

# EEOICPA BULLETINS

## 2015 EEOICP Final Bulletins

### 15-01 New guidance for expedited processing for Form SSA-581 (Authorization to Obtain Earnings Data from the Social Security Administration)

EEOICPA BULLETIN NO. 15-01

Issue Date: October 15, 2014

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Effective Date: October 15, 2014

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Expiration Date: October 15, 2015

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Subject: New guidance for expedited processing for Form SSA-581 (Authorization to Obtain Earnings Data from the Social Security Administration).

Background: The Division of Energy Employees Occupational Illness Compensation (DEEOIC) submits Form SSA-581 to the Social Security Administration (SSA) to request earnings data to assist in verifying covered employment and/or to establish wage-loss. On October 1, 2014, the SSA and the DEEOIC agreed to new procedures to expedite this process.

References: Federal (EEOICPA) Procedure Manual, Chapters 2-0500 and 2-1400.

Purpose: To provide guidance on obtaining expedited earnings data from the SSA.

Applicability: All DEEOIC staff.

Actions:

1. As part of the expedited process for obtaining earnings data from the SSA, the Claims Examiner (CE) is no longer required to obtain the signature of the employee, or, if the employee is deceased, the signature of the survivor on the SSA-581 (Attachment 1). This process eliminates the need for the survivor to provide proof of the employee's death and his or her relationship to the employee to obtain SSA earnings data for a deceased employee.
2. The CE is to complete the top portion of the Number Holder's Information section on the SSA-581. This includes the following information: name; social security number; date of birth of employee; date of death of employee (if applicable); and other name(s) used. The CE completes the form with the years deemed necessary to verify employment and/or establish wage-loss on the "Periods Requested" line. In the box entitled, "Requesting Organization's Information," the CE types his or her name and identifies the district office under, "Signature of Organization Official." The CE dates the form and lists his or her direct phone number, along with the district office fax number. The CE is to capitalize all entries on the SSA-581.
3. In lieu of mailing the completed SSA-581 to the SSA, the CE uses the Interaction Fax system to fax digitally the completed SSA-581 to the SSA using FAX number 877-278-7067. A cover page is not required with the SSA-581, nor is it necessary to fax the second page of the SSA-581 that contains the Privacy Act Statement.
4. The CE is to bronze into the OWCP Imaging System (OIS), a copy of the digitally faxed Form SSA-581, including the confirmation that the fax transmitted to the SSA.
5. If the faxed SSA-581 is deficient, the SSA contacts the CE directly to explain the deficiency, or

the SSA emails the DEEOIC designated Point of Contact (POC) with a list of rejected SSA-581s for each district office. This email will include the name of the employee, the employee's social security number, SSA reference number, and the reason(s) for the rejected SSA-581.

6. The POC forwards the email of rejected SSA-581 to the assigned CE. After making the necessary corrections, the CE digitally faxes the corrected SSA-581 with a cover sheet (Attachment 2) to FAX number 410-966-4210. The cover sheet must include the SSA reference number. The CE is responsible for bronzing into OIS any document received or created in response to a rejected SSA-581.

7. Upon receipt and processing of a SSA-581, the SSA releases a statement of earnings, known as an SSA-L460. The SSA will mail the SSA-L460 to the DEEOIC Central Mail Room (CMR), located in London, Kentucky, where it is scanned and indexed into OIS. If the CE does not receive a completed SSA-L460 within thirty (30) days of the faxed SSA-581, the CE calls the SSA to determine the status of the request. If the SSA indicates that the SSA-581 has not been received, the CE must refax the SSA-581 in accordance with Step 3. After the SSA-581 is refaxed, the CE should follow-up with the SSA within thirty (30) days. Otherwise, the CE obtains the status and monitors for SSA response.

8. Inquiries to the SSA are made by calling one of six phone numbers (Modules) depending upon the last four digits of the relevant SSN (See Attachment 3). When calling the SSA, the following information should be available to expedite the inquiry:

- SSA-issued job code (8015). The four-digit job code appears in the "Requesting organization" section of the SSA-581 form.
- Name of your organization.
  - A copy of the SSA-581 or earnings statement in question.
  - The full SSN of the number holder (employee), or the control number from the earnings statement.

9. This bulletin rescinds and supersedes EEOICPA Bulletin No. 09-10, entitled Processing Social Security Administration Form SSA-581.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

Attachment 1

**Authorization to Obtain Earnings Data from the  
Social Security Administration**

Mail completed form to:	Social Security Administration Division of Business Services PO Box 33011 Baltimore, MD 21290-3011	Requesting organization:	RA PENF 09 8015 DOL DEEOIC CENTRAL MAIL ROOM PO BOX 8306 LONDON, KY 40742-8306
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**Number Holder's Information**

First Name:	<input type="text"/>	Middle Initial:	<input type="text"/>
Last Name:	<input type="text"/>		
SSN:	<input type="text"/>		
Date of Birth:	<input type="text"/> -- <input type="text"/> -- <input type="text"/>	Date of Death:	<input type="text"/> -- <input type="text"/> -- <input type="text"/>
	Month Day Year		Month Day Year
Other First, Middle Initial, and Last Name Used to Report Earnings:	<input type="text"/>		
Periods Requested:	<input type="text"/> -- <input type="text"/> through <input type="text"/> -- <input type="text"/>		
	Month Year		Month Year
	<input type="text"/> -- <input type="text"/> through <input type="text"/> -- <input type="text"/>		
	Month Year		Month Year

I am the individual to whom the record/information applies or that person's parent (if a minor) or legal guardian, or a person who is authorized to sign on behalf of the individual to whom the record/information applies. Please furnish the requesting organization, or its designees, an itemized statement of all amounts of earnings reported to my record, or to the record identified above, for the periods specified on this form. Please include the identification numbers, names, and addresses of the reporting employers. **I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge.**

Signature of Number Holder (or authorized representative)		Date	<input type="text"/>
Printed Name (if other than number holder)		Relationship (if other than number holder)	
Address		<input type="checkbox"/> Natural or adoptive parent <input type="checkbox"/> Legal Guardian <input type="checkbox"/> Other (specify) _____	
State	City	ZIP Code	Phone Number

**Requesting Organization's Information**

Organization Official	Office	Date
Phone Number	Fax Number	

**FOR SSA USE ONLY**

1    2    3    4



Attachment 2

**Department of Labor**

Program – DEEOIC | Job Code - 8015

Primary Fax: 904-359-9294 | Secondary Fax: 904-359-9294

# Itemized Statement of Earnings (581) Reject fax

**TO:** Social Security Administration  
**FROM:** Planning Automation and Training Staff/HSS

**FAX:** 410-966-4210 **PAGES:**

**PHONE:** (410) 966-6995 || Donald Fair **DATE:**

**RE:** Itemized Statement of Earnings (581) Reject **CC:**  
Reject Reference #

Urgent     For Review     Please Comment     Please Reply     Please Recycle

Comments: [Your comments here]

## Attachment 3

	<b>Module Number</b>	<b>Help Desk Telephone No.</b>
0000-0999	Mod 1	410-966-1247
1000-1999	Mod 2	410-966-5657
2000-3999	Mod 3	410-597-1045
4000-5999	Mod 4	410-966-8512
6000-7999	Mod 5	410-597-1061
8000-9999	Mod 6	410-597-1065

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

## **2014 EEOICP Final Bulletins**

**14-01 National Instant Criminal Background Check System (NICS) Improvement Amendments Act of 2007 (NIAA)**

EEOICPA BULLETIN NO. 14-01

Issue Date: November 18, 2013

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Effective Date: November 18, 2013

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Expiration Date: November 18, 2014

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Subject: National Instant Criminal Background Check System (NICS) Improvement Amendments Act of 2007 (NIAA).

Background: The Brady Handgun Violence Prevention Act of 1993 required the Attorney General to establish a system that allows federal firearms dealers to determine whether a potential buyer is prohibited from receiving the firearm under the federal Gun Control Act of 1968 or state law. This system, the NICS, is a federal database that became operational on November 30, 1998.

The ability of the NICS to determine quickly and effectively whether an individual is prohibited from possessing or receiving a firearm depends on the completeness and accuracy of the information made available to it by federal, state, and tribal authorities. The NIAA was an effort to strengthen the NICS by increasing the quantity and quality of relevant records accessible to the system. Among its requirements, the NIAA mandates that federal departments and agencies provide relevant information to the Attorney General for the NICS on no less than a quarterly basis. The statute specifies that federal agencies must provide this information "notwithstanding any other law," and, as a result, information can be shared by agencies despite the otherwise applicable limitations of other laws (Privacy Act, Health Insurance Portability and Accountability Act, etc.). For any information provided, the NIAA also requires federal agencies to update, correct, modify, or remove records once they become aware that information should no longer be prohibiting.

On January 16, 2013, President Obama issued a Memorandum directing the Department of Justice (DOJ) to provide guidance to agencies to improve the implementation of this law. This memorandum also required each Federal agency to issue an annual report setting forth relevant records possessed by the agency, the number of records submitted each year, and various other details concerning efforts required in connection with NICS reporting.

References: P. L. 110-180, NICS Improvement Amendments Act of 2007

Purpose: To inform the appropriate Office of Workers' Compensation Program (OWCP) Division of Energy Employees Occupational Illness Compensation (DEEOIC) personnel of their responsibilities and the DEEOIC procedures required to effectively identify, track and report relevant case file records in accordance with the NIAA of 2007.

Applicability: Appropriate National Office and District Office personnel.

Actions:

## A. Prohibitors and Relevant Records

There are ten (10) categories of persons who are prohibited from shipping, transporting, possessing or receiving a firearm by federal law. For each category of prohibitors, there are relevant record types that should be reported to the NICS. Records possessed by DEEOIC are relevant for the NICS if they can identify an individual as being someone who is a prohibitor. Most applicable records in DEEOIC's possession will be obtained by DEEOIC rather than created by DEEOIC.

Only records obtained from State or Local agencies need be shared. Federal records that DEEOIC obtains should not be shared as the federal agency that created it is responsible for its submission to the NICS independently.

The following list describes the ten (10) categories of prohibited individuals and the relevant record types for each:

### 1. Felons

a. This includes any person "who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year," (including general court-martial) regardless of whether or not that term of imprisonment was imposed.

b. The term "offense punishable by imprisonment for a term exceeding one year" does not include:

(1) any federal or state offenses pertaining to antitrust violations, unfair trade practices, restraints of trade or other similar offenses relating to the regulation of business practices; or

(2) any state offense classified by the laws of the state as a misdemeanor and punishable by a term of imprisonment of two years or less.

c. What constitutes a conviction is determined in accordance with the law of the jurisdiction in which the proceedings were held. If a conviction has been expunged or set aside, or the person has been pardoned or had his/her civil rights restored, it is not considered a conviction unless it was provided in the expungement, pardon, or restoration that the person may not ship, transport, possess, or receive firearms.

Relevant records defined by Department of Justice: Judgment and commitment orders from the courts - only if the conviction is secured without collaborating with a U.S. Attorney's Office or other DOJ component.

Potential DEEOIC specific relevant records: Judgments in state court actions, usually received in conjunction with 42 U.S.C. § 7385i(a) which states that a person convicted of fraud in the application for or receipt of benefits under the Energy Employees

Occupational Illness Compensation Program Act (EEOICPA) or any other federal or state workers' compensation law forfeits any entitlement to the EEOICPA benefits for any injury, illness or death for which the time of injury was on or before the date of the conviction.

2. Fugitives from justice

a. This includes any person who has fled from any state to avoid prosecution for a felony or a misdemeanor, leaves the state to avoid giving testimony in any criminal proceeding, or who knows that misdemeanor or felony charges are pending against him/her and who leaves the state of prosecution.

Relevant records defined by Department of Justice:

Misdemeanor and felony warrants and charging documents - only if obtained without collaborating with a U.S. Attorney's Office or other DOJ component.

Potential DEEOIC specific relevant records: None anticipated.

3. Persons unlawfully using or addicted to any controlled substance

a. This includes any person who uses a controlled substance and has lost the power of self-control with reference to the use of the controlled substance or who is a current user of a controlled substance in a manner other than as prescribed by a licensed physician.

b. Unlawful use need only to have occurred recently enough to indicate that the individual is actively engaged in such conduct, not necessarily at the precise time the person seeks to acquire a firearm.

c. An inference of current use may be drawn from evidence of recent use or possession of a controlled substance, or a pattern of use or possession that reasonably covers the present time (i.e., conviction for use or possession within the past year or multiple arrests for possession within the past five years if the most recent arrest occurred within the past year).

d. For a current or former member of the Armed Forces, an inference of current use may be drawn from recent disciplinary or other administrative action based on confirmed drug use (i.e., discharged based on drug rehabilitation failure).

e. The term "controlled substance" includes, but is not limited to, marijuana, depressants, stimulants, and narcotic drugs, but excludes distilled spirits, wine, malt beverages, and tobacco.

Relevant records defined by Department of Justice: Drug-related convictions, drug-related arrests, and disciplinary or other administrative actions in the Armed Forces based on

confirmed drug use – only if obtained without collaborating with a U.S. Attorney’s Office or other DOJ component. Therapeutic or medical records that are created in the course of treatment in hospitals, medical facilities, or analogous contexts that demonstrate drug use or addiction should not be submitted.

Potential DEEOIC specific relevant records: Judgments in state court actions, usually received in conjunction with 42 U.S.C. § 7385i(a).

4. Persons “adjudicated as a mental defective” or “committed to a mental institution”

a. This includes any person who has been determined by a court, board, commission, or other lawful authority as being a danger to himself/herself or others, or lacking the mental capacity to contract or manage his/her own affairs.

b. A mental institution is a facility that provides diagnoses by licensed professionals of mental retardation or mental illness.

c. “Mentally defective” does not include a person:

(1) who has been granted relief from the disability through a qualifying federal or state relief from disability program as authorized by the NIAA; or

(2) whose adjudication or commitment was imposed by a federal department or agency and,

a) the adjudication or commitment has been set aside or expunged;

b) the individual has been fully released or discharged from all treatment, supervision or monitoring;

c) the individual has been found by a court, board, commission or other lawful authority to no longer suffer from the mental health condition that was the basis for the adjudication or commitment, or

d) whose adjudication or commitment is based on a medical finding of disability, without an opportunity for a hearing by a court, board, commission, or other lawful authority and the person has not been “adjudicated as a mental defective” pursuant to 18 U.S.C. § 922(g)(4).

d. Formal commitment of a person to a mental institution by a court, board, commission or other lawful authority includes commitment to a mental institution involuntarily, commitment for mental defectiveness or mental illness or commitment for other reasons, such as for drug use. It does not include a person in a mental

institution for observation or a voluntary admission to a mental institution.

Relevant records defined by Department of Justice: Judgment and commitment orders, sentencing orders, and court or agency records of adjudications of an individual's inability to manage his or her own affairs if such adjudication is based on marked subnormal intelligence or mental illness, incompetency, or disease (*including certain agency designations of representative or alternate payees for program beneficiaries*).

Potential DEEOIC specific relevant records: Court ordered guardianship and conservatorship documents received during the course of claims adjudication.

5. Illegal/unlawful aliens, and aliens admitted on a non-immigrant visa

a. This includes any person who is illegally or unlawfully in the United States or has been admitted to the United States under a non-immigrant visa.

b. This includes those persons who:

(1) unlawfully entered the United States without inspection and authorization by an immigrant officer and who have not been paroled into the United States under § 212(d)(5) of the INA;

(2) are a non-immigrant and whose authorized period of stay has expired or who has violated the terms of the non-immigrant category in which he/she was admitted;

(3) were paroled under INA § 212(d)(5) whose authorized period of parole has expired or whose parole status has been terminated, or;

(4) are under an order of deportation, exclusion or removal, or voluntary departure, whether or not he/she has left the United States.

c. Permanent resident aliens and aliens lawfully present in this country without a visa are not prohibited.

Relevant records defined by Department of Justice: Deportation orders, visa applications (including denials), and immigration papers.

Potential DEEOIC specific relevant records: None anticipated.

6. Persons dishonorably discharged from the military

a. This includes any person whose separation from the U.S. Armed Forces was characterized as a dishonorable discharge or a dismissal adjudged by a general court-martial.

b. Any person who was separated for any other discharge (for example, a bad conduct discharge) or whose dishonorable discharge or dismissal has been upgraded under the authority of a discharge review board or a board for the correction of military records is not prohibited.

Relevant records defined by Department of Justice: Discharge records, court-martial records, and disciplinary orders - only if no other federal agency would be submitting.

Potential DEEOIC specific relevant records: None anticipated.

7. Citizen renounces

a. This includes any person who having been a U.S. citizen renounced U.S. citizenship either before a diplomatic or consular office of the United States in a foreign state pursuant to 8 U.S.C. § 1481(a)(5) or before an officer designated by the Attorney General when the United States is in a state of war pursuant to 8 U.S.C. § 1481(a)(6).

b. Any person whose renunciation of citizenship has been reversed as a result of administrative or judicial appeal is not prohibited.

Relevant records defined by Department of Justice: Form DS-4083, Certificates of Loss of Nationality.

Potential DEEOIC specific relevant records: None anticipated.

8. Persons subject to a domestic violence restraining order

a. This includes any person subject to a domestic violence restraining order as long as the court order was:

(1) issued after a hearing of which such person received actual notice and had an opportunity to participate;

(2) restrains such person from harassing, stalking, or threatening his/her intimate partner or his/her child with that intimate partner or person, or engaging in other conduct that would place the intimate partner in reasonable fear of bodily injury to the partner or child; and

(3) includes a finding that such person represents a credible threat to the physical safety of the intimate partner or child or, by its terms, prohibits the use, attempted use or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.

b. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has clarified that an "intimate partner" is defined as:

- (1) the spouse of the person
- (2) a former spouse of the person
- (3) an individual who is a parent of a child of the person
- (4) an individual who cohabits or has cohabited with the person.

Relevant records defined by Department of Justice:

Protective orders.

Potential DEEOIC specific relevant records: Protective orders potentially received in conjunction with child support orders.

9. Persons convicted of a misdemeanor crime of domestic violence

a. This includes any person who meets all of the following criteria:

- (1) has been convicted of a federal, state, local or tribal offense that is a misdemeanor, or in states that do not classify offenses as misdemeanors, is an offense punishable by imprisonment for a term of one year or less or only by a fine;
- (2) the offense has, as an element, the use or attempted use of physical force or the threatened use of a deadly weapon; and
- (3) the offense was committed by a current or former spouse, parent or guardian of the victim, by a person with whom the victim shares a child, by a person who is cohabitating with or has cohabited with the victim as a spouse, parent or guardian, or by a person similarly situated to a spouse, parent or guardian of the victim.

b. If a conviction of a misdemeanor crime of domestic violence has been expunged or set aside, or the person has been pardoned or had his/her civil rights restored, it is not considered a conviction unless it was provided in the expungement, pardon, or restoration that the person may not ship, transport, possess, or receive firearms (and the person is not otherwise lawfully prohibited in the jurisdiction in which the proceedings were held).

Relevant records defined by Department of Justice:

Convictions - only if obtained without collaborating with a

U.S. Attorney's Office or other DOJ component.

Potential DEEOIC specific relevant records: Judgments in state court actions, usually received in conjunction with 42 U.S.C. § 7385i(a).

10. Persons under indictment

a. This includes any person "who is under indictment for a crime punishable by imprisonment for a term exceeding one year."

b. The ATF has clarified that this includes:

(1) a person under indictment or information in any court under which a crime punishable by imprisonment for a term exceeding one year may be prosecuted, or;

(2) a military service member charged with any offense punishable by imprisonment for a term exceeding one year which has been referred to a general court-martial.

Relevant records defined by Department of Justice:

Indictments and information - only if obtained without collaborating with a U.S. Attorney's Office or other DOJ component.

Potential DEEOIC relevant records: Indictments in state court actions - usually received in conjunction with 42 U.S.C. § 7385i(a).

**B. DEEOIC Responsibilities**

When a relevant record is obtained/created by DEEOIC, it should be recorded and tracked by the Claims Staff in the Energy Compensation System (ECS). DEEOIC National Office will then report any such records to NICS on a quarterly basis using this data.

1. A new "NICS Indicator" to capture the relevant record for quarterly reporting to NICS has been added to ECS effective October 15, 2013. The "NICS Indicator" is accessed from the Case Summary Screen in ECS.

2. Relevant records as described in Part A of this bulletin, primarily those identified as "Potential DEEOIC specific relevant records," for each of the 10 categories may be identified in daily Incoming Correspondence, upon inspection of case records, or in Investigative Memoranda submitted by the Department of Labor's Office of Inspector General.

3. Upon initial identification of a relevant record, the Claims Examiner should:

a. Author a brief Memo to the File describing the relevant record and why it identifies the individual as a prohibitor. The author date and received date of the

relevant document should be noted in the Memo to the File.

b. Forward the Memo to the File to the District Director or Final Adjudication Branch (FAB) Manager for signature. The case file, containing the Memo to the File, should be forwarded to the Policy Branch for review. If the Policy Branch does not concur with the Memo to the File, the case file will be returned to the district office/FAB office with a memo explaining why the evidence does not meet the NICS reporting requirements.

c. If the Policy Branch agrees that the case file contains a relevant record for NICS reporting, the policy staff should sign the Memo to the File and then select the "View/Edit NICS Indicator" from the Case Summary Screen in ECS. The policy staff will select the "NICS Enabled" field and the effective date of the memo will be auto-populated. The policy staff should indicate in the "Note" section of the "NICS Indicator" the relevant document that identifies the individual as a prohibitor.

d. No further action or reporting is required, since a report will be generated based on the entry of this NICS Indicator.

4. Upon later determination that the relevant record does not apply or no longer applies, and thus is no longer prohibiting, the Claims Examiner should:

a. Author a brief Memo to the File describing the reason the relevant record does not apply or no longer applies. The author date and received date of the relevant document that alters the original determination should be noted in the Memo to the File.

b. Forward the Memo to the File to the District Director or FAB Manager for signature. The case file, containing the Memo to the File, should then be forwarded to the Policy Branch for review. If the Policy Branch does not concur with the Memo to the File, the case file will be returned to the district office/FAB office with a memo explaining why the evidence still meets the NICS reporting requirements. If the Policy Branch agrees that the relevant record previously reported does not apply or no longer applies, the policy staff should sign

the Memo to the File and update, correct, modify, or remove the "NICS Indicator" from ECS by selecting the "View/Edit NICS Indicator" from the Case Summary Screen in ECS and selecting the "NICS Disabled" field. The policy staff should enter any applicable note in the "Note" section of the "NICS Indicator."

c. The National Office should report the update, correction, modification, or removal of the NICS Indicator to the Office of the Solicitor so that NICS can be appropriately notified.

Disposition: Retain until incorporated in the Federal Energy Employees Occupational Illness Compensation Program Act (EEOICPA) Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees  
Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections

#### **14-02 Renewed EEOICPA Forms**

EEOICPA BULLETIN NO. 14-02

Issue Date: February 10, 2014

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Effective Date: February 10, 2014

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Expiration Date: February 10, 2015

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Subject: Renewed EEOICPA forms.

Background: Every three years, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) submits a package to the Office of Management and Budget (OMB) that requests renewal of DEEOIC's authority to use 19 forms that collect information necessary for the adjudication of claims under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). On December 31, 2013, OMB granted DEEOIC's request and renewed the EEOICPA forms for another three years of use through December 31, 2016.

References: Federal (EEOICPA) Procedure Manual, Chapters 2-900, 2-1300 and 3-700.

Purpose: To provide guidance following OMB's renewal of 19 EEOICPA forms.

Applicability: All DEEOIC staff.

Actions:

1. As noted above, the 19 EEOICPA forms in OMB Control No. 1240-0002 have been renewed for use through December 31, 2016. The 19 forms are listed below:

EE-1	EE/EN-8
EE-1 (Spanish version)	EE/EN-9
EE-2	EE/EN-10
EE-2 (Spanish version)	EE/EN-11A
EE-3	EE/EN-11B
EE-3 (Spanish version)	EE/EN-12
EE-4	EE/EN-13
EE-4 (Spanish version)	EE/EN-16
EE-7	EE/EN-20
EE-7 (Spanish version)	

All remaining paper stock of the prior version of these forms (with the expiration date of either October 31, 2013 or December 31, 2013) should be discarded. In addition, any electronic versions of these forms should be deleted from wherever they are being stored or posted for use by either claims staff or the public and archived.

2. Effective immediately, all claims staff must begin using the newly renewed forms that bear the expiration date of “12/31/2016.”

3. Five of the 19 renewed forms (the EE-1, EE-2, EE-3, EE-4 and EE-7) are posted on the DEEOIC webpage for downloading and submission by members of the public. Those same forms, plus the remaining 14, are also posted and available for use by claims staff in the “Forms” subfolder in the “Policies and Procedures” folder located on the DEEOIC shared drive.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

**14-03 Handling Requests for Communication Assistance, Accommodations, and Modifications under the Federal Disability Nondiscrimination Law by Claimants and Others in the Division of Energy Employees Occupational Illness Compensation (DEEOIC) Adjudicatory Process**

EEOICPA BULLETIN NO: 14-03

Issue Date: May 13, 2014

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Effective Date: May 13, 2014

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Expiration Date: May 13, 2015

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Subject: Handling Requests for Communication Assistance, Accommodations, and Modifications under the Federal Disability Nondiscrimination Law by Claimants and Others in the Division of Energy Employees Occupational Illness Compensation (DEEOIC) Adjudicatory Process.

Background: The Office of Workers' Compensation Programs (OWCP) has long been committed to facilitating effective communication with claimants regarding decisions and other actions in each individual case. Consistent with its responsibilities under applicable Federal disability nondiscrimination laws, with its mission, and with the additional emphasis on the employment of individuals with disabilities as reflected in Executive Order 13548 (issued July 26, 2010), the DEEOIC is issuing this Bulletin to inform DEEOIC officials and personnel of their responsibilities under the Federal disability nondiscrimination law (including but not limited to the Rehabilitation Act Section 504 obligations, which applies to Federally-conducted programs or activities). This Bulletin explains the type of notice the DEEOIC is required to provide to claimants about its responsibilities under the Federal disability nondiscrimination law. This Bulletin also describes the procedures that must be used for handling requests from claimants needing communication assistance, or reasonable accommodations/modifications in the claims process. Finally, it sets forth requirements regarding conducting hearings, medical appointments, and other in-person interactions in accessible facilities.

The District Office should handle requests for communication assistance or reasonable accommodations/ modifications for claimants with disabilities as a high priority action item. Because the OWCP, and thus the DEEOIC, bears a high burden for justifying any failure to provide requested assistance, the District Office should immediately contact the National Office if it has questions or concerns regarding how to comply with the applicable requirements.

For purposes of disability nondiscrimination law and the obligations discussed in this Bulletin, a "disability" is defined as a physical or mental impairment that substantially limits one or more of a claimant's, or other individual's, major life activities. The obligations and procedures discussed in this Bulletin apply to requests related to all medical conditions that can be considered impairments, including conditions that are not employment-related or conditions that may have developed subsequent to the filing of the claim.

In addition to its duty to provide communication aids and services and reasonable accommodations for persons with disabilities, the DEEOIC must reasonably modify its policies, practices, and procedures when necessary to avoid discrimination on the basis of disability. It is also obligated to conduct its programs and activities so that each part of a program or activity is accessible to individuals with disabilities.

Communicating effectively with, providing other types of appropriate assistance and accommodations/modifications for, and ensuring that all aspects of the claims process are accessible to claimants with varying types of disabilities (including visual impairments) are not only consistent with the non-adversarial nature of the DEEOIC adjudicatory process, but are also required by Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) (Section 504), which applies to Federally-conducted programs or activities. In addition, in the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), which amends the Rehabilitation Act as well as other Federal disability nondiscrimination laws, Congress emphasized that the definition of disability "shall be construed in favor of broad coverage of individuals to the maximum extent permitted by [the terms of the applicable law]," and generally shall not require extensive analysis. Therefore, when responding to a request for assistance, the DEEOIC should focus its attention primarily on how to assist the claimant (or other individual with a disability) most effectively, rather than on whether the

individual is, in effect, "disabled enough" to deserve the assistance.

Both applicable law and Department of Labor policy require the OWCP's DEEOIC to communicate as effectively with persons who have disabilities as the agency communicates with other persons.

The DEEOIC bears the general responsibility for providing communication aids and services for claimants with disabilities, and for ensuring that the aids and services provided to each individual claimant with a disability are effective for that particular claimant. The obligation to provide equally effective communication applies to the written letters and decisions that the DEEOIC generally provides in paper format, telephonic communications, and all other modes of communication.

Finally, the legal duty to provide accommodations/modifications, and to conduct hearings and other in-person interactions in accessible facilities, applies to all phases of the claims process.

Applicability: All National Office, District Office and Final Adjudication Branch personnel, nurses, and medical billing processors.

References: 29 U.S.C. § 794; 29 U.S.C. § 705; 42 U.S.C. § 12102. Note that the ADAAA amended the statutory definition of "disability" for purposes of disability nondiscrimination law (referred to in the Background section above) to broaden that definition and provide rules for construing it. See 29 U.S.C. § 705(20)(B), incorporating by reference the definition of "disability" set forth in 42 U.S.C. § 12102. For further information about the definition of "disability," as amended by the ADAAA, and guidance on interpreting that definition, see the website of the U.S. Equal Employment Opportunity Commission (EEOC), available at: [http://www.eeoc.gov/laws/statutes/adaaa\\_info.cfm](http://www.eeoc.gov/laws/statutes/adaaa_info.cfm).

The EEOC published a Final Rule in March 2011 that explains in detail how to interpret the definition of "disability" and its component elements; it has also published a fact sheet and Questions and Answers sheet regarding the provisions of the Final Rule. These documents are available at the EEOC web page cited above. Please note that although the EEOC regulations are not directly applicable to the DEEOIC, the DOL's interpretation of the disability nondiscrimination laws it enforces must be consistent with the EEOC's interpretation of Title I of the Americans with Disabilities Act (ADA); therefore, the EEOC's regulations and guidance documents are useful tools for learning about the OWCP's and the DEEOIC's disability-related legal obligations.

Purpose: To advise the DEEOIC and related personnel of their responsibilities, and of the DEEOIC's procedures, for taking certain actions related to disability. These actions include responding to requests by claimants and others for auxiliary aids and services to ensure equally effective communication ("communication aids and services"), or for reasonable accommodations/modifications, on the basis of disability. They also include taking appropriate steps to ensure that all in-person interactions are accessible to persons with disabilities.

Actions:

### **I. General Principles Re: Requests for Communication Aids and Services and Reasonable Accommodations/Modifications**

Although this Bulletin primarily addresses requests from claimants needing communication assistance and/or accommodations/modifications under applicable Federal disability nondiscrimination laws, these instructions also apply where an employing agency official, a representative, or anyone else legitimately associated with the claims process requires communication aids and services, or reasonable accommodations/modifications. Where a specific type of accommodation has been requested, the CE/HR is to determine the type of accommodation required and provide the accommodation as is outlined in this Bulletin.

All DEEOIC personnel must be sensitive to the potential needs of the claimant population and must realize that the law permits claimants to request communication aids and services, and/or reasonable accommodations/modifications, at any stage of the claims process. A claimant who did

not need such aids, services, or accommodations/modifications at the initial stages of a claim may later develop a disability requiring one or more of these types of assistance. Under the law as amended by the ADAAA, a person who does not have an actual, current disability, but who has a record of a disability (for example, someone who has recovered from cancer or heart disease), is entitled to reasonable accommodations under appropriate circumstances.

Because the same medical condition may affect each person differently, requests for communication aids and services and/or accommodations/modifications **must be analyzed on a case-by-case basis**, and actions appropriate to each individual person with a disability will vary. For example, not every person who is deaf understands American Sign Language (ASL). Some deaf persons rely on lip reading, frequently combined with computer-assisted real-time (CART) transcription; others understand Signed English (which has a different syntax from ASL); and still others understand other sign languages, such as Spanish Sign Language. Information on how to respond to each type of request (for communication aids and services, and for accommodations/modifications) appears in Section III below.

All DEEOIC personnel should know the procedures for responding to requests for communication aids and services and/or accommodations/modifications. Each District/FAB Office should have at least one designated point of contact (POC) who is responsible for facilitating responses to such requests, and who is knowledgeable about the relevant procedures, law and policy. Any personnel within that District/FAB Office should reach out to the designated POC should a question arise. As needed, DEEOIC personnel may also consult with the Branch of Policy which may seek out resources available in other DOL agencies or other appropriate Federal agencies. For example, DOL's Office of Disability Employment Policy (ODEP) has a Technical Assistance Center called the Job Accommodation Network (JAN) which may be able to assist with interactive services to help determine what accommodations are appropriate for a specific person.

Upon receipt of a request for disability-related communication aids and services or reasonable accommodations/modifications, the DEEOIC personnel must take immediate action. The first step will be to contact the District/FAB Office POC for that person's office.

Once the DEEOIC determines that an accommodation is required under the particular circumstances, the District/FAB Office POC is to change the case number bar on the top of the case summary screen and the left side navigation panel in the Energy Compensation System (ECS) to purple so that anyone reviewing the case will immediately understand that special handling is required. To do this, the POC will select the "Edit Section 504 Indicator" from the "Case Summary" screen in ECS, select "504 Enabled" from the "Section 504 Indicator" pop-up, and click "Ok." Once this is completed, the Navigation Panel will be purple. The OWCP Imaging System (OIS) will automatically update the heading with the same color.

## **II. Notice to Claimants**

Federal disability nondiscrimination law defines a "disability" as a physical impairment (such as cancer, diabetes, or epilepsy) or a mental impairment (such as autism, bipolar disorder or post-traumatic stress disorder) that substantially limits one or more of the person's major life activities.

The DEEOIC will provide notice to claimants that: if they have such a disability, they may request that the DEEOIC provide them with communication aids and services and/or accommodations/modifications; a claimant who has a record of such a disability is also entitled to receive reasonable accommodations under appropriate circumstances; and the DEEOIC will respond to all requests for the above types of assistance as required by Federal law.

Effective immediately, all correspondence, including recommended and final decisions, shall include the following language, bolded, in the footer of the first page of all correspondence sent to all claimants and Authorized Representatives:

***If you have a disability (a substantially limiting physical or mental impairment), please contact our office/claims examiner for information about the kinds of help available, such as communication assistance (alternate formats or sign language interpretation), accommodations and modifications.***

See Attachment 1 as a sample of where this statement should be placed in all documents.

### **III. Responding to Requests for Assistance**

This section explains how to respond to two different types of requests. Subsection A addresses requests for auxiliary (communication) aids and services, while Subsection B addresses other types of requests for individualized assistance. Requests in the latter category should be considered requests for reasonable accommodations and/or modifications as further explained in subsection B.

**A. Requests for Auxiliary (Communication) Aids and Services.** The DEEOIC will provide appropriate communication assistance for claimants with disabilities at all stages of the claims process. The circumstances under which communication assistance is provided extend to claimants' interactions with DEEOIC staff (including Resource Center personnel), physicians, and other healthcare service providers. Appropriate assistance is provided regardless of the method of contact -- whether by telephone, postal mail, in person, or some other method.

The type of communication aids or services necessary to ensure effective communication will vary with the type of communication used by the individual with a disability; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. When deciding what communication aids or services to provide in response to a request from a claimant or other person with a disability, the DEEOIC must honor the choice of the person with a disability, unless the DEEOIC can demonstrate that either: (a) another means of communication exists that will be effective for the particular person with a disability; or (b) use of the means chosen by the person with a disability would result in a fundamental alteration in the nature of the DEEOIC program. In addition, to be effective, communication aids and services must be provided by methods that are usable and/or understandable by the individual with a disability; in a timely manner; and in such a way as to protect the privacy and independence of the individual with a disability.

The requirement to consider each request for communication assistance individually does not prohibit the DEEOIC from preparing for such requests in advance so that it may respond quickly. Examples:

1. Persons with visual impairments. Blind or visually impaired persons frequently ask for the following types of alternate formats for documents in standard print:
  - a. Standard print and follow-up telephone call
  - b. Braille and standard print
  - c. Microsoft or text file on a CD
  - d. Audio CD and standard print
  - e. **Large print (18 point) and/or high contrast type (such as bold)**

Each DEEOIC office should be prepared to provide documents in each of the above formats when requested. The DEEOIC National Office will identify one or more sources for producing documents in Braille and, if appropriate, on audio CD, and will inform each District/FAB Office of the turnaround time and procedures for submitting such requests. The District Office/FAB is to supply its own large-print or high-contrast documents, and should ensure that enough staff members know the appropriate computer and printer settings to permit such documents to be produced at any time, without delay.

If a person with a visual impairment requests that a document be provided in Braille, audio CD, or data CD/Microsoft Word on CD, all best efforts should be made to ensure that the document has been provided in the format requested. If the claimant also asks for the document to be provided in the usual format (paper or imaged file), it is permissible to supply that format as well.

## 2. Persons with Hearing Impairments

*a. In-person contacts:* If sign language interpreting services are necessary, they may be provided in person or through remote *Video Interpreting Services*.

Interpreters must be *qualified*. Under Federal disability nondiscrimination law, an interpreter is qualified if s/he is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. The law prohibits the DEEOIC from requiring an individual with a disability to bring another person to interpret for him/her, whether that individual is a claimant, an employing agency official, a representative, or someone else who is legitimately associated with the claims process.

In circumstances in which it is permissible for a claimant or other individual with a disability to be accompanied by another adult during in-person contacts, the DEEOIC must not rely on that adult to interpret, or to otherwise facilitate communication, except: in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or where the individual with a disability specifically requests that the accompanying adult interpret or facilitate communication; the accompanying adult agrees to provide such assistance; and reliance on that adult for such assistance is appropriate under the circumstances.

*b. Telephone contacts in general.* The DEEOIC will provide a dedicated phone line for telephone contact with individuals whose disabilities limit their capacity to use voice telephones. The dedicated number will be available on the DEEOIC website, and publicized in other ways. Additional information about the Federal Relay Service and the types of telecommunications services it offers is available at: <http://www.gsa.gov/portal/content/104626>.

*c. Hearings.* The Final Adjudication Branch (FAB) is responsible for providing appropriate communication aids and services for hearings, and for notifying claimants and other appropriate parties that such aids and services are available. For example, for in-person oral hearings before a FAB representative, the FAB must provide sign language interpreters, CART transcription services, or other types of communication assistance upon request. When deciding what type of communication aids or services to provide, the FAB must give primary consideration to the request of the individual with a disability.

3. District Office/FAB Actions. All District Office/ FAB POCs will be provided with a list of companies that can be used to provide assistance with sign language interpretation. The District Office/FAB POC is not restricted to the use of these companies and can utilize other companies in their jurisdiction if necessary. The District Office/FAB POC will also be provided with the contact information for converting documents to Braille, audio CD, and large print.

Upon receipt of notification that a claimant requires an accommodation due to a

visual or hearing impairment, the CE/HR, or any claims staff that receives a request, is to:

- a. Complete the required checklist (Attachment 2) for incoming requests for accommodations. The checklist contains a list of questions used to collect preliminary information such as the employee name, the relationship of the caller to the DEEOIC, the type of disability, and the type of accommodation that is being requested.
- b. Upon completing the checklist, it is to be bronzed into OIS under category "Other" and subject of "Accommodations Request." The CE/HR then assigns the request to the District Office/FAB POC for handling. The POC should request that his/her supervisor designate them as an "Authorized User" for the case for a time period appropriate for the actions needed.
- c. Once the POC receives OIS notification that an accommodation has been requested, the case number bar on the top of the case summary screen and the left side navigation panel in the ECS will change to purple so that anyone reviewing the case will immediately know that special handling is required. To do this, the POC will select the "Edit Section 504 Indicator" from the "Case Summary" screen in ECS, select "504 Enabled" from the "Section 504 Indicator" pop-up, and click "Ok." Once this is completed, the Navigation Panel will turn purple. The OWCP Imaging System (OIS) will automatically update the heading with the same color.
- d. The POC then determines the type of accommodation that is needed and makes the appropriate arrangements. Specifically, the POC is to secure the services for a specific date, time and location if sign language interpretation is needed, or contact the National Office for documents that need converting to Braille, audio CD or other format.
- e. Upon making arrangements for an accommodation, the POC is to document the information in the notes section of ECS under the Note Type "Accommodations Request." In the notes field, the POC must indicate who is requiring the accommodation (claimant, AR, etc.), the type of accommodation that is required, the name of the company that has been hired to conduct the service, and the date and time that service is to be utilized, as appropriate.
- f. The POC notifies the company that all invoices for services are to be sent to the National Office for payment.
- g. Once the accommodations have been made, the POC sends an email to the CE/HR assigned to the case, advising him/her that the accommodation has been made. A copy of the email is to be bronzed into OIS.

## **B. Requests for Accommodations/Modifications**

Claimants and other persons associated with the claims process who have disabilities may request a wide range of adjustments or changes to the process because of their disabilities. Such requests constitute requests for reasonable accommodation or modification, and they automatically trigger the DEEOIC's or the OWCP's duty to act.

1. To request an accommodation or modification, all that the individual with a disability (or someone acting on his/her behalf) must do is notify the claims

examiner, hearing representative, or someone else associated with the DEEOIC or the OWCP, that s/he needs an adjustment or change in the claims processing procedures for a reason related to a disability.

2. The individual may use "plain English": s/he need not mention disability law or use technical language such as "reasonable accommodation" or "reasonable modification of policies, practices, or procedures."

3. The request does not need to be in writing; it may be made during a conversation, or through any other mode of communication. DEEOIC staff should be alert to such requests, and should recognize their legal and practical significance. The law permits DEEOIC personnel to write a memorandum or letter confirming the individual's request but it is not required. Regardless, the initial request triggers the DEEOIC's and OWCP's duty to take action, and cannot be ignored pending receipt, completion, or processing of written confirmation.

4. When the DEEOIC receives a request for an accommodation/modification as described above, it may simply provide the requested assistance. Otherwise, the District Office/FAB POC should engage in an informal dialogue with the individual with a disability (and/or his/her representative) to clarify what the individual needs and identify the appropriate reasonable accommodation/modification. The exact nature of the dialogue will vary depending upon the circumstances.

- a. In many instances, both the disability and the type of accommodation/modification required will be obvious; thus, there may be little or no need to engage in any discussion.
- b. In other cases, the District Office/FAB POC may need to ask questions concerning the nature of the disability and the individual's functional limitations in order to identify an effective accommodation or modification.
- c. The individual with a disability does not have to be able to specify the precise accommodation or modification needed. However, s/he (or his/her representative) does need to describe the barriers s/he is encountering in the claims process or the way it is implemented.
- d. Even if the individual with a disability cannot identify a specific accommodation or modification, s/he may be able to offer suggestions about the type, or general characteristics, of reasonable accommodations/modifications that will help overcome the barrier.

5. Once the District Office/FAB POC ascertains the specific limitations imposed by the disability and barriers imposed by the claims process, the POC arranges the appropriate accommodations required.

6. Under the law, the DEEOIC is permitted to ask for documentation to support a request for accommodation/modification only in the following circumstances: either the disability itself or the need for an accommodation/modification is not obvious, and the information already in the DEEOIC 's possession is insufficient to confirm that the individual has a substantially limiting impairment or needs an accommodation or modification (in the case of a claimant, the information may already be in the individual's file).

7. In some circumstances, it will be appropriate for the DEEOIC to make adjustments or provide assistance without waiting for a specific request. For example, if the DEEOIC knows that a claimant has mobility impairments (for example, uses a wheelchair, walks only short distances with the use of a cane or walker, or has respiratory or cardiac-related restrictions on walking), it is entirely

appropriate -- as well as good customer service -- for the District Office/FAB POC to take the initiative to schedule in-person meetings with the claimant in locations that minimize the distance the claimant must walk or propel his/her chair.

#### **IV. Physical Accessibility**

The DEEOIC is obligated to conduct its program and activities so that when each part of a program or activity is viewed as a whole, that part is fully accessible to individuals with disabilities, including those with mobility impairments. Because not every facility associated with the claims process is required to satisfy the full array of accessibility standards adopted by the General Services Administration (GSA) for Federal facilities, the OWCP/DEEOIC is implementing the following accessibility-related policy: **ALL IN-PERSON INTERACTIONS MUST BE HELD IN ACCESSIBLE LOCATIONS**. Such interactions include, but are not limited to: any meetings with a DEEOIC employee; medical examinations; and all in-person hearings before the DEEOIC's FAB.

Whether a particular location or facility may be considered "accessible" will be determined pursuant to the accessibility standards that are applicable to Federal facilities (as well as to facilities designed, built, altered, or leased with Federal financial assistance). See <http://www.access-board.gov/aba/index.htm>.

Disposition: Retain until incorporated into the Federal (EEOICP) Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

Attachment 1

**U.S. DEPARTMENT OF  
LABOR**

Energy Employees Occupational  
Illness Compensation Program  
DOL DEEOIC Central Mail Room  
P.O. Box 8306  
London, KY 40742-8306



...

...

If you have a disability (a substantially limiting physical or mental impairment), please contact our office/claims examiner for information about the kinds of help available, such as communication assistance alternate formats or sign language interpretation), accommodations and modifications.

Attachment 2

#### **CHECKLIST FOR WHEN A CALL IS RECEIVED FROM AN INDIVIDUAL WHO IS SEEKING A REASONABLE ACCOMMODATION**



**WHAT IS THE CALLER'S NAME? TELEPHONE NUMBER?**



**WHAT IS THE CALLER'S RELATIONSHIP TO THE DEEOIC (e.g. Claimant, AR,**

DOE or NIOSH personnel, etc.)?

**IF THE CALLER IS NOT THE EMPLOYEE, WHAT IS THE EMPLOYEE'S NAME?  
CASE ID #? LAST 4 DIGITS OF SSN? (This information is necessary to determine which  
DO has jurisdiction over the case and will be handling the request for reasonable  
accommodation).**

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**WHAT IS THE NATURE OF THE DISABILITY FOR WHICH S/HE IS SEEKING  
REASONABLE ACCOMMODATION?**

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**WHAT SPECIFIC ACCOMMODATION IS THE INDIVIDUAL SEEKING? BE AS  
SPECIFIC AS POSSIBLE**

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**ANY OTHER USEFUL INFORMATION**

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Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants,  
Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs,  
Hearing Representatives, and District Office Mail & File Sections

#### **14-04 Authorized Representative Conflicts of Interest**

EEOICPA BULLETIN NO. 14-04

Issue Date: July 1, 2014

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Effective Date: July 1, 2014

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Expiration Date: July 1, 2015

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Subject: Authorized Representative Conflicts of Interest.

Background: Under the regulations guiding the administration of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), a claimant may designate an authorized representative, who is permitted to communicate with the Division of Energy Employees Occupational Illness Compensation (DEEOIC) on behalf of the claimant regarding the claims process. This authority includes permitting the authorized representative to request those services, appliances, and supplies claimed as necessary for the treatment of a compensable covered or occupational illness.

Conflicts of interest can arise when a duly authorized representative has direct financial interests as a result of his or her role, aside from the permitted fee enumerated under the EEOICPA. To provide that a duly authorized representative serves only the interests of the claimant, DEEOIC will not recognize the designation of a representative for any individual when DEEOIC finds that individual could directly benefit financially as a result of his or her role as a claimant's authorized representative, aside from the fee authorized by law.

References: 20 C.F.R. § 30.600; 20 C.F.R. § 30.601

Purpose: To provide that a duly authorized representative properly serves the interests of the appointing claimant.

Applicability: All staff.

Actions:

1. DEEOIC has developed a Conflict of Interest Policy regarding the role of authorized representatives. This Conflict of Interest Policy is to be communicated to any person serving as an authorized representative. The Conflict of Interest Policy is as follows:

As an authorized representative of a claimant under the EEOICPA, you are prohibited from having private, non-representational direct financial interests, other than your fee for serving as a representative, in regard to your client's claim with DEEOIC. Because the "role" of an authorized representative is so important, DEEOIC will consider you to have a prohibited "conflict of interest" if you could directly benefit financially from your client's EEOICPA claim due to something other than your statutorily limited fee for representing your client in connection with his or her EEOICPA claim. For example, you will be considered to have a prohibited conflict of interest if, in addition to being your client's authorized representative, you are also being paid by DEEOIC, directly or indirectly, as a provider of authorized medical services to your client. Because there is an obvious conflict of interest that will arise in this sort of situation, DEEOIC will not recognize you as an authorized representative should this occur, and will inform the claimant of the need to designate another person as his or her authorized representative who does not have such a conflict. If you are in a position to directly benefit financially from your client's EEOICPA claim, you are required to notify DEEOIC and withdraw as representative.

2. The Federal (EEOICPA) Procedure Manual, Chapter 2-0400.2c specifies that the appointment of a representative is to be made in writing. The notification is to be signed by the claimant and must identify the name, address, and telephone number of the representative. Once a signed notice of the appointment of an authorized representative is received, the DEEOIC returns an acknowledgment letter accompanied by the DEEOIC Conflict of Interest Policy. A sample of the acknowledgement letter is included as Attachment 1. The National Office is to coordinate notifications of the Conflict of Interest Policy to existing authorized representatives.

3. Once a claimant has appointed an authorized representative, and the assigned Claims Examiner (CE) has provided notification of the Conflict of Interest Policy to the representative, DEEOIC will

recognize the authority of the representative to act on behalf of the claimant.

4. If, during any interaction with an authorized representative or in review of case evidence, the CE ascertains that the authorized representative may have a conflict of interest, immediate action is to be taken to address the matter. A conflict of interest may exist if there is evidence that the authorized representative is directly receiving financial benefits, aside from the authorized fee permitted under the law, as a consequence of his or her duties as the representative. Additional conflict of interest situations include evidence showing the authorized representative is employed, or contracted by, an individual, organization or entity that is receiving monetary payment from DEEOIC for services, supplies or other resources affiliated with the claim. This includes a family member or other relative of the claimant receiving a wage or who is contracted by a medical service provider that DEEOIC has granted authorization to provide in-home medical care. For situations where the CE is unclear whether a conflict of interest exists, the district office should contact the National Office Policy Branch for guidance.

5. Upon receipt of credible evidence that a conflict of interest may exist, the CE is to prepare a notice to the designated authorized representative, with a copy to the claimant. A sample of the notice is included as [Attachment 2](#). The notice is to include a description of the evidence suggesting that a conflict of interest may exist. The CE is to ask that the authorized representative prepare a signed statement explaining his or her response to the evidence of a conflict of interest. Moreover, the CE is to state that if a conflict of interest does exist, DEEOIC will no longer recognize the designation of the authorized representative unless the conflict is eliminated. The authorized representative is to be permitted 30 days to respond to the notice.

6. Upon receipt of the authorized representative's response, the CE is to carefully evaluate the information provided, along with a review of the evidence of record, to determine if there is a basis for making a finding that a conflict of interest exists. If the authorized representative acknowledges that a conflict of interest exists, he or she may resolve the conflict by either submitting a signed resignation as the authorized representative, or submitting evidence of the relinquishment of whatever charges, position, job or duty creates a conflict with the role of authorized representative. The claimant can also withdraw the authorization for that representative, in writing, and designate a new authorized representative in writing. Because an authorized representative with a conflict of interest will not be able to provide representation free of such conflict, consent of the claimant will not remove the conflict.

7. If the authorized representative contends that the circumstances identified by the CE do not constitute a conflict of interest under DEEOIC's policy, or no response is received within 30 days of the initial notification, the CE is to carefully weigh the evidence of record. Should the authorized representative provide the CE with sufficient rationale that absolves him or her of any conflict of interest, the CE is to notify the representative, in writing with copy to the claimant, that no further action is necessary. However, if the CE determines that there is compelling evidence of a conflict of interest, the CE should conclude that DEEOIC may no longer recognize the designated authorized representative as serving the interest of the claimant. Under this circumstance, the CE is to send a notice to the claimant that DEEOIC will no longer interact with the designated authorized representative due to a conflict of interest. The claimant is to be given the option of selecting a new authorized representative who does not have conflicting interests, or alternatively providing evidence that whatever conflict of interest that exists with regard to the chosen authorized representative has been eliminated. As noted above, consent of the claimant will not remove the conflict.

8. Once a CE or FAB CE/HR has determined that a conflict of interest exists that disqualifies a designated authorized representative from representing the claimant and appropriate notification of such has been reported to the claimant, no further interaction with or disclosure of information to the authorized representative is permitted.

9. Once a CE or FAB CE/HR has determined that a conflict of interest exists that disqualifies a

designated authorized representative from representing the claimant, the district office or FAB office appropriate personnel is to remove the authorized representative (AR) indicator from the Energy Compensation System (ECS).

10. When a district office or FAB office is made aware of a conflict of interest with an authorized representative who represents claimants before multiple offices, the jurisdictional district office should notify the District Director of the affected offices.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections

Attachments:

Attachment 1

**U.S. Department of Labor**

Energy Employees Occupational Illness  
Compensation Program  
DOL DEEOIC Central Mail Room  
P.O. Box 8306  
London, KY 40742-8306



Date:

Claimant:

Case ID:

Representative Name

Address

City, State, Zip Code

Dear [Representative]:

According to our records, you have been designated as the authorized representative in the above case. As the authorized representative, you have the ability to receive correspondence, submit additional evidence, argue factual or legal issues and exercise appeal rights pertaining to the above claim. An authorized representative does not have signature authority on behalf of the claimant on Form EN-20.

As the authorized representative in the above case, any correspondence from the Division of Energy Employees Occupational Illness Compensation (DEEOIC) will be directed to you in this capacity. If the correspondence indicates a response is warranted or additional information is required, it is expected that you will make the necessary arrangements with the claimant.

**Representative Fees.** A representative may charge the claimant a fee for services associated with his/her activities regarding the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). The claimant is solely responsible for paying any fee or other costs associated with

the actions of a representative. DEEOIC will not reimburse the claimant, nor is it liable for the amount of any fee and other costs relating to an agreement between a claimant and a representative.

**Permissible Charges.** Under the regulations implementing 42 U.S.C. § 7385g, a representative is permitted to charge an appropriate fee for services related to a claim before DEEOIC. The maximum allowable percentage of a payment of lump-sum compensation that can be collected as a fee is as follows:

- (1) 2% for the filing of an initial claim with DEEOIC, provided that the representative was retained prior to the filing of the initial claim; plus
- (2) 10% of the difference between the lump-sum payment made to the claimant and the amount proposed in the recommended decision with respect to objections to a recommended decision.

**Conflict of Interest Policy.** As an authorized representative of a claimant under the EEOICPA, you are prohibited from having private, non-representational direct financial interests, other than your fee for serving as a representative, in regard to your client's claim with DEEOIC. Because the "role" of an authorized representative is so important, DEEOIC will consider you to have a prohibited "conflict of interest" if you could directly benefit financially from your client's EEOICPA claim due to something *other than* your statutorily limited fee for representing your client in connection with his or her EEOICPA claim. For example, you will be considered to have a prohibited conflict of interest if, in addition to being your client's authorized representative, you are also being paid by DEEOIC, directly or indirectly, as a provider of authorized medical services to your client. Because there is an obvious conflict of interest that will arise in this sort of situation, DEEOIC will not recognize you as an authorized representative should this occur, and will inform the claimant of the need to designate another person as his or her authorized representative who does not have such a conflict. If you are in a position to directly benefit financially from your client's EEOICPA claim, you are required to notify DEEOIC and withdraw as representative.

Please feel free to contact the District Office, if you have any questions or concerns. Our telephone number is 000-000-0000.

Sincerely,

Printed Name  
Title  
District Office

cc: Claimant

Case ID:

**AUTHORIZATION FOR REPRESENTATION/PRIVACY ACT WAIVER**

To provide that a duly authorized representative serves only the interest of the claimant, DEEOIC will not recognize the designation of an authorized representative whom DEEOIC finds is directly benefitting financially as a result of his or her affiliation with a claim, aside from the fee authorized by law.

I,

\_\_\_\_\_ (Name of Claimant)

\_\_\_\_\_ (Address of Claimant)

\_\_\_\_\_ (City, State, Zip of Claimant)

do hereby authorize:

\_\_\_\_\_ (Name of Representative/Person receiving records)

\_\_\_\_\_ (Address of Representative/Person receiving records)

\_\_\_\_\_ (City, State, Zip of Representative/ Person receiving records)

\_\_\_\_\_ (Phone Number of Representative/Person receiving records)

to **(check all that apply)**:

\_\_\_\_\_ serve as my representative in all matters pertaining to the administrative adjudication of my claim under the Energy Employees Occupational Illness Compensation Program Act of 2000 by the Division of Energy Employees Occupational Illness Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor.

\_\_\_\_\_ receive copies of all factual and medical evidence contained in my claim filed under the Energy Employees Occupational Illness Compensation Program Act of 2000 from the Division of Energy Employees Occupational Illness Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor.

I declare that the foregoing is true and correct. This authorization is effective on the date it is signed, and is effective until specifically revoked by me in writing.

\_\_\_\_\_ (Signature of Claimant)

\_\_\_\_\_ (Date)

Attachment 2

**U.S. Department of Labor**

Energy Employees Occupational Illness  
Compensation Program  
DOL DEEOIC Central Mail Room  
P.O. Box 8306  
London, KY 40742-8306



Date:

Claimant:

Case ID:

Representative Name

Address

City, State, Zip Code

Dear [Representative]:

According to our records, you have been designated as the authorized representative in the above case. As the authorized representative of the above claimant, you are expected to put your client's interests before your own private, non-representational direct financial interests in all of your dealings with the Division of Energy Employees Occupational Illness Compensation (DEEOIC). DEEOIC will consider you to have a prohibited "conflict of interest" if you could directly benefit financially from your client's Energy Employees Occupational Illness Compensation Program Act (EEOICPA) claim due to something other than your statutorily limited fee for representing your client in connection with his or her EEOICPA claim.

DEEOIC has received information that suggests a conflict of interest exists in this case. ***{Describe the evidence that suggests a conflict of interest. Be sure to include names, dates of letters, and all pertinent information to describe the evidence.}***

In light of this evidence, DEEOIC requests that you prepare a signed statement explaining your response to the above detailed evidence of a conflict of interest. Please submit your statement within 30 days from the date of this letter. Upon review of your statement, in conjunction with the evidence of record, DEEOIC will determine whether a conflict of interest exists in the case. If it is determined that a conflict of interest does exist, DEEOIC will no longer recognize you as the claimant's authorized representative unless the conflict of interest is eliminated. If you acknowledge that a conflict of interest does exist, you may resolve the conflict by either submitting a signed resignation as the claimant's authorized representative, or submitting evidence of the relinquishment of the charges, position, job, or duty creating the conflict.

Please contact the district office at XXX-XX-XXXX if you have any questions or concerns regarding this letter.

Sincerely,

Printed Name

Title

District Office

cc: Claimant

**14-05 No Bulletin Released**

**14-06 Authorization Adjustments for Home Health Care**

EEOICPA BULLETIN NO. 14-06

Issue Date: August 4, 2014

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Effective Date: August 4, 2014

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Expiration Date: August 4, 2014

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Subject: Authorization Adjustments for Home Health Care.

Background: The Energy Employees Occupational Illness Compensation Program Act (EEOICPA), specifies at 42 U.S.C § 7384t that the United States shall furnish, to an individual receiving medical benefits under this section for an illness, the services, appliances, and supplies prescribed or recommended by a qualified physician for that illness, which the President considers likely to cure, give relief, or reduce the degree or the period of that illness.

Under this section of the Act, the the Division of Energy Employees Occupational Illness Compensation (DEEOIC) grants six-month authorizations for in-home health care when prescribed by a qualified physician and which the DEEOIC considers medically necessary because of an employee's accepted work-related illness or injury. In certain claim situations, the DEEOIC may obtain new medical evidence that requires adjustment to a previously granted six-month home health care authorization. As a result, this guidance is necessary to ensure that claims examiners (CE) adjust existing home health care authorizations in a consistent and uniform manner.

References: 42 U.S.C 7384t; Federal (EEOICPA) Procedure Manual (PM) Chapters 2-0800 Developing and Weighing Medical Evidence, 2-1600 Recommended Decisions, 3-0300 Ancillary Medical Services and Related Expenses.

Purpose: To provide guidance to DEEOIC claims staff on processing adjustments to home health care authorizations.

Applicability: All staff.

Actions:

1. In those cases for which the DEEOIC has granted a six-month authorization for home health care, the CE may obtain new medical evidence that warrants an adjustment to the existing authorization. The medical evidence the CE receives may originate from sources such as the employee's treating physician, a second opinion or referee medical examiner, or other qualified physician associated with the case record.
2. The medical evidence received after an existing period of authorization may require adjustments to the existing home health care authorization, including:
  - Required skill level, *i.e.*, Registered Nurse/Licensed Nurse Practitioner or Personal Care Attendant/Certified Nurse Assistant
  - Service hours per day, days per week
  - Specified service requirements
  - Addition or removal of ancillary service personnel (hospice personnel, social workers, physical therapists etc.)
  - Transfer to residential nursing or assisted living facility

Authorization adjustments may involve both home health care service level increases and decreases. Adjustments to an existing home health care authorization may only occur in situations where the CE assigns the weight of the medical evidence to the new evidence. This requires the CE to carefully evaluate and consider the totality of all evidence present in the case record relating to the employee's medical need for home health care. Additional guidance regarding assessing the weight

of the medical evidence can be found by referring to PM Chapter 2-0800, Developing and Weighing Medical Evidence.

3. Once an adjustment to an existing authorization is established based on the weight of the medical evidence, the CE is to mail a new written authorization to the claimant, and his or her home health care service provider. The written authorization is to include notification to the recipients that the existing authorization will change, effective 15 days from the date of the letter. The CE is to specify the effective date of the adjustment in the correspondence. The CE may authorize a six-month authorization at the new level of authorized home health care from the effective date of the adjustment.

4. With any adjustment that reduces the level or amount of home health care that the DEEOIC has previously authorized, the CE is to provide the claimant notice of his or her right to request a formal recommended decision should they object to the adjustment. The CE may refer to additional guidance regarding letter decisions that is contained in PM Chapter 2-1600, Recommended Decisions.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Section

## **2013 EEOICP Final Bulletins**

### **13-01 Authorizing Massage Therapy**

EEOICPA BULLETIN NO. 13-01

Issue Date: January 2, 2013

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Effective Date: January 2, 2013

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Expiration Date: January 2, 2014

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Subject: Authorizing Massage Therapy

Background: The Energy Employees Occupational Illness Compensation Program Act (EEOICPA or the Act) provides for medical benefits to covered employees. Specifically, 42 U.S.C. §7384s(b) and §7385s-8 provide that a covered Part B or Part E employee shall receive medical benefits under §7384t of the EEOICPA. Section 7384t(a) states: “The United States shall furnish, to an individual receiving medical benefits under this section for an illness, the services, appliances, and supplies prescribed or recommended by a qualified physician for that illness, which the President considers likely to cure, give relief, or reduce the degree or the period of that illness.”

The Division of Energy Employees Occupational Illness Compensation (DEEOIC) is responsible for ensuring that employees with an accepted illness, under the EEOICPA, receive appropriate and necessary medical care for that illness, as further outlined in this Bulletin.

References: 42 U.S.C. §7384s, §7384t, §7385s-8

Purpose: The DEEOIC has determined that certain claimants may require massage therapy, as part of the treatment regimen for their covered medical condition(s). Stedman's Medical Dictionary defines "massage" as a method of manipulation of the body or part of the body by rubbing, pinching, kneading, or tapping.<sup>[1]</sup> DEEOIC views the possible benefits derived from such massage as: reducing pain and muscle tension; increasing flexibility and range of motion; and improving blood circulation. The purpose of this Bulletin is to provide clarification regarding criteria developed for the management of massage therapy requests. This Bulletin also identifies and explains the medical evidence that must accompany a request for this type of care. Lastly, the Bulletin offers procedural guidance to the DEEOIC claims staff, with regard to the review and development process leading up to an authorization or denial of a request for massage therapy services.

Applicability: All staff.

Actions:

1. All requests for massage therapy require pre-authorization by the Claims Examiner (CE) assigned to the case file. The claimant, the authorized representative, the treating physician, or a medical service provider may submit massage therapy requests to DEEOIC. The CE forwards requests for massage therapy to the DEEOIC bill processing agent (BPA) via fax, mail, or electronically for the authorization process to begin. The CE is to document telephone requests for massage therapy in the phone call section of ECS. The CE advises any such callers that their request must be in writing for the authorization process to begin, and the CE provides the caller with a verbal description of the medical evidence DEEOIC requires.
2. The BPA creates an electronic record of the request and initiates an electronic communication (referred to as a "thread") to the fiscal officer (FO) at the district office (DO) where the claimant's case file resides. The thread from the BPA advises the FO of a pending massage therapy request. Upon receipt of the thread from the BPA, the FO forwards the information to the appropriate CE for review and adjudication.
3. A treating physician must prescribe massage therapy for the claimant for the treatment or care of a covered medical condition(s). Accompanying the prescription, the physician is to include a letter of medical necessity reflecting that an initial face-to-face visit was held with the claimant. (Face-to-face visits are only required for the initial pre-authorization request.) The narrative should describe the unique physical and therapeutic benefits that the claimant will derive from massage therapy, and specify the frequency and duration of care to be provided in allotments of time (e.g., twice a week for eight weeks).
4. When the CE receives a massage therapy request that is unaccompanied by an appropriate letter of medical necessity or rationale, the CE begins development. The CE sends a letter to the claimant advising that the district office has received a request for massage therapy, but without the required supporting medical documentation or rationale. The development letter to the claimant describes the medical documentation needed to support the request, asks for the name of the licensed/certified massage therapy provider, and grants the claimant 30 calendar days to provide the requested information. The CE also notifies the claimant that a lack of response or submission of insufficient evidence or rationale will result in a denial of the request. The CE documents this request through correspondence created in ECS.
5. If the CE receives the appropriate medical evidence within the 30-day development period, the CE prepares a letter to the claimant authorizing massage therapy. The CE sends a copy of the approval letter to the provider designated by the claimant to provide the service. The approval letter must contain the following information:
  - (a) Covered medical condition(s) for which massage therapy is to treat.
  - (b) Number and frequency of visits approved (i.e., 2 visits per week for 8

weeks).

- (c) Authorized billing code(s) relevant to the approval.
- (d) Time period (dates) during which the services are authorized.
- (e) Requirement to send medical notes to match each service date
- (f) Statement advising that fees are subject to the OWCP fee schedule.

6. The initial authorization period may be fewer than, but should not exceed 8 weeks, and the CE may approve up to 2 visits per week, for a total of 16 visits during the initial authorization period. Each visit is equal to a maximum of 1.5 hours. Reauthorization, including obtaining updated medical evidence, is required for any request for additional massage therapy after the initial 8-week period. The CE may not authorize more than 60 massage therapy visits per calendar year.

7. Upon completion of the approval, the CE sends an email to the FO, who prepares and sends a thread to the BPA, authorizing the services approved by the CE. The CE also documents the approval for massage therapy in the *Notes* section of ECS.

8. If, at the end of the initial 8-week authorization period, the CE receives a new request for additional massage therapy, the CE must conduct a new evaluation of the medical necessity for continuation of care. If the request is appropriate (updated medical documentation adequately explains the medical necessity for continuing massage therapy), the CE grants authorization for the extension of care within the authorization parameters of no more than two visits per week and a maximum of 60 visits per year.

9. Massage therapy providers, which include a relative of the claimant, must hold a valid massage therapist's license or certification in the state where services are rendered.

10. Massage therapy services must be conducted in an appropriate setting (i.e., medical clinic, medical office, etc.) and should be billed daily (i.e., one date of service (DOS) per OWCP-1500 line). The service provider must submit medical notes to the DEEOIC's BPA, along with their bill, describing the particular therapeutic care provided during each visit with the claimant. The notes should describe the effect of the massage therapy, including any specific improvements in functionality or in achieving relief from the symptoms of a compensable illness. The BPA then forwards the medical notes to the district office for review. Authorized billing codes for massage therapy are CPT codes 97124 and 97140 as reflected in [Attachment 1](#). The OWCP fee schedule does not provide a separate allowance for massage therapy supplies (i.e., tables, equipment, etc.). The cost of supplies is factored into the fee schedule amount.

11. If the CE receives a request for in-home massage therapy, the claimant must be homebound in order to receive such authorization. Medical evidence from the treating physician must demonstrate that the claimant is medically unable to travel to obtain massage therapy. Once the CE receives convincing evidence that the claimant is not able to travel for care, and sufficient documentation exists regarding the medical necessity for care, the CE may authorize in-home massage therapy.

12. Massage therapy is not restricted by medical diagnosis or condition, but is not appropriate when prescribed solely for prevention of future injury, recreation (spa therapy), and/or stress reduction.

13. If, after 30 days from development, and upon review of the evidence, the CE determines there is insufficient evidence to warrant either initial authorization or reauthorization of continuing massage therapy, the CE sends a letter-decision to the claimant. The letter decision is to include a narrative explanation as to why the evidence is insufficient to warrant authorization. The CE is to send a copy of the letter decision to the provider, if applicable. The letter-decision must include the following language:

*If you disagree with this decision and wish to request a formal decision, please immediately advise this office, in writing, that you wish to have a Recommended Decision issued in this case, providing you with your rights of action.*

Any request for massage therapy beyond 60 visits in one calendar year should be denied without development, citing this Bulletin.

14. Upon completion and mailing of the letter, the CE sends an email to the FO denying the request for massage therapy. The FO then transmits this information via thread to the BPA.

15. Should the claimant request a recommended decision (RD), regarding denial of either the initial authorization or recertification of massage therapy, the CE completes the RD process in accordance with existing DEEOIC procedure. Likewise, the Final Adjudication Branch (FAB) issues an appropriate decision following the issuance of the RD.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

Attachment

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

[1] Stedman's Medical Dictionary, 28<sup>th</sup> Edition (2006)

### **13-02 Systematic Review of Denied Part E Cases**

EEOICPA BULLETIN NO. 13-02

Issue Date: February 21, 2013

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Effective Date: February 21, 2013

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Expiration Date: February 21, 2014

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Subject: Systematic Review of Denied Part E Cases

Background: Part E of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) provides compensation for workers for whom it is found that it is at least as likely as not that exposure to a toxic substance at a Department of Energy (DOE) facility was a significant factor in aggravating, contributing to, or causing the illness; and it is as least as likely as not that the exposure to such toxic substance was related to employment at a DOE facility. Determinations under these standards involve case-specific review of the facts surrounding an employee's exposures to toxic substances at DOE facilities. In addition, it requires evaluation of complex medical information and scientific literature that provides evidence of links between specific toxins and occupational illnesses. Because the state of knowledge about toxins at DOE facilities and the links between those toxins and occupational illnesses is constantly being updated, it is necessary to review cases denied under Part E to determine if there have been material changes to either the toxic exposure profiles at DOE facilities or the associated health effects of such exposures in a way that would alter the outcome of these cases.

References: 42 U.S.C. § 7385s-4(c); 20 C.F.R. § 30.320(a).

Purpose: To provide procedures for reviewing previously denied Part E cases. This Bulletin

replaces EEOICPA Bulletin No. 10-15, SEM Quality Assurance Plan.

This Bulletin addresses Part E claims in denial status and delineates procedures for the systematic re-evaluation of these cases. This will be done to ensure that the adjudication of the claim is based upon the most current toxic substance exposure information and scientific knowledge.

In conjunction with this Bulletin, periodic implementing Circulars will be issued on topics requiring review under the broad procedural guidance outlined in this Bulletin. These Circulars may include information about exposures, toxins and occupational illnesses, including new associations between these elements. The implementing Circulars may also contain screening worksheets tailored to the specific set of cases targeted for review.

Applicability: All staff.

Actions:

1. As implementing Circulars are issued, DEEOIC will prepare a case list (or lists, as appropriate) of cases requiring review.

In terms of cases being reviewed under the Systematic Part E review, note that the review is only applicable to cases denied on the basis of either 1)exposure to toxic substance not established and/or 2)it is not established that exposure to a toxic substance caused, contributed or aggravated the diagnosed condition. Cases denied for other reasons, such as survivorship or employment, don't fall under the guidance issued here, as nothing delineated here or in the subsequent circulars would change the outcome of such cases.

2. As case lists are issued, each case on the list is to be reassessed under Part E. The basic underlying components of these Part E case reviews are:

- conduct a new SEM search
- review the DAR
- review the OHQ
- review any material new to the file since the most recent Part E denial
- consider any additional information conveyed in corresponding implementing Circulars

3. All cases on the list are to undergo an initial screening based upon a case review (described below). The initial screening will place the cases in three categories (described in items 4, 5 and 6 respectively). These categories are "Likely," "Unlikely," or "Development Needed," and are recorded on the worksheet included with the corresponding implementing Circular, or in those instances described later in this item.

"Likely" will be selected if, upon re-examination of the case, exposure to a toxin linked to a diagnosed condition is now established,(a new causation determination is still needed);

"Development Needed" will be selected if development is needed, such as an IH referral;

"Unlikely" will be selected if there is no new evidence of material exposure to a toxin linked to any of the employee's diagnosed conditions.

The initial screening result must be recorded in ECS. One of the above selections will be made to correspond with the screening worksheet. The date associated with the "Likely," "Development Needed," or "Unlikely" initial screening result will be equal to the date of the screening worksheet. An initial screening reason will be selected as well. The reason will reflect either the Circular number and item being reviewed (ie. Rvwd per Circular 13-XX, Bladder Part E) or this Bulletin number (ie. Rvwd per Bulletin 13-XX) for a generic Part E systemic review, which is discussed later in this item. As discussed earlier, periodic implementing Circulars will be issued on topics requiring review under the broad procedural guidance outlined in this Bulletin. These Circulars may include information about facilities, exposures, toxins and occupational illnesses, and new

associations between these elements. Each Circular and corresponding worksheet will have a specific reason code in ECS for use in the initial screening.

Initial screening is done at the case level and is completed for all cases on a review list. Initial screening is meant to capture the analysis of the reviewer at the time of review. If after further development, the reviewer changes his or her opinion, the initial screening result should not be updated. The only exception to this being that ECS should be updated to reflect “No Action Necessary” if it is determined that the case will not need a new decision or reopened/new decision issued if the evidence warrants.

In addition to DEEOIC-initiated Part E case review, claimants may request reviews of their denied Part E cases during the normal course of DEEOIC operations. The district offices should handle those cases as they normally would. However, if a comprehensive Part E review is conducted as part of such a reopening request, that review is to be documented on the generic Part E review worksheet included as [Attachment 1](#) of this Bulletin. This will allow DEEOIC to effectively track re-review of Part E cases and can tailor subsequent pull lists in such a way as to reduce duplicative work.

Standard review actions and an initial screening outcome are listed on the worksheet. The initial screening outcome and “No Action Necessary” coding for general Part E systematic case reviews will be the same as that for the specific ones and will have the corresponding ECS coding actions discussed earlier in this bulletin. The only difference for the general Part E case reviews, versus the specific Part E systematic case reviews for which individual Circulars will be issued, is that the general reviews will have a generic “Initial Screening” and “No Action Necessary” reason code of “Rvwd per Bulletin 13-XX, General Systematic Part E Case Review.” Reviews associated with a particular Circular will have their own unique reason code assignment.

4. If, upon review of the case, there is no discernable evidence of material exposure to a toxin linked to any of the employee’s diagnosed conditions, then the “Unlikely” screening code and related Circular/Bulletin reason code is selected and the initial screening date is entered that corresponds to the screening worksheet. Then, the “No Action Necessary” checkbox and reason code are automatically populated, but the CE must enter the date of the “No Action Necessary” (which is likely the same as the screening date). Also at this time, place the printout from the new SEM search in the file, along with a memo to the file indicating the date of the review. This documents for the file that no further action is required. If the SEM search does not involve new search criteria, it does not need to be re-entered into ECS. The screening codes and associated documentation will show that the search was completed.

5. If the review of the case, in conjunction with guidance from an implementing Circular, and a new SEM search now provides information that a finding of toxic exposure related to the employee’s diagnosis is now appropriate; or there is compelling evidence in the case file of material exposure to a toxic substance(s) that is now linked to the employee’s diagnosis; then, the CE is to conclude that the employee had a material exposure to the substance. These cases are categorized as “Likely” under this structure, for “exposure established.” Cases in this category still need an assessment for causation (discussed at item number 7).

6. If the case does not fit in either category, “Likely” or “Unlikely,” then an IH referral may be appropriate if there is some evidence that *suggests* some level of exposure, but the CE is unsure of its significance. These cases are identified as “Development Needed.”

7. Once a case is either identified as a “Likely” (exposure established) or after an IH indicates potential for substantial exposure linked to one or more of the employee’s diagnoses, the case is posed for a medical opinion on whether it is at least as likely as not that exposure to a toxic substance at a DOE facility was a significant factor in aggravating, contributing to, or causing the illness.

8. If the written medical opinion does not support a finding of causation of the illness based

upon the accepted exposure, the CE is to draft a short memo memorializing the result of the medical opinion. The memo is placed in the file with the new SEM report and any additional evidence collected through development that was conducted under this Bulletin. In ECS, selection of the “No Action Necessary” associated with the initial screening is made at this time. The date associated with the “No Action Necessary” is the date of the memo discussing that no further action is needed at this time.

9. If the medical opinion supports causation between the accepted exposure and the diagnosed illness, then the case is to be reopened. In the exercise of the DEEOIC Director’s discretion in the reopening process, the Director is delegating authority to the four District Directors (DD) and the Assistant District Directors (ADD) to sign Director’s Orders to reopen cases based on guidance in this Bulletin and related Circulars when those cases are now poised for acceptance. [Attachment 2](#) is a sample Director’s Order. The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. After the district office issues a Director’s Order, issuance of a new recommended decision can proceed.

11. For cases currently pending a final decision at the FAB that are identified on the list associated with the implementing Circular, existing guidance already requires that the Hearing Representative/Claims Examiner (CE) re-run the SEM as part of their review of the case. In the event that this reexamination requires further development, FAB is to remand the recommended decision to the district office. The Remand Order should direct the district office to review the case in accordance with the further development found by FAB to be necessary. FAB staff then codes ISD, ISL (which would result in a remand), or, if their review results in an ISU, proceed with denial.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections

### **13-03 Authorizing Durable Medical Equipment**

EEOICPA BULLETIN NO: 13-03

Issue Date: June 5, 2013

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Effective Date: October 1, 2013

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Expiration Date: October 1, 2014

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Subject: Authorizing Durable Medical Equipment

Background: The Energy Employees Occupational Illness Compensation Program Act (EEOICPA or Act) provides for medical benefits to covered employees. Specifically, 42 U.S.C. §7384s(b) and §7385s-8 provide that a covered Part B or Part E employee shall receive medical benefits under

§7384t of the EEOICPA. Section 7384t(a) states: “The United States shall furnish, to an individual receiving medical benefits under this section for an illness, the services, appliances, and supplies prescribed or recommended by a qualified physician for that illness, which the President considers likely to cure, give relief, or reduce the degree or the period of that illness.”

Durable Medical Equipment (DME) is primarily used to serve a medical purpose. Some examples of DME include hospital beds, walkers, wheel chairs, and oxygen equipment.

The Division of Energy Employees Occupational Illness Compensation (DEEOIC) is responsible for ensuring that employees with an accepted illness under the EEOICPA receive the necessary medical care, including DME as appropriate for that illness. This bulletin provides the procedures for authorizing DME and replaces any previous guidance given in PM Chapter 3-0300, Ancillary Medical Services and Related Expenses.

References: 42 U.S.C. §7384s, §7384t, §7385s-8

Purpose: To provide procedures for authorizing DME and converting rental DME items to purchases.

Applicability: All staff.

Actions:

1. All requests for the rental and/or purchase of DME must be reviewed for medical necessity and require pre-authorization by the Claims Examiner (CE) assigned to the case file. The claimant, the authorized representative, the treating physician, or a DME supplier may submit requests for the approval of DME to the DEEOIC bill processing agent (BPA) via fax, mail, or electronically for the authorization process to begin. If any requests are received in the District Office (DO), the CE forwards the request for approval of DME to the DEEOIC BPA. The CE is to document telephone requests for approval of DME in the phone call section of the Energy Compensation System (ECS). The CE advises any such callers that their request must be in writing, and that the request must be submitted to the DEEOIC BPA via fax, mail, or electronically for the authorization process to begin. Moreover, the CE provides the caller with a verbal description of the medical evidence the DEEOIC requires with the request.
2. The BPA creates an electronic record of the request and initiates an electronic communication (referred to as a “thread”) to the fiscal officer (FO) at the district office where the claimant’s case file resides. The thread from the BPA advises the FO of a pending request for the rental/purchase of DME. Upon receipt of the thread from the BPA, the FO forwards the information to the appropriate CE for review and adjudication.
3. The treating physician is to prescribe and clearly identify the need for the DME. Along with the signed prescription from the treating physician, the requestor must submit a letter of medical necessity (LMN). The LMN is the written explanation from the treating physician describing the medical need for the DME to assist the claimant with regard to the treatment, care, or relief of the accepted work related illness or illnesses. The narrative of the LMN must clearly identify the type of equipment that is being requested; it must demonstrate why the equipment is medically necessary for the accepted condition; and it must clearly state the duration of use for the DME. Additionally, the requestor is to submit any supporting documentation substantiating the medical need for the requested service (i.e. medical reports, prescriptions, therapy reports, diagnostic reports, etc.).

Finally, to fully process the request for authorization, the requestor is to provide the following:

- Claimant information such as name, case file number, date of birth, and telephone number.
- Provider or vendor information such as name, provider address, ACS provider number, tax id number, national provider identification number, telephone number, and fax number.
- Treating physician contact information such as name, address, telephone number, and fax number.

- DME information such as HCPCS/CPT, modifier, quantity, purchase price and rental price, total cost, begin date, end date, and duration of use.
- Diagnosis code for the accepted condition for which the DME is being prescribed.

Note: The DEEOIC will not reimburse for any customizations to the standard DME that the physician has not prescribed, and for which there is no clear and convincing medical rationale supporting the request.

4. The CE reviewing a DME request is to first consider the authorization for rental rather than purchase. In most situations, the DME rental is the preferred choice for supplying the requestor with equipment necessary to treat an accepted illness or illnesses. The assigned CE may authorize the rental of DME for up to 6 months if supported by medical evidence. Refer to Item #10 for the process on considering DME purchases.

5. When the CE receives a request for authorization of DME that is accompanied by a signed prescription, LMN, and any other appropriate medical evidence, the CE prepares a decision letter to the claimant authorizing the DME (Attachment 1). The CE sends a copy of the approval letter to the supplier designated by the claimant. The approval letter is to include the following information:

- a. Covered medical condition for which the DME is approved.
- b. Authorized billing code(s) relevant to the approval.
- c. Time period (dates) during which the DME rental is authorized.
- d. Statement advising that fees are subject to the OWCP fee schedule.
- e. Statement advising that if the rental is converted to a purchase, the purchase reimbursement price will be less the paid rental price.

Upon completion of the approval, the CE sends an email to the FO, who prepares and sends a thread to the BPA, authorizing the DME.

The CE also creates a correspondence entry in the Correspondence screen of ECS, documenting the issuance of the decision letter approving the DME. Refer to the Correspondence procedures in the ECS folder found on the shared drive for instructions on documenting the approval (i.e., Z:\Policies and Procedures\ECS\ECS Procedures).

Finally, since reauthorization for rentals is required every 6 months, the CE is to enter a reminder in ECS that reauthorization may be needed. The reminder should be set for 30 days prior to the expiration date for which services have been authorized. If additional authorization of the DME rental is not needed, the CE sends a letter to the DME supplier, with a copy to the claimant, notifying the supplier of the expiration date of the rental for DME. However, if an additional request for the ongoing rental of the DME is received, the CE evaluates the request as outlined in this bulletin. Refer to the DO ECS Users Manual found in the ECS Training folder on the shared drive for instruction on setting reminders in ECS (i.e., Z:\Policies and Procedures\ECS\Training).

6. When the CE receives a request for authorization of DME that is unaccompanied by a signed prescription, LMN, or any other required supporting documentation, the CE begins development. The CE sends a letter to the claimant advising that the district office has received a request for DME, but without the required supporting documentation. The development letter to the claimant clearly describes the medical documentation needed to support the request, or any other information as listed in Item #3 above, and grants the claimant 30 calendar days to provide the requested information. The CE also notifies the claimant that a lack of response or submission of insufficient evidence will result in a denial of the request. The CE documents this request through correspondence in ECS. The Correspondence procedures in the ECS folder on the shared drive provide instructions on recording the development of requests for authorization of DME (i.e., Z:\Policies and Procedures\ECS\ECS Procedures). A sample development letter can be found in Attachment 2.

7. If the CE receives the appropriate medical evidence within the 30-day development period, the CE prepares a decision letter to the claimant authorizing the DME. Refer to Item #5 for the process on approving DME.

8. If, after 30 days of development, and upon review of the evidence, the CE determines there is insufficient evidence to warrant either initial authorization or reauthorization for the rental of DME, the CE sends a letter-decision to the claimant. The letter-decision is to include a narrative explanation as to why the evidence is insufficient to warrant authorization. The CE is to send a copy of the letter-decision to the provider, if applicable. The letter-decision must include the following language:

*If you disagree with this decision and wish to request a formal decision, please immediately advise this office, in writing, that you wish to have a Recommended Decision issued in this case, providing you with your rights of action.*

Upon issuance of the denial letter, the CE creates correspondence in ECS documenting the issuance of the decision letter denying the rental/purchase of DME. The Correspondence procedures in the ECS folder found on the shared drive provide instruction on documenting the denial of DME (i.e., Z:\Policies and Procedures\ECS\ECS Procedures).

Upon completion and mailing of the letter, the CE sends an email to the FO denying the request for the rental/purchase of DME. The FO then transmits this information via thread to the BPA.

9. Should the claimant request a recommended decision (RD) regarding denial of either the initial authorization or reauthorization of the rental/purchase of DME, the CE completes the RD process in accordance with existing DEEOIC procedures found at PM Chapter 2-1600, Recommended Decisions. In particular, the CE is to explain the basis for denial of any request for DME authorization. Likewise, the Final Adjudication Branch (FAB) issues a final decision following the issuance of the RD.

10. The DEEOIC will authorize the purchase of DME in situations where the equipment or item cannot be rented. Items that should not be rented but considered for purchase instead include medical/surgical supplies (i.e. ostomy, injection, incontinence, dialysis, wound care, etc), canes, crutches, and commodes.

The DEEOIC will also authorize the purchase of DME when the price to purchase that equipment or item is more cost effective than the rental price. For example, if the price of renting a wheelchair is more than the cost to purchase it, the CE should approve the purchase of the wheelchair rather than renting it for the duration that it is needed.

However, if the DME purchase price is greater than \$2000, the CE should obtain the following additional evidence:

- a. From the claimant. The claimant must submit two estimates from two different DME suppliers. These estimates must be for the exact same type of DME appliance.
- b. From the Supplier. From each potential supplier, a signed statement describing in detail the DME equipment item, a breakdown of all costs (including delivery and installation), and the current Healthcare Common Procedure System (HCPCS) code for each DME item.

When considering the purchase of DME, the CE is to use discretion to ensure that any authorization granted for the purchase of any DME satisfies the basic medical needs of the claimant. Any request for DME that is driven by convenience, comfort, or other non-medical reason is not sufficient to grant authorization.

Furthermore, situations may arise where the CE previously authorized the rental of a DME, then subsequently receives a request for authorization to purchase that same item. Under these circumstances, it may become necessary to convert the rental to a purchase. If the CE receives a request for a purchase, and rental charges were paid for the same DME with no break in service

between the rental period and the approved purchase period, and the provider who billed for the rental is the same as the provider requesting the purchase, the CE will need to contact the provider and request that the provider deduct the rental charges previously paid from the bill to be submitted for the item being purchased.

All post-purchase requests for reimbursement of DME will be reimbursed in accordance with the OWCP fee schedule.

11. If, at the end of (or any time during) the initial rental period, the CE receives a new request for the rental of DME, the CE must conduct a new evaluation of the request for medical necessity. If the request is appropriate (prescription for the extended use of the DME and submission of updated letter of medical necessity), the CE is to consider the most cost effective approach when making the decision to reauthorize the extended rental of any equipment. The CE must consider whether the cost to purchase the equipment minus the rental amount paid thus far is less than the total cost to authorize another 6 months of rental. If it is, then the CE should authorize the purchase of such equipment.

12. All DME must be rented and/or purchased from a DME supplier. To be reimbursed, all suppliers/vendors must be enrolled as a licensed provider with the Bill Processing Agent.

13. All bills for payment of DME must be submitted to the Bill Processing Agent. The OWCP fee schedule sets the reimbursement amount for the rental and purchase of DME.

14. The repair and maintenance of DME is reimbursable. Add-ons and/or upgrades to DME will be considered for approval in those cases where the evidence substantiates the medical need for the enhancement. However, add-ons and/or upgrades to DME are not covered when they are intended primarily for the claimant's convenience and do not significantly enhance DME functionality.

15. In emergency situations, the CE may authorize the rental of DME for a preliminary 30-day period while additional development is undertaken. Under these circumstances, the claimant, the Authorized Representative, or the treating physician contacts the DEEOIC's BPA for immediate attention. The BPA obtains any pertinent documentation, as outlined in Item #3 above, and assesses the emergency nature of the request. Once the BPA receives the medical evidence, the BPA contacts the FO immediately, advising of the situation and providing electronic copies of documentation obtained. The BPA does not make a decision regarding the request, but simply obtains the pertinent documentation and advises the FO of the emergency request.

a. Upon receipt of the documentation, the FO forwards the information to the CE for review. If medical documentation from the treating physician supports the need for immediate authorization, the CE provides approval for 30 days pending additional development. The CE concurrently sends an email to the FO advising of this approval. The FO sends a thread to the BPA with the approval information and places a telephone call to the BPA, alerting him/her of an impending emergency request.

b. After the initial approval for the 30-day rental period, the CE sends a letter to the treating physician (with a copy to the claimant) requesting necessary evidence to substantiate that the DME is medically necessary. This should occur within the preliminary 30-day authorization period. The CE may grant extensions in increments of 30 days, not to exceed a total of 6 months unless medical evidence establishes that the DME is medically warranted and necessitated by the accepted medical condition.

c. In some situations, the request for authorization for the rental of DME may not be accompanied by evidence supporting the emergency nature of the request. In these situations, the CE sends a letter to the claimant, with a faxed copy to the requestor if other than the claimant. The letter is to contain information advising the recipient that no evidence was submitted to support the request for the rental of DME, and that additional medical evidence is required. In addition, the CE sends an email to the FO advising that the request for authorization of rental is under development. The FO

sends a thread to the BPA advising of this determination, and places a telephone call to the BPA, alerting him/her of an impending emergency request.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

Attachment 1

SAMPLE AUTHORIZATION LETTER

Date:

*Claimant Name (or Auth Rep)*

*Street Address*

*City, State, Zip*

Re: Claim Number (*Insert Claim Number*)

Dear (*Insert Claimant or Auth Rep Name*):

This letter is in reference to your claim for benefits under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

The Division of Energy Employees Occupational Illness Compensation (DEEOIC) recently received a request for authorization for the (*enter purchase or rental*) of a (*enter the type of DME*) for the following covered medical condition(s):

*List the condition(s)*

After a thorough review of your case file, including communication with your treating physician (*if applicable*), the following authorization is granted:

*Rental of [enter type of DME and billing code] for the period of [enter to and from date] from (enter vendor name).*

*Purchase of [enter type DME and billing code] from (enter vendor name).*

Please note that the DEEOIC requires that the approved vendor noted above be enrolled as a provider in our medical bill payment system to be reimbursed. Vendors may call toll free 1-866-272-2682 for program enrollment information or for answers to payment questions.

All fees for the rental/purchase of DME are subject to the OWCP fee schedule. Furthermore, if the rental of DME is converted to a purchase, the costs incurred for the rental of that item will be deducted from the purchase reimbursement price.

Add-ons and/or upgrades to DME will be considered for approval if evidence substantiates a medical need for the enhancement. However, add-ons and/or upgrades to DME are not covered when they are intended primarily for the claimant's convenience and do not significantly enhance DME functionality.

If you have any questions or concerns regarding this

authorization, please call your claims examiner at (XXX) XXX-XXXX.

Sincerely,

*(Insert CE name)*

DEEOIC Claims Examiner

cc: *(enter supplier name)*

Attachment 2

SAMPLE DEVELOPMENT LETTER

Date:

*Claimant Name (or Auth Rep/provider) File Number*

*Street Address*

*Accepted Conditions*

*City, State, Zip*

Dear *(Insert Claimant or Auth Rep/Provider Name)*:

I am writing to you concerning your benefits under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). We have received a request for authorization for the *[rental/purchase]* of a *[enter type of DME requested]*. In order to properly evaluate and respond to this request, we need additional information from you.

Please provide our office with the following information:

*(Request only that information that is necessary to process the claim. Feel free to modify the following if necessary)*

- *Prescription from your treating physician.*
- *Letter of Medical Necessity or other medical documentation [Describe the general information a LMN is to provide. Refer to Item #3 of the Bulletin].*
- *Claimant information such as name, case file number, date of birth, and telephone number.*
- *Provider or vendor information such as name, provider address, ACS provider number, tax id number, national provider identification number, telephone number, and fax number.*
- *Treating physician contact information such as name, address, telephone number, and fax number.*
- *DME information such diagnosis code, HCPCS/CPT, modifier, quantity, purchase price, rental price, total cost, begin date, end date, and duration of use.*

Please note that add-ons and/or upgrades to DME will be considered for approval if evidence substantiates a medical need for the enhancement. However, add-ons and/or upgrades to DME are not covered when they are intended primarily for the claimant's

convenience and do not significantly enhance DME functionality.

In the interest of expediting the approval of your request for *[enter type of DME]*, please fax the requested information to the DEEOIC Bill Processing Agent at (800) 882-6147, within 30 days, or contact me if you have questions regarding this request.

Thank you for your assistance.

Sincerely,

*[Insert POC CE Name and Signature]*

*[Insert POC CE Telephone and Fax Numbers]*

Cc: *[Enter as appropriate]*

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

### **13-04 OWCP Imaging System**

EEOICPA BULLETIN NO.13-04

Issue Date:

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Effective Date: June 17, 2013

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Expiration Date: September 30, 2013

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Subject: OWCP Imaging System

Background: In June 2013, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) will begin piloting a new imaging system, the OWCP Imaging System (OIS), with the pilot starting in the Cleveland district office and the Cleveland Final Adjudication Branch (FAB). OIS is a software program which enables DEEOIC staff to view electronic images of paper case file materials. The Cleveland district office will pilot OIS starting June 17, 2013 through September 30, 2013 to evaluate the technical capacity and process needs for imaging DEEOIC records.

OIS is a distinct "stand-alone" program, and DEEOIC will not be integrating it with the Electronic Compensation System (ECS) for the pilot. ECS is the primary case management system for all work products, due dates, actions, and point of entry for all new claims processed under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). DEEOIC will modify ECS to allow for the identification of case files that are paper or imaged (either fully imaged or a hybrid of both paper and imaged documents). While imaged documents will only be created in the Cleveland district office and Cleveland FAB, during the pilot, staff working in other DEEOIC offices will be able to view all case file documents in OIS.

For the period of the pilot, contractor personnel will be receiving incoming mail, preparing the mail for scanning, scanning the documents, providing quality control and doing the initial indexing prior to the documents being submitted and captured in OIS. The pilot will not involve imaging existing paper case files. During the pilot, all new claims for the Cleveland district office will be processed as a fully imaged record. Cases either fully imaged or partially imaged during the pilot will not be transferred to a DEEOIC jurisdiction outside of the Cleveland district office or the Cleveland FAB. For existing cases, OIS contractor personnel will image incoming paper documents to create an

electronic document which will be associated with the paper case file.

While the information provided in this Bulletin provides guidance on the implementation of a pilot process for capturing and storing electronic images of paper documents, it does not alter the manner in which the CE adjudicates claims based on the legal or regulatory requirements of the EEOICPA. DEEOIC expects a CE to conduct a thorough examination of the case evidence, including any imaged record, to reach a sufficient, accurate and justifiable claim outcome. Moreover, as this is a pilot of an imaging system, the DEEOIC will be conducting routine audits to ascertain confidence in the imaging system's functionality and accuracy. Federal personnel designated by the Cleveland District Director are responsible for conducting these audits.

DEEOIC's ultimate goal is to implement a program-wide imaging program to facilitate administrative efficiencies and lessen administrative costs. This pilot is the first step in achieving that goal. Once the pilot is complete, DEEOIC will proceed with an expansion of imaging nationwide. DEEOIC considers the implementation of OIS as having several distinct advantages:

- Allows for employee remote access to electronic case records
- Enhances customer service support
- Reduces the need to physically handle paper case files
- Facilitates better organization and access of claim records
- Reduces Personally Identifiable Information (PII) violations due to lost or damaged packaging
- Reduces the logistical costs of storage and maintenance of paper files
- Decreases costs associated with shipping case file
- Facilitates continuity of operations during emergencies or other disruptive events
- Assists in making CE positions telework eligible

References: OWCP Imaging System (OIS) Functional Requirements version 1.17, OIS Document Capture Process, OWCP Bulletin No. 01-01

Purpose: To provide guidance on the handling of imaged documents during a pilot in the Cleveland district office and the Cleveland FAB.

Applicability: Regional directors, district directors, assistant district directors, chiefs of operations, system managers, technical assistants, Cleveland district office staff, Cleveland FAB staff and national office staff.

Actions:

1. Upon receipt of new mail in the Cleveland district office, the mail will be taken to the appropriate scanning area where contractor personnel will prepare the mail for scanning and scan the document. The contractor is responsible for imaging all incoming mail for the Cleveland district office and Cleveland FAB. No paper documents that have been imaged will be destroyed.
2. Once the document is imaged, the contractor personnel will verify the quality of the electronic image by checking it against the original document and do the initial indexing prior to the documents being submitted and captured in OIS. The contractor will conduct the Category indexing based on a Category and Subject index list created by DEEOIC.
3. When a case number is not available at the "initial index" step, the document will be placed in one of two queues for review prior to indexing:
  - a. Case Create Queue – the document is a new EE-1 or EE-2 form and needs to go through the case create process.
  - b. Unnumbered Mail Queue – the document is not a EE-1 or EE-2 form and the case number cannot be readily identified.

4. For new cases, once the documents are imaged and in OIS, as per current case create guidance, contractor personnel will create the case in ECS. The contractor personnel will then identify the case ID number from ECS and place it in OIS. If a claim form or other mail which belongs to another district office is imaged by mistake, the claims examiner will mark the document for deletion, and obtain approval of district office management. Contractor personnel will then locate the original document and mail it to the appropriate office.
5. Newly scanned documents requiring review will be placed in the claims examiner's Unreviewed Documents list for review.
6. For imaged documents in the unnumbered mail queue, designated claims personnel at the Cleveland district office will use ECS to locate and identify the case number ID. Once the case ID is located, if Cleveland is the correct jurisdiction for the claim, the imaged document is to be associated in OIS with the existing case file. When the designated claim personnel indexes the document, he or she selects the appropriate Category using the drop down menu.
7. For unreviewed mail associated with a Cleveland case, the claims examiner selects a case from the unreviewed documents list and performs the following:
  - Verifies document legibility and page sequence
  - Reviews the document and its document list information
  - Reviews the category index and adds the subject index —verifies and updates the attributes
  - Saves the index with a Review Status of “**Review Complete**”
8. For documents other than incoming mail that are created in the Cleveland district office or Cleveland FAB that are to be associated with a case file, appropriate personnel are to create an image of the final document and upload or “bronze” the electronic document into OIS. For any outgoing document that requires a signature, once the document has been printed and signed, designated personnel scan and upload the signed documents into OIS. This guidance only applies to final documents, not drafts.
9. ECS will have a “flag” to identify records relating to the case documents in “imaged” format. The ECS flag will identify whether the case is paper only or imaged (either fully imaged or a hybrid of both paper and imaged documents). Regardless of the ECS flag, the CE must review all documents, paper or imaged, prior to claim adjudication actions. The CE should not print out the imaged record for insertion into an existing paper case file.
10. For the duration of the imaging pilot, all paper documents that undergo imaging are to be retained for quality control evaluation, and auditing purposes. The contractor personnel imaging the documents are responsible for maintaining the documents by date received to allow for access by appropriate personnel.
11. Designated federal staff is to perform a daily audit of the imaging system to ensure that incoming documents are properly imaged, indexed to program guidelines, assigned properly to the associated case file, and imaged documents are of readable quality.
  - a. During the pilot, each day the designated auditor staff is to identify 20 distinct incoming documents received in the Cleveland office. The auditor is to identify random documents from incoming mail (to include facsimiles, multiple page documents) which are unprocessed by the contractor personnel.
  - b. Once the auditor has randomly selected a document, he or she is to annotate the OIS Document Audit Worksheet. (See Exhibit 1). The auditor enters the date of document receipt, the case ID, and a brief description of the document. The auditor is to return the mail to the incoming mail queue for OIS processing.
  - c. The auditor will then attempt to locate the sampled document once the contractor

has completed the electronic capture, and uploading of document image into OIS. Using the OIS Document Audit Worksheet, the auditor will note whether the electronic version of the sampled document is found in OIS, whether the imaged document is readable, and whether the document is correctly associated with the proper case file. The auditor will then initial and date the entry.

d. If the sampling reveals problems with document control or image quality, the district office is to notify the Director of DEEOIC of the corrective action that will be taken by the district office.

Disposition: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

## **2012 EEOICP Final Bulletins**

### **12-01 Chronic Lymphocytic Leukemia (CLL) as a Radiogenic Cancer under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA)**

EEOICPA BULLETIN NO. 12-01

Issue Date: March 7, 2012

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Effective Date: March 7, 2012

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Expiration Date: March 7, 2013

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Subject: Chronic Lymphocytic Leukemia (CLL) as a Radiogenic Cancer under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

Background: The Department of Health and Human Services (HHS) develops guidelines, by regulation, to be used by the Division of Energy Employees Occupational Illness Compensation (DEEOIC) to assess the likelihood that a worker with cancer developed that cancer as a result of exposure to radiation in performing his or her duty at a Department of Energy (DOE) facility or an atomic weapons employer facility. The guidelines are published in 42 C.F.R. Part 81, and comprise a set of policies and procedures by which DEEOIC determines whether it is “at least as likely as not” that the cancer of an employee was caused by radiation doses the employee incurred while employed at a covered facility. Currently, CLL is designated as a non-radiogenic cancer, which required DEEOIC to assign a probability of causation value of “zero.” On February 6, 2012, HHS published a final rule removing that designation. Therefore, effective March 7, 2012, claimants with CLL will be eligible for radiation dose reconstruction under the EEOICPA.

References: 42 C.F.R. Part 81.

Purpose: To provide procedures on processing claims for CLL.

Applicability: All staff.

Actions:

1. This bulletin addresses claims previously denied, claims pending adjudication (including those at NIOSH), and claims yet to be submitted.
2. The DEEOIC will prepare a comprehensive list of cases (to include those cases identified by NIOSH) with a diagnosis of CLL (ICD-9 code 204.1 through 204.19). The list includes all cases with a non-approved CLL diagnosis. **All** cases on the list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to ensure that it is referred to NIOSH for a dose reconstruction or rework of the dose reconstruction, where appropriate. The comprehensive list will be provided to the district offices and FAB under separate cover.
3. For all cases on the comprehensive list that were previously denied with a “zero” percent probability of causation value assigned to the CLL, the claim for CLL is to be reopened. In the exercise of the DEEOIC Director’s discretion in the reopening process, the Director is delegating limited authority to the four District Directors (DD) and the Assistant District Directors (ADD), to sign Director’s Orders for reopening of all CLL related cases. This delegated authority is limited to reopening those cases that appear on the comprehensive list. If the DD or ADD identifies a case that is not on the comprehensive list but has a diagnosis of CLL (with an ICD-9 code referenced in the previous paragraph), the case should be referred to the National Office. A sample Director’s Order is provided in [Attachment 1](#). The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is responsible for any further development and issuance of a new recommended decision.
4. Upon reopening the claim for CLL, the district office is to refer the case to NIOSH for a dose reconstruction or rework of the dose reconstruction, as appropriate. When referring these cases to NIOSH for further analysis, a request to the National Office Health Physicist is not required. Instead, the CE should prepare a NIOSH Referral Summary Document (NRSD) or Amended NIOSH Referral Summary Document (ANRSD), as appropriate, and forward the NRSD or ANRSD to the Public Health Advisor (PHA) assigned to the district office at NIOSH. The referrals to NIOSH should be conducted in accordance with EEOICPA Procedure Manual Chapter 2-0900 and must be recorded in ECS using the NIOSH causation path.
5. For those claims where the dose reconstruction yields a combined probability of causation (PoC) of less than 50%, the district office is to issue a new recommended decision addressing CLL only. However, should the dose reconstruction yield a combined PoC of 50% or greater, the district office will reopen all cancers that were previously denied based on the PoC in accordance with Action Item #3. The district office will then issue a new recommended decision addressing all cancers.
6. For cases currently pending a final decision at the FAB with a less than 50% PoC, the Hearing Representative/Claims Examiner (CE) is to remand the recommended decision to the district office in the usual manner. The Remand Order should direct the district office to refer the case to NIOSH for a dose reconstruction or rework of the dose reconstruction as a result of the designation of CLL as a radiogenic cancer. Once the case is remanded, the district office is to refer the case to NIOSH as instructed in Action Item #4.
7. For those cases currently at NIOSH that have CLL, DEEOIC has been notified that NIOSH will conduct the dose reconstruction to include the CLL.
8. Upon receipt of the dose reconstruction report from NIOSH, the CE proceeds in the usual manner and prepares a recommended decision.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

## Occupational Illness Compensation

### [Attachment 1](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections

## **12-02 Implementing the National Institute for Occupational Safety and Health's (NIOSH) August 2011 Report**

EEOICPA BULLETIN NO. 12-02

Issue Date: June 19, 2012

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Effective Date: June 19, 2012

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Expiration Date: June 19, 2013

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Subject: Implementing the National Institute for Occupational Safety and Health's (NIOSH) August 2011 Report.

Background: The Department of Health and Human Services (HHS) has issued an updated report entitled, "Report on Residual Radioactive and Beryllium Contamination at Atomic Weapons Employer Facilities and Beryllium Vendor Facilities." In this report, NIOSH has designated revised dates of residual radioactive contamination present at certain Atomic Weapons Employer facilities. These changes may affect the period of covered employment for claims under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) that have undergone a radiation dose reconstruction. Accordingly, this Bulletin provides instructions to claims staff on the assessment of claims affected by the changes to facility residual radiation contamination timeframes.

References: 42 U.S.C. § 7384l(3)(B); 20 C.F.R. § 30.5(c)(2); EEOICPA Bulletin Nos. 05-02 and 07-13; FY 2005 Defense Authorization Act, Public Law 108-375; and the NIOSH October 17, 2011 document entitled, "Report on Residual Radioactive and Beryllium Contamination at Atomic Weapons Employer Facilities and Beryllium Vendor Facilities."

Purpose: To provide procedures for processing claims for which additional periods of residual radiation have been identified by NIOSH in their most recent report entitled, "Report on Residual Radioactive and Beryllium Contamination at Atomic Weapons Employer Facilities and Beryllium Vendor Facilities" (hereafter, Residual Report).

Applicability: All staff.

### Actions:

1. This bulletin addresses claims previously denied, claims pending adjudication (including those at NIOSH), and claims yet to be submitted.
2. The DEEOIC will prepare a comprehensive list of cases applicable for review under this Bulletin. The comprehensive list will identify all claims with an employee who worked at facilities for which residual periods of employment have been added in the new Residual Report. Additionally, cases on the list will be limited to those containing a final decision denying an employee's claimed radiogenic cancer, because of a negative Probability of Causation (PoC) calculation (PoC of less than 50%). The comprehensive list will be provided to the district offices

and FAB under separate cover.

3. The district directors are to use their discretion in assigning staff to complete the tasks outlined in this item. This could include directing claims staff or the district office health physics (HP) coordinators to perform these actions. Once the DEEOIC district office receives the comprehensive list, staff is to identify cases located at the office. In some instances, staff is to be aware that cases identified on the list may have transferred locations from one office to another; as such, it may be necessary to alert the responsible office of the need to add the case to its own review list. Once the district office identifies a case for review, the responsible district office staff is to conduct a manual examination of the case record. In particular, the district office staff is to access the electronic version (on the NIOSH CD) of the *most recent* dose reconstruction for the employee. Once located, the district office staff is to e-mail the most recent electronic dose reconstruction report to the National Office HP staff for review. The Policy Branch will provide the National Office HP e-mail addresses associated with this requirement.

4. A DEEOIC National Office HP will review the dose reconstruction report and determine whether the period of residual radiation added in the 2011 Residual Report will require a rework of the dose reconstruction. Ultimately, the National Office HP will assess each dose reconstruction for all claims identified on the comprehensive list.

5. Once the National Office HP has completed an evaluation of the dose reconstruction report, he or she will advise, via an e-mail to the district office HP coordinators, whether a rework is necessary. If the HP decides that rework is not needed, he or she will prepare a memo and transmit it to the district office for placement in the file. The HP memo will provide a narrative explanation of the basis for finding that no further action is necessary.

Once advised that no rework is needed, district office staff are to indicate in ECS that no further action is necessary in conjunction with this Bulletin. The CE highlights the processed NIOSH path in ECS and clicks on the "View/Perform SEC Screening." This will pull up the NIOSH screening window. The CE then checks the box next to "No Action Necessary," enters the date of the memo, and selects the "No Action Necessary Reason" of "Rvwd under Bulletin 12-02, Implementing NIOSH's August 2011 Report."

If the HP determines a rework of a dose reconstruction is necessary, he or she will send an e-mail to the district office HP/NIOSH coordinators explaining that a rework is required because of a change in the residual contamination timeframe for a facility where the employee worked. Once the CE receives the HP notice of rework, he or she prepares an Amended NIOSH Referral Summary Document (ANRSD) and forwards it to the assigned NIOSH Public Health Advisor (PHA). The ANRSD should contain a note that the rework is necessary. The CE should ensure that all other necessary requirements for a rework referral to NIOSH is conducted in accordance with EEOICPA Procedure Manual Chapter 2-0900 and appropriate ECS rework procedures.

6. For those cases in which NIOSH undertakes a rework of the dose reconstruction, once the revised dose reconstruction is returned to the district office, the assigned CE calculates the new PoC. There are then two possible pathways:

1) the PoC remains below 50%; or

2) the PoC reaches 50% or more and the case becomes compensable.

For cases in which the PoC remains below 50%, the CE prepares a memo to the file documenting the review of the case based upon the Residual Report. The memo to file is to include a brief narrative explaining that a new dose reconstruction occurred, but that the revised PoC is still less than 50%. Finally, the memo should include a statement that given the outcome of the rework and recalculated POC, there is no further action necessary.

If the dose reconstruction results in a PoC of 50% or more, the CE is to initiate action to reopen the case. In the exercise of the DEEOIC Director's discretion in the reopening process, the Director is

delegating authority to the four District Directors (DD) and the Assistant District Directors (ADD), to sign Director's Orders for reopening of all residual radiation related cases. This delegated authority is limited to reopening those cases that appear on the comprehensive list. A sample Director's Order is attached for reference ([Attachment 1](#)). The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once the district office issues a Director's Order, it is responsible for any further development and issuance of a new, timely recommended decision.

7. For cases currently pending a final decision at the FAB with a less than 50% PoC, and are identified on the comprehensive list, the Hearing Representative/Claims Examiner (CE) is to remand the recommended decision to the district office. The Remand Order should direct the district office to send the dose reconstruction to the National Office HP who will determine if a rework is necessary as is explained in this directive.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections

## **2011 EEOICP Final Bulletins**

### **11-01 Blockson Chemical Company SEC Class from March 1, 1951 through June 30, 1960**

EEOICPA BULLETIN NO. 11-01

Issue Date: October 3, 2010

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Effective Date: October 3, 2010

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Expiration Date: October 3, 2011

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Subject: Blockson Chemical Company SEC Class from March 1, 1951 through June 30, 1960

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from the Blockson Chemical Company in Joliet, Illinois to be added to the Special Exposure Cohort (SEC).

The decision to initiate this petition occurred after the National Institute for Occupational Safety and Health (NIOSH) determined that it could not reconstruct a dose under 42 C.F.R. § 83.13. NIOSH submitted its findings to the Advisory Board on Radiation and Worker Health ("the Board"). On August 4, 2010, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at the Blockson Chemical Company in Joliet, Illinois.

On September 3, 2010, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress:

All Atomic Weapons Employer employees who worked at the Blockson Chemical Company in Joliet, Illinois from March 1, 1951 through June 30, 1960, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

A copy of the Secretary's letter to Congress recommending the designation is included as [Attachment 1](#). While notification was provided to Congress on September 2, 2010, the official designation is dated September 3, 2010. Although Congress had the authority to reject the recommendation within a 30-day time frame, Congress took no action. Therefore, the SEC designation for this class became effective as of October 3, 2010, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress.

While a new SEC class has been added for employees at the Blockson Chemical Company, NIOSH intends to use any available internal and external monitoring data that may become available for an individual claim (and that can be interpreted using existing NIOSH dose reconstruction processes or procedures). Additionally, NIOSH can estimate occupational medical dose. This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the September 2, 2010 letter to Congress from the Secretary of HHS in which Secretary Sebelius makes the designation; SEC Petition Report for the Blockson Chemical Company.

Purpose: To provide procedures for processing SEC claims for workers at the Blockson Chemical Company in Joliet, Illinois.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at the Blockson Chemical Company during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.
3. The district offices are to use the comprehensive list as the basis for an initial screening of cases associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is likely to meet the criteria for inclusion into the SEC. A screening worksheet is included as [Attachment 2](#). The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case file. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. Claim status codes have been created in ECMS to reflect each of these categories: **ISL** (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; **ISU** (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and **ISD** (Initial SEC Screening, Development Needed) for those for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, in this instance, "101- Rvwd per Bulletin 11-01, Blockson Chemical Company SEC (3/1/51

– 6/30/60).” Once the worksheet is completed, the claims examiner (CE) is to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the **ISL**, **ISU**, and **ISD** codes is to correspond with the completion date of the screening worksheet. The Blockson Chemical Company is an Atomic Weapons Employer (AWE). As such, there are no Part E coding implications.

The purpose of this initial screening is to assist the district offices in prioritizing claims poised for acceptance and for purposes of meeting operational plan goals. Once screening and prioritization is complete, claims adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each case must be evaluated formally for SEC inclusion and the decision recorded in ECMS for all claims (including those claims with any form of closure code in ECMS) in each case. The initial screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims submitted after the list is generated. These claims will be evaluated for inclusion in the SEC class in the general course of processing.

4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, and complete the worksheet and related coding.

5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD, in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class, and that his or her case is being returned to the DOL for adjudication. A copy of the NIOSH letter to affected Blockson Chemical Company employees is included as [Attachment 3](#). The CE must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code “**NW**” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the “**NW**” code entry is October 3, 2010. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC class, and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this Bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e-mail to return the dose reconstruction analysis records. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the status code “**NW**” with a status effective date of October 3, 2010. In addition, the CE must write a letter to the claimant advising that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this Bulletin, then refer to instructions in Action #15.

6. For any cases identified as having potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual, Chapter 2-0600.7. If the employee has a specified cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.

8. If the employee has a specified cancer, the CE must determine if the worker was a qualified Atomic Weapons Employer (AWE) employee who worked at least 250 workdays at the Blockson Chemical Company in Joliet, Illinois between March 1, 1951 and June 30, 1960. If the employee does not have 250 workdays at the Blockson Chemical Company, the CE must review the file to determine if additional days in the SEC can be found by combining days from employment meeting the criteria for other classes in the SEC and aggregating them together to meet the 250-workday requirement. If the 250-workday requirement is not satisfied, the CE proceeds to Action #10.

9. Once the CE has determined that the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

If it is determined that the case does qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail, so that NIOSH can close out their file. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. In addition to the usual recommended decision coding, when a recommended decision to grant benefits based on inclusion in an SEC Class is issued, the CE must enter the code “**SER**” (SEC Recommended Acceptance) into the claim status history. This code represents that an SEC acceptance is included in the recommended decision being issued. This code is entered with the same status effective date as the recommended decision (it doesn’t matter which one is entered first). The “**SER**” code has replaced the “**SE**” code (though there is no reason to update old “**SE**” codes).

When the “**SER**” code is entered, a reason code must be entered to reflect which SEC class the acceptance is based on. If the acceptance is based on this Blockson Chemical Company SEC, the reason code selected will be “**101- Rvwd per Bulletin 11-01, Blockson Chemical Company SEC (3/1/51 – 6/30/60).**”

If the SEC acceptance is based on inclusion in more than one SEC Class, then more than one “**SER**” code will need to be entered so that the reason codes selected will represent all SEC classes leading to the acceptance. For example, if the employee worked for 125 days of SEC covered employment at Blockson Chemical and another 125 days of SEC employment at the Metallurgical Laboratory, you would need the employment at both facilities to meet the 250 day requirement. In this situation, the CE would need to code one “**SER**” with a “**101- Rvwd per Bulletin 11-01, Blockson Chemical Company SEC (3/1/51 – 6/30/60)**” reason code. Then the CE would also need to enter a second “**SER**” with a “**907-Rvwd per Bulletin 09-07, Metallurgical Laboratory SEC**” reason code. The CE would also need to enter the recommended decision code(s) with the same status effective date as the “**SER**” codes.

ECMS Coding Reminder: For all claims where Blockson Chemical Company employment is claimed, regardless of whether the SEC criteria are met, the SEC site code “**Blockson Chemical Company**” must be selected under the “**SEC/SEC Desc**” field on the claim screen.

10. Although HHS determined that it is not feasible for NIOSH to perform complete dose reconstructions for this class of employees, NIOSH has indicated that partial dose reconstructions are possible. Accordingly, for cases that do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code “**NI**” (Sent to NIOSH) in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code “**NI**” (Sent

to NIOSH) into ECMS B, with a status effective date equal to the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-specified cancer, insufficient latency period or does not meet the 250-workday requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for dose reconstruction and the reason(s) it does not qualify for the SEC class. The CE is to send a copy of this letter to NIOSH.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “**NR**” (NIOSH Dose Reconstruction Received) in ECMS B and selects the “**PD**” (Partial Dose Reconstruction) reason code. The status effective date is the date the dose reconstruction report is date-stamped into the district office. The CE should not delete the “**NW**” (NIOSH, returned without a dose reconstruction) or “**NI**” (Sent to NIOSH) codes already present in ECMS.

11. If the claim meets the SEC class employment criteria and includes both specified and non-specified cancers, medical benefits can be awarded for the specified cancer(s) and any non-specified cancer(s) once a dose reconstruction results in a probability of causation (PoC) of 50 percent or greater. A dose reconstruction is unnecessary for any secondary cancers that are metastases of a compensable cancer including non-specified primary cancers which cause an accepted SEC secondary cancer. For instance, prostate (non-specified primary) cancer metastasizes to secondary bone cancer. If secondary bone cancer is accepted as a specified cancer under the SEC provision, both primary and secondary cancers (prostate and bone cancer) are accepted for medical benefits under Part B without a need for a dose reconstruction for the prostate cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and, concurrently prepares a NRSD to NIOSH for a dose reconstruction for the non-specified cancer to determine eligibility for medical benefits. The CE enters status code “**SER**” (SEC Recommended Acceptance) with the “**101- Rvwd per Bulletin 11-01, Blockson Chemical Company SEC (3/1/51 – 6/30/60)**” reason code (as described in item #9 above) and the “**NI**” (Sent to NIOSH) code into ECMS B. The status effective date for the “**SER**” code is the date of the recommended decision to accept the specified cancer. The status effective date for the “**NI**” code is the date of the Senior or Supervisory CE signature on the NRSD.

12. If a claim has a final decision to deny based on a PoC of less than 50%, and a review of the evidence of record establishes likely inclusion in the SEC class, the case is reopened. In the exercise of the DEEOIC Director’s discretion in the reopening process, the Director is delegating limited authority to the four District Directors and Assistant District Directors (ADDs), at the discretion of the District Director, to sign Director’s Orders for reopening of these cases. This delegated authority is limited to reopenings based upon evidence that a Blockson Chemical Company employee meets the criteria for placement into the Blockson Chemical Company SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director or ADD is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided in [Attachment 4](#). The DEEOIC Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is responsible for issuing a new recommended decision.

13. For those cases which are reopened under the authority granted in this Bulletin, the District Director or ADD enters status code “**MN**” (NO Initiates Review for Reopening) in ECMS B with a status effective date equal to the effective date of this Bulletin. For all reopenings per this Bulletin, upon completing the Director’s Order to reopen the claim, the District Director or ADD enters status code “**MD**” (Claim Reopened – File Returned to DO) into ECMS B to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “**MZ**” status code is not necessary). The status effective date of the “**MD**” code is the date of the Director’s Order. Please note that while the “**MD**” code is generally input by National Office staff, entry of this code has been delegated to the District Director and ADD, just as the authority to grant reopenings has been

delegated in this specific circumstance.

14. In addition to the usual final decision coding, when a final decision to grant benefits based on inclusion in an SEC Class is issued, the FAB CE/HR must enter the code “**SEF**” (SEC Final Acceptance) into the claim status history. This code represents that an SEC acceptance is included in the final decision being issued. This code is entered with the same status effective date as the final decision (it doesn’t matter which one is entered first).

When the “**SEF**” code is entered, a reason code must be entered to reflect which SEC class the acceptance is based on. If the acceptance is based on this Blockson Chemical Company SEC, the reason code selected will be “**101- Rvwd per Bulletin 11-01, Blockson Chemical Company SEC (3/1/51 – 6/30/60)**”.

If the SEC acceptance being rendered is based on inclusion in more than one SEC Class, then more than one “**SEF**” code will need to be entered so that the reason codes selected will represent all SEC classes leading to the acceptance. See the example outlined in Action #9 regarding “**SER**” coding for more than one SEC Class. The FAB CE/HR would also need to enter the final decision code(s) with the same status effective date as the “**SEF**” codes.

If FAB remands a case that the district office had recommended for an SEC acceptance and had coded “**SER**”, there is no need for the “**SER**” code to be removed, as it reflects the language in the recommended decision that was issued on that date. Similarly, if a final decision is vacated on an SEC final decision to accept where “**SEF**” has been coded, there is no need to remove the “**SEF**” code, as it reflects the language in the final decision that was originally issued.

15. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending Blockson Chemical Company cases that have a recommended decision to deny. All cases on the comprehensive list identified in Action #2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at the Blockson Chemical Company during the period specified, has a specified cancer, and meets the 250-workday requirement, the FAB is to reverse the district office’s recommended decision to deny, and accept the case. The CE or FAB staff member enters status code “**F6**” (FAB Reversed to Accept) with the appropriate Reason Code into ECMS B to reflect the FAB reversal with a status effective date equal to the date of the final decision to approve. The CE or FAB staff person enters status code “**SEF**” (SEC Final Acceptance) into ECMS B with the status effective date equal to the date of the final decision to approve. There is no need to enter the “**SER**” (SEC Recommended Acceptance) code with the recommended decision because the recommended decision was not an SEC acceptance.

For all claims where Blockson Chemical Company employment is claimed, regardless of whether the SEC criteria are met, the SEC site code “**Blockson Chemical Company**” must be selected under the “**SEC/SEC Desc**” field on the claim screen.

If no action is required, FAB must follow the instructions specified in Action #15, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the district office. If FAB determines that the case cannot be approved based on the new SEC designation and that re-referral to NIOSH is appropriate (see Action #10), the CE or FAB staff member remands the case for district office action. The CE or FAB staff member enters status code “**F7**” (FAB Remanded) with “**OTH**” (No DO Error – Other) as the reason code, with a status effective date equal to the date of the remand. Remember, the existing “**SER**” code does not need to be removed.

16. If, after review or further development, the CE or FAB staff member determines that a case on the list does not require any action, the CE or FAB staff member must write a brief memo to the file indicating that the file was reviewed and noting the reason why no additional action is necessary. A case classified as not requiring any action is a case that does not meet the SEC criteria and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must code “NA” (No Action Necessary) and then select the appropriate reason code from the reason code drop down list. Since the “NA” coding is specifically tied to the SEC review list generated by DEEOIC, the “NA” code is restricted to ECMS B only because the SEC review list is derived from Part B data. For Blockson Chemical Company cases that were reviewed under this Bulletin and require no additional action, the reason code that must be selected is “101” (Rvwd per Bulletin 11-01, Blockson Chemical Company SEC (3/1/51 – 6/30/60) and be coded into ECMS B only. The status effective date of the “NA” code is the date of the memo to the file stating the review is complete, and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the “NA-101” code is not entered initially. The “NA-101” code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the “NA-101” code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “NA-101” code in addition to the closure code. The status effective date for the “NA” coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections

## **11-02 Ames Laboratory SEC Class from January 1, 1955 through December 31, 1960\_**

EEOICPA BULLETIN NO. 11-02

Issue Date: November 5, 2010

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Effective Date: November 5, 2010

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Expiration Date: November 5, 2011

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Subject: Ames Laboratory SEC Class from January 1, 1955 through December 31, 1960

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from the Ames Laboratory in Ames, Iowa to be added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and

determined that it qualified for evaluation under 42 C.F.R. § 83.13. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On September 1, 2010, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at the Ames Laboratory in Ames, Iowa.

On October 6, 2010, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress:

All employees of the Department of Energy, its predecessor agencies, and its contractors and subcontractors who worked in any area of of the Department of Energy facility at the Ames Laboratory from January 1, 1955 through December 31, 1960, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

A copy of the Secretary’s letter to Congress recommending the designation is included as [Attachment 1](#). Although Congress had the authority to reject the recommendation within a 30-day time frame, Congress took no action. Therefore, the SEC designation for this class became effective as of November 5, 2010, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress.

NIOSH has concluded that it can provide a partial dose estimate using any internal and external monitoring data, including occupational medical dose, available for an individual claim (and that can be interpreted using existing NIOSH dose reconstruction processes or procedures). This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the October 6, 2010 letter to Congress from the Secretary of HHS in which Secretary Sebelius makes the designation; SEC Petition Report for the Ames Laboratory.

Purpose: To provide procedures for processing SEC claims for workers at the Ames Laboratory in Ames, Iowa.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at the Ames Laboratory during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.
3. The district offices are to use the comprehensive list as the basis for an initial screening of cases associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is likely to meet the criteria for inclusion into the SEC. A screening worksheet is included as [Attachment 2](#). The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case file. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in

the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. Claim status codes have been created in ECMS to reflect each of these categories: **“ISL”** (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; **“ISU”** (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and **“ISD”** (Initial SEC Screening, Development Needed) for those for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, in this instance, **“102- Rvwd per Bulletin 11-02, Ames Laboratory SEC (1/1/55 – 12/31/60).”** Once the worksheet is completed, the claims examiner (CE) is to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the **“ISL”**, **“ISU”**, and **“ISD”** codes is to correspond with the completion date of the screening worksheet.

The purpose of this initial screening is to assist the district offices in prioritizing claims poised for acceptance and for purposes of meeting operational plan goals. Once screening and prioritization is complete, claims adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each case must be evaluated formally for SEC inclusion and the decision recorded in ECMS for all claims (including those claims with any form of closure code in ECMS) in each case. The initial screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims submitted after the list is generated. These claims will be evaluated for inclusion in the SEC class in the general course of processing.

4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, complete the worksheet, and enter related coding.
5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD, in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class, and that his or her case is being returned to the DOL for adjudication. A copy of the NIOSH letter to affected Ames Laboratory employees is included as [Attachment 3](#). The CE must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code **“NW”** (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the **“NW”** code entry is November 5, 2010. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record. The standard procedure for NIOSH coding in ECMS E is to code all additional NIOSH actions only if the **“NI”** (Sent to NIOSH) status code has been entered. Therefore, the CE enters the **“NW”** code into ECMS E with the status effective date of November 5, 2010, only if **“NI”** has already been entered in ECMS E.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC class, and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this Bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e-mail to return the dose reconstruction analysis records. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the status code **“NW”** with a status effective date of November 5, 2010. In addition, the CE must write a letter to the claimant advising that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this Bulletin, then refer to instructions in Action #16.

6. For any cases identified as having potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual, Chapter 2-0600.7. If the employee has a specified cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.

8. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 workdays at the Ames Laboratory in Ames, Iowa between January 1, 1955 and December 31, 1960.

Based on facility information provided in the SEC evaluation report, Ames Laboratory was established by the Atomic Energy Commission (AEC) in May 1947 and played a key role in the production of strategic nuclear materials for the Manhattan Project and the AEC. The Ames Laboratory site consists of a number of buildings at Iowa State University (ISU) in Ames, Iowa.

Once 250 days of Ames Laboratory employment during the class period is established, the CE or hearing representative can accept that the employment component of the SEC class is satisfied. In these cases, the CE proceeds to Action #9.

If the employee does not have 250 workdays at the Ames Laboratory, the CE must review the file to determine if additional days in the SEC can be found by combining days from employment meeting the criteria for other classes in the SEC and aggregating them together to meet the 250-workday requirement. If the 250-workday requirement is not satisfied, the CE proceeds to Action #10.

9. Once the CE has determined that the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

If it is determined that the case does qualify for the SEC class, the CE through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail, so that NIOSH can close out their file. The SrCE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. In addition to the usual recommended decision coding, when a recommended decision to grant benefits based on inclusion in an SEC class is issued, the CE must enter the code "**SER**" (SEC Recommended Acceptance) into the claim status history. This code represents that an SEC acceptance is included in the recommended decision being issued. This code is entered with the same status effective date as the recommended decision (it doesn't matter which one is entered first). The "**SER**" code has replaced the "**SE**" code (though there is no reason to update old "**SE**" codes).

When the "**SER**" code is entered, a reason code must be entered to reflect which SEC class the acceptance is based on. If the acceptance is based on this Ames Laboratory SEC, the reason code selected will be "**102- Rvwd per Bulletin 11-02, Ames Laboratory SEC (1/1/55 – 12/31/60).**"

If the SEC acceptance is based on inclusion in more than one SEC Class, then more than one "**SER**" code will need to be entered so that the reason codes selected will represent all SEC classes leading to the acceptance. For example, if the employee worked for 125 days of SEC covered employment at Ames Laboratory and another 125 days of SEC covered employment at the Metallurgical Laboratory, you would need the employment at both facilities to meet the 250-workday requirement. In this situation, the CE would need to code one "**SER**" with a "**102- Rvwd per Bulletin 11-02, Ames Laboratory SEC (1/1/55 – 12/31/60)**" reason code. Then the CE would also need to enter a second "**SER**" with a "**907- Rvwd per Bulletin 09-07, Metallurgical Laboratory SEC**" reason code. The CE would also need to enter the recommended decision code(s)

with the same status effective date as the “**SER**” codes.

Please note that the “**SEC/SEC Desc**” field on the claim screen in ECMS is no longer a required field. The CE will not enter an Ames Laboratory SEC description into ECMS.

10. Although HHS determined that it is not feasible for NIOSH to perform complete dose reconstructions for this class of employees, NIOSH has indicated that partial dose reconstructions are possible. Accordingly, for cases that have not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code “**NI**” (Sent to NIOSH) in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the “**NI**” code is not entered into ECMS E until non-radiological toxic exposure development is complete.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code “**NI**” (Sent to NIOSH) into ECMS B, with a status effective date equal to the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-specified cancer, insufficient latency period or does not meet the 250-workday requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for dose reconstruction and the reason(s) it does not qualify for the SEC class. The CE is to send a copy of this letter to NIOSH. If the case is a B/E case, and toxic exposure development was completed with a memorandum to the file (with a prior “**NI**”/“**NW**” code), the CE enters status code “**NI**” into ECMS E with the status effective date of the e-mail requesting NIOSH to proceed with dose reconstruction.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “**NR**” (NIOSH Dose Reconstruction Received) in ECMS B and selects the “**PD**” (Partial Dose Reconstruction) reason code. The status effective date is the date the dose reconstruction report is date-stamped into the district office. The CE should not delete the “**NW**” (NIOSH, returned without a dose reconstruction) or “**NI**” (Sent to NIOSH) codes already present in ECMS. If the CE had previously entered “**NI**” in ECMS E, the CE also enters codes “**NR**” and “**PD**” in ECMS E. If the case is a B/E case, the CE enters the Probability of Causation (PoC) into ECMS B and ECMS E (regardless of whether the “**NI**” code had previously been entered).

11. If the claim meets the SEC class employment criteria and includes both specified and non-specified cancers, benefits can be awarded for the specified cancer(s) and any non-specified cancer(s) assigned a probability of causation (PoC) of 50 percent or greater. Medical benefits are also payable for a non-specified primary cancer, where it is found to be the origin of a compensable secondary SEC cancer; i.e. bone, lung, or renal. For instance, prostate (non-specified primary) cancer metastasizes to secondary bone cancer. If secondary bone cancer is accepted as a specified cancer under the SEC provision, both the primary and secondary cancers (prostate and bone cancer) are to be accepted for medical benefits without a need for a dose reconstruction for the prostate cancer. The CE should be careful to recognize, however, that a non-specified primary cancer approved for medical benefits in this situation does not qualify as determination of causation under Part E (See PM 2-0900.7b(1)). When the situation arises where both a secondary SEC cancer and its non-specified primary cancer exist, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) under Part B and Part E and to grant medical benefits only under Part B for the underlying non-specified primary cancer. The decision should explain that causation for the non-specified primary cancer has not been established and a Part E

decision regarding that cancer, along with any associated award of lump sum compensation, is deferred. The CE would proceed to code ECMS with the appropriate recommended decision coding along with the status code “**SER**” (SEC Recommended Acceptance) with the “**102- Rvwd per Bulletin 11-02, Ames Laboratory SEC (1/1/55 – 12/31/60)**” reason code (as described in item #9 above). In ECMS B both the primary and secondary cancers are coded as “**A**” (Accepted), while in ECMS E the specified secondary cancer is accepted and the non-specified primary cancer remains as “**R**” (reported) in the medical condition status field of the medical eligibility screen.

For purposes of then determining Part E compensability for the reported primary non-specified cancer, concurrent action would be taken to assess the evidence linking the cancer to toxic substance exposure, along with a NRSD to NIOSH for a dose reconstruction to address causation due to occupational radiation exposure. Once the issue of causation is resolved, a recommended decision is issued under Part E. If causation is established, the Part E recommended decision accepts the primary non-specified cancer and the CE codes the medical condition status as “**A**” (Accepted) in ECMS E. If, however, causation is not established, the Part E recommended decision denies causation for the cancer and the CE codes it as “**D**” (Denied) in the medical condition status in ECMS E; there is no need to address medical benefits under Part E as benefits under Part B were previously granted.

12. If a claim has a final decision to deny based on a PoC of less than 50%, and a review of the evidence of record establishes likely inclusion in the SEC class, the case is reopened. In the exercise of the DEEOIC Director’s discretion in the reopening process, the Director is delegating limited authority to the four District Directors and the Assistant District Directors (ADDs), at the discretion of the District Director, to sign the Director’s Orders for reopening of these cases. This delegated authority is limited to reopenings based upon evidence that an Ames Laboratory employee meets the criteria for placement into the Ames Laboratory SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director or ADD is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided as [Attachment 4](#). The DEEOIC Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is responsible for issuing a new recommended decision.

13. For those cases which are reopened under the authority granted in this Bulletin, the District Director or ADD enters status code “**MN**” (NO Initiates Review for Reopening) in ECMS B with a status effective date equal to the effective date of this Bulletin. If the District Director or ADD is also reopening Part E, an “**MN**” code is also entered into ECMS E. For all reopenings per this Bulletin, upon completing the Director’s Order to reopen the claim, the District Director or ADD enters status code “**MD**” (Claim Reopened – File Returned to DO) into ECMS B/E (as appropriate) to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “**MZ**” status code, receipt of Director’s Order in the DO or FAB, is not necessary). The status effective date of the “**MD**” code is the date of Director’s Order. Please note that while the “**MD**” code is generally input by National Office staff, entry of this code has been delegated to the District Director or ADD, just as the authority to grant reopenings has been delegated in this specific circumstance.

14. In addition to the usual final decision coding, when a final decision to grant benefits based on inclusion in an SEC class is issued, the FAB CE/HR must enter the code “**SEF**” (SEC Final Acceptance) into the claim status history. This code represents that an SEC acceptance is included in the final decision being issued. This code is entered with the same status effective date as the final decision (it doesn’t matter which one is entered first).

When the “**SEF**” code is entered, a reason code must be entered to reflect which SEC class the acceptance is based on. If the acceptance is based on this Ames Laboratory SEC, the reason code selected will be “**102– Rvwd per Bulletin 11-02, Ames Laboratory SEC (1/1/55 - 12/31/60)**”.

If the SEC acceptance being rendered is based on inclusion in more than one SEC class, then more than one “**SEF**” code will need to be entered so that the reason codes selected will represent all SEC classes leading to the acceptance. See the example outlined in Action #9 regarding “**SER**” coding for more than one SEC class. The FAB CE/HR would also need to enter the final decision code(s) with the same status effective date as the “**SEF**” codes.

If FAB remands a case that the district office had recommended for an SEC acceptance and had coded “**SER**”, there is no need for the “**SER**” code to be removed, as it reflects the language in the recommended decision that was issued on that date. Similarly, if a final decision is vacated on an SEC final decision to accept where “**SEF**” has been coded, there is no need to remove the “**SEF**” code, as it reflects the language in the final decision that was originally issued.

15. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending Ames Laboratory cases that have a recommended decision to deny. All cases on the comprehensive list identified in Action #2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at the Ames Laboratory during the period specified, has a specified cancer, and meets the 250-workday requirement, the FAB is to reverse the district office’s recommended decision to deny, and accept the case. The CE or FAB staff member enters status code “**F6**” (FAB Reversed to Accept) with the appropriate reason code into ECMS B to reflect the FAB reversal with a status effective date equal to the date of the final decision to approve. The CE or FAB staff person enters status code “**SEF**” (SEC Final Acceptance) into ECMS B with the status effective date equal to the date of the final decision to approve. There is no need to enter the “**SER**” (SEC Recommended Acceptance) code with the recommended decision because the recommended decision was not an SEC acceptance.

If no action is required, FAB must follow the instructions specified in Action #15, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the district office. If the FAB determines that the case cannot be approved based on the new SEC designation and that re-referral to NIOSH is appropriate (see Action #10), the CE or FAB staff member remands the case for district office action. The CE or FAB staff member enters status code “**F7**” (FAB Remanded) with “**OTH**” (No DO Error – Other) as the reason code in ECMS B/E (as appropriate), with a status effective date equal to the date of the remand. Remember, the existing “**SER**” code does not need to be removed.

16. If, after review or further development, the CE or FAB staff member determines that a case on the list does not require any action, the CE or FAB staff member must write a brief memo to the file indicating that the file was reviewed and noting the reason why no additional action is necessary. A case classified as not requiring any action is a case that does not meet the SEC criteria and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must code “**NA**” (No Action Necessary) and then select the appropriate reason code from the reason code drop down list. Since the “**NA**” coding is specifically tied to the SEC review list generated by DEEOIC, the “**NA**” code is restricted to ECMS B only because the SEC review list is derived from Part B data. For Ames Laboratory cases that were reviewed under this Bulletin and require no additional action, the reason code that must be selected is “**102- Rvwrd per Bulletin 11-02, Ames Laboratory SEC (1/1/55 – 12/31/60)**” and be coded into ECMS B only, even if the case is a B/E case. The status effective date of the “**NA**” code is the date of the memo to file stating the review is complete, and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the “**NA-102**” code is not entered initially. The “**NA-102**” code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the “**NA-102**” code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “NA-102” code in addition to the closure code. The status effective date for the “NA” coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections

### **11-03 Revere Copper and Brass SEC Class from July 24, 1943 through December 31, 1954**

EEOICPA BULLETIN NO. 11-03

Issue Date: November 5, 2010

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Effective Date: November 5, 2010

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Expiration Date: November 5, 2011

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Subject: Revere Copper and Brass SEC Class from July 24, 1943 through December 31, 1954

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from Revere Copper and Brass in Detroit, Michigan to be added to the Special Exposure Cohort (SEC).

The decision to initiate this petition occurred after the National Institute for Occupational Safety and Health (NIOSH) determined that it could not reconstruct a dose under 42 C.F.R. § 83.13. NIOSH submitted its findings to the Advisory Board on Radiation and Worker Health (“the Board”). On September 1, 2010, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at Revere Copper and Brass in Detroit, Michigan.

On October 6, 2010, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress:

All Atomic Weapons Employer employees who worked at Revere Copper and Brass in Detroit, Michigan, from July 24, 1943 through December 31, 1954, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

A copy of the Secretary’s letter to Congress recommending the designation is included as [Attachment 1](#). Although Congress had the authority to reject the recommendation within a 30-day

time frame, Congress took no action. Therefore, the SEC designation for this class became effective as of November 5, 2010, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress.

While a new SEC class has been added for employees at Revere Copper and Brass, NIOSH intends to use any available internal and external monitoring data that may become available for an individual claim (and that can be interpreted using existing NIOSH dose reconstruction processes or procedures). Additionally, NIOSH can estimate occupational medical dose. This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

**References:** Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the October 6, 2010 letter to Congress from the Secretary of HHS in which Secretary Sebelius makes the designation; SEC Petition Report for Revere Copper and Brass.

**Purpose:** To provide procedures for processing SEC claims for workers at Revere Copper and Brass in Detroit, Michigan.

**Applicability:** All staff.

**Actions:**

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at Revere Copper and Brass during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.
3. The district offices are to use the comprehensive list as the basis for an initial screening of cases associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is likely to meet the criteria for inclusion into the SEC. A screening worksheet is included as [Attachment 2](#). The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case file. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. Claim status codes have been created in ECMS to reflect each of these categories: “**ISL**” (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; “**ISU**” (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and “**ISD**” (Initial SEC Screening, Development Needed) for those for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, in this instance, “**103- Rvwd per Bulletin 11-03, Revere Copper and Brass SEC (7/24/43-12/31/54).**” Once the worksheet is completed, the claims examiner (CE) is to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the “**ISL**”, “**ISU**”, and “**ISD**” codes is to correspond with the completion date of the screening worksheet. Revere Copper and Brass is an Atomic Weapons Employer (AWE) and a Beryllium Vendor. As such, there are no Part E coding implications.

The purpose of this initial screening is to assist the district offices in prioritizing claims poised for

acceptance and for purposes of meeting operational plan goals. Once screening and prioritization is complete, claims adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each case must be evaluated formally for SEC inclusion and the decision recorded in ECMS. The initial screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims submitted after the list is generated. These claims will be evaluated for inclusion in the SEC class in the general course of processing.

4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, and complete the worksheet and related coding.
5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD, in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class, and that his or her case is being returned to the DOL for adjudication. A copy of the NIOSH letter to affected Revere Copper and Brass employees is included as [Attachment 3](#). The CE must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code “NW” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the “NW” code entry is November 5, 2010. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC class, and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this Bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e-mail to return the dose reconstruction analysis records. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the status code “NW” with a status effective date of November 5, 2010. In addition, the CE must write a letter to the claimant advising that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this Bulletin, then refer to instructions in Action #16.

6. For any cases identified as having potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.
7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual, Chapter 2-0600.7. If the employee has a specified cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.
8. If the employee has a specified cancer, the CE must determine if the worker was a qualified Atomic Weapons Employer (AWE) employee who worked at least 250 workdays at Revere Copper and Brass at 5851 W. Jefferson Street in Detroit, Michigan between July 24, 1943 and December 31, 1954. According to the NIOSH SEC evaluation report, the plant consisted of four buildings, including the Foundry building, the physical/chemical labs/machine shop building, the Extrusion Area building, and a smaller building that may have been used for offices. If the employee does not have 250 workdays at Revere Copper and Brass, the CE must review the file to determine if additional days in the SEC can be found by combining days from employment meeting the criteria

for other classes in the SEC and aggregating them together to meet the 250-workday requirement. If the 250-workday requirement is not satisfied, the CE proceeds to Action #10.

9. Once the CE has determined that the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

If it is determined that the case does qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail, so that NIOSH can close out their file. The SrCE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. In addition to the usual recommended decision coding, when a recommended decision to grant benefits based on inclusion in an SEC Class is issued, the CE must enter the code "**SER**" (SEC Recommended Acceptance) into the claim status history. This code represents that an SEC acceptance is included in the recommended decision being issued. This code is entered with the same status effective date as the recommended decision (it doesn't matter which one is entered first). The "**SER**" code has replaced the "**SE**" code (though there is no reason to update old "**SE**" codes).

When the "**SER**" code is entered, a reason code must be entered to reflect which SEC class the acceptance is based on. If the acceptance is based on this Revere Copper and Brass SEC, the reason code selected will be "**103- Rvwd per Bulletin 11-03, Revere Copper and Brass SEC (7/24/43-12/31/54).**"

If the SEC acceptance is based on inclusion in more than one SEC Class, then more than one "**SER**" code will need to be entered so that the reason codes selected will represent all SEC classes leading to the acceptance. For example, if the employee worked for 125 days of SEC covered employment at Revere Copper and Brass and another 125 days of SEC employment at the Metallurgical Laboratory, you would need the employment at both facilities to meet the 250 day requirement. In this situation, the CE would need to code one "**SER**" with a "**103- Rvwd per Bulletin 11-03, Revere Copper and Brass SEC (7/24/43-12/31/54)**" reason code. Then the CE would also need to enter a second "**SER**" with a "**907-Rvwd per Bulletin 09-07, Metallurgical Laboratory SEC**" reason code. The CE would also need to enter the recommended decision code(s) with the same status effective date as the "**SER**" codes.

Please note that the "**SEC/SEC Desc**" field on the claim screen in ECMS is no longer a required field. The CE will not enter a Revere Copper and Brass SEC description into ECMS.

10. Although HHS determined that it is not feasible for NIOSH to perform complete dose reconstructions for this class of employees, NIOSH has indicated that partial dose reconstructions are possible. Accordingly, for cases that do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code "**NI**" (Sent to NIOSH) in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code "**NI**" (Sent to NIOSH) into ECMS B, with a status effective date equal to the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-specified cancer, insufficient latency period or does not meet the 250-workday requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for dose reconstruction and the reason(s) it does not qualify for the SEC class. The CE is to send a copy of this letter to NIOSH.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “**NR**” (NIOSH Dose Reconstruction Received) in ECMS B and selects the “**PD**” (Partial Dose Reconstruction) reason code. The status effective date is the date the dose reconstruction report is date-stamped into the district office. The CE should not delete the “**NW**” (NIOSH, returned without a dose reconstruction) or “**NI**” (Sent to NIOSH) codes already present in ECMS.

11. If the claim meets the SEC class employment criteria and includes both specified and non-specified cancers, benefits can be awarded for the specified cancer(s) and any non-specified cancer(s) assigned a probability of causation (PoC) of 50 percent or greater. Medical benefits are also payable for a non-specified primary cancer, where it is found to be the origin of a compensable secondary SEC cancer; i.e. bone, lung, or renal. For instance, prostate (non-specified primary) cancer metastasizes to secondary bone cancer. If secondary bone cancer is accepted as a specified cancer under the SEC provision, both the primary and secondary cancers (prostate and bone cancer) are to be accepted for medical benefits without a need for a dose reconstruction for the prostate cancer. In this situation, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met). Approval would also be granted for medical benefits to be payable for the underlying non-specified primary cancer. The CE would proceed to code ECMS with the appropriate recommended decision coding along with the status code “**SER**” (SEC Recommended Acceptance) with the “**103- Rvwd per Bulletin 11-03, Revere Copper and Brass SEC (7/24/43-12/31/54)**” reason code (as described in item #9 above). In ECMS-B both the primary and secondary cancers would be coded as “**A**” (Accepted).

12. If a claim has a final decision to deny based on a PoC of less than 50%, and a review of the evidence of record establishes likely inclusion in the SEC class, the case is reopened. In the exercise of the DEEOIC Director’s discretion in the reopening process, the Director is delegating limited authority to the four District Directors and Assistant District Directors (ADDs), at the discretion of the District Director, to sign Director’s Orders for reopening of these cases. This delegated authority is limited to reopenings based upon evidence that a Revere Copper and Brass employee meets the criteria for placement into the Revere Copper and Brass SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director or ADD is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided in [Attachment 4](#). The DEEOIC Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is responsible for issuing a new recommended decision.

13. For those cases which are reopened under the authority granted in this Bulletin, the District Director or ADD enters status code “**MN**” (NO Initiates Review for Reopening) in ECMS B with a status effective date equal to the effective date of this Bulletin. For all reopenings per this Bulletin, upon completing the Director’s Order to reopen the claim, the District Director or ADD enters status code “**MD**” (Claim Reopened – File Returned to DO) into ECMS B to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “**MZ**” status code is not necessary). The status effective date of the “**MD**” code is the date of the Director’s Order. Please note that while the “**MD**” code is generally input by National Office staff, entry of this code has been delegated to the District Director and ADD, just as the authority to grant reopenings has been delegated in this specific circumstance.

14. In addition to the usual final decision coding, when a final decision to grant benefits based on inclusion in an SEC Class is issued, the FAB CE/HR must enter the code “**SEF**” (SEC Final Acceptance) into the claim status history. This code represents that an SEC acceptance is included in the final decision being issued. This code is entered with the same status effective date as the final decision (it doesn’t matter which one is entered first).

When the “**SEF**” code is entered, a reason code must be entered to reflect which SEC class the

acceptance is based on. If the acceptance is based on this Revere Copper and Brass SEC, the reason code selected will be “**103**- Rvwd per Bulletin 11-03, Revere Copper and Brass SEC (7/24/43-12/31/54)”.

If the SEC acceptance being rendered is based on inclusion in more than one SEC Class, then more than one “**SEF**” code will need to be entered so that the reason codes selected will represent all SEC classes leading to the acceptance. See the example outlined in Action #9 regarding “**SER**” coding for more than one SEC Class. The FAB CE/HR would also need to enter the recommended final decision code(s) with the same status effective date as the “**SEF**” codes.

If FAB remands a case that the district office had recommended for an SEC acceptance and had coded “**SER**”, there is no need for the “**SER**” code to be removed, as it reflects the language in the recommended decision that was issued on that date. Similarly, if a final decision is vacated on an SEC final decision to accept where “**SEF**” has been coded, there is no need to remove the “**SEF**” code, as it reflects the language in the final decision that was originally issued.

15. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending Revere Copper and Brass cases that have a recommended decision to deny. All cases on the comprehensive list identified in Action #2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at the Revere Copper and Brass during the period specified, has a specified cancer, and meets the 250-workday requirement, the FAB is to reverse the district office’s recommended decision to deny, and accept the case. The CE or FAB staff member enters status code “**F6**” (FAB Reversed to Accept) with the appropriate Reason Code into ECMS B to reflect the FAB reversal with a status effective date equal to the date of the final decision to approve. The CE or FAB staff person enters status code “**SEF**” (SEC Final Acceptance) into ECMS B with the status effective date equal to the date of the final decision to approve. There is no need to enter the “**SER**” (SEC Recommended Acceptance) code with the recommended decision because the recommended decision was not an SEC acceptance.

If no action is required, FAB must follow the instructions specified in Action #15, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the district office. If FAB determines that the case cannot be approved based on the new SEC designation and that re-referral to NIOSH is appropriate (see Action #10), the CE or FAB staff member remands the case for district office action. The CE or FAB staff member enters status code “**F7**” (FAB Remanded) with “**OTH**” (No DO Error – Other) as the reason code, with a status effective date equal to the date of the remand. Remember, the existing “**SER**” code does not need to be removed.

16. If, after review or further development, the CE or FAB staff member determines that a case on the list does not require any action, the CE or FAB staff member must write a brief memo to the file indicating that the file was reviewed and noting the reason why no additional action is necessary. A case classified as not requiring any action is a case that does not meet the SEC criteria and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must code “**NA**” (No Action Necessary) and then select the appropriate reason code from the reason code drop down list. Since the “**NA**” coding is specifically tied to the SEC review list generated by DEEOIC, the “**NA**” code is restricted to ECMS B only because the SEC review list is derived from Part B data. For Revere Copper and Brass cases that were reviewed under this Bulletin and require no additional action, the reason code that must be selected is “**103**” (Rvwd per Bulletin 11-03, Revere Copper and Brass SEC (7/24/43-12/31/54) and be coded into ECMS B only. The status effective date of the “**NA**” code is the date of the memo to the file stating the review is complete, and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the “**NA-103**” code is not entered initially. The “**NA-103**” code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those

cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the “NA-103” code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “NA-103” code in addition to the closure code. The status effective date for the “NA” coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections

**11-04 Simonds Saw and Steel Company SEC Class from January 1, 1948 through December 31, 1957**

EEOICPA BULLETIN NO. 11-04

Issue Date: February 5, 2011

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Effective Date: February 5, 2011

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Expiration Date: February 5, 2012

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Subject: Simonds Saw and Steel Company SEC Class from January 1, 1948 through December 31, 1957

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from the Simonds Saw and Steel Company in Lockport, New York to be added to the Special Exposure Cohort (SEC).

The decision to initiate this petition occurred after the National Institute for Occupational Safety and Health (NIOSH) determined that it could not reconstruct a dose under 42 C.F.R. § 83.13. NIOSH submitted its findings to the Advisory Board on Radiation and Worker Health (“the Board”). On December 8, 2010, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at the Simonds Saw and Steel Company in Lockport, New York.

On January 6, 2011, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress:

All Atomic Weapons Employer employees who worked at Simonds Saw and Steel

Company from January 1, 1948 through December 31, 1957, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort. A copy of the Secretary's letter to Congress recommending the designation is included as [Attachment 1](#). Although Congress had the authority to reject the recommendation within a 30-day time frame, Congress took no action. Therefore, the SEC designation for this class became effective as of February 5, 2011, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress.

While a new SEC class has been added for employees at the Simonds Saw and Steel Company, NIOSH intends to use any available internal and external monitoring data that may become available for an individual claim (and that can be interpreted using existing NIOSH dose reconstruction processes or procedures). Additionally, NIOSH can estimate occupational medical dose. This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the January 6, 2011 letter to Congress from the Secretary of HHS in which Secretary Sebelius makes the designation; SEC Petition Report for the Simonds Saw and Steel Company.

Purpose: To provide procedures for processing SEC claims for workers at the Simonds Saw and Steel Company in Lockport, New York.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at the Simonds Saw and Steel Company during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.
3. The district offices are to use the comprehensive list as the basis for an initial screening of cases associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is likely to meet the criteria for inclusion into the SEC. A screening worksheet is included as [Attachment 2](#). The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case file. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. Claim status codes have been created in ECMS to reflect each of these categories: **"ISL"** (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; **"ISU"** (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and **"ISD"** (Initial SEC Screening, Development Needed) for those for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, in this instance, **"104– Rvwd per Bulletin 11-04, Simonds Saw and Steel Company SEC (1/1/48–12/31/57)."** Once the worksheet is completed, the claims examiner (CE) is to select the appropriate claim status code and associated reason code from the

drop down lists in ECMS B only. The status effective date for the “ISL”, “ISU”, and “ISD” codes is to correspond with the completion date of the screening worksheet. The Simonds Saw and Steel Company is an Atomic Weapons Employer (AWE). As such, there are no Part E coding implications.

The purpose of this initial screening is to assist the district offices in prioritizing claims poised for acceptance and for purposes of meeting operational plan goals. The initial screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims created in ECMS after the list is generated. These claims will be evaluated for inclusion in the SEC class in the general course of processing.

Once screening and prioritization is complete, claims adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each claim identified on the comprehensive list of cases must be evaluated formally for SEC inclusion and appropriate coding input, in accordance with the instruction provided in this Bulletin, to denote either a decision to accept or deny SEC membership, or review with no further action required. This coding guidance also applies to administratively closed claims identified on the comprehensive list.

4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, and complete the worksheet and related coding.

5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD, in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class, and that his or her case is being returned to the DOL for adjudication. A copy of the NIOSH letter to affected Simonds Saw and Steel Company employees is included as [Attachment 3](#). The CE must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code “NW” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the “NW” code entry is February 5, 2011. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC class, and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this Bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE) or directly by a Journey Level CE, notifies the appropriate point of contact at NIOSH via e-mail to return the dose reconstruction analysis records. The SrCE/Journey Level CE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the status code “NW” with a status effective date of February 5, 2011. In addition, the CE must write a letter to the claimant advising that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this Bulletin, then refer to instructions in Action #10.

6. For any cases identified as having potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual, Chapter 2-0600.7. If the employee has a specified

cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.

8. If the employee has a specified cancer, the CE must determine if the worker was a qualified Atomic Weapons Employer (AWE) employee who worked at least 250 workdays at the Simonds Saw and Steel Company in Lockport, New York between January 1, 1948 and December 31, 1957. Based on information contained in the SEC evaluation report from NIOSH, the Simonds Saw and Steel Company processed uranium and thorium metal for the Atomic Energy Commission (AEC) from February 1948 to December 1957. A radiological survey described the former Simonds site as a 28-hectare (one hectare equals 2.47 acres) area bordered by Ohio Street to the east, residential and commercial properties to the north, U.S. Route 95 to the west, and the New York State Barge Canal to the South. The SEC class includes the entire facility. There is no requirement to identify where on-site Simonds Saw and Steel Company employees were located, as all are included regardless of location.

If the employee does not have 250 workdays at the Simonds Saw and Steel Company during the period of the class, the CE must review the file to determine if additional days in the SEC can be found by combining days from employment meeting the criteria for other classes in the SEC and aggregating them together to meet the 250-workday requirement. If the 250-workday requirement is not satisfied, the CE proceeds to Action #10.

9. Once the CE has determined that the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

If it is determined that the case does qualify for the SEC class, the CE, through the SrCE or directly by a Journey Level CE, notifies the appropriate point of contact at NIOSH via e-mail, so that NIOSH can close out their file. The SrCE/Journey Level CE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. In addition to the usual recommended decision coding, when a recommended decision to grant benefits based on inclusion in an SEC class is issued, the CE must enter the code “**SER**” (SEC Recommended Acceptance) into the claim status history. This code represents that an SEC acceptance is included in the recommended decision being issued. This code is entered with the same status effective date as the recommended decision (it doesn’t matter which one is entered first). The “**SER**” code has replaced the “**SE**” code (though there is no reason to update old “**SE**” codes).

When the “**SER**” code is entered, a reason code must be entered to reflect which SEC class the acceptance is based on. If the acceptance is based on this Simonds Saw and Steel Company SEC, the reason code selected will be “**104-Rvwd per Bulletin 11-04, Simonds Saw and Steel Company SEC (1/1/48–12/31/57).**”

In situations where the employee is found to be a member of multiple qualifying SEC classes, the CE is required to input a “**SER**” and corresponding reason code for each, regardless of the combination of qualifying SEC employment leading to approval of a claim. For example, if the employee worked for 250 days of SEC covered employment at the Simonds Saw and Steel Company and another 125 days of SEC employment at the Metallurgical Laboratory, the employment at Simonds Saw and Steel Company alone would satisfy inclusion in the SEC. However, the CE would enter one “**SER**” with a “**104- Rvwd per Bulletin 11-04, Simonds Saw and Steel Company SEC (1/1/48–12/31/57)**” reason code. Then the CE would also enter a second “**SER**” with a “**907- Rvwd per Bulletin 09-07, Metallurgical Laboratory SEC**” reason code. The CE would also enter the recommended decision code(s) with the same status effective date as the “**SER**” codes. The recommended decision is to reference each class for which the employee qualifies. The content of the decision should state compensability derived from satisfaction of the SEC criteria given the combination of all qualifying SEC employment. The CE is not to assign acceptance of a claim to one class over another.

Please note that the “**SEC/SEC Desc**” field on the claim screen in ECMS is no longer a required field. The CE does not enter a Simonds Saw and Steel Company SEC description into ECMS.

10. Although HHS determined that it is not feasible for NIOSH to perform complete dose reconstructions for this class of employees, NIOSH has indicated that partial dose reconstructions are possible. Accordingly, for cases that do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code “**NI**” (Sent to NIOSH) in ECMS B. The status effective date is the date of the Senior/Journey Level CE or Supervisory CE signature on the NRSD.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the SrCE or directly by a Journey Level CE, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE/Journey Level CE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code “**NI**” (Sent to NIOSH) into ECMS B, with a status effective date equal to the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-specified cancer, insufficient latency period or does not meet the 250-workday requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for dose reconstruction and the reason(s) it does not qualify for the SEC class. The CE is to send a copy of this letter to NIOSH.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “**NR**” (NIOSH Dose Reconstruction Received) in ECMS B and selects the “**PD**” (Partial Dose Reconstruction) reason code. The status effective date is the date the dose reconstruction report is date-stamped into the district office. The CE does not delete the “**NW**” (NIOSH, returned without a dose reconstruction) or “**NI**” (Sent to NIOSH) codes already present in ECMS.

11. If the claim meets the SEC class employment criteria and includes both specified and non-specified cancers, benefits can be awarded for the specified cancer(s) and any non-specified cancer(s) assigned a probability of causation (PoC) of 50 percent or greater. Medical benefits are also payable for a non-specified primary cancer, where it is found to be the origin of a compensable secondary SEC cancer; i.e., bone, lung, or renal. For instance, prostate (non-specified primary) cancer metastasizes to secondary bone cancer. If secondary bone cancer is accepted as a specified cancer under the SEC provision, both the primary and secondary cancers (prostate and bone cancer) are to be accepted for medical benefits without a need for a dose reconstruction for the prostate cancer. In this situation, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met). Approval would also be granted for medical benefits to be payable for the underlying non-specified primary cancer. The CE would proceed to code ECMS with the appropriate recommended decision coding along with the status code “**SER**” (SEC Recommended Acceptance) with the “**104- Rvwd per Bulletin 11-04, Simonds Saw and Steel Company SEC (1/1/48– 12/31/57)**” reason code (as described in Action #9 above). In ECMS B, both the primary and secondary cancers would be coded as “**A**” (Accepted).

12. If a claim has a final decision to deny based on a PoC of less than 50%, and a review of the evidence of record establishes likely inclusion in the SEC class, the case is reopened. In the exercise of the DEEOIC Director’s discretion in the reopening process, the Director is delegating limited authority to the four District Directors and Assistant District Director (ADDs), at the discretion of the District Director, to sign Director’s Orders for reopening of these cases. This delegated authority is limited to reopenings based upon evidence that a Simonds Saw and Steel Company employee meets the criteria for placement into the Simonds Saw and Steel Company SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected

by this SEC class. However, if the District Director or ADD is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director's Order is provided as [Attachment 4](#). The DEEOIC Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director's Order is issued, the district office is responsible for issuing a new recommended decision.

13. For those cases which are reopened under the authority granted in this Bulletin, the District Director or ADD enters status code "MN" (NO Initiates Review for Reopening) in ECMS B with a status effective date equal to the effective date of this Bulletin. For all reopenings per this Bulletin, upon completing the Director's Order to reopen the claim, the District Director or ADD enters status code "MD" (Claim Reopened – File Returned to DO) into ECMS B to reflect that the case has been reopened and is in the district office's jurisdiction. (The "MZ" status code is not necessary). The status effective date of the "MD" code is the date of the Director's Order. Please note that while the "MD" code is generally input by National Office staff, entry of this code has been delegated to the District Director and ADD, just as the authority to grant reopenings has been delegated in this specific circumstance.

14. In addition to the usual final decision coding, when a final decision to grant benefits based on inclusion in an SEC class is issued, the FAB CE/HR must enter the code "SEF" (SEC Final Acceptance) into the claim status history. This code represents that an SEC acceptance is included in the final decision being issued. This code is entered with the same status effective date as the final decision (it doesn't matter which one is entered first).

When the "SEF" code is entered, a reason code must be entered to reflect which SEC class the acceptance is based on. If the acceptance is based on this Simonds Saw and Steel Company SEC, the reason code selected will be "104-Rvwd per Bulletin 11-04, Simonds Saw and Steel Company SEC (1/1/48–12/31/57)." Should the evidence establish the employee's inclusion in multiple SEC classes, each must be coded for in ECMS using the "SEF" and corresponding reason codes. This will result in multiple "SEF" code entries. The final decision should identify each SEC class for which the employee is found to be a member. The final decision should also explain that the decision to accept the claim is based on membership in all qualifying SEC classes. No attempt should be made to differentiate acceptance based on inclusion in one SEC class in lieu of another.

See the example outlined in Action #9 regarding "SER" coding for more than one SEC class. The FAB CE/HR also enters the final decision code(s) with the same status effective date as the "SEF" codes.

If FAB remands a case that the district office had recommended for an SEC acceptance and had coded "SER", there is no need for the "SER" code to be removed, as it reflects the language in the recommended decision that was issued on that date. Similarly, if a final decision is vacated on an SEC final decision to accept where "SEF" has been coded, there is no need to remove the "SEF" code, as it reflects the language in the final decision that was originally issued.

15. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending Simonds Saw and Steel Company cases that have a recommended decision to deny. All cases on the comprehensive list identified in Action #2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at the Simonds Saw and Steel Company during the period specified, has a specified cancer, and meets the 250-workday requirement, the FAB is to reverse the district office's recommended decision to deny, and accept the case. The CE or FAB staff member enters status code "F6" (FAB Reversed to Accept) with the appropriate Reason Code into ECMS B to reflect the FAB reversal with a status effective date equal to the date of the final decision to approve. The CE or FAB staff person enters status code "SEF" (SEC Final Acceptance), with the appropriate reason code, into ECMS B with the status effective date equal to the date of the final decision to approve. There is no need to enter the "SER" (SEC Recommended Acceptance) code with the recommended decision because the recommended decision was not an SEC acceptance.

If no action is required, FAB must follow the instructions specified in Action #16, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the district office. If FAB determines that the case cannot be approved based on the new SEC designation and that re-referral to NIOSH is appropriate (see Action #10), the CE or FAB staff member remands the case for district office action. The CE or FAB staff member enters status code “**F7**” (FAB Remanded) with “**OTH**” (No DO Error – Other) as the reason code, with a status effective date equal to the date of the remand. Remember, the existing “**SER**” code does not need to be removed.

16. If, after review or further development, the CE or FAB staff member determines that a case on the list does not require any action, the CE or FAB staff member must write a brief memo to the file indicating that the file was reviewed and noting the reason why no additional action is necessary. A case classified as not requiring any action is a case that does not meet the SEC criteria and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must code “**NA**” (No Action Necessary) and then select the appropriate reason code from the reason code drop down list. Since the “**NA**” coding is specifically tied to the SEC review list generated by DEEOIC, the “**NA**” code is restricted to ECMS B only because the SEC review list is derived from Part B data. For Simonds Saw and Steel Company cases that were reviewed under this Bulletin and require no additional action, the reason code that must be selected is “**104-** Rvwd per Bulletin 11-04, Simonds Saw and Steel Company SEC (1/1/48–12/31/57) and be coded into ECMS B only. The status effective date of the “**NA**” code is the date of the memo to the file stating the review is complete, and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the “**NA-104**” code is not entered initially. The “**NA-104**” code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the “**NA-104**” code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “**NA-104**” code in addition to the closure code. The status effective date for the “**NA**” coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections

**11-05 BWX Technologies, Inc. SEC Class from January 1, 1985 through November 30, 1994**

EEOICPA BULLETIN NO. 11-05

Issue Date: February 5, 2011

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Effective Date: February 5, 2011

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Expiration Date: February 5, 2012

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**Subject:** BWX Technologies, Inc. SEC Class from January 1, 1985 through November 30, 1994

**Background:** Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from BWX Technologies, Inc. in Lynchburg, Virginia to be added to the Special Exposure Cohort (SEC).

The decision to initiate this petition occurred after the National Institute for Occupational Safety and Health (NIOSH) determined that it could not reconstruct a dose under 42 C.F.R. § 83.14. NIOSH submitted its findings to the Advisory board on Radiation and Worker Health (“the Board”). On December 8, 2010, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at BWX Technologies, Inc. in Lynchburg, Virginia.

On January 6, 2011, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress:

All Atomic Weapons Employer employees who worked at BWX Technologies, Inc., in Lynchburg, Virginia, during the period from January 1, 1985 through November 30, 1994, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

A copy of the Secretary’s letter to Congress recommending the designation is included as [Attachment 1](#). Although Congress had the authority to reject the recommendation within a 30-day time frame, Congress took no action. Therefore, the SEC designation for this class became effective as of February 5, 2011, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress.

While a new SEC class has been added for employees at BWX Technologies, Inc., NIOSH intends to use any available internal and external monitoring data that may become available for an individual claim (and that can be interpreted using existing NIOSH dose reconstruction processes or procedures). Additionally, NIOSH can estimate occupational medical dose. This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

A previous SEC class pertaining to BWX Technologies, Inc. encompassing the period from January 1, 1959 through December 31, 1959, and January 1, 1968 through December 31, 1972, was the subject of Bulletin 10-17. The new BWX Technologies, Inc. SEC class described in this Bulletin is not meant to replace the prior class, but is an addition to the prior BWX Technologies, Inc. SEC class.

**References:** Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the January 6, 2011 letter to Congress from the Secretary of HHS in which Secretary Sebelius makes the designation; SEC Petition Report for BWX Technologies, Inc.

**Purpose:** To provide procedures for processing SEC claims for workers at BWX Technologies, Inc., in Lynchburg, Virginia.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at BWX Technologies, Inc. during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.
3. The district offices are to use the comprehensive list as the basis for an initial screening of cases associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is likely to meet the criteria for inclusion into the SEC. A screening worksheet is included as [Attachment 2](#). The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case file. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. Claim status codes have been created in ECMS to reflect each of these categories: “**ISL**” (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; “**ISU**” (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and “**ISD**” (Initial SEC Screening, Development Needed) for those for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, in this instance, “**105 - Rvwd per Bulletin 11-05, BWX Technologies SEC (1/1/85-11/30/94).**” Once the worksheet is completed, the claims examiner (CE) is to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the “**ISL**”, “**ISU**”, and “**ISD**” codes is to correspond with the completion date of the screening worksheet. BWX Technologies, Inc. is an Atomic Weapons Employer (AWE). As such, there are no Part E coding implications.

The purpose of this initial screening is to assist the district offices in prioritizing claims poised for acceptance and for purposes of meeting operational plan goals. The initial screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims created in ECMS after the list is generated. These claims will be evaluated for inclusion in the SEC class in the general course of processing.

Once screening and prioritization is complete, claims adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each claim identified on the comprehensive list of cases must be evaluated formally for SEC inclusion and appropriate coding input, in accordance with the instruction provided in this bulletin, to denote either a decision to accept or deny SEC membership, or review with no further action required. This coding guidance also applies to administratively closed claims identified on the comprehensive list.

4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, and complete the worksheet and related coding.
5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD, in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class, and that his or her

case is being returned to the DOL for adjudication. A copy of the NIOSH letter to affected BWX Technologies, Inc. employees is included as [Attachment 3](#). The CE must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code “**NW**” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the “**NW**” code entry is February 5, 2011. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC class, and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this Bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE) or directly by a Journey Level CE, notifies the appropriate point of contact at NIOSH via e-mail to return the dose reconstruction analysis records. The SrCE/Journey Level CE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the status code “**NW**” with a status effective date of February 5, 2011. In addition, the CE must write a letter to the claimant advising that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this Bulletin, then refer to instructions in Action #10.

6. For any cases identified as having potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual, Chapter 2-0600.7. If the employee has a specified cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.

8. If the employee has a specified cancer, the CE must determine if the worker was a qualified Atomic Weapons Employer (AWE) employee who worked at least 250 workdays at BWX Technologies, Inc., in Lynchburg, Virginia between January 1, 1985 and November 30, 1994. Based on the description provided in NIOSH’s SEC evaluation report, the facility designation for BWX Technologies, Inc. includes two separately-licensed locations in Lynchburg, Virginia, that performed work for a variety of Atomic Energy Commission (AEC) and DOE projects. During various periods of the site’s operating history, the Nuclear Navy Fuels Division (NNFD) has been referred to as the ‘main plant’ at Mount Athos, the Nuclear Facilities Plant (NFP), the Nuclear Products Division (NPD), or the Nuclear Operations Group – Lynchburg (NOG-L). The second location is the Lynchburg Technology Center (LTC), formerly called the Lynchburg Research Center (LRC). The LTC is comprised of four main buildings (A, B, C, and D) and several support buildings and areas (e.g., Liquid Waste Disposal, Building J, silos). BWX Technologies, Inc. employees who were employed at either location qualify for consideration in the SEC class.

If the employee does not have 250 workdays at BWX Technologies, Inc., during the period of the class, the CE must review the file to determine if additional days in the SEC can be found by combining days from employment meeting the criteria for other classes in the SEC and aggregating them together to meet the 250-workday requirement. If the 250-workday requirement is not satisfied, the CE proceeds to Action #10.

9. Once the CE has determined that the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

If it is determined that the case does qualify for the SEC class, the CE, through the SrCE or directly by a Journey Level CE, notifies the appropriate point of contact at NIOSH via e-mail, so that NIOSH can close out their file. The SrCE/Journey Level CE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. In addition to the usual recommended decision coding, when a recommended decision to grant benefits based on inclusion in an SEC Class is issued, the CE must enter the code “**SER**” (SEC Recommended Acceptance) into the claim status history. This code represents that an SEC acceptance is included in the recommended decision being issued. This code is entered with the same status effective date as the recommended decision (it doesn’t matter which one is entered first). The “**SER**” code has replaced the “**SE**” code (though there is no reason to update old “**SE**” codes).

When the “**SER**” code is entered, a reason code must be entered to reflect which SEC class the acceptance is based on. If the acceptance is based on this BWX Technologies, Inc. SEC, the reason code selected will be “**105- Rvwd per Bulletin 11-05, BWX Technologies SEC (1/1/85-11/30/94).**”

In situations where the employee is found to be a member of multiple qualifying SEC classes, the CE is required to input a “**SER**” and corresponding reason code for each, regardless of the combination of qualifying SEC employment leading to approval of a claim. For example, if the employee worked for 250 days of SEC covered employment at BWX Technologies, Inc. and another 125 days of SEC employment at the Metallurgical Laboratory, the employment at BWX Technologies, Inc. alone would satisfy inclusion in the SEC. However, the CE would enter one “**SER**” with a “**105- Rvwd per Bulletin 11-05, BWX Technologies SEC (1/1/85-11/30/94)**” reason code. Then the CE would enter a second “**SER**” with a “**907-Rvwd per Bulletin 09-07, Metallurgical Laboratory SEC**” reason code. The CE would also enter the recommended decision code(s) with the same status effective date as the “**SER**” codes. The recommended decision is to reference each class for which the employee qualifies. The content of the decision should state compensability derived from satisfaction of the SEC criteria given the combination of all qualifying SEC employment. The CE is not to assign acceptance of a claim to one class over another.

Please note that the “**SEC/SEC Desc**” field on the claim screen in ECMS is no longer a required field. The CE does not enter a BWX Technologies, Inc. SEC description into ECMS.

10. Although HHS determined that it is not feasible for NIOSH to perform complete dose reconstructions for this class of employees, NIOSH has indicated that partial dose reconstructions are possible. Accordingly, for cases that do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code “**NI**” (Sent to NIOSH) in ECMS B. The status effective date is the date of the Senior/Journey Level CE or Supervisory CE signature on the NRSD.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the SrCE or directly by a Journey Level CE, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE/Journey Level CE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code “**NI**” (Sent to NIOSH) into ECMS B, with a status effective date equal to the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-specified cancer, insufficient latency period or does not meet the 250-workday requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for dose reconstruction and the reason(s) it does not qualify for the SEC class. The CE is to send a copy of this letter to NIOSH.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a

recommended decision. The CE enters status code “**NR**” (NIOSH Dose Reconstruction Received) in ECMS B and selects the “**PD**” (Partial Dose Reconstruction) reason code. The status effective date is the date the dose reconstruction report is date-stamped into the district office. The CE does not delete the “**NW**” (NIOSH, returned without a dose reconstruction) or “**NI**” (Sent to NIOSH) codes already present in ECMS.

11. If the claim meets the SEC class employment criteria and includes both specified and non-specified cancers, benefits can be awarded for the specified cancer(s) and any non-specified cancer(s) assigned a probability of causation (PoC) of 50 percent or greater. Medical benefits are also payable for a non-specified primary cancer, where it is found to be the origin of a compensable secondary SEC cancer; i.e. bone, lung, or renal. For instance, prostate (non-specified primary) cancer metastasizes to secondary bone cancer. If secondary bone cancer is accepted as a specified cancer under the SEC provision, both the primary and secondary cancers (prostate and bone cancer) are to be accepted for medical benefits without a need for a dose reconstruction for the prostate cancer. In this situation, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met). Approval would also be granted for medical benefits to be payable for the underlying non-specified primary cancer. The CE would proceed to code ECMS with the appropriate recommended decision coding along with the status code “**SER**” (SEC Recommended Acceptance) with the “**105- Rvwd per Bulletin 11-05, BWX Technologies SEC (1/1/85-11/30/94)**” reason code (as described in item #9 above). In ECMS-B both the primary and secondary cancers would be coded as “**A**” (Accepted).

12. If a claim has a final decision to deny based on a PoC of less than 50%, and a review of the evidence of record establishes likely inclusion in the SEC class, the case is reopened. In the exercise of the DEEOIC Director’s discretion in the reopening process, the Director is delegating limited authority to the four District Directors and Assistant District Directors (ADDs), at the discretion of the District Director, to sign Director’s Orders for reopening of these cases. This delegated authority is limited to reopenings based upon evidence that a BWX Technologies, Inc. employee meets the criteria for placement into the BWX Technologies, Inc. SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director or ADD is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided in [Attachment 4](#). The DEEOIC Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is responsible for issuing a new recommended decision.

13. For those cases which are reopened under the authority granted in this Bulletin, the District Director or ADD enters status code “**MN**” (NO Initiates Review for Reopening) in ECMS B with a status effective date equal to the effective date of this Bulletin. For all reopenings per this Bulletin, upon completing the Director’s Order to reopen the claim, the District Director or ADD enters status code “**MD**” (Claim Reopened – File Returned to DO) into ECMS B to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “**MZ**” status code is not necessary). The status effective date of the “**MD**” code is the date of the Director’s Order. Please note that while the “**MD**” code is generally input by National Office staff, entry of this code has been delegated to the District Director and ADD, just as the authority to grant reopenings has been delegated in this specific circumstance.

14. In addition to the usual final decision coding, when a final decision to grant benefits based on inclusion in an SEC Class is issued, the FAB CE/HR must enter the code “**SEF**” (SEC Final Acceptance) into the claim status history. This code represents that an SEC acceptance is included in the final decision being issued. This code is entered with the same status effective date as the final decision (it doesn’t matter which one is entered first).

When the “**SEF**” code is entered, a reason code must be entered to reflect which SEC class the acceptance is based on. If the acceptance is based on this BWX Technologies, Inc. SEC, the reason

code selected will be “**105- Rvwrd per Bulletin 11-05, BWX Technologies SEC (1/1/85-11/30/94).**” Should the evidence establish the employee’s inclusion in multiple SEC classes, each must be coded in ECMS using the “SEF” and corresponding reason codes. This will result in multiple “SEF” code entries. The final decision should identify each SEC class for which the employee is found to be a member. The final decision should also explain that the decision to accept the claim is based on membership in all qualifying SEC classes. No attempt should be made to differentiate acceptance based on inclusion in one SEC class in lieu of another.

