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 of 2000, as Amended

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

ACTION: Final rule.

SUMMARY: On May 25, 2001, the Department of Labor (DOL) published interim final regulations that governed its responsibilities under the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA or Act). The Act provides lump-sum payments and medical benefits to covered employees and, where applicable, to 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 smaller lump-sum payments and medical benefits to individuals found to be eligible for an award under section 5 of the Radiation Exposure Compensation Act, as amended (RECA), and where applicable, to their survivors.

At the same time the Department published the interim final regulations, it also invited written comments and advice from interested parties regarding possible changes to those regulations. This document amends the interim final regulations based on comments that the Department received, and also includes changes necessary to conform the regulations to several technical amendments to the EEOICPA that Congress enacted after the interim final regulations were published.

DATES: *Effective Date:* This rule will be effective on February 24, 2003, and will apply to all claims filed on or after that date. This rule will also apply to any claims that are pending on February 24, 2003.

Compliance Date: Affected parties do not have to comply with the new information collection requirements in §§ 30.112 and 30.213 until DOL publishes in the **Federal Register** the control number assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control number will notify the public that OMB has approved the new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). It should be noted that OMB approval of the new information collection requirements will be a revision to the currently approved collection in OMB Control No. 1215–197.

Comments: Written comments on the new information collection requirements in §§ 30.112 and 30.213 must be received by January 27, 2003.

ADDRESSES: Written comments on the new information collection requirements in §§ 30.112 and 30.213 should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment Standards Administration, Washington, DC 20503.

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

SUPPLEMENTARY INFORMATION: The Department of Labor's interim final regulations implementing its responsibilities under the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (42 U.S.C. 7384 *et seq.*), were published in the **Federal Register** on May 25, 2001 (66 FR 28948). The interim final rule took effect on July 24, 2001 and originally included a 90-day period for comment. On September 12, 2001, the Department retroactively reopened the comment period on the interim final rule and extended the period for comment through September 24, 2001 (66 FR 47382). During this comment period, the Department received 216 timely comments: Six from congressional representatives; 10 from labor organizations; 6 from physicians; seven from attorneys; 13 from advocacy groups; one from a lay representative; one from the City Council of the City of Niagara Falls, New York; one from the Department of Defense; and 171 from individuals. The Department also received untimely comments from two advocacy groups and four individuals; the points they raised were also raised by the timely commenters. A majority of the commenters addressed the issue of survivor benefits (out of the 143 commenters that addressed this issue, 85 commenters addressed this issue alone). Other commenters addressed a range of issues, including coverage for particular illnesses, the administrative claims process, entitlement qualifications, and the extent of medical benefits provided under the program. The Department's section-by-section analysis of the timely comments it received is set forth below (*see* sections I and II).

Some minor changes have been made to the interim final regulations that did not result from any comments. One such change is the addition of new paragraph (b) to § 30.15 to recognize that unpaid lump-sum payments of compensation under the Act may be subject to garnishment to collect overdue alimony and child support. A second change is the addition of a clause in § 30.115(a) that exempts any non-radiogenic cancer listed by the Department of Health and Human Services (HHS) in 42 CFR 81.30 from referral to HHS for dose reconstruction, because that regulation affirmatively directs DOL to ''assign a probability of causation of zero'' to any such cancers (and therefore a referral for dose reconstruction would serve no useful purpose); this exemption replaces the one in former § 30.115(b). In addition, § 30.213 has been divided into two sections to better reflect the two methods the Office of Workers' Compensation Programs (OWCP) uses to develop cancer claims. Similarly, § 30.505 has been divided into two sections to distinguish the pre-payment actions OWCP will take before it pays compensation from the payment mechanisms it will use to make such payments. To accomplish this, paragraphs (b), (c) and (d) from former § 30.505 are retained in final § 30.505, and the remaining paragraphs from former § 30.505 are now in final § 30.506.

This rule also corrects several sections of the interim final regulations to conform the final regulations with the technical amendments to sections 7384l, 7384q, 7384r, 7384s, 7384u, 7385d, and 7385g of the Act made by section 2403(a) of Public Law 107–20, 115 Stat. 155, 175 (July 24, 2001), and by section 3151(a) of Public Law 107–107, 115 Stat. 1012, 1371 (December 28, 2001). As a result of these corrections, § 30.5 now includes both the current list of specified cancers and the current method of establishing chronic silicosis, §§ 30.500 through 30.502 reflect the current statutory provisions on survivors, § 30.603 has been added to reflect the amended attorney fee limitation provision, and §§ 30.615 and 30.616 have been rewritten as §§ 30.615 through 30.619 to properly reflect the amended election of remedies provision. Section 2403(b) of Public Law 107–20 provided that the addition of ''renal cancers'' to the list of specified

cancers took effect on October 1, 2001, and section 3151(a)(4)(D) of Public Law 107–107 provided that the changes to the survivor provisions were retroactive to July 1, 2001. The remainder of the amendments to the Act were effective as of December 28, 2001.

When publishing a final rule following a comment period, it is customary to publish only the changes that have been made to the rule; however, in order to be more user-friendly, the Department is publishing the entire rule, including the parts that have not been changed. By doing so, only one document containing all of the regulations and commentary needs to be consulted rather than multiple documents.

I. Comments on the Interim Final Regulations

The section numbers used in the headings of the following analysis are those that were used in the interim final regulations. Unless otherwise stated, the section numbers in the text of the analysis refer to the numbering used for the final regulations. No comments were received with respect to part 1.

Section 30.2

One advocacy group suggested that OWCP provide EEOICPA claimants with State workers' compensation claim forms in addition to EEOICPA claim forms, as part of OWCP's role in the EEOICPA claim process. This suggestion was not adopted because section 7385o of the EEOICPA names DOE as the Federal entity authorized to enter into an agreement with the chief executive officer of a State, to establish procedures, and to administer the submission and adjudication of such claims. This separation of functions is also found in Executive Order 13179 (''Providing Compensation to America's Nuclear Weapons Workers'') of December 7, 2000 (65 FR 77487). However, DOL and DOE have established joint Resource Centers to provide claimants with assistance, information and the forms necessary for filing both Federal and State claims.

Section 30.5(bb)

One advocacy group suggested that the term ''physician'' should be expanded to specifically include dermatologists and other specialists in skin cancers. The suggestion was not adopted because these medical professionals are already included in the broad, non-exclusive definition of ''physician'' that appears in this section.

Section 30.5(cc)

One physician suggested that the definition of ''qualified physician'' is too broad and should be changed. This suggestion was not adopted because the term in question is only used to distinguish physicians who may provide medical services to covered employees from those who have been excluded from participation in the program in accordance with the procedures described in §§ 30.715 through 30.726 of these regulations. The term does not imply anything regarding the professional qualifications of a physician.

Section 30.5(dd)

One commenter requested that OWCP clarify if lung cancer has a required latency period as one of the specified cancers, while two advocacy groups disagreed with the required latency periods for those cancers designated in section 4(b)(2) of the Radiation Exposure Compensation Act, as amended (42 U.S.C. 2210 note). These two advocacy groups also requested that OWCP add ''renal cancers'' to the list of specified cancers to reflect the amendment to this provision of the Act made by section 2403(a) of Public Law 107–20. This section has been rewritten to clarify that as a specified cancer, lung cancer does not have a required latency period. However, the latency periods that are derived from the RECA are set by statute; OWCP does not have the authority to alter statutory provisions. The rewritten section also reflects the addition of renal cancers to the list of specified cancers, as well as the statutory modification of the provision for leukemia that was made by section 3151(a)(1) of Public Law 107–107.

Section 30.16

Two advocacy groups submitted comments asking that anti-retaliation provisions be included in the final regulations to protect claimants who file claims under the Act from reprisal in the workplace. OWCP does not have authority to implement such provisions by regulation in the absence of statutory authorization supporting such action. Moreover, other workplace discrimination legislation already exists to protect claimants from any retaliatory actions for filing a claim under the Act. The suggestion was therefore not adopted.

Sections 30.100(a) and 30.101(a)

One advocacy group disagreed with the requirement that section 5 RECA claimants must file an actual ''claim'' with OWCP before they can receive the smaller $50,000.00 lump-sum payments available under section 7384u(a) of the Act. However, unless it receives a ''claim'' for benefits under the Act, OWCP has no way of knowing who might be entitled to such benefits since it does not have access to the RECA claims information available to DOJ. Therefore, the suggestion to drop the requirement for filing a claim was not adopted.

One congressional representative asked if there was a time limit for filing claims of July 31, 2001. Although sections 7384s, 7384t and 7384u of the Act did not come into effect until July 31, 2001, there is no time limitation for filing claims in either the Act or the regulations, and claimants need not file their claims with OWCP prior to a particular date in order to be entitled to benefits. However, pursuant to section 7384t(d) of the Act, claimants authorized to receive medical benefits under the Act may only receive those benefits for the period subsequent to the date they submitted a claim.

Sections 30.100(c)(2) and 30.101(d)(2)

Three congressional representatives, seven labor organizations, six advocacy groups, two physicians, and three individuals requested that OWCP, under section 7384v of the Act, provide claimants with assistance in securing medical testing and diagnostic services by paying for or reimbursing for such testing and services. OWCP has made a policy decision to exercise its discretion to provide assistance by providing individual claimants with information and facilitating development of their EEOICPA claims. OWCP will not provide direct financial assistance for medical tests or diagnostic services because doing so would be financially impractical, would not be administratively feasible, and, in some instances, would duplicate services available under programs established by DOE or other employers that provide screening and medical monitoring of substantial numbers of former employees. Furthermore, evaluating numerous requests could substantially delay the program's overall claims adjudication process, thereby delaying payment of benefits in other deserving cases. Administrative difficulties would be particularly acute in regard to the wide variety of possible radiogenic cancers, since appropriate methods of diagnosis for these diseases can be controversial. Thus, the suggestion to pay for medical tests and diagnostic services was not adopted. However, OWCP will pay reasonable and necessary medical expenses, which could include tests and diagnostic services, in those cases that are

accepted, so long as the expenses were incurred subsequent to the filing of the claim. Language indicating that OWCP will provide information on the types and availability of medical testing and diagnostic services has been added to § 30.2(a).

Sections 30.105 and 30.106

Three commenters (one of these in two separate comments) questioned the reliability of the employment data to be provided by DOE in response to an alleged employment history provided in support of a claim, and a fourth commenter inquired about situations where DOE would not be able to verify an alleged employment history due to missing or incomplete records. OWCP anticipates that DOE will be able to fulfill its responsibilities under §§ 30.105 and 30.106 of the regulations in the majority of claims, and will work with DOE in an effort to obtain employment data sufficient to adjudicate those claims for which DOE may not have ready access to work records. To provide further guidance to claimants who may fall into this second group, new § 30.112 has been added to illustrate alternative methods of establishing the requisite period of covered employment in the absence of supporting DOE data. Former § 30.112 from the interim final rule has been renumbered as § 30.113 to accommodate this new section.

