

(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 on the Internet at www.dol.gov/esa/regs/compliance/owcp/eeoicp/main.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 in § 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 § 30.220).

(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 these regulations, the

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claimant also bears the burden of providing to 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, OWCP 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 kind of evidence is needed to establish covered employment and how will that evidence be evaluated?

(a) Evidence of covered employment may include: employment records; pay stubs; tax returns; social security records; and written affidavits or declarations, subject to penalty of perjury, by the employee, survivor or any other person. However, no one document is required to establish covered employment and a claimant is not required to submit all of the evidence listed above. A claimant may submit other evidence not listed above to establish covered employment. To be acceptable as evidence, all documents and records must

be legible. OWCP will accept photocopies, certified copies, and original documents and records.

(b) DOE shall certify that it concurs with the employment information provided by the claimant, that it disagrees with the information provided by the claimant, or, after a reasonable search of its records and a reasonable effort to locate pertinent records not already in its possession, it can neither concur nor disagree with the information provided by the claimant.

(1) If DOE certifies that it concurs with the employment information provided by the claimant, then the criterion for covered employment will be established.

(2) If DOE certifies that it disagrees with the information provided by the claimant or that after a reasonable search of its records and a reasonable effort to locate pertinent records not already in its possession it can neither concur nor disagree with the information provided by the claimant, OWCP will evaluate the evidence submitted by the claimant to determine whether the claimant has established covered employment by a preponderance of the evidence. OWCP may request additional evidence from the claimant to demonstrate that the claimant has met the criterion for covered employment. Nothing in this section shall be construed to limit OWCP's ability to request additional documentation.

(3) If the only evidence of covered employment is a self-serving affidavit and DOE either disagrees with the assertion of covered employment or cannot concur or disagree with the assertion of covered employment, then OWCP may reject the claim based upon a lack of evidence of covered employment.

§ 30.113 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 legible.