See the example outlined in Action #9 regarding “**SER**” coding for more than one SEC Class. The FAB CE/HR also enters the final decision code(s) with the same status effective date as the “**SEF**” codes.

If FAB remands a case that the district office had recommended for an SEC acceptance and had coded “**SER**,” there is no need for the “**SER**” code to be removed, as it reflects the language in the recommended decision that was issued on that date. Similarly, if a final decision is vacated on an SEC final decision to accept where “**SEF**” has been coded, there is no need to remove the “**SEF**” code, as it reflects the language in the final decision that was originally issued.

15. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending BWX Technologies, Inc. cases that have a recommended decision to deny. All cases on the comprehensive list identified in Action #2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at the BWX Technologies, Inc. during the period specified, has a specified cancer, and meets the 250-workday requirement, the FAB is to reverse the district office’s recommended decision to deny, and accept the case. The CE or FAB staff member enters status code “**F6**” (FAB Reversed to Accept) with the appropriate Reason Code into ECMS B to reflect the FAB reversal with a status effective date equal to the date of the final decision to approve. The CE or FAB staff person enters status code “**SEF**” (SEC Final Acceptance) with appropriate reason code into ECMS B with the status effective date equal to the date of the final decision to approve. There is no need to enter the “**SER**” (SEC Recommended Acceptance) code with the recommended decision because the recommended decision was not an SEC acceptance.

If no action is required, FAB must follow the instructions specified in Action #15, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the district office. If FAB determines that the case cannot be approved based on the new SEC designation and that re-referral to NIOSH is appropriate (see Action #10), the CE or FAB staff member remands the case for district office action. The CE or FAB staff member enters status code “**F7**” (FAB Remanded) with “**OTH**” (No DO Error – Other) as the reason code, with a status effective date equal to the date of the remand. Remember, the existing “**SER**” code does not need to be removed.

16. If, after review or further development, the CE or FAB staff member determines that a case on the list does not require any action, the CE or FAB staff member must write a brief memo to the file indicating that the file was reviewed and noting the reason why no additional action is necessary. A case classified as not requiring any action is a case that does not meet the SEC criteria and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must code “**NA**” (No Action Necessary) and then select the appropriate reason code from the reason code drop down list. Since the “**NA**” coding is specifically tied to the SEC review list generated by DEEOIC, the “**NA**” code is restricted to ECMS B only because the SEC review list is derived from Part B data. For BWX Technologies, Inc. cases that were reviewed under this Bulletin and require no additional action, the reason code that must be selected is “**105**” (Rvwrd per Bulletin 11-05, BWX Technologies SEC (1/1/1985 – 11/30/1994) and be coded into ECMS B only. The status effective date of the “**NA**” code is the date of the memo to the file stating the review is complete, and the CE has determined there is no further action necessary. For those instances in

which further development is necessary, the “NA-105” code is not entered initially. The “NA-105” code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the “NA-105” code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “NA-105” code in addition to the closure code. The status effective date for the “NA” coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections

**11-06 Texas City Chemicals, Inc. SEC Class from October 5, 1953 through September 30, 1955**

EEOICPA BULLETIN NO. 11-06

Issue Date: February 5, 2011

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Effective Date: February 5, 2011

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Expiration Date: February 5, 2012

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Subject: Texas City Chemicals, Inc. SEC Class from October 5, 1953 through September 30, 1955

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from Texas City Chemicals, Inc. in Texas City, TX to be added to the Special Exposure Cohort (SEC).

The decision to initiate this petition occurred after the National Institute for Occupational Safety and Health (NIOSH) determined that it could not reconstruct a dose under 42 C.F.R. § 83.13. NIOSH submitted its findings to the Advisory Board on Radiation and Worker Health (“the Board”). On December 8, 2010, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at Texas City Chemicals, Inc. in Texas City, TX.

On January 6, 2011, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress:

All Atomic Weapons Employer employees who worked at Texas City Chemicals, Inc.,

from October 5, 1953, through September 30, 1955, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

A copy of the Secretary's letter to Congress recommending the designation is included as [Attachment 1](#). Although Congress had the authority to reject the recommendation within a 30-day time frame, Congress took no action. Therefore, the SEC designation for this class became effective as of February 5, 2011, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress.

While a new SEC class has been added for employees at Texas City Chemicals, Inc. NIOSH intends to use any available internal and external monitoring data that may become available for an individual claim (and that can be interpreted using existing NIOSH dose reconstruction processes or procedures). Additionally, NIOSH can reconstruct internal and external dose for uranium extraction operations based upon source term information and can estimate occupational medical dose. This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the January 6, 2011 letter to Congress from the Secretary of HHS in which Secretary Sebelius makes the designation; SEC Petition Report for Texas City Chemicals, Inc.

Purpose: To provide procedures for processing SEC claims for workers at Texas City Chemicals, Inc. in Texas City, Texas.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at Texas City Chemicals, Inc. during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.
3. The district offices are to use the comprehensive list as the basis for an initial screening of cases associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is likely to meet the criteria for inclusion into the SEC. A screening worksheet is included as [Attachment 2](#). The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case file. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. Claim status codes have been created in ECMS to reflect each of these categories: "ISL" (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; "ISU" (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and "ISD" (Initial SEC Screening, Development Needed) for those for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, in this instance, "106- Rvwd per Bulletin 11-06, Texas City Chemicals SEC (10/5/53-9/30/55)." Once the worksheet is completed, the claims examiner (CE) is

to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the “ISL”, “ISU”, and “ISD” codes is to correspond with the completion date of the screening worksheet. Texas City Chemicals, Inc. is an Atomic Weapons Employer (AWE) only. As such, there are no Part E coding implications.

The purpose of this initial screening is to assist the district offices in prioritizing claims poised for acceptance and for purposes of meeting operational plan goals. The initial screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims created in ECMS after the list is generated. These claims will be evaluated for inclusion in the SEC class in the general course of processing.

Once screening and prioritization is complete, claims adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each claim identified on the comprehensive list of cases must be evaluated formally for SEC inclusion and appropriate coding input, in accordance with the instruction provided in this bulletin, to denote either a decision to accept or deny SEC membership, or review with no further action required. This coding guidance also applies to administratively closed claims identified on the comprehensive list.

4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, and complete the worksheet and related coding.

5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD, in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class, and that his or her case is being returned to the DOL for adjudication. A copy of the NIOSH letter to affected Texas City Chemicals, Inc. employees is included as [Attachment 3](#). The CE must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code “NW” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the “NW” code entry is February 5, 2011. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC class, and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this Bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE) or directly by a Journey Level CE, notifies the appropriate point of contact at NIOSH via e-mail to return the dose reconstruction analysis records. The SrCE/Journey Level CE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the status code “NW” with a status effective date of February 5, 2011. In addition, the CE must write a letter to the claimant advising that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this Bulletin, then refer to instructions in Action #10.

6. For any cases identified as having potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual, Chapter 2-0600.7. If the employee has a specified

cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.

8. If the employee has a specified cancer, the CE must determine if the worker was a qualified Atomic Weapons Employer (AWE) employee who worked at least 250 workdays at Texas City Chemicals, Inc. in Texas City, Texas between October 5, 1953 and September 30, 1955. Based on information contained in the SEC evaluation report from NIOSH, Texas City Chemicals, Inc. was essentially a plant that produced animal feed and fertilizer from phosphate rock. Uranium is a byproduct of the residues from the process of extracting the fertilizer and feed from the rock. The Atomic Energy Commission contracted with Texas City Chemicals to recover this byproduct uranium.

If the employee does not have 250 workdays at Texas City Chemicals, Inc. during the period of the class, the CE must review the file to determine if additional days in the SEC can be found by combining days from employment meeting the criteria for other classes in the SEC and aggregating them together to meet the 250-workday requirement. If the 250-workday requirement is not satisfied, the CE proceeds to Action #10.

9. Once the CE has determined that the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

If it is determined that the case does qualify for the SEC class, the CE, through the SrCE or directly by a Journey Level CE, notifies the appropriate point of contact at NIOSH via e-mail, so that NIOSH can close out their file. The SrCE or Journey Level CE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. In addition to the usual recommended decision coding, when a recommended decision to grant benefits based on inclusion in an SEC Class is issued, the CE must enter the code "**SER**" (SEC Recommended Acceptance) into the claim status history. This code represents that an SEC acceptance is included in the recommended decision being issued. This code is entered with the same status effective date as the recommended decision (it doesn't matter which one is entered first). The "**SER**" code has replaced the "**SE**" code (though there is no reason to update old "**SE**" codes).

When the "**SER**" code is entered, a reason code must be entered to reflect which SEC class the acceptance is based on. If the acceptance is based on this Texas City Chemicals, Inc. SEC, the reason code selected will be "**106- Rvwd per Bulletin 11-06, Texas City Chemicals SEC (10/5/53-9/30/55).**"

In situations where the employee is found to be a member of multiple qualifying SEC classes, the CE is required to input a "**SER**" and corresponding reason code for each, regardless of the combination of qualifying SEC employment leading to approval of a claim. For example, if the employee worked for 250 days of SEC covered employment at Texas City Chemicals, Inc. and another 125 days of SEC employment at the Metallurgical Laboratory, the employment at Texas City Chemicals, Inc. alone would satisfy inclusion in the SEC. However, the CE would enter one "**SER**" with a "**106- Rvwd per Bulletin 11-06, Texas City Chemicals SEC (10/5/53-9/30/55)**" reason code. Then the CE would also enter a second "**SER**" with a "**907-Rvwd per Bulletin 09-07, Metallurgical Laboratory SEC**" reason code. The CE would also enter the recommended decision code(s) with the same status effective date as the "**SER**" codes. The recommended decision is to reference each class for which the employee qualifies. The content of the decision should state compensability derived from satisfaction of the SEC criteria given the combination of all qualifying SEC employment. The CE is not to assign acceptance of a claim to one class over another.

Please note that the "**SEC/SEC Desc**" field on the claim screen in ECMS is no longer a required field. The CE does not enter a Texas City Chemicals, Inc. SEC description into ECMS.

10. Although HHS determined that it is not feasible for NIOSH to perform complete dose

reconstructions for this class of employees, NIOSH has indicated that partial dose reconstructions are possible. Accordingly, for cases that do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code “**NI**” (Sent to NIOSH) in ECMS B. The status effective date is the date of the Senior/Journey Level or Supervisory CE signature on the NRSD.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the SrCE or directly by a Journey Level CE, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE/ Journey Level CE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code “**NI**” (Sent to NIOSH) into ECMS B, with a status effective date equal to the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-specified cancer, insufficient latency period or does not meet the 250-workday requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for dose reconstruction and the reason(s) it does not qualify for the SEC class. The CE is to send a copy of this letter to NIOSH.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “**NR**” (NIOSH Dose Reconstruction Received) in ECMS B and selects the “**PD**” (Partial Dose Reconstruction) reason code. The status effective date is the date the dose reconstruction report is date-stamped into the district office. The CE does not delete the “**NW**” (NIOSH, returned without a dose reconstruction) or “**NI**” (Sent to NIOSH) codes already present in ECMS.

11. If the claim meets the SEC class employment criteria and includes both specified and non-specified cancers, benefits can be awarded for the specified cancer(s) and any non-specified cancer(s) assigned a probability of causation (PoC) of 50 percent or greater. Medical benefits are also payable for a non-specified primary cancer, where it is found to be the origin of a compensable secondary SEC cancer; i.e. bone, lung, or renal. For instance, prostate (non-specified primary) cancer metastasizes to secondary bone cancer. If secondary bone cancer is accepted as a specified cancer under the SEC provision, both the primary and secondary cancers (prostate and bone cancer) are to be accepted for medical benefits without a need for a dose reconstruction for the prostate cancer. In this situation, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met). Approval would also be granted for medical benefits to be payable for the underlying non-specified primary cancer. The CE would proceed to code ECMS with the appropriate recommended decision coding along with the status code “**SER**” (SEC Recommended Acceptance) with the “**106- Rvwd per Bulletin 11-06, Texas City Chemicals SEC (10/5/53-9/30/55)**” reason code (as described in item #9 above). In ECMS-B both the primary and secondary cancers would be coded as “**A**” (Accepted).

12. If a claim has a final decision to deny based on a PoC of less than 50%, and a review of the evidence of record establishes likely inclusion in the SEC class, the case is reopened. In the exercise of the DEEOIC Director’s discretion in the reopening process, the Director is delegating limited authority to the four District Directors and Assistant District Directors (ADDs), at the discretion of the District Director, to sign Director’s Orders for reopening of these cases. This delegated authority is limited to reopenings based upon evidence that a Texas City Chemicals, Inc. employee meets the criteria for placement into the Texas City Chemicals, Inc. SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director or ADD is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided in [Attachment 4](#). The DEEOIC Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is

responsible for issuing a new recommended decision.

13. For those cases which are reopened under the authority granted in this Bulletin, the District Director or ADD enters status code “**MN**” (NO Initiates Review for Reopening) in ECMS B with a status effective date equal to the effective date of this Bulletin. For all reopenings per this Bulletin, upon completing the Director’s Order to reopen the claim, the District Director or ADD enters status code “**MD**” (Claim Reopened – File Returned to DO) into ECMS B to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “**MZ**” status code is not necessary). The status effective date of the “**MD**” code is the date of the Director’s Order. Please note that while the “**MD**” code is generally input by National Office staff, entry of this code has been delegated to the District Director and ADD, just as the authority to grant reopenings has been delegated in this specific circumstance.

14. In addition to the usual final decision coding, when a final decision to grant benefits based on inclusion in an SEC Class is issued, the FAB CE/HR must enter the code “**SEF**” (SEC Final Acceptance) into the claim status history. This code represents that an SEC acceptance is included in the final decision being issued. This code is entered with the same status effective date as the final decision (it doesn’t matter which one is entered first).

When the “**SEF**” code is entered, a reason code must be entered to reflect which SEC class the acceptance is based on. If the acceptance is based on this Texas City Chemicals, Inc. SEC, the reason code selected will be “**106- Rvwd per Bulletin 11-06, Texas City Chemicals SEC (10/5/53-9/30/55).**” Should the evidence establish the employee’s inclusion in multiple SEC classes, each must be coded in ECMS using the “**SEF**” and corresponding reason codes. This will result in multiple “**SEF**” code entries. The final decision should identify each SEC class for which the employee is found to be a member. The final decision should also explain that the decision to accept the claim is based on membership in all qualifying SEC classes. No attempt should be made to differentiate acceptance based on inclusion in one SEC class in lieu of another.

See the example outlined in Action #9 regarding “**SER**” coding for more than one SEC Class. The FAB CE/HR also enters the final decision code(s) with the same status effective date as the “**SEF**” codes.

If FAB remands a case that the district office had recommended for an SEC acceptance and had coded “**SER**,” there is no need for the “**SER**” code to be removed, as it reflects the language in the recommended decision that was issued on that date. Similarly, if a final decision is vacated on an SEC final decision to accept where “**SEF**” has been coded, there is no need to remove the “**SEF**” code, as it reflects the language in the final decision that was originally issued.

15. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending Texas City Chemicals, Inc. cases that have a recommended decision to deny. All cases on the comprehensive list identified in Action #2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at Texas City Chemicals, Inc. during the period specified, has a specified cancer, and meets the 250-workday requirement, the FAB is to reverse the district office’s recommended decision to deny, and accept the case. The CE or FAB staff member enters status code “**F6**” (FAB Reversed to Accept) with the appropriate Reason Code into ECMS B to reflect the FAB reversal with a status effective date equal to the date of the final decision to approve. The CE or FAB staff person enters status code “**SEF**” (SEC Final Acceptance) with the appropriate reason code into ECMS B with the status effective date equal to the date of the final decision to approve. There is no need to enter the “**SER**” (SEC Recommended Acceptance) code with the recommended decision because the recommended decision was not an SEC acceptance.

If no action is required, FAB must follow the instructions specified in Action #15, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the district office. If FAB determines that the case cannot be approved based on the new SEC designation and that

re-referral to NIOSH is appropriate (see Action #10), the CE or FAB staff member remands the case for district office action. The CE or FAB staff member enters status code “F7” (FAB Remanded) with “OTH” (No DO Error – Other) as the reason code, with a status effective date equal to the date of the remand. Remember, the existing “SER” code does not need to be removed.

16. If, after review or further development, the CE or FAB staff member determines that a case on the list does not require any action, the CE or FAB staff member must write a brief memo to the file indicating that the file was reviewed and noting the reason why no additional action is necessary. A case classified as not requiring any action is a case that does not meet the SEC criteria and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must code “NA” (No Action Necessary) and then select the appropriate reason code from the reason code drop down list. Since the “NA” coding is specifically tied to the SEC review list generated by DEEOIC, the “NA” code is restricted to ECMS B only because the SEC review list is derived from Part B data. For Texas City Chemicals, Inc. cases that were reviewed under this Bulletin and require no additional action, the reason code that must be selected is “106” (Rvwd per Bulletin 11-06, Texas City Chemicals SEC (10/5/53-9/30/55) and be coded into ECMS B only. The status effective date of the “NA” code is the date of the memo to the file stating the review is complete, and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the “NA-106” code is not entered initially. The “NA-106” code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the “NA-106” code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “NA-106” code in addition to the closure code. The status effective date for the “NA” coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections

## **11-07 Special Exposure Cohort (SEC) Claim Processing**

EEOICPA BULLETIN NO. 11-07

Issue Date: May 19, 2011

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Effective Date: May 19, 2011

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Expiration Date: May 19, 2012

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Subject: Special Exposure Cohort (SEC) Claim Processing

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, petitions can be filed on behalf of workers for a class of employees to be added to the Special Exposure Cohort (SEC). If the National Institute for Occupational Safety and Health (NIOSH) reviews a petition and determines that it qualifies for evaluation under 42 C.F.R. Part 83, NIOSH submits its findings to the petitioners and/or the Advisory Board on Radiation and Worker Health (“the Board”). If the Board determines that the class qualifies under the cohort status, the Board recommends to the Secretary of Health and Human Services (HHS) that a class of employees be added to the SEC. If the Secretary of HHS decides to add the class to the SEC, the Secretary then notifies Congress of the SEC class designation. If Congress does not reject the designation, it becomes effective 30 days after the Secretary of HHS designated the class for addition to the SEC.

In the past, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) issued EEOICPA Bulletins announcing the designation of a particular SEC class and provided procedures for processing claims under that SEC class.

This Bulletin provides general guidance and procedures on reviewing and processing claims under new SEC class designations that become effective after the issuance of this Bulletin. Notification of all future SEC class designations will be issued via EEOICPA Circulars. The Circulars are to be used in conjunction with the guidance outlined in this Bulletin.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA.

Purpose: To provide procedures for processing SEC claims.

Applicability: All staff.

Actions:

1. The Division of Energy Employees Occupational Illness Compensation Program Act (EEOICPA) will issue a Circular identifying the designation of an SEC class. Unless stated otherwise in a given Circular, future SECs will be handled in accordance with the guidance set out in this bulletin as an overall example of how to handle SEC claims. The SEC class designation identified in the Circular will encompass claims previously denied, claims at NIOSH for dose reconstruction, claims pending adjudication, and future claims yet to be submitted.
2. In conjunction with the issuance of each new Circular pertaining to a SEC class designation, the DEEOIC will prepare a list of cases with claimed employment during the period of the SEC class. It will include pending cases, cases previously denied, and cases at NIOSH. It will also include specified and non-specified cancer cases. **All** cases on the comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. The comprehensive list will be provided to the appropriate district offices and FAB under separate cover.
3. The district offices are to use the comprehensive list as the basis for an initial screening of cases associated with all SEC classes. The purpose of the screening is to make an initial determination on whether a case is likely to meet the criteria for inclusion into the SEC. A screening worksheet will be provided to each district office and FAB upon the release of each Circular identifying a new SEC class. The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case file. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not

likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. Claim status codes have been created in ECMS to reflect each of these categories: “**ISL**” (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; “**ISU**” (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and “**ISD**” (Initial SEC Screening, Development Needed) for those for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code will be created and supplied in the Circular. For example, “XXX, - Rvwd per Circular XX-XX.” Once the worksheet is completed, the claims examiner (CE) is to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the “**ISL**”, “**ISU**”, and “**ISD**” codes is to correspond with the completion date of the screening worksheet.

The purpose of this initial screening is to assist the district offices in prioritizing claims poised for acceptance and for purposes of meeting operational plan goals. Once screening and prioritization is complete, claims adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each case must be evaluated formally for SEC inclusion and the decision recorded in ECMS for all claims (including those claims with any form of closure code in ECMS) in each case. The initial screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims submitted after the list is generated. These claims will be evaluated for inclusion in the SEC class in the general course of processing.

4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, complete the worksheet, and enter related coding.

5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD, in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class, and that his or her case is being returned to the DOL for adjudication. A copy of the NIOSH letter to affected SEC employees will be included in the Circular that defines the designation. The CE must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code “**NW**” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the “**NW**” code entry is the effective date of the SEC designation. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record. The standard procedure for NIOSH coding in ECMS E is to code all additional NIOSH actions only if the “**NI**” (Sent to NIOSH) status code has been entered. Therefore, the CE enters the “**NW**” code into ECMS E with the status effective date of the SEC designation, only if “**NI**” has already been entered in ECMS E.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC class, and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the class identified in the Circular under review and the procedures in this Bulletin. If any such case qualifies under the SEC class in question, the CE, through the Senior CE (SrCE), or directly by a Journey Level CE, notifies the appropriate point of contact at NIOSH via e-mail to return the dose reconstruction analysis records. The SrCE or Journey Level CE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the status code “**NW**” with a status effective date of the SEC designation. In addition, the CE must write a letter to the claimant advising that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under the SEC provision, based on the guidance provided in this Bulletin, then refer to instructions in Action #16.

6. For any cases identified as having potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual, Chapter 2-0600.7. If the employee has a specified cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.

8. If the employee has a specified cancer, the CE must then determine if the worker meets the employment criteria outlined in the Circular for the designated SEC class under review.

Once employment during the class period is established, the CE or hearing representative can accept that the employment component of the SEC class is satisfied. In these cases, the CE proceeds to Action #9.

If the employee does not meet the employment criteria for the designated SEC, the CE proceeds to Action #10.

9. Once the CE has determined that the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

If it is determined that the case does qualify for the SEC class, the CE through the SrCE or directly by a Journey Level CE, notifies the appropriate point of contact at NIOSH via e-mail, so that NIOSH can close out their file. The SrCE/Journey Level CE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. In addition to the usual recommended decision coding, when a recommended decision to grant benefits based on inclusion in an SEC class is issued, the CE must enter the code “**SER**” (SEC Recommended Acceptance) into the claim status history in ECMS B. This code represents that an SEC acceptance is included in the recommended decision being issued. This code is entered with the same status effective date as the recommended decision (it doesn’t matter which one is entered first). When the “**SER**” code is entered, a reason code must be entered to reflect which SEC class the acceptance is based on. The reason code can be found in the Circular for each SEC class.

If the SEC acceptance is based on inclusion in more than one SEC Class, then more than one “**SER**” code will need to be entered so that the reason codes selected will represent all SEC classes leading to the acceptance. For example, under circumstances where the employment criteria requires 250 days of aggregate employment, if the employee worked for 125 days of SEC covered employment at one SEC designated facility and worked another 125 days of SEC covered employment at another SEC designated facility, you would need the employment at both facilities to meet the 250-workday requirement. In this situation, the CE enters one “**SER**” with a “XXX, - Rvwd per Circular/Bulletin XX-XX” reason code. Then the CE enters a second “**SER**” with a “XXX, - Rvwd per Circular/Bulletin XX-XX” reason code. The CE also enters the recommended decision code(s) with the same status effective date as the “**SER**” codes. The Circular will provide the appropriate reason code related to that review. The recommended decision is to reference each class for which the employee qualifies. The content of the decision should state compensability derived from satisfaction of the SEC criteria given the combination of all qualifying SEC employment. The CE is not to assign acceptance of a claim to one class over another.

Please note that the “**SEC/SEC Desc**” field on the claim screen in ECMS is no longer a required field.

10. In most instances, HHS will determine that it is not feasible for NIOSH to perform complete dose reconstructions for certain classes of employees, and may therefore indicate that partial dose

reconstructions are possible. Accordingly, for cases that have not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code **"NI"** (Sent to NIOSH) in ECMS B. The status effective date is the date of the Senior, or Journey Level or Supervisory CE signature on the NRSD. If the case is a B/E case, the **"NI"** code is not entered into ECMS E until non-radiological toxic exposure development is complete.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in an SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class in question, the CE through the SrCE or directly by a Journey Level CE, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE/Journey Level CE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code **"NI"** (Sent to NIOSH) into ECMS B, with a status effective date equal to the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-specified cancer, insufficient latency period or does not meet the 250-workday requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for dose reconstruction and the reason(s) it does not qualify for the SEC class. The CE is to send a copy of this letter to NIOSH. If the case is a B/E case, and toxic exposure development was completed with a memorandum to the file (with a prior **"NI"/"NW"** code), the CE enters status code **"NI"** into ECMS E with the status effective date of the e-mail requesting NIOSH to proceed with dose reconstruction.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code **"NR"** (NIOSH Dose Reconstruction Received) in ECMS B and selects the **"PD"** (Partial Dose Reconstruction) reason code. The status effective date is the date the dose reconstruction report is date-stamped into the district office. The CE should not delete the **"NW"** (NIOSH, returned without a dose reconstruction) or **"NI"** (Sent to NIOSH) codes already present in ECMS. If the CE had previously entered **"NI"** in ECMS E, the CE also enters codes **"NR"** and **"PD"** in ECMS E. If the case is a B/E case, the CE enters the Probability of Causation (PoC) into ECMS B and ECMS E (regardless of whether the **"NI"** code had previously been entered).

11. If the claim meets the SEC employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction resulting in a probability of causation (PoC) of 50% or greater and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and any cancers for which there is a PoC of 50% or greater. The CE enters status code **"SER"** into ECMS B. The status effective date for the **"SER"** code is the date of the recommended decision to accept the specified cancer. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the **"SER"** code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

If necessary, the CE concurrently prepares a NRSD to NIOSH for a dose reconstruction for any non-specified cancer(s) to determine eligibility for medical benefits. The CE enters status code **"NI"** into ECMS B. The status effective date for the **"NI"** code is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the CE enters status code **"NI"** in ECMS E only after the non-radiological toxic exposure development is complete and the CE cannot accept causation. In that case the CE creates a memorandum to file stating that toxic exposure development is complete, and enters status code **"NI"** in ECMS E with the date of the memorandum as the status effective date.

12. If a claim has a final decision to deny based on a PoC of less than 50%, and a review of the

evidence of record establishes likely inclusion in the SEC class, the case is reopened. In the exercise of the DEEOIC Director's discretion in the reopening process, the Director is delegating limited authority to the four District Directors and the Assistant District Directors (ADDs), at the discretion of the District Director, to sign the Director's Orders for reopening of all SEC related cases. This delegated authority is limited to reopenings based upon evidence that an employee meets the criteria for placement into any SEC class defined by a Circular or, as delegated in an EEOICPA Bulletin for previous SECs. However, if the District Director or ADD is unsure of whether any SEC is applicable to the case, the case should be referred to the National Office. A sample Director's Order is provided in [Attachment 1](#). The DEEOIC Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director's Order is issued, the district office is responsible for issuing a new recommended decision.

13. For those cases which are reopened under the authority granted in this Bulletin, the District Director or ADD enters status code "MN" (NO Initiates Review for Reopening) in ECMS B with a status effective date equal to the effective date of the SEC designation. If the District Director or ADD is also reopening Part E, an "MN" code is also entered into ECMS E. For all SEC related reopenings, upon completing the Director's Order to reopen the claim, the District Director or ADD enters status code "MD" (Claim Reopened – File Returned to DO) into ECMS B/E (as appropriate) to reflect that the case has been reopened and is in the district office's jurisdiction. (The "MZ" status code, receipt of Director's Order in the DO or FAB, is not necessary). The status effective date of the "MD" code is the date of Director's Order. Please note that while the "MD" code is generally input by National Office staff, entry of this code has been delegated to the District Director or ADD, just as the authority to grant reopenings has been delegated for SEC related cases.

14. In addition to the usual final decision coding, when a final decision to grant benefits based on inclusion in an SEC class is issued, the FAB CE/HR must enter the status code "SEF" (SEC Final Acceptance) into the claim status history in ECMS B. This status code represents that an SEC acceptance is included in the final decision being issued. This status code is entered with the same status effective date as the final decision (it doesn't matter which one is entered first).

When the "SEF" status code is entered, a reason code must be entered to reflect which SEC class the acceptance is based on. For example, the FAB CE/HR enters the "SEF" status code with an "XXX, - Rvwd per Circular/Bulletin XX-XX" reason code. The reason code can be found in the Circular for each SEC class.

If the SEC acceptance being rendered is based on inclusion in more than one SEC class, then more than one "SEF" code is entered along with the appropriate reason codes representing all SEC classes leading to the acceptance. This will result in multiple "SEF" code entries. The final decision should identify each SEC class for which the employee is found to be a member. The final decision should also explain that the decision to accept the claim is based on membership in all qualifying SEC classes. No attempt should be made to differentiate acceptance based on inclusion in one SEC class in lieu of another.

See the example outlined in Action #9 regarding "SER" coding for more than one SEC class. The FAB CE/HR also enters the final decision code(s) with the same status effective date as the "SEF" codes.

If FAB remands a case that the district office had recommended for an SEC acceptance and had coded "SER" there is no need for the "SER" code to be removed, as it reflects the language in the recommended decision that was issued on that date. Similarly, if a final decision is vacated on an SEC final decision to accept where "SEF" has been coded, there is no need to remove the "SEF" code, as it reflects the language in the final decision that was originally issued.

15. Upon issuance of a Circular notifying the designation of a new SEC class, FAB personnel must be vigilant for any pending SEC cases that have a recommended decision to deny. All cases on the comprehensive list identified in Action #2 that are located at a FAB office must be reviewed for

possible inclusion in the SEC class. If the employee worked at an SEC designated site during the period specified, has a specified cancer, and meets the required employment criteria, the FAB is to reverse the district office's recommended decision to deny, and accept the case. The CE or FAB staff member enters status code "F6" (FAB Reversed to Accept) with the appropriate reason code into ECMS B to reflect the FAB reversal with a status effective date equal to the date of the final decision to approve. The CE or FAB staff person enters status code "SEF" (SEC Final Acceptance) with appropriate reason code into ECMS B with the status effective date equal to the date of the final decision to approve. There is no need to enter the "SER" (SEC Recommended Acceptance) code with the recommended decision because the recommended decision was not an SEC acceptance.

If no action is required, FAB must follow the instructions specified in Action #16, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the district office. If the FAB determines that the case cannot be approved based on the new SEC designation and that re-referral to NIOSH is appropriate (see Action #10), the CE or FAB staff member remands the case for district office action. The CE or FAB staff member enters status code "F7" (FAB Remanded) with "OTH" (No DO Error – Other) as the reason code in ECMS B/E (as appropriate), with a status effective date equal to the date of the remand. Remember, the existing "SER" code does not need to be removed.

16. If, after review or further development, the CE or FAB staff member determines that a case on the list does not require any action, the CE or FAB staff member must write a brief memo to the file indicating that the file was reviewed and noting the reason why no additional action is necessary. A case classified as not requiring any action is a case that does not meet the SEC criteria and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must code "NA" (No Action Necessary) and then select the appropriate reason code from the reason code drop down list. The "NA" reason code can be found in the Circular for each SEC class. Since the "NA" coding is specifically tied to the SEC review list generated by DEEOIC, the "NA" code is restricted to ECMS B only because the SEC review list is derived from Part B data. The status effective date of the "NA" code is the date of the memo to file stating the review is complete, and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the "NA" code is not entered initially. The "NA" code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the "NA" code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the "NA" code with the appropriate reason code in addition to the closure code. The status effective date for the "NA" coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections

## **11-08 Guidance for using the Colorado Department of Public Health and Environment (CDPHE) database (Ruttenber Database)**

EEOICPA BULLETIN NO. 11-08

Issue Date: September 9, 2011

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Effective Date: September 9, 2011

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Expiration Date: September 9, 2012

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Subject: Guidance for using the Colorado Department of Public Health and Environment (CDPHE) database (Ruttenber Database)

Background: On September 5, 2007, two classes of employees who worked at the Rocky Flats Plant in Golden, Colorado, between April 1, 1952 and December 31, 1966 were added to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA). The Division of Energy Employees Occupational Illness Compensation (DEEOIC) distributed guidance to implement Rocky Flats SEC claims in EEOICPA Bulletin Nos. 08-01, 08-11, 08-14 and EEOICPA Circular No. 08-03.

Since the issuance of that guidance, DEEOIC obtained a compilation of data on Rocky Flats employees produced by the Colorado Department of Public Health and Environment (CDPHE). The data, contained in a report entitled "Report of Epidemiologic Analyses Performed for Rocky Flats Production Workers Employed Between 1952-1989," (Ruttenber Database) is principally authored by A. James Ruttenber, Ph.D., M.D, and is organized in a database format.

References: A. James Ruttenber, Ph.D. M.D., Margaret Schonbeck, Shannon Brown, Ph.D., Timothy Wells, D.V.M., MPH, David McClure, M.S., Jason McCrea, Douglas Popken, Ph.D. and John Martyny, Ph.D., Report of Epidemiologic Analyses Performed for Rocky Flats Production Workers Employed between 1952-1989 (Colorado Department of Public Health and Environment) March 3, 2003 and the Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the August 6, 2007 letters to Congress from the Secretary of HHS in which Secretary Leavitt made the Rocky Flats SEC designations and EEOICPA Bulletin Nos. 08-01, 08-11, 08-14 and EEOICPA Circular No. 08-03.

Purpose: To provide guidance for the utilization of the Ruttenber Database in the development of cases with employment at Rocky Flats.

Applicability: All staff.

Actions:

1. In determining whether the employment history meets the 250 work day requirement to be included in the Rocky Flats SEC classes, the claims examiner (CE) must consider employment at Rocky Flats that "was monitored or should have been monitored for neutron exposure" from April 1, 1952 through December 31, 1966. Additionally, the CE must consider employment either solely at Rocky Flats or in combination with work days for other SEC classes. Staff will utilize the Ruttenber Database in all instances possible when evaluating a claim to determine whether or not inclusion in the SEC classes is warranted.
2. At all times when utilizing the guidance set out in this Bulletin, the CE is to refer to and comply

with previous guidance regarding the Rocky Flats SEC classes as set out in EEOICPA Bulletin Nos. 08-01, 08-11, 08-14 and EEOICPA Circular No. 08-03. If there is a previous final decision to deny a claim reviewed under this Bulletin, the District Director proceeds to reopen the claim pursuant to the guidance outlined in EEOICPA Bulletin No. 09-01.

3. DEEOIC will provide each district and Final Adjudication Branch (FAB) office with the Ruttenber Database, hereafter referred to as the “database.” The database lists the following data: Employee **ID**entification [Number] (EID), employee last and first name, Social Security number, employment year, general job description, general organization, building location, and attributed neutron (NEU\_REC PEN) dose. The spreadsheet is organized by year, so if an employee worked at Rocky Flats from 1955 through 1965, the listing will contain 11 lines of data for the employee, one for each year. It should be noted that there are gaps in reported information throughout the category listings. For years without any information listed, the CE ignores the absence of data.

4. If there is a match on the “database” and the case file contains evidence that the employee worked at Rocky Flats during the SEC period and the Ruttenber Database “NEU\_REC PEN” extract column shows a 100 milliRem or greater, neutron dose in any given year, then the CE accepts this as evidence that the employee should have been monitored specifically for neutron exposure. If all other requirements listed in Procedure Manual chapter 2-0600 are met, the CE accepts the employee’s inclusion in the SEC class, and proceeds accordingly based upon the adjudicatory/developmental posture of the claim.

5. If there is a match on the “database” and the case file contains evidence that the employee worked at Rocky Flats during the SEC period and the Ruttenber Database building location data column labeled “building” shows any building that matches one of the locations identified in Bulletin No. 08-01 and Circular No. 08-03, the CE will use this information as confirmation that the employee was monitored or should have been monitored for neutron exposure. If all other requirements listed in Procedure Manual chapter 2-0600 are met, the CE accepts the employee’s inclusion in the Rocky Flats SEC class, and proceeds accordingly based upon the adjudicatory/developmental posture of the claim and using the guidance outlined in the aforementioned procedural documents.

6. DEEOIC is conducting a detailed analysis of previously adjudicated claims to determine if any warrant reopening based upon data contained in the Ruttenber database. Further guidance about Rocky Flats claims that require reopening will be forthcoming from the National Office.

7. In addition to the usual recommended decision coding, when a recommended decision to grant benefits based on inclusion in an SEC Class is issued, the CE must enter the code “**SER**”(SEC Recommended Acceptance) into the claim status history. This code represents that an SEC acceptance is included in the recommended decision being issued. This code is entered with the same status effective date as the recommended decision (it doesn’t matter which one is entered first). The “**SER**” code has replaced the “**SE**” code (though there is no reason to update old “**SE**” codes).

When the “**SER**” code is entered, a reason code must be entered to reflect which SEC class the acceptance is based on. If the acceptance is based on this Rocky Flats SEC, the reason code selected will be “**O1S**- Reviewed under Bulletin 08-01, Rocky Flats SEC.”

If the SEC acceptance is based on inclusion in more than one SEC Class, then more than one “**SER**” code will need to be entered so that the reason codes selected will represent all SEC classes leading to the acceptance.

In addition to the usual final decision coding, when a final decision to grant benefits based on inclusion in an SEC class is issued, the FAB CE/HR must enter the code “**SEF**” (SEC Final Acceptance) into the claim status history. This code represents that an SEC acceptance is included in the final decision being issued. This code is entered with the same status effective date as the final decision (it doesn’t matter which one is entered first).

When the “SEF” code is entered, a reason code must be entered to reflect which SEC class the acceptance is based on. If the acceptance is based on the Rocky Flats SEC, the reason code selected will be “O1S- Reviewed under Bulletin 08-01, Rocky Flats SEC.” Just as with the recommended decision, if the SEC acceptance being rendered is based on inclusion in more than one SEC class, then more than one “SEF” code will need to be entered so that the reason codes selected will represent all SEC classes leading to the acceptance.

Also note that the SEC description field is no longer required on the claim screen.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections

## **2010 EEOICP Final Bulletins**

### **10-01 Norton Company SEC Class**

EEOICPA BULLETIN NO. 10-01

Issue Date: October 29, 2009

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Effective Date: October 29, 2009

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Expiration Date: October 29, 2010

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Subject: Norton Company SEC Class

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from Norton Co. in Worcester, Massachusetts to be added to the Special Exposure Cohort (SEC).

The decision to initiate this petition occurred after the National Institute for Occupational Safety and Health (NIOSH) determined that it could not reconstruct a dose under 42 C.F.R. § 83.14. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On August 28, 2009, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at Norton Co. in Worcester, Massachusetts.

On September 29, 2009, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress.

All AWE employees who worked at Norton Company in Worcester, Massachusetts, from January 1, 1945 through December 31, 1957, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

A copy of the Secretary’s letter to Congress recommending the designation is included as [Attachment 1](#). Although Congress had the authority to reject the recommendation within a 30-day

time frame, Congress took no action. Therefore, the SEC designation for this class became effective as of October 29, 2009, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress.

While a new SEC class has been added for employees at Norton Company, NIOSH has determined that it is possible to reconstruct occupational medical dose and NIOSH intends to use any available external monitoring data that may become available for an individual claim (and that can be interpreted using existing NIOSH dose reconstruction processes or procedures). This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the September 29, 2009 letter to Congress from the Secretary of HHS in which Secretary Sebelius makes the designation.

Purpose: To provide procedures for processing SEC claims for workers at Norton Co. in Worcester, Massachusetts.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at Norton Co. during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.
3. The district offices are to use the comprehensive list as the basis for an initial screening of cases associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is likely to meet the criteria for inclusion into the SEC. A screening worksheet is included as Attachment 2. The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case file. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. Claim status codes have been created in ECMS to reflect each of these categories: **ISL** (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; **ISU** (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and **ISD** (Initial SEC Screening, Development Needed), for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, in this instance, **001** (Reviewed under Bulletin 10-01, Norton Company SEC). Once the worksheet is completed, the claims examiner (CE) is to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the **ISL**, **ISU** and **ISD** codes is to correspond with the completion date of the screening worksheet. Norton is an Atomic Weapons Employer (AWE). As such, there are no Part E coding implications.

The purpose of this initial screening is to assist the district offices in prioritizing claims poised for acceptance and for purposes of meeting operational plan goals. Once screening and prioritization is complete, claims adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each case must be evaluated formally for SEC inclusion and the decision

recorded in ECMS. The initial screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims submitted after the list is generated. These claims will be evaluated for inclusion in the SEC class in the general course of processing.

4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, worksheet and related coding.

5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD, in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class, and that his or her case is being returned to the DOL for adjudication. A copy of the NIOSH letter to affected Norton Company employees is included as [Attachment 3](#). The CE must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code “**NW**” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the “**NW**” code entry is October 29, 2009. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC class, and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this Bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e mail to return the dose reconstruction analysis records. The SrCE then prints a copy of the “sent” e mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the status code “**NW**” with a status effective date of October 29, 2009. In addition, the CE must write a letter to the claimant advising that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this Bulletin, then refer to instructions in Action #16.

6. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the EEOICPA Procedure Manual Chapter 2-600.5. If the employee has a specified cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.

8. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 workdays at Norton Company in Worcester, Massachusetts between January 1, 1945 and December 31, 1957. If the employee does not have 250 workdays at Norton Co., the CE should review the file to determine if additional days in the SEC can be found by combining days from employment meeting the criteria for other classes in the SEC and aggregating them together to meet the 250-workday requirement.

NIOSH has found no documentation to describe buildings and areas where radiological materials were used, or to limit such use to particular locations at the Worcester site. NIOSH has insufficient information to completely describe the source term, operational processes, worker movements, or potential for contamination spread at Norton Company; therefore, NIOSH assumes that the potential for exposure to radioactive materials existed in all areas of the Norton Company site in

Worcester, Massachusetts during the period under evaluation.

9. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

If it is determined that the case does qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail, so that NIOSH can close out their file. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file.

ECMS Coding Reminder: The “**SE**” (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the status effective date of the recommended decision to approve.

For all claims where Norton Company employment is claimed, regardless of whether the SEC criteria are met, the SEC site code “Norton Company” must be selected under the “**SEC/SEC Desc**” field on the claim screen.

10. As discussed earlier, although HHS determined that it is not feasible for NIOSH to perform complete dose reconstructions for this class of employees, NIOSH has indicated that partial dose reconstructions are possible. Accordingly, for cases that had not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code “**NI**” (Sent to NIOSH) in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code “**NI**” (Sent to NIOSH) into the ECMS B, effective the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-specified cancer, insufficient latency period or does not meet the 250-workday requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for dose reconstruction and the reason(s) it does not qualify for the SEC class. The CE is to send a copy of this letter to NIOSH.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “**NR**” (NIOSH Dose Reconstruction Received) in ECMS B and selects the “**PD**” (Partial Dose Reconstruction) reason code. The status effective date is the date the dose reconstruction is date-stamped into the district office. The CE should not delete the “**NW**” (NIOSH, returned without a dose reconstruction) or “**NI**” (Sent to NIOSH) code already present in ECMS.

11. If the claim meets the SEC class employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction that resulted in a probability of causation (PoC) of 50 percent or greater and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and, if necessary, concurrently prepares a NRSD to NIOSH for a dose reconstruction for the non-specified cancer to determine eligibility for medical benefits. The CE enters status code “**SE**” (Confirmed as SEC claim) and the “**NI**” (Sent to NIOSH) code into ECMS B. The status effective date for the “**SE**” code is the date of the recommended decision to accept the specified cancer. The status effective date for the “**NI**” code is the date of the Senior or

Supervisory CE signature on the NRS D.

12. If a claim has a final decision to deny based on a PoC of less than 50%, and a review of the evidence of record establishes likely inclusion in the SEC class, the case will need to be reopened. In the exercise of the Director's discretion of the reopening process, the Director is delegating limited authority to the four District Directors to sign Director's Orders for reopening. This delegated authority is limited to reopenings based upon evidence that a Norton Company employee meets the criteria for placement into the Norton Company SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director's Order is provided in [Attachment 4](#). The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director's Order is issued, the district office is responsible for issuing a new recommended decision.

13. For those cases which are reopened under the authority granted in this Bulletin, the District Director enters status code "MN" (NO Initiates Review for Reopening) in ECMS B with a status effective date as the effective date of this bulletin. For all reopenings per this bulletin, upon completing the Director's Order to reopen the claim, the District Director enters status code "MD" (Claim Reopened – File Returned to DO) into ECMS B to reflect that the case has been reopened and is in the district office's jurisdiction. (The "MZ" status code is not necessary). The status effective date of the "MD" code is the date of the Director's Order. Please note that while the "MD" code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been delegated in this specific circumstance.

14. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending Norton Company cases that have a recommended decision to deny. All cases on the comprehensive list identified in Action # 2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at Norton Company during the time period specified, has a specified cancer, and meets the 250-workday requirement, the FAB is to reverse the district office's recommended decision to deny and accept the case. The CE or FAB staff member enters status code "F6" (FAB Reversed to Accept, with appropriate Reason Code) into ECMS B to reflect the FAB reversal with a status effective date equal to the date of the final decision to approve. The CE or FAB staff person enters status code "SE" (Confirmed as SEC Claim) into ECMS B with a status effective date equal to the date of the final decision to approve.

For all claims where Norton Company employment is claimed, regardless of whether the SEC criteria are met, the SEC site code "Norton Company" must be selected under the "SEC/SEC Desc" field on the claim screen.

If no action is required, FAB must follow the instructions specified in action item 16 below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the district office. If FAB determines that the case cannot be approved based on the new SEC designation and that re-referral to NIOSH is appropriate (see action items 7, 8 and 10) the CE or FAB staff member must remand the case for district office action. The CE or FAB staff member enters status code "F7" (FAB Remanded) with "OTH" (No DO Error – Other) as the reason code, with a status effective date of the date of the remand.

15. The operational plan goal for completion of the action items in this Bulletin are as follows: The initial screening is to be complete for 90% of all cases on the comprehensive list within 30 days of the SEC class effective date. Recommended decisions are to be issued 45 days after the initial screening for 70% of those cases that are identified via initial screening as likely to be included in the SEC class (**ISL**) and those for which development may be needed (**ISD**). Recommended decisions are to be issued 60 days after the initial screening for 90% of those cases that are

identified via initial screening as likely to be included in the SEC class (**ISL**) and those for which development may be needed (**ISD**).

16. If, after review or further development, the CE or FAB staff member determines that a case on the list does not require any action, the CE or FAB staff member must write a brief memo to the file indicating that the file was reviewed and noting the reason why no additional action is necessary. A case classified as not requiring any action is a case that does not meet the SEC criteria and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must then code “**NA**” (No Action Necessary) and then select the appropriate reason code from the reason code drop down list. The “**NA**” coding is specifically tied to the SEC review list generated by DEEOIC and the “**NA**” code is restricted to ECMS B only because the SEC review list is derived from Part B data. For Norton Company cases that were reviewed under this Bulletin and require no additional action, the reason code that must be selected is “**001**” (Reviewed under Bulletin 10-01 Norton Company SEC) and be coded into ECMS B only. The status effective date of the “**NA**” code is the date of the memo to the file stating review is complete and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the “**NA-001**” code is not entered initially. The “**NA-001**” code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the “**NA-001**” code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “**NA-001**” code in addition to the closure code. The status effective date for the “**NA**” coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections

## **10-02 Lake Ontario Ordnance Works (LOOW) SEC Class**

EEOICPA BULLETIN NO.10-02

Issue Date: October 29, 2009

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Effective Date: October 29, 2009

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Expiration Date: October 29, 2010

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Subject: Lake Ontario Ordnance Works (LOOW) SEC Class

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from Lake Ontario Ordnance Works (LOOW) in Niagara Falls, New York to be added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and determined that it qualified for evaluation under 42 C.F.R. § 83.13. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On August 28, 2009, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at LOOW in Niagara Falls, New York.

On September 29, 2009, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress:

All employees of the Department of Energy (DOE), its predecessor agencies, and DOE contractors and subcontractors who worked at Lake Ontario Ordnance Works for a number of work days aggregating at least 250 work days from January 1, 1944 through December 31, 1953, or in combination with work days within the parameters established for one or more other classes of employees in the SEC.

A copy of the Secretary’s letter to Congress recommending the designation is included as [Attachment 1](#). Although Congress had the authority to reject the recommendation within a 30-day time frame, Congress took no action. Therefore, the SEC designation for this class became effective as of October 29, 2009, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress.

NIOSH has concluded that it can provide a partial estimate of dose using any internal and external monitoring data and occupational medical dose data that may be available for an individual claim, (and that can be interpreted using existing NIOSH dose reconstruction processes or procedures). This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the September 29, 2009 letter to Congress from the Secretary of HHS in which Secretary Sebelius makes the designation.

Purpose: To provide procedures for processing SEC class claims for workers at LOOW in Niagara Falls, New York.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at LOOW during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.
3. The district offices are to use the comprehensive list as the basis for an initial screening of cases

associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is likely to meet the criteria for inclusion in the SEC. A screening worksheet is included as [Attachment 2](#). The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case file. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. Claim status codes have been created in ECMS to reflect each of these categories: **ISL** (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; **ISU** (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and **ISD** (Initial SEC Screening, Development Needed) for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, in this instance, **002** (Reviewed under 10-02, LOOW SEC). Once the worksheet is completed, the claims examiner (CE) is to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the **ISL**, **ISU** and **ISD** codes is to correspond with the completion date of the screening worksheet.

The purpose of this initial screening is to assist the district offices in prioritizing claims poised for acceptance. Once screening and prioritization is complete, claims adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each case must be evaluated formally for SEC inclusion and the decision recorded in ECMS. The initial screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims submitted after the list is generated. These claims will be evaluated for inclusion in the SEC class in the general course of processing.

4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, complete the worksheet and enter related coding.

5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class, and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected LOOW claimants is included as [Attachment 3](#). The CE must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code “**NW**” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the “**NW**” code entry is October 29, 2009. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record. The standard procedure for NIOSH coding in ECMS E is to code all additional NIOSH actions only if the “**NI**” (Sent to NIOSH) status code has been entered. Therefore, the CE enters the “**NW**” code into ECMS E with the status effective date of October 29, 2009, only if “**NI**” has already been entered in ECMS E.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC, and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this Bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e mail to return the dose reconstruction analysis records. The SrCE then prints a copy of the “sent” e mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the status code

“**NW**” with a status effective date of October 29, 2009. In addition, the CE must write a letter to the claimant advising that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this Bulletin, then refer to instructions in Action #16.

6. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the EEOICPA Procedure Manual Chapter 2-600.5. If the employee has a specified cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.

8. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 workdays at LOOW between January 1, 1944 and December 31, 1953.

LOOW, located in Niagara Falls, NY, was used by the Manhattan Engineer District (MED) and subsequently the Atomic Energy Commission (AEC) for the storage of radioactive wastes. While some buildings and outside areas are specifically noted for the use or storage of radiological materials, documentation available to NIOSH does not indicate any definite boundaries between radiological and non-radiological areas. NIOSH had to assume that the potential for exposure to radioactive materials existed in all areas of LOOW during the class period.

Additionally, NIOSH was unable to define potential radiation exposure conditions based on worker job descriptions, job titles and/or job assignments. Therefore, based on the SEC designation, any probative evidence that the employee was employed at LOOW for at least 250 workdays during the SEC period is sufficient to include him or her in the SEC class.

If the employee does not have 250 workdays at LOOW, the CE should review the file to determine if additional days in the SEC can be found by combining days from employment meeting the criteria for other classes in the SEC and aggregating them together to meet the 250-workday requirement. It is important to note that workers directly employed by either the MED or AEC during the covered time period are not eligible under Part E.

9. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

If it is determined that the case does qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail, so that NIOSH can close out their file. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file.

ECMS Coding Reminder: The “**SE**” (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the status effective date of the recommended decision to approve. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the “**SE**” code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

For all claims where LOOW employment is claimed, regardless of whether the SEC criteria are met, the SEC site code “**Lake Ontario Ordnance Works**” must be selected under the “**SEC/SEC Desc**” field on the claim screen.

10. As discussed earlier, although NIOSH determined that it is not feasible for NIOSH to perform complete dose reconstructions for this class of employees, NIOSH has indicated that partial dose reconstructions are possible. Accordingly, for cases that have not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH

Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code “**NI**” in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the “**NI**” code is not entered into ECMS E until non-radiological toxic exposure development is complete.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code “**NI**” into ECMS B, with a status effective date equal to the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction; e.g., non-specified cancer, insufficient latency period or does not meet the 250 workday requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for a dose reconstruction and the reason(s) it does not qualify for the SEC class. The CE is to send a copy of this letter to NIOSH. If the case is a B/E case, and toxic exposure development was completed with a memorandum to the file (with a prior “**NI**”/“**NW**” code), the CE enters status code “**NI**” into ECMS E with the status effective date of the e-mail requesting NIOSH to proceed with dose reconstruction.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “**NR**” (NIOSH Dose Reconstruction Received) in ECMS B and selects the reason code of “**PD**” (Partial Dose Reconstruction). The status effective date is the date the dose reconstruction report is date-stamped into the district office. The CE should not delete the “**NW**” or “**NI**” codes already present in ECMS. If the CE had previously entered “**NI**” in ECMS E, the CE also enters codes “**NR**” and “**PD**” in ECMS E. If the case is a B/E case, the CE enters the Probability of Causation (PoC) into ECMS B and ECMS E (regardless of whether the “**NI**” code had previously been entered).

11. If the claim meets the SEC employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction resulting in a probability of causation (PoC) of 50% or greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and any cancers for which there is a POC of 50% or greater. The CE enters status code “**SE**” into ECMS B. The status effective date for the “**SE**” code is the date of the recommended decision to accept the specified cancer. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the “**SE**” code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

Then, if necessary, the CE concurrently prepares a NRSD to NIOSH for a dose reconstruction for any non-specified cancer(s) to determine eligibility for medical benefits. The CE enters status code “**NI**” into ECMS B. The status effective date for the “**NI**” code is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the CE enters status code “**NI**” in ECMS E only after the non-radiological toxic exposure development is complete and the CE cannot accept causation. In that case the CE creates a memorandum to file stating that toxic exposure development is complete, and enters status code “**NI**” in ECMS E with the date of the memorandum as the status code effective date.

12. If a claim has a final decision to deny based on a PoC of less than 50% and a review of the evidence of record establishes likely inclusion in the SEC class, the case will need to be reopened. In the exercise of the DEEOIC Director’s discretion of the reopening process, the Director is delegating limited authority to the four District Directors to sign Director’s Orders for reopening of these cases. This delegated authority is limited to reopenings based upon evidence that a LOOW

employee meets the criteria for placement into the SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director's Order is provided in [Attachment 4](#). The DEEOIC Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director's Order is issued, the district office is responsible for issuing a new recommended decision.

13. For those cases reopened under the authority granted in this Bulletin, the District Director enters status code "MN" (NO Initiates Review for Reopening) in ECMS B with a status effective date equal to the effective date of this Bulletin. If the District Director is also reopening Part E, the "MN" code is also entered into EMCS E. For all reopenings per this Bulletin, upon completing the Director's Order to reopen the claim, the District Director enters status code "MD" (Claim Reopened – File Returned to DO) into ECMS B/E (as appropriate) to reflect that the case has been reopened and is in the district office's jurisdiction. (The "MZ" status code, receipt of Director's Order in the DO or FAB, is not necessary.) The status effective date of the "MD" code is the date of the Director's Order. Please note that while the "MD" code was generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been delegated in this specific circumstance.

14. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending LOOW cases that have a recommended decision to deny. All cases on the comprehensive list identified in Action #2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at LOOW during the time period specified, has a specified cancer, and meets the 250-workday requirement, the FAB is to reverse the district office's recommended decision to deny, and accept the case. The CE or FAB staff member enters status code "F6" (FAB Reversed to Accept) with the appropriate reason code into ECMS B/E (as appropriate) to reflect the FAB reversal with a status effective date equal to the date of the final decision to accept. The CE or FAB staff member also enters status code "SE" in ECMS B/E (as appropriate) with a status effective date equal to the date of the final decision to accept.

For all claims where LOOW employment is claimed, regardless of whether the SEC criteria are met, the SEC site code "**Lake Ontario Ordnance Works**" must be selected under the "**SEC/SEC Desc**" field on the claim screen.

If no action is required, FAB must follow the instructions specified in Action #16, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the district office. If FAB determines that the case cannot be accepted based on the new SEC designation and that re-referral to NIOSH is appropriate (see Actions #7, #8 and #10), the CE or FAB staff member must remand the case for district office action. The CE or FAB staff member enters status code "F7" (FAB Remanded) with "OTH" (No DO Error – Other) as the reason code in ECMS B/E (as appropriate), with a status effective date equal to the date of the remand.

15. The operational plan goal for completion of the action items in the Bulletin is as follows: The initial screening is to be completed for 90% of all cases on the comprehensive list within 30 days of the SEC class effective date. Within 45 days after the initial screening, recommended decisions are to be issued for 70% of those cases that are identified, via the initial screening, as likely to be included in the SEC class (**ISL**), and those cases for which development may be needed (**ISD**). Within 60 days after the initial screening, recommended decisions are to be issued for 90% of those cases that are identified, via initial screening, as likely to be included in the SEC class (**ISL**), and those cases for which development may be needed (**ISD**).

16. If, after review or further development, the CE or FAB staff member determines that a case on the list does not require any action, the CE or FAB staff member must write a brief memo to the file

indicating that the file was reviewed and note the reason why no additional action is necessary. A case classified as not requiring any action is a case that does not meet the SEC criteria, and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must then code “NA” (No Action Necessary) and select the appropriate reason code from the reason code drop down list. Since the “NA” coding is specifically tied to the SEC review list generated by DEEOIC, the “NA” code is restricted to ECMS B. This is because the SEC review list is derived from Part B data. For LOOW cases that were reviewed under this Bulletin and require no additional action, the reason code that must be selected is **002** (Reviewed under 10-02, LOOW SEC) and be coded into ECMS B only, even if the case is a B/E case. The status effective date of the “NA” code is the date of the memo to the file stating the review is complete, and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the “NA-002” code is not entered initially. The “NA-002” code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the “NA-002” code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “NA-002” code in addition to the closure code. The status effective date for the “NA” coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the EEOICPA Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections.

### **10-03 Brookhaven National Laboratory SEC Class for the Period of January 1, 1947 through December 31, 1979**

EEOICPA BULLETIN NO. 10-03

Issue Date: January 9, 2010

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Effective Date: January 9, 2010

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Expiration Date: January 9, 2011

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Subject: Brookhaven National Laboratory SEC Class for the Period of January 1, 1947 through December 31, 1979.

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from Brookhaven National Laboratory in Upton, New York to be added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and determined that it qualified for evaluation under 42 C.F.R. § 83.13. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On November 16, 2009, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at Brookhaven National Laboratory in Upton, New York.

On December 10, 2009, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress:

All employees of the Department of Energy, its predecessor agencies, and its contractors and subcontractors who worked at Brookhaven National Laboratory in Upton, New York, from January 1, 1947 to December 31, 1979, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

A copy of the Secretary’s letter to Congress recommending the designation is included at [Attachment 1](#). Although Congress had the authority to reject the recommendation within a 30-day time frame, Congress took no action. Therefore, the SEC designation for this class became effective as of January 9, 2010 which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress.

NIOSH has concluded that it can provide a partial estimate of dose, including occupational medical and external dose. NIOSH will also incorporate dose from any internal monitoring data that may be available for an individual claim, (and that can be interpreted using existing NIOSH dose reconstruction processes or procedures) into appropriate partial dose reconstructions. This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the December 10, 2009 letter to Congress from the Secretary of HHS in which Secretary Sebelius makes the designation.

Purpose: To provide procedures for processing SEC class claims for workers at Brookhaven National Laboratory in Upton, New York for the period of January 1, 1947 through December 31, 1979.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at Brookhaven National Laboratory during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.
3. The district offices are to use the comprehensive list as the basis for an initial screening of cases

associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is likely to meet the criteria for inclusion in the SEC. A screening worksheet is included as [Attachment 2](#). The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case file. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. Claim status codes have been created in ECMS to reflect each of these categories: **ISL** (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; **ISU** (Initial SEC Screening Unlikely SEC) for those unlikely to be included in the class; and **ISD** (Initial SEC Screening, Development Needed) for those which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, in this instance, 003 (Reviewed under 10-03, Brookhaven National Laboratory SEC). Once the worksheet is completed, the claims examiner (CE) is to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the **ISL**, **ISU**, and **ISD** codes is to correspond with the completion date of the screening worksheet.

The purpose of this initial screening is to assist the district offices in prioritizing claims poised for acceptance. Once screening and prioritization is complete, claims adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each case must be evaluated formally for SEC inclusion and the decision recorded in ECMS. The initial screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims submitted after the list is generated. These claims will be evaluated for inclusion in the SEC class in the general course of processing.

4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, complete the worksheet and enter related coding.

5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD or each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class, and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected Brookhaven National Laboratory claimants is included as [Attachment 3](#). The CE must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code “**NW**” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the “**NW**” code entry is January 9, 2010. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record. The standard procedure for NIOSH coding in ECMS E is to code all additional NIOSH actions only if the “**NI**” (Sent to NIOSH) status code has been entered. Therefore, the CE enters the “**NW**” code into ECMS E with the status effective date of January 9, 2010, only if “**NI**” has already been entered in ECMS E.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC, and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this Bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCe), notifies the appropriate point of contact at NIOSH via e-mail to return the dose reconstruction analysis records. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the status code

“**NW**” with a status effective date of January 9, 2010.

In addition, the CE must write a letter to the claimant advising that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this Bulletin, then refer to instructions in Action #15.

6. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the EEOICPA Procedure Manual Chapter 2-600.5. If the employee has a specified cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.

8. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 workdays at Brookhaven National Laboratory between January 1, 1947 and December 31, 1979.

Brookhaven National Laboratory, located in Upton, New York, was founded in 1947, and has been in operation since then under a contract between the U.S. Atomic Energy Commission (AEC) (which has now been assumed by the Department of Energy) and Associated Universities Inc. (AUI). The site was formerly Camp Upton and it was used by the Army during World Wars I and II. Brookhaven National Laboratory’s early research focused on advanced physics, but expanded into its current suite of research in the fields of medicine, biology, chemistry, physics, materials science, nuclear engineering, and environmental research.

While some buildings and outside areas are specifically noted for the use or storage of radiological materials, documentation available to NIOSH does not indicate any definite boundaries between radiological and non-radiological areas. NIOSH had to assume that the potential for exposure to radioactive materials existed in all areas of Brookhaven National Laboratory during the class period.

Additionally, NIOSH was unable to define potential radiation exposure conditions based on worker job descriptions, job titles, and/or job assignments. Therefore, based on the SEC designation, any probative evidence that a DOE employee or DOE subcontractor employee was employed at Brookhaven National Laboratory for at least 250 workdays during the SEC period is sufficient to include him or her in the SEC class.

If the employee does not have 250 workdays at Brookhaven National Laboratory, the CE should review the file to determine if additional days in the SEC can be found by combining days from employment meeting the criteria for other classes in the SEC and aggregating them together to meet the 250-workday requirement.

9. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

If it is determined that the case does qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail, so that NIOSH can close out their file. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file.

ECMS Coding Reminder: The “**SE**” (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the status effective date of the recommended decision to approve. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the “**SE**” code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

For all claims where Brookhaven National Laboratory employment is claimed, regardless of whether the SEC criteria are met, the SEC site code “**Brookhaven National Laboratory**” must be selected under the “**SEC/SEC Desc**” field on the claim screen.

10. As discussed earlier, although NIOSH determined that it is not feasible for NIOSH to perform complete dose reconstructions for this class of employees, NIOSH has indicated that partial dose reconstructions are possible. Accordingly, for cases that have not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code “**NI**” in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the “**NI**” code is not entered into ECMS E until non-radiological toxic exposure development is complete.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code “**NI**” into ECMS B, with a status effective date equal to the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction; e.g., non-specified cancer, insufficient latency period or does not meet the 250-workday requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for a dose reconstruction and the reason(s) it does not qualify for the SEC class. The CE is to send a copy of this letter to NIOSH. If the case is a B/E case, and toxic exposure development was completed with a memorandum to the file (with a prior “**NI**”/“**NW**” code), the CE enters status code “**NI**” into ECMS E with the status effective date of the e-mail requesting NIOSH to proceed with dose reconstruction.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “**NR**” (NIOSH Dose Reconstruction Received) in ECMS B and selects the reason code of “**PD**” (Partial Dose Reconstruction). The status effective date is the date the dose reconstruction report is date-stamped into the district office. The CE should not delete the “**NW**” or “**NI**” codes already present in ECMS. If the CE had previously entered “**NI**” in ECMS E, the CE also enters codes “**NR**” and “**PD**” in ECMS E. If the case is a B/E case, the CE enters the Probability of Causation (PoC) into ECMS B and ECMS E (regardless of whether the “**NI**” code had previously been entered).

11. If the claim meets the SEC employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction resulting in a probability of causation (PoC) of 50% or greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and any cancers for which there is a PoC of 50% or greater. The CE enters status code “**SE**” into ECMS B. The status effective date for the “**SE**” code is the date of the recommended decision to accept the specified cancer. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the “**SE**” code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

If necessary, the CE concurrently prepares a NRSD to NIOSH for a dose reconstruction for any non-specified cancer(s) to determine eligibility for medical benefits. The CE enters status code “**NI**” into ECMS B. The status effective date for the “**NI**” code is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the CE enters status code “**NI**” in ECMS E only after the non-radiological toxic exposure development is complete and the CE cannot accept causation. In that case the CE creates a memorandum to file stating that toxic exposure

development is complete, and enters status code “**NI**” in ECMS E with the date of the memorandum as the status code effective date.

12. If a claim has a final decision to deny based on a PoC of less than 50% and a review of the evidence of record establishes likely inclusion in the SEC class, the case will be reopened. In the exercise of the DEEOIC Director’s discretion of the reopening process, the Director is delegating limited authority to the four District Directors and the Assistant District Directors (ADDs), at the discretion of the DD, to sign Director’s Orders for reopening of these cases. This delegated authority is limited to reopenings based upon evidence that a Brookhaven National Laboratory employee meets the criteria for placement into the SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided in [Attachment 4](#). The DEEOIC Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is responsible for issuing a new recommended decision.

13. For those cases reopened under the authority granted in this Bulletin, the District Director or ADD enters status code “**MN**” (NO Initiates Review for Reopening) in ECMS B with a status effective date equal to the effective date of this Bulletin. If the District Director or ADD is also reopening Part E, the “**MN**” code is also entered into ECMS E. For all reopenings per this Bulletin, upon completing the Director’s Order to reopen the claim, the District Director or ADD enters status code “**MD**” (Claim Reopened – File Returned to DO) into ECMS B/E (as appropriate) to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “**MZ**” status code, receipt of Director’s Order in the DO or FAB, is not necessary.) The status effective date of the “**MD**” code is the date of the Director’s Order. Please note that while the “**MD**” code was generally input by National Office staff, entry of this code has been delegated to the District Director or ADD, just as the authority to grant reopenings has been delegated in this specific circumstance.

14. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending Brookhaven National Laboratory cases that have a recommended decision to deny. All cases on the comprehensive list identified in Action #2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at Brookhaven National Laboratory during the time period specified, has a specified cancer, and meets the 250-workday requirement, the FAB is to reverse the district office’s recommended decision to deny, and accept the case. The CE or FAB staff member enters status code “**F6**” (FAB Reversed to Accept) with the appropriate reason code into ECMS B/E (as appropriate) to reflect the FAB reversal with a status effective date equal to the date of the final decision to accept. The CE or FAB staff member also enters status code “**SE**” in ECMS B/E (as appropriate) with a status effective date equal to the date of the final decision to accept.

For all claims where Brookhaven National Laboratory employment is claimed, regardless of whether the SEC criteria are met, the SEC site code “**Brookhaven National Laboratory**” must be selected under the “**SEC/SEC Desc**” field on the claim screen.

If no action is required, FAB must follow the instructions specified in Action #15, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the district office. If FAB determines that the case cannot be accepted based on the new SEC designation and that re-referral to NIOSH is appropriate, the CE or FAB staff member must remand the case for district office action. The CE or FAB staff member enters status code “**F7**” (FAB Remanded) with “**OTH**” (No DO Error – Other) as the reason code in ECMS B/E (as appropriate), with a status effective date equal to the date of the remand.

15. If, after review or further development, the CE or FAB staff member determines that a case on the list does not require any action, the CE or FAB staff member must write a brief memo to the file indicating that the file was reviewed and note the reason why no additional action is necessary. A case classified as not requiring any action is a case that does not meet the SEC criteria, and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must then code “NA” (No Action Necessary) and select the appropriate reason code from the reason code drop down list. Since the “NA” coding is specifically tied to the SEC review list generated by DEEOIC, the “NA” code is restricted to ECMS B. This is because the SEC review list is derived from Part B data. For Brookhaven National Laboratory cases that were reviewed under this Bulletin and require no additional action, the reason code that must be selected is 003 (Reviewed under 10-03, Brookhaven National Laboratory SEC) and be coded into ECMS B only, even if the case is a B/E case. The status effective date of the “NA” code is the date of the memo to the file stating the review is complete, and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the “NA-003” code is not entered initially. The “NA-003” code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the “NA-003” code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “NA-003” code in addition to the closure code. The status effective date for the “NA” coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the EEOICPA Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections.

#### **10-04 Hanford SEC Class for October 1, 1943 through June 30, 1972**

EEOICPA BULLETIN NO.10-04

Issue Date: January 9, 2010

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Effective Date: January 9, 2010

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Expiration Date: January 9, 2011

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Subject: Hanford SEC Class for October 1, 1943 through June 30, 1972

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from the Hanford site in Richland, Washington to be added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and determined that it qualified for evaluation under 42 C.F.R. § 83.14. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On November 16, 2009, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at the Hanford site in Richland, Washington.

On December 10, 2009, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress:

All employees of the Department of Energy (DOE), its predecessor agencies, and its contractors and subcontractors who worked at the Hanford site in Richland, Washington, from October 1, 1943 through June 30, 1972, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

A copy of the Secretary’s letter to Congress recommending the designation is included as [Attachment 1](#). Although Congress had the authority to reject the recommendation within a 30-day time frame, Congress took no action. Therefore, the SEC designation for this class became effective as of January 9, 2010, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress.

NIOSH has concluded that it can provide a partial dose estimate using any internal and external monitoring data and occupational medical dose data that may be available for an individual claim, (and that can be interpreted using existing NIOSH dose reconstruction processes or procedures). This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

Two previous SEC classes pertaining to Hanford were the subjects of Bulletins 08-03 and 08-33, respectively. The new Hanford class described in this bulletin effectively subsumes both prior classes. Therefore, the guidance provided here replaces both of these prior Hanford SEC class bulletins.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the December 10, 2009 letter to Congress from the Secretary of HHS in which Secretary Sebelius makes the designation.

Purpose: To provide procedures for processing SEC class claims for workers at the Hanford Site in Richland, Washington.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at Hanford during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.

Additionally, the prior two Hanford classes in the SEC were limited to particular locations within the Hanford site, such as the 200 and 300 Areas. Because the new class has no such limitation, even claims previously reviewed under Bulletins 08-03 and 08-33 for the prior Hanford classes and found not to be eligible based upon employment criteria, will need to be re-examined as part of the new class.

3. The district offices are to use the comprehensive list as the basis for an initial screening of cases associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is likely to meet the criteria for inclusion in the SEC. A screening worksheet is included as [Attachment 2](#). The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case file. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. Claim status codes have been created in ECMS to reflect each of these categories: **ISL** (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; **ISU** (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and **ISD** (Initial SEC Screening, Development Needed) for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, in this instance, **004** (Reviewed under 10-04, Hanford SEC). Once the worksheet is completed, the claims examiner (CE) is to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the **ISL**, **ISU** and **ISD** codes is to correspond with the completion date of the screening worksheet.

The purpose of this initial screening is to assist the district offices in prioritizing claims poised for acceptance. Once screening and prioritization is complete, claims adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each case must be evaluated formally for SEC inclusion and the decision recorded in ECMS. The initial screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims submitted after the list is generated. These claims will be evaluated for inclusion in the SEC class in the general course of processing.

4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, complete the worksheet and enter related coding.

5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class, and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected Hanford claimants is included as [Attachment 3](#). The CE must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code “**NW**” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the “**NW**” code entry is January 9, 2010. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record. The standard procedure for NIOSH coding in ECMS E is to code all additional NIOSH actions only if the “**NI**” (Sent to NIOSH) status code has been entered. Therefore, the CE enters the “**NW**” code into ECMS E with the status effective date of January 9, 2010, only if “**NI**” has already been entered in ECMS E.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential

inclusion in the SEC, and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this Bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e mail to return the dose reconstruction analysis records. The SrCE then prints a copy of the "sent" e mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the status code "NW" with a status effective date of January 9, 2010. In addition, the CE must write a letter to the claimant advising that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this Bulletin, then refer to instructions in Action #15.

6. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the EEOICPA Procedure Manual Chapter 2-600.5. If the employee has a specified cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.

8. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 workdays at the Hanford site between October 1, 1943 and June 30, 1972.

The Department of Energy's Hanford site is 600 square miles of land that has been utilized since the days of the Manhattan Engineer District (MED) for reactor operations, plutonium finishing operations and numerous other activities involving nuclear material.

In evaluating the site for potential inclusion in the SEC, NIOSH focused primarily on the operations in the 100, 200 and 300 Areas of the Hanford site. However, in its evaluation, NIOSH does not indicate any definite boundaries between radiological and non-radiological areas of the site. NIOSH therefore had to assume that the potential for exposure to radioactive materials existed in all areas of the Hanford site during the class period.

Additionally, NIOSH was unable to define potential radiation exposure conditions based on worker job descriptions, job titles and/or job assignments. Therefore, based on the SEC designation, any probative evidence that the employee was employed at the Hanford site for at least 250 workdays during the SEC period is sufficient to include him or her in the SEC class.

However, in their class designation, HHS did not include those workers associated with Hanford whose work location was somewhere other than on the site. For example, the 700 Area refers to the Richland Operations Office which is a federal building in the City of Richland in which many of the people who manage and oversee the Hanford site work. The 1100 Area and 3000 Area are also not within the boundaries of the Hanford site. In addition, it should be noted that although the 400 Area, which housed the Fast Flux Test Facility (FFTF), is within the Hanford site, the operational period of the FFTF occurred after the SEC class period.

What this means in terms of placing employees in the Hanford SEC class is that for employees with verified Hanford employment there is a presumption that the employee's work location was the Hanford site. However, if there is clear evidence that the employee worked elsewhere, such as the 700 Area, the CE develops further to ascertain whether the employee's job required him or her to go onto the Hanford site for 250 days or more. In these instances, the CE uses any reasonable evidence, such as monitoring records, employment records, job descriptions, affidavits, etc. to establish that such an employee would have spent a total of 250 workdays on the Hanford site during the period of the SEC class (or in combination with workdays within the parameters established for one or more other classes of employees in the SEC).

Once 250 days of Hanford site employment during the class period are established, the CE or

hearing representative can accept that the employment component of the SEC class is satisfied. In these cases, the CE proceeds to Action #9.

If the employee does not have 250 workdays at the Hanford site, the CE must review the file to determine if additional days in the SEC can be found by combining days from employment meeting the criteria for other classes in the SEC and aggregating them together to meet the 250-workday requirement. If the 250 workday requirement is not satisfied, the CE proceeds to #10.

9. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

If it is determined that the case does qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail, so that NIOSH can close out their file. The SrCE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file.

ECMS Coding Reminder: The "**SE**" (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the status effective date of the recommended decision to approve. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the "**SE**" code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

For all claims where Hanford employment is claimed, regardless of whether the SEC criteria are met, the SEC site code "**Hanford**" must be selected under the "**SEC/SEC Desc**" field on the claim screen.

10. Although NIOSH determined that it is not feasible for NIOSH to perform complete dose reconstructions for this class of employees, NIOSH has indicated that partial dose reconstructions are possible. Accordingly, for cases that have not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code "**NI**" in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the "**NI**" code is not entered into ECMS E until non-radiological toxic exposure development is complete.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code "**NI**" into ECMS B, with a status effective date equal to the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction; e.g., non-specified cancer, insufficient latency period or does not meet the 250 workday requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for a dose reconstruction and the reason(s) it does not qualify for the SEC class. The CE is to send a copy of this letter to NIOSH. If the case is a B/E case, and toxic exposure development was completed with a memorandum to the file (with a prior "**NI**"/"**NW**" code), the CE enters status code "**NI**" into ECMS E with the status effective date of the e-mail requesting NIOSH to proceed with dose reconstruction.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code "**NR**" (NIOSH Dose Reconstruction Received) in ECMS B and selects the reason code of "**PD**" (Partial Dose Reconstruction). The status effective date is the date the dose reconstruction report is date-stamped into the district office. The CE should not delete the "**NW**" or "**NI**" codes already present in ECMS. If the CE had previously

entered “**NI**” in ECMS E, the CE also enters codes “**NR**” and “**PD**” in ECMS E. If the case is a B/E case, the CE enters the Probability of Causation (PoC) into ECMS B and ECMS E (regardless of whether the “**NI**” code had previously been entered).

11. If the claim meets the SEC employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction resulting in a probability of causation (PoC) of 50% or greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and any cancers for which there is a POC of 50% or greater. The CE enters status code “**SE**” into ECMS B. The status effective date for the “**SE**” code is the date of the recommended decision to accept the specified cancer. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the “**SE**” code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

If necessary, the CE concurrently prepares a NRSD to NIOSH for a dose reconstruction for any non-specified cancer(s) to determine eligibility for medical benefits. The CE enters status code “**NI**” into ECMS B. The status effective date for the “**NI**” code is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the CE enters status code “**NI**” in ECMS E only after the non-radiological toxic exposure development is complete and the CE cannot accept causation. In that case the CE creates a memorandum to file stating that toxic exposure development is complete, and enters status code “**NI**” in ECMS E with the date of the memorandum as the status effective date.

12. If a claim has a final decision to deny based on a PoC of less than 50% and a review of the evidence of record establishes likely inclusion in the SEC class, the case is reopened. In the exercise of the DEEOIC Director’s discretion of the reopening process, the Director is delegating limited authority to the four District Directors and the Assistant District Directors (ADDs), at the discretion of the DD, to sign Director’s Orders for reopening of these cases. This delegated authority is limited to reopenings based upon evidence that a Hanford employee meets the criteria for placement into the SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided in [Attachment 4](#). The DEEOIC Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is responsible for issuing a new recommended decision.

13. For those cases reopened under the authority granted in this Bulletin, the District Director or ADD enters status code “**MN**” (NO Initiates Review for Reopening) in ECMS B with a status effective date equal to the effective date of this Bulletin. If the District Director or ADD is also reopening Part E, the “**MN**” code is also entered into EMCS E. For all reopenings per this Bulletin, upon completing the Director’s Order to reopen the claim, the District Director or ADD enters status code “**MD**” (Claim Reopened – File Returned to DO) into ECMS B/E (as appropriate) to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “**MZ**” status code, receipt of Director’s Order in the DO or FAB, is not necessary.) The status effective date of the “**MD**” code is the date of the Director’s Order. Please note that while the “**MD**” code is generally input by National Office staff, entry of this code has been delegated to the District Director or ADD, just as the authority to grant reopenings has been delegated in this specific circumstance.

14. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending Hanford cases that have a recommended decision to deny. All cases on the comprehensive list identified in Action #2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at Hanford during the time period specified, has a specified cancer, and meets the 250-workday requirement, the FAB is to reverse the district office’s recommended decision to deny,

and accept the case. The CE or FAB staff member enters status code “**F6**” (FAB Reversed to Accept) with the appropriate reason code into ECMS B/E (as appropriate) to reflect the FAB reversal with a status effective date equal to the date of the final decision to accept. The CE or FAB staff member also enters status code “**SE**” in ECMS B/E (as appropriate) with a status effective date equal to the date of the final decision to accept.

For all claims where Hanford employment is claimed, regardless of whether the SEC criteria are met, the SEC site code “**Hanford**” must be selected under the “**SEC/SEC Desc**” field on the claim screen.

If no action is required, FAB must follow the instructions specified in Action #15, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the district office. If FAB determines that the case cannot be accepted based on the new SEC designation and that re-referral to NIOSH is appropriate (see Action #10), the CE or FAB staff member remands the case for district office action. The CE or FAB staff member enters status code “**F7**” (FAB Remanded) with “**OTH**” (No DO Error – Other) as the reason code in ECMS B/E (as appropriate), with a status effective date equal to the date of the remand.

15. If, after review or further development, the CE or FAB staff member determines that a case on the list does not require any action, the CE or FAB staff member must write a brief memo to the file indicating that the file was reviewed and note the reason why no additional action is necessary. A case classified as not requiring any action is a case that does not meet the SEC criteria, and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must then code “**NA**” (No Action Necessary) and select the appropriate reason code from the reason code drop down list. Since the “**NA**” coding is specifically tied to the SEC review list generated by DEEOIC, the “**NA**” code is restricted to ECMS B. This is because the SEC review list is derived from Part B data. For Hanford cases that were reviewed under this Bulletin and require no additional action, the reason code that must be selected is **004** (Reviewed under 10-04, Hanford SEC class) and be coded into ECMS B only, even if the case is a B/E case. The status effective date of the “**NA**” code is the date of the memo to the file stating the review is complete, and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the “**NA-004**” code is not entered initially. The “**NA-004**” code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the “**NA-004**” code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “**NA-004**” code in addition to the closure code. The status effective date for the “**NA**” coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the EEOICPA Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections.

**10-05 Metals and Controls SEC Class for the period January 1, 1952 through December 31, 1967**

EEOICPA BULLETIN NO. 10-05

Issue Date: January 9, 2010

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Effective Date: January 9, 2010

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Expiration Date: January 9, 2011

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Subject: Metals and Controls SEC Class for the period January 1, 1952 through December 31, 1967

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from Metals and Controls Corporation in Attleboro, Massachusetts to be added to the Special Exposure Cohort (SEC).

The decision to initiate this petition occurred after the National Institute for Occupational Safety and Health (NIOSH) determined that it could not reconstruct a dose under 42 C.F.R. § 83.14. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On November 16, 2009, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at Metals and Controls Corporation in Attleboro, Massachusetts.

On December 10, 2009 the Secretary of HHS designated the following class for addition to the SEC in a report to Congress.

All Atomic Weapons Employees who worked at Metals and Controls Corp. in Attleboro, MA, from January 1, 1952 to December 31, 1967, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

A copy of the Secretary’s letter to Congress recommending the designation is included as [Attachment 1](#). Although Congress had the authority to reject the recommendation within a 30-day time frame, Congress took no action. Therefore, the SEC designation for this class became effective as of January 9, 2010, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress.

While a new SEC class has been added for employees at Metals & Controls, NIOSH intends to use any available internal and external monitoring data that may become available for an individual claim (and that can be interpreted using existing NIOSH dose reconstruction processes or procedures). This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of

the Special Exposure Cohort Under EEOICPA; the December 10, 2009 letter to Congress from the Secretary of HHS in which Secretary Sebelius makes the designation.

Purpose: To provide procedures for processing SEC claims for workers at Metals and Controls Corporation in Attleboro, Massachusetts.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at Metals and Controls Corp. during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.
3. The district offices are to use the comprehensive list as the basis for an initial screening of cases associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is likely to meet the criteria for inclusion into the SEC. A screening worksheet is included as [Attachment 2](#). The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case file. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. Claim status codes have been created in ECMS to reflect each of these categories: **ISL** (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; **ISU** (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and **ISD** (Initial SEC Screening, Development Needed), for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, in this instance, **005** (Reviewed under Bulletin 10-05, Metals and Controls Corp. SEC). Once the worksheet is completed, the claims examiner (CE) is to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the **ISL**, **ISU** and **ISD** codes is to correspond with the completion date of the screening worksheet. Metals and Controls Corporation is an Atomic Weapons Employer (AWE). As such, there are no Part E coding implications.

The purpose of this initial screening is to assist the district offices in prioritizing claims poised for acceptance and for purposes of meeting operational plan goals. Once screening and prioritization is complete, claims adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each case must be evaluated formally for SEC inclusion and the decision recorded in ECMS. The initial screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims submitted after the list is generated. These claims will be evaluated for inclusion in the SEC class in the general course of processing.

4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, worksheet and related coding.
5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD, in the Correspondence Folder, should be a copy of the

NIOSH letter sent to each claimant informing the claimant of the new SEC class, and that his or her case is being returned to the DOL for adjudication. A copy of the NIOSH letter to affected Metals and Controls Corporation employees is included as [Attachment 3](#). The CE must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code “**NW**” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the “**NW**” code entry is January 9, 2010. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC class, and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this Bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e mail to return the dose reconstruction analysis records. The SrCE then prints a copy of the “sent” e mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the status code “**NW**” with a status effective date of January 9, 2010. In addition, the CE must write a letter to the claimant advising that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this Bulletin, then refer to instructions in Action Item #15.

6. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the EEOICPA Procedure Manual Chapter 2-600.5. If the employee has a specified cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.

8. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 workdays at Metals and Controls Corp. in Attleboro, Massachusetts between January 1, 1952 and December 31, 1967. If the employee does not have 250 workdays at Metals and Controls Corp., the CE must review the file to determine if additional days in the SEC can be found by combining days from employment meeting the criteria for other classes in the SEC and aggregating them together to meet the 250-workday requirement. If the 250 workday requirement is not satisfied, the CE proceeds to #10.

NIOSH has found no documentation to describe buildings and areas where radiological materials were used, or to limit such use to particular locations at the Attleboro site. There is also insufficient information to completely describe the source term, operational processes, worker movements, or potential for contamination spread at Metals and Controls Corporation; therefore, NIOSH assumes that the potential for exposure to radioactive materials existed in all areas of the Metals and Controls Corporate site. This means that, for the purpose of claims adjudication, employment at any location within the Metals and Controls Corp. Attleboro site, qualifies for SEC consideration.

9. Once the CE has determined that the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

If it is determined that the case does qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail, so that NIOSH can close out their file. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file.

ECMS Coding Reminder: The “**SE**” (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the date of the recommended decision to approve.

For all claims where Metals and Controls Corporation employment is claimed, regardless of whether the SEC criteria are met, the SEC site code “Metals and Controls Corp.” must be selected under the “**SEC/SEC Desc**” field on the claim screen.

10. Although HHS determined that it is not feasible for NIOSH to perform complete dose reconstructions for this class of employees, NIOSH has indicated that partial dose reconstructions are possible. Accordingly, for cases that do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code “**NI**” (Sent to NIOSH) in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code “**NI**” (Sent to NIOSH) into the ECMS B, effective the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-specified cancer, insufficient latency period or does not meet the 250-workday requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for dose reconstruction and the reason(s) it does not qualify for the SEC class. The CE is to send a copy of this letter to NIOSH.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “**NR**” (NIOSH Dose Reconstruction Received) in ECMS B and selects the “**PD**” (Partial Dose Reconstruction) reason code. The status effective date is the date the dose reconstruction is date-stamped into the district office. The CE should not delete the “**NW**” (NIOSH, returned without a dose reconstruction) or “**NI**” (Sent to NIOSH) code already present in ECMS.

11. If the claim meets the SEC class employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction that resulted in a probability of causation (PoC) of 50 percent or greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and, if necessary, concurrently prepares a NRSD to NIOSH for a dose reconstruction for the non-specified cancer to determine eligibility for medical benefits. The CE enters status code “**SE**” (Confirmed as SEC claim) and the “**NI**” (Sent to NIOSH) code into ECMS B. The status effective date for the “**SE**” code is the date of the recommended decision to accept the specified cancer. The status effective date for the “**NI**” code is the date of the Senior or Supervisory CE signature on the NRSD.

12. If a claim has a final decision to deny based on a PoC of less than 50%, and a review of the evidence of record establishes likely inclusion in the SEC class, the case is reopened. In the exercise of the Director’s discretion of the reopening process, the Director is delegating limited authority to the four District Directors and Assistant District Directors (ADD), at the discretion of the District Director, to sign Director’s Orders for reopening. This delegated authority is limited to reopenings based upon evidence that a Metals and Controls Corp. employee meets the criteria for placement into the Metals and Controls Corp. SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director or ADD is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided in [Attachment 4](#). The Director is

retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director's Order is issued, the district office is responsible for issuing a new recommended decision.

13. For those cases which are reopened under authority granted in this Bulletin, the District Director or ADD enters status code "**MN**" (NO Initiates Review for Reopening) in ECMS B with a status effective date as the effective date of this bulletin. For all reopenings per this bulletin, upon completing the Director's Order to reopen the claim, the District Director or ADD enters status code "**MD**" (Claim Reopened – File Returned to DO) into ECMS B to reflect that the case has been reopened and is in the district office's jurisdiction. (The "**MZ**" status code is not necessary). The status effective date of the "**MD**" code is the date of the Director's Order. Please note that while the "**MD**" code is generally input by National Office staff, entry of this code has been delegated to the District Director and ADD, just as the authority to grant reopenings has been delegated in this specific circumstance.

14. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending Metals and Controls Corp. cases that have a recommended decision to deny. All cases on the comprehensive list identified in Action Item #2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at Metals and Controls Corp. during the time period specified, has a specified cancer, and meets the 250-workday requirement, the FAB is to reverse the district office's recommended decision to deny and accept the case. The CE or FAB staff member enters status code "**F6**" (FAB Reversed to Accept, with appropriate Reason Code) into ECMS B to reflect the FAB reversal with a status effective date equal to the date of the final decision to approve. The CE or FAB staff person enters status code "**SE**" (Confirmed as SEC Claim) into ECMS B with a status effective date equal to the date of the final decision to approve.

For all claims where Metals and Controls Corporation employment is claimed, regardless of whether the SEC criteria are met, the SEC site code "Metals and Controls" must be selected under the "**SEC/SEC Desc**" field on the claim screen.

If no action is required, FAB must follow the instructions specified in Action Item #15 below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the district office. If FAB determines that the case cannot be approved based on the new SEC designation and that re-referral to NIOSH is appropriate (see Action Item #10) the CE or FAB staff member remands the case for district office action. The CE or FAB staff member enters status code "**F7**" (FAB Remanded) with "**OTH**" (No DO Error – Other) as the reason code, with a status effective date of the date of the remand.

15. If after review or further development, the CE or FAB staff member determines that a case on the list does not require any action, the CE or FAB staff member must write a brief memo to the file indicating that the file was reviewed and noting the reason why no additional action is necessary. A case classified as not requiring any action is a case that does not meet the SEC criteria and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must code "**NA**" (No Action Necessary) and then select the appropriate reason code from the reason code drop down list. The "**NA**" coding is specifically tied to the SEC review list generated by DEEOIC and the "**NA**" code is restricted to ECMS B only because the SEC review list is derived from Part B data. For Metals and Controls Corporation cases that were reviewed under this Bulletin and require no additional action, the reason code that must be selected is "**005**" (Reviewed under Bulletin 10-05 Metals and Controls SEC) and be coded into ECMS B only. The status effective date of the "**NA**" code is the date of the memo to the file stating review is complete and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the "**NA-005**" code is not entered initially. The "**NA-005**" code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or

there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the “NA-005” code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “NA-005” code in addition to the closure code. The status effective date for the “NA” coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

Attachment 1

Attachment 2

Attachment 3

Attachment 4

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections

**10-06 Piqua Organic Moderated Reactor (POMR) site SEC Class for the period from May 2, 1966 through February 28, 1969**

EEOICPA BULLETIN NO.10-06

Issue Date: January 9, 2010

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Effective Date: January 9, 2010

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Expiration Date: January 9, 2011

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Subject: Piqua Organic Moderated Reactor (POMR) site SEC Class for the period from May 2, 1966 through February 28, 1969.

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from the Piqua Organic Moderated Reactor (POMR) site, in Piqua, Ohio, to be added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and determined that it qualified for evaluation under 42 C.F.R. § 83.13. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On November 16, 2009, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at the POMR site in Piqua, Ohio.

On December 10, 2009, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress.

All employees of the Department of Energy, its predecessor agencies, and its contractors and subcontractors who worked at the Piqua Organic Moderated Reactor site during the covered period from May 2, 1966 through February 28, 1969, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the SEC.

A copy of the Secretary's letter to Congress recommending the designation is included as [Attachment 1](#). Although Congress had the authority to reject the recommendation within a 30-day time frame, Congress took no action. Therefore, the SEC designation for this class became effective as of January 9, 2010, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress.

NIOSH has established that it can provide a partial estimate of dose using any internal monitoring data that may be available for an individual claim (and that can be interpreted using existing NIOSH dose reconstruction processes or procedures). Additionally, NIOSH can estimate occupational medical dose and may also be able to estimate external doses from photons and beta exposure in some cases. This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the December 10, 2009 letter to Congress from the Secretary of HHS in which Secretary Sebelius makes the designation.

Purpose: To provide procedures for processing SEC class claims for workers at the POMR site in Piqua, Ohio from May 2, 1966 through February 28, 1969.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at the POMR site during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.
3. The district offices are to use the comprehensive list as the basis for an initial screening of cases associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is likely to meet the criteria for inclusion into the SEC. A screening worksheet is included as [Attachment 2](#). The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case file. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. Claim status codes have been created in ECMS to reflect each of these categories: **ISL** (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; **ISU** (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and **ISD** (Initial SEC Screening, Development Needed) for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, in this instance, **006** (Reviewed under 10-06, Piqua Organic Moderated Reactor site SEC). Once the worksheet is completed, the Claims Examiner (CE) is to select the appropriate claim

status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the **ISL**, **ISU** and **ISD** codes is to correspond with the completion date of the screening worksheet.

The purpose of this initial screening is to assist the district offices in prioritizing claims poised for acceptance. Once screening and prioritization is complete, claims adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each case must be evaluated formally for SEC inclusion and the decision recorded in ECMS. The initial screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims submitted after the list is generated. These claims will be evaluated for inclusion in the SEC class in the general course of processing.

4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, complete the worksheet and enter related coding.

5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class, and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected POMR claimants is included as [Attachment 3](#). The CE must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code “**NW**” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the “**NW**” code entry is January 9, 2010. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record. The standard procedure for NIOSH coding in ECMS E is to code all additional NIOSH actions only if the “**NI**” (Sent to NIOSH) status code has been entered. Therefore, the CE enters the “**NW**” code into ECMS E with the status effective date of January 9, 2010, only if “**NI**” has already been entered in ECMS E.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC, and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this Bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e mail to return the dose reconstruction analysis records. The SrCE then prints a copy of the “sent” e mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the status code “**NW**” with a status effective date of January 9, 2010. In addition, the CE must write a letter to the claimant advising that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this Bulletin, then refer to instructions in Action #15.

6. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the EEOICPA Procedure Manual Chapter 2-600.5. If the employee has a specified cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.

8. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 workdays at the POMR site between May 2, 1966 and February 28, 1969.

The POMR site, located in Piqua, Ohio, was operated as a demonstration reactor under contract to the Atomic Energy Commission (AEC) from 1963 to 1966. The facility contained a 45.5-megawatt (thermal) organically cooled and moderated reactor designed and initially operated by Atomics International (AI) and then operated by the City of Piqua, with continued assistance from AI. The AEC dismantled and decommissioned the reactor between 1967 and 1969, utilizing personnel from both the City of Piqua and AI. The reactor fuel coolant and most of the radioactive materials were removed from the site.

The POMR operational period was from January 1, 1963 through May 1, 1966, and the post-operational period from May 2, 1966 through February 28, 1969. It is the post-operational period that comprises the SEC class. AEC oversight of POMR operations were conducted through the Idaho National Laboratory (INL), which in turn reported to the Chicago Operations Office. Accordingly some records pertaining to those who worked on POMR operations are located with the INL and the Chicago Operations Office and these can be utilized to assist in placing employees at the POMR. All personnel of the City of Piqua employed at the POMR during the period of May 2, 1966 through February 28, 1969 are to be considered DOE contractors. For the purpose of claim adjudication, any DOE employee or DOE contractor or subcontractor employed at the POMR during the period of May 2, 1966 through February 28, 1969 can be considered for SEC inclusion.

If the employee does not have 250 workdays at the POMR site, the CE should review the file to determine if additional days in the SEC can be found by combining days from employment meeting the criteria for other classes in the SEC and aggregating them together to meet the 250 workday requirement.

9. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

If it is determined that the case does qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail, so that NIOSH can close out their file. The SrCE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file.

ECMS Coding Reminder: The "SE" (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the status effective date of the recommended decision to approve. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the "SE" code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

For all claims where POMR employment is claimed, regardless of whether the SEC criteria are met, the SEC site code "**Piqua Organic Moderated Reactor**" must be selected under the "**SEC/SEC Desc**" field on the claim screen.

10. Although HHS determined that it is not feasible for NIOSH to perform complete dose reconstructions for this class of employees, NIOSH has indicated that partial dose reconstructions are possible. Accordingly, for cases that have not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code "NI" in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the "NI" code is not entered into ECMS E until non-radiological toxic exposure development is complete.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not

required. If it is determined that the case does not qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code “**NI**” into ECMS B, with a status effective date equal to the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction; e.g., non-specified cancer, insufficient latency period or does not meet the 250 workday requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for a dose reconstruction and the reason(s) it does not qualify for the SEC class. The CE is to send a copy of this letter to NIOSH. If the case is a B/E case, and toxic exposure development was completed with a memorandum to the file (with a prior “**NI**”/“**NW**” code), the CE enters status code “**NI**” into ECMS E with the status effective date of the e-mail requesting NIOSH to proceed with dose reconstruction.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “**NR**” (NIOSH Dose Reconstruction Received) in ECMS B and selects the reason code of “**PD**” (Partial Dose Reconstruction). The status effective date is the date the dose reconstruction report is date-stamped into the district office. The CE should not delete the “**NW**” or “**NI**” codes already present in ECMS. If the CE had previously entered “**NI**” in ECMS E, the CE also enters codes “**NR**” and “**PD**” in ECMS E. If the case is a B/E case, the CE enters the Probability of Causation (PoC) into ECMS B and ECMS E (regardless of whether the “**NI**” code had previously been entered).

11. If the claim meets the SEC employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction resulting in a probability of causation (PoC) of 50% or greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and any cancers for which there is a POC of 50% or greater. The CE enters status code “**SE**” into ECMS B. The status effective date for the “**SE**” code is the date of the recommended decision to accept the specified cancer. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the “**SE**” code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

If necessary, the CE concurrently prepares a NRSD to NIOSH for a dose reconstruction for any non-specified cancer(s) to determine eligibility for medical benefits. The CE enters status code “**NI**” into ECMS B. The status effective date for the “**NI**” code is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the CE enters status code “**NI**” in ECMS E only after the non-radiological toxic exposure development is complete and the CE cannot accept causation. In that case the CE creates a memorandum to file stating that toxic exposure development is complete, and enters status code “**NI**” in ECMS E with the date of the memorandum as the status effective date.

12. If a claim has a final decision to deny based on a PoC of less than 50% and a review of the evidence of record establishes likely inclusion in the SEC class, the case is reopened. In the exercise of the DEEOIC Director’s discretion of the reopening process, the Director is delegating limited authority to the four District Directors and the Assistant District Directors (ADDs) to sign Director’s Orders for reopening of these cases. This delegated authority is limited to reopenings based upon evidence that a POMR employee meets the criteria for placement into the SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided in [Attachment 4](#). The DEEOIC Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is responsible for issuing a new recommended decision.

13. For those cases reopened under the authority granted in this Bulletin, the District Director or ADD enters status code “**MN**” (NO Initiates Review for Reopening) in ECMS B with a status effective date equal to the effective date of this Bulletin. If the District Director or ADD is also reopening Part E, the “**MN**” code is also entered into EMCS E. For all reopenings per this Bulletin, upon completing the Director’s Order to reopen the claim, the District Director or ADD enters status code “**MD**” (Claim Reopened – File Returned to DO) into ECMS B/E (as appropriate) to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “**MZ**” status code, receipt of Director’s Order in the DO or FAB, is not necessary.) The status effective date of the “**MD**” code is the date of the Director’s Order. Please note that while the “**MD**” code is generally input by National Office staff, entry of this code has been delegated to the District Director or ADD, just as the authority to grant reopenings has been delegated in this specific circumstance.

14. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending POMR cases that have a recommended decision to deny. All cases on the comprehensive list identified in Action #2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at the POMR site during the time period specified, has a specified cancer, and meets the 250-workday requirement, the FAB is to reverse the district office’s recommended decision to deny, and accept the case. The CE or FAB staff member enters status code “**F6**” (FAB Reversed to Accept) with the appropriate reason code into ECMS B/E (as appropriate) to reflect the FAB reversal with a status effective date equal to the date of the final decision to accept. The CE or FAB staff member also enters status code “**SE**” in ECMS B/E (as appropriate) with a status effective date equal to the date of the final decision to accept.

If no action is required, FAB must follow the instructions specified in Action #15, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the district office. If FAB determines that the case cannot be accepted based on the new SEC designation and that re-referral to NIOSH is appropriate, the CE or FAB staff member remands the case for district office action. The CE or FAB staff member enters status code “**F7**” (FAB Remanded) with “**OTH**” (No DO Error – Other) as the reason code in ECMS B/E (as appropriate), with a status effective date equal to the date of the remand.

15. If, after review or further development, the CE or FAB staff member determines that a case on the list does not require any action, the CE or FAB staff member must write a brief memo to the file indicating that the file was reviewed and note the reason why no additional action is necessary. A case classified as not requiring any action is a case that does not meet the SEC criteria, and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must then code “**NA**” (No Action Necessary) and select the appropriate reason code from the reason code drop down list. Since the “**NA**” coding is specifically tied to the SEC review list generated by DEEOIC, the “**NA**” code is restricted to ECMS B. This is because the SEC review list is derived from Part B data. For POMR cases that were reviewed under this Bulletin and require no additional action, the reason code that must be selected is **006** (Reviewed under 10-06, Piqua Organic Moderated Reactor site SEC) and be coded into ECMS B only, even if the case is a B/E case. The status effective date of the “**NA**” code is the date of the memo to the file stating the review is complete, and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the “**NA-006**” code is not entered initially. The “**NA-006**” code is only entered when the CE determines after development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the “**NA-006**” code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the

“NA-006” code in addition to the closure code. The status effective date for the “NA” coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the EEOICPA Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections.

### **10-07 Oak Ridge Hospital SEC Class for May 15, 1950 through December 31, 1959**

EEOICPA BULLETIN NO.10-07

Issue Date: January 9, 2010

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Effective Date: January 9, 2010

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Expiration Date: January 9, 2011

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Subject: Oak Ridge Hospital SEC Class for May 15, 1950 through December 31, 1959

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from the Oak Ridge Hospital in Oak Ridge, Tennessee to be added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and determined that it qualified for evaluation under 42 C.F.R. § 83.13. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On November 16, 2009, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at the Oak Ridge Hospital in Oak Ridge, Tennessee.

On December 10, 2009, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress:

All employees of the Department of Energy, its predecessor agencies, and its contractors and subcontractors who worked in any location at the Oak Ridge Hospital in Oak Ridge, Tennessee, from May 15, 1950 through December 31, 1959, for a number of work days aggregating at least 250 work days or in combination with work days within the parameters established for one or more other classes of employees in the SEC.

A copy of the Secretary’s letter to Congress recommending the designation is included as [Attachment 1](#). Although Congress had the authority to reject the recommendation within a 30-day

time frame, Congress took no action. Therefore, the SEC designation for this class became effective as of January 9, 2010, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress.

NIOSH has concluded that it can provide a partial estimate of dose based upon occupational medical dose and, in some instances, external gamma exposure. This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the December 10, 2009 letter to Congress from the Secretary of HHS in which Secretary Sebelius makes the designation.

Purpose: To provide procedures for processing SEC class claims for workers employed at the Oak Ridge Hospital in Oak Ridge, Tennessee from May 15, 1950 through December 31, 1959.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at the Oak Ridge Hospital during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.
3. The district offices are to use the comprehensive list as the basis for an initial screening of cases associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is likely to meet the criteria for inclusion in the SEC. A screening worksheet is included as [Attachment 2](#). The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case file. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. Claim status codes have been created in ECMS to reflect each of these categories: **ISL** (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; **ISU** (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and **ISD** (Initial SEC Screening, Development Needed) for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, in this instance, **007** (Reviewed under 10-07, Oak Ridge Hospital SEC). Once the worksheet is completed, the claims examiner (CE) is to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the **ISL**, **ISU** and **ISD** codes is to correspond with the completion date of the screening worksheet.

The purpose of this initial screening is to assist the district offices in prioritizing claims poised for acceptance. Once screening and prioritization is complete, claims adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each case must be evaluated formally for SEC inclusion and the decision recorded in ECMS. The initial screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims submitted after the list is generated. These claims will be evaluated for inclusion in the SEC class in the general course of processing.

4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, complete the worksheet and enter related coding.
5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class, and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected Oak Ridge Hospital claimants is included as [Attachment 3](#). The CE must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code “**NW**” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the “**NW**” code entry is January 9, 2010. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record. The standard procedure for NIOSH coding in ECMS E is to code all additional NIOSH actions only if the “**NI**” (Sent to NIOSH) status code has been entered. Therefore, the CE enters the “**NW**” code into ECMS E with the status effective date of January 9, 2010, only if “**NI**” has already been entered in ECMS E.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC, and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this Bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e mail to return the dose reconstruction analysis records. The SrCE then prints a copy of the “sent” e mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the status code “**NW**” with a status effective date of January 9, 2010. In addition, the CE must write a letter to the claimant advising that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this Bulletin, then refer to instructions in Action #15.

6. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.
7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the EEOICPA Procedure Manual Chapter 2-600.5. If the employee has a specified cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.
8. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 workdays at the Oak Ridge Hospital between May 15, 1950 through December 31, 1959.

The Oak Ridge Hospital, located in Oak Ridge, Tennessee, is a Department of Energy (DOE) covered facility from January 1, 1943 to December 31, 1959. With regard to workers at the Oak Ridge Hospital, NIOSH determined there was insufficient monitoring data, workplace monitoring records, and source-term information to complete individual dose reconstructions for internal and external radiation exposures from May 15, 1950 through December 31, 1959. Therefore, probative evidence that the employee was employed at the Oak Ridge Hospital for at least 250 workdays during the SEC period is sufficient to include him or her in the SEC class.

It is important to note, that the Oak Ridge Hospital was closely associated with the Oak Ridge Institute for Nuclear Studies (ORINS) cancer research hospital. Employment at the ORINS cancer research hospital for the period May 15, 1950 through December 31, 1963, is a separate class in the SEC and is the subject of Bulletin 07-09. The two institutions were closely linked, with ORINS staff occupying a wing of the Oak Ridge Hospital.

Based on information that NIOSH collected during its SEC class evaluation for the Hospital, contract agreements existed between the two facilities from 1950 to 1959, by which the two institutions intermingled services relating to staffing, patient care and other operational activities. It is important for the CE to understand the close interconnectivity of the Oak Ridge Hospital and ORINS when evaluating claims, because employment for ORINS does not restrict a covered employee from potentially being at the Oak Ridge Hospital between the period of May 15, 1950 through December 31, 1959. Moreover, it may be possible to aggregate time spent during the SEC periods at the two facilities to arrive at the necessary 250 day requirement for inclusion in the SEC. Should the evidence be found insufficient to place the employee at the Oak Ridge Hospital (or aggregated with other SEC classes such as ORINS), the CE should proceed to item #10.

9. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

If it is determined that the case does qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail, so that NIOSH can close out their file. The SrCE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file.

ECMS Coding Reminder: The "SE" (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the status effective date of the recommended decision to approve. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the "SE" code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

For all claims where Oak Ridge Hospital employment is claimed, regardless of whether the SEC criteria are met, the SEC site code "**Oak Ridge Hospital**" must be selected under the "**SEC/SEC Desc**" field on the claim screen.

10. Although NIOSH determined that it is not feasible for NIOSH to perform complete dose reconstructions for this class of employees, NIOSH has indicated that partial dose reconstructions are possible. Accordingly, for cases that have not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code "NI" in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the "NI" code is not entered into ECMS E until non-radiological toxic exposure development is complete.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code "NI" into ECMS B, with a status effective date equal to the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e mail should include a brief statement of why the case should proceed with dose reconstruction; e.g., non-specified cancer, insufficient latency period or does not meet the 250 workday requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for a dose reconstruction and the reason(s) it does not qualify for the

SEC class. The CE is to send a copy of this letter to NIOSH. If the case is a B/E case, and toxic exposure development was completed with a memorandum to the file (with a prior “**NI**”/”**NW**” code), the CE enters status code “**NI**” into ECMS E with the status effective date of the e-mail requesting NIOSH to proceed with dose reconstruction.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “**NR**” (NIOSH Dose Reconstruction Received) in ECMS B and selects the reason code of “**PD**” (Partial Dose Reconstruction). The status effective date is the date the dose reconstruction report is date-stamped into the district office. The CE should not delete the “**NW**” or “**NI**” codes already present in ECMS. If the CE had previously entered “**NI**” in ECMS E, the CE also enters codes “**NR**” and “**PD**” in ECMS E. If the case is a B/E case, the CE enters the Probability of Causation (PoC) into ECMS B and ECMS E (regardless of whether the “**NI**” code had previously been entered).

11. If the claim meets the SEC employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction resulting in a probability of causation (PoC) of 50% or greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and any cancers for which there is a POC of 50% or greater. The CE enters status code “**SE**” into ECMS B. The status effective date for the “**SE**” code is the date of the recommended decision to accept the specified cancer. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the “**SE**” code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

If necessary, the CE concurrently prepares a NRSD to NIOSH for a dose reconstruction for any non-specified cancer(s) to determine eligibility for medical benefits. The CE enters status code “**NI**” into ECMS B. The status effective date for the “**NI**” code is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the CE enters status code “**NI**” in ECMS E only after the non-radiological toxic exposure development is complete and the CE cannot accept causation. In that case the CE creates a memorandum to file stating that toxic exposure development is complete, and enters status code “**NI**” in ECMS E with the date of the memorandum as the status effective date.

12. If a claim has a final decision to deny based on a PoC of less than 50% and a review of the evidence of record establishes likely inclusion in the SEC class, the case is reopened. In the exercise of the DEEOIC Director’s discretion of the reopening process, the Director is delegating limited authority to the four District Directors and the Assistant District Directors (ADDs), at the discretion of the District Director, to sign Director’s Orders for reopening of these cases. This delegated authority is limited to reopenings based upon evidence that an Oak Ridge Hospital employee meets the criteria for placement into the SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided in [Attachment 4](#). The DEEOIC Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is responsible for issuing a new recommended decision.

13. For those cases reopened under the authority granted in this Bulletin, the District Director or ADD enters status code “**MN**” (NO Initiates Review for Reopening) in ECMS B with a status effective date equal to the effective date of this Bulletin. If the District Director or ADD is also reopening Part E, the “**MN**” code is also entered into ECMS E. For all reopenings per this Bulletin, upon completing the Director’s Order to reopen the claim, the District Director or ADD enters status code “**MD**” (Claim Reopened – File Returned to DO) into ECMS B/E (as appropriate) to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “**MZ**” status

code, receipt of Director's Order in the DO or FAB, is not necessary.) The status effective date of the "MD" code is the date of the Director's Order. Please note that while the "MD" code is generally input by National Office staff, entry of this code has been delegated to the District Director or ADD, just as the authority to grant reopenings has been delegated in this specific circumstance.

14. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending Oak Ridge Hospital cases that have a recommended decision to deny. All cases on the comprehensive list identified in Action #2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at the Oak Ridge Hospital during the time period specified, has a specified cancer, and meets the 250-workday requirement, the FAB is to reverse the district office's recommended decision to deny, and accept the case. The CE or FAB staff member enters status code "F6" (FAB Reversed to Accept) with the appropriate reason code into ECMS B/E (as appropriate) to reflect the FAB reversal with a status effective date equal to the date of the final decision to accept. The CE or FAB staff member also enters status code "SE" in ECMS B/E (as appropriate) with a status effective date equal to the date of the final decision to accept.

For all claims where Oak Ridge Hospital employment is claimed, regardless of whether the SEC criteria are met, the SEC site code "Oak Ridge Hospital" must be selected under the "SEC/SEC Desc" field on the claim screen.

If no action is required, FAB must follow the instructions specified in Action #15, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the district office. If FAB determines that the case cannot be accepted based on the new SEC designation and that re-referral to NIOSH is appropriate (see Actions #7, #8 and #10), the CE or FAB staff member remands the case for district office action. The CE or FAB staff member enters status code "F7" (FAB Remanded) with "OTH" (No DO Error – Other) as the reason code in ECMS B/E (as appropriate), with a status effective date equal to the date of the remand.

15. If, after review or further development, the CE or FAB staff member determines that a case on the list does not require any action, the CE or FAB staff member must write a brief memo to the file indicating that the file was reviewed and note the reason why no additional action is necessary. A case classified as not requiring any action is a case that does not meet the SEC criteria, and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must then code "NA" (No Action Necessary) and select the appropriate reason code from the reason code drop down list. Since the "NA" coding is specifically tied to the SEC review list generated by DEEOIC, the "NA" code is restricted to ECMS B. This is because the SEC review list is derived from Part B data. For Oak Ridge Hospital cases that were reviewed under this Bulletin and require no additional action, the reason code that must be selected is 007 (Reviewed under 10-07, Oak Ridge Hospital SEC) and be coded into ECMS B only, even if the case is a B/E case. The status effective date of the "NA" code is the date of the memo to the file stating the review is complete, and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the "NA-007" code is not entered initially. The "NA-007" code is only entered when the CE determines after development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the "NA-007" code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the "NA-007" code in addition to the closure code. The status effective date for the "NA" coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the EEOICPA Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections.

### **10-08 Laryngeal cancer and solitary plasmacytoma as specified cancers**

EEOICPA BULLETIN NO. 10-08

Issue Date: January 14, 2010

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Effective Date: January 14, 2010

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Expiration Date: January 14, 2010

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Subject: Laryngeal cancer and solitary plasmacytoma as specified cancers.

Background: The Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) regulations at 20 CFR § 30.5(ff) list the specified cancers that are payable to members of the Special Exposure Cohort (SEC). That same section notes that these cancers 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.” In accordance with this regulation, the Department of Labor (DOL) requested guidance from the National Cancer Institute (NCI) on whether certain cancers that are not listed in the regulations are the same physiological conditions as a specified cancer.

NCI was asked if laryngeal cancer could be considered a specified cancer. In their response, NCI stated that laryngeal cancer can be grouped with pharyngeal cancer. Both pharyngeal and laryngeal cancers are usually grouped together under the general term of “head and neck cancer” as they are biologically similar cancers originating from the upper aerodigestive tract. Therefore, a primary cancer of any region of the larynx is considered as a specified cancer. The regions of the larynx are the glottis, supraglottis, subglottis, and laryngeal cartilages. See [Attachment 1](#) which defines the regions and sub-regions of the larynx. However, as previously defined in EEOICPA Bulletin No. 02-15, chondrosarcoma of the cricoid cartilage of the larynx is considered a bone cancer.

NCI was also requested to provide medical clarification on whether a solitary plasmacytoma can be considered a bone cancer, and thereby considered a specified cancer under the EEOICPA. In their response, NCI stated that there are two types of solitary plasmacytoma, one is the bone form and the other is the soft tissue form. The bone form of solitary plasmacytoma is a form of cancer consistent with bone cancer. However, the soft tissue form of solitary plasmacytoma is not considered a bone cancer or multiple myeloma.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42

U.S.C. § 7384 et seq. § 7384(17); 20 CFR Part 30, § 30.5(ff)(5)(iii)(E), and § 30.5(ff)(6); July 30, 2009 response from NCI to DOL; August 19, 2009 response from NCI to DOL.

Purpose: To provide policy guidance regarding the classification of additional medical conditions as specified cancers under the EEOICPA.

Applicability: All staff.

Actions:

1. The Claims Examiners (CE) in the district offices and the Final Adjudication Branch (FAB), as well as the FAB Hearing Representatives (HR) are to consider that laryngeal cancer is a SEC specified cancer. NCI has provided guidance that laryngeal cancer meets the physiological conditions that allow it to be grouped with pharyngeal cancer, a SEC specified cancer.

The ICD-9 codes for laryngeal cancers are: glottis - 161.0; supraglottis – 161.1; subglottis – 161.2; laryngeal cartilages – 161.3; other specified sites of larynx – 161.8; and unspecified sites of the larynx – 161.9. The Energy Case Management System (ECMS) has been updated to reflect that these ICD-9 codes are to be considered as a SEC specified cancer. A list of the ICD-9 codes defining the regions and sub-regions of the larynx is included as [Attachment 1](#). (However, as defined in EEOICPA Bulletin No. 02-15, chondrosarcoma of the cricoid cartilage of the larynx is considered a bone cancer. It will not be considered laryngeal cancer.)

2. The CE/HR is to evaluate a diagnosis of solitary plasmacytoma to determine whether or not it involves the bone or the soft tissue. If the diagnosis is the bone form of solitary plasmacytoma (a/k/a solitary myeloma), it is considered a bone cancer, which is a SEC specified cancer. If the diagnosis is a soft tissue solitary plasmacytoma, it is not considered a bone cancer or multiple myeloma, and, therefore, is not a SEC specified cancer.

The ICD-9 code for both the bone form and the soft tissue form of solitary plasmacytoma is 238.6. For consideration as a specified cancer, the employee's medical records must indicate the diagnosis is the bone form of solitary plasmacytoma. ECMS has been updated to reflect that ICD-9 code 238.6 is a specified cancer; however, only the bone form of plasmacytoma is to be considered as a specified cancer.

3. For Action items 1 and 2, the inclusion of those cancers as a SEC specified cancer encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.

4. For Action items 1 and 2, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with the claimed cancers. It includes pending cases, cases previously denied, and cases at the National Institute for Occupational Safety and Health (NIOSH). All cases on this comprehensive list must be reviewed by the appropriate district office or co-located (CE2) unit at the FAB to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.

5. The district offices are to use the comprehensive list as the basis for an initial screening of cases associated with Action items 1 and 2 of this Bulletin. The purpose of the screening is to make an initial determination on whether a case is likely to meet the criteria for inclusion into a SEC class. A screening worksheet is included as [Attachment 2](#). The worksheet must be completed for all cases on the comprehensive list. Upon completion, the worksheet is to be included in the case file. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in a SEC class; those not likely to be included in a SEC class; and those for which development may be needed to determine whether the case can be accepted into a SEC class. Claim status codes have been created in ECMS to reflect each of these categories: **ISL** (Initial SEC Screening, Likely SEC) for those likely to be included in a SEC class; **ISU** (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in a class; and **ISD** (Initial SEC Screening,

Development Needed) for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, which in this instance is 008 (Reviewed under 10-08, laryngeal and plasmacytoma cancers (SEC)). Once the worksheet is completed, the claims examiner (CE) is to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the **ISL**, **ISU** and **ISD** codes is to correspond with the completion date of the screening worksheet.

The purpose of this initial screening is to assist the district offices in prioritizing claims poised for acceptance. Once screening and prioritization is complete, claims adjudication proceeds in the usual manner. Regardless of the outcome of the screening protocol, each case must be evaluated formally for SEC inclusion and the decision recorded in ECMS. The initial screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims submitted after the list is generated. These claims are evaluated for inclusion in the SEC in the general course of processing.

6. For cases on the comprehensive list that are located at FAB, the designated CE2 Unit is to conduct the initial screening, complete the worksheet and enter related coding.

7. There may be some cases on the comprehensive list that are at NIOSH for a dose reconstruction. These cases must be evaluated for inclusion in a SEC class. If any such case qualifies under any of the SEC classes, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e mail to return the dose reconstruction analysis records. The SrCE then prints a copy of the "sent" e mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the status code "**NW**" (NIOSH, returned without a dose reconstruction) using the effective date of this Bulletin, January 14, 2010, as the status effective date in ECMS B. The CE does not enter the status code until the DEEOIC district office actually receives the NIOSH-returned dose reconstruction record, which should include a CD for each case. The CD should contain all of the information generated to date; e.g., CATI report, correspondence, and dose information. The standard procedure for NIOSH coding in ECMS E is to code all additional NIOSH actions only if the "**NI**" (Sent to NIOSH) status code has been entered. In addition, the CE must write a letter to the claimant advising that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If a case on the comprehensive list is at NIOSH and it does not qualify under the SEC provision, then refer to instructions in Action item 17.

8. For any NIOSH-returned cases identified as having a potential for compensability based on a new SEC cancer, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

9. If the employee has a specified cancer, the CE must determine if he or she can be included in a SEC class. If the employee meets the criteria of a SEC class, the CE must determine if the 250-workday requirement is satisfied. The employee may aggregate 250 workdays by combining employment in more than one SEC class.

10. Once the CE has determined the employee has a diagnosed specified cancer and meets all other criteria of a SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

ECMS Coding Reminder: The "**SE**" (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the status effective date of the recommended decision to approve. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the "**SE**" code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

11. If it is determined that a case which was returned from NIOSH does meet all the criteria to qualify for a SEC claim, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail, so that NIOSH can close out their file. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file.

12. If it is determined that a case which was returned by NIOSH to the district office does not qualify for a SEC claim, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. A new NIOSH Referral Summary Document (NRSD) is not required. The SrCE prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code “**NI**” into ECMS B, with a status effective date equal to the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e mail should include a brief statement of why the case should proceed with dose reconstruction; e.g., non-specified cancer, insufficient latency period, or does not meet the 250 workday requirement.

In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for a dose reconstruction and the reason(s) it does not qualify for a SEC claim. The CE is to send a copy of this letter to NIOSH. If the case is a B/E case, and toxic exposure development was completed with a memorandum to the file (with prior “**NI**”/“**NW**” codes), the CE enters status code “**NI**” into ECMS E with the status effective date of the e mail requesting NIOSH to proceed with dose reconstruction.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “**NR**” (NIOSH Dose Reconstruction Received) in ECMS B and selects the reason code. The status effective date is the date the dose reconstruction report is date-stamped into the district office. The CE does not delete the “**NW**” or “**NI**” codes already present in ECMS. If the CE had previously entered “**NI**” in ECMS E, the CE also enters code “**NR**” and appropriate reason code in ECMS E. If the case is a B/E case, the CE enters the Probability of Causation (PoC) into ECMS B and ECMS E (regardless of whether the “**NI**” code had previously been entered).

13. If the claim meets the SEC employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction resulting in a probability of causation (PoC) of 50% or greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and any cancers for which there is a POC of 50% or greater. The CE enters status code “**SE**” into ECMS B. The status effective date for the “**SE**” code is the date of the recommended decision to accept the specified cancer. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the “**SE**” code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

Then, if necessary, the CE concurrently prepares a NRSD to NIOSH for a dose reconstruction for any non-specified cancer(s) to determine eligibility for medical benefits. The CE enters status code “**NI**” into ECMS B. The status effective date for the “**NI**” code is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the CE enters status code “**NI**” in ECMS E only after the toxic exposure development is complete and the CE cannot accept causation. In that case, the CE creates a memorandum to file stating that toxic exposure development is complete, and enters status code “**NI**” in ECMS E with the date of the memorandum as the status code effective date.

14. If a claim with one of the new specified cancers has a final decision to deny based on a PoC of less than 50% and a review of the evidence of record establishes likely inclusion in a SEC class, the case will need to be reopened. In the exercise of the DEEOIC Director’s discretion of the reopening process, limited authority is delegated to the four District Directors (DD), and the Assistant District

Directors at the discretion of the DD, to sign Director's Orders for reopening of these cases. This delegated authority is limited to reopenings based upon evidence that an employee has a diagnosis of one of the new specified cancers and who meets all other criteria for inclusion into a SEC class.

This delegated authority extends to any case potentially affected by the new SEC specified cancers. However, if the District Director is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director's Order is provided in [Attachment 3](#). The DEEOIC Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director's Order is issued, the district office is responsible for issuing a new recommended decision.

15. For those cases reopened under the authority granted in this Bulletin, the District Director enters status code **"MN"** (NO Initiates Review for Reopening) in ECMS B with a status effective date equal to the effective date of this Bulletin. If the District Director is also reopening Part E, the **"MN"** code is also entered into EMCS E. For all reopenings per this Bulletin, upon completing the Director's Order to reopen the claim, the District Director enters status code **"MD"** (Claim Reopened – File Returned to DO) into ECMS B/E (as appropriate) to reflect that the case has been reopened and is in the district office's jurisdiction. (The **"MZ"** status code, receipt of Director's Order in the DO or FAB, is not necessary.) The status effective date of the **"MD"** code is the date of the Director's Order. Please note that while the **"MD"** code was generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been delegated in this specific circumstance.

16. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending cases with one of the newly specified cancers that have a recommended decision to deny.

If the employee worked at a SEC-designated site during the SEC time period, has a specified cancer, and meets the 250-workday requirement, the FAB is to reverse the district office's recommended decision to deny, and accept the case. The FAB CE/HR enters status code **"F6"** (FAB Reversed to Accept) with the appropriate reason code into ECMS B/E to reflect the FAB reversal with a status effective date equal to the date of the final decision to accept. The FAB CE/HR also enters status code **"SE"** in ECMS B/E (as appropriate) with a status effective date equal to the date of the final decision to accept.

If no action is required, FAB must follow the instructions specified in Action item 17, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the district office. If FAB determines that the case cannot be accepted based on a new SEC specified cancer, and that referral to NIOSH is appropriate (see Action items 9 and 12), the CE or FAB staff member must remand the case for district office action. The CE or FAB staff member enters status code **"F7"** (FAB Remanded) with **"OTH"** (No DO Error – Other) as the reason code in ECMS B/E (as appropriate), with a status effective date equal to the date of the remand.

17. If, after review or further development, the district office CE or the CE2 staff member at FAB determines that a case on the comprehensive list does not require any action, the CE or CE2 staff member must write a brief memo to the file indicating that the file was reviewed and note the reason why no additional action is necessary. A case classified as not requiring any action is a case that does not meet the SEC criteria and does not need to be sent to NIOSH for dose reconstruction, or is at NIOSH and does not need to be recalled.

The CE must then code **"NA"** (No Action Necessary) and select the appropriate reason code from the reason code drop down list. Since the **"NA"** coding is specifically tied to the SEC review list generated by DEEOIC, the **"NA"** code is restricted to ECMS B. This is because the SEC review list is derived from Part B data.

For new SEC specified cancer cases that were reviewed under this Bulletin and require no

additional action, the “NA” reason code that must be selected is **008** (Reviewed under 10-08, laryngeal and plasmacytoma cancers (SEC)) and be coded into ECMS B only, even if the case is a B/E case. The status effective date of the “NA” code is the date of the memo to the file stating the review is complete, and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the “NA-008” code is not entered initially.

The “NA-008” code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for dose reconstruction. For those cases on the DEEOIC comprehensive list that were not withdrawn from NIOSH, the CE enters the “NA-008” code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “NA-008” code in addition to the closure code. The status effective date for the “NA” coding is the date of the memorandum to file.

18. The CE/HR should continue to distinguish the above medical conditions from other cancers and non-cancers, using the appropriate ICD-9 codes on all paperwork and in ECMS.

19. Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail and File Sections.

## **10-09 NO BULLETIN RELEASED**

### **10-10 SEC Class for Area IV of the Santa Susana Field Laboratory (SSFL Area IV) from January 1, 1959 through December 31, 1964**

EEOICPA BULLETIN NO.10-10

Issue Date: May 5, 2010

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Effective Date: May 5, 2010

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Expiration Date: May 5, 2011

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**Subject:** SEC Class for Area IV of the Santa Susana Field Laboratory (SSFL Area IV) from January 1, 1959 through December 31, 1964

**Background:** Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from SSFL Area IV to be added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and

determined that it qualified for evaluation under 42 C.F.R. § 83.14. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On March 5, 2010, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at SSFL Area IV.

On April 5, 2010, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress:

All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors who worked in any area of Area IV of the Santa Susana Field Laboratory from January 1, 1959 through December 31, 1964, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

A copy of the Secretary’s letter to Congress recommending the designation is included as [Attachment 1](#). Although Congress had the authority to reject the recommendation within a 30-day time frame, Congress took no action. Therefore, the SEC designation for this class became effective as of May 5, 2010, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress.

NIOSH has concluded that it can provide a partial dose estimate using any internal and external monitoring data and occupational medical dose data that may be available for an individual claim (and that can be interpreted using existing NIOSH dose reconstruction processes or procedures). NIOSH is also able to reconstruct external dose and occupational medical dose. This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

A previous SEC class pertaining to SSFL Area IV was the subject of Bulletin 09-14 which covered the period immediately preceding the newly designated class, namely January 1, 1955 through December 31, 1958. The new SSFL Area IV SEC class described in this Bulletin is not meant to replace the prior class, but is an addition to the prior SSFL Area IV SEC class.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the April 5, 2010 letter to Congress from the Secretary of HHS in which Secretary Sebelius makes the designation.

Purpose: To provide procedures for processing SEC class claims for workers at SSFL Area IV in Ventura County, California.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at SSFL Area IV during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.
3. The district offices are to use the comprehensive list as the basis for an initial screening of cases associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is likely to meet the criteria for inclusion in the SEC. A screening worksheet is

included as [Attachment 2](#). The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case file. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. Claim status codes have been created in ECMS to reflect each of these categories: **ISL** (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; **ISU** (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and **ISD** (Initial SEC Screening, Development Needed) for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, in this instance, **010** (Reviewed under 10-10, Area IV (ETEC) of the Santa Susana Field Lab SEC). Once the worksheet is completed, the claims examiner (CE) is to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the **ISL**, **ISU** and **ISD** codes is to correspond with the completion date of the screening worksheet.

The purpose of this initial screening is to assist the district offices in prioritizing claims poised for acceptance. Once screening and prioritization is complete, claims adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each case must be evaluated formally for SEC inclusion and the decision recorded in ECMS. The initial screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims submitted after the list is generated. These claims will be evaluated for inclusion in the SEC class in the general course of processing.

4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, complete the worksheet and enter related coding.

5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class, and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected SSFL Area IV claimants is included as [Attachment 3](#). The CE must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code “**NW**” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the “**NW**” code entry is May 5, 2010. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record. The standard procedure for NIOSH coding in ECMS E is to code all additional NIOSH actions only if the “**NI**” (Sent to NIOSH) status code has been entered. Therefore, the CE enters the “**NW**” code into ECMS E with the status effective date of May 5, 2010, only if “**NI**” has already been entered in ECMS E.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC, and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this Bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e mail to return the dose reconstruction analysis records. The SrCE then prints a copy of the “sent” e mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the status code “**NW**” with a status effective date of May 5, 2010. In addition, the CE must write a letter to the

claimant advising that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this Bulletin, then refer to instructions in Action #15.

6. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the EEOICPA Procedure Manual Chapter 2-0600.7. If the employee has a specified cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.

8. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 workdays at SSFL Area IV between January 1, 1959 and December 31, 1964.

The SSFL is located in Ventura County, California. Based on ownership and operations, the SSFL is divided into four administrative and operational areas. DOE operations were conducted in the westernmost area of the SSFL known as Area IV. The Energy Technology Engineering Center (ETEC) is located entirely within Area IV, and is a name more commonly associated with this facility.

During the period of the SEC class, North American Aviation (NAA) was the contractor for Area IV, and the divisional affiliation most commonly associated with Area IV employment is Atomics International (AI). Employees of another division of NAA, namely Rocketdyne, were also potentially present at Area IV.

NAA and its division AI employed workers at numerous locations in addition to Area IV. Some of these sites are covered under EEOICPA, but are not part of this SEC class. Therefore, the CE will need to carefully evaluate the employment documentation in the file to ensure 250 days of covered employment at Area IV during the class period.

There are employees who would have “clocked in” at a SSFL location other than Area IV, but who would have had reason to enter Area IV from time to time as part of their duties. In these instances, the CE needs to use any reasonable evidence, such as monitoring records, division and department affiliation records, affidavits, etc. to establish that such an employee would have spent a total of 250 workdays within the boundaries of Area IV during the period of the SEC class (or in combination with workdays within the parameters established for one or more other classes of employees in the SEC). Once 250 days of SSFL Area IV employment during the class period is established, the CE or hearing representative can accept that the employment component of the SEC class is satisfied. In these cases, the CE proceeds to Action #9.

If the employee does not have 250 workdays at SSFL Area IV, the CE must review the file to determine if additional days in the SEC can be found by combining days from employment meeting the criteria for other classes in the SEC and aggregating them together to meet the 250-workday requirement. If the 250 workday requirement is not satisfied, the CE proceeds to #10.

9. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

If it is determined that the case does qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail, so that NIOSH can close out their file. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file.

ECMS Coding Reminder: The “SE” (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the status effective date of the recommended decision

to approve. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the “SE” code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

For all claims where SSFL Area IV employment is claimed, regardless of whether the SEC criteria are met, the SEC site code “Area IV” must be selected under the “SEC/SEC Desc” field on the claim screen.

10. Although NIOSH determined that it is not feasible for NIOSH to perform complete dose reconstructions for this class of employees, NIOSH has indicated that partial dose reconstructions are possible. Accordingly, for cases that have not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code “NI” in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the “NI” code is not entered into ECMS E until non-radiological toxic exposure development is complete.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code “NI” into ECMS B, with a status effective date equal to the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction; e.g., non-specified cancer, insufficient latency period or does not meet the 250 workday requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for a dose reconstruction and the reason(s) it does not qualify for the SEC class. The CE is to send a copy of this letter to NIOSH. If the case is a B/E case, and toxic exposure development was completed with a memorandum to the file (with a prior “NI”/“NW” code), the CE enters status code “NI” into ECMS E with the status effective date of the e-mail requesting NIOSH to proceed with dose reconstruction.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “NR” (NIOSH Dose Reconstruction Received) in ECMS B and selects the reason code of “PD” (Partial Dose Reconstruction). The status effective date is the date the dose reconstruction report is date-stamped into the district office. The CE should not delete the “NW” or “NI” codes already present in ECMS. If the CE had previously entered “NI” in ECMS E, the CE also enters codes “NR” and “PD” in ECMS E. If the case is a B/E case, the CE enters the Probability of Causation (PoC) into ECMS B and ECMS E (regardless of whether the “NI” code had previously been entered).

11. If the claim meets the SEC employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction resulting in a probability of causation (PoC) of 50% or greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and any cancers for which there is a POC of 50% or greater. The CE enters status code “SE” into ECMS B. The status effective date for the “SE” code is the date of the recommended decision to accept the specified cancer. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the “SE” code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

If necessary, the CE concurrently prepares a NRSD to NIOSH for a dose reconstruction for any non-specified cancer(s) to determine eligibility for medical benefits. The CE enters status code “NI” into ECMS B. The status effective date for the “NI” code is the date of the Senior or

Supervisory CE signature on the NRS. If the case is a B/E case, the CE enters status code “**NI**” in ECMS E only after the non-radiological toxic exposure development is complete and the CE cannot accept causation. In that case the CE creates a memorandum to file stating that toxic exposure development is complete, and enters status code “**NI**” in ECMS E with the date of the memorandum as the status effective date.

12. If a claim has a final decision to deny based on a PoC of less than 50% and a review of the evidence of record establishes likely inclusion in the SEC class, the case is reopened. In the exercise of the DEEOIC Director’s discretion in the reopening process, the Director is delegating limited authority to the four District Directors and the Assistant District Directors (ADDs), at the discretion of the DD, to sign Director’s Orders for reopening of these cases. This delegated authority is limited to reopenings based upon evidence that a SSFL Area IV employee meets the criteria for placement into the SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided in [Attachment 4](#). The DEEOIC Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is responsible for issuing a new recommended decision.

13. For those cases reopened under the authority granted in this Bulletin, the District Director or ADD enters status code “**MN**” (NO Initiates Review for Reopening) in ECMS B with a status effective date equal to the effective date of this Bulletin. If the District Director or ADD is also reopening Part E, the “**MN**” code is also entered into EMCS E. For all reopenings per this Bulletin, upon completing the Director’s Order to reopen the claim, the District Director or ADD enters status code “**MD**” (Claim Reopened – File Returned to DO) into ECMS B/E (as appropriate) to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “**MZ**” status code, receipt of Director’s Order in the DO or FAB, is not necessary.) The status effective date of the “**MD**” code is the date of the Director’s Order. Please note that while the “**MD**” code is generally input by National Office staff, entry of this code has been delegated to the District Director or ADD, just as the authority to grant reopenings has been delegated in this specific circumstance.

14. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending SSFL Area IV cases that have a recommended decision to deny. All cases on the comprehensive list identified in Action #2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at SSFL Area IV during the time period specified, has a specified cancer, and meets the 250-workday requirement, the FAB is to reverse the district office’s recommended decision to deny, and accept the case. The CE or FAB staff member enters status code “**F6**” (FAB Reversed to Accept) with the appropriate reason code into ECMS B/E (as appropriate) to reflect the FAB reversal with a status effective date equal to the date of the final decision to accept. The CE or FAB staff member also enters status code “**SE**” in ECMS B/E (as appropriate) with a status effective date equal to the date of the final decision to accept.

For all claims where SSFL Area IV employment is claimed, regardless of whether the SEC criteria are met, the SEC site code “**Area IV**” must be selected under the “**SEC/SEC Desc**” field on the claim screen.

If no action is required, FAB must follow the instructions specified in Action #15, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the district office. If FAB determines that the case cannot be accepted based on the new SEC designation and that re-referral to NIOSH is appropriate (see Action #10), the CE or FAB staff member remands the case for district office action. The CE or FAB staff member enters status code “**F7**” (FAB Remanded) with “**OTH**” (No DO Error – Other) as the reason code in ECMS B/E (as appropriate), with a status effective date equal to the date of the remand.

15. If, after review or further development, the CE or FAB staff member determines that a case on the list does not require any action, the CE or FAB staff member must write a brief memo to the file indicating that the file was reviewed and note the reason why no additional action is necessary. A case classified as not requiring any action is a case that does not meet the SEC criteria, and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must then code “NA” (No Action Necessary) and select the appropriate reason code from the reason code drop down list. Since the “NA” coding is specifically tied to the SEC review list generated by DEEOIC, the “NA” code is restricted to ECMS B. This is because the SEC review list is derived from Part B data. For SSFL Area IV cases that were reviewed under this Bulletin and require no additional action, the reason code that must be selected is **010** (Reviewed under 10-10, Area IV (ETEC) of the Santa Susana Field Lab SEC) and be coded into ECMS B only, even if the case is a B/E case. The status effective date of the “NA” code is the date of the memo to the file stating the review is complete, and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the “NA-010” code is not entered initially. The “NA-010” code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the “NA-010” code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “NA-010” code in addition to the closure code. The status effective date for the “NA” coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the EEOICPA Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections.

### **10-11 Lawrence Berkeley National Laboratory (LBNL) SEC Class for August 13, 1942 through December 31, 1961**

EEOICPA BULLETIN NO.10-11

Issue Date: May 5, 2010

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Effective Date: May 5, 2010

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Expiration Date: May 5, 2011

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Subject: Lawrence Berkeley National Laboratory (LBNL) SEC Class for August 13, 1942 through December 31, 1961

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from LBNL in Berkeley, California to be added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and determined that it qualified for evaluation under 42 C.F.R. § 83.14. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On March 5, 2010, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at LBNL in Berkeley, California.

On April 5, 2010, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress:

All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors who worked at the Lawrence Berkeley National Laboratory in Berkeley, California, from August 13, 1942 through December 31, 1961, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

A copy of the Secretary’s letter to Congress recommending the designation is included as [Attachment 1](#). Although Congress had the authority to reject the recommendation within a 30-day time frame, Congress took no action. Therefore, the SEC designation for this class became effective as of May 5, 2010, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress.

NIOSH has concluded that it can provide a partial dose estimate using any internal and external monitoring data and occupational medical dose data that may be available for an individual claim, (and that can be interpreted using existing NIOSH dose reconstruction processes or procedures). This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the April 5, 2010 letter to Congress from the Secretary of HHS in which Secretary Sebelius makes the designation.

Purpose: To provide procedures for processing SEC class claims for workers at LBNL in Berkeley, California.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at LBNL during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.

3. The district offices are to use the comprehensive list as the basis for an initial screening of cases associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is likely to meet the criteria for inclusion in the SEC. A screening worksheet is included as [Attachment 2](#). The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case file. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. Claim status codes have been created in ECMS to reflect each of these categories: **ISL** (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; **ISU** (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and **ISD** (Initial SEC Screening, Development Needed) for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, in this instance, **011** (Reviewed under 10-11, Lawrence Berkeley National Laboratory (LBNL) SEC). Once the worksheet is completed, the claims examiner (CE) is to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the **ISL**, **ISU** and **ISD** codes is to correspond with the completion date of the screening worksheet.

The purpose of this initial screening is to assist the district offices in prioritizing claims poised for acceptance. Once screening and prioritization is complete, claims adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each case must be evaluated formally for SEC inclusion and the decision recorded in ECMS. The initial screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims submitted after the list is generated. These claims will be evaluated for inclusion in the SEC class in the general course of processing.

4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, complete the worksheet and enter related coding.

5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class, and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected LBNL claimants is included as [Attachment 3](#). The CE must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code “**NW**” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the “**NW**” code entry is May 5, 2010. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record. The standard procedure for NIOSH coding in ECMS E is to code all additional NIOSH actions only if the “**NI**” (Sent to NIOSH) status code has been entered. Therefore, the CE enters the “**NW**” code into ECMS E with the status effective date of May 5, 2010, only if “**NI**” has already been entered in ECMS E.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC, and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this Bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e mail to return the dose reconstruction

analysis records. The SrCE then prints a copy of the “sent” e mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the status code “**NW**” with a status effective date of May 5, 2010. In addition, the CE must write a letter to the claimant advising that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this Bulletin, then refer to instructions in Action #15.

6. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the EEOICPA Procedure Manual Chapter 2-0600.7. If the employee has a specified cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.

8. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 workdays at LBNL between August 13, 1942 and December 31, 1961.

LBNL became part of the Manhattan Engineer District (MED), upon its inception, on August 13, 1942. Since then, LBNL employees have been involved with research and development activities involving transuranic elements, and numerous other radioactive materials, as well as work with cyclotrons, linear accelerators, and other radiation-generating devices. The calutron, a modified cyclotron that separated uranium isotopes, was developed at LBNL and used for the calutrons built at the Y-12 Plant in Oak Ridge, Tennessee, which led to the enrichment of uranium.

Radiological operations at LBNL were widespread and potentially included all buildings on “the Hill” as well as all LBNL affiliated buildings on the Berkeley university campus, including the Old Radiation Laboratory, Donner Laboratory, Crocker Hall, Le Conte Hall, Gilman Hall, and the Old Chemistry Building. NIOSH therefore had to assume that the potential for exposure to radioactive materials existed in all buildings of LBNL during the class period.

Additionally, given the general lack of process knowledge or detailed source term information, and the potential for airborne radioactive contamination in many of the affected locations, it is not possible to determine that any specific work group was not potentially exposed to radioactive material releases or possible subsequent contamination. Since no specific job titles or occupations for the class definition can be identified, NIOSH had to assume that the potential for exposure existed for all workers. This means that, for the purpose of claims adjudication, any DOE or DOE contractor or subcontractor employment at any building at LBNL during the class period, qualifies for SEC consideration

Once 250 days of LBNL employment during the class period are established, the CE or hearing representative can accept that the employment component of the SEC class is satisfied. In these cases, the CE proceeds to Action #9.

If the employee does not have 250 workdays at LBNL, the CE must review the file to determine if additional days in the SEC can be found by combining days from employment meeting the criteria for other classes in the SEC and aggregating them together to meet the 250-workday requirement. If the 250 workday requirement is not satisfied, the CE proceeds to #10.

9. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

If it is determined that the case does qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail, so that NIOSH can close out their file. The

SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file.

ECMS Coding Reminder: The “SE” (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the status effective date of the recommended decision to approve. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the “SE” code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

For all claims where LBNL employment is claimed, regardless of whether the SEC criteria are met, the SEC site code “**Lawrence Berkeley National Laboratory**” must be selected under the “SEC/SEC Desc” field on the claim screen.

10. Although NIOSH determined that it is not feasible for NIOSH to perform complete dose reconstructions for this class of employees, NIOSH has indicated that partial dose reconstructions are possible. Accordingly, for cases that have not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code “NI” in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the “NI” code is not entered into ECMS E until non-radiological toxic exposure development is complete.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code “NI” into ECMS B, with a status effective date equal to the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e mail should include a brief statement of why the case should proceed with dose reconstruction; e.g., non-specified cancer, insufficient latency period or does not meet the 250 workday requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for a dose reconstruction and the reason(s) it does not qualify for the SEC class. The CE is to send a copy of this letter to NIOSH. If the case is a B/E case, and toxic exposure development was completed with a memorandum to the file (with a prior “NI”/“NW” code), the CE enters status code “NI” into ECMS E with the status effective date of the e-mail requesting NIOSH to proceed with dose reconstruction.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “NR” (NIOSH Dose Reconstruction Received) in ECMS B and selects the reason code of “PD” (Partial Dose Reconstruction). The status effective date is the date the dose reconstruction report is date-stamped into the district office. The CE should not delete the “NW” or “NI” codes already present in ECMS. If the CE had previously entered “NI” in ECMS E, the CE also enters codes “NR” and “PD” in ECMS E. If the case is a B/E case, the CE enters the Probability of Causation (PoC) into ECMS B and ECMS E (regardless of whether the “NI” code had previously been entered).

11. If the claim meets the SEC employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction resulting in a probability of causation (PoC) of 50% or greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and any cancers for which there is a POC of 50% or greater. The CE enters status code “SE” into ECMS B. The status effective date for the “SE” code is the date of the recommended decision to accept the specified cancer. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the “SE” code must also be entered into ECMS E

with a status effective date of the recommended decision to approve under Part E.

If necessary, the CE concurrently prepares a NRSD to NIOSH for a dose reconstruction for any non-specified cancer(s) to determine eligibility for medical benefits. The CE enters status code “**NI**” into ECMS B. The status effective date for the “**NI**” code is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the CE enters status code “**NI**” in ECMS E only after the non-radiological toxic exposure development is complete and the CE cannot accept causation. In that case the CE creates a memorandum to file stating that toxic exposure development is complete, and enters status code “**NI**” in ECMS E with the date of the memorandum as the status effective date.

12. If a claim has a final decision to deny based on a PoC of less than 50% and a review of the evidence of record establishes likely inclusion in the SEC class, the case is reopened. In the exercise of the DEEOIC Director’s discretion in the reopening process, the Director is delegating limited authority to the four District Directors and the Assistant District Directors (ADDs), at the discretion of the DD, to sign Director’s Orders for reopening of these cases. This delegated authority is limited to reopenings based upon evidence that an LBNL employee meets the criteria for placement into the SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided in [Attachment 4](#). The DEEOIC Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is responsible for issuing a new recommended decision.

13. For those cases reopened under the authority granted in this Bulletin, the District Director or ADD enters status code “**MN**” (NO Initiates Review for Reopening) in ECMS B with a status effective date equal to the effective date of this Bulletin. If the District Director or ADD is also reopening Part E, the “**MN**” code is also entered into EMCS E. For all reopenings per this Bulletin, upon completing the Director’s Order to reopen the claim, the District Director or ADD enters status code “**MD**” (Claim Reopened – File Returned to DO) into ECMS B/E (as appropriate) to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “**MZ**” status code, receipt of Director’s Order in the DO or FAB, is not necessary.) The status effective date of the “**MD**” code is the date of the Director’s Order. Please note that while the “**MD**” code is generally input by National Office staff, entry of this code has been delegated to the District Director or ADD, just as the authority to grant reopenings has been delegated in this specific circumstance.

14. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending LBNL cases that have a recommended decision to deny. All cases on the comprehensive list identified in Action #2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at LBNL during the time period specified, has a specified cancer, and meets the 250-workday requirement, the FAB is to reverse the district office’s recommended decision to deny, and accept the case. The CE or FAB staff member enters status code “**F6**” (FAB Reversed to Accept) with the appropriate reason code into ECMS B/E (as appropriate) to reflect the FAB reversal with a status effective date equal to the date of the final decision to accept. The CE or FAB staff member also enters status code “**SE**” in ECMS B/E (as appropriate) with a status effective date equal to the date of the final decision to accept.

For all claims where LBNL employment is claimed, regardless of whether the SEC criteria are met, the SEC site code “**Lawrence Berkeley National Laboratory**” must be selected under the “**SEC/SEC Desc**” field on the claim screen.

If no action is required, FAB must follow the instructions specified in Action #15, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the district office. If

FAB determines that the case cannot be accepted based on the new SEC designation and that re-referral to NIOSH is appropriate (see Action #10), the CE or FAB staff member remands the case for district office action. The CE or FAB staff member enters status code “F7” (FAB Remanded) with “OTH” (No DO Error – Other) as the reason code in ECMS B/E (as appropriate), with a status effective date equal to the date of the remand.

15. If, after review or further development, the CE or FAB staff member determines that a case on the list does not require any action, the CE or FAB staff member must write a brief memo to the file indicating that the file was reviewed and note the reason why no additional action is necessary. A case classified as not requiring any action is a case that does not meet the SEC criteria, and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must then code “NA” (No Action Necessary) and select the appropriate reason code from the reason code drop down list. Since the “NA” coding is specifically tied to the SEC review list generated by DEEOIC, the “NA” code is restricted to ECMS B. This is because the SEC review list is derived from Part B data. For LBNL cases that were reviewed under this Bulletin and require no additional action, the reason code that must be selected is **011** (Reviewed under 10-11, Lawrence Berkeley National Laboratory (LBNL) SEC class) and be coded into ECMS B only, even if the case is a B/E case. The status effective date of the “NA” code is the date of the memo to the file stating the review is complete, and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the “NA-011” code is not entered initially.

The “NA-011” code is only entered when the CE determines after development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the “NA-011” code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “NA-011” code in addition to the closure code. The status effective date for the “NA” coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the EEOICPA Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections.

### **10-12 Lawrence Livermore National Laboratory (LLNL) SEC Class for January 1, 1950 through December 31, 1973**

EEOICPA BULLETIN NO. 10-12

Issue Date: May 5, 2010

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Effective Date: May 5, 2010

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Expiration Date: May 5, 2011

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Subject: Lawrence Livermore National Laboratory (LLNL) SEC Class for January 1, 1950 through December 31, 1973

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from the LLNL in Livermore, California to be added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and determined that it qualified for evaluation under 42 C.F.R. § 83.14. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On March 5, 2010, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at the LLNL in Livermore, California.

On April 5, 2010, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress:

All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors who worked at the Lawrence Livermore National Laboratory in Livermore, California from January 1, 1950 through December 31, 1973, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

A copy of the Secretary’s letter to Congress recommending the designation is included as [Attachment 1](#). Although Congress had the authority to reject the recommendation within a 30-day time frame, Congress took no action. Therefore, the SEC designation for this class became effective as of May 5, 2010, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress.

NIOSH has concluded that it can provide a partial dose estimate using any internal and external monitoring data and occupational medical dose data that may be available for an individual claim, (and that can be interpreted using existing NIOSH dose reconstruction processes or procedures). This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

A previous SEC class pertaining to LLNL was the subject of Bulletin 08-20. The new LLNL class described in this Bulletin effectively subsumes the prior class. Therefore, the guidance provided here replaces the prior LLNL SEC class Bulletin.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the April 5, 2010 letter to Congress from the Secretary of HHS in which Secretary Sebelius makes the designation.

Purpose: To provide procedures for processing SEC class claims for workers at the LLNL in Livermore, California.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and

future claims yet to be submitted.

2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at LLNL during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.

Additionally, the prior LLNL class in the SEC was limited to employees who were “monitored for radiation exposure” at LLNL during the SEC period and worked at LLNL for at least 250 workdays during the SEC period. Because the new class has no such limitation, even claims previously reviewed under Bulletin 08-20 for the prior LLNL class and found not to be eligible based upon employment criteria, will need to be re-examined as part of the new class.

3. The district offices are to use the comprehensive list as the basis for an initial screening of cases associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is likely to meet the criteria for inclusion in the SEC. A screening worksheet is included as [Attachment 2](#). The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case file. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. Claim status codes have been created in ECMS to reflect each of these categories: **ISL** (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; **ISU** (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and **ISD** (Initial SEC Screening, Development Needed) for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, in this instance, **012** (Reviewed under 10-12, Lawrence Livermore National Laboratory SEC class). Once the worksheet is completed, the claims examiner (CE) is to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the **ISL**, **ISU** and **ISD** codes is to correspond with the completion date of the screening worksheet.

The purpose of this initial screening is to assist the district offices in prioritizing claims poised for acceptance. Once screening and prioritization is complete, claims adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each case must be evaluated formally for SEC inclusion and the decision recorded in ECMS. The initial screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims submitted after the list is generated. These claims will be evaluated for inclusion in the SEC class in the general course of processing.

4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, complete the worksheet and enter related coding.

5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class, and this his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected LLNL claimants is included as [Attachment 3](#). The CE must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code “**NW**” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the “**NW**” code entry is May 5, 2010. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record. The standard procedure for NIOSH coding in ECMS E is to code all additional NIOSH actions only if the “**NI**” (Sent to NIOSH) status code has been entered. Therefore, the CE enters the “**NW**” code into ECMS E with the status effective date of May 5, 2010, only if “**NI**” has already been entered in ECMS E.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC, and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this Bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e-mail to return the dose reconstruction analysis records. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the status code “**NW**” with a status effective date of May 5, 2010. In addition, the CE must write a letter to the claimant advising that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this Bulletin, then refer to instructions in Action #15.

6. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the EEOICPA Procedure Manual Chapter 2-0600.7. If the employee has a specified cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.

8. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 workdays at the LLNL between January 1, 1950 and December 31, 1973.

LLNL’s initial mission was the development of thermonuclear weapons. Since then, its mission has expanded to include diverse scientific and engineering research activities.

LLNL was originally known as the University of California Radiation Laboratory at Livermore then later as the Lawrence Radiation Laboratory at Livermore. LLNL consists of two sites, the main Laboratory site, which is in a densely populated 1.5-mile area in Livermore, California, and Site 300, LLNL’s Explosive Test Site, which is 15 miles southeast of Livermore near Tracy, California. This SEC class covers employees at both locations.

In its evaluation, NIOSH does not indicate any definite boundaries between radiological and non-radiological areas of LLNL. NIOSH, therefore, had to assume that the potential for exposure to radioactive materials existed in all areas of LLNL during the class period.

Additionally, NIOSH was unable to define potential radiation exposure conditions based on worker job descriptions, job titles, and/or job assignments. Therefore, based on the SEC designation, any probative evidence that the employee was a DOE or DOE contractor or sub-contractor employee at LLNL for at least 250 workdays during the SEC period is sufficient to include him or her in the SEC class.

Once 250 workdays of LLNL employment during the class period are established, the CE or hearing representative can accept that the employment component of the SEC class is satisfied. In these cases, the CE proceeds to Action #9.

If the employee does not have 250 workdays at LLNL, the CE must review the file to determine if

additional days in the SEC can be found by combining days from employment meeting the criteria for other classes in the SEC and aggregating them together to meet the 250-workday requirement. If the 250-workday requirement is not satisfied, the CE proceeds to Action #10.

9. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

If it is determined that the case does qualify for the SEC class, the CE through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail, so that NIOSH can close out their file. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file.

ECMS Coding Reminder: The “**SE**” (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the status effective date of the recommended decision to approve. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the “**SE**” code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

For all claims where LLNL employment is claimed, regardless of whether the SEC criteria are met, the SEC site code “**LLNL**” must be selected under the “**SEC/SEC Desc**” field on the claim screen.

10. Although NIOSH determined that it is not feasible for NIOSH to perform complete dose reconstructions for this class of employees, NIOSH has indicated that partial dose reconstructions are possible. Accordingly, for cases that have not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code “**NI**” in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the “**NI**” code is not entered into ECMS E until non-radiological toxic exposure development is complete.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code “**NI**” into ECMS B, with a status effective date equal to the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction; e.g., non-specified cancer, insufficient latency period or does not meet the 250-workday requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for a dose reconstruction and the reason(s) it does not qualify for the SEC class. The CE is to send a copy of this letter to NIOSH. If the case is a B/E case, and toxic exposure development was completed with a memorandum to the file (with a prior “**NI**”/“**NW**” code), the CE enters status code “**NI**” into ECMS E with the status effective date of the e-mail requesting NIOSH to proceed with dose reconstruction.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “**NR**” (NIOSH Dose Reconstruction Received) in ECMS B and selects the reason code of “**PD**” (Partial Dose Reconstruction). The status effective date is the date the dose reconstruction report is date-stamped into the district office. The CE should not delete the “**NW**” or “**NI**” codes already present in ECMS. If the CE had previously entered “**NI**” in ECMS E, the CE also enters codes “**NR**” and “**PD**” in ECMS E. If the case is a B/E case, the CE enters the Probability of Causation (PoC) into ECMS B and ECMS E (regardless of whether the “**NI**” code had previously been entered).

11. If the claim meets the SEC employment criteria and includes both a specified cancer and a

non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction resulting in a probability of causation (PoC) of 50% or greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and any cancers for which there is a PoC of 50% or greater. The CE enters status code “SE” into ECMS B. The status effective date for the “SE” code is the date of the recommended decision to accept the specified cancer. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the “SE” code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

If necessary, the CE concurrently prepares a NRSD to NIOSH for a dose reconstruction for any non-specified cancer(s) to determine eligibility for medical benefits. The CE enters status code “NI” into ECMS B. The status effective date for the “NI” code is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the CE enters status code “NI” in ECMS E only after the non-radiological toxic exposure development is complete and the CE cannot accept causation. In that case, the CE creates a memorandum to file stating that toxic exposure development is complete, and enters status code “NI” in ECMS E with the date of the memorandum as the status effective date.

12. If a claim has a final decision to deny based on a PoC of less than 50% and a review of the evidence of record establishes likely inclusion in the SEC class, the case is reopened. In the exercise of the DEEOIC Director’s discretion in the reopening process, the Director is delegating limited authority to the four District Directors and the Assistant District Directors (ADDs), at the discretion of the DD, to sign Director’s Orders for reopening of these cases. This delegated authority is limited to reopenings based upon evidence that a LLNL employee meets the criteria for placement into the SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided in [Attachment 4](#). The DEEOIC Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is responsible for issuing a new recommended decision.

13. For those cases reopened under the authority granted in this Bulletin, the District Director or ADD enters status code “MN” (NO Initiates Review for Reopening) in ECMS B with a status effective date equal to the effective date of this Bulletin. If the District Director or ADD is also reopening Part E, the “MN” code is also entered into ECMS E. For all reopenings per this Bulletin, upon completing the Director’s Order to reopen the claim, the District Director or ADD enters status code “MD” (Claim Reopened – File Returned to DO) into ECMS B/E (as appropriate) to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “MZ” status code, receipt of Director’s Order in the DO or FAB, is not necessary.) The status effective date of the “MD” code is the date of the Director’s Order. Please note that while the “MD” code is generally input by National Office staff, entry of this code has been delegated to the District Director or ADD, just as the authority to grant reopenings has been delegated in this specific circumstance.

14. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending LLNL cases that have a recommended decision to deny. All cases on the comprehensive list identified in Action #2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at LLNL during the time period specified, has a specified cancer, and meets the 250-workday requirement, the FAB is to reverse the district office’s recommended decision to deny, and accept the case. The CE or FAB staff member enters status code “F6” (FAB Reversed to Accept) with the appropriate reason code into ECMS B/E (as appropriate) to reflect the FAB reversal with a status effective date equal to the date of the final decision to accept. The CE or FAB staff member also enters status code “SE” in ECMS B/E (as appropriate) with a status effective date equal to the date of the final decision to accept.

For all claims where LLNL employment is claimed, regardless of whether the SEC criteria are met, the SEC site code “LLNL” must be selected under the “SEC/SEC Desc” field on the claim screen.

If no action is required, FAB must follow the instructions specified in Action #15, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the district office. If FAB determines that the case cannot be accepted based on the new SEC designation and that re-referral to NIOSH is appropriate (see Action #10), the CE or FAB staff member remands the case for district office action. The CE or FAB staff member enters status code “F7” (FAB Remanded) with “OTH” (No DO Error – Other) as the reason code in ECMS B/E (as appropriate), with a status effective date equal to the date of the remand.

15. If, after review or further development, the CE or FAB staff member determines that a case on the list does not require any action, the CE or FAB staff member must write a brief memo to the file indicating that the file was reviewed and note the reason why no additional action is necessary. A case classified as not requiring any action is a case that does not meet the SEC criteria, and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must then code “NA” (No Action Necessary) and select the appropriate reason code from the reason code drop down list. Since the “NA” coding is specifically tied to the SEC review list generated by DEEOIC, the “NA” code is restricted to ECMS B. This is because the SEC review list is derived from Part B data. For LLNL cases that were reviewed under this Bulletin and require no additional action, the reason code that must be selected is **012** (Reviewed under 10-12, Lawrence Livermore National Laboratory SEC class) and be coded into ECMS B only, even if the case is a B/E case. The status effective date of the “NA” code is the date of the memo to the file stating the review is complete, and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the “NA-012” code is not entered initially. The “NA-012” code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the “NA-012” code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “NA-012” code in addition to the closure code. The status effective date for the “NA” coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the EEOICPA Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections.

**10-13 Nevada Test Site SEC Class for January 1, 1963 through December 31, 1992**

EEOICPA BULLETIN NO.10-13

Issue Date: May 5, 2010

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Effective Date: May 5, 2010

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Expiration Date: May 5, 2011

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Subject: Nevada Test Site SEC Class for January 1, 1963 through December 31, 1992

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from the Nevada Test Site (NTS) to be added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and determined that it qualified for evaluation under 42 C.F.R. § 83.13. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On March 5, 2010, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at the NTS.

On April 5, 2010, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress:

All employees of the Department of Energy, its predecessor agencies, and its contractors and subcontractors who worked at the Nevada Test Site, from January 1, 1963 through December 31, 1992, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

A copy of the Secretary’s letter to Congress recommending the designation is included as [Attachment 1](#). Although Congress had the authority to reject the recommendation within a 30-day time frame, Congress took no action. Therefore, the SEC designation for this class became effective as of May 5, 2010, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress.

NIOSH has determined that there is insufficient information either to estimate the maximum radiation dose for every type of cancer for which radiation doses are reconstructed that could have been incurred under plausible circumstances by any member of the class, or to estimate the radiation doses of members of the class more precisely than a maximum dose estimate. Specifically, internal dose cannot be estimated.

A previous SEC class pertaining to the NTS, encompassing the period between January 27, 1951 and December 31, 1962, was the subject of Bulletin 06-16. The new NTS SEC class described in this Bulletin is not meant to replace the prior class, but is an addition to the prior NTS SEC class.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the April 5, 2010 letter to Congress from the Secretary of HHS in which Secretary Sebelius makes the designation.

Purpose: To provide procedures for processing SEC class claims for workers at the NTS.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and

future claims yet to be submitted.

2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at the NTS during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.

3. The district offices are to use the comprehensive list as the basis for an initial screening of cases associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is likely to meet the criteria for inclusion in the SEC. A screening worksheet is included as [Attachment 2](#). The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case file. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. Claim status codes have been created in ECMS to reflect each of these categories: **ISL** (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; **ISU** (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and **ISD** (Initial SEC Screening, Development Needed) for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, in this instance, **013** (Reviewed under 10-13, Nevada Test Site SEC). Once the worksheet is completed, the Claims Examiner (CE) is to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the **ISL**, **ISU** and **ISD** codes is to correspond with the completion date of the screening worksheet.

The purpose of this initial screening is to assist the district offices in prioritizing claims poised for acceptance. Once screening and prioritization is complete, claims adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each case must be evaluated formally for SEC inclusion and the decision recorded in ECMS. The initial screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims submitted after the list is generated. These claims will be evaluated for inclusion in the SEC class in the general course of processing.

4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, complete the worksheet and enter related coding.

5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class, and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected NTS claimants is included as [Attachment 3](#). The CE must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code “**NW**” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the “**NW**” code entry is May 5, 2010. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record. The standard procedure for NIOSH coding in ECMS E is to code all additional NIOSH actions only if the “**NI**” (Sent to NIOSH) status code has been entered. Therefore, the CE enters the “**NW**” code into

ECMS E with the status effective date of May 5, 2010, only if “NI” has already been entered in ECMS E.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC, and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this Bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e mail to return the dose reconstruction analysis records. The SrCE then prints a copy of the “sent” e mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the status code “NW” with a status effective date of May 5, 2010. In addition, the CE must write a letter to the claimant advising that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this Bulletin, then refer to instructions in Action #15.

6. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the EEOICPA Procedure Manual Chapter 2-0600.7. If the employee has a specified cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.

8. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 workdays at the NTS between January 1, 1963 and December 31, 1992.

The NTS has served as the Nation’s primary continental site for the testing of nuclear devices. The NTS currently encompasses approximately 1,375 square miles. NTS was the primary location for the testing of nuclear explosives in the continental United States between 1951 and 1992. Nuclear testing at or above ground surface included atmospheric testing, earth-cratering experiments, and open-air nuclear reactor and rocket testing; which were the subject of the prior NTS SEC class. In 1963, the United States signed the Limited Test Ban Treaty, which effectively sent the testing of nuclear weapons below ground. This period of underground testing is the subject of the new SEC class described in this Bulletin.

As per EEOICPA Circular No. 08-06, NTS includes Area 51 for the period 1958 through 1999. Refer to Circular 08-06 for additional details on Area 51 coverage. NTS does not, however, include the Yucca Mountain Site Characterization Project, as this is a separate DOE facility adjacent to the NTS.

Please note that, as was the case for the prior NTS SEC class, the 250 work day calculation includes any time spent at the NTS, including time spent working or living at the test site. For example, there were employees who lived in the town of Mercury within the NTS during the SEC time period. If the employee was present (either worked or lived) on site at the NTS for a 24-hour period in a day, the CE would credit the employee with the equivalent of three (8-hour) work days. If there is evidence that the employee was present on site at the NTS for 24 hours in a day for 83 days, the employee would have the equivalent of 250 work days and would meet the 250 work day requirement.

Once 250 days of NTS employment during the class period are established, the CE or hearing representative can accept that the employment component of the SEC class is satisfied. In these cases, the CE proceeds to Action #9.

If the employee does not have 250 workdays at the NTS, the CE must review the file to determine if additional days in the SEC can be found by combining days from employment meeting the criteria for other classes in the SEC and aggregating them together to meet the 250-workday requirement.

If the 250 workday requirement is not satisfied, the CE proceeds to #10.

9. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

If it is determined that the case does qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail, so that NIOSH can close out their file. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file.

ECMS Coding Reminder: The “**SE**” (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the status effective date of the recommended decision to approve. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the “**SE**” code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

For all claims where NTS employment is claimed, regardless of whether the SEC criteria are met, the SEC site code “**NTS**” (033) must be selected under the “**SEC/SEC Desc**” field on the claim screen.

10. Although NIOSH determined that it is not feasible for NIOSH to perform complete dose reconstructions for this class of employees, NIOSH has indicated that partial dose reconstructions are possible. Accordingly, for cases that have not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code “**NI**” in ECMS B.

The status effective date is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the “**NI**” code is not entered into ECMS E until non-radiological toxic exposure development is complete.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code “**NI**” into ECMS B, with a status effective date equal to the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e mail should include a brief statement of why the case should proceed with dose reconstruction; e.g., non-specified cancer, insufficient latency period or does not meet the 250 workday requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for a dose reconstruction and the reason(s) it does not qualify for the SEC class. The CE is to send a copy of this letter to NIOSH. If the case is a B/E case, and toxic exposure development was completed with a memorandum to the file (with a prior “**NI**”/“**NW**” code), the CE enters status code “**NI**” into ECMS E with the status effective date of the e-mail requesting NIOSH to proceed with dose reconstruction.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “**NR**” (NIOSH Dose Reconstruction Received) in ECMS B and selects the reason code of “**PD**” (Partial Dose Reconstruction). The status effective date is the date the dose reconstruction report is date-stamped into the district office. The CE should not delete the “**NW**” or “**NI**” codes already present in ECMS. If the CE had previously entered “**NI**” in ECMS E, the CE also enters codes “**NR**” and “**PD**” in ECMS E. If the case is a B/E case, the CE enters the Probability of Causation (PoC) into ECMS B and ECMS E (regardless of whether the “**NI**” code had previously been entered).

11. If the claim meets the SEC employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified

cancer(s) that has a dose reconstruction resulting in a PoC of 50% or greater and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and any cancers for which there is a POC of 50% or greater. The CE enters status code “SE” into ECMS B. The status effective date for the “SE” code is the date of the recommended decision to accept the specified cancer. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the “SE” code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

If necessary, the CE concurrently prepares a NRSD to NIOSH for a dose reconstruction for any non-specified cancer(s) to determine eligibility for medical benefits. The CE enters status code “NI” into ECMS B. The status effective date for the “NI” code is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the CE enters status code “NI” in ECMS E only after the non-radiological toxic exposure development is complete and the CE cannot accept causation. In that case the CE creates a memorandum to file stating that toxic exposure development is complete, and enters status code “NI” in ECMS E with the date of the memorandum as the status effective date.

12. If a claim has a final decision to deny based on a PoC of less than 50% and a review of the evidence of record establishes likely inclusion in the SEC class, the case is reopened. In the exercise of the DEEOIC Director’s discretion in the reopening process, the Director is delegating limited authority to the four District Directors (DDs) and the Assistant District Directors (ADDs), at the discretion of the DD, to sign Director’s Orders for reopening of these cases. This delegated authority is limited to reopenings based upon evidence that a NTS employee meets the criteria for placement into the SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the DD is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided in [Attachment 4](#). The DEEOIC Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is responsible for issuing a new recommended decision.

13. For those cases reopened under the authority granted in this Bulletin, the DD or ADD enters status code “MN” (NO Initiates Review for Reopening) in ECMS B with a status effective date equal to the effective date of this Bulletin. If the DD or ADD is also reopening Part E, the “MN” code is also entered into ECMS E. For all reopenings per this Bulletin, upon completing the Director’s Order to reopen the claim, the DD or ADD enters status code “MD” (Claim Reopened – File Returned to DO) into ECMS B/E (as appropriate) to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “MZ” status code, receipt of Director’s Order in the DO or FAB, is not necessary.) The status effective date of the “MD” code is the date of the Director’s Order. Please note that while the “MD” code is generally input by National Office staff, entry of this code has been delegated to the DD or ADD, just as the authority to grant reopenings has been delegated in this specific circumstance.

14. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending NTS cases that have a recommended decision to deny. All cases on the comprehensive list identified in Action #2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at the NTS during the time period specified, has a specified cancer, and meets the 250-workday requirement, the FAB is to reverse the district office’s recommended decision to deny, and accept the case. The CE or FAB staff member enters status code “F6” (FAB Reversed to Accept) with the appropriate reason code into ECMS B/E (as appropriate) to reflect the FAB reversal with a status effective date equal to the date of the final decision to accept. The CE or FAB staff member also enters status code “SE” in ECMS B/E (as appropriate) with a status effective date equal to the date of the final decision to accept.

For all claims where NTS employment is claimed, regardless of whether the SEC criteria are met,

the SEC site code “033” must be selected under the “SEC/SEC Desc” field on the claim screen.

If no action is required, FAB must follow the instructions specified in Action #15, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the district office. If FAB determines that the case cannot be accepted based on the new SEC designation and that re-referral to NIOSH is appropriate (see Action #10), the CE or FAB staff member remands the case for district office action. The CE or FAB staff member enters status code “F7” (FAB Remanded) with “OTH” (No DO Error – Other) as the reason code in ECMS B/E (as appropriate), with a status effective date equal to the date of the remand.

15. If, after review or further development, the CE or FAB staff member determines that a case on the list does not require any action, the CE or FAB staff member must write a brief memo to the file indicating that the file was reviewed and note the reason why no additional action is necessary. A case classified as not requiring any action is a case that does not meet the SEC criteria, and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must then code “NA” (No Action Necessary) and select the appropriate reason code from the reason code drop down list. Since the “NA” coding is specifically tied to the SEC review list generated by DEEOIC, the “NA” code is restricted to ECMS B. This is because the SEC review list is derived from Part B data. For NTS cases that were reviewed under this Bulletin and require no additional action, the reason code that must be selected is **013** (Reviewed under 10-13, Nevada Test Site SEC class) and be coded into ECMS B only, even if the case is a B/E case. The status effective date of the “NA” code is the date of the memo to the file stating the review is complete, and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the “NA-013” code is not entered initially. The “NA-013” code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the “NA-013” code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “NA-013” code in addition to the closure code. The status effective date for the “NA” coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the EEOICPA Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections.

**10-14 Westinghouse Electric Corp. SEC Class for the period August 13, 1942 through December 31, 1949**

EEOICPA BULLETIN NO. 10-14

Issue Date: May 5, 2010

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Effective Date: May 5, 2010

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Expiration Date: May 5, 2011

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Subject: Westinghouse Electric Corp. SEC Class for the period August 13, 1942 through December 31, 1949.

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83.14, a petition was filed on behalf of workers from Westinghouse Electric Corp. in Bloomfield, New Jersey to be added to the Special Exposure Cohort (SEC).

The decision to initiate this petition occurred after the National Institute for Occupational Safety and Health (NIOSH) determined that it could not reconstruct a dose under 42 C.F.R. § 83.14. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On March 5, 2010, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at Westinghouse Electric Corp. in Bloomfield, New Jersey.

On April 5, 2010, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress.

All Atomic Weapons Employer employees who worked at Westinghouse Electric Corp., Bloomfield, New Jersey, from August 13, 1942 through December 31, 1949, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

A copy of the Secretary’s letter to Congress recommending the designation is included as [Attachment 1](#). Although Congress had the authority to reject the recommendation within a 30-day time frame, Congress took no action. Therefore, the SEC designation for this class became effective as of May 5, 2010, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress.

While a new SEC class has been added for employees at Westinghouse Electric Corp., NIOSH intends to use any available internal and external monitoring data that may become available for an individual claim (and that can be interpreted using existing NIOSH dose reconstruction processes or procedures). This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83.13, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the April 5, 2010 letter to Congress from the Secretary of HHS in which Secretary Sebelius makes the designation.

Purpose: To provide procedures for processing SEC claims for workers at Westinghouse Electric Corp. in Bloomfield, New Jersey.

Applicability: All staff.

## Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at Westinghouse Electric Corp. during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.
3. The district offices are to use the comprehensive list as the basis for an initial screening of cases associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is likely to meet the criteria for inclusion into the SEC. A screening worksheet is included as [Attachment 2](#). The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case file. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. Claim status codes have been created in ECMS to reflect each of these categories: **ISL** (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; **ISU** (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and **ISD** (Initial SEC Screening, Development Needed), for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, in this instance, **014** (Reviewed under Bulletin 10-14, Westinghouse Electric Corp. SEC). Once the worksheet is completed, the claims examiner (CE) is to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the **ISL**, **ISU**, and **ISD** codes is to correspond with the completion date of the screening worksheet. Westinghouse Electric Corp. is an Atomic Weapons Employer (AWE). As such, there are no Part E coding implications.

The purpose of this initial screening is to assist the district offices in prioritizing claims poised for acceptance and for purposes of meeting operational plan goals. Once screening and prioritization is complete, claims adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each case must be evaluated formally for SEC inclusion and the decision recorded in ECMS. The initial screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims submitted after the list is generated. These claims will be evaluated for inclusion in the SEC class in the general course of processing.

4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, worksheet and related coding.
5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD, in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class, and that his or her case is being returned to the DOL for adjudication. A copy of the NIOSH letter to affected Westinghouse Electric Corp. employees is included as [Attachment 3](#). The CE must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code

“**NW**” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the “**NW**” code entry is May 5, 2010. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC class, and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this Bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e mail to return the dose reconstruction analysis records. The SrCE then prints a copy of the “sent” e mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the status code “**NW**” with a status effective date of May 5, 2010. In addition, the CE must write a letter to the claimant advising that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this Bulletin, then refer to instructions in Action Item #15.

6. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the EEOICPA Procedure Manual Chapter 2-0600.7. If the employee has a specified cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.

8. If the employee has a specified cancer, the CE must determine if the worker was a qualified AWE employee who worked at least 250 workdays at Westinghouse Electric Corp. in Bloomfield, New Jersey between August 13, 1942 and December 31, 1949. If the employee does not have 250 workdays at Westinghouse Electric Corp., the CE must review the file to determine if additional days in the SEC can be found by combining days from employment meeting the criteria for other classes in the SEC and aggregating them together to meet the 250-workday requirement. If the 250 workday requirement is not satisfied, the CE proceeds to #10.

NIOSH has found no documentation to describe buildings and areas where radiological materials were used, or to limit such use to particular locations at the Bloomfield site. There is also insufficient information to describe completely the source term, operational processes, worker movements, or potential for contamination spread at Westinghouse Electric Corp.; therefore, NIOSH assumes that the potential for exposure to radioactive materials existed in all areas of the Westinghouse Electric Corporate site. This means that, for the purpose of claims adjudication, employment at any location within the Westinghouse Electric Corp. Bloomfield site, qualifies for SEC consideration.

9. Once the CE has determined that the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

If it is determined that the case does qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail, so that NIOSH can close out their file. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file.

ECMS Coding Reminder: The “**SE**” (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the date of the recommended decision to approve.

For all claims where Westinghouse Electric Corp. employment is claimed, regardless of whether the SEC criteria are met, the SEC site code “Westinghouse Electric Corp.” must be selected under the “**SEC/SEC Desc**” field on the claim screen.

10. Although HHS determined that it is not feasible for NIOSH to perform complete dose reconstructions for this class of employees, NIOSH has indicated that partial dose reconstructions are possible. Accordingly, for cases that do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code “**NI**” (Sent to NIOSH) in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code “**NI**” (Sent to NIOSH) into the ECMS B, effective the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-specified cancer, insufficient latency period or does not meet the 250-workday requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for dose reconstruction and the reason(s) it does not qualify for the SEC class. The CE is to send a copy of this letter to NIOSH.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “**NR**” (NIOSH Dose Reconstruction Received) in ECMS B and selects the “**PD**” (Partial Dose Reconstruction) reason code. The status effective date is the date the dose reconstruction is date-stamped into the district office. The CE should not delete the “**NW**” (NIOSH, returned without a dose reconstruction) or “**NI**” (Sent to NIOSH) code already present in ECMS.

11. If the claim meets the SEC class employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction that resulted in a probability of causation (PoC) of 50 percent or greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and, if necessary, concurrently prepares a NRSD to NIOSH for a dose reconstruction for the non-specified cancer to determine eligibility for medical benefits. The CE enters status code “**SE**” (Confirmed as SEC claim) and the “**NI**” (Sent to NIOSH) code into ECMS B. The status effective date for the “**SE**” code is the date of the recommended decision to accept the specified cancer. The status effective date for the “**NI**” code is the date of the Senior or Supervisory CE signature on the NRSD.