Section 30.111

Nine commenters, five labor organizations, seven advocacy groups, one physician and one congressional representative submitted a total of 24 comments on the collection and assessment of employment and medical evidence, as well as the assistance to be given by OWCP in that process. In order to meet its statutory responsibility to provide assistance to claimants, OWCP has held public informational meetings around the country. With DOE, OWCP has also established and staffed ten resource centers near large populations of potential claimants to maximize accessibility, and staff from these resource centers periodically travel to other areas where a significant number of potential claimants might reside. Finally, § 30.111 provides that OWCP will notify claimants of any deficiencies in their claims and provide an opportunity to correct such deficiencies.

In response to various comments received about § 30.111, the regulations have been revised by adding a new § 30.114 and clarifying former § 30.112 (renumbered as § 30.113 in accordance with the revisions noted above) to give additional guidance as to what type of evidence is required and how that evidence will be evaluated. Although the claimant's evidentiary burden of proof has not been changed, the regulations more clearly reflect the flexible standard for considering a claimant's evidence in view of the fact that there may be gaps in the record. As noted in §§ 30.105 and 30.106, covered employment is verified by DOE. It is necessary for DOE to have access to worker records to perform this task, but given the size and scope of the data it is impractical to impose restrictive timeframes on DOE to complete the verification process.

Section 30.115

Three labor organizations, one advocacy group and one commenter suggested that OWCP reconsider the use of dose reconstruction. ''Dose reconstruction'' is the term used to describe the process by which HHS will estimate an employee's radiation exposure history. The estimate produced in the dose reconstruction process is used by OWCP to determine whether an employee's cancer is at least as likely as not related to the employee's exposure to radiation at a covered facility. For claims seeking coverage for cancer based on the Special Exposure Cohort (SEC), no dose reconstruction is performed because coverage is presumed when a member of the SEC sustains a specified cancer after beginning employment at a covered facility. Section 7384n of the Act specifically requires that a determination concerning coverage of any cancer not subject to the SEC provisions be based upon guidelines established to determine the probability that a cancer was caused by exposure to radiation at a covered facility. That section also requires that a determination regarding the probability of causation incorporate the results of the dose reconstruction. Accordingly, since OWCP is not authorized to reconsider the use of dose reconstruction, the suggestion was not adopted. However, and as noted above, § 30.115 has been revised slightly to conform the dose reconstruction referral process with HHS's regulations at 42 CFR part 81.

Section 30.207

One physician, one advocacy group, one labor organization and one individual submitted five comments on the manner of diagnosing covered beryllium illnesses. The suggested changes to § 30.207 were not adopted because § 30.207 mirrors the language of section 7384l(8) and (13) of the Act for establishing beryllium illnesses; OWCP may not vary the requirements of these provisions by regulation.

Section 30.213

As noted above, § 30.213 has been divided for clarity into two sections to reflect the two methods to claim benefits for cancer, and the contents have been rearranged slightly. Section 30.213 in the interim final rule has been renumbered as § 30.214, new § 30.212 now specifically addresses claims for cancer not based on membership in the SEC, and § 30.212 in the interim final rule has been renumbered as § 30.213.

Two advocacy groups, one labor organization, and two commenters disagreed with the specific eligibility cutoff date for the members of the SEC who were exposed to ionizing radiation in the performance of duty related to one of three specified underground nuclear tests on Amchitka Island, Alaska. Five other commenters (one of whom is a physician), the same labor organization, one of the advocacy groups, and one of the two prior commenters also generally questioned the limited definition of who can qualify as a member of the SEC and therefore bypass the entire dose reconstruction process at HHS. The criteria for eligibility of members of the SEC set out in § 30.213 (renumbered as § 30.214 in accordance with the revision noted above) are governed by the explicit terms of section 7384l(14) of the Act, and may not be modified in any manner by regulation.

Section 30.214(b)

Two labor organizations and an advocacy group disagreed with the requirement in § 30.214(b) (renumbered as § 30.215(b) in accordance with the revision noted above) that employees seeking medical benefits for a consequential injury of a covered cancer submit rationalized medical evidence of a causal relationship between the consequential injury and the covered cancer. However, this evidentiary requirement is commonplace among State and Federal workers' compensation systems and does not exceed what is required to obtain these benefits under those other systems. OWCP further notes that under the Act, consequential injuries do not have any explicit diagnostic requirements that must be met (as do the covered occupational illnesses). Therefore, OWCP concludes that the current regulatory requirement for rationalized medical evidence of a causal relationship is reasonable and necessary, and the suggested changes have not been adopted.

Sections 30.215, 30.217 and 30.220

One lay representative suggested that OWCP consider adding a provision for coverage of consequential injuries of the various section 5 RECA illnesses. The interim final rule included regulatory provisions governing consequential injuries of covered cancers and covered beryllium diseases, but did not also specifically reference consequential injuries of either chronic silicosis or the section 5 RECA illnesses in §§ 30.215, 30.217 or 30.220. In order to clarify that medical benefits are available for consequential injuries of all the occupational illnesses covered under the Act, these sections (renumbered as §§ 30.220, 30.222 and 30.225 in accordance with the revisions noted above) have been revised, and new § 30.226 has been added to address the type of medical evidence that will be needed to establish a causal relationship between a consequential injury and a section 5 RECA illness.

Section 30.300

In the absence of any language mandating a particular adjudicatory structure in the Act, the interim final regulations established the current structure. Four congressional representatives, six labor organizations, seven advocacy groups, and two commenters (one of whom is a physician) submitted a total of 28 comments on the current structure for adjudicating claims filed under the EEOICPA. One congressional representative, one labor organization and four advocacy groups asked that OWCP devise a more elaborate administrative review process, while the other three congressional representatives, one of the four advocacy groups, and two other advocacy groups specifically recommended that administrative law judges be part of the adjudication process. Finally, one of the congressional representatives, all six labor organizations, all seven advocacy groups, and both commenters suggested that OWCP should add an independent review body to the adjudicatory process.

At the time that the interim final rule was issued, OWCP decided that it would be most efficient and beneficial to claimants to provide an expeditious administrative claims process that would allow claimants to seek review of adverse final agency decisions on their claims in Federal court without delay. This process provides claimants with an opportunity to challenge a recommended decision before a Final Adjudication Branch (FAB) reviewer, either through an oral hearing or through a review of the written record. Either mechanism allows a claimant to submit additional evidence or arguments to the FAB reviewer in a non-adversarial forum. This is unlike a proceeding before an administrative law judge where an adverse party would have an opportunity to object to the admission of evidence or provide evidence or arguments to refute the claimant's contentions. If the claimant disagrees with the final agency decision, he or she can seek review of the decision from a Federal court without delay. OWCP believes that utilizing administrative law judges or an independent review body would unnecessarily complicate and delay the adjudication process to the detriment of claimants. None of the commenters provided a convincing justification to reverse OWCP's initial decision concerning this adjudicatory structure, and therefore the suggestions were not adopted.

Section 30.305

Four labor organizations, two advocacy groups, one physician, and three individuals suggested that time limits be placed on the claim adjudication process. Time limits are currently in place with respect to recommended decisions pending either a hearing or a review of the written record before the FAB in § 30.316(c). These time limits provide that any recommended decision pending either a hearing or a review of the written record at the FAB for more than a specified period will be deemed to be a final decision of the FAB. Due to the wide range of claim types and the complexities involved in developing and establishing certain of these claims, along with the fact that Federal agencies other than OWCP are involved in the claim process, OWCP has decided against establishing strict time limits to govern the complete adjudicatory process, and did not adopt the suggestion. However, OWCP has established performance goals under the Government Performance and Results Act to monitor the efficiency of the claims adjudication process.

Sections 30.306 and 30.316(b)

Seven labor organizations, three advocacy groups and one physician suggested that the regulations require detailed findings and grounds in all recommended decisions denying a claim and in any final decision issued by the FAB. However, § 30.306 already requires that all recommended decisions contain findings of fact and conclusions of law; this existing requirement provides a claimant with the detailed findings requested by the commenters. Therefore, further descriptions of these requirements for final decisions of the FAB does not appear necessary, and the suggestions were not adopted.

Section 30.310(b)

One congressional representative, three labor organizations, and three advocacy groups voiced concerns about the limited time period for raising objections to findings of fact and/or conclusions of law contained in a recommended decision with the FAB. The 60-day period was designed to expedite the adjudicatory process and thus it has not been deemed necessary to modify this time frame. However, to address the concerns raised by these commenters, OWCP has provided in new § 30.320 a procedure for reopening FAB decisions at any time in the event that new evidence is discovered or circumstances have changed. In addition, OWCP has modified § 30.310(b) by removing the requirement that the claimant raise a specific objection to a particular finding of fact or conclusion of law as this requirement has not proved effective in practice. Sections 30.312 and 30.314(b) have also been revised to remove similar requirements for specific objections in those two sections.

One of these three advocacy groups also recommended that the FAB provide hearings to all claimants automatically. Removing the requirement that a claimant raise a specific objection will allow any claimant who is dissatisfied with a recommended decision to receive a hearing upon a timely request. To date, less than 2% of claimants who have received a recommended decision have requested hearings before the FAB. Therefore, it does not seem reasonable to require OWCP to devote the resources necessary to provide hearings to the vast majority of claimants who either request a review of the written record or do not object to the recommended decision. Accordingly, since the suggestion to provide hearings to every claimant automatically would hamper the ability of the FAB to issue final decisions on claims, especially on claims that have been accepted for the payment of benefits, it was not adopted.

Section 30.311(a)

One congressional representative disagreed with the provision in § 30.311(a) directing the FAB to issue a decision accepting the recommendation of the district office if the claimant did not file timely and specific objections to findings of fact and/or conclusions of law contained in the recommended decision, even if the claimant had

requested a hearing. Consistent with the revision to § 30.310(b), this section has been revised to remove the requirement for a specific objection. As a result, the FAB will now issue a decision that accepts the recommendation of the district office if the claimant neither requests a hearing nor submits a general objection to the recommended decision within the requisite time period.

Sections 30.313 and 30.314(a)

Five labor organizations, four advocacy groups, and one physician suggested that EEOICPA claimants should have the right to a formal adjudicative hearing to challenge findings and build a record for possible judicial review. The administrative claims process within the Department is intended to be non-adversarial and has been structured as an informal, streamlined process allowing for the prompt adjudication of claims. The regulations in §§ 30.313 and 30.314(a) allow claimants to introduce additional written evidence and/or testimony and give FAB reviewers the discretion to conduct hearings in a manner that ensures that a complete record is made sufficient for judicial review. Since there is nothing in the Act that requires formal adjudicative hearings, it does not appear necessary to create a more elaborate and less expeditious administrative claims process, as has been requested.

Section 30.314

Four labor organizations and three advocacy groups (one of these in two separate comments) suggested that § 30.314(a), which provides that the FAB reviewer retains complete discretion to set the time and place of the hearing, also include a requirement that the reviewer shall attempt to schedule the hearing at a location that is convenient for the claimant. The current practice of OWCP is to schedule the FAB hearing, whenever possible, at a location that is within a reasonable distance from the claimant's residence. Based on the above comments, OWCP is persuaded that this policy should be set forth with more specificity in the rule, and § 30.314(a) has been revised accordingly.

One of these four labor organizations, the three advocacy groups, one congressional representative, and a fourth advocacy group also suggested that FAB hearing procedures be spelled out in the regulations. However, § 30.314 is purposefully formulated to permit maximum flexibility and gives the FAB reviewer complete discretion, among other things, to schedule and conduct hearings in a fair and expedient manner. Since the claims adjudication process is non-adversarial and the informal FAB hearing process is working effectively, OWCP sees no reason to revise § 30.314 to create a formal and less flexible hearing process.

