

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 occupational illnesses and covered illnesses compensable under Parts B and E of EEOICPA.

(d) Subpart D: The rules governing the adjudication process leading to recommended and final decisions on claims for entitlement filed under Parts B and E of EEOICPA. It also describes the hearing and reopening processes.

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

(f) Subpart F: The rules relating to the payment of monetary compensation available under Parts B and E of EEOICPA. It includes provisions on medical monitoring for beryllium sensitivity, on the identification, processing and recovery of overpayments of compensation, and on the maximum aggregate amount of compensation payable under Part E.

(g) Subpart G: The rules concerning the representation of claimants in connection with the administrative adjudication of claims before OWCP, subrogation of the United States, the effect of tort suits against beryllium vendors and atomic weapons employers, and the coordination of benefits under Part E of EEOICPA with state workers' compensation benefits for the same covered illness.

(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.

(i) Subpart I: The rules relating to the adjudication of alleged periods of wage-loss of covered Part E employees. It also includes provisions on the use by OWCP of Social Security Administration earnings information and cer-

tain medical evidence to establish compensable wage-loss.

(j) Subpart J: The rules relating to the adjudication of alleged impairment due to the exposure of covered Part E employees to toxic substances. It includes provisions relating to the medical evaluation of ratable impairments, the rating of progressive conditions, apportionment, and qualifications of physicians.

#### 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, as amended (42 U.S.C. 7384 *et seq.*).

(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:

(1) 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; or

(2)(i) An individual employed at a facility that the National Institute for Occupational Safety and Health reported had a potential for significant residual contamination outside of the period described in paragraph (c)(1) of this section;

(ii) By the atomic weapons employer that owned the facility referred to in paragraph (c)(2)(i) of this section, or a subsequent owner or operator of such facility; and

(iii) During a period reported by the National Institute for Occupational Safety and Health (NIOSH), in its report dated October 2003 and titled "Report on Residual Radioactive and Beryllium Contamination at Atomic Weapons Employer Facilities and Beryllium Vendor Facilities," or any update to that report, to have a potential

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for significant residual radioactive contamination.

(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 any facility, owned by an atomic weapons employer, that:

(1) 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; and

(2) Is designated as such in the list periodically published in the FEDERAL REGISTER by DOE.

(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 either a covered Part B employee under Part B, or a covered Part E employee under Part E, from the Energy Employees Occupational Illness Compensation Fund. However, the term "compensation" used in section 7385f(b) of EEOICPA (restricting entitlement to only one payment of compensation under Part B) means only the payments specified in section 7384s(a)(1) and in section 7384u(a). Except as used in section 7385f(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) performed on either blood or lung lavage cells.

(i) *Beryllium vendor* means the specific corporations and named predecessor corporations listed in section 7384l(6) of the Act and any of the facilities designated as such in the list periodically published in the FEDERAL REGISTER by 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 1/0 or higher; or

(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 to OWCP of an individual's entitlement to benefits under 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 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 paragraphs (o)(1) or (2) of this section.

(p) *Covered Part E employee* means, under Part E of the Act, a Department of Energy contractor employee or a RECA section 5 uranium worker who has been determined by OWCP to have

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contracted a covered illness (see paragraph (r) of this section) through exposure at a Department of Energy facility or a RECA section 5 facility, as appropriate.

(q) *Covered Part B employee* means, under Part B of the Act, a covered beryllium employee (see §30.205), a covered employee with cancer (see §30.210(a)), a covered employee with chronic silicosis (see §30.220), or a covered uranium employee (see paragraph (s) of this section).

(r) *Covered illness* means, under Part E of the Act relating to exposures at a DOE facility or a RECA section 5 facility, an illness or death resulting from exposure to a toxic substance.

(s) *Covered uranium employee* means, under Part B of the Act, an individual who has been determined by DOJ to be entitled to an award under section 5 of the RECA, whether or not the individual was the employee or the deceased employee's survivor.

(t) *Current or former employee as defined in 5 U.S.C. 8101(1)* as used in §30.205(a)(1) 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.

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

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

(w) *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.