12. If a claim has a final decision to deny based on a PoC of less than 50%, and a review of the evidence of record establishes likely inclusion in the SEC class, the case is reopened. In the exercise of the Director’s discretion in the reopening process, the Director is delegating limited authority to the four District Directors and Assistant District Directors (ADD), at the discretion of the District Director, to sign Director’s Orders for reopening. This delegated authority is limited to reopenings based upon evidence that a Westinghouse Electric Corp. employee meets the criteria for placement into the Westinghouse Electric Corp. SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director or ADD is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided in [Attachment 4](#). The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is responsible for issuing a new recommended decision.

13. For those cases which are reopened under authority granted in this Bulletin, the District Director or ADD enters status code “**MN**” (NO Initiates Review for Reopening) in ECMS B with a status

effective date as the effective date of this bulletin. For all reopenings per this bulletin, upon completing the Director's Order to reopen the claim, the District Director or ADD enters status code "**MD**" (Claim Reopened – File Returned to DO) into ECMS B to reflect that the case has been reopened and is in the district office's jurisdiction. (The "**MZ**" status code is not necessary). The status effective date of the "**MD**" code is the date of the Director's Order. Please note that while National Office staff generally input the "**MD**" code, entry of this code has been delegated to the District Director and ADD, just as the authority to grant reopenings has been delegated in this specific circumstance.

14. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending Westinghouse Electric Corp. cases that have a recommended decision to deny. All cases on the comprehensive list identified in Action Item #2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at Westinghouse Electric Corp. during the period specified, has a specified cancer, and meets the 250-workday requirement, the FAB is to reverse the district office's recommended decision to deny and accept the case. The CE or FAB staff member enters status code "**F6**" (FAB Reversed to Accept, with appropriate Reason Code) into ECMS B to reflect the FAB reversal with a status effective date equal to the date of the final decision to approve. The CE or FAB staff person enters status code "**SE**" (Confirmed as SEC Claim) into ECMS B with a status effective date equal to the date of the final decision to approve.

For all claims where Westinghouse Electric Corp. employment is claimed, regardless of whether the SEC criteria are met, the SEC site code "Westinghouse Electric" must be selected under the "**SEC/SEC Desc**" field on the claim screen.

If no action is required, FAB must follow the instructions specified in Action Item #15 below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the district office. If FAB determines that the case cannot be approved based on the new SEC designation and that re-referral to NIOSH is appropriate (see Action Item #10) the CE or FAB staff member remands the case for district office action. The CE or FAB staff member enters status code "**F7**" (FAB Remanded) with "**OTH**" (No DO Error – Other) as the reason code, with a status effective date of the date of the remand.

15. If after review or further development, the CE or FAB staff member determines that a case on the list does not require any action, the CE or FAB staff member must write a brief memo to the file indicating that the file was reviewed and noting the reason why no additional action is necessary. A case classified as not requiring any action is a case that does not meet the SEC criteria and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must code "**NA**" (No Action Necessary) and then select the appropriate reason code from the reason code drop down list. The "**NA**" coding is specifically tied to the SEC review list generated by DEEOIC and the "**NA**" code is restricted to ECMS B only because the SEC review list is derived from Part B data. For Westinghouse Electric Corp. cases that were reviewed under this Bulletin and require no additional action, the reason code that must be selected is "**014**" (Reviewed under Bulletin 10-14 Westinghouse Electric Corp. SEC Class) and be coded into ECMS B only. The status effective date of the "**NA**" code is the date of the memo to the file stating review is complete and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the "**NA-014**" code is not entered initially. The "**NA-014**" code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the "**NA-014**" code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the

“NA-014” code in addition to the closure code. The status effective date for the “NA” coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections

### **10-15 SEM Quality Assurance Plan**

EEOICPA BULLETIN NO. 10-15

Issue Date: June 14, 2010

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Effective Date: June 14, 2010

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Expiration Date: June 14, 2011

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Subject: SEM Quality Assurance Plan

Background: Changes in the SEM information about the work processes, labor categories, and toxic materials used at a DOE site can change the outcome of an eligibility determination and are typically the result of DOL’s research of previously un-reviewed site documentation. DOE does not maintain a central document repository or index of records applicable to each site, thereby inhibiting DOL’s research and data collection efforts. Records for most sites, especially those that are no longer operating, are typically spread among several Federal Records Centers and operating DOE sites. Furthermore, active DOE sites regularly generate new documentation. As a result, the DOL SEM research team constantly reviews site documentation as it is identified and adds it to the DOL SEM Library where appropriate (it’s worth noting that information is also obtained from the Haz-Map website).

Past adjudication results may have been different if adjudication had been performed using current SEM information. To ensure that such previously adjudicated cases are reviewed with the latest and most complete SEM information, this procedure has been developed. Using this procedure will result in the post-adjudication review of cases where changes in the SEM diseases and disease associations could affect the denial decision. As noted above, this procedure is also applicable to Part E claims that are still in the process of being reviewed.

On a quarterly basis, Paragon provides DEEOIC with a report that describes the changes made to the SEM database and the affected ICD-9 codes, by worksite, during the previous three months. The DEEOIC SEM Coordinator reviews this report and shares it with the Branch of ADP Systems (BAS) within 2 business days. The BAS then generates a “Post Adjudication Report” within 5-10

business days.

The Post Adjudication Report generated by BAS has two components: a *SEM Summary Report* and a *SEM Detail Report*. The *SEM Summary Report* gives the total number of Part E Denials, based on a medical condition (ICD-9 match) identified as a result of changes in the SEM. These numbers are broken up by District Office, including the FAB. The *SEM Detail Report* provides specific information on these cases by District Office, claimant name, affected worksite, file number and the assigned Claims Examiner. Using this information, the District Offices/FAB can ensure that each denial decision that could be affected by the SEM changes can be reevaluated. For example, the SEM may list a new relationship between a toxic material and an occupational disease (the procedure “*Instruction for Compiling and Entering Toxic Substance Information into the Site Exposure Matrices (SEM) Database,*” provides a detailed discussion of how toxic materials are added to the SEM). Using the ICD-9 code of that disease, District Office/FAB personnel can search its database of denied cases to identify those cases with the same ICD-9 disease code. At each District Office, those cases on the *SEM Detail Report* are assigned to a Claims Examiner (at the District Director’s discretion) for review to determine if its denial should be reevaluated. The Claims Examiner uses the SEM to reevaluate the case using current information. After reviewing the totality of evidence, this reevaluation may result in the case being reopened and approved or, alternatively, there may be no change in the existing denied status. Similarly, for cases that are in the process of being reviewed, this procedure will assist the current Claims Examiner with the most current information relative to the condition being evaluated. These actions are to be controlled by the District Director and the data are to be utilized at the discretion of the District Director and the FAB Manager.

DEEOIC believes the above process provides each claimant whose case has been denied a fair opportunity for reevaluation whenever new disease and disease-toxic material association information is added to the SEM database.

References: U.S. Department of Labor EEOICP Site Exposure Matrices Pre-adjudication Changes Report, National Office Post-Adjudication Report

Purpose: To provide a mechanism for ensuring that previously denied cases have a way to be reopened based upon new medical and toxicological data that have been added to the SEM database since the cases’ initial adjudication. This plan is also applicable to cases that have yet to be adjudicated that may be impacted by changes to the SEM. For example, if an additional causative agent link is added for bladder cancer, personnel will have a means of addressing this new piece of information. This plan is part of an overall effort to maintain the quality of the DEEOIC program and to be claimant-friendly in the review and ultimate adjudication of claims.

Applicability: All staff.

Actions:

Using SEM Pre/Post-Adjudication Reports:

Sometimes changes are made in SEM that may affect the DOL adjudication decision of a closed or in-process claim. Specifically, a denied case may need to be reevaluated because of a disease or disease/toxic material association change in the SEM. The SEM changes affecting an adjudication decision include the recognition of an occupational disease not previously listed in the SEM, deletion of a previously accepted occupational disease, or new toxic substance associations with existing occupational diseases.

Two methods have been established to facilitate the District Office/FAB’s review of cases, the first for *denied* adjudicated cases where the ICD-9 is impacted by a change in the SEM and the second for pre-adjudication (in-progress) cases:

1. Using the Post-Adjudication Report: As noted above, this report has two parts, the *SEM*

*Summary Report* (covers all the District Offices and the FAB) and the *SEM Detail Report* (provides detailed information, including case number, work location, claims examiner, district office, etc.). The Post-Adjudication Report is issued periodically by the National Office to identify those denied Part E cases that may be affected by a change in the SEM health effect information (by ICD-9) during the prior quarter. Please see Figures 1 through 16 (attachments) to assist in visualizing these steps. It's important to note that the District Directors, FAB managers and National Office management will ultimately review and prioritize possible post-adjudication file review by trends in the data fields.

- a. Using the *SEM Detail Report*, Select the "All" tab or a District Office to display those cases of interest. Delete the first row of the spreadsheet, and then enable the Excel Auto Filter feature for all remaining columns and rows of the spreadsheet.
- b. In the "ICD-9 CD" column click on the drop-down arrow and select the ICD-9 Code of interest. The list of those cases potentially affected by a change in the SEM is returned.
- c. In the "Worksite ID" column, click on the drop-down arrow and select the number of the site of interest. The resulting list indicates those cases for the selected site that potentially need to be reevaluated using current SEM information.
- d. Using information in the "Case Number" and "LOC" (case location) retrieve the case file for the case of interest (for Privacy Act reasons, the case numbers have been suppressed in the attached figures).
- e. For only the health effect in Step 2, repeat the applicable SEM searches. Section 4 of chapter E-500 of the procedure manual provides guidance on using the SEM to evaluate a claim.

- (1) If the SEM indicates that none of the claimant's potential exposures is related to the health effect then the Claims Examiner documents this information, inserts this documentation in the case file, and returns the case file to storage.

- (2) If the SEM indicates that the worker may have been exposed to one or more substances linked to the health effect, then the claim should be carefully reviewed to determine whether, based upon the claimant's documented job title and work activities, there should be an industrial hygiene review to determine whether any significant exposures to the material(s) in question may have occurred.

Example: The Cleveland District Office receives the *SEM Detail Report* covering the period of April through June 2008 (see [Figure 1](#)).

- a. Using the *SEM Detail Report*, select the "CLE" tab to display those cases that may need reevaluation at the Cleveland District Office (see [Figure 2](#)). Delete the first row of the spreadsheet and then enable the Excel Auto Filter feature for all remaining columns and rows (see [Figure 3](#)).
- b. Suppose the District Office is interested in reviewing denied cases with the ICD-9 code of 173.3, Skin Cancer. In the "ICD-9 CD" column, click on the drop-down arrow and select "173.3". The list of those denied cases linked to ICD-9 code 173.3 is returned (see [Figure 4](#)).
- c. Suppose the District Office is interested in reviewing the denied ICD-9 code 173.3 at cases at [SITE NAME], Worksite ID 242. In the "Worksite ID" column, select "242". The list of those denied cases linked to ICD-9 code 173.3 at the [SITE NAME] is returned. Nine cases are listed (see [Figure 5](#)).
- d. If the District Office is interested in reviewing case #111111111, that number should be highlighted off the spreadsheet (See [Figure 6](#)) and assigned to a Claims Examiner who would then retrieve the case file. Using information from the case file, the Claims Examiner repeats the SEM searches for case 111111111 that are applicable to Skin Cancer.

- (1) If the SEM indicates that none of the claimant's potential exposures is related to skin cancer, then document this information and return the case file.

(2) If the SEM indicates that the worker may have been exposed to one or more substances linked to skin cancer, then the claim should be carefully reviewed to determine whether, based upon the claimant's documented job title and work activities, there should be an industrial hygiene review to determine whether any significant exposures to the material(s) in question may have occurred.

2. Using the Pre-Adjudication SEM Changes Report (in the SEM database): On the SEM Main Menu, clicking on the link "Adjudication-Related Change Report" on the lower task bar takes authorized users to a search page. That page allows the user to search SEM for recent changes in the SEM diseases and disease associations that could affect the recommended decision of a case that has been evaluated, but where a final adjudication decision has not yet been made. The following search filters are available:

- Site name
- Health effect
- Reporting period

In addition, the user can select what features of the search are displayed:

- Show sites (shows all the sites affected by a change in a health effect during the selected reporting period)
- Show toxics (shows all the toxic substances associated with the health effect and any changes - additions and deletions - in disease associations during the selected reporting period)
- Show dates (shows the date that a disease was added to SEM and the date(s) of any disease association changes during the selected reporting period)

Because the SEM contains large amounts of data, the user will find that search times are shorter if use of the above features is limited to just those necessary. Selecting all the features will result in thousands of rows of information being returned and will slow response time.

a. Select "Adjudication-Related Change Report" on the SEM Main Menu lower task bar.

b. On the returned page, select the DOE site of interest.

c. On the returned page, select the health effect of interest.

d. Select a start date just after the SEM searches in the case file were completed, and select an end date of yesterday. For example, if a case was researched in the SEM on June 28, 2008, and today's date is December 5, 2008, then the reporting period should be June 29, 2008 to December 4, 2008.

e. Click "Run Report." Within the designated reporting period, the returned report tells the user whether the selected disease was added, deleted, or had disease association changes.

f. If changes are reported, then the case may need to be reevaluated using current SEM data before it is adjudicated.

Example 1: "Worker C" worked at the Pinellas Plant from 1970 to 1990. He filed a COPD claim in July 2008. Case research was completed on August 15, 2008, and a recommended "denial" decision made. However, a final adjudication decision has not been made. The user wants to know, "Have changes been made in the SEM information for COPD that could affect the adjudication decision?" Assume that today's date is December 5, 2008.

a. Select "Adjudication-Related Report" on the SEM Main Menu lower task bar (see [Figure 7](#)).

b. On the returned page, select "Pinellas Plant" as the site (see [Figure 8](#)).

d. Select "Pulmonary disease, chronic obstructive" as the health effect (see [Figure 9](#)).

d. In the Reporting Period blocks enter "8/16/2008" (start date of search) and yesterday's date, e.g. "12/4/2008" (end date of search).

e. Click “Run Report.” Results: The returned information shows that no changes have been made in the SEM COPD information at Pinellas since the denial recommendation was made on August 15, 2008 (see [Figure 11](#)). The SEM page with this information is printed and inserted in the file and is processed for adjudication.

f. Since there were no changes in COPD from the time the case was previously researched in the SEM, there is no need for case reevaluation.

**Example 2:** “Worker D” worked at Hanford from 1975 to 2001. He filed an “occupational asthma” claim in July 2008. Case research was completed on August 15, 2008, and a recommended “denial” decision was made. However, a final adjudication decision has not yet been rendered. The user wants to know, “Have changes been made in the SEM information for occupational asthma that could affect the adjudication decision?” Assume that today’s date is December 5, 2008.

a. Select “Changes Report” on the SEM Main Menu lower task bar.

b. On the returned page, select “Hanford” as the site (see [Figure 12](#)).

c. Select “Occupational asthma” as the health effect (see [Figure 13](#)).

d. Enter the reporting period “8/16/2008” (start date of search) and yesterday’s date, e.g. “12/4/2008” (end date of search). See [Figure 14](#).

e. Click “Run Report”. Results: two rows of data are returned (see [Figure 15](#)). This alerts the user that since August 15, 2008, changes (additions, deletions, or both) have occurred in the occupational asthma toxic material associations.

f. Because there were changes in occupational asthma associations since the time that the case was previously researched in the SEM, there is a need for reevaluation.

Note that this generated report can be used by authority granted at the discretion of District Directors/FAB Managers or other management; ad hoc reports can also be run as needed.

**Disposition:** Retain until incorporated in the Federal EEOICPA Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

[Attachment 5](#)

[Attachment 6](#)

[Attachment 7](#)

[Attachment 8](#)

[Attachment 9](#)

[Attachment 10](#)

[Attachment 11](#)

[Attachment 12](#)

[Attachment 13](#)

[Attachment 14](#)

[Attachment 15](#)

[Attachment 16](#)

Distribution List No. 1: (Claims Examiners, Supervisory Claims Examiners, Technical Assistants, FAB District Managers, Operation Chiefs, Hearing Representatives)

**10-16 Canoga Avenue Facility SEC Class from January 1, 1955 through December 31, 1960**

EEOICPA BULLETIN NO. 10-16

Issue Date: June 13, 2010

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Effective Date: June 13, 2010

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Expiration Date: June 13, 2011

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Subject: Canoga Avenue Facility SEC Class from January 1, 1955 through December 31, 1960

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from the Canoga Avenue Facility, Los Angeles County, California, to be added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and determined that it qualified for evaluation under 42 C.F.R. § 83.13. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On April 12, 2010, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at the Canoga Avenue Facility.

On May 14, 2010, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress:

All employees of the Department of Energy, its predecessor agencies, and its contractors and subcontractors who worked at the Canoga Avenue Facility, Los Angeles County, California, from January 1, 1955 through December 31, 1960 for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

A copy of the Secretary’s letter to Congress recommending the designation is included as [Attachment 1](#). Although Congress had the authority to reject the recommendation within a 30-day time frame, Congress took no action. Therefore, the SEC designation for this class became effective as of June 13, 2010, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress.

NIOSH has concluded that it can provide a partial dose estimate using any internal and external monitoring data, including occupational medical dose, available for an individual claim (and that can be interpreted using existing NIOSH dose reconstruction processes or procedures). This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the May 14, 2010 letter to Congress

from the Secretary of HHS in which Secretary Sebelius makes the designation.

Purpose: To provide procedures for processing SEC class claims for workers at the Canoga Avenue Facility, Los Angeles County, California.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at the Canoga Avenue Facility during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.
3. The district offices are to use the comprehensive list as the basis for an initial screening of cases associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is likely to meet the criteria for inclusion in the SEC. A screening worksheet is included as [Attachment 2](#). The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case file. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. Claim status codes have been created in ECMS to reflect each of these categories: **ISL** (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; **ISU** (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and **ISD** (Initial SEC Screening, Development Needed) for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, in this instance, **016** (Reviewed under 10-16, Canoga Avenue Facility, Los Angeles County, California SEC). Once the worksheet is completed, the claims examiner (CE) is to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the **ISL**, **ISU** and **ISD** codes is to correspond with the completion date of the screening worksheet.

The purpose of this initial screening is to assist the district offices in prioritizing claims poised for acceptance. Once screening and prioritization is complete, claims adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each case must be evaluated formally for SEC inclusion and the decision recorded in ECMS. The initial screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims submitted after the list is generated. These claims will be evaluated for inclusion in the SEC class in the general course of processing.

4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, complete the worksheet and enter related coding.
5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class, and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected Canoga

Avenue Facility claimants is included as [Attachment 3](#). The CE must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including cases that DEEOC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code “**NW**” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the “**NW**” code entry is June 13, 2010. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record. The standard procedure for NIOSH coding in ECMS E is to code all additional NIOSH actions only if the “**NI**” (Sent to NIOSH) status code has been entered. Therefore, the CE enters the “**NW**” code into ECMS E with the status effective date of June 13, 2010, only if “**NI**” has already been entered in ECMS E.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC, and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this Bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e-mail to return the dose reconstruction analysis records. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the status code “**NW**” with a status effective date of June 13, 2010. In addition, the CE must write a letter to the claimant advising that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this Bulletin, then refer to instructions in Action #15.

6. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual, Chapter 2-0600.7. If the employee has a specified cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.

8. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 workdays at the Canoga Avenue Facility, Los Angeles County, California, between January 1, 1955 and December 31, 1960.

Once 250 days of Canoga Avenue Facility employment during the class period is established, the CE or hearing representative can accept that the employment component of the SEC class is satisfied. In these cases, the CE proceeds to Action #9.

If the employee does not have 250 workdays at the Canoga Avenue Facility, the CE must review the file to determine if additional days in the SEC can be found by combining days from employment meeting the criteria for other classes in the SEC and aggregating them together to meet the 250-workday requirement. If the 250 workday requirement is not satisfied, the CE proceeds to Action #10.

9. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

If it is determined that the case does qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail, so that NIOSH can close out their file. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file.

ECMS Coding Reminder: The “SE” (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the status effective date of the recommended decision to approve. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the “SE” code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

For all claims where Canoga Avenue Facility employment is claimed, regardless of whether the SEC criteria are met, the SEC site code “**Canoga Avenue Facility**” must be selected under the “SEC/SEC Desc” field on the claim screen.

10. Although NIOSH determined that it is not feasible for NIOSH to perform complete dose reconstructions for this class of employees, NIOSH has indicated that partial dose reconstructions are possible. Accordingly, for cases that have not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code “NI” in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the “NI” code is not entered into ECMS E until non-radiological toxic exposure development is complete.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code “NI” into ECMS B, with a status effective date equal to the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction; e.g., non-specified cancer, insufficient latency period or does not meet the 250-workday requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for a dose reconstruction and the reason(s) it does not qualify for the SEC class. The CE is to send a copy of this letter to NIOSH. If the case is a B/E case, and toxic exposure development was completed with a memorandum to the file (with a prior “NI”/“NW” code), the CE enters status code “NI” into ECMS E with the status effective date of the e-mail requesting NIOSH to proceed with dose reconstruction.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “NR” (NIOSH Dose Reconstruction Received) in ECMS B and selects the reason code of “PD” (Partial Dose Reconstruction). The status effective date is the date the dose reconstruction report is date-stamped into the district office. The CE should not delete the “NW” or “NI” codes already present in ECMS. If the CE had previously entered “NI” in ECMS E, the CE also enters codes “NR” and “PD” in ECMS E. If the case is a B/E case, the CE enters the Probability of Causation (PoC) into ECMS B and ECMS E (regardless of whether the “NI” code had previously been entered).

11. If the claim meets the SEC employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction resulting in a probability of causation (PoC) of 50% or greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and any cancers for which there is a PoC of 50% or greater. The CE enters status code “SE” into ECMS B. The status effective date for the “SE” code is the date of the recommended decision to accept the specified cancer. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the “SE” code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

If necessary, the CE concurrently prepares a NRSD to NIOSH for a dose reconstruction for any

non-specified cancer(s) to determine eligibility for medical benefits. The CE enters status code “NI” into ECMS B. The status effective date for the “NI” code is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the CE enters status code “NI” in ECMS E only after the non-radiological toxic exposure development is complete and the CE cannot accept causation. In that case the CE creates a memorandum to file stating that toxic exposure development is complete, and enters status code “NI” in ECMS E with the date of the memorandum as the status effective date.

12. If a claim has a final decision to deny based on a PoC of less than 50% and a review of the evidence of record establishes likely inclusion in the SEC class, the case is reopened. In the exercise of the DEEOIC Director’s discretion in the reopening process, the Director is delegating limited authority to the four District Directors and the Assistant District Directors (ADDs), at the discretion of the DD, to sign the Director’s Orders for reopening of these cases. This delegated authority is limited to reopenings based upon evidence that a Canoga Avenue Facility employee meets the criteria for placement into the SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided in [Attachment 4](#). The DEEOIC Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is responsible for issuing a new recommended decision.

13. For those cases reopened under the authority granted in this Bulletin, the District Director or ADD enters status code “MN” (NO Initiates Review for Reopening) in ECMS B with a status effective date equal to the effective date of this Bulletin. If the District Director or ADD is also reopening Part E, and “MN” code is also entered into ECMS E. For all reopenings per this Bulletin, upon completing the Director’s Order to reopen the claim, the District Director or ADD enters status code “MD” (Claim Reopened – File Returned to DO) into ECMS B/E (as appropriate) to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “MZ” status code, receipt of Director’s Order in the DO or FAB, is not necessary.) The status effective date of the “MD” code is the date of the Director’s Order. Please note that while the “MD” code is generally input by National Office staff, entry of this code has been delegated to the District Director or ADD, just as the authority to grant reopenings has been delegated in this specific circumstance.

14. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending Canoga Avenue Facility cases that have a recommended decision to deny. All cases on the comprehensive list identified in Action #2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at the Canoga Avenue Facility during the time period specified, has a specified cancer, and meets the 250-workday requirement, the FAB is to reverse the district office’s recommended decision to deny, and accept the case. The CE or FAB staff member enters status code “F6” (FAB Reversed to Accept) with the appropriate reason code into ECMS B/E (as appropriate) to reflect the FAB reversal with a status effective date equal to the date of the final decision to accept. The CE or FAB staff member also enters status code “SE” in ECMS B/E (as appropriate) with a status effective date equal to the date of the final decision to accept.

For all claims where Canoga Avenue Facility employment is claimed, regardless of whether the SEC criteria are met, the SEC site code “**Canoga Avenue Facility**” must be selected under the “SEC/SEC Desc” field on the claim screen.

If no action is required, FAB must follow the instructions specified in Action #15, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the district office. If FAB determines that the case cannot be accepted based on the new SEC designation and that re-referral to NIOSH is appropriate (see Action #10), the CE or FAB staff member remands the case

for district office action. The CE or FAB staff member enters status code “F7” (FAB Remanded) with “OTH” (No DO Error – Other) as the reason code in ECMS B/E (as appropriate), with a status effective date equal to the date of the remand.

15. If, after review or further development, the CE or FAB staff member determines that a case on the list does not require any action, the CE or FAB staff member must write a brief memo to the file indicating that the file was reviewed and note the reason why no additional action is necessary. A case classified as not requiring any action is a case that does not meet the SEC criteria, and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must then code “NA” (No Action Necessary) and select the appropriate reason code from the reason code drop down list. Since the “NA” coding is specifically tied to the SEC review list generated by DEEOIC, the “NA” code is restricted to ECMS B. This is because the SEC review list is derived from Part B data. For Canoga Avenue Facility cases that were reviewed under this Bulletin and require no additional action, the reason code that must be selected is **016** (Reviewed under 10-16, Canoga Avenue Facility, Los Angeles County, California SEC) and be coded into ECMS B only, even if the case is a B/E case. The status effective date of the “NA” code is the date of the memo to the file stating the review is complete, and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the “NA-016” code is not entered initially. The “NA-016” code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the “NA-016” code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “NA-016” code in addition to the closure code. The status effective date for the “NA” coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the EEOICPA Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections.

**10-17 BWX Technologies, Inc. (Virginia) SEC Class from January 1, 1959 through December 31, 1959 and/or January 1, 1968 through December 31, 1972**

EEOICPA BULLETIN NO. 10-17

Issue Date: August 12, 2010

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Effective Date: August 12, 2010

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Expiration Date: August 12, 2011

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**Subject:** BWX Technologies, Inc. (Virginia) SEC Class from January 1, 1959 through December 31, 1959 and/or January 1, 1968 through December 31, 1972

**Background:** Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from BWX Technologies, Inc. (Virginia) in Lynchburg, Virginia to be added to the Special Exposure Cohort (SEC).

The decision to initiate this petition occurred after the National Institute for Occupational Safety and Health (NIOSH) determined that it could not reconstruct a dose under 42 C.F.R. § 83.14. NIOSH submitted its findings to the Advisory board on Radiation and Worker Health (“the Board”). On June 11, 2010, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at BWX Technologies, Inc. (Virginia) in Lynchburg, Virginia.

On July 13, 2010, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress:

All Atomic Weapons Employer employees who worked at BWX Technologies, Inc. in Lynchburg, Virginia from January 1, 1959 through December 31, 1959; and/or from January 1, 1968 through December 31, 1972, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

A copy of the Secretary’s letter to Congress recommending the designation is included as [Attachment 1](#). Although Congress had the authority to reject the recommendation within a 30-day time frame, Congress took no action. Therefore, the SEC designation for this class became effective as of August 12, 2010, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress.

While a new SEC class has been added for employees at BWX Technologies, Inc. (Virginia), NIOSH intends to use any available internal and external monitoring data that may become available for an individual claim (and that can be interpreted using existing NIOSH dose reconstruction processes or procedures). Additionally, NIOSH can estimate occupational medical dose. This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

**References:** Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83.14, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the July 13, 2010 letter to Congress from the Secretary of HHS in which Secretary Sebelius makes the designation; SEC Petition Report for BWX Technologies, Inc. (Virginia).

**Purpose:** To provide procedures for processing SEC claims for workers at BWX Technologies, Inc. in Lynchburg, Virginia.

**Applicability:** All staff.

**Actions:**

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at BWX Technologies, Inc. (Virginia) during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also

includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.

3. The district offices are to use the comprehensive list as the basis for an initial screening of cases associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is likely to meet the criteria for inclusion into the SEC. A screening worksheet is included as [Attachment 2](#). The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case file. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. Claim status codes have been created in ECMS to reflect each of these categories: **ISL** (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; **ISU** (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and **ISD** (Initial SEC Screening, Development Needed) for those for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, in this instance, **017** (Reviewed under Bulletin 10-17, BWX Technologies, Inc. (Virginia) SEC). Once the worksheet is completed, the claims examiner (CE) is to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the **ISL**, **ISU**, and **ISD** codes is to correspond with the completion date of the screening worksheet. BWX Technologies, Inc. (Virginia) is an Atomic Weapons Employer (AWE). As such, there are no Part E coding implications.

The purpose of this initial screening is to assist the district offices in prioritizing claims poised for acceptance and for purposes of meeting operational plan goals. Once screening and prioritization is complete, claims adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each case must be evaluated formally for SEC inclusion and the decision recorded in ECMS. The initial screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims submitted after the list is generated. These claims will be evaluated for inclusion in the SEC class in the general course of processing.

4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, complete the worksheet and related coding.

5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD, in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class, and that his or her case is being returned to the DOL for adjudication. A copy of the NIOSH letter to affected BWX Technologies, Inc. (Virginia) employees is included as [Attachment 3](#). The CE must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code “**NW**” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the “**NW**” code entry is August 12, 2010. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC class, and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this Bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE),

notifies the appropriate point of contact at NIOSH via e-mail to return the dose reconstruction analysis records. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the status code “**NW**” with a status effective date of August 12, 2010. In addition, the CE must write a letter to the claimant advising that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this Bulletin, then refer to instructions in Action #15.

6. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual, Chapter 2-0600.7. If the employee has a specified cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.

8. If the employee has a specified cancer, the CE must determine if the worker was a qualified Atomic Weapons Employer (AWE) employee who worked at least 250 workdays at BWX Technologies, Inc. in Lynchburg, Virginia between January 1, 1959 and December 31, 1959 and/or between January 1, 1968 and December 31, 1972. If the employee does not have 250 workdays at BWX Technologies, Inc. (Virginia), the CE must review the file to determine if additional days in the SEC can be found by combining days from employment meeting the criteria for other classes in the SEC and aggregating them together to meet the 250-workday requirement. If the 250 workday requirement is not satisfied, the CE proceeds to Action #10.

Based on the description provided in NIOSH’s SEC evaluation report, the facility designation for BWX Technologies, Inc. (Virginia) includes two separately-licensed locations in Lynchburg, Virginia, that have performed work for a variety of Atomic Energy Commission (AEC) and DOE projects. During various periods of the site’s operating history, the Nuclear Navy Fuels Division (NNFD) has been referred to as the ‘main plant’ at Mount Athos, the Nuclear Facilities Plant (NFP), the Nuclear Products Division (NPD), or the Nuclear Operations Group – Lynchburg (NOG-L). The second location is the Lynchburg Technology Center (LTC), formerly called the Lynchburg Research Center (LRC).

The LTC is comprised of four main buildings (A, B, C, and D) and several support buildings and areas (e.g., Liquid Waste Disposal, Building J, silos). BWX Technologies, Inc. (Virginia) employees who were employed at either location qualify for consideration in the SEC class.

9. Once the CE has determined that the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

If it is determined that the case does qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail, so that NIOSH can close out their file. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file.

ECMS Coding Reminder: The “**SE**” (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the date of the recommended decision to approve.

For all claims where BWX Technologies, Inc. (Virginia) employment is claimed, regardless of whether the SEC criteria are met, the SEC site code “**BWX Technologies, Inc. (Virginia)**” must be selected under the “**SEC/SEC Desc**” field on the claim screen.

10. Although HHS determined that it is not feasible for NIOSH to perform complete dose reconstructions for this class of employees, NIOSH has indicated that partial dose reconstructions

are possible. Accordingly, for cases that do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code “**NI**” (Sent to NIOSH) in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code “**NI**” (Sent to NIOSH) into ECMS B, with a status effective date equal to the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-specified cancer, insufficient latency period or does not meet the 250-workday requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for dose reconstruction and the reason(s) it does not qualify for the SEC class. The CE is to send a copy of this letter to NIOSH.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “**NR**” (NIOSH Dose Reconstruction Received) in ECMS B and selects the “**PD**” (Partial Dose Reconstruction) reason code. The status effective date is the date the dose reconstruction report is date-stamped into the district office. The CE should not delete the “**NW**” (NIOSH, returned without a dose reconstruction) or “**NI**” (Sent to NIOSH) codes already present in ECMS.

11. If the claim meets the SEC class employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction resulting in a probability of causation (PoC) of 50 percent or greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and, if necessary, concurrently prepares a NRSD to NIOSH for a dose reconstruction for the non-specified cancer to determine eligibility for medical benefits. The CE enters status code “**SE**” (Confirmed as SEC claim) and the “**NI**” (Sent to NIOSH) code into ECMS B. The status effective date for the “**SE**” code is the date of the recommended decision to accept the specified cancer. The status effective date for the “**NI**” code is the date of the Senior or Supervisory CE signature on the NRSD.

12. If a claim has a final decision to deny based on a PoC of less than 50%, and a review of the evidence of record establishes likely inclusion in the SEC class, the case is reopened. In the exercise of the DEEOIC Director’s discretion in the reopening process, the Director is delegating limited authority to the four District Directors and Assistant District Directors (ADDs), at the discretion of the District Director, to sign Director’s Orders for reopening of these cases. This delegated authority is limited to reopenings based upon evidence that a BWX Technologies, Inc. (Virginia) employee meets the criteria for placement into the BWX Technologies, Inc. (Virginia) SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director or ADD is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided in [Attachment 4](#). The DEEOIC Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is responsible for issuing a new recommended decision.

13. For those cases which are reopened under the authority granted in this Bulletin, the District Director or ADD enters status code “**MN**” (NO Initiates Review for Reopening) in ECMS B with a status effective date equal to the effective date of this Bulletin. For all reopenings per this Bulletin, upon completing the Director’s Order to reopen the claim, the District Director or ADD enters

status code “**MD**” (Claim Reopened – File Returned to DO) into ECMS B to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “**MZ**” status code is not necessary). The status effective date of the “**MD**” code is the date of the Director’s Order. Please note that while the “**MD**” code is generally input by National Office staff, entry of this code has been delegated to the District Director and ADD, just as the authority to grant reopenings has been delegated in this specific circumstance.

14. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending BWX Technologies, Inc. (Virginia) cases that have a recommended decision to deny. All cases on the comprehensive list identified in Action #2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at BWX Technologies, Inc. (Virginia) during the period specified, has a specified cancer, and meets the 250-workday requirement, the FAB is to reverse the district office’s recommended decision to deny, and accept the case. The CE or FAB staff member enters status code “**F6**” (FAB Reversed to Accept) with the appropriate Reason Code into ECMS B to reflect the FAB reversal with a status effective date equal to the date of the final decision to approve. The CE or FAB staff person enters status code “**SE**” (Confirmed as SEC Claim) into ECMS B with the status effective date equal to the date of the final decision to approve.

For all claims where BWX Technologies, Inc. (Virginia) employment is claimed, regardless of whether the SEC criteria are met, the SEC site code “**BWX Technologies, Inc. (Virginia)**” must be selected under the “**SEC/SEC Desc**” field on the claim screen.

If no action is required, FAB must follow the instructions specified in Action #15, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the district office. If FAB determines that the case cannot be approved based on the new SEC designation and that re-referral to NIOSH is appropriate (see Action #10), the CE or FAB staff member remands the case for district office action. The CE or FAB staff member enters status code “**F7**” (FAB Remanded) with “**OTH**” (No DO Error – Other) as the reason code, with a status effective date equal to the date of the remand.

15. If, after review or further development, the CE or FAB staff member determines that a case on the list does not require any action, the CE or FAB staff member must write a brief memo to the file indicating that the file was reviewed and noting the reason why no additional action is necessary. A case classified as not requiring any action is a case that does not meet the SEC criteria and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must code “**NA**” (No Action Necessary) and then select the appropriate reason code from the reason code drop down list. Since the “**NA**” coding is specifically tied to the SEC review list generated by DEEOIC, the “**NA**” code is restricted to ECMS B only because the SEC review list is derived from Part B data. For BWX Technologies, Inc. (Virginia) cases that were reviewed under this Bulletin and require no additional action, the reason code that must be selected is “**017**” (Reviewed under Bulletin 10-17, BWX Technologies, Inc. (Virginia) SEC) and be coded into ECMS B only. The status effective date of the “**NA**” code is the date of the memo to the file stating the review is complete, and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the “**NA-017**” code is not entered initially. The “**NA-017**” code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the “**NA-017**” code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “**NA-017**” code in addition to the closure code. The status effective date for the “**NA**” coding is the

date of the memorandum to file.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

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Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections

**10-18 St. Louis Airport Storage Site (SLAPS) SEC class from January 3, 1947 through November 2, 1971**

EEOICPA BULLETIN NO. 10-18

Issue Date: August 13, 2010

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Effective Date: August 13, 2010

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Expiration Date: August 13, 2011

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Subject: St. Louis Airport Storage Site (SLAPS) SEC class from January 3, 1947 through November 2, 1971

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from SLAPS, St. Louis, Missouri, to be added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and determined that it qualified for evaluation under 42 C.F.R. § 83.13. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On June 11, 2010, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at SLAPS.

On July 14, 2010, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress:

All employees of the Department of Energy, its predecessor agencies, and its contractors and subcontractors who worked in any area and in any job capacity at the St. Louis Airport Storage Site in St. Louis, Missouri from January 3, 1947 through November 2, 1971, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more of the other classes of employees in the Special Exposure Cohort.

A copy of the Secretary’s letter to Congress recommending the designation is included at

[Attachment 1](#). Although Congress had the authority to reject the recommendation within a 30-day time frame, Congress took no action. Therefore, the SEC designation for this class became effective as of August 13, 2010, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress.

NIOSH intends to use any available internal and external monitoring data that may become available for an individual claim (and that can be interpreted using existing NIOSH dose reconstruction processes or procedures). Additionally, NIOSH can estimate occupational medical dose. This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

**References:** Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the July 14, 2010 letter to Congress from the Secretary of HHS in which Secretary Sebelius makes the designation; SEC Petition Report for SLAPS.

**Purpose:** To provide procedures for processing SEC claims for workers at SLAPS, St. Louis, Missouri.

**Applicability:** All staff.

**Actions:** asses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.

2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at SLAPS during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.

3. The district offices are to use the comprehensive list as the basis for an initial screening of cases associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is likely to meet the criteria for inclusion in the SEC. A screening worksheet is included as [Attachment 2](#). The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case file. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. Claim status codes have been created in ECMS to reflect each of these categories: **ISL** (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; **ISU** (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and **ISD** (Initial SEC Screening, Development Needed) for those for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, in this instance, **018** (Reviewed under 10-18, St. Louis Airport Storage Site (SLAPS), St. Louis, Missouri SEC). Once the worksheet is completed, the claims examiner (CE) is to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the **ISL**, **ISU**, and **ISD** codes is to correspond with the completion date of the screening worksheet.

The purpose of this initial screening is to assist the district offices in prioritizing claims poised for acceptance. Once screening and prioritization is complete, claims adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each case must be evaluated formally for SEC inclusion and the decision recorded in ECMS. The initial screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims submitted after the

list is generated. These claims will be evaluated for inclusion in the SEC class in the general course of processing.

4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, complete the worksheet and enter related coding.

5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class, and that his or her case is being returned to the DOL for adjudication. A copy of the NIOSH letter to affected SLAPS claimants is included as [Attachment 3](#). The CE must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code “NW” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the “NW” code entry is August 13, 2010. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record. The standard procedure for NIOSH coding in ECMS E is to code all additional NIOSH actions only if the “NI” (Sent to NIOSH) status code has been entered. Therefore, the CE enters the “NW” code into ECMS E with the status effective date of August 13, 2010, only if “NI” has already been entered in ECMS E.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC class, and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this Bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e-mail to return the dose reconstruction analysis records. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the status code “NW” with a status effective date of August 13, 2010. In addition, the CE must write a letter to the claimant advising that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this Bulletin, then refer to instructions in Action #15.

6. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual, Chapter 2-0600.7. If the employee has a specified cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.

8. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 workdays at SLAPS, St. Louis, Missouri between January 3, 1947 and November 2, 1971.

Based on the description provided in NIOSH’s SEC evaluation report, beginning in the mid 1940s, the Manhattan Engineer District (MED) acquired a 21.7 acre site north of the St. Louis International Airport to be used as a storage site for residues resulting from the processing of uranium ores. Most of the materials stored at the site (now referred to as the St. Louis Airport Storage site or SLAPS) were residues generated by Mallinckrodt Chemical Works during uranium processing operations for

the Atomic Energy Commission (AEC) from 1946 through 1953. The residues remained at SLAPS after Mallinckrodt ceased production until they were sold to a private company in 1966. From 1966 through 1969, most of the stored materials were removed from the SLAPS site; however, some contaminated wastes were buried on site.

Once 250 days of SLAPS employment during the class period is established, the CE or hearing representative can accept that the employment component of the SEC class is satisfied. In these cases, the CE proceeds to Action #9.

If the employee does not have 250 workdays at SLAPS, the CE must review the file to determine if additional days in the SEC can be found by combining days from employment meeting the criteria for other classes in the SEC and aggregating them together to meet the 250-workday requirement. If the 250 workday requirement is not satisfied, the CE proceeds to Action #10.

9. Once the CE has determined that the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

If it is determined that the case does qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail, so that NIOSH can close out their file. The SrCE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file.

ECMS Coding Reminder: The "**SE**" (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the date of the recommended decision to approve. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the "**SE**" code must also be entered into ECMS E with a status effective date equal to the date of the recommended decision to approve under Part E.

For all claims where SLAPS employment is claimed, regardless of whether the SEC criteria are met, the SEC site code "**St. Louis Airport Storage Site (SLAPS)**" must be selected under the "**SEC/SEC Desc**" field on the claim screen.

10. Although NIOSH determined that it is not feasible for NIOSH to perform complete dose reconstructions for this class of employees, NIOSH has indicated that partial dose reconstructions are possible. Accordingly, for cases that have not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code "**NI**" in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the "**NI**" code is not entered into ECMS E until non-radiological toxic exposure development is complete.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code "**NI**" into ECMS B, with a status effective date equal to the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction; e.g., non-specified cancer, insufficient latency period or does not meet the 250-workday requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for a dose reconstruction and the reason(s) it does not qualify for the SEC class. The CE is to send a copy of this letter to NIOSH. If the case is a B/E case, and toxic exposure development was completed with a memorandum to the file (with a prior "**NI**"/"**NW**" code), the CE enters status code "**NI**" into ECMS E with the status effective date of the e-mail requesting NIOSH to proceed with dose reconstruction.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “**NR**” (NIOSH Dose Reconstruction Received) in ECMS B and selects the “**PD**” (Partial Dose Reconstruction) reason code. The status effective date is the date the dose reconstruction report is date-stamped into the district office. The CE should not delete the “**NW**” or “**NI**” codes already present in ECMS. If the CE had previously entered “**NI**” in ECMS E, the CE also enters codes “**NR**” and “**PD**” in ECMS E. If the case is a B/E case, the CE enters the Probability of Causation (PoC) into ECMS B and ECMS E (regardless of whether the “**NI**” code had previously been entered).

11. If the claim meets the SEC employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction resulting in a probability of causation (PoC) of 50% or greater and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and any cancers for which there is a PoC of 50% or greater. The CE enters status code “**SE**” into ECMS B. The status effective date for the “**SE**” code is the date of the recommended decision to accept the specified cancer. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the “**SE**” code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

If necessary, the CE concurrently prepares a NRSD to NIOSH for a dose reconstruction for any non-specified cancer(s) to determine eligibility for medical benefits. The CE enters status code “**NI**” into ECMS B. The status effective date for the “**NI**” code is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the CE enters status code “**NI**” in ECMS E only after the non-radiological toxic exposure development is complete and the CE cannot accept causation. In that case the CE creates a memorandum to file stating that toxic exposure development is complete, and enters status code “**NI**” in ECMS E with the date of the memorandum as the status effective date.

12. If a claim has a final decision to deny based on a PoC of less than 50%, and a review of the evidence of record establishes likely inclusion in the SEC class, the case is reopened. In the exercise of the DEEOIC Director’s discretion in the reopening process, the Director is delegating limited authority to the four District Directors and the Assistant District Directors (ADDs), at the discretion of the DD, to sign the Director’s Orders for reopening of these cases. This delegated authority is limited to reopenings based upon evidence that a SLAPS employee meets the criteria for placement into the SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided in [Attachment 4](#). The DEEOIC Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is responsible for issuing a new recommended decision.

13. For those cases reopened under the authority granted in this Bulletin, the District Director or ADD enters status code “**MN**” (NO Initiates Review for Reopening) in ECMS B with a status effective date equal to the effective date of this Bulletin. If the District Director or ADD is also reopening Part E, an “**MN**” code is also entered into ECMS E. For all reopenings per this Bulletin, upon completing the Director’s Order to reopen the claim, the District Director or ADD enters status code “**MD**” (Claim Reopened – File Returned to DO) into ECMS B/E (as appropriate) to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “**MZ**” status code, receipt of Director’s Order in the DO or FAB, is not necessary.) The status effective date of the “**MD**” code is the date of the Director’s Order. Please note that while the “**MD**” code is generally input by National Office staff, entry of this code has been delegated to the District Director or ADD, just as the authority to grant reopenings has been delegated in this specific circumstance.

14. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending SLAPS cases that have a recommended decision to deny. All cases on the comprehensive list identified in Action #2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at SLAPS during the time period specified, has a specified cancer, and meets the 250-workday requirement, the FAB is to reverse the district office's recommended decision to deny, and accept the case. The CE or FAB staff member enters status code "F6" (FAB Reversed to Accept) with the appropriate reason code into ECMS B/E (as appropriate) to reflect the FAB reversal with a status effective date equal to the date of the final decision to accept. The CE or FAB staff member also enters status code "SE" in ECMS B/E (as appropriate) with a status effective date equal to the date of the final decision to accept.

For all claims where SLAPS employment is claimed, regardless of whether the SEC criteria are met, the SEC site code "**St. Louis Airport Storage Site (SLAPS)**" must be selected under the "**SEC/SEC Desc**" field on the claim screen.

If no action is required, FAB must follow the instructions specified in Action #15, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the district office. If FAB determines that the case cannot be accepted based on the new SEC designation and that re-referral to NIOSH is appropriate (see Action #10), the CE or FAB staff member remands the case for district office action. The CE or FAB staff member enters status code "F7" (FAB Remanded) with "OTH" (No DO Error – Other) as the reason code in ECMS B/E (as appropriate), with a status effective date equal to the date of the remand.

15. If, after review or further development, the CE or FAB staff member determines that a case on the list does not require any action, the CE or FAB staff member must write a brief memo to the file indicating that the file was reviewed and note the reason why no additional action is necessary. A case classified as not requiring any action is a case that does not meet the SEC criteria, and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must then code "NA" (No Action Necessary) and select the appropriate reason code from the reason code drop down list. Since the "NA" coding is specifically tied to the SEC review list generated by DEEOIC, the "NA" code is restricted to ECMS B. This is because the SEC review list is derived from Part B data. For SLAPS cases that were reviewed under this Bulletin and require no additional action, the reason code that must be selected is **018** (Reviewed under 10-18, St. Louis Airport Storage Site (SLAPS), St. Louis, Missouri SEC) and be coded into ECMS B only, even if the case is a B/E case. The status effective date of the "NA" code is the date of the memo to the file stating the review is complete, and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the "NA-018" code is not entered initially. The "NA-018" code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the "NA-018" code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the "NA-018" code in addition to the closure code. The status effective date for the "NA" coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the EEOICPA Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections.

### **10-19 Downey Facility SEC Class from January 1, 1948 through December 31, 1955**

EEOICPA BULLETIN NO. 10-19

Issue Date: August 12, 2010

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Effective Date: August 12, 2010

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Expiration Date: August 12, 2011

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Subject: Downey Facility SEC Class from January 1, 1948 through December 31, 1955

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from the Downey Facility in Los Angeles County, California to be added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and determined that it qualified for evaluation. NIOSH submitted its findings to the Advisory Board on Radiation and Worker Health (“the Board”). On June 11, 2010, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at the Downey Facility in Los Angeles County, California.

On July 13, 2010, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress:

All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors who worked at the Downey Facility in Los Angeles County, California from January 1, 1948 through December 31, 1955, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

A copy of the Secretary’s letter to Congress recommending the designation is included as [Attachment 1](#). Although Congress had the authority to reject the recommendation within a 30-day time frame, Congress took no action. Therefore, the SEC designation for this class became effective as of August 12, 2010, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress.

NIOSH intends to use any available internal and external monitoring data that may become available for an individual claim (and that can be interpreted using existing NIOSH dose reconstruction processes or procedures). Additionally, NIOSH can estimate occupational medical dose. This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42

U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the July 13, 2010 letter to Congress from the Secretary of HHS in which Secretary Sebelius makes the designation; SEC Petition Report for the Downey Facility.

Purpose: To provide procedures for processing SEC claims for workers at the Downey Facility in Los Angeles County, California.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at the Downey Facility during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.
3. The district offices are to use the comprehensive list as the basis for an initial screening of cases associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is likely to meet the criteria for inclusion in the SEC. A screening worksheet is included as [Attachment 2](#). The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case file. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. Claim status codes have been created in ECMS to reflect each of these categories: **ISL** (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; **ISU** (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and **ISD** (Initial SEC Screening, Development Needed) for those for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, in this instance, **019** (Reviewed under 10-19, Downey Facility SEC). Once the worksheet is completed, the claims examiner (CE) is to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the **ISL**, **ISU**, and **ISD** codes is to correspond with the completion date of the screening worksheet.

The purpose of this initial screening is to assist the district offices in prioritizing claims poised for acceptance. Once screening and prioritization is complete, claims adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each case must be evaluated formally for SEC inclusion and the decision recorded in ECMS. The initial screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims submitted after the list is generated. These claims will be evaluated for inclusion in the SEC class in the general course of processing.

4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, complete the worksheet and enter related coding.
5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD in the Correspondence Folder, should be a copy of the

NIOSH letter sent to each claimant informing the claimant of the new SEC class, and that his or her case is being returned to the DOL for adjudication. A copy of the NIOSH letter to affected Downey Facility claimants is included as [Attachment 3](#). The CE must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code “**NW**” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the “**NW**” code entry is August 12, 2010. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record. The standard procedure for NIOSH coding in ECMS E is to code all additional NIOSH actions only if the “**NI**” (Sent to NIOSH) status code has been entered. Therefore, the CE enters the “**NW**” code into ECMS E with the status effective date of August 12, 2010, only if “**NI**” has already been entered in ECMS E.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC class, and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this Bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e-mail to return the dose reconstruction analysis records. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the status code “**NW**” with a status effective date of August 12, 2010. In addition, the CE must write a letter to the claimant advising that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this Bulletin, then refer to instructions in Action #15.

6. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual, Chapter 2-0600.7. If the employee has a specified cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.

8. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 workdays at the Downey Facility in Los Angeles County, California between January 1, 1948 and December 31, 1955.

Once 250 days of Downey Facility employment during the class period is established, the CE or hearing representative can accept that the employment component of the SEC class is satisfied. In these cases, the CE proceeds to Action #9.

If the employee does not have 250 workdays at the Downey Facility, the CE must review the file to determine if additional days in the SEC can be found by combining days from employment meeting the criteria for other classes in the SEC and aggregating them together to meet the 250-workday requirement. If the 250 workday requirement is not satisfied, the CE proceeds to Action #10.

9. Once the CE has determined that the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

If it is determined that the case does qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail, so that NIOSH can close out their file. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it

was sent) for inclusion in the case file.

ECMS Coding Reminder: The “**SE**” (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the date of the recommended decision to approve. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the “**SE**” code must also be entered into ECMS E with a status effective date equal to the date of the recommended decision to approve under Part E.

For all claims where Downey Facility employment is claimed, regardless of whether the SEC criteria are met, the SEC site code “**Downey Facility**” must be selected under the “**SEC/SEC Desc**” field on the claim screen.

10. Although NIOSH determined that it is not feasible for NIOSH to perform complete dose reconstructions for this class of employees, NIOSH has indicated that partial dose reconstructions are possible. Accordingly, for cases that have not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code “**NI**” in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the “**NI**” code is not entered into ECMS E until non-radiological toxic exposure development is complete.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code “**NI**” into ECMS B, with a status effective date equal to the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction; e.g., non-specified cancer, insufficient latency period or does not meet the 250-workday requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for a dose reconstruction and the reason(s) it does not qualify for the SEC class. The CE is to send a copy of this letter to NIOSH. If the case is a B/E case, and toxic exposure development was completed with a memorandum to the file (with a prior “**NI**”/“**NW**” code), the CE enters status code “**NI**” into ECMS E with the status effective date of the e-mail requesting NIOSH to proceed with dose reconstruction.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “**NR**” (NIOSH Dose Reconstruction Received) in ECMS B and selects the “**PD**” (Partial Dose Reconstruction) reason code. The status effective date is the date the dose reconstruction report is date-stamped into the district office. The CE should not delete the “**NW**” or “**NI**” codes already present in ECMS. If the CE had previously entered “**NI**” in ECMS E, the CE also enters codes “**NR**” and “**PD**” in ECMS E. If the case is a B/E case, the CE enters the Probability of Causation (PoC) into ECMS B and ECMS E (regardless of whether the “**NI**” code had previously been entered).

11. If the claim meets the SEC employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction resulting in a probability of causation (PoC) of 50% or greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and any cancers for which there is a PoC of 50% or greater. The CE enters status code “**SE**” into ECMS B. The status effective date for the “**SE**” code is the date of the recommended decision to accept the specified cancer. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the “**SE**” code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

If necessary, the CE concurrently prepares a NRSD to NIOSH for a dose reconstruction for any non-specified cancer(s) to determine eligibility for medical benefits. The CE enters status code “**NI**” into ECMS B. The status effective date for the “**NI**” code is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the CE enters status code “**NI**” in ECMS E only after the non-radiological toxic exposure development is complete and the CE cannot accept causation. In that case the CE creates a memorandum to file stating that toxic exposure development is complete, and enters status code “**NI**” in ECMS E with the date of the memorandum as the status effective date.

12. If a claim has a final decision to deny based on a PoC of less than 50%, and a review of the evidence of record establishes likely inclusion in the SEC class, the case is reopened. In the exercise of the DEEOIC Director’s discretion in the reopening process, the Director is delegating limited authority to the four District Directors and the Assistant District Directors (ADDs), at the discretion of the DD, to sign the Director’s Orders for reopening of these cases. This delegated authority is limited to reopenings based upon evidence that a Downey Facility employee meets the criteria for placement into the SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided in [Attachment 4](#). The DEEOIC Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is responsible for issuing a new recommended decision.

13. For those cases reopened under the authority granted in this Bulletin, the District Director or ADD enters status code “**MN**” (NO Initiates Review for Reopening) in ECMS B with a status effective date equal to the effective date of this Bulletin. If the District Director or ADD is also reopening Part E, an “**MN**” code is also entered into ECMS E. For all reopenings per this Bulletin, upon completing the Director’s Order to reopen the claim, the District Director or ADD enters status code “**MD**” (Claim Reopened – File Returned to DO) into ECMS B/E (as appropriate) to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “**MZ**” status code, receipt of Director’s Order in the DO or FAB, is not necessary.) The status effective date of the “**MD**” code is the date of the Director’s Order. Please note that while the “**MD**” code is generally input by National Office staff, entry of this code has been delegated to the District Director or ADD, just as the authority to grant reopenings has been delegated in this specific circumstance.

14. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending Downey Facility cases that have a recommended decision to deny. All cases on the comprehensive list identified in Action #2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at the Downey Facility during the time period specified, has a specified cancer, and meets the 250-workday requirement, the FAB is to reverse the district office’s recommended decision to deny, and accept the case. The CE or FAB staff member enters status code “**F6**” (FAB Reversed to Accept) with the appropriate reason code into ECMS B/E (as appropriate) to reflect the FAB reversal with a status effective date equal to the date of the final decision to accept. The CE or FAB staff member also enters status code “**SE**” in ECMS B/E (as appropriate) with a status effective date equal to the date of the final decision to accept.

For all claims where Downey Facility employment is claimed, regardless of whether the SEC criteria are met, the SEC site code “**Downey Facility**” must be selected under the “**SEC/SEC Desc**” field on the claim screen.

If no action is required, FAB must follow the instructions specified in Action #15, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the district office. If FAB determines that the case cannot be accepted based on the new SEC designation and that re-referral to NIOSH is appropriate (see Action #10), the CE or FAB staff member remands the case

for district office action. The CE or FAB staff member enters status code “F7” (FAB Remanded) with “OTH” (No DO Error – Other) as the reason code in ECMS B/E (as appropriate), with a status effective date equal to the date of the remand.

15. If, after review or further development, the CE or FAB staff member determines that a case on the list does not require any action, the CE or FAB staff member must write a brief memo to the file indicating that the file was reviewed and note the reason why no additional action is necessary. A case classified as not requiring any action is a case that does not meet the SEC criteria, and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must then code “NA” (No Action Necessary) and select the appropriate reason code from the reason code drop down list. Since the “NA” coding is specifically tied to the SEC review list generated by DEEOIC, the “NA” code is restricted to ECMS B. This is because the SEC review list is derived from Part B data. For Downey Facility in Los Angeles County, California cases that were reviewed under this Bulletin and require no additional action, the reason code that must be selected is 019 (Reviewed under 10-19, Downey Facility, Los Angeles County, California SEC) and be coded into ECMS B only, even if the case is a B/E case. The status effective date of the “NA” code is the date of the memo to the file stating the review is complete, and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the “NA-019” code is not entered initially. The “NA-019” code is only entered when the CE determines after development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the “NA-019” code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “NA-019” code in addition to the closure code. The status effective date for the “NA” coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the EEOICPA Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections.

### **10-20 University of Rochester Atomic Energy Project SEC Class from September 1, 1943 through October 30, 1971**

EEOICPA BULLETIN NO. 10-20

Issue Date: August 12, 2010

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Effective Date: August 12, 2010

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Expiration Date: August 12, 2010

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Subject: University of Rochester Atomic Energy Project SEC Class from September 1, 1943 through October 30, 1971

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from the University of Rochester Atomic Energy Project in Rochester, New York to be added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and determined that it qualified for evaluation under 42 C.F.R. § 83.13. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On June 11, 2010, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at the University of Rochester Atomic Energy Project.

On July 13, 2010, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress:

All employees of the Department of Energy, its predecessor agencies, and its contractors and subcontractors who worked at the University of Rochester Atomic Energy Project in Rochester, New York, from September 1, 1943 through October 30, 1971, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more of the other classes of employees in the Special Exposure Cohort.

A copy of the Secretary’s letter to Congress recommending the designation is included as [Attachment 1](#). Although Congress had the authority to reject the recommendation within a 30-day time frame, Congress took no action. Therefore, the SEC designation for this class became effective as of August 12, 2010, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress.

NIOSH intends to use any available internal and external monitoring data that may become available for an individual claim (and that can be interpreted using existing NIOSH dose reconstruction processes or procedures). Additionally, NIOSH can estimate occupational medical dose. This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the July 13, 2010 letter to Congress from the Secretary of HHS in which Secretary Sebelius makes the designation; SEC Petition Report for the University of Rochester Atomic Energy Project.

Purpose: To provide procedures for processing SEC claims for workers at the University of Rochester Atomic Energy Project, Rochester, New York.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared

a list of cases with claimed employment at the University of Rochester Atomic Energy Project during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.

3. The district offices are to use the comprehensive list as the basis for an initial screening of cases associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is likely to meet the criteria for inclusion in the SEC. A screening worksheet is included as [Attachment 2](#). The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case file. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. Claim status codes have been created in ECMS to reflect each of these categories: **ISL** (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; **ISU** (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and **ISD** (Initial SEC Screening, Development Needed) for those for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, in this instance, **020** (Reviewed under 10-20, University of Rochester Atomic Energy Project, Rochester, New York SEC). Once the worksheet is completed, the claims examiner (CE) is to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the **ISL**, **ISU**, and **ISD** codes is to correspond with the completion date of the screening worksheet.

The purpose of this initial screening is to assist the district offices in prioritizing claims poised for acceptance. Once screening and prioritization is complete, claims adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each case must be evaluated formally for SEC inclusion and the decision recorded in ECMS. The initial screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims submitted after the list is generated. These claims will be evaluated for inclusion in the SEC class in the general course of processing.

4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, complete the worksheet and enter related coding.

5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class, and that his or her case is being returned to the DOL for adjudication. A copy of the NIOSH letter to affected University of Rochester Atomic Energy Project claimants is included as [Attachment 3](#). The CE must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code “**NW**” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the “**NW**” code entry is August 12, 2010. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record. The standard procedure for NIOSH coding in ECMS E is to code all additional NIOSH actions only if the “**NI**” (Sent to NIOSH) status code has been entered. Therefore, the CE enters the “**NW**” code into ECMS E with the status effective date of August 12, 2010, only if “**NI**” has already been entered in

## ECMS E.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC class, and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this Bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e-mail to return the dose reconstruction analysis records. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the status code “NW” with a status effective date of August 12, 2010. In addition, the CE must write a letter to the claimant advising that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this Bulletin, then refer to instructions in Action #15.

6. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual, Chapter 2-0600.7. If the employee has a specified cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.

8. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 workdays at the University of Rochester Atomic Energy Project, Rochester, New York, between September 1, 1943 and October 30, 1971.

Once 250 days of University of Rochester Atomic Energy Project employment during the class period is established, the CE or hearing representative can accept that the employment component of the SEC class is satisfied. In these cases, the CE proceeds to Action #9.

If the employee does not have 250 workdays at the University of Rochester Atomic Energy Project, the CE must review the file to determine if additional days in the SEC can be found by combining days from employment meeting the criteria for other classes in the SEC and aggregating them together to meet the 250-workday requirement. If the 250 workday requirement is not satisfied, the CE proceeds to Action #10.

9. Once the CE has determined that the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

If it is determined that the case does qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail, so that NIOSH can close out their file. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file.

ECMS Coding Reminder: The “SE” (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the date of the recommended decision to approve. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the “SE” code must also be entered into ECMS E with a status effective date equal to the date of the recommended decision to approve under Part E.

For all claims where University of Rochester Atomic Energy Project employment is claimed, regardless of whether the SEC criteria are met, the SEC site code “**University of Rochester Atomic Energy Project SEC**” must be selected under the “SEC/SEC Desc” field on the claim screen.

10. Although NIOSH determined that it is not feasible for NIOSH to perform complete dose

reconstructions for this class of employees, NIOSH has indicated that partial dose reconstructions are possible. Accordingly, for cases that have not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code **“NI”** in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the **“NI”** code is not entered into ECMS E until non-radiological toxic exposure development is complete.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the **“sent”** e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code **“NI”** into ECMS B, with a status effective date equal to the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction; e.g., non-specified cancer, insufficient latency period or does not meet the 250-workday requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for a dose reconstruction and the reason(s) it does not qualify for the SEC class. The CE is to send a copy of this letter to NIOSH. If the case is a B/E case, and toxic exposure development was completed with a memorandum to the file (with a prior **“NI”/“NW”** code), the CE enters status code **“NI”** into ECMS E with the status effective date of the e-mail requesting NIOSH to proceed with dose reconstruction.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code **“NR”** (NIOSH Dose Reconstruction Received) in ECMS B and selects the **“PD”** (Partial Dose Reconstruction) reason code. The status effective date is the date the dose reconstruction report is date-stamped into the district office. The CE should not delete the **“NW”** or **“NI”** codes already present in ECMS. If the CE had previously entered **“NI”** in ECMS E, the CE also enters codes **“NR”** and **“PD”** in ECMS E. If the case is a B/E case, the CE enters the Probability of Causation (PoC) into ECMS B and ECMS E (regardless of whether the **“NI”** code had previously been entered).

11. If the claim meets the SEC employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction resulting in a probability of causation (PoC) of 50% or greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and any cancers for which there is a PoC of 50% or greater. The CE enters status code **“SE”** into ECMS B. The status effective date for the **“SE”** code is the date of the recommended decision to accept the specified cancer. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the **“SE”** code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

If necessary, the CE concurrently prepares a NRSD to NIOSH for a dose reconstruction for any non-specified cancer(s) to determine eligibility for medical benefits. The CE enters status code **“NI”** into ECMS B. The status effective date for the **“NI”** code is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the CE enters status code **“NI”** in ECMS E only after the non-radiological toxic exposure development is complete and the CE cannot accept causation. In that case the CE creates a memorandum to file stating that toxic exposure development is complete, and enters status code **“NI”** in ECMS E with the date of the memorandum as the status effective date.

12. If a claim has a final decision to deny based on a PoC of less than 50%, and a review of the evidence of record establishes likely inclusion in the SEC class, the case is reopened. In the

exercise of the DEEOIC Director's discretion in the reopening process, the Director is delegating limited authority to the four District Directors and the Assistant District Directors (ADDs), at the discretion of the DD, to sign the Director's Orders for reopening of these cases. This delegated authority is limited to reopenings based upon evidence that a University of Rochester Atomic Energy Project employee meets the criteria for placement into the SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director's Order is provided in [Attachment 4](#). The DEEOIC Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director's Order is issued, the district office is responsible for issuing a new recommended decision.

13. For those cases reopened under the authority granted in this Bulletin, the District Director or ADD enters status code "MN" (NO Initiates Review for Reopening) in ECMS B with a status effective date equal to the effective date of this Bulletin. If the District Director or ADD is also reopening Part E, an "MN" code is also entered into ECMS E. For all reopenings per this Bulletin, upon completing the Director's Order to reopen the claim, the District Director or ADD enters status code "MD" (Claim Reopened – File Returned to DO) into ECMS B/E (as appropriate) to reflect that the case has been reopened and is in the district office's jurisdiction. (The "MZ" status code, receipt of Director's Order in the DO or FAB, is not necessary.) The status effective date of the "MD" code is the date of the Director's Order. Please note that while the "MD" code is generally input by National Office staff, entry of this code has been delegated to the District Director or ADD, just as the authority to grant reopenings has been delegated in this specific circumstance.

14. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending University of Rochester Atomic Energy Project cases that have a recommended decision to deny. All cases on the comprehensive list identified in Action #2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at the University of Rochester Atomic Energy Project during the time period specified, has a specified cancer, and meets the 250-workday requirement, the FAB is to reverse the district office's recommended decision to deny, and accept the case. The CE or FAB staff member enters status code "F6" (FAB Reversed to Accept) with the appropriate reason code into ECMS B/E (as appropriate) to reflect the FAB reversal with a status effective date equal to the date of the final decision to accept. The CE or FAB staff member also enters status code "SE" in ECMS B/E (as appropriate) with a status effective date equal to the date of the final decision to accept.

For all claims where University of Rochester Atomic Energy Project employment is claimed, regardless of whether the SEC criteria are met, the SEC site code "**University of Rochester Atomic Energy Project SEC**" must be selected under the "**SEC/SEC Desc**" field on the claim screen. If no action is required, FAB must follow the instructions specified in Action #15, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the district office. If FAB determines that the case cannot be accepted based on the new SEC designation and that re-referral to NIOSH is appropriate (see Action #10), the CE or FAB staff member remands the case for district office action. The CE or FAB staff member enters status code "F7" (FAB Remanded) with "OTH" (No DO Error – Other) as the reason code in ECMS B/E (as appropriate), with a status effective date equal to the date of the remand.

15. If, after review or further development, the CE or FAB staff member determines that a case on the list does not require any action, the CE or FAB staff member must write a brief memo to the file indicating that the file was reviewed and note the reason why no additional action is necessary. A case classified as not requiring any action is a case that does not meet the SEC criteria, and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must then code “NA” (No Action Necessary) and select the appropriate reason code from the reason code drop down list. Since the “NA” coding is specifically tied to the SEC review list generated by DEEOIC, the “NA” code is restricted to ECMS B. This is because the SEC review list is derived from Part B data. For University of Rochester Atomic Energy Project cases that were reviewed under this Bulletin and require no additional action, the reason code that must be selected is **020** (Reviewed under 10-20, University of Rochester Atomic Energy Project, Rochester, New York SEC) and be coded into ECMS B only, even if the case is a B/E case. The status effective date of the “NA” code is the date of the memo to the file stating the review is complete, and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the “NA-020” code is not entered initially. The “NA-020” code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the “NA-020” code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “NA-020” code in addition to the closure code. The status effective date for the “NA” coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the EEOICPA Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections.

### **10-21 Mound Plant SEC Class for March 1, 1959 through March 5, 1980**

EEOICPA BULLETIN NO.10-21

Issue Date: August 13, 2010

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Effective Date: August 13, 2010

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Expiration Date: August 13, 2011

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Subject: Mound Plant SEC Class for March 1, 1959 through March 5, 1980

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from the Mound Plant in Miamisburg, Ohio to be added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and determined that it qualified for evaluation under 42 C.F.R. § 83.14. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On June 11, 2010, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at the Mound Plant in Miamisburg, Ohio.

On July 14, 2010, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress:

All employees of the Department of Energy (DOE), its predecessor agencies, and its contractors and subcontractors who had at least one tritium bioassay sample and worked at the Mound Plant in Miamisburg, Ohio from March 1, 1959 through March 5, 1980, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

A copy of the Secretary’s letter to Congress recommending the designation is included as [Attachment 1](#). Although Congress had the authority to reject the recommendation within a 30-day time frame, Congress took no action. Therefore, the SEC designation for this class became effective as of August 13, 2010, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress.

NIOSH intends to use any available internal and external monitoring data that may become available for an individual claim (and that can be interpreted using existing NIOSH dose reconstruction processes or procedures). Additionally, NIOSH can estimate occupational medical dose. This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

A previous SEC class pertaining to the Mound Plant, encompassing the period from October 1, 1949 through February 28, 1959, was the subject of Bulletin 08-19. The new Mound Plant SEC class described in this Bulletin is not meant to replace the prior class, but is an addition to the prior Mound Plant SEC class.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the July 14, 2010 letter to Congress from the Secretary of HHS in which Secretary Sebelius makes the designation; SEC Petition Report for the Mound Plant.

Purpose: To provide procedures for processing SEC class claims for workers at the Mound Plant in Miamisburg, Ohio.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at the Mound Plant during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.
3. The district offices are to use the comprehensive list as the basis for an initial screening of cases

associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is likely to meet the criteria for inclusion in the SEC. A screening worksheet is included as [Attachment 2](#). The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case file. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. Claim status codes have been created in ECMS to reflect each of these categories: **ISL** (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; **ISU** (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and **ISD** (Initial SEC Screening, Development Needed) for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, in this instance, **021** (Reviewed under 10-21, Mound Plant SEC). Once the worksheet is completed, the claims examiner (CE) is to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the **ISL**, **ISU** and **ISD** codes is to correspond with the completion date of the screening worksheet.

The purpose of this initial screening is to assist the district offices in prioritizing claims poised for acceptance. Once screening and prioritization is complete, claims adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each case must be evaluated formally for SEC inclusion and the decision recorded in ECMS. The initial screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims submitted after the list is generated. These claims will be evaluated for inclusion in the SEC class in the general course of processing.

4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, complete the worksheet and enter related coding.

5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class, and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected Mound Plant claimants is included as [Attachment 3](#). The CE must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code “**NW**” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the “**NW**” code entry is August 13, 2010. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record. The standard procedure for NIOSH coding in ECMS E is to code all additional NIOSH actions only if the “**NI**” (Sent to NIOSH) status code has been entered. Therefore, the CE enters the “**NW**” code into ECMS E with the status effective date of August 13, 2010, only if “**NI**” has already been entered in ECMS E.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC, and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this Bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e mail to return the dose reconstruction analysis records. The SrCE then prints a copy of the “sent” e mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the status code

“**NW**” with a status effective date of August 13, 2010. In addition, the CE must write a letter to the claimant advising that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this Bulletin, then refer to instructions in Action #15.

6. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the EEOICPA Procedure Manual Chapter 2-0600.7. If the employee has a specified cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.

8. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 workdays at the Mound Plant between March 1, 1959 and March 5, 1980.

Based on information presented in the NIOSH SEC Evaluation report, the Mound Plant was the nation’s first postwar U.S. Atomic Energy Commission (AEC) site to be constructed. Construction of the Mound Plant began in 1946, with polonium processing becoming operational in February 1949. The Mound Plant’s main focus was to support DOE weapons and non-weapons program, especially chemicals explosives and nuclear technology. One of its principal missions was to research, develop, and manufacture non-nuclear explosive components for nuclear weapons that were then assembled at other sites. Mound went on to play an important role in research and development, manufacturing weapons, and evaluation and maintenance of explosive components for the nuclear defense stockpiles. Other work included tritium recovery, isotope separation methods, development and production of heat sources in support of space programs, support of the fossil fuels program, and nuclear-materials processing. Following some earlier research with small quantities of tritium, production of tritium for nuclear weapon applications began during the mid-1950s. Related activities included tritium enrichment, recovery processes, and control of tritium-contaminated wastes.

As part of the class designation, HHS defined the class as encompassing all employees of the DOE, its predecessor agencies, and its contractors and subcontractors who had at least one tritium bioassay sample and worked at the Mound Plant. To assist in the administration of the class, NIOSH provided the DEEOIC with a listing of employee names derived from tritium urinalysis logbooks. The listing provides names of individual employees, and when available their individual employee identification number, who gave urinalysis samples during the Mound SEC class period of March 1, 1959 to March 5, 1980. Any name that appears on the NIOSH provided list is presumed to have had at least one tritium bioassay sample.

For the purposes of evaluating a claim under criteria of this SEC class, the CE is to first compare an employee’s name against the NIOSH provided list of Mound workers who provided urinalysis records. In most situations, the listing provides the worker’s last name, first initial and occasionally the worker’s identification number. However, in some instances, a worker’s last name is the only entry. Any reasonable match between the claimed employee and an entry in the NIOSH listing is to be accepted as a positive finding of at least one tritium bioassay sample. For example, if an employee name is John Doe, but the only entry in the NIOSH listing is “Doe” the CE is to accept that the entry applies to the named employee. Without evidence of tritium bioassay sample, there is no basis to count any days of employment at Mound as qualifying for the SEC designation and the CE is to proceed to item #10.

If the CE can match the employee to a tritium bioassay sample, the next step is to determine if the employee was employed by the DOE, its predecessor agencies or its contractors or subcontractors for an aggregate of at least 250 days at the Mound Plant during the period of March 1, 1959 to March 5, 1980. Once the bioassay and employment requirement of the SEC class is satisfied, the

CE or hearing representative is to accept the employment component of the SEC class. In these cases, the CE proceeds to Action #9.

If the employee is matched to a tritium bioassay, but does not have the requisite 250 workdays of employment at the Mound Plant, the CE is to investigate the file to determine if adding the balance of any SEC qualifying days at Mound with another partial period of SEC employment will satisfy the aggregate work day requirement. Should the 250 workday requirement for the SEC class not be met, the CE is to proceed to #10.

9. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

If it is determined that the case does qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail, so that NIOSH can close out their file. The SrCE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file.

ECMS Coding Reminder: The "**SE**" (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the status effective date of the recommended decision to approve. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the "**SE**" code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

For all claims where Mound Plant employment is claimed, regardless of whether the SEC criteria are met, the SEC site code "**Mound Plant**" must be selected under the "**SEC/SEC Desc**" field on the claim screen.

10. Although NIOSH determined that it is not feasible for NIOSH to perform complete dose reconstructions for this class of employees, NIOSH has indicated that partial dose reconstructions are possible. Accordingly, for cases that have not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code "**NI**" in ECMS B.

The status effective date is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the "**NI**" code is not entered into ECMS E until non-radiological toxic exposure development is complete.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code "**NI**" into ECMS B, with a status effective date equal to the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction; e.g., non-specified cancer, insufficient latency period or does not meet the 250 workday requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for a dose reconstruction and the reason(s) it does not qualify for the SEC class. The CE is to send a copy of this letter to NIOSH. If the case is a B/E case, and toxic exposure development was completed with a memorandum to the file (with a prior "**NI**"/"**NW**" code), the CE enters status code "**NI**" into ECMS E with the status effective date of the e-mail requesting NIOSH to proceed with dose reconstruction.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code "**NR**" (NIOSH Dose Reconstruction Received) in ECMS B and selects the reason code of "**PD**" (Partial Dose Reconstruction). The status effective date is the date the dose reconstruction report is date-stamped into the district office. The CE

should not delete the “**NW**” or “**NI**” codes already present in ECMS. If the CE had previously entered “**NI**” in ECMS E, the CE also enters codes “**NR**” and “**PD**” in ECMS E. If the case is a B/E case, the CE enters the Probability of Causation (PoC) into ECMS B and ECMS E (regardless of whether the “**NI**” code had previously been entered).

11. If the claim meets the SEC employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction resulting in a probability of causation (PoC) of 50% or greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and any cancers for which there is a POC of 50% or greater. The CE enters status code “**SE**” into ECMS B. The status effective date for the “**SE**” code is the date of the recommended decision to accept the specified cancer. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the “**SE**” code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

If necessary, the CE concurrently prepares a NRSD to NIOSH for a dose reconstruction for any non-specified cancer(s) to determine eligibility for medical benefits. The CE enters status code “**NI**” into ECMS B. The status effective date for the “**NI**” code is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the CE enters status code “**NI**” in ECMS E only after the non-radiological toxic exposure development is complete and the CE cannot accept causation. In that case the CE creates a memorandum to file stating that toxic exposure development is complete, and enters status code “**NI**” in ECMS E with the date of the memorandum as the status effective date.

12. If a claim has a final decision to deny based on a PoC of less than 50% and a review of the evidence of record establishes likely inclusion in the SEC class, the case is reopened. In the exercise of the DEEOIC Director’s discretion in the reopening process, the Director is delegating limited authority to the four District Directors and the Assistant District Directors (ADDs), at the discretion of the DD, to sign Director’s Orders for reopening of these cases. This delegated authority is limited to reopenings based upon evidence that a Mound Plant employee meets the criteria for placement into the SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided in [Attachment 4](#). The DEEOIC Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is responsible for issuing a new recommended decision.

13. For those cases reopened under the authority granted in this Bulletin, the District Director or ADD enters status code “**MN**” (NO Initiates Review for Reopening) in ECMS B with a status effective date equal to the effective date of this Bulletin. If the District Director or ADD is also reopening Part E, the “**MN**” code is also entered into EMCS E. For all reopenings per this Bulletin, upon completing the Director’s Order to reopen the claim, the District Director or ADD enters status code “**MD**” (Claim Reopened – File Returned to DO) into ECMS B/E (as appropriate) to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “**MZ**” status code, receipt of Director’s Order in the DO or FAB, is not necessary.) The status effective date of the “**MD**” code is the date of the Director’s Order. Please note that while the “**MD**” code is generally input by National Office staff, entry of this code has been delegated to the District Director or ADD, just as the authority to grant reopenings has been delegated in this specific circumstance.

14. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending Mound Plant cases that have a recommended decision to deny. All cases on the comprehensive list identified in Action #2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at the Mound Plant during the time period specified, has at least one tritium

bioassay sample, a specified cancer, and meets the 250-workday requirement, the FAB is to reverse the district office's recommended decision to deny, and accept the case. The CE or FAB staff member enters status code "F6" (FAB Reversed to Accept) with the appropriate reason code into ECMS B/E (as appropriate) to reflect the FAB reversal with a status effective date equal to the date of the final decision to accept. The CE or FAB staff member also enters status code "SE" in ECMS B/E (as appropriate) with a status effective date equal to the date of the final decision to accept.

For all claims where Mound Plant employment is claimed, regardless of whether the SEC criteria are met, the SEC site code "Mound Plant" must be selected under the "SEC/SEC Desc" field on the claim screen.

If no action is required, FAB must follow the instructions specified in Action #15, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the district office. If FAB determines that the case cannot be accepted based on the new SEC designation and that re-referral to NIOSH is appropriate (see Action #10), the CE or FAB staff member remands the case for district office action. The CE or FAB staff member enters status code "F7" (FAB Remanded) with "OTH" (No DO Error – Other) as the reason code in ECMS B/E (as appropriate), with a status effective date equal to the date of the remand.

15. If, after review or further development, the CE or FAB staff member determines that a case on the list does not require any action, the CE or FAB staff member must write a brief memo to the file indicating that the file was reviewed and note the reason why no additional action is necessary. A case classified as not requiring any action is a case that does not meet the SEC criteria, and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must then code "NA" (No Action Necessary) and select the appropriate reason code from the reason code drop down list. Since the "NA" coding is specifically tied to the SEC review list generated by DEEOIC, the "NA" code is restricted to ECMS B. This is because the SEC review list is derived from Part B data. For Mound Plant cases that were reviewed under this Bulletin and require no additional action, the reason code that must be selected is 021 (Reviewed under 10-21, Mound Plant SEC class) and be coded into ECMS B only, even if the case is a B/E case. The status effective date of the "NA" code is the date of the memo to the file stating the review is complete, and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the "NA-021" code is not entered initially. The "NA-021" code is only entered when the CE determines after development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the "NA-021" code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the "NA-021" code in addition to the closure code. The status effective date for the "NA" coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the EEOICPA Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

Attachment 1

Attachment 2

Attachment 3

#### Attachment 4

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections.

#### **10-22 Los Alamos National Laboratory (LANL) SEC Class from March 15, 1943 through December 31, 1975**

EEOICPA BULLETIN NO. 10-22

Issue Date: August 12, 2010

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Effective Date: August 12, 2010

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Expiration Date: August 12, 2011

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Subject: Los Alamos National Laboratory (LANL) SEC Class from March 15, 1943 through December 31, 1975.

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from the Los Alamos National Laboratory (LANL) in Los Alamos, New Mexico, to be added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and determined that it qualified for evaluation under 42 C.F.R. § 83.14. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On June 11, 2010, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at the LANL.

On July 13, 2010, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress:

All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors who worked at the Los Alamos National Laboratory in Los Alamos, New Mexico from March 15, 1943 through December 31, 1975, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

A copy of the Secretary’s letter to Congress recommending the designation is included as [Attachment 1](#). Although Congress had the authority to reject the recommendation within a 30-day time frame, Congress took no action. Therefore, the SEC designation for this class became effective as of August 12, 2010, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress.

NIOSH intends to use any available internal and external monitoring data that may become available for an individual claim (and that can be interpreted using existing NIOSH dose reconstruction processes or procedures). Additionally, NIOSH can estimate occupational medical dose. This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the SEC Petition Evaluation Report Petition SEC-00170, the July 13, 2010 letter to Congress from the Secretary of HHS in which Secretary Sebelius makes the designation.

This is the third SEC class in effect for LANL. Two previous classes for workers at LANL during the combined periods of 1943-1975 were the subject of DEEOIC Bulletins 07-11 and 07-23.

Purpose: To provide procedures for processing SEC class claims for workers at the LANL.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at the LANL during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.
3. The district offices are to use the comprehensive list as the basis for an initial screening of cases associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is likely to meet the criteria for inclusion in the SEC. A screening worksheet is included as [Attachment 2](#). The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case file. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. Claim status codes have been created in ECMS to reflect each of these categories: **ISL** (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; **ISU** (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and **ISD** (Initial SEC Screening, Development Needed) for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, in this instance, **022** (Reviewed under Bulletin 10-22, Los Alamos National Laboratory SEC). Once the worksheet is completed, the Claims Examiner (CE) is to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the **ISL**, **ISU** and **ISD** codes is to correspond with the completion date of the screening worksheet.

The purpose of this initial screening is to assist the district offices in prioritizing claims poised for acceptance. Once screening and prioritization is complete, claims adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each case must be evaluated formally for SEC inclusion and the decision recorded in ECMS. The initial screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims submitted after the list is generated. These claims will be evaluated for inclusion in the SEC class in the general course of processing.

4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, complete the worksheet and enter related coding.

5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with

specified cancers to the appropriate district office along with a CD for each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class, and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected LANL claimants is included as [Attachment 3](#). The CE must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including cases that DEEOC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code “**NW**” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the “**NW**” code entry is August 12, 2010. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record. The standard procedure for NIOSH coding in ECMS E is to code all additional NIOSH actions only if the “**NI**” (Sent to NIOSH) status code has been entered. Therefore, the CE enters the “**NW**” code into ECMS E with the status effective date of August 12, 2010, only if “**NI**” has already been entered in ECMS E.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC, and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this Bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e-mail to return the dose reconstruction analysis records. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the status code “**NW**” with a status effective date of August 12, 2010. In addition, the CE must write a letter to the claimant advising that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this Bulletin, then refer to instructions in Action #15.

6. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual, Chapter 2-0600.7. If the employee has a specified cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.

8. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 workdays at the LANL between March 15, 1943 and December 31, 1975.

Once 250 days of LANL employment during the class period is established, the CE or hearing representative can accept that the employment component of the SEC class is satisfied. In these cases, the CE proceeds to Action #9.

If the employee does not have 250 workdays at the LANL, the CE must review the file to determine if additional days in the SEC can be found by combining days from employment meeting the criteria for other classes in the SEC and aggregating them together to meet the 250-workday requirement. If the 250 workday requirement is not satisfied, the CE proceeds to Action #10.

Based on the SEC Evaluation Report, LANL’s primary mission was the design and manufacture of nuclear weapons. Additional responsibilities included experimental and theoretical research; particularly with regard to the fission of uranium and plutonium, and the production of fission products. Related work also entailed chemistry, metallurgy, preparation, and assembly of nuclear

weapon components. In 1946, responsibility for the lab was transferred from the military to the newly-created civilian Atomic Energy Commission (AEC), and its mission further expanded to include the development of neutron reactors and thermonuclear weapons research. To accomplish the large scope of activities, LANL was divided into at least 75 Technical Areas, although some of them have no history of radioactive material use. However, requisite employment for the Department of Energy (DOE), its contractors and/or subcontractors at any of these 75 Technical Areas qualifies the employee for inclusion in this SEC class.

As previously mentioned, this is the third SEC class in effect for LANL. Two previous classes for workers at LANL during the combined periods of 1943-1975 were the subject of DEEOIC Bulletins 07-11 and 07-23. The SEC class which is the subject of this Bulletin subsumes those earlier classes. Cases which were previously denied under those earlier Bulletins are to be reviewed to determine whether the latest SEC class criteria are satisfied.

9. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

If it is determined that the case does qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail, so that NIOSH can close out their file. The SrCE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file.

ECMS Coding Reminder: The "SE" (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the status effective date of the recommended decision to approve. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the "SE" code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

For all claims where LANL employment is claimed, regardless of whether the SEC criteria are met, the SEC site code "LANL" must be selected under the "SEC/SEC Desc" field on the claim screen.

10. Although NIOSH determined that it is not feasible for NIOSH to perform complete dose reconstructions for this class of employees, NIOSH has indicated that partial dose reconstructions are possible. Accordingly, for cases that have not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code "NI" in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the "NI" code is not entered into ECMS E until non-radiological toxic exposure development is complete.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code "NI" into ECMS B, with a status effective date equal to the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction; e.g., non-specified cancer, insufficient latency period or does not meet the 250-workday requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for a dose reconstruction and the reason(s) it does not qualify for the SEC class. The CE is to send a copy of this letter to NIOSH. If the case is a B/E case, and toxic exposure development was completed with a memorandum to the file (with a prior "NI"/"NW" code), the CE enters status code "NI" into ECMS E with the status effective date of the e-mail requesting NIOSH to proceed with dose reconstruction.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code **“NR”** (NIOSH Dose Reconstruction Received) in ECMS B and selects the reason code of **“PD”** (Partial Dose Reconstruction). The status effective date is the date the dose reconstruction report is date-stamped into the district office. The CE should not delete the **“NW”** or **“NI”** codes already present in ECMS. If the CE had previously entered **“NI”** in ECMS E, the CE also enters codes **“NR”** and **“PD”** in ECMS E. If the case is a B/E case, the CE enters the Probability of Causation (PoC) into ECMS B and ECMS E (regardless of whether the **“NI”** code had previously been entered).

11. If the claim meets the SEC employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction resulting in a probability of causation (PoC) of 50% or greater and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and any cancers for which there is a PoC of 50% or greater. The CE enters status code **“SE”** into ECMS B. The status effective date for the **“SE”** code is the date of the recommended decision to accept the specified cancer. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the **“SE”** code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

If necessary, the CE concurrently prepares a NRSD to NIOSH for a dose reconstruction for any non-specified cancer(s) to determine eligibility for medical benefits. The CE enters status code **“NI”** into ECMS B. The status effective date for the **“NI”** code is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the CE enters status code **“NI”** in ECMS E only after the non-radiological toxic exposure development is complete and the CE cannot accept causation. In that case the CE creates a memorandum to file stating that toxic exposure development is complete, and enters status code **“NI”** in ECMS E with the date of the memorandum as the status effective date.

12. If a claim has a final decision to deny based on a PoC of less than 50% and a review of the evidence of record establishes likely inclusion in the SEC class, the case is reopened. In the exercise of the DEEOIC Director’s discretion in the reopening process, the Director is delegating limited authority to the four District Directors (DDs) and the Assistant District Directors (ADDs), at the discretion of the DD, to sign the Director’s Orders for reopening of these cases. This delegated authority is limited to reopenings based upon evidence that a LANL employee meets the criteria for placement into the SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the DD is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided in [Attachment 4](#). The DEEOIC Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is responsible for issuing a new recommended decision.

13. For those cases reopened under the authority granted in this Bulletin, the DD or ADD enters status code **“MN”** (NO Initiates Review for Reopening) in ECMS B with a status effective date equal to the effective date of this Bulletin. If the DD or ADD is also reopening Part E, and **“MN”** code is also entered into ECMS E. For all reopenings per this Bulletin, upon completing the Director’s Order to reopen the claim, the DD or ADD enters status code **“MD”** (Claim Reopened – File Returned to DO) into ECMS B/E (as appropriate) to reflect that the case has been reopened and is in the district office’s jurisdiction. (The **“MZ”** status code, receipt of Director’s Order in the DO or FAB, is not necessary.) The status effective date of the **“MD”** code is the date of the Director’s Order. Please note that while the **“MD”** code is generally input by National Office staff, entry of this code has been delegated to the DD or ADD, just as the authority to grant reopenings has been delegated in this specific circumstance.

14. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending LANL cases

that have a recommended decision to deny. All cases on the comprehensive list identified in Action #2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at the LANL during the time period specified, has a specified cancer, and meets the 250-workday requirement, the FAB is to reverse the district office's recommended decision to deny, and accept the case. The CE or FAB staff member enters status code "F6" (FAB Reversed to Accept) with the appropriate reason code into ECMS B/E (as appropriate) to reflect the FAB reversal with a status effective date equal to the date of the final decision to accept. The CE or FAB staff member also enters status code "SE" in ECMS B/E (as appropriate) with a status effective date equal to the date of the final decision to accept.

For all claims where LANL employment is claimed, regardless of whether the SEC criteria are met, the SEC site code "LANL" must be selected under the "SEC/SEC Desc" field on the claim screen.

If no action is required, FAB must follow the instructions specified in Action #15, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the district office. If FAB determines that the case cannot be accepted based on the new SEC designation and that re-referral to NIOSH is appropriate (see Action #10), the CE or FAB staff member remands the case for district office action. The CE or FAB staff member enters status code "F7" (FAB Remanded) with "OTH" (No DO Error – Other) as the reason code in ECMS B/E (as appropriate), with a status effective date equal to the date of the remand.

15. If, after review or further development, the CE or FAB staff member determines that a case on the list does not require any action, the CE or FAB staff member must write a brief memo to the file indicating that the file was reviewed and note the reason why no additional action is necessary. A case classified as not requiring any action is a case that does not meet the SEC criteria, and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must then code "NA" (No Action Necessary) and select the appropriate reason code from the reason code drop down list. Since the "NA" coding is specifically tied to the SEC review list generated by DEEOIC, the "NA" code is restricted to ECMS B. This is because the SEC review list is derived from Part B data. For LANL cases that were reviewed under this Bulletin and require no additional action, the reason code that must be selected is 022 (Reviewed under Bulletin 10-22, Los Alamos National Laboratory SEC) and be coded into ECMS B only, even if the case is a B/E case. The status effective date of the "NA" code is the date of the memo to the file stating the review is complete, and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the "NA-022" code is not entered initially. The "NA-022" code is only entered when the CE determines after development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the "NA-022" code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the "NA-022" code in addition to the closure code. The status effective date for the "NA" coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the EEOICPA Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections.

**10-23 Bethlehem Steel Corporation SEC Class for the period January 1, 1949 through December 31, 1952**

EEOICPA BULLETIN NO. 10-23

Issue Date: August 13, 2010

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Effective Date: August 13, 2010

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Expiration Date: August 13, 2011

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**Subject:** Bethlehem Steel Corporation SEC Class for the period January 1, 1949 through December 31, 1952.

**Background:** Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83.13, a petition was filed on behalf of workers from Bethlehem Steel Corporation in Lackawanna, New York to be added to the Special Exposure Cohort (SEC).

The decision to initiate this petition occurred after the National Institute for Occupational Safety and Health (NIOSH) determined that it could not reconstruct a dose under 42 C.F.R. § 83.13. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On June 11, 2010, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at Bethlehem Steel Corporation in Lackawanna, New York.

On July 14, 2010, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress.

All Atomic Weapons Employer employees who worked at Bethlehem Steel Corporation facility in Lackawanna, New York from January 1, 1949 through December 31, 1952, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

A copy of the Secretary’s letter to Congress recommending the designation is included as [Attachment 1](#). Although Congress had the authority to reject the recommendation within a 30-day time frame, Congress took no action. Therefore, the SEC designation for this class became effective as of August 13, 2010, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress.

While a new SEC class has been added for employees at Bethlehem Steel Corporation, NIOSH intends to use any available internal and external monitoring data that may become available for an individual claim (and that can be interpreted using existing NIOSH dose reconstruction processes or

procedures). Additionally, NIOSH can estimate occupational medical dose. This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83.13; Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; HHS Designation of Additional Members of the Special Exposure Cohort under the EEOICPA – Designating a Class of Employees from Bethlehem Steel Corporation Facility, Lackawanna, NY; the July 14, 2010 letter to Congress from the Secretary of HHS in which Secretary Sebelius makes the designation.

Purpose: To provide procedures for processing SEC claims for workers at Bethlehem Steel Corporation in Lackawanna, New York.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at Bethlehem Steel Corporation during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.
3. The district offices are to use the comprehensive list as the basis for an initial screening of cases associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is likely to meet the criteria for inclusion into the SEC. A screening worksheet is included as [Attachment 2](#). The worksheet must be completed for all cases on the comprehensive list. Upon completion, the worksheet is to be included in the case file. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. Claim status codes have been created in ECMS to reflect each of these categories: **ISL** (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; **ISU** (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and **ISD** (Initial SEC Screening, Development Needed), for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, in this instance, **023** (Reviewed under Bulletin 10-23 Bethlehem Steel Corporation SEC). Once the worksheet is completed, the Claims Examiner (CE) is to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the **ISL**, **ISU**, and **ISD** codes is to correspond with the completion date of the screening worksheet. Bethlehem Steel Corporation is an Atomic Weapons Employer (AWE). As such, there are no Part E coding implications.

The purpose of this initial screening is to assist the district offices in prioritizing claims poised for acceptance and for purposes of meeting operational plan goals. Once screening and prioritization is complete, claims adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each case must be evaluated formally for SEC inclusion and the decision recorded in ECMS. The initial screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims submitted after the list is generated. These claims will be evaluated for inclusion in the SEC class in the general course of processing.

4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, worksheet and related coding.

5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD, in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class, and that his or her case is being returned to the DOL for adjudication. A copy of the NIOSH letter to affected Bethlehem Steel Corporation claimants is included as [Attachment 3](#). The CE must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code “**NW**” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the “**NW**” code entry is August 13, 2010. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC class, and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this Bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e mail to return the dose reconstruction analysis records. The SrCE then prints a copy of the “sent” e mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the status code “**NW**” with a status effective date of August 13, 2010. In addition, the CE must write a letter to the claimant advising that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this Bulletin, then refer to instructions in Action Item #15.

6. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the EEOICPA Procedure Manual Chapter 2-0600.7. If the employee has a specified cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.

8. If the employee has a specified cancer, the CE must determine if the worker was a qualified AWE employee who worked at least 250 workdays at Bethlehem Steel Corporation facility in Lackawanna, New York between January 1, 1949 and December 31, 1952. If the employee does not have 250 workdays at the Lackawanna facility, the CE must review the file to determine if aggregating days from employment meeting the criteria for other classes in the SEC to meet the 250-workday requirement. If the 250 workday requirement is not satisfied, the CE proceeds to #10.

9. Once the CE has determined that the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

If it is determined that the case does qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail, so that NIOSH can close out their file. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file.

ECMS Coding Reminder: The “**SE**” (Confirmed as SEC Claim) status code must be entered into

ECMS B with a status effective date equal to the date of the recommended decision to approve.

For all claims where Bethlehem Steel Corporation employment is claimed, regardless of whether the SEC criteria are met, the SEC site code “Bethlehem Steel Corporation” must be selected under the “**SEC/SEC Desc**” field on the claim screen.

10. Although HHS determined that it is not feasible for NIOSH to perform complete dose reconstructions for this class of employees, NIOSH has indicated that partial dose reconstructions are possible. Accordingly, for cases that do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code “**NI**” (Sent to NIOSH) in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code “**NI**” (Sent to NIOSH) into the ECMS B, effective the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-specified cancer, insufficient latency period or does not meet the 250-workday requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for dose reconstruction and the reason(s) it does not qualify for the SEC class. The CE is to send a copy of this letter to NIOSH.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “**NR**” (NIOSH Dose Reconstruction Received) in ECMS B and selects the “**PD**” (Partial Dose Reconstruction) reason code. The status effective date is the date the dose reconstruction is date-stamped into the district office. The CE should not delete the “**NW**” (NIOSH, returned without a dose reconstruction) or “**NI**” (Sent to NIOSH) code already present in ECMS.

11. If the claim meets the SEC class employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction that resulted in a probability of causation (PoC) of 50 percent or greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and, if necessary, concurrently prepares a NRSD to NIOSH for a dose reconstruction for the non-specified cancer to determine eligibility for medical benefits. The CE enters status code “**SE**” (Confirmed as SEC claim) and the “**NI**” (Sent to NIOSH) code into ECMS B. The status effective date for the “**SE**” code is the date of the recommended decision to accept the specified cancer. The status effective date for the “**NI**” code is the date of the Senior or Supervisory CE signature on the NRSD.

12. If a claim has a final decision to deny based on a PoC of less than 50%, and a review of the evidence of record establishes likely inclusion in the SEC class, the case is reopened. In the exercise of the Director’s discretion in the reopening process, the Director is delegating limited authority to the four District Directors (DD) and Assistant District Directors (ADD), at the discretion of the DD, to sign Director’s Orders for reopening. This delegated authority is limited to reopenings based upon evidence that an employee meets the criteria for placement into the Bethlehem Steel Corporation SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the DD or ADD is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided in [Attachment 4](#). The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is

issued, the district office is responsible for issuing a new recommended decision.

13. For those cases which are reopened under authority granted in this Bulletin, the DD or ADD enters status code **"MN"** (NO Initiates Review for Reopening) in ECMS B with a status effective date as the effective date of this Bulletin. For all reopenings per this Bulletin, upon completing the Director's Order to reopen the claim, the DD or ADD enters status code **"MD"** (Claim Reopened – File Returned to DO) into ECMS B to reflect that the case has been reopened and is in the district office's jurisdiction. (The **"MZ"** status code is not necessary). The status effective date of the **"MD"** code is the date of the Director's Order. Please note that while National Office staff generally input the **"MD"** code, entry of this code has been delegated to the DD and ADD, just as the authority to grant reopenings has been delegated in this specific circumstance.

14. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending Bethlehem Steel Company cases that have a recommended decision to deny. All cases on the comprehensive list identified in Action Item #2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at Bethlehem Steel Corporation facility during the period specified, has a specified cancer, and meets the 250-workday requirement, the FAB is to reverse the district office's recommended decision to deny and accept the case. The CE or FAB staff member enters status code **"F6"** (FAB Reversed to Accept, with appropriate Reason Code) into ECMS B to reflect the FAB reversal with a status effective date equal to the date of the final decision to approve. The CE or FAB staff person enters status code **"SE"** (Confirmed as SEC Claim) into ECMS B with a status effective date equal to the date of the final decision to approve.

For all claims where Bethlehem Steel Corporation employment is claimed, regardless of whether the SEC criteria are met, the SEC site code "Bethlehem Steel Corporation" must be selected under the **"SEC/SEC Desc"** field on the claim screen.

If no action is required, FAB must follow the instructions specified in Action Item #15 below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the district office. If FAB determines that the case cannot be approved based on the new SEC designation and that re-referral to NIOSH is appropriate (see Action Item #10) the CE or FAB staff member remands the case for district office action. The CE or FAB staff member enters status code **"F7"** (FAB Remanded) with **"OTH"** (No DO Error – Other) as the reason code, with a status effective date of the date of the remand.

15. If after review or further development, the CE or FAB staff member determines that a case on the list does not require any action, the CE or FAB staff member must write a brief memo to the file indicating that the file was reviewed and noting the reason why no additional action is necessary. A case classified as not requiring any action is a case that does not meet the SEC criteria and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must code **"NA"** (No Action Necessary) and then select the appropriate reason code from the reason code drop down list. The **"NA"** coding is specifically tied to the SEC review list generated by DEEOIC and the **"NA"** code is restricted to ECMS B only because the SEC review list is derived from Part B data. For Bethlehem Steel Corporation cases that were reviewed under this Bulletin and require no additional action, the reason code that must be selected is **"023"** (Reviewed under Bulletin 10-23 Bethlehem Steel Corporation Class) and be coded into ECMS B only. The status effective date of the **"NA"** code is the date of the memo to the file stating review is complete and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the **"NA-023"** code is not entered initially. The **"NA-023"** code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the **"NA-023"** code only after the CE determines that the case does not meet the SEC criteria. These cases remain at

NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “NA-023” code in addition to the closure code. The status effective date for the “NA” coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections

### **10-24 De Soto Avenue Facility SEC Class from January 1, 1959 through December 31, 1964**

EEOICPA BULLETIN NO. 10-24

Issue Date: August 13, 2010

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Effective Date: August 13, 2010

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Expiration Date: August 13, 2011

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Subject: De Soto Avenue Facility SEC Class from January 1, 1959 through December 31, 1964.

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from the De Soto Avenue Facility in Los Angeles County, California, to be added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and determined that it qualified for evaluation. NIOSH submitted its findings to the Advisory Board on Radiation and Worker Health (“the Board”). On June 11, 2010, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at the De Soto Avenue Facility.

On July 14, 2010, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress:

All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors who worked at the De Soto Avenue Facility in Los Angeles County, California, from January 1, 1959 through December 31, 1964, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters

established for one or more other classes of employees included in the Special Exposure Cohort.

A copy of the Secretary's letter to Congress recommending the designation is included as [Attachment 1](#). Although Congress had the authority to reject the recommendation within a 30-day time frame, Congress took no action. Therefore, the SEC designation for this class became effective as of August 13, 2010, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress.

NIOSH intends to use any available internal and external monitoring data that may become available for an individual claim (and that can be interpreted using existing NIOSH dose reconstruction processes or procedures). Additionally, NIOSH can estimate occupational medical dose. This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; HHS Designation of Additional Members of the Special Exposure Cohort under the EEOICPA – Designating a Class of Employees from De Soto Avenue Facility, Los Angeles County, California; the July 14, 2010 letter to Congress from the Secretary of HHS in which Secretary Sebelius makes the designation.

Purpose: To provide procedures for processing SEC class claims for workers at the De Soto Avenue Facility in Los Angeles County, California.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at the De Soto Avenue Facility during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.
3. The district offices are to use the comprehensive list as the basis for an initial screening of cases associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is likely to meet the criteria for inclusion in the SEC. A screening worksheet is included as [Attachment 2](#). The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case file. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. Claim status codes have been created in ECMS to reflect each of these categories: **ISL** (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; **ISU** (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and **ISD** (Initial SEC Screening, Development Needed) for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, in this instance, **024** (Reviewed under Bulletin 10-24, De Soto Avenue Facility SEC). Once the worksheet is completed, the Claims Examiner (CE) is to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the **ISL**, **ISU** and **ISD** codes is to correspond with the completion date of the screening worksheet.

The purpose of this initial screening is to assist the district offices in prioritizing claims poised for acceptance. Once screening and prioritization is complete, claims adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each case must be evaluated formally for SEC inclusion and the decision recorded in ECMS. The initial screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims submitted after the list is generated. These claims will be evaluated for inclusion in the SEC class in the general course of processing.

4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, complete the worksheet and enter related coding.

5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class, and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected De Soto Avenue Facility claimants is included as [Attachment 3](#). The CE must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including cases that DEEOC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code “**NW**” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the “**NW**” code entry is August 13, 2010. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record. The standard procedure for NIOSH coding in ECMS E is to code all additional NIOSH actions only if the “**NI**” (Sent to NIOSH) status code has been entered. Therefore, the CE enters the “**NW**” code into ECMS E with the status effective date of August 13, 2010, only if “**NI**” has already been entered in ECMS E.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC, and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this Bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e-mail to return the dose reconstruction analysis records. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the status code “**NW**” with a status effective date of August 13, 2010. In addition, the CE must write a letter to the claimant advising that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this Bulletin, then refer to instructions in Action #15.

6. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual, Chapter 2-0600.7. If the employee has a specified cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.

8. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 workdays at the De Soto Avenue Facility between January 1, 1959 and December 31, 1964.

Once 250 days of De Soto Avenue Facility employment during the class period is established, the CE or hearing representative can accept that the employment component of the SEC class is satisfied. In these cases, the CE proceeds to Action #9.

If the employee does not have 250 workdays at the De Soto Avenue Facility, the CE must review the file to determine if additional days in the SEC can be found by combining days from employment meeting the criteria for other classes in the SEC and aggregating them together to meet the 250-workday requirement. If the 250 workday requirement is not satisfied, the CE proceeds to Action #10.

9. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

If it is determined that the case does qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail, so that NIOSH can close out their file. The SrCE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file.

ECMS Coding Reminder: The "**SE**" (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the status effective date of the recommended decision to approve. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the "**SE**" code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

For all claims where De Soto Avenue Facility employment is claimed, regardless of whether the SEC criteria are met, the SEC site code "**De Soto Avenue Facility**" must be selected under the "**SEC/SEC Desc**" field on the claim screen.

10. Although NIOSH determined that it is not feasible for NIOSH to perform complete dose reconstructions for this class of employees, NIOSH has indicated that partial dose reconstructions are possible. Accordingly, for cases that have not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code "**NI**" in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the "**NI**" code is not entered into ECMS E until non-radiological toxic exposure development is complete.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code "**NI**" into ECMS B, with a status effective date equal to the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction; e.g., non-specified cancer, insufficient latency period or does not meet the 250-workday requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for a dose reconstruction and the reason(s) it does not qualify for the SEC class. The CE is to send a copy of this letter to NIOSH. If the case is a B/E case, and toxic exposure development was completed with a memorandum to the file (with a prior "**NI**"/"**NW**" code), the CE enters status code "**NI**" into ECMS E with the status effective date of the e-mail requesting NIOSH to proceed with dose reconstruction.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code "**NR**" (NIOSH Dose Reconstruction Received) in ECMS B and selects the reason code of "**PD**" (Partial Dose Reconstruction). The status effective

date is the date the dose reconstruction report is date-stamped into the district office. The CE should not delete the “**NW**” or “**NI**” codes already present in ECMS. If the CE had previously entered “**NI**” in ECMS E, the CE also enters codes “**NR**” and “**PD**” in ECMS E. If the case is a B/E case, the CE enters the Probability of Causation (PoC) into ECMS B and ECMS E (regardless of whether the “**NI**” code had previously been entered).

11. If the claim meets the SEC employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction resulting in a probability of causation (PoC) of 50% or greater and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and any cancers for which there is a PoC of 50% or greater. The CE enters status code “**SE**” into ECMS B. The status effective date for the “**SE**” code is the date of the recommended decision to accept the specified cancer. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the “**SE**” code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

If necessary, the CE concurrently prepares a NRSD to NIOSH for a dose reconstruction for any non-specified cancer(s) to determine eligibility for medical benefits. The CE enters status code “**NI**” into ECMS B. The status effective date for the “**NI**” code is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the CE enters status code “**NI**” in ECMS E only after the non-radiological toxic exposure development is complete and the CE cannot accept causation. In that case the CE creates a memorandum to file stating that toxic exposure development is complete, and enters status code “**NI**” in ECMS E with the date of the memorandum as the status effective date.

12. If a claim has a final decision to deny based on a PoC of less than 50% and a review of the evidence of record establishes likely inclusion in the SEC class, the case is reopened. In the exercise of the DEEOIC Director’s discretion in the reopening process, the Director is delegating limited authority to the four District Directors (DDs) and the Assistant District Directors (ADDs), at the discretion of the DD, to sign the Director’s Orders for reopening of these cases. This delegated authority is limited to reopenings based upon evidence that a De Soto Avenue Facility employee meets the criteria for placement into the SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the DD is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided in [Attachment 4](#). The DEEOIC Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is responsible for issuing a new recommended decision.

13. For those cases reopened under the authority granted in this Bulletin, the DD or ADD enters status code “**MN**” (NO Initiates Review for Reopening) in ECMS B with a status effective date equal to the effective date of this Bulletin. If the DD or ADD is also reopening Part E, and “**MN**” code is also entered into ECMS E. For all reopenings per this Bulletin, upon completing the Director’s Order to reopen the claim, the DD or ADD enters status code “**MD**” (Claim Reopened – File Returned to DO) into ECMS B/E (as appropriate) to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “**MZ**” status code, receipt of Director’s Order in the DO or FAB, is not necessary.) The status effective date of the “**MD**” code is the date of the Director’s Order. Please note that while the “**MD**” code is generally input by National Office staff, entry of this code has been delegated to the DD or ADD, just as the authority to grant reopenings has been delegated in this specific circumstance.

14. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending De Soto Avenue Facility cases that have a recommended decision to deny. All cases on the comprehensive list identified in Action #2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at the De Soto Avenue Facility during the time period

specified, has a specified cancer, and meets the 250-workday requirement, the FAB is to reverse the district office's recommended decision to deny, and accept the case. The CE or FAB staff member enters status code "F6" (FAB Reversed to Accept) with the appropriate reason code into ECMS B/E (as appropriate) to reflect the FAB reversal with a status effective date equal to the date of the final decision to accept. The CE or FAB staff member also enters status code "SE" in ECMS B/E (as appropriate) with a status effective date equal to the date of the final decision to accept.

For all claims where De Soto Avenue Facility employment is claimed, regardless of whether the SEC criteria are met, the SEC site code "**De Soto Avenue Facility**" must be selected under the "**SEC/SEC Desc**" field on the claim screen.

If no action is required, FAB must follow the instructions specified in Action #15, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the district office. If FAB determines that the case cannot be accepted based on the new SEC designation and that re-referral to NIOSH is appropriate (see Action #10), the CE or FAB staff member remands the case for district office action. The CE or FAB staff member enters status code "F7" (FAB Remanded) with "OTH" (No DO Error – Other) as the reason code in ECMS B/E (as appropriate), with a status effective date equal to the date of the remand.

15. If, after review or further development, the CE or FAB staff member determines that a case on the list does not require any action, the CE or FAB staff member must write a brief memo to the file indicating that the file was reviewed and note the reason why no additional action is necessary. A case classified as not requiring any action is a case that does not meet the SEC criteria, and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must then code "NA" (No Action Necessary) and select the appropriate reason code from the reason code drop down list. Since the "NA" coding is specifically tied to the SEC review list generated by DEEOIC, the "NA" code is restricted to ECMS B. This is because the SEC review list is derived from Part B data. For De Soto Avenue Facility cases that were reviewed under this Bulletin and require no additional action, the reason code that must be selected is **024** (Reviewed under Bulletin 10-24, De Soto Avenue Facility SEC) and be coded into ECMS B only, even if the case is a B/E case. The status effective date of the "NA" code is the date of the memo to the file stating the review is complete, and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the "NA-024" code is not entered initially. The "NA-024" code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the "NA-024" code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the "NA-024" code in addition to the closure code. The status effective date for the "NA" coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the EEOICPA Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections.

## 2009 EEOICP Bulletins

### 09-01 Delegating the Reopening of Claims with New Evidence

#### EEOICPA BULLETIN NO. 09-01

Issue Date: November 6, 2008

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Effective Date: November 6, 2008

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Expiration Date: November 6, 2009

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Subject: Delegating the Reopening of Claims with New Evidence.

Background: The Director for the Division of Energy Employees Occupational Illness Compensation (DEEOIC) has the discretionary authority to issue a Director's Order reopening a claim at any point following issuance of final decision under 20 CFR 30.320.

At any time after receiving an adverse final decision from the Final Adjudication Branch (FAB), a claimant may petition the Director to reopen a claim for additional development and issuance of a new decision. To support a request for reopening, a claimant must submit new factual evidence or argument material to their claim to the Director in support of a request for reopening.

Increasingly, routine reopening requests are submitted to the Director. This includes instances where new employment, exposure, medical, or survivorship evidence has become available, which invalidates a prior final decision of the FAB. For example, insufficient medical evidence is initially presented to establish a diagnosed cancer, which then leads to a final decision to deny the claim. Several months after the decision, the claimant obtains a pathology report confirming the existence of cancer and submits this evidence along with a reopening request to the Director. In this situation, a reopening request must be issued as a matter of routine due process, given the diagnostic proof of cancer.

In the interest of expediency and program efficiency, the authority to issue a Director's Order regarding a case reopening is being delegated, in limited circumstances, to the District Director(s) (DD) of the four DEEOIC District Offices (DO). The authority being delegated applies to certain case scenarios as outlined below.

The Director retains sole authority to reopen claims not explicitly identified in this Bulletin or other policy directives. In any instance where uncertainty exists with regard to the application of this delegated authority, the claim record is to be referred to the Office of the Director for review.

This bulletin does not affect the guidance provided in PM Chapter 2-1400 regarding the authority of the DD to deny a reopening when a request is not accompanied by new evidence.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, as amended, 42 U.S.C. § 7384 *et seq.*, Section 7385s-10(e); 20 CFR § 30.320; EEOICPA PM 2-1400.

Purpose: To establish procedures for the administration of certain requests to reopen claims based

on the discovery of new evidence.

Applicability: All Staff

Actions:

1. The DEEOIC Director hereby delegates the authority to issue orders concerning the reopening of claims in limited circumstances involving a claimant's submission of new evidence to the District Director (DD) of the District Office (DO), as described below. This authority will extend to the Assistant District Director (ADD) at the discretion of the District Director.

2. If new medical, employment, or survivorship evidence is received concerning a claim where a final decision has been issued, DEEOIC staff will forward the evidence and the case file to the DD or ADD of the District Office with jurisdiction over the claim, for review. The only types of circumstances for which this Bulletin applies are as follows:

a. In instances where the denial was based on employment issues: employment records that establish previously denied or unverified time periods of covered Department of Energy, DOE contractor/subcontractor, atomic weapons employer, beryllium vendor employment, or RECA section 5 employment.

b. In instances where the denial was based on medical issues: medical records establishing a diagnosis of a previously denied, closed, or reported occupational or covered illness.

c. In instances where the denial was based on survivorship issues: records or documents that demonstrate a relationship between a previously denied survivor and the covered employee. Or, cases under Part B where an employee claim has received a final decision to approve, but the claimant died before payment could be made.

d. In instances where an update to the Site Exposure Matrices (SEM) or the submission of new factual evidence establish a previously denied, closed, or unverified toxic substance exposure, which is known to be linked to the claimed illness(es). Or, in cases where new evidence of exposure is received that demonstrates a clear link to the claimed illness(es). Evidence demonstrating a link between exposure and a claimed illness must meet the criteria outlined in Bulletin 08-38 for programmatic or claim-specific medical evidence to be eligible for reopening under this bulletin.

e. In instances where the decision to deny was based upon a dose reconstruction returned from NIOSH with a Probability of Causation (PoC) of less than 50%, and the claimant has submitted a diagnosis of a new cancer which results in a PoC of 50% or greater.

3. The reviewer must determine if the new evidence is unambiguous, and clearly applies to medical, employment, exposure, or survivorship criteria for eligibility under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), DEEOIC regulations, or a DEEOIC bulletin. The new evidence must be sufficient to reopen the prior final decision. This evidence would include, for example, a medical report containing a diagnosis of a claimed condition, or a birth certificate demonstrating that the claimant is the child of a deceased employee.

4. Requests to reopen cases that are located with DO FAB must be sent to the DD with jurisdiction for review and a determination whether the request meets the criteria outlined in this bulletin for reopening in the DO. Requests to reopen cases that are located with NO FAB must be sent to the National Office for review and a determination whether the request meets the criteria outlined in this bulletin.

5. Other reopening requests received from claimants will continue to be evaluated in the National Office. Complex or novel medical, employment, or survivorship evidence must also be reviewed in the National Office.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service

Representatives, Fiscal Officers, FAB District Managers,

Operation Chiefs, Hearing Representatives, District Office Mail & File Section, Managers.

**09-02 Subcontractor database for verification of contractual relationship at covered facilities to web**

**EEOICPA BULLETIN NO.09-02**

Issue Date: November 13, 2008

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Effective Date: November 13, 2008

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Expiration Date: November 13, 2009

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Subject: Subcontractor database for verification of contractual relationship at covered facilities.

Background: As described in [EEOICPA Bulletin No.06-09](#), The Center for Construction Research and Training *nee* The Center to Protect Workers' Right (CPWR) is tasked with assisting the Division of Energy Employees Occupational Illness Compensation (DEEOIC) to verify employment, in part by confirming that contractor or subcontractor employers were engaged in contractual employment at covered Department of Energy (DOE) facilities. With the recognition that CPWR collects vast amounts of data about the various employers engaged in contractual or subcontractual work at DOE facilities, the DEEOIC also tasked CPWR with developing a centralized means to record information about the employers who performed work at DOE and Beryllium Vendor (BV) facilities covered under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). This information could then be made available to DEEOIC staff to assist in the verification of employment in other claims.

The outcome of this project is a web-accessible database, which can be used by the Claims Examiner (CE) in identifying and confirming the existence of contractor or subcontractor employers at certain covered facilities. The database currently contains contractual information for approximately 1000 contractors and subcontractors. The information includes the name of the facility where the employer performed work and, in many instances, the period of time the employer was present at the facility. If available, the current mailing address and any aliases of the employer are listed. Additionally, the database provides a brief description of the evidence used to establish the contractual relationship. This database is intended to serve as a valuable resource in assisting claimants with the establishment of a claim for compensation, and will continuously be updated as new information is identified. The claims Examiner (CE) is to use this database during the routine development of cases filed under Parts B and E of the EEOICPA.

Reference: EEOICPA Bulletin No. 06-09, Center to Protect Workers' Rights (CPWR), EEOICPA Bulletin No. 03-27, Establishing Covered Subcontractor Employment, Federal (EEOICPA) Procedure Manual, Chapters 2-0400 and 0500, and 20 CFR §30.205(a)(3).

Purpose: To provide guidance on how to use the web-based contractor/subcontractor database

developed by CPWR for DEEOIC.

Applicability: All staff.

Actions:

1. Upon identification of claimed contractual or sub-contractual employment at a covered facility, it is necessary for the CE to verify that (1) the employee worked for the claimed employer, (2) the employer was contractually linked to the covered facility, and (3) the employee was “at” the covered facility. To assist the CE determine if a claimed employer is contractually linked to a covered facility, a web-based database has been developed to identify employers known to have operated under a contract or subcontract at certain covered facilities. Presently, the database retains data on employers at the following facilities:

Amchitka

Argonne National Lab West

Atomics International

Brookhaven

Canoga Avenue

Clarksville Base (aka Mason-Hanger)

Clinton Engineering Works

De Soto Avenue

Downey Facility

Ethyl Corporation

Fernald (aka FMPC)

General Steel Industries

Hanford

INEEL

Iowa Army Ammunition Plant (IOP)

Kansas City Plant

Latty Avenue Properties

Lawrence

Lawrence

Los Alamos National Lab

Mallinckrodt

Mound

Nevada Test Site

Oak Ridge (K25,S-50, Y-12, X-10 or National Laboratory)

Oak Ridge Institute for Science and Education (ORISE)

Ore Buying Station at , UT

Paducah Gaseous Diffusion Plant

Pantex

Pinellas Plant

Portsmouth Gaseous Diffusion Plant

Rocky Flats

Sandia National Laboratory

Santa Susanna Field Laboratory

Savannah River

Stanford Linear (SLAC)

The Mill at , UT

Weldon Spring Plant

Yucca

2. If the CE identifies contractual employment claimed at one or more of the facilities where the database maintains contractor or subcontractor evidence, the CE must go to [www.btcomp.org](http://www.btcomp.org). A log on screen will then appear. Each district office will be assigned one original user name and password.

3. Upon access to the web site, a disclaimer notes the database is a general information resource tool. It is not intended to nor does it contain all documents that relate to DOE contractors and/or subcontractors. However, DEEOIC considers the database accurate and correct based on information available. The CE must accept the disclaimer. Upon acceptance of the disclaimer, the database opens into basic search mode. The database allows various ways to search for information: by subcontractor name, by site, or by scrolling down the subcontractor master list.

4. To search by contractor/subcontractor name, the CE enters the name of the company identified in the evidence from the case record. The company name may be the current recognized employer name, an acronym for the employer, or a previous iteration. It is recommended that the CE search the database using various combinations or spellings or aliases for the employer name. This will increase the likelihood of a positive outcome and reduce the number of false negative results. For example, if a CE enters the name "Bowles Construction Company" the database will return a negative result. However, if the CE enters "Bowles" or "Bowles Construction" the employer will appear in the return.

5. To search by site, i.e. covered facility, the CE clicks on the list box labeled "by site" on the left hand side of the screen and selects the facility for which he or she is seeking contractor or subcontractor information. This will return all employers known by CPWR linked to the facility. It may be necessary for the CE to scroll down to view all named employers. To view detail for a named employer, the CE merely needs to access the "view" link under the options category. It should be noted that in some instances a contractor or subcontractor name might be linked to multiple covered facilities. In these instances, the detail return for the employer will be separated into sections by covered site.

6. It is also possible for the CE to simply search the comprehensive listing (master list) of all contractor employers listed in the database which appears if no name or site search criteria are applied or if the option "show all" is selected. It should be noted that a unique document identification (Doc Id) has been assigned to each contractual finding. The Doc Id is used by CPWR as a means of tracking. The CE will not access information using the Doc Id.

7. After the CE has accessed the database and conducted appropriate research to locate a contractor/subcontractor, it will be necessary to document the case file. In the case of a positive result, the CE prints a copy of the screen for the case file. The print out must show all the results of the database search including the employer name, site name, contractual relationship indicator, dates

verified, type of work performed, description of evidence, document ID, and date of database update. Generally, this information must be printed based on a “landscape” printer setting (click on ‘File’, then ‘Page Setup’ to select ‘Landscape’).The printout should also list the date of the database search, the date of the latest update of a facility and any other pertinent facts.In the situation where a database search does not return any result,the CE completes a “Memorandum to the file” noting the lack of information in the database for that claimed contractor/subcontractor. The memorandum should be dated and signed by the CE. The database contains records on employers linked to a DOE facility for which probative documentation has yet to be retrieved. Any employer found within the database that does not have the “contractual relationship” indicator checked cannot be used to confirm that the employer is linked to the facility and should not be printed out for the file.

8.The purpose of the database is solely to show a relationship between a DOE facility and a contractor or subcontractor employer.A positive result may return varying levels of information about an employer linked to a facility. For example, a database return may merely list that a contractor or subcontractor was linked to a particular facility, but not when.In addition to the database results, it is also important for the CE to remember that additional development may be needed independent of the database to ensure that an individual was actually an employee of a claimed contractor or subcontractor employer, particularly during a covered time period of the facility in question. The database also provides no information as to whether an employee was at a covered facility. As such,the CE must always develop employment to determine if the employee worked at the covered facility. Ultimately, as with many other aspects of the program,the evidence of record must be sufficient to convince the adjudicator of the accuracy of the claim presented.The CE must evaluate the totality of all evidence contained in a case file.

9. If the contractor or subcontractor is not listed on the database, additional development will be necessary. The CE is not to assume that a no return in the database establishes that the claimed employer was not a contractor or subcontractor.The CE must use all other resources that may potentially establish a contractual relationship including union records, affidavits, CPWR, Social Security Administration records, etc.

10. When the database is searched, the CE is to enter the claim status code “DE” (Developing Employment) in the claim status history screen in ECMS.Upon entry of the “DE” code, the CE must select the reason code “CD-CPWR Subcontractor Database Searched” from the corresponding drop-down box.The status effective date of the DE/CD code is equal to the date the database is searched (which is the date of the memorandum to the file) even when no data is returned.

11. Each District Office has an assigned CPWR Point of Contact (POC) who serves as an intermediary between the company and the DEEOIC. These POCs are responsible for assisting co-workers within the district office utilize resources including this new web-based database.If a CE encounters problems or needs assistance with the use of the contractor/subcontractor database, he or she should contact the district office POC.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections



[\[A1\]](#)Wouldn't they do this only if DOE is unable to verify employment?

## **09-03 SEC Class for Connecticut Aircraft Nuclear Engine Laboratory (CANEL)**

### **EEOICPA BULLETIN NO.09-03**

Issue Date: November 24, 2008

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Effective Date: November 24, 2008

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Expiration Date: November 24, 2009

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**Subject:** SEC Class for Aircraft Nuclear Engine Laboratory (CANEL)

**Background:** Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from the Connecticut Aircraft Nuclear Engine Laboratory (CANEL) in , to be added to the Special Exposure Cohort (SEC).

The decision to initiate this petition occurred after the National Institute for Occupational Safety and Health (NIOSH) determined that it could not reconstruct a dose under 42 C.F.R. § 83.14. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health ("the Board"). On September 23, 2008, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at the Connecticut Aircraft Nuclear Engine Laboratory in , .

On October 24, 2008, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress.

All employees of the Department of Energy (DOE), its predecessor agencies, and DOE contractors or subcontractors who worked at the Connecticut Aircraft Nuclear Engine Laboratory in Middletown, Connecticut, from January 1, 1958, through December 31, 1965, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

A copy of the Secretary's letter to Congress recommending the designation is included as [Attachment 1](#). The SEC designation for this class became effective as of November 23, 2008, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in a report to Congress. Although Congress had the authority to reject the recommendation within the 30-day time frame, Congress took no action and therefore the new SEC class became effective November 23, 2008.

While a new SEC class has been added for employees at CANEL, NIOSH has determined that it is possible to reconstruct occupational medical dose. NIOSH also intends to use any available internal and external monitoring data that may be available for an individual claim (and can be interpreted using existing NIOSH dose reconstruction processes or procedures). This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

**References:** Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the October 24, 2008 letter to Congress from the

Secretary of HHS in which Secretary Leavitt makes the designation.

Purpose: To provide procedures for processing SEC claims for workers at CANEL in , .

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at CANEL during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.
3. The district offices are to use the comprehensive list as the basis for an initial screening of cases associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is *likely* to meet the criteria for inclusion into the SEC class. A screening worksheet is included as [Attachment 2](#). The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case record. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. New claim status codes have been created in ECMS to reflect each of these categories: **ISL** (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; **ISU** (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and **ISD** (Initial SEC Screening, Development Needed), for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, in this instance, 903 (Screened under Bulletin 09-03, CANEL SEC class). Once the worksheet is completed, the CE is to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the ISL, ISU and ISD codes is to correspond with the completion date of the screening worksheet.  
  
The purpose of this initial screening is to assist the district offices in prioritizing cases posed for acceptance and for purposes of meeting the FY 2009 operational plan goal. Once screening and prioritization is complete, case adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each case must be evaluated formally for SEC inclusion and the decision recorded in ECMS. This screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims submitted after the list is generated. These claims will be evaluated for inclusion in the SEC in the general course of claims processing.
4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, worksheet and related coding.
5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected CANEL claimants is included as [Attachment 3](#). claims examiner (CE) must print out a hard copy of the NIOSH letter for inclusion in the case file.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e-mail to return dose reconstruction analysis records. SrCE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. In addition, the CE must write a letter to the claimant to advise that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

Once a case file is returned from NIOSH (including those cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code "NW" (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the code entry is November 24, 2008. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record. Standard procedure for NIOSH coding in ECMS E is to code all additional NIOSH actions only if the "NI" (Sent to NIOSH) status code has been entered. Therefore, the CE enters the "NW" code into ECMS E with the status effective date of November 24, 2008 only if "NI" has already been entered in ECMS E. Although this class in the SEC becomes effective on November 23, 2008, because that is a Sunday, the Bulletin effective date is November 24, 2008. It is the Bulletin date that forms the basis for the ECMS status effective date coding, November 24, 2008.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this bulletin, then refer to instructions in Action #15.

6. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual (PM) Chapter 2-600.5. If the employee has a specified cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.

8. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 work days at CANEL in , between January 1, 1958 through December 31, 1965. The CE may refer to [EEOICPA Bulletin No. 02-09](#) for guidance on calculating 250 work days.

The CANEL facility covered approximately 1,100 acres and there were 34 buildings on the site. NIOSH has documentation indicating buildings in which radioactive materials and waste were known to have been used and/or stored, but has no documentation to confirm that all radioactive materials were restricted to such areas or that contamination was adequately controlled. As a result, NIOSH assumes that the potential for exposure to radioactive materials existed in all CANEL buildings and areas. Additionally, NIOSH is unable to define potential radiation exposure conditions based on worker job descriptions, job titles and/or job assignments. Therefore, based on the SEC designation, any probative evidence that the employee was employed at CANEL for at least 250 work days during the SEC period is sufficient to include him or her in the SEC class.

If the employee does not have 250 days at CANEL, the CE should review the file to determine if additional days in the SEC can be found by combining days from employment that meets the criteria for other classes in the SEC and aggregating them together to meet the 250-work-day requirement.

9. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

ECMS Coding Reminder: "SE" (Confirmed as SEC Claim) status code must be entered into ECMS

B with a status effective date equal to the status effective date of the recommended decision to approve. If the case is an E/B case, and the basis for the Part E acceptance is the Part B SEC acceptance, the "SE" code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

For all claims where CANEL employment is claimed, regardless of whether the SEC criterion is met, the SEC site code must be entered under the "SEC/SEC Desc" field on the claim screen. The SEC site code for Connecticut Aircraft Nuclear Engine Laboratory is 0056.

10. As discussed earlier, although HHS determined that it is not feasible for NIOSH to perform complete dose reconstructions for this class of employees, NIOSH has indicated that partial dose reconstructions are possible. Accordingly, for cases that had not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code "NI" (Sent to NIOSH) in ECMS B. status effective date is the date of the Senior or Supervisory CE signature on the NRSD.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the Senior CE (SrCe), notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code "NI" (Sent to NIOSH) into ECMS B, effective the date of the e-mail requesting NIOSH to proceed with dose reconstruction. *The e-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-specified cancer, insufficient latency period or does not meet the 250-work-day requirement.* In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for dose reconstruction and the reason(s) it does not qualify for the SEC class. *The CE is to send a copy of this letter to NIOSH.* If the case is an E/B case and toxic exposure development was completed with a memorandum to file (with a prior "NI"/"NW" code), the CE enters status code "NI" into ECMS E with the status effective date of the e-mail requesting NIOSH to proceed with dose reconstruction.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code "NR" (NIOSH Dose Reconstruction Received) in ECMS B and selects the "PD" (Partial Dose Reconstruction) reason code. status effective date is the date the dose reconstruction is date-stamped into the District Office. CE should not delete the "NW" (NIOSH, returned without a dose reconstruction) or "NI" (Sent to NIOSH) code already present in ECMS. If the CE had previously entered "NI" in ECMS E, the CE also enters codes "NR" and "PD" into ECMS E. If the case is an E/B case, the CE enters the Probability of Causation (PoC) into ECMS B and ECMS E (regardless of whether the "NI" code had previously been entered).

11. If the claim meets the SEC employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction that resulted in a probability of causation of 50 percent or greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and, if necessary, concurrently prepares a NRSD to NIOSH for a dose reconstruction for the non-specified cancer to determine eligibility for medical benefits. The CE enters status code "SE" (Confirmed as SEC Claim) and the "NI" (Sent to NIOSH) code into ECMS B. The status effective date for the "SE" code is the date of the recommended decision to accept the specified cancer. The status effective date for the "NI" code is the date of the Senior or Supervisory CE signature on the NRSD. If the case is an E/B case, the CE enters status code "NI" (Sent to NIOSH) only after the toxic exposure development is complete and the CE cannot accept causation.

In that case the CE creates a memorandum to file stating that toxic exposure development is complete. CE then enters status code “NI” into ECMS E with the date of the memorandum as the status effective date.

12. If there is a final decision to deny based on a POC of less than 50% and a review of the evidence of record establishes likely inclusion in the SEC class, the case will need to be reopened. In the exercise of the Director’s discretion of the reopening process, the Director is delegating limited authority to the four District Directors to sign Director’s Orders for reopening. This delegated authority is limited to reopenings based upon evidence that a CANEL employee meets the criteria for placement into the CANEL SEC class as defined by this bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided in [Attachment 4](#). The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is responsible for issuing a new recommended decision.

13. For those cases which are reopened under the authority granted in this Bulletin, the District Director enters status code “MN” (NO Initiates Review for Reopening) in ECMS B with a status effective date as the effective date of this bulletin. If the District Director is also reopening Part E, the “MN” code is also input in ECMS E. For all reopenings per this bulletin, upon completing the Director’s Order to reopen the claim, the District Director (DD) enters status code “MD” (Claim Reopened – File Returned to DO) into ECMS B to reflect that the case has been reopened and is in the district office’s jurisdiction. The “MZ” status code is not necessary). The status effective date of the “MD” code is the date of the Director’s Order. Please note that while the “MD” code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been in this specific circumstance.

14. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending CANEL cases that have a recommended decision to deny. All cases on the comprehensive list identified in action item 2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at the CANEL during the time period specified, has a specified cancer, and meets the 250-work-day requirement, the FAB is to reverse the district office’s recommended decision to deny and accept the case. The CE or FAB staff person enters status code “F6” (FAB Reversed to Accept) into ECMS B/E (as appropriate) to reflect the FAB reversal with a status effective date equal to the date of the final decision to approve. The CE or FAB staff person enters status code “SE” (Confirmed as SEC Claim) into ECMS B with a status effective date equal to the date of the final decision to approve. If the FAB is also reversing the Part E decision based on SEC designation, CE or FAB staff person also enters status codes “F6” and “SE” into ECMS E with a status effective date of the final decision for Part E.

If no action is required, FAB must follow the instructions specified in action item 16, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the District Office. If FAB determines that the case cannot be approved based on the new SEC designation and that re-referral to NIOSH is appropriate (see action items 8 and 10) the CE or FAB staff person must remand the case for district office action. The CE or FAB staff person enters status code “F7” (FAB Remanded) with “OTH” (No DO Error – Other) as the reason code. If the Part B decision is being remanded, the CE or FAB staff person enters the remand code into ECMS B with a status effective date of the date of the remand.

15. The operational plan goal for completion of the action items in the Bulletin is as follows: The initial screening is to be complete for 90% of all cases on the comprehensive list within 30 days of the Bulletin effective date. Recommended decisions are to be issued 45 days after the initial screening for 60% of those cases that are identified via initial screening as likely to be included in the SEC class (**ISL**) and those for which development may be needed (**ISD**). Recommended

decisions are to be issued 60 days after the initial screening for 90% of those cases that are identified via initial screening as likely to be included in the SEC class (**ISL**) and those for which development may be needed(**ISD**).

16. If, after review or further development, the CE or FAB staff person determines that a case on the list does not require any action, the CE or FAB staff person must write a brief memo to the file indicating that the file was reviewed and noting the reason why no additional action is necessary, and why. A case classified as not requiring any action is a case that does not meet the SEC criteria and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must then code "NA" (No Action Necessary) and then select the appropriate reason code from the reason code drop down list. The "NA" coding is specifically tied to the SEC review list generated by DEEOIC and the "NA" code is restricted to ECMS B only because the SEC review list is derived from Part B data. For CANEL cases that were reviewed under this bulletin and require no additional action, the reason code that must be selected is "**903**" (**Reviewed under Bulletin 09-03, CANEL SEC**) and be coded into ECMS B only. Even if the case is an E/B case, the NA-903 must be coded into ECMS B only. The status effective date of the "NA" code is the date of the memo to the file stating review is complete and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the "NA-903" code is not entered initially. The "NA-903" code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the "NA-903" code only after the CE determines that the case does not meet the SEC criteria. se cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the "NA-903" code in addition to the closure code. The status effective date for the "NA" coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections.

#### **09-04 LNR coding in ECMS for ICEs related to IREP and LANL**

**EEOICPA Bulletin No. 09-04**

Issued Date: December 4, 2008

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Effective Date: December 4, 2008

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Expiration Date: December 4, 2009

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**Note: This Bulletin provides guidance on ECMS coding for Individual Program Evaluation Reports(PER)/Individual Case Evaluations (ICE) received from the National Institute for Occupational Safety and Health (NIOSH) related to OCAS-PER-016, entitled “Implementation of IREP procedures for claims near 50% probability of causation” and OCAS-PER-018, entitled “ National Laboratory TBD Revision.”**

Subject: “LNR” coding in ECMS for ICEs related to OCAS-PER-016, IREP procedures and OCAS-PER-018, Los Alamos National Laboratory (LANL).

Background: On October 29, 2007, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) issued EEOICPA Bulletin No. 08-05, NIOSH’s OCAS-PER-018, entitled “Los Alamos National Laboratory TBD Revision.” Bulletin 08-05 provided steps for returning certain cases to NIOSH for a new dose reconstruction.

On January 23, 2008, the DEEOIC issued EEOICPA Bulletin No. 08-13, NIOSH’s OCAS-PER-016, entitled “Implementation of IREP procedures for claims near 50% probability of causation.” Bulletin 08-13 included steps for identifying those cases that should be returned to NIOSH for a new dose reconstruction. EEOICPA Bulletin 08-16, issued on March 21, 2008, provided supplemental guidance for identifying those cases potentially impacted by the release of OCAS-PER-016.

In the Spring of 2008, NIOSH provided the DEEOIC with several thousand case specific PERs/ICEs for cases potentially affected by the release of the many PERs that NIOSH issued (i.e. Super S, Construction Trade Workers).

The National Office printed and sorted the majority of the PER/ICEs and distributed them to the district/FAB offices. A copy of these PERs/ICEs has also been placed on the DEEOIC Shared Drive to be retrieved by the district/FAB offices. Upon review of the PER/ICEs received from NIOSH, it was determined that NIOSH also provided the DEEOIC with case specific PER/ICEs related to OCAS-PER-016 and OCAS-PER-018.

However, since Bulletins 08-05, 08-13 and 08-16 were released prior to the receipt of the letters from NIOSH, guidance on coding ECMS to indicate that an individual PER/ICE had been received from NIOSH was omitted. This is due to the fact that at the time EEOICPA Bulletins 08-05, 08-13 and 08-16 were issued, it was not known that these case specific evaluations related to PERs would be provided to the DEEOIC. As such, this bulletin provides the procedures for ECMS coding associated with the receipt of ICE/PER from NIOSH and subsequent actions as it relates to the release of OCAS-PER-016 and OCAS-PER-018.

For those PER related EEOICPA Bulletins issued after the receipt of the case specific PERs/ICEs from NIOSH, appropriate ECMS coding instruction pertaining to the “LNR” status code and subsequent actions were included.

References: NIOSH document, OCAS-PER-016, “Implementation of IREP procedures for claims near 50% probability of causation,” effective September 25, 2007, found at <http://198.246.98.21/niosh/ocas/pdfs/pers/oc-per16-r0.pdf>.

Purpose: To provide guidance on ECMS coding for ICEs received from NIOSH related to OCAS-PER-16, Implementation of IREP Procedures for Claims near 50% Probability of Causation and OCAS-PER-018, Los Alamos National Laboratory TBD Revision.

Applicability: All staff.

Actions:

1. For those cases where NIOSH provides the DEEOIC with individual PERs/ICEs related to the release of OCAS-PER-016 (IREP procedures) or OCAS-PER-018 (LANL), the individual PER/ICE will serve as documentation that the case file has been reviewed by NIOSH and that NIOSH has

determined that:

- the change outlined in the PER affects the outcome of the claim and a return to NIOSH for a new dose reconstruction is necessary, or
- there are multiple changes that affect the dose reconstruction and a return to NIOSH for a new dose reconstruction is necessary, or
- the change outlined in the PER does not affect the dose reconstruction, nor do any other changes affect the dose reconstruction and a return to NIOSH is not necessary.

For those cases where NIOSH provided DEEOIC with an individual case PER or ICE referencing OCAS-PER-016, the CE enters the code “LNR” (Letter/Response Received from NIOSH) and selects the “813” reason code from the reason code drop down menu in ECMS B. For those cases where NIOSH provided DEEOIC with an individual case PER or ICE referencing OCAS-PER-018, the CE enters the code “LNR” and selects the “805” reason code from the reason code drop down menu in ECMS B. The claim status date of the code is the date the response is received in the appropriate office, which is the date of the date stamp. The “LNR” status code is not input into ECMS E unless the “NI” (Sent to NIOSH) status code had previously been entered into ECMS E.

If the individual case PER or ICE indicates that the case should “Return to NIOSH” for a new dose reconstruction, the case must be reviewed to determine whether it was previously returned to NIOSH as a result of the release of OCAS-PER-016 or OCAS-PER-018 (there should be an amended NRSD on file). If the case was already referred to NIOSH as a result of OCAS-PER-016 or OCAS-PER-018, then the only action required is to ensure that the “LNR” status code and appropriate reason code has been entered into ECMS.

If the case has not already been returned to NIOSH as a result of OCAS-PER-016 or OCAS-PR-018, then the District Director issues a Director’s Order (if appropriate) reopening the case. Upon reopening, the district office refers the case to NIOSH for a new dose reconstruction. EEOICPA Bulletins 08-05 and 08-13 delegate the reopening authority to the District Directors and also provides guidance on referring cases back to NIOSH for a new dose reconstruction.

If the individual case PER or ICE indicates that the case was “Evaluated with No Change” but does not include a dispositive statement, the District Director issues a Director’s Order reopening the case (if appropriate) and refers the case to NIOSH for a new dose reconstruction (see instructions provided in EEOICPA Bulletin 08-13) if the case has not previously been referred to NIOSH as a result of OCAS-PER-016 or OCAS-PER-018. In order to be dispositive, NIOSH must indicate that they have evaluated the case against the PER and any other changes, and determined that a new dose reconstruction is not necessary.

If the individual case PER or ICE is dispositive, then no action is necessary. The CE must review ECMS to determine whether the “NA” code has already been entered. If the “NA” status code is already entered into ECMS B, it is not necessary to enter another “NA” status code. However, if the “NA” status code has not been entered, then the CE enters the “NA” status code and appropriate reason code into ECMS B. The “NA” reason code for OCAS-PER-016 is “13P” and the “NA” reason code for OCAS-PER-018 is “805.” The status effective date of the “NA” code is the date of the memo to the file stating review is complete and the CE has determined there is no further action necessary.

2. Its possible that some PER/ICEs have already been associated with the appropriate file but ECMS has not been coded to indicate that a PER/ICE has been received from NIOSH. As such, the district/FAB office is to backfill ECMS with the “LNR” status code and appropriate reason code to indicate the receipt of the PER/ICE. This means that the district/FAB office is to review the file to determine if a PER/ICE has been associated with the file and if so, then an “LNR” status code is to be entered into ECMS. Furthermore, if not already done, the appropriate action must be taken on the case as instructed in Action Item #1.

To assist with identifying the OCAS-PER-16 and OCAS-PER-018 related cases to be reviewed for “LNR” coding, a list of the cases where NIOSH provided the DEEOIC with case specific PERs/ICEs will be distributed to the district/FAB offices.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

Rachel P. Leiton

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service

Representatives, Fiscal Officers, FAB District Managers,

Operation Chiefs, Hearing Representatives, District Office Mail & File Section, Managers.

### **09-05 Processing Claims for End-Stage Terminally Ill Claimants**

#### **EEOICPA BULLETIN NO. 09-05**

Issue Date: November 26, 2008

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Effective Date: November 26, 2008

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Expiration Date: November 26, 2009

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Subject: Processing Claims for End-Stage Terminally Ill Claimants

Background: The Division of Energy Employees Occupational Illness Compensation (DEEOIC) strives to process claims fairly and expeditiously for all claimants. However, claimants who are end-stage terminally ill must have priority processing. It is imperative they have our compassionate and swift response to all matters regarding their claims. DEEOIC currently has an informal process to expedite the processing of decisions and payments to claimants in these situations. These procedures need to be formalized, and we must be able to track these cases to ensure they are processed in a timely manner.

Reference: March 8, 2006, Memorandum from Peter M. Turcic, Director of the DEEOIC, to all DEEOIC Offices regarding “Processing claims from terminally ill employees.”

Purpose: To formalize the existing practice of expediting claim and payment processing for end-stage terminally ill claimants and to provide instructions concerning a new Energy Case Management System (ECMS) code that has been created to track the progress of claims for these individuals.

Applicability: All Staff

#### Actions:

1. District Office (DO) and Final Adjudication Branch (FAB) Claims Examiners (CE) and Hearing Representatives (HR) are instructed to watch for indicators of an end-stage terminally ill claimant any time they are reviewing a case file or preparing a decision. This information may be evident in a number of ways (e.g. requests for hospice care, CE review of medical evidence, telephone calls, or letters). Notification may come from resource centers (RCs), congressional offices, authorized

representatives, family members, or medical providers. Upon receipt of information concerning the end stage of the claimant's illness, the District Director (DD) or Assistant District Director (ADD), or FAB Manager (depending upon where the file is located) must be notified immediately.

2. The DD/ADD or FAB Manager must exercise sound judgment in determining if priority handling is warranted. If medical documents or other information indicate that the claimant is in the end stage of his/her illness, or that death is imminent, priority handling is required. If the claimant's medical status is unclear, a medical report to substantiate that the claimant is in the end stage of a disease or illness, must be obtained. Once this information is available, the DD/ADD or FAB Manager will make a final determination whether priority handling is required.

3. Having determined that a claimant is in the end stage of his or her illness, the DD/ADD or FAB Manager must enter a 'TL' – "Terminal Claimant Designated by the DD/FAB Manager" status code in the Claim Status History of ECMS. If the case is a B/E case, the 'TL' code must be entered into both ECMS B and E. The DD or FAB Manager should prepare a brief memo for the case file explaining the need for terminal claimant processing (see [Attachment 1](#)). The status effective date of the code is equal to the date of the memo. The memo should be supported by some form of communication in the case file (e.g. telephone call with corresponding Telephone Management System (TMS) printout, email, or letter, etc.) explaining the need for expedited processing. At the time of coding, the file must also be flagged with a brightly colored sheet of paper that reads, "Terminal Claimant – Expedite Processing." This flag should be stapled to the outside of the file. A second copy of this "flag" should be spindled in the file (in case the cover sheet tears off.) The terminal claimant flag should remain on top of the spindle, even as additional evidence is received. The only item that can be placed on top of it is the authorized representative form, which is a partial sheet, leaving the "Terminal Claimant" sheet still visible.

4. Priority handling for terminally ill claimants requires that the entire adjudication process be expedited. **Everyone involved with the case should do everything within their power to make sure the case progresses as quickly as possible.** Whenever the file changes hands, the person receiving the file should be notified, verbally or in writing, of the claimant's terminal status. The supervisor or DD/ADD should facilitate the expedited adjudication of the claim by requesting priority processing from any other agencies involved, such as the Department of Energy (DOE), the Department of Justice (DOJ), and the National Institute for Occupational Safety and Health (NIOSH).

5. If a case requires referral to the National Office (NO) for reopening or policy clarification, the DO or FAB must be sure to identify the claimant as terminally ill in their memo to the Director.

6. If a terminal claimant case is accepted and a lump sum payment is to be issued, the DD/ADD or FAB Manager should determine if the case warrants an immediate (exception processing) payment, rather than standard payment processing through ECMS. Exception payments are special request payments that are entered directly into the Treasury Department's payment system, at the NO, for same-day or next-day delivery. Exception payments are only to be requested by the DD/ADD, or FAB Manager, if the claimant's condition is rapidly deteriorating and the payment must be transmitted immediately. Upon issuing the final decision, the FAB should notify the DD that a decision and an EN-20 (Acceptance of Payment) have been sent to the claimant. The DO should contact the claimant and his family or authorized representative, and explain why it is imperative they get the completed EN-20 back as quickly as possible. The CE should explain the advantage (timeliness) of selecting an electronic funds transfer (EFT) vs. a paper check, and also explain the need for accurate banking information on the EN-20. It should be emphasized that the DO and/or the RC will assist in any way possible to expedite the return of the EN-20. This would include return of the EN-20 by facsimile, if necessary, which is not permitted for normal payment processing.

7. Upon receipt of the properly completed EN-20, and if an exception processing payment is warranted, the DO fiscal officer will send an email to the National Office Fiscal Officer (NOFO)

advising that a payment request is being forwarded for immediate processing. This email notification simply serves as notice of an incoming payment request, and need only contain the anticipated amount of the payment, the claimant's last name, and last 4 digits of the claim number.

The email notification must be followed by a fax to the NOFO, with the necessary payment documents listed in item #10 below. The NOFO will not initiate any action until the actual payment documents have been received by fax at the NO.

8. When entering exception processing payments in ECMS, the DO Payee Change Assistant will enter the "AOP received date," and the "EFT Account Information" on the "Payee" screen. However, the CE will not create a payment on the "Compensation" screen. In the event the DO begins the payment approval process on the "Compensation" screen, and subsequently determines that a manual payment is required, the payment approvals must be deleted from the "Compensation" screen.

9. Once the DO has notified the NOFO of a pending exception payment request, the DO will begin preparing the Exception Processing Payment Transaction Form (EPPTF). For EFT transactions, the fiscal officer must contact the financial institution and verify the EFT information on the EN-20, the same as with a normal ECMS payment (i.e. account name and number, account type, bank name, etc.) Additionally, the fiscal officer must inquire of the bank whether the routing number on the EN-20 can accept a same-day wire transfer (Fed Wire) or whether the payment must be sent as an ACH (overnight) payment? When completing the EPPTF (available to staff on the DEEOIC shared drive), the PTF must specify the type of payment transaction being requested (i.e. same-day or overnight payment). If the bank routing number can accept either type of electronic payment, the default preference should be "Fed Wire" on the PTF. (If a Fed Wire payment is desired, the FO can also obtain confirmation of the bank routing number at: [www.fedwiredirectory.frb.org](http://www.fedwiredirectory.frb.org)).

The EPPTF is routed through the CE, senior CE/supervisor, DO fiscal officer, and the DD. Each will review the payment information on the form for accuracy; will check the information against the payee screen in ECMS; and will complete all other separate and compulsory creation, certification, verification, and authorization duties (respectively), in an expedited manner. If all information is correct, they will print and sign their names, and date the form. If there is an error, the form is rejected by checking the "Transaction Cancelled" box and indicating the reason for the cancellation. The information is immediately corrected, and the process starts over. The last two signatures are left blank on the EPPTF, at the DO. No compensation payment is created in ECMS.

10. The DO fiscal officer will send, via fax to the NOFO, a copy of the claimant's completed EN-20, a copy of the phone message verifying the account information for electronic payments, and a completed EPPTF. After completing the fax transmission, the DO fiscal officer must notify the NOFO by telephone, that a "terminal payment request" has been transmitted, and must obtain confirmation that the payment request has been received for immediate processing. If the NOFO is unavailable, the fiscal officer should contact the designated back-up person, or the Unit Chief for Policy.

11. The NOFO will review all of the faxed information and take the appropriate steps to process an exception payment through the Treasury Department's Secure Payment System (SPS). Upon completion of the exception payment process, the NOFO will notify the DD/ADD and DO fiscal officer that the payment has been certified with the Treasury Department. Fed Wire transfers are typically delivered to the recipient bank within one to two hours of certification. ACH transfers are completed overnight, for delivery the next day. The DO should advise the claimant and/or family members when to expect the payment.

12. Upon completion of the exception payment, the NOFO will send the DD a copy of the EN-20 that was faxed to the NOFO; the EPPTF containing the final two signatures entered at the NO, and printed verification of the completed transaction from the SPS system. These documents should be sent to the DD via FedEx. Verification of payment documents is now the responsibility of the DD/ADD, and the case file is no longer being sent to the National Office. Upon receipt of the

exception processing documents from the NOFO, the DD/ADD will verify that these documents match the original payment documents in the case file. Once verified, the DD/ADD will prepare a memorandum for the case file stating verification of the fiscal documents (original and facsimile copies of the EN-20 and PTF) has been completed and the documents are in order.

13. The NOFO retains copies of the payment documents in a secure, locked location at the NO.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims

Examiners, Technical Assistants, Customer Service

Representatives, Fiscal Officers, FAB District Managers,

Operation Chiefs, Hearing Representatives, District Office Mail & File Sections, and

### **09-06 Obtaining Signed Responses on State Workers' Compensation Claims, Lawsuits and Fraud**

EEOICPA BULLETIN NO. 09-06

Issue Date: December 29, 2008

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Effective Date: December 29, 2008

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Expiration Date: December 29, 2009

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**Subject:** Obtaining Signed Responses on State Workers' Compensation Claims, Lawsuits and Fraud.

**Background:** Before a case can be accepted under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), it is necessary to verify whether a claimant has ever filed a lawsuit or a state workers' compensation claim related to the same illness for which compensation is being sought. In addition, it is necessary to determine whether a claimant ever pled guilty to or has been convicted of fraud in connection with an application for or receipt of federal or state workers' compensation.

Forms EE-1 (Claim for Benefits Under the EEOICPA) and EE-2 (Claim for Survivor Benefits Under the EEOICPA) were modified in 2005 to include a section requiring answers to the existence of these type of lawsuits, claims and charges. However, in cases where the claimant completed the pre-2005 Form EE-1 or Form EE-2 (which did not have these questions on the forms) there is currently no formalized procedure for requesting this information.

**References:** 20 C.F.R. §§ 30.505 and 30.626

**Purpose:** To provide procedures for collecting information on lawsuits, state workers' compensation claims and fraud charges connected with an application for or receipt of federal or state workers' compensation.

Applicability: All staff.

Actions:

1. In cases where the claimant submitted a pre-2005 version of Form EE-1 or Form EE-2 (version date can be found in the bottom right corner of the forms), **and** the case is in posture for recommended acceptance, the claimant must submit a **signed** response to the following questions:

- Has there been a lawsuit filed for the exposure to the same toxic substance(s) that the claim is based on under Part B and/or Part E?
- Has there been a state workers' compensation claim filed for the same accepted medical condition(s) under Part E? (This question should be omitted if the claimant is only eligible for Part B benefits)
- Has the claimant either pled guilty to or been convicted of fraud in connection with an application for or receipt of any federal or state workers' compensation?

2. In order to obtain this information, the claims examiner (CE) sends a development letter to the claimant. The letter must be in freeform and claim specific in regards to the exposure and medical condition(s) being considered. Standardized, routinely used letters, forms, or templates can not be used for this purpose. The development letter must note that by signing the written response, the claimant agrees to report any changes to the information provided in the response, immediately, to DEEOIC. The claimant should also be advised in the development letter that should he/she refuse to execute a signed written response to the questions, such failure or refusal may be deemed a rejection of the potential EEOICPA benefit and could result in administrative closure of the claim.

3. The CE may also call the claimant to get an initial verbal response to the questions before the issuance of the recommended decision to accept the claim. As long as the claimant confirms verbally or submits a signed response that he/she has not filed a lawsuit, state workers' compensation claim, or pled guilty to or been convicted of fraud in connection with an application for or receipt of federal or state workers' compensation, the CE may proceed with issuance of the recommended decision. If the CE only receives a verbal response, the CE must document this conversation in the Telephone Management System (TMS). However, the CE must still follow up with a development letter requesting the signed response from the claimant.

4. If the CE is unable to obtain a verbal response from the claimant or the claimant responds affirmatively to any one of the questions, (either verbally or in a signed response), the CE cannot issue a recommended decision without further development and clarification. The CE must develop to determine if an offset and/or coordination of benefits is required or if the claimant is entitled to EEOICPA benefits in the case of a guilty plea or conviction on fraud charges connected with an application for workers' compensation. If the CE is unable to obtain a verbal response from the claimant or the claimant is not responsive to the CE's development requests for clarification, the CE must advise the claimant by letter that non compliance would result in administrative closure of the claim. As a last resort, the CE may consider administrative closure of the claim after at least two development letters.

5. A signed written response must be received from each eligible claimant before the issuance of the final decision. If a recommended decision is issued without receipt of the signed response (i.e. the CE only received verbal confirmation), it is then the responsibility of the FAB to obtain this signed response. Every effort should be taken by the FAB to obtain this signed response including calling the claimant and sending a follow up development letter. However, if the FAB is unable to obtain the signed response after 30 days from the FAB's follow up development letter, the FAB is to remand the case to the district office for administrative closure of the claim.

6. By signing the written response or the post-2005 EE-1/ EE-2 forms, the claimant agrees to notify DEEOIC of any changes in the information provided in regards to the "lawsuit/state workers' compensation/fraud statement." As such, it is not necessary for the district office or the FAB to

request this information again unless there is a new exposure or illness (including consequential) being accepted under EEOICPA. For instance, if the claimant has submitted a written response for asbestosis (asbestos exposure) and is now filing a new claim for beryllium illness (beryllium exposure) that is being accepted under EEOICPA, a written response regarding the new condition/exposure is required. In some cases, the claimant may have already submitted a written response but the claimant was not advised by DEEOIC to report any changes in the "lawsuit/state workers' compensation/fraud statement." In these cases, the CE must request this information again if the written response is older than six months.

7. Regardless of the information provided by the claimant, if there is any evidence in the case file of a lawsuit, a state workers' compensation claim, or fraud charges in connection with an application for or receipt of workers' compensation that may impact the claimant's EEOICPA benefits, further development must be undertaken. If the case is with the FAB and the matter could be clarified by a telephone call, the FAB should take this action. If the matter appears to be complex and would require extensive development, the case is to be remanded to the district office for further development.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

### **09-07 Metallurgical Laboratory SEC Class**

EEOICPA BULLETIN NO.09-07

Issue Date: February 17 , 2009

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Effective Date: February 17 , 2009

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Expiration Date: February 17 , 2010

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Subject: Metallurgical Laboratory SEC Class

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from the Metallurgical Laboratory (Met Lab) in Chicago, Illinois to be added to the Special Exposure Cohort (SEC).

The decision to initiate this petition occurred after the National Institute for Occupational Safety and Health (NIOSH) determined that it could not reconstruct a radiation dose under 42 C.F.R. § 83.14. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health ("the Board"). On December 18 , 2008, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at Met Lab in Chicago, Illinois.

On January 16, 2009, the Secretary of HHS designated the following class for addition to the SEC

in a report to Congress.

All AWE employees who worked at the Metallurgical Laboratory in Chicago, Illinois, from August 13, 1942 through June 30, 1946, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the SEC.

A copy of the Secretary's letter to Congress recommending the designation is included as [Attachment 1](#). The SEC designation for this class became effective as of February 15, 2009, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in a report to Congress. Although Congress had the authority to reject the recommendation within the 30-day time frame, Congress took no action, and, therefore, the new SEC class became effective February 15, 2009.

While a new SEC class has been added for employees at Met Lab, NIOSH has determined that it is possible to reconstruct occupational medical dose. NIOSH also intends to use any available internal and external monitoring data that may be available for an individual claim (and can be interpreted using existing NIOSH dose reconstruction processes or procedures). This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the January 16, 2009 letter to Congress from the Secretary of HHS in which Secretary Leavitt makes the designation.

Purpose: To provide procedures for processing SEC claims for workers at Met Lab in Chicago, Illinois.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at Met Lab during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.
3. The district offices are to use the comprehensive list as the basis for an initial screening of cases associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is *likely* to meet the criteria for inclusion into the SEC class. A screening worksheet is included as [Attachment 2](#). The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case record. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. Claim status codes have been created in ECMS to reflect each of these categories: **ISL** (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; **ISU** (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and **ISD** (Initial SEC Screening, Development Needed), for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, in this instance, **907** (Reviewed under 09-07, Metallurgical Laboratory SEC class). Once

the worksheet is completed, the claims examiner (CE) is to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the **ISL**, **ISU** and **ISD** codes is to correspond with the completion date of the screening worksheet.

The purpose of the initial screening of cases is to assist the district offices in prioritizing claims posed for acceptance and for purposes of meeting the FY 2009 operational plan goal. Once screening and prioritization is complete, claims adjudication proceeds in the usual manner.

Regardless of the outcome of the screening protocol, each case must be evaluated formally for SEC inclusion and the decision recorded in ECMS. The initial screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims submitted after the list is generated. These claims will be evaluated for inclusion in the SEC in the general course of processing.

4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, complete the worksheet and enter related coding.

5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class, and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected Met Lab claimants is included as [Attachment 3](#). The CE must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including those cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code “**NW**” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the “**NW**” code entry is February 17, 2009. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record.

Although this class becomes effective on February 15, 2009, because that is a Sunday, and the following day is a federal holiday, this Bulletin effective date is February 17, 2009. It is the Bulletin effective date (February 17, 2009) that forms the basis for coding the ECMS status effective date.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC, and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this Bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e mail to return the dose reconstruction analysis records. The SrCE then prints a copy of the “sent” e mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the status code “**NW**” with a status effective date equal to February 17, 2009. In addition, the CE must write a letter to the claimant to advise that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this Bulletin, then refer to instructions in Action #16.

6. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the EEOICPA Procedure Manual Chapter 2-600.5. If the employee has a specified cancer,

proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.

8. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 workdays at Met Lab in Chicago, Illinois between August 13, 1942 and June 30, 1946. The CE may refer to [EEOICPA Bulletin No. 02-09](#) for guidance on calculating 250 workdays.

The Met Lab site occupied part of the University of Chicago, primarily using seven locations on the campus. NIOSH has documentation indicating buildings in which radioactive materials and waste were known to have been used and/or stored, but has no documentation to confirm that all radioactive materials were restricted to such areas or that contamination was adequately controlled. As a result, NIOSH assumes that the potential for exposure to radioactive materials existed in all Met Lab buildings and areas. Additionally, NIOSH is unable to define potential radiation exposure conditions based on worker job descriptions, job titles and/or job assignments. Therefore, based on the SEC designation, any probative evidence that the employee was employed at Met Lab for at least 250 workdays during the SEC period is sufficient to include him or her in the SEC class.

Additionally, any employment that is verified for Argonne National Laboratory prior to July 1, 1946 actually represents employment at the Met Lab.

If the employee does not have 250 workdays at Met Lab, the CE should review the file to determine if additional days in the SEC can be found by combining days from employment that meets the criteria for other classes in the SEC and aggregating them together to meet the 250-workday requirement. If, after such review, the employee still does not meet the employment criteria or inclusion in the SEC, proceed to Action #10.

9. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

ECMS Coding Reminder: The “SE” (Confirmed as SEC Claim) status code must be entered into ECMS B with an effective date equal to the date of the recommended decision to approve.

For all claims where Met Lab employment is claimed, regardless of whether the SEC criterion is met, the SEC site code must be entered under the “SEC/SEC Desc” field on the claim screen. The SEC site code for Met Lab is **0057**.

10. As discussed earlier, although HHS determined that it is not feasible for NIOSH to perform complete dose reconstructions for this class of employees, NIOSH has indicated that partial dose reconstructions are possible. Accordingly, for cases that have not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code “NI” in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the SrCe, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code “NI” into ECMS B, with a status effective date equal to the date of the e-mail requesting NIOSH to proceed with dose reconstruction. *The e-mail should include a brief statement of why the case should proceed with dose reconstruction; e.g., non-specified cancer, insufficient latency period or does not meet the 250 workday requirement.* In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for a dose reconstruction and the reason(s) it does not qualify for the SEC class. *The CE is to send a copy of this letter to NIOSH.*

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a

recommended decision. The CE enters status code “**NR**” (NIOSH Dose Reconstruction Received) in ECMS B and selects the reason code of “**PD**” (Partial Dose Reconstruction). The status effective date is the date the dose reconstruction is date-stamped into the district office. The CE should not delete the “**NW**” (NIOSH, returned without a dose reconstruction) or “**NI**” code already present in ECMS.

11. If the claim meets the SEC employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction resulting in a probability of causation (PoC) of 50% or greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and, if necessary, concurrently prepares a NRSD to NIOSH for a dose reconstruction for the non-specified cancer to determine eligibility for medical benefits. The CE enters status code “**SE**” (Confirmed as SEC Claim) and the “**NI**” code into ECMS B. The status effective date for the “**SE**” code is the date of the recommended decision to accept the specified cancer. The status effective date for the “**NI**” code is the date of the Senior or Supervisory CE signature on the NRSD.

12. If there is a final decision to deny based on a PoC of less than 50% and a review of the evidence of record establishes likely inclusion in the SEC class, the case will need to be reopened. Since the Met Lab is identified as an AWE employer, those employees are not eligible under Part E. However, many Met Lab employees went on to work for various DOE facilities, and may have Part E claims that may be affected by an acceptance under Part B. Therefore, there may be cases where the Part E claim will also have to be reopened. In the exercise of the DEEOIC Director’s discretion of the reopening process, the Director is delegating limited authority to the four District Directors to sign Director’s Orders for reopening of these cases. This delegated authority is limited to reopenings based upon evidence that a Met Lab employee meets the criteria for placement into the Met Lab SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided in [Attachment 4](#). The DEEOIC Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is responsible for issuing a new recommended decision.

13. For those cases reopened under the authority granted in this Bulletin, the District Director enters status code “**MN**” (NO Initiates Review for Reopening) in ECMS B with a status effective date equal to the effective date of this Bulletin. For all reopenings per this Bulletin, upon completing the Director’s Order to reopen the claim, the District Director enters status code “**MD**” (Claim Reopened – File Returned to DO) into ECMS B to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “**MZ**” status code is not necessary). The status effective date of the “**MD**” code is the date of the Director’s Order. Please note that while the “**MD**” code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been delegated in this specific circumstance.

14. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending Met Lab cases that have a recommended decision to deny. All cases on the comprehensive list identified in action item 2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at Met Lab during the time period specified, has a specified cancer, and meets the 250-workday requirement, the FAB is to reverse the district office’s recommended decision to deny, and accept the case. The CE or FAB staff person enters status code “**F6**” (FAB Reversed to Accept) with the appropriate reason code into ECMS B to reflect the FAB reversal with a status effective date equal to the date of the final decision to approve. The CE or FAB staff person enters status code “**SE**” (Confirmed as SEC Claim) into ECMS B with a status effective date equal to the date of the final decision to approve.

If no action is required, FAB must follow the instructions specified in action item 16, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the district office. If FAB determines that the case cannot be approved based on the new SEC designation and that re-referral to NIOSH is appropriate (see action items 7, 8 and 10), the CE or FAB staff person must remand the case for district office action. The CE or FAB staff person enters status code “**F7**” (FAB Remanded) with “**OTH**” (No DO Error – Other) as the reason code. If the Part B decision is being remanded, the CE or FAB staff person enters the remand code into ECMS B with a status effective date equal to the date of the remand.

15. The operational plan goal for completion of the action items in the Bulletin is as follows: The initial screening is to be completed for 90% of all cases on the comprehensive list within 30 days of the Bulletin effective date. Within 45 days after the initial screening, recommended decisions are to be issued for 60% of those cases that are identified, via the initial screening, as likely to be included in the SEC class (**ISL**), and those cases for which development may be needed (**ISD**). Within 60 days after the initial screening, recommended decisions are to be issued for 90% of those cases that are identified, via initial screening, as likely to be included in the SEC class (**ISL**), and those cases for which development may be needed (**ISD**).

16. If, after review or further development, the CE or FAB staff person determines that a case on the list does not require any action, the CE or FAB staff person must write a brief memo to the file indicating that the file was reviewed and note the reason why no additional action is necessary. A case classified as not requiring any action is a case that does not meet the SEC criteria, and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must then code “**NA**” (No Action Necessary) and select the appropriate reason code from the reason code drop down list. The “**NA**” coding is specifically tied to the SEC review list generated by DEEOIC, and the “**NA**” code is restricted to ECMS B only. This is because the SEC review list is derived from Part B data. For Met Lab cases that were reviewed under this Bulletin and require no additional action, the reason code that must be selected is **907** (Rvwd under 09-07, Metallurgical Laboratory SEC) and be coded into ECMS B only. The status effective date of the “**NA**” code is the date of the memo to the file stating the review is complete, and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the “**NA-907**” code is not entered initially. The “**NA-907**” code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the “**NA-907**” code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “**NA-907**” code in addition to the closure code. The status effective date for the “**NA**” coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the EEOICPA Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections.

## **09-08 Vitro Manufacturing (Canonsburg) SEC Class**

EEOICPA BULLETIN NO.09-08

Issue Date: February 17, 2009

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Effective Date: February 17, 2009

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Expiration Date: February 17, 2010

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Subject: Vitro Manufacturing (Canonsburg) SEC Class

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from Vitro Manufacturing in Canonsburg, Pennsylvania to be added to the Special Exposure Cohort (SEC).

The decision to initiate this petition occurred after the National Institute for Occupational Safety and Health (NIOSH) determined that it could not reconstruct a radiation dose under 42 C.F.R. § 83.14. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On December 18, 2008, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at Vitro Manufacturing in Canonsburg, Pennsylvania.

On January 16, 2009, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress.

All AWE employees who worked at Vitro Manufacturing in Canonsburg, Pennsylvania, from August 13, 1942 through December 31, 1957, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

A copy of the Secretary’s letter to Congress recommending the designation is included as [Attachment 1](#). The SEC designation for this class became effective as of February 15, 2009, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in a report to Congress. Although Congress had the authority to reject the recommendation within the 30-day time frame, Congress took no action and therefore the new SEC class became effective February 15, 2009.

While a new SEC class has been added for employees at Vitro Manufacturing (Canonsburg), NIOSH has determined that it is possible to reconstruct occupational medical dose. NIOSH also intends to use any available internal and external monitoring data that may be available for an individual claim (and can be interpreted using existing NIOSH dose reconstruction processes or procedures). This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of

the Special Exposure Cohort Under EEOICPA; the January 16, 2009 letter to Congress from the Secretary of HHS in which Secretary Leavitt makes the designation.

Purpose: To provide procedures for processing SEC claims for workers at Vitro Manufacturing in Canonsburg, Pennsylvania.

Applicability: All staff.

### Actions

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at Vitro Manufacturing (Canonsburg) during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.
3. The district offices are to use the comprehensive list as the basis for an initial screening of cases associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is *likely* to meet the criteria for inclusion into the SEC class. A screening worksheet is included as Attachment 2. The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case record. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. New claim status codes have been created in ECMS to reflect each of these categories: **ISL** (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; **ISU** (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and **ISD** (Initial SEC Screening, Development Needed), those for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, in this instance, 908 (Reviewed under 09-08, Vitro Manufacturing (Canonsburg) SEC class). Once the worksheet is completed, the claims examiner (CE) is to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the **ISL**, **ISU** and **ISD** codes is to correspond with the completion date of the screening worksheet.

The purpose of this initial screening is to assist the district offices in prioritizing claims posed for acceptance and for purposes of meeting the FY 2009 operational plan goal. Once screening and prioritization is complete, claims adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each case must be evaluated formally for SEC inclusion and the decision recorded in ECMS. This screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims submitted after the list is generated. These claims will be evaluated for inclusion in the SEC in the general course of processing.

4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, worksheet and related coding.
5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her

case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected Vitro Manufacturing (Canonsburg) claimants is included as [Attachment 3](#). The CE must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including those cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code "NW" (NIOSH, Returned without a dose reconstruction) in ECMS B. The status effective date for the code entry is February 17, 2009. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record.

Although this class in the SEC becomes effective on February 15, 2009, because that is a Sunday, and the following day is a federal holiday, this Bulletin effective date is February 17, 2009. It is the Bulletin date (February 17, 2009) that forms the basis for the ECMS status effective date coding.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this Bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e-mail to return dose reconstruction analysis records. The SrCE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the "NW" code with a status effective date of February 17, 2009. In addition, the CE must write a letter to the claimant to advise that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this Bulletin, then refer to instructions in Action #16.

6. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual (PM) Chapter 2-600.5. If the employee has a specified cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.

8. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 work days at Vitro Manufacturing in Canonsburg, Pennsylvania between August 13, 1942 through December 31, 1957. The CE may refer to [EEOICPA Bulletin No. 02-09](#) for guidance on calculating 250 work days.

The Vitro Manufacturing facility was located on an 18-acre site on Strabane Avenue in Canonsburg, Pennsylvania. NIOSH has documentation indicating buildings in which radioactive materials and waste were known to have been used and/or stored, but has no documentation to confirm that all radioactive materials were restricted to such areas or that contamination was adequately controlled. As a result, NIOSH assumes that the potential for exposure to radioactive materials existed in all Vitro Manufacturing (Canonsburg) buildings and areas. Additionally, NIOSH is unable to define potential radiation exposure conditions based on worker job descriptions, job titles and/or job assignments. Therefore, based on the SEC designation, any probative evidence that the employee was employed at Vitro Manufacturing (Canonsburg) for at least 250 work days during the SEC period is sufficient to include him or her in the SEC class.

If the employee does not have 250 work days at Vitro Manufacturing (Canonsburg), the CE should review the file to determine if additional days in the SEC can be found by combining days from employment that meets the criteria for other classes in the SEC and aggregating them together to meet the 250-work-day requirement. If, after such review, the employee still does not meet the employment criteria for inclusion in the SEC, proceed to Action #10.

9. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

ECMS Coding Reminder: The “SE” (Confirmed as SEC Claim) status code must be entered into ECMS B with an effective date equal to the date of the recommended decision to approve.

For all claims where Vitro Manufacturing (Canonsburg) employment is claimed, regardless of whether the SEC criteria are met, the SEC site code must be entered under the “SEC/SEC Desc” field on the claim screen. The SEC site code for Vitro Manufacturing (Canonsburg) is 0058.

10. As discussed earlier, although HHS determined that it is not feasible for NIOSH to perform complete dose reconstructions for this class of employees, NIOSH has indicated that partial dose reconstructions are possible. Accordingly, for cases that had not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code “NI” (Sent to NIOSH) in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code “NI” (Sent to NIOSH) into the ECMS B, effective the date of the e-mail requesting NIOSH to proceed with dose reconstruction. *The e-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-specified cancer, insufficient latency period or does not meet the 250-work-day requirement.* In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for dose reconstruction and the reason(s) it does not qualify for the SEC class. *The CE is to send a copy of this letter to NIOSH.*

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “NR” (NIOSH Dose Reconstruction Received) in ECMS B and selects the “PD” (Partial Dose Reconstruction) reason code. The status effective date is the date the dose reconstruction is date-stamped into the District Office. The CE should not delete the “NW” (NIOSH, returned without a dose reconstruction) or “NI” (Sent to NIOSH) code already present in ECMS.

11. If the claim meets the SEC employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction that resulted in a probability of causation of 50 percent or greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and, if necessary, concurrently prepares a NRSD to NIOSH for a dose reconstruction for the non-specified cancer to determine eligibility for medical benefits. The CE enters status code “SE” (Confirmed as SEC claim) and the “NI” (Sent to NIOSH) code into ECMS B. The status effective date for the “SE” code is the date of the recommended decision to accept the specified cancer. The status effective date for the “NI” code is the date of the Senior or Supervisory CE signature on the NRSD.

12. If there is a final decision to deny based on a PoC of less than 50% and a review of the evidence of record establishes likely inclusion in the SEC class, the case will need to be reopened. In the exercise of the Director’s discretion of the reopening process, the Director is delegating limited authority to the four District Directors to sign Director’s Orders for reopening. This delegated authority is limited to reopenings based upon evidence that a Vitro Manufacturing

(Canonsburg) employee meets the criteria for placement into the Vitro Manufacturing (Canonsburg) SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director's Order is provided in [Attachment 4](#). The District Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director's Order is issued, the district office is responsible for issuing a new recommended decision.

13. For those cases which are reopened under the authority granted in this Bulletin, the District Director enters status code "**MN**" (NO Initiates Review for Reopening) in ECMS B with a status effective date as the effective date of this Bulletin. For all reopenings per this Bulletin, upon completing the Director's Order to reopen the claim, the District Director (DD) enters status code "**MD**" (Claim Reopened – File Returned to DO) into ECMS B to reflect that the case has been reopened and is in the district office's jurisdiction. (The "**MZ**" status code is not necessary). The status effective date of the "**MD**" code is the date of the Director's Order. Please note that while the "**MD**" code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been in this specific circumstance.

14. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending Vitro Manufacturing (Canonsburg) cases that have a recommended decision to deny. All cases on the comprehensive list identified in action item 2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at Vitro Manufacturing (Canonsburg) during the time period specified, has a specified cancer, and meets the 250-work-day requirement, the FAB is to reverse the district office's recommended decision to deny and accept the case. The CE or FAB staff person enters status code "**F6**" (FAB Reversed to Accept, with appropriate Reason Code) into ECMS B to reflect the FAB reversal with a status effective date equal to the date of the final decision to approve. The CE or FAB staff person enters status code "**SE**" (Confirmed as SEC Claim) into ECMS B with a status effective date equal to the date of the final decision to approve.

If no action is required, FAB must follow the instructions specified in action item 16, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the District Office. If FAB determines that the case cannot be approved based on the new SEC designation and that re-referral to NIOSH is appropriate (see action items 7, 8 and 10) the CE or FAB staff person must remand the case for district office action. The CE or FAB staff person enters status code "**F7**" (FAB Remanded) with "**OTH**" (No DO Error – Other) as the reason code. If the Part B decision is being remanded, the CE or FAB staff person enters the remand code into ECMS B with a status effective date of the date of the remand.

15. The operational plan goal for completion of the action items in the Bulletin is as follows: The initial screening is to be complete for 90% of all cases on the comprehensive list within 30 days of the Bulletin effective date. Recommended decisions are to be issued 45 days after the initial screening for 60% of those cases that are identified via initial screening as likely to be included in the SEC class (**ISL**) and those for which development may be needed (**ISD**). Recommended decisions are to be issued 60 days after the initial screening for 90% of those cases that are identified via initial screening as likely to be included in the SEC class (**ISL**) and those for which development may be needed (**ISD**).