Two of the first three advocacy groups questioned the requirement in § 30.314(e) that the claimant must submit his or her comments regarding the hearing transcript to the FAB reviewer within 20 days from the date that the transcript is sent to the claimant. The commenters suggested that this requirement be changed to within 20 days from the date that the transcript is received by the claimant, citing the possibility of slow mail. A clear fixed date set by OWCP is necessary to ensure that no bottlenecks are created in the claims adjudication process, and thus, the above suggestion has not been adopted.

Section 30.316(c)

A congressional representative, a labor organization and an advocacy group expressed concerns about the procedural mechanism by which any recommended decision that is still pending at the FAB for more than one year is deemed to be a final decision of the FAB. The labor organization believed that the FAB could take advantage of the mechanism by intentionally delaying issuing final decisions on claims, thereby rendering the opportunity to raise objections to the recommended decision moot. However, this mechanism actually protects claimants against excessive delay by the FAB because it ensures that claimants receive a final agency decision on their claims within a time certain, and permits them to seek judicial review, within a reasonable time following the issuance of a recommended decision. Further, as noted above, OWCP has established performance goals under the Government Performance and Results Act to monitor the efficiency of the claims adjudication process, and those performance goals also cover the activities of the FAB. There have been no demonstrated incidents of delay and therefore it does not appear necessary to modify this mechanism. Nevertheless, to more accurately reflect the FAB's current performance goals for issuing final decisions and to accommodate the changes regarding specific objections described above, the event that will commence the one-year period has been changed from the receipt of the case file from the district office to the receipt of the written submission described in § 30.310, or the expiration of the 60-day period in that same section in the absence of a written submission.

Section 30.318

Four congressional representatives, six labor organizations, two advocacy groups and one physician suggested that the regulations should permit claimants to challenge the dose reconstruction methodology before the FAB. This suggestion was not adopted because both the development and implementation of the dose reconstruction methodology have been established pursuant to regulations promulgated by HHS (42 CFR part 82) and are outside the scope of the Department's authority under E.O. 13179.

Section 30.320

One congressional representative, six labor organizations, five advocacy groups, and two physicians disagreed with the one-year period for claimants to seek modification set out in § 30.320, noting that it is likely that after the expiration of such period, there will be changes in the science related to dose reconstruction and the disclosure of previously unavailable exposure and employment information that might justify reopening of the claim. In addition, the same six labor organizations, three of the five advocacy groups, and one of the two physicians asserted that reopening of the claim or the filing of a new claim might be warranted where a claimant with a cancer claim is denied benefits but at a later date falls within a class of employees that is added to the SEC, as contemplated by section 7384q(b) of the EEOICPA. OWCP is persuaded by these comments; therefore, § 30.320 has been revised to abandon the one-year modification limitation for claimants. Revised § 30.320(b) allows claimants to ask OWCP to reopen their claims at any time if they submit new and material evidence of covered employment or exposure to radiation, beryllium or silica; or if they identify a material change in the probability of causation guidelines, a material change in the dose reconstruction methods or a material addition of a class of employees to the SEC that occurred after the FAB issued a final decision on their claim. If the required showing of materiality is met, the claim will be reopened and returned to the district office for a new determination on the merits of the claim. OWCP will closely coordinate with HHS and reopen cases on the Director's own authority under revised § 30.320(a) when factors such as changes in HHS methodology or the discovery of new relevant information warrants doing so (in those cases, it will

not be necessary for claimants to take any action to receive a new decision).

Section 30.400

One advocacy group and one commenter suggested that OWCP reimburse employees for medical expenses they incurred due to a covered occupational illness prior to the date they filed a claim for benefits with OWCP, while a lay representative generally urged that a broad scope of medical benefits should be made available to covered employees. The availability of medical benefits is governed by section 7384t of the Act, which explicitly states that eligibility to receive such benefits will commence no earlier than the date on which the claim is filed. Therefore, OWCP cannot alter this statutory limitation through regulation. In addition, § 30.400 already notes the broad scope of medical benefits that are payable under the Act, and provides that a covered employee is entitled to receive all medical treatment prescribed or recommended by a qualified physician that OWCP considers necessary to treat his or her covered illness. In light of this, it does not appear necessary to modify § 30.400 as requested.

Three other commenters suggested that OWCP issue medical benefits identification cards (similar to health insurance identification cards) to covered employees, to make it easier for such employees to obtain medical benefits. Subsequent to the promulgation of the interim final regulations, OWCP decided to utilize such cards. However, because medical benefits are only available for conditions covered by the Act, rather than for almost all conditions as is the case with health insurance, a covered employee's medical benefits identification card only lists the specific condition(s) for which medical benefits are available for that covered employee.

Section 30.403

Four labor organizations, four advocacy groups and one commenter suggested that family members be compensated for providing personal care services. Section 30.403 does not preclude family members from being paid for providing personal care services as long as they have received the necessary training. This will help ensure that covered employees are provided proper care for any medical conditions that are covered by the Act. Therefore, the regulation has not been changed.

Section 30.404

Four labor organizations, one advocacy group, one physician, and four individuals disagreed with the general travel limit of 25 miles set forth in § 30.404, noting that employees who reside in remote geographic areas where medical services are limited, or who require the services of a small number of recognized medical specialists, should not be denied reimbursement for travel of greater distances to obtain appropriate medical treatment. While OWCP's current policy is to take into consideration such demonstrated needs of individual claimants, the above comments indicate that there is a need to clarify the current rule. As modified, § 30.404(a) establishes a roundtrip distance of up to 200 miles as what OWCP will generally consider a reasonable distance to travel. Section 30.404(b) further provides that if travel of more than 200 miles is contemplated, or if air travel or overnight accommodations will be needed, the employee must request prior approval from OWCP demonstrating the circumstances and necessity for such travel.

Three labor organizations stated that § 30.404 should include information on where employees can obtain the standard form for requesting medical travel refunds. Section 30.404(c) indicates that the form can be obtained from OWCP.

One advocacy group and one individual commenter indicated that OWCP should pay the travel expenses of a person who accompanies an employee on a trip to obtain medical treatment. Under § 30.404, OWCP has the discretion to determine what travel expenses are ''reasonable and necessary,'' and prefers to maintain the flexibility to make such determinations on a case-by-case basis. Therefore, no change was made to this section.

One individual asserted that OWCP should compensate employees for any lost wages resulting from absences from work to undergo diagnostic testing, and other persons for any lost wages resulting from absences from work in order to accompany employees on medical visits to obtain diagnostic testing. As set forth in § 30.412 of the regulations, OWCP provides reimbursement for actual wages lost by employees for the time needed to submit to a second opinion or referee examination required by OWCP. As for the lost wages of persons accompanying employees, OWCP has the discretion under § 30.404 to determine if these constitute ''reasonable and necessary'' travel expenses and prefers to maintain the flexibility to make such determinations in individual situations. As a result, no change was made to this section.

Section 30.410

Four labor organizations and two advocacy groups did not believe that OWCP should have the authority to refer claimants to multiple ''second opinion'' medical examinations by physicians of its choosing, even at the government's expense. However, this authority is necessary to enable OWCP to obtain additional medical evidence in situations where a claimant has submitted some medical evidence in support of a claim, but the evidence is of insufficient probative value to allow the claimant to meet his or her burden of proof. If the claimant could not submit the additional evidence necessary to meet this burden, and OWCP could not obtain it through a second opinion examination, OWCP would have to deny the claim. Since it is OWCP's policy to assist claimants in the development of their claims, the authority to refer claimants for second opinion medical examinations is one of the tools OWCP needs to efficiently carry out this policy.

Three of these same four labor organizations and two different advocacy groups also suggested that claimants should be allowed to have someone other than a physician of their choosing present during a second opinion examination. The restriction on who may accompany claimants during these examinations was intended to minimize the possibility of disruptions, but given the nature of the claimant population and the likelihood of this occurring, OWCP is persuaded that the restriction is not necessary for all second opinion referrals. However, OWCP will retain the restriction for use if the person accompanying the claimant disrupts the examination and OWCP has to refer the claimant to a different physician for the requested second opinion examination.

Section 30.411

Three congressional representatives, five labor organizations, four advocacy groups and three commenters (two of whom are physicians) suggested that OWCP utilize a joint naming process whereby the claimant and OWCP would agree on a physician to perform a referee examination needed to resolve a conflict in the medical evidence. OWCP does not see the utility of this suggestion, especially since the EEOICPA claims adjudication process is non-adversarial and OWCP does not oppose a claim for benefits. Furthermore, this more

complex manner of selecting physicians to perform referee examinations would add to the length of time necessary to adjudicate the claim without providing any tangible benefit. Accordingly, the suggestion was not adopted, and OWCP will continue to select all physicians performing referee examinations from a pool of specialists (consisting of both Board-certified physicians and other qualified specialists) who have expressed a willingness to perform these types of examinations. OWCP selects physicians from the pool on a strict rotational basis according to medical specialty and geographic location, and periodically reviews the pool for quality control purposes and to allow other qualified physicians an opportunity to join the pool.

Three of these same five labor organizations and two of the same four advocacy groups also suggested that claimants should be allowed to have someone of their own choosing present during a referee examination. As was the case with second opinion examinations, the restriction against anyone accompanying a claimant during a referee examination was intended to minimize the possibility of disruptions, but given the nature of the claimant population and the likelihood of this occurring, OWCP is persuaded that the restriction is not necessary for all referee examination referrals. However, consistent with its decision regarding the limitation in § 30.410, OWCP will retain the restriction for use if the person accompanying the claimant disrupts the examination and OWCP has to refer the claimant to a different physician for the requested referee examination.

Section 30.412

One advocacy group suggested that OWCP consider paying for a family member to accompany all employees on any directed medical examinations that would necessitate either an overnight stay away from home or air transportation. OWCP does not consider a blanket rule of this sort to be justifiable, since it is clear that while many employees may be so infirm as to require somebody to accompany them to such an examination, it is equally clear that others will not. Therefore, OWCP prefers to maintain the discretion in this section to determine whether such expenses are ''reasonable and necessary,'' and the suggestion has not been adopted.

Sections 30.500, 30.501 and 30.502

A total of 143 comments addressed the description of how survivors are defined and paid in §§ 30.500, 30.501 and 30.502: Three from congressional representatives; eight from labor organizations; 10 from advocacy groups; four from physicians; four from attorneys; one from a lay representative; and 112 from other individuals. However, these comments were rendered moot following the enactment of section 3151(a)(4) of Public Law 107–107, which amended the survivor provisions in sections 7384s(e) and 7384u(e) of the EEOICPA. To conform the final regulations to the amended provisions, §§ 30.500 through 30.502 have been completely rewritten and the prior definition for ''widow or widower'' from § 30.5(gg) of the interim final regulations has been modified and consolidated with the other statutory definitions in § 30.500. As a result of the latter change, former § 30.5(hh) has been renumbered as § 30.5(gg) in the final regulations.

