915
May 2001

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