16. If, after review or further development, the CE or FAB staff person determines that a case on the list does not require any action, the CE or FAB staff person must write a brief memo to the file indicating that the file was reviewed and noting the reason why no additional action is necessary, and why. A case classified as not requiring any action is a case that does not meet the SEC criteria and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must then code "**NA**" (No Action Necessary) and then select the appropriate reason code

from the reason code drop down list. The “NA” coding is specifically tied to the SEC review list generated by DEEOIC and the “NA” code is restricted to ECMS B only because the SEC review list is derived from Part B data. For Vitro Manufacturing (Canonsburg) cases that were reviewed under this Bulletin and require no additional action, the reason code that must be selected is “908” (Reviewed under Bulletin 09-08, Vitro Manufacturing (Canonsburg) SEC) and be coded into ECMS B only. The status effective date of the “NA” code is the date of the memo to the file stating review is complete and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the “NA-908” code is not entered initially. The “NA-908” code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the “NA-908” code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “NA-908” code in addition to the closure code. The status effective date for the “NA” coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections

### **09-09 Mallinckrodt Chemical Company, Destrehan Street Plant, 1958 SEC Class**

EEOICPA BULLETIN NO.09-09

Issue Date: February 17 , 2009

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Effective Date: February 17 , 2009

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Expiration Date: February 17 , 2010

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Subject: Mallinckrodt Chemical Company, Destrehan Street Plant, 1958 SEC class.

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from the Mallinckrodt Chemical Company, Destrehan Street Plant (Mallinckrodt) in St. Louis, Missouri to be added to the Special Exposure Cohort (SEC).

The decision to initiate this petition occurred after the National Institute for Occupational Safety and Health (NIOSH) determined that it could not reconstruct a radiation dose under 42 C.F.R. §

83.14. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On December 18, 2008, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at the Mallinckrodt Chemical Company, Destrehan Street Plant in St. Louis, Missouri.

On January 16, 2009, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress.

All employees of DOE, its predecessor agencies, and their contractors and subcontractors who worked in the Uranium Division at the Mallinckrodt Chemical Co., Destrehan Street Plant in St. Louis, Missouri, from January 1, 1958 to December 31, 1958, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees included in the SEC.

A copy of the Secretary’s letter to Congress recommending the designation is included as [Attachment 1](#). The SEC designation for this class became effective as of February 15, 2009, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in a report to Congress. Although Congress had the authority to reject the recommendation within the 30-day time frame, Congress took no action and therefore the new SEC class became effective February 15, 2009.

While a new SEC class has been added for employees at Mallinckrodt, NIOSH has determined that it is likely feasible to reconstruct both individual external dose and occupational medical dose for Mallinckrodt workers with sufficient accuracy. NIOSH also intends to use any available internal and external monitoring data that may be available for an individual claim (and can be interpreted using existing NIOSH dose reconstruction processes or procedures). This means that for claims that do not satisfy the SEC criteria, a partial dose reconstruction is to be performed by NIOSH.

This is the third SEC class in effect for Mallinckrodt. Two previous classes for workers at Mallinckrodt during the combined periods of 1942-1957 were the subject of DEEOIC Bulletins 06-03 and 06-05.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the January 16, 2009 letter to Congress from the Secretary of HHS in which Secretary Leavitt makes the designation.

Purpose: To provide procedures for processing SEC claims for workers at the Mallinckrodt Chemical Company, Destrehan Street Plant in St. Louis, Missouri.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at Mallinckrodt during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.
3. The district offices are to use the comprehensive list as the basis for an initial screening of cases associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is *likely* to meet the criteria for inclusion into the SEC class. A screening worksheet

is included as [Attachment 2](#). The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case record. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. New claim status codes have been created in ECMS to reflect each of these categories: **ISL** (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; **ISU** (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and **ISD** (Initial SEC Screening, Development Needed), for which development may be needed in order to reach a determination on SEC class inclusion. A reason code had also been created, in this instance, **909** (Reviewed under Bulletin 09-09, Mallinckrodt 1958 SEC class). Once the worksheet is completed, the claims examiner (CE) is to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the **ISL**, **ISU** and **ISD** codes is to correspond with the completion date of the screening worksheet.

The purpose of this initial screening is to assist the district offices in prioritizing claims posed for acceptance and for purposes of meeting the FY 2009 operational plan goal. Once screening and prioritization is complete, claims adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each case must be evaluated formally for SEC inclusion and the decision recorded in ECMS. This screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims submitted after the list is generated. These claims will be evaluated for inclusion in the SEC in the general course of processing.

4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, worksheet and related coding.

5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected MCW claimants is included as [Attachment 3](#). The CE must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including those cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code “**NW**” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the code entry is February 17, 2009. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record. The standard procedure for NIOSH coding in ECMS E is to code all additional NIOSH actions only if the “**NI**” (Sent to NIOSH) status code has been entered. Therefore, the CE enters the “**NW**” code into ECMS E with the status effective date of February 17, 2009 only if “**NI**” (Sent to NIOSH) has already been entered in ECMS E.

Although this class becomes effective on February 15, 2009, because that is a Sunday and the following day is a holiday, the Bulletin effective date is February 17, 2009. It is the Bulletin date that forms the basis for the ECMS status effective date coding, February 17, 2009.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCe), notifies the appropriate point of contact at NIOSH via e-mail to return dose reconstruction analysis records. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents

the date it was sent) for inclusion in the case file. The CE is to enter status code “**NW**” with the status effective date of February 17, 2009. In addition, the CE must write a letter to the claimant to advise that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this bulletin, then refer to instructions in Action #16.

6. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual (PM) Chapter 2-600.5. If the employee has a specified cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.

8. If the employee has a specified cancer, the CE must verify the employee worked in the Uranium Division of Mallinckrodt at the Destrehan Street facility. The term “Uranium Division” includes work performed at any building, structure, or premise that is owned by the Mallinckrodt Chemical Company located within the area bounded in part by North Broadway, Angelroot Street, and Salisbury Street.

If the employee meets this criterion, the CE must determine whether the worker was employed at least 250 work days at Mallinckrodt between January 1, 1958 and December 31, 1958. The CE may refer to [EEOICPA Bulletin No. 02-09](#) for guidance on calculating 250 work days.

HHS has previously designated SEC classes for employment at Mallinckrodt during the periods 1942-1948 and 1949-1957. Based on available information, NIOSH has concluded that similar operations and radiological exposure conditions upon which the 1949-1957 SEC class is based continued into 1958. NIOSH has found no substantive difference in site operations, personnel and workplace monitoring, source term, or available site characterization data between 1958 and the previously designated 1949-1957 SEC period. As a result, NIOSH assumes that the potential for radiation exposure existed in all buildings and areas within the Uranium Division. Additionally, as with the earlier SEC periods, NIOSH does not have sufficient information for 1958 to distinguish the raffinate-exposed workers from the workers who never worked with raffinate. Therefore, NIOSH is unable to define potential radiation exposure conditions based on worker job descriptions, job titles and/or job assignments within the Uranium Division. Based on the SEC designation, any probative evidence that the employee was employed at Mallinckrodt’s Uranium Division for at least 250 work days during the SEC period is sufficient to include him or her in the SEC class.

If the employee does not have 250 days at Mallinckrodt, the CE should review the file to determine if additional days in the SEC can be found by combining days from employment that meets the criteria for other classes in the SEC and aggregating them together to meet the 250-work-day requirement. If after such review the employee still does not meet the employment criteria, proceed to Action #10.

9. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

ECMS Coding Reminder: The “**SE**” (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the status effective date of the recommended decision to approve. If the case is an E/B case, and the basis for the Part E acceptance is the Part B SEC acceptance, the “**SE**” code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

For all claims where Mallinckrodt employment is claimed, regardless of whether the SEC criteria

are met, the SEC site code must be entered under the “SEC/SEC Desc” field on the claim screen. The SEC site code for the Mallinckrodt Chemical Company, Destrehan St. Plant in St. Louis, Missouri is **0029**.

10. As discussed earlier, although HHS determined that it is not feasible for NIOSH to perform complete dose reconstructions for this class of employees, NIOSH has indicated that partial dose reconstructions are possible. Accordingly, for cases that had not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code “**NI**” in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD. If the case is an E/B case, the “**NI**” code is not entered into ECMS until toxic exposure development is complete.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the SrCe, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code “**NI**” into ECMS B, effective the date of the e-mail requesting NIOSH to proceed with dose reconstruction. *The e-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-specified cancer, insufficient latency period or does not meet the 250-work-day requirement.* In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for dose reconstruction and the reason(s) it does not qualify for the SEC class. *The CE is to send a copy of this letter to NIOSH.* If the case is an E/B case and toxic exposure development was completed with a memorandum to file (with a prior “**NI**”/“**NW**” code), the CE enters status code “**NI**” into ECMS E with the status effective date of the e-mail requesting NIOSH to proceed with dose reconstruction.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “**NR**” (NIOSH Dose Reconstruction Received) in ECMS B and selects the “**PD**” (Partial Dose Reconstruction) reason code. The status effective date is the date the dose reconstruction is date-stamped into the District Office. The CE should not delete the “**NW**” (NIOSH, returned without a dose reconstruction) or “**NI**” code already present in ECMS. If the CE had previously entered “**NI**” in ECMS E, the CE also enters the status code “**NR**” and the reason code “**PD**” into ECMS E. If the case is an E/B case, the CE enters the Probability of Causation (PoC) into ECMS B and ECMS E (regardless of whether the “**NI**” code had previously been entered).

11. If the claim meets the SEC employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction that resulted in a probability of causation of 50 percent or greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and, if necessary, concurrently prepares a NRSD to NIOSH for a dose reconstruction for the non-specified cancer to determine eligibility for medical benefits. The CE enters status code “**SE**” and the “**NI**” code into ECMS B. The status effective date for the “**SE**” code is the date of the recommended decision to accept the specified cancer. The status effective date for the “**NI**” code is the date of the Senior or Supervisory CE signature on the NRSD. If the case is an E/B case, the CE enters status code “**NI**” only after the toxic exposure development is complete and the CE cannot accept causation. In that case the CE creates a memorandum to file stating that toxic exposure development is complete. The CE then enters status code “**NI**” into ECMS E with the date of the memorandum as the status effective date.

12. If there is a final decision to deny based on a POC of less than 50% and a review of the

evidence of record establishes likely inclusion in the SEC class, the case will need to be reopened. In the exercise of the Director's discretion of the reopening process, the Director is delegating limited authority to the four District Directors to sign Director's Orders for reopening. This delegated authority is limited to reopenings based upon evidence that a Mallinckrodt employee meets the criteria for placement into the Mallinckrodt SEC class as defined by this bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director's Order is provided in [Attachment 4](#). The Director of the DEEOIC is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director's Order is issued, the district office is responsible for issuing a new recommended decision.

13. For those cases which are reopened under the authority granted in this Bulletin, the District Director enters status code "**MN**" (NO Initiates Review for Reopening) in ECMS B with a status effective date as the effective date of this bulletin. If the District Director is also reopening Part E, the "**MN**" code is also input in ECMS E. For all reopenings per this bulletin, upon completing the Director's Order to reopen the claim, the District Director (DD) enters status code "**MD**" (Claim Reopened – File Returned to DO) into ECMS B and/or ECMS E to reflect that the case has been reopened and is in the district office's jurisdiction. (The "**MZ**" status code is not necessary). The status effective date of the "**MD**" code is the date of the Director's Order. Please note that while the "**MD**" code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been in this specific circumstance.

14. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending Mallinckrodt cases that have a recommended decision to deny. All cases on the comprehensive list identified in action item 2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at Mallinckrodt during the time period specified, has a specified cancer, and meets the 250-work-day requirement, the FAB is to reverse the district office's recommended decision to deny and accept the case. The CE or FAB staff person enters status code "**F6**" (FAB Reversed to Accept) into ECMS B/E with appropriate reason code (as appropriate) to reflect the FAB reversal with a status effective date equal to the date of the final decision to approve. The CE or FAB staff person enters status code "**SE**" into ECMS B with a status effective date equal to the date of the final decision to approve. If the FAB is also reversing the Part E decision based on SEC designation, CE or FAB staff person also enters status codes "**F6**" and "**SE**" into ECMS E with a status effective date of the final decision for Part E.

If no action is required, FAB must follow the instructions specified in action item 16, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the District Office. If FAB determines that the case cannot be approved based on the new SEC designation and that re-referral to NIOSH is appropriate (see action items 7, 8 and 10) the CE or FAB staff person must remand the case for district office action. The CE or FAB staff person enters status code "**F7**" (FAB Remanded) with "**OTH**" (No DO Error – Other) as the reason code. If the Part B and/or E decision is being remanded, the CE or FAB staff person enters the remand code into ECMS B with a status effective date of the date of the remand.

15. The operational plan goal for completion of the action items in the Bulletin is as follows: The initial screening is to be complete for 90% of all cases on the comprehensive list within 30 days of the Bulletin effective date. Recommended decisions are to be issued 45 days after the initial screening for 60% of those cases that are identified via initial screening as likely to be included in the SEC class (**ISL**) and those for which development may be needed (**ISD**). Recommended decisions are to be issued 60 days after the initial screening for 90% of those cases that are identified via initial screening as likely to be included in the SEC class (**ISL**) and those for which development may be needed (**ISD**).

16. If, after review or further development, the CE or FAB staff person determines that a case on the list does not require any action, the CE or FAB staff person must write a brief memo to the file indicating that the file was reviewed and noting the reason why no additional action is necessary, and why. A case classified as not requiring any action is a case that does not meet the SEC criteria and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must then code “NA” (No Action Necessary) and then select the appropriate reason code from the reason code drop down list. The “NA” coding is specifically tied to the SEC review list generated by DEEOIC and the “NA” code is restricted to ECMS B only because the SEC review list is derived from Part B data. For Mallinckrodt cases that were reviewed under this bulletin and require no additional action, the reason code that must be selected is “909” and be coded into ECMS B only. Even if the case is an E/B case, the “NA-909” must be coded into ECMS B only. The status effective date of the “NA” code is the date of the memo to the file stating review is complete and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the “NA-909” code is not entered initially. The “NA-909” code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the “NA-909” code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “NA-909” code in addition to the closure code. The status effective date for the “NA” coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections.

## **09-10 Processing Social Security Administration Form SSA-581**

EEOICPA BULLETIN NO.09-10

Issue Date: March 1, 2009

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Effective Date: March 1, 2009

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Expiration Date: March 1, 2010

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Subject: Processing Social Security Administration Form SSA-581.

Background: When the Division of Energy Employees Occupational Illness Compensation (DEEOIC) first initiated procedures for verifying covered employment, action was taken to obtain employee wage and earning information from the Social Security Administration (SSA). This information proved important for validating periods of claimed employment and linking named employees to covered beryllium vendors, atomic weapon employers or Department of Energy facilities.

DEEOIC submits form SSA-581 (Authorization to Obtain Earnings Data from the Social Security Administration) to the SSA to obtain earnings information for an employee. Once SSA has completed the request, SSA mails an SSA-L460 to the address specified, indicating the amount of income earned by the employee during the time period indicated on the SSA-581. As part of the procedure for interacting with the SSA, the DEEOIC devised a centralized process for obtaining employment records. Since the procedure has been in place, the number of SSA-581 referrals has steadily increased.

To streamline and improve the timeliness of SSA-581 referrals to the SSA, this Bulletin confers authority to obtain SSA wage and earning data to the District Office (DO). Rather than forwarding the SSA-581 forms to a centralized location for processing, all relevant actions pertaining to the completion of the form and interaction with the SSA will occur at the DO.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, as amended, 42 U.S.C. § 7384 *et seq.*, 20 CFR § 30.805, PM E-800.

Purpose: To provide guidance to the District Offices for submitting Form SSA-581 to the Social Security Administration.

Applicability: All Staff

Actions:

1. The Resource Center (RC) is responsible for obtaining a completed SSA-581 (see [Attachment 1](#) for an example) for certain walk-in claims filed through the RCs. The SSA-581 form is collected from all employee claimants and from clearly eligible survivors. Each DO has an office-specific form indicating where SSA must send the results of the inquiry. The SSA-581 forms for each office are located on the in the Policies and Procedures folder, Forms subfolder. The RC advises the claimant that the completed SSA-581 is needed for the collection of wage and earning data from the SSA. If the does not obtain the SSA-581, or if a claim (EE-1 or EE-2) is submitted directly to the DO, the Claims Examiner (CE) should send an SSA-581 to the claimant, if it is needed for employment verification and/or determination of wage loss. To be processed by SSA, a signed SSA-581 must be dated no earlier than 60 days from the date of submission to the SSA. If the timeframe between the signature date of the SSA-581 and submission to SSA exceeds sixty (60) days, the CE or RC will need to obtain a new, signed and dated SSA-581.

2. Whenever subsequent development is undertaken with regard to employment verification, a request should be made to the claimant to complete a SSA-581 form, if pertinent wage and earning documentation is not present in the case record. A claimant should be advised that completion of the SSA-581 is a crucial part of the employment verification and/or wage loss process and that their signature on this SSA-581 is only valid for sixty (60) days. The information required on the SSA-581 form depends on the type of request. In a development letter, the CE advises the claimant of the information needed on the SSA-581:

a. **Employee Claims:** The employee or CE is to complete the following sections of the SSA-581: name; social security number; date of birth of employee; and other name(s) used. The claimant must add information for address/daytime telephone number of employee; date signed; signature of social security number holder or authorized representative; and printed name of social security number holder or authorized representative.

b. **Survivor Claims:** The survivor or CE is to complete the following sections of the SSA-581

form: name of social security number holder (employee); employee's social security number; date of employee's birth; date of employee's death; and other name(s) used. The survivor will fill-in the survivor's address/daytime telephone number; indicate the appropriate box to show relationship; add the date signed; sign the form; and print their name in the requested space.

The CE will explain that the survivor must provide proof of the employee's death and his or her relationship to the employee. Proof of death includes: a copy of the death certificate, mortuary or interment record, or court issued document. Proof of relationship includes: marriage certificate, birth certificate, adoption papers, or other court issued document(s). SSA requires that these documents be submitted in order to process requests from survivors.

Once the correspondence is prepared and released to the claimant, the CE should update the claim status screen in ECMS by entering code **DE (Developing Employment)** with a reason code of **LE (Letter to Employee)** or **DO (Developing Other)** with a reason code **WL (Wage Loss)**. The WL code is only input when the reason for the collection of the SSA-581 pertains to a claim for wage loss. The status effective date for code input is the date on the correspondence to the claimant.

3. Once the claimant returns the signed SSA-581 document and any accompanying documents, the CE or RC staff will complete the following sections:

a. The CE or RC staff will fill in the years deemed necessary to verify employment and/or establish wage loss on the "Periods Requested" line. The CE or RC staff is to identify the time period for employment history by searching the Energy Case Management System (ECMS), the records in the case file, wage loss claims, or other documents or forms in the file.

In the box titled, "Requesting Organization's Information," the CE or RC staff will sign in the section, "Signature of Organization Official" as well as provide the district office toll free telephone number and fax number.

b. The CE or RC staff will make sure that the upper right hand corner of the form allocated for "Requesting Organization:" indicates the correct district office where SSA's response should be sent.

4. The original (signed) SSA-581, and supporting documents (if the request is submitted by a survivor) must be submitted via Federal Express to the SSA, Wilkes Barre Data Operations Center (WBDOC), at the following address:

The Social Security Administration  
Wilkes Barre  
PO Box 1040  
Wilkes Barre,

a. The CE will update the case status screen in ECMS by entering **SS (Sent to Social Security)** status code. The status effective date is the date the SSA-581 form is sent to SSA. The CE date stamps the form at the time that the form is sent to SSA, and this date serves as the status effective date. A copy of the form is retained in the case file.

5. Following submission of a Form SSA-581, the CE or employee so designated by the District Director, is responsible for determining if SSA has received the earnings request (Form SSA-581) and for obtaining a status update on the employment verification request.

a. If there has been no response from SSA within thirty (30) calendar days of the date of the submission to SSA the CE will call to obtain a status update. The telephone call should be documented in the TMS section of ECMS and a printed copy placed in the case. If SSA indicates that no SSA-581 form has been received, the CE must resubmit the form. Otherwise, the CE will obtain the status and monitor for further follow-up.

b. Inquiries to SSA are made by calling one of ten phone numbers (Modules) depending on the last

four digits of the relevant SSN. (See [Attachment 2](#)).

c. If the CE does not receive a completed SSA-L460 within thirty (30) days of the first inquiry call to SSA (the 60<sup>th</sup> day), the CE will make another follow-up call to determine the status of the request and proceed as necessary. At this point, it will be necessary to obtain a newly signed SSA-581 from the claimant and resubmit the SSA-581 to SSA as outlined above.

6. After the completed SSA-581 form is sent, and a copy is placed in the case file, a SSA Point of Contact (POC) designated by the District Director will ensure that the form is logged into a tracking spreadsheet. Each DO is responsible for determining a method for developing a system of logging and tracking each claim, but the spreadsheet should contain, at minimum, the case number, date sent to SSA, and cost of the request. On a quarterly basis National Office will sample each log maintained by the DOs to monitor costs.

7. The designated employee must determine the cost of the request according to the period of years for which information is sought. Form SSA-7050-F4 (Request for Social Security Earnings Information) ([Attachment 3](#)) identifies the cost by the number of years requested. For example, if one (1) year of earnings information is requested, the cost is \$15.00. The cost increases incrementally by year, up until forty (40) years of requested employment. For each year after forty (40) years, add \$1.00 for each year.

8. At the end of each quarter, the DOL National Office SSA POC will obtain the SSA-581 submission logs maintained in each DO and sample the contents to properly evaluate contract outlays.

9. Upon receipt of a completed SSA-L460, the CE will update the case status screen in ECMS by entering the **SR (Response from SSA)** status code. The status effective date is the date the SSA-L460 form is date stamped into the district office. The designated employee will confirm the years received by SSA equals the years used to determine the cost. If there is a discrepancy, the DO SSA POC must contact SSA immediately to rectify the issue.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

Rachel P. Leiton

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service

Representatives, Fiscal Officers, FAB District Managers,

Operation Chiefs, Hearing Representatives, District Office Mail & File Section.

**09-11 Westinghouse Atomic Power Development Plant (Pittsburgh) SEC Class**

EEOICPA BULLETIN NO.09-11

Issue Date: April 30, 2009

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Effective Date: April 30, 2009

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Expiration Date: April 30, 2010

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Subject: Westinghouse Atomic Power Development Plant (Pittsburgh) SEC Class

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from Westinghouse Atomic Power Plant in East Pittsburgh, Pennsylvania to be added to the Special Exposure Cohort (SEC).

The decision to initiate this petition occurred after the National Institute for Occupational Safety and Health (NIOSH) determined that it did not have sufficient information to estimate dose for members of the proposed class under 42 C.F.R. § 83.13. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On March 3, 2009, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at Westinghouse Atomic Power Plant in Pittsburgh, Pennsylvania.

On March 31, 2009, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress.

All Atomic Weapons Employer (AWE) employees who worked at Westinghouse Atomic Power Development Plant in East Pittsburgh, Pennsylvania, from August 13, 1942 through December 31, 1944, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days or in combination with work days within the parameters established for one or more other classes of employees in the SEC.

A copy of the Secretary’s letter to Congress recommending the designation is included as [Attachment 1](#). Although Congress had the authority to reject the recommendation within a 30-day time frame, Congress took no action. Therefore, the SEC designation for this class became effective as of April 30, 2009, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress.

While a new SEC class has been added for employees at the Westinghouse Atomic Power Development Plant in (East Pittsburgh), NIOSH has determined that it is possible to reconstruct occupational medical dose. This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the March 31, 2009 letter to Congress from the Secretary of HHS in which Secretary Leavitt makes the designation.

Purpose: To provide procedures for processing SEC claims for workers at Westinghouse Atomic Power Plant in East Pittsburgh, Pennsylvania.

Applicability: All staff.

#### Actions

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at Westinghouse Atomic Power Plant (Pittsburgh) during the period of the SEC class. It includes pending cases, cases previously denied, and cases at

NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.

3. The district offices are to use the comprehensive list as the basis for an initial screening of cases associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is *likely* to meet the criteria for inclusion into the SEC class. A screening worksheet is included as [Attachment 2](#). The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case record. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. New claim status codes have been created in ECMS to reflect each of these categories: **ISL** (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; **ISU** (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and **ISD** (Initial SEC Screening, Development Needed), those for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, in this instance, **911 (Rvwd under 09-11, Westinghouse Atomic Power Development Plant SEC)**. Once the worksheet is completed, the claims examiner (CE) is to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the **ISL**, **ISU** and **ISD** codes is to correspond with the completion date of the screening worksheet.

The purpose of this initial screening is to assist the district offices in prioritizing claims poised for acceptance and for purposes of meeting the FY 2009 operational plan goal. Once screening and prioritization is complete, claims adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each case must be evaluated formally for SEC inclusion and the decision recorded in ECMS. This screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims submitted after the list is generated. These claims will be evaluated for inclusion in the SEC in the general course of processing.

4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, worksheet and related coding.

5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected Westinghouse Atomic Power Plant (East Pittsburgh) claimants is included as [Attachment 3](#). The CE must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including those cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code **"NW"** (NIOSH, Returned without a dose reconstruction) in ECMS B. The status effective date for the code entry is April 30, 2009. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this Bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e-mail to return dose reconstruction analysis

records. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the “**NW**” code with a status effective date of April 30, 2009. In addition, the CE must write a letter to the claimant to advise that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this Bulletin, then refer to instructions in Action #16.

6. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual (PM) Chapter 2-600.5. If the employee has a specified cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.

8. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 work days at Westinghouse Atomic Power Development Plant in Pittsburgh, Pennsylvania between August 13, 1942 through December 31, 1944. The CE may refer to [EEOICPA Bulletin No. 02-09](#) for guidance on calculating 250 work days.

NIOSH cannot estimate the radiation doses with sufficient accuracy, as a result, NIOSH assumes that the potential for exposure to radioactive materials existed for all Westinghouse Atomic Power Development Plant employees in all buildings and areas of the facility. Additionally, NIOSH is unable to define potential radiation exposure conditions based on worker job descriptions, job titles and/or job assignments. Therefore, based on the SEC designation, any probative evidence that the employee was employed at Westinghouse Atomic Power Development Plant for at least 250 work days during the SEC period is sufficient to include him or her in the SEC class.

If the employee does not have 250 work days at Westinghouse Atomic Power Development Plant in East Pittsburgh, Pennsylvania, the CE should review the file to determine if additional days in the SEC can be found by combining days from employment that meets the criteria for other classes in the SEC and aggregating them together to meet the 250-work-day requirement. If, after such review, the employee still does not meet the employment criteria for inclusion in the SEC, proceed to Action #10.

9. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

ECMS Coding Reminder: The “**SE**” (Confirmed as SEC Claim) status code must be entered into ECMS B with an effective date equal to the date of the recommended decision to approve.

For all claims where Westinghouse Atomic Power Development Plant, Pittsburgh, employment is claimed, regardless of whether the SEC criteria are met, the SEC site code must be entered under the “SEC/SEC Desc” field on the claim screen. The SEC site code for Westinghouse Atomic Power Development Plant in East Pittsburgh, Pennsylvania is 59.

10. As discussed earlier, although HHS determined that it is not feasible for NIOSH to perform complete dose reconstructions for this class of employees, NIOSH has indicated that partial dose reconstructions are possible. Accordingly, for cases that had not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code “**NI**” (Sent to NIOSH) in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not

required. If it is determined that the case does not qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code “**NI**” (Sent to NIOSH) into the ECMS B, effective the date of the e-mail requesting NIOSH to proceed with dose reconstruction. *The e-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-specified cancer, insufficient latency period or does not meet the 250-work-day requirement.* In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for dose reconstruction and the reason(s) it does not qualify for the SEC class. *The CE is to send a copy of this letter to NIOSH.*

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “**NR**” (NIOSH Dose Reconstruction Received) in ECMS B and selects the “**PD**” (Partial Dose Reconstruction) reason code. The status effective date is the date the dose reconstruction is date-stamped into the District Office. The CE should not delete the “**NW**” (NIOSH, returned without a dose reconstruction) or “**NI**” (Sent to NIOSH) code already present in ECMS.

11. If the claim meets the SEC employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction that resulted in a probability of causation of 50 percent or greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and any cancers for which there is a POC of 50% or greater. The CE enters status code “**SE**” into ECMS B. The status effective date for the “**SE**” code is the date of the recommended decision to accept the specified cancer.

Then, if necessary, the CE concurrently prepares a NRSD to NIOSH for a dose reconstruction for any non-specified cancer(s) to determine eligibility for medical benefits. The CE enters status code “**NI**” into ECMS B. The status effective date for the “**NI**” code is the date of the Senior or Supervisory CE signature on the NRSD.

12. If there is a final decision to deny based on a PoC of less than 50% and a review of the evidence of record establishes likely inclusion in the SEC class, the case will need to be reopened. In the exercise of the Director’s discretion of the reopening process, the Director is delegating limited authority to the four District Directors to sign Director’s Orders for reopening. This delegated authority is limited to reopenings based upon evidence that a Westinghouse Atomic Power Development Plant employee meets the criteria for placement into the SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided in [Attachment 4](#). The District Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is responsible for issuing a new recommended decision.

13. For those cases reopened under the authority granted in this Bulletin, the District Director enters status code “**MN**” (NO Initiates Review for Reopening) in ECMS B with a status effective date equal to the effective date of this Bulletin. For all reopenings per this Bulletin, upon completing the Director’s Order to reopen the claim, the District Director enters status code “**MD**” (Claim Reopened – File Returned to DO) into ECMS B to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “**MZ**” status code is not necessary). The status effective date of the “**MD**” code is the date of the Director’s Order. Please note that while the “**MD**” code was generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been delegated in this specific

circumstance.

14. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending Westinghouse Atomic Power Development Plant cases that have a recommended decision to deny. All cases on the comprehensive list identified in action item 2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at Westinghouse Atomic Power Development Plant during the time period specified, has a specified cancer, and meets the 250-work-day requirement, the FAB is to reverse the district office's recommended decision to deny and accept the case. The CE or FAB staff member enters status code "F6" (FAB Reversed to Accept) with the appropriate reason code into ECMS B to reflect the FAB reversal with a status effective date equal to the date of the final decision to accept. The CE or FAB staff member also enters status code "SE" in ECMS B with a status effective date equal to the date of the final decision to accept.

For all claims where Westinghouse Atomic Power Development Plant, Pittsburgh, employment is claimed, regardless of whether the SEC criteria are met, the SEC site code must be entered under the "SEC/SEC Desc" field on the claim screen. The SEC site code for Westinghouse Atomic Power Development Plant in East Pittsburgh, Pennsylvania is 59.

If no action is required, FAB must follow the instructions specified in action item 16, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the District Office. If FAB determines that the case cannot be approved based on the new SEC designation and that re-referral to NIOSH is appropriate (see action items 7, 8 and 10) the CE or FAB staff person must remand the case for district office action. The CE or FAB staff person enters status code "F7" (FAB Remanded) with "OTH" (No DO Error – Other) as the reason code in ECMS B with a status effective date of the date of the remand.

15. The operational plan goal for completion of the action items in the Bulletin is as follows: The initial screening is to be complete for 90% of all cases on the comprehensive list within 30 days of the Bulletin effective date. Recommended decisions are to be issued 45 days after the initial screening for 60% of those cases that are identified via initial screening as likely to be included in the SEC class (**ISL**) and those for which development may be needed (**ISD**). Recommended decisions are to be issued 60 days after the initial screening for 90% of those cases that are identified via initial screening as likely to be included in the SEC class (**ISL**) and those for which development may be needed (**ISD**).

16. If, after review or further development, the CE or FAB staff person determines that a case on the list does not require any action, the CE or FAB staff person must write a brief memo to the file indicating that the file was reviewed and noting the reason why no additional action is necessary, and why. A case classified as not requiring any action is a case that does not meet the SEC criteria and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must then code "NA" (No Action Necessary) and then select the appropriate reason code from the reason code drop down list. The "NA" coding is specifically tied to the SEC review list generated by DEEOIC and the "NA" code is restricted to ECMS B only because the SEC review list is derived from Part B data. For Westinghouse Atomic Power Development Plant (Pittsburgh) cases that were reviewed under this Bulletin and require no additional action, the reason code that must be selected is "911" (**Rvwd under Bulletin 09-11 Westinghouse Atomic Power Development Plant SEC**) and be coded into ECMS B only. The status effective date of the "NA" code is the date of the memo to the file stating review is complete and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the "NA-911" code is not entered initially. The "NA-911" code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were

not withdrawn from NIOSH, the CE enters the “NA-911” code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “NA-911” code in addition to the closure code. The status effective date for the “NA” coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections

## **09-12 Tyson Valley Powder Farm SEC Class**

EEOICPA BULLETIN NO.09-12

Issue Date: April 30, 2009

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Effective Date: April 30, 2009

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Expiration Date: April 30, 2010

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Subject: Tyson Valley Powder Farm SEC Class

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers at Tyson Valley Powder Farm near Eureka, Missouri to be added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and determined that it qualified for evaluation under 42 C.F.R. § 83.13. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On March 3, 2009, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at Tyson Valley Powder Farm near Eureka, Missouri.

On March 31, 2009, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress.

All Atomic Weapons Employer (AWE) employees who worked at Tyson Valley Powder Farm near Eureka, Missouri, from February 13, 1946 through June 30, 1948, for a number of work days aggregating at least 250 work days, occurring either solely under this

employment or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

A copy of the Secretary's letter to Congress recommending the designation is included as [Attachment 1](#). Although Congress had the authority to reject the recommendation within a 30-day time frame, Congress took no action. Therefore, the SEC designation for this class became effective as of April 30, 2009, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress.

While a new SEC class has been added for employees of Tyson Valley Powder Farm, NIOSH has determined that it is possible to reconstruct occupational medical dose and a portion of external dose. This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the March 31, 2009, letter to Congress from the Secretary of HHS in which Acting Secretary Charles E. Johnson makes the designation.

Purpose: To provide procedures for processing SEC claims for workers at Tyson Valley Powder Farm near Eureka, Missouri.

Applicability: All staff.

#### Actions

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at Tyson Valley Powder Farm during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.
3. The district offices are to use the comprehensive list as the basis for an initial screening of cases associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is *likely* to meet the criteria for inclusion into the SEC class. A screening worksheet is included as [Attachment 2](#). The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case record. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. New claim status codes have been created in ECMS to reflect each of these categories: **ISL** (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; **ISU** (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and **ISD** (Initial SEC Screening, Development Needed), those for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, in this instance, **912 (Reviewed under 09-12, Tyson Valley Powder Farm SEC)**. Once the worksheet is completed, the claims examiner (CE) is to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the **ISL**, **ISU** and **ISD** codes is to correspond with the completion date of the screening worksheet.

The purpose of this initial screening is to assist the district offices in prioritizing claims poised for acceptance and for purposes of meeting the FY 2009 operational plan goal. Once screening and

prioritization is complete, claims adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each case must be evaluated formally for SEC inclusion and the decision recorded in ECMS. This screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims submitted after the list is generated. These claims will be evaluated for inclusion in the SEC in the general course of processing.

4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, worksheet and related coding.

5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected Tyson Valley Powder Farm claimants is included as [Attachment 3](#). The CE must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including those cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code "NW" (NIOSH, Returned without a dose reconstruction) in ECMS B. The status effective date for the code entry is April 30, 2009. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this Bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e-mail to return dose reconstruction analysis records. The SrCE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the "NW" code with a status effective date of April 30, 2009. In addition, the CE must write a letter to the claimant to advise that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this Bulletin, then refer to instructions in Action #16.

6. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual (PM) Chapter 2-600.5. If the employee has a specified cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.

8. If the employee has a specified cancer, the CE must determine if the worker was employed for at least 250 work days at Tyson Valley Powder Farm near Eureka, Missouri between February 13, 1946 and June 30, 1948. The CE may refer to [EEOICPA Bulletin No. 02-09](#) for guidance on calculating 250 work days.

The Tyson Valley Powder Farm (aka Tyson Valley Powder Storage Farm) facility was located on 2,621 acres of undeveloped land approximately 25 miles southwest of St. Louis, Missouri and 3 miles northeast of Eureka, Missouri.

NIOSH has documentation indicating buildings in which radioactive materials were known to have been used and/or stored, but has no documentation to confirm that all radioactive materials were

restricted to such areas or that contamination was adequately controlled. As a result, NIOSH assumes that the potential for exposure to radioactive materials existed in all Tyson Valley Powder Farm buildings and areas. Additionally, NIOSH is unable to define potential radiation exposure conditions based on worker job descriptions, job titles and/or job assignments.

Therefore, based on the SEC designation, any probative evidence that the employee was employed at Tyson Valley Powder Farm for at least 250 work days during the SEC period is sufficient to include him or her in the SEC class.

If the employee does not have 250 work days at Tyson Valley Powder Farm, the CE should review the file to determine if additional days in the SEC can be found by combining days from employment that meets the criteria for other classes in the SEC and aggregating them together to meet the 250-work-day requirement. If, after such review, the employee still does not meet the employment criteria for inclusion in the SEC, proceed to Action #10.

9. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

ECMS Coding Reminder: The “**SE**” (Confirmed as SEC Claim) status code must be entered into ECMS B with an effective date equal to the date of the recommended decision to approve.

For all claims where Tyson Valley Powder Farm employment is claimed, regardless of whether the SEC criteria are met, the SEC site code must be entered under the “SEC/SEC Desc” field on the claim screen. The SEC site code for Tyson Valley Powder Farm is 60.

10. As discussed earlier, although HHS determined that it is not feasible for NIOSH to perform complete dose reconstructions for this class of employees, NIOSH has indicated that partial dose reconstructions are possible. Accordingly, for cases that had not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code “**NI**” (Sent to NIOSH) in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code “**NI**” (Sent to NIOSH) into the ECMS B, effective the date of the e-mail requesting NIOSH to proceed with dose reconstruction. *The e-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-specified cancer, insufficient latency period or does not meet the 250-work-day requirement.* In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for dose reconstruction and the reason(s) it does not qualify for the SEC class. *The CE is to send a copy of this letter to NIOSH.*

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “**NR**” (NIOSH Dose Reconstruction Received) in ECMS B and selects the “**PD**” (Partial Dose Reconstruction) reason code. The status effective date is the date the dose reconstruction is date-stamped into the District Office. The CE should not delete the “**NW**” (NIOSH, returned without a dose reconstruction) or “**NI**” (Sent to NIOSH) code already present in ECMS.

11. If the claim meets the SEC employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction that resulted in a probability of causation of 50% or greater,

and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and any cancers for which there is a POC of 50% or greater. The CE enters status code “SE” (Confirmed as SEC claim) into ECMS B. The status effective date for the “SE” code is the date of the recommended decision to accept the specified cancer.

Then, if necessary, the CE concurrently prepares a NRSD to NIOSH for a dose reconstruction for any non-specified cancer(s) to determine eligibility for medical benefits. The CE enters status code “NI” into ECMS B. The status effective date for the “NI” code is the date of the Senior or Supervisory CE signature on the NRSD.

12. If there is a final decision to deny based on a PoC of less than 50% and a review of the evidence of record establishes likely inclusion in the SEC class, the case will need to be reopened. In the exercise of the Director’s discretion of the reopening process, the Director is delegating limited authority to the four District Directors to sign Director’s Orders for reopening. This delegated authority is limited to reopenings based upon evidence that a Tyson Valley Powder Farm employee meets the criteria for placement into the Tyson Valley Powder Farm SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided in [Attachment 4](#). The District Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is responsible for issuing a new recommended decision.

13. For those cases reopened under the authority granted in this Bulletin, the District Director enters status code “MN” (NO Initiates Review for Reopening) in ECMS B with a status effective date equal to the effective date of this Bulletin. If the District Director is also reopening Part E, the “MN” code is also entered into EMCS E. For all reopenings per this Bulletin, upon completing the Director’s Order to reopen the claim, the District Director enters status code “MD” (Claim Reopened – File Returned to DO) into ECMS B to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “MZ” status code is not necessary). The status effective date of the “MD” code is the date of the Director’s Order. Please note that while the “MD” code was generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been delegated in this specific circumstance.

14. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending Tyson Valley Powder Farm cases that have a recommended decision to deny. All cases on the comprehensive list identified in action item 2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at Tyson Valley Powder Farm during the time period specified, has a specified cancer, and meets the 250-work-day requirement, the FAB is to reverse the district office’s recommended decision to deny and accept the case. The CE or FAB staff member enters status code “F6” (FAB Reversed to Accept) with the appropriate reason code into ECMS B to reflect the FAB reversal with a status effective date equal to the date of the final decision to accept. The CE or FAB staff member also enters status code “SE” in ECMS B with a status effective date equal to the date of the final decision to accept.

For all claims where Tyson Valley Powder Farm employment is claimed, regardless of whether the SEC criteria are met, the SEC site code must be entered under the “SEC/SEC Desc” field on the claim screen. The SEC site code for Tyson Valley Powder Farm is “60”.

If no action is required, FAB must follow the instructions specified in action item 16, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the District Office. If FAB determines that the case cannot be approved based on the new SEC designation and that re-referral to NIOSH is appropriate (see action items 7, 8 and 10) the CE or FAB staff person must

remand the case for district office action. The CE or FAB staff person enters status code “**F7**” (FAB Remanded) with “**OTH**” (No DO Error – Other) as the reason code in ECMS B, with a status effective date of the date of the remand.

15. The operational plan goal for completion of the action items in the Bulletin is as follows: The initial screening is to be complete for 90% of all cases on the comprehensive list within 30 days of the Bulletin effective date. Recommended decisions are to be issued 45 days after the initial screening for 60% of those cases that are identified via initial screening as likely to be included in the SEC class (**ISL**) and those for which development may be needed (**ISD**). Recommended decisions are to be issued 60 days after the initial screening for 90% of those cases that are identified via initial screening as likely to be included in the SEC class (**ISL**) and those for which development may be needed (**ISD**).

16. If, after review or further development, the CE or FAB staff person determines that a case on the list does not require any action, the CE or FAB staff person must write a brief memo to the file indicating that the file was reviewed and noting the reason why no additional action is necessary, and why. A case classified as not requiring any action is a case that does not meet the SEC criteria and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must then code “**NA**” (No Action Necessary) and then select the appropriate reason code from the reason code drop down list. The “**NA**” coding is specifically tied to the SEC review list generated by DEEOIC and the “**NA**” code is restricted to ECMS B only because the SEC review list is derived from Part B data. For Tyson Valley Powder Farm cases that were reviewed under this Bulletin and require no additional action, the reason code that must be selected is “**912**” (Rvwd under 09-12, Tyson Valley Powder Farm SEC) and be coded into ECMS B only. The status effective date of the “**NA**” code is the date of the memo to the file stating review is complete and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the “**NA-912**” code is not entered initially. The “**NA-912**” code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the “**NA-912**” code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “**NA-912**” code in addition to the closure code. The status effective date for the “**NA**” coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections

**09-13 Hood Building SEC Class**

EEOICPA BULLETIN NO.09-13

Issue Date: April 30, 2009

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Effective Date: April 30, 2009

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Expiration Date: April 30, 2010

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Subject: Hood Building SEC Class

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from the Hood Building in Cambridge, Massachusetts to be added to the Special Exposure Cohort (SEC).

The decision to initiate this petition occurred after the National Institute for Occupational Safety and Health (NIOSH) determined that it could not reconstruct a dose under 42 C.F.R. § 83.14. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On March 3, 2009, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked in the Hood Building in Cambridge, Massachusetts.

On March 31, 2009, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress.

All employees of the DOE, its predecessor agencies, and their contractors and subcontractors who worked in the Hood Building in Cambridge, MA, from May 9, 1946 through December 31, 1963, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees included in the SEC.

A copy of the Secretary’s letter to Congress recommending the designation is included as [Attachment 1](#). Although Congress had the authority to reject the recommendation within a 30-day time frame, Congress took no action. Therefore, the SEC designation for this class became effective as of April 30, 2009, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress.

While a new SEC class has been added for employees at the Hood Building, NIOSH has determined that it can reconstruct internal doses received from potential exposure to natural uranium metal and medical dose for Hood Building workers. NIOSH also intends to use any available internal and external monitoring data that may be available for an individual claim (and can be interpreted using existing NIOSH dose reconstruction processes or procedures). This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the March 31, 2009 letter to Congress from the Secretary of HHS in which Acting Secretary Johnson makes the designation.

Purpose: To provide procedures for processing SEC claims for workers at the Hood Building in Cambridge, Massachusetts.

Applicability: All staff.

### Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at the Hood Building during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.
3. The district offices are to use the comprehensive list as the basis for an initial screening of cases associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is *likely* to meet the criteria for inclusion into the SEC class. A screening worksheet is included as [Attachment 2](#). The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case file. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. Claim status codes have been created in ECMS to reflect each of these categories: **ISL** (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; **ISU** (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and **ISD** (Initial SEC Screening, Development Needed), for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, in this instance, **913 (Rvwd under 09-13, Hood Building SEC)**. Once the worksheet is completed, the CE is to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the **ISL**, **ISU** and **ISD** codes is to correspond with the completion date of the screening worksheet.

The purpose of this initial screening is to assist the district offices in prioritizing claims poised for acceptance and for purposes of meeting the FY 2009 operational plan goal. Once screening and prioritization is complete, claims adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each case must be evaluated formally for SEC inclusion and the decision recorded in ECMS. The initial screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims submitted after the list is generated. These claims will be evaluated for inclusion in the SEC in the general course of processing.

4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, complete the worksheet and enter related coding.
5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class, and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected Hood Building claimants is included as [Attachment 3](#). The claims examiner (CE) must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code “**NW**” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the “**NW**” code entry is April 30, 2009. However, the CE does not enter the status code until the

DEEOIC office actually receives the NIOSH-returned dose reconstruction record. The standard procedure for NIOSH coding in ECMS E is to code all additional NIOSH actions only if the “NI” (Sent to NIOSH) status code has been entered. Therefore, the CE enters the “NW” code into ECMS E with the status effective date of April 30, 2009, only if “NI” has already been entered in ECMS E.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC, and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this Bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e mail to return the dose reconstruction analysis records. The SrCE then prints a copy of the “sent” e mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the status code “NW” with a status effective date of April 30, 2009. In addition, the CE must write a letter to the claimant advising that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this Bulletin, then refer to instructions in Action #16.

6. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the EEOICPA Procedure Manual Chapter 2-600.5. If the employee has a specified cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.

8. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 workdays in the Hood Building in Cambridge, Massachusetts between May 9, 1946 and December 31, 1963. The CE may refer to [EEOICPA Bulletin No. 02-09](#) for guidance on calculating 250 workdays.

The Hood Building, which was located at 155 Massachusetts Avenue, Cambridge, Massachusetts, was purchased by the Manhattan Engineer District (MED) in 1946, and subsequently owned by the Atomic Energy Commission (AEC). Under contract with the MED, the initial work performed in the Hood Building was carried out by employees of the Massachusetts Institute of Technology (MIT). On July 1, 1954, MIT and AEC privatized all work done at the Hood Building, and the contract was given to Nuclear Metals, Inc. (NMI) to continue the on-going activities. The MIT employees at the Hood Building became employees of NMI on that date. NMI continued the work in the Hood Building until it vacated the building on October 29, 1958. The General Services Administration then deeded the Hood Building to MIT by early 1963, for the purpose of demolishing the building and constructing an educational facility.

The comprehensive list of cases includes all employees of MIT and NMI with employment verified between May 9, 1946 and December 31, 1963, since it was employees of MIT and NMI who performed the operations in the Hood Building. In those cases in which an employee has confirmed employment with MIT during this timeframe, the CE is to review the file, and if there is any indication that the employee performed work in the Hood Building, it can be assumed that all the employee’s MIT employment occurring prior to July 1, 1954, took place in the Hood Building. In those cases in which an employee has NMI employment prior to October 29, 1958, the CE should credit that entire work period to the Hood Building.

Because NIOSH has no information to confirm when during the period between May 9, 1946 and December 31, 1963, actual radiological operations occurred in the Hood Building, it assumes that DOE operations in the Hood Building began on May 9, 1946 and continued through December 31, 1963 (the year the Hood Building was released to its new owner).

Additionally, NIOSH is unable to define potential radiation exposure conditions based on worker job descriptions, job titles and/or job assignments. Therefore, based on the SEC designation, any probative evidence that the employee was employed in the Hood Building for at least 250 workdays during the SEC period is sufficient to include him or her in the SEC class.

If the employee does not have 250 workdays in the Hood Building, the CE should review the file to determine if additional days in the SEC can be found by combining days from employment meeting the criteria for other classes in the SEC and aggregating them together to meet the 250-workday requirement.

9. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

ECMS Coding Reminder: The “SE” (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the status effective date of the recommended decision to approve. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the “SE” code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

For all claims where Hood Building employment is claimed, regardless of whether the SEC criteria are met, the SEC site code must be entered under the “SEC/SEC Desc” field on the claim screen. The SEC site code for the Hood Building in Cambridge, Massachusetts is **0061**.

10. As discussed earlier, although HHS determined that it is not feasible for NIOSH to perform complete dose reconstructions for this class of employees, NIOSH has indicated that partial dose reconstructions are possible. Accordingly, for cases that have not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code “NI” in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the “NI” code is not entered into ECMS E until toxic exposure development is complete.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code “NI” into ECMS B, with a status effective date equal to the date of the e-mail requesting NIOSH to proceed with dose reconstruction. *The e mail should include a brief statement of why the case should proceed with dose reconstruction; e.g., non-specified cancer, insufficient latency period or does not meet the 250 workday requirement.* In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for a dose reconstruction and the reason(s) it does not qualify for the SEC class. *The CE is to send a copy of this letter to NIOSH.* If the case is a B/E case, and toxic exposure development was completed with a memorandum to the file (with a prior “NI”/“NW” code), the CE enters status code “NI” into ECMS E with the status effective date of the e-mail requesting NIOSH to proceed with dose reconstruction.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “NR” (NIOSH Dose Reconstruction Received) in ECMS B and selects the reason code of “PD” (Partial Dose Reconstruction). The status effective date is the date the dose reconstruction report is date-stamped into the district office. The CE should not delete the “NW” or “NI” codes already present in ECMS. If the CE had previously entered “NI” in ECMS E, the CE also enters codes “NR” and “PD” in ECMS E. If the case is a B/E case, the CE enters the Probability of Causation (PoC) into ECMS B and ECMS E (regardless

of whether the “**NI**” code had previously been entered).

11. If the claim meets the SEC employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction resulting in a probability of causation (PoC) of 50% or greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and any cancers for which there is a POC of 50% or greater. The CE enters status code “**SE**” into ECMS B. The status effective date for the “**SE**” code is the date of the recommended decision to accept the specified cancer. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the “**SE**” code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

Then, if necessary, the CE concurrently prepares a NRSR to NIOSH for a dose reconstruction for any non-specified cancer(s) to determine eligibility for medical benefits. The CE enters status code “**NI**” into ECMS B. The status effective date for the “**NI**” code is the date of the Senior or Supervisory CE signature on the NRSR. If the case is a B/E case, the CE enters status code “**NI**” in ECMS E only after the toxic exposure development is complete and the CE cannot accept causation. In that case the CE creates a memorandum to file stating that toxic exposure development is complete, and enters status code “**NI**” in ECMS E with the date of the memorandum as the status code effective date.

12. If a claim has a final decision to deny based on a PoC of less than 50% and a review of the evidence of record establishes likely inclusion in the SEC class, the case will need to be reopened. In the exercise of the DEEOIC Director’s discretion of the reopening process, the Director is delegating limited authority to the four District Directors to sign Director’s Orders for reopening of these cases. This delegated authority is limited to reopenings based upon evidence that a Hood Building employee meets the criteria for placement into the Hood Building SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided in [Attachment 4](#). The DEEOIC Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is responsible for issuing a new recommended decision.

13. For those cases reopened under the authority granted in this Bulletin, the District Director enters status code “**MN**” (NO Initiates Review for Reopening) in ECMS B with a status effective date equal to the effective date of this Bulletin. If the District Director is also reopening Part E, the “**MN**” code is also entered into ECMS E. For all reopenings per this Bulletin, upon completing the Director’s Order to reopen the claim, the District Director enters status code “**MD**” (Claim Reopened – File Returned to DO) into ECMS B/E (as appropriate) to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “**MZ**” status code is not necessary). The status effective date of the “**MD**” code is the date of the Director’s Order. Please note that while the “**MD**” code was generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been delegated in this specific circumstance.

14. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending Hood Building cases that have a recommended decision to deny. All cases on the comprehensive list identified in action item 2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked in the Hood Building during the time period specified, has a specified cancer, and meets the 250-workday requirement, the FAB is to reverse the district office’s recommended decision to deny, and accept the case. The CE or FAB staff member enters status code “**F6**” (FAB Reversed to Accept) with the appropriate reason code into ECMS B/E (as appropriate) to reflect the FAB reversal with a status effective date equal to the date of the final

decision to accept. The CE or FAB staff member also enters status code “SE” in ECMS B/E (as appropriate) with a status effective date equal to the date of the final decision to accept.

For all claims where Hood Building employment is claimed, regardless of whether the SEC criteria are met, the SEC site code must be entered under the “SEC/SEC Desc” field on the claim screen. The SEC site code for the Hood Building is **0061**.

If no action is required, FAB must follow the instructions specified in action item 16, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the district office. If FAB determines that the case cannot be accepted based on the new SEC designation and that re-referral to NIOSH is appropriate (see action items 7, 8 and 10), the CE or FAB staff member must remand the case for district office action. The CE or FAB staff member enters status code “F7” (FAB Remanded) with “OTH” (No DO Error – Other) as the reason code in ECMS B/E (as appropriate), with a status effective date equal to the date of the remand.

15. The operational plan goal for completion of the action items in the Bulletin is as follows: The initial screening is to be completed for 90% of all cases on the comprehensive list within 30 days of the Bulletin effective date. Within 45 days after the initial screening, recommended decisions are to be issued for 60% of those cases that are identified, via the initial screening, as likely to be included in the SEC class (**ISL**), and those cases for which development may be needed (**ISD**). Within 60 days after the initial screening, recommended decisions are to be issued for 90% of those cases that are identified, via initial screening, as likely to be included in the SEC class (**ISL**), and those cases for which development may be needed (**ISD**).

16. If, after review or further development, the CE or FAB staff member determines that a case on the list does not require any action, the CE or FAB staff member must write a brief memo to the file indicating that the file was reviewed and note the reason why no additional action is necessary. A case classified as not requiring any action is a case that does not meet the SEC criteria, and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must then code “NA” (No Action Necessary) and select the appropriate reason code from the reason code drop down list. Since the “NA” coding is specifically tied to the SEC review list generated by DEEOIC, the “NA” code is restricted to ECMS B. This is because the SEC review list is derived from Part B data. For Hood Building cases that were reviewed under this Bulletin and require no additional action, the reason code that must be selected is **913 (Rvwd under 09-13, Hood Building SEC)** and be coded into ECMS B only, even if the case is a B/E case. The status effective date of the “NA” code is the date of the memo to the file stating the review is complete, and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the “NA-913” code is not entered initially. The “NA-913” code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the “NA-913” code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “NA-913” code in addition to the closure code. The status effective date for the “NA” coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the EEOICPA Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections.

## **09-14 Area IV of the Santa Susana Field Laboratory SEC Class**

EEOICPA BULLETIN NO.09-14

Issue Date: July 29, 2009

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Effective Date: July 18, 2009

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Expiration Date: July 29, 2010

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**Subject:** Area IV of the Santa Susana Field Laboratory SEC Class

**Background:** Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from Area IV of the Santa Susana Field Laboratory (SSFL) in Ventura County, California to be added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and determined that it qualified for evaluation under 42 C.F.R. § 83.13. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On May 19, 2009, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at Area IV of the SSFL in Ventura County, California.

On June 18, 2009, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress.

All employees of the Department of Energy (DOE), its predecessor agencies, and DOE contractors and subcontractors who worked in any area of Area IV of the Santa Susana Field Laboratory for a number of work days aggregating at least 250 work days from January 1, 1955 through December 31, 1958, or in combination with work days within the parameters established for one or more other classes of employees in the SEC.

A copy of the Secretary’s letter to Congress recommending the designation is included as [Attachment 1](#). Although Congress had the authority to reject the recommendation within a 30-day time frame, Congress took no action. Therefore, the SEC designation for this class became effective as of July 18, 2009, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress.

NIOSH has established that it can provide a partial estimate of dose for the pre-1959 workers for non-specified cancer cases or for less than 250-workday cases in the SEC time period using the available monitoring data after 1958 (back-extrapolating the potential intake/dose), or ambient environmental dose. This means that for claims that do not satisfy the SEC membership criteria, a

partial dose reconstruction is to be performed by NIOSH.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the June 18, 2009 letter to Congress from the Secretary of HHS in which Secretary Sebelius makes the designation.

Purpose: To provide procedures for processing SEC claims for workers at Area IV of the SSFL in Ventura County, California.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at Area IV of the SSFL during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.
3. The district offices are to use the comprehensive list as the basis for an initial screening of cases associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is likely to meet the criteria for inclusion into the SEC. A screening worksheet is included as Attachment 2. The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case file. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. Claim status codes have been created in ECMS to reflect each of these categories: **ISL** (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; **ISU** (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and **ISD** (Initial SEC Screening, Development Needed) for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, in this instance, **914** (Reviewed under 09-14, Area IV of the SSFL SEC). Once the worksheet is completed, the claims examiner (CE) is to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the **ISL**, **ISU** and **ISD** codes is to correspond with the completion date of the screening worksheet.  
  
The purpose of this initial screening is to assist the district offices in prioritizing claims poised for acceptance. Once screening and prioritization is complete, claims adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each case must be evaluated formally for SEC inclusion and the decision recorded in ECMS. The initial screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims submitted after the list is generated. These claims will be evaluated for inclusion in the SEC in the general course of processing.
4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial screening, complete the worksheet and enter related coding.
5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose

information. Also included on the CD in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class, and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected Area IV claimants is included as [Attachment 3](#). The CE must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code “**NW**” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the “**NW**” code entry is July 18, 2009. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record. The standard procedure for NIOSH coding in ECMS E is to code all additional NIOSH actions only if the “**NI**” (Sent to NIOSH) status code has been entered. Therefore, the CE enters the “**NW**” code into ECMS E with the status effective date of July 18, 2009, only if “**NI**” has already been entered in ECMS E.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC, and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this Bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e mail to return the dose reconstruction analysis records. The SrCE then prints a copy of the “sent” e mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the status code “**NW**” with a status effective date of July 18, 2009. In addition, the CE must write a letter to the claimant advising that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this Bulletin, then refer to instructions in Action #16.

6. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the EEOICPA Procedure Manual Chapter 2-600.5. If the employee has a specified cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.

8. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 workdays at Area IV between January 1, 1955 and December 31, 1958. If the employee does not have 250 workdays at Area IV, the CE should review the file to determine if additional days in the SEC can be found by combining days from employment meeting the criteria for other classes in the SEC and aggregating them together to meet the 250-workday requirement.

The SSFL is located in Ventura County, California. Based on ownership and operations, the SSFL is divided into four administrative and operational areas. DOE operations were conducted in the westernmost area of the SSFL known as Area IV. The Energy Technology Engineering Center (ETEC) is located entirely within Area IV, and is a name more commonly associated with this facility.

During the period of the SEC class, North American Aviation (NAA) was the contractor for Area IV, and the divisional affiliation most commonly associated with Area IV employment is Atomics International (AI). Employees of another division of NAA, namely Rocketdyne, were also potentially present at Area IV.

NAA and its division AI employed workers at numerous locations in addition to Area IV. Some of these sites are covered under EEOICPA, but are not part of this SEC class. Therefore, the CE will

need to carefully evaluate the employment documentation in the file to ensure 250 days of covered employment at Area IV during the class period.

There are employees who would have “clocked in” at a SSFL location other than Area IV, but who would have had reason to enter Area IV from time to time as part of their duties. In these instances, the CE needs to use any reasonable evidence, such as monitoring records, division and department affiliation records, affidavits, etc. to establish that such an employee would have spent a total of 250 workdays within the boundaries of Area IV during the period of the SEC class (or in combination with workdays within the parameters established for one or more other classes of employees in the SEC). If the CE determines that the evidence is sufficient to place the employee in the SEC, then proceed to Action #9. In cases where specific and contradictory information exists to exclude these employees from the SEC class, the CE must undertake non-SEC development of the claim.

9. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

If it is determined that the case does qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail, so that NIOSH can close out their file. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file.

ECMS Coding Reminder: The “SE” (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the status effective date of the recommended decision to approve. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the “SE” code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

For all claims where Area IV employment is claimed, regardless of whether the SEC criteria are met, the SEC site code must be entered under the “SEC/SEC Desc” field on the claim screen. The SEC site code for Area IV of the SSFL in Ventura County, California is **0011**.

10. As discussed earlier, although HHS determined that it is not feasible for NIOSH to perform complete dose reconstructions for this class of employees, NIOSH has indicated that partial dose reconstructions are possible. Accordingly, for cases that have not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code “NI” in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the “NI” code is not entered into ECMS E until toxic exposure development is complete.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code “NI” into ECMS B, with a status effective date equal to the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e mail should include a brief statement of why the case should proceed with dose reconstruction; e.g., non-specified cancer, insufficient latency period or does not meet the 250 workday requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for a dose reconstruction and the reason(s) it does not qualify for the SEC class. The CE is to send a copy of this letter to NIOSH. If the case is a B/E case, and toxic exposure development was completed with a memorandum to the file (with a prior “NI”/“NW” code), the CE enters status code “NI” into ECMS E with the status effective date of the e-mail requesting NIOSH to proceed with dose reconstruction.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “**NR**” (NIOSH Dose Reconstruction Received) in ECMS B and selects the reason code of “**PD**” (Partial Dose Reconstruction). The status effective date is the date the dose reconstruction report is date-stamped into the district office. The CE should not delete the “**NW**” or “**NI**” codes already present in ECMS. If the CE had previously entered “**NI**” in ECMS E, the CE also enters codes “**NR**” and “**PD**” in ECMS E. If the case is a B/E case, the CE enters the Probability of Causation (PoC) into ECMS B and ECMS E (regardless of whether the “**NI**” code had previously been entered).

11. If the claim meets the SEC employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction resulting in a probability of causation (PoC) of 50% or greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and any cancers for which there is a POC of 50% or greater. The CE enters status code “**SE**” into ECMS B. The status effective date for the “**SE**” code is the date of the recommended decision to accept the specified cancer. If the case is a B/E case, and the basis for the Part E acceptance is the Part B SEC acceptance, the “**SE**” code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

Then, if necessary, the CE concurrently prepares a NRSD to NIOSH for a dose reconstruction for any non-specified cancer(s) to determine eligibility for medical benefits. The CE enters status code “**NI**” into ECMS B. The status effective date for the “**NI**” code is the date of the Senior or Supervisory CE signature on the NRSD. If the case is a B/E case, the CE enters status code “**NI**” in ECMS E only after the toxic exposure development is complete and the CE cannot accept causation. In that case the CE creates a memorandum to file stating that toxic exposure development is complete, and enters status code “**NI**” in ECMS E with the date of the memorandum as the status code effective date.

12. If a claim has a final decision to deny based on a PoC of less than 50% and a review of the evidence of record establishes likely inclusion in the SEC class, the case will need to be reopened. In the exercise of the DEEOIC Director’s discretion of the reopening process, the Director is delegating limited authority to the four District Directors to sign Director’s Orders for reopening of these cases. This delegated authority is limited to reopenings based upon evidence that an Area IV employee meets the criteria for placement into the SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided in [Attachment 4](#). The DEEOIC Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is responsible for issuing a new recommended decision.

13. For those cases reopened under the authority granted in this Bulletin, the District Director enters status code “**MN**” (NO Initiates Review for Reopening) in ECMS B with a status effective date equal to the effective date of this Bulletin. If the District Director is also reopening Part E, the “**MN**” code is also entered into EMCS E. For all reopenings per this Bulletin, upon completing the Director’s Order to reopen the claim, the District Director enters status code “**MD**” (Claim Reopened – File Returned to DO) into ECMS B/E (as appropriate) to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “**MZ**” status code, receipt of Director’s Order in the DO or FAB, is not necessary.) The status effective date of the “**MD**” code is the date of the Director’s Order. Please note that while the “**MD**” code was generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been delegated in this specific circumstance.

14. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending Area IV cases

that have a recommended decision to deny. All cases on the comprehensive list identified in Action #2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at Area IV during the time period specified, has a specified cancer, and meets the 250-workday requirement, the FAB is to reverse the district office's recommended decision to deny, and accept the case. The CE or FAB staff member enters status code "F6" (FAB Reversed to Accept) with the appropriate reason code into ECMS B/E (as appropriate) to reflect the FAB reversal with a status effective date equal to the date of the final decision to accept. The CE or FAB staff member also enters status code "SE" in ECMS B/E (as appropriate) with a status effective date equal to the date of the final decision to accept.

For all claims where Area IV employment is claimed, regardless of whether the SEC criteria are met, the SEC site code must be entered under the "SEC/SEC Desc" field on the claim screen. The SEC site code for Area IV of the SSFL is **0011**.

If no action is required, FAB must follow the instructions specified in Action #16, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the district office. If FAB determines that the case cannot be accepted based on the new SEC designation and that re-referral to NIOSH is appropriate (see Actions #7, #8 and #10), the CE or FAB staff member must remand the case for district office action. The CE or FAB staff member enters status code "F7" (FAB Remanded) with "OTH" (No DO Error – Other) as the reason code in ECMS B/E (as appropriate), with a status effective date equal to the date of the remand.

15. The operational plan goal for completion of the action items in the Bulletin is as follows: The initial screening is to be completed for 90% of all cases on the comprehensive list within 30 days of the Bulletin effective date. Within 45 days after the initial screening, recommended decisions are to be issued for 60% of those cases that are identified, via the initial screening, as likely to be included in the SEC class (**ISL**), and those cases for which development may be needed (**ISD**). Within 60 days after the initial screening, recommended decisions are to be issued for 90% of those cases that are identified, via initial screening, as likely to be included in the SEC class (**ISL**), and those cases for which development may be needed (**ISD**).

16. If, after review or further development, the CE or FAB staff member determines that a case on the list does not require any action, the CE or FAB staff member must write a brief memo to the file indicating that the file was reviewed and note the reason why no additional action is necessary. A case classified as not requiring any action is a case that does not meet the SEC criteria, and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must then code "NA" (No Action Necessary) and select the appropriate reason code from the reason code drop down list. Since the "NA" coding is specifically tied to the SEC review list generated by DEEOIC, the "NA" code is restricted to ECMS B. This is because the SEC review list is derived from Part B data. For Area IV cases that were reviewed under this Bulletin and require no additional action, the reason code that must be selected is **914** (Reviewed under 09-14, Area IV of the SSFL SEC) and be coded into ECMS B only, even if the case is a B/E case. The status effective date of the "NA" code is the date of the memo to the file stating the review is complete, and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the "NA-914" code is not entered initially. The "NA-914" code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the "NA-914" code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the "NA-914" code in addition to the closure code. The status effective date for the "NA" coding is the

date of the memorandum to file.

Disposition: Retain until incorporated in the EEOICPA Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections.

### **09-15 Standard Oil Development Co. SEC Class**

EEOICPA BULLETIN NO.09-15

Issue Date: July 30, 2009

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Effective Date: June 18, 2009

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Expiration Date: July 30, 2009

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Subject: Standard Oil Development Co. SEC Class

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from Standard Oil Development Co. in Linden, New Jersey to be added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and determined that it qualified for evaluation under 42 C.F.R. § 83.13. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On May 19, 2009, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at Standard Oil in Linden, New Jersey.

On June 18, 2009, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress.

All employees of Standard Oil Development Company in Linden, New Jersey, during the period from August 13, 1942 through December 31, 1945, who were monitored, or should have been monitored, for exposure to ionizing radiation while working for a number of work days aggregating at least 250 work days, either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the SEC.

A copy of the Secretary’s letter to Congress recommending the designation is included as [Attachment 1](#). Although Congress had the authority to reject the recommendation within a 30-day time frame, Congress took no action. Therefore, the SEC designation for this class became effective as of July 18, 2009, which was 30 days after the Secretary of HHS designated the class for

addition to the SEC in the report to Congress.

While a new SEC class has been added for employees at Standard Oil, NIOSH has determined that it is possible to reconstruct occupational medical dose. This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the June 18, 2009 letter to Congress from the Secretary of HHS in which Secretary Sebelius makes the designation.

Purpose: To provide procedures for processing SEC claims for workers at Standard Oil in Linden, New Jersey.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at Standard Oil during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.
3. The district offices are to use the comprehensive list as the basis for an initial screening of cases associated with this Bulletin. The purpose of the screening is to make an initial determination on whether a case is likely to meet the criteria for inclusion into the SEC. A screening worksheet is included as Attachment 2. The worksheet must be completed for *all* cases on the comprehensive list. Upon completion, the worksheet is to be included in the case file. Based upon the initial screening, the cases on the list will be grouped into three categories: those likely to be included in the SEC class; those not likely to be included in the SEC class; and those for which development may be needed to determine whether the case can be accepted into the new SEC class. Claim status codes have been created in ECMS to reflect each of these categories: **ISL** (Initial SEC Screening, Likely SEC) for those likely to be included in the SEC class; **ISU** (Initial SEC Screening, Unlikely SEC) for those unlikely to be included in the class; and **ISD** (Initial SEC Screening, Development Needed), for which development may be needed in order to reach a determination on SEC class inclusion. A reason code corresponding to the SEC class status screening code has also been created, in this instance, **915** (Reviewed under Bulletin 09-15, Standard Oil Development Company SEC). Once the worksheet is completed, the claims examiner (CE) is to select the appropriate claim status code and associated reason code from the drop down lists in ECMS B only. The status effective date for the **ISL**, **ISU** and **ISD** codes is to correspond with the completion date of the screening worksheet. Standard Oil is an Atomic Weapons Employer (AWE). As such, there are no Part E coding implications.

The purpose of this initial screening is to assist the district offices in prioritizing claims poised for acceptance and for purposes of meeting the FY 2009 operational plan goal. Once screening and prioritization is complete, claims adjudication proceeds in the usual manner. No matter the outcome of the screening protocol, each case must be evaluated formally for SEC inclusion and the decision recorded in ECMS. The initial screening step is only applicable to cases on the comprehensive list. It is not applicable to new claims submitted after the list is generated. These claims will be evaluated for inclusion in the SEC in the general course of processing.

4. For cases on the comprehensive list at FAB, the designated CE2 Unit is to conduct the initial

screening, worksheet and related coding.

5. The comprehensive list includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD should contain all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD, in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class, and that his or her case is being returned to the DOL for adjudication. A copy of the NIOSH letter to affected Standard Oil employees is included as [Attachment 3](#). The CE must print out a hard copy of the NIOSH letter for inclusion in the case file.

Once a case file is returned from NIOSH (including cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code “**NW**” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the “**NW**” code entry is July 18, 2009. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC, and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this Bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e mail to return the dose reconstruction analysis records. The SrCE then prints a copy of the “sent” e mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE is to enter the status code “**NW**” with a status effective date of July 18, 2009. In addition, the CE must write a letter to the claimant advising that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this Bulletin, then refer to instructions in Action #16.

6. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

7. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the EEOICPA Procedure Manual Chapter 2-600.5. If the employee has a specified cancer, proceed to Action #8. If the employee does not have a specified cancer, proceed to Action #10.

8. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 workdays at Standard Oil between August 13, 1942 and December 31, 1945. If the employee does not have 250 workdays at Standard Oil, the CE should review the file to determine if additional days in the SEC can be found by combining days from employment meeting the criteria for other classes in the SEC and aggregating them together to meet the 250-workday requirement.

NIOSH has found little documentation that provides detailed process and operational information for the operations at Standard Oil for the period from August 13, 1942 through December 31, 1945. Most information available regarding site activities are based on documentation containing Standard Oil contract information; which suggests that beginning in the early 1940s, Standard Oil was involved in procurement activities and work for the Manhattan Engineer District (MED). Limited information regarding the amount of source material stored onsite and used during Standard Oil’s operational period is available.

Standard Oil had two areas where radiological work was conducted; the Bayway Facility located at 1400 Park Avenue, and the Linden Laboratory located at 1900 East Linden Avenue. The Centrifuge

Pilot Plant was built at the Bayway Facility. Both locations were located in Linden, New Jersey, performed work for the MED and are included in the SEC class. Accordingly, for SEC membership under this designation, it is merely necessary to establish that the employee worked for Standard Oil (was an AWE employee) at either location in Linden, New Jersey. The CE is to assume that all employees at the plant “were monitored or should have been monitored for potential exposure to ionizing radiation.”

9. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

If it is determined that the case does qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail, so that NIOSH can close out their file. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file.

ECMS Coding Reminder: The “**SE**” (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the status effective date of the recommended decision to approve.

For all claims where Standard Oil employment is claimed, regardless of whether the SEC criteria are met, the SEC site code must be entered under the “**SEC/SEC Desc**” field on the claim screen. The SEC site code for Standard Oil in Linden, New Jersey is **0063**.

10. As discussed earlier, although HHS determined that it is not feasible for NIOSH to perform complete dose reconstructions for this class of employees, NIOSH has indicated that occupational medical dose reconstructions are possible. Accordingly, for cases that had not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code “**NI**” (Sent to NIOSH) in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the SrCE, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code “**NI**” (Sent to NIOSH) into the ECMS B, effective the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-specified cancer, insufficient latency period or does not meet the 250-workday requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for dose reconstruction and the reason(s) it does not qualify for the SEC class. The CE is to send a copy of this letter to NIOSH.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “**NR**” (NIOSH Dose Reconstruction Received) in ECMS B and selects the “**PD**” (Partial Dose Reconstruction) reason code. The status effective date is the date the dose reconstruction is date-stamped into the district office. The CE should not delete the “**NW**” (NIOSH, returned without a dose reconstruction) or “**NI**” (Sent to NIOSH) code already present in ECMS.

11. If the claim meets the SEC employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction that resulted in a probability of causation (PoC) of 50 percent or greater and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer

(provided all criteria are met) and, if necessary, concurrently prepares a NRSD to NIOSH for a dose reconstruction for the non-specified cancer to determine eligibility for medical benefits. The CE enters status code “SE” (Confirmed as SEC claim) and the “NI” (Sent to NIOSH) code into ECMS B. The status effective date for the “SE” code is the date of the recommended decision to accept the specified cancer. The status effective date for the “NI” code is the date of the Senior or Supervisory CE signature on the NRSD.

12. If a claim has a final decision to deny based on a PoC of less than 50%, and a review of the evidence of record establishes likely inclusion in the SEC class, the case will need to be reopened. In the exercise of the Director’s discretion of the reopening process, the Director is delegating limited authority to the four District Directors to sign Director’s Orders for reopening. This delegated authority is limited to reopenings based upon evidence that a Standard Oil employee meets the criteria for placement into the Standard Oil SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided in [Attachment 4](#). The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is responsible for issuing a new recommended decision.

13. For those cases which are reopened under the authority granted in this Bulletin, the District Director enters status code “MN” (NO Initiates Review for Reopening) in ECMS B with a status effective date as the effective date of this bulletin. For all reopenings per this bulletin, upon completing the Director’s Order to reopen the claim, the District Director enters status code “MD” (Claim Reopened – File Returned to DO) into ECMS B to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “MZ” status code is not necessary). The status effective date of the “MD” code is the date of the Director’s Order. Please note that while the “MD” code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been delegated in this specific circumstance.

14. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending Standard Oil cases that have a recommended decision to deny. All cases on the comprehensive list identified in Action # 2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at Standard Oil during the time period specified, has a specified cancer, and meets the 250-workday requirement, the FAB is to reverse the district office’s recommended decision to deny and accept the case. The CE or FAB staff member enters status code “F6” (FAB Reversed to Accept, with appropriate Reason Code) into ECMS B to reflect the FAB reversal with a status effective date equal to the date of the final decision to approve. The CE or FAB staff person enters status code “SE” (Confirmed as SEC Claim) into ECMS B with a status effective date equal to the date of the final decision to approve.

For all claims where Standard Oil employment is claimed, regardless of whether the SEC criteria are met, the SEC site code must be entered under the “SEC/SEC Desc” field on the claim screen. The SEC site code for Standard Oil in Linden, New Jersey is **0063**.

If no action is required, FAB must follow the instructions specified in action item 16 below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the district office. If FAB determines that the case cannot be approved based on the new SEC designation and that re-referral to NIOSH is appropriate (see action items 7, 8 and 10) the CE or FAB staff member must remand the case for district office action. The CE or FAB staff member enters status code “F7” (FAB Remanded) with “OTH” (No DO Error – Other) as the reason code, with a status effective date of the date of the remand.

15. The operational plan goal for completion of the action items in this Bulletin are as follows: The

initial screening is to be complete for 90% of all cases on the comprehensive list within 30 days of the Bulletin effective date. Recommended decisions are to be issued 45 days after the initial screening for 60% of those cases that are identified via initial screening as likely to be included in the SEC class **(ISL)** and those for which development may be needed **(ISD)**. Recommended decisions are to be issued 60 days after the initial screening for 90% of those cases that are identified via initial screening as likely to be included in the SEC class **(ISL)** and those for which development may be needed **(ISD)**.

16. If, after review or further development, the CE or FAB staff member determines that a case on the list does not require any action, the CE or FAB staff member must write a brief memo to the file indicating that the file was reviewed and noting the reason why no additional action is necessary. A case classified as not requiring any action is a case that does not meet the SEC criteria and there is no need to return it to NIOSH for partial dose reconstruction.

The CE must then code “**NA**” (No Action Necessary) and then select the appropriate reason code from the reason code drop down list. The “**NA**” coding is specifically tied to the SEC review list generated by DEEOIC and the “**NA**” code is restricted to ECMS B only because the SEC review list is derived from Part B data. For Standard Oil cases that were reviewed under this Bulletin and require no additional action, the reason code that must be selected is “**915**” (Reviewed under Bulletin 09-15, Standard Oil Development Company SEC) and be coded into ECMS B only. The status effective date of the “**NA**” code is the date of the memo to the file stating review is complete and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the “**NA-915**” code is not entered initially. The “**NA-915**” code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the “**NA-915**” code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “**NA-915**” code in addition to the closure code. The status effective date for the “**NA**” coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, Resource Centers and District Office Mail & File Sections

## **2008 EEOICP Final Bulletins**

### **08-01 Rocky Flats SEC designations**

EEOICPA BULLETIN NO.08-01

Issue Date: October 15, 2007

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Effective Date: September 5 , 2007

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Expiration Date: October 15, 2008

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Subject: Rocky Flats SEC designations.

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed to add a class of employees at the Rocky Flats Plant in Golden, CO to the Special Exposure Cohort (SEC) membership.

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and decided it qualified for evaluation under 42 C.F.R. § 83.13. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On July 2, 2007, the Board submitted two letters of recommendation to the Secretary of Health and Human Services (HHS) to add to the SEC two classes of employees who worked at the Rocky Flats Plant in Golden, CO during certain years. One letter covers a class of employees who worked at Rocky Flats during the period April 1, 1952 through December 31, 1958 and the other letter covers a class of employees who worked during the period January 1, 1959 through December 31, 1966.

On August 6, 2007, the Secretary of HHS designated both classes for addition to the SEC in a report to Congress. The class designations are identical except for the years. The designations cover (with the second set of years noted in parenthesis):

Employees of the Department of Energy (DOE), its predecessor agencies, or DOE contractors or subcontractors who were monitored or should have been monitored for neutron exposures while working at the Rocky Flats Plant in Golden, Colorado, for a number of work days aggregating at least 250 work days from April 1, 1952 through December 31, 1958 (January 1, 1959 through December 31, 1966), or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

Copies of the Secretary’s letters to Congress recommending these designations are included as **Attachments 1 and 2**. The SEC designations for these classes became effective as of September 5, 2007, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in a report to Congress. While Congress had the authority to reject the recommendation within the 30-day time frame, no action was taken to contradict the addition of this new SEC class.

Additionally, at the time the Board recommended the two Rocky Flats classes be added to the SEC, it also recommended that partial dose reconstructions, including all dose other than neutron dose, were feasible for any Rocky Flats workers who did not qualify for the class. Concurrently, NIOSH agreed to make numerous changes to the underlying methodology for performing dose reconstructions for employees at the Plant.

NIOSH agreed to make several changes to the dose reconstruction methodology, but has provided no official description of the changes to be implemented. NIOSH did, however, state that these changes to their methodology for Rocky Flats dose reconstructions were implemented on August 17, 2007.

Given that NIOSH has indicated a change in the manner in which it will perform dose reconstructions for claims originating from the Rocky Flats Plant, any non-SEC claim that is either pending or contains a final decision based on a POC of <50%, and is dated prior to August 17, 2007, must be returned to NIOSH for a new dose reconstruction.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C.

§ 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the August 6, 2007 letters to Congress from the Secretary of HHS in which Secretary Leavitt makes the designations.

Purpose: To determine eligibility for two new classes in the SEC and to provide procedures for obtaining new dose reconstructions for all Rocky Flats cases with dose reconstructions dated prior to August 17, 2007 and a POC <50% and which do not qualify for inclusion in the SEC.

Applicability: All staff.

### Actions

1. These new additions to the SEC encompass claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. In terms of prioritizing those claims that have been identified as having potential for inclusion in the SEC, NIOSH has provided two lists of employees who claimed employment at the Rocky Flats Plant during the period of these two SEC classes and are pending a dose reconstruction. One list covers employees with specified cancers and the other list addresses employees with non-specified cancers. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD contains all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD, in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her case is being returned to DOL for adjudication. A sample copy of the NIOSH letter to affected Rocky Flats Plant claimants is included as **Attachment 3**. The claims examiner (CE) must print out a hard copy of the NIOSH claimant letter for inclusion in the case file. Case files returned from NIOSH to the district office for potential inclusion in the SEC class must be coded as “NW” (NIOSH, returned without a dose reconstruction) in ECMS. The effective date for the code entry is September 5, 2007.

Since the NIOSH SEC lists contain only cases that were with NIOSH for dose reconstruction at the time this SEC designation became effective, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) has also produced a list identifying Rocky Flats cases that are potentially included in the SEC class, including cases that were previously denied. The list identifies those cases that must be reviewed by the district office(s) to determine whether SEC class criteria are satisfied, including cases with employment during the SEC period with either a specified or non-specified cancer and a previous denial for POC less than 50%. The NIOSH and DEEOIC lists will be compared by the district offices to ensure all potential SEC cases are identified by the district offices. The lists will be provided to the appropriate district offices under separate cover.

3. For any cases identified (either by NIOSH or DEEOIC) as having a potential for compensability based on the new SEC classes, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

Based on this review, the CE determines whether the claimant has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual Chapter 2-600.5. If the employee has a specified cancer, proceed to Action #4. If the employee does not have a specified cancer, proceed to Action #6.

4. If the employee has a specified cancer, the CE must determine if the worker has a period of employment between April 1, 1952 through December 31, 1966 at the Rocky Flats Plant in Golden, Colorado during which the employee had a total of at least 250 days when he/she “was monitored or should have been monitored for neutron exposures.”

In determining whether the employment history meets the 250 work day requirement, the CE must consider employment at Rocky Flats that “was monitored or should have been monitored for neutron exposure” in either (or both) the period April 1, 1952 through December 31, 1958 and/or

January 1, 1959 through December 31, 1966. Additionally, the CE must consider employment either solely at Rocky Flats or in combination with work days for other SEC classes.

To make a decision as to whether the employee “was monitored or should have been monitored” for neutron exposures at Rocky Flats, the CE must evaluate the case records to determine if any of the following three criteria are met:

- Inclusion on the *Rocky Flats Neutron Dosimetry Reconstruction Project (NDRP)* list (see below);
- Previously completed NIOSH dose reconstruction for named employee includes neutron exposure or mentions exposure to plutonium; or
- Employment in a building identified as a plutonium building (see below).

If the evidence is sufficient to show that the employee meets any one or more of the preceding criteria, the CE may accept that the employee “was monitored or should have been monitored for neutron exposures.”

To provide further clarification, *The Rocky Flats Neutron Dosimetry Reconstruction Project (NDRP)* was a historical project undertaken to better reconstruct neutron dose for workers at the Rocky Flats Plant. As part of that Project, a list of 5,308 names was compiled. Every name on the list represents someone who was monitored for neutron dose. In making the determination on whether the employee “was monitored or should have been monitored” the CE should first check this list. If the employee’s name and social security number match one on the list, the CE may accept that the employee was monitored for neutron exposure. The Rocky Flats NDRP list will be provided under separate cover to the district offices.

In situations where there is no match with a name on the *Rocky Flats NDRP* list, the CE should then evaluate the case record to determine if a dose reconstruction report is contained in the file. Upon scrutiny of the dose reconstruction report, if there is a positive reference to applicable neutron or plutonium exposure, the CE may accept that the employee was monitored or should have been monitored for neutron exposure.

Since neutron exposure can occur when a worker is exposed to plutonium, the term “should have been monitored for neutron exposures” has also been interpreted to include any worker who worked in a building where plutonium was used. The DEEOIC has coordinated with NIOSH to identify applicable buildings, which are:

Building 86 (which is the same Building as 886)

Building 91 (which is the same Building as 991)

Building 701

Building 771(which is the same Building as 71)

Building 774(which is the same Building as 74)

Building 776(which is the same Building as 76)

Building 777(which is the same Building as 77)

Building 778(which is the same Building as 78)

Building 779(which is the same Building as 79)

Note however, that although plutonium work occurred in Building 707, that building was not operational until 1972. This means that an employee’s work in Building 707 would not qualify that employee for inclusion in either of the Rocky Flats SEC classes because the last date of aggregate coverage of these combined classes in the SEC is December 31, 1966.

Therefore, if the employee is not on the NDRP list and there is no mention of applicable neutron

dose or plutonium exposure factored into an existing dose reconstruction, the CE is to review the file to determine if the employee worked in any of the buildings noted in this section. If so, the CE can accept employee as one who “should have been monitored.”

If none of these criteria is met, the CE should develop the claim in an attempt to collect any evidence that would reasonably establish inclusion in the SEC. This would include any documentation of neutron or plutonium exposure or employment in a building where plutonium work occurred. The evidence merely needs to be of sufficient quality to convince the CE that the employee meets the SEC class requirement for monitored or should have been monitored. If after aforementioned development nothing exists to make such a conclusion, the employee must be excluded from the Rocky Flats classes of the SEC.

5. Once the CE has determined the employee has a diagnosed, specified cancer and meets the employment criteria of the SEC class, the CE is to accept the employee in the SEC class. If there is a final decision in the case, that final decision will need to be vacated and the case reopened. Procedures for so doing are provided in Action #8.

6. As discussed earlier, the Secretary of Health and Human Services determined that it is not feasible for NIOSH to perform complete dose reconstructions for the class of employees who worked at the Rocky Flats Plant in Golden, Colorado between April 1, 1952 through December 31, 1966.

However, NIOSH has indicated that partial dose reconstructions are possible for all exposures except neutrons. Additionally, NIOSH has changed various aspects of the dose reconstruction methodology used for Rocky Flats workers. Because these changes are extensive, it has been determined that all cases with confirmed employment at Rocky Flats containing a dose reconstruction performed prior to August 17, 2007, calculated with a PoC < 50%, and not qualified for SEC membership must be returned to NIOSH for a new dose reconstruction. If cases have a final decision, they must be reopened as explained in Action #8.

7. As a means of identifying the cases affected by the NIOSH changes to the dose reconstruction methodology, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a comprehensive list of all Rocky Flats claims that must be evaluated as part of this Bulletin. The list includes social security numbers for 1145 cases. This list includes all Rocky Flats cases with a POC of < 50% as well as those with NI/NR (Sent to NIOSH/Received from NIOSH) dates, but lacking any data in the POC field in ECMS. NIOSH has also provided a list of 590 claims they have identified that should be returned for a new dose reconstruction. These lists will be provided to the appropriate district offices under separate cover. For those cases that are on the list that do not qualify for the SEC, e.g., non-specified cancer, insufficient latency period or does not meet the 250 work day requirement, and which have a final decision, the CE, through the Senior CE (SrCe) must initiate a reopening of the case to obtain a new dose reconstruction, provided that the completed dose reconstruction in the file is dated prior to August 17, 2007.

If there is not a final decision but the claim meets the criteria outlined here (dose reconstruction completed prior to August 17, 2007 with a POC <50%, but not qualified for inclusion in the SEC), the case must be sent back to NIOSH for a rework. Steps for referring back to NIOSH are explained in #10.

8. If there is a final decision in the case with a POC <50%, and it falls within the parameters of the SEC class or it qualifies for a new dose reconstruction, it will need to be reopened.

In the exercise of the Director’s discretion of the reopening process, the Director is delegating limited authority to the District Director to sign Director’s Orders for reopening. This delegated authority is limited to reopenings based upon evidence that a Rocky Flats employee meets the criteria for placement into the Rocky Flats SEC class or requires a new dose reconstruction due to changes implemented by NIOSH. Two sample Director’s Orders are provided in **Attachments 4 and 5**. **Attachment 4** is a sample reopening for inclusion into the SEC. **Attachment 5** is a sample

reopening for the District Director to reopen those Rocky Flats cases needing a new dose reconstruction. The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated.

9. For those cases which are reopened for the purpose of obtaining a new dose reconstruction, the District Director should code the case as “MN” (NO Initiates Review for Reopening) with a status effective date as the effective date of this bulletin.

For all reopenings per this bulletin, upon completing the Director’s Order to reopen the claim, the District Director should code the case as “MD” (Claim Reopened – File Returned to DO) to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “MZ” status code is not necessary). The status effective date of the “MD” code is the date of the Director’s Order.

Please note that while the “MD” code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been in this specific circumstance.

10. Once the claim has been reopened, or if a claim without a final decision requires a rework, the responsible CE refers the case to NIOSH to obtain a new dose reconstruction. For cases affected by this bulletin, a rework request to the National Office Health Physicist is not required. Instead, once the claim is reopened (or determined to require a rework), the CE should complete an amended NIOSH Referral Summary Document (ANRSD) and forward the ANRSD to the Public Health Advisor (PHA) assigned to the district office at NIOSH. The ANRSD should include the following statement in the “DOL Information” section, “Rework request due to multiple changes in methodology for dose reconstructions for Rocky Flats workers and any other applicable modifications.” The CE should also:

a. Send a letter to the claimant explaining that the case has been returned to NIOSH for a rework of the dose reconstruction as a result of a change in the dose reconstruction methodology applicable to Rocky Flats. A sample letter to the claimant is included as **Attachment 6**.

b. Send a copy of this letter to the PHA at NIOSH assigned to the DO along with the weekly DO submissions to NIOSH. The dates on the ANRSD and the letter to the claimant must both be the same, since this will be the date used for the status code entry into ECMS. The CE should code the case as “NI” (Sent to NIOSH) and select the “PER” (Rework based on Program Evaluation Report) reason code. (Since this is considered a new dose reconstruction, the CE should not change the existing NR/DR status code to NR/RW as typically done for rework cases. In addition, the existing POC should not be deleted from ECMS.)

11. Upon receipt of the new dose reconstruction report incorporating the most recent NIOSH methodology for Rocky Flats, the CE proceeds in the usual manner and prepares a recommended decision. The CE should code the case as “NR” (Received from NIOSH) and select the “DR” (Dose Reconstruction Received-POC) reason code. The status effective date will be the date the dose reconstruction is date-stamped into the District Office. The POC should be updated in ECMS based on the new dose reconstruction.

12. For any claim that is not already at NIOSH effective September 5, 2007 and for which the CE determines a dose reconstruction is appropriate, the normal NIOSH referral process will apply.

13. Once the claim is reopened, the CE should proceed in the usual manner for a compensable SEC claim and prepare a recommended decision.

14. If the claim includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any secondary cancers that are metastases of the specified cancer(s), and any non-specified cancers that have a dose reconstruction that resulted in a probability of causation of 50 percent or greater.

15. FAB personnel must carefully review any Rocky Flats Plant in Golden, Colorado cases that have a currently pending recommended decision to deny based on a POC <50%. If the existing

dose reconstruction was performed prior to August 17, 2007 and the employee is not eligible for inclusion into the SEC, then the case needs to be remanded for a referral to NIOSH for a new dose reconstruction. If the case does meet the requirements for inclusion into the SEC a remand should be issued to insure appropriate handling of the claim in accordance with this directive.

16. The proposed district office operational plan goal for the cases on the NIOSH list and on the list of denied or "in process" cases is to complete recommended decisions (including reopening, if required) or refer the cases back to NIOSH within 45 days of the date of this Bulletin for at least 50% of the cases, and within 90 days for 90% of the cases. All cases requiring action due to this Bulletin should be completed within 120 days.

17. To track progress on completion of the tasks outlined in this Bulletin, the comprehensive list outlined in Action #7 has four columns added thereto with the headings, "Reviewed Per Bulletin," "Action Taken," "Date of Action," and "Comments." The District Offices are to complete these columns as work progresses on implementation of this Bulletin. The updated spreadsheet is to be forwarded to Mr. Frank James, Special Assistant, DEEOIC, every two weeks commencing on November 2, 2007.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

[Attachment 5](#)

[Attachment 6](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

**08-02 Supplemental Guidance on Processing Cases Affected by OCAS-PER-012, entitled "Evaluation of Highly Insoluble Plutonium Compounds"** *Note: This bulletin updates Bulletin No.07-27 to include coding instructions for development letters sent to NIOSH as well as coding the response received from NIOSH.*

EEOICPA BULLETIN NO.08-02

Issue Date: October 25, 2007

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Effective Date: October 25, 2007

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Expiration Date: October 25, 2008

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**Note: This bulletin updates Bulletin No.07-27 to include coding instructions for development letters sent to NIOSH as well as coding the response received from NIOSH.**

Subject: Supplemental Guidance on Processing Cases Affected by OCAS-PER-012, entitled “Evaluation of Highly Insoluble Plutonium Compounds.”

Background: Bulletin 07-27 outlines the process of processing cases affected by OCAS-PER-012, entitled “Evaluation of Highly Insoluble Plutonium Compounds.” After the issuance of Bulletin 07-27, the need for ECMS codes to track development letters sent to NIOSH, and their response, was identified. This bulletin provides the codes associated with sending letters to the PHAs at NIOSH inquiring as to the applicability of OCAS-PER-012, as well as coding the response received from NIOSH.

References: NIOSH document, OCAS-PEP-012 Rev-00, “Program Evaluation Plan: Evaluation of Highly Insoluble Plutonium Compounds,” approved on March 29, 2007, viewed at <http://www.cdc.gov/niosh/ocas/pdfs/peps/oc-pep12-r0.pdf>; OCAS-PER-012, “Evaluation of Highly Insoluble Plutonium Compounds.”

Purpose: To provide procedures for processing claims with a final decision to deny that may be affected by NIOSH’s OCAS-PER-012, including ECMS coding instructions.

Applicability: All staff.

Actions:

1. Action item 5 in EEOICPA Bulletin 07-27 discusses a separate list of cases being provided that are not on the NIOSH list of cases requiring reopening, but appear to be affected by OCAS-PER-012. The responsible CE should review each case on the list and confirm that the case meets the parameters for the PER, i.e. Super S site, POC <50%, DR signed prior to February 6, 2007. Once all three parameters are determined to have been met, the CE sends a letter to the PHA assigned to the district office at NIOSH inquiring as to the applicability of OCAS-PER-012 (see Attachment 4 in EEOICPA Bulletin 07-27). At that time, the CE enters the code **LNS** (Letter sent to NIOSH) into the claim status history in ECMS. The claims status date of the code is the date of the letter. The CE should also send a letter to the claimant explaining our action (see Attachment 5 in EEOICPA Bulletin 07-27). When a response to the inquiry is received from NIOSH, the CE enters the code **LNR** (Letter/Response Received from NIOSH) into the claim status history in ECMS. The claim status date of the code is the date the response is received in the appropriate office, which is the date of the date stamp. Once NIOSH responds, the DO proceeds to reopen the case if appropriate.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

**08-03 SEC class designation for the early years at the Hanford Engineer Works**

**EEOICPA BULLETIN NO.08-03**

Issue Date: October 19, 2007

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Effective Date: October 12, 2007

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Expiration Date: October 19, 2008

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Subject: SEC class designation for the early years at the Hanford Engineer Works

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of a class of employees at the Hanford Engineer Works (HEW or Hanford) in Richland, WA to add the class to the SEC.

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and decided it qualified for evaluation under 42 C.F.R. § 83.13. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On August 9, 2007, the Board submitted a letter of recommendation to the Secretary of Health and Human Services (HHS) to add the class of employees who worked at Hanford during the early years of operation to the SEC.

On September 12, 2007, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress.

Employees of the Department of Energy (DOE), its predecessor agencies, or DOE contractors or subcontractors who were monitored or should have been monitored for internal radiological exposures while working at the Hanford Engineer Works in: the 300 Area fuel fabrication and research facilities from October 1, 1943 through August 31, 1946; the 200 Area plutonium separation facilities from November 1, 1944 through August 31, 1946; or the 100 B, D and F reactor areas from September 1, 1944 through August 31, 1946; for a number of work days aggregating at least 250 work days or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

A copy of the Secretary’s letter to Congress recommending the designation is included as **Attachment 1**. The SEC designation for the class became effective October 12, 2007, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in a report to Congress. While Congress had the authority to reject the recommendation within the 30-day time frame, no action was taken to contradict the addition of this new SEC class.

Although a new SEC class has been added for employees at the Hanford Engineer Works, NIOSH has determined that, with the exception of internal dose from fission products and plutonium, it is possible to estimate all other internal and external exposures and to estimate occupational medical dose for employees at Hanford. This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the September 12, 2007 letter to Congress from the Secretary of HHS in which Secretary Leavitt makes the designations.

Purpose: To provide procedures for processing SEC claims for those employed at the Hanford Engineer Works in Richland, WA.

Applicability: All staff.

#### Actions

1. This new addition to the SEC encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of employees with claimed employment at Hanford during the period of the SEC class. This list is a comprehensive list of those cases that must be reviewed by the district office(s) to determine whether the SEC class criteria are satisfied. It includes pending cases with employment during the SEC period with either a specified or non-specified cancer, and cases previously denied for a POC less than 50% and Hanford cases currently at NIOSH. This comprehensive list will be provided to

the appropriate district offices under separate cover.

NIOSH has also identified cases associated with this new class in the SEC. The DEEOIC list includes NIOSH-identified cases. Additionally, NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD contains all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD, in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected Hanford claimants is included as **Attachment 2**. The claims examiner (CE) must print out a hard copy of the NIOSH letter for inclusion in the case file. Case files returned from NIOSH to the district office for potential inclusion in the SEC class must be coded as “NW” (NIOSH, returned without a dose reconstruction) in ECMS. The effective date for the code entry is October 12, 2007.

3. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to: review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process. Action #5 provides additional guidance on making the determination of whether the employee’s employment should be included in the class.

4. Based on this review, the CE determines whether the claimant has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual Chapter 2-600.5. If the employee has a specified cancer, proceed to the Action #5. If the employee does not have a specified cancer, proceed to Action #7.

5. If the employee has a specified cancer, the CE must determine if the worker was employed for at least 250 work days at one of the designated areas between the specified dates. Expressed in chart form the parameters of this new SEC class are:

Area	Start date	End date
100 B, D and F reactor areas	September 1, 1944	August 31, 1946
200 Area plutonium separation facilities	November 1, 1944	August 31, 1946
300 Area fuel fabrication and research facilities	October 1, 1943	August 31, 1946

The three start dates each coincide with the first time radioactive materials were used or created in the designated areas. The end date for the entire class is August 31, 1946, which correlates with the end of DuPont being the management and operating contractor at Hanford; General Electric assumed management of Hanford on September 1, 1946. This addition to the SEC, therefore, is predominately, if not entirely, made up of former employees of DuPont. Therefore, as the CE reviews a file and determines that the employee worked for DuPont at Hanford, potential eligibility for this SEC must be considered.

Once it is established that the employee worked at Hanford between the earliest date of the SEC, October 1, 1943 and August 31, 1946, the CE needs to determine whether the employee is included in the class. There are basically two evidentiary categories for the CE to consider when making a judgment of SEC membership in the new class:

- Personal dosimetry
- Employee work location

If the claimant has either personal dosimetry or a work location in one of the specified areas, the CE is to accept that the employee, “should have been monitored” for internal radiological exposures.

With regard to personal dosimetry, according to the SEC petition evaluation report, "Routine Hanford practices appear to have required assigning dosimeters to all workers who entered a controlled radiation area." It further states, "Based on available records, it appears that dosimeters were assigned to all workers who entered controlled radiation areas."

In the case of this addition to the SEC, all workers who should have been monitored were monitored, though not necessarily for all nuclides needed for an EEOICPA dose reconstruction. The CE is therefore to review the case file and dose reconstruction report, if available, and look for any indication that the employee was monitored. If such evidence is found, then the CE should accept the employee's work location, during the monitored period, was in one of the areas designated as part of this additional class in the SEC.

However, not all monitoring records from the time period of the class exist today. As such, if the employee worked at Hanford during the DuPont years of operation, but there are no monitoring records pertaining to the employee, the CE is to review the file for any indication that the employee's work location was *either* 100 B, D and F reactor areas and/or the 200 Area plutonium separation facilities and/or the 300 Area fuel fabrication and research facilities.

For qualifying SEC class employment, it is essential that the claims examiner review the case file in its entirety, including information obtained from NIOSH during the dose reconstruction process, dosimetry records and contemporaneous medical records to determine if evidence indicates the employee worked at one of the locations specified in the designation of the SEC class. The evidence does not need to rise to the level of beyond all reasonable doubt to qualify for consideration.

For those cases in which there are no dosimetry records and the adjudicator cannot determine whether the employee worked in one of the specified areas, additional development is appropriate. In terms of suggesting to claimants what type of additional evidence could be persuasive, claimants can be encouraged to submit affidavits from co-workers regarding work location at Hanford.

6. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC classes, the CE should proceed in the usual manner for a compensable SEC claim and prepare a recommended decision.

7. As discussed earlier, the Secretary of Health and Human Services determined that it is not feasible for NIOSH to perform complete dose reconstructions for the class of employees who worked at Hanford in radiological areas prior to August 31, 1946.

However, NIOSH has indicated that partial dose reconstructions, except for dose from internal plutonium and fission products, are possible. Accordingly, for cases with a non-specified cancer and/or that do not meet the employment criteria of the SEC class, the CE must refer these cases back to NIOSH with a new NIOSH Referral Summary Document (NRSD) to perform a dose reconstruction. The CE should code these cases as "NI" (Sent to NIOSH). The status effective date is the date of the Senior or Supervisory CE signature on the NRSD.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE should code the case as "NR" (NIOSH Dose Reconstruction Received) and select the "PD" (Partial Dose Reconstruction, SEC) reason code. The status effective date is the date the dose reconstruction is date-stamped into the District Office. The CE should not delete the "NW" (NIOSH, returned without a dose reconstruction) or "NI" (Sent to NIOSH) code already present in ECMS.

8. For those cases that were identified by NIOSH as having a "specified cancer" and therefore returned to the district office, if it is determined that the case does not qualify for the SEC class, the CE, through the Senior CE (SrCe), notifies the appropriate point of contact at NIOSH via E-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) and inputs the NI (Sent to NIOSH) code to ECMS, effective the date of the E-mail requesting NIOSH to proceed with dose reconstruction. The

E-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-specified cancer, insufficient latency period or does not meet the 250 work day requirement. A hard copy printout of the E-mail is to be inserted in the case file.

9. For any claim that is not already at NIOSH effective October 12, 2007 and for which the CE determines a dose reconstruction is appropriate, the normal NIOSH referral process will apply.

10. If there is a final decision in the case and a review of the evidence of records establishes likely inclusion in the SEC class, it will need to be reopened. In the exercise of the Director's discretion of the reopening process, the Director is delegating limited authority to the four District Directors to sign Director's Orders for reopening. This delegated authority is limited to reopenings based upon evidence that a Hanford employee meets the criteria for placement into the Hanford SEC class. A sample Director's Order is provided in **Attachment 3**. The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated.

11. For those cases which are reopened under the authority granted in this Bulletin, the District Director should code the case as "MN" (NO Initiates Review for Reopening) with a status effective date as the effective date of this bulletin.

For all reopenings per this bulletin, upon completing the Director's Order to reopen the claim, the District Director should code the case as "MD" (Claim Reopened – File Returned to DO) to reflect that the case has been reopened and is in the district office's jurisdiction. (The "MZ" status code is not necessary). The status effective date of the "MD" code is the date of the Director's Order.

Please note that while the "MD" code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been in this specific circumstance.

12. Once the claim is reopened, the CE should proceed in the usual manner for a compensable SEC claim and prepare a recommended decision.

13. If the claim includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any secondary cancers that are metastases of the specified cancer(s), and any non-specified cancers that have a dose reconstruction that resulted in a probability of causation of 50 percent or greater.

14. FAB personnel must be vigilant for any Hanford case that has a recommended decision to deny. If the employee worked at Hanford during the time specified, has a specified cancer, and meets the 250 work day requirement, FAB is to review the case for the parameters of the SEC as specified in this Bulletin. If the criteria of the SEC are met, the FAB is to reverse the district office's recommended decision to deny and accept the case. FAB should undertake appropriate development, if necessary, to determine membership in the SEC class. Every effort should be taken to avoid a remand of a potential SEC claim to the District Office for development.

15. The proposed district office operational plan goal for the cases on the DEEOIC list described in Action #2 is to complete recommended decisions (including reopening, if required) or refer the cases back to NIOSH within 45 days of the date of this Bulletin for at least 50% of the cases, and within 90 days for 90% of the cases. All cases requiring action due to this Bulletin should be completed within 120 days.

16. To track progress on completion of the tasks outlined in this Bulletin, the list provided by DEEOIC outlined in Action #2 has four columns added thereto with the headings, "Reviewed Per Bulletin," "Action Taken," "Date of Action," and "Comments." The district offices are to complete these columns as work progresses on implementation of this Bulletin. The updated spreadsheet is to be forwarded to Mr. Frank James, Special Assistant, DEEOIC, every two weeks commencing two weeks after the issue date of this Bulletin.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

**08-04 NIOSH's OCAS-PER-017, entitled "Evaluation of Incomplete Internal Dosimetry Records from Idaho, Argonne – East and Argonne – West National Laboratories."**

EEOICPA BULLETIN NO.08-04

Issue Date: October 29, 2007

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Effective Date: September 11, 2007

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Expiration Date: October 29, 2008

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**Subject:** NIOSH's OCAS-PER-017, entitled "Evaluation of Incomplete Internal Dosimetry Records from Idaho, Argonne – East and Argonne – West National Laboratories."

**Background:** In April/May 2006, NIOSH found that the Idaho National Laboratory (INL), Argonne National Laboratory – East (ANL-East), and Argonne National Laboratory – West (ANL-West) "did not consistently include internal dose data in all of their individual dosimetry responses" and that the internal dosimetry data was not previously submitted to NIOSH. On September 11, 2007, the National Institute for Occupational Safety and Health (NIOSH) released OCAS-PER-017, entitled "Evaluation of Incomplete Internal Dosimetry Records from Idaho, Argonne – East and Argonne – West National Laboratories." The PER indicates that NIOSH has since received and evaluated additional internal dosimetry data for previously completed non-compensable cases that NIOSH determined to be potentially affected by the findings. As a result of its evaluation, NIOSH has identified certain cases where the newly acquired internal dosimetry data merits inclusion in the dose reconstructions. As such, identified cases not currently with NIOSH must be returned to NIOSH for a new radiation dose reconstruction. A copy of OCAS-PER-017 is included as [Attachment 1](#).

This bulletin provides guidance on returning specific cases to NIOSH for a new radiation dose reconstruction.

**References:** NIOSH document, OCAS-PER-017, "Evaluation of Incomplete Internal Dosimetry Records from Idaho, Argonne – East and Argonne – West National Laboratories," effective September 11, 2007, viewed at <http://198.246.98.21/niosh/ocas/pdfs/pers/oc-per-017-r0.pdf>.

**Purpose:** To provide procedures for processing claims affected by NIOSH's OCAS-PER-017.

**Applicability:** All staff.

**Actions:**

1. NIOSH's OCAS-PER-017 indicates that the additional internal dosimetry data received for 83

previously completed non-compensable cases at the INL, ANL-East, and ANL-West facilities, merit a new dose reconstruction. Some of these cases are currently at NIOSH where the additional internal dosimetry data will be considered in a new dose reconstruction. The remainder of the identified cases, a total of 68, should be returned to NIOSH for a new dose reconstruction. A list of identified cases will be distributed to the appropriate district offices under separate cover.

2. For those cases identified on the list of cases that are currently in posture for a recommended decision, the Claims Examiner (CE) is to return those cases to NIOSH for a new dose reconstruction.

3. When referring these cases to NIOSH for a new dose reconstruction, a request to the National Office Health Physicist is not required. Instead, the CE should complete an amended NIOSH Referral Summary Document (ANRSD) and forward the ANRSD to the Public Health Advisor (PHA) assigned to the district office at NIOSH. The ANRSD should include the following statement in the "DOL Information" section, "Rework request due to the release of OCAS-PER-017 and any other applicable modifications." The CE should also:

a. Send a letter to the claimant explaining that the case has been returned to NIOSH for a new dose reconstruction as a result of the receipt of internal dosimetry data for inclusion in the dose reconstruction as outlined in OCAS-PER-019. A sample letter to the claimant is included as

[Attachment 2](#).

b. Send a copy of this letter to the PHA at NIOSH assigned to the DO along with the weekly DO submissions to NIOSH. The dates on the ANRSD and the letter to the claimant must both be the same, since this will be the date used for the status code entry into ECMS. The CE should code the case as "NI" (Sent to NIOSH) and select the "PEP" (Rework based on Program Evaluation Plan) reason code.

(Note: Since this is considered a new dose reconstruction, the CE should not change the existing NR/DR status code to NR/RW as typically done for rework cases. Furthermore, if a POC value is already entered into ECMS, the CE should not delete the POC. The new POC will simply be updated once it is calculated.)

Upon receipt of the revised dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE should code the case as "NR" (Received from NIOSH) and select the "DR" (Dose Reconstruction Received-POC) reason code. The status effective date will be the date the dose reconstruction is date stamped into the district office. The POC should be updated in ECMS based on the new dose reconstruction.

4. For those cases identified on the list of cases that are currently pending a final decision at the Final Adjudication Branch (FAB), the Hearing Representative/CE should remand the case to the district office in the usual manner. The Remand Order should direct the district office to refer the case to NIOSH for a new dose reconstruction as established in OCAS-PER-017.

The Hearing Representative/CE should code the case as "F7" (FAB Remand) with a "F7J" (Dose Reconstruction needs to be Reworked) reason code. The status effective date will be the date of the FAB remand.

5. The following statement should be included in the Remand Order regarding the return of the case to NIOSH for a rework of the radiation dose reconstruction:

On September 11, 2007, NIOSH issued OCAS-PER-017 entitled, "Evaluation of Incomplete Dosimetry Records from Idaho, Argonne – East and Argonne – West National Laboratories." The PER indicates that additional internal dosimetry data has been received for certain cases. The newly acquired internal dosimetry data may affect the dose reconstruction, and as such, may potentially affect the outcome of the claim.

The DEEOIC is obligated to ensure that the application of the dose reconstruction methodology is administered in a fair and consistent manner. Based on NIOSH's receipt and evaluation of the

additional dosimetry data associated with your claim, the prior dose reconstruction/POC calculation on your claim is now invalid. While the addition of the internal dosimetry data may not impact the outcome of your claim, it is necessary for the claim to undergo a new dose reconstruction by NIOSH.

6. In the exercise of the Director's discretion over the reopening process, the Director is delegating limited authority to the District Director to sign Director's Orders for reopening. This delegated authority is limited to reopenings for those cases that are affected by the PER established for certain claims for the INL, ANL-East, and ANL-West. The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated.

7. For those identified cases requiring a new dose reconstruction that have a previously issued final decision to deny as a result of a less than 50% POC, the responsible District Director should issue a Director's Order vacating the final decision and reopening the claim. The Director's Order should state that the case is being reopened as a result of NIOSH's assessment of internal dosimetry data that was not previously considered and that a new dose reconstruction is necessary based on guidance provided in OCAS-PER-017. A sample Director's Order is included as [Attachment 3](#). The District Director should code the case as "MN" (NO Initiates Review for Reopening) with a status effective date as the effective date of this bulletin.

Upon reopening the claim, the District Director should code the case as "MD" (Claim Reopened – File Returned to DO) to reflect that the case has been reopened and is in the district office's jurisdiction. (The "MZ" status code is not necessary.) The status effective date of the "MD" code is the date of the Director's Order.

Please note that while the "MD" code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been in this specific circumstance.

8. If a claimant requests a reopening of his/her claim as a result of the OCAS-PER-017, and the case is not identified on the list of cases to be returned to NIOSH for a new dose reconstruction, the District Director should prepare a memorandum to the Director of DEEOIC and forward the case file to the National Office for review.

9. The proposed district office operational plan goal for the list of identified cases is to refer the cases back to NIOSH (including reopening, if required) within 45 days of the date of this Bulletin for at least 50% of the cases, and within 90 days for 95% of the cases. All cases requiring action due to this Bulletin should be completed within 120 days.

10. To track progress on completion of the tasks outlined in this Bulletin, the list of cases provided by DEEOIC has four columns added thereto with the headings, "Reviewed Per Bulletin," "Action Taken," "Date of Action," and "Comments." The district offices are to complete these columns as work progresses on implementation of this Bulletin. The updated spreadsheet is to be forwarded to Mr. Frank James, Special Assistant, DEEOIC, every two weeks commencing two weeks after the issue date of this Bulletin.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

Distribution List No. 1: All DEEOIC Employees

**08-05 NIOSH's OCAS-PER-018, entitled "Los Alamos National Laboratory Technical Basis Document Revision."**

EEOICPA BULLETIN NO.08-05

Issue Date: October 29, 2007

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Effective Date: July 31, 2007

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Expiration Date: October 29, 2008

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Subject: NIOSH's OCAS-PER-018, entitled "Los Alamos National Laboratory Technical Basis Document Revision."

Background: On July 31, 2007, the National Institute for Occupational Safety and Health (NIOSH) released OCAS-PER-018, entitled "Los Alamos National Laboratory TBD Revision." The purpose of the Program Evaluation Report (PER) is to evaluate the effect of the revision to the Technical Basis Document (TBD) on previously completed dose reconstructions. It is NIOSH's assessment that the change would affect the dose assigned and the probability of causation (POC) for certain claims. A copy of OCAS-PER-018 is included as [Attachment 1](#).

This bulletin provides guidance on processing cases that are potentially affected by the release of OCAS-PER-018 where employment is verified at the Los Alamos National Laboratory (LANL) and where a dose reconstruction was performed prior to May 30, 2007 and resulted in a POC of less than 50%.

References: NIOSH document, OCAS-PER-018, "Los Alamos National Laboratory TBD Revision," approved on July 31, 2007 found at <http://198.246.98.21/niosh/ocas/pdfs/pers/oc-per18-r0.pdf>.

Purpose: To provide procedures for processing claims affected by NIOSH's OCAS-PER-018.

Applicability: All staff.

Actions:

1. On May 30, 2007, NIOSH revised the external dose TBD for the LANL to add median photon adjustment values and increase the skin/shallow dose for the Los Alamos Meson Physics Facility at the Los Alamos Neutron Science Center (LAMPF/LANSCE). Because changes to a TBD change the underlying scientific methodology by which dose reconstructions are performed, NIOSH issued OCAS-PER-018, entitled "Los Alamos National Laboratory TBD Revision," effective July 31, 2007. Since these changes may affect the outcome of the claim, the previous dose reconstruction for certain cases are no longer valid. As a result, a new radiation dose reconstruction is necessary.

The release of OCAS-PER-018 affects those cases with verified employment at the LANL where the dose reconstruction was performed prior to May 30, 2007 (as determined by the "Calculations Performed by" date found on NIOSH's Report of Dose Reconstruction under the Energy Employees Occupational Illness Compensation Program Act), and resulted in a POC of less than 50%.

No action is required on cases with a final decision that was issued based on a dose reconstruction if the "Calculations Performed by" date is on or after May 30, 2007.

2. A comprehensive list of affected cases will be distributed to the appropriate district offices under separate cover.

3. A claims examiner (CE) who receives a claim involving verified employment at LANL, must review the case for inclusion in the LANL Special Exposure Cohort (SEC) in accordance with EEOICPA Bulletin 07-11, Processing Claims for a new SEC Class for covered employees with exposure to radioactive lanthanum (RaLa) at work locations within Los Alamos National Laboratory and EEOICPA Bulletin 07-23, Processing Claims for a new Special Exposure Cohort (SEC) Class for covered employees of the Los Alamos National Laboratory (LANL), March 15, 1943 through December 31, 1975. If the criteria established for the LANL SEC's are not met, then the CE should proceed with reviewing the case as outlined below.

4. For those cases currently in posture for a recommended decision with verified employment at LANL, where a dose reconstruction was performed prior to May 30, 2007 and resulted in a POC of less than 50%, the CE is to return those cases to NIOSH for a new dose reconstruction.

5. When referring these cases to NIOSH for a new dose reconstruction, a request to the National Office Health Physicist is not required. Instead, the CE should complete an amended NIOSH Referral Summary Document (ANRSD) and forward the ANRSD to the Public Health Advisor (PHA) assigned to the district office at NIOSH. The ANRSD should include the following statement in the "DOL Information" section, "Rework request due to the release of OCAS-PER-018 and any other applicable modifications." The CE should also:

a. Send a letter to the claimant explaining that the case has been returned to NIOSH for a new dose reconstruction as a result of a change in the dose reconstruction methodology. A sample letter to the claimant is included as [Attachment 2](#).

b. Send a copy of this letter to the PHA at NIOSH assigned to the DO with the weekly DO submissions to NIOSH. The dates on the ANRSD and the letter to the claimant must both be the same, since this will be the date used for the status code entry into ECMS. The CE should code the case as "NI" (Sent to NIOSH) and select the "PEP" (Rework based on Program Evaluation Plan) reason code.

(Note: Since this is considered a new dose reconstruction, the CE should not change the existing NR/DR status code to NR/RW as typically done for rework cases. Furthermore, if a POC value is already entered into ECMS, the CE should not delete the POC. The new POC will simply be updated once it is calculated.)

Upon receipt of the revised dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE should code the case as "NR" (Received from NIOSH) and select the "DR" (Dose Reconstruction Received-POC) reason code. The status effective date will be the date the dose reconstruction is date stamped into the district office. The POC should be updated in ECMS based on the new dose reconstruction.

6. For cases currently pending a final decision at the Final Adjudication Branch (FAB), the Hearing Representative/CE is to identify those cases with verified employment at LANL that have a recommended decision to deny based on a POC of less than 50%. If the dose reconstruction was performed prior to May 30, 2007, the recommended decision should be remanded to the district office in the usual manner. The Remand Order should direct the district office to refer the case back to NIOSH for a new dose reconstruction as a result of the release of OCAS-PER-018.

The CE should code the case as "F7" (FAB Remand) with a "F7J" (Dose Reconstruction needs to be Reworked) reason code. The status effective date will be the date of the FAB remand.

7. The following statement should be included in the Remand Order regarding the return of the case to NIOSH for a new radiation dose reconstruction.

On July 31, 2007, NIOSH issued OCAS-PER-018, entitled "Los Alamos National Laboratory TBD Revision." The changes outlined in OCAS-PER-018 for LANL not only affect the underlying scientific methodology by which the dose reconstruction was performed, but could potentially affect the outcome of a claim.

The DEEOIC is obligated to ensure that the application of the dose reconstruction methodology is administered in a fair and consistent manner. Given the revision to the underlying scientific assumptions by which the dose reconstruction was performed by NIOSH, and the release of OCAS-PER-018, the prior dose reconstruction/POC calculation on your claim is now invalid. While the modification to the dose reconstruction methodology may not impact the outcome of your claim, it is necessary for the claim to undergo a new dose reconstruction by NIOSH.

8. In the exercise of the Director's discretion over the reopening process, the Director is delegating limited authority to the District Director to sign Director's Orders for reopening. This delegated authority is limited to reopenings for those cases that are affected by the PER established for the LANL TBD revision. The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated.

9. For those cases that have a final decision to deny with verified employment at LANL, and not likely part of the SECs, where a dose reconstruction was performed prior to May 30, 2007 and resulted in a POC of less than 50%, the responsible District Director should issue a Director's Order vacating the final decision and reopening the claim. The Director's Order should state that the case is being reopened as a result of the change in scientific methodology by which the dose reconstruction is performed by NIOSH, and that a new dose reconstruction is necessary based on guidance provided in OCAS-PER-018. A sample Director's Order is included as [Attachment 3](#). The District Director should code the case as "MN" (NO Initiates Review for Reopening) with a status effective date as the effective date of this bulletin.

Upon reopening the claim, the District Director should code the case as "MD" (Claim Reopened – File Returned to DO) to reflect that the case has been reopened and is in the district office's jurisdiction. (The "MZ" status code is not necessary.) The status effective date of the "MD" code is the date of the Director's Order.

Please note that while the "MD" code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been in this specific circumstance.

10. If a claimant requests a reopening of his/her claim as a result of OCAS-PER-018, and the case is not one that is identified on the comprehensive list of cases distributed to the district offices, the case file must be evaluated to determine whether or not the claim warrants a reopening. Simply identifying a PER is not considered new evidence and is not sufficient to warrant a reopening. A reopening should be granted only if the evidence of file supports verified employment at the LANL and the dose reconstruction was performed prior to May 30, 2007, and resulted in a POC of less than 50%. If these requirements are met, the District Director should issue a Director's Order reopening the claim following the procedures as outlined in this Bulletin.

Upon receipt of the claimant's request for reopening, the District Director should code the case as "MC" (Claimant Requests Reopening). The status effective date is the postmark date, if available, or the date the request is received in the DO or FAB, whichever is earlier.

For all claimant requests for reopening as a result of the LANL PER that do not meet the criteria for reopening as outlined in this bulletin, the District Director should prepare a memorandum to the Director of DEEOIC and forward the case file to National Office for review.

11. The proposed district office operational plan goal for the list of identified cases is to refer the cases back to NIOSH (including reopening, if required) within 45 days of the date of this Bulletin for at least 50% of the cases, and within 90 days for 95% of the cases. All cases requiring action due to this Bulletin should be completed within 120 days.

12. To track progress on completion of the tasks outlined in this Bulletin, the list of cases provided by DEEOIC has four columns added thereto with the headings, "Reviewed Per Bulletin," "Action Taken," "Date of Action," and "Comments." The district offices are to complete these columns as

work progresses on implementation of this Bulletin. The updated spreadsheet is to be forwarded to Mr. Frank James, Special Assistant, DEEOIC, every two weeks commencing two weeks after the issue date of this Bulletin.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

Distribution List No. 1: All DEEOIC Employees

Distribution List No. 7: Resource Centers

### **08-06 SEC class designation for Wilhelm Hall renovation workers at Ames Laboratory**

EEOICPA BULLETIN NO.08-06

Issue Date: November 16, 2007

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Effective Date: October 12, 2007

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Expiration Date: One year after issue date

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Subject: SEC class designation for Wilhelm Hall renovation workers at Ames Laboratory.

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of employees at the Ames Laboratory in Ames, Iowa to add a class to the SEC.

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and decided it qualified for evaluation under 42 C.F.R. § 83.13. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On August 9, 2007, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked in certain job categories involved in the renovation of Wilhelm Hall at the Ames Laboratory for the period from January 1, 1955 through December 31, 1970.

On September 12, 2007, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress.

Sheet metal workers, physical plant maintenance and associated support staff (including all maintenance shop personnel), and supervisory staff who were monitored or should have been monitored for potential internal radiation exposures associated with the maintenance and renovation activities of the thorium production areas in Wilhelm Hall (a.k.a. the Metallurgy Building or “Old” Metallurgy Building) at the Ames Laboratory from January 1, 1955 through December 31, 1970, for a number of work days aggregating at least 250 work days or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

A copy of the Secretary's letter to Congress recommending the designation is included as [Attachment 1](#). The SEC designation for this class became effective as of October 12, 2007, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in a report to Congress. While Congress had the authority to reject the recommendation within the 30-day time frame, no action was taken to contradict the addition of this new SEC class.

While a new SEC class has been added for employees at Ames Laboratory, NIOSH has determined that it is possible to estimate external exposures and to estimate medical dose of employees working in these job descriptions in Wilhelm Hall at the Ames Laboratory. This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

This is the second SEC class designation for Ames Laboratory. A previous SEC class for Ames for the period 1942 through December 31, 1954 became effective September 7, 2006 and was the subject of Bulletin No. 07-01.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the September 12, 2007 letter to Congress from the Secretary of HHS in which Secretary Leavitt makes the designation.

Purpose: To provide procedures for processing SEC claims for those performing renovation work in Wilhelm Hall at Ames Laboratory.

Applicability: All staff.

Actions:

1. This additional class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of employees with claimed employment at Ames during the period of the SEC class. It includes pending cases, cases previously denied and those at NIOSH. It also includes specified and non-specified cancer cases. This list is a comprehensive list of those cases that must be reviewed by the district office(s) and to FAB to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.  
  
The DEEOIC list includes NIOSH-identified cases, which should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD contains all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD, in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected Ames claimants is included as [Attachment 2](#). The claims examiner (CE) must print out a hard copy of the NIOSH letter for inclusion in the case file. Case files returned from NIOSH to the district office for potential inclusion in the SEC class must be coded as "NW" (NIOSH, returned without a dose reconstruction) in ECMS. The effective date for the code entry is October 12, 2007. However, the code should not be entered until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record.

3. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.
4. Based on this review, the CE determines whether the claimant has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual Chapter 2-600.5. If the employee has a specified cancer,

proceed to the Action #5. If the employee does not have a specified cancer, proceed to Action #7.

5. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 work days in a job that would have been involved in the renovation work in Wilhelm Hall at Ames Laboratory between January 1, 1955 and December 31, 1970.

Although thorium use in Wilhelm Hall ceased in 1953, renovations were undertaken beginning in 1955 as part of the process to remove all residual radioactivity, particularly thorium, from the building. In performing these extensive renovations, workers encountered thorium contamination left over from the period during which thorium was used and it was comments from these workers that provided the impetus for this addition to the SEC class. Given the definition of this class in the SEC, the evidentiary category that is most valuable to the CE in making the determination of whether to place and employee in the new class is job title.

Job titles included in the class are sheet metal workers, painters, electricians, welders, plumbers and HVAC mechanics as well as any others who would have participated in tasks such as duct work, removing and disposing of laboratory hoods, removing floor and ceiling tiles, moving basement walls, dismantling machine shops and removing the roof and equipment on the roof. The SEC petition evaluation report specifically states that the SEC class is intended to cover all Ames Laboratory maintenance shop personnel, since they were key to the various renovations that took place in Wilhelm Hall. The report also stated that of all the claims that NIOSH has identified as being included in the class, none had any dosimetry records. Therefore, the renovation work was not monitored, but should have been monitored.

According to the Ames Laboratory records staff, Ames Laboratory records provide detailed information about employees' job titles during the years of the class. In making a determination on whether an employee is a member of this additional class to the SEC, the CE must first review the case file for any indication of the worker's job title. If the case file does not contain an indication of job title, the CE is to develop the claim with inquiries to the DOE and the claimant, as appropriate, seeking clarification of the employee's job title. In so doing, the CE is to enter the **DE (Developing Employment)** code in ECMS with a status effective date of the letter.

NIOSH has also provided a summary of job titles that are *not* included in this additional class in the SEC. Excluded job titles include: scientists, chemists, metallurgists, engineers, technicians, and machinists. These employees, although exposed to radionuclides in the course of their employment, were monitored for those exposures and not involved in the unmonitored renovation activities in Wilhelm Hall. This tends to suggest that employees of Ames Laboratory with monitoring records would not be included in the class, unless they present additional evidence that would show they performed renovation work in Wilhelm Hall.

If the employee is in a job title that is not obviously included or excluded, the operative question that needs to be answered by the CE is "does the evidence of record reasonably demonstrate the employee would have been involved in the renovation work inside Wilhelm Hall?" If they worked in a job title known to be related to the renovation activities at the site, or there is some other evidence to show they performed renovations at the facility, then they are included. The CE must apply reasonable discretion in making a judgment in these situations given the evidence of record. The evidence must present a credible basis for the CE to conclude that the employee performed renovations at the lab to be considered part of the SEC class. If not, the claimant should be notified of the SEC criteria and advised to submit probative evidence. For example, a secretary would not likely work as part of a renovation team. As such, it would be necessary for the CE to notify the claimant of the SEC class requirement and allow them the opportunity to present convincing evidence that he or she was performing duties within the scope of the SEC class. Code ECMS with **DE (Developing Employment)** with the status effective date of the letter. It should be noted that merely showing a work location within Wilhelm Hall is *not* pertinent to determining class membership, since some of the excluded job descriptions pertain to workers who were located in Wilhelm Hall.

6. Once the CE has determined the person named in the claim has a diagnosed specified cancer and meets the employment criteria of the SEC classes, the CE should proceed in the usual manner for a compensable SEC claim and prepare a recommended decision.

ECMS Coding Reminder: The “SE” status code must be entered with a status effective date equal to the status effective date of the recommended decision to approve. The SEC site must be selected from the drop down menu under the “SEC/SEC Desc” field on the claim screen.

7. As discussed earlier, the Secretary of Health and Human Services determined that it is not feasible for NIOSH to perform complete dose reconstructions for the class of employees who performed renovations in Wilhelm Hall at the Ames Laboratory in Ames, IA between January 1, 1955 and December 31, 1970.

However, NIOSH has indicated that partial dose reconstructions are possible for external dosimetry and that medical dose can also be calculated. Accordingly, for cases that do not meet the criteria of the SEC class, the CE must refer these cases back to NIOSH with a new NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE should code these cases as “NI” (Send to NIOSH). The status effective date is the date of the Senior or Supervisory CE signature on the NRSD.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE should code the case as “NR” (NIOSH Dose Reconstruction Received) and select the “PD” (Partial Dose Reconstruction) reason code. The status effective date is the date the dose reconstruction is date-stamped into the District Office. The CE should not delete the “NW” (NIOSH, returned without a dose reconstruction) or “NI” (Sent to NIOSH) code already present in ECMS.

8. For NIOSH-identified cases returned to the district office, if it is determined that the case does not qualify for the SEC class, the CE, through the Senior CE (SrCe), notifies the appropriate point of contact at NIOSH via E-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) and inputs the NI (Sent to NIOSH) code into ECMS, effective the date of the E-mail requesting NIOSH to proceed with dose reconstruction. The E-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-specified cancer, insufficient latency period or does not meet the 250 work day requirement. A hard copy printout of the E-mail is to be inserted in the case file.

9. For any claim that is not already at NIOSH effective October 12, 2007 and for which the CE determines a dose reconstruction is appropriate, the normal NIOSH referral process will apply.

10. If the claim includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any secondary cancers that are metastases of the specified cancer(s), and any non-specified cancers that have a dose reconstruction that resulted in a probability of causation of 50 percent or greater. In these instances, the CE is to draft a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and refer the rest back to NIOSH for a determination on causation for the non-specified cancer to determine eligibility for medical benefits. The CE is to code this A1 for Recommend Partial Accept in ECMS and use B for the description code. The CE also needs to input the SE (SEC) code with the appropriate reason code. Then input the NI code when the case is sent to NIOSH.

11. If there is a final decision to deny based on a POC of less than 50% in the case and a review of the evidence of record establishes likely inclusion in the SEC class, it will need to be reopened. In the exercise of the Director’s discretion of the reopening process, the Director is delegating limited authority to the four District Directors to sign Director’s Orders for reopening. This delegated authority is limited to reopenings based upon evidence that an Ames employee meets the criteria for placement into the Ames SEC class as defined by this Bulletin. A sample Director’s Order is provided in **Attachment 3**. The Director is retaining sole signature authority for all other types of

reopenings not otherwise delegated.

12. For those cases which are reopened under the authority granted in this Bulletin, the District Director should code the case as “MN” (NO Initiates Review for Reopening) with a status effective date as the effective date of this bulletin.

For all reopenings per this bulletin, upon completing the Director’s Order to reopen the claim, the District Director should code the case as “MD” (Claim Reopened – File Returned to DO) to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “MZ” status code is not necessary). The status effective date of the “MD” code is the date of the Director’s Order.

Please note that while the “MD” code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been in this specific circumstance.

13. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending Ames Laboratory cases that have a recommended decision to deny. All cases on the comprehensive list identified in action item 2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at Ames during the time specified, has a specified cancer, and meets the 250 work day requirement, FAB is to review the case for the parameters of the SEC as specified in this Bulletin. If the criteria of the SEC are met, the FAB is to reverse the district office’s recommended decision to deny and accept the case. In ECMS, the status code “F6” must be used to reflect the FAB reversal. FAB should undertake appropriate development, as outlined in item 5, above, if necessary, to determine membership in the SEC class.

If no action is required FAB must follow the instructions specified in action item 15, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the District Office. If FAB determines that the case cannot be approved based on the new SEC designation and that re-referral to NIOSH is appropriate (see action items 5 and 7) FAB must remand the case for district office action.

14. The proposed district office operational plan goal for the cases on the DEEOIC list is to:

- complete recommended decisions (including reopening, if required) within 45 days of the date of this Bulletin or refer the cases back to NIOSH within 45 days of the date of this Bulletin for at least 50% of the cases,
- complete recommended decisions (including reopening, if required) within 90 days of the date of this Bulletin or refer the cases back to NIOSH within 90 days for 95% of the cases,
- and complete all cases requiring action due to this Bulletin within 120 days.

15. For cases on the list that do not require any action to be taken (either a new recommended decision to accept based on the SEC or a return to NIOSH) the CE must write a brief memo to the file that explains the case was reviewed under this bulletin, no additional action is necessary, and why. No action is required when the case does not meet the SEC and there is no need to return it to NIOSH.

The CE must then code ‘NA’ – No Action Necessary and then select the appropriate reason code from the reason code drop down list. For Ames Laboratory cases that were reviewed under this bulletin and require no additional action, the reason code that must be selected is ‘06S’ (Reviewed under 08-06, Ames SEC). If the case is an E/B case, the NA-06S must be coded into ECMS B. The status effective date of the ‘NA’ code is the date of the memo to the file stating review is complete and the CE has determined there is no further action necessary.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

## **08-07 Beryllium vendor activities that are related to producing or processing beryllium for DOE**

EEOICPA BULLETIN NO.08-07

Issue Date: November 1, 2007

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Effective Date: November 1, 2007

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Expiration Date: November 1, 2008

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Subject: Beryllium vendor activities that are related to producing or processing beryllium for DOE.

Background: 42 U.S.C. § 7384l(7) defines “covered beryllium employee” in three different contexts. In § 7384l(7)(C), a “covered beryllium employee” is defined as a person who was exposed to beryllium in the performance of duty and is also “a current or former employee of 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 Department of Energy” (DOE). This means that a “covered beryllium employee” under § 7384l(7)(C) can be an employee of a vendor during a period when the vendor was producing or processing beryllium for DOE, as well as during a period when the vendor was engaged in “activities related to” producing or processing beryllium for DOE. In 20 C.F.R. § 30.205(a)(2)(iii) (2006), one of these “activities related to” is identified as environmental remediation of a vendor’s facility pursuant to a contract between the vendor and DOE, and the Division of Energy Employees Occupational Illness Compensation (DEEOIC) took the position in a Part B claim by an employee who only worked for a vendor after it had ceased producing or processing beryllium for DOE that there were no vendor “activities related to” such producing or processing other than the one described in § 30.205(a)(2)(iii). After DEEOIC denied the claim, the employee filed a petition for review of that denial in U.S. District Court, and in *Brigham v. Office of Workers’ Compensation Programs*, 477 F.Supp.2d 160 (D.D.C. 2007), it was held that § 30.205(a)(2)(iii) did not describe the **only** vendor activity “related to” producing or processing beryllium for DOE. This Bulletin describes the additional vendor activity that DEEOIC found was related to producing or processing beryllium for DOE in the final decision that it subsequently issued in the employee’s Part B claim, and the type of findings of fact and conclusions of law that were needed in the final decision. This Bulletin also provides guidance regarding some other beryllium vendor activities that DEEOIC considers to be related to producing or processing for the purpose of § 7384l(7)(C), and general procedures to be followed in all other claims where none of an employee’s work for a beryllium vendor occurred while the vendor was producing or processing beryllium for DOE.

References: 42 U.S.C. § 7384l(7)(C); 20 C.F.R. §§ 30.205(a)(2)(iii) and 30.206.

Purpose: To provide guidance regarding vendor activities that are considered by DEEOIC to be related to processing or producing beryllium for DOE, and procedures to be followed in all claims where the employee only worked for a beryllium vendor either before or after the covered period shown for that vendor in ECMS.

Applicability: All staff.

Actions:

1. In the claim noted above, the claimant submitted a number of documents showing that the beryllium vendor where he had worked had contracted with another firm (not DOE) to remediate and demolish a building at the vendor's facility in which it had processed beryllium for the Atomic Energy Commission (AEC) in the 1960's. The beryllium vendor had last processed or produced beryllium for the AEC in 1975 (this was also the end date for that vendor in ECMS). The employee started working for the beryllium vendor in June of 1983, and the remediation and demolition of the building in question occurred during the single calendar year 1985.
2. Because this evidence suggested that the employee could have been exposed to residual beryllium contamination due to the vendor's former work for the AEC, further development of the record was necessary. To accomplish this, the Director of DEEOIC issued an administrative subpoena directing the vendor to produce all relevant evidence in their possession regarding the beryllium work they did for both the AEC/DOE and the private sector.
3. Because the evidence submitted by the beryllium vendor in response to the subpoena met the criteria in 20 C.F.R. § 30.206(d) for persuasiveness, DEEOIC considered whether the evidence supported enlarging the time frame for the vendor under § 30.206(b). It determined that in addition to the expansion for all beryllium vendors already contained in § 30.205(a)(2)(iii) noted above, it would be appropriate to expand the covered time period for that particular vendor to include the additional year 1985 because it was engaged in "activities related to" its prior producing or processing of beryllium for the AEC/DOE when the vendor's management took conscious action by contracting with a firm to remediate more than a "*de minimus*" amount of residual beryllium contamination remaining from that producing or processing, as supported by the determination of the National Institute for Occupational Safety and Health (NIOSH) that there was a "potential for significant residual contamination outside of the period in which weapons-related production occurred" at the beryllium vendor's facility in its revised June 2004 *Report on Residual Radioactive and Beryllium Contamination at Atomic Weapons Employer Facilities and Beryllium Vendor Facilities*, at Appendix B-2, page 4. The final decision in the *Brigham* claim is EEOICPA Fin. Dec. No. 23005-2002 (July 31, 2007); this decision will be posted to the FAB Decision Database on the DEEOIC website.
4. As a result of the adjudication of the above-noted claim, DEEOIC has determined that effective immediately, the expansion beyond the period during which a vendor is engaged in the processing or producing of beryllium for DOE is **not** limited to the one situation found in § 30.205(a)(2)(iii), which involves time periods during which "environmental remediation of a vendor's facility was undertaken pursuant to a contract between the vendor and DOE." Instead, DEEOIC will consider whether additional activities of a vendor are "related to" that vendor's processing or producing in future claims. Except as described in Action Item Nos. 5-8 below, when a claims examiner (CE) encounters a claim in which the employee worked for a beryllium vendor completely outside of the period for that vendor that appears in ECMS, and it is alleged that the vendor was "engaged in activities related to" its processing or producing of beryllium for DOE at some point during the time the employee worked for the vendor, the CE must forward the case file to the Policy Branch for consideration of whether the employee is a "covered beryllium employee."
5. With respect to claims where the "activities related to" are activities of the vendor involving remediation of its facility after the time period for that vendor listed in ECMS, the CE checks

Appendix B-2 of NIOSH's revised 2004 *Report on Residual Radioactive and Beryllium Contamination at Atomic Weapons Employer Facilities and Beryllium Vendor Facilities* to see if NIOSH found "potential for significant residual contamination outside of the period in which weapons-related production occurred" at the facility. If there is such a finding for the vendor in question, the CE proceeds to develop the factual evidence with respect to the issue of "conscious" management action.

6. If the evidence in the case file is not sufficient to establish that the management of the beryllium vendor took some form of "conscious" action to remediate the residual beryllium contamination (actions of the employee alone are not actions of the vendor's management), but the claimant has made a threshold showing sufficient to convince the CE that further development is warranted, a request should be sent to the vendor asking for evidence of management action taken to remediate the residual beryllium contamination. If after the CE received additional evidence in response to the request there is still some doubt as to whether the action taken is the equivalent of the management action that led to the acceptance of the *Brigham* claim, or if the CE encounters a lack of cooperation on the part of the vendor, refer the case file to the Policy Branch for further action.

7. Once the appropriate development is completed, the CE determines whether there is sufficient evidence to show that the beryllium vendor's management took "conscious" action to remediate residual beryllium contamination as demonstrated by NIOSH's revised 2004 *Report*, and if there is, the period of time during which this "conscious" action took place. If the CE can answer the first one of these inquiries in the affirmative, and the employee worked for the vendor at the vendor's facility for at least one day during the period of the "conscious" action, the CE proceeds to adjudicate the case using the normal procedures of Chapter 2-700 (February 2007) of the Federal (EEOICPA) Procedure Manual. In the findings of fact for the recommended decision (as well as the final decision), the CE must make findings on the period of time during which the vendor was processing or producing beryllium for DOE, NIOSH's determination that there was residual beryllium contamination at the facility, what the "conscious" action of the vendor's management was, and how that "conscious" management action remediated more than a "*de minimus*" amount of residual beryllium contamination at the facility after the vendor ceased producing or processing beryllium for DOE.

8. In addition to the above-noted situation, DEEOIC has determined that certain other activities of a beryllium vendor are considered to be "related to" the production or processing of beryllium for sale to, or use by, DOE under § 7384l(7)(C) of EEOICPA. Those activities are:

(a) Packing/shipping activities necessary for the delivery of beryllium or machined beryllium to the AEC/DOE after production or processing has stopped.

(b) Relocation of AEC/DOE-owned beryllium machining equipment from one building to another at a beryllium vendor facility, after producing or processing under one contract has stopped and before it begins under another contract.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

**08-08 Processing Claims for a Special Exposure Cohort (SEC) Class for covered employees of**

**the Los Alamos National Laboratory (LANL), March 15, 1943 through December 31, 1975.**

***Note: This bulletin updates Bulletin 07-23 (Processing Claims for Special Exposure Cohort Class for covered employees of the Los Alamos National Laboratory, March 15, 1943 through December 31, 1975) by adding Technical Area 33 (TA-33) to the table of operational technical areas that potentially used radioactive material in Attachment 3.***

EEOICPA BULLETIN NO.08-08

Issue Date: November 8, 2007

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Effective Date: July 22, 2007

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Expiration Date: November 8, 2008

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**Note: This bulletin updates Bulletin 07-23 (Processing Claims for Special Exposure Cohort Class for covered employees of the Los Alamos National Laboratory, March 15, 1943 through December 31, 1975) by adding Technical Area 33 (TA-33) to the table of operational technical areas that potentially used radioactive material in Attachment 3.**

Subject: Processing Claims for a Special Exposure Cohort (SEC) Class for covered employees of the Los Alamos National Laboratory (LANL), March 15, 1943 through December 31, 1975.

Background: On August 3, 2007, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) issued EEOICPA Bulletin 07-23, *Processing Claims for a new Special Exposure Cohort (SEC) Class for covered employees of the Los Alamos National Laboratory (LANL), March 15, 1943 through December 31, 1975*. Bulletin 07-23 included Attachment #3, provided by the National Institute for Occupational Safety and Health (NIOSH), which listed all the technical areas at LANL that NIOSH had concluded used radioactive material during the SEC time period. After the issuance of Bulletin 07-23, NIOSH notified DEEOIC that they had inadvertently omitted Technical Area 33 (TA-33) from the table listing the technical areas (TAs) that were known to have a history of radioactive material use.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 et seq.; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the June 22, 2007 letter to Congress from the Secretary of HHS in which Secretary Leavitt makes the designation; EEOICPA Bulletin No. 07-23; the September 10, 2007 letter from NIOSH to DEEOIC.

Purpose: To add Technical Area 33 (TA-33) to the list of TAs in LANL that was known to have a history of radioactive material use.

Applicability: All staff.

Actions: Pursuant to Bulletin 07-23, NIOSH provided a list that identified TAs with a history of radioactive material use. Bulletin 07-23 instructed the Claims Examiner (CE) to consider all TAs found on this list as covered for purposes of assessing employment at a location that is part of the SEC class for LANL. This list was provided as Attachment 3 under Bulletin 07-23 and is an addendum to the SEC Petition Evaluation Report (Table Addendum-2: List of TAs NIOSH has Concluded Used Radioactive Material During the Covered Period). Since the issuance of Bulletin 07-23, NIOSH has notified DEEOIC that TA-33 was inadvertently omitted from this list. The CE is now to consider TA-33 as having a history of radioactive material use. Evidence showing employment at TA-33 must be considered covered for purposes of assessing employment for inclusion in the SEC class for LANL in accordance with the procedures developed under Bulletin

07-23.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

**08-09 Authorizing In-Home Health Care. Note:** *This Bulletin replaces Bulletin Nos. 07-20 and 07-22. Attachments 3 and 4 have been modified to reflect the proper per diem billing code for Home Health Aides (HHAs) and Certified Nurse Assistants (CNAs), including an explanation of when this billing code is to be used. Minor procedural and wording changes have been incorporated as well.*

EEOICPA BULLETIN NO. 08-09

Issue Date:

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Effective Date:

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Expiration Date:

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**Note:** This Bulletin replaces Bulletin Nos. 07-20 and 07-22. Attachments 3 and 4 have been modified to reflect the proper per diem billing code for Health Aides (HHAs) and Certified Nurse Assistants (CNAs), including an explanation of when this billing code is to be used. Minor procedural and wording changes have been incorporated as well.

Subject: Authorizing In-Home Health Care

Background: The Energy Employees Occupational Illness Compensation Program Act (EEOICPA or the Act) provides for medical benefits to covered employees. Specifically, 42 U.S.C. §7384s(b) and §7385s-8 provide that a covered Part B or Part E employee shall receive medical benefits under §7384t of EEOICPA. Section 7384t(a) states that: “The United States shall furnish, to an individual receiving medical benefits under this section for an illness, the services, appliances, and supplies prescribed or recommended by a qualified physician for that illness, which the President considers likely to cure, give relief, or reduce the degree or the period of that illness.” The Division of Energy Employees Occupational Illness Compensation (DEEOIC) is responsible for ensuring that employees who have had an illness accepted under the EEOICPA receive appropriate and necessary medical care for that illness as delineated under the EEOICPA.

The program has numerous claimants with covered medical conditions who require in-home health care services. This bulletin provides clarification with regard to the evidence needed to authorize this type of care, as well as procedural guidance with regard to the process for review, development, and authorization of in-home health care services.

References: 42 U.S.C. §7384s, §7384t, §7385S-8

Purpose: The purpose of this bulletin is to provide procedural guidance to claims staff in the adjudication of claims for in-home health care services.

Applicability: All staff.

Actions:

1. For all in-home health care requests, there are three parties within DEEOIC involved in the

receipt, review, and authorization process:

(a) **Home Health Care Point of Contact (POC)** Claims Examiner - These specialized claims examiners are responsible for reviewing, developing, approving or denying the requests. Each District Director is to appoint one to three claims examiners (as appropriate) to serve in this role.

(b) **Bill Processing Agent (BPA)** – This is the DEEOIC medical bill contractor responsible for recording receipt of incoming requests, communicating with district office personnel to obtain appropriate authorization, and processing provider bills.

(c) **District Office Fiscal Officer (FO)** – This individual serves as the official liaison between the POC CE and the bill processing agent (BPA). The FO's principal duty is to provide official authorizations or rejections of home health care requests to the BPA processing agent in the form of electronic communications (threads).

2. All requests for home health care must be submitted to DEEOIC's bill processing agent (BPA) via fax, mail, or electronically, to begin the authorization process. The BPA documents receipt of all requests and creates an electronic record of same. The BPA then sends a thread communicating the receipt of a new pending home health care request to the FO.

3. All requests for in-home health care require prior authorization from the POC claims examiner (expedient review occurs under certain emergency situations - see action item 18 below for further information), including authorization for initial nurse assessments. If a physician requests that an initial in-home assessment be performed to determine the need for home health care, the request for that initial assessment must be submitted to the BPA with appropriate supporting medical documentation.

4. Written requests that are received in the district office from the claimant, the authorized representative, the treating physician, or a service provider, must be faxed by the POC CE, to the BPA, to begin the authorization process. Concurrently, the POC CE will begin development on any such request while awaiting an acknowledgement from the BPA.

5. If the POC CE receives a request for an initial assessment without a physician's signature or recommendation, the POC CE must fax it to the BPA and begin concurrent development, the same as in step #4 above. The POC CE sends a letter to the claimant advising that a request for an initial assessment has been received without a physician's recommendation. The POC CE enters code **DM – Developing Medical** into ECMS with a status effective date the date of the letter. In the letter, the POC CE provides 30 days for receipt of a physician's authorization or request for the assessment. If medical documentation is not received within 30 days, the POC CE denies the request for assessment pursuant to the instructions in action item 26 below.

6. Telephone requests for in-home health care must be documented in ECMS. Except in cases of an emergency nature (See Item 19 below), the POC CE may provide information and answer questions pertaining to in-home care covered by DEEOIC, however all callers should be advised that they must submit their requests in writing before the authorization process can begin. Written requests must include a medical rationale and a detailed explanation of the type and level of service the patient requires.

7. Requests need not come directly from the claimant to be considered a valid request. Requests for an in-home evaluation of a patient's needs, and/or requests for in-home care can be initiated by an authorized representative, or any licensed doctor or medical provider.

8. Upon receipt of an authorization request for home health care from the BPA, the FO forwards the information to the appropriate POC CE for review and adjudication.

9. Upon receipt of such request, the POC CE must determine the particular home health services or care being requested. Generally, the types of requests that are submitted include: a physician's request for authorization of an initial in-home assessment; discharge summary from a hospital requesting specific home health care services; or requests from a physician for continuing home

health care services (following expiration of a previous authorization).

10. Upon receipt of a request, the POC CE reviews the medical evidence to determine if the initial assessment or home health care was requested by the treating physician. If the request comes from the treating physician, or another appropriate doctor, the POC CE approves the initial assessment only (if applicable). When an initial assessment request precedes a request for home health care, the POC CE may not approve home health care until after the initial assessment has been completed and a plan of care has been submitted. Once the POC CE approves the initial assessment, the POC CE sends an email to the FO, who sends a thread to the BPA authorizing the request (see action item 17 for more information concerning approvals).

11. Upon receipt of a plan of care, discharge summary, or physician's recommendation delineating a specific request for home health care services, the CE must conduct a complete review of the case file to determine if there is any recent medical documentation from the primary care physician (or treating specialist for the accepted condition), describing the need for in-home medical care as it relates to the covered medical condition. The primary information that the treating physician must provide (often contained in the plan of care signed by a physician) should include:

(a) Description of the in-home medical needs of the patient arising from the covered medical condition. This includes a narrative of the patient's medical need for assistance while in the home and how this is linked to the covered medical condition. The physician must describe the findings upon physical examination, and provide a complete list of all medical conditions (those accepted by DEEOIC and those not accepted by DEEOIC). If a claimant has one or more non-covered conditions, medical evidence must demonstrate how the requirement for home health care is related to the accepted conditions. The physician should also describe laboratory or other findings that substantiate a causal relationship between the accepted condition(s) and the need for assistance or skilled nursing care in the home. Generally, approved in-home services include: administration of medication, medical monitoring, bathing and personal hygiene, meal preparation and feeding, wound dressing changes, and medical equipment checks.

(b) Level of care required, i.e. Registered Nurse (RN), Licensed Practical Nurse (LPN), Home Health Aide (HHA), etc. The doctor must specify the appropriate type of professional who will attend to the patient. Services requiring specialized skills such as administration of medication and medical monitoring generally require a RN or LPN, while services of a general nature (typically referred to as activities of daily living), such as bathing, personal hygiene, and feeding are generally performed by home health aides.

(c) Extent of care required (months, days, hours, etc). A written medical narrative must describe the extent of care to be provided in allotments of time. (Example: RN to administer medication and check vitals once a day, every three days, with a home health aide to assist with bathing, personal hygiene, and feeding, eight hours a day, seven days a week for three months.)

12. If upon review the POC CE finds that the medical evidence is incomplete and the file does not contain an adequate description of the in-home health care needs of the patient, the POC CE prepares a letter to the claimant advising that the DEEOIC has received a request for in-home health care. In the letter to the claimant, the POC CE advises that additional medical evidence is required before services can be authorized. Additionally, the POC CE will direct a copy of the claimant letter to the treating physician, requesting a narrative medical report that includes all of the information described in action item 11 (above). In addition, the physician should be asked to estimate the length of time for which the patient will ultimately require home health care assistance. The POC CE advises in the letter that the medical report is required within 30 days. A sample letter to the claimant (and physician) is attached. (Attachment 1) The POC CE also faxes and mails a copy of the letter to the treating physician's office. The POC CE enters code **DM - Developing Medical** into ECMS with a status effective date the date of the letter.

13. Upon mailing the request to the claimant (copy to the treating physician) the POC CE enters an

ECMS note describing the action and inserting a 15-day call-up. If on the fifteenth day the physician has not responded, the CE contacts the physician's office to inquire if the letter was received, and to ask if there are any questions regarding the request for information. The call is documented in TMS and another 15-day call-up inserted in ECMS.

14. After 30 days has passed with no satisfactory response from the treating physician, or no response from the claimant, the POC CE prepares a second letter to the claimant (accompanied by a copy of the initial letter), advising that following the previous letter, no additional information has been received from the treating physician. The POC CE advises that an additional period of 30 days will be granted for the submission of necessary evidence, and if the information is not received in that time, the request for in-home care may be denied by the DEEOIC (see Attachment 2 for a sample letter). The POC CE enters code **DM – Developing Medical** into ECMS with the status effective date the date of the letter.

15. If the claimant or the physician does not provide a response to the request for information within the 30-day period allowed, the POC CE issues a letter decision to the claimant denying the claim for in-home health care. (See action item 26 below for more details.) The POC CE further sends an email to the FO, who sends a thread to the BPA advising that the service has been denied.

16. If the claimant calls and states that he/she does not require in-home health care, the POC CE requests that the claimant put this in writing. Upon receipt of any written statement from the claimant stating that he/she is not requesting in-home health care, the POC CE writes a letter to the claimant with a copy to the treating physician advising that the claimant is not requesting in-home health care and thus the matter is closed. In this situation, the POC CE sends an email to the FO, who sends a thread to the BPA advising that this service is denied. The POC CE enters the code **DM – Developing Medical** into ECMS with the status effective date the date of the letter.

17. If medical evidence is received, the POC CE must determine if it is of sufficient probative value to authorize in-home health care. It is absolutely critical that the POC CE undertake appropriate analysis of any documentation pertaining to in-home services before authorizing such care. The underlying function of the POC CE is to ensure that the covered employee receives the necessary medical care for the accepted medical condition and that any such request for care reasonably corresponds with the medical evidence in the case file. If the physician does not provide sufficient details concerning the claimant's physical condition, relationship to accepted conditions, or specific reasons for in-home health care, the POC CE must refer the case to a District Medical Consultant (DMC) for review. Upon receipt of a DMC's opinion, the CE weighs the medical evidence in the file. If the DMC opinion is clearly in conflict with the recommendations of the treating physician, and the POC CE's attempts to resolve the situation by communicating with the treating physician have not been successful, the POC CE is to arrange for a second medical opinion or referee evaluation, depending on the circumstances. (Refer to Procedure Manual 2-0300 for instructions regarding a second opinion examination or referee medical examination.) In evaluating the medical evidence, the POC CE must base any determination solely on the weight of medical evidence in the case file. The POC CE must not under any circumstances deny or reduce in-home health care services without a medical basis for such denial.

18. In certain emergency claim situations (see item 19 for a full discussion of the types of emergencies), the CE may authorize in-home health care for a preliminary 30-day period while additional development is undertaken.

(a) Under these circumstances, the physician or hospital staff will contact DEEOIC's BPA for immediate attention. The physician or hospital employee must notify the BPA that the situation is of an emergency nature (i.e. the claimant is being released from the hospital and requires immediate in-home care). The BPA obtains any pertinent documentation and assesses the emergency nature of the request. Once the medical evidence is obtained, the BPA contacts the FO immediately, advising of the situation and providing electronic copies of documentation obtained. The BPA does not make a decision regarding the request, but simply obtains the pertinent documentation and advises the FO

of the emergency request.

(b) Upon receipt of the documentation, the FO forwards the information to the POC CE for review. If discharge information from a treating physician supports the need for immediate authorization, the CE provides approval for 30 days pending additional development (see below for additional information concerning approval). The POC CE enters code **DM – Developing Medical** into ECMS with the status effective date being the date that a request letter is sent to the claimant. The POC CE concurrently sends an email to the FO advising of this approval. The FO sends a thread to the BPA with the approval information and places a telephone call to the BPA, alerting them of an impending emergency request.

(c) In some situations the request for emergency home health care may not be accompanied by evidence supporting the emergency nature of the request. For example, the claimant's condition may be stable, or he/she is not being discharged from a hospital. In these situations, the POC CE sends a letter to the claimant, with a faxed copy to the requestor if other than the claimant. The letter advises that no evidence was submitted to support the request for emergency care, and that additional medical evidence is required. The POC CE enters code **DM – Developing Medical** into ECMS with the status effective date the date of the request letter. Further development actions are outlined below. In addition, the POC CE sends an email to the FO advising that the request for emergency care is under development. The FO sends a thread to the BPA advising of this determination and places a telephone call to the BPA, alerting them of an impending emergency request.

(d) After any initial approval for 30-day emergency care, it is very important that the POC CE undertake immediate action to obtain the necessary evidence to fully substantiate that the care being provided is medically necessary to give relief for the accepted medical condition. This should occur within the preliminary 30-day authorization period. Extensions may be granted in increments of 30 days, but should generally never exceed a total of 120 days without the collection of the necessary evidence to fully document that the care being provided is medically warranted and necessitated by the accepted medical condition.

19. Emergency situations warranting short-term preliminary authorization for in-home health care include:

- Requests for in-home health care for terminal patients with six months or less to live. Terminal status must be based on the opinion of a medical physician.
- Patients discharged from in-patient hospital care with need for assistance. The CE must carefully evaluate these situations to ensure the medical documentation clearly indicates that the patient's care and well-being is dependent on the assignment of a medical professional in the home, (normally following a hospital stay). If the BPA has not already obtained this, the POC CE requests the attending physician discharge summary and discharge planning summary, which is normally available within 72 hours of discharge.

When pre-authorization of emergency in-home care is to be granted, the POC CE prepares a memorandum for the case file documenting the rationale applied in authorizing care. For each subsequent 30-day pre-authorization granted, a new memo should be prepared outlining the basis for such authorization. In addition, the POC CE notifies the claimant and provider in writing of additional periods of authorization. The POC CE sends an email to the FO advising of any authorizations, and the FO forwards the information to the BPA in the form of a thread.

20. For all requests, if upon review of the medical evidence the POC CE decides that in-home health care is required, authorization is to be granted. The POC CE prepares a letter notifying the claimant and the home health care provider of the decision, and delineating the following information (see Attachment 3 for a sample authorization letter):

- (a) Covered medical condition(s) for which care is being authorized.
- (b) A specific narrative description of the service approved (e.g. in-home assistance in administering medicine, monitoring accepted conditions, assistance in/out of bed, preparing meals and feeding, and medical equipment checks).
- (c) Level and duration of the specialized care to be provided, i.e. RN 1 hour per day and Home Health Aide 8 hours per day, 7 days a week for a period of 3 months.
- (d) Authorized billing codes relevant to the level of authorization (see Attachment 4 for a description of the pertinent codes).
- (e) Period of authorization with specific start and end dates.

21. The authorization must be limited to in-home medical services that are reasonably necessary for the treatment or care of the patient's covered medical condition. These services generally include: Home Health Aide for mobility, food preparation, feeding and dressing; skilled nursing should be limited to the scope of practice of an RN or LPN, as long as there is medical evidence of such. The POC CE may not authorize a lower level of care than that requested by the physician unless the weight of medical evidence supports a lower level of care and the claimant has been provided the right to a recommended decision (see below for further discussion).

22. Once the responsible POC CE sends the letter of authorization to the claimant and the provider, the POC CE prepares an email to the fiscal officer (FO). In the email, the POC CE advises the FO of the precise level of care, billing codes, and time period of authorization. The POC CE is not required to advise the FO of the number of correlating units per billing codes. In assigning billing codes, the POC CE references Attachment 4.

23. Once the email authorizing the services has been sent, the POC CE enters a note into ECMS detailing the level of service and time period of authorization. In addition, the POC CE enters a call-up note into ECMS for 30 days prior to the expiration date for which services have been authorized.

24. If no request for additional authorization for home health care is received prior to the date of the call-up, the POC CE sends a letter to the provider, with a copy to the claimant. In the letter, the provider is notified of the expiration date of the home health care services. The provider is further advised of the medical evidence required if additional services are necessary. The POC CE enters code **DM – Developing Medical** in ECMS with a status effective date the date of the letter. If the POC CE does not receive an additional request, further action is unnecessary. However, if the provider or the claimant submits an additional request for ongoing services, the POC CE evaluates the evidence as above.

25. Upon receipt of the email authorization from the POC CE, the FO prepares a thread to the BPA authorizing the specific level of care, billing codes (with units), and period of authorization. The FO calculates the authorized number of units based upon the POC CE's description of the level of care, weekly authorized amount for each level of care, and the time period of authorization.

26. If upon review of the medical evidence in the file, and if after appropriate development as outlined above, the POC CE determines that there is insufficient evidence to warrant authorization of in-home health care, the POC CE sends a detailed letter-decision to the claimant (with a copy to the in-home provider). The letter-decision must include a sentence at the end with language as follows:

*If you disagree with this decision and wish to request a formal decision, please immediately advise this office, in writing, that you wish to have a Recommended Decision issued in this case, providing you with your rights of action.*

Once the letter is written, the POC CE enters code **DM – Developing Medical**, with a drop down code of **DMB - Deny Specific Med Benefits on Accepted Conditions**. The status effective date is

the date of the letter.

27. In the event that the claimant does request a recommended decision, a sample decision is attached for the CE's use (Attachment 5). Once the Recommended Decision is written, the POC CE enters code **D7 – Rec Deny, Medical Insufficient to Support Claim** with a drop down code of **DMB – Deny Specific Med Benefits on Accepted Conditions**. The status effective date is the date of the decision. If the Final Adjudication Branch (FAB) issues a final decision to deny, the FAB hearing representative enters the code **F9 – Fab Affirmed – Deny – Medical Info Insufficient to Support Claim** with a drop down code of **DMB – Deny Specific Med Benefits on Accepted Conditions**.

28. At any time after a period of authorized services, and after the POC CE has undertaken any medical development (i.e. letter to the claimant requesting additional documentation, referral to DMC or second opinion) the POC CE may receive new medical evidence that warrants a change in the level of in-home care currently authorized. If this occurs, the POC CE must review that evidence, employing the same decision-making process described in action item 17. If the new medical evidence supports a denial of services, or reduction in the level of services currently being authorized, that reduction or denial must be communicated to the claimant in a detailed letter as discussed in action item 26, (with a copy to the in-home care provider) explaining the change.

29. Letters that advise of a reduction or termination of services must be copied to the in-home care provider and must specifically advise the claimant that:

(a) Any reduction in the current level of service being provided will occur 15 days from the date of the letter. This letter must also contain the same information as is delineated in action item 20, describing the new level of care being authorized; or,

(b) Any termination of services will occur 30 days from the date of the letter.

30. After the expiration of the 15 or 30 day periods, the POC CE sends a letter-decision to the claimant advising as to the final action taken on the request for home health care services. In this letter the POC CE advises the claimant of his/her rights of action as delineated in action item 26 above. In the event of a termination of services, the POC CE enters the same codes into ECMS as described in action item 26 (corresponding with the letter decision). In the event of a reduction in benefits, the POC CE enters code **DM – Developing Medical** with a drop down code of **RMB - Reduce Medical Benefits on Accepted Conditions**. The status effective date is the date of the letter decision.

In addition, the POC CE sends an email to the FO advising of the new level of care or the termination of current level of services. The FO then sends a thread to the BPA advising of the determination. It is very important for the POC CE to note that only a single authorization can exist at any one time. If the POC CE has authorized a certain level of care that subsequently changes, it is essential that this information be clearly communicated in an email to the FO. The FO sends a thread to the BPA advising of any change in the level of care being authorized, or of any additional period of authorization beyond the existing expiration date. The POC CE must also document the information in the notes section of ECMS when a thread is sent to the BPA.

31. If the claimant requests a recommended decision on a termination of services, the POC CE proceeds with a recommended decision and codes ECMS pursuant to instructions in action item 27. If the claimant requests a recommended decision on a reduction in the level of care, the POC CE proceeds with a recommended decision. The POC CE enters code **D7 – Rec Deny, Medical Insufficient to Support Claim** with a drop down code of **RMB - Reduce Medical Benefits on Accepted Conditions**. The status effective date is the date of the recommended decision. If the final decision of the FAB is to reduce the medical benefits, consistent with the recommended decision, the hearing representative enters code **F9 – FAB Affirmed – Deny – Medical Info Insufficient to Support Claim** with a drop down code of **RMB - Reduce Medical Benefits on Accepted Conditions**. The status effective date is the date of the final decision.

32. If, after initial approval of services, the claimant's treating physician sends in medical documentation (without prior POC CE development) recommending a lower level of care, the POC CE authorizes the new level of care via letter to the claimant (with a copy to the provider). Since the new level of care is requested by the treating physician without development by the POC CE, the POC CE does not need to provide the claimant with a right to a recommended decision. The POC CE concurrently sends an email to the FO advising of the new level of care. The FO sends a thread to the BPA advising of this change.

[Attachment1](#)

[Attachment2](#)

[Attachment3](#)

[Attachment4](#)

[Attachment5](#)

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

**08-10 NIOSH's Program Evaluation Plan for Construction Trade Workers.** *Note: This bulletin is replaced by Bulletin 08-31*

EEOICPA BULLETIN NO.08-10

Issue Date: November 27, 2007

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Effective Date: March 29, 2007

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Expiration Date: November 27, 2008

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Subject: NIOSH's Program Evaluation Plan for Construction Trade Workers.

Background: In 2004, the National Institute for Occupational Safety and Health (NIOSH) found that some Construction Trade Workers (CTWs) were "unmonitored during the early years of the complex" and that these workers "may have been exposed to external radiation and/or internal contamination above ambient and environmental levels without adequate monitoring." As such, on August 31, 2006, NIOSH issued ORAUT-OTIB-0052 to provide guidance on assessing CTWs with inadequate internal or external monitoring. On March 29, 2007, NIOSH released OCAS-PEP-014, entitled "Evaluation of the Impact of OTIB-0052, Construction Trade Workers." The Program Evaluation Plan (PEP) outlines NIOSH's plan for evaluating claims for CTWs with inadequate internal/external monitoring. A copy of the PEP is included as Attachment 1.

The Division of Energy Employees Occupational Illness Compensation (DEEOIC) is taking preliminary action on certain cases that may be impacted by NIOSH's PEP. This Bulletin provides guidance on identifying and processing those cases potentially affected by the release of OCAS-PEP-014 that are currently in the adjudication process and do not have a final decision.

Further guidance will be forthcoming on the treatment of those cases with a final decision based on the results of NIOSH's review of the dose reconstruction methodology involving Construction Trade Workers.

References: OCAS-PEP-014, "Evaluation of the Impact of OTIB-0052, Construction Trade Workers," viewed at: <http://www.cdc.gov/niosh/ocas/pdfs/peps/oc-pep14-r0.pdf>.

Purpose: To provide procedures for processing claims currently in the adjudication process and pending a recommended or final decision that may be potentially affected by the release of OCAS-PEP-014 for Construction Trade Workers.

Applicability: All staff.

Actions:

1. OCAS-PEP-014, "Evaluation of the Impact of OTIB-0052, Construction Trade Workers (CTW)" indicates that the changes provided in the Technical Information Bulletin (TIB) may result in a favorable adjustment in radiation dose. Since these changes affect the Probability of Causation (POC) determination and the outcome of the claim, the previous dose reconstruction on certain cases for CTWs are no longer valid. As such, certain cases with a less than 50% POC where subcontractor employment in the CTW field is verified should be returned to NIOSH for a new dose reconstruction.

Please note that a list of cases will not accompany this directive. Therefore, while adjudicating cases, claims examiners (CE) must be vigilant to identify any case that could potentially be affected by OCAS-PEP-014 and are responsible for tracking the actions taken on a claim (see Action Item #7).

2. To determine whether the dose reconstruction is affected by the release of OCAS-PEP-014, the CE must first determine whether the employee is/was a construction trade worker. To assist the CE in making this determination, the following lists of trades may be utilized as examples of job titles that are recognized in the construction field:

- list of trades as identified in Attachment A of the OCAS-PEP-014 (see **Attachment 2**), or
- list of trades identified under the Labor Categories found under "Construction" in the Site Exposure Matrix (SEM).

In utilizing SEM, the CE should select "Construction (all sites)" from the "Site" drop down menu and press "select." This will bring up a screen that allows a search for specific information related to construction. Under Searches Specific to the Selected Site, there is category called "Labor Category" which allows the CE to identify labor categories specific to the construction field. A search can be conducted by "Labor Category Information" and/or "Labor Category Alias." Both options should be utilized to assist in establishing construction trade work.

The lists of trades identified above are not all encompassing. As such, it is not necessary for the CE to ensure that the employee's position directly matches that of one of the titles listed in Attachment A of the OCAS-PEP-014 or the SEM, merely that the description of the employees' position is one that can reasonably be considered a construction worker.

If it is established that the employee worked in the construction trade field, the CE will then need to determine whether the employee had subcontractor employment. The Department of Energy's (DOE) List of Covered Facilities identifies prime operating contractors of DOE facilities. However, employment for a prime contractor does not qualify the claim for re-evaluation under OCAS-PEP-014. Therefore, if the employer is **not** listed on DOE's List of Covered Facilities found on the DOE website, then it will be assumed that the employee was a subcontractor, and the CE should proceed as outlined in this bulletin.

If it is determined that the employee did not perform duties in construction, or the employer is identified as a prime contractor, no further action is necessary.

3. For those cases that are currently in posture for a recommended decision to deny based on a less than 50% POC and where it is determined that the employee is/was a subcontractor and a CTW, the CE must determine whether ORAUT-OTIB-0052 was utilized by NIOSH in the dose reconstruction. The use of ORAUT-OTIB-0052 is important to note because it signifies that NIOSH performed the dose reconstruction in accordance with the changes described as part of OCAS-PEP-014. To determine whether ORAUT-OTIB-0052 was utilized in the dose reconstruction, the CE must review

the “References” section of the NIOSH Report of Dose Reconstruction under the Energy Employees Occupational Illness Compensation Program Act. If document ORAUT-OTIB-0052 is listed as a reference in the dose reconstruction report, no further action is required.

However, if document ORAUT-OTIB-0052 is not referenced in the dose reconstruction report, and the dose reconstruction was performed prior to the implementation of ORAUT-OTIB-0052 on August 31, 2006 (as determined by the “Calculation Performed by” date on the NIOSH Report of Dose Reconstruction under the Energy Employees Occupational Illness Compensation Program Act), with a resulting POC of less than 50%, the CE is to return the case to NIOSH for a new dose reconstruction.

4. When referring these cases to NIOSH for a new dose reconstruction, a request to the National Office Health Physicist is not required. Instead, the CE should complete an amended NIOSH Referral Summary Document (ANRSD) and forward the ANRSD to the Public Health Advisor (PHA) assigned to the district office at NIOSH. The ANRSD should include the following statement in the “DOL Information” section, “Rework request due to the release of OCAS-PEP-014 and any other applicable changes.” The CE should also:

a. Send a letter to the claimant explaining that the case has been returned to NIOSH for a rework of the dose reconstruction as a result of a change in the dose reconstruction methodology as outlined in the OCAS-PEP-014. A sample letter to the claimant is included as **Attachment 3**.

b. Send a copy of this letter to the PHA at NIOSH assigned to the DO along with the weekly DO submissions to NIOSH. The date on the ANRSD and the letter to the claimant must both be the same, since this will be the date used for the status code entry into ECMS. The CE should code the case as “NI” (Sent to NIOSH) and select the “PEP” (Rework based on Program Evaluation Plan) reason code.

(Note: Since this is considered a new dose reconstruction, the CE should not change the existing NR/DR status code to NR/RW as typically done for rework cases. Furthermore, if a POC value is already entered into ECMS, the CE should not delete the POC. The new POC will simply be updated once it is calculated.)

Upon receipt of the revised dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE should code the case as “NR” (Received from NIOSH) and select the “DR” (Dose Reconstruction Received-POC) reason code. The status effective date will be the date the dose reconstruction is date stamped into the district office. The POC should be updated in ECMS based on the new dose reconstruction.

5. For cases currently pending a final decision at the FAB, the Hearing Representative/CE must determine whether the claim is potentially affected by the CTW PEP. If the recommended decision to deny is based on a less than 50% POC, the Hearing Representative/CE should determine whether the employee was a subcontractor and a CTW as described under Action Item 2. If subcontractor employment is verified, the Hearing Representative/CE must then review the “References” section of the NIOSH Report of Dose Reconstruction under the Energy Employees Occupational Illness Compensation Program Act to determine whether ORAUT-OTIB-0052 was/was not utilized in the dose reconstruction process.

If ORAUT-OTIB-0052 was utilized by NIOSH in the dose reconstruction, no further action is

necessary and the Hearing Representative/CE may proceed with a final decision.

If subcontractor employment in the CTW field is established, and document ORAUT-OTIB-0052 was not utilized by NIOSH, and the dose reconstruction was performed prior to August 31, 2006, the recommended decision should be remanded to the district office in the usual manner. The Remand Order should direct the district office to refer the case back to NIOSH for a new dose reconstruction as a result OCAS-PEP-014.

The Hearing Representative/CE should code the case as “F7” (FAB Remand) with a “F7J” (Dose Reconstruction needs to be Reworked) reason code. The status effective date will be the date of the FAB remand.

6. The following statement should be included in the Remand Order regarding the return of the case to NIOSH for a new radiation dose reconstruction.

On March 29, 2007, NIOSH issued OCAS-PEP-014, “Evaluation of the Impact of OTIB-0052, Construction Trade Workers.” The changes outlined in OCAS-PEP-014 not only affect the underlying scientific methodology by which the dose reconstruction was performed, but could potentially affect the outcome of a claim.

The DEEOIC is obligated to ensure that the application of the dose reconstruction methodology is administered in a fair and consistent manner. Given the revision to the underlying scientific assumptions by which the dose reconstruction was performed by NIOSH, and the release of OCAS-PEP-014, the prior dose reconstruction/Probability of Causation calculation on your claim is now invalid. While the modification to the dose reconstruction methodology may not impact the outcome of your claim, it is necessary for the claim to undergo a new dose reconstruction by NIOSH.

7. For tracking purposes, the district offices will be provided a spreadsheet to maintain/update as these cases are identified. The cases that will be tracked are those where subcontractor employment in the CTW field with a less than 50% POC are identified, regardless of whether ORAU-OTIB—05 was/was not utilized in the dose reconstruction. The spreadsheet will include columns for the “Employee Name,” “Case File Number,” “Reviewed Per Bulletin,” “Action Taken,” “Date of Action,” and “Comments.” The district offices are to complete these columns as work progresses on implementation of this Bulletin. The updated spreadsheet is to be forwarded to Mr. Frank James, Special Assistant, DEEOIC, every two weeks commencing two weeks after the issue date of this Bulletin.

8. If not already entered, the CE must update the Employment Classification Field in the Case Screen of ECMS by selecting “S” (a subcontractor at a DOE facility has been identified) from the DOE drop down menu.

9. If a claimant requests a reopening of his/her claim as a result of OCAS-PEP-014, the District Director should prepare a memorandum to the Director of DEEOIC and forward the case file to National Office for review.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

Distribution List No. 1: All DEEOIC Employees

Distribution List No. 7: Resource Centers

**08-11 New coding instructions for cases that are reviewed under a new SEC or PEP/PER. Note:** *This bulletin updates Bulletin No.08-01, "Rocky Flats SEC designations," and Bulletin No. 08-03 "SEC class designation for the early years at the Hanford Engineer Works." It also corrects a phone number referenced in attachment #6 to Bulletin No. 08-01.*

EEOICPA BULLETIN NO.08-11

Issue Date: November 27, 2007

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Effective Date: November 27, 2007

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Expiration Date: November 27, 2008

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**Note: This bulletin updates Bulletin No.08-01, "Rocky Flats SEC designations," and Bulletin No. 08-03 "SEC class designation for the early years at the Hanford Engineer Works." It also corrects a phone number referenced in attachment #6 to Bulletin No. 08-01.**

Subject: New coding instructions for cases that are reviewed under a new SEC or PEP/PER.

Background: Bulletin 08-01, entitled "Rocky Flats SEC designations," and Bulletin 08-03, entitled "SEC class designation for the early years at the Hanford Engineer Works," outline the procedures for processing cases affected by the Rocky Flats SEC and the Hanford SEC, respectively. Associated with these bulletins are lists of cases requiring review for potential inclusion into these new classes of the SEC. If a case needs to be returned to NIOSH or a new recommended decision issued after a case is reviewed, those actions can be tracked through ECMS coding. However, to date there has been no code to denote when the result of a case review is that no further action is necessary. Because of this, a new code has been created – 'NA' (No Action Necessary). This bulletin discusses the use of this new code as it pertains to the noted prior bulletins and future similar bulletins.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; EEOICPA Bulletin 08-01, "Rocky Flats SEC designations;" and EEOICPA Bulletin 08-03, "SEC class designation for the early years at the Hanford Engineer Works."

Purpose: To provide guidance on using new ECMS codes for tracking certain cases requiring review under new SEC classes or PEP/PERs.

Applicability: All staff.

Actions:

1. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) provided the District/FAB offices with two lists of cases identifying those which require a review under Bulletin Numbers 08-01 and 08-03, respectively. For cases on the lists that have been reviewed and it is determined that no action needs to be taken (neither a new recommended decision to accept based

on the SEC or a return to NIOSH), the CE will document the file with a short memo to the file denoting that the case was reviewed under the bulletin and explaining why no additional action is necessary. The CE must then enter the status code 'NA' – No Action Necessary into ECMS and select the appropriate reason code from the reason code drop down list.

For Rocky Flats cases that were reviewed under Bulletin 08-01 and require no additional action, the reason code that must be selected is '01S' (Reviewed under Bulletin No. 08-01, Rocky Flats SEC). For Hanford cases that were reviewed under Bulletin 08-03 and require no additional action, the reason code that must be selected is '03S' (Reviewed under 08-03, Hanford SEC). The status effective date of the 'NA' code is the date of documentation certifying that no action is needed. If a case is reviewed under multiple lists for different SECs (or PERs), a 'NA' code (and accompanying documentation) must be entered each time the case is reviewed and it is determined that no action needs to be taken under the bulletin.