Section 30.505(c)

Two advocacy groups, one attorney and one commenter disagreed with the provision in § 30.505(c) (renumbered as § 30.505(b) in accordance with the revision noted above) for an offset of EEOICPA benefits against any amounts received for an occupational illness in a final judgment or settlement in litigation. This same commenter, and five other commenters, also questioned the justification for any offset of EEOICPA benefits. Section 7385 of the Act requires an offset of EEOICPA benefits if certain other payments have been received, and provides the necessary statutory justification for the offset process. However, section 7385 does not describe how this process should occur, and the above comments indicate the need for a more detailed description of how, and to what extent, OWCP will offset EEOICPA benefits. Therefore, § 30.505(b) now contains a more thorough definition of the type of payment that will necessitate an offset, and how OWCP will determine the value of any such payment. It also provides for deductions from the amount to be offset (for reasonable attorney's fees and itemized costs of suit) in order to arrive at the amount of the required offset of EEOICPA benefits. The regulation also provides that an offset will result in the reduction of an unpaid lump-sum payment first. Finally, this paragraph indicates that OWCP will not offset any EEOICPA benefits if a claimant has already had his or her benefits under section 5 of the RECA reduced to reflect a payment that would otherwise require an offset of EEOICPA benefits.

Section 30.505(d) and (f)

One lay representative inquired whether OWCP would pay survivor benefits in stages, or if it would wait until it was ready to pay all survivors of a single deceased covered employee at the same time. Section 30.505(d) (renumbered as § 30.505(c) in accordance with the revision noted above) provides that ''No payment shall be made until OWCP has made a determination concerning the survivors related to a respective claim for benefits.'' This restriction is necessary to conserve administrative resources and has been retained; however, there is no requirement that OWCP wait to actually pay all the survivors of a deceased covered employee at the same time. Accordingly, a survivor who signs and returns the acceptance form quickly may be paid his or her share of the compensation payment before another survivor who waits the full 60 days before signing and returning the form. In cases with multiple claimants, OWCP will determine the share of the lump-sum amount, if any, to which each survivor is entitled.

The same lay representative also questioned the prohibition in § 30.505(f) (renumbered as § 30.506(c) in accordance with the revision noted above) against distributing rejected shares of compensation payments to other eligible survivors. Sections 7384s(e)(1)(B) and 7384u(e)(1)(B) both require the payment of equal shares of a single compensation payment to ''all children of the covered employee who are living at the time of payment,'' not all children of the covered employee who are living at the time of payment and who do not reject their shares. Therefore, the prohibition against distributing rejected shares of compensation is established by the terms of the Act itself, and no change was made to this section.

Section 30.506

Two physicians, one advocacy group, one labor organization and one commenter had questions regarding the provision of medical benefits to covered employees whose sole occupational illness is beryllium sensitivity. Section 30.506 (renumbered as § 30.507 in accordance with the revision noted above) stated that these employees were not entitled to any medical benefits other than beryllium sensitivity monitoring. However, because section 7384s(a)(2) of the Act only replaces the lump-sum payment provided for under section 7384s(a)(1) with beryllium sensitivity monitoring and is silent with respect to entitlement to medical

benefits, covered employees whose sole occupational illness is beryllium sensitivity should be provided medical benefits for that condition. Therefore, § 30.507 has been revised to be consistent with this interpretation and now states that covered employees whose sole occupational illness is beryllium sensitivity are entitled to the same medical benefits provided to other covered employees. The estimated marginal cost of providing these benefits (which would usually be for low-cost prescription steroid medications) will be negligible from a budgetary standpoint.

Section 30.601

One lay representative commented on this section by asking who would represent mentally incompetent claimants, and if she could represent claimants in the EEOICPA claim process. Serving as a legal representative of a mentally incompetent person is a matter of state law and is thus outside the scope of these regulations. Section 30.601, which addresses the question of who may serve as a representative in the claims process, does not bar lay representatives from providing representation to EEOICPA claimants. On a related issue, three advocacy groups and three individuals submitted comments on the statutory attorney fees cap for representation of EEOICPA claimants. However, following publication of the interim final rule, Congress amended section 7385g of the Act in section 3151(a)(6) of Public Law 107–107. Therefore, new § 30.603 has been added to reflect the current statutory limits on attorney fees in amended section 7385g.

Section 30.609

One advocacy group disagreed with the requirement that claimants report (for possible offset of EEOICPA benefits) awards they receive due to medical malpractice in treating a covered occupational disease. However, since these awards are clearly payments ''made pursuant to a final award or settlement on a claim'' that has its genesis in an occupational illness covered by the Act, no change was made to this requirement so OWCP will be able to fulfill its offset responsibilities under section 7385 of the EEOICPA.

Sections 30.615 and 30.616

Two advocacy groups, two attorneys and three other commenters suggested possible changes to §§ 30.615 and 30.616 (rewritten as §§ 30.615 through 30.619 as noted above). These suggestions were rendered moot by section 3151(a)(5) of Public Law 107–107, which amended the election of remedy provisions in section 7385d of the EEOICPA. To conform the final regulations to these amendments, prior §§ 30.615 and 30.616 have been rewritten as §§ 30.615 through 30.619, and prior § 30.617 has been renumbered as § 30.620 to accommodate these changes.

Section 30.701(c)

One physician and one advocacy group noted that there is no diagnostic code for beryllium sensitivity in the ''International Classification of Disease, 9th Edition, Clinical Modification'' (ICD–9–CM), and that medical providers are required to provide such a code whenever they submit bills to OWCP for payment. To address this, OWCP has designated the V81.4 classification ''Other and unspecified respiratory conditions'' as the appropriate ICD–9–CM classification for beryllium sensitivity. Use of this code will both allow OWCP to track accepted beryllium sensitivity cases, and to pay medical providers for pre-approved diagnostic tests to monitor the employee for signs of chronic beryllium disease.

Sections 30.705 through 30.710

One advocacy group questioned OWCP's decision to base the medical fee schedule for professional medical services and inpatient medical services on cost data supplied by the Centers for Medicare and Medicaid Services (CMS) in light of the increased cost for those services in remote geographical areas. However, § 30.707(b) provides that the ''relative value units'' assigned by CMS to professional medical services will be multiplied by the Geographic Practice Cost Indices for Metropolitan Statistical Areas as devised for CMS, and this adjustment should be sufficient to accommodate increased costs for these services in remote areas. Further, § 30.710 indicates that the fee schedule for inpatient medical services will be based on hospital-specific cost factors that are part of the CMS Prospective Payment System OWCP will use to pay for hospital discharges. In either instance, the fee schedules may be adjusted if OWCP deems it necessary or appropriate. Therefore, the suggestion to use a different set of cost data was not adopted.

II. Miscellaneous Comments

Several of the 216 timely comments the Department received raised issues that either were not addressed in the interim final regulations or involved extraneous matters. The Department's analysis of these miscellaneous comments follows:

The Rulemaking Process

OWCP received comments from two labor organizations, four advocacy groups and one individual commenter on the rulemaking process. The various comments requested that public hearings be held on the regulations and that a formal advisory committee be appointed, and suggested that the interim final regulations be effective for a short time period, to be followed by a notice and comment period prior to publication of the final rule. Because of the time constraints set forth in E.O. 13179, which required publication of regulations by May 31, 2001 and the establishment of a functioning program by July 31, 2001, OWCP chose to publish an interim final rule without first publishing a notice of proposed rulemaking. However, because OWCP both understands and appreciates the importance of public input in the rulemaking process, it provided an extensive comment period of 120 days to receive input from the public on the regulations. Also, OWCP staff members participated in numerous public meetings across the United States to publicize and explain the Act and the regulations. All comments received during the comment period have been thoroughly reviewed and taken into consideration for purposes of the rulemaking process and publication of this final rule.

Unlike the requirements in 42 U.S.C. 7384n(c)(2) and (d)(2) that the regulations promulgated by HHS pursuant to section 7384n(b) and (d)(1) be reviewed by the Advisory Board on Radiation and Worker Health that was established as directed by section 7384o, there is no requirement in section 7384d that the regulations promulgated by DOL for the administration of the program be reviewed by any advisory board. As noted above, a lengthy period for public comments was provided in connection with the Interim Final Regulations, and regular and frequent communications occur with HHS and DOE. DOL also attends and participates in the public meetings of the Advisory Board on Radiation and Worker Health. Under these circumstances, DOL does not see the utility in adding an advisory committee to this rulemaking process.

Coordination of Benefits

Three individuals submitted comments suggesting that there be no coordination of benefits for claimants with beryllium illnesses, and three other individuals submitted general questions regarding coordination of benefits with State workers' compensation program

benefits. These comments involve the operation of section 7385h of the Act, which deals with the interplay between the Act, State law and private insurance contracts; however, OWCP did not address this issue in the interim final rule, nor does it do so in this final rule.

Designating Facilities

One attorney (in two separate comments), the City Council of the City of Niagara Falls, and eight individuals requested that the time frames indicated by DOE for certain facilities be expanded and/or that specific new facilities be included on the list of covered facilities maintained by DOE. These recommendations have been forwarded to DOE, which is actively soliciting information from the public as it continues its research efforts regarding facility time frames and additions or deletions to the covered facilities list.

Benefit Levels

One lay representative and eight other commenters made suggestions about the level of benefits to be provided to successful claimants. However, since the benefit levels are set by the terms of the Act, the regulations cannot adopt a different level of benefits unless the Act itself is amended. Accordingly, the suggested changes were not adopted.

Coverage

One congressional representative, two physicians, the Department of Defense, five advocacy groups, and 31 commenters made suggestions about which workers should be covered by the Act. However, the Act mandates the categories of workers covered and the regulations cannot be changed to either expand or restrict the categories of covered workers unless the Act is amended. Therefore, the suggested changes have not been made.

Covered Illnesses

Two advocacy groups, a physician, an attorney and 19 individuals suggested that the occupational illnesses covered by the Department's program be expanded to include additional illnesses that may have resulted from the exposure of employees to harmful substances while in the performance of duty at covered facilities under the Act. However, OWCP has no authority to implement any such changes in the absence of legislative changes to the Act. Furthermore, Part D of the Act already provides the opportunity for claimants to obtain assistance from DOE in filing for benefits under appropriate State workers compensation programs in connection with the exposure of DOE contractor employees to toxic substances at DOE facilities.

III. Publication in Final

The Department of Labor has determined, pursuant to 5 U.S.C. 553(b)(B), that good cause exists for waiving public comment on this final rule with respect to the following changes: (1) Those needed to conform the regulations to the sections of the EEOICPA that were amended by Public Laws 107–20 and 107–107; (2) those needed to conform the regulations to the probability of causation guidelines issued by HHS; (3) corrections of typographical errors; and (4) minor wording changes and clarifications that do not affect the substance of the regulations. For these changes, publication of a proposed rule and solicitation of comments would be neither necessary nor fruitful.

IV. Statutory Authority

Section 7384d of the EEOICPA provides the general statutory authority, which E.O. 13179 allocates to the Secretary, to prescribe rules and regulations necessary for the administration and enforcement of the Act. Sections 7384t and 7384u of the EEOICPA provide specific authority regarding medical treatment and care, including determining the appropriateness of charges. The Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701 *et seq.*), authorizes imposition of interest charges and collection of debts by withholding funds due the debtor.

