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

(a) To establish eligibility for benefits for radiogenic cancer under Part B of EEOICPA, an employee or his or her survivor must show that:

(1) The employee has been diagnosed with one of the forms of cancer specified in §30.5(ff) of this part; and

(i) Is a member of the Special Exposure Cohort (as described in §30.214(a) of this subpart) who, as a civilian DOE employee or civilian DOE contractor employee, contracted the specified cancer after beginning employment at a DOE facility; or

(ii) Is a member of the Special Exposure Cohort (as described in §30.214(a) of this subpart) who, as a civilian atomic weapons employee, contracted the specified cancer after beginning employment at a DOE facility; and

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

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

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

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

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

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

(b)(1) To establish eligibility for benefits for radiogenic cancer under Part E of EEOICPA, an employee or his or her survivor must show that:

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

(A) Is/was a civilian DOE contractor employee or a civilian RECA section 5 uranium worker who contracted that cancer after beginning employment at a DOE facility or a RECA section 5 facility; and

(B) The cancer was at least as likely as not related to exposure to a toxic substance of a radioactive nature at a DOE facility or a RECA section 5 facility; and

(C) It is at least as likely as not that the exposure to such toxic substance(s) was related to employment at a DOE facility or a RECA section 5 facility; or

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

(2) Eligibility for benefits for radiogenic cancer under Part E in a claim that has previously been accepted under Part B pursuant to the Special Exposure Cohort provisions is described in §30.230(a) of these regulations.

§ 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 a specified cancer (as defined in §30.5(ff)) or other cancer with medical evidence that sets forth an explicit diagnosis of cancer and the date on which that diagnosis was first made.

§ 30.212  How does a claimant establish that the employee contracted cancer after beginning employment at a DOE facility, an atomic weapons employer facility or a RECA section 5 facility?

(a) Proof of employment by the DOE or a DOE contractor at a DOE facility,
§ 30.213 How does a claimant establish that the radiogenic cancer was at least as likely as not related to employment at the DOE facility, the atomic weapons employer facility, or the RECA section 5 facility?

(a) HHS, with the advice of the Advisory Board on Radiation and Worker Health, has issued regulatory guidelines at 42 CFR part 81 that OWCP uses to determine whether radiogenic cancers claimed under Parts B and E were at least as likely as not related to employment at a DOE facility, an atomic weapons employer facility, or a RECA section 5 facility, as appropriate. Persons should consult HHS's regulations for information regarding the factual evidence that will be considered by OWCP, in addition to the employee's radiation dose reconstruction that will be provided to OWCP by HHS, in making this particular factual determination.

(b) HHS's regulations satisfy the legal requirements in section 7384n(c) of the Act, which also sets out OWCP's obligation to use them in its adjudication of claims for radiogenic cancer filed under Part B of the Act, and provide the factual basis for OWCP to determine if the "probability of causation" (PoC) that an employee's cancer was sustained in the performance of duty is 50% or greater (i.e., it is "at least as likely as not" causally related to employment), as required under section 7384(n)(b).

(c) OWCP also uses HHS's regulations when it makes the determination required by section 7385s–4(c)(1)(A) of the Act, since those regulations provide the factual basis for OWCP to determine if "it is at least as likely as not" that exposure to radiation at a DOE facility or RECA section 5 facility, as appropriate, was a significant factor in aggravating, contributing to, or causing the employee's radiogenic cancer claimed under Part E, if the PoC is less than 50%.