2. Attachment 6 to Bulletin 08-01 is a letter that NIOSH is sending to claimants as part of the Actions specified in that Bulletin. NIOSH has informed DEEOIC that the letter contains an incorrect phone number. The number listed is 513-533-8423 and it should be 513-533-8426.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

## **08-12 SEC Class Designation for Workers at Nuclear Materials and Equipment Corporation (NUMEC) in Apollo, PA from January 1, 1957 through December 31, 1983**

EEOICPA BULLETIN NO.08-12

Issue Date: January 16, 2008

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Effective Date: December 29, 2007

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Expiration Date: December 29, 2008

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Subject: SEC class designation for workers at the Nuclear Materials and Equipment Corporation (NUMEC) in Apollo, Pennsylvania from January 1, 1957, through December 31, 1983.

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from the NUMEC in Apollo, Pennsylvania, to be added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and decided it qualified for evaluation under 42 C.F.R. § 83.13. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health ("the Board"). On October 27, 2007, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked in the NUMEC in Apollo, PA from January 1, 1957, through December 31, 1983.

On November 29, 2007, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress.

Atomic Weapons Employer employees who were monitored or should have been monitored for exposure to ionizing radiation while working at the NUMEC in Apollo, Pennsylvania from January 1, 1957, through December 31, 1983, for a number of work days aggregating at least 250 work days or in combination with work days within the parameters established for one or more other classes of employees in the SEC.

A copy of the Secretary's letter to Congress recommending the designation is included as [Attachment 1](#). The SEC designation for this class became effective as of December 29, 2007, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in a report to Congress. While Congress had the authority to reject the recommendation within the 30-day time frame, no action was taken to contradict the addition of this new SEC class.

While a new SEC class has been added for employees at NUMEC in Apollo, PA, NIOSH has determined that it is possible to reconstruct occupational medical dose and components of the internal dose (uranium doses starting from 1960). This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the November 29, 2007 letter to Congress from the Secretary of HHS in which Secretary Leavitt makes the designation.

Purpose: To provide procedures for processing SEC claims for workers at the NUMEC in Apollo, PA.

Applicability: All staff.

Actions:

1. This additional class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at the NUMEC facility in Apollo, PA during the period of the SEC class. It includes pending cases, cases previously denied and those at NIOSH. It also includes specified and non-specified cancer cases. This list is a comprehensive list of those cases that must be reviewed by the district office(s) and by the FAB to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.

The DEEOIC list also includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD contains all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD, in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected NUMEC claimants is included as [Attachment 2](#). The claims examiner (CE) must print out a hard copy of the NIOSH letter for inclusion in the case file. Case files returned from NIOSH to the district office for potential inclusion in the SEC class must be coded as "NW" (NIOSH, returned without a dose reconstruction) in ECMS. The effective date for the code entry is December 29, 2007. However, the code should not be entered until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record.

3. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any

documentation that NIOSH may have acquired or generated during the dose reconstruction process.

4. Based on this review, the CE determines whether the claimant has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual (PM) Chapter 2-600.5. If the employee has a specified cancer, proceed to the Action #5. If the employee does not have a specified cancer, proceed to Action #7.

5. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 work days at the NUMEC facility in Apollo, PA between January 1, 1957 and December 31, 1983. The CE may review EEOICPA Bulletin No. 02-09 for guidance on calculating 250 work days.

The Apollo NUMEC facility is located in the town of Apollo, PA, 33 miles northeast of Pittsburgh, in Armstrong County, PA. The plant is bordered by U.S. Route 66, Warren Avenue and the Kiskiminetas River. The facility consisted of one main bay, the East Bay, and three smaller attached bays, known as the West Bay, the Box Shop and the Annex. The facility also included a main office building, laundry building and a Small Block building that was used for storage of process equipment. The HHS SEC designation for Apollo NUMEC includes the findings that “[a]ll Atomic Weapons Employees who were employed at the Apollo NUMEC facility, regardless of job classification, shall be presumed to have been employed in a job which was or should have been monitored since all NUMEC workers had the potential to receive exposures to onsite releases of radioactive material.” As such, any probative evidence that the employee was employed at the NUMEC facility in Apollo for at least 250 work days during the SEC period is sufficient to include him or her in the SEC class.

6. Once the CE has determined the person named in the claim has a diagnosed specified cancer and meets the employment criteria of the SEC classes, the CE should proceed in the usual manner for a compensable SEC claim and prepare a recommended decision.

ECMS Coding Reminder: The “SE” (Confirmed as SEC Claim) status code must be entered with a status effective date equal to the status effective date of the recommended decision to approve. The SEC site must be selected from the drop down menu under the “SEC/SEC Desc” field on the claim screen.

7. As discussed earlier, the Secretary of Health and Human Services determined that it is not feasible for NIOSH to perform complete dose reconstructions for the class of employees who worked at NUMEC in Apollo, PA from January 1, 1957, through December 31, 1983.

However, NIOSH has indicated that partial dose reconstructions are possible based on reconstructed occupational medical dose and components of the internal dose. Accordingly, for cases that had not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE should code these cases as “NI” (Sent to NIOSH). The status effective date is the date of the Senior or Supervisory CE signature on the NRSD.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the Senior CE (SrCe), notifies the appropriate point of contact at NIOSH via E-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) and inputs the NI (Sent to NIOSH) code into ECMS, effective the date of the E-mail requesting NIOSH to proceed with dose reconstruction. The E-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-specified cancer, insufficient latency period or does not meet the 250 work day requirement. A hard copy printout of the E-mail is to be inserted in the case file.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE should code the case as “NR” (NIOSH Dose Reconstruction Received) and select the “PD” (Partial Dose Reconstruction) reason code. The status effective date is the date the dose reconstruction is date-stamped into the District Office. The CE should not delete the “NW” (NIOSH, returned without a dose reconstruction) or “NI” (Sent to NIOSH) code already present in ECMS.

8. If the claim includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction that resulted in a probability of causation of 50 percent or greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE is to draft a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and if necessary concurrently prepare a NRSD to NIOSH for a dose reconstruction for the non-specified cancer to determine eligibility for medical benefits. The CE is to code this A1 for Recommend Partial Accept/Partial Develop in ECMS and enter the reason code “B” (Part B Acceptance). The CE also needs to input the SE (Confirmed as SEC Claim) code, and then input the NI code when the case is sent to NIOSH. The status effective date for the NI code is the date of the Senior or Supervisory CE signature on the NRSD.

9. If there is a final decision to deny based on a POC of less than 50% and a review of the evidence of record establishes likely inclusion in the SEC class, it will need to be reopened. In the exercise of the Director’s discretion of the reopening process, the Director is delegating limited authority to the four District Directors to sign Director’s Orders for reopening. This delegated authority is limited to reopenings based upon evidence that an Apollo NUMEC employee meets the criteria for placement into the Apollo NUMEC SEC class as defined by this Bulletin. A sample Director’s Order is provided in [Attachment 3](#). The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is responsible for issuing a new recommended decision.

10. For those cases which are reopened under the authority granted in this Bulletin, the District Director should code the case as “MN” (NO Initiates Review for Reopening) with a status effective date as the effective date of this bulletin.

For all reopenings per this bulletin, upon completing the Director’s Order to reopen the claim, the District Director should code the case as “MD” (Claim Reopened – File Returned to DO) to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “MZ” status code is not necessary). The status effective date of the “MD” code is the date of the Director’s Order.

Please note that while the “MD” code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been in this specific circumstance.

11. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending Apollo NUMEC cases that have a recommended decision to deny. All cases on the comprehensive list identified in action item 2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at the Apollo NUMEC facility during the time specified, has a specified cancer, and meets the 250 work day requirement, FAB is to review the case for the parameters of the SEC as specified in this Bulletin. If the criteria of the SEC are met, the FAB is to reverse the district office’s recommended decision to deny and accept the case. In ECMS, the status code “F6” (FAB Reversed to Accept) must be used to reflect the FAB reversal. The “SE” status code must be entered with a status effective date equal to the status effective date of the final decision to approve.

If no action is required FAB must follow the instructions specified in action item 13, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the District Office. If

FAB determines that the case cannot be approved based on the new SEC designation and that re-referral to NIOSH is appropriate (see action items 5 and 7) FAB must remand the case for district office action.

12. The operational plan goal for the list of cases identified for review as part of this new SEC class is to complete the Part B recommended decision, return to NIOSH, or determine that no action is necessary within 45 days of the date of this Bulletin for at least 50% of the cases, and within 90 days for 95% of the cases. All cases requiring action due to this Bulletin should be completed within 120 days.

13. If after review or further development, the adjudicator determines that a case on the list does not require any action to be taken (either a new recommended decision to accept based on the SEC, a return to NIOSH, or a FAB reversal or remand) the CE/FAB HR must write a brief memo to the file that explains the case was reviewed under this bulletin, no additional action is necessary, and why. A case classified as not requiring any action is a case that does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction.

The CE must then code "NA" (No Action Necessary) and then select the appropriate reason code from the reason code drop down list. The coding is restricted to ECMS B only. For Apollo NUMEC cases that were reviewed under this bulletin and require no additional action, the reason code that must be selected is "12S" (**Reviewed under 08-12, Apollo NUMEC SEC**). Even if the case is an E/B case, the NA-12S must be coded into ECMS B only. The status effective date of the "NA" code is the date of the memo to the file stating review is complete and the CE has determined there is no further action necessary. It should be noted that if the case requires further development, the "NA" code is not entered until after development determines that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

**08-13 NIOSH's OCAS-PER-016, entitled "Implementation of IREP procedures for claims near 50% probability of causation."** *Note: This bulletin has been updated by Bulletin 08-16*

EEOICPA BULLETIN NO.08-13

Issue Date: January 23, 2008

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Effective Date: January 23, 2008

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Expiration Date: January 23, 2009

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Subject: NIOSH's OCAS-PER-016, entitled "Implementation of IREP procedures for claims near 50% probability of causation."

Background: As of June 6, 2006, for claims in which the upper 99<sup>th</sup> percentile credibility limit (C.L.) of probability of causation (POC) was equal to or greater than 45% but less than 50%, the National Institute for Occupational Safety and Health (NIOSH) increased the simulation sample size from 2,000 to 10,000 in the Interactive RadioEpidemiological Program (IREP). To achieve greater statistical precision for cases close to the 50% threshold, NIOSH performed 30 IREP runs for each cancer. The average value of the resulting upper 99% C.L. of POC determines the claim outcome. NIOSH adopted this approach not only to provide better statistical precision, but to reduce the chance of denying a claim due to sampling error.

On September 25, 2007, NIOSH released OCAS-PER-016, entitled "Implementation of IREP procedures for claims near 50% probability of causation." The purpose of the Program Evaluation Report (PER) is to evaluate the effect of NIOSH's revised procedures on IREP calculations for previously decided claims. While the changes outlined in the PER do not affect the outcome of the claim, other dose reconstruction methodology modifications, i.e., Super S, Lymphoma, Technical Information Bulletin revisions, could potentially impact the dose reconstruction and outcome of the claim. As such, certain claims need to be returned to NIOSH for a new dose reconstruction. The IREP revision became effective on June 6, 2006. A copy of OCAS-PER-016 is included as **Attachment 1**.

This bulletin provides guidance on processing cases that are potentially affected by the release of OCAS-PER-016.

References: NIOSH document, OCAS-PER-016, "Implementation of IREP procedures for claims near 50% probability of causation," effective September 25, 2007, found at <http://198.246.98.21/niosh/ocas/pdfs/pers/oc-per16-r0.pdf>.

Purpose: To provide procedures for processing claims affected by NIOSH's OCAS-PER-016.

Applicability: All staff.

Actions:

1. On June 6, 2006, NIOSH revised the IREP procedures used for calculating the probability of causation. The revision to the procedure increases the statistical precision for cases approaching the compensation threshold of 50%. The cases that should be returned to NIOSH are those that had a dose reconstruction conducted prior to June 6, 2006 (as determined by the "Calculations performed by" date found on the most recent NIOSH Report of Dose Reconstruction under the EEOICPA on file), and:

- resulted in a POC of at least 45% but less than 50%, and
- IREP model 5.5.2(4) was not utilized in the POC calculation.

No action is required on cases with a dose reconstruction if IREP Version 5.5.2(4) was utilized in calculating the POC. Furthermore, no action is necessary on any case that is already at NIOSH for a dose reconstruction. For any case meeting the "no action" criteria, the CE should code ECMS and create a memorandum to the file as instructed in Action #9.

2. Based on ECMS data, we have attempted to identify all cases that meet the above criteria; a comprehensive list of potentially affected cases will be distributed to the appropriate district and FAB offices under separate cover. Offices must review the cases on the list that are in their locations and take appropriate actions, as outlined in this bulletin.

Because ECMS data entry may be incomplete or errant (or for some other reason) it is possible that cases on the list, when pulled and reviewed, may be found not to meet the criteria for obtaining new dose reconstructions; conversely, it is possible that cases not on the list are nonetheless impacted by

this bulletin and require a new dose reconstruction.

For this reason it is important to emphasize that the crux of this bulletin, the requirement to do new dose reconstructions on cases that meet the criteria outlined in this bulletin, applies regardless of the case's inclusion on the comprehensive list.

3. For those cases currently in posture for a recommended decision where the dose reconstruction was completed prior to June 6, 2006 and resulted in a POC of at least 45% but less than 50%, the CE is to determine which NIOSH IREP version was utilized in the calculation of the POC.

The CE can verify the IREP version used in the POC calculation in ECMS. However, if ECMS indicates that IREP version 5.5.2 was used instead of 5.5.2(4), then the CE must review the NIOSH CD. On the NIOSH CD, the CE looks for an HTML document named "IREP Summar....." This document, when opened, is titled "NIOSH-Interactive RadioEpidemiological Program Probability of Causation Results." The NIOSH-IREP version used in the PoC calculation is shown in the second entry on the top of the right hand column. If NIOSH IREP Version 5.5.2(4) was not utilized in the calculation of the POC, the CE is to return the case to NIOSH for a new dose reconstruction.

4. When referring these cases to NIOSH for a new dose reconstruction, a request to the National Office Health Physicist is not required. Instead, the CE should complete an amended NIOSH Referral Summary Document (ANRSD) and forward the ANRSD to the Public Health Advisor (PHA) assigned to the district office at NIOSH. The ANRSD should include the following statement in the "DOL Information" section, "Rework request due to the release of OCAS-PER-016 and any other applicable modifications." The CE should also:

a. Send a letter to the claimant explaining that the case has been returned to NIOSH for a new dose reconstruction as a result of a change in the dose reconstruction methodology. A sample letter to the claimant is included as **Attachment 2**.

b. Send a copy of this letter to the PHA at NIOSH assigned to the DO with the weekly DO submissions to NIOSH. The dates on the ANRSD and the letter to the claimant must both be the same, since this will be the date used for the status code entry into ECMS. The CE should code the case as "NI" (Sent to NIOSH) and select the "PEP" (Rework based on Program Evaluation Plan) reason code.

(Note: Since this is considered a new dose reconstruction, the CE should not change the existing NR/DR status code to NR/RW as typically done for rework cases. Furthermore, if a POC value is already entered into ECMS, the CE should not delete the POC. The new POC will simply be updated once it is calculated.)

Upon receipt of the revised dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE should code the case as "NR" (Received from NIOSH) and select the "DR" (Dose Reconstruction Received-POC) reason code. The status effective date will be the date the dose reconstruction is date stamped into the district office. The POC should be updated in ECMS based on the new dose reconstruction.

5. For those cases on the comprehensive list of cases that are currently pending a final decision at the Final Adjudication Branch (FAB), where the most recent dose reconstruction on file was conducted prior to June 6, 2006, and resulted in a POC of at least 45% but less than 50%, the Hearing Representative (HR)/CE is to determine which NIOSH IREP version was utilized in the calculation of the POC. If IREP Version 5.5.2(4) was not utilized in the POC calculation (see Action Item 3 for instructions on verifying the IREP version), the recommended decision should be remanded to the district office in the usual manner. The Remand Order should direct the district office to refer the case back to NIOSH for a new dose reconstruction as a result of the release of OCAS-PER-016 and any other changes that potentially affect the dose reconstruction. The CE should code the case as "F7" (FAB Remand) with a "F7J" (Dose Reconstruction needs to be Reworked) reason code. The status effective date will be the date of the FAB remand.

6. The following statement should be included in the Remand Order regarding the return of the case to NIOSH for a new radiation dose reconstruction.

On September 25, 2007, NIOSH issued OCAS-PER-016, entitled “Implementation of IREP procedure for claims near 50% probability of causation.” The change in NIOSH IREP model affects those cases with a dose reconstruction conducted prior to June 6, 2006 and resulted in a probability of causation (POC) of at least 45% but less than 50%. In addition to the IREP revision, NIOSH has made several changes that affect the methodology by which dose reconstructions are performed. As a result of these changes in the dose reconstruction methodology and the revision to the NIOSH IREP model used in calculating the POC, the previous POC is no longer valid.

The DEEOIC is obligated to ensure that the application of the dose reconstruction methodology is administered in a fair and consistent manner. Given the revision to the underlying scientific assumptions by which the dose reconstruction was performed by NIOSH, and the release of OCAS-PER-016, the prior dose reconstruction/POC calculation on your claim is now invalid. While the modification to the dose reconstruction methodology and the POC procedural revision may not impact the outcome of your claim, it is necessary for the claim to undergo a new dose reconstruction by NIOSH.

7. In the exercise of the Director’s discretion over the reopening process, the Director is delegating limited authority to the District Directors to sign Director’s Orders for reopening. This delegated authority is limited to reopenings for those cases that are affected by the PER established for the IREP revision. The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated.

8. For those cases on the comprehensive list of cases that have a final decision to deny, where the most recent dose reconstruction on file was conducted prior to June 6, 2006, and resulted in a POC of at least 45% but less than 50%, the CE is to determine which NIOSH IREP version was utilized in the calculation of the POC. If NIOSH IREP Version 5.5.2(4) was not utilized in the calculation of the POC (see Action Item 3 for instructions on verifying the IREP version), the District Director should issue a Director’s Order vacating the final decision and reopening the claim. The Director’s Order should state that this action is necessary as a result of multiple changes in the scientific methodology by which dose reconstructions are performed by NIOSH, and the revision to the IREP procedures used in calculating the POC. The Director’s Order should also indicate that upon receipt of the new dose reconstruction report from NIOSH, a new recommended decision will be issued. A sample Director’s Order is included as **Attachment 3**. The District Director should code the case as “MN” (NO Initiates Review for Reopening) with a status effective date as the effective date of this bulletin.

Upon reopening the claim, the District Director should code the case as “MD” (Claim Reopened – File Returned to DO) to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “MZ” status code is not necessary.) The status effective date of the “MD” code is the date of the Director’s Order.

Please note that while the “MD” code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been in this specific circumstance.

Once the case has been reopened, the district office should proceed with a referral to NIOSH for a new dose reconstruction as instructed in Action Item #4.

9. For those cases on the “comprehensive list” that do not require any action to be taken, the CE/HR must write a brief memo to the file that explains the case was reviewed under this bulletin, no additional action is necessary, and why. The CE/HR must then code ‘NA’ – No Action Necessary, and then select the appropriate reason code from the reason code drop down list. For cases that were

reviewed under this bulletin and require no additional action, the reason code that must be selected is '13P' (Reviewed under 08-13). If the case is an E/B case, the NA-13P must be coded into ECMS B only. The status effective date of the 'NA' code is the date of the memo to the file stating review is complete and the CE has determined there is no further action necessary.

10. For cases on the list to be considered "worked," the CE/HR must enter one of the following codes after the issuance date of this Bulletin:

- NA-13P – This code will be entered when a case has been reviewed under this bulletin and either the criteria have not been met, or the case is already at NIOSH and therefore no additional action is necessary. Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the NA-13P code in addition to the closure code.
- NI/PEP – This code reflects that the case has gone back to NIOSH to complete a new dose reconstruction as a result of OCAS-PER-016.

11. If a claimant requests a reopening of his/her claim as a result of OCAS-PER-016, regardless of the case's inclusion on the comprehensive list of potentially affected cases, the case file must be evaluated to determine whether or not the claim warrants a reopening. Simply identifying a PER is not considered new evidence and is not sufficient to warrant a reopening. The District Director should grant the reopening only if the evidence of file supports that a dose reconstruction was conducted prior to June 6, 2006, the POC resulted in at least 45% but less than 50%, and IREP Version 5.5.2(4) was not utilized.

Upon receipt of the claimant's request for reopening, the District Director should code the case as "MC" (Claimant Requests Reopening). The status effective date is the postmark date, if available, or the date the request is received in the DO or FAB, whichever is earlier. Following the input of the "MC" status code, the District Director should issue a Director's Order reopening the claim following the procedures as outlined in this Bulletin.

For all claimant requests for reopening as a result of the IREP PER that do not meet the criteria for reopening as outlined in this bulletin, the District Director should prepare a memorandum to the Director of DEEOIC and forward the case file to the National Office for review. The District Director should code the case as "MC" (Claimant Requests Reopening) and "MI" (District Director Requests Reopening) to indicate that the file is being forwarded to National Office for review under the reopening process. The status effective date for the "MI" code is the date of the District Director's memo to the Director of DEEOIC.

12. The operational plan goal for the lists of cases identified for review as part of a new SEC class, PEP, or PER is to complete the Part B recommended decision, return to NIOSH, or determine that no action is necessary within 45 days of the date of this Bulletin for at least 50% of the cases, and within 90 days for 95% of the cases. All cases requiring action due to this Bulletin should be completed within 120 days.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

Distribution List No. 1: All DEEOIC Employees

Distribution List No. 7: Resource Centers

## **08-14 Supplemental guidance on implementation of Bulletin No. 08-01, “Rocky Flats SEC designations.**

EEOICPA BULLETIN NO.08-14

Issue Date: January 23, 2008

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Effective Date: January 23, 2008

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Expiration Date: January 23, 2009

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Subject: Supplemental guidance on implementation of Bulletin No. 08-01, “Rocky Flats SEC designations.”

Background: EEOICPA Bulletin No. 08-01, entitled “Rocky Flats SEC designations,” outlines the procedures for processing cases affected by the Rocky Flats SEC and other changes affecting Rocky Flats. EEOICPA Bulletin No. 08-11 provided new coding instructions to be associated with the Rocky Flats SEC and other instances. EEOICPA Circular No. 08-03 added Building NO. 881 to the list of buildings associated with the Rocky Flats SEC.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the August 6, 2007 letters to Congress from the Secretary of HHS in which Secretary Leavitt makes the designations for Rocky Flats; EEOICPA Bulletin No. 08-01, entitled “Rocky Flats SEC designations;” EEOICPA Bulletin No. 08-11, entitled, “New coding instructions for cases that are reviewed under a new SEC or PEP/PER;” and EEOICPA Circular No. 8-03, “Rocky Flats Building 881.”

Purpose: To refine and clarify instructions for those instances in which a dose reconstruction report provides sufficient evidence, under Action Item #4 of Bulletin No. 08-01, such that it can be used to satisfy the criteria that the employee, “should have been monitored” for neutrons.

Applicability: All staff.

### Actions:

1. According to Action #4 in Bulletin No. 08-01, there are three evidentiary categories the CE can utilize to determine that the employee was “monitored or should have been monitored” for neutron exposure. If any of the three are met, the CE may find that the employee was “monitored or should have been monitored” for neutron exposure. These three are:

- Inclusion on the *Rocky Flats Neutron Dosimetry Reconstruction Project (NDRP)* list;
- Previously completed National Institute for Occupational Safety and Health (NIOSH) dose reconstruction for named employee includes neutron exposure or mentions exposure to plutonium; or
- Employment in a building identified as a plutonium building.

Further review of these criteria and discussion of the definition of the SEC class with NIOSH has necessitated a change in how to use a previously completed NIOSH dose reconstruction under the second criterion of this action item. Under the Rocky Flats SEC classes definition, **an employee does not meet the standard of “monitored or should have been monitored” for neutron dose unless there is sufficient neutron dose included in the dose reconstruction calculation to reach**

**the threshold level for monitoring in at least one year during the period covered by the SEC classes.** The current threshold regulatory level for neutron monitoring is 100 millirem (mrem) per year. Therefore, the CE will need to determine if there is at least one year in the period 1952 through 1966 for which the dose reconstruction credits the employee with at least 100 mrem for neutrons in that year. Only one year at or above 100 mrem during the period is needed.

To make this determination, the CE is to go to “Attachment 1: IREP Input Tables” of the dose reconstruction report. The CE will then look closely at the column in the table with the heading “Radiation Type” (generally the fourth column). Radiation types include alpha, beta, electrons, protons, neutrons, photons, etc. The CE identifies the rows of cells containing the neutrons. Sometimes these tables are somewhat illegible in their printed form and if the CE is having difficulty discerning which rows reflect neutrons, it is recommended that the CE review the electronic version of the dose reconstruction report and search on “neu.” This will highlight every instance of the word neutron, including those in the table. Once the rows of the table containing the word “neutron” are found, the CE determines whether there is one year in which at least 100 mrem was included in the calculation for those years. On these tables, 0.100 is equal to 100 mrem and is in the column labeled, “Parameter 1” (generally the sixth column). Then the CE reviews the table to determine whether the year is between 1952 and 1966, inclusive. The date is found in the column entitled, “exposure year,” and is generally the second column. If the exposure year does not fall between these years, the CE continues to review the rows of neutron calculations to determine the presence of at least 100 mrem neutron dose included for any given year during the course of the Rocky Flats classes in the SEC.

[Attachment 1](#) to this Bulletin provides an example of an IREP table from a dose reconstruction report in which the employee was credited with at least 100 mrem for neutrons for 1961, 1962, 1964, 1965, 1966, as well as a number of years outside the class period. In the example, the neutrons are identified by yellow highlighting and one can see that the entire word “neutron” does not always display and will sometimes appear truncated, such as “utrons” and this is the reason for searching on “neu” in the electronic version, as the “neu” is electronically present in the table, just not visible. In the sample, each instance in which there is at least 100 mrem of neutrons included in the calculation is highlighted in light blue. The years highlighted in purple are those which meet all the criteria for a determination that the employee “should have been monitored” for neutrons. Only one year meeting all the criteria need be found for such a determination.

Additionally, please note that on the table in the example, within the section on neutrons, some years appear three times and for each instance of a given year there is a different number in the “parameter 1” column. These disparate numbers represent different energy levels of neutron dose assigned to the employee for each year. Therefore, if the CE is unable to find one line on the table that meets the 100 mrem criteria, but notices that there are multiple entries for the same year, each for neutrons, the CE is to add the numbers within the year. The CE should not add other types of radiation for that year – only neutrons. If the resulting sum for any one year in the class totals at least 100 mrem for neutrons, the employee meets the threshold for “should have been monitored.” In the example provided there are numerous instances where one line provides at least 100 mrem of neutrons, and therefore no addition is needed, but CE’s need to be alert to the possibility of the need to add the numbers within years, within the neutron portion of the table, in the event that no one line meets the threshold of at least 100 mrem of neutron exposure.

2. If, upon a review of the IREP table, the CE determines that there is no year within the class period for which the employee is credited with a dose of at least 100 mrem of neutrons, then the CE needs to develop the case to determine whether the employee has employment aggregating at least 250 days in one or more of the buildings listed in either EEOICPA Bulletin No. 08-01 or EEOICPA Circular No. 08-03. An employee who worked in one or more of the plutonium buildings in any combination for 250 days does not need to meet the threshold of at least 100 mrem of neutron exposure.

3. If the CE finds an instance in which there is neutron dose of at least 100 mrem, but it is attributed *entirely* to a building or buildings other than those referenced in Bulletin 08-01 or Circular 08-03, the case is to be pended and the dose reconstruction sent to the National Office for a health physics review with a cover memo stating that the case is being forwarded as per this Bulletin. The DD codes the case in ECMS as WS with HP as the reason code and a status effective date of the cover memo.

4. The procedures in this Bulletin apply prospectively to all Final Decisions. FAB is to review all pending Rocky Flats recommended decisions pursuant to this Bulletin and ensure that acceptances based upon neutron exposure meet the parameters outlined in this Bulletin. If a case does not meet these parameters, FAB is to remand the case back to the District Office for development on building location. The appropriate reason code for the remand is **OTH** (Other).

5. This Bulletin also corrects a typographical error in Bulletin 08-01 in Action Item 10 (b). That action item instructs CEs to code cases requiring a return to NIOSH as “NI” (sent to NIOSH) with a reason code of “PER” (based upon Program Evaluation Report). That reason code is incorrect. The correct reason code is “PEP” (based upon a Program Evaluation Plan).

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

### **08-15 Adjudication of Part E claims for the conditions of parkinsonism and Parkinson’s disease (PD)**

EEOICPA BULLETIN NO. 08-15

Issue Date: May 30, 2008

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Effective Date: May 30, 2008

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Expiration Date: May 30, 2009

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Subject: Adjudication of Part E claims for the conditions of parkinsonism and Parkinson’s disease (PD).

Background: “Parkinsonism” is a neurological disorder or syndrome that can arise from a number of sources, including toxic exposure, drugs, and PD. There is no clinical test or method for distinguishing parkinsonism from PD and the two terms are often used interchangeably since the symptoms are the same. According to the New England Journal of Medicine a misdiagnosis occurs about 25% of the time because of the inability to distinguish the one from the other. This is problematic for the EEOICPA Claims Examiner (CE) when adjudicating toxic exposure claims, because the Site Exposure Matrices (SEM) shows a causal link between certain toxic substances and parkinsonism, but no substances are linked to PD. Claims Examiners need to be aware of this potential for misdiagnosis and must know how to treat either condition when developing claims for

toxic exposure under Part E.

References: Federal EEOICPA Procedure Manual 2-300 and E-500 (4, 19); U.S. Department of Labor EEOICP Site Exposure Matrices (NIH HazMap Disease List); *The New England Journal of Medicine*; and The Centers for Disease Control and Prevention.

Purpose: To clarify the policies and procedures for adjudicating claims involving the conditions of parkinsonism and PD.

Applicability: All staff.

Actions:

1. For the purpose of claim adjudication under Part E of the EEOICPA, the CE is to consider the medical conditions of PD, parkinsonism, or any reasonable alias as synonymous. In other words, in any instance where an individual has claimed any one of these conditions, the CE will proceed to adjudicate the claim in the same manner.
2. Upon receipt of a claim for PD, parkinsonism, or any reasonable alias, the CE is to access SEM and perform an appropriate *site/area/facility/building/process/labor category/job description/incident/exposure* search using the “Toxic substance by health effect” query. The CE selects the entry for “parkinsonism” from the list box of health effects. At present, the SEM database contains the following substances with a known link between exposure and development of the condition of parkinsonism:
  - a. Carbon disulfide
  - b. Carbon monoxide
  - c. Diesel exhaust
  - d. Manganese
  - e. Manganese II chloride
  - f. Potassium permanganate
  - g. Steel, cold drawn
  - h. Steel, tool
  - i. Steel, galvanized
  - j. Kovar
  - k. Hastelloy ®
  - l. MPTP (1-Methyl-4-phenyl-1,2,3,6-tetrahydropyridine)
3. In cases where SEM identifies the presence of carbon monoxide (CO) at the worksite, or where the employee claims CO exposure, there must be evidence of an acute occupational exposure that precedes the onset of parkinsonism. If the claimant does not produce documentation substantiating such an exposure, the CE must request that the claimant, treating doctors, the employer, or others, provide contemporaneous evidence (e.g. emergency room records, hospital records, industrial accident reports, industrial hygienist reports, witness statements, etc.), of an incident requiring medical intervention that fits one of the following criteria:
  - a. An incident involving acute occupational CO exposure that caused the claimant to lose consciousness at the time of the exposure.
  - b. A documented incident involving significant CO levels and/or exposure sufficient to either cause loss of consciousness or a reduction in oxygen to levels which could result in brain injury. (NIOSH and OSHA consider a CO level of 1200PPM to be “immediately dangerous to life and health,” and this level would be considered

evidence of a toxic level sufficient to cause loss of consciousness in an adult.)

c. Documentation such as laboratory test results or other clinical records demonstrating blood gas levels consistent with a reduction of oxygen sufficient to cause injury to the brain; or records documenting admission to an acute care facility or hospital for treatment or observation arising from an occupational CO exposure. (A carboxyhemoglobin level of 20% or higher would be evidence of a blood gas level sufficient to cause brain injury.)

Acceptance of parkinsonism from CO exposure is contingent upon the claimant exhibiting symptoms of, or being diagnosed with parkinsonism, following an incident of acute occupational CO exposure as described above.

4. With the exception of the above guidelines for CO exposure, the CE is to evaluate toxic exposure claims for parkinsonism in accordance with Federal EEOICPA Procedure Manual Chapter E-500, 2(c), which states that the CE must review all evidence of record. If after review the CE is uncertain as to the potential for an employee to develop parkinsonism resulting from exposure to any of the above-listed toxic substances, a referral may be made to an industrial hygienist (IH) or toxicologist. Most importantly, the CE should not rely exclusively on SEM to ascertain whether an employee had contact with a known toxic substance linked to parkinsonism. All evidence of record must be evaluated including: DAR records, occupational health questionnaires, former worker screening documents, EE-3/4 forms, or any other documents which may provide information on toxic substance exposure. Attachment 1 provides additional information on work processes and routes of exposure, to aid the CE in identifying possible sources of toxic exposure to the substances listed therein. This attachment is not inclusive of all routes of exposure and the CE should not rely exclusively on this document when evaluating a claim for toxic exposure. In addition, since the SEM database is regularly updated with new exposure information, the CE should conduct a separate exposure search for each new claim.

5. If the evidence of record clearly establishes that exposure to a toxic substance known to be associated with parkinsonism is evident, and if the medical evidence satisfies the Part E causation standard, then the CE can accept the claim for parkinsonism, PD, or any reasonable alias. However, if there is evidence of an exposure to toxic substances, but the medical rationale linking the exposure to the patient's condition is lacking, or not clear, the CE must follow up with the claimant's treating doctor, or refer the case to a DMC for a medical opinion on causation.

6. As with all medical referrals, the CE must prepare a clearly written Statement of Accepted Facts (SOAF) and a list of questions for the medical expert to consider. The SOAF must identify all relevant toxic exposure data. In the referring memorandum accompanying the SOAF, the CE must clearly explain the issue(s) to be addressed and must make it very clear that: a) the purpose of the medical review is to establish or rule out causation on the basis that it is *at least as likely as not that exposure to a toxic substance at a Department of Energy facility was a significant factor in aggravating, contributing to, or causing the employee's illness or death*; and b) the doctor is not to differentiate between parkinsonism and PD when making this determination. The conditions of parkinsonism, PD, or any reasonable alias, are to be considered synonymous.

7. In the exercise of the Director's discretion over the reopening process, the Director is delegating limited authority to the District Directors to sign reopening orders. This delegated authority is limited to reopenings for those cases affected by this bulletin. The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated.

8. Prior to reopening, the medical evidence must be reviewed in all targeted cases. For all cases that have a final decision to deny, where:

- the denial was based on a diagnosis of Parkinson's disease(PD);
- the denial was based on a diagnosis of an alias for parkinsonism or PD; or

· the initial diagnosis was parkinsonism but the case was denied because the medical evidence supported a finding of Parkinson's disease;

reopening of the case is warranted, and the case should be reviewed in accordance with the instructions provided in this bulletin.

The Director's Order should state that the case is being reopened as a result of new guidelines for evaluating cases involving a diagnosis of parkinsonism, PD, or any alias of this disease or syndrome.

The District Director should code the case as "MN" (NO Initiates Review for Reopening) with a status effective date as the effective date of this bulletin. Upon reopening the claim, the District Director should code the case as "MD" (Claim Reopened – File Returned to DO) to reflect that the case has been reopened and is in the district office's jurisdiction. (The "MZ" status code is not used.) The status effective date of the "MD" code is the date of the Director's Order.

Please note that while the "MD" code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been delegated in this specific circumstance.

District Offices will be provided with a list of cases affected by this bulletin, under separate cover.

Disposition: Retain until incorporated in the Federal EEOICPA Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

Distribution List No. 1: (Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office

Mail & File Sections)

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[A1]David – revise this and go through a instruction with regard to a DMC referral. The CE will need to send a SOAF and referral, but how do we notify the DMC or treating that our program treats all the illnesses synonymously

**08-16 NIOSH's OCAS-PER-016 Note:** *This bulletin updates Bulletin No. 08-13, "NIOSH's OCAS-PER-016, entitled "Implementation of IREP procedures for claims near 50% probability of causation."*

EEOICPA Bulletin No. 08-16

Issued Date: March 21, 2008

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Effective Date: March 21, 2008

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Expiration Date: March 21, 2009

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**Note: This Bulletin updates Bulletin 08-13 (NIOSH's OCAS-PER-016, entitled**

**“Implementation of IREP procedures for claims near 50% probability of causation”) to correct all references of IREP Version 5.5.2(4) to version 5.5.2.**

Subject: NIOSH’s OCAS-PER-016, entitled “Implementation of IREP procedures for claims near 50% probability of causation.”

Background: On January 23, 2008, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) issued EEOICPA Bulletin No. 08-13, *NIOSH’s OCAS-PER-016, entitled “Implementation of IREP procedures for claims near 50% probability of causation.”* Bulletin 08-13 included steps for identifying those cases that should be returned to NIOSH. One of these steps included identifying the IREP Version used in calculating the probability of causation. After the issuance of the Bulletin, NIOSH notified DEEOIC that the “(4)” in IREP Version 5.5.2(4) was incorrect and that the correct IREP Version is 5.5.2.

References: NIOSH document, OCAS-PER-016, “Implementation of IREP procedures for claims near 50% probability of causation,” effective September 25, 2007, found at <http://198.246.98.21/niosh/ocas/pdfs/pers/oc-per16-r0.pdf>.

Purpose: To correct the reference to the appropriate IREP Version.

Applicability: All staff.

Actions:

1. To determine whether any of the cases identified on the comprehensive list (previously distributed to the district/FAB offices) should be returned to NIOSH, the following criteria should be used:

- A dose reconstruction conducted prior to June 6, 2006 (as determined by the “Calculations performed by” date found on the most recent NIOSH Report of Dose Reconstruction under the EEOICPA on file), and
- The POC was at least 45% but less than 50%, and
- IREP Model 5.5.2 was not utilized in the POC calculation.

No action is required on cases with a dose reconstruction if IREP Version 5.5.2 was utilized in calculating the POC.

2. The second paragraph in Bulletin 08-13, Action Item #3 states “if ECMS indicates that IREP Version 5.5.2 was used instead of 5.5.2(4), then...” This statement is no longer appropriate and should read as follows:

The CE can verify the IREP version used in the POC calculation in ECMS. However, if the IREP version is not found in ECMS, then the CE should review the NIOSH CD for the IREP version. On the NIOSH CD, the CE looks for an HTML document named “IREP Summar....” This document, when opened, is titled “NIOSH-Interactive RadioEpidemiological Program Probability of Causation Results.” The NIOSH-IREP version used in the PoC calculation is shown in the second entry on the top of the right hand column. If NIOSH IREP Version 5.5.2 was not utilized in the calculation of the POC, the CE is to return the case to NIOSH for a new dose reconstruction.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

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Director, Division of Energy Employees

Occupational Illness Compensation

**08-17 Medical Expense Reimbursement for Extended Travel Note:** *This Bulletin replaces Bulletin No. 03-09.*

EEOICPA BULLETIN NO. 08- 17 **(Replaces Bulletin # 03-09)**

Issue Date: March 24, 2008

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Effective Date: March 24, 2008

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Expiration Date: March 24, 2009

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Subject: Medical Expense Reimbursement for Extended Travel

Background: The Division of Energy Employees Occupational Illness Compensation (DEEOIC) requires pre-authorization for reimbursement of transportation, lodging, meals, and incidental expenses incurred when a claimant travels in excess of 200 miles round trip for medical care of an approved condition. DEEOIC's bill processing agent will process reimbursement claims for claimant travel without pre-authorization when travel is less than 200 miles round trip.

Upon acceptance of a medical condition, the claimant receives a medical benefits package from the DEEOIC that includes instructions on how to submit a written request for prior approval of medical travel when such extended travel (over 200 miles round trip) is required. Despite these instructions, it is not uncommon for claimants to submit their request for reimbursement after a trip has been completed, and without having obtained prior approval. EEOICPA Bulletin 03-09, "Travel over 200 Miles Round Trip," provided instructions for processing travel authorization and reimbursement requests, whether received before or after claimant travel.

This Bulletin streamlines the existing procedures to improve the efficiency (timeliness) and effectiveness (quality and accuracy) of the travel authorization and reimbursement process.

**It should be noted that Resource Center personnel now have an increased role in assisting claimants with pre-authorization requests and submission of claims for reimbursement.**

References: 20 CFR Parts 1 & 30, Subpart E, Medical and Related Benefits, § 30.400.

Purpose: To streamline the policies and procedures for authorizing medical travel requests (over 200 miles round trip), and the process for approving claims for reimbursement, regardless of whether or not the claimant obtained prior approval for the trip. The changes in the authorization process are needed to facilitate this important benefit and provide superior customer service.

Note: Bulletin 03-09 is superseded by this Bulletin.

Applicability: All staff.

Actions:

1. By regulation, claimant travel to receive medical care exceeding 200 miles round trip must be authorized by DEEOIC claims personnel. Claims that are submitted to DEEOIC's bill processing agent, for reimbursement of travel expenses arising from medical travel in excess of 200 miles roundtrip, will not be processed for payment unless authorization has been provided by the district office.
2. Upon receipt of a travel authorization request from the claimant, the claims examiner (CE) must take immediate action to ensure that the request meets one basic requirement: that the medical treatment or service is for the claimant's approved condition(s). The CE should be aware that the medical provider's enrollment in the DEEOIC program is not a prerequisite to approving medical travel if the claimant chooses to receive medical services from a non-enrolled provider.
3. If the travel request involves authorization for a companion to accompany the claimant,

the claimant must provide medical justification from a physician. That justification must be in written form, relating the treatment to the accepted condition and rationalizing the need for the companion. If the doctor confirms that a companion is medically necessary, and provides satisfactory rationale, then the CE may approve companion travel. In the alternative, the CE can authorize the claimant to stay overnight in a hospital or medical facility, and can approve payment for a nurse or home health aide if a companion is not available. The CE must use discretion when authorizing such requests and may approve one of the above alternatives when there is a definite medical need, accompanied by written justification from the physician.

4. The claimant must be allowed to specify his/her desired mode of travel. It is the CE's role to authorize the desired mode of travel for the time period(s) requested. When a request is received from the claimant that does not identify the mode of transportation, the CE must contact the claimant by telephone and assist in determining the desired mode of travel. (Resource Center staff may be utilized to assist in this process.)

5. Once the basic requirements for travel over 200 miles are met, as outlined above, the CE will prepare and send the claimant a travel authorization letter following the guidelines below. The CE may approve an individual trip, or any number of trips within a specified date range, all in one letter to the claimant. Once an initial approval letter has been sent, future visits to the same doctor or facility may be approved by telephone, followed by a confirming letter.

In the travel authorization letter, claimants are to be advised that travel costs are reimbursable only to the extent that the travel is related to obtaining medical treatment. The authorization letter should delineate the specifics of the trip being authorized, based upon the mode of travel the claimant has selected. When completed, the authorization letter will be mailed to the claimant as part of an approval package as follows (See *sample Authorization Letter* in Attachment 1):

a. The approval package must include the following: two copies of the detailed authorization letter; two copies of a blank OWCP-957; and an express mail prepaid envelope, addressed to DEEOIC's bill processing agent, for the claimant's use.

b. The authorization letter will advise claimants to complete Form OWCP-957, Request for Reimbursement, and forward the reimbursement request to DEEOIC's bill processing agent, in accordance with the information and conditions outlined below. The letter also invites claimants to contact the nearest Resource Center for assistance prior to or upon completing any trip, particularly if they need help understanding reimbursement limits for lodging or airfare, or need help preparing their reimbursement requests.

(1) MIE: Reimbursement for meals and incidental expenses (MIE) will be based on a daily, flat-rate allowance, and that MIE allowance will be paid in full for each day of authorized travel. A separate daily allowance will also be paid for any authorized companion. The daily MIE allowance will be determined by the Government Services Administration (GSA) published per diem rate for the specific locality where the claimant is staying on any given day, whether in route or at their destination city. First and last days of travel will be paid at the  $\frac{3}{4}$  rate. The claimant will not be required to submit receipts for meals or miscellaneous expenses reimbursed under this category, nor will any reimbursement be paid in excess of the daily MIE allowance. (For further information regarding locality rates for MIE, claimants may contact their nearest resource center.)

(2) For authorizations approving travel by privately owned vehicle (POV), the authorization letter must specify the GSA-established mileage reimbursement rate for POV travel.

(3) If travel is to be by commercial airline, the travel authorization letter should advise the claimant that reimbursement will be based on actual ticket cost up to the amount of a refundable coach ticket (Y-Class airfare), unless the CE has specifically

approved an exception to this rule.

(4) The daily lodging rate is established by GSA, based upon locality and single or double occupancy, whichever is applicable. This daily rate is exclusive of taxes which will be reimbursed in addition to the base rate.

(5) Approval for rental car reimbursement, if warranted, should include instructions limiting rental reimbursement to the cost of standard, economy-sized vehicles, unless the claimant provides justification for a larger vehicle. (Note: reimbursement for gasoline purchases applies only to rental cars.)

(6) Local transportation costs, such as taxis, airport shuttles or bus fares, are reimbursable separately from, and in addition to the daily MIE allowance. Services such as airport shuttles, hospital or hotel courtesy buses, etc., should be used when available.

(7) Receipts are not required for any allowable expenditure under \$75.00, with the exception of lodging, airfare, rental cars, and gasoline purchases (rental car only).

(8) Expenses for both the claimant and any authorized companion must be submitted on Form OWCP-957, and will be reimbursed to the approved DEEOIC claimant, not to any other party.

(9) When submitting a reimbursement request to the DEEOIC bill processing agent, the claimant must include a copy of the authorization approval letter, the completed OWCP-957, and all applicable receipts.

6. DEEOIC's bill processing agent will process reimbursement claims in accordance with GSA travel guidelines. Per diem rates for overnight stay and mileage reimbursement rates are published on GSA's website, and air fare reimbursement is based on actual ticket cost up to the amount of a refundable coach ticket (Y-Class airfare).

7. All claims for travel reimbursement must be sent to DEEOIC's bill processing agent.

Should the CE receive a reimbursement request directly from the claimant, for an authorized trip, the CE will forward it immediately to DEEOIC's bill processing agent to begin the reimbursement process. In the event the CE receives a claim for travel reimbursement that was not approved in advance, the CE will immediately forward the claim to the bill payment processor, and will concurrently begin the process of approving or denying the trip. This will ensure that all claims are adjudicated promptly and are properly recorded and tracked by DEEOIC's bill processing agent, throughout the reimbursement process. When adjudicating claims submitted after the trip has been completed, but for which prior approval was not obtained, the CE will follow the same steps as for pre-authorized trips, until reaching the point of sending an authorization package. At that point the CE will send only the authorization (or denial) letter to the claimant, not an entire authorization package.

8. If a travel request is denied (either before or after a trip), the CE must notify the claimant in writing, detailing the reason(s) for the denial. *The CE's unit supervisor must provide sign-off for all denials of claimant travel before the denial letter is sent to the claimant.* The following wording must be included in the denial letter: "This is the final agency decision on your request for approval of travel expense reimbursement."

9. In conjunction with sending the claimant an approval or denial of travel request, the CE must convey his/her decision to DEEOIC's bill processing agent via the office's Fiscal Officer (FO), who is the point of contact with DEEOIC's bill processing agent for such issues. The CE prepares an email to the FO, who in turn will generate an electronic thread to the bill processing agent. In the email the CE must provide the information specified below. The CE must ***also*** enter this information into the case notes field of ECMS (Select the note type of "T" for Travel Authorization):

- .. Approved dates for a single trip; or in the alternative, a date range and number of trips authorized within that time frame.
- .. Approved mode of transportation.
- .. Starting point and destination: claimant address and provider address (city & state at a minimum).
- .. Authorization for rental car reimbursement, if appropriate.
- .. Companion travel if approved.

10. DEEOIC's bill processing agent will promptly pay any approved claims directly to the claimant, not to any other party. However, if the claimant completes the form in error or neglects to submit the proper information, DEEOIC's bill processing agent will attempt to resolve the issue by accessing the authorization letter or the pre-approval notification (thread) from the FO. If unable to issue payment based on information provided in one of these two sources, DEEOIC's bill processing agent will contact the FO, requesting clarification and/or assistance.

11. The FO and responsible CE will take immediate action to review the claim as submitted, contact the claimant when appropriate, make a determination as to the correct amount of reimbursement or denial if warranted, and send an authorization notification or correction (electronic thread) back to DEEOIC's bill processing agent.

12. District office CEs and FOs responsible for travel authorization processing must keep upper management apprised of issues impacting prompt and accurate processing of travel authorizations and reimbursements. Claims staff should be especially vigilant to identify any real or perceived problems with the processing interfaces between and among the district office, the Resource Center and DEEOIC's bill processing agent. Problems must be elevated (reported via email) immediately to the National Office to the attention of the Branch Chief for Policy, with a copy of the notification to the Branch Chief for the Branch of ADP Systems (responsible for oversight of DEEOIC's bill processing agent).

Disposition: Retain until incorporated in the Federal EEOICPA Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

Distribution List No. 1: (Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office

Mail & File Sections)

### **08-18 NIOSH coding in ECMS E.**

EEOICPA BULLETIN NO. 08-18

Issue Date: April 7, 2008

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Effective Date: April 7, 2008

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Expiration Date: April 7, 2009

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Subject: NIOSH coding in ECMS E.

Background: The Federal EEOICPA Procedure Manual at Chapter E-500.20.e states the following in regards to coding NIOSH cases in ECMS E:

“Coding NIOSH Referrals for Part E ECMS. When a non-SEC cancer claim is referred to NIOSH or was originally referred to NIOSH as a Part B claim and a new Part E claim is now extant, the CE does not input the ‘NI’ SENT TO NIOSH code into ECMS E to show that the claim is pending dose reconstruction at NIOSH. The ‘NI’ code is input into the Part B only (unless RECA Section 5 case with claim for cancer other than lung cancer). Instead, while the CE is concurrently developing for exposure to a toxic substance, the ‘DO’ code is entered into ECMS E and the CE selects ‘TD’ (Toxic Exposure Development) from the corresponding drop down menu. ECMS codes must reflect a particular development action. If CE takes a development action (i.e. sends a letter to a claimant or a DAR to DOE), then and only then may a ‘DO’ code be entered. The status effective date is the date of the letter.

When toxic exposure development is complete and the CE cannot accept causation, the CE creates a memorandum to file stating that toxic exposure development is complete. The CE then codes ‘NI’ into ECMS E with the status effective date of the date memorandum.”

These coding instructions do not address how to code cases that are returned from NIOSH prior to the completion of toxic exposure development, or how to code ECMS E if a claim is withdrawn from NIOSH or administratively closed. This bulletin serves to provide that missing information.

Reference: Federal (EEOICPA) Procedure Manual, Chapter E-500 (EEOICPA Tr. No. 06-04, June 2006) and Chapter 2-1500 (EEOICPA TR. No. 06-08, July 2006)

Purpose: To provide procedures for coding cases that are withdrawn from NIOSH, administratively closed with NIOSH, or returned from NIOSH prior to the completion of toxic exposure development.

Applicability: All Staff

Actions:

1. As stated above, the CE does not code the ‘NI’ into ECMS E until toxic exposure development is complete. Once the ‘NI’ code has been entered into ECMS E, the CE should code any additional NIOSH actions into ECMS *B and E*. This includes coding the Probability of Causation (PoC), the ‘NO’ (NIOSH Administrative Closure) code, ‘NR’ (Returned from NIOSH) code, and ‘NW’(Withdrawn from NIOSH) code as outlined in EEOICPA PM Ch 2-1500.4.e(4):

‘NO’ - ‘NIOSH, Administrative Closure’

For cases at NIOSH, the OCAS-1 form is provided to the claimant after completion of the dose reconstruction report. The claimant is required to sign and return the form to NIOSH before NIOSH can return the case to DOL. If none of the claimants sign the OCAS-1 form or submit comments within 60 days, NIOSH will administratively close the case. NIOSH will send a letter to DOL addressing the administrative closure. The CE enters the ‘NO’ claim status code in ECMS, with a status effective date of the receipt of the letter from NIOSH.

‘NR’ - ‘NIOSH Dose Reconstruction Received’ When a case is returned from NIOSH with a dose reconstruction or it is returned from NIOSH because a dose reconstruction could not be performed, the CE enters the ‘NR’ (Received from NIOSH) claim status code in ECMS with a status effective date of the date the dose reconstruction is date-stamped into the District Office. When after full medical development the only claimed primary cancer is CLL or a non-specified cancer at an SEC site where no dose reconstruction can be performed, the CE enters the ‘NR’ (Received from NIOSH) claim status code in ECMS, even though there will not be an ‘NI’ code. On these cases, the status effective date is the date of the Recommended Decision to deny based on CLL (0% POC)

or no dose reconstruction possible. Upon entry in ECMS of the 'NR' code, the CE selects the appropriate reason code.

'NW' - 'NIOSH, Returned without a Dose Reconstruction' When withdrawing a case from NIOSH for any reason (i.e. the CE realizes there was no covered employment and the case shouldn't have been sent to NIOSH) wherein the District Office will not be sending the case back to NIOSH, the CE requests the return of the case from NIOSH without a dose reconstruction and enters the 'NW' code in ECMS. The CE sends notification to NIOSH that the dose reconstruction is no longer needed for the case. The status effective date is the date the notification is sent to NIOSH.

2. When cases are received back from NIOSH and toxic exposure development has not yet been completed (NI has not yet been coded in ECMS E), the CE does not code 'NR' into ECMS E. However, the POC must be entered into ECMS E. This information will reflect that the dose reconstruction has been completed for Part E, even though the toxic exposure development has not. Similarly, if the claim is administratively closed by NIOSH (NO) or the claim is withdrawn from NIOSH (NW), this coding does NOT go into ECMS E if the 'NI' code has not yet been coded in ECMS E.

3. There are no changes/additions to how 'NI', 'NR', 'NO', 'NW', and PoC are coded into ECMS B.

Disposition: Retain until incorporated in the Federal (EEOICPA)

Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

## **08-19 Mound Plant SEC**

EEOICPA BULLETIN NO.08-19

Issue Date: April 2, 2008

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Effective Date: April 2, 2008

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Expiration Date: April 2, 2009

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Subject: Mound Plant SEC

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from the Mound Plant in Miamisburg (near Dayton), OH to be added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and decided it qualified for evaluation under 42 C.F.R. § 83.13. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health ("the Board"). On January 30, 2008, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at the Mound Plant in , from October 1, 1949

through February 28, 1959.

On March 3, 2008, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress.

Employees of the Department of Energy (DOE), its predecessor agencies, and DOE contractors or subcontractors who worked in any areas at the Mound Plant site from October 1, 1949, through February 28, 1959, for a number of work days aggregating at least 250 work days or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

A copy of the Secretary's letter to Congress recommending the designation is included as **Attachment 1**. The SEC designation for this class became effective as of April 2, 2008, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in a report to Congress. While Congress had the authority to reject the recommendation within the 30-day time frame, no action was taken to contradict the addition of this new SEC class.

While a new SEC class has been added for employees at Mound Plant, NIOSH has determined that it is possible to reconstruct occupational medical dose, some components of the internal dose and all external doses. This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the March 3, 2008 letter to Congress from the Secretary of HHS in which Secretary Leavitt makes the designation.

Purpose: To provide procedures for processing SEC claims for workers at the Mound Plant in , .

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at the Mound Plant during the period of the SEC class. It includes pending cases, cases previously denied and those at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.

The comprehensive list also includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD contains all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD, in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected Mound Plant claimants is included as **Attachment 2**. The claims examiner (CE) must print out a hard copy of the NIOSH letter for inclusion in the case file.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC and consequently are still at NIOSH for a partial dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCe), notifies the appropriate point of contact at NIOSH via e-mail to return dose reconstruction analysis

records. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. In addition, the CE must write a letter to the claimant to advise that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

Once a case file is returned from NIOSH (including those cases where DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code “NW” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the code entry is April 2, 2008. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record. The standard procedure for NIOSH coding in ECMS E is to code all additional NIOSH actions only if the “NI” (Sent to NIOSH) status code has been entered. Therefore, the CE enters the “NW” code into ECMS E with the status effective date of April 2, 2008 only if “NI” has already been coded.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this bulletin, then refer to instructions in Action #13.

3. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

4. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual (PM) Chapter 2-600.5. If the employee has a specified cancer, proceed to Action #5. If the employee does not have a specified cancer, proceed to Action #7.

5. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 work days at the Mound Plant in , from October 1, 1949 through February 28, 1959. The CE may review EEOICPA Bulletin No. 02-09 for guidance on calculating 250 work days.

The Mound Plant is a 306-acre facility which occupied a hill in the center of , , near . Based on the SEC designation, any probative evidence that the employee was employed at the Mound Plant for at least 250 work days during the SEC period is sufficient to include him or her in the SEC class.

6. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE should proceed in the usual manner for a compensable SEC claim and prepare a recommended decision.

ECMS Coding Reminder: The “SE” (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the status effective date of the recommended decision to approve. (This is a change from previous guidance which tied the “SE” effective date to when the employment and medical criteria for SEC has been met). If the case is an E/B case, and the basis for the Part E acceptance is the Part B SEC acceptance, the “SE” code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E. The SEC site code “48” for “Mound Plant” must be selected from the drop down menu under the “SEC/SEC Desc” field on the claim screen in ECMS B only.

7. As discussed earlier, the Secretary of Health and Human Services determined that it is not feasible for NIOSH to perform complete dose reconstructions for the class of employees who worked at Mound Plant from October 1, 1949 through February 28, 1959.

However, NIOSH has indicated that partial dose reconstructions are possible based on occupational medical dose, some components of the internal dose and all external doses. Accordingly, for cases that had not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code “NI” (Sent to NIOSH) in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD. “NI” should only be

entered in ECMS E after toxic exposure development is complete and the CE cannot accept causation. In that case the CE creates a memorandum to file stating that toxic exposure development is complete. The CE then enters status code “NI” into ECMS E with the date of the memorandum as the status effective date.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the Senior CE (SrCe), notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code “NI” (Sent to NIOSH) into ECMS B, effective the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-specified cancer, insufficient latency period or does not meet the 250 work day requirement. A hard copy printout of the e-mail is to be inserted in the case file. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for dose reconstruction and the reason(s) it does not qualify for the SEC class. If the case is an E/B case and toxic exposure development was completed with a memorandum to file (with a prior “NI”/“NW” code), the CE enters status code “NI” into ECMS E with the status effective date of the e-mail requesting NIOSH to proceed with dose reconstruction.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “NR” (NIOSH Dose Reconstruction Received) in ECMS B and selects the “PD” (Partial Dose Reconstruction) reason code. The status effective date is the date the dose reconstruction is date-stamped into the District Office. The CE should not delete the “NW” (NIOSH, returned without a dose reconstruction) or “NI” (Sent to NIOSH) code already present in ECMS. If the CE had previously entered “NI” in ECMS E, the CE also enters codes “NR” and “PD” into ECMS E. If the case is an E/B case, the CE enters the Probability of Causation (PoC) into ECMS B and ECMS E (regardless of whether the “NI” code had previously been entered).

8. If the claim includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction that resulted in a probability of causation of 50 percent or greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE is to draft a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and if necessary concurrently prepare a NRSD to NIOSH for a dose reconstruction for the non-specified cancer to determine eligibility for medical benefits. The CE enters status code “SE” (Confirmed as SEC Claim) and the “NI” (Sent to NIOSH) code into ECMS B. The status effective date for the “SE” code is the date of the recommended decision to accept the specified cancer. The status effective date for the “NI” code is the date of the Senior or Supervisory CE signature on the NRSD. If the case is an E/B case, the CE enters status code “NI” (Sent to NIOSH) only after the toxic exposure development is complete and the CE cannot accept causation. In that case the CE creates a memorandum to file stating that toxic exposure development is complete. The CE then enter status code “NI” into ECMS E with the date of the memorandum as the status effective date.

9. If there is a final decision to deny based on a POC of less than 50% and a review of the evidence of record establishes likely inclusion in the SEC class, it will need to be reopened. In the exercise of the Director’s discretion of the reopening process, the Director is delegating limited authority to the four District Directors to sign Director’s Orders for reopening. This delegated authority is limited to reopenings based upon evidence that a Mound Plant employee meets the criteria for placement into the Mound Plant SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided in **Attachment 3**. The Director is retaining sole signature authority for

all other types of reopenings not otherwise delegated. Once a Director's Order is issued, the district office is responsible for issuing a new recommended decision.

10. For those cases which are reopened under the authority granted in this Bulletin, the District Director enters status code "MN" (NO Initiates Review for Reopening) in ECMS B with a status effective date as the effective date of this bulletin. If the District Director is also reopening Part E, the "MN" code is also input in ECMS E.

For all reopenings per this bulletin, upon completing the Director's Order to reopen the claim, the District Director (DD) enters status code "MD" (Claim Reopened – File Returned to DO) into ECMS B to reflect that the case has been reopened and is in the district office's jurisdiction. (The "MZ" status code is not necessary). The status effective date of the "MD" code is the date of the Director's Order. If the Director's Order reopens the Part E claim, the DD also enters status code "MD" into ECMS E.

Please note that while the "MD" code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been in this specific circumstance.

11. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending Mound Plant cases that have a recommended decision to deny. All cases on the comprehensive list identified in action item 2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at the Mound Plant during the time specified, has a specified cancer, and meets the 250 work day requirement, FAB is to review the case for the parameters of the SEC as specified in this Bulletin. If the criteria of the SEC are met, the FAB is to reverse the district office's recommended decision to deny and accept the case. The CE/HR enters status code "F6" (FAB Reversed to Accept) into ECMS B/E (as appropriate) to reflect the FAB reversal. The CE/HR enters status code "SE" (Confirmed as SEC Claim) into ECMS B with a status effective date equal to the date of the final decision to approve. If the FAB is also reversing the Part E decision based on SEC designation, CE/HR also enters status codes "F6" and "SE" into ECMS E with a status effective date of the final decision for Part E.

If no action is required, FAB must follow the instructions specified in action item 13, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the District Office. If FAB determines that the case cannot be approved based on the new SEC designation and that re-referral to NIOSH is appropriate (see action items 5 and 7) the HR must remand the case for district office action. The CE/HR enters status code "F7" (FAB Remanded) with "OTH" (No DO Error – Other) as the reason code. If the decision on Parts B and E are being remanded, the remand coding goes into ECMS B and E. The status effective date is the date of the remand.

12. The operational plan goal for the list of cases identified for review as part of this new SEC class is to complete the Part B recommended decision, return to NIOSH, or determine that no action is necessary within 45 days of the date of this Bulletin for at least 50% of the cases, and within 90 days for 95% of the cases. All cases requiring action due to this Bulletin should be completed within 120 days.

13. All cases on the DEEOIC generated list must be reviewed to determine if it qualifies under the SEC provision including cases still at NIOSH. If after review or further development, the adjudicator determines that a case on the list does not require any action to be taken (either a new recommended decision to accept based on the SEC, or return to NIOSH, or a FAB reversal or remand) the CE/FAB HR must write a brief memo to the file that explains the case was reviewed under this bulletin, no additional action is necessary, and why. A case classified as not requiring any action is a case that does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction.

The CE must then code “NA” (No Action Necessary) and then select the appropriate reason code from the reason code drop down list. The “NA” coding is specifically tied to the SEC review list generated by DEEOIC and the “NA” code is restricted to ECMS B only because the SEC review list is derived from Part B data. For Mound Plant cases that were reviewed under this bulletin and require no additional action, the reason code that must be selected is “19S” (**Reviewed under Bulletin 08-19, Mound Plant SEC**). Even if the case is an E/B case, the **NA-19S** must be coded into ECMS B only. The status effective date of the “NA” code is the date of the memo to the file stating review is complete and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the “NA-19S” code is not entered initially. The “NA-19S” code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the “NA-19S” code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “NA-19S” code in addition to the closure code. The status effective date for the “NA” coding is the date of the memorandum to file.

14. In carrying out the policy outlined in this Bulletin, personnel must understand that the comprehensive list not only provides the "to do" list of cases requiring attention, but it also serves a means of tracking progress. As part of tracking progress, the list becomes the "pending" list and it is the goal to successfully and accurately review cases and enter appropriate ECMS coding which will result in “the case being removed from the list” (in other words, will result in an indicator for reporting purposes showing that the initial review was completed and/or that subsequent action was taken). ECMS coding is at the claim level and so the failure to input a code that will remove the case from the pending list on even one claim associated with a case, will result in the case still showing up as still pending review or action. In terms of ECMS coding, it is crucial to be thorough and precise. The most obvious example of this is the use of the “C2” (administrative closure) code. “C2” will not remove a case from the pending list; the “NA” code must be entered for each claim to which it applies after input of the “C2” code. In terms of codes that will remove cases off the pending list, any recommended decision on or after the SEC effective date will remove it and proper use of the “NA” code will remove it from the pending list. These are not the only codes that will remove cases from the pending list, but rather are provided as examples to show their importance. Any additional questions regarding proper SEC coding must be directed to the Policy Branch.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

**08-20 Lawrence Livermore National Laboratory (LLNL) SEC class from January 1, 1950, through December 31, 1973.**

EEOICPA BULLETIN NO.08-20

Issue Date: April 21, 2008

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Effective Date: April 2, 2008

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Expiration Date: April 2, 2009

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Subject: Livermore National Laboratory (LLNL) SEC class from January 1, 1950, through December 31, 1973.

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from LLNL to be added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and decided it qualified for evaluation under 42 C.F.R. § 83.13 and § 83.14. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On January 30, 2008, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of certain employees who worked at LLNL from January 1, 1950, through December 31, 1973.

On March 3, 2008, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress.

Employees of the Department of Energy (DOE), its predecessor agencies, and DOE contractors or subcontractors who were monitored for radiation exposure while working at the Lawrence Livermore National Laboratory from January 1, 1950, through December 31, 1973, for a number of work days aggregating at least 250 work days or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

A copy of the Secretary’s letter to Congress recommending the designation is included as **Attachment 1**. The SEC designation for this class became effective as of April 2, 2008, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in a report to Congress. While Congress had the authority to reject the recommendation within the 30-day time frame, no action was taken to contradict the addition of this new SEC class.

The new SEC class for employees of LLNL has been added because NIOSH is unable to reconstruct internal dose from fission and activation products. NIOSH has, however, also determined that it is possible to reconstruct all other internal doses. NIOSH can also reconstruct external and medical dose for LLNL workers. This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the March 3, 2008 letter to Congress from the Secretary of HHS in which Secretary Leavitt makes the designation.

Purpose: To provide procedures for processing SEC claims for LLNL workers.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, pending claims, and future claims yet to be submitted.

2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at LLNL during the period of the SEC class. It includes pending cases, cases previously denied and those at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.

The comprehensive list also includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD contains all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD, in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected LLNL claimants is included as **Attachment 2**. The claims examiner (CE) must print out a hard copy of the NIOSH letter for inclusion in the case file.

There are some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC and consequently are still at NIOSH for a partial dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this bulletin. If any such case qualifies under the SEC class, the CE through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e-mail to return dose reconstruction analysis records. The SrCE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. In addition, the CE must write a letter to the claimant to advise that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

Once a case file is returned from NIOSH (including those cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code "NW" (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the code entry is April 2, 2008. However, the code is not entered until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record. The standard procedure for NIOSH coding in ECMS E is to code all additional NIOSH actions only if the "NI" (Sent to NIOSH) status code has been entered. Therefore, the CE enters the "NW" code into ECMS E with the status effective date of April 2, 2008 only if "NI" has already been coded.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this bulletin, then refer to instructions in Action Item #14.

3. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

4. Based on this review, the CE must first determine whether the employee has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual (PM) Chapter 2-600.5. If the employee has a specified cancer, proceed to Action Item #5. If the employee does not have a specified cancer, proceed to Action Item #8.

5. If the employee has a specified cancer, the CE must then determine if the employee was "monitored for radiation exposure while working at" LLNL for at least 250 work days between January 1, 1950 and December 31, 1973. Given the nature of the monitoring records from LLNL that are available, it is not possible to establish that an employee was monitored for 250 days by determining the particular work days on which an employee was actually monitored for radiation exposure. Therefore, the CE must review records (such as those discussed below) to determine if

the employee “was monitored for radiation exposure” for 250 work days while working at LLNL at any time during the period of the SEC class (1950-1973) using the methodology set out in Action Item #6.

6. An employee who “was monitored for radiation exposure” at LLNL during the SEC period and worked at LLNL for at least 250 work days during the SEC period will be presumed to have been monitored for radiation exposure for 250 work days at LLNL during the SEC period unless there is substantial evidence to the contrary (ie. evidence demonstrating that employee was **not** monitored for at least 250 work days during the SEC period.) Please see EEOICPA Bulletin No. 02-09 for guidance on calculating 250 work days. As in other classes added to the SEC, the LLNL class definition provides that the 250 work day requirement can be met by combining work days at LLNL during the SEC period with work days meeting the SEC criteria of one or more other SEC classes.

If the employee has a specified cancer and “was monitored for radiation exposure” for at least 250 work days, while working at LLNL the employee should be placed in the SEC class. If the employee does not meet the 250 work day requirement, as discussed herein, proceed to Action Item #8.

This class definition is specific to LLNL, so this means the CE must find records showing that the employee was monitored while working at LLNL during the SEC period. The LLNL facility includes both the main campus in , and Site 300, which is a part of LLNL used for testing conventional explosives located near , . Site 300 is sometimes referred to as the Explosive Test Site.

The following two subsections provide guidance to the CE on how to make the determination of whether the employee “was monitored.” The guidance is in two parts:

A. for existing claims in which NIOSH has already collected dose information

B. for claims in which dose records have not yet been collected.

A. Existing claims for which dosimetry records have already been collected

In order to determine whether an employee, for whom NIOSH has already gathered dose records, “was monitored” while working at LLNL for at least 250 work days during the SEC period, the CE needs to review the file and locate any personal dosimetry records therein. To find personal dosimetry documentation, the CE first accesses the NIOSH CD in the file and reviews the folder entitled, “DOE information,” which is the folder for dosimetry records on the CD. The CE then reviews that file for any documentation showing the employee was monitored for radiation at LLNL. Personal dosimetry records will have the employee’s name on them. Although the NIOSH CD is the most likely location for dosimetry records in existing case files and should be checked first, if nothing is found there, the CE should review the entire case file for records of personal dosimetry. The monitoring records can reflect radiation dose from a dosimetry badge, urinalysis, whole body counting or any combination of these or other radiological monitoring unique to the individual.

Many LLNL employees traveled to nuclear weapons testing sites, most commonly the Nevada Test Site (NTS) and the Pacific Proving Ground (PPG), as part of their jobs. When these employees traveled to NTS and/or PPG they were generally monitored at those locations. Monitoring at NTS, PPG (or any other site) alone, without evidence of monitoring at LLNL, does not establish that an employee “was monitored for radiation exposure” while working at LLNL for at least 250 work days during the SEC period as required for the LLNL class. To understand how to tell the difference between monitoring while working at LLNL and being monitored while present at NTS or PPG, two attachments have been provided. **Attachment 3** provides four examples of records that show an employee was monitored at LLNL. The examples provided are not all inclusive of all types of LLNL monitoring records, but rather provide a sample of the most common documents found in employee files, each of which demonstrates that the employee was “monitored for

radiation exposure while working” at LLNL. The monitoring needs to refer to the period that the employee worked during the SEC class (1950-1973).

To better understand the examples in Attachment 3, note that the first example is the most common. For an employee with this record (dated 1973 or earlier) in the file, in which at least one of the boxes in the last two columns was filled in with something other than “NM” (meaning not monitored) for years within the LLNL SEC class, this record is sufficient to establish that the employee “was monitored for radiation exposure” while working at LLNL for at least 250 work days during the SEC period. In the sample included, “0.00” was entered in the last column of the first two rows. A “0.00” would indicate that although the employee was monitored, no dose was recorded. Since one of the requirements for inclusion in the class is having been monitored while working at LLNL during the years of the class, it does not matter whether the employee actually received any measured dose; those with zeroes are to be included in the class. Additionally, this first example in Attachment 3 states that the doses on the table include doses from other sites. Thus, employees who have this type of record during the SEC period meet the test of having been monitored for radiation exposure at LLNL because it represents dose at LLNL plus doses at any other locations the employee traveled to. Documents showing monitoring that only occurred elsewhere (such as all the examples in Attachment 4) do not establish that the employee was monitored for radiation exposure while working at LLNL for at least 250 work days during the SEC period.

**Attachment 4** provides excerpts of monitoring records specific to the NTS for LLNL employees.

The existence of records such as these in the case file, without any other evidence of having been monitored for radiation exposure while working at LLNL, is not sufficient to support a finding that the employee “was monitored for radiation exposure” while working at LLNL for at least 250 work days during the SEC period because they pertain solely to other locations. Generally, the best way to recognize monitoring at a site other than LLNL in the file of a LLNL employee is to find (often in very small type or lettering) “Bechtel Nevada,” “NTS,” or “Reynolds Electrical & Engineering co. Inc, (REECO)” (circled on the attachment for emphasis) written on the record. Bechtel and REECO were the contractors for NTS, the PPG and some other weapons testing locations. The operating contractor for LLNL (including Site 300) has always been the of . Neither REECO nor Bechtel are associated with monitoring at LLNL in any way.

Although monitoring at non-LLNL locations does not place the employee in the LLNL class, the CE should be mindful that there are classes in the SEC for employees at NTS, PPG and Amchitka and that work days at those sites can be added to the work days of an employee who otherwise qualifies for the SEC class at LLNL in order to meet the 250 work day requirement. If the CE finds evidence that the employee was at those other locations during their respective SEC class times, the CE is to develop accordingly.

#### B. Claims for which monitoring information has not yet been gathered

1) Existing claims. If there are existing LLNL claims that have sufficient employment at LLNL within the period of the class to meet the 250 work day requirement, but for which no dosimetry information has been collected, the CE is to write a letter to the DOE (LLNL) and request radiation monitoring documentation, using the same DOE contact person that is used for employment verification. Once DOE has provided records, or informed us that none exist, the CE determines whether the employee “was monitored for exposure to radiation” while working at LLNL, as described in subsection A of this Action Item. For those instances in which DOE reports that no monitoring records exist for the employee, the CE is to prepare the case for submission to NIOSH using the normal procedures and send a letter to the claimant(s) informing the claimant(s) that the case is being sent to NIOSH with an explanation that no evidence of the employee having been “monitored” at LLNL between 1950 and 1973 was provided.

2) New claims. For all new claims, when the Resource Center (RC) receives a claim that includes employment at LLNL with any work between January 1, 1950 and December 31, 1973, the RC is to

include a letter to DOE along with the request for employment verification asking for all radiation monitoring and dose documentation pertaining to the employee available from LLNL. Once the CE receives the documentation, the decision-making process proceeds as described above.

Additionally, records which do **not** constitute evidence that the employee “was monitored” include records of X-rays (people receive a radiation dose from X-rays, but the record of the X-ray is not a monitoring record), general medical records, blood count records, industrial hygiene records, high explosive check lists, or the inclusion of the employee’s name in the Computerized Accident/Incident Reporting System (CAIRS) (unless the accident pertains to radiation exposure).

It is understood that there might be instances in which making the determination of whether the employee was monitored will be difficult. If the CE is unable to reach an answer after due consideration of the records, the case may be referred to National Office for a health physicist review.

7. Once the CE has determined that the employee has a diagnosed specified cancer and meets the 250 work day and radiation monitoring criteria of the LLNL class, the CE should proceed in the usual manner for a compensable SEC claim and prepare a recommended decision.

ECMS Coding Reminder: The “SE” (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the status effective date of the recommended decision to approve. (This is a change from previous guidance which tied the “SE” effective date to when the employment and medical criteria for SEC has been met). If the case is an E/B case, and the basis for the Part E acceptance is the Part B SEC acceptance, the “SE” code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E. The SEC site code for “Lawrence Livermore National Laboratory” must be selected from the drop down menu under the “SEC/SEC Desc” field on the claim screen in ECMS B only.

8. As discussed earlier, the Secretary of HHS determined that it is not feasible for NIOSH to perform complete dose reconstructions for the class of employees who worked at LLNL from January 1, 1950, through December 31, 1973.

However, NIOSH has indicated that partial dose reconstructions are possible based on occupational medical dose, some components of the internal dose and all external doses. Accordingly, for cases that have not been submitted to NIOSH and do not meet the criteria of the LLNL SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. These cases should be coded as “NI” (Sent to NIOSH) in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD. “NI” should only be entered in ECMS E after toxic exposure development is complete and the CE cannot accept causation. In that case the CE creates a memorandum to file stating that toxic exposure development is complete. The CE then enters status code ‘NI’ into ECMS E with the date of the memorandum as the status effective date.

For those cases that were previously submitted to NIOSH for dose reconstruction and were returned to the district office for consideration of inclusion in this SEC class, a new NRSD is not required. If it is determined that the employee does not qualify for the SEC class, the CE, through the SrCe, notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent). The “NI” (Sent to NIOSH) code is input into ECMS B, effective the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why NIOSH should proceed with a dose reconstruction, e.g., non-specified cancer, no evidence of required monitoring or does not meet the 250 work day requirement. A hard copy printout of the e-mail is to be inserted in the case file. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for dose reconstruction and the reason(s) it does not qualify for SEC class. If the case is an E/B case and toxic exposure development was previously completed with a memo to file (and appropriate NI/NW coding), the

CE enters the status code “NI” into ECMS E with the status effective date of the e-mail requesting NIOSH to proceed with dose reconstruction.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE should code the case as “NR” (NIOSH Dose Reconstruction Received) in ECMS B and select the “PD” (Partial Dose Reconstruction) reason code. The status effective date is the date the dose reconstruction is date-stamped into the District Office. The CE should not delete the “NW” (NIOSH, returned without a dose reconstruction) or “NI” (Sent to NIOSH) code already present in ECMS. If the CE had previously entered “NI” in ECMS E, the “NR” and “PD” codes will also need to be entered into ECMS E. If the case is an E/B case, the Probability of Causation (PoC) must be entered into ECMS B and ECMS E (regardless of whether the NI had previously been entered).

9. If the claim includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction that resulted in a POC of 50 percent or greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE is to draft a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and if necessary concurrently prepare a NRSD to NIOSH for a dose reconstruction for the non-specified cancer to determine eligibility for medical benefits. The CE enters status code “SE” (Confirmed as SEC Claim) and the “NI” (Sent to NIOSH) code into ECMS B. The status effective date for the “SE” code is the date of the recommended decision to accept the specified cancer. The status effective date for the “NI” code is the date of the Senior or Supervisory CE signature on the NRSD. If the case is an E/B case, the CE enters the status code “NI” (Sent to NIOSH) only after the toxic exposure development is complete and the CE cannot accept causation. In that case the CE creates a memorandum to the file stating that toxic exposure development is complete. The CE then enters status code “NI” into ECMS E with the date of the memorandum as the status effective date.

10. If there is a final decision to deny based on a POC of less than 50% and a review of the evidence of record establishes likely inclusion in the SEC class, it will need to be reopened. In the exercise of the Director’s discretionary authority over the reopening process, the Director is delegating limited authority to the four District Directors to sign Director’s Orders for reopening. This delegated authority is limited to reopenings based upon evidence that a LLNL employee meets the criteria for placement into the LLNL SEC class as discussed in this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director is unsure of whether the case meets the criteria for placement into the LLNL SEC class, the case should be referred to the National Office. A sample Director’s Order is provided in **Attachment 5**. The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is responsible for issuing a new recommended decision.

11. For those cases which are reopened under the authority granted in this Bulletin, the District Director enters status code “MN” (NO Initiates Review for Reopening) in ECMS B with a status effective date of the effective date of this bulletin. If the District Director is also reopening Part E, the “MN” code is also input in ECMS E.

For all reopenings per this bulletin, upon completing the Director’s Order to reopen the claim, the District Director enters status code “MD” (Claim Reopened – File Returned to DO) to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “MZ” status code is not necessary). The status effective date of the “MD” code is the date of the Director’s Order. If the Director’s Order reopens the Part E claim, “MD” is also input into ECMS E.

Please note that while the “MD” code is generally input by National Office staff, entry of this code has been delegated to the District Directors, just as the authority to grant reopenings has been in this specific circumstance.

12. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending LLNL cases that have a recommended decision to deny. All cases on the comprehensive list identified in Action Item #2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at LLNL during the time specified, has a specified cancer, meets the 250 work day and radiation monitoring requirements, FAB is to review the case for the parameters of the SEC as specified in this Bulletin. If the criteria of the SEC are met, the FAB is to reverse the district office's recommended decision to deny and accept the case. The CE/HR enters the status code "F6" (FAB Reversed to Accept) into ECMS B/E (as appropriate) to reflect the FAB reversal. The CE/HR enters status code "SE" (Confirmed as SEC Claim) into ECMS B with a status effective date equal to date of the final decision to approve. If the FAB is also reversing the Part E decision based on the SEC designation, the CE/HR also enters status codes "F6" and "SE" into ECMS E with a status effective date of the final decision for Part E.

If no action is required, FAB must follow the instructions specified in action item 14 below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the District Office. If FAB determines that the case cannot be approved based on the LLNL SEC designation and that re-referral to NIOSH is appropriate (see action items 5 and 8), FAB must remand the case for district office action. The correct coding for the remand is "F7" (FAB Remanded) with "OTH" (NO DO ERROR – Other) as the reason code. If decisions on Parts B and E are being remanded, the remand coding goes into ECMS B and E. The status effective date is the date of the remand.

13. The operational plan goal for the list of cases identified for review as part of this new SEC class is to complete the Part B recommended decision, return to NIOSH, or determine that no action is necessary within 45 days of the date of this Bulletin for at least 50% of the cases, and within 90 days for 95% of the cases. All cases requiring action due to this Bulletin should be completed within 120 days.

14. All cases on the DEEOIC generated list must be reviewed to determine if it qualifies under the SEC provision, including cases still at NIOSH. If after review or further development, the adjudicator determines that a case on the list does not require any action to be taken (either a new recommended decision to accept based on the SEC, a return to NIOSH, or a FAB reversal or remand), the CE/FAB HR must write a brief memo to the file that explains that the case was reviewed under this bulletin, that no additional action is necessary, and why. A case classified as not requiring any action is a case that does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction.

The CE enters status code "NA" (No Action Necessary) and then selects the appropriate reason code from the reason code drop down list. The "NA" coding is specifically tied to the SEC review list generated by DEEOIC and the "NA" code is restricted to ECMS B only because the SEC review list is derived from Part B data. For LLNL cases that are reviewed under this bulletin and require no additional action, the reason code that must be selected is **"20S" (Reviewed under 08-20, LLNL SEC)**. Even if the case is an E/B case, the **NA-20S** must be coded into ECMS B only. The status effective date of the "NA" code is the date of the memo to the file stating review is complete and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the "NA" code is not entered initially. The "NA" code is **only** entered when the CE determines, **after** development, that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the "NA-20S" code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the "NA-20S" code in addition to the closure code. The status effective date for the "NA" coding is the date of the memorandum to file.

15. In carrying out the policy outlined in this Bulletin, personnel must understand that the comprehensive list not only provides the "to do" list of cases requiring attention, but it also serves as a means of tracking progress. As part of tracking progress, the list becomes the "pending" list and it is the goal to successfully and accurately review cases and enter appropriate ECMS coding which will result in "the case being removed from the list" (in other words, will result in an indicator for reporting purposes showing that the initial review was completed and/or that subsequent action was taken). ECMS coding is at the claim level and so the failure to input a code that will remove the case from the pending list on even one claim associated with a case, will result in the case still showing up as still pending review or action. In terms of ECMS coding, it is crucial to be thorough and precise. The most obvious example of this is the use of the "C2" (administrative closure) code. "C2" will not remove a case from the pending list; the "NA" code must be entered for each claim to which it applies after input of the "C2" code. In terms of codes that will remove cases off the pending list, any recommended decision **on or after the SEC effective date** will remove it and proper use of the "NA" code will remove it from the pending list. These are not the only codes that will remove cases from the pending list, but rather are provided as examples to show their importance. Any additional questions regarding proper SEC coding must be directed to the Policy Branch.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

[Attachment 5](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

## **08-21 Combustion Engineering SEC**

EEOICPA BULLETIN NO.08-21

Issue Date: April 2, 2008

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Effective Date: April 2, 2008

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Expiration Date: April 2, 2009

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Subject: Combustion Engineering SEC.

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from the Combustion Engineering site Windsor, Connecticut to be added to the Special Exposure Cohort (SEC).

The decision to initiate this petition occurred after the National Institute for Occupational Safety and Health (NIOSH) determined that it could not reconstruct a dose under 42 C.F.R. § 83.14. NIOSH submitted its findings to the petitioner and the Advisory Board on Radiation and Worker Health (“the Board”). On January 30, 2008, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at Combustion Engineering in Windsor, Connecticut from January 1, 1965, through December 31, 1972.

On March 3, 2008, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress.

Atomic Weapons Employer (AWE) employees who worked at the Combustion Engineering site in Windsor, Connecticut from January 1, 1965, through December 31, 1972, for a number of work days aggregating at least 250 work days or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

A copy of the Secretary’s letter to Congress recommending the designation is included as **Attachment 1**. The SEC designation for this class became effective as of April 2, 2008, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in a report to Congress. While Congress had the authority to reject the recommendation within the 30-day time frame, no action was taken to contradict the addition of this new SEC class.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the March 3, 2008 letter to Congress from the Secretary of HHS in which Secretary Leavitt makes the designation.

Purpose: To provide procedures for processing SEC claims for workers at the Combustion Engineering site in Windsor, Connecticut.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at the Combustion Engineering facility in Windsor, Connecticut during the period of the SEC class. It includes pending cases, cases previously denied and those at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.

The comprehensive list also includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD contains all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD, in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected Combustion Engineering claimants is included as **Attachment 2**. The claims examiner (CE) must print out a hard copy of the NIOSH letter for inclusion in the case file.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC and consequently are still at NIOSH for a partial dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this bulletin. If any such case qualifies under the SEC class, the CE through the Senior CE (SrCE),

notifies the appropriate point of contact at NIOSH via e-mail to return dose reconstruction analysis records. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. In addition, the CE must write a letter to the claimant to advise that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

Once a case file is returned from NIOSH (including those cases where DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code “NW” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the code entry is April 2, 2008. However, the code is not entered until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record. Because Combustion Engineering is an Atomic Weapons Employer, there is no entitlement to Part E benefits.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this bulletin, then refer to the instructions in Action #13.

3. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

4. Based on this review, the CE determines whether the claimant has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual (PM) Chapter 2-600.5. If the employee has a specified cancer, proceed to Action #5. If the employee does not have a specified cancer, proceed to Action #7.

5. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 work days at the Combustion Engineering facility in Windsor, Connecticut between January 1, 1965 and December 31, 1972. The CE may review EEOICPA Bulletin No. 02-09 for guidance on calculating 250 work days.

6. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC classes, the CE should proceed in the usual manner for a compensable SEC claim and prepare a recommended decision.

ECMS Coding Reminder: The “SE” (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the status effective date of the recommended decision to approve. (This is a change from previous guidance which tied the “SE” effective date to when the employment and medical criteria for SEC has been met). The SEC site code for “Combustion Engineering” must be selected from the drop down menu under the “SEC/SEC Desc” field on the claim screen.

7. As discussed earlier, the Secretary of Health and Human Services determined that it is not feasible for NIOSH to perform complete dose reconstructions for the class of employees who worked at the Combustion Engineering site in Windsor, Connecticut from January 1, 1965, through December 31, 1972.

However, NIOSH has indicated that partial dose reconstructions are possible based on occupational medical dose, some components of the internal dose and all external doses. Accordingly, for cases that had not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code “NI” (Sent to NIOSH) in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the Senior CE (SrCe), notifies the appropriate point of contact at NIOSH via e-mail to proceed with the

dose reconstruction. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters the status code “NI” (Sent to NIOSH), effective the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-specified cancer, insufficient latency period or does not meet the 250 work day requirement. A hard copy printout of the e-mail is to be inserted in the case file. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for dose reconstruction and the reason(s) it does not qualify for SEC class.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters the status code “NR” (NIOSH Dose Reconstruction Received) in ECMS B, selects the “PD” (Partial Dose Reconstruction) reason code, and enters the Probability of Causation (PoC). The status effective date is the date the dose reconstruction is date-stamped into the District Office. The CE should not delete the “NW” (NIOSH, returned without a dose reconstruction) or “NI” (Sent to NIOSH) code already present in ECMS.

8. If the claim includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction that resulted in a probability of causation of 50 percent or greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE is to draft a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and if necessary concurrently prepare a NRSD to NIOSH for a dose reconstruction for the non-specified cancer to determine eligibility for medical benefits. The CE enters the status code “SE” (Confirmed as SEC Claim) and the “NI” (Sent to NIOSH). The status effective date for the “SE” code is the date of the recommended decision to accept the specified cancer. The status effective date for the “NI” code is the date of the Senior or Supervisory CE signature on the NRSD.

9. If there is a final decision to deny based on a POC of less than 50% and a review of the evidence of record establishes likely inclusion in the SEC class, it will need to be reopened. In the exercise of the Director’s discretion of the reopening process, the Director is delegating limited authority to the four District Directors to sign Director’s Orders for reopening. This delegated authority is limited to reopenings based upon evidence that a Windsor Combustion Engineering employee meets the criteria for placement into the Combustion Engineering SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided in **Attachment 3**. The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is responsible for issuing a new recommended decision.

10. For those cases which are reopened under the authority granted in this Bulletin, the District Director enters status code “MN” (NO Initiates Review for Reopening) in ECMS B with a status effective date as the effective date of this bulletin.

For all reopenings per this bulletin, upon completing the Director’s Order to reopen the claim, the District Director enters status code “MD” (Claim Reopened – File Returned to DO) to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “MZ” status code is not necessary). The status effective date of the “MD” code is the date of the Director’s Order.

Please note that while the “MD” code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been in this specific circumstance.

11. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending Combustion Engineering cases that have a recommended decision to deny. All cases on the comprehensive list identified in action item 2 that are located at a FAB office must be reviewed for possible inclusion

in the SEC class. If the employee worked at the Windsor Combustion Engineering facility during the time specified, has a specified cancer, and meets the 250 work day requirement, FAB is to review the case for the parameters of the SEC as specified in this Bulletin. If the criteria of the SEC are met, the FAB is to reverse the district office's recommended decision to deny and accept the case. The CE/HR enters status code "F6" (FAB Reversed to Accept) to reflect the FAB reversal. The "SE" (Confirmed as SEC Claim) status code must be entered with a status effective date equal to the status effective date of the final decision to approve.

If no action is required FAB must follow the instructions specified in action item 13, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the District Office. If FAB determines that the case cannot be approved based on the new SEC designation and that re-referral to NIOSH is appropriate (see action items 5 and 7) FAB must remand the case for district office action. The CE/HR enters status code "F7" (FAB Remanded) with "OTH" (No DO Error – Other) as the reason code.

12. The operational plan goal for the list of cases identified for review as part of this new SEC class is to complete the Part B recommended decision, return to NIOSH, or determine that no action is necessary within 45 days of the date of this Bulletin for at least 50% of the cases, and within 90 days for 95% of the cases. All cases requiring action due to this Bulletin should be completed within 120 days.

13. If after review or further development, the adjudicator determines that a case on the list does not require any action to be taken (either a new recommended decision to accept based on the SEC, a return to NIOSH, or a FAB reversal or remand) the CE/FAB HR must write a brief memo to the file that explains the case was reviewed under this bulletin, no additional action is necessary, and why. A case classified as not requiring any action is a case that does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction.

The CE enters the status code "NA" (No Action Necessary) and then selects the appropriate reason code from the reason code drop down list. The "NA" coding is specifically tied to the SEC review list generated by the DEEOIC and the "NA" code is restricted to ECMS B only because the SEC review list is derived from Part B data. For Combustion Engineering cases that were reviewed under this bulletin and require no additional action, the reason code that must be selected is **"21S" (Reviewed under 08-21, Combustion Engineering SEC)**. Even if the case is an E/B case, the **NA-21S** must be coded into ECMS B only. The status effective date of the "NA" code is the date of the memo to the file stating review is complete and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the "NA" code is not entered initially. The "NA" code is **only** entered when the CE determines, **after** any necessary development, that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the "NA-21S" code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the "NA-21S" code in addition to the closure code. The status effective date for the "NA" coding is the date of the memorandum to file.

14. In carrying out the policy outlined in this Bulletin, personnel must understand that the comprehensive list not only provides the "to do" list of cases requiring attention, but it also serves as a means of tracking progress. As part of tracking progress, the list becomes the "pending" list and it is the goal to successfully and accurately review cases and enter appropriate ECMS coding which will result in "the case being removed from the list" (in other words, will result in an indicator for reporting purposes showing that the initial review was completed and/or that subsequent action was taken). ECMS coding is at the claim level and so the failure to input a code that will remove the

case from the pending list on even one claim associated with a case, will result in the case still showing up as still pending review or action. In terms of ECMS coding, it is crucial to be thorough and precise. The most obvious example of this is the use of the "C2" (administrative closure) code. "C2" will not remove a case from the pending list; the "NA" code must be entered for each claim to which it applies after input of the "C2" code. In terms of codes that will remove cases off the pending list, any recommended decision **on or after the SEC effective date** will remove it and proper use of the "NA" code will remove it from the pending list. These are not the only codes that will remove cases from the pending list, but rather are provided as examples to show their importance. Any additional questions regarding proper SEC coding must be directed to the Policy Branch.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

## **08-22 SEC coding**

EEOICPA BULLETIN NO.08-22

Issue Date: April 23, 2008

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Effective Date: April 23, 2008

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Expiration Date: April 23, 2009

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**Note: This bulletin updates Bulletin No.07-15, Processing Claims for Allied Chemical Corporation Plant Special Exposure Cohort (SEC)Class, January 1, 1959 through December 31, 1976; Bulletin No. 07-17, Processing Claims for the General Atomics Special Exposure Cohort (SEC) class, January 1, 1960 through December 31, 1969; Bulletin No. 07-23, Processing Claims for a new Special Exposure Cohort (SEC) Class for covered employees of the Los Alamos National Laboratory (LANL), March 15, 1943 through December 31, 1975; Bulletin No. 07-25, Processing claims for a new Special Exposure Cohort (SEC) class for the Dow Chemical Company (Madison Site) in Madison, IL, from January 1, 1957 through December 31, 1960**

Subject: SEC coding

Background: New SEC coding instruction was incorporated into recent SEC bulletins to better track the development action taken by the District/Final Adjudication Branch (FAB) offices on potential SEC cases. In particular, the reason code "NA" (No Action Necessary) was created to identify a case that the adjudicator has reviewed and determined does not meet the SEC criteria or where there is no need to for NIOSH to perform a partial dose reconstruction.

This bulletin provides instruction for the use of “NA” (No Action Necessary) as it pertains to the above-noted prior bulletins and establishes corresponding reason codes.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; EEOICPA Bulletin No.07-15, Processing Claims for Allied Chemical Corporation Plant Special Exposure Cohort (SEC)Class, January 1, 1959 through December 31, 1976; EEOICPA Bulletin No. 07-17, Processing Claims for the General Atomics Special Exposure Cohort (SEC) class, January 1, 1960 through December 31, 1969; EEOICPA Bulletin No. 07-23, Processing Claims for a new Special Exposure Cohort (SEC) Class for covered employees of the Los Alamos National Laboratory (LANL), March 15, 1943 through December 31, 1975; EEOICPA Bulletin No. 07-25, Processing claims for a new Special Exposure Cohort (SEC) class for the Dow Chemical Company (Madison Site) in Madison, IL, from January 1, 1957 through December 31, 1960

Purpose: To provide guidance on the proper use of the “NA” reason code for reporting and tracking purposes.

Applicability: All staff.

Actions:

1. When each respective bulletin noted above was issued, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) provided the District/Final Adjudication Branch (FAB) offices with a comprehensive list of cases to be reviewed for SEC eligibility.

For cases on the comprehensive list that have been reviewed and where it is determined that no action needs to be taken (either a new recommended decision to accept based on the SEC, or return to NIOSH, or a FAB reversal or remand) the CE/FAB HR must write a brief memo to the file explaining that the case was reviewed under the respective bulletin, no additional action was necessary, and why. A case classified as not requiring any action is a case that does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction.

The CE must then code “NA” (No Action Necessary) in ECMS B and then select the appropriate reason code from the reason code drop down list. The following corresponding reason codes have been added to the drop down list in ECMS B:

Reason Code “715”	Allied Chemical (Bulletin 07-15)
Reason Code “717”	General Atomics (Bulletin 07-17)
Reason Code “723”	LANL (Bulletin 07-23)
Reason Code “725”	Dow Chemical (Bulletin 07-25)

The status effective date of the “NA” code is the date of the memo to the file stating review is complete and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the “NA” and its corresponding reason code is not entered initially. The “NA” code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the comprehensive list that are still with NIOSH, the CE enters the “NA” code only after the CE determines that the case does not meet the SEC criteria. These cases will remain at NIOSH for completion of a partial dose reconstruction.

If a case is reviewed under multiple lists for different SECs, a “NA” code (and accompanying documentation) must be entered along with the appropriate drop down reason code each time the case is reviewed and it is determined that no action needs to be taken under the bulletin.

Please note that if the CE discovers the claimant(s) is/are deceased, the CE must still enter the “NA” code in addition to the closure code. The status effective date is the date of the memorandum

to file.

2. The comprehensive list not only identifies cases requiring review for SEC eligibility, it also serves as a means of tracking progress. For tracking purposes, the list becomes the "pending" list. The objective is to successfully and accurately review cases and enter appropriate ECMS coding which will result in "the case being removed from the pending list." In other words, certain ECMS codes act as an indicator that the initial review was completed and/or that subsequent action was taken. The following are examples of subsequent actions, as tracked in ECMS B coding, which would remove a case from the pending list.

1. Any recommended decision/final decision on or after the SEC effective date
2. The case is sent to NIOSH for dose reconstruction after the SEC effective date
3. The case is closed after the SEC effective date
4. The case is reviewed and the CE determines that no additional action is required under the respective SEC bulletin (as denoted by the "NA" code in ECMS B)

ECMS coding is at the claim level. Failure to input a code that will remove the case from the pending list on even one claim associated with a case, will result in the case still showing up as still "pending" review or action. In addition, the "NA" coding is specifically tied to the comprehensive list generated by DEEOIC. The "NA" code and its corresponding reason code is restricted to ECMS B because the comprehensive review list is derived from Part B data.

3. Since most cases on the comprehensive lists (sent with the issuance of the prior bulletins) should already have subsequent action completed, the DEEOIC will provide the District Office/FAB with a pending list of cases that still require review by the District Office/FAB. This pending list will be updated and sent weekly by the Branch of Automated Services (BAS) to the District Directors and FAB managers via E-mail. Cases on the pending list must be reviewed to determine if any further action is necessary under their respective bulletins. If no further action is necessary, the "NA" (No Action Necessary) code with the corresponding reason code can now be entered in ECMS B in accordance with this bulletin. All cases on the pending list for these four SEC classes must be reviewed and/or subsequent action taken to remove the case from the pending list.

4. Actions described above for the cases on the pending list for these four SEC classes should be completed within **30** days of the date of this Bulletin.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

**08-23 NO BULLETIN RELEASED**

**08-24 Chapman Valve, Argonne National Laboratory – West, General Steel Industries, and the Huntington Pilot Plant (Reduction Pilot Plant) Program Evaluation Reports.**

EEOICPA BULLETIN NO.08-24

Issue Date: May 9, 2008

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Effective Date: May 9, 2008

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Expiration Date: May 9, 2009

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Subject: Chapman Valve, Argonne National Laboratory – West, General Steel Industries, and the Huntington Pilot Plant (Reduction Pilot Plant) Program Evaluation Reports.

Background: On September 20, 2007, NIOSH released two separate Program Evaluation Reports (PERs) addressing Technical Basis Document (TBD) revisions; OCAS-PER-022, entitled “Chapman Valve TBD Revision,” which includes a revision to the internal dose methodology; and OCAS-PER-023, entitled “Argonne National Lab – West,” which includes a revision to the default frequency of x-ray examinations between 1954 and 1974. On September 25, 2007, NIOSH issued OCAS-PER-024, entitled “General Steel Industries TBD Approval.” This PER involved a revision to the external dose to Radiographers. On September 28, 2007, NIOSH issued OCAS-PER-025, entitled “Huntington Pilot Plant TBD Revision,” which provides for an estimate of shallow dose (electron dose) that did not appear in the original TBD version.

NIOSH issued the PERs to document the changes in the TBDs for these particular sites and their potential effect on previously completed dose reconstructions. Since the revisions to the TBDs change the dose reconstruction methodology by which dose reconstructions are performed, NIOSH has requested the return of several cases for a new dose reconstruction. A copy of each PER is included as **Attachment 1**.

A list of cases that are potentially affected by the release of the PERs identified above has been generated. All of the cases on the list have a final decision issued and therefore require reopening. The comprehensive list of cases will be distributed to the appropriate district offices under separate cover.

References: NIOSH document, OCAS-PER-022, “Chapman Valve TBD Revision,” effective September 20, 2007; OCAS-PER-023, “Argonne National Lab – West TBD Revision,” effective September 20, 2007; OCAS-PER-024, “General Steel Industries TBD Approval,” effective September 25, 2007; and OCAS-PER-025, “Huntington Pilot Plant,” effective September 28, 2007.

Purpose: To provide procedures for processing claims affected by NIOSH’s Program Evaluation Reports.

Applicability: All staff.

Actions:

1. In the exercise of the Director’s discretion over the reopening process, the Director is delegating limited authority to the District Directors to sign Director’s Orders for reopening. This delegated authority is limited to reopenings for those cases that are potentially affected by the PERs established for the Chapman Valve, Argonne National Lab – West, General Steel Industries, and Huntington Pilot Plant TBD revisions. The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. If the District Director is unsure of whether the delegated authority to reopen applies, the case should be referred to the National Office.
2. For those cases that have a final decision to deny based on a less than 50% Probability of Causation, the responsible District Director issues a Director’s Order vacating the final decision and reopening the claim. The Director’s Order states that the case is being reopened as a result of the change in scientific methodology by which the dose reconstruction is performed by NIOSH, and that a new dose reconstruction is necessary based on guidance provided in OCAS-PER-022 (Chapman Valve), OCAS-PER-023 (Argonne National Lab – West), OCAS-PER-024 (General Steel Industries), or OCAS-PER-025 (Huntington Pilot Plant), as appropriate. The District Director enters the status code “MN” (NO Initiates Review for Reopening) into ECMS B with a status

effective date as the effective date of this bulletin. If the District Director is also reopening Part E, the “MN” code is also input in ECMS E.

For all reopenings per this bulletin, upon completing the Director’s Order to reopen the claim, the District Director enters status code “MD” (Claim Reopened – File Returned to DO) into ECMS B to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “MZ” status code is not necessary.) The status effective date of the “MD” code is the date of the Director’s Order. If the Director’s Order reopens the Part E claim, the “MD” code is also input in ECMS E.

Please note that while the “MD” code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been in this specific circumstance.

3. The Claims Examiner (CE) then prepares the case for a return to NIOSH for a new dose reconstruction. When referring these cases to NIOSH for a new dose reconstruction, a request to the National Office Health Physicist is not required. Instead, the Claims Examiner (CE) completes an amended NIOSH Referral Summary Document (ANRSD) and forwards the ANRSD to the Public Health Advisor (PHA) assigned to the district office at NIOSH. The ANRSD should include the following statement in the “DOL Information” section, “Rework request due to the release of **[identify appropriate PER]** and any other changes.” The CE also:

- a. Sends a letter to the claimant explaining that the case has been returned to NIOSH for a new dose reconstruction as a result of a change in the dose reconstruction methodology. A sample letter to the claimant is included as **Attachment 2**.
- b. Sends a copy of this letter to the PHA at NIOSH assigned to the DO with the weekly DO submissions to NIOSH. The dates on the ANRSD and the letter to the claimant must both be the same, since this will be the date used for the status code entry into ECMS. The CE enters status code “NI” (Sent to NIOSH) into ECMS B and selects the “PEP” (Rework based on Program Evaluation Plan) reason code.

The “NI” status code should only be entered in ECMS E after toxic exposure development is complete and the CE cannot accept causation. In that case the CE creates a memorandum to file stating that toxic exposure development is complete. The CE then enters status code “NI-PEP” into ECMS E with the date of the memorandum as the status effective date.

(Note: Since this is considered a new dose reconstruction, the CE should not change the existing NR/DR status code to NR/RW as typically done for rework cases. Furthermore, if a POC value is already entered into ECMS, the CE should not delete the POC. The new Probability of Causation (POC) will simply be updated into both ECMS B and E once it is calculated.)

Upon receipt of the revised dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “NR” (Received from NIOSH) into ECMS B and selects the “DR” (Dose Reconstruction Received-POC) reason code. The status effective date is the date the dose reconstruction is date stamped into the district office. If the CE had previously entered “NI” in ECMS E, the CE also enters codes “NR” and “DR” into ECMS E. If the case is an E/B case, the CE enters the Probability of Causation into ECMS B and ECMS E regardless of whether an “NI” status code had previously been entered.

4. All cases on the DEEOIC generated list must be reviewed to determine if it qualifies for a return to NIOSH for a new dose reconstruction. If after review, the adjudicator determines that a case on the list does not require any action to be taken, the CE/FAB HR must write a brief memo to the file that explains the case was reviewed under this bulletin, no additional action is necessary, and why. A case classified as not requiring any action is a case that does not meet the criteria for a return to NIOSH, the case is already at NIOSH, or NIOSH has determined that a dose reconstruction is not necessary.

The CE must then code “NA” (No Action Necessary) and select the appropriate reason code from

the reason code drop down list. The “NA” coding is specifically tied to the review list generated by DEEOIC and the “NA” code is restricted to ECMS B only because the review list is derived from Part B data. For cases that were reviewed under this bulletin and require no additional action, the reason code that must be selected is “24P” (Reviewed under Bulletin 08-24). Even if the case is an E/B case, the NA-24P must be coded into ECMS B only. The status effective date of the “NA” code is the date of the memo to the file stating review is complete and the CE has determined there is no further action necessary.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “NA-24P” code in addition to the closure code. The status effective date for the “NA” coding is the date of the memorandum to file.

5. It is possible that during the course of the review of these cases, NIOSH may supply the National Office with individual Program Evaluation Reports (PER) or Individual Case Evaluations (ICE) for cases (or a PER that represents a population of cases) potentially affected by this PER. The individual PER or ICE will serve as documentation that the case file has been reviewed by NIOSH and that NIOSH has determined that:

- the change outlined in the PER affects the outcome of the claim and a return to NIOSH for a new dose reconstruction is necessary, or
- there are multiple changes that affect the dose reconstruction and a return to NIOSH for a new dose reconstruction is necessary, or
- the change outlined in the PER does not affect the dose reconstruction, nor do any other changes affect the dose reconstruction and a return to NIOSH is not necessary.

If NIOSH provides DEEOIC with an individual case PER or ICE, the CE enters the code “LNR” (Letter/Response Received from NIOSH) and “824” reason code from the reason code drop down menu into ECMS B. The claim status date of the code is the date the response is received in the appropriate office, which is the date of the date stamp. If the “NI” status code had previously been entered in ECMS E, the CE also enters codes “LNR” and “824” into ECMS E.

If the individual case PER or ICE indicates that the case should “Return to NIOSH” for a new dose reconstruction, the District Director issues a Director’s Order (if appropriate) reopening the case. Upon reopening, the district office should refer the case to NIOSH for a new dose reconstruction as instructed in this bulletin.

If the individual case PER or ICE indicates that the case was “Evaluated with No Change” but does not include a dispositive statement, the District Director issues a Director’s Order referring the case to NIOSH for a new dose reconstruction. In order to be dispositive, NIOSH must indicate that they have evaluated the case against this PER and any other changes, and determined that a new dose reconstruction is not necessary. If the individual case PER or ICE is dispositive, then no action is necessary and the CE enters the “NA” status code into ECMS B as instructed in Action Item #4.

Individual case PERs or ICEs received in the National Office, will be forwarded to the appropriate district office for inclusion in the case file.

6. If a claimant requests a reopening of his/her claim as a result of the PERs released for Chapman Valve, Argonne National Lab – West, General Steel Industries, or the Huntington Pilot Plant, and the case is not on the list referenced in the Background Section of this Bulletin the District Director prepares a memorandum to the Director of DEEOIC and forwards the case file to National Office for review using the standard reopening process.

7. In carrying out the policy outlined in this Bulletin, personnel must understand that the comprehensive list not only provides the "to do" list of cases requiring attention, but it also serves as a means of tracking progress. As part of tracking progress, the list becomes the "pending" list and it is the goal to successfully and accurately review cases and enter appropriate ECMS coding which will result in “the case being removed from the list” (in other words, will result in an indicator for

reporting purposes showing that the initial review was completed and/or that subsequent action was taken). ECMS coding is at the claim level and so the failure to input a code that will remove the case from the pending list on even one claim associated with a case, will result in the case still showing up as still pending review or action. In terms of ECMS coding, it is crucial to be thorough and precise. The most obvious example of this is the use of the "C2" (administrative closure) code. "C2" will not remove a case from the pending list; the "NA" code must be entered for each claim to which it applies after input of the "C2" code. In terms of codes that will remove cases off the pending list, any "NI" code entered after the bulletin effective date will remove it and proper use of the "NA" code will remove it from the pending list. These are not the only codes that will remove cases from the pending list, but rather are provided as examples to show their importance. Any additional questions regarding proper ECMS coding must be directed to the Policy Branch.

8. The operational plan goal for the list of cases identified for review as part of a new SEC class, PEP, or PER is to complete the Part B recommended decision, return to NIOSH, or determine that no action is necessary within 45 days of the date of this Bulletin for at least 50% of the cases, and within 90 days for 95% of the cases. All cases requiring action due to this Bulletin should be completed within 120 days.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

Distribution List No. 1: All DEEOIC Employees

Distribution List No. 7: Resource Centers

### **08-25 NIOSH's OCAS-PER-011, entitled "K-25 TBD and TIB Revisions".**

EEOICPA BULLETIN NO.08-25

Issue Date: June 16, 2008

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Effective Date: June 16, 2008

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Expiration Date: June 16, 2009

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Subject: NIOSH's OCAS-PER-011, entitled "K-25 TBD and TIB Revisions."

Background: On November 24, 2004, the National Institute for Occupational Safety and Health (NIOSH) issued the external section of the Technical Basis Document (TBD) for K-25 that contained a tabulation of the dose received by K-25 monitored workers to be used as co-worker dose for unmonitored workers. Thereafter, on May 31, 2005, the Technical Information Bulletin (TIB) was modified to increase the external co-worker values to account for missed dose when conducting dose reconstructions. Consequently, on September 26, 2007, NIOSH issued OCAS-PER-011, "K-25 TBD and TIB Revisions." A copy of OCAS-PER-011 is included as **Attachment 1**.

Since the changes resulting from OCAS-PER-011 may affect the outcome of the claim, the previous

dose reconstructions for certain cases are no longer valid. Consequently, a new radiation dose reconstruction is necessary. The purpose of the Program Evaluation Report (PER) is to evaluate the effect of the revisions to the TBD and TIB on previously completed dose reconstructions.

This bulletin provides guidance on processing cases that are potentially affected by the release of OCAS-PER-011 where:

- employment is verified at K-25, and
- a dose reconstruction was performed between November 24, 2004 and May 21, 2005 using external co-worker data, or
- a dose reconstruction was performed between May 21, 2005 and August 31, 2006 using external co-worker data and the employee is deemed a construction trade worker, and
- the PoC resulted in less than 50%.

A list of cases that are potentially affected by the release of the PER identified above has been generated. The comprehensive list of cases will be distributed to the appropriate district offices under separate cover.

References: NIOSH document, OCAS-PER-011, "K-25 TBD and TIB Revisions," approved on September 26, 2007 found at <http://198.246.98.21/niosh/ocas/pdfs/pers/oc-per11-r0.pdf>.

Purpose: To provide procedures for processing claims affected by NIOSH's OCAS-PER-011.

Applicability: All staff.

Actions:

1. A claims examiner (CE) who receives a claim involving verified employment at K-25 should verify whether the case can be considered under the Special Exposure Cohort (SEC) established for the Oak Ridge Gaseous Diffusion Plant. If the case does not qualify under the SEC, then the CE should proceed with reviewing the case as outlined below.
2. For those cases currently in posture for a recommended decision based on a dose reconstruction with verified employment at K-25, the CE must determine whether external co-worker data was used in the dose reconstruction. If so, and the dose reconstruction was performed between November 24, 2004 and May 21, 2005 and the PoC resulted in less than 50%, the CE is to return those cases to NIOSH for a new dose reconstruction. Similarly, if the dose reconstruction was performed between May 21, 2005 and August 31, 2006 using external co-worker data; and the employee is deemed a construction trade worker; and the PoC resulted in less than 50%, the CE is to return those cases to NIOSH for a new dose reconstruction as well. The "Calculations Performed by" date found on the most recent NIOSH Report of Dose Reconstruction under the Energy Employees Occupational Illness Compensation Program Act on file is used to determine the date the dose reconstruction was performed.

To determine whether external co-worker data was used in the dose reconstruction, the CE must review the most recent "NIOSH Report of Dose Reconstruction under the EEOICPA" on file.

While the CE should review the report in its entirety, the sections most likely to indicate whether external co-worker data was used in the dose reconstruction are the "Information Used" or "External Dose" sections of the report. In these sections of the report, NIOSH will likely indicate that the employee's external dosimetry records were not available and that the external dose assigned was based on co-worker data or that individual dosimeter dose was not available and that the dosimeter results for "employees who were monitored" was used.

To assist the CE in determining whether the employee is deemed a construction trade worker, the following lists of trades may be utilized as examples of job titles that are recognized in the construction field:

- list of trades as identified in **Attachment 2**, or
- list of trades identified under the Labor Categories found under “Construction” in the Site Exposure Matrix (SEM).

In utilizing SEM, the CE should select “Construction (all sites)” from the “Site” drop down menu and press “select.” This will bring up a screen that allows a search for specific information related to construction. Under Searches Specific to the Selected Site, there is a section called “Labor Category” which allows the CE to identify labor categories specific to the construction field. A search can be conducted by “Labor Category Information” and/or “Labor Category Alias.” Both options should be utilized to assist in establishing construction trade work.

The lists of trades identified above are not all-encompassing. As such, it is not necessary for the CE to ensure that the employee’s position directly matches that of one of the titles found in Attachment 2 or the SEM, merely that the description of the employees’ position is one that can reasonably be considered a construction worker.

If the case does not meet the parameters for a new dose reconstruction, no action is necessary and the CE enters the “NA” (No Action Necessary) status code and appropriate reason code into ECMS B as instructed in Action Item #10.

3. When referring these cases to NIOSH for a new dose reconstruction, a request to the National Office Health Physicist is not required. Instead, the CE should complete an amended NIOSH Referral Summary Document (ANRSD) and forward the ANRSD to the Public Health Advisor (PHA) assigned to the district office at NIOSH. The ANRSD should include the following statement in the “DOL Information” section, “Rework request due to the release of OCAS-PER-011 and any other changes.” The CE should also:

- a. Send a letter to the claimant explaining that the case has been returned to NIOSH for a new dose reconstruction as a result of a change in the dose reconstruction methodology. A sample letter to the claimant is included as **Attachment 3**.
- b. Send a copy of this letter to the PHA at NIOSH assigned to the DO with the weekly DO submissions to NIOSH. The dates on the ANRSD and the letter to the claimant must both be the same, since this will be the date used for the status code entry into ECMS. The CE enters status code “NI” (Sent to NIOSH) into ECMS B and selects the “PEP” (Rework based on Program Evaluation Plan) reason code.

The “NI” status code should only be entered in ECMS E after toxic exposure development is complete and the CE cannot accept causation. In that case the CE creates a memorandum to file stating that toxic exposure development is complete. The CE then enters status code “NI-PEP” into ECMS E with the date of the memorandum as the status effective date.

(Note: Since this is considered a new dose reconstruction, the CE should not change the existing NR/DR status code to NR/RW as typically done for rework cases. Furthermore, if a PoC value is already entered into ECMS, the CE should not delete the PoC. The new PoC will simply be updated once it is calculated.)

Upon receipt of the revised dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “NR” (Received from NIOSH) into ECMS B and selects the “DR” (Dose Reconstruction Received-POC) reason code. The status effective date is the date the dose reconstruction is date stamped into the district office. If the CE had previously entered “NI” in ECMS E, the CE also enters codes “NR” and “DR” into ECMS E. If the case is an E/B case, the CE enters the Probability of Causation into ECMS B and ECMS E regardless of whether an “NI” status code had previously been entered.

4. For cases currently pending a final decision at the Final Adjudication Branch (FAB), the Hearing Representative/CE is to identify those cases with verified employment at K-25 that have a

recommended decision to deny based on a PoC of less than 50%. If the dose reconstruction was performed between November 24, 2004 and May 21, 2005 using external co-worker data, or between May 21, 2005 and August 31, 2006 using external co-worker data and the employee is deemed a construction trade worker (see Action Item #2 for guidance to make this determination), the recommended decision should be remanded to the district office in the usual manner. The Remand Order should direct the district office to refer the case back to NIOSH for a new dose reconstruction as a result of the release of OCAS-PER-011.

The Hearing Representative/CE enters status code "F7" (FAB Remand) in ECMS B/E (as appropriate) with an "OTH" (No D.O. Error – Other) reason code. The status effective date will be the date of the FAB remand.

If the case does not meet the parameters for a new dose reconstruction, no action is necessary and the Hearing Representative/CE enters the "NA" (No Action Necessary) status code and appropriate reason code into ECMS B as instructed in Action Item #10.

5. The following statement should be included in the Remand Order regarding the return of the case to NIOSH for a new radiation dose reconstruction.

On September 26, 2007, NIOSH issued OCAS-PER-011, entitled "K-25 TBD and TIB Revisions." The changes

outlined in OCAS-PER-011 for K-25 not only affect the underlying scientific methodology by which the dose reconstruction was performed, but could potentially affect the outcome of a claim.

The DEEOIC is obligated to ensure that the application of the dose reconstruction methodology is administered in a fair and consistent manner. Given the revision to the underlying scientific assumptions by which the dose reconstruction was performed by NIOSH, and the release of OCAS-PER-011, the prior dose reconstruction/PoC calculation on your claim is now invalid. While the modification to the dose reconstruction methodology may not impact the outcome of your claim, it is necessary for the claim to undergo a new dose reconstruction by NIOSH.

6. In the exercise of the Director's discretion over the reopening process, the Director is delegating limited authority to the District Director to sign Director's Orders for reopening. This delegated authority is limited to reopenings for those cases that are affected by the PER established for the K-25 TBD and TIB revisions. The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. If the District Director is unsure of whether the delegated authority to reopen applies, the case should be referred to the National Office.

7. For those cases that have a final decision to deny based on a less than 50% PoC, where employment is verified at K-25 and the dose reconstruction was performed between November 24, 2004 and May 21, 2005 using external co-worker data, or between May 21, 2005 and August 31, 2006 using external co-worker data and the employee is deemed a construction trade worker (see Action Item #2 for guidance to make this determination), the responsible District Director should issue a Director's Order vacating the final decision and reopening the claim. The Director's Order should state that the case is being reopened as a result of the change in scientific methodology by which the dose reconstruction is performed by NIOSH, and that a new dose reconstruction is necessary based on guidance provided in OCAS-PER-011.

The District Director enters the status code "MN" (NO Initiates Review for Reopening) into ECMS B with a status effective date as the effective date of this bulletin. If the District Director is also reopening Part E, the "MN" code is also input in ECMS E.

For all reopenings per this bulletin, upon completing the Director's Order to reopen the claim, the District Director enters status code "MD" (Claim Reopened – File Returned to DO) into ECMS B to reflect that the case has been reopened and is in the district office's jurisdiction. (The "MZ" status code is not necessary.) The status effective date of the "MD" code is the date of the Director's Order. If the Director's Order reopens the Part E claim, the "MD" code is also input in ECMS E.

Please note that while the “MD” code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been in this specific circumstance.

If the case does not meet the parameters for a new dose reconstruction, no action is necessary and the CE enters the “NA” (No Action Necessary) status code and appropriate reason code into ECMS B as instructed in Action Item #10.

8. It is possible that during the course of the review of these cases, NIOSH may supply the National Office with individual Program Evaluation Reports (PER) or Individual Case Evaluations (ICE) for cases (or a PER that represents a population of cases) potentially affected by this PER. The individual PER or ICE will serve as documentation that the case file has been reviewed by NIOSH and that NIOSH has determined that:

- the change outlined in the PER affects the outcome of the claim and a return to NIOSH for a new dose reconstruction is necessary, or
- there are multiple changes that affect the dose reconstruction and a return to NIOSH for a new dose reconstruction is necessary, or
- the change outlined in the PER does not affect the dose reconstruction, nor do any other changes affect the dose reconstruction and a return to NIOSH is not necessary.

If NIOSH provides DEEOIC with an individual case PER or ICE, the CE enters the code “LNR” (Letter/Response Received from NIOSH) and “825” reason code from the reason code drop down menu into ECMS B. The claim status date of the code is the date the response is received in the appropriate office, which is the date of the date stamp. If the “NI” status code had previously been entered in ECMS E, the CE also enters codes “LNR” and “825” into ECMS E.

If the individual case PER or ICE indicates that the case should “Return to NIOSH” for a new dose reconstruction, the District Director issues a Director’s Order (if appropriate) reopening the case. Upon reopening, the district office should refer the case to NIOSH for a new dose reconstruction as instructed in this bulletin.

If the individual case PER or ICE indicates that the case was “Evaluated with No Change” but does not include a dispositive statement, the District Director issues a Director’s Order referring the case to NIOSH for a new dose reconstruction. In order to be dispositive, NIOSH must indicate that they have evaluated the case against this PER and any other changes, and determined that a new dose reconstruction is not necessary. If the individual case PER or ICE is dispositive, then no action is necessary and the CE enters the “NA” status code and appropriate reason code into ECMS B as instructed in Action Item #10.

Individual case PERs or ICEs received in the National Office, will be forwarded to the appropriate district office for inclusion in the case file.

9. If a claimant requests a reopening of his/her claim as a result of OCAS-PER-011, and the case is not one that is identified on the comprehensive list of cases distributed to the district offices, the case file must be evaluated to determine whether or not the claim warrants a reopening. Simply identifying a PER is not considered new evidence and is not sufficient to warrant a reopening. A reopening should be granted only if the evidence of file meets the parameters for reopening as outlined in Action Item #7.

Upon receipt of the claimant’s request for reopening, the District Director enters status “MC” (Claimant Requests Reopening) in ECMS. The status effective date is the postmark date, if available, or the date the request is received in the DO or FAB, whichever is earlier. Following the input of the “MC” status code, the District Director should issue a Director’s Order reopening the claim following the procedures as outlined in this Bulletin.

For all claimant requests for reopening as a result of the K-25 PER that do not meet the criteria for

reopening as outlined in this Bulletin, the District Director should prepare a memorandum to the Director of DEEOIC and forward the case file to National Office for review. The District Director enters status code "MC" (Claimant Requests Reopening) and "MI" (District Director Requests Reopening) in ECMS B/E as appropriate to indicate that the file is being forwarded to National Office for review under the reopening process. The status effective date for the "MI" code is the date of the District Director's memo to the Director of DEEOIC.

10. All cases on the DEEOIC generated list must be reviewed to determine if it qualifies for a return to NIOSH for a new dose reconstruction. If after review, the adjudicator determines that a case on the list does not require any action to be taken, the CE/FAB HR must write a brief memo to the file that explains the case was reviewed under this bulletin, no additional action is necessary, and why. A case classified as not requiring any action is a case that does not meet the criteria for a return to NIOSH, the case is already at NIOSH, or NIOSH has determined that a dose reconstruction is not necessary.

The CE must then enter status code "NA" (No Action Necessary) into ECMS B and select the appropriate reason code from the reason code drop down list. The "NA" coding is specifically tied to the review list generated by DEEOIC and the "NA" code is restricted to ECMS B only because the review list is derived from Part B data. For cases that were reviewed under this bulletin and require no additional action, the reason code that must be selected is "25P" (Reviewed under Bulletin 08-25). Even if the case is an E/B case, the NA-25P must be coded into ECMS B only. The status effective date of the "NA" code is the date of the memo to the file stating review is complete and the CE has determined there is no further action necessary.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the "NA-25P" code in addition to the closure code. The status effective date for the "NA" coding is the date of the memorandum to file.

11. In carrying out the policy outlined in this Bulletin, personnel must understand that the comprehensive list not only provides the "to do" list of cases requiring attention, but it also serves as a means of tracking progress. As part of tracking progress, the list becomes the "pending" list and it is the goal to successfully and accurately review cases and enter appropriate ECMS coding which will result in "the case being removed from the list" (in other words, will result in an indicator for reporting purposes showing that the initial review was completed and/or that subsequent action was taken). ECMS coding is at the claim level and so the failure to input a code that will remove the case from the pending list on even one claim associated with a case, will result in the case still showing up as still pending review or action. In terms of ECMS coding, it is crucial to be thorough and precise. The most obvious example of this is the use of the "C2" (administrative closure) code. "C2" will not remove a case from the pending list; the "NA" code must be entered for each claim to which it applies after input of the "C2" code. In terms of codes that will remove cases off the pending list, any "NI" code entered after the bulletin effective date will remove it and proper use of the "NA" code will remove it from the pending list. These are not the only codes that will remove cases from the pending list, but rather are provided as examples to show their importance. Any additional questions regarding proper ECMS coding must be directed to the Policy Branch.

12. The operational plan goal for the lists of cases identified for review as part of a new SEC class, PEP, or PER is to complete the Part B recommended decision, send a letter to NIOSH, response received from NIOSH, return to NIOSH, or determine that no action is necessary within 45 days of the date of this Bulletin for at least 50% of the cases, and within 90 days for 95% of the cases. All cases requiring action due to this Bulletin should be completed within 120 days.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

Distribution List No. 1: All DEEOIC Employees

Distribution List No. 7: Resource Centers

**08-26 OCAS-PER-029, Hanford/Pacific Northwest National Laboratory (PNNL) Program Evaluation Report.**

EEOICPA BULLETIN NO.08-26

Issue Date: June 16, 2008

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Effective Date: June 16, 2008

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Expiration Date: June 16, 2009

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**Subject:** OCAS-PER-029, Hanford/Pacific Northwest National Laboratory (PNNL) Program Evaluation Report.

**Background:** Although Hanford and PNNL are two separate facilities, the same dose reconstruction methodology is utilized for both. Several documents which govern Hanford/PNNL dose reconstructions have been revised by the National Institute for Occupational Safety and Health (NIOSH). On December 18, 2007, NIOSH issued OCAS-PER-029, "Hanford TBD (Technical Basis Document) Revisions" (**Attachment 1**).

OCAS-PER-029 indicates that technical changes to the documents which govern Hanford/PNNL dose reconstructions were reviewed to determine if any previously completed dose reconstruction would result in an increased dose using the current methods. As of June 22, 2007, all of the revisions to the applicable documents had been effectuated. Therefore, cases with dose reconstructions performed prior to June 22, 2007 are the claims at issue.

There were 1,190 Hanford or PNNL claims completed prior to June 22, 2007 with a Probability of Causation (PoC) below 50%. Hence, the dose reconstruction methodology of each will be reviewed to determine if a new dose reconstruction is necessary. OCAS-PER-029 indicates that NIOSH will provide DOL with the list of 1,190 claims, as well as a determination on each claim as to whether a new dose estimate is required. Documentation for each claim not requiring a new dose reconstruction will provide the basis for that determination.

This bulletin provides guidance on handling those cases that have been identified as potentially affected by the release of OCAS-PER-029, "Hanford TBD Revisions."

A comprehensive list of potentially affected cases will be distributed to the appropriate district and FAB (Final Adjudication Branch) offices under separate cover. Offices must review the cases on the list that are in their locations and take appropriate actions, as outlined in this bulletin.

It is possible that cases on the list, when pulled and reviewed, may not meet the criteria for obtaining new dose reconstructions. Conversely, it is possible that cases not on the list are nonetheless impacted by this bulletin and require a new dose reconstruction.

**References:** OCAS-PER-029, "Hanford TBD Revisions" viewed at:

<http://www.cdc.gov/niosh/ocas/pdfs/pers/oc-per29-r0.pdf>

Purpose: To provide procedures for processing claims that are potentially affected by the release of OCAS-PER-029 with regard to Hanford and PNNL claims.

Applicability: All staff.

Actions:

1. For those cases on the comprehensive list that are currently in posture for a recommended decision, the CE (Claims Examiner) must determine whether the previous dose reconstruction could be affected by the release of OCAS-PER-029. To do so, the CE must first confirm that the employee is/was employed at Hanford and/or PNNL. If so, the CE must then determine whether the dose reconstruction was conducted prior to June 22, 2007 (as determined by the "Calculations Performed by" date found on the most recent NIOSH Report of Dose Reconstruction). For those cases with employment verified at Hanford and/or PNNL with a dose reconstruction conducted prior to June 22, 2007 which resulted in a less than 50% PoC, the CE returns those cases to NIOSH for a new dose reconstruction.

Any case with a dose reconstruction conducted after this date or where employment is not confirmed for Hanford or PNNL is not affected by the release of OCAS-PER-029. As such, no action is necessary. The CE codes ECMS as instructed in Action #8.

2. When referring these cases to NIOSH for further analysis, a request to the National Office Health Physicist is not required. Instead, the CE should complete an amended NIOSH Referral Summary Document (ANRSD) and forward the ANRSD to the Public Health Advisor (PHA) assigned to the district office at NIOSH. The ANRSD should include the following statement in the "DOL Information" section, "Rework request due to the release of OCAS-PER-029 and any other changes." The CE should also:

a. Send a letter to the claimant explaining that the case has been returned to NIOSH for a new dose reconstruction as a result of a change in the dose reconstruction methodology as outlined in the OCAS-PER-029. A sample letter to the claimant is included as **Attachment 2**.

b. Send a copy of this letter to the PHA at NIOSH

assigned to the DO along with the weekly DO submissions to NIOSH. The date on the ANRSD and the letter to the claimant must both be the same, since this will be the date used for the status code entry into ECMS. The CE enters status code "NI" (Sent to NIOSH) in ECMS B and selects the "PEP" (Rework based on Program Evaluation Plan) reason code.

The "NI" status code should only be entered in ECMS E after toxic exposure development is complete and the CE cannot accept causation. In that case, the CE creates a memorandum to the file stating that toxic exposure development is complete. The CE then enters status code "NI-PEP" into ECMS E with the date of the memorandum as the status effective date.

(Note: Since this is considered a new dose reconstruction, the CE should not change the existing NR/DR status code to NR/RW as typically done for rework cases. Furthermore, if a PoC value is already entered into ECMS, the CE should not delete the PoC. The new PoC will simply be updated into both ECMS B and E once it is calculated).

Upon receipt of the revised dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code "NR" (Received from NIOSH) in ECMS B and selects the "DR" (Dose Reconstruction Received-PoC) reason code. The status effective date will be the date the dose reconstruction is date stamped into the district office. If the CE had previously entered "NI" in ECMS E, the CE also enters codes "NR" and "DR" into ECMS E. If the case is an E/B case, the CE enters the Probability of Causation into ECMS B and ECMS E regardless of whether an "NI" status code had previously been entered.

3. For cases currently pending a final decision at the FAB, the Hearing Representative/CE must

determine whether the claim is potentially affected by the Hanford PER. If the recommended decision to deny is based on a less than 50% PoC, employment is verified at Hanford or PNNL, and the dose reconstruction was conducted prior to June 22, 2007, the recommended decision should be remanded to the district office in the usual manner. The Remand Order should direct the district office to refer the case back to NIOSH for a new dose reconstruction as a result OCAS-PER-029.

The Hearing Representative/CE enters status code "F7" (FAB Remand) in ECMS B/E (as appropriate) with an "OTH" (No D.O. Error – Other) reason code. The status effective date will be the date of the FAB remand.

If the case does not meet the parameters for a new dose reconstruction, no action is necessary and the Hearing Representative/CE enters the "NA" (No Action Necessary) status code and appropriate reason code into ECMS B as instructed in Action Item #8.

4. The following statement should be included in the Remand Order regarding the return of the case to NIOSH for a new radiation dose reconstruction:

On December 18, 2007, NIOSH issued OCAS-PER-029, "Hanford TBD Revisions." The changes outlined in OCAS-PER-029 not only affect the underlying scientific methodology by which the dose reconstruction was performed, but could potentially affect the outcome of a claim.

The DEEOIC is obligated to ensure that the application of the dose reconstruction methodology is administered in a fair and consistent manner. Given the revision to the underlying scientific assumptions by which the dose reconstruction was performed by NIOSH, and the release of OCAS-PER-029, the prior dose reconstruction/Probability of Causation calculation on your claim is now invalid. While the modification to the dose reconstruction methodology may not impact the outcome of the claim, it is necessary for the claim to undergo a new dose reconstruction by NIOSH.

5. In the exercise of the Director's discretion over the reopening process, the Director is delegating limited authority to the District Directors to sign Director's Orders for reopening. This delegated authority is limited to reopenings for those cases that are potentially affected by the OCAS-PER-029 with regard to the Hanford and PNNL sites. The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. If the District Director is unsure of whether the delegated authority to reopen applies, the case should be referred to the National Office.

6. For those cases that have a final decision to deny based on a less than 50% PoC, the CE must determine whether the claim is potentially affected by the Hanford PER. If employment is verified at Hanford and/or PNNL and the dose reconstruction was performed prior to June 22, 2007, the responsible District Director issues a Director's Order vacating the final decision and reopening the claim. The Director's Order states that the case is being reopened as a result of the change in scientific methodology by which the dose reconstruction is performed by NIOSH, and that a new dose reconstruction is necessary based on guidance provided in OCAS-PER-029.

Upon reopening the claim, the District Director enters status code "MN" (NO Initiates Review for Reopening) into ECMS B with a status effective date as the effective date of this bulletin. If the District Director is also reopening Part E, the "MN" code is also input in ECMS E.

For all reopenings per this bulletin, upon completing the Director's Order to reopen the claim, the District Director enters status code "MD" (Claim Reopened – File Returned to DO) into ECMS B to reflect that the case has been reopened and is in the district office's jurisdiction. (The "MZ" status code is not necessary.) The status effective date of the "MD" code is the date of the Director's Order. If the Director's Order reopens the Part E claim, the "MD" code is also input in ECMS E.

Please note that while the "MD" code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been in this specific circumstance.

Once the case has been reopened, the district office should proceed with a referral to NIOSH for a

new dose reconstruction as instructed in Action Item #2.

7. It is possible that during the course of the review of these cases, NIOSH may supply the National Office with individual Program Evaluation Reports (PER) or Individual Case Evaluations (ICE) for cases (or a PER that represents a population of cases) potentially affected by this PER. The individual PER or ICE will serve as documentation that the case file has been reviewed by NIOSH and that NIOSH has determined that:

- the change outlined in the PER affects the outcome of the claim and a return to NIOSH for a new dose reconstruction is necessary, or
- there are multiple changes that affect the dose reconstruction and a return to NIOSH for a new dose reconstruction is necessary, or
- the change outlined in the PER does not affect the dose reconstruction, nor do any other changes affect the dose reconstruction and a return to NIOSH is not necessary.

If NIOSH provides DEEOIC with an individual case PER or ICE, the CE enters the code “LNR” (Letter/Response Received from NIOSH) and “826” reason code from the reason code drop down menu into ECMS B. The claim status date of the code is the date the response is received in the appropriate office, which is the date of the date stamp. If the “NI” status code had previously been entered in ECMS E, the CE also enters codes “LNR” and “826” into ECMS E.

If the individual case PER or ICE indicates that the case should “Return to NIOSH” for a new dose reconstruction, the District Director issues a Director’s Order (if appropriate) reopening the case. Upon reopening, the district office should refer the case to NIOSH for a new dose reconstruction as instructed in this bulletin.

If the individual case PER or ICE indicates that the case was “Evaluated with No Change” but does not include a dispositive statement, the District Director issues a Director’s Order referring the case to NIOSH for a new dose reconstruction. In order to be dispositive, NIOSH must indicate that they have evaluated the case against this PER and any other changes, and determined that a new dose reconstruction is not necessary. If the individual case PER or ICE is dispositive, then no action is necessary and the CE enters the “NA” status code into ECMS B as instructed in Action Item #8.

Individual case PERs or ICEs received in the National Office will be forwarded to the appropriate district office for inclusion in the case file.

8. Each case on the DEEOIC generated list must be reviewed to determine if it qualifies for a return to NIOSH for a new dose reconstruction. If after review, the adjudicator determines that a case on the list does not require any action to be taken, the CE/FAB HR must write a brief memo to the file that explains the case was reviewed under this bulletin, no additional action is necessary, and why. A case classified as not requiring any action is a case that does not meet the criteria for a return to NIOSH, the case is already at NIOSH, or NIOSH has determined that a dose reconstruction is not necessary.

The CE must code “NA” (No Action Necessary) in ECMS B and select the appropriate reason code from the reason code drop down list. The “NA” coding is specifically tied to the review list generated by DEEOIC and the “NA” code is restricted to ECMS B only because the review list is derived from Part B data. For cases that were reviewed under this bulletin and require no additional action, the reason code that must be selected is “26P” (**Reviewed under Bulletin 08-26**). Even if the case is an E/B case, the **NA-26P** must be coded into ECMS B only. The status effective date of the “NA” code is the date of the memo to the file stating review is complete and the CE has determined there is no further action necessary.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “NA-26P” code in addition to the closure code. The status effective date for the “NA” coding is the

date of the memorandum to file.

9. If a claimant requests a reopening of his/her claim as a result of OCAS-PER-029 and the case is not one that is identified on the comprehensive list of cases distributed to the district offices, the case file must be evaluated to determine whether or not the claim warrants a reopening. Simply identifying a PER is not considered new evidence and is not sufficient to warrant a reopening. A reopening should be granted only if the evidence of file meets the parameters for reopening as outlined in Action Item #6.

Upon receipt of the claimant's request for reopening, the District Office/FAB enters status code "MC" (Claimant Requests Reopening) in ECMS B. If it is an EB case where the potential reopening affects Part E, the "MC" code must also be entered into ECMS E. The status effective date is the postmark date, if available, or the date the request is received in the DO or FAB, whichever is earlier. For cases with multiple claimants, this code is only entered in the claim status history for the claimant(s) who submitted the request. (This is the only code related to Director's Orders that works like this. All other Director's Order codes are coded for all the *active* claimants.)

Once a determination is made by the District Director to reopen the case, the District Director enters the "MD" (Claim reopened, file returned to District Office) status code into ECMS B. If it is an EB case where the reopening request is applicable to Part E, the "MD" code must also be entered into ECMS E. The status effective date of the "MD" code is the date of the Director's Order. These codes have typically been used in the National Office, however their use has been delegated to the District Director in certain circumstances, such as the review of cases under OCAS-PER-029.

For all claimant requests for reopening that do not meet the parameters for reopening as outlined in this Bulletin, or where the District Director is unsure of whether the delegated authority applies, the case should be referred to the National Office. When the case is referred to the National Office, the District Director enters the "MI" (District Director requests reopening) status code into ECMS B to indicate that the file is being forwarded to National Office for review under the reopening process. If it is an EB case where the potential reopening affects Part E, the "MI" code must also be entered into ECMS E. A cover memo outlining the District Director's concerns must be submitted. The status effective date is the date of the District Director's memo to the Director of DEEOIC.

10. In carrying out the policy outlined in this Bulletin, personnel must understand that the comprehensive list not only provides the "to do" list of cases requiring attention, but it also serves as a means of tracking progress. As part of tracking progress, the list becomes the "pending" list and it is the goal to successfully and accurately review cases and enter appropriate ECMS coding which will result in "the case being removed from the list" (in other words, will result in an indicator for reporting purposes showing that the initial review was completed and/or that subsequent action was taken). ECMS coding is at the claim level and so the failure to input a code that will remove the case from the pending list on even one claim associated with a case, will result in the case still showing up as still pending review or action. In terms of ECMS coding, it is crucial to be thorough and precise. The most obvious example of this is the use of the "C2" (administrative closure) code. "C2" will not remove a case from the pending list; the "NA" code must be entered for each claim to which it applies after input of the "C2" code. In terms of codes that will remove cases off the pending list, any "NI" code entered after the bulletin effective date will remove it and proper use of the "NA" code will remove it from the pending list. These are not the only codes that will remove cases from the pending list, but rather are provided as examples to show their importance. Any additional questions regarding proper ECMS coding must be directed to the Policy Branch.

11. The operational plan goal for the lists of cases identified for review as part of a new SEC class, PEP or PER is to complete the Part B recommended decision, an individual case evaluation is received from NIOSH, return to NIOSH, or determine that no action is necessary within 45 days of the date of this Bulletin for at least 50% of the cases, and within 90 days for 95% of the cases. All cases requiring action due to this Bulletin should be completed within 120 days.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC, Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

Distribution List No. 1: All DEEOIC Employees

Distribution List No. 7: Resource Centers

### **08-27 OCAS-PER-027, Clarksville Program Evaluation Report.**

EEOICPA BULLETIN NO.08-27

Issue Date: June 16, 2008

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Effective Date: June 16, 2008

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Expiration Date: June 16, 2009

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Subject: OCAS-PER-027, Clarksville Program Evaluation Report.

Background: On November 14, 2006, the National Institute for Occupational Safety and Health (NIOSH) issued the Clarksville Technical Basis Document (TBD), ORAUT-TKBS-0039. This document also contained guidance for completing claims from the Medina Weapons Storage Area and Modification Center (Medina). Clarksville and Medina are two separate facilities. Clarksville is located in Tennessee, and Medina is located in Texas. However, these facilities were similar in purpose and operation. Prior to the issuance of the Clarksville/Medina TBD, some claims were completed using information which had been developed in anticipation of the TBD. However, some of that information was modified during the TBD comment resolution process which resulted in an increase in the assigned dose. Prior to November 14, 2006, there were 65 Clarksville and Medina claims completed which had a probability of causation below 50%. NIOSH will review these dose reconstructions to determine if the dose assigned is consistent with or higher than the issued TBD. NIOSH will provide the Department of Labor (DOL) with the list of 65 claims as well as a determination on each claim as to whether a new dose estimate is required. Documentation for each claim not requiring a new dose reconstruction will provide the basis for that determination.

As a result of the changes in the Clarksville/Medina assigned dose, NIOSH issued Program Evaluation Report OCAS-PER-027 on October 31, 2007 (**Attachment 1**). This bulletin provides guidance on processing those cases that have been identified as potentially affected by the release of OCAS-PER-027 for the Clarksville/Medina TBD.

A comprehensive list of potentially affected cases will be distributed to the appropriate district and FAB (Final Adjudication Branch) offices under separate cover. Offices must review the cases on the list that are in their locations and take appropriate actions, as outlined in this bulletin.

It is possible that cases on the list, when pulled and reviewed, may not meet the criteria for obtaining new dose reconstructions. Conversely, it is possible that cases not on the list are nonetheless impacted by this bulletin and require a new dose reconstruction.

References: OCAS-PER-027, "Clarksville and Medina Site Profile" viewed at:  
<http://www.cdc.gov/niosh/ocas/pdfs/pers/oc-per-027-r0.pdf>

Purpose: To provide procedures for processing claims that are potentially affected by the release of OCAS-PER-027 with regard to Clarksville/Medina claims.

Applicability: All staff.

Actions:

1. For those cases on the comprehensive list that are currently in posture for a recommended decision, the Claims Examiner (CE) must determine whether the previous dose reconstruction could be affected by the release of OCAS-PER-027. To do so, the CE must first confirm that the employee is/was employed at either Clarksville or Medina. If the employee is/was employed at one of these facilities, the CE must then determine whether the dose reconstruction was conducted prior to November 14, 2006 (as determined by the "Calculations Performed by" date found on the most recent NIOSH Report of Dose Reconstruction). For those cases with employment verified at Clarksville or Medina with a dose reconstruction conducted prior to November 14, 2006 which resulted in a less than 50% Probability of Causation (PoC), the CE is to return those cases to NIOSH for a new dose reconstruction.

Any case with a dose reconstruction conducted after this date or where employment is not confirmed for Clarksville or Medina is not affected by the release of OCAS-PER-027. As such, no action is necessary. The CE enters the "NA" (No Action Necessary) status code and the appropriate reason code into ECMS B as instructed in Action #9.

2. When referring these cases to NIOSH for further analysis, a request to the National Office Health Physicist is not required. Instead, the CE completes an amended NIOSH Referral Summary Document (ANRSD) and forwards the ANRSD to the Public Health Advisor (PHA) assigned to the district office at NIOSH. The ANRSD should include the following statement in the "DOL Information" section, "Rework request due to the release of OCAS-PER-027 and any other changes." The CE also:

a. Sends a letter to the claimant explaining that the case has been returned to NIOSH for a new dose reconstruction as a result of a change in the dose reconstruction methodology as outlined in the OCAS-PER-027. A sample letter to the claimant is included as **Attachment 2**.

b. Sends a copy of this letter to the PHA at NIOSH assigned to the District Office (DO) along with the weekly DO submissions to NIOSH. The date on the ANRSD and the letter to the claimant must both be the same, since this will be the date used for the status code entry into ECMS. The CE enters status code "NI" (Sent to NIOSH) in ECMS B and selects the "PEP" (Rework based on Program Evaluation Plan) reason code.

The "NI" status code should only be entered in ECMS E after toxic exposure development is complete and the CE cannot accept causation. In that case, the CE creates a memorandum to the file stating that toxic exposure development is complete. The CE then enters status code "NI-PEP" into ECMS E with the date of the memorandum as the status effective date.

(Note: Since this is considered a new dose reconstruction, the CE should not change the existing NR/DR status code to NR/RW as typically done for rework cases. Furthermore, if a PoC value is already entered into ECMS, the CE should not delete the PoC. The new PoC will simply be updated once it is calculated.)

Upon receipt of the revised dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code "NR" (Received from NIOSH) in ECMS B and selects the "DR" (Dose Reconstruction Received-PoC) reason code. The status effective date is the date the dose reconstruction is date stamped into the district office. If the CE had previously entered "NI" in ECMS E, the CE also enters codes "NR" and "DR" into ECMS E. If the case is an E/B case, the CE enters the Probability of Causation into ECMS B and ECMS E regardless of whether an "NI" status code had previously been entered.

3. For cases currently pending a final decision at the FAB, the Hearing Representative/CE must

determine whether the claim is potentially affected by the Clarksville/Medina PER. If the recommended decision to deny is based on a less than 50% PoC, employment is verified at Clarksville and/or Medina, and the dose reconstruction was conducted prior to November 14, 2006, the recommended decision should be remanded to the district office in the usual manner. The Remand Order should direct the district office to refer the case back to NIOSH for a new dose reconstruction as a result of OCAS-PER-027.

The Hearing Representative/CE enters status code "F7" (FAB Remand) in ECMS B/E (as appropriate) with an "OTH" (No D.O. Error – Other) reason code. The status effective date will be the date of the FAB remand.

If the case does not meet the parameters for a new dose reconstruction, no action is necessary and the Hearing Representative/CE enters the "NA" (No Action Necessary) status code and appropriate reason code into ECMS B as instructed in Action Item #9.

4. The following statement should be included in the Remand Order regarding the return of the case to NIOSH for a new radiation dose reconstruction:

On October 31, 2007, NIOSH issued OCAS-PER-027, "Clarksville and Medina Site Profile – ORAUT TBKS-0039." The changes outlined in OCAS-PER-027 not only affect the underlying scientific methodology by which the dose reconstruction was performed, but could potentially affect the outcome of a claim.

The DEEOIC is obligated to ensure that the application of the dose reconstruction methodology is administered in a fair and consistent manner. Given the revision to the underlying scientific assumptions by which the dose reconstruction was performed by NIOSH, and the release of OCAS-PER-027, the prior dose reconstruction/Probability of Causation calculation on your claim is now invalid. While the modification to the dose reconstruction methodology may not impact the outcome of the claim, it is necessary for the claim to undergo a new dose reconstruction by NIOSH.

5. In the exercise of the Director's discretion over the reopening process, the Director is delegating limited authority to the District Directors to sign Director's Orders for reopening. This delegated authority is limited to reopenings for those cases that are affected by the OCAS-PER-027 with regard to the Clarksville/Medina sites. The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. If the District Director is unsure of whether the delegated authority to reopen applies, the case should be referred to the National Office.

6. For those cases that have a final decision to deny based on a less than 50% PoC, the CE must determine whether the claim is potentially affected by the Clarksville/Medina PER. If employment is verified at either Clarksville or Medina and the dose reconstruction was conducted prior to November 14, 2006, the responsible District Director issues a Director's Order vacating the final decision and reopening the claim. The Director's Order should state that the case is being reopened as a result of the change in scientific methodology by which the dose reconstruction is performed by NIOSH, and that a new dose reconstruction is necessary based on guidance provided in OCAS-PER-027.

Upon reopening the claim, the District Director enters status code "MN" (NO Initiates Review for Reopening) into ECMS B with a status effective date as the effective date of this bulletin. If the District Director is also reopening Part E, the "MN" code is also input in ECMS E.

For all reopenings per this bulletin, upon completing the Director's Order to reopen the claim, the District Director enters status code "MD" (Claim Reopened – File Returned to DO) into ECMS B to reflect that the case has been reopened and is in the district office's jurisdiction. (The "MZ" status code is not necessary.) The status effective date of the "MD" code is the date of the Director's Order. If the Director's Order reopens the Part E claim, the "MD" code is also input in ECMS E.

Please note that while the "MD" code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been in this

specific circumstance.

Once the case has been reopened, the district office should proceed with a referral to NIOSH for a new dose reconstruction as instructed in Action Item #3.

If the case does not meet the parameters for a new dose reconstruction, no action is necessary and the CE enters the "NA" (No Action Necessary) status code and appropriate reason code into ECMS B as instructed in Action Item #9.

7. It is possible that during the course of the review of these cases, NIOSH may supply the National Office with individual Program Evaluation Reports (PER) or Individual Case Evaluations (ICE) for cases (or a PER that represents a population of cases) potentially affected by this PER. The individual PER or ICE will serve as documentation that the case file has been reviewed by NIOSH and that NIOSH has determined that:

- the change outlined in the PER affects the outcome of the claim and a return to NIOSH for a new dose reconstruction is necessary, or
- there are multiple changes that affect the dose reconstruction and a return to NIOSH for a new dose reconstruction is necessary, or
- the change outlined in the PER does not affect the dose reconstruction, nor do any other changes affect the dose reconstruction and a return to NIOSH is not necessary.

If NIOSH provides DEEOIC with an individual case PER or ICE, the CE enters the code "LNR"(Letter/Response Received from NIOSH) and "827" reason code from the reason code drop down menu into ECMS B. The claim status date of the code is the date the response is received in the appropriate office, which is the date of the date stamp. The "LNR" reason code is not input into ECMS E unless the "NI" (Sent to NIOSH) status code had previously been entered into ECMS E.

If the individual case PER or ICE indicates that the case should "Return to NIOSH" for a new dose reconstruction, the District Director issues a Director's Order (if appropriate) reopening the case. Upon reopening, the district office should refer the case to NIOSH for a new dose reconstruction as instructed in this bulletin.

If the individual case PER or ICE indicates that the case was "Evaluated with No Change" but does not include a dispositive statement, the District Director issues a Director's Order referring the case to NIOSH for a new dose reconstruction. In order to be dispositive, NIOSH must indicate that they have evaluated the case against this PER and any other changes, and determined that a new dose reconstruction is not necessary. If the individual case PER or ICE is dispositive, then no action is necessary and the CE enters the "NA" status code and appropriate reason code into ECMS B as instructed in Action Item #9.

Individual case PERs or ICEs received in the National Office, will be forwarded to the appropriate district office for inclusion in the case file.

8. Each case on the DEEOIC generated list must be reviewed to determine if it qualifies for a return to NIOSH for a new dose reconstruction. If after review, the adjudicator determines that a case on the list does not require any action to be taken, the CE/FAB HR must write a brief memo to the file that explains the case was reviewed under this bulletin, no additional action is necessary, and why. A case classified as not requiring any action is a case that does not meet the criteria for a return to NIOSH, the case is already at NIOSH, or NIOSH has determined that a dose reconstruction is not necessary.

The CE must then code "NA" (No Action Necessary) in ECMS B and select the appropriate reason code from the reason code drop down list. The "NA" coding is specifically tied to the review list generated by DEEOIC and the "NA" code is restricted to ECMS B only because the review list is derived from Part B data. For cases that were reviewed under this bulletin and require no additional action, the reason code that must be selected is "27P" (Reviewed under Bulletin 08-27. Even if the

case is an E/B case, the NA-27P must be coded into ECMS B only. The status effective date of the "NA" code is the date of the memo to the file stating review is complete and the CE has determined there is no further action necessary.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the "NA-27P" code in addition to the closure code. The status effective date for the "NA" coding is the date of the memorandum to file.

9. If a claimant requests a reopening of his/her claim as a result of OCAS-PER-027 and the case is not one that is identified on the comprehensive list of cases distributed to the district offices, the case file must be evaluated to determine whether or not the claim warrants a reopening. Simply identifying a PER is not considered new evidence and is not sufficient to warrant a reopening. A reopening should be granted only if the evidence of file meets the parameters for reopening as outlined in Action Item #2.

Upon receipt of the claimant's request for reopening, the District Office/FAB enters status code "MC" (Claimant Requests Reopening) in ECMS B. If it is an EB case where the potential reopening affects Part E, the "MC" code must also be entered into ECMS E. The status effective date is the postmark date, if available, or the date the request is received in the DO or FAB, whichever is earlier. For cases with multiple claimants, this code is only entered in the claim status history for the claimant(s) who submitted the request. (This is the only code related to Director's Orders that works like this. All other Director's Order codes are coded for all the *active* claimants.)

Once a determination is made by the District Director to reopen the case, the District Director enters the "MD" (Claim reopened, file returned to District Office) status code into ECMS B. If it is an EB case where the reopening request is applicable to Part E, the "MD" code must also be entered into ECMS E. The status effective date of the "MD" code is the date of the Director's Order. These codes have typically been used in the National Office, however their use has been delegated to the District Director in certain circumstances, such as the review of cases under OCAS-PER-027.

For all claimant requests for reopening that do not meet the parameters for reopening as outlined in this Bulletin, or where the District Director is unsure of whether the delegated authority applies, the case should be referred to the National Office. When the case is referred to the National Office, the District Director enters the "MI" (District Director requests reopening) status code into ECMS B to indicate that the file is being forwarded to National Office for review under the reopening process. If it is an EB case where the potential reopening affects Part E, the "MI" code must also be entered into ECMS E. A cover memo outlining the District Director's concerns must be submitted. The status effective date is the date of the District Director's memo to the Director of DEEOIC.

10. In carrying out the policy outlined in this Bulletin, personnel must understand that the comprehensive list not only provides the "to do" list of cases requiring attention, but it also serves as a means of tracking progress. As part of tracking progress, the list becomes the "pending" list and it is the goal to successfully and accurately review cases and enter appropriate ECMS coding which will result in "the case being removed from the list" (in other words, will result in an indicator for reporting purposes showing that the initial review was completed and/or that subsequent action was taken). ECMS coding is at the claim level and so the failure to input a code that will remove the case from the pending list on even one claim associated with a case, will result in the case still showing up as still pending review or action. In terms of ECMS coding, it is crucial to be thorough and precise. The most obvious example of this is the use of the "C2" (administrative closure) code. "C2" will not remove a case from the pending list; the "NA" code must be entered for each claim to which it applies after input of the "C2" code. In terms of codes that will remove cases off the pending list, any "NI" code entered after the bulletin effective date will remove it and proper use of the "NA" code will remove it from the pending list. These are not the only codes that will remove cases from the pending list, but rather are provided as examples to show their importance. Any additional questions regarding proper ECMS coding must be directed to the Policy Branch.

11. The operational plan goal for the lists of cases identified for review as part of a new SEC class, PEP, or PER is to complete the Part B recommended decision, an individual case evaluation is received from NIOSH, return to NIOSH, or determine that no action is necessary within 45 days of the date of this Bulletin for at least 50% of the cases, and within 90 days for 95% of the cases. All cases requiring action due to this Bulletin should be completed within 120 days.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

Distribution List No. 1: All DEEOIC Employees

Distribution List No. 7: Resource Centers

### **08-28 OCAS-PER-026, Pantex and OCAS-PER-028, Pinellas Program Evaluation Reports.**

EEOICPA BULLETIN NO.08-28

Issue Date: June 16, 2008

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Effective Date: June 16, 2008

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Expiration Date: June 16, 2009

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Subject: OCAS-PER-026, Pantex and OCAS-PER-028, Pinellas Program Evaluation Reports.

Background: On October 31, 2007, the National Institute for Occupational Safety and Health (NIOSH) issued two Program Evaluation Reports (PER) addressing Technical Basis Document (TBD) revisions. OCAS-PER-026, entitled "Pantex TBD Revision – ORAUT-TKBS-0013" addresses changes to the Occupational Medical Dose section of the TBD. The effect of this change increases the assigned x-ray dose for several target organs when conducting the dose reconstruction.

OCAS-PER-028, entitled "Pinellas TBD Revision" addresses changes to the TBD because "the language in the TBD could be misinterpreted to exclude missed photon dose from monitored workers." The report states that "it is possible that missed photon dose was not included for some monitored workers when it should have been for dose reconstructions that were completed between August 3, 2006 and November 8, 2006."

NIOSH issued the PERs to document the changes to the TBDs for these particular sites and their potential effect on previously completed dose reconstructions. A copy of each PER is included as **Attachment 1**.

NIOSH provided the Division of Energy Employees Occupational Illness Compensation (DEEOIC) with a list of cases that are potentially affected by the release of the PERs identified above.

However, NIOSH has not indicated which cases on the lists need a new dose reconstruction. As such, this bulletin provides guidance on handling those cases that have been identified as potentially affected by the release of OCAS-PER-026 for Pantex and OCAS-PER-028 for Pinellas.

References: OCAS-PER-26, "Pantex TBD Revision – ORAUT-TKBS-0013," viewed at:

<http://198.246.98.21/niosh/ocas/pdfs/pers/oc-per-026-r0.pdf>; OCAS-PER-028, “Pinellas TBD Revision,” viewed at: <http://198.246.98.21/niosh/ocas/pdfs/pers/oc-per-028-r0.pdf>.

**Purpose:** To provide procedures for processing claims that are potentially affected by the release of NIOSH’s Program Evaluation Reports for Pantex and Pinellas.

**Applicability:** All staff.

**Actions:**

1. For those cases on the list that are currently in posture for a recommended decision to deny based on a less than 50% POC, where either:

- Employment is verified at Pantex and the dose reconstruction was conducted prior to February 1, 2007, and/or
- Employment is verified at Pinellas and the dose reconstruction was conducted between August 3, 2006 and November 8, 2006,

the CE is to return the case to NIOSH for a new dose reconstruction. To determine when the dose reconstruction was conducted, the CE should use the date referenced in the “Calculations performed by” date found on the most recent NIOSH Report of Dose Reconstruction under the EEOICPA on file.

No action is required on cases with a dose reconstruction that was conducted after February 1, 2007 for Pantex. Similarly, no action is required on cases with a dose reconstruction conducted before August 3, 2006 or after November 8, 2006 for Pinellas. Furthermore, no action is necessary on any case that is already at NIOSH for a dose reconstruction. For any case meeting the “no action” criteria, the CE should code ECMS and create a memorandum to the file as instructed in Action #8.

2. When referring these cases to NIOSH for a new dose reconstruction, a request to the National Office Health Physicist is not required. Instead, the CE should complete an amended NIOSH Referral Summary Document (ANRSD) and forward the ANRSD to the Public Health Advisor (PHA) assigned to the district office at NIOSH. The ANRSD should include the following statement in the “DOL Information” section, “Rework request due to the release of **[OCAS-PER-026/OCAS-PER-028]** and any other changes.” The CE should also:

- a. Send a letter to the claimant explaining that the case has been returned to NIOSH for a new dose reconstruction as a result of a change in the dose reconstruction methodology as outlined in either OCAS-PER-026 for Pantex or OCAS-PER-028 for Pinellas. A sample letter to the claimant is included as **Attachment 2**.
- b. Send a copy of this letter to the PHA at NIOSH assigned to the DO along with the weekly DO submissions to NIOSH. The date on the ANRSD and the letter to the claimant must both be the same, since this will be the date used for the status code entry into ECMS. The CE enters status code “NI” (Sent to NIOSH) into ECMS B and selects the “PEP” (Rework based on Program Evaluation Plan) reason code.

The “NI” status code should only be entered in ECMS E after toxic exposure development is complete and the CE cannot accept causation. In that case the CE creates a memorandum to file stating that toxic exposure development is complete. The CE then enters status code “NI-PEP” into ECMS E with the date of the memorandum as the status effective date.

(Note: Since this is considered a new dose reconstruction, the CE should not change the existing NR/DR status code to NR/RW as typically done for rework cases. Furthermore, if a POC value is already entered into ECMS, the CE should not delete the POC. The new POC will simply be updated once it is calculated.)

Upon receipt of the revised dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “NR” (Received from NIOSH) into

ECMS B and selects the “DR” (Dose Reconstruction Received-POC) reason code. The status effective date is the date the dose reconstruction is date stamped into the district office. If the CE had previously entered “NI” in ECMS E, the CE also enters codes “NR” and “DR” into ECMS E. If the case is an E/B case, the CE enters the Probability of Causation into ECMS B and ECMS E regardless of whether an “NI” status code had previously been entered.

3. For cases currently pending at the FAB for a final decision, the Hearing Representative/CE must determine whether the case is affected by the release of OCAS-PER-026 for Pantex or OCAS-PER-028 for Pinellas. If the recommended decision is to deny based on a less than 50% POC, and meets one of the two bulleted criteria listed in Action Item #1, the Hearing Representative/CE should remand the recommended decision to the district office in the usual manner. The Remand Order directs the district office to refer the case back to NIOSH for a new dose reconstruction as a result of the release of OCAS-PER-026 for Pantex or OCAS-PER-028 for Pinellas, as appropriate, and any other changes affecting the dose reconstruction methodology.

The Hearing Representative/CE should code the case as “F7” (FAB Remand) in ECMS B/E (as appropriate) with an “OTH” (No DO Error - Other) reason code. The status effective date will be the date of the FAB remand.

If the case does not meet the parameters for a new dose reconstruction, no action is necessary and the Hearing Representative/CE enters the “NA” (No Action Necessary) status code and appropriate reason code into ECMS B as instructed in Action Item #8.

4. The following statement should be included in the Remand Order regarding the return of the case to NIOSH for a new radiation dose reconstruction.

On October 31, 2007, NIOSH issued [**OCAS-PER-026, “Pantex TBD Revision – ORAUT-TKBS-0013/OCAS-PER-028, “Pinellas TBD Revision”**]. The changes outlined in [**OCAS-PER-026/OCAS-PER-028**] not only affect the underlying scientific methodology by which the dose reconstruction was performed, but could potentially affect the outcome of a claim.

The DEEOIC is obligated to ensure that the application of the dose reconstruction methodology is administered in a fair and consistent manner. Given the revision to the underlying scientific assumptions by which the dose reconstruction was performed by NIOSH, and the release of [**OCAS-PER-026/OCAS-PER-028**], the prior dose reconstruction/Probability of Causation calculation on your claim is now invalid. While the modification to the dose reconstruction methodology may not impact the outcome of the claim, it is necessary for the claim to undergo a new dose reconstruction by NIOSH.

5. In the exercise of the Director’s discretion over the reopening process, the Director is delegating limited authority to the District Director to sign Director’s Orders for reopening. This delegated authority is limited to reopenings for those cases that are affected by OCAS-PER-026 for Pantex and OCAS-PER-028 for Pinellas. The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. If the District Director is unsure of whether the delegated authority to reopen applies, the case should be referred to the National Office.

6. For each case that has a final decision to deny based on a less than 50% POC, the CE must determine whether the claim is potentially affected by the PER released for Pantex or Pinellas. If the case meets either of the bulleted criteria listed in Action Item #1, the responsible District Director issues a Director’s Order vacating the final decision and reopening the claim. The Director’s Order states that the case is being reopened as a result of the change in scientific methodology by which the dose reconstruction is performed by NIOSH, and that a new dose reconstruction is necessary based on guidance provided in OCAS-PER-026 for Pantex or OCAS-PER-028 for Pinellas.

The District Director enters the status code “MN” (NO Initiates Review for Reopening) into ECMS B with a status effective date as the effective date of this bulletin. If the District Director is also

reopening Part E, the “MN” code is also input in ECMS E.

For all reopenings per this bulletin, upon completing the Director’s Order to reopen the claim, the District Director enters status code “MD” (Claim Reopened – File Returned to DO) into ECMS B to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “MZ” status code is not necessary.) The status effective date of the “MD” code is the date of the Director’s Order. If the Director’s Order reopens the Part E claim, the “MD” code is also input in ECMS E.

Please note that while the “MD” code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been in this specific circumstance.

Once the case has been reopened, the district office should proceed with a referral to NIOSH for a new dose reconstruction as instructed in Action Item #2.

If the case does not meet the parameters for a new dose reconstruction, no action is necessary and the CE enters the “NA” (No Action Necessary) status code and appropriate reason code into ECMS B as instructed in Action Item #8.

7. It is possible that during the course of the review of these cases, NIOSH may supply the National Office with individual Program Evaluation Reports (PER) or Individual Case Evaluations (ICE) for cases (or a PER that represents a population of cases) potentially affected by this PER. The individual PER or ICE will serve as documentation that the case file has been reviewed by NIOSH and that NIOSH has determined that:

- the change outlined in the PER affects the outcome of the claim and a return to NIOSH for a new dose reconstruction is necessary, or
- there are multiple changes that affect the dose reconstruction and a return to NIOSH for a new dose reconstruction is necessary, or
- the change outlined in the PER does not affect the dose reconstruction, nor do any other changes affect the dose reconstruction and a return to NIOSH is not necessary.

If NIOSH provides DEEOIC with an individual case PER or ICE, the CE enters the code “LNR” (Letter/Response Received from NIOSH) and “828” reason code from the reason code drop down menu into ECMS B. The claim status date of the code is the date the response is received in the appropriate office, which is the date of the date stamp. If the “NI” status code had previously been entered in ECMS E, the CE also enters codes “LNR” and “828” into ECMS E.

If the individual case PER or ICE indicates that the case should “Return to NIOSH” for a new dose reconstruction, the District Director issues a Director’s Order (if appropriate) reopening the case.

Upon reopening, the district office should refer the case to NIOSH for a new dose reconstruction as instructed in this bulletin.

If the individual case PER or ICE indicates that the case was “Evaluated with No Change” but does not include a dispositive statement, the District Director issues a Director’s Order referring the case to NIOSH for a new dose reconstruction. In order to be dispositive, NIOSH must indicate that they have evaluated the case against this PER and any other changes, and determined that a new dose reconstruction is not necessary. If the individual case PER or ICE is dispositive, then no action is necessary and the CE enters the “NA” status code and appropriate reason code into ECMS B as instructed in Action Item #8.

Individual case PERs or ICEs received in the National Office, will be forwarded to the appropriate district office for inclusion in the case file.

8. Each case on the DEEOIC generated list must be reviewed to determine if it qualifies for a return to NIOSH for a new dose reconstruction. If after review, the adjudicator determines that a case on the list does not require any action to be taken, the CE/FAB HR must write a brief memo to the file that explains the case was reviewed under this bulletin, no additional action is necessary, and why.

A case classified as not requiring any action is a case that does not meet the criteria for a return to NIOSH, the case is already at NIOSH, or NIOSH has determined that a dose reconstruction is not necessary.

The CE must then enter status code "NA" (No Action Necessary) into ECMS B and select the appropriate reason code from the reason code drop down list. The "NA" coding is specifically tied to the review list generated by DEEOIC and the "NA" code is restricted to ECMS B only because the review list is derived from Part B data. For cases that were reviewed under this bulletin and require no additional action, the reason code that must be selected is "28P" (**Reviewed under Bulletin 08-28**). Even if the case is an E/B case, the **NA-28P** must be coded into ECMS B only. The status effective date of the "NA" code is the date of the memo to the file stating review is complete and the CE has determined there is no further action necessary.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the "NA-28P" code in addition to the closure code. The status effective date for the "NA" coding is the date of the memorandum to file.

9. In carrying out the policy outlined in this Bulletin, personnel must understand that the comprehensive list not only provides the "to do" list of cases requiring attention, but it also serves as a means of tracking progress. As part of tracking progress, the list becomes the "pending" list and it is the goal to successfully and accurately review cases and enter appropriate ECMS coding which will result in "the case being removed from the list" (in other words, will result in an indicator for reporting purposes showing that the initial review was completed and/or that subsequent action was taken). ECMS coding is at the claim level and so the failure to input a code that will remove the case from the pending list on even one claim associated with a case, will result in the case still showing up as still pending review or action. In terms of ECMS coding, it is crucial to be thorough and precise. The most obvious example of this is the use of the "C2" (administrative closure) code. "C2" will not remove a case from the pending list; the "NA" code must be entered for each claim to which it applies after input of the "C2" code. In terms of codes that will remove cases off the pending list, any "NI" code entered after the bulletin effective date will remove it and proper use of the "NA" code will remove it from the pending list. These are not the only codes that will remove cases from the pending list, but rather are provided as examples to show their importance. Any additional questions regarding proper ECMS coding must be directed to the Policy Branch.

10. If a claimant requests a reopening of his/her claim as a result of OCAS-PER-026 or OCAS-PER-028, and the case is not one that is identified on the comprehensive list of cases distributed to the district offices, the case file must be evaluated to determine whether or not the claim warrants a reopening. Simply identifying a PER is not considered new evidence and is not sufficient to warrant a reopening. A reopening should be granted only if the evidence of file meets the parameters for reopening as outlined in Action Item #1.

Upon receipt of the claimant's request for reopening, the District Director enters status "MC" (Claimant Requests Reopening) in ECMS. The status effective date is the postmark date, if available, or the date the request is received in the DO or FAB, whichever is earlier. Following the input of the "MC" status code, the District Director should issue a Director's Order reopening the claim following the procedures as outlined in this Bulletin.

For all claimant requests for reopening as a result of the PER for Pantex or Pinellas that do not meet the criteria for reopening as outlined in this Bulletin, the District Director should prepare a memorandum to the Director of DEEOIC and forward the case file to National Office for review. The District Director enters status code "MC" (Claimant Requests Reopening) and "MI" (District Director Requests Reopening) in ECMS B/E as appropriate to indicate that the file is being forwarded to National Office for review under the reopening process. The status effective date for the "MI" code is the date of the District Director's memo to the Director of DEEOIC.

11. The operational plan goal for the lists of cases identified for review as part of a new SEC class,

PEP, or PER is to complete the Part B recommended decision, receive a response from NIOSH, return to NIOSH, or determine that no action is necessary within 45 days of the date of this Bulletin for at least 50% of the cases, and within 90 days for 95% of the cases. All cases requiring action due to this Bulletin should be completed within 120 days.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

Distribution List No. 1: All DEEOIC Employees

Distribution List No. 7: Resource Centers

### **08-29 OCAS-PER-031, Y-12 Program Evaluation Report.**

EEOICPA BULLETIN NO.08-29

Issue Date: June 16, 2008

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Effective Date: June 16, 2008

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Expiration Date: June 16, 2009

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Subject: OCAS-PER-031, Y-12 Program Evaluation Report.

Background: The Technical Basis Document (TBD) for the Y-12 National Security Complex has been revised several times. On December 18, 2007, NIOSH issued OCAS-PER-031, "Y-12 TBD Revisions." (**Attachment 1**).

OCAS-PER-031 indicates that technical changes to the documents which govern Y-12 dose reconstructions were reviewed to determine if any previously completed dose reconstruction would result in an increased dose using the current methods. As of January 12, 2006, all of the revisions to the applicable documents had been effectuated. Therefore, cases with dose reconstructions performed prior to January 12, 2006 are the claims at issue.

The National Office has developed a list of Y-12 claims completed prior to January 12, 2006 with a Probability of Causation (PoC) below 50%. Hence, the dose reconstruction methodology of each will be reviewed to determine if a new dose reconstruction is necessary. OCAS-PER-031 indicates that NIOSH may provide a determination on each claim as to whether a new dose estimate is required. If so, this will be in the form of a letter from NIOSH, as discussed in Action Item #8. Documentation for each claim not requiring a new dose reconstruction will provide the basis for that determination.

This bulletin provides guidance on handling those cases that have been identified as potentially affected by the release of OCAS-PER-031, "Y-12 TBD Revisions."

A list of cases that are potentially affected by the release of the PER identified above has been generated. The comprehensive list of cases will be distributed to the appropriate district offices under separate cover.

References: OCAS-PER-031, “Y-12 TBD Revisions” viewed at:

<http://www.cdc.gov/niosh/ocas/pdfs/pers/oc-per31-r0.pdf>

Purpose: To provide procedures for processing claims that are potentially affected by the release of OCAS-PER-031 with regard to Y-12 claims.

Applicability: All staff.

Actions:

1. For those cases on the comprehensive list that are currently in posture for a recommended decision, the CE must determine whether the previous dose reconstruction could be affected by the release of OCAS-PER-031. To do so, the CE must first confirm that the employee is/was employed at Y-12. If so, the CE must then determine whether the dose reconstruction was conducted prior to January 12, 2006 (as determined by the “Calculations Performed by” date found on the most recent NIOSH Report of Dose Reconstruction). For those cases with employment verified at Y-12 with a dose reconstruction conducted prior to January 12, 2006 which resulted in a less than 50% PoC, the CE is to return those cases to NIOSH for a new dose reconstruction.

Any case with a dose reconstruction conducted after this date or where employment is not confirmed for Y-12 is not affected by the release of OCAS-PER-031. As such, no action is necessary. The CE enters the “NA” (No Action Necessary) status code and the appropriate reason code into ECMS B.

2. When referring these cases to NIOSH for further analysis, a request to the National Office Health Physicist is not required. Instead, the CE should complete an amended NIOSH Referral Summary Document (ANRSD) and forward the ANRSD to the Public Health Advisor (PHA) assigned to the district office at NIOSH. The ANRSD should include the following statement in the “DOL Information” section, “Rework request due to the release of OCAS-PER-031 and any other changes.” The CE also:

a. Sends a letter to the claimant explaining that the case has been returned to NIOSH for a new dose reconstruction as a result of a change in the dose reconstruction methodology as outlined in the OCAS-PER-031. A sample letter to the claimant is included as

**Attachment 2.**

b. Sends a copy of this letter to the PHA at NIOSH assigned to the DO along with the weekly DO submissions to NIOSH. The date on the ANRSD and the letter to the claimant must both be the same, since this will be the date used for the status code entry into ECMS. The CE enters status code “NI” (Sent to NIOSH) in ECMS B and selects the “PEP” (Rework based on Program Evaluation Plan) reason code.

The “NI” status code should only be entered in ECMS E after toxic exposure development is complete and the CE cannot accept causation. In that case, the CE creates a memorandum to the file stating that toxic exposure development is complete. The CE then enters status code “NI-PEP” into ECMS E with the date of the memorandum as the status effective date.

(Note: Since this is considered a new dose reconstruction, the CE should not change the existing NR/DR status code to NR/RW as typically done for rework cases. Furthermore, if a PoC value is already entered into ECMS, the CE should not delete the PoC. The new PoC will simply be updated into both ECMS B and E once it is calculated.)

Upon receipt of the revised dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “NR” (Received from NIOSH) into ECMS B and selects the “DR” (Dose Reconstruction Received-PoC) reason code. The status effective date is the date the dose reconstruction is date stamped into the district office. If the CE had previously entered “NI” in ECMS E, the CE also enters codes “NR” and “DR” into ECMS E.

If the case is an E/B case, the CE enters the Probability of Causation into ECMS B and ECMS E regardless of whether an “NI” status code had previously been entered.

3. For cases currently pending a final decision at the FAB, the Hearing Representative/CE must determine whether the claim is potentially affected by the Y-12 PER. If the recommended decision to deny is based on a less than 50% PoC, employment is verified at Y-12, and the dose reconstruction was conducted prior to January 12, 2006, the recommended decision should be remanded to the district office in the usual manner. The Remand Order should direct the district office to refer the case back to NIOSH for a new dose reconstruction as a result OCAS-PER-031.

The Hearing Representative/CE enters status code “F7” (FAB Remand) in ECMS B/E (as appropriate) with an “OTH” (No D.O. Error – Other) reason code. The status effective date will be the date of the FAB remand.

If the case does not meet the parameters for a new dose reconstruction, no action is necessary and the Hearing Representative/CE enters the “NA” (No Action Necessary) status code and appropriate reason code into ECMS B as instructed in Action Item #9.

4. The following statement should be included in the Remand Order regarding the return of the case to NIOSH for a new radiation dose reconstruction:

On December 18, 2007, NIOSH issued OCAS-PER-031, “Y-12 TBD Revisions – ORAUT TBKS-0014.” The changes outlined in OCAS-PER-031 not only affect the underlying scientific methodology by which the dose reconstruction was performed, but could potentially affect the outcome of a claim.

The DEEOIC is obligated to ensure that the application of the dose reconstruction methodology is administered in a fair and consistent manner. Given the revision to the underlying scientific assumptions by which the dose reconstruction was performed by NIOSH, and the release of OCAS-PER-031, the prior dose reconstruction/Probability of Causation calculation on your claim is now invalid. While the modification to the dose reconstruction methodology may not impact the outcome of the claim, it is necessary for the claim to undergo a new dose reconstruction by NIOSH.

5. In the exercise of the Director’s discretion over the reopening process, the Director is delegating limited authority to the District Directors to sign Director’s Orders for reopening. This delegated authority is limited to reopenings for those cases that are potentially affected by the OCAS-PER-031 with regard to the Y-12 site. The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. If the District Director is unsure of whether the delegated authority to reopen applies, the case should be referred to the National Office.

6. For those cases that have a final decision to deny based on a less than 50% PoC, the CE must determine whether the case is potentially affected by the Y-12 PER. If employment is verified at Y-12 and the dose reconstruction was performed prior to January 12, 2006, the responsible District Director issues a Director’s Order vacating the final decision and reopening the claim. The Director’s Order should state that the case is being reopened as a result of the change in scientific methodology by which the dose reconstruction is performed by NIOSH, and that a new dose reconstruction is necessary based on guidance provided in OCAS-PER-031.

Upon reopening the claim, the District Director enters status code “MN” (NO Initiates Review for Reopening) into ECMS B with a status effective date as the effective date of this bulletin. If the District Director is also reopening Part E, the “MN” code is also input in ECMS E.

For all reopenings per this bulletin, upon completing the Director’s Order to reopen the claim, the District Director enters status code “MD” (Claim Reopened – File Returned to DO) into ECMS B to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “MZ” status code is not necessary.) The status effective date of the “MD” code is the date of the Director’s Order. If the Director’s Order reopens the Part E claim, the “MD” code is also input in ECMS E.