V. Paperwork Reduction Act

This final rule contains information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA). The information collection requirements set out in §§ 30.401, 30.404, 30.420, 30.421, 30.700, 30.701 and 30.702(a) of this rule were submitted to and approved by OMB under the PRA, and the currently approved collections in OMB Control Nos. 1215–0054 (expires June 30, 2004), 1215–0055 (expires November 30, 2003), 1215–0137 (expires February 28, 2005), 1215–0176 (expires December 31, 2003), and 1215–0194 (expires January 31, 2004) were revised to include the added EEOICPA respondents. No public comments were received regarding this group of information collection requirements, and they were not affected by any of the substantive changes that have been made in this final rule.

The information collection requirements in §§ 30.100, 30.101, 30.102, 30.111, 30.113, 30.114, 30.206, 30.207, 30.212, 30.214, 30.215, 30.221, 30.222, 30.226, 30.415, 30.416, 30.417, 30.505, 30.620 and 30.702(b) of this rule were also submitted to and approved by OMB under the PRA and were assigned OMB Control No. 1215–0197 (expires July 31, 2004). No public comments were received regarding this second group of information collection requirements, and they were not affected by any of the substantive changes that have been made in this final rule. However, this final rule revises the currently approved collection in OMB Control No. 1215–0197 by adding three new information collection requirements, and this revision of a currently approved collection will be submitted to OMB for review under the PRA upon publication of the rule. 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 §§ 30.112 and 30.213, and they relate to information required to be submitted by claimants as part of the EEOICPA claims adjudication process. One of the new collections will be implemented without any specific form (see section A below). The Department is proposing to create two new forms to implement the other new collections (see sections B and C below).

A. Supplemental Employment Evidence (§ 30.112)

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. To do so, claimants submit either a Form EE–3 listing periods of alleged covered employment, or a Form EE–4 containing basic employment information in situations where specific employment information is not available. If the employment history provided on Form EE–3 or EE–4 cannot be verified, OWCP may ask the claimant to provide supplemental employment evidence in support of the alleged history. After it reviews the evidence of record on this point, OWCP will determine whether a period of covered employment has been established by a preponderance of the evidence.

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 3,870

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 30 minutes per response for a total annual burden of 1,935 hours.

B. Lung Cancer Information: Form EE/EN–8 (§ 30.213)

Summary: Guidelines issued by HHS require OWCP to ask claimants for information regarding the employee's smoking history before OWCP can determine the probability of causation for lung cancer (the disease classified as ''lung cancer'' includes primary cancer of both the trachea and bronchus). This information is not requested if the employee is a member of the Special Exposure Cohort. If the claim is for lung cancer (or a secondary cancer for which lung cancer is a likely primary cancer), OWCP will send the claimant a Form EE/EN–8. Form EE/EN–8 informs the claimant that to determine the probability of causation of the claimed cancer, OWCP needs to know the employee's smoking history, and requests that the claimant submit the necessary information. All respondents will be required to certify that the information provided on Form EE/EN–8 is accurate and true.

Need: OWCP cannot determine the probability of causation for lung cancer without this information.

Respondents and proposed frequency of response: It is estimated that 3,021 respondents annually will file one Form EE/EN–8.

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–8 is estimated to take an average of 5 minutes per response for a total annual burden of 252 hours.

C. Skin Cancer Information: Form EE/EN–9 (§ 30.213)

Summary: Guidelines issued by HHS require OWCP to ask claimants for information regarding the employee's race/ethnicity before OWCP can determine the probability of causation for skin cancer. If the claim involves skin cancer (or a secondary cancer for which skin cancer is a likely primary cancer), OWCP will send the claimant a Form EE/EN–9. Form EE/EN–9 informs the claimant that in order to determine the probability of causation of the claimed cancer, OWCP needs to know the employee's race/ethnicity, and requests that the claimant submit the necessary information. All respondents will be required to certify that the information provided on Form EE/EN–9 is accurate and true.

Need: OWCP cannot determine the probability of causation for skin cancer without this information.

Respondents and proposed frequency of response: It is estimated that 1,057 respondents annually will file one Form EE/EN–9.

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–9 is estimated to take an average of 5 minutes per response for a total annual burden of 88 hours.

D. Total Annual Burden and Request for Comments

Total public burden: The new information collection requirements being added to OMB Control No. 1215–0197 have a total public burden hour estimate of 2,275. Using the current National average hourly earnings of $14.00, the total annual public cost for these new information collection requirements is estimated to be $31,850.00. There are no recordkeeping or collection costs associated with the new information collection requirements described above. The only operation and maintenance cost will be for postage and mailing. An estimated annual total of 7,948 mailed responses to these new information collection requirements at $0.37 (postage) + $0.03 (envelope) per response would be $3,179.20.

Request for comments: The public is invited to provide comments on the above-noted revision to the currently approved collection in OMB Control No. 1215–0197 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 revision to the currently approved collection in OMB Control No. 1215–0197, 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 January 27, 2003.

VI. Executive Order 12866

This rule is being treated as a ''significant regulatory action'' within the meaning of E.O. 12866 because it is economically significant, as defined in section 3(f)(1) of that Order. 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 final 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. The Department has also concluded that this final rule constitutes a ''major rule,'' as that term is defined in the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 804(2)), because of the effect on the economy noted above.

Based upon the factors and assumptions set forth below, the Department's estimate of the aggregate cost of benefits and administrative expenses of this final regulatory action implementing the EEOICPA is, in millions of dollars (estimates for FY2004, FY2005 and FY2006 are preliminary and will be reviewed during the budget formulation process):

	FY2002	FY2003	FY2004	FY2005	FY2006
Admin	$136	$100	$55	$50	$33
Benefits	769	758	578	353	250

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 easily determined. These benefit estimates further reflect contemplated medical costs of $1,500 per year for 90% of the covered claimants, while the remaining 10% will incur $125,000 in 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 $3,000 per year for beryllium sensitivity, $4,000 per year for mild chronic beryllium disease, and $9,000 per year for more severe chronic beryllium disease. Benefit estimates for silicosis are based on figures obtained from DOE concerning the number of exposed employees and the expected incidence of silicosis, and medical costs of $4,000 per year. Benefit estimates for the claims based on the receipt of an award pursuant to section 5 of the RECA are based on figures for the number of claims provided by DOJ, and $4,000 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 this 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. As noted above, 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 statutory terms, those choices have no significant impact on the cost of this regulatory action because they do not involve either the number of eligible recipients or the level of benefits to which they are entitled.

OMB has reviewed this final 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 final rule prior to its effective date. The report will state that the Department has concluded that this final 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 final 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 final rule will have ''no significant economic impact upon a substantial number of small entities'' within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). 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 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 first two of these provisions essentially adopt 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 both the Government and providers. The Government will benefit because OWCP did not have to 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 providers 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 that are familiar to the providers. The third of these three provisions will not have an effect on a substantial number of ''small entities'' under Small Business Administration 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 19,479 claims OWCP estimates it will accept over the first five years of the program, only approximately 5,727 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 Reform)

This final rule has been drafted and reviewed in accordance with E.O. 12988 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 rule 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 13045 (Protection of Children From Environmental, Health Risks and Safety Risks)

In accordance with E.O. 13045, the Department has evaluated the environmental health and safety effects of this rule on children. The Department has determined that the final rule will have no effect on children.

XII. Executive Order 13132 (Federalism)

The Department has reviewed this final rule in accordance with E.O. 13132 and has determined that it does not have any ''federalism implications.'' The final 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.''

XIII. Executive Order 13211 (Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use)

In accordance with E.O. 13211, the Department has evaluated the effects of this final rule on energy supply, distribution or use, and has determined that this rule is not likely to have a significant adverse effect on them.

XIV. Submission to Congress and the General Accounting Office

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, 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).

XV. 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

Organization and functions (Government agencies).

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.

Authority: 5 U.S.C. 301, 8145 and 8149 (Reorganization Plan No. 6 of 1950, 15 FR 3174, 3 CFR, 1949–1953 Comp., p. 1004, 64 Stat. 1263); 42 U.S.C. 7384d; 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 Director who, under the general supervision of

the Assistant Secretary, administers the programs assigned to OWCP by the Assistant Secretary.

§ 1.2 What functions are assigned to OWCP?

The Assistant Secretary of Labor for Employment Standards has delegated authority and assigned responsibility to the Director of OWCP 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 of 2000, as amended (42 U.S.C. 7384 *et seq.*), 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 of Labor 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 of 2000.

§ 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, 3 CFR, 1949–1954 Comp., page 1010, 64 Stat. 1271), 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, 3 CFR, 1949–1953 Comp., page 1004, 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, was established in lieu of the Bureau of Employees' Compensation (39 FR 34722).

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

Subchapter C—Energy Employees Occupational Illness Compensation Program Act of 2000

PART 30–CLAIMS FOR COMPENSATION UNDER THE ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT OF 2000, AS AMENDED

Subpart A—General Provisions

Introduction

Definitions

Information in Program Records

Rights and Penalties

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

Claims for Occupational Illness—Employee or Survivor's Actions

Claims for Occupational Illness—Actions of DOE

Evidence and Burden of Proof

Authority: 5 U.S.C. 301; 31 U.S.C. 3716 and 3717; 42 U.S.C. 7384d, 7384t and 7384u; Executive Order 13179, 65 FR 77487, 3 CFR, 2000 Comp., p. 321; Secretary of Labor's Order No. 4–2001, 66 FR 29656.

Subpart A—General Provisions

Introduction

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

The Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA or Act), 42 U.S.C. 7384 *et seq.*, provides for the payment of compensation benefits to covered employees and, where applicable, survivors of such employees, of the United States Department of Energy (DOE), 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, as amended (RECA), 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, Executive Order 13179 and Secretary's Order No. 4–2001, the primary responsibility for administering the Act, except for those activities assigned to the Secretary of Health and Human Services, the Secretary of Energy and the Attorney General, has been delegated to the Assistant Secretary of Labor for Employment Standards. The Assistant Secretary, in turn, has delegated the responsibility for administering the Act to the Director of the Office of Workers' Compensation Programs (OWCP). Except as otherwise provided by law, the Director of OWCP and his or her designees have the exclusive authority to administer, interpret and enforce the provisions of the Act.

§ 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 assistance to claimants and potential claimants by providing information regarding eligibility and other program requirements, including information on completing claim forms and the types and availability of medical testing and diagnostic services related to covered illnesses. In addition, OWCP 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 has also promulgated regulations at 42 CFR part 81 establishing the guidelines that OWCP must follow 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 that are filed with OWCP, 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 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 hearing and reopening 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 of claimants before OWCP, subrogation of the United States, and the effect of tort suits 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, 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 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 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 a covered employee from the Energy Employees Occupational Illness Compensation Fund. However, the term ''compensation'' used in section 7385f(b) of the EEOICPA (with respect to entitlement to only one payment of compensation) means only the payments specified in section 7384s(a)(1) ($150,000 lump sum payment) and in section 7384u(a) ($50,000 payment to beneficiaries under section 5 of the RECA). 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 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 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 employee* means a covered beryllium employee (see § 30.205), a covered employee with cancer (*see* § 30.210), a covered employee with chronic silicosis (see § 30.220), or a covered uranium employee (see paragraph (q) of this section).

(q) *Covered uranium employee* means an individual who has been determined by DOJ to be entitled to an award under section 5 of the RECA, regardless of whether the individual was the employee or the deceased employee's survivor.

(r) *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.

