§ 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 an atomic weapons employer facility (as defined in §30.5(e));

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

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

(B) 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,
or by an atomic weapons employer at
an atomic weapons employer facility,
or at a RECA section 5 facility, may be
made by the submission of any trust-
worthy records that, on their face or in
conjunction with other such records,
establish that the employee was so em-
ployed and the time period(s) of such
employment.

(b)(1) Except as provided in para-
graph (b)(2) of this section, if the evi-
dence shows that exposure occurred
while the employee was employed at a
facility during a time frame that is
outside the relevant period indicated
for that facility, OWCP may request
that DOE provide additional informa-
tion on the facility. OWCP will deter-
mine whether the evidence of record
supports enlarging the relevant period
for that facility.

(2) OWCP may choose not to request
that DOE provide additional informa-
tion on an atomic weapons employer
facility that NIOSH reported had a po-
tential for significant residual radia-
tion contamination in its report dated
October 2003 and titled “Report on Re-
sidual Radioactive and Beryllium Con-
tamination at Atomic Weapons Em-
ployer Facilities and Beryllium Vendor
Facilities,” or any update to that re-
port, if the evidence referred to in
paragraph (a) of this section estab-
lishes that the employee was employed
at that facility during a period when
NIOSH reported that it had a potential
for significant residual radiation con-
tamination.

(c) If the evidence shows that expo-
sure occurred while the employee was
employed by an employer that would
have to be designated by DOE as an
atomic weapons employer under sec-
tion 7384l(4) of the Act to be a covered
employer, and that the employer has
not been so designated, OWCP will
deny the claim on the ground that the
employer is not a covered atomic weap-
ons employer.

(d) Records from the following
sources may be considered as evidence
for purposes of establishing employ-
ment or presence at a covered facility:

(1) Records or documents created by
any federal government agency (in-
cluding verified information submitted
for security clearance), any tribal gov-
ernment, or any state, county, city or
local government office, agency, de-
partment, 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.

§ 30.213 How does a claimant establish
that the radiogenic cancer was at
least as likely as not related to em-
ployment at the DOE facility, the
atomic weapons employer facility,
or the RECA section 5 facility?

(a) HHS, with the advice of the Advi-
sory Board on Radiation and Worker
Health, has issued regulatory guide-
lines at 42 CFR part 81 that OWCP uses
to determine whether radiogenic can-
cers claimed under Parts B and E were
at least as likely as not related to em-
ployment at a DOE facility, an atomic
weapons employer facility, or a RECA
section 5 facility, as appropriate. Per-
sons 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 mak-
ing this particular factual determina-
tion.

(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 adjudica-
tion of claims for radiogenic cancer
filed under Part B of the Act, and pro-
vide the factual basis for OWCP to de-
termine if the “probability of causa-
tion” (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 sec-
tion 7384n(b).

(c) OWCP also uses HHS’s regulations
when it makes the determination re-
quired by section 7385s–4(c)(1)(A) of the
Act, since those regulations provide
the factual basis for OWCP to deter-
mine if “it is at least as likely as not”
that exposure to radiation at a DOE fa-
cility or RECA section 5 facility, as ap-
propriate, was a significant factor in
aggravating, contributing to, or caus-
ing the employee’s radiogenic cancer
claimed under Part E. For cancer
claims under Part E, if the PoC is less