Please note that while the “MD” code is generally input by National Office staff, entry of this code

has been delegated to the District Director, just as the authority to grant reopenings has been in this specific circumstance.

Once the case has been reopened, the district office should proceed with a referral to NIOSH for a new dose reconstruction as instructed in Action Item #3.

If the case does not meet the parameters for a new dose reconstruction, no action is necessary and the CE enters the “NA” (No Action Necessary) status code and appropriate reason code into ECMS B as instructed in Action Item #9.

7. It is possible that during the course of the review of these cases, NIOSH may supply the National Office with individual Program Evaluation Reports (PER) or Individual Case Evaluations (ICE) for cases (or a PER that represents a population of cases) potentially affected by this PER. The individual PER or ICE will serve as documentation that the case file has been reviewed by NIOSH and that NIOSH has determined that:

- the change outlined in the PER affects the outcome of the claim and a return to NIOSH for a new dose reconstruction is necessary, or
- there are multiple changes that affect the dose reconstruction and a return to NIOSH for a new dose reconstruction is necessary, or
- the change outlined in the PER does not affect the dose reconstruction, nor do any other changes affect the dose reconstruction and a return to NIOSH is not necessary.

If NIOSH provides DEEOIC with an individual case PER or ICE, the CE enters the code “LNR” (Letter/Response Received from NIOSH) and “829” reason code from the reason code drop down menu into ECMS B. The claim status date of the code is the date the response is received in the appropriate office, which is the date of the date stamp. The “LNR” reason code is not input into ECMS E unless the “NI” (Sent to NIOSH) status code had previously been entered into ECMS E.

If the individual case PER or ICE indicates that the case should “Return to NIOSH” for a new dose reconstruction, the District Director issues a Director’s Order (if appropriate) reopening the case. Upon reopening, the district office should refer the case to NIOSH for a new dose reconstruction as instructed in this bulletin.

If the individual case PER or ICE indicates that the case was “Evaluated with No Change” but does not include a dispositive statement, the District Director issues a Director’s Order referring the case to NIOSH for a new dose reconstruction. In order to be dispositive, NIOSH must indicate that they have evaluated the case against this PER and any other changes, and determined that a new dose reconstruction is not necessary. If the individual case PER or ICE is dispositive, then no action is necessary and the CE enters the “NA” status code and appropriate reason code into ECMS B as instructed in Action Item #9.

Individual case PERs or ICEs received in the National Office, will be forwarded to the appropriate district office for inclusion in the case file.

8. Each case on the DEEOIC generated list must be reviewed to determine if it qualifies for a return to NIOSH for a new dose reconstruction. If after review, the adjudicator determines that a case on the list does not require any action to be taken, the CE/FAB HR must write a brief memo to the file that explains the case was reviewed under this bulletin, no additional action is necessary, and why. A case classified as not requiring any action is a case that does not meet the criteria for a return to NIOSH, the case is already at NIOSH, or NIOSH has determined that a dose reconstruction is not necessary.

The CE must then code “NA” (No Action Necessary) and select the appropriate reason code from the reason code drop down list. The “NA” coding is specifically tied to the review list generated by DEEOIC and the “NA” code is restricted to ECMS B only because the review list is derived from Part B data. For cases that were reviewed under this bulletin and require no additional action, the

reason code that must be selected is “29P” (**Reviewed under Bulletin 08-29**). Even if the case is an E/B case, the **NA-29P** must be coded into ECMS B only. The status effective date of the “NA” code is the date of the memo to the file stating review is complete and the CE has determined there is no further action necessary.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “NA-29P” code in addition to the closure code. The status effective date for the “NA” coding is the date of the memorandum to file.

9. If a claimant requests a reopening of his/her claim as a result of OCAS-PER-031 and the case is not one that is identified on the comprehensive list of cases distributed to the district offices, the case file must be evaluated to determine whether or not the claim warrants a reopening. Simply identifying a PER is not considered new evidence and is not sufficient to warrant a reopening. A reopening should be granted only if the evidence of file meets the parameters for reopening as outlined in Action Item #2.

Upon receipt of the claimant’s request for reopening, the District Office/FAB enters status code “MC” (Claimant Requests Reopening) in ECMS B. If it is an EB case where the potential reopening affects Part E, the “MC” code must also be entered into ECMS E. The status effective date is the postmark date, if available, or the date the request is received in the DO or FAB, whichever is earlier. For cases with multiple claimants, this code is only entered in the claim status history for the claimant(s) who submitted the request. (This is the only code related to Director’s Orders that works like this. All other Director’s Order codes are coded for all the *active* claimants.)

Once a determination is made by the District Director to reopen the case, the District Director enters the “MD” (Claim reopened, file returned to District Office) status code into ECMS B. If it is an EB case where the reopening request is applicable to Part E, the “MD” code must also be entered into ECMS E. The status effective date of the “MD” code is the date of the Director’s Order. These codes have typically been used in the National Office, however their use has been delegated to the District Director in certain circumstances, such as the review of cases under OCAS-PER-031.

For all claimant requests for reopening that do not meet the parameters for reopening as outlined in this Bulletin, or where the District Director is unsure of whether the delegated authority applies, the case should be referred to the National Office. When the case is referred to the National Office, the District Director enters the “MI” (District Director requests reopening) status code into ECMS B to indicate that the file is being forwarded to National Office for review under the reopening process. If it is an EB case where the potential reopening affects Part E, the “MI” code must also be entered into ECMS E. A cover memo outlining the District Director’s concerns must be submitted. The status effective date is the date of the District Director’s memo to the Director of DEEOIC.

10. In carrying out the policy outlined in this Bulletin, personnel must understand that the comprehensive list not only provides the "to do" list of cases requiring attention, but it also serves as a means of tracking progress. As part of tracking progress, the list becomes the "pending" list and it is the goal to successfully and accurately review cases and enter appropriate ECMS coding which will result in “the case being removed from the list” (in other words, will result in an indicator for reporting purposes showing that the initial review was completed and/or that subsequent action was taken). ECMS coding is at the claim level and so the failure to input a code that will remove the case from the pending list on even one claim associated with a case, will result in the case still showing up as still pending review or action. In terms of ECMS coding, it is crucial to be thorough and precise. The most obvious example of this is the use of the “C2” (administrative closure) code. “C2” will not remove a case from the pending list; the "NA" code must be entered for each claim to which it applies after input of the “C2” code. In terms of codes that will remove cases off the pending list, any “NI” code entered after the bulletin effective date will remove it and proper use of the “NA” code will remove it from the pending list. These are not the only codes that will remove cases from the pending list, but rather are provided as examples to show their importance. Any additional questions regarding proper ECMS coding must be directed to the Policy Branch.

11. The operational plan goal for the list of cases identified for review as part of a new SEC class, PEP, or PER is to complete the Part B recommended decision, an individual case evaluation is received from NIOSH, return to NIOSH, or determine that no action is necessary within 45 days of the date of this Bulletin for at least 50% of the cases, and within 90 days for 95% of the cases. All cases requiring action due to this Bulletin should be completed within 120 days.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

Distribution List No. 1: All DEEOIC Employees

Distribution List No. 7: Resource Centers

### **08-30 OCAS-PER-012, Super S Program Evaluation Report.**

EEOICPA BULLETIN NO.08-30

Issue Date: June 16, 2008

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Effective Date: June 16, 2008

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Expiration Date: June 16, 2009

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Subject: OCAS-PER-012, Super S Program Evaluation Report.

Background: On March 29, 2007, the National Institute for Occupational Safety and Health (NIOSH) released OCAS-PEP-012 Rev-00, entitled "Program Evaluation Plan (PEP): Evaluation of Highly Insoluble Plutonium Compounds." NIOSH's OCAS-PEP-012 stated that "due to the increased doses assigned to workers exposed to Type Super S plutonium, previously completed claims that were assigned plutonium doses at sites where this material is potentially available for exposure need to be reexamined to determine the impact (if any) on the dose assessment." The PEP outlined NIOSH's plan for evaluating claims with the potential for exposure to highly insoluble forms of plutonium (Type Super S) at several facilities.

In response to NIOSH's PEP, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) issued EEOICPA Bulletin No. 07-19, *Processing Cases Affected by the National Institute for Occupational Safety and Health's (NIOSH) "Program Evaluation Plan (PEP): Evaluation of Highly Insoluble Plutonium Compounds."* EEOICPA Bulletin 07-19, issued on May 16, 2007, provided guidance on handling those cases affected by NIOSH's PEP that are in the adjudication process and have no final decision.

On August 7, 2007, NIOSH released OCAS-PER-012, "Evaluation of Highly Insoluble Plutonium Compounds." The Program Evaluation Report (PER) provides NIOSH's findings on the effect of type Super S plutonium on certain cases with a dose reconstruction.

Following the release of NIOSH's PER, the DEEOIC issued EEOICPA Bulletin No. 07-27, *Supplemental Guidance on Processing Cases Affected by OCAS-PER-012, entitled "Evaluation of Highly Insoluble Plutonium Compounds."* EEOICPA Bulletin No. 07-27, issued on August 7, 2007,

delegated reopening authority to the District Directors to reopen those cases specifically identified by NIOSH as needing reevaluation. Guidance was also provided on a subset of cases that were not specifically identified by NIOSH as needing reevaluation but for which DEEOIC determined may be affected by the PER. In this instance, instructions were given to send a letter to NIOSH inquiring about whether OCAS-PER-012, and any other changes NIOSH made, may affect the dose reconstruction. While the DEEOIC has received responses from NIOSH requesting the return of certain cases for a new dose reconstruction, there are many more for which NIOSH has not provided a dispositive statement or response concerning changes to the dose reconstruction.

This bulletin is necessary to provide guidance to claims staff on the appropriate handling of the subset of cases in EEOICPA Bulletin No. 07-27 for which NIOSH has not provided appropriate guidance on the effect of OCAS-PER-012 on an existing dose reconstruction.

References: NIOSH document, OCAS-PEP-012 Rev-00, "Program Evaluation Plan: Evaluation of Highly Insoluble Plutonium Compounds," approved on March 29, 2007, viewed at <http://www.cdc.gov/niosh/ocas/pdfs/peps/oc-pep12-r0.pdf>; OCAS-PER-012, "Evaluation of Highly Insoluble Plutonium Compounds."

Purpose: To provide procedures for processing claims with a final decision to deny that may be affected by NIOSH's OCAS-PER-012.

Applicability: All staff.

Actions:

1. For the cases identified on the subset list of cases identified in EEOICPA Bulletin No. 07-27, regardless of whether or not a letter was sent to NIOSH inquiring on the applicability of OCAS-PER-012 and any other changes, NIOSH may supply National Office with individual Program Evaluation Reports (PER) or Individual Case Evaluations (ICE). The individual PER or ICE will serve as documentation that the case file has been reviewed by NIOSH and that NIOSH has determined that:

- the change outlined in the PER affects the outcome of the claim and a return to NIOSH for a new dose reconstruction is necessary, or
- there are multiple changes that affect the dose reconstruction and a return to NIOSH for a new dose reconstruction is necessary, or
- the change outlined in the PER does not affect the dose reconstruction, nor do any other changes affect the dose reconstruction and a return to NIOSH is not necessary.

If NIOSH provides DEEOIC with an individual case PER or ICE, the CE enters the code "LNR" (Letter/Response Received from NIOSH) and "830" reason code from the reason code drop down menu into ECMS B. The claim status date of the code is the date the response is received in the appropriate office, which is the date of the date stamp. No "LNR" status code is input in ECMS E unless the "NI" (Sent to NIOSH) status code had previously been entered. Therefore, if the "NI" status code had previously been entered in ECMS E, the CE also enters codes "LNR" and "830" into ECMS E.

If the individual case PER or ICE indicates that the case should "Return to NIOSH" for a new dose reconstruction, the District Director issues a Director's Order (if appropriate) reopening the case and refers the case to NIOSH as outlined in this bulletin.

If the individual case PER or ICE indicates that the case was "Evaluated with No Change," but does not include a dispositive statement, the District Director issues a Director's Order reopening the case for a referral to NIOSH for a new dose reconstruction. In order to be dispositive, NIOSH must indicate that they have evaluated the case against this PER and any other changes, **and** determined that a new dose reconstruction is not necessary.

If the individual case PER or ICE is dispositive, then no action is necessary and the CE enters the "NA" (No Action Necessary) status code an appropriate reason code into ECMS B as instructed in Action Item #5.

Individual case PERs or ICEs received in the National Office, will be forwarded to the appropriate district office for inclusion in the case file.

2. In the exercise of the Director's discretion over the reopening process, the Director is delegating limited authority to the District Director to sign Director's Orders for reopening. This delegated authority is limited to reopenings for those cases that are affected by the PER established for exposure to highly insoluble forms of plutonium. The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. If the District Director is unsure of whether the delegated authority to reopen applies, the case should be referred to the National Office.

3. For each case on the subset list of cases from EEOICPA Bulletin 07-27, regardless of whether or not a letter was sent to NIOSH inquiring on the applicability of OCAS-PER-012 on the dose reconstruction, the CE must determine whether a new dose reconstruction is needed. For those cases where:

- NIOSH requests a "Return to NIOSH," or
- NIOSH response is not dispositive (as discussed above), or
- No response from NIOSH is received but employment is identified at one of the sites listed in NIOSH's OCAS-PER-012 (**Attachment 1**), in which a dose reconstruction was performed prior to February 6, 2007 (as determined by the "Calculations Performed by" date found on the **most recent** NIOSH Report of Dose Reconstruction under the Energy Employees Occupational Illness Compensation Program Act) and resulted in a less than 50% POC,

the responsible District Director issues a Director's Order vacating the final decision and reopening the claim. The Director's Order states that the case is being reopened as a result of the change in scientific methodology by which the dose reconstruction is performed by NIOSH, and that a new dose reconstruction is necessary based on guidance provided in OCAS-PER-012.

The District Director enters the status code "MN" (NO Initiates Review for Reopening) into ECMS B with a status

effective date as the effective date of this bulletin. If the District Director is also reopening Part E, the “MN” code is also input in ECMS E.

For all reopenings per this bulletin, upon completing the Director’s Order to reopen the claim, the District Director enters status code “MD” (Claim Reopened – File Returned to DO) into ECMS B to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “MZ” status code is not necessary.) The status effective date of the “MD” code is the date of the Director’s Order. If the Director’s Order reopens the Part E claim, the “MD” code is also input in ECMS E.

Please note that while the “MD” code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been in this specific circumstance.

If the case does not meet the parameters for a new dose reconstruction (as described in the bulleted items above), no action is necessary and the CE enters the “NA” (No Action Necessary) status code and appropriate reason code into ECMS B as instructed in Action Item #5.

4. Once the claim has been reopened, the responsible CE is to refer the case to NIOSH for a new dose reconstruction. For cases affected by this bulletin, a request to the National Office Health Physicist is not required. Instead, the Claims Examiner (CE) should complete an amended NIOSH Referral Summary Document (ANRSD) and forward the ANRSD to the Public Health Advisor (PHA) assigned to the district office at NIOSH. The ANRSD should include the following statement in the “DOL Information” section, “Rework request due to OCAS-PER-012 and any other changes.” The CE should also:

- a. Send a letter to the claimant explaining that the case has been returned to NIOSH for a rework of the dose reconstruction as a result of a change in the dose reconstruction methodology as outlined in the OCAS-PER-012. A sample letter to the claimant is included as **Attachment 2**.
- b. Send a copy of this letter to the PHA at NIOSH assigned to the DO along with the weekly DO submissions to NIOSH. The dates on the ANRSD and the letter to the claimant must both be the same,
- c. since this will be the date used for the status code entry into ECMS. The CE enters status code “NI” (Sent to NIOSH) into ECMS B and selects the “PEP” (Rework based on Program Evaluation Plan) reason code.

The “NI” status code should only be entered in ECMS E after toxic exposure development is complete and the CE cannot accept causation. In that case the CE creates a memorandum to file stating that toxic exposure development is complete. The CE then enters status code “NI-PEP” into ECMS E with the date of the memorandum as the status effective date.

(Since this is considered a new dose reconstruction, the CE should not change the existing NR/DR status code to NR/RW as typically done for rework cases. Furthermore, if a POC value is already entered into ECMS, the CE should not delete the POC. The new POC will be updated once it is calculated.)

Upon receipt of the revised dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “NR” (Received from NIOSH) into ECMS B and selects the “DR” (Dose Reconstruction Received-POC) reason code. The status effective date is the date the dose reconstruction is date stamped into the district office. If the CE had previously entered “NI” in ECMS E, the CE also enters codes “NR” and “DR” into ECMS E. If the case is an E/B case, the CE enters the Probability of Causation into ECMS B and ECMS E regardless of whether an “NI” status code had previously been entered.

5. Each case on the subset list of cases from EEOICPA Bulletin 07-27 must be reviewed to determine if it meets the criteria to return to NIOSH for a new dose reconstruction. If after review, the adjudicator determines that a case on the list does not require any action to be taken, the CE/FAB HR must write a brief memo to the file that explains the case was reviewed under this

bulletin, no additional action is necessary, and why. A case classified as not requiring any action is a case that does not meet the criteria for a return to NIOSH, the case is already at NIOSH, or NIOSH has determined that a dose reconstruction is not necessary.

The CE must then code “NA” (No Action Necessary) and select the appropriate reason code from the reason code drop down list. The “NA” coding is specifically tied to the review list generated by DEEOIC and the “NA” code is restricted to ECMS B only because the review list is derived from Part B data. For cases that were reviewed under this bulletin and require no additional action, the reason code that must be selected is “30P” (**Reviewed under Bulletin 08-30**). Even if the case is an E/B case, the **NA-30P** must be coded into ECMS B only. The status effective date of the “NA” code is the date of the memo to the file stating review is complete and the CE has determined there is no further action necessary.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “NA-30P” code in addition to the closure code. The status effective date for the “NA” coding is the date of the memorandum to file.

6. For data integrity, EEOICPA Bulletin 08-02 supplemented EEOICPA Bulletin No. 07-27 by providing instructions on coding “LNS” (Letter Sent to NIOSH) and “LNR” (Letter/Response Received from NIOSH) in ECMS. If a letter was previously sent to NIOSH inquiring as to the applicability of OCAS-PER-012 and any other changes on the dose reconstruction, and the “LNS” status code was not coded into ECMS B, the CE enters the “LNS” status code in ECMS B. The status effective date is the date of the letter to NIOSH. If the “NI” status code had previously been entered in ECMS E, the CE also enters code “LNS” into ECMS E with the status effective date as the date of the letter to NIOSH. Similarly, as discussed above in Action Item #1, if a response was received from NIOSH, and the “LNR” code was not coded in ECMS, the CE is to enter the “LNR-830” status code into ECMS B. A review of the file will be necessary to determine whether a letter was sent to NIOSH inquiring on the applicability of OCAS-PER-012 and/or whether an individual case PER or ICE has been received from NIOSH.

7. For all cases with no final decision issued, the CE should take the appropriate action to refer the case back to NIOSH for a new dose reconstruction. This guidance is provided in EEOICPA Bulletin No. 07-19.

8. When reviewing cases under this Bulletin, CEs must keep in mind other changes that might affect the case and take the action that is appropriate under the circumstances.

For example, if a case should be reopened and accepted under a new Special Exposure Cohort class, the CE should take the action that will result in the most expedient positive outcome.

9. In carrying out the policy outlined in this Bulletin, personnel must understand that the comprehensive list not only provides the "to do" list of cases requiring attention, but it also serves as a means of tracking progress. As part of tracking progress, the list becomes the "pending" list and it is the goal to successfully and accurately review cases and enter appropriate ECMS coding which will result in "the case being removed from the list" (in other words, will result in an indicator for reporting purposes showing that the initial review was completed and/or that subsequent action was taken). ECMS coding is at the claim level and so the failure to input a code that will remove the case from the pending list on even one claim associated with a case, will result in the case still showing up as still pending review or action. In terms of ECMS coding, it is crucial to be thorough and precise. The most obvious example of this is the use of the "C2" (administrative closure) code. "C2" will not remove a case from the pending list; the "NA" code must be entered for each claim to which it applies after input of the "C2" code. In terms of codes that will remove cases off the pending list, any "NI" code entered after the bulletin effective date will remove it and proper use of the "NA" code will remove it from the pending list. These are not the only codes that will remove cases from the pending list, but rather are provided as examples to show their importance. Any additional questions regarding proper ECMS coding must be directed to the Policy Branch.

10. The operational plan goal for the lists of cases identified for review as part of a new SEC class, PEP, or PER is to complete the Part B recommended decision, return to NIOSH, or determine that no action is necessary within 45 days of the date of this Bulletin for at least 50% of the cases, and within 90 days for 95% of the cases. All cases requiring action due to this Bulletin should be completed within 120 days.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

Distribution List No. 1: All DEEOIC Employees

Distribution List No. 7: Resource Centers

**08-31 OCAS-PER-014, Program Evaluation Report for Construction Trade Workers. Note:**  
*This bulletin replaces Bulletin No. 08-10*

EEOICPA BULLETIN NO.08-31

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**Note: This bulletin replaces EEOICPA Bulletin No. 08-10, NIOSH's Program Evaluation Plan for Construction Trade Workers (CTW). This bulletin follows the release of NIOSH's Program Evaluation Report which provides further clarification on assessing cases for CTWs with inadequate internal or external monitoring.**

Subject: OCAS-PER-014, Program Evaluation Report for Construction Trade Workers.

Background: In 2004, the National Institute for Occupational Safety and Health (NIOSH) found that some Construction Trade Workers (CTWs) were “unmonitored during the early years of the complex” and that these workers “may have been exposed to external radiation and/or internal contamination above ambient and environmental levels without adequate monitoring.” As such, on August 31, 2006, NIOSH issued ORAUT-OTIB-0052 to provide guidance on assessing CTWs with inadequate internal or external monitoring. On March 29, 2007, NIOSH released OCAS-PEP-014, entitled “Evaluation of the Impact of OTIB-0052, Construction Trade Workers.” The Program Evaluation Plan (PEP) outlined NIOSH’s plan for identifying and evaluating claims for CTWs with inadequate internal/external monitoring.

On November 27, 2007, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) released EEOICPA Bulletin No. 08-10, NIOSH’s Program Evaluation Plan for Construction Trade Workers. EEOICPA Bulletin 08-10 provided guidance on handling those cases that are potentially affected by NIOSH’s PEP that are in the adjudication process and have no final decision. The guidance provided in the Bulletin outlined the process that Claims Examiners (CE) should undertake to identify whether a case involving a CTW should be returned to NIOSH for a new dose reconstruction.

On November 28, 2007, NIOSH released OCAS-PER-014, entitled “Construction Trade Workers.” The Program Evaluation Report (PER) provides the results of the NIOSH’s evaluation and further defines the parameters used for identifying potentially affected cases. A copy of OCAS-PER-014 is included as **Attachment 1**.

A list of cases that are potentially affected by the release of the PER identified above has been generated. The list of cases will be distributed to the appropriate district offices under separate cover.

References: OCAS-PEP-014, “Evaluation of the Impact of OTIB-0052, Construction Trade Workers,” viewed at: <http://www.cdc.gov/niosh/ocas/pdfs/peps/oc-pep14-r0.pdf>; OCAS-PER-014, “Construction Trade Workers,” viewed at: <http://198.246.98.21/niosh/ocas/pdfs/pers/oc-per14-r0.pdf>.

Purpose: To provide procedures for processing claims that are potentially affected by the release of OCAS-PER-014 for Construction Trade Workers.

Applicability: All staff.

Actions:

1. For each case identified on the list of cases, the CE must determine whether the dose reconstruction is affected by the release of OCAS-PER-014. To do so, the CE must first confirm that the employee is/was employed at one of the following facilities:

Hanford	Portsmouth Gaseous Diffusion Plant
Pacific Northwest National Laboratory	Savannah River Site
Kansas City Plant	Weldon Springs Plant
Los Alamos National Laboratory	Oak Ridge National Laboratory (X-10)
Pantex Plant	Y-12 Plant

If employment at one of the facilities listed above is not found, no further action is necessary. The CE codes ECMS as instructed in Action Item #12.

If the employee is/was employed at one of the facilities listed above, the CE must then determine whether the employee is/was a subcontractor and a construction trade worker.

2. To assist the CE in determining whether an employee is/was a construction trade worker, the following lists of trades may be utilized as examples of job titles that are recognized in the construction field:

- list of trades as identified in Attachment A of the OCAS-PER-014 (found in **Attachment 1**),  
or
- list of trades identified under the Labor Categories found under “Construction” in the Site Exposure Matrix (SEM).

In utilizing SEM, the CE should select “Construction (all sites)” from the “Site” drop down menu and press “select.” This will bring up a screen that allows a search for specific information related to construction. Under Searches Specific to the Selected Site, there is category called “Labor Category” which allows the CE to identify labor categories specific to the construction field. A search can be conducted by “Labor Category Information” and/or “Labor Category Alias.” Both options should be utilized to assist in establishing construction trade work.

The lists of trades identified above are not all encompassing. As such, it is not necessary that the employee’s position directly matches that of one of the titles listed in Attachment A of the OCAS-PER-014 or the SEM, merely that the description of the employees’ position is one that can reasonably be considered a construction worker.

If it is established that the employee worked in the construction trade field, the CE will then need to determine whether the employee was a subcontractor. The Department of Energy’s (DOE) List of Covered Facilities identifies prime operating contractors of DOE facilities. However, employment for a prime contractor does not qualify the claim for re-evaluation under OCAS-PER-014. Therefore, if the employer is **not** listed on DOE’s List of Covered Facilities found on the DOE website, then it will be assumed that the employee was a subcontractor, and the CE should proceed to the next step to determine whether external co-worker dose was assigned and/or ORAUT-OTIB-0052 was/was not used in the dose reconstruction.

If it is determined that the employee did not perform duties in construction, or the employer is identified as a prime contractor, no further action is necessary. The CE codes ECMS as instructed in Action Item #12.

3. Once it is established that the employee is/was employed at one of the facilities identified in this bulletin and the employee is/was a subcontractor and CTW, the CE must determine whether the dose reconstruction was conducted prior to August 31, 2006 (as determined by the “Calculations Performed by” date found on the most recent NIOSH Report of Dose Reconstruction under the EEOICPA on file). Since ORAUT-OTIB-0052 was implemented on August 31, 2006, any case with a dose reconstruction conducted after this date, will not need further action. The CE codes ECMS as instructed in Action Item #12.

However, if the dose reconstruction was conducted prior to August 31, 2006, the CE must then determine whether external co-worker dose was assigned in the dose reconstruction.

4. To determine whether external co-worker dose was assigned to the dose reconstruction, the CE must carefully review the most recent NIOSH Report of Dose Reconstruction under the EEOICPA on file. To do this, look at the external dose section of the dose reconstruction report for the term “co-worker dose.” If there is no indication that external co-worker dose was assigned, then there is no OTIB-0052 adjustment to be made and the claim is not affected by the release of OCAS-PER-014. Therefore, no further action is necessary and the CE codes ECMS as instructed under Action Item #12.

If external co-worker dose was used in the dose reconstruction, the CE must further verify whether

ORAUT-OTIB-0052 was utilized by NIOSH in the dose reconstruction. The use of ORAUT-OTIB-0052 is important to note because it signifies that NIOSH performed the dose reconstruction in accordance with the changes described as part of OCAS-PER-014. To determine whether ORAUT-OTIB-0052 was utilized in the dose reconstruction, the CE must review the “References” section of the most recent NIOSH Report of Dose Reconstruction under the EEOICPA on file. If document ORAUT-OTIB-0052 is listed as a reference in the dose reconstruction report, OCAS-PER-014 does not affect the dose reconstruction and no further action is required. The CE codes ECMS as instructed under Action #12.

If NIOSH did not use ORAUT-OTIB-0052 in the dose reconstruction, then the CE proceeds with the instructions for handling the claim as outlined in this bulletin.

5. For those cases on the list that are currently in posture for a recommended decision to deny based on a less than 50% POC, where:

- employment is verified at one of the facilities found in Action #2, and
- it is determined that the employee is/was a subcontractor and a CTW, and
- the dose reconstruction was conducted prior to August 31, 2006, and
- External co-worker dose was assigned but NIOSH did not use ORAUT-OTIB-0052 in the dose reconstruction

the CE is to return the case to NIOSH for a new dose reconstruction.

6. When referring these cases to NIOSH for a new dose reconstruction, a request to the National Office Health Physicist is not required. Instead, the CE should complete an amended NIOSH Referral Summary Document (ANRSD) and forward the ANRSD to the Public Health Advisor (PHA) assigned to the district office at NIOSH. The ANRSD should include the following statement in the “DOL Information” section, “Rework request due to the release of OCAS-PER-014 and any other changes.” The CE should also:

- a. Send a letter to the claimant explaining that the case has been returned to NIOSH for a new dose reconstruction as a result of a change in the dose reconstruction methodology as outlined in the OCAS-PER-014. A sample letter to the claimant is included as **Attachment 2**.
- b. Send a copy of this letter to the PHA at NIOSH assigned to the DO along with the weekly DO submissions to NIOSH. The date on the ANRSD and the letter to the claimant must both be the same, since this will be the date used for the status code entry into ECMS. The CE enters status code “NI” (Sent to NIOSH) into ECMS B and selects the “PEP” (Rework based on Program Evaluation Plan) reason code.

The “NI” status code should only be entered in ECMS E after toxic exposure development is complete and the CE cannot accept causation. In that case the CE creates a memorandum to file stating that toxic exposure development is complete. The CE then enters status code “NI-PEP” into ECMS E with the date of the memorandum as the status effective date.

(Note: Since this is considered a new dose reconstruction, the CE should not change the existing NR/DR status code to NR/RW as typically done for rework cases. Furthermore, if a POC value is already entered into ECMS, the CE should not delete the POC. The new POC will simply be updated once it is calculated.)

Upon receipt of the revised dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “NR” (Received from NIOSH) into ECMS B and selects the “DR” (Dose Reconstruction Received-POC) reason code. The status effective date is the date the dose reconstruction is date stamped into the district office. If the CE had previously entered “NI” in ECMS E, the CE also enters codes “NR” and “DR” into ECMS E. If the case is an E/B case, the CE enters the Probability of Causation into ECMS B and ECMS E regardless of whether an “NI” status code had previously been entered.

7. For cases currently pending a final decision at the FAB, the Hearing Representative/CE must determine whether the claim is potentially affected by the CTW PER. If the recommended decision to deny is based on a less than 50% POC, the Hearing Representative/CE should follow Action Items 1-4 to determine whether a new dose reconstruction is necessary.

If ORAUT-OTIB-0052 was utilized in the dose reconstruction, the Representative/CE codes ECMS as instructed in Action #12 and proceeds with a final decision.

However, if document ORAUT-OTIB-0052 was not utilized by NIOSH, the recommended decision should be remanded to the district office in the usual manner. The Remand Order directs the district office to refer the case back to NIOSH for a new dose reconstruction as a result OCAS-PER-014.

The Hearing Representative/CE codes the case as "F7" (FAB Remand) in ECMS B/E as appropriate with an "OTH" (No DO Error- Other) reason code. The status effective date will be the date of the FAB remand.

If the case does not meet the parameters for a new dose reconstruction, no action is necessary and the Hearing Representative/CE enters the "NA" (No Action Necessary) status code and appropriate reason code into ECMS B as instructed in Action Item #12.

8. The following statement should be included in the Remand Order regarding the return of the case to NIOSH for a new radiation dose reconstruction.

On November 28, 2007, NIOSH issued OCAS-PER-014, "Construction Trade Workers." The changes outlined in OCAS-PER-014 not only affect the underlying scientific methodology by which the dose reconstruction was performed, but could potentially affect the outcome of a claim.

The DEEOIC is obligated to ensure that the application of the dose reconstruction methodology is administered in a fair and consistent manner. Given the revision to the underlying scientific assumptions by which the dose reconstruction was performed by NIOSH, and the release of OCAS-PER-014, the prior dose reconstruction/Probability of Causation calculation on your claim is now invalid. While the modification to the dose reconstruction methodology may not impact the outcome of the claim, it is necessary for the claim to undergo a new dose reconstruction by NIOSH.

9. In the exercise of the Director's discretion over the reopening process, the Director is delegating limited authority to the District Directors to sign Director's Orders for reopening. This delegated authority is limited to reopenings for those cases that are affected by OCAS-PER-014 for CTWs. The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. If the District Director is unsure of whether the delegated authority to reopen applies, the case should be referred to the National Office.

10. For those cases that have a final decision to deny based on a less than 50% POC, the CE must determine whether the claim is potentially affected by the CTW PER. The CE must follow Action Items 1-4 to determine whether a new dose reconstruction is necessary. If ORAUT-OTIB-0052 was utilized in the dose reconstruction, no further action is necessary. The CE codes ECMS as instructed in Action Item #12.

However, if ORAUT-OTIB-0052 was not utilized in the dose reconstruction, the responsible District Director issues a Director's Order vacating the final decision and reopening the claim. The Director's Order states that the case is being reopened as a result of the change in scientific methodology by which the dose reconstruction is performed by NIOSH, and that a new dose reconstruction is necessary based on guidance provided in OCAS-PER-014.

The District Director enters the status code "MN" (NO Initiates Review for Reopening) into ECMS B with a status effective date as the effective date of this bulletin. If the District Director is also reopening Part E, the "MN" code is also input in ECMS E.

For all reopenings per this bulletin, upon completing the Director's Order to reopen the claim, the District Director enters status code "MD" (Claim Reopened – File Returned to DO) into ECMS B

to reflect that the case has been reopened and is in the district office's jurisdiction. (The "MZ" status code is not necessary.) The status effective date of the "MD" code is the date of the Director's Order. If the Director's Order reopens the Part E claim, the "MD" code is also input in ECMS E.

Please note that while the "MD" code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been in this specific circumstance.

Once the case has been reopened, the district office should proceed with a referral to NIOSH for a new dose reconstruction as instructed in Action Item #6.

If the case does not meet the parameters for a new dose reconstruction, no action is necessary and the CE enters the "NA" (No Action Necessary) status code and appropriate reason code into ECMS B as instructed in Action Item #12.

11. It is possible that during the course of the review of these cases, NIOSH may supply the National Office with individual Program Evaluation Reports (PER) or Individual Case Evaluations (ICE) for cases (or a PER that represents a population of cases) potentially affected by this PER. The individual PER or ICE will serve as documentation that the case file has been reviewed by NIOSH and that NIOSH has determined that:

- the change outlined in the PER affects the outcome of the claim and a return to NIOSH for a new dose reconstruction is necessary, or
- there are multiple changes that affect the dose reconstruction and a return to NIOSH for a new dose reconstruction is necessary, or
- the change outlined in the PER does not affect the dose reconstruction, nor do any other changes affect the dose reconstruction and a return to NIOSH is not necessary.

If NIOSH provides DEEOIC with an individual case PER or ICE, the CE enters the code "LNR" (Letter/Response Received from NIOSH) and "831" reason code from the reason code drop down menu into ECMS B. The claim status date of the code is the date the response is received in the appropriate office, which is the date of the date stamp. If the "NI" status code had previously been entered in ECMS E, the CE also enters codes "LNR" and "831" into ECMS E.

If the individual case PER or ICE indicates that the case should "Return to NIOSH" for a new dose reconstruction, the District Director issues a Director's Order (if appropriate) reopening the case. Upon reopening, the district office refers the case to NIOSH for a new dose reconstruction as instructed in this bulletin.

If the individual case PER or ICE indicates that the case was "Evaluated with No Change" but does not include a dispositive statement, the District Director issues a Director's Order referring the case to NIOSH for a new dose reconstruction. In order to be dispositive, NIOSH must indicate that they have evaluated the case against this PER and any other changes, and determined that a new dose reconstruction is not necessary. If the individual case PER or ICE is dispositive, then no action is necessary and the CE enters the "NA" status code and appropriate reason code into ECMS B as instructed in Action Item #12.

Individual case PERs or ICEs received in the National Office, will be forwarded to the appropriate district office for inclusion in the case file.

12. All cases on the DEEOIC generated list must be reviewed to determine if it qualifies for a return to NIOSH for a new dose reconstruction. If after review, the adjudicator determines that a case on the list does not require any action to be taken, the CE/FAB HR must write a brief memo to the file that explains the case was reviewed under this bulletin, no additional action is necessary, and why. A case classified as not requiring any action is a case that does not meet the criteria for a return to NIOSH, the case is already at NIOSH, or NIOSH has determined that a dose reconstruction is not necessary.

The CE must then enter status code “NA” (No Action Necessary) into ECMS B and select the appropriate reason code from the reason code drop down list. The “NA” coding is specifically tied to the review list generated by DEEOIC and the “NA” code is restricted to ECMS B only because the review list is derived from Part B data. For cases that were reviewed under this bulletin and require no additional action, the reason code that must be selected is “31P” (**Reviewed under Bulletin 08-31**). Even if the case is an E/B case, the **NA-31P** must be coded into ECMS B only. The status effective date of the “NA” code is the date of the memo to the file stating review is complete and the CE has determined there is no further action necessary.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “NA-31P” code in addition to the closure code. The status effective date for the “NA” coding is the date of the memorandum to file.

13. For those cases where subcontractor employment is established, and if not already entered, the CE must update the Employment Classification Field in the Case Screen of ECMS by selecting “S” (a subcontractor at a DOE facility has been identified) from the DOE drop down menu.

14. If a claimant requests a reopening of his/her claim as a result of OCAS-PER-014, and the case is not one that is identified on the comprehensive list of cases distributed to the district offices, the case file must be evaluated to determine whether or not the claim warrants a reopening. Simply identifying a PER is not considered new evidence and is not sufficient to warrant a reopening. A reopening should be granted only if the evidence of file meets the parameters for reopening as outlined in Action Items #1-4.

Upon receipt of the claimant’s request for reopening, the District Office/FAB enters status code “MC” (Claimant Requests Reopening) in ECMS B. If it is an EB case where the potential reopening affects Part E, the “MC” code must also be entered into ECMS E. The status effective date is the postmark date, if available, or the date the request is received in the DO or FAB, whichever is earlier. For cases with multiple claimants, this code is only entered in the claim status history for the claimant(s) who submitted the request. (This is the only code related to Director’s Orders that works like this. All other Director’s Order codes are coded for all the *active* claimants.)

Once a determination is made by the District Director to reopen the case, the District Director enters the “MD” (Claim reopened, file returned to District Office) status code into ECMS B. If it is an EB case where the reopening request is applicable to Part E, the “MD” code must also be entered into ECMS E. The status effective date of the “MD” code is the date of the Director’s Order. These codes have typically been used in the National Office, however their use has been delegated to the District Director in certain circumstances, such as the review of cases under OCAS-PER-011.

For all claimant requests for reopening that do not meet the parameters for reopening as outlined in this Bulletin, or where the District Director is unsure of whether the delegated authority applies, the case should be referred to the National Office. When the case is referred to the National Office, the District Director enters the “MI” (District Director requests reopening) status code into ECMS B to indicate that the file is being forwarded to National Office for review under the reopening process. If it is an E/B case where the potential reopening affects Part E, the “MI” code must also be entered into ECMS E. A cover memo outlining the DD concerns must be submitted. The status effective date is the date of the DD’s memo to the Director of DEEOIC.

15. In carrying out the policy outlined in this Bulletin, personnel must understand that the comprehensive list not only provides the "to do" list of cases requiring attention, but it also serves as a means of tracking progress. As part of tracking progress, the list becomes the "pending" list and it is the goal to successfully and accurately review cases and enter appropriate ECMS coding which will result in “the case being removed from the list” (in other words, will result in an indicator for reporting purposes showing that the initial review was completed and/or that subsequent action was taken). ECMS coding is at the claim level and so the failure to input a code that will remove the case from the pending list on even one claim associated with a case, will result in the case still

showing up as still pending review or action. In terms of ECMS coding, it is crucial to be thorough and precise. The most obvious example of this is the use of the "C2" (administrative closure) code. "C2" will not remove a case from the pending list; the "NA" code must be entered for each claim to which it applies after input of the "C2" code. In terms of codes that will remove cases off the pending list, any "NI" code entered after the bulletin effective date will remove it and proper use of the "NA" code will remove it from the pending list. These are not the only codes that will remove cases from the pending list, but rather are provided as examples to show their importance. Any additional questions regarding proper ECMS coding must be directed to the Policy Branch.

16. The operational plan goal for the lists of cases identified for review as part of a new SEC class, PEP, or PER is to complete the Part B recommended decision, letter received from NIOSH, return to NIOSH, or determine that no action is necessary within 45 days of the date of this Bulletin for at least 50% of the cases, and within 90 days for 95% of the cases. All cases requiring action due to this Bulletin should be completed within 120 days.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

Distribution List No. 1: All DEEOIC Employees

Distribution List No. 7: Resource Centers

## **08-32 NIOSH's Program Evaluation Reports for Savannah River Site and Nevada Test Site.**

EEOICPA BULLETIN NO.08-32

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Expiration Date: July 16, 2009

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Subject: NIOSH's Program Evaluation Reports for Savannah River Site and Nevada Test Site.

Background: On December 18, 2007, the National Institute for Occupational Safety and Health (NIOSH) issued two Program Evaluation Reports (PER) addressing Technical Basis Document (TBD) revisions.

OCAS-PER-030, entitled "Savannah River Site TBD Revisions," addresses changes to the Savannah River Site TBD.

OCAS-PER-032, entitled "Nevada Test Site TBD Revisions," addresses changes to the Nevada Test Site TBD.

NIOSH issued the PERs to document the changes to the TBDs for these particular sites and their potential effect on previously completed dose reconstructions. A copy of the Savannah River Site PER is included as **Attachment 1**, and a copy of the Nevada Test Site PER is included as **Attachment 2**.

A list of cases that are potentially affected by the release of the PERs identified above will be distributed to the appropriate District/Final Adjudication Branch Office. This bulletin provides guidance on handling those cases that have been identified as potentially affected by the release of OCAS-PER-030 for the Savannah River Site and OCAS-PER-032 for the Nevada Test Site.

References: OCAS-PER-032, “Nevada Test Site TBD Revisions,” viewed at: <http://198.246.98.21/niosh/ocas/pdfs/pers/oc-per32-r0.pdf>; OCAS-PER-030, “Savannah River Site TBD Revision,” viewed at: <http://198.246.98.21/niosh/ocas/pdfs/pers/oc-per30-r0.pdf>.

Purpose: To provide procedures for processing claims that are potentially affected by the release of NIOSH’s Program Evaluation Reports for the Savannah River Site and Nevada Test Site.

Applicability: All staff.

Actions:

1. For those cases on the list that are currently in posture for a recommended decision to deny based on a less than 50% POC, where either:

- Employment is verified at the Savannah River Site and the dose reconstruction was conducted prior to August 21, 2003, or
- Employment is verified at the Nevada Test Site and the dose reconstruction was conducted prior to July 30, 2007,

the CE is to return the case to NIOSH for a new dose reconstruction. To determine when the dose reconstruction was conducted, the CE should use the date referenced in the “Calculations performed by” date found on the most recent NIOSH Report of Dose Reconstruction under the EEOICPA on file.

No action is required on cases with a dose reconstruction that was conducted on/after August 21, 2003 for Savannah River Site. Similarly, no action is required on cases with a dose reconstruction conducted on/after July 30, 2007 for Nevada Test Site. Furthermore, no action is necessary on any case that is already at NIOSH for a dose reconstruction. For any case meeting the “no action” criteria, the CE should code ECMS and create a memorandum to the file as instructed in Action #8.

2. When referring these cases to NIOSH for a new dose reconstruction, a request to the National Office Health Physicist is not required. Instead, the CE should complete an amended NIOSH Referral Summary Document (ANRSD) and forward the ANRSD to the Public Health Advisor (PHA) assigned to the district office at NIOSH. The ANRSD should include the following statement in the “DOL Information” section, “Rework request due to the release of **[OCAS-PER-030/OCAS-PER-032]** and any other changes.” The CE should also:

- a. Send a letter to the claimant explaining that the case has been returned to NIOSH for a new dose reconstruction as a result of a change in the dose reconstruction methodology as outlined in either OCAS-PER-030 for Savannah River Site or OCAS-PER-032 for the Nevada Test Site. A sample letter to the claimant is included as **Attachment 3**.
- b. Send a copy of this letter to the PHA at NIOSH assigned to the DO along with the weekly DO submissions to NIOSH. The date on the ANRSD and the letter to the claimant must both be the same, since this will be the date used for the status code entry into ECMS. The CE enters status code “NI” (Sent to NIOSH) into ECMS B and selects the “PEP” (Rework based on Program Evaluation Plan) reason code.

The “NI” status code should only be entered in ECMS E after toxic exposure development is complete and the CE cannot accept causation. In that case the CE creates a memorandum to file stating that toxic exposure development is complete. The CE then enters status code “NI-PEP” into ECMS E with the date of the memorandum as the status effective date.

(Note: Since this is considered a new dose reconstruction, the CE should not change the existing

NR/DR status code to NR/RW as typically done for rework cases. Furthermore, if a POC value is already entered into ECMS, the CE should not delete the POC. The new POC will simply be updated once it is calculated.)

Upon receipt of the revised dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code "NR" (Received from NIOSH) into ECMS B and selects the "DR" (Dose Reconstruction Received-POC) reason code. The status effective date is the date the dose reconstruction is date stamped into the district office. If the CE had previously entered "NI" in ECMS E, the CE also enters codes "NR" and "DR" into ECMS E. If the case is an E/B case, the CE enters the Probability of Causation into ECMS B and ECMS E regardless of whether an "NI" status code had previously been entered.

3. For cases currently pending at the FAB for a final decision, the Hearing Representative/CE must determine whether the case is affected by the release of OCAS-PER-030 for Savannah River Site or OCAS-PER-032 for the Nevada Test Site. If the recommended decision is to deny based on a less than 50% POC, and meets one of the two bulleted criteria listed in Action Item #1, the Hearing Representative/CE should remand the recommended decision to the district office in the usual manner. The Remand Order directs the district office to refer the case back to NIOSH for a new dose reconstruction as a result of the release of OCAS-PER-030 for Savannah River Site or OCAS-PER-032 for the Nevada Test Site, as appropriate, and any other changes affecting the dose reconstruction methodology.

The Hearing Representative/CE should enter status code "F7" (FAB Remand) in ECMS B/E (as appropriate) with an "OTH" (No DO Error - Other) reason code. The status effective date will be the date of the FAB remand.

If the case does not meet the parameters for a new dose reconstruction, no action is necessary and the Hearing Representative/CE enters the "NA" (No Action Necessary) status code and appropriate reason code into ECMS B as instructed in Action Item #8.

4. The following statement should be included in the Remand Order regarding the return of the case to NIOSH for a new radiation dose reconstruction.

On December 18, 2007, NIOSH issued [**OCAS-PER-030, "Savannah River Site TBD Revisions/OCAS-PER-032, "Nevada Test Site TBD Revisions"**]. The changes outlined in [**OCAS-PER-030/OCAS-PER-032**] not only affect the underlying scientific methodology by which the dose reconstruction was performed, but could potentially affect the outcome of a claim.

The DEEOIC is obligated to ensure that the application of the dose reconstruction methodology is administered in a fair and consistent manner. Given the revision to the underlying scientific assumptions by which the dose reconstruction was performed by NIOSH, and the release of [**OCAS-PER-30/OCAS-PER-032**], the prior dose reconstruction/Probability of Causation calculation on your claim is now invalid. While the modification to the dose reconstruction methodology may not impact the outcome of the claim, it is necessary for the claim to undergo a new dose reconstruction by NIOSH.

5. In the exercise of the Director's discretion over the reopening process, the Director is delegating limited authority to the District Director to sign Director's Orders for reopening. This delegated authority is limited to reopenings for those cases that are affected by OCAS-PER-030 for Savannah River Site and OCAS-PER-032 for Nevada Test Site. The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. If the District Director is unsure of whether the delegated authority to reopen applies, the case should be referred to the National Office.

6. For those cases that have a final decision to deny based on a less than 50% POC, the CE must determine whether the claim is potentially affected by the PER released for Savannah River Site or the Nevada Test Site. If the case meets either of the bulleted criteria listed in Action Item #1, the

responsible District Director issues a Director's Order vacating the final decision and reopening the claim. The Director's Order states that the case is being reopened as a result of the change in scientific methodology by which the dose reconstruction is performed by NIOSH, and that a new dose reconstruction is necessary based on guidance provided in OCAS-PER-030 for Savannah River Site or OCAS-PER-032 for the Nevada Test Site.

The District Director enters the status code "MN" (NO Initiates Review for Reopening) into ECMS B with a status effective date as the effective date of this bulletin. If the District Director is also reopening Part E, the "MN" code is also input in ECMS E.

For all reopenings per this bulletin, upon completing the Director's Order to reopen the claim, the District Director enters status code "MD" (Claim Reopened – File Returned to DO) into ECMS B to reflect that the case has been reopened and is in the district office's jurisdiction. (The "MZ" status code is not necessary.) The status effective date of the "MD" code is the date of the Director's Order. If the Director's Order reopens the Part E claim, the "MD" code is also input in ECMS E.

While the "MD" code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been in this specific circumstance.

Once the case has been reopened, the district office should proceed with a referral to NIOSH for a new dose reconstruction as instructed in Action Item #2.

If the case does not meet the parameters for a new dose reconstruction, no action is necessary and the CE enters the "NA" (No Action Necessary) status code and appropriate reason code into ECMS B as instructed in Action Item #8.

7. It is possible that during the course of the review of these cases, NIOSH may supply the National Office with individual Program Evaluation Reports (PER) or Individual Case Evaluations (ICE) for cases (or a PER that represents a population of cases) potentially affected by this PER. The individual PER or ICE will serve as documentation that the case file has been reviewed by NIOSH and that NIOSH has determined that:

- the change outlined in the PER affects the outcome of the claim and a return to NIOSH for a new dose reconstruction is necessary, or
- there are multiple changes that affect the dose reconstruction and a return to NIOSH for a new dose reconstruction is necessary, or
- the change outlined in the PER does not affect the dose reconstruction, nor do any other changes affect the dose reconstruction and a return to NIOSH is not necessary.

If NIOSH provides DEEOIC with an individual case PER or ICE, the CE enters the code "LNR" (Letter/Response Received from NIOSH) and "832" reason code from the reason code drop down menu into ECMS B. The status effective date is the date the response is received in the appropriate office, which is the date of the date stamp. If the "NI" status code had previously been entered in ECMS E, the CE also enters status code "LNR" and "832" into ECMS E.

If the individual case PER or ICE indicates that the case should "Return to NIOSH," the case should be prepared for a referral to NIOSH for a new dose reconstruction as instructed in this bulletin. If necessary, the District Director issues a Director's Order reopening the case. Upon reopening, the district office should refer the case to NIOSH for a new dose reconstruction as instructed in this bulletin.

If the individual case PER or ICE indicates that the case was "Evaluated with No Change" but does not include a dispositive statement, the case should be referred to NIOSH for a new dose reconstruction as instructed in this bulletin. If necessary, the District Director issues a Director's Order vacating the final decision and reopening the case. In order to be dispositive, NIOSH must indicate that they have evaluated the case against this PER and any other changes, and determined

that a new dose reconstruction is not necessary. If the individual case PER or ICE is dispositive, then no action is necessary and the CE enters the “NA” status code and appropriate reason code into ECMS B as instructed in Action Item #8.

Individual case PERs or ICEs received in the National Office, will be forwarded to the appropriate district office for inclusion in the case file.

8. All cases on the list must be reviewed to determine if it qualifies for a return to NIOSH for a new dose reconstruction. If after review, the adjudicator determines that a case on the list does not require any action to be taken, the CE/FAB HR must write a brief memo to the file that explains the case was reviewed under this bulletin, no additional action is necessary, and why. A case classified as not requiring any action is a case that does not meet the criteria for a return to NIOSH, the case is already at NIOSH, or NIOSH has determined that a dose reconstruction is not necessary.

The CE must then enter status code “NA” (No Action Necessary) into ECMS B and select the appropriate reason code from the reason code drop down list. The “NA” coding is specifically tied to the review list generated by DEEOIC and the “NA” code is restricted to ECMS B only because the review list is derived from Part B data. For cases that were reviewed under this bulletin and require no additional action, the reason code that must be selected is “32P” (**Reviewed under Bulletin 08-32**). Even if the case is an E/B case, the **NA-32P** must be coded into ECMS B only. The status effective date of the “NA” code is the date of the memo to the file stating review is complete and the CE has determined there is no further action necessary.

If the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “NA-32P” code in addition to the closure code. The status effective date for the “NA” coding is the date of the memorandum to file.

9. If a claimant requests a reopening of his/her claim as a result of OCAS-PER-030 or OCAS-PER-032, and the case is not one that is identified on the comprehensive list of cases distributed to the district offices, the case file must be evaluated to determine whether or not the claim warrants a reopening. Simply identifying a PER is not considered new evidence and is not sufficient to warrant a reopening. A reopening should be granted only if the evidence of file meets the parameters for reopening as outlined in Action Item #6.

Upon receipt of the claimant’s request for reopening, the District Director enters status “MC” (Claimant Requests Reopening) in ECMS. The status effective date is the postmark date, if available, or the date the request is received in the DO or FAB, whichever is earlier. Following the input of the “MC” status code, the District Director should issue a Director’s Order reopening the claim following the procedures as outlined in this Bulletin.

For all claimant requests for reopening as a result of the PER for the Savannah River Site or the Nevada Test Site that do not meet the criteria for reopening as outlined in this Bulletin, the District Director should prepare a memorandum to the Director of DEEOIC and forward the case file to National Office for review. The District Director enters status code “MC” (Claimant Requests Reopening) and “MI” (District Director Requests Reopening) in ECMS B/E as appropriate to indicate that the file is being forwarded to National Office for review under the reopening process. The status effective date for the “MI” code is the date of the District Director’s memo to the Director of DEEOIC.

10. The operational plan goal for the lists of cases identified for review as part of a new SEC class, PEP, or PER is to complete the Part B recommended decision, return to NIOSH, or determine that no action is necessary within 45 days of the date of this Bulletin for at least 50% of the cases, and within 90 days for 95% of the cases. All cases requiring action due to this Bulletin should be completed within 120 days.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

Distribution List No. 1: All DEEOIC Employees

Distribution List No. 7: Resource Centers

### **08-33 An additional Hanford class in the SEC**

EEOICPA BULLETIN NO.08-33

Issue Date: June 30, 2008

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Effective Date: June 30, 2008

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Expiration Date: June 30, 2009

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Subject: An additional Hanford class in the SEC

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from the Hanford Nuclear Reservation near Richland, WA to be added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and decided it qualified for evaluation under 42 C.F.R. § 83.13. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On April 30, 2008, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at Hanford.

On May 30, 2008, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress.

All employees of the Department of Energy (DOE), its predecessor agencies, and DOE contractors or subcontractors who worked from:

1. September 1, 1946 though December 31, 1961 in the 300 area; or
2. January 1, 1949 through December 31, 1968 in the 200 areas (East and West)

at the Hanford Nuclear Reservation in Richland, Washington for a number of work days aggregating at least 250 work days occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

A copy of the Secretary’s letter to Congress recommending the designation is included as **Attachment 1**. The SEC designation for this class became effective as of June 29, 2008, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in a report to Congress. While Congress had the authority to reject the recommendation within the 30-day time frame, no action was taken to contradict the addition of this new SEC class.

While a new SEC class has been added for employees at Hanford, NIOSH has determined that it is possible to reconstruct all doses except internal thorium exposures for the 300 Area and internal americium exposures for the 200 Area. This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

A previous SEC class pertaining to Hanford became effective on October 12, 2007 and was the subject Bulletin 08-03. The guidance provided here is to be used in addition to the prior bulletin, as it pertains to an entirely new SEC class.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the May 30, 2008 letter to Congress from the Secretary of HHS in which Secretary Leavitt makes the designation. Additionally, NIOSH provided clarifying information on the class definition in a letter dated May 27, 2008, included as **Attachment 2** to this Bulletin.

Purpose: To provide procedures for processing SEC claims for workers at Hanford.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, claims pending a decision, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at Hanford during the period of the SEC class. It includes pending cases, cases previously denied and those at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.

The comprehensive list also includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD contains all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD, in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected Hanford claimants is included as **Attachment 3**. The claims examiner (CE) must print out a hard copy of the NIOSH letter for inclusion in the case file.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e-mail to return dose reconstruction analysis records. The SrCE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. In addition, the CE must write a letter to the claimant to advise that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

Once a case file is returned from NIOSH (including those cases where DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code "NW" (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the code entry is June 30, 2008. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record. The standard procedure for

NIOSH coding in ECMS E is to code all additional NIOSH actions only if the “NI” (Sent to NIOSH) status code has been entered. Therefore, the CE enters the “NW” code into ECMS E with the status effective date of June 30, 2008 only if “NI” has already been entered in ECMS E.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this bulletin, then refer to instructions in Action #13.

3. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.
4. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual (PM) Chapter 2-600.5. If the employee has a specified cancer, proceed to Action #5. If the employee does not have a specified cancer, proceed to Action #7.
5. If the employee has a specified cancer, the CE must determine if the worker was employed for a number of work days aggregating at least 250 work days by combining the number of days in:
  - the Hanford 300 area during the period September 1, 1946 through December 31, 1961and
  - the Hanford 200 area (East or West) during the period January 1, 1949 through December 31, 1968

There is also a 200 North Area at Hanford. We are awaiting clarification from NIOSH as to whether or not the 200 North will be included in this additional class in the SEC. The 200 North Area became the 600 Area and includes Buildings 212-N, 212-P, 212-R, 213-J and 213-K. Once further clarification is received from NIOSH on this matter, appropriate guidance will be forthcoming. If there are questions concerning the 200 North area, and the employee cannot be placed in the SEC class based on employment in the other areas, the case is to be referred to the National Office for review.

As with previous additions to the SEC, the 250 work day criteria can be met through employment solely in the new class or in combination with work days within the parameters established for one or more other classes of employees in the SEC.

The 300 Area and the 200 East and West Areas are large parcels of land encompassing many acres. Within the acreage of the areas is a wide assortment of work locations, including buildings, waste pits, burial grounds, underground vaults (for waste storage), and tank farms (also for waste). The CE examines the totality of the evidence to determine whether employees worked in Areas included as part of this additional class in the SEC, keeping in mind the following three categories:

A) Those employees for which there is strong evidence that shows the employee worked in either the 200 (East or West) and/or 300 Area at Hanford. The CE should become familiar with the SEC Petition Evaluation Report located at <http://www.cdc.gov/niosh/ocas/pdfs/sec/hanford/hanforder2-r1.pdf>. This report contains valuable information about the site, which can be used to determine whether an employee may have worked in the SEC areas. Particularly, on pages 29-30, the report contains a summary of key Hanford facilities, broken down by Area. If the evidence clearly places the employee in either the 200 Area (East or West) or the 300 Area, proceed to step #6.

Additionally, many subcontractors were employed at the Hanford site. In cases in which subcontractor employment is claimed, staff is reminded to utilize the Center to Protect Worker Rights (CPWR) database for verification of subcontractor employment. If the job for which the subcontractor company was hired was exclusively performed in the 200 (East or West) or 300 Area

(such as construction of a building in that Area), the CE should credit all of the employee's verified time so employed as occurring within that Area.

B) Those employees who worked in jobs which required them to move around the site because their job was such that they supported activities site-wide (operational support positions). The types of jobs in this category would include pipefitters, construction workers, plumbers, electricians, steamfitters, carpenters, sheetmetal workers, masons, maintenance workers, firefighters and guards, to name a few. For these workers, the CE/HR is to assume the employee worked in the 200 (East or West) Area and/or 300 Area for 250 days if they have 250 days of verified employment during the class period, unless there is substantial evidence to the contrary. (i.e. evidence demonstrating that the employee did not work in these areas for 250 days) If there is affirmative evidence that an employee in this category was not in either the 200 (East or West) or 300 Area for some of their confirmed employment period, the employment in the non-SEC Areas do not count towards the 250 days. The CE then must weigh the evidence to determine whether the employee worked for 250 work days in the SEC Areas of Hanford (in combination with work days within the parameters established for one or more other classes of employees in the SEC). If the CE determines that the evidence is sufficient to place the employee in the SEC, then proceed to step #6.

Under circumstances where specific and contradictory information exists to exclude an "operational support" employee from the SEC class, the CE must undertake additional development of the claim.

C) Any employees not fitting into categories A) or B), above should not be determined to be members of the SEC class unless there is probative evidence to suggest the employee worked in covered work locations for at least 250 days. There are other Areas at Hanford in which employees could have worked that are not part of this SEC class (the 100, 400 and 700 Areas, for example). Beginning on page 17 of the NIOSH SEC petition evaluation report there is an overview of all Hanford areas. When developing claims for placement in the class, CE's should encourage claimants to submit work records, affidavits from co-workers regarding work location or any other documentation relevant to their work location.

6. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

ECMS Coding Reminder: The "SE" (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the status effective date of the recommended decision to approve. (This is a change from previous guidance which tied the "SE" effective date to when the employment and medical criteria for SEC has been met). If the case is an E/B case, and the basis for the Part E acceptance is the Part B SEC acceptance, the "SE" code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E. The SEC site code "45" for "Hanford" must be selected from the drop down menu under the "SEC/SEC Desc" field on the claim screen in ECMS B only.

7. As discussed earlier, the Secretary of Health and Human Services determined that it is not feasible for NIOSH to perform complete dose reconstructions for the class of employees who worked at the Hanford Nuclear Reservation in the 200 Area (East or West) during the period January 1, 1949 through December 31, 1968 or the 300 Area during the period September 1, 1946 through December 31, 1961.

NIOSH has indicated that partial dose reconstructions are possible for all 200 (East and West) and 300 Area employees. These partial dose reconstructions include all doses except those from internal thorium (300 Area) and americium (200 Area). Accordingly, for cases that had not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code "NI" (Sent to NIOSH) in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD. "NI" should only be entered in ECMS E after

toxic exposure development is complete and the CE cannot accept causation. In that case the CE creates a memorandum to file stating that toxic exposure development is complete. The CE then enters status code "NI" into ECMS E with the date of the memorandum as the status effective date.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code "NI" (Sent to NIOSH) into ECMS B, effective the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-specified cancer, insufficient latency period or does not meet the 250 work day requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for dose reconstruction and the reason(s) it does not qualify for the SEC class. If the case is an E/B case and toxic exposure development was completed with a memorandum to file (with a prior "NI"/"NW" code), the CE enters status code "NI" into ECMS E with the status effective date of the e-mail requesting NIOSH to proceed with dose reconstruction.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code "NR" (NIOSH Dose Reconstruction Received) in ECMS B and selects the "PD" (Partial Dose Reconstruction) reason code. The status effective date is the date the dose reconstruction is date-stamped into the District Office. The CE should not delete the "NW" (NIOSH, returned without a dose reconstruction) or "NI" (Sent to NIOSH) code already present in ECMS. If the CE had previously entered "NI" in ECMS E, the CE also enters codes "NR" and "PD" into ECMS E. If the case is an E/B case, the CE enters the Probability of Causation (PoC) into ECMS B and ECMS E (regardless of whether the "NI" code had previously been entered).

8. If the claim meets the SEC employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction that resulted in a probability of causation of 50 percent or greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and if necessary concurrently prepares a NRSD to NIOSH for a dose reconstruction for the non-specified cancer to determine eligibility for medical benefits. The CE enters status code "SE" (Confirmed as SEC Claim) and the "NI" (Sent to NIOSH) code into ECMS B. The status effective date for the "SE" code is the date of the recommended decision to accept the specified cancer. The status effective date for the "NI" code is the date of the Senior or Supervisory CE signature on the NRSD. If the case is an E/B case, the CE enters status code "NI" (Sent to NIOSH) only after the toxic exposure development is complete and the CE cannot accept causation. In that case the CE creates a memorandum to file stating that toxic exposure development is complete. The CE then enters status code "NI" into ECMS E with the date of the memorandum as the status effective date.

9. If there is a final decision to deny based on a POC of less than 50% and a review of the evidence of record establishes likely inclusion in the SEC class, it will need to be reopened. In the exercise of the Director's discretion of the reopening process, the Director is delegating limited authority to the four District Directors to sign Director's Orders for reopening. This delegated authority is limited to reopenings based upon evidence that a Hanford employee meets the criteria for placement into the Hanford SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director's Order is provided in **Attachment 4**. The Director is retaining sole signature authority for

all other types of reopenings not otherwise delegated. Once a Director's Order is issued, the district office is responsible for issuing a new recommended decision.

10. For those cases which are reopened under the authority granted in this Bulletin, the District Director enters status code "MN" (NO Initiates Review for Reopening) in ECMS B with a status effective date as the effective date of this bulletin. If the District Director is also reopening Part E, the "MN" code is also input in ECMS E.

For all reopenings per this bulletin, upon completing the Director's Order to reopen the claim, the District Director (DD) enters status code "MD" (Claim Reopened – File Returned to DO) into ECMS B to reflect that the case has been reopened and is in the district office's jurisdiction. (The "MZ" status code is not necessary). The status effective date of the "MD" code is the date of the Director's Order. If the Director's Order reopens the Part E claim, the DD also enters status code "MD" into ECMS E.

While the "MD" code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been in this specific circumstance.

11. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending Hanford cases that have a recommended decision to deny. All cases on the comprehensive list identified in action item 2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at in either the 200 Area (East and West) or 300 Area at Hanford during the time specified, has a specified cancer, and meets the 250 work day requirement, FAB is to review the case for the parameters of the SEC as specified in this Bulletin. If the criteria of the SEC are met, the FAB is to reverse the district office's recommended decision to deny and accept the case. The CE/HR enters status code "F6" (FAB Reversed to Accept) into ECMS B/E (as appropriate) to reflect the FAB reversal with a status effective date equal to the date of the final decision to approve. The CE/HR enters status code "SE" (Confirmed as SEC Claim) into ECMS B with a status effective date equal to the date of the final decision to approve. If the FAB is also reversing the Part E decision based on SEC designation, CE/HR also enters status codes "F6" and "SE" into ECMS E with a status effective date of the final decision for Part E.

If no action is required, FAB must follow the instructions specified in action item 13, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the District Office. If FAB determines that the case cannot be approved based on the new SEC designation and that re-referral to NIOSH is appropriate (see action items 5 and 7) the HR must remand the case for district office action. The CE/HR enters status code "F7" (FAB Remanded) with "OTH" (No DO Error – Other) as the reason code. If the decisions on Parts B and E are being remanded, the CE/HR enters the remand code into ECMS B and E. The status effective date is the date of the remand.

12. The operational plan goal for the list of cases identified for review as part of this new SEC class is to complete the Part B recommended decision, return to NIOSH, or determine that no action is necessary within 45 days of the date of this Bulletin for at least 50% of the cases, and within 90 days for 95% of the cases. All cases requiring action due to this Bulletin should be completed within 120 days.

13. All cases on the DEEOIC generated list must be reviewed to determine if it qualifies under the SEC provision including cases still at NIOSH. If after review or further development, the CE/HR determines that a case on the list does not require any action to be taken (either a new recommended decision to accept based on the SEC, or return to NIOSH, or a FAB reversal or remand) the CE/FAB HR must write a brief memo to the file that explains the case was reviewed under this bulletin, no additional action is necessary, and why. A case classified as not requiring any action is a case that does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose

reconstruction.

The CE must then code “NA” (No Action Necessary) and then select the appropriate reason code from the reason code drop down list. The “NA” coding is specifically tied to the SEC review list generated by DEEOIC and the “NA” code is restricted to ECMS B only because the SEC review list is derived from Part B data. For Hanford cases that were reviewed under this bulletin and require no additional action, the reason code that must be selected is “833” (**Reviewed under Bulletin 08-33, Hanford 200/300 Area SEC**). Even if the case is an E/B case, the **NA-833** must be coded into ECMS B only. The status effective date of the “NA” code is the date of the memo to the file stating review is complete and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the “NA-833” code is not entered initially. The “NA-833” code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the “NA-19S” code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “NA-833” code in addition to the closure code. The status effective date for the “NA” coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

### **08-34 Horizons, Inc. SEC Class**

EEOICPA BULLETIN NO.08-34

Issue Date: June 30, 2008

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Effective Date: June 30, 2008

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Expiration Date: June 30, 2009

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Subject: Horizons, Inc. SEC Class

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from Horizons, Inc. in Cleveland, Ohio to be added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and decided it qualified for evaluation under 42 C.F.R. Part 83. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On April 30, 2008, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at the Horizons, Inc. in Cleveland, Ohio.

On May 30, 2008, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress.

All Atomic Weapons Employer (AWE) employees who worked at the Horizons, Inc. facility from January 1, 1952 through December 31, 1956 for a number of work days aggregating at least 250 work days occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

A copy of the Secretary’s letter to Congress recommending the designation is included as **Attachment 1**. The SEC designation for this class became effective as of June 29, 2008, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in a report to Congress. While Congress had the authority to reject the recommendation within the 30-day time frame, no action was taken to contradict the addition of this new SEC class.

While a new SEC class has been added for employees at Horizons, Inc., NIOSH has determined that it is possible to reconstruct the external radiation doses and the occupational medical dose during the time period in question. Also, NIOSH believes that they can construct individual doses during the residual period (January 1, 1957 to July 31, 2006). This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the May 30, 2008 letter to Congress from the Secretary of HHS in which Secretary Leavitt makes the designation.

Purpose: To provide procedures for processing SEC claims for workers at Horizons, Inc. in Cleveland, Ohio.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at the Horizons, Inc. Plant during the period of the SEC class. It includes pending cases, cases previously denied and those at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.

The comprehensive list also includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD contains all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD, in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected Horizons, Inc. claimants is included as **Attachment 2**. The claims examiner (CE) must print out a hard copy of the NIOSH letter for inclusion in the case file.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e-mail to return dose reconstruction analysis records. The SrCE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. In addition, the CE must write a letter to the claimant to advise that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

Once a case file is returned from NIOSH (including those cases where DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code "NW" (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the code entry is June 30, 2008. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this bulletin, then refer to instructions in Action #13.

3. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.
4. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual (PM) Chapter 2-600.5. If the employee has a specified cancer, proceed to Action #5. If the employee does not have a specified cancer, proceed to Action #7.
5. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 work days at Horizons, Inc. in Cleveland, Ohio from January 1, 1952 through December 31, 1956 or in combination with work days within the parameters established for one or more other classes of employees in the SEC.

Horizons, Inc. was a facility which operated in Cleveland, Ohio. Based upon the SEC designation, any probative evidence that the employee was employed at Horizons, Inc. for at least 250 work days during the SEC period is sufficient to include him or her in the SEC class.

6. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE should proceed in the usual manner for a compensable SEC claim and prepare a recommended decision.

ECMS Coding Reminder: The "SE" (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the status effective date of the recommended decision to approve. (This is a change from previous guidance which tied the "SE" effective date to when the employment and medical criteria for SEC has been met). The SEC site code "51" for "Horizons, Inc." must be selected from the drop down menu under the "SEC/SEC Desc" field on the claim screen in ECMS B only.

7. As discussed earlier, the Secretary of Health and Human Services determined that it is not feasible for NIOSH to perform complete dose reconstructions for the class of employees who worked at the Horizons, Inc. Plant from January 1, 1952 to December 31, 1956.

However, NIOSH has indicated that partial dose reconstructions are possible based on external radiation doses and occupational medical dose. Accordingly, for cases that had not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code "NI" (Sent to NIOSH) in ECMS B. The status effective date is the date of the

Senior or Supervisory CE signature on the NRSD.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code "NI" (Sent to NIOSH) into ECMS B, effective the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-specified cancer, insufficient latency period or does not meet the 250 work day requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for dose reconstruction and the reason(s) it does not qualify for the SEC class.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code "NR" (NIOSH Dose Reconstruction Received) in ECMS B and selects the "PD" (Partial Dose Reconstruction) reason code. The status effective date is the date the dose reconstruction is date-stamped into the District Office. The CE should not delete the "NW" (NIOSH, returned without a dose reconstruction) or "NI" (Sent to NIOSH) code already present in ECMS.

8. If the claim meets the SEC employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction that resulted in a probability of causation of 50 percent or greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and if necessary concurrently prepares a NRSD to NIOSH for a dose reconstruction for the non-specified cancer to determine eligibility for medical benefits. The CE enters status code "SE" (Confirmed as SEC Claim) and the "NI" (Sent to NIOSH) code into ECMS B. The status effective date for the "SE" code is the date of the recommended decision to accept the specified cancer. The status effective date for the "NI" code is the date of the Senior or Supervisory CE signature on the NRSD.

9. If there is a final decision to deny based on a POC of less than 50% and a review of the evidence of record establishes likely inclusion in the SEC class, it will need to be reopened. In the exercise of the Director's discretion of the reopening process, the Director is delegating limited authority to the four District Directors to sign Director's Orders for reopening. This delegated authority is limited to reopenings based upon evidence that a Horizons, Inc. employee meets the criteria for placement into the Horizons, Inc. SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director's Order is provided in **Attachment 3**. The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director's Order is issued, the district office is responsible for issuing a new recommended decision.

10. For those cases which are reopened under the authority granted in this Bulletin, the District Director enters status code "MN" (NO Initiates Review for Reopening) in ECMS B with a status effective date as the effective date of this bulletin.

For all reopenings per this bulletin, upon completing the Director's Order to reopen the claim, the District Director (DD) enters status code "MD" (Claim Reopened – File Returned to DO) into ECMS B to reflect that the case has been reopened and is in the district office's jurisdiction. (The "MZ" status code is not necessary). The status effective date of the "MD" code is the date of the Director's Order. If the Director's Order reopens the Part E claim, the DD also enters status code "MD" into ECMS E.

While the “MD” code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been in this specific circumstance.

11. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending Horizons, Inc. cases that have a recommended decision to deny. All cases on the comprehensive list identified in action item 2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at the Horizons, Inc. Plant during the time specified, has a specified cancer, and meets the 250 work day requirement, FAB is to review the case for the parameters of the SEC as specified in this Bulletin. If the criteria of the SEC are met, the FAB is to reverse the district office’s recommended decision to deny and accept the case. The CE/HR enters status code “F6” (FAB Reversed to Accept) into ECMS B to reflect the FAB reversal with a status effective date equal to the date of the final decision to approve. The CE/HR enters status code “SE” (Confirmed as SEC Claim) into ECMS B with a status effective date equal to the date of the final decision to approve.

If no action is required, FAB must follow the instructions specified in action item 13, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the District Office. If FAB determines that the case cannot be approved based on the new SEC designation and that re-referral to NIOSH is appropriate (see action items 5 and 7) the HR must remand the case for district office action. The CE/HR enters status code “F7” (FAB Remanded) with “OTH” (No DO Error – Other) as the reason code. The status effective date is the date of the remand.

12. The operational plan goal for the list of cases identified for review as part of this new SEC class is to complete the Part B recommended decision, return to NIOSH, or determine that no action is necessary within 45 days of the date of this Bulletin for at least 50% of the cases, and within 90 days for 95% of the cases. All cases requiring action due to this Bulletin should be completed within 120 days.

13. All cases on the DEEOIC generated list must be reviewed to determine if it qualifies under the SEC provision including cases still at NIOSH. If after review or further development, the CE/HR determines that a case on the list does not require any action to be taken (either a new recommended decision to accept based on the SEC, or return to NIOSH, or a FAB reversal or remand) the CE/FAB HR must write a brief memo to the file that explains the case was reviewed under this bulletin, no additional action is necessary, and why. A case classified as not requiring any action is a case that does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction.

The CE must then code “NA” (No Action Necessary) and then select the appropriate reason code from the reason code drop down list. The “NA” coding is specifically tied to the SEC review list generated by DEEOIC and the “NA” code is restricted to ECMS B only because the SEC review list is derived from Part B data. For Horizons, Inc. cases that were reviewed under this bulletin and require no additional action, the reason code that must be selected is “834” (**Reviewed under Bulletin 08-34, Horizons, Inc. SEC**). The status effective date of the “NA” code is the date of the memo to the file stating review is complete and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the “NA-834” code is not entered initially. The “NA-834” code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the “NA-834” code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

If the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “NA-834” code in addition to the closure code. The status effective date for the “NA” coding is the date of the

memorandum to file.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

### **08-35 SEC Class for SAM Laboratories at Columbia University**

EEOICPA BULLETIN NO.08-35

Issue Date: June 30, 2008

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Effective Date: June 30, 2008

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Expiration Date: June 30, 2009

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Subject: SEC Class for SAM Laboratories at Columbia University

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from the SAM Laboratories of Columbia University in New York City, New York to be added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and decided it qualified for evaluation under 42 C.F.R. § 83.13. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On April 30, 2008, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at the SAM Laboratories of Columbia University in New York City, New York from August 13, 1942 through December 31, 1947.

On May 30, 2008, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress.

All Employees of the Department of Energy (DOE), its predecessor agencies, and DOE contractors or subcontractors who worked in the Pupin, Schemerhorn, Havenmeyer, Nash, or Prentiss buildings at SAM (Special Alloyed or Substitute Alloy Materials) Laboratories of Columbia University in New York City, New York, from August 13, 1942, through December 31, 1947, for a number of work days aggregating at least 250 work days occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

A copy of the Secretary’s letter to Congress recommending the designation is included as **Attachment 1**. The SEC designation for this class became effective as of June 29, 2009, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in a report to

Congress. While Congress had the authority to reject the recommendation within the 30-day time frame, no action was taken to contradict the addition of this new SEC class.

While a new SEC class has been added for employees at SAM Laboratories, NIOSH has determined that it is possible to reconstruct occupational medical dose. This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the May 30, 2008 letter to Congress from the Secretary of HHS in which Secretary Leavitt makes the designation.

Purpose: To provide procedures for processing SEC claims for workers at the SAM Laboratories in New York City, New York.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at the SAM Laboratories during the period of the SEC class. It includes pending cases, cases previously denied and those at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.

The comprehensive list also includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD contains all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD, in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected SAM Laboratories claimants is included as **Attachment 2**. The claims examiner (CE) must print out a hard copy of the NIOSH letter for inclusion in the case file.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e-mail to return dose reconstruction analysis records. The SrCE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. In addition, the CE must write a letter to the claimant to advise that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

Once a case file is returned from NIOSH (including those cases where DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code "NW" (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the code entry is June 30, 2008. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record. The standard procedure for NIOSH coding in ECMS E is to code all additional NIOSH actions only if the "NI" (Sent to NIOSH) status code has been entered. Therefore, the CE enters the "NW" code into ECMS E with

the status effective date of June 30, 2008 only if “NI” has already been entered in ECMS E.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this bulletin, then refer to instructions in Action #13.

3. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

4. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual (PM) Chapter 2-600.5. If the employee has a specified cancer, proceed to Action #5. If the employee does not have a specified cancer, proceed to Action #7.

5. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 work days at the SAM Laboratories at Columbia University in New York City, New York between August 13, 1942 and December 31, 1947 (or in combination with work days within the parameters established for one or more other classes of employees in the SEC). Because Pupin, Schemerhorn, Havenmeyer, Nash, and Prentiss comprise the SAM Laboratory, if the employee has confirmed employment at SAM no further development to place the employee in a specific building is required.

To date, all SAM Laboratory claimed employment has been confirmed through the Oak Ridge Institute for Science and Education (ORISE) database. Once there is confirmation by ORISE of employment at SAM Laboratory, the CE then calculates the work days, based thereon. In the event that SAM Laboratory employment is claimed, but verification is not possible through ORISE, those cases are to be referred to National Office.

6. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

ECMS Coding Reminder: The “SE” (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the status effective date of the recommended decision to approve. (This is a change from previous guidance which tied the “SE” effective date to when the employment and medical criteria for SEC has been met). If the case is an E/B case, and the basis for the Part E acceptance is the Part B SEC acceptance, the “SE” code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E. The SEC site code “54” for “SAM Laboratories” must be selected from the drop down menu under the “SEC/SEC Desc” field on the claim screen in ECMS B only.

7. As discussed earlier, the Secretary of Health and Human Services determined that it is not feasible for NIOSH to perform complete dose reconstructions for the class of employees who worked at SAM Laboratories from August 13, 1942 through December 31, 1947.

NIOSH has indicated that partial dose reconstructions are possible based on occupational medical dose, some components of the internal dose and all external doses. Accordingly, for cases that had not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code “NI” (Sent to NIOSH) in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD. “NI” should only be entered in ECMS E after toxic exposure development is complete and the CE cannot accept causation. In that case the CE creates a memorandum to file stating that toxic exposure development is complete. The CE then enters status code “NI” into ECMS E with the date of the memorandum as the status effective date.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were

returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code “NI” (Sent to NIOSH) into ECMS B, effective the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-specified cancer, insufficient latency period or does not meet the 250 work day requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for dose reconstruction and the reason(s) it does not qualify for the SEC class. If the case is an E/B case and toxic exposure development was completed with a memorandum to file (with a prior “NI”/“NW” code), the CE enters status code “NI” into ECMS E with the status effective date of the e-mail requesting NIOSH to proceed with dose reconstruction.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “NR” (NIOSH Dose Reconstruction Received) in ECMS B and selects the “PD” (Partial Dose Reconstruction) reason code. The status effective date is the date the dose reconstruction is date-stamped into the District Office. The CE should not delete the “NW” (NIOSH, returned without a dose reconstruction) or “NI” (Sent to NIOSH) code already present in ECMS. If the CE had previously entered “NI” in ECMS E, the CE also enters codes “NR” and “PD” into ECMS E. If the case is an E/B case, the CE enters the Probability of Causation (PoC) into ECMS B and ECMS E (regardless of whether the “NI” code had previously been entered).

8. If the claim meets the SEC employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction that resulted in a probability of causation of 50 percent or greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and if necessary concurrently prepares a NRSD to NIOSH for a dose reconstruction for the non-specified cancer to determine eligibility for medical benefits. The CE enters status code “SE” (Confirmed as SEC Claim) and the “NI” (Sent to NIOSH) code into ECMS B. The status effective date for the “SE” code is the date of the recommended decision to accept the specified cancer. The status effective date for the “NI” code is the date of the Senior or Supervisory CE signature on the NRSD. If the case is an E/B case, the CE enters status code “NI” (Sent to NIOSH) only after the toxic exposure development is complete and the CE cannot accept causation. In that case the CE creates a memorandum to file stating that toxic exposure development is complete. The CE then enters status code “NI” into ECMS E with the date of the memorandum as the status effective date.

9. If there is a final decision to deny based on a POC of less than 50% and a review of the evidence of record establishes likely inclusion in the SEC class, it will need to be reopened. In the exercise of the Director’s discretion of the reopening process, the Director is delegating limited authority to the four District Directors to sign Director’s Orders for reopening. This delegated authority is limited to reopenings based upon evidence that a SAM Laboratories employee meets the criteria for placement into the SAM Laboratories SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided in **Attachment 3**. The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is responsible for issuing a new recommended decision.

10. For those cases which are reopened under the authority granted in this Bulletin, the District Director enters status code “MN” (NO Initiates Review for Reopening) in ECMS B with a status effective date as the effective date of this bulletin. If the District Director is also reopening Part E,

the “MN” code is also input in ECMS E.

For all reopenings per this bulletin, upon completing the Director’s Order to reopen the claim, the District Director (DD) enters status code “MD” (Claim Reopened – File Returned to DO) into ECMS B to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “MZ” status code is not necessary). The status effective date of the “MD” code is the date of the Director’s Order. If the Director’s Order reopens the Part E claim, the DD also enters status code “MD” into ECMS E.

While the “MD” code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been in this specific circumstance.

11. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending SAM Laboratories cases that have a recommended decision to deny. All cases on the comprehensive list identified in action item 2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at the SAM Laboratories during the time specified, has a specified cancer, and meets the 250 work day requirement, FAB is to review the case for the parameters of the SEC as specified in this Bulletin. If the criteria of the SEC are met, the FAB is to reverse the district office’s recommended decision to deny and accept the case. The CE/HR enters status code “F6” (FAB Reversed to Accept) into ECMS B/E (as appropriate) to reflect the FAB reversal with a status effective date equal to the date of the final decision to approve. The CE/HR enters status code “SE” (Confirmed as SEC Claim) into ECMS B with a status effective date equal to the date of the final decision to approve. If the FAB is also reversing the Part E decision based on SEC designation, CE/HR also enters status codes “F6” and “SE” into ECMS E with a status effective date of the final decision for Part E.

If no action is required, FAB must follow the instructions specified in action item 13, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the District Office. If FAB determines that the case cannot be approved based on the new SEC designation and that re-referral to NIOSH is appropriate (see action items 5 and 7) the HR must remand the case for district office action. The CE/HR enters status code “F7” (FAB Remanded) with “OTH” (No DO Error – Other) as the reason code. If the decisions on Parts B and E are being remanded, the CE/HR enters the remand code into ECMS B and E. The status effective date is the date of the remand.

12. The operational plan goal for the list of cases identified for review as part of this new SEC class is to complete the Part B recommended decision, return to NIOSH, or determine that no action is necessary within 45 days of the date of this Bulletin for at least 50% of the cases, and within 90 days for 95% of the cases. All cases requiring action due to this Bulletin should be completed within 120 days.

13. All cases on the DEEOIC generated list must be reviewed to determine if it qualifies under the SEC provision including cases still at NIOSH. If after review or further development, the CE/HR determines that a case on the list does not require any action to be taken (either a new recommended decision to accept based on the SEC, or return to NIOSH, or a FAB reversal or remand) the CE/FAB HR must write a brief memo to the file that explains the case was reviewed under this bulletin, no additional action is necessary, and why. A case classified as not requiring any action is a case that does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction.

The CE must then code “NA” (No Action Necessary) and then select the appropriate reason code from the reason code drop down list. The “NA” coding is specifically tied to the SEC review list generated by DEEOIC and the “NA” code is restricted to ECMS B only because the SEC review list is derived from Part B data. For SAM Laboratories cases that were reviewed under this bulletin

and require no additional action, the reason code that must be selected is “835” (**Reviewed under Bulletin 08-35, SAM Laboratories SEC**). Even if the case is an E/B case, the **NA-835** must be coded into ECMS B only. The status effective date of the “NA” code is the date of the memo to the file stating review is complete and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the “NA-835” code is not entered initially. The “NA-835” code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the “NA-835” code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “NA-835” code in addition to the closure code. The status effective date for the “NA” coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections.

### **08-36 Kellex/Pierpont SEC Class**

EEOICPA BULLETIN NO.08-36

Issue Date: June 30, 2008

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Effective Date: June 30, 2008

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Expiration Date: June 30, 2009

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Subject: Kellex/Pierpont SEC Class

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from the Kellex/Pierpont facility Jersey City, New Jersey to be added to the Special Exposure Cohort (SEC).

The decision to initiate this petition occurred after the National Institute for Occupational Safety and Health (NIOSH) determined that it could not reconstruct a dose under 42 C.F.R. § 83.14. NIOSH submitted its findings to the petitioner and the Advisory Board on Radiation and Worker Health (“the Board”). On April 30, 2008, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at Kellex/Pierpont in Jersey City, New Jersey from January 1, 1943, through December 31, 1953.

On May 30, 2008, the Secretary of HHS designated the following class for addition to the SEC in a

report to Congress.

All Atomic Weapons Employer (AWE) employees who worked at the Kellex/Pierpont facility in Jersey City, New Jersey from January 1, 1943, through December 31, 1953, for a number of work days aggregating at least 250 work days occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

A copy of the Secretary's letter to Congress recommending the designation is included as **Attachment 1**. The SEC designation for this class became effective as of June 29, 2008, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in a report to Congress. While Congress had the authority to reject the recommendation within the 30-day time frame, no action was taken to contradict the addition of this new SEC class.

While a new SEC class has been added for employees at Kellex/Pierpont, NIOSH has determined that it is possible to reconstruct occupational medical dose during the time period in question. This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the May 30, 2008 letter to Congress from the Secretary of HHS in which Secretary Leavitt makes the designation.

Purpose: To provide procedures for processing SEC claims for workers at the Kellex/Pierpont facility in Jersey City, New Jersey.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at the Kellex/Pierpont facility in Jersey City, New Jersey during the period of the SEC class. It includes pending cases, cases previously denied and those at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.

The comprehensive list also includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD contains all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD, in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected Kellex/Pierpont claimants is included as **Attachment 2**. The claims examiner (CE) must print out a hard copy of the NIOSH letter for inclusion in the case file.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this bulletin. If any such case qualifies under the SEC class, the CE through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e-mail to return dose reconstruction analysis records. The SrCE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. In addition, the CE must write a letter to the

claimant to advise that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

Once a case file is returned from NIOSH (including those cases where DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code "NW" (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the code entry is June 30, 2008. However, the code is not entered until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this bulletin, then refer to the instructions in Action #13.

3. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

4. Based on this review, the CE determines whether the claimant has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual (PM) Chapter 2-600.5. If the employee has a specified cancer, proceed to Action #5. If the employee does not have a specified cancer, proceed to Action #7.

5. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 work days at the Kellex/Pierpont facility in Jersey City, New Jersey between January 1, 1943 and December 31, 1953 (or in combination with work days within the parameters established for one or more other classes of employees in the SEC).

6. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC classes, the CE should proceed in the usual manner for a compensable SEC claim and prepare a recommended decision.

ECMS Coding Reminder: The "SE" (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the status effective date of the recommended decision to approve. (This is a change from previous guidance which tied the "SE" effective date to when the employment and medical criteria for SEC has been met). The SEC site code "52" for "Kellex Pierpont" must be selected from the drop down menu under the "SEC/SEC Desc" field on the claim screen.

7. The Secretary of Health and Human Services determined that it is not feasible for NIOSH to perform complete dose reconstructions for the class of employees who worked at the Kellex/Pierpont site in Jersey City, New Jersey from January 1, 1943, through December 31, 1953.

However, NIOSH has indicated that partial dose reconstructions are possible based on occupational medical dose. Accordingly, for cases that had not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code "NI" (Sent to NIOSH) in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters the status code "NI" (Sent to NIOSH), effective the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-specified cancer, insufficient latency period or does not meet the 250

work day requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for dose reconstruction and the reason(s) it does not qualify for SEC class.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters the status code “NR” (NIOSH Dose Reconstruction Received) in ECMS B, selects the “PD” (Partial Dose Reconstruction) reason code, and enters the Probability of Causation (PoC). The status effective date is the date the dose reconstruction is date-stamped into the District Office. The CE should not delete the “NW” (NIOSH, returned without a dose reconstruction) or “NI” (Sent to NIOSH) code already present in ECMS.

8. If the claim meets the SEC employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction that resulted in a probability of causation of 50 percent or greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and if necessary concurrently prepares a NRSD to NIOSH for a dose reconstruction for the non-specified cancer to determine eligibility for medical benefits. The CE enters the status code “SE” (Confirmed as SEC Claim) and the “NI” (Sent to NIOSH). The status effective date for the “SE” code is the date of the recommended decision to accept the specified cancer. The status effective date for the “NI” code is the date of the Senior or Supervisory CE signature on the NRSD .

9. If there is a final decision to deny based on a POC of less than 50% and a review of the evidence of record establishes likely inclusion in the SEC class, it will need to be reopened. In the exercise of the Director’s discretion of the reopening process, the Director is delegating limited authority to the four District Directors to sign Director’s Orders for reopening. This delegated authority is limited to reopenings based upon evidence that a Kellex/Pierpont employee meets the criteria for placement into the Kellex/Pierpont SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided in **Attachment 3**. The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is responsible for issuing a new recommended decision.

10. For those cases which are reopened under the authority granted in this Bulletin, the District Director enters status code “MN” (NO Initiates Review for Reopening) in ECMS B with a status effective date as the effective date of this bulletin.

For all reopenings per this bulletin, upon completing the Director’s Order to reopen the claim, the District Director enters status code “MD” (Claim Reopened – File Returned to DO) to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “MZ” status code is not necessary). The status effective date of the “MD” code is the date of the Director’s Order.

Please note that while the “MD” code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been in this specific circumstance.

11. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending Kellex/Pierpont cases that have a recommended decision to deny. All cases on the comprehensive list identified in action item 2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at the Jersey City Kellex/Pierpont facility during the time specified, has a specified cancer, and meets the 250 work day requirement, FAB is to review the case for the parameters of the SEC as specified in this Bulletin. If the criteria of the SEC are met, the FAB is to reverse the district office’s recommended decision to deny and accept the case. The CE/HR enters status code “F6”, with a status effective date (FAB Reversed to Accept) of the FAB decision to reverse. The “SE” (Confirmed as SEC Claim) status code must be entered with a status effective date equal to the status effective date of the final decision to approve.

If no action is required FAB must follow the instructions specified in action item 13, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the District Office. If FAB determines that the case cannot be approved based on the new SEC designation and that re-referral to NIOSH is appropriate (see action items 5 and 7) FAB must remand the case for district office action. The CE/HR enters status effective date "F7" (FAB Remanded) with "OTH" (No DO Error – Other) as the reason code, with a status effective date of the date of the remand.

12. The operational plan goal for the list of cases identified for review as part of this new SEC class is to complete the Part B recommended decision, return to NIOSH, or determine that no action is necessary within 45 days of the date of this Bulletin for at least 50% of the cases, and within 90 days for 95% of the cases. All cases requiring action due to this Bulletin should be completed within 120 days.

13. If after review or further development, the CE/HR determines that a case on the list does not require any action to be taken (either a new recommended decision to accept based on the SEC, a return to NIOSH, or a FAB reversal or remand) the CE/FAB HR must write a brief memo to the file that explains the case was reviewed under this bulletin, no additional action is necessary, and why. A case classified as not requiring any action is a case that does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction.

The CE enters the status code "NA" (No Action Necessary) and then selects the appropriate reason code from the reason code drop down list. The "NA" coding is specifically tied to the SEC review list generated by the DEEOIC and the "NA" code is restricted to ECMS B only because the SEC review list is derived from Part B data. For Kellex/Pierpont cases that were reviewed under this bulletin and require no additional action, the reason code that must be selected is **"836" (Reviewed under 08-36, Kellex/Pierpont SEC)**. Even if the case is an E/B case, the **NA-836** must be coded into ECMS B only. The status effective date of the "NA" code is the date of the memo to the file stating review is complete and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the "NA" code is not entered initially. The "NA" code is **only** entered when the CE determines, **after** any necessary development, that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the "NA-836" code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

If the CE discovers that the claimant(s) is/are deceased, the CE must still enter the "NA-836" code in addition to the closure code. The status effective date for the "NA" coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

## **08-37 Nuclear Materials and Equipment Corporation (NUMEC)-Parks Township SEC class.**

EEOICPA BULLETIN NO.08-37

Issue Date: June 30, 2008

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Effective Date: June 30, 2008

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Expiration Date: June 30, 2009

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Subject: Nuclear Materials and Equipment Corporation (NUMEC)-Parks Township SEC class.

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from the NUMEC—Parks Township, Parks Township, Pennsylvania to be added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and decided it qualified for evaluation under 42 C.F.R. § 83.13 and § 83.14. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”).

On April 30, 2008, the Board submitted a recommendation to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at NUMEC-Parks Township in Parks Township, Pennsylvania from June 1, 1960 to December 31, 1980.

On May 30, 2008, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress.

All Atomic Weapons Employer (AWE) employees who worked at the Nuclear Materials and Equipment Corporation (NUMEC) facility in Parks Township, Pennsylvania, from June 1, 1960, through December 31, 1980, for a number of work days aggregating at least 250 work days occurring either solely under this employment or in combination with work days within the parameters established for one

or more other classes of employees in the Special Exposure Cohort.

A copy of the Secretary’s letter to Congress recommending the designation is included as **Attachment 1**. The SEC designation for this class became effective as of June 29, 2008, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in a report to Congress. While Congress had the authority to reject the recommendation within the 30-day time frame, no action was taken to contradict the addition of this new SEC class.

While a new SEC class has been added for employees at NUMEC—Parks Township, NIOSH has determined that it is possible to perform partial dose reconstructions; for employees who worked during the class period. This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

A previous SEC class pertaining to NUMEC at the Apollo location became effective on November 29, 2007 and was the subject of Bulletin 08-12. The guidance provided here is to be used in addition to the prior bulletin, as it pertains to an entirely new SEC class at a separate location.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the May 30, 2008 letter to Congress from the Secretary of HHS in which Secretary Leavitt makes the designation.

Purpose: To provide procedures for processing SEC claims for workers at the NUMEC—Parks

Township facility in Parks Township, Pennsylvania.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at the NUMEC—Parks Township during the period of the SEC class. It includes pending cases, cases previously denied and those at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.

The comprehensive list also includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD contains all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD, in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected NUMEC-Parks Township claimants is included as **Attachment 2**. The claims examiner (CE) must print out a hard copy of the NIOSH letter for inclusion in the case file.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e-mail to return dose reconstruction analysis records. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. In addition, the CE must write a letter to the claimant to advise that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

Once a case file is returned from NIOSH (including those cases where DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code “NW” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the code entry is June 30, 2008. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record. Because NUMEC-Parks Township is an Atomic Weapons Employer, there is no entitlement to Part E benefits.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this bulletin, then refer to instructions in Action #13.

3. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.
4. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual Chapter 2-600.5. If the employee has a specified cancer, proceed to Action #5. If the employee does not have a specified cancer, proceed to Action #7.
5. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 work days at the NUMEC-Parks Township facility in Parks Township, Pennsylvania from June 1, 1960 through December 31, 1980 (in combination with workdays within the parameters

established for one or more other classes of employees in the SEC).

Based on the SEC designation, any probative evidence that the employee was employed at the NUMEC-Parks Township facility for at least 250 work days during the SEC period is sufficient to include him or her in the SEC class.

6. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE should proceed in the usual manner for a compensable SEC claim and prepare a recommended decision.

ECMS Coding Reminder: The “SE” (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the status effective date of the recommended decision to approve. (This is a change from previous guidance which tied the “SE” effective date to when the employment and medical criteria for SEC has been met). The SEC site code “53” for “NUMEC-Parks Township” must be selected from the drop down menu under the “SEC/SEC Desc” field on the claim screen.

7. As discussed earlier, the Secretary of Health and Human Services determined that it is not feasible for NIOSH to perform complete dose reconstructions for the class of employees who worked at NUMEC-Parks Township from June 1, 1960 through December 31, 1980.

NIOSH has determined that it lacks sufficient monitoring, process, or source term information from thorium and source production operations to estimate internal radiation doses to employees for the period of June 1, 1960 through December 31, 1980. NIOSH believes it has sufficient information to estimate the internal dose from uranium and plutonium from 1960 to 1976 and occupational external exposures (including medical exposures) for that same period. NIOSH will use individual personal monitoring data, with the exception of the CEP (bioassay vendor) data, for partial dose reconstructions as appropriate. This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH. Accordingly, for cases that had not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code “NI” (Sent to NIOSH) in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code “NI” (Sent to NIOSH) into the ECMS B, effective the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-specified cancer, insufficient latency period or does not meet the 250 work day requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for dose reconstruction and the reason(s) it does not qualify for the SEC class.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “NR” (NIOSH Dose Reconstruction Received) in ECMS B and selects the “PD” (Partial Dose Reconstruction) reason code. The status effective date is the date the dose reconstruction is date-stamped into the District Office. The CE should not delete the “NW” (NIOSH, returned without a dose reconstruction) or “NI” (Sent to NIOSH) code already present in ECMS.

8. If the claim meets the SEC employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction that resulted in a probability of causation of 50 percent or

greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and if necessary concurrently prepares a NRSD to NIOSH for a dose reconstruction for the non-specified cancer to determine eligibility for medical benefits. The CE enters status code “SE” (Confirmed as SEC Claim) and the “NI” (Sent to NIOSH) code into ECMS B. The status effective date for the “SE” code is the date of the recommended decision to accept the specified cancer. The status effective date for the “NI” code is the date of the Senior or Supervisory CE signature on the NRSD.

9. If there is a final decision to deny based on a PoC of less than 50% and a review of the evidence of record establishes likely inclusion in the SEC class, it will need to be reopened. In the exercise of the Director’s discretion of the reopening process, the Director is delegating limited authority to the four District Directors to sign Director’s Orders for reopening. This delegated authority is limited to reopenings based upon evidence that a NUMEC-Parks Township employee meets the criteria for placement into the NUMEC-Parks Township SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided in **Attachment 3**.

The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is responsible for issuing a new recommended decision.

10. For those cases which are reopened under the authority granted in this Bulletin, the District Director enters status code “MN” (NO Initiates Review for Reopening) in ECMS B with a status effective date as the effective date of this bulletin.

For all reopenings per this bulletin, upon completing the Director’s Order to reopen the claim, the District Director (DD) enters status code “MD” (Claim Reopened – File Returned to DO) into ECMS B to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “MZ” status code is not necessary). The status effective date of the “MD” code is the date of the Director’s Order.

Please note that while the “MD” code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been in this specific circumstance.

11. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending NUMEC-Parks Township cases that have a recommended decision to deny. All cases on the comprehensive list identified in action item 2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at the NUMEC-Parks Township facility during the time specified, has a specified cancer, and meets the 250 work day requirement, FAB is to review the case for the parameters of the SEC as specified in this Bulletin. If the criteria of the SEC are met, the FAB is to reverse the district office’s recommended decision to deny and accept the case. The CE/HR enters status code “F6” (FAB Reversed to Accept) into ECMS B to reflect the FAB reversal with a status effective date equal to the date of the final decision to reverse. The CE/HR enters status code “SE” (Confirmed as SEC Claim) into ECMS B with a status effective date equal to the date of the final decision to approve.

If no action is required, FAB must follow the instructions specified in action item 13, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the District Office. If FAB determines that the case cannot be approved based on the new SEC designation and that re-referral to NIOSH is appropriate (see action items 5 and 7), the HR must remand the case for district office action. The CE/HR enters status code “F7” (FAB Remanded) with “OTH” (No DO Error-Other) as the reason code. The status effective date is the date of the remand.

12. The operational plan goal for the list of cases identified for review as part of this new SEC class is to complete the Part B recommended decision, return to NIOSH, or determine that no action is necessary within 45 days of the date of this Bulletin for at least 50% of the cases, and within 90 days for 95% of the cases. All cases requiring action due to this Bulletin should be completed within 120 days.

13. All cases on the DEEOIC generated list must be reviewed to determine if they qualify under the SEC provision, including cases still at NIOSH. If after review or further development, the CE/HR determines that a case on the list does not require any action to be taken (either a new or recommended decision to accept based on the SEC, or return to NIOSH, or a FAB reversal or remand) the CE/FAB HR must write a brief memo to the file that explains the case was reviewed under this bulletin, no additional action is necessary, and why. A case classified as not requiring any action is a case that does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction.

The CE must then code "NA" (No Action Necessary) and then select the appropriate reason code from the code drop down list. The "NA" coding is specifically tied to the SEC review list generated by DEEOIC and the "NA" code is restricted to ECMS B only because the SEC review list is derived from Part B data. For NUMEC-Parks Township cases that were reviewed under this bulletin and require no additional action, the reason code that must be selected is "837" (Reviewed under Bulletin 08-37, NUMEC-Parks Township SEC). Even if the case is an E/B case, the NA-837 must be coded into ECMS B only. The status effective date of the "NA" code is the date of the memo to the file stating review is complete and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the "NA-837" code is not entered initially. The "NA-837" code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the "NA-837" code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

If the CE discovers that the claimant(s) is/are deceased, the CE must still enter the "NA-837" code in addition to the closure code. The status effective date for the "NA" coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

**08-38 Rescinding Bulletins 06-10 and 06-14 Note: This bulletin replaces Bulletin Nos. 06-10 and 06-14**

EEOICPA BULLETIN NO.08-38

Issue Date: June 25, 2008

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Effective Date: June 25, 2008

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Expiration Date: June 25, 2009

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**Note: This bulletin replaces Bulletin Nos. 06-10 and 06-14.**

Subject: Rescinding Bulletins 06-10 and 06-14.

Background: Given the complexity and number of claims presented under Part E of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), means to expedite the claims adjudication process were developed to assist the Claims Examiner (CE). The Division of Energy Employees Occupational Illness Compensation (DEEOIC) National Office (NO) established criteria for the presumption of causation in certain specific situations as outlined in EEOICPA Bulletin No. 06-08.

DEEOIC specialists researched authoritative scientific publications, medical literature, and occupational exposure records for information to identify medical illnesses for which current scientific knowledge does not show a relationship or an etiology due to biological or chemical exposure. The findings of these specialists were incorporated into the appendices of Bulletin 06-10 and its amendment, Bulletin 06-14, to assist the CE in rendering timely and accurate claim determinations under Part E of the EEOICPA.

The information provided in Bulletins 06-10 and 06-14 were not intended to disqualify claims automatically based on medical conditions with no known causal link to toxic exposure. Bulletins 06-10 and 06-14 allowed the claimant to present evidence to refute the conclusions of the DEEOIC specialists, and did not affect existing procedures in place for establishing causation based upon radiation exposure for cancer.

This bulletin replaces Bulletins 06-10 and 06-14. The information contained in the appendices to Bulletins 06-10 and 06-14 has been rendered operationally obsolete by the continued development of the EEOICP Site Exposure Matrices (SEM) website. SEM represents the most current, accurate, and comprehensive information regarding toxic substances and their known health effects, and is updated regularly. DEEOIC has updated SEM to include new conditions based on evidence received from claimants.

The information housed in SEM in no way precludes the claimant's ability to present evidence that refutes the conclusions of the DEEOIC specialists. To challenge the scientific conclusions presented, compelling and probative evidence must establish that exposure to a toxic substance has been shown to cause, contribute, or aggravate an occupational illness. This bulletin does not affect existing procedures in place for establishing causation based upon radiation exposure for cancer.

References: Energy Employees Occupational Illness Compensation Act of 2000, 42 U.S.C. § 7384 *et seq.*; 20 C.F.R. §§ 30.111-30.114, 30.230-30.232, 30.300-30.320, 30.400-30.406, 30.420-30.422, 30.505, 30.700-30.726, 30.815, and 30.900-30.912; the Federal (EEOICPA) Procedure Manual: Part E, Chapter E-500 (Evidentiary Requirements for Causation); the EEOICP Site Exposure Matrices; and the National Library of Medicine Haz-Map.

Purpose: To rescind Bulletin Nos. 06-10 and 06-14.

Applicability: All staff.

Actions:

1. The CE will conduct initial development of medical evidence submitted in support of a Part E claim based upon established procedures as set out in EEOICPA PM 2-300 and E-500. Medical evidence must establish that a covered employee was diagnosed with the disease or illness

being claimed. Once the CE has confirmed the existence of a diagnosed illness, he or she should determine if it corresponds to one of the conditions listed in SEM as having a causal link to occupational exposure to a toxic substance.

SEM lists three distinct categories of illnesses: specific medical conditions for which a causal link to toxic substances has been identified; conditions for which no known causal link exists based upon the National Library of Medicine's Occupational Exposure to Hazardous Agents database (Haz-Map); and specific medical conditions for which there is no established causal link to toxic substance exposure based on Haz-Map, but that the CE will still develop for causation based on biological exposure (for example, legionellosis and hantavirus).

2. If it is determined the diagnosed illness does not appear in SEM, or does not correspond to a condition listed in SEM as having a link to occupational or biological exposure to a toxic substance, the CE prepares a letter to the claimant(s). The letter should notify the claimant(s) that available evidence does not demonstrate a known link between the condition being claimed and exposure to a toxic substance.

- If the claimed condition is cancer, the claimant is advised that DEEOIC will assess the claim based upon exposure to radiation. This is done either through membership in a Special Exposure Cohort (SEC) class or the dose reconstruction process and the resultant Probability of Causation (POC). An SEC analysis is comparatively easy to complete. The CE should check for SEC membership before developing for toxic exposure. However, if there is no SEC class membership, the CE should develop for non-radiation toxic causation while awaiting the results of a POC. If a link between a biological or chemical exposure and the illness is found and the results of the POC analysis are not yet available, the CE should accept the Part E claim and pend the B portion until the POC is returned. If the outcome of the SEC or POC is negative and the CE has found no other link, the claimant must produce evidence that the cancer is affiliated with a toxic substance. (See paragraph 3 for a larger discussion of claimant evidence).
- If the claimed condition is not cancer, the claimant is advised the DEEOIC will evaluate any argument, medical, or scientific evidence submitted in support of a causal relationship between the claimed illness and a toxic substance exposure.

The letter must allow the claimant(s) thirty days to provide a response. If additional time is required to obtain information, the claimant should notify the claims examiner. The CE will permit any reasonable request for an extension of the deadline for evidence submission.

3. The CE must evaluate all evidence received from the claimant(s) or other sources to determine if there is any compelling or probative basis for review by a DEEOIC specialist. There are essentially two types of evidence that a CE might encounter: evidence of a programmatic nature (i.e. broad-based epidemiological studies conducted by a university or peer reviewed articles in a reputable medical journal) and claim-specific evidence (i.e. a well-reasoned and medically rationalized opinion from a treating physician).

Occasionally programmatic evidence will be submitted in support of a claim. Despite the type, the CE must evaluate the evidence on its merits and determine whether or not it is probative in nature and warrants review by a DMC or National Office toxicologist, or both. Evidence not warranting a referral includes: unsubstantiated statements of causal relationship; speculative or equivocal medical/specialist opinions; scientific literature or other documents that do not provide reference to the illness under evaluation; and general news articles from print or the Internet. The CE must follow the guidance below when evaluating all such evidence relative to this Bulletin:

(a) Programmatic Evidence. This type of evidence may allow DEEOIC to make a program-wide policy decision regarding how to treat a certain disease/exposure relationship. Programmatic evidence should be based on studies that are occupational in nature, cover a statistically significant

human population, and be published in a peer reviewed journal. This would include, for example, large-scale studies conducted by a university regarding occupational or environmental etiology. Animal and environmental studies may also be useful in certain circumstances. Some chemicals used in the production of nuclear weapons are so unique and exotic that no broad-based studies of their health effects exist; therefore, animal and environmental studies must be assessed for possible program-wide applications.

Evidence that is programmatic in nature must be forwarded to National Office for review by the toxicologist and possibly the DEEOIC Medical Director and other policy makers. Such referrals are routed to National Office utilizing the existing method of referrals to the toxicologist.

(b) Claim-Specific Medical Evidence. Claim specific evidence can be used establish a causal relationship for a specific employee based on his or her unique conditions or history. This evidence would take the form of a reasoned opinion from a qualified medical specialist concerning the employee's particular circumstances. This reasoned opinion may be accompanied by human epidemiological studies or other scientific findings supporting a causal relationship between an illness and a toxic substance.

Generally, such evidence will require a DMC review to determine whether or not the conclusions drawn by the opining physician are plausible given the facts of the case. If there is a question regarding the exposure aspects of the case, the CE refers the matter to an Industrial Hygienist for an exposure analysis before forwarding the matter on to the DMC.

If the evidence is of such a nature that it establishes, in a logical way, a causal relationship between a disease and an exposure, a review by the National Office toxicologist might be in order. Similarly, if the opinion relates to a chemical about which little is known, a toxicologist review might be necessary. The CE consults his/her supervisor to evaluate the efficacy of a potential toxicologist review and such referrals are made pursuant to existing guidelines. While rare, it is possible that a toxicologist referral of this nature could result in a policy decision and thus equate to programmatic evidence. If the toxicologist determines that the opinion can be used in other decisions meeting similar fact patters, the opinion could be used as a policy making tool and SEM will be updated as noted below.

(c) Programmatic and Claim Specific. At times both types of evidence will be offered. It is possible that a claimant or treating physician will enter evidence of a programmatic nature into the record as claim-specific. If this is the case, the CE must evaluate the evidence with his/her supervisor to determine whether it warrants National Office review. If so, the evidence is forwarded for toxicologist review as noted above.

Evidence that alters policy and is implemented program-wide will be communicated to the National Office SEM POC so that SEM will reflect these policy decisions. The Policy Branch Chief will inform the SEM POC whenever a policy change requires a SEM update. A programmatic change may or may not require the issuance of a bulletin. In either case, SEM updates with policy implications will be evident by the appearance of the small DOL icon in the "References" column in the SEM search result page. The appearance of the DOL icon will inform the CE that policy guidance is present regarding a given subject in SEM and the CE must review the policy statement before proceeding further.

4. If, after reasonable development, the CE has determined the response from the claimant(s) is insufficient to warrant review by a DEEOIC specialist, a finding for causation can be rendered with regard to toxic exposure. The CE will make the finding that an exposure to a toxic exposure was not "at least as likely as not a significant factor in aggravating, contributing to or causing the diagnosed illness." While it may be necessary to await a dose reconstruction and POC calculation regarding a diagnosed cancer, all non-cancerous conditions immediately receive a recommended decision denying compensation for the illness under the EEOICPA. If any of the non-cancer conditions are consequential to the cancer, a decision on those conditions should not be rendered

until the cancer decision is made. The recommended decision includes a citation to this bulletin.

5. The following wording is to be included in the Conclusions of Law in both the recommended and final decisions:

DEEOIC has been unable to identify any relationship between [insert condition] and exposure to toxic substances. There is insufficient evidence to determine that an exposure to a toxic substance was at least as likely as not a significant factor in aggravating, contributing to or causing the diagnosed illness.

6. Claimants are encouraged to submit documentation of established occupational illness correlations for possible inclusion in SEM. Paragraph 3 outlines the programmatic evidence that would assist in modifying SEM. SEM contains a link for claimants to e-mail information on illness causation, and an address for mailing documentation. Each DO and FAB has designated a SEM Point of Contact (POC) that is responsible for forwarding information received in the District Office concerning possible additions to SEM to the NO.

Disposition: Retain until superceded or incorporated into the Federal (EEOICPA) Procedure Manual

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

### **08-39 Privacy Act - Personally Identifiable Information**

EEOICPA BULLETIN NO. 08-39

Issue Date: July 16, 2008

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Effective Date: July 16, 2008

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Expiration Date: July 16, 2009

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Subject: Privacy Act - Personally Identifiable Information (PII)

Background: The release of information by any governmental agency, including the Division of Energy Employees Occupational Illness Compensation (DEEOIC), is subject to two federal laws: the Freedom of Information Act (FOIA) and the Privacy Act of 1974.

The Privacy Act of 1974 applies to an individual seeking information about him/herself. The law provides an individual the right to access records that are maintained in federal "systems of records" and that are retrievable by his/her name or other personal identifier. This applies to most of the requests received by DEEOIC for information.

The amount of data collected, maintained and shared in the management of workers' compensation files creates certain vulnerabilities in the integrity of the privacy of records maintained by DEEOIC. As a result, procedures must be put in place to mitigate the risk of improper disclosure.

The claim files maintained by DEEOIC constitute a "system of records" under the Privacy Act of 1974 and must be treated accordingly. These records contain personally identifiable information

(PII).

“PII” is defined as information that can be used to distinguish or trace an individual's identity, such as their name, Social Security number, or biometric records, alone, or when combined with other personal or identifying information that is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc.

The Department of Labor defines “Protected PII” as PII, which when disclosed, could result in harm to the individual whose name or identity is linked to that information. This is distinguished from “Non-sensitive PII”, the disclosure of which cannot reasonably be expected to result in personal harm.

Protected PII includes, but is not limited to:

- Social Security number
- Credit card number
- Bank account number
- Residential address
- Residential or personal telephone number
- Biometric identifier (image, fingerprint, iris, etc.)
- Date of birth
- Place of birth
- Mother’s maiden name
- Criminal records
- Medical records
- Financial records.

Non-sensitive PII that can become protected if linked with other Protected PII includes:

- First/last name
- E-mail address
- Business address
- Business telephone
- General education credentials.

Categories of PII that indirectly identify an individual:

- Any information where it is reasonably foreseeable that the information will be linked with other information to identify an individual.
- Documents not containing a name or Social Security number but that do contain a place of birth and mother’s maiden name which, when taken together, may identify a specific individual.
- Documents containing the name or names of other individuals (e.g. names of coworkers).

A deceased person’s name, address or Social Security number is not PII; however, a document referring to a deceased person may also contain PII regarding living relatives, authorized representatives, or associates.

Safeguarding the sensitive data that includes personally identifiable information (PII) is of utmost importance. Care and vigilance must be exercised in daily operations when accessing, processing, transporting, or storing the sensitive data on end-user computing devices and portable media.

The Privacy Act of 1974 provides for criminal penalties against individuals for willful disclosure of PII in a manner that is prohibited by the Act and civil penalties against agencies for willful or intentional failure to comply with the provisions of the Act.

References: Privacy Act of 1974, 5 U.S.C. § 552a; OMB Memorandum M-06-19, Reporting Incidents Involving Personally Identifiable Information and Incorporating the Cost for Security in Agency Information Technology Investments, July 12, 2006; OWCP Bulletin No. 08-01, Privacy Act – Personally Identifiable Information (PII), January 23, 2008; OWCP Bulletin No. 08-02, Case-specific email transactions, May 9, 2008; DLMS 9, Chapter 1200 - DOL Safeguarding Sensitive Data Including Personally Identifiable Information, January 8, 2008; DLMS 5, Chapter 200 - The Privacy Act of 1974 and Invasion of Privacy, November 17, 2004.

Purpose: To provide guidance on how to protect personally identifiable information on DEEOIC claimants.

Applicability: All Staff

Actions:

1. The CE must prevent the unauthorized release of CDs, paper records, or any other material that contains PII for any living individual. This includes materials received from NIOSH, DOE (DAR records), unions, corporate verifiers, resource centers, or any other source.
2. CDs from NIOSH and DOE (DAR records) often contain PII of individuals other than the employee/subject of the information request. The CE must thoroughly review all documents before copying the information for a claimant. If a document requested by a claimant contains the PII of an individual other than the claimant, the CE must print the record and physically redact the other individuals' PII from the document by totally concealing the information with a black marker, opaque tape, or other method that completely removes the PII. A copy of the newly redacted record must be made to ensure that no information can be detected from materials sent to the requesting claimant. The CE must then ensure that the unredacted file is not saved on a copy of any CD to be sent to the claimant.

The CE must mark CDs that contain PII on other individuals in the case file as follows:

## **NOTICE DEEOIC**

### **EMPLOYEE**

This CD and/or printed documents from the CD, **includes confidential information on workers other than this employee.** This information must be carefully reviewed and redacted before any release of the information from the CD, whether by electronic or printed version, pursuant to the Privacy Act. Monetary fines may be imposed on an individual government employee for release of confidential information or personally identifiable information.

The CE must take care to ensure that any CD containing PII is not separated from the case file.

3. The CE must comply with all proscribed OWCP directives concerning the use of e-mail containing PII. E-mail sent from one DEEOIC employee to another DOL employee through the ESA wide-area network (WAN) is considered secure. E-mail to and from contractors who use the ESA network (ESA owned and properly configured equipment, including remote laptops that access the ESA WAN) is also considered secure. As such, reference to the employee's name and case number may be used in the body of the message. However, no reference to the employee's name or Protected PII (see definition above) should be made in the subject portion of the e-mail. Central Bill Process (CBP) "threads", provided through the bill processing agent's secured website conform to this policy, as they are secured within an accredited network.

Any e-mail originating within the DOL network that is forwarded to outside parties becomes non-secure, and PII must be deleted as explained below.

4. E-mail between DEEOIC employees and outside parties is outside the ESA network, and therefore does not guarantee security. As such, the CE must not disclose any Protected PII in any part of the e-mail message.

- The last four digits of a person's SSN may be referenced in the body of the message along with the last name only, as long as the remainder of the SSN, full name, or other PII is not used anywhere in the e-mail message or in attachments that are not password protected or encrypted.
- Attachments that are encrypted with Point Sec may contain the full SSN and name. (See instructions for sending encrypted documents to non-Point Sec users: [http://omap/Pointsec%20Encryption/Quick Reference Guide.pdf](http://omap/Pointsec%20Encryption/Quick%20Reference%20Guide.pdf))

In accordance with the above directive, the CE **must not** send information requests to the resource centers, corporate verifiers, NIOSH, or the Department of Energy via unencrypted e-mail, if the request contains Protected PII for an individual. Development letters to corporate verifiers should be faxed or mailed; or the CE can contact the corporate verifier by telephone. E-mails to the resource centers, NIOSH, and DOE Operations Centers may contain the last name and last four digits of a person's SSN, as described above.

5. CEs may receive e-mail messages from sources outside of DOL that contain PII in the text. The CE is reminded that substantive e-mail responses to outside parties who are not a party to the case are strictly prohibited. An acknowledgement e-mail may be sent, but reference to any personal identifiers must be removed, and the CE must never confirm the existence of cases for specific claimants to members of the public who are not a party to the case.

6. When DEEOIC employees exchange e-mail messages with the bill processing agent concerning claimants, the communications should reference the claimant's CBP Member ID (from the CBP claimant eligibility file). Claimant names should not be included in the same e-mail message as these Member IDs unless they are provided in an encrypted attachment.

The CE must review attachments and e-mail message chains, and if necessary, alter them to remove reference to the claimant's name, SSN or other Protected PII if that e-mail trail is being forwarded outside of DOL. If it is not possible to alter or redact the document or e-mail, or if it is important that the attachment or e-mail include both the claimant's name and case number or SSN, the CE must fax or send the document via mail or courier to the appropriate party. Packages containing extracts of multiple Protected PII records sent via mail or courier must be tracked (e.g. Registered Mail, Return Receipt, Fed Ex, etc.).

If a case-specific e-mail message is received from an outside party containing Protected PII, the message should be printed for inclusion in the case file.

If a DEEOIC response containing Protected PII is required, the CE should respond in accordance with the above guidance. If a CE's response does not require Protected PII, the response may be made via a reply e-mail message, but the Protected PII from the originating e-mail request must be deleted or redacted. The response should also include a statement encouraging the party to write or call with future requests that include Protected PII. The CE must adhere to this procedure when communicating with any source, including, for example, claimants, physicians, and Congressional offices.

DEEOIC does not handle claims communications with claimants or physicians over e-mail. The CE should always encourage claimants and physicians to communicate with DEEOIC via telephone or letter if they have specific questions regarding individual claims, as e-mail cannot be considered secure.

7. The CE may respond to inquiries and communications regarding deceased claimants without protecting the decedent's information, as the right to privacy ends upon death. CEs are cautioned, however, that living beneficiaries' information must continue to be protected.

8. Upon receiving a written and signed request from a claimant or the authorized representative of

a claimant for a copy of the claim, the CE handling the case can arrange for the case file to be photocopied and sent to the claimant, or authorized representative.

- The CE or a Workers Compensation Assistant (WCA) completes the Data Release Form (See Attachment 1) providing all prudent information such as case number, claimant's information and the name of the person assigned the responsibility of making the actual copies.
- The mail staff will make the copy of the file, and return the file and the copy to the CE who made the request. The CE must take the case file along with the Data Release Form and examine each page of the file to look for any PII that does not belong to requester.
- If the CE finds PII other than that of the requester, the CE redacts that information from the photocopies. A permanent ink black marker that thoroughly conceals the PII must be used in redacting the hard copy.
- Once the examination of the case file and any necessary redaction is completed, the case file, photo copies and the signed Data Release Form is returned back to the CE or WCA.
- The CE or WCA must then provide the copy of the redacted case file to the appropriate Supervisory Claims Examiner (SCE), Senior CE, or hearing representative (HR) to ensure the documents are appropriately redacted.
- The name and signature of the person performing the secondary check will also be filled out on the Data Release Form.
- Only after this two level verification is completed will the CE, WCA, or HR send out the data to the claimant.
- The original copy of the Data Release Form will be placed in the original case file.

9. The CE must follow the same procedure that is provided above for paper records before releasing any records in an electronic format:

- CE has the first level responsibility for verifying that all additional PII not related to the requester has been removed from the electronic file.
- The SCE, Senior CE, or HR will be responsible for conducting the second level verification for PII information on the electronic media.

10. The CE must only store Protected PII or other sensitive data on portable media when absolutely necessary, as determined by DEEOIC.

Protected PII and other sensitive data on portable media devices including laptops issued by DOL must be protected with encryption. All removable storage media, such as flash drives, CDs, DVDs, writable optical media, and external hard drives that will store Protected PII or other sensitive data, must be encrypted. DOE and NIOSH submit CDs containing claimant PII to DEEOIC in accordance with Department of Energy and Department of Health and Human Services policy. Both DOE and NIOSH have assured DEEOIC that these policies address the sensitivity of the materials, and provide adequate protection of claimant PII.

All reasonable measures will be taken to ensure that portable media containing Protected PII and other sensitive data are stored inside a safe or in a secured, locked cabinet, room, or area during periods when the media is not in transit or in active use.

11. Portable media containing Protected PII or other sensitive data including CDs, DVDs, or other writable media may be transmitted by the United States Postal Service or another DOL-authorized delivery service if media is encrypted to DOL standards and double-wrapped in an opaque package or container that is sufficiently sealed to prevent inadvertent opening and to show signs of tampering. The decryption key must **not** be included in the same package, but transmitted via a

separate or alternate channel. The package must be sent via certified carrier with an ability to track pickup, receipt, transfer, and delivery.

12. Documents and electronic media containing PII must never be discarded in wastebaskets or recycle bins, but must be shredded or burned. Documents containing PII must be boxed in containers marked as “Sensitive Information – Burn Box” and burned if volumes are large. CDs containing PII must be disposed of via shredding.

13. If Protected PII is improperly released as a result of the inadvertent mailing of a case record copy to an incorrect individual, or a release pursuant to a Privacy Act request of a case record that contains incorrectly filed documents or documents with other individuals’ Protected PII that has not been redacted, the CE takes the following actions:

- (a) The CE begins the document recapture process by asking the individual to return the document (either via telephone or registered mail) and offering a self-addressed, stamped envelope for return of the material directly to the district office for re-filing or destruction.
- (b) The CE immediately notifies the District Director who in turn notifies the Regional Director, who complies with established Departmental reporting requirements documenting the type of PII disclosure, the circumstances surrounding the disclosure and how it was discovered, the appropriate actions taken to recover the PII documents in question and the disposition of that recovery effort.
- (c) The CE must track each PII recapture request within the regional or FAB office. If the recapture of the PII document(s) is successful, the incident will be closed with the incident record filed and maintained in OWCP.
- (d) If the third party in possession of errant PII document(s) refuses to return the document(s), the CE must report the situation to the National Office, through the Regional Director, who will provide guidance on determining what actions should be taken.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers,

FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Section

### **08-40 Processing cases with a recommended decision pending at FAB in excess of one year**

EEOICPA BULLETIN NO. 08-40

Issue Date: August 27, 2008

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Effective Date: August 27, 2008

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Expiration Date: August 27, 2009

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Subject: Processing cases with a recommended decision pending at FAB in excess of one year.

Background: 20 C.F.R. § 30.316 (c) states that:

“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 described in § 30.310(a), or the date the Director reopened the claim for issuance of a new final decision pursuant to § 30.320(a), 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.”

This language was added to the regulations to guarantee that delays do not occur in the adjudication process. There are three different scenarios applicable to the one year time limit (or “one year rule”):

1. In cases where there is an objection, the recommended decision becomes final one year after the date the objection is received in the FAB (if no final decision has been issued.)
2. In cases where no objection is filed, the recommended decision becomes final one year after the period for objections has expired (if no final decision has been issued). This would be 425 days [60 days to object + 365 days (one year)] after the recommended decision date.
3. In cases where a Director’s Order vacated the final decision, the recommended decision becomes final one year after the date of the Director’s Order (if a new final decision has not been issued).

The current version of the Procedure Manual at Chapter 2-1300.10 states that in such instances where the recommended decision becomes final after the one-year time limit has been exceeded, “the FAB will issue a final decision explaining the delay in the adjudication process.” **This is no longer the procedure to be followed in these types of cases.** This bulletin serves to update the procedures for handling these types of cases.

Reference: 20 C.F.R. § 30.316 (29 December 2006), Federal (EEOICPA) Procedure Manual (EEOICPA Tr. No. 05-01, April 2005)

Purpose: To provide guidance on processing claims that have a “regulatory/administrative” final decision based on the “one-year rule.”

Applicability: All Staff

Actions:

1. Once the one year time frame has elapsed, there is essentially a regulatory/administrative final decision. This means the recommended decision is considered final as of the pertinent one year date and becomes known as the regulatory/administrative final decision. The district FAB CE or HR does not need to issue any correspondence or decision to the claimant at this time. These cases are reviewed by the Office of the Director to vacate the regulatory/administrative final decision so a formal final decision can be issued.
2. If a claims examiner (CE) or hearing representative (HR) in a district FAB office has a case in which there is a recommended decision that has not had a corresponding final decision or remand order issued within (a) one year after the period for objections has expired; (b) one year from the date the objection or hearing request was received (if one was filed); or (c) one year from the date of the Director’s Order vacating the final decision (if one was issued), the case file must be forwarded to the Washington, DC FAB for review.
3. If the case is identified in the district office as requiring a regulatory/administrative final decision, the case should be returned first to the district FAB along with notification on the transfer sheet that the case requires a regulatory/administrative final decision. The case should then be sent to the Washington, DC FAB.

When the district FAB CE/HR identifies a regulatory/administrative decision based on the one year rule described above, the FAB CE/HR enters the “**F10**” (Regulatory Final Decision) claim status code into ECMS prior to referral to the Washington, DC FAB. The status effective date of the code is the one-year anniversary date of the objection being received (as indicated by the date stamp) in the FAB NO or FAB DO (whichever is first) for contested claims, the 425<sup>th</sup> day after the date of the recommended decision for non-contested claims, or one year after the date of the Director’s Order (if a new final decision has not been issued on cases where a Director’s Order vacated the final decision).

4. The FAB CE/HR ensures the case file is sent to the Washington, DC FAB to the attention of the FAB Operations Specialist. A memo from the district FAB Manager, through the FAB Branch Chief, dated and signed by the FAB Branch Chief, to the Director must be included with the case file. The FAB Operations Specialist ensures that the case file is sent to the National Office to the attention of the Office of the Director. The memo requests that the regulatory/administrative final decision (based on the one-year rule) be vacated so a formal final decision can be issued. The FAB Operations Specialist enters the “**MI**” [District Director (or FAB Manager) requests reopening] claim status code into ECMS B and/or E, as appropriate, with a status effective date equal to the date of the memo to the Director. If the case is an E/B case and the regulatory/administrative final decision affects Part B and Part E of the case, the “**MI**” status code must be entered into both ECMS B and E. This is true for the subsequent reopening status coding as well (MQ, MD or MF, and MZ discussed below).

5. Once the case file is received in National Office, it is assigned to a CE who enters status code “**MQ**” (Reopening Request Received in National Office) in ECMS. The status effective date of the “**MQ**” code is the date the case file is date-stamped as received in the National Office. The file is then reviewed by the CE and a Director’s Order is drafted to vacate the regulatory/administrative final decision. The Director, or the designated representative, reviews and signs the Director’s Order advising the claimant that the recommended decision became final due to an administrative process contained in regulations [20 C.F.R. § 30.316 (c)] and that the regulatory/administrative final decision has been vacated so a formal final decision can be issued. The Director’s Order also specifies whether the case file needs to be returned to FAB for a final decision or to the district office for a new recommended decision based on the evidence of record. If the case file is returned to FAB, the National Office CE enters the “**MF**” (Claim Reopened, File Returned to the FAB) status code into ECMS with a status effective date equal to the date of the Director’s Order. If the case file is returned to the District Office because the recommended decision was incorrect, or additional evidence has resulted in the need for additional development and issuance of a new recommended decision, the National Office CE enters the “**MD**” (Claim Reopened, File Returned to the DO) status code into ECMS with a status effective date equal to the date of the Director’s Order.

6. Once the file is received back in the FAB or district office, the responsible CE/HR enters the “**MZ**” (Receipt of Director’s Order in DO or FAB) status code with a status effective date of the date the file is date-stamped as received back in the district office or FAB. The District Office or FAB proceeds as instructed by the Director’s Order.

Disposition: Retain until incorporated in the Federal (EEOICPA)

Procedure Manual.

Rachel P. Leiton

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs,

Hearing Representatives, District Office Mail & File Sections

**08-41 SEC Class for Y-12, March 1, 1943 to December 31, 1947**

EEOICPA BULLETIN NO.08-41

Issue Date: September 15, 2008

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Effective Date: September 15, 2008

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Expiration Date: September 15, 2009

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Subject: SEC Class for Y-12, March 1, 1943 to December 31, 1947

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from the Y-12 Plant of Oak Ridge, Tennessee to be added to the Special Exposure Cohort (SEC).

The decision to initiate this petition occurred after the National Institute for Occupational Safety and Health (NIOSH) determined that it could not reconstruct a dose under 42 C.F.R. § 83.14. NIOSH submitted its findings to the petitioner and the Advisory Board on Radiation and Worker Health (“the Board”). On July 12, 2008, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at Y-12 from March 1, 1943 to December 31, 1947.

On August 15, 2008, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress.

All employees of the Department of Energy (DOE), its predecessor agencies, and DOE contractors or subcontractors who worked at the Y-12 Plant in Oak Ridge, Tennessee from March 1, 1943 through December 31, 1947 for a number of work days aggregating at least 250 work days occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

A copy of the Secretary’s letter to Congress recommending the designation is included as **Attachment 1**. The SEC designation for this class became effective as of September 14, 2008, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in a report to Congress. While Congress had the authority to reject the recommendation within the 30-day time frame, no action was taken to contradict the addition of this new SEC class.

While a new SEC class has been added for employees at Y-12, NIOSH has determined that it is possible to reconstruct external doses for workers directly involved with calutron uranium enrichment, and occupational medical dose. This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH. In reconstructing partial dose, NIOSH also intends to use any available internal monitoring data that may be available for an individual claim (and can be interpreted using existing NIOSH dose reconstruction processes or procedures).

This SEC class is during the same period as one other Y-12 SEC designation and the subject of bulletins:

- EEOICPA Bulletin No. 06-04, Processing Claims for SEC Classes for Y-12 Plant, 1943 – 1947, and IAAP Radiographers, 1948 – 1949, and
- EEOICPA Bulletin No. 06-11, Supplemental Guidance for Processing Claims for the Special

Exposure Cohort (SEC) Class for the Y-12 Plant, March 1943 – December 1947.

This bulletin replaces these previous bulletins addressing Y-12. However, the discussion of the IAAP radiographers SEC class designation in EEOICPA Bulletin 06-04 remains in effect.

There is also another SEC class for Y-12 that encompasses covered employees in certain work locations within certain buildings at the Y-12 Plant between January 1948 and December 1957. This class is addressed in EEOICPA Bulletin No. 07-04, which also remains in effect.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the August 15, 2008 letter to Congress from the Secretary of HHS in which Secretary Leavitt makes the designation.

Purpose: To provide procedures for processing SEC claims for workers at the Y-12 Plant in Oak Ridge, Tennessee.

Applicability: All staff

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at the Y-12 Plant during the period of the SEC class. It includes pending cases, cases previously denied and those at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.

The comprehensive list also includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD contains all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD, in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected Y-12 claimants is included as **Attachment 2**. The claims examiner (CE) must print out a hard copy of the NIOSH letter for inclusion in the case file.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e-mail to return dose reconstruction analysis records. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. In addition, the CE must write a letter to the claimant to advise that the case file has been withdrawn from NIOSH for evaluation under the SEC provision.

Once a case file is returned from NIOSH (including those cases where DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code “NW” (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the code entry is September 15, 2008. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record. The standard procedure for NIOSH coding in ECMS E is to code all additional NIOSH actions only if the “NI” (Sent to NIOSH) status code has been entered. Therefore, the CE enters the “NW” code into ECMS

E with the status effective date of September 15, 2008 only if "NI" has already been entered in ECMS E. Although this class in the SEC becomes effective on September 14, 2008, that is a Sunday, so the Bulletin effective date is September 15, 2008. It is the Bulletin date that forms the basis for the ECMS status effective date coding, September 15, 2008.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this bulletin, then refer to instructions in Action #13.

3. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process, including all information on the NIOSH CD.

4. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual (PM) Chapter 2-600.5. If the employee has a specified cancer, proceed to Action #5. If the employee does not have a specified cancer, proceed to Action #7.

5. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 work days at the Y-12 Plant in Oak Ridge, Tennessee between March 1, 1943 and December 31, 1947 (or in combination with work days within the parameters established for one or more other classes of employees in the SEC).

Unlike prior SEC designations for this time frame at the Y-12 facility, this SEC class encompasses all employees at the plant during the time frame. There are no applicable limitations to inclusion based on building, job title, location, exposure or the like.

6. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

ECMS Coding Reminder: The "SE" (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the status effective date of the recommended decision to approve. (This is a change from previous guidance which tied the "SE" effective date to when the employment and medical criteria for SEC has been met). If the case is an E/B case, and the basis for the Part E acceptance is the Part B SEC acceptance, the "SE" code must also be entered into ECMS E with a status effective date of the recommended decision to approve under Part E.

For all claims where Y-12 employment is claimed, regardless of whether the SEC criterion is met, the SEC site code must be entered under the "SEC/SEC Desc" field on the claim screen. The SEC site code for Y-12 is "30."

7. As discussed earlier, the Secretary of Health and Human Services determined that it is not feasible for NIOSH to perform complete dose reconstructions for the class of employees who worked at Y-12 from March 1, 1943 through December 31, 1947.

NIOSH has indicated that partial dose reconstructions are possible based on external doses for workers directly involved with calutron uranium enrichment, occupational medical dose, and any available internal monitoring that may be available for an individual claim. Accordingly, for cases that have not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code "NI" (Sent to NIOSH) in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD. "NI" should only be entered in ECMS E after toxic exposure development is complete and the CE cannot accept causation. In that case the CE creates a memorandum to file stating that toxic exposure development is complete. The CE then enters status code "NI" into ECMS E with the date of the memorandum as the status effective date.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were

returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code "NI" (Sent to NIOSH) into ECMS B, effective the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-specified cancer, insufficient latency period or does not meet the 250 work day requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for dose reconstruction and the reason(s) it does not qualify for the SEC class. If the case is an E/B case and toxic exposure development was completed with a memorandum to file, the CE enters status code "NI" into ECMS E with the status effective date of the e-mail requesting NIOSH to proceed with dose reconstruction.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code "NR" (NIOSH Dose Reconstruction Received) in ECMS B and selects the "PD" (Partial Dose Reconstruction) reason code. The status effective date is the date the dose reconstruction is date-stamped into the District Office. The CE should not delete the "NW" (NIOSH, returned without a dose reconstruction) or "NI" (Sent to NIOSH) code already present in ECMS. If the CE had previously entered "NI" in ECMS E, the CE also enters status code "NR" and "PD" into ECMS E. If the case is an E/B case, the CE enters the Probability of Causation (PoC) into ECMS B and ECMS E (regardless of whether the "NI" code had previously been entered).

8. If the claim meets the SEC employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction that resulted in a probability of causation of 50 percent or greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and if necessary concurrently prepares a NRSD to NIOSH for a dose reconstruction for the non-specified cancer to determine eligibility for medical benefits. The CE enters status code "SE" (Confirmed as SEC Claim) and the "NI" (Sent to NIOSH) code into ECMS B. The status effective date for the "SE" code is the date of the recommended decision to accept the specified cancer. The status effective date for the "NI" code is the date of the Senior or Supervisory CE signature on the NRSD. If the case is an E/B case, the CE enters status code "NI" (Sent to NIOSH) into ECMS E only after the toxic exposure development is complete and the CE cannot accept causation. In that case the CE creates a memorandum to file stating that toxic exposure development is complete. The CE then enters status code "NI" into ECMS E with the date of the memorandum as the status effective date.

9. If there is a final decision to deny based on a POC of less than 50% and a review of the evidence of record establishes likely inclusion in the SEC class, it will need to be reopened. In the exercise of the Director's discretion of the reopening process, the Director is delegating limited authority to the four District Directors to sign Director's Orders for reopening. A sample Director's Order is provided in **Attachment 3**. This delegated authority is limited to reopenings based upon evidence that a Y-12 Plant employee meets the criteria for placement into the Y-12 SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director's Order is issued, the district office is responsible for issuing a new recommended decision.

10. For those cases which are reopened under the authority granted in this Bulletin, the District Director enters status code "MN" (NO Initiates Review for Reopening) in ECMS B with a status effective date as the effective date of this bulletin. If the District Director is also reopening Part E,

the “MN” code is also input in ECMS E.

For all reopenings per this bulletin, upon completing the Director’s Order to reopen the claim, the District Director (DD) enters status code “MD” (Claim Reopened – File Returned to DO) into ECMS B to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “MZ” status code is not necessary). The status effective date of the “MD” code is the date of the Director’s Order. If the Director’s Order reopens the Part E claim, the DD also enters status code “MD” into ECMS E.

While the “MD” code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been in this specific circumstance.

11. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending Y-12 cases that have a recommended decision to deny. All cases on the comprehensive list identified in Action #2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at the Y-12 Plant during the time specified, has a specified cancer, and meets the 250 work day requirement, the FAB is to reverse the district office’s recommended decision to deny and accept the case. The CE/HR enters status code “F6” (FAB Reversed to Accept) into ECMS B/E (as appropriate) to reflect the FAB reversal with a status effective date equal to the date of the final decision to approve. The CE/HR enters status code “SE” (Confirmed as SEC Claim) into ECMS B with a status effective date equal to the date of the final decision to approve. If the FAB is also reversing the Part E decision based on SEC designation, CE/HR also enters status codes “F6” and “SE” into ECMS E with a status effective date of the final decision for Part E.

If no action is required, FAB must follow the instructions specified in Action #13, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the District Office. If FAB determines that the case cannot be approved based on the new SEC designation and that re-referral to NIOSH is appropriate (see action items 5 and 7) the HR must remand the case for district office action. The CE/HR enters status code “F7” (FAB Remanded) with “OTH” (No DO Error – Other) as the reason code. If the decisions on Parts B and E are being remanded, the CE/HR enters the remand code into ECMS B and E. The status effective date is the date of the remand.

12. The operational plan goal for the list of cases identified for review as part of this new SEC class is to complete the Part B recommended decision, return to NIOSH, or determine that no action is necessary within 45 days of the date of this Bulletin for at least 50% of the cases, and within 90 days for 95% of the cases. All cases requiring action due to this Bulletin should be completed within 120 days.

13. All cases on the DEEOIC generated list must be reviewed to determine if it qualifies under the SEC provision including cases still at NIOSH. If after review or further development, the CE/HR determines that a case on the list does not require any action to be taken (either a new recommended decision to accept based on the SEC, or return to NIOSH, or a FAB reversal or remand) the CE/FAB HR must write a brief memo to the file that explains the case was reviewed under this bulletin, no additional action is necessary, and why. A case classified as not requiring any action is a case that does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction.

The CE must then code “NA” (No Action Necessary) and then select the appropriate reason code from the reason code drop down list. The “NA” coding is specifically tied to the SEC review list generated by DEEOIC and the “NA” code is restricted to ECMS B only because the SEC review list is derived from Part B data. For Y-12 cases that were reviewed under this bulletin and require no additional action, the reason code that must be selected is “841” (**Reviewed under Bulletin 08-41, Y-12 SEC**). Even if the case is an E/B case, the **NA-841** must be coded into ECMS B only. The

status effective date of the “NA” code is the date of the memo to the file stating review is complete and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the “NA-841” code is not entered initially. The “NA-841” code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the “NA-841” code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the “NA-841” code in addition to the closure code. The status effective date for the “NA” coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

Rachel P. Leiton

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections.

### **08-42 SEC Class for Spencer Chemical Company/Jayhawk Works**

EEOICPA BULLETIN NO.08-42

Issue Date: September 15, 2008

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Effective Date: September 15, 2008

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Expiration Date: September 15, 2009

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Subject: SEC Class for Spencer Chemical Company/Jayhawk Works

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of workers from Spencer Chemical Company/Jayhawk Works near Pittsburg, Kansas to be added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and determined that it qualified for evaluation under 42 C.F.R. § 83.13. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On July 12, 2008, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at Spencer Chemical Company/Jayhawk Works near Pittsburg, Kansas.

On August 15, 2008, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress.

All Atomic Weapons Employer (AWE) employees who worked at Spencer Chemical Company/Jayhawk Works near Pittsburg, Kansas, from January 1, 1956, through December 31, 1961, for a number of workdays aggregating at least 250 workdays occurring either solely under this employment or in combination with workdays within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

A copy of the Secretary's letter to Congress recommending the designation is included as **Attachment 1**. The SEC designation for this class became effective as of September 14, 2008, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in a report to Congress. While Congress had the authority to reject the recommendation within the 30-day time frame, no action was taken to contradict the addition of this new SEC class.

While a new SEC class has been added for employees at Spencer Chemical Company/Jayhawk Works, NIOSH has determined that it is possible to reconstruct occupational medical dose and some components of the internal dose. This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the August 15, 2008 letter to Congress from the Secretary of HHS in which Secretary Leavitt makes the designation.

Purpose: To provide procedures for processing SEC claims for workers at the Spencer Chemical Company/Jayhawk Works near Pittsburg, Kansas.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at the Spencer Chemical Company/Jayhawk Works during the period of the SEC class. It includes pending cases, cases previously denied, and cases at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.

The comprehensive list also includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD contains all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected Spencer Chemical Company/Jayhawk Works claimants is included as **Attachment 2**. The claims examiner (CE) must print out a hard copy of the NIOSH letter for inclusion in the case file.

There may be some cases on the comprehensive list that were not identified by NIOSH for potential inclusion in the SEC and consequently are still at NIOSH for a dose reconstruction. These cases must also be evaluated for inclusion in the SEC class in accordance with the procedures in this bulletin. If any such case qualifies under the SEC class, the CE, through the Senior CE (SrCE), notifies the appropriate point of contact at NIOSH via e-mail to return dose reconstruction analysis records. The SrCE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. In addition, the CE must write a letter to the claimant to advise that the case file has been withdrawn from NIOSH for evaluation under the SEC

provision.

Once a case file is returned from NIOSH (including those cases that DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code "NW" (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the code entry is September 15, 2008. However, the CE does not enter the status code until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record. Although this class in the SEC becomes effective on September 14, 2008, because that is a Sunday, the Bulletin effective date is September 15, 2008. It is the Bulletin date that forms the basis for the ECMS status effective date coding, September 15, 2008.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this bulletin, then refer to instructions in Action #13.

3. For any cases identified as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.
4. Based on this review, the CE determines whether the employee has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual (PM) Chapter 2-600.5. If the employee has a specified cancer, proceed to Action #5. If the employee does not have a specified cancer, proceed to Action #7.
5. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 work days in any area at the Spencer Chemical Company/Jayhawk Works near Pittsburg, Kansas from January 1, 1956 through December 31, 1961.
6. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE proceeds in the usual manner for a compensable SEC claim and prepares a recommended decision.

ECMS Coding Reminder: The "SE" (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the status effective date of the recommended decision to approve. (This is a change from previous guidance which tied the "SE" effective date to when the employment and medical criteria for SEC has been met). The SEC site code for "Spencer Chemical Company/Jayhawk Works" must be selected from the drop down menu under the "SEC/SEC Desc" field on the claim screen in ECMS B only.

For all claims where Spencer Chemical Company/Jayhawk Works employment is claimed, regardless of whether the SEC criterion is met, the SEC site code must be entered under the "SEC/SEC Desc" field on the claim screen. The SEC site code for Spencer Chemical Company/Jayhawk Works is "55".

7. As discussed earlier, the Secretary of Health and Human Services determined that it is not feasible for NIOSH to perform complete dose reconstructions for the class of employees who worked at Spencer Chemical Company/Jayhawk Works from January 1, 1956 through December 31, 1961.

NIOSH has indicated that partial dose reconstructions are possible based on occupational medical dose and some components of the internal dose. Accordingly, for cases that had not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code "NI" (Sent to NIOSH) in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD.

For those cases which were previously submitted to NIOSH for dose reconstruction and which were returned to the district office for consideration for inclusion in this SEC class, a new NRSD is not required. If it is determined that the case does not qualify for the SEC class, the CE, through the Senior CE (SrCe), notifies the appropriate point of contact at NIOSH via e-mail to proceed with the

dose reconstruction. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) for inclusion in the case file. The CE enters status code “NI” (Sent to NIOSH) into ECMS B, effective the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-specified cancer, insufficient latency period or does not meet the 250 work day requirement. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for dose reconstruction and the reason(s) it does not qualify for the SEC class.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE enters status code “NR” (NIOSH Dose Reconstruction Received) in ECMS B and selects the “PD” (Partial Dose Reconstruction) reason code. The status effective date is the date the dose reconstruction is date-stamped into the District Office. The CE should not delete the “NW” (NIOSH, returned without a dose reconstruction) or “NI” (Sent to NIOSH) code already present in ECMS.

8. If the claim meets the SEC employment criteria and includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction that resulted in a probability of causation of 50 percent or greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE drafts a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and if necessary concurrently prepares a NRSD to NIOSH for a dose reconstruction for the non-specified cancer to determine eligibility for medical benefits. The CE enters status code “SE” (Confirmed as SEC Claim) and the “NI” (Sent to NIOSH) code into ECMS B. The status effective date for the “SE” code is the date of the recommended decision to accept the specified cancer. The status effective date for the “NI” code is the date of the Senior or Supervisory CE signature on the NRSD. Since Spencer Chemical is an Atomic Weapons Employer, there is no Part E coding associated with this additional class in the SEC.

9. If there is a final decision to deny based on a POC of less than 50% and a review of the evidence of record establishes likely inclusion in the SEC class, it will need to be reopened. In the exercise of the Director’s discretion of the reopening process, the Director is delegating limited authority to the four District Directors to sign Director’s Orders for reopening. This delegated authority is limited to reopenings based upon evidence that a Spencer Chemical Company/Jayhawk Works employee meets the criteria for placement into the Spencer Chemical Company/Jayhawk Works SEC class as defined by this bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director’s Order is provided in **Attachment 3**. The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director’s Order is issued, the district office is responsible for issuing a new recommended decision.

10. For those cases which are reopened under the authority granted in this Bulletin, the District Director enters status code “MN” (NO Initiates Review for Reopening) in ECMS B with a status effective date as the effective date of this bulletin.

For all reopenings per this bulletin, upon completing the Director’s Order to reopen the claim, the District Director (DD) enters status code “MD” (Claim Reopened – File Returned to DO) into ECMS B to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “MZ” status code is not necessary). The status effective date of the “MD” code is the date of the Director’s Order.

Please note that while the “MD” code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been in this specific circumstance.

11. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending Spencer

Chemical Company/Jayhawk Works cases that have a recommended decision to deny. All cases on the comprehensive list identified in action item 2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at the Spencer Chemical Company/Jayhawk Works during the time specified, has a specified cancer, and meets the 250 work day requirement, the FAB is to reverse the district office's recommended decision to deny and accept the case. The CE/HR enters status code "F6" (FAB Reversed to Accept) into ECMS B to reflect the FAB reversal with a status effective date equal to the date of the final decision to approve. The CE/HR enters status code "SE" (Confirmed as SEC Claim) into ECMS B with a status effective date equal to the date of the final decision to approve.

If no action is required, FAB must follow the instructions specified in action item 13, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the District Office. If FAB determines that the case cannot be approved based on the new SEC designation and that re-referral to NIOSH is appropriate (see action items 5 and 7) the HR must remand the case for district office action. The CE/HR enters status code "F7" (FAB Remanded) with "OTH" (No DO Error – Other) as the reason code. If the Part B decision is being remanded, the CE/HR enters the remand code into ECMS B with a status effective date of the date of the remand.

12. The operational plan goal for the list of cases identified for review as part of this new SEC class is to complete the Part B recommended decision, return to NIOSH, or determine that no action is necessary within 45 days of the date of this bulletin for at least 50% of the cases, and within 90 days for 95% of the cases. All cases requiring action due to this bulletin should be completed within 120 days.

13. All cases on the DEEOIC generated list must be reviewed to determine if it qualifies under the SEC provision including cases still at NIOSH. If after review or further development, the CE/HR determines that a case on the list does not require any action to be taken (either a new recommended decision to accept based on the SEC, or return to NIOSH, or a FAB reversal or remand) the CE/FAB HR must write a brief memo to the file that explains the case was reviewed under this bulletin, no additional action is necessary, and why. A case classified as not requiring any action is a case that does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction.

The CE must then code "NA" (No Action Necessary) and then select the appropriate reason code from the reason code drop down list. The "NA" coding is specifically tied to the SEC review list generated by DEEOIC and the "NA" code is restricted to ECMS B only because the SEC review list is derived from Part B data. For Spencer Chemical Company/Jayhawk Works cases that were reviewed under this bulletin and require no additional action, the reason code that must be selected is "842" (**Reviewed under Bulletin 08-42, Spencer Chemical Company/Jayhawk Works SEC**) and be coded into ECMS B only. The status effective date of the "NA" code is the date of the memo to the file stating review is complete and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the "NA-842" code is not entered initially. The "NA-842" code is **only** entered when the CE determines **after** development that the case does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the "NA-842" code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the "NA-842" code in addition to the closure code. The status effective date for the "NA" coding is the date of the memorandum to file.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

RACHEL P. LEITON

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections.

## **2007 EEOICP Final Bulletins**

### **07-01 Processing Claims for Ames Laboratory SEC Class**

EEOICPA BULLETIN NO.07-01

Issue Date: October 17, 2006

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Effective Date: September 7, 2006

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Expiration Date: October 17, 2007

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**Subject:** Processing Claims for Ames Laboratory SEC Class, January 1, 1942 through December 31, 1954

**Background:** Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of class of workers from the Ames Laboratory in Ames, Iowa to have this facility added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and decided it qualified for evaluation under 42 C.F.R. § 83.13. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On July 5, 2006, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC employees who worked at the Ames Laboratory for the period from January 1, 1942 through December 31, 1954.

On August 8, 2006, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress.

**Ames Laboratory, Ames, Iowa, January 1, 1942 – December 31, 1954:**

Department of Energy (DOE) employees or DOE contractor or subcontractor employees who worked at the Ames Laboratory in one or more of the following facilities/locations: Chemistry Annex 1(also known as “the old women’s gymnasium” and “Little Ankeny”), Chemistry Annex 2, Chemistry Building (also known as “Gilman Hall”), Research Building, or the Metallurgical Building (also known as “Harley Wilhelm Hall”) from January 1, 1942 through December 31, 1954 for a number of work days aggregating at least 250 work days, or in combination with work days within the parameters (excluding aggregate work day requirements) established for one or more classes of employees in the SEC, and who were monitored or should have been monitored.

In its evaluation, NIOSH determined that “... there is insufficient information either to estimate the maximum radiation dose for every type of cancer for which radiation doses are reconstructed that

could have been incurred under plausible circumstances by any member of the class, or to estimate the radiation doses of members of the class more precisely than a maximum dose estimate.” NIOSH has determined that it is unable to estimate external and internal occupational dose.

In the August 8, 2006 report, the Secretary of HHS determined that it is not feasible to undertake dose reconstructions for the class of employees employed at Ames Laboratory from January 1, 1942 through December 31, 1954.

A copy of the Secretary’s letter to Congress recommending the designation is included as Attachment 1. The SEC designation for this class became effective as of September 7, 2006, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress. While Congress has the authority to reject the recommendation within the 30-day time frame, no action was taken to contradict the addition of this new SEC class.

References: Energy Employees Occupational Illness Compensation Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; and the August 8, 2006 report to Congress from the Secretary of HHS, entitled, “HHS Designation of Additional Members of the Special Exposure Cohort, Designating a Class of Employees from Ames Laboratory, Ames, Iowa.”

Purpose: To provide procedures for processing claims for the Ames Laboratory SEC class.

Applicability: All staff.

Actions:

1. This new addition to the SEC affects DOE employees and DOE contractor employees or subcontractor employees employed at the Ames Laboratory from January 1, 1942 through December 31, 1954 for a number of work days aggregating at least 250 work days, either solely under this employment or in combination with work days established for other classes of employees included in the SEC. This new SEC designation is established for workers who were “monitored or should have been monitored” while employed at the Ames Laboratory. Using the current standards for monitoring of workers at a nuclear facility site, DOL is interpreting “monitored or should have been monitored” as including all atomic weapons employees who worked at the Ames Laboratory during the period from January 1, 1942 through December 31, 1954. DEEOIC has determined that during this SEC period from January 1, 1942 through December 31, 1954, Ames Laboratory consisted solely of the facilities/locations named in the SEC class designation; namely, Chemistry Annex (also known as “the old women’s gymnasium” and “Little Ankeny”), Chemistry Annex 2, Chemistry Building (also known as “Gilman Hall”), Research Building, or the Metallurgical Building (also known as “Harley Wilhelm Hall”). As such, employees with confirmed employment at Ames Laboratory during its SEC class period from January 1, 1942 through December 31, 1954, must be determined to have worked at one or more of the facilities/locations listed in this SEC class designation.

This additional class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.

2. NIOSH has provided a list of employees who claimed employment at Ames Laboratory during its SEC class period. NIOSH will return analysis records for all Ames Laboratory cases that are within its SEC class period to the appropriate district office along with a CD for each case. The CD contains all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also, included on the CD in the Correspondence Folder should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected Ames Laboratory claimants is included as Attachment 2. The claims examiner (CE) must print out a hard copy of the NIOSH letter for inclusion in the case file. Employee case files returned from NIOSH to the district office for potential inclusion in the SEC class must be coded as “NW” in ECMS. The

effective date for the code entry is September 7, 2006.

Since the NIOSH lists contain only cases that were with NIOSH for dose reconstruction at the time this SEC class designation became effective, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) has also produced a list identifying all Ames Laboratory cases that are potentially included in the SEC class including cases that were previously denied. The list identifies those cases that must be reviewed by the district office(s) to determine whether SEC class criteria are satisfied including pending cases with employment during the SEC period with either a specified, non-specified cancer, or previous denial for POC less than 50%. The NIOSH and DEEOIC lists will be compared to ensure all potential SEC cases are identified by the district offices. The lists will be provided to the appropriate district offices under separate cover.

3. For any cases identified (either by NIOSH or DEEOIC) as having a potential for compensability based on the new SEC class, the responsible CE is to: review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process. If the evidence is unclear as to whether the employment or medical documentation satisfies the SEC class requirements, the claimant should be asked to provide clarifying evidence.

4. Based on this review, the CE then determines whether the claimant has a specified cancer, as listed in DEEOIC Procedure Manual Chapter 2-600.5. If the employee has a specified cancer, proceed to Action #5. If the employee does not have a specified cancer, proceed to Action #7.

5. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 work days at the Ames Laboratory from January 1, 1942 through December 31, 1954. In determining whether the employment history meets the 250 work day requirement, the CE must consider employment either solely at the Ames Laboratory or in combination with work days for other SEC classes.

If the employee does not meet any of the employment criteria, proceed to Action #7.

6. Once the CE has determined the person named in the claim has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE should proceed in the usual manner for a compensable SEC claim and prepare a recommended decision.

7. As discussed earlier, the Secretary of Health and Human Services determined that it is not feasible for NIOSH to perform dose reconstructions for the class of employees who worked at the Ames Laboratory from January 1, 1942 through December 31, 1954. However, NIOSH has indicated that dose reconstructions for non-specified cancers may be possible for medical X-ray doses. Accordingly, for cases with a non-specified cancer and/or that do not meet the employment criteria of the SEC class, the CE must refer these cases back to NIOSH to perform dose reconstructions. The CE should code these cases as "NI".

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE should code the case as "NR," but should not delete the "NW" or "NI" code already present in ECMS. The "NR" reason code should be input as "XR" for "Medical X-ray reports used, SEC."

8. If the claim includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any secondary cancers that are metastases of the specified cancer(s), and any non-specified cancers that have a dose reconstruction that resulted in a probability of causation of 50 percent or greater.

9. If a case with a denied final decision now meets the SEC class criteria, the CE must submit the case for reopening through the appropriate process in the district office. The case must be forwarded to the DEEOIC Director to reopen the claim per 20 C.F.R. § 30.320(a).

10. FAB personnel must be vigilant for any Ames Laboratory cases that have a recommended decision to deny. If the employee worked at Ames Laboratory for the specified period, has a

specified cancer, and meets the 250 work day requirement, the recommended decision must be remanded to the district office in the usual manner.

11. A period of 60 calendar days, effective with the issuance date of this directive, is granted for case files affected by this SEC that are returned from NIOSH for evaluation by the DEEOIC to either receive a recommended decision for inclusion in the SEC or referral back to NIOSH for dose reconstruction.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

## **07-02 Amended Procedures for Coordinating EEOICPA Part E Benefits**

EEOICPA BULLETIN NO. 07-02

Issue Date: October 18, 2006

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Effective Date: October 18, 2006

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Expiration Date: October 18, 2007

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Subject: Amended procedures for coordinating EEOICPA Part E benefits with payments received under a state workers' compensation (SWC) program for the same covered illness.

Background: Part E of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) requires the coordination of Part E benefits with amounts received by a claimant as SWC for the same covered illness or illnesses compensable under Part E. In some SWC claims, these amounts take the form of periodic payments, such as a worker's or widow's annuity, that can make calculation of the proper amount of the coordination difficult. In light of the administrative burden of performing the calculations multiple times to accommodate periodic payments made under a SWC program, the process for determining the amount of the required coordination has been simplified, and the instructions for filling out the "EEOICPA/SWC Coordination of Benefits Worksheet" (Attachment 1) have been amended slightly, pursuant to the authority granted by 20 C.F.R. § 30.627 (2005).

References: 42 U.S.C. § 7385s-11; 20 C.F.R. §§ 30.626 and 30.627; Federal (EEOICPA) Procedure Manual, Chapter E-1000 and Attachment 1 (September 2005).

Purpose: To provide new procedures for calculating the required coordination of EEOICPA Part E benefits.

Applicability: All staff.

Actions:

1. Attachment 1 consists of the “EEOICPA/SWC Coordination of Benefits Worksheet,” which includes amended instructions that will simplify the calculations that are necessary to determine how much to “coordinate” (reduce) a claimant’s Part E EEOICPA benefits to reflect payments received under a SWC program.
2. Previously, the Final Adjudication Branch (FAB) was required to recalculate the amount of the required coordination if the claimant was receiving periodic state workers’ compensation, since each subsequent payment would increase the amount by which the Part E award had to be reduced. Effective immediately, the FAB is to use the same cut-off date for determining the amount of state workers’ compensation received that was used by the claims examiner at the District Office. This cut-off date must be the same as the date of the recommended decision. This change will enable the FAB to avoid the current practice of recalculating the amount of the coordination (and the resulting amount of Part E benefits payable) for one or more payment cycles in the future.
3. The completed Worksheet is to be attached to the inside left flap of the claimant’s case jacket.

Disposition: Retain until incorporated in the Federal  
(EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment](#)

Distribution List No. 1: Claims Examiners, Supervisory  
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**07-03 De-listing of Certain Atomic Weapons Employers (AWEs)**

EEOICPA BULLETIN NO. 07-03

Issue Date: December 13, 2006

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Effective Date: November 23, 2005

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Expiration Date: December 13, 2007

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Subject: De-listing National Bureau of Standards (NBS) – Van Ness Street (DC), Picatinny Arsenal(Dover, NJ), Seneca Army Depot(Romulus, NY), and Frankford Arsenal(Philadelphia, PA) as Atomic Weapons Employers(AWEs).

Background: 42 U.S.C. § 7384l(4) defines the term “atomic weapons employer” as an entity, *other than the United States*, that—

(A) 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

(B) is designated by the Secretary of Energy as an atomic weapons employer for purposes of the

compensation program.

42 U.S.C. § 7384l(5) defines the term “atomic weapons employer facility” as “a facility, owned by an atomic weapons employer, that 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.”

Seneca Army Depot, Picatinny Arsenal, and the Frankford Arsenal were owned by the United States (U.S. Army). Similarly, NBS, as a predecessor to the National Institute of Standards and Technology (NIST), was part of the U.S. Department of Commerce. Under the statutory definitions above, therefore, these facilities cannot be classified as AWEs. Nevertheless, each of these had been erroneously designated as AWEs by the Department of Energy(DOE). In a Federal Register notice dated November 30, 2005, the DOE acknowledged that its designations of these facilities as AWEs were erroneous and formally revoked the designations (Attachment 1). The notice therefore makes it clear that none of these facilities are covered AWEs under the Act.

In the event that proper documentation is obtained, however; these entities could be reclassified as DOE facilities, as the facts may warrant. At this time, however, no such documentation has been obtained.

Any cases that were active at the time of the de-listing and involve employment at any of these facilities have been handled individually. This bulletin addresses how to handle any future claims that are filed with employment claimed at one of these facilities.

Reference: 42 U.S.C. § 7384l(4),(5), and (12), 70 *Fed. Reg.* 229 (30 November 2005).

Purpose: To provide guidance on how the district offices should handle future claims that are filed with employment claimed at NBS – Van Ness Street, Picatinny Arsenal, Seneca Army Depot, or Frankford Arsenal.

Applicability: All Staff

Actions:

1. If a claim is received where the only claimed employment is at NBS – Van Ness Street, Picatinny Arsenal, Seneca Army Depot, or Frankford Arsenal, the claimant is provided the opportunity to submit evidence that may allow for these facilities to be reclassified as DOE facilities. The claimant is provided a letter informing them of the statutory definition of a DOE facility and allowing them 30 days to submit evidence that their place of claimed employment meets this definition. 42 U.S.C. § 7384l(12) defines the term “Department of Energy facility” as any building, structure, or premise, including the grounds upon which such building, structure, or premise is located—

(A) in which *operations are, or have been, conducted by, or on behalf of, the Department of Energy* (except for buildings, structures, premises, grounds, or operations covered by Executive Order No. 12344, dated February 1, 1982 (42 U.S.C. 7158 note), pertaining to the Naval Nuclear Propulsion Program); and

(B) with regard to which the Department of Energy 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.

2. If any pertinent evidence is received that may allow for the reclassification of any of these facilities as a DOE facility, it is forwarded to National Office for review. If no such evidence is received, a recommended decision is issued denying the claim for lack of covered employment.

3. If employment at one of the above listed facilities is claimed, in addition to covered

employment, a letter is sent informing the claimant that the de-listed facility is not a covered facility unless the claimant can provide evidence that will allow the reclassification of the facility as a DOE facility. If the claimant provides no such evidence within 30 days, the claim should be adjudicated in the usual manner, excluding the employment of the de-listed facility.

Disposition: Retain until incorporated in the Federal (EEOICPA)

Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

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& File Sections

### **07-04 Processing Claims for a new Special Exposure Cohort Class within certain buildings at the Y-12 Plant**

#### **EEOICPA BULLETIN NO.07-04**

Issue Date: December 22, 2006

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Effective Date: September 7, 2006

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Expiration Date: December 22, 2007

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**Subject:** Processing Claims for a new Special Exposure Cohort (SEC) Class for covered employees in work locations within certain buildings at the Y-12 Plant, January 1948 through December 1957.

**Background:** Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of a class of workers from the Y-12 Plant(Y-12) in Oak Ridge, Tennessee to have this class added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and decided it qualified for evaluation under 42 C.F.R. § 83.13. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On July 5, 2006, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC employees who worked in certain buildings with exposures to certain nuclides at the Y-12 Plant, January 1948 through December 1957.

On August 8, 2006, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress.

Department of Energy (DOE) employees or DOE contractor or subcontractor employees who were monitored or should have been monitored for

1) thorium exposures while working in Building 9201-3, 9202, 9204-1, 9204-3, 9206, or 9212

at Y-12 for a number of work days aggregating at least 250 days during the period from January 1948 through December 1957 or in combination with work days within the parameters (excluding aggregate work date requirements) established for one or more other classes of employees in the SEC; or

2) radionuclide exposures associated with cyclotron operations in Building 9201-2 at Y-12 for a number of work days aggregating at least 250 work days during the period from January 1948 through December 1957 or in combination with work days within the parameters (excluding aggregate work date requirements) established for one or more other classes of employees in the SEC.

A copy of the Secretary's letter to Congress recommending the designation is included as Attachment 1. The SEC designation for this class became effective as of

September 7, 2006, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress. While Congress has the authority to reject the recommendation within the 30-day time frame, no action was taken to contradict the addition of this new SEC class.

NIOSH has determined it is possible to estimate the radiation exposure that resulted from medical doses; external gamma, beta, and neutron doses; internal doses for workers with potential exposure to uranium or recycled uranium contaminants (NIOSH has sufficient bioassay data to estimate doses); and internal doses for workers involved in plutonium operations when plutonium was enriched with the calutrons.

A previous SEC class pertaining to Y-12 was added on August 25, 2005, which was the subject of two prior bulletins, No. 06-04 and 06-11. The guidance provided here is to be used in addition to the two prior bulletins, as it pertains to an entirely new SEC class.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the August 8, 2006 letter to Congress from the Secretary of HHS in which Secretary Leavitt makes the designation.

Purpose: To provide procedures for processing claims for this second Y-12 SEC class.

Applicability: All staff.

#### Actions

1. This new addition to the SEC affects DOE employees and DOE contractor employees or subcontractor employees employed in certain locations at Y-12 from January 1948 through December 1957 for a number of work days aggregating at least 250 work days, either solely under this employment or in combination with work days established for other classes of employees included in the SEC. This new SEC designation is established for workers who were "monitored or should have been monitored" for thorium exposures while working in Building 9201-3, 9202, 9204-1, 9204-3, 9206, or 9212 or were "monitored or should have been monitored" for radionuclide exposures associated with cyclotron operations in Building 9201-2 at Y-12. This additional class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.

NIOSH has additionally stated that:

The Building 9206 Complex includes: 9768, 9720-17, 9409-17, 9510-2, 9767-2, and the east and west tank farm pits.

The Building 9212 Complex includes buildings 9809, 9812, 9818, 9815, and 9980.

To assist claims examiners with conceptualizing these buildings and their locations in the context of the entire Y-12 site, a map of Y-12 with building numbers has been included as Attachment 2. This

map shows the buildings in the 9206 and 9212 complex are generally contiguous, with the exception of 9809 which is a small building in a remote Southwest portion of the Y-12 complex which was also known as the Critical Experiments Facility. This building was constructed in 1950, and access was restricted by means of a chain link fence. Additionally, the building numbers are quite specific, so if a dash is indicated, the use of a more generalized number (lacking the dash) is inappropriate.

2. NIOSH has provided two lists of employees who claimed employment at the Y-12 Plant during its SEC class period. One list covers employees with specified cancers and the other list addresses employees with non-specified cancers. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD contains all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also, included on the CD in the Correspondence Folder should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected Y-12 claimants is included as Attachment 3. The claims examiner (CE) must print out a hard copy of the NIOSH letter for inclusion in the case file. Case files returned from NIOSH to the district office for potential inclusion in the SEC class must be coded as "NW" in ECMS. The effective date for the code entry is September 7, 2006.

Since the NIOSH lists contain only cases that were with NIOSH for dose reconstruction at the time this SEC designation became effective, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) has also produced a list identifying all Y-12 cases that are potentially included in the SEC class including cases that were previously denied. The list identifies those cases that must be reviewed by the district office(s) to determine whether SEC class criteria are satisfied including pending cases with employment during the SEC period with either a specified, non-specified cancer, or previous denial for POC less than 50%. The NIOSH and DEEOIC lists will be compared to ensure all potential SEC cases are identified by the district offices. The lists will be provided to the appropriate district offices under separate cover.

3. For any cases identified (either by NIOSH or DEEOIC) as having a potential for compensability based on the new SEC class, the responsible CE is to: review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process. Action #5 provides additional guidance on making the determination of whether the employee worked in one of the buildings that is part of this SEC. If the evidence is unclear as to whether the employment or medical documentation satisfies the SEC class requirements, the claimant should be asked to provide clarifying evidence.

4. Based on this review, the CE then determines whether the claimant has a specified cancer, as listed in DEEOIC Procedure Manual Chapter 2-600.5. If the employee has a specified cancer, proceed to the Action #5. If the employee does not have a specified cancer, proceed to Action #7.

5. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 work days in an appropriately numbered building at the Y-12 Plant from January 1948 through December 1957. In determining whether the employment history meets the 250 work day requirement, the CE must consider employment either solely at Y-12 or in combination with work days for other SEC classes.

To assist the CE in making these determinations, Attachment 4, "Y-12 Plant and Process Descriptions excerpt from the NIOSH Evaluation Report Summary: SEC-00028, Y-12 Plant" is provided. This portion of the report, which is available in its entirety on the NIOSH website at <http://www.cdc.gov/niosh/ocas/y12.html#sec> provides detailed information as to what activities went on in each of the buildings that is part of the SEC. (The report also provides some information on processes in buildings not part of the SEC which is included in the Attachment for completeness sake)

As Section 5.2.5 of the attachment makes clear, some employees for this new SEC class at Y-12 will actually have confirmed employment with the Oak Ridge National Laboratory (ORNL), but have a work location which was within the SEC buildings on the Y-12 campus. This means that if the employee is from ORNL and worked at a Y-12 SEC building, they are covered under the SEC. However, it is not enough that an employee be an ORNL employee at Y-12, since the buildings designated as part of this SEC do not include all ORNL work locations at Y-12.

In terms of the evidence needed to place people in buildings, there are three categories.

A) Those claimants for which there is strong evidence that shows the employee worked in one of the numbered buildings and/or worked on a process that is clearly indicated in Attachment 4 as having taken place in one of those buildings. Work locations at Y-12 can often be found on copies of the old medical dispensary records, in personnel records and some other Y-12 originated records. If the evidence clearly places the employee in one of the buildings in the designation, proceed to step #6.

B) Those claimants that worked in jobs which required them to move around the site because their job was such that they supported activities site-wide (ie, an operational support role). The types of jobs in this category would include pipefitters, plumbers, steamfitters, carpenters and sheetmetal workers, to name a few. For these workers, the CE is to assume that the worker entered the buildings that are part of the SEC, but must consider evidence that would place these employees elsewhere on the site. If there is affirmative evidence that an employee in this category was not in one of the SEC buildings for some of their confirmed employment period, the CE is to make sure the days in non-SEC buildings does not count towards the 250 days. The CE then must balance the evidence and make a determination on whether the employee meets the 250 day requirement or not. If the CE determines that the evidence is sufficient to place the employee in the SEC, then proceed to step #6.

Additionally, if there is specific evidence that the employee worked in an operational support position, but did not have employment activities that brought him into one of the recognized building locations affiliated with this SEC, the benefit of the doubt cannot be extended to the employee. Under circumstances where specific and contradictory information exists to exclude an “operational support” employee from the SEC class, the CE must undertake additional development of the claim.

C) Those claimants for which their job category and/or building location clearly places them outside one of the buildings that is part of the SEC. Examples of these types of job descriptions includes cafeteria workers, auto mechanics and employees of the Oak Ridge National Laboratory’s Biology Division which was located at Y-12 Building 9207, also known as the “Mouse House.” These employees would not be covered as part of the SEC, unless there is probative evidence to suggest alternate, covered work locations. In terms of suggesting to claimants what type of additional evidence could be persuasive, they can be encouraged to submit affidavits from co-workers regarding work location.

6. Once the CE has determined the person named in the claim has a diagnosed specified cancer and meets the employment criteria of the SEC classes, the CE should proceed in the usual manner for a compensable SEC claim and prepare a recommended decision.

7. As discussed earlier, the Secretary of Health and Human Services determined that it is not feasible for NIOSH to perform complete dose reconstructions for the class of employees who worked in these buildings at Y-12 from January 1948 through December 1957. However, NIOSH has indicated that partial dose reconstructions may be possible based on medical doses; external gamma, beta, and neutron doses; internal doses for workers with potential exposure to uranium or recycled uranium contaminants (NIOSH has sufficient bioassay data to estimate doses); and internal doses for workers involved in plutonium operations when plutonium was enriched with the calutrons. Accordingly, for cases with a non-specified cancer and/or that do not meet the

employment criteria of the SEC class, the CE must refer these cases back to NIOSH to perform dose reconstructions. The CE should code these cases as “NI.”

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE should code the case as “NR” and select the appropriate reason code. The CE should not delete the “NW” or “NI” code already present in ECMS.

8. For those cases that were identified by NIOSH as having a “specified cancer” and therefore returned to the district office, if it is determined that the case does not qualify for the SEC class, the CE, through the Senior CE (SrCe), notifies the appropriate point of contact at NIOSH via E-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) and inputs the NI code to ECMS, effective the date of the E-mail requesting NIOSH to proceed with dose reconstruction. The E-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-qualifying employment at the Y-12 Plant, insufficient latency period, does not meet the 250 work day requirement, or not a specified cancer. A hard copy printout of the E-mail is to be inserted in the case file.

9. For any claim that is not already at NIOSH effective September 7, 2006 and for which the CE determines a dose reconstruction is appropriate, the normal NIOSH referral process will apply.

10. If the claim includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any secondary cancers that are metastases of the specified cancer(s), and any non-specified cancers that have a dose reconstruction that resulted in a probability of causation of 50 percent or greater.

11. If a case with a denied final decision now meets the SEC class criteria, the CE must submit the case for reopening through the appropriate process in the district office. The case must be forwarded to the DEEOIC Director to reopen the claim per 20 C.F.R. § 30.320(a).

12. FAB personnel must be vigilant for any Y-12 cases that have a recommended decision to deny. If the employee worked in one of the specified buildings during the time specified, has a specified cancer, and meets the 250 work day requirement, the recommended decision must be remanded to the district office in the usual manner.

13. A period of 60 calendar days, effective with the issuance date of this directive, is granted for case files affected by this SEC that are returned from NIOSH for evaluation by the DEEOIC to either receive a recommended decision for inclusion in the SEC or referral back to NIOSH for dose reconstruction.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

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Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual

## 07-05 Supplemental Guidance for Processing Claims for Pacific Proving Grounds SEC Class

EEOICPA BULLETIN NO.07-05

Issue Date: January 11, 2007

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Effective Date: July 26, 2006

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Expiration Date: January 11, 2008

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**Subject:** Supplemental Guidance for Processing Claims for Pacific Proving Grounds SEC Class, 1946 – 1962.

**Background:** On July 26, 2006, the following Pacific Proving Grounds class designation was added as an SEC employee class:

Department of Energy (DOE) employees or DOE contractor or subcontractor employees who worked at the Pacific Proving Grounds (PPG) from 1946 through 1962 for a number of work days aggregating at least 250 work days, either solely under this employment or in combination with work days within the parameters (excluding aggregate work day requirements) established for other classes of employees included in the SEC, and who were monitored or should have been monitored.

NIOSH has determined it can reconstruct occupational external dose using currently available film badge monitoring data or field radiation surveys. Also, NIOSH can determine exposure from occupational medical x-rays. As such, for cases with a non-specified cancer and/or that do not meet the employment criteria of the SEC class, NIOSH will perform dose reconstructions based on external occupational doses and occupational medical x-rays.

On September 27, 2006, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) issued Bulletin 06-15 which provided procedures for processing claims for PPG SEC class.

Under Item 5 of Bulletin 06-15, procedures were established to verify covered SEC employment at PPG. In determining the actual employment period, Item #5 states that there must be clear and convincing evidence of a beginning date (hire) and end date (termination) of employment at the PPG. It further instructed the Claims Examiner (CE) to await further policy guidance before proceeding with the verification of covered SEC employment at PPG if there is no clear and convincing evidence of a beginning and end date of employment at the PPG.

After appropriate research, DEEOIC has developed additional guidance to verify covered SEC employment absent clear and convincing employment evidence. Film badge records are now to be used to determine start and end dates of employment at the PPG.

The information contained in this bulletin is supplemental to the guidance provided in EEOICPA Bulletin 06-15.