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

(t) *Department of Energy or 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 E.O. 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.

(w) *Disability* means, for purposes of determining entitlement to payment 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.

(x) *Eligible surviving beneficiary* means any individual who is entitled under sections 7384s(e) or 7384u(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)(2) of the RECA and in the Act) 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.

(ee) *Survivor* means:

(1) Subject to paragraph (ee)(2) of this section, a surviving spouse, child, parent, grandchild and grandparent of a deceased covered employee.

(2) Those individuals listed in paragraph (ee)(1) 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.

(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 7384n(a) or 7384r(c) of the Act; 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 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.

(gg) *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 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 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 lump-sum payments of EEOICPA benefits to collect overdue alimony and child support. A request to garnish a lump-sum 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 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's regulations implementing the PFCRA 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 or a State government in connection with a claim for benefits under the Act 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 an employee to submit a Form EE–1 for OWCP to fully develop the claim. Copies of Form EE–1 may be obtained from OWCP, from DOE, or on the Internet at *www.dol.gov/esa/regs/compliance/owcp/eeoicp/main.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) The employee, or the person filing the claim on behalf of the employee, shall affirm that the information provided on the Form EE–1 is true, and must inform OWCP of any subsequent changes to that information.

(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) A 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 Act will be considered a claim. It will, however, be necessary for a survivor to submit a Form EE–2 for OWCP to fully develop the claim. Copies of Form EE–2 may be

obtained from OWCP, from DOE, or on the Internet at *www.dol.gov/esa/regs/compliance/owcp/eeoicp/main.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 development 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) The survivor, or the person filing the claim on behalf of the survivor, shall affirm that the information provided on the Form EE–2 is true, and must inform OWCP of any subsequent changes to that information.

(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) Claims 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 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 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 require 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. OWCP will accept photocopies, certified copies, and original documents and records.

(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 this section shall be construed to limit OWCP's ability to require additional documentation.

(c) If a claimant submits a certified statement, by a person with knowledge of the facts, that the medical records containing a diagnosis and date of diagnosis of a covered medical condition no longer exist, then OWCP may consider other evidence to establish a diagnosis and date of diagnosis of a covered medical condition. However, if the certified statement is a self-serving document, OWCP may reject the claim based upon a lack of evidence of a covered medical condition.

§ 30.114 What kind of evidence is needed to establish a covered medical condition and how will that evidence be evaluated?

(a) Evidence of a covered medical condition may include: A physician's report, laboratory reports, hospital records, death certificates, x-rays, magnetic resonance images or reports, computer axial tomography or other imaging reports, lymphocyte proliferation testings, beryllium patch tests, pulmonary function or exercise testing results, pathology reports including biopsy results and other medical records. A claimant is not required to submit all of the evidence listed in this paragraph. A claimant may submit other evidence that is not listed in this paragraph to establish a covered medical condition. Nothing in this section shall be construed to limit OWCP's ability to require additional documentation.

(b) The medical evidence submitted will be used to establish the diagnosis and the date of diagnosis of the covered medical condition.

(1) For covered beryllium illnesses, additional medical evidence, as set forth in § 30.207, is required to establish a beryllium illness.

(2) For chronic silicosis, additional medical evidence, as set forth in § 30.222, is required to establish chronic silicosis.

(3) For consequential injuries or illnesses, the claimant must also submit a physician's fully rationalized medical report showing the causal relationship between the resulting illness or injury and the covered medical condition.

(c) OWCP will evaluate the medical evidence in accordance with recognized and accepted diagnostic criteria used by physicians to determine whether the claimant has established the medical condition for which compensation is sought in accordance with the requirements of the Act.

Special Procedures for Certain Cancer Claims

§ 30.115 For those claims that do not seek benefits pursuant to the Special Exposure Cohort provisions, what will OWCP do once it determines that a covered employee (or a survivor of such an employee) has established that he or she contracted cancer under § 30.211?

(a) Other than claims solely for a non-radiogenic cancer listed by HHS at 42 CFR 81.30, 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, development 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 provide OWCP, DOE and the claimant with the final dose reconstruction report. The final dose reconstruction record will be delivered to OWCP with the final dose reconstruction report and to the claimant upon request.

(b) 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 of this part.

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 7384l, 7384n, 7384s and 7384t of the Act; for claims relating to employees with cancer under sections 7384l, 7384n, 7384q and 7384t of the Act; for claims relating to chronic silicosis under sections 7384l, 7384r, 7384s and 7384t; and for claims relating to covered uranium employees under sections 7384t and 7384u. 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 both paragraphs (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 part) 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, during a period when beryllium dust, particles, or vapor may have been present at such a facility:

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

(ii) Present at a DOE facility, or at a facility owned, operated, or occupied 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. Under this paragraph, exposure to beryllium in the performance of duty can be established whether or not the beryllium that may have been present at such facility was produced or processed for sale to, or use by, DOE.

(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 employee 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, operated, or occupied by a beryllium vendor, because of employment by the United States, a beryllium vendor, or a contractor or subcontractor of a beryllium vendor 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 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) If the evidence shows that exposure occurred while the employee was employed or present at a facility during a time frame that is outside the relevant time frame indicated for that facility by DOE, OWCP may request that DOE provide additional information on the facility. OWCP will determine whether the evidence of record supports enlarging the relevant time frame for that facility.

(c) If the evidence shows that exposure occurred while the employee was employed or present at a facility that would have to be designated by DOE as a beryllium vendor under section 7384m of the Act to be a covered facility, and that the facility has not been so designated, OWCP will deny the claim on the ground that the facility is not a covered facility.

(d) 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 7384m 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 a 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), or (d) 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 a 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.

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 § 30.5(dd) of this part; and

(1) Is a member of the Special Exposure Cohort (as described in § 30.214(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 § 30.214(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)(i) Is/was a DOE employee who contracted that cancer after beginning employment at a DOE facility; or

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

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

(2) 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 employee contracted cancer after beginning employment at a DOE facility or an atomic weapons employer 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, may be made by the submission of any trustworthy 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.

(b) If the evidence shows that exposure occurred while the employee was employed at a facility during a time frame that is outside the relevant time frame indicated for that facility by DOE, OWCP may request that DOE provide additional information on the facility. OWCP will determine whether the evidence of record supports enlarging the relevant time frame for that facility.

(c) If the evidence shows that exposure occurred while the employee was employed by an employer that would have to be designated by DOE as an atomic weapons employer under section 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 weapons employer.

(d) 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.

§ 30.213 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, has issued 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 at 42 CFR part 81. Claimants should consult those guidelines for information regarding the type of evidence that will be considered by OWCP, in addition to the employee's radiation dose reconstruction that will be provided by HHS, in making this determination.

§ 30.214 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(a), the employee must have been a DOE employee, a 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 1, 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 an 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 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. If the evidence shows that exposure occurred while the employee was employed by an employer that would have to be designated by DOE as an atomic weapons employer under section 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 weapons employer.

(d) 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.

§ 30.215 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 Claims Relating to Chronic Silicosis

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

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

(a) The employee is a DOE employee, or a DOE contractor employee, who was present for a number of workdays aggregating at least 250 workdays 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 has been diagnosed with chronic silicosis (as defined in § 30.5(j)); or

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

§ 30.221 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 or experiments related to an atomic weapon may be made by the submission of any trustworthy 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) If the evidence shows that exposure occurred while the employee was employed and present at a facility during a time frame that is outside the relevant time frame indicated for that facility by DOE, OWCP may request that DOE provide additional information on the facility. OWCP will determine whether the evidence of record supports enlarging the relevant time frame for that facility.

(c) 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.

(d) For purposes of satisfying the 250 workday requirement of § 30.220(a), the claimant may aggregate the days of service at more than one qualifying site.

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

(a) 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 one of the following:

(1) 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

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

(3) Lung biopsy findings consistent with silicosis.

(b) An injury, illness, impairment or disability sustained as a consequence of accepted chronic silicosis covered by the provisions of § 30.220(a) 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 accepted chronic silicosis. Neither the fact that the injury, illness, impairment or disability manifests itself after a diagnosis of accepted chronic silicosis, nor the belief of the claimant that the injury, illness, impairment or disability was caused by the accepted chronic silicosis, is sufficient in itself to prove a causal relationship.

Eligibility Criteria for Certain Uranium Employees

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

In order to be eligible for benefits under this section, the claimant must establish the criteria set forth in either paragraph (a) or paragraph (b) of this section:

(a) The Attorney General has determined that the claimant is a covered uranium employee who is entitled to payment of $100,000 as compensation due under section 5 of the RECA for a claim made under that statute (there is, however, no requirement that the claimant or surviving eligible beneficiary has actually received payment pursuant to the RECA). If a deceased employee's survivor has been determined to be entitled to such an award, his or her survivor(s), if any, will only be entitled to EEOICPA compensation in accordance with section 7384u(e) of the Act.

(b) The covered uranium employee has been diagnosed with an illness or disease that arose as a consequence of the medical condition for which he or she was determined to be entitled to payment of $100,000 as compensation due under section 5 of the RECA.

§ 30.226 How does a claimant establish that a covered uranium employee has sustained a consequential injury, illness or disease?

An injury, illness, impairment or disability sustained as a consequence of a medical condition covered by the provisions of § 30.225(a) 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 accepted medical condition. Neither the fact that the injury, illness, impairment or disability manifests itself after a diagnosis of a medical condition covered by the provisions of § 30.225(a), nor the belief of the claimant that the injury, illness, impairment or disability was caused by such a condition, is sufficient in itself to prove a causal relationship.

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 before the FAB. 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), any 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 a notice of the claimant's right to file objections with, and request a hearing before, the FAB.

§ 30.307 To whom is the recommended decision sent?

(a) 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.

(b) 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.

Hearings and Final Decisions on Claims

§ 30.310 What must the claimant do if he or she objects to the recommended decision or wants to request a hearing?

(a) Within 60 days from the date the recommended decision is issued, the claimant must state, in writing, whether he or she objects to any of the findings of fact and/or conclusions of law contained in such decision, including HHS's reconstruction of the radiation dose to which the employee was exposed (if any), and whether a hearing is desired. This written statement should be filed with the FAB at the address indicated in the notice accompanying the recommended decision.

(b) For purposes of determining whether the written statement referred to in paragraph (a) of this section has been timely filed with the FAB, the statement will be considered to be ''filed'' on the date that the claimant mails it to the FAB, as determined by postmark, or on the date that such written statement is actually received by the FAB, whichever is the earliest determinable date.

§ 30.311 What happens if the claimant does not object to the recommended decision or request a hearing within 60 days?

(a) If the claimant does not file a written statement that objects to the recommended decision and/or requests a hearing within the period of time allotted in § 30.310, the FAB may issue a final decision accepting the recommendation of the district office as provided in § 30.316.

(b) If the recommended decision accepts all or part of a claim for compensation, the FAB may issue a final 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 will the FAB do if the claimant objects to the recommended decision but does not request a hearing?

If the claimant files a written statement that objects to the recommended decision within the period of time allotted in § 30.310 but does not request a hearing, the FAB will consider any objections by means of a review of the written record. If the claimant only objects to part of the recommended decision, the FAB may issue a final decision accepting the remaining part of the recommendation of the district office 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 consider the written 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 written statement that objects to the recommended decision, 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.