(x)(1) *Department of Energy facility* means, as determined by the Director of OWCP, any building, structure, or premise, including the grounds upon which such building, structure, or premise is located:

(i) 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 E.O. 12344, dated February 1, 1982, pertaining to the Naval Nuclear Propulsion Program); and

(ii) With regard to which the DOE has or had:

(A) A proprietary interest; or

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

(2) DOL hereby adopts the list of facilities established by the Department of Energy that is in effect on the date of the publication of this Interim Final Rule. DOL will periodically update this list as it deems appropriate in its sole discretion by publishing a revised list of covered facilities in the FEDERAL REGISTER.

(y) *Disability* means, for purposes of determining entitlement to payment of Part B benefits under section 7384s(a)(1) of the Act, having been determined by OWCP to have or have had established chronic beryllium disease, cancer, or chronic silicosis.

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(z) *Eligible surviving beneficiary* means any individual who is entitled under sections 7384s(e), 7384u(e), or 7385s-3(c) and (d) of the Act to receive a payment on behalf of a deceased covered Part B employee or a deceased covered Part E employee.

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

(bb) *Occupational illness* means, under Part B of the Act, a covered beryllium illness, cancer sustained in the performance of duty as defined in §30.210(a), specified cancer, chronic silicosis, or an illness for which DOJ has awarded compensation under section 5 of RECA.

(cc) *OWCP* means the Office of Workers' Compensation Programs, United States Department of Labor. One of the four divisions of OWCP is the Division of Energy Employees Occupational Illness Compensation.

(dd) *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.

(ee) *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.

(ff) *Specified cancer* (as defined in section 4(b)(2) of RECA and in the EEOICPA) means:

(1) Leukemia (other than chronic lymphocytic leukemia) provided that 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) Bone cancer;

(4) Renal cancers; or

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

(i) Multiple myeloma;

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

(iii) Primary cancer of the:

(A) Thyroid;

(B) Male or female breast;

(C) Esophagus;

(D) Stomach;

(E) Pharynx;

(F) Small intestine;

(G) Pancreas;

(H) Bile ducts;

(I) Gall bladder;

(J) Salivary gland;

(K) Urinary bladder;

(L) Brain;

(M) Colon;

(N) Ovary; or

(O) Liver (except if cirrhosis or hepatitis B is indicated).

(6) The specified diseases designated in 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.

(gg) *Survivor* means:

(1) For claims under Part B of the Act, and subject to paragraph (gg)(3) of this section, a surviving spouse, child, parent, grandchild and grandparent of a deceased covered Part B employee.

(2) For claims under Part E of the Act, and subject to paragraph (gg)(3) of this section, a surviving spouse and child of a deceased covered Part E employee.

(3) Those individuals listed in paragraphs (gg)(1) and (gg)(2) of this section do not include any individuals not living as of the time OWCP makes a lump-sum payment or payments to an eligible surviving beneficiary or beneficiaries.

(hh) *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 Part B employee was exposed to such substance in the performance of duty in accordance with sections 7384n(a) or 7384r(c) of the Act; or

(2) In regard to a claim arising out of exposure to radiation under Part B, the last date on which a covered Part B employee was exposed to radiation in the performance of duty in accordance with section 7384n(b) of the Act 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 or the atomic weapons employer facility at which the member was exposed to radiation; or

(3) In regard to a claim arising out of exposure to a toxic substance, the last date on which a covered Part E employee was employed at the Department of Energy facility or RECA section 5 facility, as appropriate, at which the exposure took place.

(ii) *Toxic substance* means any material that has the potential to cause illness or death because of its radioactive, chemical, or biological nature.

(jj) *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 Act 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 published in the FEDERAL REGISTER. All questions relating to access, disclosure, and/or amendment of claims records main-

tained 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 district 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, transferred or garnished?**

(a) Pursuant to section 7385f(a) of the Act, no claim for EEOICPA benefits may be assigned or transferred.

(b) Provisions of the Social Security Act (42 U.S.C. 659) and regulations issued by the Office of Personnel Management at 5 CFR part 581 permit the garnishment of payments of EEOICPA monetary benefits to collect overdue alimony and child support. A request to garnish a payment for either of these purposes should be submitted to the district office that is handling the EEOICPA claim, and must be accompanied by a copy of the pertinent state agency or court order.

##### **§ 30.16 What penalties may be imposed in connection with a claim under the Act?**

(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 Act. Included among these provisions is 18 U.S.C. 1001. Enforcement of criminal provisions that may apply to claims under the Act is 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 *et seq.*, to impose civil penalties and assessments