**References:** Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort under EEOICPA; the June 26, 2006 report to Congress from the Secretary of HHS, entitled, "HHS Designation of Additional Members of the Special Exposure Cohort, Designating a Class of Employees from Pacific Proving Grounds, Enewetak Atoll."

**Purpose:** To provide additional guidance on verifying covered SEC employment at PPG.

**Applicability:** All staff.

**Actions:**

1. This bulletin is in addition to the guidance specifically referenced in Item 5 of Bulletin 06-15. The CE should continue to refer to Bulletin 06-15 for all other procedures on processing PPG SEC class cases.

2. Once the CE has developed the case to satisfy the initial components of the SEC class, it is then necessary to make a determination as to whether the employee was at the PPG for a period equal to or greater than 250 aggregate work days from 1946 through 1962. As noted in Item 5 of Bulletin 06-15, the CE must have clear and convincing evidence of a beginning employment date (hire) and end date (termination) of employment at the PPG.

Absent evidence of hire and end dates of employment, the CE may utilize external film badge (dosimetry) records to establish covered employment at PPG. As confirmed by DEEOIC, employees working at PPG during its SEC period were issued individual film badges to monitor for radiation exposure. These individual film badges were generally issued for one day, one week or a month depending on potential exposure to the individual. Typically, film badge records would include the issue date and the end (return) date which can be used to document employment periods at the PPG.

As noted for this SEC class in Bulletin 06-15, continuous time spent (including working or living) at PPG is credited toward the calculation of 250 work days. If the film badge records include an issue date and end (return) date within the PPG SEC time period, the CE is to credit the employee with the equivalent of three (8-hour) work days for each date the employee was badged, inclusive of the issue date and end (return) date. For example, an employee with a film badge with the issue date of 3/27/1954 and the end (return) date of 3/31/1954 would be credited with 15 (8-hour) work days.

As discussed previously, NIOSH has indicated that it can reconstruct occupational external dose using currently available film badge monitoring data or field radiation surveys. As part of its dose reconstruction process, NIOSH may already have obtained relevant employment documentation such as complete film badge records for the employee, CATI report, correspondence, and other DOE records useful in determining SEC employment at PPG. This information may be found on the NIOSH CD attached to the case file. The CE must inspect these records carefully to determine whether any film badge monitoring data is available that can be used to verify employment at the PPG.

DEEOIC has also confirmed that the Nevada Operations Office (DOE employment verifier for PPG) has extensive records for employees who worked at PPG during its SEC time period. In the case of employees of Holmes and Narver (civilian support contractor at PPG), Nevada Operations Office would have the actual employment dates. Nevada Operations Office also has film badge records of most employees who worked at the PPG during its SEC time period.

In responding to previous Form EE-5 (Employment Verification) request by the DEEOIC, Nevada Operations Office would, in some instances, include only the date (often just the year) that a film badge was issued without an end (return) date. There may be additional film badge records including end (return) date not provided by Nevada Operations Office in their initial response to Form EE-5. In cases in which a Form EE-5 has already been submitted and responded to by the Nevada Operations Office but the film badge records appear incomplete (for example, no return date of the film badge or just the year issued and the NIOSH records do not contain any relevant dosimetry data) the CE may request the film badge records including the complete issue and return dates by calling the point of contact (POC) at Nevada Operations Office and following up with email if necessary. Do not complete another Form EE-5 if one has already been responded to by Nevada Operations Office. If the case file contains the NIOSH CD used for dose reconstruction, the CE should assume that the film badge record received by NIOSH is complete and there is no need to contact the POC unless evidence clearly indicates that NIOSH has not yet requested or received the complete film badge records for the SEC period.

DEEOIC has confirmed that the Nevada Operations Office will now provide dosimetry records to

include all available issue and return dates on all responses to **new** Form EE-5 submissions for PPG. The CE should assume that the responses to **new** Form EE-5 from Nevada Operations Office are complete as of December 18, 2006.

Since continuous time spent at PPG is credited toward the calculation of 250 work day, it is important that clear and convincing evidence is used to determine employment at the PPG. In cases where the Nevada Operations Center confirmed that they only have the date the film badge was issued at PPG but no end (return) date, the CE may only credit the employee with the equivalent of three (8-hour) work days for the date the film badge was issued. The CE may not assume that an employee was at the PPG between two issue dates even if the two film badges (absent end dates) were issued between short intervals of time.

4. In developing the 250 work day requirement, the CE must consider employment either solely at the PPG or in combination with work days for other SEC classes. In some cases, employees who worked at the PPG would also work at the Nevada Test Site (NTS). NTS is a SEC class for the period from January 27, 1951 to 1962.

5. Once the CE has determined that the employee has a diagnosed specified cancer and meets the employment criteria of this PPG SEC class, the CE should proceed in the usual manner for a compensable SEC claim and prepare a recommended decision.

6. For cases with a non-specified cancer and/or that do not meet the employment criteria of the SEC class, the CE must refer the case back to NIOSH to perform dose reconstructions.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

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Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

## **07-06 Educating claimants on impairment and/or wage loss compensation benefits**

EEOICPA BULLETIN NO. 07-06

Issue Date: February 6, 2007

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Effective Date: February 6, 2007

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Expiration Date: February 6, 2008

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Subject: Educating claimants on impairment and/or wage loss compensation benefits.

Background: Due to the complex nature of the Part E benefit structure and the requirements necessary to qualify for lump sum compensation, selected Resource Centers (RCs) have been tasked to engage in an outreach effort to educate claimants on the requirements for filing for and obtaining impairment and/or wage loss benefits.

References: EEOICPA Procedure Manual E-800, Wage-Loss Determinations; E-900, Impairment Ratings; ECMS User's Reference Guide for Resource Center Staff.

Purpose: To provide guidance on communicating with claimants who are potentially eligible for impairment and/or wage loss benefits under Part E of the EEOICPA.

Applicability: All DEEOIC and RC staff.

Actions:

1. To facilitate communication with eligible claimants who are also the covered employee or worker (hereafter referred to as employees) certain DEEOIC RCs will be assigned responsibility for contacting identified employees by telephone to explain the benefit provisions available under Part E. Assignments are as follows:

Jacksonville DO and FAB	Savannah River RC
Cleveland DO and FAB	Portsmouth RC
Denver DO and FAB	Espanola RC
Seattle DO and FAB	Hanford RC

2. There are two types of Part E cases that are to be identified and referred to the designated Resource Center (RC) to initiate employee communication:

- Cases at the Final Adjudication Branch where a positive Final Decision has been issued to a living employee and there has not been a prior claim for impairment and/or wage loss.
- Cases at the District Office where a positive Final Decision has been issued to a living employee and initial development is underway for impairment and/or wage loss.

3. For Part E cases at the Final Adjudication Branch, when a final decision is issued to a living employee with a positive causation determination, a copy is to be prepared and forwarded to the designated RC. This should be done **only** in situations where there is no indication that a claim has been made for impairment and/or wage loss. Decisions that pertain strictly to survivors of a deceased employee are not to be referred to the RC, but processed in the normal fashion. The Washington, DC FAB will send final decisions that meet these guidelines to the appropriate RC, based on which DO issued the recommended decision on Part E.

4. For any case at the District Office that contains a final decision with a positive finding on causation issued to a living employee and where there has been no claim for impairment and/or wage loss, an initial development letter for impairment and/or wage loss benefits must be completed and sent to the employee with a copy of the letter sent to the assigned RC. An example of an initial development letter for impairment benefits is included as Attachment 1. Examples of the initial development letters for wage loss benefits are included as Attachment 2.

5. Upon receipt of a final decision or a development letter in the RC, the RC should take appropriate action to record its receipt. The RC is responsible for ensuring that an appropriate system for recordkeeping is developed to track referrals, and subsequent actions in accordance with the guidance provided in this bulletin. The RC system records the date the final decision or development letter(s) was received in the RC, the employee's name, claim number, the date outreach was completed and whether or not the employee intends to pursue impairment and/or wage loss. In addition, the RC will also report on the disposition of all referrals on a weekly basis to the Branch Chief for Outreach and Technical Assistance. This data should be incorporated into the routine weekly RC activity report already generated by the RC manager.

6. The RC staff should carefully review Procedure Manual Chapters E-0800 and E-0900, which explains the eligibility requirements for compensation benefits and the procedures DEEOIC follows for developing impairment and wage loss benefit claims. For each referral, the RC will initiate a telephone call to the employee identified. It will be necessary for the RC to access the Energy Case Management System (ECMS) to obtain contact information for the employee. The purpose of this

call is to provide information about the potential impairment and/or wage loss benefits available, respond to questions, and solicit claims.

7. A script (Attachment 3) has been developed for use by the RC staff in explaining impairment and/or wage loss benefits to the employee at a general level. It is important the RC staff adhere to the script. Given the complexity of the benefit structure under Part E, it is likely that the employee will have questions. The RC staff may respond to general follow-up questions; for example, eligibility requirements or program procedures to develop a claim for impairment and/or wage loss benefits. To help the RCs anticipate and answer some of the most common questions regarding impairment and wage loss benefits, DEEOIC has developed a Q & A Sheet (Attachment 4) for use by the RCs.

Claim-specific questions or questions that exceed the RC's ability to assist the employee must be referred to the assigned DO claims examiner (CE) or FAB hearing representative/claims examiner, per ECMS. No attempt should be made by the RC representative to offer opinion or conjecture as to the likelihood of entitlement. All adjudicatory functions are solely the responsibility of the assigned CE.

8. During the telephone call, if the employee expresses the intention to pursue impairment and/or wage loss benefits or in cases where the RC staff member believes the employee may qualify for these benefits, the RC advises the employee to submit a signed statement or letter to the appropriate DO of their intention to pursue benefits.

9. In cases where the employee expresses the intention to pursue impairment and/or wage loss benefits, the RC must also mail the brochures titled "How Do I Qualify for an Impairment Award" (Attachment 5) and/or "Wage Loss Benefits" (Attachment 6) with an appropriate cover letter to the employee. These brochures were developed to explain these two types of benefits and the requirements that must be met to qualify for benefits.

10. All discussions with the employee about wage loss and/or impairment must be memorialized into the ECMS via the Telephone Management System (TMS) screen in accordance with the instructions contained in the attached ECMS User's Reference Guide for Resource Center Staff (Attachment 7). In general, each TMS entry should contain a synopsis outline of the discussion; the employee's question or request, if any; the guidance or solution offered; and a notation as to whether the employee intends to pursue impairment and/or wage loss. The TMS screen is printed and the paper record of the activity is forwarded to the appropriate DO/FAB daily for association with the case file.

11. Designated RCs are responsible to immediately notify via email the DO Point of Contact (POC) and the assigned CE or HR (as denoted in ECMS), on any case needing prioritization, such as a terminally ill employee who wants to claim impairment and/or wage loss. The designated DO POC is the same individual who handles the RC employment verification process. The RC staff member must still submit the printed copy of the telephone contact in TMS to the appropriate DO/FAB for association with the case file. For easier identification, these TMS records must be marked "Priority" on top of the page.

12. The designated RC has seven calendar days from the RC's receipt of the employee's final decision or initial development letter(s) to initiate telephonic contact. In cases where the RC is unable to contact the employee within seven calendar days (for example, the employee may be on vacation), the RC must continue to follow up with the employee and document the contact attempts in TMS until contact is successful or a reasonable determination has been made by the RC that further attempts at contact will not be productive. The RC representative may use his or her discretion to determine when to cease further contact attempts with the employee, but as a general rule, after three recorded attempts in as many days has failed to garner employee contact, the RC may cease outreach effort.

13. The RC is to shred the final decision and/or development letter after the employee has been

successful contacted or after the RC has ceased outreach effort with the employee.

Disposition: Retain until incorporated into the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

[Attachment 5](#)

[Attachment 6](#)

[Attachment 7](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections, and Resource Center Managers.

## **07-07 Procedures for rating impairment due to mental disorders under Part E of the EEOICPA**

EEOICPA BULLETIN NO.07-07

Issue Date: February 9, 2007

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Effective Date: February 9, 2007

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Expiration Date: February 9, 2008

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**Subject:** Procedures for rating impairment due to mental disorders under Part E of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

**Background:** Section 7385s-2(b) of EEOICPA requires that a minimum impairment rating be determined in accordance with the American Medical Association's Guides to the Evaluation of Permanent Impairment (AMA's Guides). This requirement is reflected in 20 C.F.R. § 30.901(b), which states the Division of Energy Employees Occupational Illness Compensation (DEEOIC) will determine a minimum impairment rating using the current edition of the Guides. The 5<sup>th</sup> edition of the Guides states the following regarding mental impairment ratings:

Percentages are not provided to estimate mental impairment in this edition of the Guides. Unlike cases with some organ systems, there are no precise measures of impairment in mental disorders. The use of percentages implies a certainty that does not exist. Percentages are likely to be used inflexibly by adjudicators, who then are less likely to take into account the many factors that influence mental and behavioral impairment. In addition, the authors are unaware of data that show the reliability of the impairment percentages. After considering this difficult matter, the Committee on Disability and Rehabilitation of the American Psychiatric Association advised Guides contributors against the use of percentages in the chapter on mental and

behavioral disorders of the fourth edition, and that remains the opinion of the authors of the present chapter. Guides to the Evaluation of Permanent Impairment, 5<sup>th</sup> Edition, Chapter 14.3, pg. 361.

However, the Guides does allow for rating impairment due to emotional or behavioral disorders that are associated with ratable neurological conditions that result from exposures to toxic substances, and as such the physician conducting the impairment is directed to Chapter 13 of the Guides.

References: 42 U.S.C. § 7385s-2(b); 20 C.F.R. §§ 30.901 and 30.910 (2005).

Purpose: To provide procedures to develop claims for impairment ratings due to mental disorders associated with neurological conditions under Part E of EEOICPA.

Applicability: All staff.

Actions:

1. Upon receipt of a claim for a mental impairment, the CE must determine whether the claimed impairment is due to a purely psychological condition or is a consequence of an exposure to a toxic substance that caused neurobehavioral sequelae.
2. Once it has been established that an employee's mental impairment is related to a documented physical dysfunction of the nervous system, the employee should obtain an impairment evaluation from the physician based on Table 13-8 of Chapter 13 in the 5th edition of the AMA's Guides.
3. If the mental impairment is not related to a documented physical dysfunction of the nervous system, the CE should then communicate with the claimant regarding the non-ratability of the condition per 5<sup>th</sup> edition of the Guides. The CE should provide the claimant with a 30-day period to submit documentation from their personal physician if s/he believes there is a link between the employee's exposure to a toxic substance at the covered facility and the development of a mental impairment. The report from the individual's physician must contain rationalized medical evidence establishing that the mental impairment is related to neurological damage due to an accepted toxic exposure. Speculation or unequivocal statements from the physician should reduce the probative value of a physician's report, and in such cases the CE may find it necessary to refer the case to a DMC or the DEEOIC toxicologist to determine whether a toxic exposure caused an emotional or behavioral disorder.
4. While an individual's mental impairment due to a purely psychological condition will not be included in an impairment rating for Part E purposes, such a "non-ratable" condition may be accepted as a consequence of another compensable covered illness, provided that the case file contains rationalized medical evidence in support of causation. For example, depression is often an added diagnosis in terminally ill cancer patients. When this occurs, a compensable consequential psychological condition may be used to pay for medical treatment and qualifying calendar years of wage-loss under Part E.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory

Claims Examiners, Technical Assistants, Customer Service

Representatives, Fiscal Officers, FAB District Managers,

Operation Chiefs, Hearing Representatives, District Office

Mail & File Sections

**07-08 Processing Claims for S-50 Oak Ridge Thermal Diffusion Plant Special Exposure Cohort (SEC) Class**

EEOICPA BULLETIN NO.07-08

Issue Date: February 9, 2007

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Effective Date: December 9, 2006

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Expiration Date: February 9, 2008

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Subject: Processing Claims for S-50 Oak Ridge Thermal Diffusion Plant Special Exposure Cohort (SEC) Class, July 9, 1944 through December 31, 1951.

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of class of workers from the S-50 Thermal Diffusion Plant, Oak Ridge, Tennessee to have this facility added to the SEC.

This petition was a result of a determination under 42 C.F.R. § 83.14 made by National Institute for Occupational Safety and Health (NIOSH) that a dose reconstruction for members of the class was not possible. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On October 11, 2006, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC employees who worked at the S-50 Oak Ridge Thermal Diffusion Plant from July 9, 1944 through December 31, 1951.

On November 9, 2006, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress.

S-50 Oak Ridge Thermal Diffusion Plant in Oak Ridge, Tennessee from July 9, 1944 through December 31, 1951:

Employees of the Department of Energy predecessor agencies and their contractors or subcontractors who were monitored or should have been monitored while working at the S-50 Oak Ridge Thermal Diffusion Plant for a number of work days aggregating at least 250 work days during the period from July 9, 1944, through December 31, 1951, or in combination with work days within the parameters established for one or more other classes of employees in the SEC.

Pursuant to 42 U.S.C. §7384q of the EEOICPA and 42 C.F. R. § 83.14(b), NOISH has established that it does not have sufficient information to complete dose reconstructions for individual members of the class with sufficient accuracy except in instances of occupational medical doses.

A copy of the Secretary’s letter to Congress recommending the designation is included as Attachment 1. The SEC designation for this class became effective as of December 9, 2006, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress. While Congress has the authority to reject the recommendation within the 30-day time frame, no action was taken to contradict the addition of this new SEC class.

References: Energy Employees Occupational Illness Compensation Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; and the November 9, 2006 report to Congress from the Secretary of HHS, entitled, “HHS Designation of Additional Members of the Special Exposure Cohort, Designating a Class of Employees from S-50 Oak Ridge Thermal Diffusion Plant (S-50), Oak Ridge, Tennessee.”

Purpose: To provide procedures for processing claims for the S-50 Oak Ridge Thermal Diffusion Plant from July 9, 1944 through December 31, 1951.

Applicability: All staff.

Actions:

1. This new addition to the SEC affects DOE predecessor agency employees and their contractor or subcontractor employees employed at the S-50 Thermal Diffusion Plant from July 9, 1944 through December 31, 1951, for a number of work days aggregating at least 250 work days, either solely under this employment or in combination with work days established for other classes of employees included in the SEC. This new SEC designation is established for workers who were “monitored or should have been monitored” while employed at S-50. Using the current standards for monitoring of workers at a nuclear facility site, DOL is interpreting “monitored or should have been monitored” as including all employees who worked at S-50 during the period from July 9, 1944 through December 31, 1951.

The designation of this class makes it clear that it includes all employees with a work location at S-50. That is to say it includes both those who were employed on the wartime uranium enrichment activities which took place there from July 9, 1944 to September 9, 1945 and it includes those who worked on feasibility studies for the Nuclear Energy for the Propulsion of Aircraft Project which took place in the same location from May 1, 1946 through December 31, 1951. Employee job type and project names are irrelevant for this SEC designation. This SEC designation covers all workers on both projects that took place at S-50 from July 9, 1944 through December 31, 1951. This is the entire timeframe for which S-50 is a covered facility.

This additional class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.

2. NIOSH has provided a list of employees who claimed employment at S-50 during its SEC class period. NIOSH will return analysis records for all S-50 cases that are within its SEC class period to the appropriate district office along with a CD for each case. The CD contains all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also, included on the CD in the Correspondence Folder should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected S-50 claimants is included as Attachment 2. The claims examiner (CE) must print out a hard copy of the NIOSH letter for inclusion in the case file. Employee case files returned from NIOSH to the district office for potential inclusion in the SEC class must be coded as “NW” in ECMS. The effective date for the code entry is December 9, 2006.

Since the NIOSH lists contain only cases that were with NIOSH for dose reconstruction at the time this SEC class designation became effective, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) has also produced a list identifying all S-50 cases that are potentially included in the SEC class including cases that were previously denied. The list identifies those cases that must be reviewed by the district office(s) to determine whether SEC class criteria are satisfied including pending cases with employment during the SEC period with either a specified, non-specified cancer, or previous denial for POC less than 50%. The NIOSH and DEEOIC lists will be compared to ensure all potential SEC cases are identified by the district offices. The lists will be provided to the appropriate district offices under separate cover.

3. For any cases identified (either by NIOSH or DEEOIC) as having a potential for compensability based on the new SEC class, the responsible CE is to: review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process. If the evidence is unclear as to whether the employment or medical documentation satisfies the SEC class requirements, the claimant should be asked to provide clarifying evidence.

4. Based on this review, the CE then determines whether the employee has a specified cancer, as listed in DEEOIC Procedure Manual Chapter 2-600.5. If the employee has a specified cancer, proceed to Action #5. If the employee does not have a specified cancer, proceed to Action #7.
5. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 work days at the S-50 from July 9, 1944 through December 31, 1951. In determining whether the employment history meets the 250 work day requirement, the CE must consider employment either solely at the S-50 or in combination with work days for other SEC classes. If the employee does not meet any of the employment criteria, proceed to Action #7.
6. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE should proceed in the usual manner for a compensable SEC claim and prepare a recommended decision.
7. As discussed earlier, the Secretary of Health and Human Services determined that it is not feasible for NIOSH to perform dose reconstructions for the class of employees who worked at the S-50 from July 9, 1944 through December 31, 1951. However, NIOSH has indicated that dose reconstructions for non-specified cancers may be possible for medical X-ray doses. Accordingly, for cases with a non-specified cancer and/or that do not meet the employment criteria of the SEC class, the CE must refer these cases back to NIOSH to perform dose reconstructions. The CE should code these cases as "NI".  
  
Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE should code the case as "NR," but should not delete the "NW" or "NI" code already present in ECMS. The "NR" reason code should be input as "XR" for "Medical X-ray reports used, SEC."
8. If the claim includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any secondary cancers that are metastases of the specified cancer(s), and any non-specified cancers that have a dose reconstruction that resulted in a probability of causation of 50 percent or greater.
9. If a case with a denied final decision now meets the SEC class criteria, the CE must submit the case for reopening through the appropriate process in the district office. The case must be forwarded to the DEEOIC Director to reopen the claim per 20 C.F.R. § 30.320(a).
10. FAB personnel must be vigilant for any S-50 cases that have a recommended decision to deny. If the employee worked at S-50 for the specified period, has a specified cancer, and meets the 250 work day requirement, the recommended decision must be remanded to the district office in the usual manner.
11. A period of 60 calendar days, effective with the issuance date of this directive, is granted for case files affected by this SEC that are returned from NIOSH for evaluation by the DEEOIC to either receive a recommended decision for inclusion in the SEC or referral back to NIOSH for dose reconstruction.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

## **07-09 Processing Claims for Oak Ridge Institute of Nuclear Studies (ORINS) Cancer Research Hospital Special Exposure Cohort (SEC) Class**

EEOICPA BULLETIN NO.07-09

Issue Date: February 9, 2007

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Effective Date: December 9, 2006

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Expiration Date: February 9, 2008

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Subject: Processing Claims for Oak Ridge Institute of Nuclear Studies (ORINS) Cancer Research Hospital, Oak Ridge, Tennessee Special Exposure Cohort (SEC) Class, May 15, 1950 through December 31, 1963.

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of class of workers from ORINS to have this facility added to the SEC.

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and decided it qualified for evaluation under 42 C.F.R. § 83.13. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On October 11, 2006, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC employees who worked at the ORINS Cancer Research Hospital from May 15, 1950 through December 31, 1963.

On November 9, 2006, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress.

### Oak Ridge Institute of Nuclear Studies Cancer Research Hospital in Oak Ridge, Tennessee from May 15, 1950 through December 31, 1963:

Employees of the Department of Energy predecessor agencies and their contractors or subcontractors who were monitored or should have been monitored while working at the Oak Ridge Institute of Nuclear Studies Cancer Research Hospital from May 15, 1950, through December 31, 1963, and who were employed for a number of work days aggregating at least 250 work days, or in combination with work days within the parameters established for one or more other classes of employees in the SEC.

In its evaluation, NIOSH determined that “...there is insufficient information either to estimate the maximum radiation dose for every type of cancer for which radiation doses are reconstructed that could have been incurred under plausible circumstances by any member of the class, or to estimate the radiation doses of members of the class more precisely than a maximum dose estimate.” NIOSH has determined that it is unable to estimate internal occupational dose.

In the November 9, 2006 report, the Secretary of HHS determined that it is not feasible to undertake dose reconstruction for the class of employees employed at the Oak Ridge Institute of Nuclear Studies Cancer Research Hospital from May 15, 1950, through December 31, 1963.

A copy of the Secretary’s letter to Congress recommending the designation is included as Attachment 1. The SEC designation for this class became effective as of December 9, 2006, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress. While Congress has the authority to reject the recommendation within the 30-day time

frame, no action was taken to contradict the addition of this new SEC class.

References: Energy Employees Occupational Illness Compensation Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; and the November 9, 2006 report to Congress from the Secretary of HHS, entitled, “HHS Designation of Additional Members of the Special Exposure Cohort, Designating a Class of Employees from ORINS Cancer Research Hospital, Oak Ridge, Tennessee.”

Purpose: To provide procedures for processing claims for the ORINS Cancer Research Hospital from May 15, 1950, through December 31, 1963.

Applicability: All staff.

Actions:

1. This new addition to the SEC affects DOE predecessor agency employees and their contractor or subcontractor employees employed at the ORINS Cancer Research Hospital from May 15, 1950, through December 31, 1963 for a number of work days aggregating at least 250 work days, either solely under this employment or in combination with work days established for other classes of employees included in the SEC. This new SEC designation is established for workers who were “monitored or should have been monitored” while employed at ORINS Cancer Research Hospital. Using the current standards for monitoring of workers at a nuclear facility site, DOL is interpreting “monitored or should have been monitored” as including all employees who worked at ORINS Cancer Research Hospital during the period from May 15, 1950, through December 31, 1963.

Additionally, the ORINS Cancer Research Hospital (which closed many years ago) is only one portion of the covered DOE facility today known as the Oak Ridge Institute for Science and Education (ORISE). ORINS was an educational non-profit organization which contracted with the Atomic Energy Commission to “promote the theoretical education and practical training of the scientific personnel essential to the continued conduct of research and development activities in the fields of nuclear and related sciences...” The operation of the Cancer Research Hospital was but one facet of this broader mission. In 1966, ORINS became Oak Ridge Associated Universities (ORAU). In 1992, the Oak Ridge Institute for Science Education (ORISE) was formed as an official Department of Energy Institute to be managed by ORAU. It is ORISE which is the present day successor in interest to ORINS.

This additional class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.

2. NIOSH has provided a list of employees who claimed employment at ORINS during its SEC class period. NIOSH will return analysis records for all ORINS cases that are within its SEC class period to the appropriate district office along with a CD for each case. The CD contains all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also, included on the CD in the Correspondence Folder should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected ORINS claimants is included as Attachment 2. There is, however; a mistake in the letter. The letter states, “Our records indicate that you, or the energy employee on the claim, worked at the Oak Ridge Institute of Nuclear Studies Cancer Research Hospital during the period...” What it should have said was, “Our records indicate that you, or the energy employee on the claim, worked for ORINS during the period...” It is up to the claims examiner (CE) to make the determination of which ORINS employees worked at the ORINS Cancer Research Hospital. The CE must print out a hard copy of the NIOSH letter for inclusion in the case file. Employee case files returned from NIOSH to the district office for potential inclusion in the SEC class must be coded as “NW” in ECMS. The effective date for the code entry is December 9, 2006.

Since the NIOSH lists contain only cases that were with NIOSH for dose reconstruction at the time this SEC class designation became effective, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) has also produced a list identifying all ORINS cases that are potentially included in the SEC class, including cases that were previously denied. The list identifies those cases that must be reviewed by the district office(s) to determine whether SEC class criteria are satisfied, including pending cases with employment during the SEC period with either a specified, non-specified cancer, or previous denial for POC less than 50%. The CE must compare the NIOSH and DEEOIC lists to ensure all potential SEC cases are identified by the district offices. The lists will be provided to the appropriate district offices under separate cover.

3. For any cases identified (either by NIOSH or DEEOIC) as having potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process. If the evidence is unclear as to whether the employment or medical documentation satisfies the SEC class requirements, the claimant should be asked to provide clarifying evidence.

4. Based on this review, the CE then determines whether the claimant has a specified cancer, as listed in DEEOIC Procedure Manual Chapter 2-600.5. If the employee has a specified cancer, proceed to Action #5. If the employee does not have a specified cancer, proceed to Action #7.

5. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 work days at the ORINS Cancer Research Hospital from May 15, 1950, through December 31, 1963. In determining whether the employment history meets the 250 work day requirement, the CE must consider employment either solely at the ORINS Cancer Research Hospital or in combination with work days for other SEC classes. Not all ORINS employees worked at the Cancer Research Hospital, so a determination will have to be made as to work location.

If the employee does not meet any of the employment criteria, proceed to Action #7.

6. Once the CE has determined the person named in the claim has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE should proceed in the usual manner for a compensable SEC claim and prepare a recommended decision.

7. As discussed earlier, the Secretary of Health and Human Services determined that it is not feasible for NIOSH to perform dose reconstructions for the class of employees who worked at ORINS Cancer Research Hospital from May 15, 1950, through December 31, 1963. However, NIOSH has indicated that dose reconstructions for non-specified cancers may be possible for external doses and for medical X-ray doses. Accordingly, for cases with a non-specified cancer and/or that do not meet the employment criteria of the SEC class, the CE must refer these cases back to NIOSH to perform dose reconstructions. The CE should code these cases as "NI".

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE should code the case as "NR," but should not delete the "NW" or "NI" code already present in ECMS. The "NR" reason code should be input as "XM" for "External and medical dose used, SEC."

8. If the claim includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any secondary cancers that are metastases of the specified cancer(s), and any non-specified cancers that have a dose reconstruction that resulted in a probability of causation of 50 percent or greater.

9. If a case with a denied final decision now meets the SEC class criteria, the CE must submit the case for reopening through the appropriate process in the district office. The case must be forwarded to the DEEOIC Director to reopen the claim per 20 C.F.R. § 30.320(a).

10. FAB personnel must be vigilant for any ORINS cases that have a recommended decision to

deny. If the employee worked at ORINS Cancer Research Hospital for the specified period, has a specified cancer, and meets the 250 work day requirement, the recommended decision must be remanded to the district office in the usual manner.

11. A period of 60 calendar days, effective with the issuance date of this directive, is granted for case files affected by this SEC that are returned from NIOSH for evaluation by the DEEOIC to either receive a recommended decision for inclusion in the SEC or referral back to NIOSH for dose reconstruction.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

**07-10 Procedures for deducting payments received for final judgments or settlements from EEOICPA benefits under Parts B and/or Part E**  
*This bulletin has been updated by Bulletin 07-12*

**EEOICPA BULLETIN NO.07-10**

Issue Date: February 21, 2007

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Effective Date: February 21, 2007

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Expiration Date: February 21, 2008

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**NOTE: This Bulletin replaces EEOICPA Bulletin No. 05-04, Procedures for deducting payments received for final judgments or settlements from EEOICPA benefits under Part B and/or new Part E.**

Subject: Procedures for deducting payments received for final judgments or settlements from EEOICPA benefits under Parts B and/or Part E.

Background: Since Part E was added to the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) on October 28, 2004, Claims Examiners (CEs) have experienced an upsurge in the number and variety of cases in which they must determine whether and how much to offset an award of EEOICPA benefits to reflect the amount of a settlement or final judgment payment for injuries resulting from exposure to the same toxic substance for which EEOICPA benefits are payable. A number of important policy decisions involving offsets have been made to address common scenarios arising from multiple-defendant litigation with multiple settlement payments over time (usually involving asbestos exposure), earlier offsets and surpluses, and the satisfaction of workers' compensation liens out of a settlement or final judgment payment.

Attachment 1 is the modified "EEOICPA Part B/E Benefits Offset Worksheet," which has been updated to accommodate these policy decisions. The accompanying step-by-step instructions for filling out the Worksheet have also been substantially rewritten and expanded.

References: 42 U.S.C. § 7385 and 20 C.F.R. § 30.505(b).

Purpose: To provide updated procedures and a modified Worksheet for making the required reduction of EEOICPA benefits.

Applicability: All staff.

Actions:

1. When evidence in the case file suggests that a payment for injuries due to an exposure to the same toxic substance for which EEOICPA benefits are payable (whether alone or in combination with other non-occupational exposures) has been received by any person (it does not matter who) as a result of a tort suit (whether or not the suit was ever actually filed in a court), the CE must send a development letter to the claimant asking for copies of all documents in his or her possession relating to the suit, such as the complaint (whether or not it was ever filed in court), any settlement agreement(s), and any itemized lists of expenses submitted with an attorney's bill. The claimant should be asked to contact the attorney who filed the suit to obtain copies of these documents if the claimant does not have them. The CE must obtain enough information to be able to determine the dollar amount of the payment(s), and when and to whom the payment(s) was paid. While the complaint must be obtained if the claimant disputes the necessity of the offset, the CE may proceed with the offset without the complaint if the claimant does not dispute that offset is necessary, and the CE has sufficient evidence to fill out the Worksheet. The CE may administratively close the file if no document relating to the suit is received after two development letters are issued. The development letter must advise the claimant of this action prior to the file being administratively closed. The status code in ECMS must be updated with the "C2" (Administrative Closure) code.
2. Attachment 1 consists of the revised "EEOICPA Part B/E Benefits Offset Worksheet." After receipt of all relevant documents, the CE consults the instructions accompanying the Worksheet to determine whether an offset is needed, and if it is, selects the proper method to calculate the amount by which the claimant's lump-sum or medical benefits must be "offset" (reduced). The Worksheet includes detailed instructions on how to compute the different figures that the CE uses to calculate the amount of any offset. After completing the Worksheet, the CE staples it to the inside left cover of the case file so the Final Adjudication Branch (FAB) reviewer can find it easily.
3. If the amount of EEOICPA benefits to which the claimant is currently entitled is MORE than the offset, the balance due the claimant will be the amount appearing on Line 7b of the Worksheet. This is the amount of EEOICPA benefits that must be referenced in the recommended decision, together with an explanation of how this amount was calculated.
4. If the amount of EEOICPA benefits currently payable is LESS than the offset, the amount of the "surplus" payment still to be offset will appear on Line 7c of the Worksheet. Since additional EEOICPA benefits must first become payable before a surplus payment can be absorbed, no further action to offset the surplus payment is required for a survivor's Part B claim. If there is a surplus payment to be absorbed in an employee's Part B claim, this must be noted in the recommended decision, along with an explanation that OWCP will not pay medical benefits and will apply the amount it would otherwise pay (directly to a medical provider, or to reimburse an employee for ongoing medical treatment) to the surplus until it is absorbed. If there is a surplus to be absorbed in an employee's Part E claim, this same explanation must appear in the recommended decision, PLUS an explanation that OWCP will also not pay any benefits for wage-loss and/or impairment that may be due in the future until the surplus is absorbed. If there is a surplus to be absorbed in a survivor's Part E claim and further monetary benefits may be payable based on the deceased employee's calendar years of qualifying wage-loss, this must be noted in the recommended decision, along with an explanation that OWCP will absorb the remaining surplus out of those benefits if and when they become payable. All future EEOICPA benefit payments for the same exposure(s) that formed the basis for the tort suit are subject to the offset to absorb a surplus.
5. In situations involving a surplus, the FAB issues an award letter to the claimant containing

special language. The FAB award letter accompanies the final decision and advises the claimant of the exact amount of the surplus. The award letter explains that the surplus will be absorbed out of medical benefits payable under EEOICPA (and lump-sum payments due in the future in Part E claims). The award letter further instructs the claimant to submit proof of payment of medical bills to the district office until notice is received that the surplus has been absorbed. In addition, claimants are instructed to advise medical providers to submit proof of payment of medical bills to the district office during this time.

6. In all claims described in Item 5 above, upon issuance of the final decision the FAB reviewer will update ECMS in the *condition status* field with the “O” (Offset) code for the affected medical condition(s) on the medical condition screen for the employee’s claim. The offset will only apply to the employee’s claim, even in the event that the employee died prior to adjudication of the case, and the survivor is entitled to compensation. The ECMS process for Part B and Part E claims is as follows:

Offset for a Living Employee: For any medical condition(s) that will be affected by a surplus, the FAB reviewer:

- a) Updates the *condition status* field for the medical condition(s) from “A” (Accepted, entered by the district office) to “O” (Offset) on the Employee Medical Condition screen;
- b) Confirms that the corresponding medical *status effective date* is equal to the employee’s claim filing date; and
- c) Confirms that the corresponding data for the medical condition(s) is correct (condition type, ICD-9 code and diagnosis date).

Offset for a Deceased Employee: For any medical condition(s) that will be affected by a surplus, the FAB reviewer:

- a) Confirms the “C3” claim status code was entered in the employee’s claim status history screen, with a *status effective date* of the date stamp of receipt of notification of the employee’s death;
- b) Adds or updates the actual date of the employee’s death in the *DOD (Date of Death)* field in the Employee Census Information box of the case screen;
- c) Updates through the employee’s claim, the *condition status* field for the medical condition(s) to “O” (Offset) on the Employee Medical Condition screen;
- d) Updates or confirms that the corresponding medical *status effective date* is equal to the employee’s claim filing date;
- e) Updates or confirms that the corresponding data for the medical condition(s) is correct (condition type, ICD-9 code and diagnosis date); and
- f) Updates or confirms that the employee’s date of death is entered in the *eligibility end date* field.

As an award automatically generates an eligibility file at the medical bill processing center, the “O” code acts as a “suspend” code and will not permit medical bill payment until the surplus is absorbed and the “O” code is removed from the condition status screen. During the time in which the “O” code remains in the medical condition status screen, the medical bill processing center will return the pertinent bills received on a surplus file to the claimant or the billing provider indicating that the bill can not be paid at this time due to a surplus.

7. During the time in which a surplus is in effect, the district office offset point of contact (POC) will be responsible for tracking surplus depletion. The FAB award letter will inform the claimant and medical providers to send all proofs of payment of medical bills to the offset POC. Should an unpaid bill be submitted to the offset POC during the surplus period, it will be returned to the claimant or the billing provider indicating that it can not be paid at that time due to the existence of a surplus. During the time in which the surplus is being monitored for depletion, the POC will

tabulate the amounts of the proofs of payment until they equal or exceed the surplus amount. Once the proofs of payment monitored by the offset POC equal the surplus amount, all future medical bills in excess of the surplus amount will be paid under EEOICPA.

8. Once the surplus is absorbed, the DO offset POC updates the medical condition(s) of the employee's claim in ECMS to reflect that the offset(s) is complete. The POC will change the "O" (Offset) in the *status* field and replace it with an "A" (Accepted) code. If the employee is deceased, the POC will confirm that the *eligibility end date* is equal to the actual date of the employee's death. The POC then enters a comment into ECMS case notes indicating that the surplus has been absorbed and that all future medical bills will be paid under EEOICPA. Once the "A" code is entered into the Medical Condition Status screen in ECMS, the payment eligibility file will become active. The POC confirms that the *status effective date* is the employee's claim filing date. Upon entering the "A" code into ECMS, the offset POC will send a letter advising the claimant that the surplus is absorbed. The letter will provide the claimant with the address of the medical bill processing center and instruct him or her to submit all future unpaid medical bills to that address for review and payment. At that point, the offset POC will send a copy of all proofs of payment received during the time in which the surplus was in force to the medical bill processing center. The medical bill processing center will maintain a record of these proofs of payment to guard against payment of these previously rejected or otherwise unprocessed bills.

9. During any period when medical benefits are not being paid because of the required reduction of EEOICPA benefits, if the CE finds it necessary in the course of normal case management to obtain a second opinion examination, a referee examination, or a medical file review, the costs for these procedures will be directly paid by OWCP and any reasonable expenses incurred by the employee will be reimbursed without being added to the surplus. Therefore, the offset will not apply to any prior approval medical conditions in ECMS, coded with a medical condition type of "PA." In such situations, the CE will enter a comment into ECMS case notes authorizing the medical bill processing center to pay all bills related to the directed medical examination or medical file review. The CE must follow the procedures outlined in EEOICPA Bulletin No. 03-01 for the processing of bills related to these matters.

Disposition: Retain until incorporated in the Federal  
(EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

**07-11 Processing Claims for a new Special Exposure Cohort (SEC) Class for covered employees with exposure to radioactive lanthanum (RaLa) at work locations within Los Alamos National Laboratory (LANL)**

EEOICPA BULLETIN NO.07-11

Issue Date: February 28, 2007

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Effective Date: December 9, 2006

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Expiration Date: February 28, 2008

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Subject: Processing Claims for a new Special Exposure Cohort (SEC) Class for covered employees with exposure to radioactive lanthanum (RaLa) at work locations within Los Alamos National Laboratory (LANL), September 1, 1944 through July 18, 1963.

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of a class of employees from the Los Alamos National Laboratory in Los Alamos, NM to have a class added to the Special Exposure Cohort (SEC).

The decision to initiate this petition occurred after the National Institute for Occupational Safety and Health (NIOSH) determined that it could not reconstruct a dose under 42 C.F.R. § 83.14. NIOSH submitted its findings to the petitioner and the Advisory Board on Radiation and Worker Health (“the Board”). On October 11, 2006, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC employees who worked in certain locations with exposures to ionizing radiation associated with radioactive lanthanum (RaLa) at the LANL during the period from September 1, 1944 through July 18, 1963.

On November 9, 2006, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress:

Employees of the Department of Energy predecessor agencies and their contractors or subcontractors who were monitored or should have been monitored for exposure to ionizing radiation associated with radioactive lanthanum (RaLa) operations at Technical Area 10 (Bayo Canyon Site), Technical Area 35 (Ten Site), and Buildings H, Sigma, and U (located within Technical Area 1) at the Los Alamos National Laboratory (LANL) for a number of work days aggregating at least 250 work days during the period from September 1, 1944 through July 18, 1963, or in combination with work days within the parameters established for one or more other classes of employees in the SEC.

A copy of the Secretary's letter to Congress recommending the designation is included as Attachment 1. The SEC designation for this class became effective as of December 9, 2006, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress. While Congress has the authority to reject the recommendation within the 30-day time frame, no action was taken to contradict the addition of this new SEC class.

NIOSH has determined it is possible to reconstruct or bound both external doses and occupational medical doses. As such, for cases with a non-specified cancer and/or do not meet the employment criteria of the SEC class, NIOSH will perform a dose reconstructions based on external doses and occupational medical doses.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the November 9, 2006 letter to Congress from the Secretary of HHS in which Secretary Leavitt makes the designation.

Purpose: To provide procedures for processing claims for the LANL SEC class.

Applicability: All staff.

Actions:

1. This new addition to the SEC affects employees of the Department of Energy (DOE) predecessor agencies and their contractors or subcontractors in certain locations at the LANL from September 1, 1944 through July 18, 1963 for a number of work days aggregating at least 250 work days, either solely under this employment or in combination with work days established for other classes of employees included in the SEC. This new SEC designation is established for employees who were "monitored or should have been monitored" for exposure to ionizing radiation associated with radioactive lanthanum (RaLa) operations at Technical Area 10 (Bayo Canyon Site), Technical Area 35 (Ten Site), and Buildings H, Sigma, and U (located within Technical Area 1). This additional class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. NIOSH has provided two lists of employees who claimed employment at the LANL during its SEC class period. One list covers employees with specified cancers and the other list addresses employees with non-specified cancers. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD contains all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also, included on the CD in the Correspondence Folder should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected LANL claimants is included as Attachment 2. The claims examiner (CE) must print out a hard copy of the NIOSH letter for inclusion in the case file. Case files returned from NIOSH to the district office for potential inclusion in the SEC class must be coded as "NW" in ECMS. The effective date for the code entry is December 9, 2006.

Since the NIOSH lists contain only cases that were with NIOSH for dose reconstruction at the time this SEC designation became effective, the Division of Energy Employees Occupational Illness

Compensation (DEEOIC) has also produced a list identifying all LANL cases that may potentially be included in the SEC class including cases that were previously denied. The list identifies those cases that must be reviewed by the district office(s) to determine whether SEC class criteria are satisfied including pending cases with employment during the SEC period with either a specified, non-specified cancer, or previous denial for POC less than 50%. The DEEOIC will compare the NIOSH and DEEOIC lists to ensure all potential SEC cases are identified by the district offices. The lists will be provided to the appropriate district offices under separate cover by the Policy Branch.

3. For any cases identified (either by NIOSH or DEEOIC) as having a potential for compensability based on the new SEC class, the responsible CE is to: review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process. Action #5 provides additional guidance on making the determination of whether the employee worked in one of the TAs or buildings that are part of this SEC class.

4. Based on this review, the CE then determines whether the claimant has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual, Chapter 2-600.5. If the employee has a specified cancer, proceed to the Action #5. If the employee does not have a specified cancer, proceed to Action #7.

5. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 work days at a location delineated in the SEC class designation. In determining whether the employment history meets the 250 work day requirement, the CE must consider employment either solely at LANL or in combination with work days for other SEC classes.

After careful research and analysis of the SEC class designation, the DEEOIC has determined two methods by which a CE can accept that an employee was exposed to RaLa at LANL: Work Site Location or Work Group Designation. The evidence of record must be evaluated by the CE to determine if there is sufficient evidence to either place the employee at one of the accepted work locations or evidence that the employee belonged to one of the designated work groups for a period of 250 or more work days.

#### Work Site Locations

LANL is organized into land divisions called technical areas (TAs). The current convention for describing locations at LANL is TA-10-1, where 10 is the technical area and 1 is the building number. In total, there have been no less than 75 TAs in the LANL with several TAs currently no longer active, including TA-1 and TA-10.

The CE must be aware that a TA may encompass more than one building or other designated area (such as waste storage yards or testing areas). If a TA area is identified as a location where RaLa was present, all buildings and other geographic designations within the perimeter of the TA is considered covered. If a building designation is listed, coverage extends to any location within the boundary of that building.

RaLa, a gamma ray emission source, was used in tests to develop an implosion-type bomb design. The SEC designation demonstrates the following locations were directly associated with RaLa operations:

- Technical Area 10 (Bayo Canyon Site)

A total of 254 implosion tests involving RaLa were conducted at Bayo Canyon Site (TA-10) from 1944 through 1962. Bayo Canyon Site encompasses several buildings including the radiochemistry building where RaLa sources were prepared, and four outdoor firing sites.

- Technical Area 35 (Commonly known as the "Ten Site")

- Buildings H, Sigma, and U (Located within TA-1)

It is essential the claims examiner reviews the case file in its entirety, including information obtained from NIOSH during the dose reconstruction process to determine if evidence indicates the employee worked at one of the locations involved with RaLa operations during the period from September 1, 1944 through July 18, 1963 to establish covered employment for this SEC class. The evidence merely needs to be of sufficient probative value to convince the adjudicator of the accuracy of the claim that the employee worked at one of the accepted locations listed for the SEC membership. The evidence does not need to rise to the level of beyond all reasonable doubt to quality for consideration.

#### Work Group Designation

If the claims examiner is unable to identify the TAs or the buildings where the employee worked, the CE may review the record of employment and/or medical records for the employee's work group information.

Several work groups have been identified to have known RaLa exposure. Evidence of employment for one of the following work groups is sufficient for consideration as part of this SEC class:

- CM-4
- CM-14
- CMR-10
- G-6
- G-7
- GMX-5

The employee's work group information is typically found in the record of employment and/or medical records obtained from LANL. Evidence confirming that the employee was part of work groups CM-4, CM-14, CMR-10, G-6, G-7 and GMX-5 during the period of September 1, 1944 through July 18, 1963 is sufficient to accept for RaLa exposure for the SEC class.

6. In cases where the CE is unable to make an affirmative determination of covered SEC employment either through evidence of employment in the TAs or the buildings, or evidence that the employee is part of the known work groups associated with RaLa operations, a decision must be pended awaiting further policy guidance. The Department of Health and Human Services is in the process of evaluating a new petition to designate a new class of employees at the LANL for additional TAs and time periods. If approved, this new SEC class may encompass the TAs and the time period designated for this current SEC class in addition to other areas at LANL.

7. Once the CE has determined that the person named in the claim has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE should proceed in the usual manner for a compensable SEC claim and prepare a recommended decision.

8. As discussed earlier, the Secretary of Health and Human Services determined that it is not feasible for NIOSH to perform complete dose reconstructions for the class of employees who worked in certain areas at LANL from September 1, 1944 through July 18, 1963. However, NIOSH has indicated that partial dose reconstructions may be possible based on external doses and occupational medical doses. Accordingly, for cases with a non-specified cancer and/or that do not meet the employment criteria of the SEC class, the CE must refer these cases back to NIOSH to perform dose reconstructions. The CE should code these cases as "NI."

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE should code the case as "NR" and select the appropriate reason code. In this case, the "XM" reason code would apply. The CE should not delete the "NW" or "NI" code already present in ECMS.

9. For those cases that were identified by NIOSH as having a “specified cancer” and therefore returned to the district office, if it is determined that the case does not qualify for the SEC class, the CE, through the Senior CE (SrCe), notifies the appropriate point of contact at NIOSH via E-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) and inputs the NI code to ECMS, effective the date of the E-mail requesting NIOSH to proceed with dose reconstruction. The E-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-qualifying employment at the LANL, insufficient latency period, does not meet the 250 work day requirement, or not a specified cancer. A hard copy printout of the E-mail is to be inserted in the case file.

10. For any claim that was not already at NIOSH on December 9, 2006 and for which the CE determines a dose reconstruction is appropriate, the normal NIOSH referral process will apply.

11. If the claim includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any secondary cancers that are metastases of the specified cancer(s), and any non-specified cancers that have a dose reconstruction that resulted in a probability of causation of 50 percent or greater.

12. If a case with a denied final decision now meets the SEC class criteria and the employee has/had a specified cancer, the CE must submit the case for reopening through the appropriate process in the district office. The case must be forwarded to the DEEOIC Director to reopen the claim per 20 C.F.R. § 30.320(a).

13. FAB personnel must be vigilant for any LANL cases that have a recommended decision to deny. If the employee worked in one of the specified areas during the time specified, has a specified cancer, and meets the 250 work day requirement, the recommended decision must be remanded to the district office in the usual manner.

14. On all accepted SEC claims, the CE must enter the “SE” code in ECMS. The status effective date is the date both employment and medical criteria is met.

15. A period of 60 calendar days, effective with the issuance date of this directive, is granted for case files affected by this SEC that are returned from NIOSH for evaluation by the DEEOIC to receive a recommended decision for inclusion in the SEC, referral back to NIOSH for dose reconstruction or pended awaiting further policy guidance.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

**07-12 Procedures for deducting payments received for final judgments or settlements from EEOICPA benefits under Parts B and/or Part E "Update to Bulletin 07-10"**

**EEOICPA BULLETIN NO.07-12**

Issue Date: April 10, 2007

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Effective Date: April 10, 2007

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Expiration Date: April 10, 2008

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**NOTE: This Bulletin updates EEOICPA Bulletin No. 07-10, with a revised attachment consisting of a new “EEOICPA Part B/E Benefits Offset Worksheet”.**

Subject: Procedures for deducting payments received for final judgments or settlements from EEOICPA benefits under Parts B and/or Part E.

Background: EEOICPA Bulletin No. 07-10 describes how the claims examiner (CE) is to perform the required offset of Part B and/or Part E benefits to reflect a payment received as an award or settlement of a tort suit for the same exposure to a toxic substance. Those procedures remain in force and are not modified in any way by this Bulletin.

However, this Bulletin replaces the attachment to EEOICPA Bulletin No. 07-10 with a new “EEOICPA Part B/E Benefits Offset Worksheet” that has been slightly modified in order to address some concerns regarding its use.

References: 42 U.S.C. § 7385 and 20 C.F.R. § 30.505(b).

Purpose: To provide a revised attachment to be used to calculate the required offset of Part B and/or Part E EEOICPA benefits.

Applicability: All staff.

Actions:

1. The CE is to replace the attachment to EEOICPA Bulletin No. 07-10 with Attachment 1 to this Bulletin.
2. Additional revisions to Attachment 1 may be issued to reflect further modifications to the calculations required by section 7385 of EEOICPA, if necessary.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

**07-13 Implementing the National Institute for Occupational Safety and Health’s (NIOSH) December 2006 Report “Update to Bulletin 05-02”**

***EEOICPA BULLETIN NO.07-13***

Issue Date: April 10, 2007

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Effective Date: December 1, 2006

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Expiration Date: April 10, 2008

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**Note: This Bulletin supplements Bulletin No.05-02, “Processing Residual Contamination Site Claims.”**

Subject: Implementing the National Institute for Occupational Safety and Health’s (NIOSH) December 2006 Report.

Background: An amendment to the National Defense Authorization Act (NDAA)(Pub. L. 108-375) for Fiscal Year 2005, signed into law on October 28, 2004, mandated that NIOSH update their report regarding residual contamination at facilities covered by the Energy Employees Occupational Illness Compensation Program Act(EEOICPA). A prior update to that report (“Report on Residual Radioactive and Beryllium Contamination at Atomic Weapons Employer Facilities and Beryllium Vendor Facilities”) was issued in June 2004 and was the basis for EEOICPA Bulletin No. 05-02. In December 2006, NIOSH issued the mandated update to the report. This Bulletin gives guidance on implementing their revised findings.

There are significant differences between NIOSH’s June 2004 and December 2006 reports. These differences include:

- Altered covered dates for 107 Atomic Weapons Employer facilities (AWE facilities)
- The creation of “gaps” in periods of qualifying employment for atomic weapons employees due to suspending residual contamination periods during DOE remediation.
- Establishment of qualifying employment for employees of as-yet unidentified additional employers, as explained in this paragraph. The October 2004 amendment to the Act added 42 U.S.C. § 7384l(3)(B) which expanded the definition of an “atomic weapons employee” to include a person employed at a facility where NIOSH finds that there is a potential for significant residual contamination outside of the period in which weapons-related production occurred, if the person was employed ”by an atomic weapons employer or subsequent owner or operators of a facility described” in the NIOSH report (emphasis added), and “during a period, as specified in such report or any update to such report, of potential for significant residual radioactive contamination at such facility.” The Division of Energy Employees Occupational Illness Compensation (DEEOIC) currently does not know the identities of these subsequent owners or operators of the various AWE facilities for which the employees thereof may now be considered for the benefits available through EEOICPA.
- Characterization of the level of exposure in relation to the potential for compensation. The December 2006 report states, “All facilities for which significant residual contamination was determined to be present after the period of weapons related production are considered to have the potential of causing an employee who was employed at such facility only during the residual contamination period to contract a cancer or beryllium illness compensable under subtitle B of the (EEOICPA) of 2006.” This marks a contrast to their June 2004 report in which NIOSH said that due to the nature and levels of radioactivity at most sites, employment during just the residual contamination period will probably not provide sufficient dose to result in a probability of causation of at least 50% based upon NIOSH cancer risk computer models. In the December 2006 report NIOSH reiterated the change by stating “If NIOSH determined there was ‘the potential for significant contamination’ at a designated facility, then NIOSH determined that such contamination ‘could have caused or substantially contributed to the cancer of a covered employee with cancer.’”

References: 42 U.S.C. § 7384l(3)(B); 20 C.F.R. § 30.5(c)(2); EEOICPA Bulletin No. 05-02; FY 2005 Defense Authorization Act, Public Law 108-375; and the NIOSH June 2004 and December 2006 reports each entitled, “Report on Residual Radioactive and Beryllium Contamination at Atomic Weapons Employer Facilities and Beryllium Vendor Facilities.”

Purpose: To provide procedures for processing claims based on AWE employment at sites identified by

NIOSH as having a period of potential residual contamination.

Applicability: All staff.

Actions:

1. Many claims that were previously denied due to AWE covered time periods may need to be reopened and forwarded to NIOSH for the preparation of a dose reconstruction. This includes claims that were denied on the basis of having no covered employment as well as claims denied for a less than 50% probability of causation using a dose reconstruction which did not fully consider dose from residual contamination.

The changes brought about by this report affect previously completed claims as well as current and future claims. The effect on previously adjudicated claims may be subtle, as the claim may not have been denied strictly for “no covered employment.” For example, DEEOIC may have advised a claimant that the claimed employment was not qualifying and concurrently asked for medical evidence of the claimed cancer. In the absence of a reply, the claim may have been denied due to the lack of evidence of cancer, or the claimant may have opted to withdraw the claim. Clearly, however, the claimant may have chosen not to pursue the claim because of being told of the then-shortcomings of the reported employment. As such, previously denied claims must be reviewed and adjudicatory judgment used in determining the current appropriate action.

Claims Examiners must review all claims which referenced the claimed employment as not being covered (but for which atomic weapons employee status may now be established), as this may have dissuaded claimants from perfecting other eligibility factors in their claims.

2. Attachment 1 provides a complete comparison of the current NIOSH report (right-most column) and the previous report (the column next to it). This attachment therefore provides a quick reference to what has changed in terms of covered employment years at all AWE facilities and should serve as a guide for making determinations on whether an employee now has increased years of covered employment. An entry of “N/A” shows that NIOSH determined there was little potential for significant residual contamination. For those sites shown as having potential residual contamination to the “present,” NIOSH defined that date as July 2006. In reviewing a given claim the CE must utilize the list and identify the site where the employee worked, note the NIOSH-designated residual contamination period and compare if and how it has changed since the previous report, and proceed as appropriate.

Note also that the DOE website has not yet been updated and therefore the CEs are not to rely on that website for determinations of covered years at AWE facilities. Although it is anticipated that the website will be updated as part of implementation of the NIOSH report, CEs are reminded that even once it is updated, information on the DOE website provides generalized facility data and is not considered conclusive.

3. The DEEOIC has identified all affected claims; all non-granted closed claims with employment at an AWE site with residual contamination and whose period of employment is not entirely prior to the end of AWE activity (weapons-related) years. This list will be identified for purposes of this Bulletin as the “2006 NIOSH-designated Residual Contamination Master Claim List” (Master List). All claims on this list must be reviewed for potential reopening. To avoid duplicate reviews of cases as part of this effort we will utilize a tracking sheet and a “folder flash sheet” (Attachment 2), discussed later in this Bulletin.

4. For purposes of implementing this Bulletin, the Director of DEEOIC has delegated limited authority for the reopening of claims to each of the four District Directors. This authority is strictly limited to claims in which the basis for reopening is the establishment of covered employment based on residual radioactive contamination at an AWE site. Any claims deemed questionable or unusual by the District Director that appears to be in posture for a reopening may still be referred to the Director of DEEOIC. The Director’s Orders for Reopening by the District Directors should utilize language from the current report by NIOSH, as appropriate. (Attachment 3)

Such reopenings are to be limited to claims for cancer and not based on denials for reasons other than “no covered employment” and/or “<50% probability of causation.” For example, if a Part B claim was denied because some claimed conditions are not covered and because a claimed cancer had a <50% POC, the reopening should be limited to the claim for cancer.

Claims previously denied on the basis of <50% POC first need to have the prior dose reconstruction summary critiqued to determine if the facility’s residual contamination had already been taken into consideration in the prior dose reconstruction for the claim. If it clearly was already factored-in (in its entirety), no reopening is in order. If it clearly was not factored-in, the claim should be reopened. If a particular dose reconstruction is unclear, forward the dose reconstruction to a National Office Health Physicist for review to determine if the NIOSH-designated residual contamination period was fully taken into consideration by NIOSH in the dose reconstruction.

An example of the type of case in which the “newly designated” residual period should have already been factored in are those claims at AWE facilities for which the previous NIOSH report shows a “+” or an “indistinguishable.” If the NIOSH report clearly shows that NIOSH calculated radiation dose for both internal up until the date of diagnosis and external dose through the end of contaminated employment, which may fall in the “newly designated” residual period, those cases will not need to be reopened.

5. Because the list of claims needing to be reviewed as part of this effort is extensive, a triage approach is suggested as a means of systematically addressing cases on the Master List. The categories and their generalized order of priority are as follows:

A) In 2005 the DEEOIC contacted 228 claimants identified as having denied claims impacted by NIOSH’s June 2004 report on AWE sites with residual contamination. With but a few exceptions, these should all be reopened. The exceptions to automatic reopening of the 228 from this list are as follows:

- i. Those claims based solely on employment at AWE facilities that have been delisted, per Bulletin No. 07-03.
- ii. Those claims for which payment has been approved.
- iii. Those claims based solely on employment at AWE facilities for which the time period either decreased or was revised to “N/A” in the updated report.
- iv. Those claims previously reopened which are still pending or underwent dose reconstruction and the DR was recent enough that it gave full credit for dose from residual contamination.
- v. The claimant is deceased, though other known and eligible survivors may be solicited.

With regard to claims in this category, the Director of DEEOIC will be sending a letter to the claimants providing information about the reason for the reopening. The letter will inform the claimants that they will be contacted regarding their reopenings by the District Office.

B) Additionally, it is expected that once claimants learn of NIOSH’s recent report they will contact the district offices. These claimants are to receive a priority review of their case and a determination of whether the claim warrants reopening. If a claimant requests reopening, existing procedures of PM 2-1400 apply except as modified by Action Item #4 of this Bulletin.

C) In 2005, the DEEOIC also identified another group of claimants who potentially had employment within the timeframes outlined in NIOSH’s June 2004 report’s findings but whose claims were denied by FAB on a basis other than “no covered employment.” Because these denials were for reasons not related to their covered years of employment, these claimants were not previously sent a letter in which they were invited to request a reopening of their case. Although DEEOIC did not issue letters to these claimants, their claims must be reviewed in their entirety. As

with other claims affected by this Bulletin, determine if the NIOSH-designated residual contamination period adds covered employment to the claim. If it does, determine if the material in the file, in conjunction with the newly added residual period now justifies reopening the claim. If so, the District Director must presently reopen the claim.

If the claim does not currently warrant reopening, determine whether DEEOIC may have notified the claimant of the inadequacies of claimed employment. This may have resulted in the claimant abandoning further attempts to establish his or her claim. If the CE determines that the claimant was notified of the lack of covered employment, it will be necessary to issue a letter advising the claimant that the reported employment may now be qualifying and invite a request for the reopening of the claim by submitting new/additional evidence that satisfies the prior reason(s) for the claim's denial. (Attachment 4) In some cases, such as those in which the employee has died and there are no survivors, the appropriate action may be to do nothing.

D) The list created by DEEOIC of potentially affected claims also includes a group of claimants whose claims were received and/or denied after the implementation of Bulletin No. 05-02, and for which there thus may now be additional years of potentially covered employment. Due to the wide range of possible case scenarios, these cases need a complete review and require further action "as appropriate." Similar to the previously identified groups, actions can range from reopening the claim, to notifying the claimant of the change in the employment's qualifying status, to documenting the review and not further contacting the claimant. The review of these claims may include critiquing a prior dose reconstruction summary to determine if the facility's residual contamination had already been taken into consideration in the prior adjudication of the claim (either because of NIOSH acting as stated in Bulletin No. 05-02 or their triaging of the DR and over-use of exposure).

E) Cases serendipitously identified during normal case handling and all remaining cases from the DEEOIC Master List of employees at the affected AWE facilities will similarly require a review as outlined here because of the revised NIOSH-designated residual contamination periods.

F) For all categories under this action item number, if the claimant has died, the claim is not to be reopened, though known and eligible survivors may be solicited.

6. Given the number and complexity of the task of reviewing all potentially affected cases, tracking is an essential part the process. The tracking process is as follows:

A) The CE begins by identifying a case that is affected by this Bulletin and conducts a review of that case.

B) The CE then fills out Part A of the folder flash sheet (Attachment 2) and indicates what the recommended action is and why.

C) Each DO must designate an individual to serve as the central coordinator for the "Master List."

D) The CE makes a copy of the partially filled-out folder flash sheet and sends it to the designated coordinator for the Master List in their DO, who makes a notation on the Master List, "CE review complete on [date]." The original folder flash sheet stays in the file so that when someone else picks up the file they will know what work, vis-à-vis this residual report, has already been completed.

E) The file moves to DO supervisory personnel who will make a final determination on the appropriate action on the case and fill out Part B of the folder flash sheet once the appropriate action has been taken (Director's Order or letter to the claimant, or no action). A second copy of the flash sheet, now completed, is sent to the same central coordinator to whom the first photocopy was sent.

F) The DO designated coordinator notes the end result of the review on the Master List and the date thereof.

Cases are tracked when the action by the CE is recommended (ie. the file has been reviewed) and

then again upon completion of whatever action is appropriate (even if the decision is that no action is needed). The progress of this review should be reported to the National Office on a monthly basis until all cases on the list have been completed.

If a case file has multiple volumes, place the folder flash sheet in the “active” B file.

7. A new ECMS Code for reopening will be added to the system for purposes of tracking cases to which this Bulletin pertains. The new code is MA (for NIOSH-Added AWE years). The following is how cases should be coded in ECMS for purposes of this Bulletin:

A. If a claimant requests a reopening, the CE should use the MC code, with the date of the letter from the claimant. If the reopening is granted, the CE uses the MA code and the date of the reopening. If the reopening is not granted, use the MX code.

B. For all other reopenings under this Bulletin, the CE is to use only the MA code.

8. With regard to ECMS, the current employment classification code entries (currently Y / N) for AWE employment will now include the option of R, representing employment entirely outside of weapons-related production and partially or entirely during the site’s period of residual radioactive contamination. An “**R**” represents that employment at an AWE site is qualifying solely on the basis of **R**esidual contamination. This field must be backfilled for prior claims as encountered.

If employment at multiple AWE sites is claimed and at least one such site’s qualifying employment is solely due to residual radiation, utilize the “**R**” code. Continue to comply with existing procedures in PM 2-1500.4a(2)(b) by entering \*NV in the first three spaces of the “Worksite Desc” “Note” field if that site’s employment is not verified. In the absence of this entry the dates of employment are presumed to have been verified.

9. Be cognizant of the fact that employment based on residual radioactive contamination at an AWE site is not limited to employees of the Atomic Weapons Employer, but also to those employed by subsequent owners or operators of the facility. This presents unique challenges in identifying and verifying employment, as the name of the property and/or its owner and/or its operator may change numerous times. For claims which now identify employment at a “subsequent owner or operator” of an AWE facility, the NO will provide additional guidance at a later date on how employment at these entities is to be verified. If any questions on this arise before such guidance is issued, direct those to the Policy Branch. As with employment during weapons-related production, subcontractor employment with subsequent owners or operators at an AWE facility does not result in coverage during a period of residual radioactive contamination.

10. FAB personnel must be vigilant in identifying cases with a recommended decision to deny when the claim is based on employment at an AWE site with residual contamination. If employment has become covered due to the changes related to NIOSH’s December 2006 report, consideration may be given to remanding the claim if the reason for denial is related to that employment. If the reason for denial is other than employment, but by advising the claimant of the shortcomings of employment the district office may have dissuaded the perfecting of other aspects of the claim, the final decision should clearly mitigate the issue of qualifying employment according to the facts of the particular claim.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

[Attachment 1](#): Revised Residual Radioactive Contamination Report– Summary of All Sites

[Attachment 2](#): Folder Flash to Track & Document Review

[Attachment 3](#): Director's Order for Reopening

[Attachment 4](#): Sample Letter to Claimant

## **07-14 Fee Schedule Appeal Process (Medical Bill Pay)**

EEOICPA BULLETIN NO. 07-14

Issue Date: April 17, 2007

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Effective Date: April 17, 2007

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Expiration Date: April 17, 2008

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**Subject:** Fee Schedule Appeal Process (Medical Bill Pay)

**Background:** As part of the medical bill payment process, the EEOICPA regulations provide for the appeal of fee schedule reductions. To maintain consistency, record responses, and track fee schedule appeals, it has become necessary to develop procedures consistent with DEEOIC regulations.

**References:** 20 C.F.R. Part 30.712

**Purpose:** The purpose of this bulletin is to provide procedural guidance to all staff regarding the processing and tracking of fee schedule appeals. The final step in this bulletin includes action required of the OWCP Regional Directors, who are included in the distribution list.

### **Actions:**

1. When a fee appeal request letter is received by ACS (DEEOIC's bill payment contractor), ACS will store an electronic copy of the appeal letter in the Stored Image Retrieval system (SIR) linked to the remittance voucher, and will send a printed copy of the letter to DEEOIC Central Bill Pay, Attn: Payment Systems Manager.
2. For each fee schedule appeal letter received, the Payment Systems Manager (PSM) will create a record, and these records will be maintained in a tracking system (spreadsheet or database) created for this purpose.
3. The PSM will review the fee appeal request to determine if the provider has met any of the conditions below which justify a reevaluation of the amount paid. These three conditions, as found in 20 C.F.R. 30.712, are:
  - (a) The service or procedure was incorrectly identified by the original code; or
  - (b) the presence of a severe or concomitant medical condition made treatment especially difficult; or
  - (c) the provider possesses unusual qualifications (i.e. possesses additional qualifications beyond Board-certification in a medical specialty, such as professional rank or published articles.)
4. Within 30 days of receiving the request for reconsideration, the PSM will prepare a response to the medical provider outlining DEEOIC's decision to either:
  - (a) Approve an additional payment amount; in this instance, the PSM will generate a draft letter for the District Director's (DD) signature, informing the provider of the approval for additional payment. [Where an additional amount is

found to be payable based on unusual provider qualifications, the DD should determine whether future bills for the same or similar service from that provider should be exempt from the fee schedule and should consider placing that provider on review.] The PSM will also prepare a memorandum for the case file stating the findings and the basis for the approval of the additional amount or,

(b) Deny any additional payment; in this instance the PSM will prepare a draft letter decision for the DD's signature, advising that additional payment is denied, based upon the provider's failure to establish one of the conditions listed above, in Item 3.(a,b,c). Where additional payment is denied, the letter decision must contain a notice of the provider's right to further review similar to the following:

*If you disagree with this decision, you may, within 30 days of the date of this decision, apply for additional review. The application may be accompanied by additional evidence and should be addressed to the Regional Director, District \_\_\_\_\_, Office of Workers' Compensation Programs, U.S. Department of Labor, [Insert appropriate Regional Office address and Zip Code.]*

5. The draft approval or denial letters will be prepared by the PSM, for the signature of the District Director whose office has control of the claim file(s) being addressed in the decision(s). The PSM will send the draft letter (via email) to the District Director for review, signature and mailing. The DD will place a copy of the signed letter in the case file and will also return (via email) a scanned copy of the signed letter, to be retained by the PSM.

6. The PSM will continue to track the status of any fee schedule appeal case, and will maintain an electronic copy of all correspondence. This will include a copy of the draft letter and a scanned copy of the signed letter mailed by the DD.

7. If a denial is subsequently appealed to the Regional Director (RD), the RD must consult with the PSM to obtain copies of relevant bills and documents, and to discuss the appeal. The PSM will also provide the RD with a copy of the denial letter sent by the DD. This can be handled via email.

8. After consultation with the PSM, the Regional Director will prepare a written response to the provider within 60 days of receipt of the request for review. Where additional payment is denied at the regional level, the letter decision from the RD should advise the provider that the decision is final and is not subject to further review. The RD will forward a scanned copy of the signed letter decision to the PSM. That response will also be retained by the PSM as part of the appeal record.

9. The final outcome of each appeal letter will be recorded in the PSM tracking system to indicate:

- (a) additional payment made
- (b) denial letter sent by DD
- (c) appeal letter sent to RD
- (d) time limit (30 days) has expired for appeal to RD
- (e) denial letter sent by RD
- (f) the final disposition date for each appeal letter

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Regional Directors, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

**07-15 Processing Claims for Allied Chemical Corporation Plant Special Exposure Cohort (SEC) Class, January 1, 1959 through December 31, 1976**

**EEOICPA BULLETIN NO.07-15**

Issue Date: May 9, 2007

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Effective Date: March 3, 2007

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Expiration Date: May 9, 2008

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Subject: Processing Claims for Allied Chemical Corporation Plant Special Exposure Cohort (SEC) Class, January 1, 1959 through December 31, 1976.

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of a class of employees from the Allied Chemical Corporation Plant in Metropolis, Illinois to have this facility added to the SEC.

The decision to initiate this petition occurred after the National Institute for Occupational Safety and Health (NIOSH) determined that it could not reconstruct a dose under 42 C.F.R. § 83.14. NIOSH submitted its findings to the petitioner and the Advisory Board on Radiation and Worker Health (“the Board”). On January 2, 2007, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC employees who worked in the Allied Chemical Corporation Plant from January 1, 1959 through December 31, 1976.

On February 1, 2007, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress:

Atomic Weapons employees who were monitored or should have been monitored for exposure to ionizing radiation while working at Allied Chemical Corporation Plant in Metropolis, Illinois, from January 1, 1959, through December 31, 1976, and who were employed for a number of work days aggregating at least 250 work days or in combination with work days within the parameters established for one or more other classes of employees in the SEC.

A copy of the Secretary’s letter to Congress recommending the designation is included as Attachment 1. The SEC designation for this class became effective on March 3, 2007, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress. While Congress has the authority to reject the recommendation within the 30-day time frame, no action was taken to contradict the addition of this new SEC class.

NIOSH has determined it is possible to reconstruct external dose and components of the internal dose (from uranium). As such, for cases with a non-specified cancer and/or that do not meet the employment criteria of the SEC class, NIOSH will perform dose reconstructions based on external doses and components of the internal doses.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the February 1, 2007 letter to Congress from the Secretary of HHS in which Secretary Leavitt makes the designation.

Purpose: To provide procedures for processing claims for the Allied Chemical Corporation Plant SEC class.

Applicability: All staff

### Actions:

1. This new addition to the SEC affects Atomic Weapons employees employed at Allied Chemical Corporation Plant (a.k.a. General Chemical Division and Allied Signal Metropolis Plant) in Metropolis, Illinois, from January 1, 1959 through December 31, 1976 for a number of work days aggregating at least 250 work days, either solely under this employment or in combination with work days established for other classes of employees included in the SEC. This new SEC class designation is established for employees who were “monitored or should have been monitored” while working at Allied Chemical Corporation Plant. Using the current standards for monitoring of workers at a nuclear facility site, the Department of Labor (DOL) is interpreting “monitored or should have been monitored” as including all employees who worked at Allied Chemical Corporation Plant during the period from January 1, 1959 through December 31, 1976.
  2. NIOSH has provided two lists of employees who claimed employment at the Allied Chemical Corporation Plant during its SEC class period. One list covers employees with specified cancers and the other list addresses employees with non-specified cancers. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD contains all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also, included on the CD in the Correspondence Folder should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected claimants is included as Attachment 2. The claims examiner (CE) must print out a hard copy of the NIOSH letter for inclusion in the case file. Case files returned from NIOSH to the district office for potential inclusion in the SEC class must be coded as “NW” in ECMS. The effective date for the code entry is March 3, 2007.
- Since the NIOSH lists contain only cases that were with NIOSH for dose reconstruction at the time this SEC designation became effective, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) has also produced a list identifying all Allied Chemical Corporation Plant cases that may potentially be included in the SEC class including cases that were previously denied. The list identifies those cases that must be reviewed by the district office(s) to determine whether SEC class criteria are satisfied including pending cases with employment during the SEC period with either a specified, non-specified cancer, or previous denial for POC less than 50%. The DEEOIC will compare the NIOSH and DEEOIC lists to ensure all potential SEC cases are identified by the district offices. The lists will be provided to the appropriate district offices under separate cover by the Policy Branch.
3. For any cases identified (either by NIOSH or DEEOIC) as having a potential for compensability based on the new SEC class, the responsible CE is to: review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process. If the evidence is unclear as to whether the employment or medical documentation satisfies the SEC class requirements, the claimant should be asked to provide clarifying evidence.
  4. The CE concurrently determines whether the claimant has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual, Chapter 2-600.5. If the employee has a specified cancer, proceed to Action #5. If the employee does not have a specified cancer, proceed to Action #7.
  5. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 work days at Allied Chemical Corporation Plant from January 1, 1959 through December 31, 1976.

The Allied Chemical Corporation Plant in Metropolis, Illinois is located on approximately a 1000 acre property along the north bank of the Ohio River; however, operations were conducted in a single fenced-in, restricted area covering 59 acres on the north-central portion of the site. From the SEC Petition Evaluation Report from NIOSH, Allied Plant operations are described as refinement

of uranium ore to produce feed material for the Paducah Gaseous Diffusion Plant. For the purposes of the assessment of SEC class membership, employment at any building, property or facility that constitutes the Allied Chemical Plant in Metropolis qualifies.

Presently, employment at the facility is confirmed through information collected from a corporate verifier. In any instance where the corporate verifier has established that an employee worked for the Allied Chemical Company Plant in Metropolis during the qualifying SEC time frame, the CE may accept that the employee is a member of SEC class as long as the employment history meets the 250 work day and medical requirements for the SEC class. The CE must consider employment either solely at Allied Chemical Corporation Plant or in combination with work days for other SEC classes.

It is important for the CE to assess the totality of evidence presented in the case and make a reasoned conclusion as to whether it is sufficient to conclude that an employee worked at the Plant. It is not necessary for the evidence to be so convincing as to prove beyond reasonable doubt that the claim of employment at the Plant is accurate and true.

If the employee does not meet the employee criteria for the SEC class, proceed to Action #7.

6. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE should proceed in the usual manner for a compensable SEC claim and prepare a recommended decision.

7. As discussed earlier, the Secretary of Health and Human Services determined that it is not feasible for NIOSH to perform complete dose reconstructions for the class of employees who worked at Allied Chemical Corporation Plant from January 1, 1959 through December 31, 1976. However, NIOSH has indicated that partial dose reconstructions may be possible based on external doses and components of the internal doses (from uranium). Accordingly, for cases with a non-specified cancer and/or that do not meet the employment criteria of the SEC class, the CE must refer these cases to NIOSH to perform dose reconstructions. The CE should code these cases as "NI." The status effective date is the date of the Senior or Supervisory CE signature on the NIOSH Referral Summary Document (NRSD).

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE should code the case as "NR," and select the "PD" (partial dose reconstruction) reason code. The status effective date is the date the dose reconstruction is date-stamped into the District Office. The CE should not delete the "NW" or "NI" code already present in ECMS.

8. For those cases that were identified by NIOSH as having a "specified cancer" and therefore returned to the district office, if it is determined that the case does not qualify for the SEC class, the CE, through the Senior CE (SrCe), notifies the appropriate point of contact at NIOSH via E-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) and inputs the NI code in ECMS, effective the date of the E-mail requesting NIOSH to proceed with dose reconstruction. The E-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-qualifying employment at the Allied Chemical Corporation Plant, insufficient latency period, does not meet the 250 work day requirement, or not a specified cancer. A hard copy printout of the E-mail is to be inserted in the case file.

9. For any claim that was not already at NIOSH on March 3, 2007 and for which the CE determines a dose reconstruction is appropriate, the normal NIOSH referral process will apply.

10. If the claim includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any secondary cancers that are metastases of the specified cancer(s), and any non-specified cancers that have a dose reconstruction that resulted in a probability of causation of 50 percent or greater.

11. As noted previously, DEEOIC will provide a list identifying all Allied Chemical Corporation Plant cases that may be included in the SEC class including cases that were previously denied. If a case with a denied final decision now meets the SEC class criteria and the employee has/had a specified cancer, the CE must submit the case for reopening through the appropriate process in the district office. The case must be forwarded to the DEEOIC Director to reopen the claim per 20 C.F.R. § 30.320(a).

12. FAB personnel must be vigilant for any Allied Chemical Corporation Plant cases that have a recommended decision to deny. If the employee worked at Allied Chemical Corporation Plant for the specified period, has a specified cancer, and meets the 250 work day requirement, the recommended decision must be remanded to the district office in the usual manner.

13. On all accepted SEC claims, the CE must enter the "SE" code in ECMS. The status effective date is the date both employment and medical criteria is met.

14. A period of 60 calendar days, effective with the issuance date of this directive, is granted for case files affected by this SEC that are returned from NIOSH for evaluation by the DEEOIC to receive a recommended decision for inclusion in the SEC or be referred back to NIOSH for dose reconstruction.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

**07-16 Processing Claims for a new Special Exposure Cohort (SEC) Class for covered employees of the Harshaw Chemical Company's Harvard-Denison Plant in Cleveland, OH, August 14, 1942 through November 30, 1949**

**EEOICPA BULLETIN NO.07-16**

Issue Date: May 9, 2007

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Effective Date: March 3, 2007

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Expiration Date: May 9, 2008

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Subject: Processing Claims for a new Special Exposure Cohort (SEC) Class for covered employees of the Harshaw Chemical Company's Harvard-Denison Plant in Cleveland, OH, August 14, 1942 through November 30, 1949.

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of class of workers from the Harshaw Chemical Company, Cleveland, OH to have this facility added to the Special Exposure Cohort (SEC).

This petition was a result of a determination under 42 C.F.R. § 83.14 made by National Institute for Occupational Safety and Health (NIOSH) that a dose reconstruction for members of the class was not possible. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On January 2, 2007, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC employees who worked at the Harshaw Chemical Company’s Harvard-Denison Plant in Cleveland, OH, August 14, 1942 through November 30, 1949.

On February 1, 2007, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress:

Atomic Weapons employees who were monitored or should have been monitored while working at the Harshaw Harvard-Denison Plant located at 1000 Harvard Avenue in Cleveland, Ohio from August 14, 1942 through November 30, 1949 and who were employed for a number of work days aggregating at least 250 work days or in combination with work days within the parameters established for one or more other classes of employees in the SEC.

Pursuant to 42 U.S.C. §7384q of the EEOICPA and 42 C.F. R. § 83.14(b), NOISH has established that it does not have sufficient information to complete dose reconstructions for individual members of the class with sufficient accuracy.

A copy of the Secretary’s letter to Congress recommending the designation is included as Attachment 1. The SEC designation for this class became effective as of March 3, 2007, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress. While Congress has the authority to reject the recommendation within the 30-day time frame, no action was taken to contradict the addition of this new SEC class.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; and the February 1, 2007 report to Congress from the Secretary of HHS, entitled, “HHS Designation of Additional Members of the Special Exposure Cohort, Designating a Class of Employees from Harshaw Harvard-Denison Plant, Cleveland, Ohio.”

Purpose: To provide procedures for processing claims for the Harshaw Harvard-Denison Plant from August 14, 1942 through November 30, 1949.

Applicability: All staff.

Actions:

1. This new addition to the SEC affects those employed by Harshaw Chemical Company, an Atomic Weapons Employer in Cleveland, OH from August 14, 1942 through November 30, 1949, for a number of work days aggregating at least 250 work days, either solely under this employment or in combination with work days established for other classes of employees included in the SEC. This new SEC designation is established for workers who were “monitored or should have been monitored” while employed at the Harshaw Harvard-Denison Plant. Using the current standards for monitoring of workers at a nuclear facility site, DOL is interpreting “monitored or should have been monitored” as including all employees who worked at the Harshaw Harvard-Denison Plant during the period from August 14, 1942 through November 30, 1949.

This additional class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.

2. NIOSH has provided a list of employees who claimed employment at Harshaw during its SEC class period. NIOSH will return analysis records for all Harshaw cases that are within its SEC class period to the appropriate district office along with a CD for each case. The CD contains all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also, included on the CD in the Correspondence Folder should be a copy of the NIOSH letter sent to each

claimant informing the claimant of the new SEC class and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected Harshaw claimants is included as Attachment 3. The claims examiner (CE) must print out a hard copy of the NIOSH letter for inclusion in the case file. Employee case files returned from NIOSH to the district office for potential inclusion in the SEC class must be coded as "NW" in ECMS. The effective date for the code entry is March 3, 2007.

Since the NIOSH lists contain only cases that were with NIOSH for dose reconstruction at the time this SEC class designation became effective, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) has also produced a list identifying all Harshaw cases that are potentially included in the SEC class including cases that were previously denied. The list identifies those cases that must be reviewed by the district office(s) to determine whether SEC class criteria are satisfied including pending cases with employment during the SEC period with either a specified, non-specified cancer, or previous denial for POC less than 50%. The NIOSH and DEEOIC lists will be compared to ensure all potential SEC cases are identified by the district offices. The lists will be provided to the appropriate district offices under separate cover.

3. For any cases identified (either by NIOSH or DEEOIC) as having a potential for compensability based on the new SEC class, the responsible CE is to: review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process. If the evidence is unclear as to whether the employment or medical documentation satisfies the SEC class requirements, the claimant should be asked to provide clarifying evidence.

4. Based on this review, the CE then determines whether the employee has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual Chapter 2-600.5. If the employee has a specified cancer, proceed to Action #5. If the employee does not have a specified cancer, proceed to Action #7.

5. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 work days at the Harshaw Harvard-Denison Plant from August 14, 1942 through November 30, 1949. The plant location was at 1000 Harvard Avenue in Cleveland, OH. The SEC designation is inclusive of all buildings, property, and facilities that comprise the Plant. Additionally, the extent to which DOE has designated Harshaw as an AWE is synonymous with the coverage of this SEC class. As such, any convincing evidence that the employee was employed at Plant for the required 250 day is sufficient to include him or her in the SEC class.

A map is attached to this directive that identifies various locations and building designations that can be used by a CE to assist in reaching determination of SEC class membership (Attachment 2). It is not necessary for the evidence to establish the exact locations of employment duties at the Plant for SEC class membership to be accepted. Attachment 2 merely provides information that can be used to assist CE in making a determination of SEC membership.

The CE is to carefully review all documentation in the file to come to a decision as to whether it is reasonable to conclude the employee worked at the Plant. The evidence does not need to establish beyond all reasonable doubt that the employee worked at one of specified locations.

In determining whether the employment history meets the 250 work day requirement, the CE must consider employment either solely at Harshaw or in combination with work days for other SEC classes.

If the employee does not meet the SEC employment criteria, proceed to Action #7.

6. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE should proceed in the usual manner for a compensable SEC claim and prepare a recommended decision.

7. As discussed earlier, the Secretary of Health and Human Services determined that it is not

feasible for NIOSH to perform dose reconstructions for the class of employees who worked at Harshaw from August 14, 1942 through November 30, 1949. However, NIOSH has indicated that dose reconstructions for non-specified cancers may be possible because they are able to reconstruct uranium-specific internal and external doses using uranium bioassay data, known uranium production source term data, co-worker intake data, film badge readings and results from work area dose rate measurements. Accordingly, for cases with a non-specified cancer and/or that do not meet the employment criteria of the SEC class, the CE must refer these cases to NIOSH to perform dose reconstructions. The CE should code these cases as "NI".

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE should code the case as "NR," and select the "PD" (partial dose reconstruction) reason code. The CE should not delete the "NW" or "NI" code already present in ECMS.

8. If the claim includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any secondary cancers that are metastases of the specified cancer(s), and any non-specified cancers that have a dose reconstruction that resulted in a probability of causation of 50 percent or greater.

9. If a case with a denied final decision now meets the SEC class criteria, the CE must submit the case for reopening through the appropriate process in the district office. The case must be forwarded to the DEEOIC Director to reopen the claim per 20 C.F.R. § 30.320(a).

10. FAB personnel must be vigilant for any Harshaw cases that have a recommended decision to deny. If the employee worked at Harshaw for the specified period, has a specified cancer, and meets the 250 work day requirement, the recommended decision must be remanded to the district office in the usual manner.

11. A period of 60 calendar days, effective with the issuance date of this directive, is granted for case files affected by this SEC that are returned from NIOSH for evaluation by the DEEOIC to either receive a recommended decision for inclusion in the SEC or referral back to NIOSH for dose reconstruction.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

**07-17 Processing Claims for the General Atomics Special Exposure Cohort (SEC) Class, January 1, 1960 through December 31, 1969**

EEOICPA BULLETIN NO. 07-17

Issue Date: May 9, 2007

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Effective Date: March 18, 2007

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Expiration Date: May 9, 2008

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Subject: Processing Claims for the General Atomics Special Exposure Cohort (SEC) Class, January 1, 1960 through December 31, 1969.

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of a class of workers from the General Atomics facility in La Jolla, California to have this site added to the SEC. General Atomics is currently recognized as a beryllium vendor and an Atomic Weapons Employer (AWE) from 1960 to 1969 with residual radiation from 1970 to 1995. It is also considered a Department of Energy (DOE) facility from 1996 to 1999 for remediation purposes. The plant is also known as GA, Division of General Dynamics, and John Jay Hopkins Laboratory for Pure and Applied Science.

This petition was a result of a determination under 42 C.F.R. § 83.14 made by the National Institute for Occupational Safety and Health (NIOSH) that a dose reconstruction for members of the class was not possible. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On January 19, 2007, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC employees who worked at General Atomics from January 1, 1960 through December 31, 1969.

On February 16, 2007, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress:

Atomic Weapons Employer (AWE) employees who were monitored or should have been monitored for exposure to ionizing radiation while working at the General Atomics facility in La Jolla, California, at the following locations: Science Laboratories A,B, and C (Building 2); Experimental Building (Building 9); Maintenance (Building 10); Service Building (Building 11); Buildings 21 and 22: Hot Cell Facility (Building 23; Waste Yard (Buildings 25 and 26); Experimental Area (Building 27 and 27-1); LINAC Complex (Building 30); HTGR-TCF (Building 31); Fusion Building (Building 33); Fusion Doublet III (Building 34: SV-A (Building 37); SV-B (Building 39); and SV-D (no building number) for a number of work days aggregating at least 250 work days from January 1, 1960 through December 31, 1969, or in combination with work days within the parameters established for one or more other classes of employees in the SEC.

A copy of the Secretary’s letter to Congress recommending this designation is included as Attachment 1. This designation became effective on March 18, 2007, in the absence of Congressional action as provided for under 42 U.S.C. 7384l(14)(c).

A report attached to the Secretary of HHS’s letter, entitled “HHS Designation of Additional Members of the Special Exposure Cohort,” provided the supporting rationale for designating a class of employees of General Atomics in La Jolla, California from January 1, 1960 to December 31, 1969.

Section IV, “Designation Findings,” summarized NIOSH’s findings that “General Atomics AWE employees in the proposed class could have received internal and external radiation exposure from uranium, thorium, plutonium, and other radioactive materials.” However, NIOSH “lacks sufficient information, including biological monitoring data, air monitoring information, and process and radiological source information, that would allow it to estimate the potential intakes of thorium” and that there is “insufficient information either to estimate the maximum radiation dose for every type of cancer for which radiation doses are reconstructed that could have been incurred under plausible circumstances by any member of the class, or to estimate the radiation doses of members of the class more precisely than a maximum dose estimate.” The designation found that NIOSH is “unable to adequately estimate total internal exposure for members of the class, internal dose due to intake of uranium can be reconstructed for exposure starting in October 1963, and tritium internal

dose can be estimated after September 1965. NIOSH considers the reconstruction of occupational external radiation doses, including medical dose, to be feasible for members of the class.”

Thus, the Secretary of HHS determined that it is not feasible to undertake dose reconstructions for individuals employed at General Atomics from January 1, 1960 through December 31, 1969.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 et seq.; 42C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; February 16, 2007 report to Congress from the Secretary of HHS, entitled, “HHS Designation of Additional Members of the Special Exposure Cohort Designating a Class of Employees from General Atomics, La Jolla, California,” and the SEC Petition Evaluation Report Petition SEC-00064.

Purpose: To provide procedures for processing claims for members of the SEC class at General Atomics from January 1, 1960 through December 31, 1969.

Applicability: All staff.

Actions:

1. This new addition to the SEC affects workers employed in certain locations at General Atomics during the period of January 1, 1960 through December 31, 1969 for a number of work days aggregating at least 250 work days, either solely under this employment or in combination with work days established for other classes of employees included in the SEC. This new SEC designation is established for workers who were monitored or should have been monitored for ionizing radiation exposures while working in the Science Laboratories A,B, and C (Building 2); Experimental Building (Building 9); Maintenance (Building 10); Service Building (Building 11); Buildings 21 and 22: Hot Cell Facility (Building 23); Waste Yard (Buildings 25 and 26); Experimental Area (Building 27 and 27-1); LINAC Complex (Building 30); HTGR-TCF (Building 31); Fusion Building (Building 33); Fusion Doublet III (Building 34); SV-A (Building 37); SV-B (Building 39); and SV-D (no building number). This additional class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
  2. NIOSH has provided two lists of employees who claimed employment at General Atomics during its SEC class period. One list covers employees with specified cancers and the other list addresses employees with non-specified cancers. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD contains all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD, in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected General Atomics claimants is included as Attachment 2. The claims examiner (CE) must print out a hard copy of the NIOSH letter for inclusion in the case file. Case files returned from NIOSH to the district office for potential inclusion in the SEC class must be coded as “NW” in ECMS. The effective date for the code entry is March 18, 2007.
- Since the NIOSH lists contain only cases that were with NIOSH for dose reconstruction at the time this SEC designation became effective, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) has also produced a list identifying all General Atomics cases that are potentially included in the SEC class including cases that were previously denied. The list identifies those cases that must be reviewed by the district office(s) to determine whether SEC class criteria are satisfied including pending cases with employment during the SEC period with either a specified or non-specified cancer, or cases with a previous denial for POC less than 50%. The NIOSH and DEEOIC lists will be compared to ensure all potential SEC cases are identified by the district offices. The lists will be provided to the appropriate district offices under separate cover.
3. For any cases identified (either by NIOSH or DEEOIC) as having a potential for compensability

based on the new SEC class, the responsible CE is to: review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process. If the evidence is unclear as to whether the employment or medical documentation satisfies the SEC class requirements, the claimant should be asked to provide clarifying evidence.

4. Based on this review, the CE then determines whether the claimant has a specified cancer, as listed in Federal (EEOICPA) Procedure Manual Chapter 2-600.5. If the employee has a specified cancer, proceed to Action #5. If the employee does not have a specified cancer, proceed to Action #7.

5. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 work days in an appropriately numbered building at General Atomics from January 1, 1960 through December 31, 1969. In determining whether the employment history meets the 250 work day requirement, the CE must consider employment either solely at General Atomics or in combination with work days for other SEC classes.

To assist the CE in making these determinations, Attachment 3, "Table 4-1: General Atomics Facilities that Conducted Radiological Work" is provided. The report provides detailed information as to what activities were conducted in each of the buildings that is part of the SEC. The entire report is available at the NIOSH website. The CE is to use any supporting documentation in the file in conjunction with the information listed in Attachment 3 when reaching a conclusion for SEC class membership. The evidence merely needs to convince the adjudicator that it is reasonable to conclude that the employee worked at one of the locations identified on Attachment 3 or performed a function that is described as occurring in one of the specified locations. The evidence does not need to establish beyond all reasonable doubt that the employee worked at one of specified locations.

For example, an employee presents a claim stating she was employed at General Atomics from 1965 to 1980. She states that she worked at a variety of buildings at the facility, but for a few years her job in the mid to late 60's was working in a location where radioactive material was being shipped out of the facility. Employment records reflect that she had an AEC dosimeter badge issued for the period of 1966-1968. An affidavit from a co-worker states that the employee worked at the site for the claimed period and worked in the shipping department for a part of that time. No other evidence is presented after development. From Attachment 3, the CE could deduce that given the job description by the employee and the affiant, it is reasonable to conclude that the employee worked in Building 11 (Service Building), as the primary work described by both the employee and an affiant was radioactive materials shipping. This would be further substantiated given the existence of the dosimeter badge.

**Please note: Employees who worked solely in the Technical Office Building (Building 13); Technical Office East Building #1 (Building 14); and the Technical Office East Building #2 (Building 15) at General Atomics are specifically excluded from coverage under the SEC provision.**

6. Once the CE has determined the person named in the claim has a diagnosed specified cancer and meets the employment criteria of the SEC classes, the CE should proceed in the usual manner for a compensable SEC claim and prepare a recommended decision. If the claim was previously denied for a POC of less than 50%, it must first be sent to the National Office for reopening.

7. As discussed earlier, the Secretary of HHS determined that it is not feasible for NIOSH to perform complete dose reconstructions for the class of employees who worked in these buildings at General Atomics from January 1, 1960 through December 31, 1969. However, NIOSH has indicated that partial dose reconstructions may be possible based on internal dose due to intake of uranium for exposures starting in October 1963, tritium internal dose after September 1965, and occupational external radiation and medical doses. Accordingly, for cases with a non-specified

cancer and/or that do not meet the employment criteria of the SEC class, the CE must refer these cases to NIOSH to perform dose reconstructions. The CE should code these cases as “NI.”

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE should code the case as “NR” and select the reason code “PD” (partial dose reconstruction). The CE should not delete the “NW” or “NI” code already present in ECMS.

8. For those cases that were identified by NIOSH as having a “specified cancer” and therefore returned to the district office, if it is determined that the case does not qualify for the SEC class, the CE, through the Senior CE (SrCe), notifies the appropriate point of contact at NIOSH via E-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) and inputs the NI code to ECMS, effective the date of the E-mail requesting NIOSH to proceed with dose reconstruction. The E-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-qualifying employment at General Atomic, insufficient latency period, does not meet the 250 work day requirement, or not a specified cancer. A hard copy printout of the E-mail is to be inserted in the case file.

9. For any claim that is not already at NIOSH effective March 18, 2007, and for which the CE determines a dose reconstruction is appropriate, the normal NIOSH referral process will apply.

10. If the claim includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any secondary cancers that are metastases of the specified cancer(s), and any non-specified cancers that have a dose reconstruction that resulted in a probability of causation of 50 percent or greater.

11. If a case with a denied final decision now meets the SEC class criteria, the CE must submit the case for reopening through the appropriate process in the district office. The case must be forwarded to the DEEOIC Director to reopen the claim per 20 C.F.R. § 30.320(a).

12. FAB personnel must be vigilant for any General Atomics cases that have a recommended decision to deny. If the employee worked in one of the specified buildings during the time specified, has a specified cancer, and meets the 250 work day requirement, the recommended decision must be remanded to the district office in the usual manner.

13. A period of 60 calendar days, effective with the issuance date of this directive, is granted for case files affected by this SEC that are returned from NIOSH for evaluation by the DEEOIC to either receive a recommended decision for inclusion in the SEC or referral back to NIOSH for dose reconstruction.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

**07-18 Processing Claims for a new Special Exposure Cohort (SEC) Class for the Monsanto Chemical Company in Dayton, OH, from January 1, 1943 through December 31, 1949**

## **EEOICPA BULLETIN NO.07-18**

Issue Date: May 9, 2007

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Effective Date: March 18, 2007

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Expiration Date: May 9, 2008

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**Subject:** Processing Claims for a new Special Exposure Cohort (SEC) Class for the Monsanto Chemical Company in Dayton, OH, from January 1, 1943 through December 31, 1949.

**Background:** Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of a class of workers from the Monsanto Chemical Company in Dayton, OH to have this class added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and decided it qualified for evaluation under 42 C.F.R. § 83.13. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On January 17, 2007, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC employees who worked at Monsanto Chemical Company in Dayton, OH between January 1, 1943 through December 31, 1949.

On February 16, 2007, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress.

Atomic Weapons Employer (AWE) employees who were monitored or should have been monitored for exposure to ionizing radiation while working at Monsanto Chemical Company Units I, III, or IV in Dayton, Ohio, for a number of work days aggregating at least 250 work days during the period from January 1, 1943, through December 31, 1949, or in combination with work days within the parameters established for one or more other classes of employees in the SEC.

A copy of the Secretary’s letter to Congress recommending the designation is included as Attachment 1. The SEC designation for this class became effective as of March 18, 2007, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress. While Congress had the authority to reject the recommendation within the 30-day time frame, no action was taken to contradict the addition of this new SEC class.

NIOSH has determined that it is possible to estimate internal exposures from polonium and external exposures from beta-photon exposures, occupational medical X-Rays and ambient environmental sources.

**References:** Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the February 16, 2007 letter to Congress from the Secretary of HHS in which Secretary Leavitt makes the designation.

**Purpose:** To provide procedures for processing SEC claims for Monsanto Chemical Company.

**Applicability:** All staff.

### **Actions**

1. This new addition to the SEC affects Monsanto Chemical Company employees located at Units I, III, or IV in Dayton, Ohio who were “monitored or should have been monitored” for exposures to ionizing radiation between January 1, 1943 through December 31, 1949 for a number of work days

aggregating at least 250 work days, either solely under this employment or in combination with work days established for other classes of employees included in the SEC. This additional class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.

It should be noted that Units I, III and IV encompass the entire extent to which Monsanto Chemical Company in Dayton, Ohio is designated as an AWE.

2. NIOSH has provided two lists of employees who claimed employment at Monsanto during its SEC class period. One list covers employees with specified cancers and the other list addresses employees with non-specified cancers. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD contains all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected Monsanto claimants is included as Attachment 2. The claims examiner (CE) must print out a hard copy of the NIOSH letter for inclusion in the case file. Case files returned from NIOSH to the district office for potential inclusion in the SEC class must be coded as "NW" in ECMS. The effective date for the code entry is March 18, 2007.

Since the NIOSH lists contain only cases that were with NIOSH for dose reconstruction at the time this SEC designation became effective, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) has also produced a list identifying Monsanto cases that are potentially included in the SEC class including cases that were previously denied. The list identifies those cases that must be reviewed by the district office(s) to determine whether SEC class criteria are satisfied including pending cases with employment during the SEC period with either a specified, non-specified cancer, or previous denial for POC less than 50%. The NIOSH and DEEOIC lists will be compared to ensure all potential SEC cases are identified by the district offices. The lists will be provided to the appropriate district offices under separate cover.

3. For any cases identified (either by NIOSH or DEEOIC) as having a potential for compensability based on the new SEC class, the responsible CE is to: review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

4. Based on this review, the CE then determines whether the claimant has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual Chapter 2-600.5. If the employee has a specified cancer, proceed to the Action #5. If the employee does not have a specified cancer, proceed to Action #7.

5. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 work days at Monsanto Chemical Company in Dayton, OH between January 1, 1943 through December 31, 1949. The extent to which DOE has designated Monsanto as an AWE is synonymous with the coverage of Monsanto in this SEC class. That is to say the AWE and the SEC class both encompass all of Monsanto Units I, III and IV. It is not necessary for the evidence to establish the exact locations of employment duties for Monsanto employees.

Unit I was located at 1515 Nicholas Road, Dayton, OH. Unit I started in September 1943. Spectrographic and X-ray work was performed at this location through 1949.

Unit III was located at 1601 W. First Street, Dayton, OH. Unit III was first occupied in October 1943 as one building, but eventually Unit III consisted of 20 buildings and included a chemical research laboratory, a powerhouse, a pilot plant and numerous other support buildings. All of the buildings at Unit III are included in the SEC. The primary work occurring at Unit III was research into manufacturing neutron sources. The principal radioisotope at Unit III was polonium-210. Operations in Unit II ceased in 1948.

Unit IV was also known as the Runnymede Playhouse and was technically located on the corner of Dixon Avenue and Runnymede Road in Oakwood, OH (which is considered the southern boundary of Dayton). Unit IV was used to manufacture and calibrate neutron sources. The principal radioisotope at Unit IV was polonium-210. Unit IV was demolished in 1950 and by the spring of 1950 all Unit IV structures, services, and utilities had been removed to a depth of seven feet, packaged, and shipped to Oak Ridge for burial.

This SEC does **not** apply Unit II which was “off Betty Lane.” Additionally, Unit II is not part of the designated AWE because it manufactured rocket propellants and never performed any work that would allow that unit to be considered part of this AWE. If there is a suggestion that a worker was solely at Unit II, they should not have any qualified employment under EEOICPA and they do not fall within this SEC.

This SEC does **not** apply to Mound, the facility in Miamisburg, OH. Monsanto Chemical Company was the management and operating contractor for Mound from 1947-1988. CEs should be aware of the distinction to avoid confusion.

The CE is to carefully review all documentation in the file to come to a decision as to whether it is reasonable to conclude that the employee worked in Units I, III or IV. The evidence does not need to establish beyond all reasonable doubt that the employee worked at one of the specified locations.

6. Once the CE has determined the person named in the claim has a diagnosed specified cancer and meets the employment criteria of the SEC classes, the CE should proceed in the usual manner for a compensable SEC claim and prepare a recommended decision.

7. As discussed earlier, the Secretary of Health and Human Services determined that it is not feasible for NIOSH to perform complete dose reconstructions for the class of employees who worked for Monsanto Chemical Company in Dayton, OH, from January 1, 1943 through December 31, 1949.

However, NIOSH has indicated that partial dose reconstructions may be possible based on the table below. Accordingly, for cases with a non-specified cancer and/or that do not meet the employment criteria of the SEC class, the CE must refer these cases back to NIOSH to perform dose reconstructions. The CE should code these cases as “NI.”

Source of Exposure	Reconstruction Feasible	Reconstruction Not Feasible
<b>Internal</b>		
- Occupational Polonium	X <sup>1</sup>	
- Occupational Non-Polonium		X <sup>1</sup>
- Ambient Environmental (polonium)	X <sup>2</sup>	
- Ambient Environmental (non-polonium)		X <sup>2</sup>
<b>External</b>		
- Alpha	X	
- Beta	X	
- Neutron		X <sup>3</sup>
- Photon	X	
- Occupational Medical X-ray	X	
- Ambient Environmental	X	

**Notes:**

<sup>1</sup> Dose reconstruction is considered feasible for polonium only; bioassay data are not available for any other isotopes.

<sup>2</sup> Dose reconstruction is considered feasible for polonium only; ambient environmental data are not available for any other isotopes.

<sup>3</sup> Dose reconstruction is not considered feasible for neutron exposures. However, NIOSH has concluded that an approach to estimate these exposures could be developed.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a

recommended decision. The CE should code the case as "NR" and select the "PD" (partial dose reconstruction) reason code. The CE should not delete the "NW" or "NI" code already present in ECMS.

8. For those cases that were identified by NIOSH as having a "specified cancer" and therefore returned to the district office, if it is determined that the case does not qualify for the SEC class, the CE, through the Senior CE (SrCe), notifies the appropriate point of contact at NIOSH via E-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) and inputs the NI code to ECMS, effective the date of the E-mail requesting NIOSH to proceed with dose reconstruction. The E-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-specified cancer, insufficient latency period or does not meet the 250 work day requirement. A hard copy printout of the E-mail is to be inserted in the case file.

9. For any claim that is not already at NIOSH effective March 18, 2007 and for which the CE determines a dose reconstruction is appropriate, the normal NIOSH referral process will apply.

10. If the claim includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any secondary cancers that are metastases of the specified cancer(s), and any non-specified cancers that have a dose reconstruction that resulted in a probability of causation of 50 percent or greater.

11. If a case with a denied final decision now meets the SEC class criteria, the CE must submit the case for reopening through the appropriate process in the district office. The case must be forwarded to the DEEOIC Director to reopen the claim per 20 C.F.R. § 30.320(a).

12. FAB personnel must be vigilant for any Monsanto Chemical cases that have a recommended decision to deny. If the employee worked at this AWE during the time specified, has a specified cancer, and meets the 250 work day requirement, the recommended decision must be remanded to the district office in the usual manner.

13. A period of 60 calendar days, effective with the issuance date of this directive, is granted for case files affected by this SEC that are returned from NIOSH for evaluation by the DEEOIC to either receive a recommended decision for inclusion in the SEC or referral back to NIOSH for dose reconstruction.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual

**07-19 Processing Cases Affected by the National Institute for Occupational Safety and Health's (NIOSH) "Program Evaluation Plan: Evaluation of Highly Insoluble Plutonium Compounds."**

**EEOICPA BULLETIN NO. 07-19**

Issue Date: May 16, 2007

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Effective Date: March 29, 2007

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Expiration Date: May 16, 2008

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**Subject:** Processing Cases Affected by the National Institute for Occupational Safety and Health's (NIOSH) "Program Evaluation Plan: Evaluation of Highly Insoluble Plutonium Compounds."

**Background:** On March 29, 2007, NIOSH released OCAS-PEP-012 Rev-00, entitled "Program Evaluation Plan (PEP): Evaluation of Highly Insoluble Plutonium Compounds." The PEP outlines NIOSH's plan for evaluating claims with the potential for exposure to highly insoluble forms of plutonium (Type Super S). In its PEP, NIOSH identified several facilities "to be considered" for potential exposure to Type Super S plutonium. It is NIOSH's assessment that the existence of the highly insoluble plutonium compound at these sites could potentially affect the outcome of certain cases with a dose reconstruction. A list of the affected sites is included as Attachment 1.

In response to the OCAS-PEP-012, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) issued a letter to NIOSH on May 1, 2007. DEEOIC requested that NIOSH identify and provide individual signed letters for each case affected by the PEP. A copy of DEEOIC's letter is included as Attachment 2. In the interim, DEEOIC is taking preliminary action on certain cases that may be impacted by NIOSH's PEP. This Bulletin provides guidance on processing those cases affected by the PEP that are currently in the adjudication process and do not have a final decision. Further guidance will be forthcoming on the treatment of those cases with a final decision based on the results of NIOSH's dose reconstruction methodology applied prior to February 6, 2007.

**References:** NIOSH document, OCAS-PEP-012 Rev-00, "Program Evaluation Plan: Evaluation of Highly Insoluble Plutonium Compounds," approved on March 29, 2007 viewed at <http://www.cdc.gov/niosh/ocas/pdfs/peps/oc-pep12-r0.pdf>.

**Purpose:** To provide procedures for processing claims currently in the adjudication process that may be affected by NIOSH's OCAS-PEP-012.

**Applicability:** All staff.

**Actions:**

1. In its Program Evaluation Plan, Document Number OCAS-PEP-012, NIOSH determined that highly insoluble forms of plutonium were generated during the Rocky Flats fires. As such, methods for assessing the potential for exposure to highly insoluble forms of plutonium at the Rocky Flats Plant, and at other sites that may have worked with this material, is necessary.

The OCAS-PEP-012 states that "due to the increased doses assigned to workers exposed to Type Super S plutonium, previously completed claims that were assigned plutonium doses at sites where this material is potentially available for exposure need to be reexamined to determine the impact (if any) on the dose assessment." (NIOSH will provide the results of the assessment in a Program Evaluation Report.)

This PEP affects those cases with a dose reconstruction performed prior to February 6, 2007, that resulted in a <50% Probability of Causation (POC) with verified employment at any one of the sites listed in Attachment 1, as identified by NIOSH in Attachment A of the OCAS-PEP-012.

2. For those cases currently in posture for a recommended decision with employment identified at one of the sites listed in NIOSH's OCAS-PEP-012, Attachment A "Consider Super S," and where a dose reconstruction was performed prior to February 6, 2007 and resulted in a <50% POC, the district office/CE2 Unit is to return those cases to NIOSH for a rework of the dose reconstruction.

3. When referring these cases to NIOSH for a dose reconstruction rework, a request to the National Office Health Physicist is not required. Instead, the Claims Examiner (CE) should complete an amended NIOSH Referral Summary Document (ANRSD) and forward the ANRSD as an electronic attachment via email to the Public Health Advisor (PHA) assigned to the district office at NIOSH. The CE should also:

- a. Send a letter to the claimant explaining that the case has been returned to NIOSH for a rework of the dose reconstruction as a result of a change in the dose reconstruction methodology as outlined in the OCAS-PEP-012. A sample letter to the claimant is included as Attachment 3.
- b. Send a copy of this letter to the PHA at NIOSH assigned to the DO along with the weekly DO submissions to NIOSH. The dates on the ANRSD and the letter to the claimant must both be the same, since this will be the date used for the status code entry into ECMS. The CE should code the case as "NI" (Sent to NIOSH) and select the "PEP" (Rework based on Program Evaluation Plan) reason code.

Upon receipt of the revised dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE should code the case as "NR" (Received from NIOSH) and select the "DR" (Dose Reconstruction Received-POC) reason code.

4. For cases currently pending a final decision at the FAB, the Hearing Representative/CE is to identify those cases with a recommended decision to deny based on a POC <50% and verified employment at one of the sites as listed in Item 1 above. If the dose reconstruction was conducted prior to February 6, 2007, the recommended decision should be remanded to the district office in the usual manner. The Remand Order should direct the district office to refer the case back to NIOSH for a rework as a result of the PEP.

5. The following statement should be included in the Remand Order regarding the return of the case to NIOSH for a rework of the radiation dose reconstruction.

On March 29, 2007, NIOSH issued OCAS PEP-012 entitled, "Program Evaluation Plan: Evaluation of Highly Insoluble Plutonium Compounds." The PEP provides NIOSH's plan for reevaluating dose reconstructions for certain claims to determine the impact of highly insoluble plutonium compounds at particular sites. It is NIOSH's determination that the existence of the highly insoluble plutonium compound at the (*list facility*) should be considered for Type Super S plutonium in the dose reconstruction. This change went into effect on February 6, 2007.

The DEEOIC is obligated to ensure that the application of the dose reconstruction methodology is administered in a fair and consistent manner. Given the revision to the underlying scientific assumptions by which the dose reconstruction was performed by NIOSH, and the notification by NIOSH that "previously completed claims that were assigned plutonium doses at sites where this material is potentially available for exposure need to be reexamined to determine the impact (if any) on the dose assessment," the prior dose reconstruction/POC calculation on your claim is now invalid. While the modification to the dose reconstruction methodology may not impact the outcome of your claim, it is necessary for the claim to undergo a new dose reconstruction by NIOSH.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

**07-20 Authorizing In-Home Health Care - Replaced by EEOICPA Bulletin 08-09**

EEOICPA BULLETIN NO. 07-20

Issue Date: June 14, 2007

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Effective Date: June 14, 2007

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Expiration Date: June 14, 2008

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Subject: Authorizing In-Home Health Care

Background: The Energy Employees Occupational Illness Compensation Program Act (EEOICPA or the Act) provides for medical benefits to covered employees. Specifically, 42 U.S.C. §7384s(b) and §7385s-8 provide that a covered Part B or Part E employee shall receive medical benefits under §7384t of EEOICPA. Section 7384t(a) states that: “The United States shall furnish, to an individual receiving medical benefits under this section for an illness, the services, appliances, and supplies prescribed or recommended by a qualified physician for that illness, which the President considers likely to cure, give relief, or reduce the degree or the period of that illness.” The Division of Energy Employees Occupational Illness Compensation (DEEOIC) is responsible for ensuring that employees who have had an illness accepted under the EEOICPA receive appropriate and necessary medical care for that illness as delineated under the EEOICPA.

The program has numerous claimants with covered medical conditions who require in-home health care services. This bulletin provides clarification with regard to the evidence needed to authorize this type of care, as well as procedural guidance with regard to the process for review, development, and authorization of in-home health care services.

References: 42 U.S.C. §7384s, §7384t, §7385S-8

Purpose: The purpose of this bulletin is to provide procedural guidance to claims staff in the adjudication of claims for in-home health care services.

Applicability: All staff.

Actions:

1. For all in-home health care requests, there are three parties within DEEOIC involved in the receipt, review, and authorization process:

(a) Home Health Care Point of Contact (POC) Claims Examiner - These specialized claims examiners are responsible for reviewing, developing, approving or denying the requests. Each District Director is to appoint one to three claims examiners (as appropriate) to serve this role.

(b) Bill Pay Agent – This is the DEEOIC medical bill contractor responsible for recording receipt of incoming requests, communicating with district office personnel to obtain appropriate authorization, and processing provider charges.

(c) District Office Fiscal Officer (FO) – This individual serves as the official liaison between the POC CE and the bill pay agent. The FO’s principal duty is to provide official authorizations or rejections of home health care requests to the bill pay agent in the form of electronic

communications (threads).

2. In-home health care requests will routinely be submitted to DEEOIC's bill pay agent via fax, mail or electronically. The bill pay agent records the receipt of such a request and creates an electronic record of the request. The bill pay agent then sends a thread communicating the receipt of the new pending home health care request to the FO.

3. Upon receipt of an authorization request for home health care from the bill pay agent, the FO forwards the information to the appropriate POC CE for review and adjudication.

All requests for in-home health care require prior authorization from the POC claims examiner (expedient review occurs under certain emergency situations - see action item 15 below for further information), including authorization for initial nurse assessments. If a physician requests an initial nurse assessment to determine the need for in-home health care, the request for the initial assessment must be submitted to the bill pay agent along with the appropriate supporting medical documentation.

4. Some requests may be received by district office staff by way of a written request from the claimant, the authorized representative, the treating physician or a service provider. Requests for in-home health care services made by telephone must be documented in ECMS and followed by a written request from the requester. The request does not need to come directly from the claimant to be considered a valid request. In such situations, if the POC CE can approve the request, the POC CE notifies the FO by email of the incoming request and approval (see below for additional information about approving requests). The FO then faxes the request to the bill pay agent and advises of the approval. If the POC CE cannot immediately approve the request, the POC CE sends an email to the FO advising that further development is required. The FO faxes the request to the bill pay agent for tracking purposes. The FO also initiates a thread to the bill pay agent advising that further development is required.

5. Upon receipt of a request, the POC CE must determine the particular home health service or care being requested. Generally, the types of requests that may be submitted include: request from a physician for authorization for an initial patient assessment; discharge summary from a hospital requesting specific in-home health care services; or requests from a physician for continuing home health care services (following expiration of a previous authorization).

6. Upon receipt of a request, the POC CE reviews the medical evidence to determine whether the assessment/home health care was requested by the treating physician. If it is recommended by an appropriate treating physician, the POC CE approves the initial assessment only (if applicable). When an initial assessment precedes a request for home health care, the POC CE may not approve ongoing in-home health care until after the initial assessment is complete and a plan of care has been submitted. Once the POC CE approves the initial assessment, the POC CE sends an email to the FO, who sends a thread to the bill pay agent authorizing the request (see action item 17 for more information concerning approvals).

7. If the POC CE receives a request for an initial assessment without a physician's signature or recommendation, the POC CE sends a letter to the claimant advising that a request for an initial assessment has been received without a physician's recommendation. The POC CE enters code **DM – Developing Medical** into ECMS with a status effective date the date of the letter. In the letter, the POC CE provides 30 days for receipt of a physician's authorization or request for the assessment. The POC CE concurrently sends an email to the FO advising that further development is required. The FO sends a thread to the bill pay agent advising that further development is required before approval can be provided. If medical documentation is not received within 30 days, the POC CE denies the request for assessment pursuant to the instruction in action item 23 below.

8. Upon receipt of a plan of care, discharge summary, or physician's recommendation delineating a specific request for ongoing in-home health care services, the CE must conduct a complete review of the case file to determine if there is any recent medical documentation from the primary care

physician (or treating specialist for the accepted condition), describing the need for in-home medical care as it relates to the covered medical condition. The primary information that the treating physician must provide (often in the plan of care signed by a physician) should include:

(a) Description of the in-home medical needs of the patient arising from the covered medical condition. This includes a narrative of the patient's medical need for assistance while in the home and how this is linked to the covered medical condition. The physician must describe the findings upon physical examination, and provide a complete problem list of all medical conditions (those accepted by DEEOIC and those not accepted by DEEOIC). If a claimant has one or more non-covered conditions, medical evidence must demonstrate how the requirement for home health care is related to the accepted conditions. The physician should also describe laboratory or other findings that substantiate a causal relationship between the accepted condition(s) and the need for assistance or skilled nursing care in the home. Generally, approved in-home services include: administration of medication, medical monitoring, bathing and personal hygiene, meal preparation and feeding, wound dressing changes, and medical equipment checks.

(b) Level of care required, i.e. Registered Nurse (RN), Licensed Practical Nurse (LPN), Home Health Aide (HHA), etc. The doctor must specify the appropriate type of professional who will attend to the patient. Services requiring specialized skills such as administration of medication and medical monitoring generally require a RN or LPN, while services of a general nature (typically referred to as activities of daily living), such as bathing, personal hygiene, and feeding are generally performed by home health aides.

(c) Extent of care required (months, days, hours, etc). A written medical narrative must describe the extent of care to be provided in allotments of time. (Example: RN to administer medication and check vitals once a day, every three days, with a home health aide to assist with bathing, personal hygiene, and feeding, eight hours a day, seven days a week for three months.)

9. If upon review the POC CE finds that the medical evidence is incomplete and the file does not contain an adequate description of the in-home health care needs of the patient, the POC CE prepares a letter to the claimant advising that the DEEOIC has received a request for in-home health care. In the letter to the claimant, the POC CE advises that additional medical evidence is required before services may be authorized. The POC CE further requests a narrative medical report from the treating physician that includes all of the information described in action item 8 (above). In addition, the physician should estimate the length of time for which the patient will ultimately require in-home health assistance. The POC CE advises in the letter that the medical report is required within 30 days. A sample letter to the claimant is attached. (Attachment 1) The POC CE also faxes and mails a copy of the letter to the treating physician's office. The POC CE enters code *DM - Developing Medical* into ECMS with a status effective date the date of the letter.

10. Upon mailing the request to the claimant (copy to the treating physician) the POC CE enters an ECMS note describing the action and inserting a 15-day call-up. If on the fifteenth day the physician has not responded, the CE contacts the physician's office to inquire if the letter was received, and to ask if there are any questions regarding the request for information. The call is documented in TMS and another 15-day call-up inserted in ECMS.

11. After 30 days has passed with no satisfactory response from the treating physician, or no response from the claimant, the POC CE prepares a second letter to the claimant (accompanied by a copy of the initial letter), advising that following the previous letter, no additional information has been received from the treating physician. The POC CE advises that an additional period of 30 days will be granted for the submission of necessary evidence, and if the information is not received in that time, the request for in-home care may be denied by the DEEOIC (see Attachment 2 for a sample letter). The POC CE enters code *DM – Developing Medical* into ECMS with a status effective date the date of the letter.

12. If the claimant or the physician does not provide a response to the request for information

within the 30-day period allowed, the POC CE issues a letter decision to the claimant denying the claim for in-home health care. (See action item 23 below for more detail.) The POC CE further sends an email to the FO, who sends a thread to the medical bill pay agent advising that the service has been denied.

13. If the claimant calls and states that he/she does not require in-home health care, the POC CE requests that the claimant put this in writing. Upon receipt of any written statement from the claimant stating that he/she is not requesting in-home health care, the POC CE writes a letter to the claimant with a copy to the treating physician advising that the claimant is not requesting in-home health care and thus the matter is closed. In this situation, the POC CE sends an email to the FO, who sends a thread to the medical bill pay agent advising that this service is denied because the claimant has not requested the service. The POC CE enters the code *DM – Developing Medical* into ECMS with a status effective date the date of the letter.

14. If medical evidence is received, the POC CE must determine if it is of sufficient probative value to authorize in-home health care. It is absolutely critical that the POC CE undertake appropriate analysis of any documentation pertaining to in-home health services before authorizing such care. The underlying function of the POC CE is to ensure that the medical evidence supports that the covered employee receives the necessary medical care for the covered medical condition. It is the POC CE's responsibility to ensure that the request for in-home health care reasonably corresponds with the medical evidence in the case file. If the physician does not provide any details concerning the claimant's physical condition, relationship to accepted conditions, or specific reasons for in-home health care, the POC CE must refer the case to a District Medical Consultant (DMC) for review. Upon receipt of a DMC's opinion, the CE weighs the medical evidence on file. If the DMC opinion is clearly in conflict with the recommendations of the treating physician, and the POC CE's attempts to resolve the situation by communicating with the treating physician have not been successful, the POC CE is to arrange for a second medical opinion or referee evaluation, depending on the circumstances. (Refer to Procedure Manual 2-0300 for instructions regarding arranging a second opinion examination or referee medical examination.) In evaluating the medical evidence, the POC CE must base any determination solely on the weight of medical evidence in the case file. The POC CE must not under any circumstances deny or reduce in-home health care services without a medical basis for such denial.

15. In certain emergency claim situations (see item 16 for a full discussion of the types of emergencies), the CE may authorize in-home health care for a preliminary 30-day period while additional development is undertaken.

(a) Under these circumstances, the physician or hospital staff will contact DEEOIC's medical bill pay agent for immediate attention. The physician or hospital employee must notify the bill pay agent that the situation is of an emergency nature (i.e. the claimant is just released from the hospital and requires immediate in-home care). The bill pay agent obtains any pertinent documentation and assesses the emergency nature of the request. Once the medical evidence is obtained, the bill pay agent contacts the FO immediately, advising of the situation and providing electronic copies of documentation obtained. The bill pay agent does not make a decision regarding the request, but simply obtains the pertinent documentation and advises the FO of the emergency request.

(b) Upon receipt of the documentation, the FO forwards the information to the POC CE for review. If discharge information from a treating physician supports the need for immediate authorization, the CE provides approval for 30 days pending additional development (see below for additional information concerning approval). The POC CE enters code *DM – Developing Medical* into ECMS with a status effective date the date of the letter. The POC CE concurrently sends an email to the FO advising of this approval. The FO sends a thread to the bill pay agent with the approval information.

(c) In some situations the request for emergency home health care may not be accompanied by evidence supporting the emergency nature of the request. For example, the claimant's condition

may be stable, or he/she is not being discharged from a hospital. In these situations, the POC CE sends a letter to the claimant, with a faxed copy to the requestor if other than the claimant. The letter advises that no evidence was submitted to support the request for emergency care, and that additional medical evidence is required. The POC CE enters code *DM – Developing Medical* into ECMS with a status effective date the date of the letter. Further development actions are taken as below. In addition, the POC CE sends an email to the FO advising that the request for emergency care is under development. The FO sends a thread to the bill pay agent advising of this determination.

(d) After any initial approval for 30 day emergency care, it is very important that the POC CE undertake immediate action to obtain the necessary evidence to fully substantiate that the care being provided is medically necessary to give relief for the accepted medical condition. This should occur within the preliminary 30-day authorization period. Extensions may be granted in increments of 30 days, but should generally never exceed a total of 120 days without the collection of the necessary evidence to fully document that the care being provided is medically warranted and necessitated by the accepted medical condition.

16. Emergency situations warranting short-term preliminary authorization for in-home health care include:

- Requests for in-home health care for terminal patients with six months or less to live. Terminal status must be based on the opinion of a medical physician.
- Patients discharged from in-patient hospital care with need for assistance. The CE must carefully evaluate these situations to ensure that the medical documentation clearly indicates that the patient care and well-being is dependent on the assignment of a medical professional in the home, (normally following a hospital stay). If the bill pay agent has not already obtained this, the POC CE requests the attending physician discharge summary and discharge planning summary, which is normally available within 72 hours of discharge.

When pre-authorization of emergency in-home care is to be granted, the POC CE prepares a memorandum for the case file documenting the rationale applied in authorizing care. For each subsequent 30-day pre-authorization granted, a new memo should be prepared outlining the basis for such authorization. In addition, the POC CE notifies the claimant and provider in writing of additional periods of authorization. The POC CE sends an email to the FO advising of any authorizations, and the FO forwards the information to the bill pay agent in the form of a thread.

17. For all requests, if upon review of the medical evidence the POC CE decides that in-home health care is required, authorization is to be granted. The POC CE prepares a letter notifying the claimant and the home health care provider of the decision, and delineating the following information (see Attachment 3 for a sample authorization letter):

- (a) Covered medical condition(s) for which care is being authorized.
- (b) A specific narrative description of the service approved (e.g. in-home assistance in administering medicine, monitoring accepted conditions, assistance in/out of bed, preparing meals and feeding, and medical equipment checks).
- (c) Level and duration of the specialized care to be provided, i.e. RN 1 hour per day and Home Health Aide 8 hours per day, 7 days a week for a period of 3 months.
- (d) Authorized billing codes relevant to the level of authorization (see Attachment 4 for a description of the pertinent codes).
- (e) Period of authorization with specific start and end dates.

18. The authorization must be limited to in-home medical services that are reasonably necessary for the treatment or care of the patient's covered medical condition. These services generally include:

Home Health Aide for mobility, food preparation, feeding and dressing; skilled nursing should be limited to the scope of practice of an RN or LPN, as long as there is medical evidence of such. The POC CE may not authorize a lower level of care than that requested by the physician unless the weight of medical evidence supports a lower level of care and the claimant has been provided the right to a recommended decision (see below for further discussion).

19. Once the responsible POC CE sends the letter of authorization to the claimant and the provider, the POC CE prepares an email to the fiscal officer (FO). In the email, the POC CE advises the FO of precisely the level of care, billing codes, and time period of authorization. The POC CE is not required to advise the FO of the number of correlating units per billing codes. In assigning billing codes, the POC CE references Attachment 4.

20. Once the email authorizing the services has been sent, the POC CE enters a note into ECMS detailing the level of service and time period of authorization. In addition, the POC CE enters a call-up note into ECMS for 30 days prior to the expiration date for which services have been authorized.

21. If no request for additional authorization for home health care is received prior to the date of the call-up, the POC CE sends a letter to the provider, with a copy to the claimant. In the letter, the provider is notified of the expiration date of the home health care services. The provider is further advised of the medical evidence required if additional services are necessary. The POC CE enters code *DM – Developing Medical* in ECMS with a status effective date the date of the letter. If the POC CE does not receive an additional request, further action is unnecessary. However, if the provider or the claimant submits an additional request for ongoing services, the POC CE evaluates the evidence as above.

22. Upon receipt of the email authorization from the POC CE, the FO prepares a thread to the bill pay agent authorizing the specific level of care, billing codes (with units), and period of authorization. The FO calculates the authorized number of units based upon the POC CE's description of the level of care, weekly authorized amount for each level of care, and the time period of authorization.

23. If upon review of the medical evidence on file, and if after appropriate development as outlined above, the POC CE determines that there is insufficient evidence to warrant authorization of in-home health care, the POC CE sends a detailed letter-decision to the claimant (with a copy to the in-home provider). The letter-decision must include a sentence at the end with language as follows:

*If you disagree with this decision and wish to request a formal decision, please immediately advise this office, in writing, that you wish to have a Recommended Decision issued in this case, providing you with your rights of action.*

Once the letter is written, the POC CE enters code *DM – Developing Medical*, with a drop down code of *DMB - Deny Specific Med Benefits on Accepted Conditions*. The status effective date is the date of the letter.

24. In the event that the claimant does request a recommended decision, a sample decision is attached for the CE's use (Attachment 5). Once the Recommended Decision is written, the POC CE enters code *D7 – Rec Deny, Medical Insufficient to Support Claim* with a drop down code of *DMB – Deny Specific Med Benefits on Accepted Conditions*. The status effective date is the date of the decision. If the Final Adjudication Branch (FAB) issues a final decision to deny, the FAB hearing representative enters the code *F9 – Fab Affirmed – Deny – Medical Info Insufficient to Support Claim* with a drop down code of *DMB – Deny Specific Med Benefits on Accepted Conditions*.

25. At any time after a period of authorized services, and after the POC CE has undertaken any medical development (i.e. letter to the claimant requesting additional documentation, referral to DMC or second opinion) the POC CE may receive new medical evidence that warrants a change in

the level of in-home care currently authorized. If this occurs, the POC CE must review that evidence, employing the same decision-making process described in action item 8. If the new medical evidence supports a denial of services, or reduction in the level of services currently being authorized, that reduction or denial must be communicated to the claimant in a detailed letter as discussed in action item 26, (with a copy to the in-home care provider) explaining the change.

26. Letters that advise of a reduction or termination of services must be copied to the in-home care provider and must specifically advise the claimant that:

- (a) Any reduction in the current level of service being provided will occur 15 days from the date of the letter. This letter must also contain the same information as is delineated in action item 17, describing the new level of care being authorized; or
- (b) Any termination of services will occur 30 days from the date of the letter.

27. After the expiration of the 15 days or 30 days the POC CE sends a letter-decision to the claimant advising as to the final action taken on the request for home health care services. In this letter the POC CE advises the claimant of their rights of action should they disagree, as delineated in action item 23 above. In the event of a termination of services, the POC CE enters the same codes into ECMS as described in action item 23 (corresponding with the letter decision). In the event of a reduction in benefits, the POC CE enters code *DM – Developing Medical* with a drop down code of *RMB - Reduce Medical Benefits on Accepted Conditions*. The status effective date is the date of the letter decision.

In addition, the POC CE sends an email to the FO advising of the new level of care or the termination of current level of services. The FO then sends a thread to the bill pay agent advising of the determination. It is very important for the POC CE to note that only a single authorization can exist at any one time. If the POC CE has authorized a certain level of care that subsequently changes, it is essential that this information be clearly communicated in an email to the FO. The FO sends a thread to the bill pay agent advising of any additional authorizations past the expiration date. The POC CE must also document the information in the notes section of ECMS when a thread is sent to the bill-pay contractor.

28. If the claimant requests a recommended decision on a termination of services, the POC CE proceeds with a recommended decision and codes ECMS pursuant to instructions in action item 24. If the claimant requests a recommended decision on a reduction in the level of care, the POC CE proceeds with a recommended decision. The POC CE enters code *D7 – Rec Deny, Medical Insufficient to Support Claim* with a drop down code of *RMB - Reduce Medical Benefits on Accepted Conditions*. The status effective date is the date of the recommended decision. If the final decision of the FAB is to reduce the medical benefits, consistent with the recommended decision, the hearing representative enters code *F9 – Fab Affirmed – Deny – Medical Info Insufficient to Support Claim* with a drop down code of *RMB - Reduce Medical Benefits on Accepted Conditions*. The status effective date is the date of the final decision.

29. If, after initial approval of services, the claimant's treating physician sends in medical documentation (without prior POC CE development) recommending a lower level of care, the POC CE authorizes the new level of care via letter to the claimant (with a copy to the provider). Since the new level of care is requested by the treating physician without development by the POC CE, the POC CE does not need to provide the claimant with a right to a recommended decision. The POC CE concurrently sends an email to the FO advising of the new level of care. The FO sends a thread to ACS advising of this change.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

[Attachment 5](#)

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

## **07-21 NIOSH's Program Evaluation Report for Lymphoma**

**EEOICPA BULLETIN NO. 07-21**

Issue Date: June 15, 2007

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Effective Date: March 8, 2007

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Expiration Date: June 15, 2008

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Subject: NIOSH's Program Evaluation Report for Lymphoma.

Background: On March 8, 2007, the National Institute for Occupational Safety and Health (NIOSH) issued a document that changed the underlying scientific rationale for performing dose reconstructions for lymphoma. NIOSH's findings and its effect on certain cases with a dose reconstruction for lymphoma was documented in the release OCAS-PER-009, "Program Evaluation Report (PER): Target Organs for Lymphoma," issued on March 8, 2007. It is NIOSH's assessment that the following changes apply for target organ selections in lymphoma cases (OCAS-TIB-012, REV-01):

- For internal dose, the thoracic lymph nodes associated with the lungs will be selected because the dose to this tissue from exposure via inhalation of insoluble radioactive material is always higher than the dose to other organs.
- For external dose, the lungs will be selected for B-cell lymphomas as the target organ because a significant fraction of the total lymphoid organ mass occurs in the thoracic cavity.
- For T-cell lymphomas, the thymus will be selected.

The change in the dose reconstruction methodology impacts lymphoma cases with a dose reconstruction prior to February 10, 2006, that resulted in a <50% Probability of Causation.

References: OCAS-TIB-012 Rev-01, "Selection for internal and external dosimetry target organs for lymphatic/hematopoietic cancers"; OCAS-PEP-009 Rev-00, "[Program Evaluation Plan: Evaluation of the Change in Target Organs for Dose Reconstruction Involving Lymphoma](#)," approved on December 8, 2006; OCAS-PER-009 Rev-00, "Target organs for lymphoma" dated March 8, 2007.

Purpose: To provide procedures for processing claims affected by NIOSH's OCAS-PER-009.

Applicability: All staff.

Actions:

1. In OCAS-PER-009 (**Attachment 1**), NIOSH has made the decision that a change is required for

internal and external dosimetry target organs used for dose reconstruction for lymphoma cases that were performed prior to February 10, 2006, and deemed non-compensable on the basis of a <50% Probability of Causation (POC). The change in methodology resulted from a detailed investigation by the Office of Compensation Analysis and Support of the etiology of lymphoma. The investigation found that the site of radiation injury can differ from the site of origin, and that the site listed in the diagnosis may not be the site of primary involvement. The change in the dose reconstruction methodology includes selecting the organ that would have received the highest radiation dose when the identity of the affected organ is in question or unknown. As a result, NIOSH found that the change in the organ used for dose reconstructions increases the organ dose, thereby resulting in a higher POC.

All lymphoma dose reconstructions completed after February 10, 2006, use the correct target organ selection. The completion date of the dose reconstruction is determined by the "Calculations Performed by" date found on the NIOSH Report of Dose Reconstruction under the Energy Employees Occupational Illness Compensation Program Act. No action is required in any case with a final decision that was issued based on a dose reconstruction if the "Calculations Performed by" date is after February 10, 2006.

2. NIOSH conducted a review of all lymphoma cases with a dose reconstruction prior to February 10, 2006, that resulted in a <50% POC and provided the Division of Energy Employees Occupational Illness Compensation (DEEOIC) a list of those cases via CD. The CD contains a folder for each case identified by NIOSH and includes a copy of the "Claim Review in Support of Program Evaluation Report" specific to that case. The report indicates whether the case is now compensable or that the change in method does not alter the compensability of the claim. Of the 528 cases listed on the CD, 152 cases have been identified as potentially compensable and need to be reopened for a rework of the dose reconstruction based on guidance provided in the PER. The NIOSH list will be reviewed to ensure that the identified lymphoma cases are sorted by district office. The list and accompanying CD's will be provided to the appropriate district offices under separate cover.

DEEOIC will also produce a list identifying all lymphoma cases that are potentially affected by OCAS-PER-009. The NIOSH and DEEOIC lists will be compared by National Office to ensure that all potential lymphoma cases with a dose reconstruction performed prior to February 10, 2006, that resulted in a <50% POC, are identified. The DEEOIC list will be provided to the appropriate district offices under separate cover with additional guidance.

3. In the exercise of the Director's discretion over the reopening process, the Director is delegating limited authority to the District Director to sign Director's Orders for reopening. This delegated authority is limited to reopenings for those cases that are affected by the PER established for lymphoma dose reconstructions. The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated.

4. For all lymphoma cases identified by NIOSH as having the potential for compensability based on the change in lymphoma dose reconstruction methodology, the responsible District Director should issue a Director's Order vacating the final decision and reopening the claim. The Director's Order should state that the case is being reopened as a result of the change in scientific methodology by which the dose reconstruction for lymphoma is performed, and that a rework of the dose reconstruction is necessary based on guidance provided in OCAS-PER-009. A sample Director's Order is included as **Attachment 2**. The District Director should code the case as "MN" (NO Initiates Review for Reopening) with a status effective date as the effective date of this bulletin.

Upon reopening the claim, the District Director should code the case as "MD" (Claim Reopened – File Returned to DO) to reflect that the case has been reopened and is in the district office's jurisdiction. The status effective date of the "MD" code is the date of the Director's Order.

Please note that while the "MD" code is generally input by National Office staff, entry of this code

has been delegated to the District Director, just as the authority to grant reopenings has been in this specific circumstance.

5. Once the claim has been reopened, the responsible CE refers the case to NIOSH for a rework of the dose reconstruction. For these cases only, a rework request to the National Office Health Physicist is not required. Instead, the CE should complete an amended NIOSH Referral Summary Document (ANRSD) and forward the ANRSD to the Public Health Advisor (PHA) assigned to the district office at NIOSH. The ANRSD should include the following statement in the “DOL Information” section, “Rework request due to OCAS-PER-009 and any other applicable modifications.” The CE should also:

a. Send a letter to the claimant explaining that the case has been returned to NIOSH for a rework of the dose reconstruction as a result of a change in the dose reconstruction methodology as outlined in OCAS-PER-009. A sample letter to the claimant is included as **Attachment 3**.

b. Send a copy of this letter to the PHA at NIOSH assigned to the DO along with the weekly DO submissions to NIOSH. The dates on the ANRSD and the letter to the claimant must both be the same, since this will be the date used for the status code entry into ECMS. The CE should code the case as “NI” (Sent to NIOSH) and select the “PEP” (Rework based on Program Evaluation Plan) reason code. (Since this is considered a new dose reconstruction, the CE should not change the existing NR/DR status code to NR/RW as typically done for rework cases.)

6. Upon receipt of the new dose reconstruction report that incorporates NIOSH’s findings from OCAS-PER-009, the CE proceeds in the usual manner and prepares a recommended decision. The CE should code the case as “NR” (Received from NIOSH) and select the “DR” (Dose Reconstruction Received-POC) reason code. The status effective date will be the date the dose reconstruction is date-stamped into the District Office.

7. For those cases NIOSH determined there is no change in the compensability of the claim, the CE is to: print a copy of the “Claim Review in Support of Program Evaluation Report” from the NIOSH CD for inclusion in the case file and send a copy along with a letter to the claimant(s) advising them of the change in the dose reconstruction model. The letter states that while a change has occurred in the target organ used to conduct the dose reconstruction in the claim, NIOSH has determined it does not change the outcome of the case. However, the claimant may still request a reopening of the claim for a rework of the radiation dose reconstruction. A sample letter to the claimant(s) is included as **Attachment 4**.

8. If a claimant requests a reopening of his/her claim as a result of the PER regardless of whether the case is identified in the CD from NIOSH, the District Director should issue a Director’s Order reopening the claim following the procedures as outlined in this Bulletin.

Upon receipt of the claimant’s requests for reopening, the District Director should code the case as “MC” (Claimant Requests Reopening). The status effective date is the postmark date, if available, or the date the request is received in the DO or FAB, whichever is earlier.

Upon reopening the claim, the District Director should code the case as “MD” (Claim Reopened – File Returned to DO) to reflect that the case has been reopened and is in the district office’s jurisdiction. The status effective date of the “MD” code is the date of the Director’s Order.

9. FAB personnel must be vigilant for any lymphoma cases with a recommended decision to deny. If lymphoma is claimed and the dose reconstruction was conducted prior to February 10, 2006, the recommended decision should be remanded to the district office in the usual manner. The remand should direct the district office to refer the case back to NIOSH for a rework as a result of the PER for lymphoma cases. The CE should code the case as “F7” (FAB Remand) with a “F7J” (Dose Reconstruction needs to be Reworked) reason code. The status effective date will be the date of the FAB remand.

10. A period of 90 calendar days, effective with receipt of the cases listing, is granted for case files

affected by this PER for the district office to either refer the case to NIOSH for a rework of the dose reconstruction or to send a letter to the claimant(s) advising them of NIOSH's change in the dose reconstruction methodology.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

**07-22 Update to Bulletin No.07-20 Authorizing In-Home Health Care - Replaced by EEOICPA Bulletin 08-09**

EEOICPA BULLETIN NO.07-22

Issue Date: July 16, 2007

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Effective Date: July 16, 2007

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Expiration Date: July 16, 2008

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**Note: This bulletin updates Bulletin No.07-20, with a revised Attachment 4 that corrects a per diem billing code for Home Health Aides (HHAs) and Certified Nurse Assistants (CNAs), and provides an explanation of code usage.**

Subject: Authorizing In-Home Health Care, specifically billing codes and usage of the billing codes for Home Health Aides (HHAs) and Certified Nurse Assistants (CNAs).

Background: Bulletin 07-20 outlines the process of authorizing in-home health care. After the issuance of Bulletin 07-20, errors were detected in Attachment 4 of that bulletin. This bulletin provides a corrected version of Attachment 4.

References: 42 U.S.C. §7384s, §7384t, §7385S-8, EEOICPA Bulletin No. 07-20

Purpose: To provide a revised attachment for guidance on authorizing home health care.

Applicability: All staff.

Actions:

1. Recipients of this bulletin are to replace Attachment 4, in Bulletin 07-20, with the attachment to this bulletin.

Disposition: Retain until superseded or incorporated into the Federal (EEOICPA) Procedure Manual

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

**07-23 Processing Claims for a new Special Exposure Cohort (SEC) Class for covered employees of the Los Alamos National Laboratory (LANL), March 15, 1943 through December 31, 1975**

*Updated by bulletin 08-08*

EEOICPA BULLETIN NO.07-23

Issue Date: August 3, 2007

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Effective Date: July 22, 2007

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Expiration Date: August 3, 2008

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**Subject:** Processing Claims for a new Special Exposure Cohort (SEC) Class for covered employees of the Los Alamos National Laboratory (LANL), March 15, 1943 through December 31, 1975.

**Background:** Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of a class of employees from the Los Alamos National Laboratory in Los Alamos, New Mexico to have a class added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and decided it qualified for evaluation under 42 C.F.R. § 83.13. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On May 23, 2007, the Board submitted recommendations to the Secretary of Health and Human Services (HHS).

Based on the Board’s recommendation, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress on June 22, 2007:

Employees of the Department of Energy (DOE), its predecessor agencies, or DOE contractors or subcontractors who were monitored or should have been monitored for radiological exposures while working in operational Technical Areas with a history of radioactive material use at the Los Alamos National Laboratory (LANL) for a number of work days aggregating at least 250 work days from March 15, 1943 through December 31, 1975, or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

A copy of the Secretary’s letter to Congress recommending the designation is included as Attachment 1. The SEC designation for this class became effective as of **July 22, 2007**, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress. While Congress has the authority to reject the recommendation within the 30-day time frame, no action was taken to contradict the addition of this new SEC class.

NIOSH has determined it is possible to reconstruct components of the internal dose including

tritium, polonium, plutonium, and uranium, and of the external dose including gamma, beta, neutron and occupational medical X-ray. As such, cases with a non-specified cancer, and/or do not meet the employment criteria of the SEC class, may be considered for partial dose reconstructions.

This is the second SEC class designation for LANL. A previous SEC class for LANL based on exposure to radioactive lanthanum (RaLa) was approved on December 9, 2006 and was the subject of Bulletin No. 07-11.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the June 22, 2007 letter to Congress from the Secretary of HHS in which Secretary Leavitt makes the designation.

Purpose: To provide procedures for processing claims for this second LANL SEC class.

Applicability: All staff.

Actions:

1. This new addition to the SEC affects employees of the Department of Energy (DOE), its predecessor agencies, or DOE contractors or subcontractors in certain locations at the LANL from March 15, 1943 through December 31, 1975 for a number of work days aggregating at least 250 work days, either solely under this employment or in combination with work days established for other classes of employees included in the SEC. This new SEC designation is established for employees who were “monitored or should have been monitored” for exposure to radiological exposures while working in operational Technical Areas (TAs) with a history of radioactive material use. This additional class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.

2. NIOSH has provided two lists of employees who claimed employment at the LANL during its SEC class period. One list covers employees with specified cancers and the other list addresses employees with non-specified cancers. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD contains all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also, included on the CD in the Correspondence Folder should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected LANL claimants is included as Attachment 2. The claims examiner (CE) must print out a hard copy of the NIOSH letter for inclusion in the case file. Case files returned from NIOSH to the district office for potential inclusion in the SEC class must be coded as “NW” (NIOSH, Returned without a Dose Reconstruction) in ECMS. The effective date for the code entry is July 22, 2007.

Since the NIOSH lists contain only cases that were with NIOSH for dose reconstruction at the time this SEC designation became effective, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) has also produced a list identifying all LANL cases that may potentially be included in the SEC class including cases that were previously denied. The list identifies those cases that must be reviewed by the district office(s) to determine whether SEC class criteria are satisfied including pending cases with employment during the SEC period with either a specified, non-specified cancer, or previous denial for POC less than 50%. The DEEOIC will compare the NIOSH and DEEOIC lists to ensure all potential SEC cases are identified by the district offices.

The lists will be provided to the appropriate district offices under separate cover by the Policies, Regulations and Procedures Unit of the Branch of Policy.

3. For any cases identified (either by NIOSH or DEEOIC) as having a potential for compensability based on the new SEC class, the responsible CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process. Action #5 provides additional guidance on making the

determination of whether the employee worked in one of the TAs with a history of radioactive material use.

4. Based on this review, the CE then determines whether the claimant has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual, Chapter 2-600.5. If the employee has a specified cancer, proceed to Action #5. If the employee does not have a specified cancer, proceed to Action #7.

5. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 work days at a location delineated in the SEC class designation. In determining whether the employment history meets the 250 work day requirement, the CE must consider employment either solely at LANL or in combination with work days for other SEC classes. There are essentially three evidentiary categories for CE to consider when making a judgment of SEC membership in the new class:

- Employment at a Technical Area specifically identified as a location where radioactive material was present
- Personal dosimetry
- Occupation or job category that likely involved employment duties at a location or multiple locations where radioactive material was present

LANL is organized into land divisions called Technical Areas (TAs). The current convention for describing locations at LANL is TA-10-1, where 10 is the Technical Area and 1 is the building number. In total, there have been no less than 75 TAs in the LANL with several TAs currently no longer active, including TA-1 and TA-10.

NIOSH has provided a list that identifies TAs with a history of radioactive material use. All TAs found on this list are covered for purposes of assessing employment at a location that is part of the SEC class. This list is provided as Attachment 3 to this directive and is an addendum to the SEC Petition Evaluation Report (Table Addendum-2: List of TAs NIOSH has Concluded Used Radioactive Material During the Covered Period). Evidence showing employment within the perimeter of any of these TAs, including work at a building or other geographic designation within the boundary of the TA, is considered covered for purposes of the LANL SEC class.

Employees who worked exclusively at TAs 17, 28, 34, 38, 57, 64, 65, 69, 70, and 74 are specifically excluded from coverage under the SEC provision. These TAs have no known history of radioactive material use or were not operational during the evaluation period. However, the evidence of record would need to demonstrate conclusively that the employee was employed solely at one of these specific locations, did not perform job functions at other potentially covered TAs, and did not have any personalized dosimetry data.

In addition, the NIOSH website (<http://www.cdc.gov/niosh/ocas/lanl.html>) contains a more detailed summary of all key LANL facilities (including TAs found not to have radioactive material use and not subject to this SEC class), the type of activities that were conducted at the TAs, its operational dates and type of radioactive material use (if any).

The CE must be aware that a TA may encompass more than one building or other designated areas (such as waste storage yards or testing areas). It is also important to note that TA designations changed over time and the current list of TAs with confirmed radioactive material use is based on information available at this time. NIOSH may update its list of locations where radioactive material was present and notify DOL of any additions to the list as information becomes available.

Upon receipt of any evidence to show that the employee was monitored for radiation exposure and was employed at LANL during the SEC designated period, the CE may accept the period of monitored dose as evidence of employment at a covered TA and as qualifying for the SEC class. Since requirement standards for radiological monitoring have changed and early monitoring at LANL was limited to employees thought to have the highest potential for receiving radiation, the

adjudicator cannot assume that an employee without a dosimeter badge or dosimeter record did not work at a TA with radioactive material use.

In addition to evidence placing an employee at a specific location where radioactive material was known to be present or evidence of personal dosimetry, it may be necessary for the CE to consider the occupation or job category of the employee. This is necessary as it has been confirmed that maintenance workers at LANL (predominately Zia Company contractor employees) were assigned to different TAs as needed. Absent evidence to the contrary (for instance evidence clearly indicating a maintenance worker solely assigned to TA not known to have radioactive material use), maintenance workers at LANL are considered part of this SEC class. This is true even if evidence is not present to demonstrate the specific TAs where duties occurred or evidence of personal dosimetry. The following are considered maintenance workers:

Electricians

Rad Technicians

Pipefitters

Carpenters

Custodians

Laborers

Security

Truck Drivers

Plumbers

Painters

It is not necessary for the CE to ensure that the employee's position directly matches that of one of the titles listed above, merely that the description of the employees' position is one that can reasonably be considered "maintenance."

For qualifying SEC class employment, it is essential that the claims examiner review the case file in its entirety, including information obtained from NIOSH during the dose reconstruction process, dosimetry records and contemporaneous medical records to determine if evidence indicates the employee worked at one of the locations involved with radioactive material use during the period from March 15, 1943 through December 31, 1975. The evidence merely needs to be of sufficient probative value to convince the adjudicator of the accuracy of the claim that the employee worked in one of the TAs with radioactive material use. The evidence does not need to rise to the level of beyond all reasonable doubt to qualify for consideration.

For example, a claim is submitted based on a deceased employee who worked as a lab technician at the LANL from August 1948 to 1952. The Department of Energy confirmed employment at the LANL for 1949 to 1951, but no evidence was found to indicate the TA(s) where the employee worked. However, employment records show the employee was issued an AEC dosimeter badge in May 1950 with an expiration date of June 1951. As such, it is reasonable to conclude that the employee worked at a TA with radioactive material given the job title (lab technician) and the existence of a dosimeter badge. Since there is no evidence to the contrary, the confirmed employment dates of 1949 to 1951 at LANL coupled with the existence of the dosimeter badge is probative evidence of 250 work days at a covered TA.

For those cases in which the adjudicator cannot determine whether the employee worked at a TA with history of radioactive material use, had no personal dosimetry, and can not be shown to be a qualifying maintenance worker, further development must occur. In terms of suggesting to claimants what type of additional evidence could be persuasive, claimants can be encouraged to submit affidavits from co-workers regarding work location and type of work performed at LANL.

LANL was also subject of a previous SEC designation for covered employees with exposure to radioactive lanthanum (RaLa) from September 1, 1944 through July 18, 1963 under Bulletin No. 07-11. As instructed in that Bulletin, those cases that were pended because the CE was unable to make an affirmative determination of RaLa exposure must now be developed for coverage under this new SEC class.

6. Once the CE has determined that the person named in the claim has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE should proceed in the usual manner for a compensable SEC claim and prepare a recommended decision.

7. As discussed earlier, the Secretary of Health and Human Services determined that it is not feasible for NIOSH to perform complete dose reconstructions for the class of employees who worked in certain areas at LANL from March 15, 1943 through December 31, 1975. However, NIOSH has indicated that partial dose reconstructions may be possible based on components of the internal doses, external doses and occupational medical doses. Accordingly, for a case with a non-specified cancer and/or that do not meet the employment criteria of the SEC class, the CE must refer the case back to NIOSH with a new NIOSH Referral Summary Document (NRSD) to perform radiation dose reconstruction. The CE should code the case as "NI" (Sent to NIOSH for Dose Reconstruction). The status effective date is the date the Senior or Supervisory CE signature

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE should code the case as "NR" (NIOSH Dose Reconstruction Received) and select the appropriate reason code. In this case, the "PD" (Partial Dose Construction, SEC) reason code would apply. The CE should not delete the "NW" (NIOSH, Returned Without a Dose Reconstruction) or "NI" (Sent to NIOSH for Dose Reconstruction) code already present in ECMS.

8. For those cases that were identified by NIOSH as having a specified cancer and therefore returned to the district office, if it is determined that the case does not qualify for the SEC class, the CE, through the Senior CE (SrCe), notifies the appropriate point of contact at NIOSH via E-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) and inputs the "NI" (Sent to NIOSH for Dose Reconstruction) code to ECMS, effective the date of the E-mail requesting NIOSH to proceed with dose reconstruction. The E-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-qualifying employment at the LANL, insufficient latency period, does not meet the 250 work day requirement, or not a specified cancer. A hard copy printout of the E-mail is to be inserted in the case file.

9. For any claim that was not already at NIOSH on July 22, 2007 and for which the CE determines a dose reconstruction is appropriate, the normal NIOSH referral process will apply.

10. If the claim includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any secondary cancers that are metastases of the specified cancer(s), and any non-specified cancers that have a dose reconstruction that resulted in a probability of causation of 50 percent or greater.

11. If a case with a denied final decision now meets the SEC class criteria and the employee has/had a specified cancer, the CE must submit the case for reopening through the appropriate process in the district office. The case must be forwarded to the DEEOIC Director to reopen the claim per 20 C.F.R. § 30.320(a).

12. FAB personnel must be vigilant for any LANL cases that have a recommended decision to deny. If the employee worked in one of the specified areas during the time specified, has a specified cancer, and meets the 250 work day requirement, the recommended decision must be remanded to the district office in the usual manner.

13. On all accepted SEC claims, the CE must enter the "SE" (Confirmed as SEC Claim) status code

in ECMS. The status effective date is the date both employment and medical criteria is met.

14. The district office operational plan goal for the specified cancer cases on the NIOSH list is to complete recommended decisions or refer the cases back to NIOSH within 60 days of the date of this Bulletin for at least 75% of the cases. All cases requiring action due to this Bulletin should be completed within 90 days.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

**07-24 Processing claims for a new Special Exposure Cohort (SEC) class for the W.R. Grace facility in Erwin, TN, from January 1, 1958 through December 31, 1970.**

EEOICPA BULLETIN NO.07-24

Issue Date: August 3, 2007

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Effective Date: July 22, 2007

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Expiration Date: August 3, 2008

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Subject: Processing claims for a new Special Exposure Cohort (SEC) class for the W.R. Grace facility in Erwin, TN, from January 1, 1958 through December 31, 1970.

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of a class of employees at the W.R. Grace facility in Erwin, TN to add the class to the SEC.

The decision to initiate this petition occurred after the National Institute for Occupational Safety and Health (NIOSH) determined that it could not reconstruct a dose under 42 C.F.R. § 83.14. NIOSH submitted its findings to the petitioner and the Advisory Board on Radiation and Worker Health (“the Board”). On May 23, 2007, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC employees who worked in the W.R. Grace facility in Erwin, TN from January 1, 1958 through December 31, 1970.

On June 22, 2007, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress.

Atomic Weapons Employer (AWE) employees who were monitored or should have been monitored for potential exposure to thorium while working in any of the 100 series buildings or Buildings 220, 230, 233, 234, 301 or 310 at the W.R. Grace site at Erwin, Tennessee for a number of work days aggregating at least 250 work days from January 1, 1958 through December 31, 1970, or in combination with work days within the parameters established for one or more other classes of

employees in the Special Exposure Cohort.

A copy of the Secretary's letter to Congress recommending the designation is included as Attachment 1. The SEC designation for this class became effective as of July 22, 2007, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in a report to Congress. While Congress had the authority to reject the recommendation within the 30-day time frame, no action was taken to contradict the addition of this new SEC class.

While a new SEC class has been added for employees at the W.R. Grace site, NIOSH has determined that it is possible to estimate internal exposures and external exposures from other radio-nuclides and to estimate medical dose of employees at the W.R. Grace site. This means that for claims that do not satisfy the SEC membership criteria, a partial dose reconstruction is to be performed by NIOSH.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the June 22, 2007 letter to Congress from the Secretary of HHS in which Secretary Leavitt makes the designation.

Purpose: To provide procedures for processing SEC claims for those employed at the W.R. Grace site in Erwin, TN.

Applicability: All staff.

#### Actions

1. This new addition to the SEC affects employees of the W.R. Grace site in Erwin, TN who were "monitored or should have been monitored" for thorium exposures between January 1, 1958 through December 31, 1970 for a number of work days aggregating at least 250 work days, either solely under this employment or in combination with work days established for other classes of employees included in the SEC. This additional class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.

2. NIOSH has provided two lists of employees who claimed employment at the W.R. Grace location during its SEC class period. One list covers employees with specified cancers and the other list addresses employees with non-specified cancers. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD contains all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD, in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected W.R. Grace claimants is included as Attachment 2. The claims examiner (CE) must print out a hard copy of the NIOSH letter for inclusion in the case file. Case files returned from NIOSH to the district office for potential inclusion in the SEC class must be coded as "NW" (NIOSH, returned without a dose reconstruction) in ECMS. The effective date for the code entry is July 22, 2007.

Since the NIOSH lists contain only cases that were with NIOSH for dose reconstruction at the time this SEC designation became effective, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) has also produced a list identifying W.R. Grace cases that are potentially included in the SEC class including cases that were previously denied. The list identifies those cases that must be reviewed by the district office(s) to determine whether SEC class criteria are satisfied including pending cases with employment during the SEC period with either a specified, non-specified cancer, or previous denial for POC less than 50%. The NIOSH and DEEOIC lists will be compared to ensure all potential SEC cases are identified by the district offices. The lists will be provided to the appropriate district offices under separate cover.

3. For any cases identified (either by NIOSH or DEEOIC) as having a potential for compensability based on the new SEC class, the responsible CE is to: review all relevant documentation contained

in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

4. Based on this review, the CE determines whether the claimant has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual Chapter 2-600.5. If the employee has a specified cancer, proceed to the Action #5. If the employee does not have a specified cancer, proceed to Action #7.

5. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 work days at the W.R. Grace site in Erwin, TN between January 1, 1958 through December 31, 1970.

As part of the SEC membership designation, working in any of the 100 series buildings or Buildings 220, 230, 233, 234, 301 or 310 is necessary for establishing consideration for the SEC class. However, NIOSH in its SEC Petition Evaluation report also states:

No documentation is currently available that associates job titles and/or job assignments with specific radiological operations. Without information that associates work locations with worker job descriptions, it is impractical to narrow down the job descriptions for those who may have been potentially exposed to radioactive materials. Therefore, it is not possible to determine that any specific work group was not potentially exposed to radioactive materials or possible subsequent contamination.

Given the information presently available on the employment activities conducted at the site and the limited information available on the specific employees who would have had reason to be in the demarcated locations included in the SEC designation, it is not feasible to differentiate between workers employed at the 100 series buildings or Buildings 220, 230, 233, 234, 301 or 310 and other locations of the facility that are not part of the SEC designation. Accordingly, for consideration of SEC membership under this designation, it is merely necessary to establish that the employee worked for W.R. Grace (was an AWE employee) at its Erwin, TN facility. The CE is to assume that all employees of the plant would have had reason to enter the numbered buildings identified as part of the SEC and that all employees of the plant “were monitored or should have been monitored for potential exposure to thorium.” It is not necessary for the CE to determine the exact locations within the plant where employment activities occurred, just that the employee worked for the company at its Erin location during the SEC time frame. The aggregate period of this employment then counts towards the necessary 250 work day requirement of the SEC class.

For this determination, the CE must evaluate the totality of all information contained in the case to establish the necessary criteria of the SEC class including documentation submitted by a corporate verifier, SSA administration, affidavits, and other employment verification records.

6. Once the CE has determined the person named in the claim has a diagnosed specified cancer and meets the employment criteria of the SEC classes, the CE should proceed in the usual manner for a compensable SEC claim and prepare a recommended decision.

7. As discussed earlier, the Secretary of Health and Human Services determined that it is not feasible for NIOSH to perform complete dose reconstructions for the class of employees who worked at the W.R. Grace site in Erwin, TN between January 1, 1958 through December 31, 1970.

However, NIOSH has indicated that partial dose reconstructions may be possible for internal and external dosimetry for radio-nuclides other than thorium and that medical dose can also be calculated. Accordingly, for cases with a non-specified cancer and/or that do not meet the employment criteria of the SEC class, the CE must refer these cases back to NIOSH with a new NIOSH Referral Summary Document (NRS) to perform dose reconstructions. The CE should code these cases as “NI” (Send to NIOSH). The status effective date is the date of the Senior or Supervisory CE signature on the NRS.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE should code the case as “NR” (NIOSH Dose Reconstruction

Received) and select the “PD” (Partial Dose Reconstruction) reason code. The status effective date is the date the dose reconstruction is date-stamped into the District Office. The CE should not delete the “NW” (NIOSH, returned without a dose reconstruction) or “NI” (Sent to NIOSH) code already present in ECMS.

8. For those cases that were identified by NIOSH as having a “specified cancer” and therefore returned to the district office, if it is determined that the case does not qualify for the SEC class, the CE, through the Senior CE (SrCe), notifies the appropriate point of contact at NIOSH via E-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the “sent” e-mail (making sure the printed copy documents the date it was sent) and inputs the NI (Sent to NIOSH) code to ECMS, effective the date of the E-mail requesting NIOSH to proceed with dose reconstruction. The E-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-specified cancer, insufficient latency period or does not meet the 250 work day requirement. A hard copy printout of the E-mail is to be inserted in the case file.

9. For any claim that is not already at NIOSH effective July 22, 2007 and for which the CE determines a dose reconstruction is appropriate, the normal NIOSH referral process will apply.

10. If the claim includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any secondary cancers that are metastases of the specified cancer(s), and any non-specified cancers that have a dose reconstruction that resulted in a probability of causation of 50 percent or greater.

11. If a case with a denied final decision now meets the SEC class criteria, the CE must submit the case for reopening through the appropriate process in the district office. The case must be forwarded to the DEEOIC Director to reopen the claim per 20 C.F.R. § 30.320(a).

12. FAB personnel must be vigilant for any W.R. Grace cases for the Erwin, TN location that have a recommended decision to deny. If the employee worked at this AWE during the time specified, has a specified cancer, and meets the 250 work day requirement, the recommended decision must be remanded to the district office in the usual manner.

13. The district office operational plan goal for the specified cancer cases on the NIOSH list is to complete recommended decisions or refer the cases back to NIOSH within 60 days of the date of this Bulletin for at least 75% of the cases. All cases requiring action due to this Bulletin should be completed within 90 days.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

**07-25 Processing claims for a new Special Exposure Cohort (SEC) class for the Dow Chemical Company (Madison Site) in Madison IL, from January 1, 1957 through December 31, 1960**

EEOICPA BULLETIN NO.07-25

Issue Date: August 3, 2007

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Effective Date: July 22, 2007

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Expiration Date: August 3, 2008

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Subject: Processing claims for a new Special Exposure Cohort (SEC) class for the Dow Chemical Company (Madison Site) in Madison, IL, from January 1, 1957 through December 31, 1960.

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of a class of employees from the Dow Chemical Company in Madison, Illinois to have a class added to the SEC.

The decision to initiate this petition occurred after the National Institute for Occupational Safety and Health (NIOSH) determined that it could not reconstruct a dose under 42 C.F.R. § 83.14. NIOSH submitted its findings to the petitioner and the Advisory Board on Radiation and Worker Health (“the Board”). On May 23, 2007, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC employees who worked at the Dow Chemical Company Plant from January 1, 1957 through December 31, 1960.

On June 22, 2007, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress.

Atomic Weapons Employer (AWE) employees who were monitored or should have been monitored for exposure to thorium radionuclides while working at the Dow Chemical Company in Madison, Illinois for a number of work days aggregating at least 250 work days from January 1, 1957 through December 31, 1960, or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

A copy of the Secretary’s letter to Congress recommending the designation is included as Attachment 1. The SEC designation for this class became effective as of July 22, 2007, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress. While Congress had the authority to reject the recommendation within the 30-day time frame, no action was taken to contradict the addition of this new SEC class.

While a new SEC class has been added for employees at DOW Chemical Company, NIOSH has determined that it is possible to estimate internal and external exposures from uranium and to estimate dose from occupational medical x-rays at Dow in Madison, IL. As such, for claims that do not satisfy the criteria for SEC membership, a partial dose reconstruction is to be performed by NIOSH.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the June 22, 2007 letter to Congress from the Secretary of HHS in which Secretary Leavitt makes the designation.

Purpose: To provide procedures for processing SEC claims based upon employment at the Dow Chemical Company in Madison, IL.

Applicability: All staff.

Actions:

1. This new addition to the SEC affects employees of the Dow Chemical Company who worked at the Madison, Illinois location and were “monitored or should have been monitored” for thorium exposures between January 1, 1957 through December 31, 1960 for a number of work days aggregating at least 250 work days, either solely under this employment or in combination with work days established for other classes of employees included in the SEC. This additional class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet

to be submitted.

2. NIOSH has provided two lists of employees who claimed employment at Dow in Madison, IL during its SEC class period. One list covers employees with specified cancers and the other list addresses employees with non-specified cancers. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD contains all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD, in the Correspondence Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected Dow claimants is included as Attachment 2. The claims examiner (CE) must print out a hard copy of the NIOSH letter for inclusion in the case file. Case files returned from NIOSH to the district office for potential inclusion in the SEC class must be coded as "NW" (NIOSH, returned without a dose reconstruction) in ECMS. The effective date for the code entry is July 22, 2007.

Since the NIOSH lists contain only cases that were with NIOSH for dose reconstruction at the time this SEC designation became effective, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) has also produced a list identifying Dow cases that are potentially included in the SEC class including cases that were previously denied. The list identifies those cases that must be reviewed by the district office(s) to determine whether SEC class criteria are satisfied including pending cases with employment during the SEC period with either a specified, non-specified cancer, or previous denial for POC less than 50%. The NIOSH and DEEOIC lists will be compared to ensure all potential SEC cases are identified by the district offices. The lists will be provided to the appropriate district offices under separate cover.

3. For any cases identified (either by NIOSH or DEEOIC) as having a potential for compensability based on the new SEC class, the responsible CE is to: review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process.

4. Based on this review, the CE then determines whether the claimant has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual Chapter 2-600.5. If the employee has a specified cancer, proceed to Action #5. If the employee does not have a specified cancer, proceed to Action #7.

5. If the employee has a specified cancer, the CE must then determine if the worker was employed at least 250 work days at Dow Chemical Company (Madison Site) in Madison, IL, from January 1, 1957 through December 31, 1960.

As part of its SEC Petition Evaluation Report (Petition SEC-00079), NIOSH states, "Because it is not possible to determine if employees working in specific locations were not potentially exposed to thorium, all areas of the Dow Madison site are included in the proposed SEC class definition." Based on this assessment, the DEEOIC has determined that employment at any property, area, building, or other location that comprises the Dow Madison Site permits consideration for SEC class inclusion. Moreover, the DEEOIC is interpreting "monitored or should have been monitored" as applicable to all employees who worked at Dow Chemical in Madison, IL during the period January 1, 1957 through December 31, 1960.

To establish a membership in the SEC class under this designation, the evidence of record must establish that the employee worked for DOW Chemical Company (AWE employer) and worked at the Madison Site in IL. The CE does not need to determine the exact locations within site where the employee performed his or her duties. It is also not necessary for a claimant to show that the employee was monitored for radiation dose. The evidence needs to be of sufficient convincing quality to reasonably demonstrate that a DOW employee performed employment duties at the Madison Site during the SEC specified time frame. This can be accomplished by reviewing the totality of all the employment records presented including any records from the corporate verifier,

Social Security Administration, affidavits, or other employment verification records.

6. Once the CE has determined the person named in the claim has a diagnosed specified cancer and meets the employment criteria of the SEC classes, the CE should proceed in the usual manner for a compensable SEC claim and prepare a recommended decision.

7. As discussed earlier, the Secretary of Health and Human Services determined that it is not feasible for NIOSH to perform complete dose reconstructions for the class of employees who worked for Dow Chemical Company (Madison Site) in Madison, IL, from January 1, 1957 through December 31, 1960.

However, NIOSH has indicated that partial dose reconstructions to estimate internal and external exposures from uranium and to estimate dose from occupational medical x-rays are possible. Accordingly, for cases with a non-specified cancer and/or that do not meet the employment criteria of the SEC class, the CE must refer these cases back to NIOSH with a new NIOSH Referral Summary Document (NRSD) to perform a dose reconstruction. The CE should code these cases as "NI" (Sent to NIOSH). The status effective date is the date of the Senior or Supervisory CE signature on the NRSD.

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE should code the case as "NR" (NIOSH Dose Reconstruction Received) and select the "PD" (Partial Dose Reconstruction, SEC) reason code. The status effective date is the date the dose reconstruction is date-stamped into the District Office. The CE should not delete the "NW" (NIOSH, returned without a dose reconstruction) or "NI" (Sent to NIOSH) code already present in ECMS.

8. For those cases that were identified by NIOSH as having a "specified cancer" and therefore returned to the district office, if it is determined that the case does not qualify for the SEC class, the CE, through the Senior CE (SrCe), notifies the appropriate point of contact at NIOSH via E-mail to proceed with the dose reconstruction. The SrCE then prints a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) and inputs the NI (Sent to NIOSH) code to ECMS, effective the date of the E-mail requesting NIOSH to proceed with dose reconstruction. The E-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-specified cancer, insufficient latency period or does not meet the 250 work day requirement. A hard copy printout of the E-mail is to be inserted in the case file.

9. For any claim that is not already at NIOSH effective July 22, 2007 and for which the CE determines a dose reconstruction is appropriate, the normal NIOSH referral process will apply.

10. If the claim includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any secondary cancers that are metastases of the specified cancer(s), and any non-specified cancers that have a dose reconstruction that resulted in a probability of causation of 50 percent or greater.

11. If a case with a denied final decision now meets the SEC class criteria, the CE must submit the case for reopening through the appropriate process in the district office. The case must be forwarded to the DEEOIC Director to reopen the claim per 20 C.F.R. § 30.320(a).

12. FAB personnel must be vigilant for any Dow Chemical

Company cases that have a recommended decision to deny. If the employee worked at this AWE during the time specified, has a specified cancer, and meets the 250 work day requirement, the recommended decision must be remanded to the district office in the usual manner.

13. The district office operational plan goal for the specified cancer cases on the NIOSH list is to complete recommended decisions or refer the cases back to NIOSH within 60 days of the date of this Bulletin for at least 75% of the cases. All cases requiring action due to this Bulletin should be completed within 90 days.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual

### **07-26 Supplemental Guidance for Additional Cases Affected by NIOSH's Program Evaluation Report for Lymphoma.**

EEOICPA BULLETIN NO. 07-26

Issue Date: August 8, 2007

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Effective Date: March 8, 2007

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Expiration Date: August 8, 2007

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Subject: Supplemental Guidance for Additional Cases Affected by NIOSH's Program Evaluation Report for Lymphoma.

Background: On June 15, 2007, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) issued EEOICPA Bulletin 07-21, *NIOSH's Program Evaluation Report for Lymphoma*. EEOICPA Bulletin 07-21 provided guidance on processing cases that were identified by NIOSH as potentially affected by the release of OCAS-PER-009, Target Organs for Lymphoma.

This Bulletin provides guidance for those cases identified by DEEOIC as being potentially affected by the release of OCAS-PER-009, in which a "Claim Review in Support of Program Evaluation Report (PER)" was not received and the case contains a final decision to deny based on a lymphoma diagnosis and a POC of less than 50%.

References: OCAS-TIB-012 Rev-01, "Selection for internal and external dosimetry target organs for lymphatic/hematopoietic cancers"; OCAS-PEP-009 Rev-00, "Program Evaluation Plan: Evaluation of the Change in Target Organs for Dose Reconstruction Involving Lymphoma," approved on December 8, 2006; OCAS-PER-009 Rev-00, "Target organs for lymphoma" dated March 8, 2007, viewed at <http://www.cdc.gov/niosh/ocas/pdfs/pers/oc-per9-r0.pdf>.

Purpose: To provide procedures for processing claims identified by DEEOIC that do not have an individual PER.

Applicability: All staff.

Actions:

1. In OCAS-PER-009 (**Attachment 1**), NIOSH determined that a change is required for internal and external dosimetry target organs used for dose reconstruction for lymphoma cases that were

performed prior to February 10, 2006, and deemed non-compensable on the basis of a less than 50% Probability of Causation (POC). NIOSH found that the change in the target organ used for dose reconstructions increases the organ dose, thereby resulting in a higher POC. As such, certain lymphoma cases containing a final decision to deny based on a POC of less than 50% need to be reopened and returned to NIOSH for a new dose reconstruction.

All lymphoma dose reconstructions completed after February 10, 2006, use the correct target organ selection. The completion date of the dose reconstruction is determined by the "Calculations Performed by" date found on the NIOSH Report of Dose Reconstruction under the Energy Employees Occupational Illness Compensation Program Act. No action is required for a final decision to deny a cancer for a less than 50% POC, if the applicable dose reconstruction has a "Calculations Performed by" date after February 10, 2006.

2. Both NIOSH and DEEOIC produced separate lists identifying all lymphoma cases that are potentially affected by OCAS-PER-009. The NIOSH and DEEOIC lists were compared by National Office to ensure that all potential lymphoma cases with a dose reconstruction performed prior to February 10, 2006, that resulted in a less than 50% POC were identified. The NIOSH list of cases was provided to the appropriate district offices on June 15, 2007, with instructions on retrieving a copy of NIOSH's "Claim Review in Support of Program Evaluation Report" for each corresponding case file from the DEEOIC Shared Drive.

The DEEOIC list of cases (cases that were not on the list provided by NIOSH and are the subject of this directive) will be distributed to the appropriate district offices under separate cover. A "Claim Review in Support of Program Evaluation Report" is not available for these cases. As such, it is necessary for these cases to be reviewed for possible reopening and return to NIOSH for a new dose reconstruction.

3. In the exercise of the Director's discretion over the reopening process, the Director is delegating limited authority to the District Director to sign Director's Orders for reopening. This delegated authority is limited to reopenings for those cases that are potentially affected by the PER established for lymphoma dose reconstructions. The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated.

4. For all lymphoma cases on the DEEOIC list, with a confirmed diagnosis of lymphoma (ICD-9 200-208.91), the responsible Claims Examiner (CE) must review the *NIOSH Report of Dose Reconstruction under the Energy Employees Occupational Illness Compensation*. If the "Calculations Performed by" date is on or before February 10, 2006, and the POC is less than 50%, the responsible District Director should issue a Director's Order vacating the final decision and reopening the claim. The Director's Order should state that the case is being reopened as a result of the change in scientific methodology by which the dose reconstruction for lymphoma is performed, and that a rework of the dose reconstruction is necessary based on guidance provided in OCAS-PER-009. A sample Director's Order is included as **Attachment 2**. The District Director should code the case as "MN" (NO Initiates Review for Reopening) with a status effective date as the effective date of this bulletin.

Upon completing the Director's Order to reopen the claim, the District Director should code the case as "MD" (Claim Reopened – File Returned to DO) to reflect that the case has been reopened and is in the district office's jurisdiction. (The "MZ" status code is not necessary).

The status effective date of the "MD" code is the date of the Director's Order.

Please note that while the "MD" code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been in this specific circumstance.

5. Once the claim has been reopened, the responsible CE refers the case to NIOSH for a rework of the dose reconstruction. For cases affected by this bulletin, a rework request to the National Office

Health Physicist is not required. Instead, the CE should complete an amended NIOSH Referral Summary Document (ANRSD) and forward the ANRSD to the Public Health Advisor (PHA) assigned to the district office at NIOSH. The ANRSD should include the following statement in the “DOL Information” section, “Rework request due to OCAS-PER-009 and any other applicable modifications.” The CE should also:

a. Send a letter to the claimant explaining that the case has been returned to NIOSH for a rework of the dose reconstruction as a result of a change in the dose reconstruction methodology as outlined in OCAS-PER-009. A sample letter to the claimant is included as **Attachment 3**.

b. Send a copy of this letter to the PHA at NIOSH assigned to the DO along with the weekly DO submissions to NIOSH. The dates on the ANRSD and the letter to the claimant must both be the same, since this will be the date used for the status code entry into ECMS. The CE should code the case as “NI” (Sent to NIOSH) and select the “PEP” (Rework based on Program Evaluation Plan) reason code. (Since this is considered a new dose reconstruction, the CE should not change the existing NR/DR status code to NR/RW as typically done for rework cases. In addition, the existing POC should not be deleted from ECMS.)

6. Upon receipt of the new dose reconstruction report that incorporates NIOSH’s findings from OCAS-PER-009, the CE proceeds in the usual manner and prepares a recommended decision. The CE should code the case as “NR” (Received from NIOSH) and select the “DR” (Dose Reconstruction Received-POC) reason code. The status effective date will be the date the dose reconstruction is date-stamped into the District Office. The POC should be updated in ECMS based on the new dose reconstruction.

7. It is possible that during the course of the review of these cases, NIOSH may supply the National Office with an individual Program Evaluation Report (PER) or Individual Case Evaluation (ICE) form for each case (or a PER that represents a population of cases) potentially affected by the PER. The individual PER or ICE will serve as documentation that the case file has been reviewed by NIOSH and that NIOSH has determined that:

- the change to the scientific methodology outlined in the PER affects the outcome of the claim and a new dose reconstruction is required, or
- the change to the scientific methodology outlined in the PEP/other modifications, does not affect the outcome of the claim and a new dose reconstruction is not required.

If an individual PEP/ICE is received indicating that a new dose reconstruction is required, the case should be reopened/referred to NIOSH (if not already at NIOSH) for a new dose reconstruction following procedures as outlined in this bulletin.

If an individual PEP/ICE is received indicating that a new dose reconstruction is not required, but lymphoma is the diagnosed condition and the dose reconstruction was performed prior to February 10, 2006, the CE is to send a copy of the individual PEP/ICE along with a letter to the claimant(s) advising them of the change in the dose reconstruction model. The letter states that while a change has occurred in the target organ used to conduct the dose reconstruction in the claim, NIOSH has determined it does not change the outcome of the case. However, the claimant may still request a reopening of the claim for a rework of the radiation dose reconstruction. A sample letter to the claimant(s) is included as **Attachment 4**.