(c) Any objection that is not presented to the FAB reviewer, including any objection to HHS's reconstruction of the radiation dose to which the employee was exposed (if any), whether or not the pertinent issue was previously presented to the district office, is deemed waived for all purposes.

§ 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. As part of the hearing process, the FAB reviewer will consider the written 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.

(1) The FAB reviewer will try to set the hearing at a place that is within commuting distance of the claimant's residence, but will not be able to do so in all cases. Therefore, for reasons of economy, the claimant may be required to travel a roundtrip distance of up to 200 miles to attend the hearing.

(2) In unusual circumstances, the FAB reviewer may set a place for the hearing that is more than 200 miles roundtrip from the claimant's residence. However, in that situation, OWCP will reimburse the claimant for reasonable and necessary travel expenses incurred to attend the hearing if he or she submits a written reimbursement request that documents such expenses.

(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 hearing date. If the claimant only objects to part of the recommended decision, the FAB reviewer may issue a final decision accepting the remaining part of the recommendation of the district office without first holding a hearing (see § 30.316). Any objection that is not presented to the FAB reviewer, including any objection to HHS's reconstruction of the radiation dose to which the employee was exposed (if any), whether or not the pertinent issue was previously presented to the district office, is deemed waived for all purposes.

(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 the hearing is requested. 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, it 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 one of the tests of paragraph (b) of this section and cannot be accommodated on the same docket, no further opportunity for a hearing will be provided. Instead, the FAB will consider the claimant's objections 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 claimant does not file a written statement that objects to the recommended decision and/or requests a hearing within the period of time allotted in § 30.310, or if the claimant waives any objections to all or part of the recommended decision, the FAB may issue a final decision accepting the recommendation of the district office, either in whole or in part (see §§ 30.311, 30.312 and 30.314(b)).

(b) If the claimant objects to all or part of the recommended decision, the FAB reviewer will issue a final 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 received the written statement that objected to the recommended decision and/or requested a hearing shall be considered a final decision of the FAB on the one-year anniversary of such date. Any recommended decision described in § 30.311 that is pending at the FAB for more than one year from the date that the period of time described in § 30.310 expired shall be considered a final decision of 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 date of issuance of such decision, unless a timely request for reconsideration under § 30.319 has been filed.

(e) A copy of the final 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 final 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 final 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 final decision, whether or not requested to do so by the claimant.

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

(a) If the claimant objects to HHS's reconstruction of the radiation dose to which the employee was exposed, the FAB will evaluate the factual findings upon which HHS based its dose reconstruction. If these factual findings do not appear to be supported by substantial evidence, the claim 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 at 42 CFR part 82, 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 final decision of the FAB?

(a) A claimant may request reconsideration of a final decision of the FAB by filing a written request with the FAB within 30 days from the date of issuance of such decision. If a timely request for reconsideration is made, the decision in question will no longer be considered ''final'' under § 30.316(d).

(b) For purposes of determining whether the written request referred to in paragraph (a) of this section has been timely filed with the FAB, the request will be considered to be ''filed'' on the date that the claimant mails it to the FAB, as determined by postmark, or on the date that such written request is actually received by the FAB, whichever is the earliest determinable date.

(c) If the FAB grants the request for reconsideration, it will consider the written record of the claim again and issue a new final 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 considered ''final'' on the date the request is denied.

(d) A claimant may not seek judicial review of a decision on his or her claim under the EEOICPA until OWCP's decision on the claim is final pursuant to § 30.316(d).

Reopening Claims

§ 30.320 Can a claim be reopened after the FAB has issued a final decision?

(a) At any time after the FAB has issued a final decision pursuant to § 30.316, and without regard to whether new evidence or information is presented or obtained, the Director for Energy Employees Occupational Illness Compensation may reopen a claim and return it to the district office for such further development as may be necessary, to be followed by a new recommended decision. The Director may also vacate any other type of decision issued by the FAB.

(b) At any time after the FAB has issued a final decision pursuant to § 30.316, a claimant may file a written request that the Director for Energy Employees Occupational Illness Compensation reopen his or her claim, provided that the claimant also submits new evidence of either covered employment or exposure to radiation, beryllium or silica, or identifies either a change in the probability of causation guidelines, a change in the dose reconstruction methods or an addition of a class of employees to the Special Exposure Cohort.

(1) If the Director concludes that the evidence submitted or matter identified in support of the claimant's request is material to the claim, the Director will reopen the claim and return it to the district office for such further development as may be necessary, to be followed by a new recommended decision.

(2) New evidence of a medical condition described in subpart C of these regulations is not sufficient to support a written request to reopen a claim for such a condition under paragraph (b) of this section.

(c) The decision whether or not to reopen a claim under this section is solely within the discretion of the Director for Energy Employees Occupational Illness Compensation and is not reviewable. If the Director reopens a claim pursuant to paragraphs (a) or (b) of this section, the resulting new recommended decision will be subject to the adjudicatory process described in this subpart. However, neither the district office nor the FAB can consider any objection concerning the Director's decision to reopen a claim under this section.

Subpart E—Medical and Related Benefits

Medical Treatment and Related Issues

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

(a) A 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. When a survivor receives payment, OWCP will pay for such treatment if the covered employee died before the claim was paid. 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 7384t of the Act, 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?

(a) 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, a roundtrip distance of up to 200 miles is considered a reasonable distance to travel.

(b) If travel of more than 200 miles is contemplated, or air transportation or overnight accommodations will be needed, the employee must submit a written request to OWCP for prior approval with information describing the circumstances and necessity for such travel expenses. OWCP will approve the request if it determines that the travel expenses are reasonable and necessary. Requests for travel expenses that are often approved include those resulting from referrals to a specialist for further medical treatment, and those involving air transportation of an employee who lives in a remote geographical area with limited local medical services.

(c) The standard form designated for medical travel refund requests is Form OWCP–957 and should be used to seek reimbursement under this section. This form can be obtained from OWCP.

§ 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 the 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?

(a) 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. Also, OWCP may send a case file for second opinion review where an actual examination is not needed, or where the employee is deceased.

(b) If the initial examination is disrupted by someone accompanying the employee, OWCP will schedule another examination with a different qualified physician. The employee will not be entitled to have anyone else present at the subsequent 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.

§ 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. 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.

(c) If the initial referee examination is disrupted by someone accompanying the employee, OWCP will schedule another examination with a different qualified physician. The employee will not be entitled to have anyone else present at the subsequent referee 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.

§ 30.412 Who pays for second opinion and referee examinations?

OWCP will pay second opinion and referee medical specialists directly. OWCP will also 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 general, medical reports from the employee's attending physician should include the following:

(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 medical reports 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?

For the purposes of paying compensation to survivors, EEOICPA applies the following definitions:

(a) *Surviving spouse* means the wife or husband of a deceased covered employee who was married to that individual for at least one year immediately before the death of that individual.

(b) *Child or children* includes a recognized natural child of a deceased covered employee, a stepchild who lived with that individual in a regular parent-child relationship, and an adopted child of that individual.

(c) *Parent* includes fathers and mothers of a deceased covered employee through adoption.

(d) *Grandchild* means a child of a child of a deceased covered employee.

(e) *Grandparent* means a parent of a parent of a deceased covered employee.

§ 30.501 What order of precedence will OWCP use to determine which survivors are entitled to receive compensation under the EEOICPA?

If OWCP determines that a survivor or survivors are entitled to receive compensation under the 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 a surviving spouse, the compensation shall be paid to that individual.

(b) If there is no surviving spouse, the compensation shall be paid in equal shares to all children of the deceased covered employee.

(c) If there is no surviving spouse and no children, the compensation shall be paid in equal shares to the parents of the deceased covered employee.

(d) If there is no surviving spouse, no children and no parents, the compensation shall be paid in equal shares to all grandchildren of the deceased covered employee.

(e) If there is no surviving spouse, no children, no parents and no grandchildren, the compensation shall be paid in equal shares to the grandparents of the deceased covered employee.

(f) Notwithstanding the other paragraphs of this section, if there is a surviving spouse and at least one child of the deceased covered employee who is a minor at the time of payment and who is not a recognized natural child or adopted child of such surviving spouse, half of the compensation shall be paid to the surviving spouse, and the other half of the compensation shall be paid in equal shares to each child of the deceased covered employee who is a minor at the time of payment.

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

Entitlement to any lump-sum payment for survivors under the EEOICPA will be determined as of the time OWCP makes such a payment.

Payment of Claims and Offset for Certain Payments

§ 30.505 What procedures will OWCP follow before it pays any compensation?

(a) In cases involving the approval of a claim, OWCP shall take all necessary steps to determine the amount of any offset of EEOICPA benefits, and to verify the identity of the covered employee or the eligible surviving beneficiary or beneficiaries. To perform these tasks, OWCP may conduct any investigation, require any claimant 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 or persons. OWCP shall also require every claimant to execute and provide any necessary affidavit described in § 30.620 of these regulations. Should a claimant fail or refuse to execute an affidavit or release of information, or fail or refuse to provide a requested record or document or to provide access to information, such failure or refusal may be deemed to be a rejection of the

payment, unless the claimant does not have and cannot obtain the legal authority to provide, release, or authorize access to the required information, records, or documents.

(b) To determine the amount of any offset, OWCP shall require the covered employee or each eligible surviving beneficiary filing a claim under this part to execute and provide an affidavit (or declaration made under oath on Form EE–1 or EE–2) reporting the amount of any payment made pursuant to a final judgment or settlement in litigation (other than litigation for workers' compensation) seeking damages for any occupational illnesses covered by the EEOICPA. Even if someone other than the covered employee receives a payment pursuant to a final judgment or settlement in litigation seeking damages for any occupational illness covered by the EEOICPA (*e.g.*, the surviving spouse of a deceased covered employee), the receipt of any such payment must be reported since it constitutes a payment solely for an occupational illness covered by the EEOICPA.

(1) For the purposes of this paragraph only, ''litigation seeking damages'' refers to any request or demand for money by the covered employee, or by another individual if the covered employee is deceased, made or sought in a civil action or in anticipation of the filing of a civil action, solely for any occupational illness covered by the EEOICPA. This term does not also include any request or demand for money made or sought pursuant to a life insurance or health insurance contract, or any request or demand for money made or sought by an individual other than the covered employee in that individual's own right (*e.g.*, a spouse's claim for loss of consortium), or any request or demand for money made or sought by the covered employee or the estate of a deceased covered employee not for any occupational illness covered by the EEOICPA (*e.g.*, a covered employee's claim for damage to real or personal property).

(2) If a payment has been made pursuant to a final judgment or settlement in litigation seeking damages, OWCP shall subtract a portion of the dollar amount of such payment from the benefit payments to be made under the EEOICPA. OWCP will calculate the amount to be subtracted from the benefit payments in the following manner:

(i) OWCP will first determine the value of the payment made pursuant to either a final judgment or settlement in litigation seeking damages by adding the dollar amount of any monetary damages (other than contingent awards) and any medical expenses for treatment provided on or after the date the covered employee filed a claim for EEOICPA benefits that were paid for under the final judgment or settlement. In the event that these payments include a ''structured'' settlement (where a party makes an initial cash payment and also arranges, usually through the purchase of an annuity, for payments in the future), OWCP will usually accept the cost of the annuity to the purchaser as the dollar amount of the right to receive the future payments.

(ii) OWCP will then make certain deductions from the above dollar amount to arrive at the dollar amount to be subtracted from any unpaid EEOICPA benefits. Allowable deductions consist of attorney's fees OWCP deems reasonable, and itemized costs of suit (out-of-pocket expenditures not part of the normal overhead of a law firm's operation like filing fees, travel expenses, witness fees, and court reporter costs for transcripts) provided that adequate supporting documentation is submitted to OWCP.

(iii) The EEOICPA benefits that will be reduced will consist of any unpaid lump-sum payments and medical benefits payable in the future. In those cases where it has not yet paid EEOICPA benefits, OWCP will reduce such benefits on a dollar-for-dollar basis, beginning with the lump-sum payment first. If the amount to be subtracted exceeds the lump-sum payment, OWCP will reduce ongoing EEOICPA medical benefits payable in the future by the amount of any remaining surplus. This means that OWCP will apply the amount it would otherwise pay to reimburse the covered employee for any ongoing EEOICPA medical treatment to the remaining surplus until it is absorbed. In addition to this reduction of ongoing EEOICPA medical benefits, OWCP will not be the first payer for any medical expenses that are the responsibility of another party (who will instead be the first payer) as part of a final judgment or settlement in litigation seeking damages.

(3) The above reduction of EEOICPA benefits will not occur if an EEOICPA claimant has had his or her award under section 5 of the RECA reduced by the full amount of a payment made pursuant to a final judgment or settlement in litigation seeking damages. In that case, OWCP will not reduce EEOICPA benefits by the same amount (but will reduce EEOICPA benefits by the amount of any surplus final judgment or settlement payment that remains).

(c) Except as provided in § 30.506(b) of these regulations, when OWCP has verified the identity of every claimant who is entitled to the compensation payment, or to a share of the compensation payment, and has determined the correct amount of the payment or the share of the payment, OWCP shall notify every claimant, or every person with power of attorney for a claimant, and require such person or persons to sign a Form EE–20 indicating acceptance of the payment. Such form shall be signed and returned to OWCP within sixty days of the date of the form or within such greater period as may be allowed by OWCP. Failure to sign and return the 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 payment, in which case the person who then receives 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.

§ 30.506 To whom and in what manner will OWCP pay compensation?

(a) Except with respect to claims related to beryllium sensitivity, payment shall be made to the covered employee, or to the person with power of attorney for the covered employee, unless the covered employee is deceased at the time of the payment. In all cases involving a deceased covered employee, payment shall be made to the eligible surviving beneficiary or beneficiaries, or to every person with power of attorney for an eligible surviving beneficiary, in accordance with the terms and conditions specified in sections 7384s(e) and 7384u(e) of the EEOICPA.

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

(c) Rejected compensation payments, or shares of compensation payments, shall not be distributed to other eligible surviving beneficiaries, but shall be returned to the Fund.

(d) No covered employee may receive more than one lump-sum payment under these regulations for any occupational illnesses he or she contracted. However, any individual, including a covered employee who has received a lump-sum payment for his or her own occupational illness, may receive one lump-sum payment for each deceased covered employee for whom he or she qualifies as an eligible surviving beneficiary.

§ 30.507 What compensation will be provided to covered employees who only establish beryllium sensitivity?

The establishment of beryllium sensitivity does not entitle a covered employee, or the eligible surviving beneficiary or beneficiaries of a deceased covered employee, to any lump-sum payment provided for under the EEOICPA. Instead, a covered employee whose sole occupational illness is beryllium sensitivity shall receive beryllium sensitivity monitoring, as well as medical benefits for the treatment of this occupational illness in accordance with § 30.400 of these regulations.

§ 30.508 What is beryllium sensitivity monitoring?

Beryllium sensitivity monitoring shall consist of medical examinations to confirm and monitor the extent and nature of a covered employee's beryllium sensitivity. Monitoring shall also include regular medical examinations, with diagnostic testing, to determine if the covered employee 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, 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 7384s or 7384u 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 (31 U.S.C. 3701 *et seq.*), 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 a 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.

(1) 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.

(2) A representative does not have authority to sign the Form EE–20, described in § 30.505(c) of these regulations, which indicates acceptance of a compensation payment.

§ 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.

§ 30.603 Are there any limitations on what the representative may charge the claimant for his or her services?

(a) Notwithstanding any contract, the representative may not receive, for services rendered in connection with the claim, more than the percentages of the lump-sum payment made to the claimant set out in paragraph (b) of this section.

(b) The percentages referred to in paragraph (a) of this section are:

(1) 2 percent for the filing of an initial claim with OWCP; plus

(2) 10 percent with respect to objections to a recommended decision denying payment of lump-sum compensation.

(c) Any representative who violates this section shall be fined not more than $5,000.

(d) The fee limitations described in this section shall not apply with

respect to representative services that are not rendered in connection with a claim pending before OWCP.

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 Act, 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 which the United States is entitled to offset 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.

Effect of Tort Suits Against Beryllium Vendors and Atomic Weapons Employers

§ 30.615 What type of tort suits filed against beryllium vendors or atomic weapons employers may disqualify certain claimants from receiving benefits under EEOICPA?

Section 7385d of the EEOICPA provides that a tort suit (other than an administrative or judicial proceeding for workers' compensation) solely for injuries arising out of an exposure to beryllium or radiation covered by the EEOICPA, filed against a beryllium vendor or an atomic weapons employer, by a covered employee, or an eligible surviving beneficiary or beneficiaries of a deceased covered employee without an independent cause of action, will disqualify that individual or individuals from receiving benefits under the EEOICPA unless the suit is terminated in accordance with the requirements of §§ 30.616 through 30.619 of these regulations.

§ 30.616 What happens if this type of tort suit was filed prior to October 30, 2000?

(a) If a tort suit described in § 30.615 was filed prior to October 30, 2000, the claimant or claimants will not be disqualified from receiving any EEOICPA benefits to which they may be found entitled if the tort suit was terminated in any manner prior to December 28, 2001.

(b) If a tort suit described in § 30.615 was filed prior to October 30, 2000 and was pending as of December 28, 2001, the claimant or claimants will be disqualified from receiving any EEOICPA benefits unless they dismiss the tort suit prior to December 31, 2003.

§ 30.617 What happens if this type of tort suit was filed during the period from October 30, 2000 through December 28, 2001?

(a) If a tort suit described in § 30.615 was filed during the period from October 30, 2000 through December 28, 2001, the claimant or claimants will be disqualified from receiving any EEOICPA benefits unless they dismiss the tort suit on or before the last permissible date described in paragraph (b) of this section.

(b) The last permissible date is the later of:

(1) April 30, 2003; or

(2) The date that is 30 months after the date the claimant or claimants first became aware that an illness of the covered employee may be connected to his or her exposure to beryllium or radiation covered by the EEOICPA. For purposes of determining when this 30-month period begins, ''the date the claimant or claimants first became aware'' will be deemed to be the date they received either a reconstructed dose from HHS, or a diagnosis of a covered beryllium illness, as applicable.

§ 30.618 What happens if this type of tort suit is filed after December 28, 2001?

(a) If a tort suit described in § 30.615 is filed after December 28, 2001, the claimant or claimants will be disqualified from receiving any EEOICPA benefits if a final court decision is entered against them.

(b) If a tort suit described in § 30.615 is filed after December 28, 2001 and a final court decision has not yet been entered against the claimant or claimants, they will also be disqualified from receiving any EEOICPA benefits unless they dismiss the tort suit on or before the last permissible date described in paragraph (c) of this section.

(c) The last permissible date is the later of:

(1) April 30, 2003; or

(2) The date that is 30 months after the date the claimant or claimants first became aware that an illness of the covered employee may be connected to his or her exposure to beryllium or radiation covered by the EEOICPA. For purposes of determining when this 30-month period begins, ''the date the claimant or claimants first became aware'' will be deemed to be the date they received either a reconstructed dose from HHS, or a diagnosis of a covered beryllium illness, as applicable.

§ 30.619 Do all the parties to this type of tort suit have to take these actions?

The type of tort suits described in § 30.615 may be filed by more than one individual, each with a different cause of action. For example, a tort suit may be filed against a beryllium vendor by both a covered employee and his or her spouse, with the covered employee filing for chronic beryllium disease and the spouse filing for loss of consortium due to the covered employee's exposure to beryllium. However, since the spouse of a living covered employee could not be an eligible surviving beneficiary under the EEOICPA, the spouse would not have to comply with the termination requirements of §§ 30.616 through 30.618. A similar result would occur if a tort suit were filed by both the spouse of a deceased covered employee and other family members (such as children of the deceased covered employee). In this case, the spouse would be the only eligible surviving beneficiary of the deceased covered employee under the EEOICPA because the other family members could not be eligible for benefits while he or she was alive. As a result, the spouse would be the only party to the tort suit who would have to comply with the termination requirements of §§ 30.616 through 30.618.

§ 30.620 How will OWCP ascertain whether a claimant filed this type of tort suit and if he or she has been disqualified from receiving any benefits under the EEOICPA?

Prior to authorizing payment on a claim, OWCP will require each claimant to execute and provide an affidavit stating if he or she filed a tort suit (other than an administrative or judicial proceeding for workers' compensation) against either a beryllium vendor or an atomic weapons employer, solely for injuries arising out of an exposure to beryllium or radiation covered by the EEOICPA, and if so, the current status of such tort suit. OWCP may also require the submission of any supporting evidence 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 Form OWCP–1500 or CMS–1500 (for professional charges), Form OWCP–92 or UB–92 (for hospitals), Form 79–1A (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 Centers for Medicare and Medicaid Services Common Procedure Coding System (CCPCS) 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 Form OWCP–92 or UB–92. The provider shall identify each outpatient radiology service, outpatient pathology service and physical therapy service performed, using CCPCS/CPT codes with a brief narrative description. The charge for each individual service, or the total charge for all identical services, should also appear on the form.

(ii) Other outpatient hospital services for which CCPCS/CPT codes exist shall also be coded individually using the coding scheme noted in this section. Services for which there are no CCPCS/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 CCPCS/CPT codes and furnishing the corresponding diagnostic codes using the ICD–9–CM.

(2) Pharmacies shall itemize charges for prescription medications, appliances, or supplies on Form 79–1A 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 Form OWCP–1500 or CMS–1500 (for physicians), Form OWCP–92 or UB–92 (for hospitals), or Form 79–1A (for pharmacies); contain the signature or signature stamp of the provider; and identify the procedures using CCPCS/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 Form OWCP–1500 or CMS–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 CCPCS/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 CCPCS/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 CCPCS/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 Centers for Medicare and Medicaid Services (CMS).

(b) OWCP shall assign the relative value units (RVUs) published by CMS to all services for which CMS 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 CMS and as updated or revised by CMS from time to time. OWCP will devise conversion factors for each category of service, and in doing so may adapt CMS 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 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 CMS (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 CMS 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 CMS in the form of their PPS Pricer software program. The software takes into consideration the type of facility, census division, actual geographic location 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 CMS 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 CMS'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 on the Internet at *www.dol.gov/esa/regs/compliance/owcp/eeoicp/main.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 OWCP 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 OWCP representative named pursuant to § 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) CMS; 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 13th day of December, 2002.

Elaine L. Chao,

Secretary of Labor.

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