NOTE: A PER/ICE cannot be used in lieu of a dose reconstruction after a reopening is issued. A new dose reconstruction must be received and the new POC must be entered in ECMS.

If an individual PER or ICE is received in the National Office, it will be forwarded to the appropriate district office for inclusion in the case file.

8. If a claimant requests a reopening of his/her claim as a result of the PER for lymphoma, regardless of whether the case is identified by NIOSH or DEEOIC, the case file must be evaluated to determine whether or not the claim warrants a reopening (unless DEEOIC sent a letter to the

claimant as instructed under Action Item #7). Simply identifying OCAS-PER-009 is not considered new evidence and is not sufficient to warrant a reopening. A reopening should be granted only if the evidence of file supports a diagnosis of lymphoma and the dose reconstruction was performed prior to February 10, 2006 and resulted in a less than 50% POC. If these requirements are met, the District Director should issue a Director's Order reopening the claim following the procedures as outlined in this Bulletin.

Upon receipt of the claimant's requests for reopening, the District Director should code the case as "MC" (Claimant Requests Reopening). The status effective date is the postmark date, if available, or the date the request is received in the DO or FAB, whichever is earlier.

For all claimant requests for reopening that do not meet the criteria for reopening, the District Director should prepare a memorandum to the Director of DEEOIC and forward the case file to National Office for review.

9. A period of 120 calendar days, effective with receipt of the case listing that will be sent under separate cover, is granted for case files affected by this PER for the district office to issue a Director's Order reopening the cases and returning the case file to NIOSH for a new dose reconstruction.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1

Distribution List No. 7

**07-27 Supplemental Guidance on Processing Cases Affected by OCAS-PER-012, entitled "Evaluation of Highly Insoluble Plutonium Compounds."**

EEOICPA BULLETIN NO.07-27

Issue Date: August 8, 2007

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Effective Date: August 7, 2007

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Expiration Date: August 8, 2007

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Subject: Supplemental Guidance on Processing Cases Affected by OCAS-PER-012, entitled "Evaluation of Highly Insoluble Plutonium Compounds."

Background: On May 16, 2007, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) issued EEOICPA Bulletin 07-19, *Processing Cases Affected by the National Institute for Occupational Safety and Health's (NIOSH) "Program Evaluation Plan (PEP): Evaluation of Highly Insoluble Plutonium Compounds."* EEOICPA Bulletin 07-19 provided guidance on handling those cases affected by NIOSH's PEP that are in the adjudication process and

have no final decision. The guidance was necessary because NIOSH determined that the existence of highly insoluble forms of plutonium compounds at certain sites could potentially affect the outcome of certain cases with a dose reconstruction. As such, it was necessary for certain cases in which the potential for exposure to Type Super S plutonium existed to be returned to NIOSH for a new dose reconstruction as a result of the PEP.

On August 7, 2007, NIOSH released OCAS-PER-012, "Evaluation of Highly Insoluble Plutonium Compounds." The Program Evaluation Report (PER) provides NIOSH's findings on the effect of type Super S plutonium on certain cases with a dose reconstruction.

NIOSH provided DEEOIC with a list of cases that had previously been denied with a Probability of Causation (POC) of less than 50% and required reevaluation. The purpose of this Bulletin is to provide procedures for reopening those cases specifically identified by NIOSH as needing reevaluation. In addition, procedures are provided for all remaining cases with a final decision to deny based on a less than 50% POC, a dose reconstruction performed prior to February 6, 2007, and employment verified at one of the sites listed in the OCAS-PER-012.

References: NIOSH document, OCAS-PEP-012 Rev-00, Program Evaluation Plan: Evaluation of Highly Insoluble Plutonium Compounds, approved on March 29, 2007, viewed at <http://www.cdc.gov/niosh/ocas/pdfs/peps/oc-pep12-r0.pdf>; OCAS-PER-012, "Evaluation of Highly Insoluble Plutonium Compounds."

Purpose: To provide procedures for processing claims with a final decision to deny that may be affected by NIOSH's OCAS-PER-012.

Applicability: All staff.

Actions:

1. The OCAS-PER-012 states that "due to the increased doses assigned to workers exposed to Type Super S plutonium, previously completed claims that were assigned plutonium doses at sites where this material is potentially available for exposure need to be reexamined to determine the impact (if any) on the dose assessment."  
NIOSH identified cases with a dose reconstruction prior to February 6, 2007, that resulted in a less than 50% POC with verified employment at any one of the sites listed in **Attachment 1**, as identified by NIOSH in Attachment A of the OCAS-PER-012. NIOSH provided the DEEOIC with a list of those cases that need to be returned to NIOSH because of the PER. The NIOSH list will be sorted by district office and provided to the appropriate district offices under separate cover. (On May 30, 2007, a list of cases that had no final decision was distributed via email to the appropriate District Offices and Final Adjudication Branch to process in accordance with EEOICPA Bulletin No. 07-19.)
2. In the exercise of the Director's discretion over the reopening process, the Director is delegating limited authority to the District Director to sign Director's Orders for reopening. This delegated authority is limited to reopenings for those cases that are affected by the PER established for exposure to highly insoluble forms of plutonium. The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated.
3. For those cases on the "return" list provided by NIOSH that have a final decision to deny with employment identified at one of the sites listed in NIOSH's OCAS-PER-012, Attachment A "Consider Super S," (Attachment 1) and where a dose reconstruction was performed prior to February 6, 2007 (as determined by the "Calculations Performed by" date found on the NIOSH Report of Dose Reconstruction under the Energy Employees Occupational Illness Compensation Program Act) and resulted in a less than 50% POC, the responsible District Director should issue a Director's Order vacating the final decision and reopening the claim. The Director's Order should state that the case is being reopened as a result of the change in scientific methodology by which the dose reconstruction is performed by NIOSH, and that a rework of the dose reconstruction is

necessary based on guidance provided in OCAS-PER-012. A sample Director's Order is included as **Attachment 2**. The District Director should code the case as "MN" (NO Initiates Review for Reopening) with a status effective date as the effective date of this bulletin.

Upon reopening the claim, the District Director should code the case as "MD" (Claim Reopened – File Returned to DO) to reflect that the case has been reopened and is in the district office's jurisdiction. (The "MZ" status code is not necessary.) The status effective date of the "MD" code is the date of the Director's Order.

Please note that while the "MD" code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been in this specific circumstance.

4. Once the claim has been reopened, the responsible CE is to refer the case to NIOSH for a new dose reconstruction. For cases affected by this bulletin, a request to the National Office Health Physicist is not required. Instead, the Claims Examiner (CE) should complete an amended NIOSH Referral Summary Document (ANRSD) and forward the ANRSD to the Public Health Advisor (PHA) assigned to the district office at NIOSH. The ANRSD should include the following statement in the "DOL Information" section, "Rework request due to OCAS-PER-012 and any other applicable changes." The CE should also:

a. Send a letter to the claimant explaining that the case has been returned to NIOSH for a rework of the dose reconstruction as a result of a change in the dose reconstruction methodology as outlined in the OCAS-PER-012. A sample letter to the claimant is included as **Attachment 3**.

b. Send a copy of this letter to the PHA at NIOSH assigned to the DO along with the weekly DO submissions to NIOSH. The dates on the ANRSD and the letter to the claimant must both be the same, since this will be the date used for the status code entry into ECMS. The CE should code the case as "NI" (Sent to NIOSH) and select the "PEP" (Rework based on Program Evaluation Plan) reason code. (Since this is considered a new dose reconstruction, the CE should not change the existing NR/DR status code to NR/RW as typically done for rework cases. Furthermore, if a POC value is already entered into ECMS, the CE should not delete the POC. The new POC will be updated once it is calculated.)

Upon receipt of the new dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE should code the case as "NR" (Received from NIOSH) and select the "DR" (Dose Reconstruction Received-POC) reason code. The status effective date will be the date the dose reconstruction is date-stamped into the District Office. The POC should be updated in ECMS based on the new dose reconstruction.

5. A separate list is being provided of cases that are not on the NIOSH list of cases requiring reopening, but appear to be affected by OCAS-PER-012. This list is being provided under separate cover. The responsible CE should review each case on the list and confirm that the case meets the parameters for the PER, i.e. Super S site, POC <50%, DR signed prior to February 6, 2007. Note that there will be cases signed after February 6, 2007 on the list because we do not capture the OCAS sign date in ECMS. Once all three parameters are determined to have been met, the CE sends a letter to the PHA assigned to the district office at NIOSH inquiring as to the applicability of OCAS-PER-012 (see **Attachment 4**), and a letter to the claimant explaining our action (see **Attachment 5**). Once NIOSH responds, the DO proceeds to reopen the case if appropriate.

6. It is possible that during the course of the review of these cases, NIOSH may supply the National Office with individual Program Evaluation Reports (PER) or Individual Case Evaluation (ICE) forms for cases (or a PER that represents a population of cases) potentially affected by the PEP. The individual PER or ICE will serve as documentation that the case file has been reviewed by NIOSH and that NIOSH has determined that:

- the change outlined in the PER affects the outcome of the claim and a return to NIOSH for a

new dose reconstruction is necessary, or

- there are multiple changes that affect the dose reconstruction and a return to NIOSH for a new dose reconstruction is necessary, or
- the change outlined in the PER does not affect the dose reconstruction, nor do any other changes affect the dose reconstruction and a return to NIOSH is not necessary.

If an individual PER/ICE is received indicating that a new dose reconstruction is required, a copy of the PER/ICE should be placed in the file and the case should be reopened/referred to NIOSH (if not already at NIOSH) for a new dose reconstruction following procedures as outlined in this bulletin.

If prior to sending the letters as described in Action Item 5, we have an individual PER/ICE that says the dose reconstruction is not affected by the PER, then the ICE/PER is to be placed in the file and no further action is necessary.

NOTE: A PER/ICE cannot be used in lieu of a dose reconstruction after a reopening is issued. A new dose reconstruction must be received and the new POC must be entered in ECMS.

If an individual PER or ICE is received in the National Office, it will be forwarded to the appropriate district office for inclusion in the case file.

7. If a claimant requests a reopening of his/her claim as a result of the PER for Super S, regardless of whether the case is identified by NIOSH or DEEOIC, the case file must be evaluated to determine whether or not the claim warrants a reopening. Simply identifying OCAS-PER-012 is not considered new evidence and is not sufficient to warrant a reopening. A reopening should be granted only if the evidence of file supports verified employment at any one of the listed sites in Attachment 1 and the dose reconstruction was performed prior to February 6, 2007 and resulted in a less than 50% POC, and there is no individual PER/ICE stating that the claim is not affected by the changes. If these requirements are met, the District Director should issue a Director's Order reopening the claim following the procedures as outlined in this Bulletin.

Upon receipt of the claimant's requests for reopening, the District Director should code the case as "MC" (Claimant Requests Reopening). The status effective date is the postmark date, if available, or the date the request is received in the DO or FAB, whichever is earlier.

For all claimant requests for reopening that do not meet the criteria for reopening, the District Director should prepare a memorandum to the Director of DEEOIC and forward the case file to National Office for review.

8. For all cases with no final decision, where employment is verified at one of the sites as listed in NIOSH's OCAS-PER-012, Attachment A "Consider Super S," and a dose reconstruction was performed prior to February 6, 2007 resulting in a less than 50% POC, the CE should follow guidance as outlined in EEOICPA Bulletin 07-19.

9. When reviewing cases under this Bulletin, CEs must keep in mind other changes that might affect the cases and take the action that is appropriate under the circumstances. For example, if a case should be reopened and accepted under a new Special Exposure Cohort class, the CE should take the action that will result in the most expedient positive outcome.

10. A period of 120 calendar days, effective with receipt of the case listing that will be sent under separate cover, is granted for case files affected by this PER for the district office to issue a Director's Order reopening the claim and to return the case file to NIOSH for a new radiation dose reconstruction.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

[Attachment 5](#)

Distribution List No. 1: All DEEOIC Employees

Distribution List No. 7: Resource Centers

## **07-28 NIOSH's Program Evaluation Report for the Paducah Gaseous Diffusion Plant**

EEOICPA BULLETIN NO.07-28

Issue Date: September 6, 2007

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Effective Date: March 21, 2007

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Expiration Date: September 6, 2007

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**Subject:** NIOSH's Program Evaluation Report for the Paducah Gaseous Diffusion Plant.

**Background:** On March 21, 2007, the National Institute for Occupational Safety and Health (NIOSH) released OCAS-PEP-013, entitled "Evaluation of the Impact of Changes to the Isotopic Ratios for the Paducah Gaseous Diffusion Plant." The PEP outlines NIOSH's plan for evaluating the effect on dose reconstructions of changes to multiple Paducah Gaseous Diffusion Plant (GDP) Technical Basis Documents (TBDs) that were made to ensure that the published isotopic ratios for transuranic radionuclides meet the criteria of providing either an accurate or maximum dose estimate. NIOSH determined that the current ratios in the prior TBDs did not meet that goal. As such, the Occupational Internal Dose and Occupational Environmental Dose TBDs were updated to account for the transuranic uranium isotopic ratios (relative to uranium) for estimating dose from these radionuclides.

In response to OCAS-PEP-013, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) issued a letter to NIOSH on July 2, 2007. DEEOIC informed NIOSH that all cases potentially affected by the release of OCAS-PEP-013 would be reopened and returned to NIOSH for a new radiation dose reconstruction. A copy of DEEOIC's letter is included as **Attachment 1**.

On August 13, 2007, NIOSH released the Program Evaluation Report (PER). The PER indicates that certain claims potentially impacted by the change should be returned for a new dose reconstruction.

This bulletin provides guidance on processing those cases that are potentially affected by the release of OCAS-PEP-013 where employment is verified at the Paducah GDP and a dose reconstruction was performed prior to November 7, 2006 and resulted in a less than 50% Probability of Causation (POC).

**References:** NIOSH document, OCAS-PEP-013, "Evaluation of the Impact of Changes to the Isotopic Ratios for the Paducah Gaseous Diffusion Plant," effective March 21, 2007, viewed at <http://www.cdc.gov/niosh/ocas/pdfs/peps/oc-pep-013-r0.pdf>; OCAS-PEP-013, "Evaluation of the Impact of Changes to the Isotopic Ratios for the Paducah Gaseous Diffusion Plant," effective

August 13, 2007.

Purpose: To provide procedures for processing claims affected by NIOSH's OCAS-PER-013.

Applicability: All staff.

Actions:

1. NIOSH's OCAS-PER-013 provides a plan for evaluating which dose reconstructions are impacted by changes in the Occupational Internal Dose and Occupational Environmental Dose Technical Basis Documents (TBDs) that were made to the transuranic uranium isotopic ratios (relative to uranium) for estimating dose from these radionuclides. It is NIOSH's assessment that these changes will increase the estimated radiation dose. As a result, certain claims need to be returned to NIOSH for a new radiation dose reconstruction.

This Program Evaluation Report (PER) affects those cases with verified employment at the Paducah GDP where the dose reconstruction was performed prior to November 7, 2006 (as determined by the "Calculations Performed by" date found on NIOSH's Report of Dose Reconstruction under the Energy Employees Occupational Illness Compensation Program Act), and resulted in a less than 50% Probability of Causation (POC).

No action is required on cases with a final decision that were issued based on a dose reconstruction if the "Calculations Performed by" date is after November 7, 2006.

2. A comprehensive list of cases will be distributed to the appropriate district offices under separate cover.

3. For those cases currently in posture for a recommended decision with employment identified at the Paducah Gaseous Diffusion Plant (GDP), where a dose reconstruction was performed on or prior to November 7, 2006 and resulted in a less than 50% POC, the district office/CE2 Unit is to return those cases to NIOSH for a new dose reconstruction.

4. When referring these cases to NIOSH for a new dose reconstruction, a request to the National Office Health Physicist is not required. Instead, the Claims Examiner (CE) should complete an amended NIOSH Referral Summary Document (ANRSD) and forward the ANRSD to the Public Health Advisor (PHA) assigned to the district office at NIOSH. The ANRSD should include the following statement in the "DOL Information" section, "Rework request due to the release of OCAS-PER-013 and any other applicable modifications." The CE should also:

a. Send a letter to the claimant explaining that the case has been returned to NIOSH for a new dose reconstruction as a result of a change in the dose reconstruction methodology for the Paducah GDP. A sample letter to the claimant is included as **Attachment 2**.

b. Send a copy of this letter to the PHA at NIOSH assigned to the DO along with the weekly DO submissions to NIOSH. The dates on the ANRSD and the letter to the claimant must both be the same, since this will be the date used for the status code entry into ECMS. The CE should code the case as "NI" (Sent to NIOSH) and select the "PEP" (Rework based on Program Evaluation Plan) reason code.

(Note: Since this is considered a new dose reconstruction, the CE should not change the existing NR/DR status code to NR/RW as typically done for rework cases. Furthermore, if a POC value is already entered into ECMS, the CE should not delete the POC. The new POC will simply be updated once it is calculated.)

Upon receipt of the revised dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE should code the case as "NR" (Received from NIOSH) and select the "DR" (Dose Reconstruction Received-POC) reason code. The status effective date will be the date the dose reconstruction is date stamped into the district office. The POC should be updated in ECMS based on the new dose reconstruction.

5. For cases currently pending a final decision at the FAB, the Hearing Representative/CE is to identify those cases with verified employment at the Paducah GDP with a recommended decision to deny based on a less than 50% POC. If the dose reconstruction was conducted on or prior to November 7, 2006, the recommended decision should be remanded to the district office in the usual manner. The Remand Order should direct the district office to refer the case back to NIOSH for a new dose reconstruction as a result of the release of OCAS-PER-013.

The Hearing Representative/CE should code the case as “F7” (FAB Remand) with a “F7J” (Dose Reconstruction needs to be Reworked) reason code. The status effective date will be the date of the FAB remand.

6. The following statement should be included in the Remand Order regarding the return of the case to NIOSH for a rework of the radiation dose reconstruction.

On March 21, 2007, NIOSH issued OCAS-PER-013 entitled, “Evaluation of the Impact of Changes to the Isotopic Ratios for the Paducah Gaseous Diffusion Plant.” The changes outlined in OCAS-PER-013 for the Paducah GDP not only affect the underlying scientific methodology by which the dose reconstruction was performed, but could potentially affect the outcome of a claim.

The DEEOIC is obligated to ensure that the application of the dose reconstruction methodology is administered in a fair and consistent manner. Given the revision to the underlying scientific assumptions by which the dose reconstruction was performed by NIOSH, and the release of OCAS-PER-013, the prior dose reconstruction/POC calculation on your claim is now invalid. While the modification to the dose reconstruction methodology may not impact the outcome of your claim, it is necessary for the claim to undergo a new dose reconstruction by NIOSH.

7. In the exercise of the Director’s discretion over the reopening process, the Director is delegating limited authority to the District Director to sign Director’s Orders for reopening. This delegated authority is limited to reopenings for those cases that are affected by the PER established for the Paducah GDP TBDs with isotopic ratios. The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated.

8. For those cases that have a final decision to deny with verified employment at the Paducah GDP, and where a dose reconstruction was performed prior to November 7, 2006 (as determined by the “Calculations Performed by” date found on the NIOSH Report of Dose Reconstruction under the Energy Employees Occupational Illness Compensation Program Act) and resulted in a less than 50% POC, the responsible District Director should issue a Director’s Order vacating the final decision and reopening the claim. The Director’s Order should state that the case is being reopened as a result of the change in scientific methodology by which the dose reconstruction is performed by NIOSH, and that a new dose reconstruction is necessary based on guidance provided in OCAS-PER-013. A sample Director’s Order is included as **Attachment 3**. The District Director should code the case as “MN” (NO Initiates Review for Reopening) with a status effective date as the effective date of this bulletin.

Upon reopening the claim, the District Director should code the case as “MD” (Claim Reopened – File Returned to DO) to reflect that the case has been reopened and is in the district office’s jurisdiction. (The “MZ” status code is not necessary.) The status effective date of the “MD” code is the date of the Director’s Order.

Please note that while the “MD” code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been in this specific circumstance.

9. If a claimant requests a reopening of his/her claim as a result of the OCAS-PER-013, the case file must be evaluated to determine whether or not the claim warrants a reopening. Simply identifying OCAS-PER-013 is not considered new evidence and is not sufficient to warrant a reopening. A reopening should be granted only if the evidence of file supports verified employment at the

Paducah GDP and the dose reconstruction was performed prior to November 7, 2006, and resulted in a less than 50% POC. If these requirements are met, the District Director should issue a Director's Order reopening the claim following the procedures as outlined in this Bulletin.

Upon receipt of the claimant's request for reopening, the District Director should code the case as "MC" (Claimant Requests Reopening). The status effective date is the postmark date, if available, or the date the request is received in the DO or FAB, whichever is earlier.

For all claimant requests for reopening that do not meet the criteria for reopening, the District Director should prepare a memorandum to the Director of DEEOIC and forward the case file to National Office for review.

10. When reviewing cases under this Bulletin, CEs must keep in mind other changes that might affect the cases and take the action that is appropriate under the circumstances. For example, if a case should be reopened and accepted under a Special Exposure Cohort class, the CE should take the action that will result in the most expedient positive outcome.

11. A period of 120 calendar days, effective with the receipt of the case listing, is granted for the district office/CE2 Unit to return case files affected by OCAS-PEP-013 to NIOSH for a new dose reconstruction, issue a Director's Order to reopen the case and refer the case to NIOSH for a new dose reconstruction, or for FAB to remand the case to the district office for a return to NIOSH.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

Distribution List No. 1: All DEEOIC Employees

Distribution List No. 7: Resource Centers

### **07-29 NIOSH's Program Evaluation Report for the Mallinckrodt and Blockson Chemical Company's Technical Basis Document (TBD) Revision.**

EEOICPA BULLETIN NO.07-29

Issue Date: September 20, 2007

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Effective Date: July 31, 2007

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Expiration Date: September 20, 2008

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Subject: NIOSH's Program Evaluation Report for the Mallinckrodt and Blockson Chemical Company's Technical Basis Document (TBD) Revision.

Background: On July 31, 2007, the National Institute for Occupational Safety and Health (NIOSH) released OCAS-PER-015, entitled "Mallinckrodt TBD Revision" and OCAS-PER-020, entitled "Blockson TBD Revision." The Program Evaluation Reports (PERs) ([Attachment 1](#)) for Mallinckrodt and Blockson indicate that the revisions to the TBDs change the dose reconstruction

methodology by which dose reconstructions are performed. It is NIOSH's assessment that the "magnitude of the effect on individual dose estimates will vary from claim to claim" and that it is not possible to determine the effect on the Probability of Causation (POC) without a new dose reconstruction.

In separate letters to the Division of Energy Employees Occupational Illness Compensation (DEEOIC) dated July 31, 2007, NIOSH requested the return of all cases with previously completed dose reconstructions for the Mallinckrodt and Blockson Chemical Company that resulted in a POC below 50%.

This bulletin provides guidance on processing those cases that are potentially affected by the release of OCAS-PER-015 and OCAS-PER-020 where employment is verified at the Mallinckrodt Chemical Co., Destrehan Street Plant (including the St. Louis Airport Storage Site) and/or the Blockson Chemical Company and where a dose reconstruction was performed prior to July 31, 2007 and resulted in a less than 50% POC.

References: NIOSH document, OCAS-PER-015, "Mallinckrodt TBD Revision," approved on July 31, 2007; OCAS-PER-020, "Blockson TBD Revision," approved on July 31, 2007.

Purpose: To provide procedures for processing claims affected by NIOSH's OCAS-PER-015 and OCAS-PER-020.

Applicability: All staff.

Actions:

1. On June 14, 2007, NIOSH revised the Technical Basis Document (TBD) for the Mallinckrodt Chemical Co., Destrehan Street Plant (which also includes the St. Louis Airport Storage Site) to enable the reconstruction of doses from available monitoring and coworker data for the period of 1949 – 1962; to change the method for assigning uranium, radium and thorium coworker intakes and radon exposures; and to address "unmonitored raffinate exposure" for the period of 1948–1958. In addition, on June 20, 2007, NIOSH revised the TBD for the Blockson Chemical Company by revising the internal and external dose modeling and adding site information and radiological data discussion. Because changes to a TBD change the underlying scientific methodology by which dose reconstructions are performed, NIOSH issued OCAS-PER-015, entitled "Mallinckrodt TBD Revision" and OCAS-PER-020, entitled "Blockson TBD Revision" effective July 31, 2007. Since these changes affect the outcome of the claim, the previous dose reconstructions for claims from these sites are no longer valid. As a result, certain claims need to be returned to NIOSH for a new radiation dose reconstruction.

The release of OCAS-PER-015 affects those cases with verified employment at the Mallinckrodt Chemical Co., Destrehan Street Plant and/or the St. Louis Airport Storage Site where the dose reconstruction was performed prior to July 31, 2007, and resulted in a less than 50% POC. Please note that OCAS-PER-015 does not pertain to the Mallinckrodt Weldon Springs Plant.

The release of OCAS-PER-020 affects those cases with verified employment at the Blockson Chemical Company where the dose reconstruction was performed prior to July 31, 2007, and resulted in a less than 50% POC.

No action is required on cases with a final decision that was issued based on a dose reconstruction if the "Calculations Performed by" date found on the NIOSH Report of Dose Reconstruction under the Energy Employees Occupational Illness Compensation Program Act is after July 31, 2007.

2. A comprehensive list of cases will be distributed to the appropriate district offices under separate cover.

3. For those cases currently in posture for a recommended decision with employment identified at the Mallinckrodt Chemical Co. (Destrehan Street Plant and/or the St. Louis Airport Storage Site) and/or the Blockson Chemical Company, where a dose reconstruction was performed on or prior to

July 31, 2007 (as determined by the “Calculations Performed by” date found on NIOSH’s Report of Dose Reconstruction under the Energy Employees Occupational Illness Compensation Program Act) and resulted in a less than 50% POC, the district office/CE2 Unit is to return those cases to NIOSH for a new dose reconstruction.

4. When referring these cases to NIOSH for a new dose reconstruction, a request to the National Office Health Physicist is not required. Instead, the Claims Examiner (CE) should complete an amended NIOSH Referral Summary Document (ANRSD) and forward the ANRSD to the Public Health Advisor (PHA) assigned to the district office at NIOSH. The ANRSD should include the following statement in the “DOL Information” section, “Rework request due to the release of **[OCAS-PER-015/OCAS-PER-020]** and any other applicable modifications.” The CE should also:

a. Send a letter to the claimant explaining that the case has been returned to NIOSH for a new dose reconstruction as a result of a change in the dose reconstruction methodology. A sample letter to the claimant is included as [Attachment 2](#).

b. Send a copy of this letter to the PHA at NIOSH assigned to the DO with the weekly DO submissions to NIOSH. The dates on the ANRSD and the letter to the claimant must both be the same, since this will be the date used for the status code entry into ECMS. The CE should code the case as “NI” (Sent to NIOSH) and select the “PEP” (Rework based on Program Evaluation Plan) reason code.

(Note: Since this is considered a new dose reconstruction, the CE should not change the existing NR/DR status code to NR/RW as typically done for rework cases. Furthermore, if a POC value is already entered into ECMS, the CE should not delete the POC. The new POC will simply be updated once it is calculated.)

Upon receipt of the revised dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE should code the case as “NR” (Received from NIOSH) and select the “DR” (Dose Reconstruction Received-POC) reason code. The status effective date will be the date the dose reconstruction is date stamped into the district office. The POC should be updated in ECMS based on the new dose reconstruction.

5. For cases currently pending a final decision at the FAB, the Hearing Representative/CE is to identify those cases with verified employment at the Mallinckrodt Chemical Co. (Destrehan Street Plant and/or the St. Louis Airport Storage Site) and/or the Blockson Chemical Company that have a recommended decision to deny based on a less than 50% POC. If the dose reconstruction was performed on or prior to July 31, 2007, the recommended decision should be remanded to the district office in the usual manner. The Remand Order should direct the district office to refer the case back to NIOSH for a new dose reconstruction as a result of the release of OCAS-PER-015 or OCAS-PER-020, as appropriate.

The CE should code the case as “F7” (FAB Remand) with a “F7J” (Dose Reconstruction needs to be Reworked) reason code. The status effective date will be the date of the FAB remand.

6. The following statement should be included in the Remand Order regarding the return of the case to NIOSH for a rework of the radiation dose reconstruction.

On July 31, 2007, NIOSH issued **[OCAS-PER-015, entitled “Mallinckrodt TBD Revision” or OCAS-PER-020, entitled “Blockson TBD Revision.”]** The changes outlined in **[OCAS-PER-015/OCAS-PER-020]** for the **[Mallinckrodt or Blockson]** Chemical Company not only affect the underlying scientific methodology by which the dose reconstruction was performed, but could potentially affect the outcome of a claim.

The DEEOIC is obligated to ensure that the application of the dose reconstruction methodology is administered in a fair and consistent manner. Given the revision to the underlying scientific assumptions by which the dose reconstruction was performed by NIOSH, and the release of **[OCAS-PER-015 or OCAS-PER-020]**, the prior dose reconstruction/POC calculation on your claim

is now invalid. While the modification to the dose reconstruction methodology may not impact the outcome of your claim, it is necessary for the claim to undergo a new dose reconstruction by NIOSH.

7. In the exercise of the Director's discretion over the reopening process, the Director is delegating limited authority to the District Director to sign Director's Orders for reopening. This delegated authority is limited to reopenings for those cases that are affected by the PERs established for the Mallinckrodt and Blockson Chemical Company TBD revision. The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated.

8. For those cases that have a final decision to deny with verified employment at the Mallinckrodt Chemical Co. (Destrehan Street Plant and/or St. Louis Airport Storage Site) and/or Blockson Chemical Company, and where a dose reconstruction was performed prior to July 31, 2007 and resulted in a less than 50% POC, the responsible District Director should issue a Director's Order vacating the final decision and reopening the claim. The Director's Order should state that the case is being reopened as a result of the change in scientific methodology by which the dose reconstruction is performed by NIOSH, and that a rework of the dose reconstruction is necessary based on guidance provided in OCAS-PER-015 or OCAS-PER-020, as appropriate. A sample Director's Order is included as [Attachment 3](#). The District Director should code the case as "MN" (NO Initiates Review for Reopening) with a status effective date as the effective date of this bulletin.

Upon reopening the claim, the District Director should code the case as "MD" (Claim Reopened – File Returned to DO) to reflect that the case has been reopened and is in the district office's jurisdiction. (The "MZ" status code is not necessary.) The status effective date of the "MD" code is the date of the Director's Order.

Please note that while the "MD" code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been in this specific circumstance.

10. If a claimant requests a reopening of his/her claim as a result of OCAS-PER-015 or OCAS-PER-020, the case file must be evaluated to determine whether or not the claim warrants a reopening. Simply identifying a PER is not considered new evidence and is not sufficient to warrant a reopening. A reopening should be granted only if the evidence of file supports verified employment at the Mallinckrodt Chemical Co. (Destrehan Street Plant and/or St. Louis Airport Storage Site) and/or Blockson Chemical Company and the dose reconstruction was performed prior to July 31, 2007, and resulted in a less than 50% POC. If these requirements are met, the District Director should issue a Director's Order reopening the claim following the procedures as outlined in this Bulletin.

Upon receipt of the claimant's request for reopening, the District Director should code the case as "MC" (Claimant Requests Reopening). The status effective date is the postmark date, if available, or the date the request is received in the DO or FAB, whichever is earlier.

For all claimant requests for reopening that do not meet the criteria for reopening, the District Director should prepare a memorandum to the Director of DEEOIC and forward the case file to National Office for review.

11. A period of 120 calendar days, effective with the receipt of the case listing, is granted for the district office/CE2 Unit to return case files affected by OCAS-PER-015 or OCAS-PER-020 to NIOSH for a new dose reconstruction, issue a Director's Order to reopen the case and refer the case to NIOSH for a new dose reconstruction, and for FAB to remand the case to the district office for a return to NIOSH.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

Distribution List No. 1: All DEEOIC Employees

Distribution List No. 7: Resource Center

## **2006 EEOICP Final Bulletins**

### **06-01 Issuing multiple payments to the same payee in ECMS E**

EEOICPA BULLETIN NO. 06-01

Issue Date: October 28, 2005

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Effective Date: October 12, 2005

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Expiration Date: October 12, 2006

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**Subject:** Issuing multiple payments to the same payee in ECMS E.

**Background:** Under Part E, claimants can receive compensation from three possible areas: lump sum compensation (specifically awarded to a survivor if the employee's covered illness was a significant factor in aggravating, causing, or contributing to the employee's death); wage loss; and impairment. On August 26, 2005, an update to ECMS was released. That release allowed for the total Acceptance of Payment (AOP) amount to be broken down into three different fields: "Wage Loss Alloc," "Impairment Alloc," and "Lump Sum Alloc" to allow ECMS to accurately reflect the allocation of the payments awarded in the corresponding final decision.

Cases may require multiple decisions to address the different types of compensation awarded under Part E. Multiple decisions may require issuance of multiple payments to the same payee. Until now, ECMS did not have the capability to allow the district offices to issue multiple payments to the same payee. All cases in which more than one monetary award was made under Part E had to be processed in the National Office. With the latest release of ECMS, the district offices will now have the capabilities to create, certify, verify, and authorize multiple payments to the same payee in ECMS E. While the payment processing procedures are virtually unchanged, there have been some modifications to ECMS E. This bulletin provides written guidance on the procedures that are to be followed regarding issuing multiple payments to the same payee in ECMS E. Only some ECMS screens have changed slightly, which this bulletin addresses. Previous guidance regarding the EN-20, payment transaction forms, verifying account information, etc. still stands.

**Reference:** ECMS Release Notes (October 2005), EEOICPA Bulletin No. 02-13

**Purpose:** To provide *ECMS procedures* for processing cases in which multiple payments are issued to the same claimant.

**Applicability:** All Staff

**Actions:**

1. When the Final Adjudication Branch (FAB) issues a final decision awarding compensation under

Part E, the FAB Claims Examiner (CE) or Hearing Representative (HR) must complete the Acceptance of Payment (AOP) information on the payee screen in ECMS E. The AOP information consists of the AOP sent date, which is the date the EN-20 is sent out, and the AOP allocation amounts. The AOP allocation amounts coincide with the final decision that is being issued. These amounts include lump sum compensation, wage loss, and impairment. The default amount for these blank fields is \$0.00. Therefore, if no decision is made or benefits are denied in one of the three areas *in that decision*, no input is needed for that field. How the AOP information is access has changed slightly and is outlined below.

2. To add new AOP information for a payee, the FAB CE/HR must go to the payee screen in ECMS E, click on any field in the AOP section, and click "Insert." This will access the AOP information screen where the FAB CE/HR has access to the AOP sent date and allocation amounts (impairment, wage loss, and lump sum). The FAB CE/HR accurately completes these fields to coincide with the final decision. Once the allocation amounts are entered, ECMS automatically totals the allocations and populates the (total) AOP amount. The AOP amount cannot exceed \$250,000 in ECMS E. The AOP amount field should match the amount on the EN-20, which reflects the total amount awarded under that particular final decision. For example, a final decision awards a widow \$125,000 because the employee's lung cancer was a significant factor in aggravating, causing, or contributing to the employee's death. She also receives \$25,000 for his wage loss under the same decision. The EN-20 would reflect a payment amount of \$150,000. The AOP screen would show "\$125,000.00" in the lump sum compensation field, "\$25,000.00" in the wage loss field, and no amount paid in the impairment field. ECMS will total the amounts in the allocation fields and show "\$150,000.00" in the AOP amount field, which is the same amount on the EN-20.

3. If subsequent decisions are issued awarding compensation, such as additional wage loss, a new AOP record will be created following the process discussed above. This will create a new/separate AOP record that reflects the corresponding final decision. All of the AOP records are retained and accessible by accessing the payee screen in ECMS, highlighting the associated AOP record and pressing enter, or double-clicking. While the AOP amount on each individual screen shows the total amount on that particular payment/decision, the system will total all of the AOP amounts on the various AOP screens to ensure their totals do not exceed \$250,000. ECMS will not allow input of AOP amounts in ECMS E that exceed \$250,000.

4. When the completed EN-20 is received in the district office, it is routed to the CE if payment is to be made via paper check or routed to the payee change assistant (PCA) if payment is to be made via electronic funds transfer (EFT). The routing process has not changed. However, the payee screen, utilized by both has changed. The EFT and address information have been put onto two separate tabs. For an EFT, the PCA accesses the EFT tab on the payee screen to enter the EFT data. The EFT information includes the bank name, bank address, routing number, account number, account name, account type, contact name, and contact phone number. The account number, routing number, account name, and account type is verified with the bank whenever possible and documented in the case file.

5. When the CE receives the EN-20 for processing, he/she must first enter the AOP received date. As previously mentioned, the AOP information section has changed. It is now on a table at the bottom of the payee screen. Various AOP records can be viewed/accessed from the table. To input the AOP received date, the CE accesses the payee screen in ECMS, highlighting the associated AOP record, which will have a blank AOP received date, and pressing enter or double-clicking. This will access the AOP information. The CE can only add/edit the AOP received date. He/she cannot add/edit the AOP sent date or AOP amount. He/she inputs the date the EN-20 was date-stamped as received in the office. Once the CE saves the AOP received date, he/she closes out of the case in ECMS.

6. The CE completes the Payment Transaction Form (PTF) in line with current procedures.

7. After the AOP received date has been entered and the PTF has been accurately completed, the

CE is ready to create the compensation transaction in ECMS E. The CE selects “Compensation” from the main menu at the top of the screen, followed by “Create Compensation Transaction” from the corresponding drop down menu. The CE then enters the employee and payee SSN and pushes the “Search” button. The employee and payee information should populate the “Add Payment Transaction” screen.

8. At the bottom of the compensation creation screen, the AOP sent and received dates will be viewable for any payment that is waiting to be created. The CE highlights the associated AOP record and selects “Create Payment.” If a previously voided payment that is eligible for re-issue exists (e.g. check was never received, EFT rejected because of an erroneous routing number), the “Create Payment” button will change to a “Re-issue Payment” button that can be selected, when the corresponding AOP record is highlighted. As always, if information needs corrected on the payee screen, such as routing number or street address, the PCA needs to complete this prior to the payment being re-issued.

9. When the “Create Payment” (or “Re-issue Payment”) button is pressed, the system will force the CE to confirm the allocation amounts by entering the amounts for impairment, wage loss, and lump sum and pressing “OK.” If the allocation amounts do not match the amounts entered by the FAB CE/HR, an error message will appear stating “The allocation amounts entered do not match the AOP allocation.” If this occurs, the CE checks the amounts he/she is entering for accuracy. If it is determined to be a FAB error, the case file is returned to the FAB so the allocation amounts can be corrected. A transfer sheet is created that contains a note explaining the needed AOP allocation correction. Correction of this information by the FAB CE/HR is to be considered a priority task.

ECMS allows the FAB CE/HR to change the allocation amounts in the impairment, wage loss, and lump sum fields at any time prior to the creation of the associated payment. After the payment has been created, the FAB CE/HR has the ability to redistribute the allocation amounts, as long as the total AOP amount for the associated payment does not change. After the requested corrections are made, the case file is immediately transferred back to the district office CE to complete the payment.

10. If no errors occur and the AOP allocation amounts are input, this takes the CE to the compensation screen, which is unchanged. The process is also unchanged. The CE enters the routing number, account number, account type, and payment amount for an EFT on the compensation screen and “Saves” the record. For a paper check, the CE enters the payment amount and changes the address (if the check is going to a payment only address) on the compensation screen and “Saves” the record. The CE then completes the appropriate portion of the certification section on the PTF and forwards the case file to the “certifier”, which is a senior or supervisory claims examiner.

11. The process of certifying, verifying and authorizing payments for the Senior/Supervisory CEs, Fiscal Officers and District Directors, respectively has remained unchanged.

Disposition: Retain until incorporated in the Federal (EEOICPA)

Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims

Examiners, Technical Assistants, Customer Service

Representatives, Fiscal Officers, FAB District Managers,

Operation Chiefs, Hearing Representatives, District Office Mail

& File Sections

## **06-02 Director's Order-Delegation of Signature Authority**

EEOICPA BULLETIN NO.06-02

Issue Date: October 28, 2005

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Effective Date: October 26, 2005

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Expiration Date: October 26, 2006

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Subject: Director's Order-Delegation of Signature Authority

Background: Under 20 C.F.R. § 30.320, the Director of the Division of Energy Employees occupational Illness Compensation (DEEOIC) is granted the authority to reopen a claim and vacate a FAB decision at any time after the FAB has issued a final decision. The Director is granted sole discretion over the process by which a claim is reopened.

Under the current process, the Director will issue a signed Director's Order when a claim is reopened. The Director's Order is issued with instructions to either the District Office or FAB as to the future handling of the claim. In order to streamline the reopening process and in the exercise of the Director's discretion over the reopening process, the Director is delegating the authority to sign Director's Orders specific to certain routine re-openings to the Branch Chief for Policies, Regulations and Procedures (BPRP). This delegated authority is limited to re-openings based on residual radiation contamination outside of the contractual time periods and re-openings based on the submission of new and probative medical and/or employment evidence that was not considered previously. The Director is retaining sole signature authority for all other types of re-openings and all decisions on remands.

References: Energy Employees Occupational Illness Compensation Program Act (EEOICPA) of 2000, Final Rule 20 C.F.R. § 30.320 and Federal (EEOICPA) Procedure Manual Chapter 2-1400.

Purpose: To document the delegated authority granted to the Branch Chief for Policies, Regulations and Procedures to sign Director's Orders specific to certain routine reopenings.

Applicability: All staff.

Actions: The delegation of authority to sign Director's Orders for certain routine reopenings to the Branch Chief for Policies, Regulations and Procedures will not affect the current responsibilities and work flow for the District Office and FAB in the overall reopening process as described in Federal (EEOICPA) Procedure Manual Chapter 2-1400. In addition, regardless of who signed the Director's Order, the District Office and the FAB must strictly comply with the instructions in the Director's Order.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

**06-03 Processing Claims for Mallinckrodt Chemical Works, Destrehan Street Facility SEC Class, 1942 - 1948**

EEOICPA BULLETIN NO.06-03

Issue Date: November 8, 2005

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Effective Date: November 8, 2005

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Expiration Date: November 8, 2006

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**NOTE: This bulletin replaces Bulletin 05-03, Processing Claims for Mallinckrodt Chemical Works, Destrehan Street Facility SEC Class, 1942 - 1948. The meaning of the term “Uranium Division” is clarified. It also corrects the description of the role the Department of Health and Human Services has in Special Exposure Cohort designations.**

Subject: Processing Claims for Mallinckrodt Chemical Works, Destrehan Street Facility SEC Class, 1942 - 1948

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of a class of workers from the Uranium Division of Mallinckrodt Chemical Works, Destrehan Street Facility, St. Louis, Missouri, to have the Mallinckrodt Chemical Works added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and decided it qualified for evaluation under 42 C.F.R. Part § 83.13. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On March 14, 2005, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add the Mallinckrodt Chemical Works as a SEC class. The Director of NIOSH also submitted a proposed decision on this petition.

On April 11, 2005, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress:

Employees of the Department of Energy (DOE) or DOE contractors or subcontractors employed by the Uranium Division of Mallinckrodt Chemical Works, Destrehan Street Facility, during the period from 1942 through 1948 and who were employed for a number of work days aggregating at least 250 work days either solely under this employment or in combination with work days within the parameters (excluding aggregate work day requirements) established for other classes of employees included in the SEC.

In their evaluation, NIOSH determined that, “... it lacks access to sufficient information to either estimate the maximum radiation dose for every type of cancer for which radiation doses are reconstructed that could have been incurred under plausible circumstances by any member of the class, or to estimate the radiation doses of members of the class more precisely than a maximum dose estimate.” In other words, NIOSH has indicated that it is not feasible to undertake dose reconstructions for the class of employees employed at the Mallinckrodt Chemical Works for the period from 1942 through 1948. In view of HHS’ explanation of the rationale for designating this class of employees as members of the SEC, HHS has determined that NIOSH cannot perform dose reconstructions for any cases, i.e., cases with either specified or non-specified cancers.

References: Energy Employees Occupational Illness Compensation Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; and the April 11, 2005 report to Congress from the

Secretary of HHS, entitled, “HHS Designation of Additional Members of the Special Exposure Cohort, Designating a Class of Employees from Uranium Division of Mallinckrodt Chemical Works, Destrehan Street Facility, St. Louis, Missouri.”

Purpose: To provide procedures for processing claims for the new SEC class at the Mallinckrodt Chemical Works, Destrehan Street Facility. The new SEC class applies to DOE employees, DOE contractors or subcontractors employed by Mallinckrodt Chemical, during the period from 1942 through 1948 and who were employed for a number of work days aggregating at least 250 work days either solely under this employment or in combination with work days within the parameters established for other classes of employees included in the SEC.

Applicability: All staff.

Actions:

1. The consideration of DOE employees, DOE contractors or subcontractors employed by the Mallinckrodt Chemical Works, Destrehan Street Facility, during the period from 1942 through 1948 encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted. The DEEOIC has identified all Part B claims that were denied or are at NIOSH for dose reconstruction and submitted a list of cases to the appropriate district office. NIOSH will send a CD for each case with all information generated to date, e.g., CATI report, correspondence, and dose information. Also, included on the CD in the Correspondence Folder should be a copy of the NIOSH letter sent to each claimant informing them of the new SEC class and that their case is being returned to DOL for adjudication. The claims examiner (CE) must print out a hard copy of the NIOSH letter for inclusion in the case file.
2. When a case on the list is returned from NIOSH, a previously denied claim is reopened, a claim is remanded by FAB, or a new claim for compensation is submitted, the CE reviews the documentation submitted with the EE-1 or EE-2 and EE-3 forms. Development of medical and employment information should proceed in the usual manner. If the evidence is unclear as to whether employment falls within the new SEC class time period, the claimant should be asked to provide clarification. The CE must review any documentation submitted by the claimant and undertake any additional development necessary to clarify the individual’s medical and employment status.
3. Based on this review, the CE determines whether the claimant has a specified cancer, as listed in DEEOIC Procedure Manual Chapter 2-600.5. If the employee has a specified cancer, proceed to the next step. If the employee does not have a specified cancer, proceed to step #6.
4. The CE must verify that the employee worked for the DOE or a DOE contractor or subcontractor employed by the Uranium Division of Mallinckrodt Chemical Works at the Destrehan Street facility. The term “Uranium Division” includes work performed at any building, structure, or premise that is owned by the Mallinckrodt Chemical Company located within the area bounded in part by North Broadway, Angelroot Street, and Salisbury Street. If the employee meets this criterion, the CE must determine whether the worker was employed at least 250 work days within the 1942 through 1948 period listed for the SEC class for the Mallinckrodt Chemical Works. In determining whether the employment history meets the 250 work day requirement, the CE must consider employment either solely at Mallinckrodt Chemical Works Destrehan Street facility or in combination with work days for other SEC classes, e.g., the three gaseous diffusion plants and the Iowa Army Ammunition Plant (March 1949 - 1974). If the employee does not meet any of the employment criteria, proceed to step #6.
5. Once the CE has determined that the person named in the claim has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE should proceed in the usual manner for a compensable claim and prepare a recommended decision.
6. As discussed earlier, HHS has determined that NIOSH cannot perform dose reconstructions for

any cases, i.e., cases with either specified or non-specified cancers. If the CE has determined that the person named in the claim has a non-specified cancer or does not meet the employment criteria of the SEC class, the CE should proceed in the usual manner for a denied claim and prepare a recommended decision. However, HHS is considering the SEC petition for the period of 1949 to 1957 for the Mallinckrodt Chemical Works. If any employment is present for this period, the CE must delay the decision to deny pending the HHS' decision.

7. If the claim includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s) and any secondary cancers that are metastases of the specified cancer(s). Again, this is based on the HHS determination that NIOSH cannot perform dose reconstructions for any cases.

8. If a case on the list meets the SEC class criteria, but has a denied final decision, the CE must submit the case for reopening through the appropriate process in the district office. The case must be forwarded to the DEEOIC Director to reopen the claim per 20 C.F.R. § 30.320.

9. FAB personnel must be vigilant for any cases from the Mallinckrodt Chemical Works at the Destrehan Street facility that have a recommended decision to deny. If the employee worked at the Mallinckrodt Chemical Works during the period from 1942 through 1948, has specified cancer, and meets the 250 work day requirement, the final decision must be reversed to accept in the usual manner.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

**06-04 Processing Claims for SEC Classes for Y-12 Plant, 1943 – 1947, and IAAP Radiographers, 1948 - 1949**

EEOICPA BULLETIN NO.06-04

Issue Date: November 21, 2005

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Effective Date: November 21, 2005

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Expiration Date: November 21, 2006

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Subject: Processing Claims for SEC Classes for Y-12 Plant, 1943 – 1947, and IAAP Radiographers, 1948 - 1949

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, petitions were filed on behalf of classes of workers from the Y-12 Plant in Oak Ridge, Tennessee, and the Iowa Army Ammunition Plant (IAAP), in Burlington, Iowa, to have these facilities added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petitions and decided that both qualified for evaluation under 42 C.F.R. Part § 83.13. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On July 26, 2005, the Board submitted recommendations to the Secretary of Health and Human

Services (HHS) to add the Y-12 Plant for the period 1943 to 1947 and the IAAP radiographers for the period 1948 to 1949 as new SEC classes. The Director of NIOSH also submitted proposed decisions on these petitions.

On August 25, 2005, the Secretary of HHS designated the following classes for addition to the SEC in two separate reports to Congress.

Y-12 Plant, 1943 - 1947:

Department of Energy (DOE) employees or DOE contractor or subcontractor employees who worked in uranium enrichment operations or other radiological activities at the Y-12 facility in Oak Ridge, Tennessee from March 1943 through December 1947 and who were employed for a number of work days aggregating at least 250 work days, either solely under this employment or in combination with work days within the parameters (excluding aggregate work day requirements) established for other classes of employees included in the SEC.

In its evaluation, NIOSH determined that, "... it lacks access to sufficient information to either estimate the maximum radiation dose for every type of cancer for which radiation doses are reconstructed that could have been incurred under plausible circumstances by any member of the class, or to estimate the radiation doses of members of the class more precisely than a maximum dose estimate with sufficient accuracy."

Also, NIOSH provided some information as to what constituted other radiological activities during this time period. These activities included the development of beneficial radiological isotopes, development and testing of a neutron monitor, maintenance and use of a large Radium-226 sealed source, and thorium extraction.

In that report, the Secretary of Health and Human Services determined that it is not feasible to undertake dose reconstructions for the class of employees employed at the Y-12 Plant from March 1943 through December 1947. However, NIOSH has determined that it is possible to estimate the exposure that resulted from occupational medical X-ray doses alone to complete sufficiently accurate dose reconstruction for this class. The DOL letter to NIOSH is included as Attachment 1.

IAAP Radiographers, 1948 - 1949:

Department of Energy (DOE) employees or DOE contractor or subcontractor employees who worked as radiographers from May 1948 to March 1949 in support of Line 1 operations at the Iowa Army Ammunition Plant and who were employed for a number of work days aggregating at least 250 work days, occurring under this employment or in combination with work days within the parameters (excluding aggregate work day requirements) established for other classes of employees included in the SEC.

In its evaluation, NIOSH determined that, "... it lacks access to sufficient information to either estimate the maximum radiation dose for every type of cancer for which radiation doses are reconstructed that could have been incurred under plausible circumstances by any member of the class, or to estimate the radiation doses of members of the class more precisely than a maximum dose estimate with sufficient accuracy."

In that report, the Secretary of Health and Human Services determined that it is not feasible to undertake dose reconstructions for radiographers who supported Line 1 operations at the Iowa Army Ammunition Plant from May 1948 through March 1949. The DOL letter to NIOSH is included as Attachment 1.

The SEC designation for both of these classes became effective as of September 24, 2005, which was 30 days after the Secretary of the Department of HHS designated the class for addition to the SEC in a report to Congress. While Congress has the authority to reject the recommendation within the 30-day time frame, no action was taken to contradict the addition of the Y-12 Plant and the IAAP radiographers as new SEC classes.

References: Energy Employees Occupational Illness Compensation Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the August 25, 2005 report to Congress from the Secretary of HHS, entitled, “HHS Designation of Additional Members of the Special Exposure Cohort, Designating a Class of Employees from Y-12 Plant, Oak Ridge, Tennessee;” and the August 25, 2005 report to Congress from the Secretary of HHS, entitled, “HHS Designation of Additional Members of the Special Exposure Cohort, Designating a Class of Employees from Iowa Army Ammunition Plant (IAAP), Burlington, Iowa.”

Purpose: To provide procedures for processing claims for the new SEC classes for the Y-12 Plant and IAAP radiographers. The new SEC classes apply to DOE employees, DOE contractors or subcontractors employed at each of these facilities and who were employed for a number of work days aggregating at least 250 work days either solely under this employment or in combination with work days within the parameters established for other classes of employees included in the SEC. For the Y-12 Plant, workers must have been involved in uranium enrichment operations or other radiological activities during the period from March 1943 through December 1947. For the IAAP radiographers, workers must have supported Line 1 operations from May 1948 to March 1949.

Applicability: All staff.

Actions:

1. These new additions to the SEC affect the consideration of DOE employees and DOE contractors or subcontractors employed at the Y-12 Plant from March 1943 through December 1947 and at IAAP (radiographers) from May 1948 to March 1949. It encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.

2. The DEEOIC has identified all Part B claims that were denied or are at NIOSH for dose reconstruction and submitted lists of cases to the appropriate district offices. All Y-12 Plant and IAAP radiographer cases that were with NIOSH for dose reconstruction as of September 24, 2005 must be coded as “NW” in ECMS.

NIOSH will provide two lists of employees at the Y-12 Plant during the SEC class period. One list will cover employees with specified cancers and the other list will address employees with non-specified cancers. NIOSH will return analysis records for all cases to the Jacksonville District Office along with a CD for each case. Since there are only a few IAAP radiographer cases, these cases will be returned to the Denver District Office along with a CD for each case. The CD contains all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also, included on the CD in the Correspondence Folder should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to a claimant is included as Attachments 2 and 3 for the Y-12 Plant and IAAP radiographers, respectively. The claims examiner (CE) must print out a hard copy of the NIOSH letter for inclusion in the case file.

3. For cases on both of NIOSH’s Y-12 Plant lists and the IAAP radiographer list, the CE must verify that the employee worked for the DOE or a DOE contractor or subcontractor employed by the Y-12 Plant or IAAP. For the Y-12 Plant, the worker must have been involved in uranium enrichment operations or other radiological activities. For the IAAP radiographers, they must have supported Line 1 operations. For cases that had been referred to NIOSH prior to the date these SEC classes became effective, September 24, 2005, the CE should assume that the employee was involved in the specified activities, unless specific evidence exists to the contrary. For cases received by DOL after September 24, 2005, when the EE-5 Form is sent to DOE the CE must specifically ask if the employee was involved in uranium enrichment operations or other radiological activities at the Y-12 Plant or radiography in support of Line 1 operations at IAAP.

HHS defined “other radiological activities” at the Y-12 Plant as including the development of beneficial radiological isotopes, development and testing of a neutron monitor, maintenance and use

of a large Radium 226 sealed source, and thorium extraction. If the returned EE-5 Form does not specifically affirm that the employee was involved in uranium enrichment operations or other radiological activities at the Y-12 Plant or radiography in support of Line 1 operations at IAAP, the CE must ask the employee or survivor(s) to submit appropriate evidence, including an affidavit attesting to the employee's involvement in the specified activities. Lack of positive affirmation by DOE that an employee was involved in the specified activities is not sufficient basis to deny a claim. If a determination cannot be made, the claimant is to be given the benefit of the doubt.

4. Based on this review, the CE then determines whether the claimant has a specified cancer, as listed in DEEOIC Procedure Manual Chapter 2-600.5. If the employee has a specified cancer, proceed to the next step. If the employee does not have a specified cancer, proceed to Action #7.

5. If the employee meets this criterion, the CE must determine that the worker was employed at least 250 work days within the listed periods for these two SEC classes. For the Y-12 Plant that period is March 1943 through December 1947. For IAAP radiographers that period is May 1948 to March 1949. Please note that for the IAAP radiographers, the period most likely does not meet the 250 work day criterion. Also, remember that an SEC class for IAAP exists for March 1949 to 1974. In determining whether the employment history meets the 250 work day requirement, the CE must consider employment either solely at the Y-12 Plant or IAAP or in combination with work days for other SEC classes, e.g., the three gaseous diffusion plants and the Mallinckrodt Chemical Works in St. Louis (1942 - 1948). If the employee does not meet any of the employment criteria, proceed to Action #7.

6. Once the CE has determined that the person named in the claim has a diagnosed specified cancer and meets the employment criteria of the SEC classes, the CE should proceed in the usual manner for a compensable SEC claim and prepare a recommended decision. Please note that if, during the Part E claim review process for Y-12 Plant or IAAP cases, information is found that specifically indicates that the employee was not involved in the specified activities, the district office should investigate further and take appropriate action, as necessary, including a determination if an overpayment was made.

7. As discussed earlier for the Y-12 Plant, the Secretary of Health and Human Services determined that it is not feasible for NIOSH to perform dose reconstructions for the class of employees involved in uranium enrichment operations or other radiological activities at the Y-12 Plant for the period from March 1943 through December 1947 with one exception. NIOSH has determined that it is possible to estimate the exposure that resulted from occupational medical X-ray doses alone. Accordingly, for cases with a non-specified cancer and/or that do not meet the employment criteria of the SEC class, the CE must refer these cases back to NIOSH to perform dose reconstructions using only the exposure that resulted from occupational annual medical X-ray doses. The CE should code these cases as "NI".

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE should code the case as "NR," but should not delete the "NW" or "NI" code already present in ECMS.

As discussed earlier for the IAAP radiographers, HHS has determined that NIOSH cannot perform dose reconstructions for any cases. If the CE has determined that the person named in the claim has a non-specified cancer or does not meet the employment criteria of the SEC class and have no other covered employment, the CE should proceed in the usual manner for a denied claim and prepare a recommended decision.

8. If the claim includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any secondary cancers that are metastases of the specified cancer(s), and any non-specified cancers that have a dose reconstruction that resulted in a probability of causation of 50 percent or greater.

9. If a case with a denied final decision now meets the SEC class criteria, the CE must submit the

case for reopening through the appropriate process in the district office. The case must be forwarded to the DEEOIC Director to reopen the claim per 20 C.F.R. Part § 30.320.

10. FAB personnel must be vigilant for any Y-12 Plant or IAAP radiographer cases that have a recommended decision to deny. If the employee worked at the Y-12 Plant or IAAP and was involved in specified activities for the specified periods, has a specified cancer, and meets the 250 work day requirement, the recommended decision must be reversed and the case remanded in the usual manner.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

[Attachment](#)

### **06-05 Processing Claims for Mallinckrodt Chemical Works, Destrehan Street Facility SEC Class, 1949 - 1957**

EEOICPA BULLETIN NO.06-05

Issue Date: December 27, 2005

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Effective Date: November 13, 2005

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Expiration Date: November 13, 2006

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Subject: Processing Claims for Mallinckrodt Chemical Works, Destrehan Street Facility SEC Class, 1949 - 1957

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of a class of workers from the Uranium Division of Mallinckrodt Chemical Works, Destrehan Street Facility, St. Louis, Missouri, to have those workers added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and decided it qualified for evaluation under 42 C.F.R. § 83.13. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health ("the Board"). On September 16, 2005, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add workers during the later years at the Mallinckrodt Chemical Works as a SEC class. The Director of NIOSH also submitted a proposed decision on this petition.

On October 14, 2005, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress:

Department of Energy (DOE) employees or DOE contractor or subcontractor employees who worked in the Uranium Division of the Destrehan Street Facility of Mallinckrodt Chemical Works from 1949 to 1957 and who were employed for a number of work days aggregating at least 250 work days, either solely under this employment or in combination with work days within the

parameters (excluding aggregate work day requirements) established for other classes of employees included in the SEC.

In their evaluation, NIOSH determined that "... there is insufficient information either to estimate the maximum radiation dose for every type of cancer for which radiation doses are reconstructed that could have been incurred under plausible circumstances by any member of the class, or to estimate the radiation doses of members of the class more precisely than a maximum dose estimate with sufficient accuracy."

The evaluation concludes, "It should be noted that the Board believes, and NIOSH concurs, that the available external dose monitoring information is adequate for the reconstruction of individual external exposures; where appropriate, individual external doses can be reconstructed for specific types of cancer (e.g., skin)."

The designation became effective on November 13, 2005, as provided for under 42 U.S.C § 7384(14)(C)

References: Energy Employees Occupational Illness Compensation Act of 2000, 42 U.S.C. § 7384 et seq.; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; and the October 14, 2005 report to Congress from the Secretary of HHS, entitled, "HHS Designation of Additional Members of the Special Exposure Cohort," provided the supporting rationale for designating a class of employees from the Uranium Division of the Mallinckrodt Chemical Works, Destrehan Street Facility, St. Louis, Missouri, for the years 1949 through 1957."

Purpose: To provide procedures for processing claims for the SEC class covering the later years at the Mallinckrodt Chemical Works, Destrehan Street Facility. The new SEC class applies to DOE employees, DOE contractor employees and subcontractor employees employed in the Uranium Division of the Destrehan Street Facility of Mallinckrodt Chemical Works during the period from 1949 through 1957 and who were employed for a number of work days aggregating at least 250 work days either solely under this employment or in combination with work days within the parameters established for other classes of employees included in the SEC.

Applicability: All staff.

Actions:

1. This new addition to the SEC affects the consideration of DOE employees and DOE contractor and subcontractor employees in the Uranium Division of the Mallinckrodt Chemical Works, Destrehan Street Facility, St. Louis, Missouri, for the years 1949 through 1957. It encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) is to produce pertinent reference lists identifying all Part B claims that were denied or at NIOSH for dose reconstruction and are not likely included in the new SEC class. These lists will be submitted to the appropriate district office(s) for processing in accordance with the instructions provided herein.
3. A formal request for data has also been submitted from the DEEOIC to NIOSH requesting two lists of case files where employment is claimed at the Mallinckrodt Chemical Works, Destrehan Street Facility, during the SEC class (Attachment 1). The request pertains to those employee case files pending a NIOSH dose reconstruction. One list will identify employee case files with at least one specified cancer claimed and the other list will address files with non-specified cancers.
4. NIOSH will return dose reconstruction analysis records for those cases with a specified cancer to the appropriate district office along with a CD for each case. The CD contains all of the NIOSH documentation generated to date, e.g., CATI report, correspondence, and dose information. Also, included on the CD in the Correspondence Folder should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her case is being returned to

DOL for adjudication. A copy of the NIOSH letter to a claimant is included as Attachment 2 for the Mallinckrodt Chemical Works, Destrehan Street Facility. The claims examiner (CE) must print out a hard copy of the NIOSH letter for inclusion in the case file. Employee case files returned from NIOSH to the district office for potential inclusion in the SEC class must be coded as "NW" in ECMS. The effective date for the code entry is November 13, 2005.

5. For any cases identified (either by NIOSH or DEEOIC) as having a potential for compensability based on the new SEC class, the responsible CE is to undertake appropriate action to ascertain whether the evidence of file meets the criteria delineated in the designation. The CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process. If the evidence is unclear as to whether the employment or medical documentation satisfies the SEC class requirements, the claimant should be asked to provide clarifying evidence.

6. After appropriate development has occurred, the CE is to ascertain whether the employee has a specified cancer, as listed in DEEOIC Procedure Manual Chapter 2-600.5. If the employee has a specified cancer, proceed to the next step. If the employee does not have a specified cancer, proceed to Action #9.

7. The CE must verify the employee worked for the DOE or a DOE contractor or subcontractor in the Uranium Division of Mallinckrodt Chemical Works at the Destrehan Street facility. The term "Uranium Division" includes work performed at any building, structure, or premise that is owned by the Mallinckrodt Chemical Company located within the area bounded in part by North Broadway, Angelroot Street, and Salisbury Street. If the employee meets this criterion, the CE must determine whether the worker was employed at least 250 work days within the 1949 through 1957 period listed for the SEC class for the Mallinckrodt Chemical Works. In determining whether the employment history meets the 250 work day requirement, the CE can consider employment either solely at Mallinckrodt Chemical Works Destrehan Street facility or in combination with work days for other SEC classes, e.g., the three gaseous diffusion plants and the Uranium Division of the Destrehan Street Facility of Mallinckrodt Chemical Works for 1942 through 1948. If the employee does not meet the employment criteria, proceed to Action #9.

8. Once the CE has determined that the person named in the claim has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE should proceed in the usual manner for a compensable SEC claim and prepare a recommended decision.

9. As discussed earlier, the Secretary of Health and Human Services determined that it is not feasible for NIOSH to perform dose reconstructions for employees who worked in the Uranium Division of the Destrehan Street Facility of Mallinckrodt Chemical Works from 1949 to 1957 with one exception. NIOSH has determined that the available external dose monitoring information is adequate for the reconstruction of individual external exposures, i.e., where appropriate, individual external doses can be reconstructed for specific types of cancer (e.g., skin).

For those cases NIOSH has identified as having a "non-specified" cancer and are already at NIOSH for dose reconstruction, NIOSH will retain the case for processing unless otherwise advised by the district office. As noted previously, the district office will receive a listing of all cases with non-specified cancer claims for Mallinckrodt Chemical Works. The District Office is to review the identified cases to ensure that there is no possibility of inclusion in the SEC class. Should the CE find a case that may qualify for the SEC class, an electronic notification should be made to the appropriate NIOSH point of contact to have the case returned to the district office. The "NW" code will be input for this type of case with an effective date of November 13, 2005.

10. For those cases that were identified by NIOSH as having a "specified cancer" and therefore returned to the district office, if it is determined that the case does not qualify for the SEC class, the CE notifies the appropriate point of contact at NIOSH via E-mail to proceed with the dose reconstruction. The E-mail should include a brief statement why the case should proceed with dose

reconstruction, e.g., insufficient latency period, does not meet the 250 work day requirement, or not a specified cancer. The ECMS status code "NI" will be input effective the date of E-mail requesting NIOSH to proceed with dose reconstruction. A hard copy printout of the E-mail is to be inserted in the case file.

11. For any claim that is not already at NIOSH effective November 13, 2005 and for which the CE determines a dose reconstruction is appropriate, the normal NIOSH referral process will apply.

12. Upon receipt of a dose reconstruction report on cases deemed by the district office to be excluded from the new SEC class, the CE proceeds in the usual manner and prepares a recommended decision. It should be noted that in any instance where a dose reconstruction is not possible based on the information available, NIOSH will so advise in their correspondence back to the district office. Upon receipt of either a dose reconstruction report or a notice that a dose reconstruction is not possible (on a confirmed non-SEC employee cases), the "NR" code is input into ECMS and the district office proceeds with the issuance of a recommended decision.

13. As noted previously, the district office is provided a listing of all denied claims that may now satisfy the criteria for inclusion in the SEC class. Upon review by the CE, if a case with a denied final decision now meets the SEC class criteria, the CE must submit the case for reopening through the appropriate process in the district office. The case must be forwarded to the DEEOIC Director to reopen the claim per 20 C.F.R. § 30.320.

14. FAB personnel must be vigilant for any Mallinckrodt Chemical Works cases that have a recommended decision to deny. If the employee worked at the Destrehan Street Facility of Mallinckrodt Chemical Works for the specified period, has a specified cancer, and meets the 250 work day requirement, the recommended decision must be remanded to the district office in the usual manner.

15. A period of 60 calendar days, effective the issuance date of this directive, is granted for case files affected by this SEC that are returned from NIOSH for evaluation by the DEEOIC are to either receive a recommended decision for inclusion in the SEC or referral back to NIOSH for dose reconstruction.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

[Attachment 1](#)

[Attachment 2](#)

## **06-06 Processing Claims for the Linde Ceramics Plant SEC Class, October 1, 1942 through October 31, 1947**

EEOICPA BULLETIN NO.06-06

Issue Date: April 4, 2006

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Effective Date: January 7, 2006

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Expiration Date: January 7, 2006

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**Subject:** Processing Claims for the Linde Ceramics Plant SEC Class, October 1, 1942 through October 31, 1947

**Background:** Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed to add a class of certain workers of the Linde Ceramics Plant in Niagara Falls, New York, to the Special Exposure Cohort (SEC). Linde Ceramics Plant is currently recognized as having been an Atomic Weapons Employer (AWE) from 1940 to 1953 with related residual radiation until 1995, and a Department of Energy facility from 1988 to 1992, as well as for purposes of remediation in 1996. The plant is also known as Tonawanda Laboratory; Linde Air; and Praxair.

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and decided it qualified for evaluation under 42 C.F.R. § 83.13. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On November 8, 2005, the Board submitted recommendations in a report to the Secretary of Health and Human Services (HHS) to add to the SEC employees who worked at the Linde Ceramics Plant during the time period October 1, 1942 to October 31, 1947.

On December 8, 2005, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress:

Atomic weapons employees who worked at the Linde Ceramics Plant from October 1, 1942 through October 31, 1947, and who were employed for a number of work days aggregating at least 250 work days, either solely under this employment or in combination with work days within the parameters (excluding aggregate work day requirements) established for other classes of employees included in the SEC.

A copy of the Secretary’s letter to Congress recommending this designation is included as Attachment 1. This designation became effective on January 7, 2006, in the absence of Congressional action as provided for under 42 U.S.C. 7384l(14)(C).

A report attached to the Secretary of HHS’s letter, entitled “HHS Designation of Additional Members of the Special Exposure Cohort,” provided the supporting rationale for designating a class of employees of the Linde Ceramics Plant in Niagara Falls, New York, from October 1, 1942 through October 31, 1947.

Section IV, “Designation Findings,” summarized NIOSH’s finding that “... there is insufficient information to estimate the maximum radiation dose for every type of cancer for which radiation doses are reconstructed that could have been incurred under plausible circumstances by any member of the class, or to estimate the radiation doses of members of the class more precisely than a maximum dose estimate.” The designation found that “Radiation survey and film badge data provide means for reconstructing external doses and it is possible to estimate the exposure that resulted from occupational medical x-rays.” It went on to find, however, that “Data from October 1942 to October 1947 is insufficient to support reconstruction of internal exposures and resulting doses. Urinalysis for internal dosimetry was implemented in November 1947. The air monitoring program, including task analysis with air concentrations measured in breathing zone, general area, and process area, began in 1947.”

Thus, the Secretary of Health and Human Services determined that it is not feasible to undertake dose reconstructions for individuals employed at the Linde Ceramics Plant from October 1, 1942 through October 31, 1947.

**References:** Energy Employees Occupational Illness Compensation Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; and the December 8, 2005 report to Congress from the

Secretary of HHS, entitled, “HHS Designation of Additional Members of the Special Exposure Cohort.”

Purpose: To provide procedures for processing claims for the SEC class atomic weapons employees who worked at the Linde Ceramics Plant from October 1, 1942 through October 31, 1947.

Applicability: All staff.

Actions:

1. This new addition to the SEC affects the consideration of all atomic weapons employees who worked at any location within the site boundaries of the Linde Ceramics Plant, Tonawanda, NY, during the period October 1, 1942 through October 31, 1947. In a letter to DOL, dated February 23, 2006, NIOSH clarified its interpretation of the SEC class to comprise all atomic weapons employees who worked at any location within the Linde Ceramics site boundaries during the designated time period. A copy of this letter is included as Attachment 2. For the purposes of processing claims, the term “Linde Ceramics Plant” is not limited to employees who worked in certain buildings at the site, but is inclusive of employment at any combination of employment at building 14 (Tonawanda Laboratory), 30, 31, 37, 38, 39, A and B. It is also noted that the Board’s recommendation report to the HHS secretary, and the Secretary’s letter to Congress cite the Linde Ceramics Plant facility location as “Niagara Falls, NY.” However, this location is synonymous with “Tonawanda, NY.” It encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) is to produce pertinent reference lists identifying all Part B Linde Ceramics Plant claims that are potentially included in the SEC class. The lists will identify those cases that must be reviewed by the district office(s) to determine whether SEC class criteria are satisfied including pending cases with employment during the SEC period with either a specified, non-specified cancer, or previous denial for POC less than 50%. These lists will be submitted to the appropriate district office(s) for processing in accordance with the instructions provided herein.
3. A formal request for data has also been submitted from the DEEOIC to NIOSH requesting two lists of case files where employment is claimed at the Linde Ceramics Plant during the SEC period. The request pertains to those employee case files pending a NIOSH dose reconstruction. One list will identify employee case files with at least one specified cancer claimed and the other list will address files with non-specified cancers.
4. NIOSH will return dose reconstruction analysis records for those cases with a specified cancer to the appropriate district office along with a CD for each case. The CD contains all of the NIOSH documentation generated to date, e.g., CATI report, correspondence, and dose information. Also, included on the CD in the Correspondence Folder should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected Linde Ceramics Plant claimants is included as Attachment 3. The Claims Examiner (CE) must print out a hard copy of the NIOSH letter for inclusion in the case file. Employee case files returned from NIOSH to the district office for potential inclusion in the SEC class must be coded as “NW” in ECMS. The effective date for the code entry is January 7, 2006.
5. For any cases identified (either by NIOSH or DEEOIC) as having a potential for compensability based on the new SEC class, the responsible CE is to undertake appropriate action to ascertain whether the evidence of file meets the criteria delineated in the designation. The CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process. If the evidence is unclear as to whether the employment or medical documentation satisfies the SEC class requirements, the claimant should be asked to provide clarifying evidence.

6. After appropriate development has occurred, the CE is to ascertain whether the employee has a specified cancer, as listed in DEEOIC Procedure Manual Chapter 2-600.5. If the employee has a specified cancer, proceed to the next step. If the employee does not have a specified cancer, proceed to Action #9.

7. The CE must verify that the employee was an atomic weapons employee who worked at the Linde Ceramics Plant. If the employee meets this criterion, the CE then determines whether the worker was employed at the Linde Ceramics Plant for at least 250 work days the October 1, 1942 through October 31, 1947. In determining whether the employment history meets the 250 work day requirement, the CE can consider employment either solely at the Linde Ceramics Plant or in combination with work days for other SEC classes.

8. Once the CE has determined that the person named in the claim has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE should proceed in the usual manner for a compensable SEC claim and prepare a recommended decision.

9. As discussed earlier, the Secretary of Health and Human Services determined that it is not feasible for NIOSH to perform dose reconstructions for atomic weapons employees who worked at the Linde Ceramics Plant from October 1, 1942 through October 31, 1947. However, NIOSH has indicated that external dose reconstructions for non-specified cancers may be possible. For those Linde Ceramics Plant cases NIOSH has identified as having a "non-specified" cancer and are already at NIOSH for dose reconstruction, NIOSH will retain the case for processing unless otherwise advised by the district office. As noted previously, the district office will receive a listing of all cases with non-specified cancer claims for Linde Ceramics Plant. The district office is to review the identified cases to ensure that there is no possibility of inclusion in the SEC class. Should the CE find a case that may qualify for the SEC class, an electronic notification should be made to the appropriate NIOSH point of contact to have the case returned to the district office. The "NW" code will be input for this type of case with an effective date of January 7, 2006.

10. For those cases that were identified by NIOSH as having a "specified cancer" and therefore returned to the district office, if it is determined that the case does not qualify for the SEC class, the CE, through the Senior CE (SrCe), notifies the appropriate point of contact at NIOSH via E-mail to proceed with the dose reconstruction. The SrCE would then print a copy of the "sent" e-mail (making sure the printed copy documents the date it was sent) and inputs the NI code to ECMS. The E-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-qualifying employment at the Linde Ceramics Plant, insufficient latency period, does not meet the 250 work day requirement, or not a specified cancer. The ECMS status code "NI" will be input effective the date of E-mail requesting NIOSH to proceed with dose reconstruction. A hard copy printout of the E-mail is to be inserted in the case file.

11. For any claim that is not already at NIOSH effective January 7, 2006 and for which the CE determines a dose reconstruction is appropriate, the normal NIOSH referral process will apply.

12. Upon receipt of a dose reconstruction report on cases deemed by the district office to be excluded from the new SEC class, the CE proceeds in the usual manner and prepares a recommended decision. It should be noted that in any instance where a dose reconstruction is not possible based on the information available, NIOSH will so advise in their correspondence back to the district office. Upon receipt of either a dose reconstruction report or a notice that a dose reconstruction is not possible (on a confirmed non-SEC employee case), the "NR" Code is input into ECMS and the district office proceeds with the issuance of a recommended decision.

13. As noted previously, the district office is provided a listing of all denied claims that may now satisfy the criteria for inclusion in the SEC class. Upon review by the CE, if a case with a denied final decision now meets the SEC class criteria, the CE must submit the case for reopening through the appropriate process in the district office. The case must be forwarded to the DEEOIC Director to reopen the claim per 20 C.F.R. § 30.320.

14. FAB personnel must be vigilant for any Linde Ceramics Plant cases that have a recommended decision to deny. If the employee worked at the Linde Ceramics Plant for the specified period, has a specified cancer, and meets the 250 work day requirement, the recommended decision must be remanded to the district office in the usual manner.

15. A period of 60 calendar days, effective the issuance date of this directive, is granted for case files affected by this SEC that are returned from NIOSH for evaluation by the DEEOIC to either receive a recommended decision for inclusion in the SEC or referral back to NIOSH for dose reconstruction.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

#### **06-07 Potential eligibility of RECA-4 awardees under Part E of the EEOICPA**

EEOICPA BULLETIN NO. 06-07

Issue Date: May 18, 2006

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Effective Date: May 18, 2006

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Expiration Date: May 18, 2007

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Subject: Potential Eligibility of Radiation Exposure Compensation Act section 4 (RECA-4) awardees under Part E of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA, or the Act).

Background: The statutory language in 42 U.S.C. § 7385j acts as a bar to any EEOICPA claim for cancer filed by employees who had received compensation under RECA section 4. It states:

Except in accordance with section 7384u of this title, an individual may not receive compensation or benefits under the compensation program for cancer and also receive compensation under the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) or section 1112(c) of Title 38.

Section 7384u refers to the \$50,000 lump sum benefits available under the EEOICPA to RECA section 5 awardees, and was the only exception for benefits payable concurrently for cancer under both statutes. Section 4 is a separate provision within the RECA which provides benefits for individuals with cancer who were either proximate to atomic tests at the Nevada Test Site (downwinder) or participated at the site of an atmospheric atomic weapon test (onsite participant). Given that coverage under section 4 is limited to individuals diagnosed with cancer, U.S.C. § 7385j prevented those awardees from receiving compensation under Part B of the EEOICPA, except for

chronic silicosis and beryllium disease. With the passage of Part E, the scope of potential illnesses covered under the EEOICPA has expanded. An individual with a covered RECA section 4 cancer may have a non-cancer condition under Part E of the EEOICPA, in addition to chronic silicosis and beryllium disease.

This bulletin provides procedural guidance for handling EEOICPA claims where a RECA section 4 award has been granted or is pending.

Reference: Energy Employees Occupational Illness Compensation Program Act of 2000, As Amended, 42 U.S.C. § 7384 et seq; Radiation Exposure Compensation Act (RECA), 42 U.S.C. § 2210 note; Federal (EEOICPA) Procedure Manual, Chapter 2-900.

Purpose: To provide procedures for handling claims under Part E of the EEOICPA for individuals who have either received an award, or have a pending claim under RECA section 4.

Actions:

1. Upon receipt of an EEOICPA claim for benefits, the Claims Examiner (CE) must determine if there is evidence that the employee has filed a claim with the Department of Justice (DOJ), under RECA-4. This can usually be accomplished by reviewing the information provided by the claimant(s) in the, "Awards and Other Information" section of the EE-1 or EE-2 claim form. There may also be relevant information in the case record indicative of a RECA-4 claim, such as an award letter or other RECA-related documentation.
2. If the evidence suggests that a RECA-4 claim has been filed, the CE must determine the status of the claim by contacting DOJ, the federal agency that administers benefits under RECA. Attached to this bulletin is a letter that may be utilized by the CE when seeking information from DOJ on the status of a RECA claim (Attachment 1).
3. Upon receipt of the DOJ's response, the CE must then proceed with development of the claim for compensation. If there is confirmation of an award under RECA-4, then development should proceed with respect to any claimed medical condition(s), other than cancer, to determine if there is evidence of a compensable Part E covered illness. The CE should follow the standard procedures for development of covered employment in a Part E claim in accordance with the EEOICPA Procedure Manual (PM) Chapters 2-400, E-400, and E-500, as well as any other medical or factual development needed.
4. Should cancer be the only claimed illness, and an award under RECA-4 is confirmed, the CE may proceed with a recommended denial of compensation under Part E. The denial of compensation should specifically reference the exclusion to benefits for cancer under both EEOICPA and RECA contained in 42 U.S.C. § 7385j.
5. If the response from DOJ indicates that a RECA-4 decision is pending determination, the CE must prepare a letter to the claimant(s), explaining that an EEOICPA and a RECA-4 cancer claim cannot be adjudicated concurrently. The claimant(s) must be asked to select which program they wish to pursue benefits under, for the claimed cancer(s). The claimant(s) should be notified that if they either fail to respond within 30 days, or if they elect to pursue their claim under RECA, their EEOICPA cancer claim will be denied. Development of any non-cancer condition will be pursued in accordance with the EEOICPA. The claimant(s) should also be advised that if they wish to pursue their cancer claim under EEOICPA, they must formally withdraw their claim from RECA, and confirmation of such withdrawal must be obtained from DOJ. The letter should further state that if their RECA claim ultimately ends in a denial, then they may seek to have their EEOICPA cancer claim reopened.
6. Depending upon the response from the claimant(s), the CE will either proceed with the adjudication of the claimed cancer (upon confirmation of RECA-4 withdrawal) or will proceed with development of the case for non-cancer conditions, and will issue a recommended decision that includes a denial for the claimed cancer. Any recommended decision that includes a denial of a

claimed cancer, on the grounds that compensation cannot be awarded under both RECA-4 and EEOICPA, must reference 42 U.S.C. § 7385j.

7. If DOJ reports that a RECA-4 award has been granted, but the claimant has elected to reject the settlement, and if a copy of the Acceptance of Payment form confirms this, the CE can proceed with the adjudication of the cancer claim under the EEOICPA.

Applicability: All personnel.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

Peter M. Turcic

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Resource Center Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections.

**06-08 Establishing causation for specific medical conditions under the Program (EEOICPA); updated by *Bulletin 06-13***

EEOICPA BULLETIN NO.06-08

Issue Date: April 25, 2006

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Effective Date: April 25, 2006

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Expiration Date: April 25, 2007

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Subject: Establishing causation for specific medical conditions under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

Background: Given the complexity and number of claims presented under Part E of the EEOICPA, means to expedite the claims adjudication process are being developed to assist the Claims Examiner (CE). As such, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) National Office (NO) has established criteria for the presumption of causation in certain specific situations.

The causal criteria described in this bulletin are based on findings by specialists in the field of Industrial Hygiene, Occupational Medicine and Toxicology. These specialists researched authoritative scientific publications, medical literature, and industrial processes and occupational exposure records to develop accepted causal relationships between specific known medical conditions and exposure to specific toxic substances. These findings are incorporated into this bulletin to assist the CE in rendering timely and accurate claim determinations under Part E of the EEOICPA. Periodically this bulletin will be updated as new conditions are researched and new presumptions can be made.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; Public Law 108-375; 20 C.F.R. §§ 30.111-30.114, 30.230-30.232, 30.300-30.320, 30.400-30.406, 30.420-30.422, 30.505, 30.700-30.726, 30.815, and 30.900-30.912; the Federal (EEOICPA) Procedure Manual: Part E, Chapter E-500 (Evidentiary Requirements for Causation); the EEOICP Site Exposure Matrices website; and the National Library of Medicine

Haz-Map.

Purpose: To provide procedures for establishing causation for certain specific conditions identified by the DEEOIC.

Applicability: All staff.

Actions:

1. The DEEOIC has developed specific criteria to establish a causal link between a diagnosed medical condition and toxic substance exposure. Attachment 1 to this bulletin lists specific criteria the CE uses when adjudicating certain claims for compensation under Part E of the EEOICPA. When elements of Attachment 1 are satisfied, the CE can accept that exposure to a listed toxic substance is at least as likely as not a significant factor in aggravating, contributing to or causing the medical illness. As noted previously, this attachment will be periodically updated with new conditions.
2. The CE evaluates causation pursuant to this guidance using the Attachment 1 criteria in conjunction with EEOICPA Procedure Manual Chapter E-500 (Evidentiary Requirements for Causation). The CE conducts a complete review of all evidence of the case file record and, when necessary, conducts development when the claimed medical condition corresponds to one of the toxic substances referenced in Attachment 1. All authorized evidentiary development tools, including the exposure data contained in the Site Exposure Matrices (SEM), are to be utilized. The SEM acts as a repository of information related to toxic substances potentially present at covered Department of Energy (DOE) and Radiation Exposure Compensation Act (RECA) sites, and is particularly helpful as an exposure development tool. SEM can assist the CE in verifying the presence of a toxic substance at a given building or during a given work process. Other sources of information may include contacting the claimant or seeking guidance from a DEEOIC technical specialist or District Medical Consultant (DMC).
3. The first step a CE takes in developing claims for causation using guidance pursuant to this bulletin is to verify the claimed medical condition. Medical evidence must establish the employee was diagnosed with the condition as identified by the specified ICD-9 code listed in the attachment. Initial development of the medical evidence is conducted based upon established procedures as set out in EEOICPA PM 2-300 and E-500.
5. The next action is to confirm exposure to the relevant toxic substance. The CE examines all information contained in the case record (i.e. DAR responses, DOE FWP records, employment records) that references exposure to the toxic substance listed in Attachment 1. The CE also searches SEM to determine whether or not it is possible that, given the employee's labor category and the work processes engaged in, the employee was exposed to the toxic substance in the course of employment. The CE uses SEM to determine whether or not available data on the job title, location of employment, or job duties, is sufficient to reasonably establish exposure to the toxic substance. Since toxic substances may have more than one name and toxic substance names may vary by facility, the CE should also search SEM for toxic substance alias names when the true identity of the claimed substance is not known.
6. In addition to establishing exposure to a particular substance, the evidence must demonstrate the employee was likely exposed to the noted toxin for a particular duration of time. The required duration may vary depending on the toxic substance. The CE must evaluate the evidence to assess whether or not sufficient evidence exists to verify exposure for a period of time equal to or greater than the duration noted in Attachment 1. The evidence does not need to conclusively prove the employee was directly exposed to the toxic substance throughout the entire work-shift or the exposure was continuous, merely that it would be reasonable that the employee's labor brought him or her into contact with the toxic substance on a day by day basis.
7. For certain covered illnesses, it may be necessary to also establish a period of latency between

the initial exposure to a toxic substance and the date of diagnosis of the claimed illness. The CE evaluates the evidence to identify the date that exposure to the toxic substance first occurred. If the latency period is equal to or exceeds the time outlined in Attachment 1, the CE has satisfied the criteria. The CE relies on existing procedures as referenced in EEOICPA PM 2-300 to establish a diagnosis. EEOICPA PM E-500 provides guidance as to evaluating latency periods.

8. If the evidence of record is sufficient to establish all of the necessary criteria identified in the attachment then causation is presumed to exist. No further development for causation is required. A copy of the appropriate attachment is to be included in the case file as evidence of causation, and a recommended/final decision is issued. This bulletin is cited in the recommended/final decision as the guidance upon which the adjudication was based.

9. If the documentation in the case file does not allow verification of all of the identified criteria, additional development in accordance with established procedures is required. A claim for benefits is not denied simply on the basis that the evidence does not meet the requirements set forth in this bulletin. If at any time the CE determines that DMC or technical specialist referral is necessary for an evaluation of the evidence, such referrals are made pursuant to established guidance.

10. The DEEOIC will periodically update the Occupational Illness Exposure Matrix.

Disposition: Retain until superseded or incorporated into the Federal (EEOICPA) Procedure Manual

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

## **06-09 Center to Protect Workers' Rights (CPWR)**

EEOICPA BULLETIN NO. 06-09

Issue Date: June 2, 2006

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Effective Date: June 2, 2006

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Expiration Date: June 2, 2007

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**This bulletin replaces Bulletin 04-09, Center to Protect Workers' Rights (CPWR). It reflects the current contract details.**

Subject: Center to Protect Workers' Rights (CPWR).

Background: The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has received numerous claims from employees who worked in jobs related to construction or trade (construction workers, electricians, plumbers, etc.) in the nuclear weapons industry. Given these jobs are usually performed under a subcontract, obtaining reliable documentation to verify employment has proven difficult and time consuming.

To assist in the collection of relevant evidence, the DEEOIC has contracted with The Center to

Protect Workers' Rights (CPWR) for assistance in obtaining records pertinent to construction and trade employees at DOE, Atomic Weapons Employer or Beryllium Vendor facilities. The DEEOIC has contracted with the CPWR due to their extensive access to records and their ongoing relationship to various worker advocate organizations. CPWR is a research, development, and training arm of the Building and Construction Trades Department (BCTD), of the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO). This unique relationship with the BCTD allows CPWR direct access to the 15 building and construction trades international unions, signatory contractors, union health and welfare records, and pension funds. As a consequence, they have access to employment records, pension contribution records, union rosters and dispatch records. In addition, CPWR has an extensive institutional knowledge and working experience with several DOE sites.

DEEOIC has contracted with CPWR to research and provide employment information for construction/trade worker claims where the Department of Labor (DOL) has been unable to obtain reliable information through available resources (i.e. DOE, corporate verifiers). Additionally, CPWR is able to provide employment information for claims originating under both Parts B and E of the Act. However, they serve no function in determining coverage for benefits, nor are they permitted to offer opinion as to the validity of the evidence presented to substantiate a claim. The CE retains the responsibility for evaluating evidence and making any judgment concerning covered employment. CPWR will be asked to provide any information or documentation that substantiates the following items:

- (1) Evidence that a contractual relationship existed between DOE at the covered facility and the identified employer (contractor) during a specific time period;
- (2) Evidence that the claimant was an employee of covered employer during the claimed time period;
- (3) Evidence that the employee worked at the covered facility.

Currently CPWR is able to assist DEEOIC with several construction and trade positions, including laborers, at 21 DOE facilities. Additional DOE facilities will be added on an as needed basis.

Reference: EEOICPA Bulletin 03-27, Establishing Covered Subcontractor Employment.

Purpose: To provide procedures for obtaining employment documents from CPWR.

Applicability: All Staff

Actions:

1. When the CE reaches the point in case development where he or she is attempting employment verification through the DOE or a corporate verifier, consideration must be given to referring the case to CPWR.
2. A referral to CPWR must be performed concurrently with other required developmental actions, such as requests for wage information from the Social Security Administration, or development letters to the claimant. The CE should not delay undertaking other avenues of development on a case while awaiting a response from CPWR.
3. A referral to CPWR is contingent on the facility where employment occurred and the type of job claimed. CPWR will coordinate the creation and updating with the National Office the submission of two lists. One list identifies the facilities where CPWR can provide assistance. The second list identifies the types of jobs for which CPWR is likely to have information, such as construction or building trades. These lists are available to each District Office via the shared drive and are periodically updated. For a CPWR referral to proceed, the claimed employment must identify both a facility and job type appearing on the lists provided.
4. To determine that any period of claimed employment satisfies both the facility and job type criteria for CPWR, the CE must complete a Subcontractor Worksheet (Attachment 1). The

Subcontractor Worksheet has two parts, claimed and verified. The claimed section refers to the information provided by either the employee or survivor on forms EE-1, EE-2, and EE-3.

Claimed Employment Dates - identifies the dates of employment listed on the form EE-3 and or occupational history,

Claimed Covered Facility - identifies the facility(ies) at which the employee worked,

Claimed Subcontractor - identifies the subcontractor which employed the employee.

The verified section refers to the documentation on record that supports the information reported on the forms EE-1, EE-2, and EE-3.

Verified Contract/Employment – identifies the source that confirms the employer’s link to the Department of Energy,

Verified Earnings – identifies documents which supports that the employee was employed by the specified subcontractor,

Verified Premises – identifies documents used to support the employee’s presence at a covered facility during the covered time period.

5. Upon completion of the Subcontractor Worksheet (Exhibit 1), if the CE determines that any period of claimed employment satisfies both the facility and job type criteria for CPWR consideration, he or she may confer with the designated District Office Point of Contact(POC)or the designated backup. The POC is selected by each District Office to serve as the principal liaison between DEEOIC and CPWR. There will be one POC per District Office. The designated POC is responsible for all communication between the District Office and CPWR. Moreover, the POC is responsible for certifying outgoing referrals and reviewing incoming responses.

6. If the POC agrees that the claim requires a CPWR referral, the appropriate forms are to be prepared. There are three principle forms used to make a CPWR referral: a Subcontractor Worksheet, a CP-1 Referral Sheet and a CP-2 Employment Response Report (Attachments 1, 2 & 3). The Subcontractor Worksheet, previously described, apprises CPWR of the established documentation on record relevant to establishing covered employment. The CP-1 provides general information concerning the employee’s case file. The CP-2 is a form CPWR uses to respond to employment data requests made by the DEEOIC.

7. The CP-1 is to be completed by either the CE or the POC. Section 1 requires information concerning the case to be listed, such as employee name, claim type, file number and Social Security Number. In Section 2, the referring District Office is to be identified along with the number of attached CP-2 Employment Response Reports. Any special requests or other relevant information for CPWR is to be listed in the comment section.

8. For each claimed employer at a facility where CPWR can provide assistance, a separate CP-2 Employment Response Report is to be prepared by the CE or POC. The CE or POC may prepare as many copies of the form as necessary. The CP-2 contains two sections. Section 1 is completed by the CE or POC and describes the employment to be researched by CPWR. It is important that the information specify both the periods of employment requiring verification and the type of evidence being requested such as evidence of contractual relationship, proof of employment with the claimed employer, or evidence of employment on the premise of the claimed facility. Section 2 of the CP-2 is reserved for CPWR to report any findings pertaining to the claimed employment.

9. Upon completion of the DOL’s portions of the CP-1 and CP-2, the POC is to conduct a complete review of all the material. He or she ensures that the information contained on the Subcontractor Worksheet and on the referral forms is reported accurately and satisfies all the requirements for submission to CPWR. Once the review is complete and the POC is satisfied that the Subcontractor Worksheet, the CP-1 and all CP-2 forms are completed correctly, he or she signs and dates the CP-1. The CP-1 Referral Sheet is certified on the day the referral is mailed out of the District

Office.

10. Once the referral forms are completed and certified by the POC, copies of the Subcontractor Worksheet, the referral sheets and the factual documents (medical documents are excluded) in the case file are made. The POC or CE attaches the original CP-1 and CP-2 sheets to a copy of the Subcontractor Worksheet and factual documents in the case file. This constitutes a complete CPWR referral package. The entire package will be express mailed to CPWR. Copies of the Subcontractor Worksheet, CP-1 and CP-2 forms are to be inserted into the official case file.

11. On the same day that the referral package is mailed to CPWR, notification of CPWR involvement in the case must be prepared for each known claimant and/or authorized representative. The CE or POC must prepare a letter for each claimant that describes CPWR's involvement in the case (Attachment 4). This letter must then be sent to the claimant(s) and/or authorized representative.

12. CPWR will be able to accept a minimum of 3500 through a maximum of 6000 of CP-2s annually. Once the POC or the backup person determines the number of cases to be sent to CPWR during a given week, he or she is to batch all the referrals and express mail them weekly to:

Anna Chen (achen@zenithadmin.com)

Zenith Administrators

201 Queen Anne Avenue, North

Suite 100

Seattle, WA 98109

1-800-866-9663

On the same day the referrals are expressed to Zenith, the POC or the backup person will email the total number of referrals requested from CPWR to the designated contact at the National Office. The email will include the last name of the employee, the last four digits of the employee's case file number, and the number of referrals requested per employee.

13. The POC or the backup person is the ultimate arbiter of all issues involving the CPWR referral process. He or she is not to certify for submission any referral package that does not meet the requirements for referral. Any incomplete or inaccurate referral package must be returned to the CE. The POC is to notify the CE of any deficiency and the steps necessary to correct the problem. CPWR is permitted to contact claimants directly. However, any request for claimant contact must be

submitted to the POC, who will then provide the necessary contact information.

14. The POC is responsible for tracking all CPWR referrals and responses. For each referral, the District Office must track the following information:

a. case number

b. facility name(s),

c. employer name(s),

d. number and date of referral(s) to CPWR,

e. number and date response(s) received from CPWR,

f. CE initiating request,

g. target due date (40 days from the date of referral).

h. number of overdue referral(s)(41 or more days from the date of referral.)

By the tenth day of each month, the DO POC will send the National Office an email summarizing

the total number of CPWR referrals and responses for the preceding month, the number of outstanding requests (>40 days), the number of referrals determined to be eligible, the number of referrals determined to be ineligible, and the total number of referrals to date. The number of referrals determined to be eligible is defined as the number of referrals that CPWR determined as valid requests. The number of referrals determined to be ineligible is defined as the number of referrals that CPWR determined as invalid requests, e.g. the name was incorrect, the social security number was incorrect, the subcontractor was not a part of their database, etc. Contractually, CPWR can process a limited number of claims during the contracted time period. Therefore, the report will assist the National Office in tracking the number of requests by each District office on a monthly basis.

15. The CE or POC is to enter the claim status code “US” (Union sent) in the claim status history screen in both Parts B and E of ECMS with the status effective date equal to the date of referral mailing. The “US” code signifies that all actions are complete pertaining to a CPWR mailing, including release of a completed referral package and mailing of a cover letter to the claimant(s). Upon entry of the “US” code, the CE or POC must select the number of CP-2s that are sent to CPWR from the corresponding drop-down box. The drop-down menu will only allow the CE or POC to select a number between one and twenty.

In the event that more than twenty CP-2s are sent to CPWR, the CE or POC will enter an additional “US” code and select the remaining number of CP-2s (greater than twenty) that are being mailed. For example, if twenty-five CP-2s are being sent to CPWR, the CE or POC will have to enter one “US” code and select “20” from the drop-down menu. Then the CE or POC will have to enter a second “US” code and select “5” from the drop down menu.

16. The CE or POC will also enter a 40 day call-up in ECMS effective the date of referral. If a CE or POC receives a call up notice indicating 40 days has elapsed and a response from CPWR has not been received, he/she will send notification via email to the POC. Upon receipt of the notification, the POC is to verify the delinquency and list it in their tracking program. The POC is then responsible for contacting CPWR by telephone or email to advise of the overdue request. The POC is to input a claim status code of “DE” (Developing Employment) in the claim status history screen on both Parts B and E of ECMS effective the date contact is made with CPWR concerning an overdue response. The CE or POC selects “US-Follow-up to CPWR” from the reason code list box. All phone calls or email are to be appropriately recorded in the case file. The POC has three working days to report all overdue referrals to CPWR. Moreover, he or she must update the status of the referral in the CPWR tracking program.

17. In instances where CPWR requests that additional CP-2s are needed subsequent to their preliminary research and request such from the POC, the CE and POC must confer on the requests to determine if additional CP-2s are needed. If they agree with CPWR’s assessment, the POC will forward via email or fax the appropriate number of additional CP-2s to the aforementioned address. If they do not agree with CPWR’s assessment, the POC will provide with an explanation of disagreement.

In instances where new factual evidence is received by the district office (DO) while the CPWR referral is pending, the CE will review it for relevance to the CPWR referral. If the new factual evidence is received within the first week (five to seven calendar days) of the referral and the CE and POC agree that it is sufficient to establish covered employment, the CE must prepare an “EC Memo” (Attachment 5). The POC will then advise, via email or fax, CPWR to cancel the referral.

If there is new factual evidence and the CE and POC agree that it is not sufficient to establish covered employment, the POC will provide, via email or fax, CPWR with a supplemental package that contains another CP-1 identifying whether the attached CP-2s are new or supplemental.

The POC will then update both Parts B and E of ECMS and the local spreadsheet with the appropriate changes whenever there is a change to the original referral package. For example, if the

DO referred a claim in January with one (1) form CP-2 for CPWR to research, then receives more employment evidence in February which changes the number of CP-2's to request, the POC enters another case status code US (drop down with the number of additional CP-2 forms) into ECMS, and added to the local NO tracking spreadsheet as another case referred.

18. CPWR has 30 calendar days from receipt of a referral package to conduct appropriate research into the claimed employment, complete each CP-2 based on the evidence gathered, and express mail the response to the appropriate POC. Responses are to be bundled according to case file number.

19. District Office mailroom staff date stamps incoming responses according to established procedures and forwards it to the designated POC. The POC enters the receipt date in the tracking database and immediately forwards the CPWR response to the appropriate CE.

20. Upon receipt of a CPWR response, the CE or POC enters the claim status code "UR" (Received from Union) in the claim status history screen on both Parts B and E of ECMS with the status effective date equal to the date the referral was date stamped received by the DO. Upon entering the "UR" code, the CE must select a "VN-verified none", "VS-verified some", or "VA-verified all" from the corresponding drop-down box.

**Verified None (VN):** when "NONE" of the data requested from CPWR was used to verify the claimed covered employment.

**Verified Some (VS):** when "SOME" portion of the data requested from CPWR was used to verify the claimed covered employment.

**Verified All (VA):** when "ALL" of the data requested from CPWR was used to verify the claimed covered employment.

21. When reviewing the CPWR response, the CE or POC is to ensure it is complete. The CE or POC checks to ensure that the number of CP-2 forms per bundle corresponds with the number of referrals identified on the CP-1 form. Each CP-2 form is to be marked according to the information found, submitted with any supporting documentation and signed by a representative of the CPWR. In particular, CPWR is required to complete the **Search Results** section on the CP-2 for each employer noting: the evidence located; whether it resulted in sufficient evidence to support the developmental components identified by the CE requiring assistance; comments to include where the information came from and how to interpret; a summary of all the evidence; contact information for potential affiants; and contact information for the CPWR employee who conducted the search.

22. When reviewing the evidence, generally, there are five categories of records that can be submitted to the CE for consideration. The categories are listed in the CPWR Research Results section of the CP-2 Employment Response Report and will be marked if corresponding evidence is submitted. These categories include: Union Dispatch/Log, Pension Fund, Health & Welfare, Facility/Site, DOE Former Worker Program, and other. To assist the CE in distinguishing between the categories of records, the evidence will be labeled as follows: A – Union Dispatch Log; B – Pension Fund; C - Health Welfare Fund Records; D – Former Worker Program Records; E - Site Records.

**(A) Union dispatch/log** – records that show the placement of a worker to a specific jobsite and/or contractor. These records are filed at the local union hall or with the union steward on the jobsite. A dispatch record may provide the following information: worker's name, social security number, job title, project being assigned to, the date of assignment, the company/employer, hire/termination date, and pay scale.

**(B) Pension fund** – records maintained by a pension fund established pursuant to a collective bargaining agreement between a building and construction trades union and one or more employers to act as a trust for the purpose of providing pension benefits to employees covered by the collective bargaining agreement.

**(C) Health and welfare** – records maintained by a health and welfare fund established pursuant to a collective bargaining agreement between a building and construction trades union and one or more employers, to act as a trust for the purpose of providing pension group health, life, disability and similar benefits to employees covered by the collective bargaining agreement.

**(D) Former Worker Program (FWP)** - These programs evaluated the long-term health conditions of former workers who may be risk of occupational diseases due to their former employment at certain DOE sites. Additional discussion on the FWP is located in Bulletin 05-05.

**(E) Facility/Site** - records that CPWR has obtained previously or concurrently from the DOE facility such as a certified payroll, a personnel record, or a collective bargaining agreement.

23. The CE is responsible for carefully assessing the relevance of any evidence or information submitted by CPWR. Judgments regarding covered employment rely on a careful examination of not only the evidence submitted by CPWR, but other sources as well. The CE should be mindful to ensure that the evidence submitted by CPWR reasonably substantiates allegations of employment brought forth by an employee or survivors. The evidence must reasonably satisfy all the components necessary to establish covered employment. In instances where additional action is needed subsequent to CPWR response, the CE must further develop the case. For example, the evidence provided by CPWR confirmed that the employee was employed by a covered employer yet failed to place the employee on the premise during a covered time period. Additionally, CPWR provided the names and addresses of individuals that may have known the employee yet this information was not previously contained in the factual evidence. The CE must request an affidavit form EE-4 from individuals identified by CPWR. In any instance where the CE questions or does not understand the nature of the information supplied by CPWR, he or she must request the POC to contact CPWR for clarification.

24. The DEEOIC is the ultimate arbiter of any disputes arising between the program and CPWR. If the POC encounters an instance where a question of interpretation has arisen that can not be resolved through normal discourse with CPWR, the issue should be referred to the Branch of Policies, Regulations and Procedures. A memo is to be prepared outlining the issue to be resolved. Copies of the completed referral form(s) and any other relevant employment documentation are to be attached. All referrals prepared for the National Office are to be certified by the appropriate POC and District Director.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

[Attachment 5](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

**06-10 Illnesses that presently have no known causal link to toxic substances; *This Bulletin is replaced by Bulletin 08-38***

EEOICPA BULLETIN NO.06-10

Issue Date: June 2, 2006

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Effective Date: June 2, 2006

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Expiration Date: June 2, 2007

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Subject: Illnesses that presently have no known causal link to toxic substances.

Background: Given the complexity and number of claims presented under Part E of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), means to expedite the claims adjudication process are being developed to assist the Claims Examiner (CE). The Division of Energy Employees Occupational Illness Compensation (DEEOIC) National Office (NO) established criteria for the presumption of causation in certain specific situations outlined in EEOICPA Bulletin NO. 06-08. In conducting research to establish these criteria, a number of claimed illnesses were identified for which DEEOIC was unable to find scientific information demonstrating an association with exposures to toxic substances. DEEOIC has established criteria for handling claims where there is no known relationship between certain illnesses and occupational exposure to toxic substances under Part E of the EEOICPA.

DEEOIC specialists researched authoritative scientific publications, medical literature, and occupational exposure records for information to identify medical illnesses for which current scientific knowledge does not show a relationship or an etiology due to biological or chemical exposure. The findings of these specialists are incorporated into this bulletin to assist the CE in rendering timely and accurate claim determinations under Part E of the EEOICPA.

While the information in this bulletin provides guidance relative to certain claimed medical conditions, it in no way precludes the claimant's ability to present evidence that refutes the conclusions of the DEEOIC specialists. To challenge the scientific conclusions presented, compelling and probative evidence must establish exposure to a toxic substance has been shown to cause, contribute, or aggravate an occupational illness. This bulletin does not affect existing procedures in place for establishing causation based upon radiation exposure for cancer.

References: Energy Employees Occupational Illness Compensation Act of 2000, 42 U.S.C. § 7384 *et seq.*; 20 C.F.R. §§ 30.111-30.114, 30.230-30.232, 30.300-30.320, 30.400-30.406, 30.420-30.422, 30.505, 30.700-30.726, 30.815, and 30.900-30.912; the Federal (EEOICPA) Procedure Manual: Part E, Chapter E-500 (Evidentiary Requirements for Causation); the EEOICP Site Exposure Matrices website; and the National Library of Medicine Haz-Map.

Purpose: To provide guidance on handling claims where certain claimed medical conditions have no known relationship to a toxic substance.

Applicability: All staff.

Actions:

1. The DEEOIC has identified certain illnesses with no known causal link to toxic substance exposure. Attachment 1 to this bulletin lists specific medical conditions and their associated ICD-9 codes where there is presently no known relationship to toxic substance exposure. Therefore, extensive development of the claim is not required. This Attachment may be updated periodically with additional information.

2. Initial development of the medical evidence is conducted based upon established procedures as set out in EEOICPA PM 2-300 and E-500. Medical evidence must establish a covered employee was diagnosed with the disease or illness being claimed. Once the CE has confirmed the existence of a diagnosed illness, he or she should determine if it corresponds to one of the conditions listed in Attachment 1.

3. If it is determined the diagnosed illness corresponds to one listed on Attachment 1, the CE prepares a letter to the claimant(s) listed in the case file. The letter should notify the claimant(s) that the condition being claimed is not scientifically recognized as having any known link to exposure to a toxic substance (Attachment 2). If the claimed condition listed in this Attachment is cancer, the claimant is advised that DEEOIC will assess the claim based upon exposure to radiation. This is done either through membership in a Special Exposure Cohort (SEC) class or the dose reconstruction process and the resultant Probability of Causation (POC). If the outcome of the SEC or POC is negative, the claimant must produce evidence that the cancer is affiliated with a biological or chemical exposure. If the claimed condition in this Attachment is not cancer, the claimant is specifically informed there is no known scientific link between exposure to radiation and the listed condition. The claimant is further advised the DEEOIC will evaluate any argument, medical, or scientific evidence submitted in support of a causal relationship between the claimed illness and a toxic substance exposure. The letter is to allow the claimant(s) thirty days to provide a response. If additional time is required to obtain information, the claimant should notify the claims examiner. The CE will permit any reasonable request for an extension of the deadline for evidence submission.

4. Upon receipt of any evidence from the claimant(s), the CE must evaluate it to determine if there is any compelling or probative basis for DEEOIC specialist review. Items of particular interest would reference human epidemiological studies or other scientific findings suggesting a causal relationship between an illness (referenced on Attachment 1) and a toxic substance. Any well-rationalized opinion from a board-certified physician or other specialist attesting to such relationship would also be a sufficient basis for referral to the DEEOIC specialists. Evidence that does not warrant a referral to a DEEOIC specialist includes: unsubstantiated statements of causal relationship; speculative or equivocal medical/specialist opinions; scientific literature or other documents that do not reference the illness under evaluation; and general news articles from print or the Internet. When evaluating evidence of this nature, the CE consults with his/her Senior Claims Examiner or Supervisor and, if necessary, the DEEOIC Medical Director for guidance.

5. If, after reasonable development, the CE has determined the response from the claimant(s) is insufficient to warrant review by a DEEOIC specialist, a finding of causation can be rendered with regard to toxic exposure. The CE will make the finding that an exposure to a toxic exposure was not "as least as likely as not a significant factor in aggravating, contributing to or causing the diagnosed illness." While it may be necessary to await a dose reconstruction and POC calculation regarding a diagnosed cancer, all non-cancerous conditions immediately receive a recommended decision denying compensation for the illness under the EEOICPA. If any of the non-cancer conditions are consequential to the cancer, a decision on those conditions should not be rendered until the cancer decision is made. The recommended decision includes a citation to this bulletin. A copy of the attachment is inserted into the case record.

6. The following wording is to be included in the Conclusions of Law in both the recommended and final decisions:

The evidence of record establishes that the claimed medical condition, [insert condition], neither has a known scientific relationship to toxic substances nor is "at least as likely as not" caused by such exposure at a covered DOE facility during a covered time period.

Disposition: Retain until superceded or incorporated into the Federal (EEOICPA) Procedure Manual

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

**06-11 Supplemental Guidance for Processing Claims for the Special Exposure Cohort (SEC) Class for the Y-12 Plant, March 1943 – December 1947**

EEOICPA BULLETIN NO.06-11

Issue Date: June 5, 2006

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Effective Date: September 24, 2005

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Expiration Date: June 5, 2007

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**Subject:** Supplemental Guidance for Processing Claims for the Special Exposure Cohort (SEC) Class for the Y-12 Plant, March 1943 – December 1947.

**Background:** On September 24, 2005, the following Y-12 class designation was added as a SEC employee class:

Department of Energy (DOE) employees or DOE contractor or subcontractor employees who worked in uranium enrichment operations or other radiological activities at the Y-12 facility in Oak Ridge, Tennessee from March 1943 through December 1947 and who were employed for a number of work days aggregating at least 250 work days, either solely under this employment or in combination with work days within the parameters (excluding aggregate work day requirements) established for other classes of employees included in the SEC.

NIOSH has determined it is possible to estimate the radiation exposure that resulted from occupational medical X-ray doses alone to complete a sufficiently accurate dose reconstruction for this SEC class. As such, for cases with a non-specified cancer and/or do not meet the employment criteria of the SEC class, NIOSH will perform a dose reconstructions based solely on X-ray dose.

On November 21, 2005, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) issued Bulletin 06-04 which provided procedures for processing claims included in the Y-12 and Iowa Army Ammunition Plant (IAAP) SEC classes. This bulletin pertains only to the Y-12 SEC procedures; it does not affect any information related to the IAAP SEC class.

Since the issuance of Bulletin 06-04, DEEOIC has encountered difficulties in attempting to apply a standard for what constitutes “uranium enrichment operations or other radiological activities,” and an employee’s involvement in such work. The Y-12 facility is comprised of many different buildings where many different types of activities occurred. Some of locations or activities do not involve any work with radiological material. It is also recognized that there are also many different labor categories at the site.

While certain workers were likely linked to routine uranium enrichment operations or other radiological activities as part of their normal job functions, others would have a much lower

likelihood of being exposed to these types of processes. Accordingly, it was determined that development of accurate information needed to occur to identify work locations, job categories, and duties to link an employee to “uranium enrichment operations or other radiological activities.”

Radiation exposures at Y-12 during the SEC period resulted from uranium in various forms and occurred primarily in locations where the uranium was received, analyzed, chemically converted, and recycled and/or purified. This SEC is based on the absence of internal or air sampling data for employees who were potentially routinely exposed to airborne concentrations of uranium products.

During 1943 to 1947, Y-12’s primary function was to perform uranium enrichment using an electromagnetic isotope separator known as a “calutron.” Calutrons were used to separate out enriched uranium from other uranium isotopes. The concept was that the enriched uranium would be separated and preferentially captured onto a “receiver.” The efficiency of the calutron process was limited and significant proportions of the enriched uranium were deposited on the liner (inside wall of the calutron) and on internal equipment before it made it to the receiver. Uranium splattered on the inside of the calutron had to be recovered through labor-intensive cleaning operations. The recovered uranium was then recycled, handled, and the enriched uranium was chemically separated.

The calutrons provided little potential for internal exposures while in use, because the calutrons were fully closed systems operated under a high vacuum (negative pressure). The potential for significant airborne uranium concentration (internal exposure) occurred when the calutron was not operating, and partially disassembled, for the purpose of recovering enriched uranium from the calutron walls. In addition, uranium was recovered/salvaged from components within the calutron. Recovery of uranium from the calutron as a whole, involved manual cleaning, washing, vacuuming, and concentrated nitric acid leaching. Salvaging refers to the recovery of relatively smaller amounts of uranium from items associated with the recovery process, such as liquid and solid waste material from the calutron maintenance and/or clean-up activities. The recovered uranium was chemically separated or recycled back through the calutron feed material. Therefore, the potential for uranium intake was significant during the recovery, handling, salvaging, and chemical separation phases.

The SEC designation covers employees who were routinely involved with uranium enrichment operations or other radiological activities. Employees performing other, non-uranium enrichment duties, but were routinely present within the buildings or areas where uranium enrichment operations or other radiological activities occurred are also considered part of the SEC class. The DEEOIC does not construe the SEC designation to apply merely to any employee present at the Y-12 Plant during the designated time frame.

After appropriate research using available data pertaining to the Y-12 Plant, the DEEOIC has developed resources to identify locations, work processes, and job categories with a high likelihood of routine involvement in “uranium enrichment operations and other radiological activities.” This information is provided as attachments to this bulletin to assist the CE in determining whether an employee can be considered a member of this SEC class at Y-12. During the course of evidentiary development for the SEC class, the CE must compare the employment information provided in the case to the information provided in this bulletin.

The information contained in this bulletin is supplemental to the guidance provided in EEOICPA Bulletin 06-04. In addition, it affects consideration of cases where the evidence of record establishes the existence of a qualified “specified cancer” and employment as a DOE employee, DOE contractor, or subcontractor at the Y-12 Plant is verified for 250 work days from March 1943 through December 1947.

References: Energy Employees Occupational Illness Compensation Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, report to Congress from the Secretary of HHS, entitled, “HHS Designation of Additional Members of the Special Exposure Cohort, Designating a Class of Employees from Y-12 Plant, Oak Ridge, Tennessee.”

Purpose: To provide guidance pertaining to the definition of the term, “uranium enrichment operations or other radiological activities,” using site identifiers such as buildings, work duties, and work titles.

Applicability: All staff.

Actions:

1. The CE is to ensure all cases considered for the SEC class satisfy the requirement that the employee worked in “uranium enrichment operations or other radiological activities” at the Y-12 facility in Oak Ridge. This replaces the guidance specifically referenced in item number 3, in Bulletin 06-04, which states the CE would assume the employee was involved in the specified activities if a NIOSH referral had been performed prior to September 24, 2005.
2. Once the CE has developed the case to satisfy the initial components of the SEC class, it is then necessary to make a determination as to whether the employee was involved in “uranium enrichment operations or other radiological activities” for a period equal to or greater than 250 aggregate work days between March 1943 to the end of December 1947. The CE should review all relevant employment documentation contained in the case file including any data that may have been obtained by NIOSH during development of a dose reconstruction, such as the CATI report, correspondence, DOE employment and other DOE records, and any dose assessment. This information may be found on the NIOSH CD attached to the case file. NIOSH did not develop employee-specific analyses records or dose reconstructions for many of these Y-12 cases received prior to the SEC designation date; therefore, the NIOSH CDs for these cases may not contain adequate information for the purpose of adjudication. The CE may also use any available programmatic resources including: DAR requests, ORISE database, Site Exposure Matrix (SEM), occupational interviews conducted by the DEEOIC resource center, claimant requests, etc. Other relevant information pertaining to employment activities may also be contained in former Part D case material.
3. Attachment 1 provides a list of those positions the DEEOIC accepts were affiliated with uranium enrichment operations at the Y-12 Plant. The list includes job title strings (abbreviations) that DOE records may reference, as well as the actual job title. The list is not all-inclusive, but gives a good basis for the type of job titles that were routinely affiliated with uranium enrichment operations. Attachment 2 provides a list of buildings where uranium enrichment operations or other processes relating to radiological material were conducted. Attachment 3 provides example descriptive terms for the processes known to be linked to uranium enrichment operations. Attachment 4 describes “other radiological activities” and associated job titles. The “other radiological activities” most likely took place in the main research and development (R & D) building, 9202. Support for these covered R & D activities may have also taken place at the analytical lab (building 9203) located behind the R & D building. All the attachments serve to provide guidance to the CE in evaluating the evidence to make an informed judgment as to whether it is reasonable to conclude employment in uranium enrichment operations or other radiological activities occurred.
4. In those instances where the evidence of record substantiates the employee routinely worked in a position or at a location linked to uranium enrichment operations or other radiological activities (from attachment 1-4), the CE can accept the employee is included in the SEC class, if all other criteria are satisfied. Based on the information presented, the CE should make a rationalized judgment as to whether the employee performed routine duties connected to uranium enrichment operations or other radiological activities. The totality of evidence must be sufficiently affirming to convince the adjudicator that the claim presented is reasonably accurate and is not based merely on ambiguous statements provided by the claimant. For example, a claim is presented from a survivor who states her father’s job entailed scraping uranium from the machine walls at the Y-12 Plant. DOE confirms the employee worked at the Y-12 Plant from 1945-1955. An accident reports shows that the employee lacerated his arm during process recovery operations in the plant. Given that attachments 1-3 establish uranium recovery and recycling operations are affiliated with uranium

enrichment operations, and employment occurred for two years during the SEC period, the CE should accept the employee as part of the SEC. No development is needed to confirm the employee's job title or plant location of his work. A comparison between the claimant's statements and available employee-specific data, and the collective information contained in Attachments 1-4, provides a sufficient basis for evaluating the claim.

5. Alternatively, in a situation where an employee is identified as having worked a position that is not referenced in the attachments and it is unclear what location at the plant he routinely worked, but the evidence demonstrates the employee worked an "operational support" role; the employee may be included in the SEC class. "Operational support" roles are defined as any job or position that would have a likelihood of routine employment activities within any building at the Y-12 plant involving uranium enrichment or other radiological activities. This includes jobs such as electricians, pipe fitters, welders, etc. For example, a survivor claim is presented where the family does not know the precise job title of the employee, but they know he was a pipe-fitter. DOE confirms employment at Y-12, but provides no other information other than the employee was present at the site from March 1945 to April 1962. A co-worker affidavit states he knew the employee and he remembers the employee worked inside several large buildings performing checks and routine maintenance on large machines whenever they were shut down. In this instance, the CE accepts the employee as a member of the SEC given the high likelihood that he performed employment activities linked to uranium enrichment operations or other radiological activities. The CE should make specific findings in the recommended decision that lead to this conclusion.

However, if there is specific evidence the employee worked in an "operational support" position, but did not have employment activities that brought him into routine contact with one of the recognized building locations affiliated with uranium enrichment or other radiological activities, the benefit of the doubt cannot be extended to the employee. This would occur if the employee was specifically assigned to work in one location not accepted as being linked to uranium enrichment operations or other radiological activities. It can also apply to employees whose position was limited to working exterior locations at the plant. Under circumstances where specific and contradictory evidence exists to exclude an "operations support" employee from the SEC class, the CE must undertake additional development of the claim.

6. If the evidence of record indicates that the employee worked in a position that is neither listed in the attachments to this bulletin nor reasonably considered "operational support" full development must be undertaken to determine if the employment satisfies the requirements of this SEC. The CE can not grant these employees the benefit of the doubt when it comes to inclusion in Y-12 SEC class. This would pertain to individuals employed in positions with a low likelihood of being routinely involved in uranium enrichment operations or other radiological activities. For example, administrative and support staff, cafeteria workers, construction workers, couriers, custodians, groundskeepers, housekeepers, machinists, security guards, or similar occupational titles and duties are not likely to have been routinely involved in, or routinely located within, buildings associated with uranium enrichment operations or other radiological activities. As such, compelling evidence would need to be submitted to show that such employees worked within one of the recognized buildings or facility locations accepted by DEEOIC as having involvement in uranium enrichment operations or other radiological activities. They would also need to satisfy the 250 aggregate work-day requirement during the relevant time period.

7. Ultimately, the evidence must establish a reasonable connection to uranium enrichment operations or other radiological activities as outlined in this directive. If, after appropriate development, the evidence does not establish the requirements of the SEC, the CE should proceed in accordance with Item 9.

8. Once the CE has determined that the employee has a diagnosed specified cancer and meets the employment criteria of this Y-12 SEC class, the CE should proceed in the usual manner for a compensable SEC claim and prepare a recommended decision.

9. As discussed earlier, NOISH determined that it is feasible to estimate the exposure that resulted from annual occupational medical X-ray doses. For cases with a non-specified cancer and/or that do not meet the employment criteria of the SEC class, the CE must refer the case back to NIOSH to perform dose reconstructions.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

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Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

## **06-12 Evaluating Permanent Impairment to the Breast (Male or Female)**

EEOICPA BULLETIN NO. 06-12

Issue Date: August 3, 2006

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Effective Date: August 3, 2006

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Expiration Date: August 3, 2007

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Subject: Evaluating Permanent Impairment to the Breast (Male or Female).

Background: As a part of the adjudication process under Part E of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), impairment attributable to a covered illness is compensable under the provisions of 42 U.S.C. 7385s. Impairment is defined as a loss, loss of use, or derangement of any body part, organ system or organ functionality after having reached maximum medical improvement (MMI). MMI is reached when impairment is stabilized and unlikely to improve with or without medical treatment.

The standard used to determine impairment is the American Medical Association (AMA) in its Guides the Evaluation of Permanent Partial Impairment 5th ed. The Guides provide instruction needed for a physician to apply measures and other criteria for making a judgment on the total percentage of impairment due to injury or illness.

The Division of Energy Employee Occupational Illness Compensation (DEEOIC) has received numerous claims from employees (male and female) who were diagnosed with breast cancer and are claiming impairment as a result of their illness. Given the manner in which the American Medical Association (AMA) describes the methodology to calculate an impairment of the breast, it was determined that procedural clarification was required.

In any instance where an impairment of the breast due to cancer is claimed, several factors are to be addressed by the physician performing the impairment rating: (1) presence or absence of the organ;

(2) loss of function of the upper extremity; (3) skin disfigurement; (4) other impairment(s) caused by the breast cancer or lack of the organ.

By itself, the anatomical absence of a mammary gland is rated according to the AMA Guides, Section 10.9 Mammary Glands, p239, and is assigned a maximum of 5% of the whole person.

Loss of function of the upper extremity can accompany the surgical treatment of breast cancer, causing range of motion problems, neurological abnormalities, lymphedema, and other complications that affect the activities of daily living (ADL). The physician performing the evaluation should use the AMA Guides, Chapter 16. The Upper Extremity, p433-512 to assess these impairments.

Breast cancer and its surgical treatment can result in skin disfigurement which can be assessed using Sections 8.2 and 8.3 (p175 – 176) of the AMA Guides.

Other physical impairments identified by the physician performing the evaluation need to be well documented and related to the underlying accepted condition, or therapy such as radiation and chemotherapy. They have to be ratable under the AMA Guides.

The completed evaluation must delineate all the factors present in the case, together with the individual whole person impairment assigned to each, and a mention of the supporting sections and tables of the Guides. The individual impairment percentages need to be added into a total impairment percent.

The Guides do not define “child bearing age”. Therefore, for the purposes of DEEOIC (when considering impairment due to breast cancer), “child bearing age” will not be a determining factor when issuing an impairment rating.

References: EEOICPA Part E Procedure Manual Chapter 2-900 and the AMA Guides to the Evaluation of Permanent Impairment, 5<sup>th</sup> Edition.

Purpose: To provide guidance on evaluating impairment for individuals (male or female) diagnosed with breast cancer.

Applicability: All staff.

Actions:

1. Upon receipt of a claim for impairment for the breast in either a male or female, the Claims Examiner (CE) will submit a request to the physician undertaking the evaluation for permanent impairment explaining all the criteria that must be considered and referenced in their final report. Attached to this bulletin is a sample letter that may be used for this purpose (Attachment 1).
2. When the completed impairment evaluation is returned, the CE must review it to ensure that the physician has comprehensively addressed each of the factors necessary for an acceptable rating. The report must show that the physician has considered: (1) the presence or absence of the breast(s); (2) the loss of function of the upper extremity (or extremities if there is absence of both breasts due to cancer), including range of motion, neurological abnormalities and pain, lymphedema, etc.; (3) skin disfigurement; and (4) other physical impairments resulting from the breast cancer. The total percentage of permanent impairment of the whole person must be supported by medical rationale and references to the appropriate sections and tables (with page numbers) of the AMA Guides.
3. If the CE determines the physician has not provided a complete rating for a claimed impairment of the breast, a follow-up letter should be sent. The CE should explain to the physician the noted deficiency in the assessment and that the purpose for obtaining a complete response is to ensure the employee received the maximum allowable rating provided by the Guides.
4. Upon receipt of an acceptable report pertaining to an assessment of permanent impairment of the breast, the CE should proceed with additional development of the claim, as necessary, and issuance

of a recommended decision.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

**06-13 Establishing causation for specific medical conditions under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA)**

EEOICPA BULLETIN NO.06-13

Issue Date: July 11, 2006

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Effective Date: July 11, 2006

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Expiration Date: July 11, 2007

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**Note: This bulletin updates Bulletin No.06-08, with a revised attachment that establishes causation for Laryngeal Cancer and Hemangiosarcoma/Angiosarcoma of the liver.**

Subject: Establishing causation for specific medical conditions under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

Background: Bulletin 06-08 describes accepted causal relationships between specific known medical conditions and exposure to specific toxic substances. After appropriate research by Division of Energy Employees Occupational Illness Compensation specialists, additional diseases are found to be linked to toxic exposure.

This bulletin replaces the attachment in Bulletin 06-08 to reflect the addition of two additional medical conditions: laryngeal cancer and hemangiosarcoma/angiosarcoma of the liver.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 20 C.F.R. §§ 30.230-30.232; the Federal (EEOICPA) Procedure Manual, Chapter E-500 (Evidentiary Requirements for Causation); the EEOICP Site Exposure Matrices website; and the National Library of Medicine Haz-Map.

Purpose: To provide a revised attachment for accepted causal relationships between specific known medical conditions and exposure to specific toxic substances.

Applicability: All staff.

Actions:

1. The CE is to replace the attachment in Bulletin 06-08 with attachment 1 to this bulletin. The attachment provides additional information with regard to the toxic exposure linked to laryngeal cancer and hemangiosarcoma/angiosarcoma of the liver.
2. Additional revisions to attachment 1 will be issued periodically as new conditions are

researched and new presumptions can be made.

Disposition: Retain until superseded or incorporated into the Federal (EEOICPA) Procedure Manual

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Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment](#)

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**06-14 Illnesses that presently have no known causal link to exposure to toxic substances under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) ; *This Bulletin is replaced by Bulletin 08-38***

EEOICPA BULLETIN NO.06-14

Issue Date: August 1, 2006

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Effective Date: August 1, 2006

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Expiration Date: August 1, 2007

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**Note: This bulletin updates Bulletin No.06-10, with a revised attachment adding prostate cancer to a list of illnesses with no known causal link to exposure to toxic substances.**

Subject: Illnesses that presently have no known causal link to exposure to toxic substances under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

Background: Bulletin 06-10 describes illnesses that presently have no known causal link to toxic substances. After appropriate research by Division of Energy Employees Occupational Illness Compensation specialists, an additional disease is found to have no known causal link to toxic substances.

This bulletin replaces the attachment in Bulletin 06-10 to reflect the addition of one additional medical condition that presently has no known causal link to exposure to toxic substances: prostate cancer.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 20 C.F.R. §§ 30.230-30.232; the Federal (EEOICPA) Procedure Manual, Chapter E-500 (Evidentiary Requirements for Causation); the EEOICP Site Exposure Matrices website; and the National Library of Medicine Haz-Map.

Purpose: To provide a revised attachment for guidance on handling claims where certain claimed medical conditions have no known relationship to a toxic substance.

Applicability: All staff.

Actions:

1. The CE is to replace the attachment in Bulletin 06-10 with Attachment 1 to this bulletin. Prostate cancer has been determined to have no known relationship to a toxic substance.

2. Additional revisions to Attachment 1 will be issued periodically as new conditions are researched and new findings can be made.

Disposition: Retain until superseded or incorporated into the Federal (EEOICPA) Procedure Manual

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Attachment

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

**06-15 Processing Claims for Pacific Proving Grounds SEC Class, 1946 - 1962**

EEOICPA BULLETIN NO.06-15

Issue Date: September 27, 2006

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Effective Date: July 26, 2006

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Expiration Date: September 27, 2007

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Subject: Processing Claims for Pacific Proving Grounds SEC Class, 1946 - 1962

Background: Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of a class of workers employed at the Pacific Proving Grounds (PPG) in the former United States Trust Territory of the Marshall Islands, to have this facility added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and decided it qualified for evaluation under 42 C.F.R. § 83.13. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health (“the Board”). On May 24, 2006, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC employees who worked at the PPG for the period from 1946 through 1962.

On June 26, 2006, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress.

Pacific Proving Grounds, 1946 - 1962:

Department of Energy (DOE) employees or DOE contractor or subcontractor employees who worked at the Pacific Proving Grounds (PPG) from 1946 through 1962 for a number of work days aggregating at least 250 work days, either solely under this employment or in combination with work days within the parameters (excluding aggregate work day requirements) established for other classes of employees included in the SEC, and who were monitored or should have been monitored.

In its evaluation, NIOSH determined that, “... there is insufficient information either to estimate the maximum radiation dose for every type of cancer for which radiation doses are reconstructed that could have been incurred under plausible circumstances by any member of the class, or to estimate the radiation doses of members of the class more precisely than a maximum dose estimate.” Specifically, internal dose cannot be estimated.

NIOSH did determine that it can reconstruct occupational external dose using currently available film badge monitoring data or field radiation surveys. Also, NIOSH can determine exposure from occupational medical x-rays.

In the June 26, 2006 report, the Secretary of HHS determined that it is not feasible to undertake dose reconstructions for the class of employees employed at the PPG from 1946 through 1962.

A copy of the Secretary's letter to Congress recommending the designation is included as Attachment 1. The SEC designation for this class became effective on July 26, 2006, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress. While Congress has the authority to reject the recommendation within the 30-day time frame, no action was taken to contradict the addition of this new SEC class.

References: Energy Employees Occupational Illness Compensation Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the June 26, 2006 report to Congress from the Secretary of HHS, entitled, "HHS Designation of Additional Members of the Special Exposure Cohort, Designating a Class of Employees from Pacific Proving Grounds, Enewetak Atoll."

Purpose: To provide procedures for processing claims for the PPG SEC class.

Applicability: All staff.

Actions:

1. This new addition to the SEC affects DOE employees and DOE contractor employees or subcontractor employees employed at the PPG from 1946 through 1962 for a number of work days aggregating at least 250 work days, either solely under this employment or in combination with work days established for other classes of employees included in the SEC. It is particularly important for the CE to evaluate claims for the PPG workers carefully as it has been shown that many also worked at the Nevada Test Site (NTS) which also has a SEC designation. This new SEC designation is established for workers who were "monitored or should have been monitored" while employed at the PPG. Using the current standards for monitoring of workers at a nuclear facility site, DOL is interpreting "monitored or should have been monitored" as including all employees who worked at the PPG during the period from 1946 to 1962. The PPG included Bikini Atoll, Enewetak Atoll, Johnston Island and Christmas Island. This additional class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. NIOSH has provided two lists of employees who claimed employment at the PPG during its SEC class period. One list covers employees with specified cancers and the other list addresses employees with non-specified cancers. NIOSH will return analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD contains all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also, included on the CD in the Correspondence Folder should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected PPG claimants is included as Attachment 2. The Claims Examiner (CE) must print out a hard copy of the NIOSH letter for inclusion in the case file.

Since the NIOSH lists contain only cases that were with NIOSH for dose reconstruction at the time this SEC designation became effective, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) has also produced a list identifying all PPG cases that are potentially included in the SEC class including cases that were previously denied. The list identifies those cases that must be reviewed by the district office(s) to determine whether SEC class criteria are satisfied including pending cases with employment during the SEC period with either a specified, non-specified cancer, or previous denial for POC less than 50%. The NIOSH and DEEOIC lists will be compared to ensure all potential SEC cases are identified by the district offices. The lists

will be provided to the appropriate district offices under separate cover.

3. For any cases identified (either by NIOSH or DEEOIC) as having a potential for compensability based on the new SEC class, the responsible CE is to undertake appropriate action to evaluate whether the evidence of file meets the criteria delineated in the designation. The CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process. If the evidence is unclear as to whether the employment or medical documentation satisfies the SEC class requirements, the claimant should be asked to provide clarifying evidence.

4. Based on this review, the CE then determines whether the claimant has a specified cancer, as listed in DEEOIC Procedure Manual Chapter 2-600.5. If the employee has a specified cancer, proceed to the next step. If the employee does not have a specified cancer, proceed to Action #7.

5. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 work days at the PPG from 1946 through 1962. In determining whether the employment history meets the 250 work day requirement, the CE must consider employment either solely at the PPG or in combination with work days for other SEC classes.

Please note that for this new SEC class, the 250 work day calculation includes any time spent at any of the islands or atolls that make up the PPG during its SEC time period. This includes time spent working or living at the PPG during the SEC time period. In addition, employees were evacuated to ships from the PPG prior to nuclear weapons tests being performed. Time spent on ships just prior to a nuclear weapons test is counted toward meeting the 250 work day requirement. For any 24-hour period that the employee was present (either worked or lived) on the PPG or on ships (evacuated prior to a nuclear weapon testing), the CE would credit the employee with the equivalent of three (8-hour) work days. If there is evidence the employee was present at the PPG or on ships for 24 hours in a day for 83 days, the employee would have the equivalent of 250 work days and would meet the 250 work day requirement.

Since continuous time spent at this site is credited toward the calculation of 250 work days, it is important the CE establish any period when the employee was not present at the site and exclude these periods from the 250 work day calculation. In determining the actual employment period, the CE must have clear and convincing evidence of a beginning date (hire) and end date (termination) of employment at the PPG. Where the evidence is not clear and convincing or consists only of film badge date(s) without a beginning date or end date, the CE must await further policy guidance before proceeding with the verification of covered SEC employment at the site. The National Office of DEEOIC continues to explore methods by which confirmation of employment can occur for workers alleging employment at the PPG.

If the employee does not meet any of the employment criteria, proceed to Action #7.

6. Once the CE has determined the person named in the claim has a diagnosed specified cancer and meets the employment criteria of the SEC classes, the CE should proceed in the usual manner for a compensable SEC claim and prepare a recommended decision.

7. As discussed earlier, the Secretary of Health and Human Services determined that it is not feasible for NIOSH to perform dose reconstructions for the class of employees who worked at the PPG from 1946 through 1962. However, NIOSH has indicated that dose reconstructions for non-specified cancers may be possible for external occupational doses and occupational medical x-rays. Accordingly, for cases with a non-specified cancer and/or that do not meet the employment criteria of the SEC class, the CE must refer these cases back to NIOSH to perform dose reconstructions. The CE should code these cases as "NI".

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE should code the case as "NR," but should not delete the "NW" or "NI" code already present in ECMS.

8. If the claim includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any secondary cancers that are metastases of the specified cancer(s), and any non-specified cancers that have a dose reconstruction that resulted in a probability of causation of 50 percent or greater.
9. If a case with a denied final decision now meets the SEC class criteria, the CE must submit the case for reopening through the appropriate process in the district office. The case must be forwarded to the DEEOIC Director to reopen the claim per 20 C.F.R. § 30.320.
10. FAB personnel must be vigilant for any PPG cases that have a recommended decision to deny. If the employee worked and lived at the PPG for the specified period, has a specified cancer, and meets the 250 work day requirement, the recommended decision must be remanded to the district office in the usual manner.
11. A period of 60 calendar days, effective with the issuance date of this directive, is granted for case files affected by this SEC that are returned from NIOSH for evaluation by the DEEOIC to either receive a recommended decision for inclusion in the SEC or referral back to NIOSH for dose reconstruction.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

## **06-16 Processing Claims for the Nevada Test Site SEC Class, January 27, 1951 – 1962**

EEOICPA BULLETIN NO.06-16

Issue Date: September 12, 2006

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Effective Date: July 26, 2006

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Expiration Date: September 12, 2007

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Subject: Processing Claims for the Nevada Test Site SEC Class, January 27, 1951 – 1962.

Background:

Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of class of workers from the Nevada Test Site (NTS) in Mercury, Nevada to have this facility added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and decided it qualified for evaluation under 42 C.F.R. Part § 83.13. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health ("the Board"). On May 25,

2006, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC employees who worked at the NTS for the period from January 27, 1951 through December 31, 1962.

On June 26, 2006, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress.

Nevada Test Site, January 27, 1951 - 1962:

Department of Energy (DOE) employees or DOE contractor or subcontractor employees who worked at the Nevada Test Site from January 27, 1951 through December 31, 1962 for a number of work days aggregating at least 250 work days, either solely under this employment or in combination with work days within the parameters (excluding aggregate work day requirements) established for other classes of employees included in the SEC, and who were monitored or should have been monitored.

NIOSH determined that "... there is insufficient information either to estimate the maximum radiation dose for every type of cancer for which radiation doses are reconstructed that could have been incurred under plausible circumstances by any member of the class, or to estimate the radiation doses of members of the class more precisely than a maximum dose estimate."

Specifically, internal dose cannot be estimated.

In the June 26, 2006 report, the Secretary of HHS determined that it is not feasible to undertake dose reconstructions for the class of employees employed at the NTS from January 27, 1951 through December 31, 1962.

A copy of the Secretary's letter to Congress recommending the designation is included as Attachment 1. The SEC designation for this class became effective as of July 26, 2006, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in the report to Congress. While Congress has the authority to reject the recommendation within the 30-day time frame, no action was taken to contradict the addition of this new SEC class.

References: Energy Employees Occupational Illness Compensation Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; and the June 26, 2006 report to Congress from the Secretary of HHS, entitled, "HHS Designation of Additional Members of the Special Exposure Cohort, Designating a Class of Employees from Nevada Test Site, Mercury, Nevada."

Purpose: To provide procedures for processing claims for the NTS SEC class.

Applicability: All staff.

Actions:

1. This new addition to the SEC affects DOE employees and DOE contractor employees or subcontractor employees employed at the NTS from January 27, 1951 through December 31, 1962 for a number of work days aggregating at least 250 work days, either solely under this employment or in combination with work days established for other classes of employees included in the SEC. This new SEC designation is established for workers who were "monitored or should have been monitored" while employed at the NTS. Using the current standards for monitoring of workers at a nuclear facility site, DOL is interpreting "monitored or should have been monitored" as including all employees who worked at the NTS during the period from January 27, 1951 through December 31, 1962. NTS encompasses an approximately 1,375 square-mile area in southern Nevada in Nye County and about 65 miles northwest of Las Vegas. NTS is surrounded on the east, west, and north by the Nellis Air Force Range (NAFR) complex and is bordered on the south by federal land administered by the U.S. Bureau of Land Management. NTS includes the town of Mercury which is located in the southwest corner of the site. This additional class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.

2. NIOSH has provided two lists of employees who claimed employment at the NTS during its SEC class period. One list covers employees with specified cancers and the other list addresses employees with non-specified cancers. NIOSH will return analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD contains all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also, included on the CD in the Correspondence Folder should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected NTS claimants is included as Attachment 2. The Claims Examiner (CE) must print out a hard copy of the NIOSH letter for inclusion in the case file.

Since the NIOSH lists contain only cases that were with NIOSH for dose reconstruction at the time this SEC designation became effective, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) has also produced a list identifying all NTS cases that are potentially included in the SEC class including cases that were previously denied. The list identifies those cases that must be reviewed by the district office(s) to determine whether SEC class criteria are satisfied including pending cases with employment during the SEC period with either a specified, non-specified cancer, or previous denial for POC less than 50%. The NIOSH and DEEOIC lists will be compared to ensure all potential SEC cases are identified by the district offices. The lists will be provided to the appropriate district offices under separate cover.

3. For any cases identified (either by NIOSH or DEEOIC) as having a potential for compensability based on the new SEC class, the responsible CE is to undertake appropriate action to evaluate whether the evidence of file meets the criteria delineated in the designation. The CE is to review all relevant documentation contained in the case file, including any documentation that NIOSH may have acquired or generated during the dose reconstruction process. If the evidence is unclear as to whether the employment or medical documentation satisfies the SEC class requirements, the claimant should be asked to provide clarifying evidence.

4. Based on this review, the CE then determines whether the claimant has a specified cancer, as listed in DEEOIC Procedure Manual Chapter 2-600.5. If the employee has a specified cancer, proceed to the next step. If the employee does not have a specified cancer, proceed to Action #7.

5. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 work days at the NTS from January 27, 1951 through December 31, 1962. In determining whether the employment history meets the 250 work day requirement, the CE must consider employment either solely at the NTS or in combination with work days for other SEC classes.

Please note that for this new SEC class, the 250 work day calculation includes any time spent at the NTS, including time spent working or living at the test site. For example, there were employees who lived in the town of Mercury within the NTS during the SEC time period. If the employee was present (either worked or lived) on site at the NTS for a 24-hour period in a day, the CE would credit the employee with the equivalent of three (8-hour) work days. If there is evidence that the employee was present on site at the NTS for 24 hours in a day for 83 days, the employee would have the equivalent of 250 work days and would meet the 250 work day requirement.

Since continuous time spent at the NTS is credited toward the calculation of 250 work days, it is important that the CE establish any period when the employee was not present on site at the NTS and exclude these periods from the 250 work day calculation. If the employee does not meet any of the employment criteria, proceed to Action #7.

6. Once the CE has determined the person named in the claim has a diagnosed specified cancer and meets the employment criteria of the SEC classes, the CE should proceed in the usual manner for a compensable SEC claim and prepare a recommended decision.

7. As discussed earlier, the Secretary of Health and Human Services determined that it is not feasible for NIOSH to perform dose reconstructions for the class of employees who worked at the

NTS from January 27, 1951 through December 31, 1962. However, NIOSH has indicated that dose reconstructions for non-specified cancers may be possible for external and medical x-ray doses.

Accordingly, for cases with a non-specified cancer and/or that do not meet the employment criteria of the SEC class, the CE must refer these cases back to NIOSH to perform dose reconstructions.

The CE should code these cases as "NI".

Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE should code the case as "NR," but should not delete the "NW" or "NI" code already present in ECMS.

8. If the claim includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any secondary cancers that are metastases of the specified cancer(s), and any non-specified cancers that have a dose reconstruction that resulted in a probability of causation of 50 percent or greater.

9. If a case with a denied final decision now meets the SEC class criteria, the CE must submit the case for reopening through the appropriate process in the district office. The case must be forwarded to the DEEOIC Director to reopen the claim per 20 C.F.R. § 30.320.

10. FAB personnel must be vigilant for any NTS cases that have a recommended decision to deny. If the employee worked and lived at the NTS for the specified period, has a specified cancer, and meets the 250 work day requirement, the recommended decision must be remanded to the district office in the usual manner.

11. A period of 60 calendar days, effective with the issuance date of this directive, is granted for case files affected by this SEC that are returned from NIOSH for evaluation by the DEEOIC to either receive a recommended decision for inclusion in the SEC or referral back to NIOSH for dose reconstruction.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

[Attachment 1](#)

[Attachment 2](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

## **2005 EEOICP Final Bulletins**

### **05-01 Administration of Part E**

EEOICPA BULLETIN NO.05-01

Issue Date: November 23, 2004

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Effective Date: November 23, 2004

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Expiration Date: This Bulletin will expire on the effective date of the Interim Final Regulations issued pursuant to the recent amendments to EEOICPA.

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Subject: Administration of Part E of EEOICPA in the period prior to the effective date of Interim Final Regulations.

Background: The Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. § 7384 *et seq.*, was amended on October 28, 2004 to abolish Part D of EEOICPA, under which the Department of Energy (DOE) was required to provide assistance to DOE contractor employees (or their survivors) found to have work-related occupational illnesses as a result of exposure to a toxic substance at a DOE facility. Congress replaced Part D with a new program, called Part E, and assigned responsibility for administration of the new program, which calls for direct federal payments to claimants, to the Department of Labor (DOL). Claims previously filed under Part D have been transferred to DOL as claims under Part E. In view of the fact that thousands of claimants have been waiting for several years without final action on their claims, DEEOIC has determined to utilize the authority granted under the new amendments to EEOICPA to begin administration of Part E prior to the issuance of Interim Final Regulations. The purpose of this bulletin is to set forth guidance for administering Part E of EEOICPA during the period prior to the effective date of the Interim Final Regulations, referred to as the Preliminary Administration Period.

References: Public Law 108-375 and 20 C.F.R. §§ 30.111-30.114, 30.300-30.320, 30.400-406, 30.420-422, 30.505, and 30.700-726.

Purpose: To issue guidance for the administration of Part E of EEOICPA during the Preliminary Administration Period.

Applicability: All staff.

Actions:

1. Effective immediately, DEEOIC will begin taking action on claims under new Part E of the EEOICPA. Part E provides that claims that were filed with DOE under the previous Part D seeking DOE assistance in obtaining state workers' compensation shall be considered claims for benefits under Part E. Once these claims are received in the district office (DO), an acknowledgement letter must be sent by the DO noting the transfer of the former Part D claim to DEEOIC.
2. During the Preliminary Administration Period DOL will also accept new claims filed on Part D claim forms that were developed by DOE, until such time as new claim forms for Part E are issued by DEEOIC.
3. The only Part E claims that will be adjudicated during the Preliminary Administration Period are claims that are "obviously compensable" where DEEOIC finds indisputable evidence of covered employment and finds a causal relationship between a claimed illness or death and exposure to a toxic substance at a DOE facility based on unambiguous medical evidence using well-recognized criteria in support of that conclusion. As a result, all part E claims will undergo initial screening to verify that they are "obviously compensable" and therefore qualified to be adjudicated during the Preliminary Administration Period. In cases lacking such indisputable and unambiguous evidence, such as those based on multiple exposures to multiple toxic substances or based upon ambiguous medical evidence, the CE must inform the claimant that adjudication of the claim will be deferred until after the effective date of the Interim Final Regulations. No denials of claims will be issued during the Preliminary Administration Period.
4. Part E provides that certain employee illnesses are presumed to qualify claimants for the benefits for which they are found to be entitled under the benefits provisions of Part E. During Phase One of the Preliminary Administration Period, claims filed by survivors concerning these illnesses will be assigned to a CE in the Special Claims Units for adjudication. The two presumptions are:
  - In any case in which a determination has been made by DEEOIC that a DOE contractor employee suffered an illness covered by Part B of EEOICPA, that employee is presumed to

have contracted that illness as a result of exposure to a toxic substance at a DOE facility.

- In any case in which, after Physician Panel review under former Part D, the Secretary of Energy has determined that an illness of a DOE contractor was work-related, that employee is presumed to have contracted that illness as a result of exposure to a toxic substance at a DOE facility.

Claims filed by living workers will not be assigned to a Special Claims Unit, since DEEOIC will have to take further development actions before it will be able to pay them any benefits. Instead, development of their claims will take place during Phase Two of the Preliminary Administration Period.

5. During Phase Two of the Preliminary Adjudication Period, the entitlement of claimants other than those set forth in Item 4 will be adjudicated by the CE pursuant to the standard set forth in Part E, which provides that a DOE contractor employee shall be determined to have contracted a covered illness through exposure to a toxic substance at a DOE facility if-

(A) it is at least as likely as not that exposure to a toxic substance at a Department of Energy facility was a significant factor in aggravating, contributing to, or causing the illness; and

(B) it is at least as likely as not that the exposure to such toxic substance was related to employment at a Department of Energy facility.

6. Because many of the entitlement provisions of Part E will require issuance of regulations in order to implement, only certain benefit determinations will be made during the Preliminary Administration Period.

- In any case in which a claim by an eligible survivor is determined “obviously compensable,” a payment of \$125,000 will be made to the eligible survivor or survivors. Determination of whether such survivor or survivors is entitled to a supplemental payment based upon wage-loss will be deferred until after the effective date of the Interim Final Regulations. Determination of any case in which an employee filed a claim and then died and a survivor claims entitlement to an election to receive either survivor benefits or benefits that the employee would have received will also be deferred until after the effective date of the Interim Final Regulations.
- In any case in which the claim of an employee is determined to be “obviously compensable,” the employee will be informed that DEEOIC has concluded the claim was filed by a covered employee and that a claimed illness was contracted as a result of exposure to a toxic substance at a DOE facility and the claimant will be awarded medical benefits. Determination of the claimant’s entitlement to monetary compensation based upon either impairment or wage-loss will be deferred until after the effective date of the Interim Final Regulations.

This “partial adjudication” of claims will not be construed as precluding entitlement to additional compensation after the effective date of the Interim Final Regulations.

7. Any decision issued on a Part E claim that cannot be fully adjudicated during the Preliminary Administration Period must clearly indicate that the claimant is only receiving a decision on a portion of their claim under Part E and must specify the extent of adjudication that has taken place and what further steps will be taken when the Interim Final Regulations take effect. Decisions on claims that are issued during the Preliminary Administration Period may require adjudication of a claimant’s entitlement under both Part B and Part E. The decisions must carefully distinguish between decisions made in regard to claims under Part B and decisions made in regard to claims under Part E, and specify whether a decision on any portion of the Part E claim is being deferred until after the effective date of the Interim Final Regulations.

8. Case development during the Preliminary Administration Period will be limited to obtaining

information necessary to make the determinations specified in Item 6, except that if DEEOIC determines that an employee is a covered DOE contractor employee with a covered illness, or if it determines that a deceased employee was a covered DOE contractor employee with a covered illness whose death was causally related to that covered illness, the claimant will be requested to supply any information or evidence relevant to wage-loss or to the extent of any impairment due to the covered illness. DEEOIC will resume development of these matters expeditiously after the effective date of the Interim Final Regulations.

9. CE's should develop claims during the Preliminary Administration Period using the development actions set out in Chapters 2-100 through 2-500 of the Federal (EEOICPA) Procedure Manual, to the extent such actions are feasible.

10. DEEOIC will adjudicate Part E claims using the entire two-step adjudicatory structure applicable to Part B claims as set out in 20 C.F.R. §§ 30.300-30.320, with recommended decisions being issued by district offices and final decisions being issued by the Final Adjudication Branch (FAB). Claimants will have the ability to request reconsideration before the FAB and/or reopening by the Director of the DEEOIC. Any final decision on a Part E claim issued by FAB must indicate that any person aggrieved by such decision may seek review of the decision by filing a petition in United States district court within 60 days of the date of such decision.

11. Consistent with the requirement for offsetting Part B compensation to reflect certain payments received for an occupational illness in 42 U.S.C. § 7385, Part E benefits must also be offset under that same section of the EEOICPA. Therefore, DEEOIC will perform these offsets and any other required adjustments to compensation using its current Part B procedures, based on the general guidelines set out in 20 C.F.R. § 30.505(b).

12. Once a Part E claim of a DOE contractor employee is accepted, medical benefits will be provided in accordance with the existing requirements for authorized medical treatment and related travel, the timely submission of bills by medical providers and reimbursement requests by beneficiaries, and the fee schedule that applies to all medical services provided for pursuant to the EEOICPA.

Disposition: Retain until superceded or incorporated into the Federal (EEOICPA) Procedure Manual

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Attachment

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

## **05-02 Processing Residual Contamination Site Claims *Has been updated by Bulletin 07-13***

EEOICPA BULLETIN NO.05-02

Issue Date: April 13, 2005

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Effective Date: April 13, 2005

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Expiration Date: April 13, 2006

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Subject : Processing Residual Contamination Site Claims

Background :An amendment to the National Defense Authorization Act for Fiscal Year 2002 mandated that the National Institute for Occupational Safety and Health (NIOSH) identify and report on all facilities covered under the EEOICPA where the potential for significant residual contamination existed outside of the period in which weapons-related production occurred.

NIOSH identified certain facilities with the potential for significant residual contamination outside of the EEOICPA covered time periods. The current report, "Report on Residual Radioactive and Beryllium Contamination at Atomic Weapons Employer Facilities and Beryllium Vendor Facilities," was revised in June 2004. Appendix A-2 of the NIOSH report lists 96 facilities that have been identified to date. Of these facilities, 49 have defined residual contamination periods, 29 require continued NIOSH review (as part of the Congressionally-required NIOSH review discussed further below), and 18 sites have AEC/DOE activities indistinguishable from non AEC/DOE activities. i.e., NIOSH cannot determine with certainty which activities contributed the residual contamination.

On October 28, 2004 , the President signed into law an amendment to Part B of the EEOICPA mandating that NIOSH prepare an updated report regarding all facilities where the potential for significant residual contamination existed outside of the originally covered employment period. This updated report must be submitted to Congress not later than December 31, 2006 . NIOSH continues to assess other facilities to determine if the potential for significant residual contamination existed at those sites for inclusion in its updated report to Congress.

In addition, the new amendment extends coverage for work performed during the time periods identified by NIOSH in which the potential for significant residual contamination existed at a facility. As such, significant residual contamination periods identified by NIOSH are now included as covered timeframes under Part B of the EEOICPA, and work performed during these periods is deemed covered.

Due to the nature and levels of radioactivity at most sites, employment during just the residual contamination period will probably not provide sufficient dose to result in a probability of causation of at least 50% based upon NIOSH cancer risk computer models, as the health endangerment model generally exhibits a relatively low corresponding radiation dose value. As such, the fact that residual contamination was identified during any given period of employment does not necessarily mean that the presence of such contamination actually caused an individual any adverse health effect.

Nonetheless, now that such residual contamination periods are considered covered under the EEOICPA, claims denied based upon the covered time frame issue may be reopened and forwarded to NIOSH for the preparation of a dose reconstruction. In addition, all future claims arising out of such facilities identified by NIOSH must undergo the dose reconstruction process. Finally, in all such cases, only claims with verified employment exclusively within the residual contamination period will be evaluated by NIOSH based upon the residual contamination model.

References : Energy Employees Occupational Illness Compensation Act of 2000, 42 U.S.C. § 7384 et seq.; FY 2005 Defense Authorization bill, Public Law 108-375, which contains amendments to the Energy Employees Occupational Illness Compensation Program Act (EEOICPA); and the NIOSH "Report on Residual Radioactive and Beryllium Contamination at Atomic Weapons Employer Facilities and Beryllium Vendor Facilities," revised June 2004.

Purpose : To provide procedures for processing claims for workers with employment at AWEs identified by NIOSH as having the potential for significant residual contamination outside of the original covered time periods under Part B of the EEOICPA.

Applicability : All staff.

Actions :

1. The addition of residual contamination periods to the covered periods for AWEs encompasses

both claims already denied due to employment outside of the covered employment period, i.e., the period in which weapons-related production occurred, as well as future claims yet to be submitted. The DEEOIC has identified all Part B claims denied due to work performed during a non-covered time period now covered as a result of the new amendment. All affected claimants will be contacted and afforded the opportunity to request a reopening of their claim for benefits based upon the findings provided by NIOSH. In the future, DEEOIC will allow other claimants to request a reopening if their claim for benefits was denied and NIOSH found that the potential for significant residual contamination existed at a facility during the time in which employment took place.

When a previously denied claim is reopened, a claim is remanded by FAB, or a new claim for compensation is submitted, the claims examiner (CE) reviews the documentation submitted with the EE-1 or EE-2 and EE-3 forms. Based on this review, the CE determines whether the claimant has identified employment that falls exclusively within some portion of the expanded covered period based on the presence of significant residual contamination. NIOSH already considers exposure from residual contamination in the dose reconstruction of any claim with employment within any portion of the original covered period. The attached table is a summary of Appendix A-2, "Residual Radioactivity Summary" of the NIOSH report, which identified 96 facilities as having the potential for significant residual contamination as a result of weapons-related production.

This table lists the 96 facilities NIOSH identified as having the potential for significant residual contamination outside of the periods in which weapons-related production occurred and lists the time periods for residual contamination. This list is not exhaustive, as other facilities may be identified and added by NIOSH. The CE must identify the facility on the table where the employee worked and proceed according to Actions # 2 through 4, as appropriate.

2. Some facilities are listed in the table with defined time periods, i.e., with both a start and end year. This period includes both the original AEC/DOE covered period and the additional period of residual contamination. For these facilities, proceed to Action #5.

3. Some facilities are listed in the table as "NIOSH facility review continuing." As noted earlier, NIOSH is charged with reviewing these facilities and submitting an updated report to Congress not later than December 31, 2006. If the facility in question is listed as one of these facilities, the claim must be denied, citing the continued evaluation of the facility's residual contamination period by NIOSH staff.

4. Some facilities are listed in the table with a time period and the phrase, "AEC/DOE activities indistinguishable from non AEC/DOE work." The time period also has a "+" sign following the end year of the period, which denotes NIOSH's uncertainty as to the whether the end date for the residual contamination period may be later than the listed year. For these facilities, proceed to Action #5. If the cancer diagnosis year is after the last year listed, NIOSH will include additional dose from residual contamination through the year of diagnosis.

5. Development of medical and employment information should proceed in the usual manner. If the evidence is unclear as to whether employment falls within the period of significant residual contamination, the claimant should be asked to provide clarification. The CE must review any documentation submitted by the claimant and undertake any additional development necessary to clarify the individual's medical and employment status.

6. Once the CE has determined that the person named in the claim has a diagnosed primary cancer (other than chronic lymphocytic leukemia (CLL)) and covered employment the claim must be prepared for referral to NIOSH for a dose reconstruction per Sections 7 and 8 of Chapter 2-600 of the Federal (EEOICPA) Procedure Manual. Mere exposure to residual radioactive contamination at any of the facilities identified by NIOSH is not sufficient to establish that a diagnosed cancer is work related. A dose reconstruction is required to determine the probability that a diagnosed cancer was "at least as likely as not" (a 50% or greater causation value) caused by occupational exposure to radiation.

7. Upon receipt of the dose reconstruction by the district office, the claim is processed in the same manner as all NIOSH cases and a recommended decision is prepared.

8. FAB personnel must be vigilant for any cases with employees who worked at the listed facilities and that have a recommended decision to deny. If the case does not have a NIOSH dose reconstruction and falls under Action # 2 or 4, FAB must remand the case to the district office for referral to NIOSH.

Disposition : Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

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Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

Attachment 1: [Significant Residual Contamination Outside Of the Periods in Which Weapons-Related Production Occurred](#)

**05-04 Procedures for deducting payments received for final judgments or settlements from EEOICPA benefits under Part B and/or new Part E**  
*05-04 has been updated by Bulletin 07-10*

EEOICPA BULLETIN NO.05-04

Issue Date: July 1, 2005

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Effective Date: July 1, 2005

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Expiration Date: July 1, 2006

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**NOTE: This Bulletin replaces Bulletin No. 04-08, Revised procedures for deducting judgment or settlement payments.**

Subject: Procedures for deducting payments received for final judgments or settlements from EEOICPA benefits under Part B and/or new Part E.

Background: On October 28, 2004, the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) was amended by abolishing Part D and adding a new Part E. Many sections contained in Part C of EEOICPA were also amended to reflect the addition of Part E on that date, including the offset provision of § 7385. As amended, § 7385 now requires OWCP to “offset” or reduce the amount of Part B and Part E EEOICPA benefits it pays to a claimant by the amount of any payment received from either a final judgment or a settlement in a lawsuit (except a lawsuit for workers’ compensation) seeking damages for an occupational illness compensable under Part B, or a covered illness compensable under Part E. If the evidence in the case file (Forms EE-1 or EE-2, or later submissions from the claimant) suggests that this type of payment may have been received, the Claims Examiner (CE) designated in each district office to handle these matters must develop this aspect of the case further to determine if EEOICPA benefits that are payable to the claimant(s) must be reduced, and if so, by how much. Attachment 1 is the modified “EEOICPA Part B/E Benefits Offset Worksheet,” which provides step-by-step instructions to help the CE make these calculations.

References: 42 U.S.C. § 7385 and 20 C.F.R. § 30.505(b).

Purpose: To provide updated procedures and a modified Worksheet for making the required reduction of EEOICPA benefits.

Applicability: All staff.

Actions:

1. When evidence in the case file suggests that a payment for an occupational illness compensable under Part B or a covered illness compensable under Part E has been received by someone (not just the employee or a deceased employee's survivor), a letter must be sent to the claimant asking for copies of documents in his or her possession relating to the lawsuit, such as any complaint (whether or not it was filed in court), any settlement agreement, and any itemized list of expenses submitted with an attorney's bill. The claimant should be asked to contact the attorney who filed the lawsuit to obtain copies of these documents if the claimant does not have them. The CE may also need to ask for more evidence or explanation before determining the dollar amount of the settlement or award payment(s) made for an occupational illness compensable under Part B or a covered illness compensable under Part E, and to whom the payment(s) was made.

2. Attachment 1 consists of the revised "EEOICPA Benefits Offset Worksheet." This Worksheet is to be used by the CE to make the calculations necessary to determine how much to "offset" (reduce) a claimant's Part B and/or Part E EEOICPA benefits to reflect payments received from a final judgment or a settlement in a lawsuit that sought damages for an occupational illness compensable under Part B, or a covered illness compensable under Part E. The Worksheet includes detailed instructions on how to compute the different figures that the CE enters on the Worksheet and are used to calculate the amount of any offset. After completing the Worksheet, the designated CE files it in the claimant's case record.

3. If the amount of EEOICPA benefits (which may consist of lump-sum payments and/or post-filing and ongoing medical benefits) to which the claimant is currently entitled is MORE than the offset, the balance due the claimant will be listed on Line 7b of the Worksheet. This is the amount of EEOICPA benefits that must be referenced in the recommended decision, together with an explanation of how this amount was calculated.

4. If the amount of EEOICPA benefits is LESS than the offset, the amount of the "surplus" is listed on Line 7c of the Worksheet. Because a surplus can only be absorbed from EEOICPA benefits due an employee currently or in the future, no further action is required for a survivor claim. If there is a surplus to be absorbed in an employee's Part B claim, this must be noted in the recommended decision, along with an explanation that OWCP will not pay medical benefits and will apply the amount it would otherwise pay (directly to a medical provider, or to reimburse an employee for ongoing medical treatment) to the remaining surplus until it is absorbed. If there is a surplus to be absorbed in an employee's Part E claim, this same explanation needs to appear in the recommended decision, PLUS an explanation that OWCP will also not pay any further lump-sum payments for wage-loss and/or impairment due in the future until the surplus is absorbed.

5. In situations involving a surplus, the FAB issues an award letter to the claimant containing special language. The FAB award letter accompanies the final decision and advises the claimant of the exact amount of the surplus. The award letter explains that the surplus will be absorbed out of medical benefits payable under EEOICPA (and further lump-sum payments due in the future in Part E claims). The award letter further instructs the claimant to submit proof of payment of medical bills to the district office until notice is received that the surplus has been absorbed. In addition, claimants are instructed to advise medical providers to submit proof of payment of medical bills to the district office during this time.

6. In all claims described in Item 5 above, upon issuance of the final decision the FAB representative will update ECMS in the *condition status* field with the "O" (Offset) code for the

affected medical condition(s) on the medical condition screen for the Employee's claim. The offset will only apply to the Employee's claim, even in the event that the Employee died prior to adjudication of the case, and the survivor is entitled to compensation. The ECMS process for Part B and Part E claims is as follows:

Offset for a Living Employee: For any medical condition(s) that will be affected by a surplus, the FAB representative:

- a) Updates the *condition status* field for the medical condition(s) from "A" (Accepted, entered by the district office) to "O" (Offset) on the Employee Medical Condition screen;
- b) Confirms that the corresponding medical *status effective date* is equal to the Employee's claim filing date; and
- c) Confirms that the corresponding data for the medical condition(s) is correct (condition type, ICD-9 code and diagnosis date).

Offset for a Deceased Employee: For any medical condition(s) that will be affected by a surplus, the FAB representative:

- a) Confirms the "C3" claim status code was entered in the Employee's claim status history screen, with a *status effective date* of the date stamp of receipt of notification of the Employee's death;
- b) Adds or updates the actual date of the Employee's death in the *DOD (Date of Death)* field in the Employee Census Information box of the case screen;
- c) Updates through the Employee's claim, the *condition status* field for the medical condition(s) to "O" (Offset) on the Employee Medical Condition screen;
- d) Updates or confirms that the corresponding medical *status effective date* is equal to the Employee's claim filing date; and
- e) Updates or confirms that the corresponding data for the medical condition(s) is correct (condition type, ICD-9 code and diagnosis date).

As an award automatically generates an eligibility file at the medical bill processing center, the "O" code acts as a "suspend" code and will not permit medical bill payment until the surplus is absorbed and the "O" code is removed from the condition status screen. During the time in which the "O" code remains in the medical condition status screen, the medical bill processing center will return all bills received on a surplus file to the claimant or the billing provider indicating that the bill can not be paid at this time due to a surplus.

7. During the time in which a surplus is in effect, the district office offset point of contact (POC) will be responsible for tracking surplus depletion. The FAB award letter will inform the claimant and medical providers to send all proofs of payment of medical bills to the offset POC. Should an unpaid bill be submitted to the offset POC during the surplus period, it will be returned to the claimant or the billing provider indicating that it can not be paid at that time due to the existence of a surplus. During the time in which the surplus is being monitored for depletion, the POC will tabulate the amounts of the proofs of payment until they equal or exceed the surplus amount. Once the proofs of payment monitored by the offset POC equal the surplus amount, all future medical bills in excess of the surplus amount will be paid under EEOICPA.

8. Once the surplus is absorbed, the DO offset POC updates the medical condition(s) of the Employee's claim in ECMS to reflect that the offset(s) is complete. The POC will change the "O" (Offset) in the *status* field and replace it with an "A" (Accepted) code. If the Employee is deceased, the POC will confirm that the *eligibility end date* is equal to the actual date of the Employee's death. The POC then enters a comment into ECMS case notes indicating that the surplus has been absorbed and that all future medical bills will be paid under EEOICPA. Once the "A" code is entered into the Medical Condition Status screen in ECMS, the payment eligibility file will become active. The POC confirms that the *status effective date* is the Employee's claim filing date. Upon

entering the “A” code into ECMS, the offset POC will send a letter advising the claimant that the surplus is absorbed. The letter will provide the claimant with the address of the medical bill processing center and instruct him or her to submit all future unpaid medical bills to that address for review and payment. At that point, the offset POC will send a copy of all proofs of payment received during the time in which the surplus was in force to the medical bill processing center. The medical bill processing center will maintain a record of these proofs of payment to guard against payment of these previously rejected or otherwise unprocessed bills.

9. During any period when medical benefits are not being paid because of the required reduction of EEOICPA benefits, if the CE finds it necessary in the course of normal case management to obtain a second opinion examination, a referee examination, or a medical file review, the costs for these procedures will be directly paid by OWCP and any reasonable expenses incurred by the employee will be reimbursed without being added to the surplus. Therefore, the offset will not apply to any prior approval medical conditions in ECMS, coded with a medical condition type of “PA.” In such situations, the CE will enter a comment into ECMS case notes authorizing the medical bill processing center to pay all bills related to the directed medical examination or medical file review. The CE must follow the procedures outlined in EEOICPA Bulletin No. 03-01 for the processing of bills related to these matters.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Attachment 1: [EEOICPA Part B/E Benefits Offset Worksheet](#)

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

## **05-05 Resource Center Procedures for Employment Verification and Occupational History Questionnaires**

EEOICPA BULLETIN NO. 05-05

Issue Date: August 26, 2005

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Effective Date: August 26, 2005

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Expiration Date: August 26, 2006

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Subject: Resource Center Procedures for Employment Verification and Occupational History Questionnaires

Background:

This Bulletin provides background and new procedures outlining operational guidance to the Resource Centers (RC) assisting the Division of Energy Employees Occupational Illness Compensation (DEEOIC) in the implementation and administration of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). In particular, this bulletin provides specific instructions and a User Guide regarding RC Energy Case Management System (ECMS) access and usage. In addition, this bulletin imparts direction for RC employment verification and

occupational history development functions in compliance with the outcome of a recent A-76 competition.

A contractor is responsible for RC management and conduct. Permanent RCs are situated in key geographic locations throughout the United States to provide assistance and information to the DEEOIC claimant community and other interested parties. Originally, RCs were designed to provide basic claims process and program information and to assist claimants in the completion of the necessary claim forms. Due to new program demands, RCs will now perform additional tasks, and procedures addressing certain new RC actions are necessary.

The RCs will now take initial employment verification steps for all new EEOICPA claims filed with the RC and occupational history development for certain employees. As a large portion of DEEOIC adjudication relies upon establishing covered employment and worksite exposure, detailed procedures governing these actions are necessary to ensure uniform claim development and equitable adjudication of claims filed under the EEOICPA.

References: ECMS User's Reference Guide; Employment Verification and Occupational History Development Functions Performance Work Statement and Most Efficient Organization (MEO) Concept of Operations; EEOICPA Procedure Manual 2-400, 2-500, E-300 (Draft) E-400 (Draft), E-500 (Draft) and 2-1500; EEOICPA Bulletin 02-34 and Public Law 108-375.

Purpose: To provide guidance to the Resource Centers and District Offices on employment verification and occupational history development actions.

Applicability: All DEEOIC and RC staff.

Actions:

1. When interfacing with claimants and other interested parties (i.e. authorized representatives of claimants) RC staff must remain cognizant of individual privacy concerns and at all times maintain compliance with Privacy Act mandates. In all instances discussed herein, RC staff members are not permitted to provide information regarding an individual claim for benefits, or any other personal information, to anyone other than the identified claimant, or his or her duly authorized representative. In order for RC staff to release any information regarding a specific claim or claimant to an alleged authorized representative of that claimant, an authorization form signed by the claimant in question must be in the case file appointing such individual as the claimant's authorized representative regarding his or her claim for benefits under the EEOICPA. Only one authorized representative may be appointed per claimant. Please see EEOICPA PM 2-1200 for a full discussion of the use and appointment of authorized representatives.
2. In all instances where information is sought that exceeds the RC's ability to assist the claimant or duly appointed authorized representative, the RC staff refers the matter to the proper District Office (DO) Claims Examiner (CE) or Final Adjudication Branch (FAB) Hearing Representative (HR), denoted in ECMS as the primary case file designee. ECMS access is granted to the RC staff in order to memorialize claimant interaction and obtain claim status updates. Specific guidance regarding ECMS is provided in the attached ECMS User's Reference Guide (Attachment 1). No ECMS coding access is granted to the RCs at this time.
3. Due to the privacy concerns outlined above and the sensitive nature of the records available for viewing in ECMS and other claim file documents (i.e. employment history, payment information, disease history, Social Security Numbers [SSN], and addresses) it is imperative that security measures govern access to the system and in general. Accordingly, when RC staff member employment is terminated for whatever reason, a process must exist that deletes the outgoing employee's ECMS access in an efficient manner. Conversely, in the event that a RC staff member is added and ECMS access is required for that individual, a process must be in place to grant access as needed.
  - a. Memorandum from RC Manager. Upon employee termination or resignation, the RC

manager must prepare a memorandum to the RC Project Manager at National Office (NO). The memorandum provides the departing RC employee's name, title, employee number, and all other necessary information, including the date of the employee's termination or resignation. The memorandum will request that the employee's access to ECMS be terminated on a specified date (date of termination or resignation). The RC Project Manager then prepares a memorandum notifying the Branch Chief of the Branch of Outreach and Technical Assistance (BOTA) advising of the RC employee's scheduled departure. The Branch Chief of BOTA advises Energy Technical Support of the need to delete ECMS access to the outgoing RC employee upon receipt of such notification.

In the event of the addition of new RC staff requiring ECMS access, the RC manager prepares a memorandum the RC Project Manager at NO. The RC Project Manager then prepares a memorandum to the Branch Chief of BOTA requesting such access and providing all pertinent employee information. The Branch Chief of BOTA reviews the request and advises Energy Technical Support of the need to grant access to an incoming RC employee.

4. In certain instances discussed herein, a RC staff member may either be a party to a claim under the EEOICPA or have some personal or familial interest in the outcome of a claim. When a RC staff member is a claimant or is the family member of a claimant or has some personal interest in a claim in question, the RC manager must immediately notify the BOTA Branch Chief in writing. Email notification will suffice. All claims filed by RC staff members themselves will undergo employment verification at the adjudicatory DO. Occupational history development is conducted at the nearest RC. The RC manager where the claim arises prepares a memorandum to the nearest RC manager requesting that the occupational history development task be conducted and forwarded to the appropriate DO upon completion. The RC assigned this development action has 14 calendar days upon the date the assignment is received to complete all initial activities and report to the DO as outlined herein.

5. One major customer service function performed by RC staff members is telephone contact with claimants and other interested parties. RC staff members receive incoming telephone calls, return telephone calls and place outbound telephone calls to claimants and various other individuals regarding questions and concerns arising out of the claims process. Each telephone call to or from a claimant is accurately entered into ECMS in accordance with the specific instructions contained in the attached ECMS User's Reference Guide. Each telephone call entered into ECMS is accompanied by a written synopsis memorializing the discussion. Primarily, the RC staff member associated with the telephone call outlines the content of the discussion, the claimant request, if any, the guidance or solution offered, and the general outcome of the call or resolution of the issue at hand. The input of quality entries is of the utmost importance. The RC staff member strives to ensure accuracy and specificity of data input into the system. Once a telephone contact is captured in the telephone management system (TMS) in ECMS, the TMS screen is printed and the paper record of the activity is forwarded to the appropriate DO/FAB for association with the case file.

Most employment verification and occupational history tasks performed by the RC staff will occur prior to case create at the DO and are not immediately tracked in ECMS; tracking of such activities is covered below. Occupational history development activity conducted on cases already created is entered into ECMS.

a. Telephone Management System (TMS). The TMS feature in ECMS allows the ECMS user to memorialize telephone conversations, place and obtain telephone messages within the system. It provides a mechanism by which telephone contact on a given case file is tracked and maintained. All incoming and outgoing telephone calls to and from the RC regarding a particular existing case file or claim must be entered into TMS to accurately capture and reflect telephonic activity. All telephonic activity related to occupational history development on cases that are already created must be logged into TMS.

b. Incoming Calls. RCs receive various different kinds of incoming calls. Generally,

incoming calls are from claimants (or their duly appointed authorized representative) seeking claim status or guidance of some sort, or from potential claimants seeking program information and guidance regarding the claims process.

1) Claim Status. Claim status requests regarding initial employment verification or occupational history development fall within the purview of the RC staff. Other claim status requests, too, are fielded by RC staff members to assist claimants with general questions not requiring DO or FAB expertise or involvement. The RC staff member reviews ECMS status codes and answers claimant inquiries, memorializing such activities into the TMS screen whenever possible. If the claim status request is beyond the scope of the RC staff to address, the RC staff member determines the case file location in ECMS and directs the caller to the proper claims examiner (CE) or hearing representative (HR), as the case may be. Calls received from a claimant or authorized representative seeking claim statuses are referred to the adjudicatory DO CE, or the FAB HR if pending FAB review. When referring a claimant or authorized representative to a DO or FAB for further information, the RC provides the toll free number to the DO or FAB for use.

2) Program Information or Claim Process Guidance. If a potential claimant calls to inquire as to claim status and no claim is on file, the RC staff member informs the potential claimant of program filing requirements and available benefits. No referral to a DO or FAB is necessary. As no claim exists in the system, a note memorializing the telephone conversation is not entered into ECMS. In instances where a current claimant contacts the RC for basic guidance regarding the claim process (confirmation that a claim exists, questions regarding the submission of new evidence or a new claim for benefits), the RC can provide guidance to the claimant as needed without referral to the DO or FAB. In some instances, too, the RC staff may assist claimants in understanding the information being sought in DO development letters and explain the means by which such information may be obtained. Claim-specific conversations and guidance provided on claims existing in ECMS are entered into TMS.

c. Return Calls. Regardless of the issue at hand, a message to return a telephone call received in the RC is returned by a RC staff member within two (2) business days of receipt. All calls received in the RC related to claims currently existing in ECMS will be logged into the TMS and must be returned accordingly. All return calls must be memorialized in ECMS and coded correctly per the ECMS User's Reference Guide. Additionally, all issues must be treated as outlined above in the incoming call discussion and the RC staff will refer all claim status type calls beyond the scope of their expertise or authority to the necessary DO or FAB for response.

d. Outgoing Calls. Outgoing calls are calls generated from the RC for a purpose other than returning a telephone call. In certain instances the DO may request RC assistance in obtaining evidence from a claimant or conducting some additional development on a case file. All outgoing calls regarding claims already created at the DO must be logged into the TMS in ECMS with a narrative memorializing the call. Many RC outgoing calls will be generated in the course of conducting employment verification and occupational history development.

6. Members of the RC staff can also enter notes into ECMS. Primarily, the notes field is accessed and populated when a claimant appears at the RC in person to submit evidence or claim forms, to make an inquiry or raise a concern, or to complete the occupational history questionnaire interview described below. In instances where a claimant appears in person at the RC, the RC staff member assisting the claimant memorializes the claimant's visit in the notes field in ECMS, providing a synopsis of the conversation and a list of any evidence or new claim filed during the visit. The

notes field captures all interface with the claimant, including instructions or guidance provided to the claimant by the RC. As always, the RC will only discuss information on a specific claimant with the claimant in question. As with telephone calls, the RC staff will assist the claimant as best as possible. Claimant referral to the designated CE or HR will be made when appropriate by supplying the toll free number for contact or placing a conference call with the handling CE. Once a note is placed in the system, the screen is printed and the printed record of the activity is forwarded to the appropriate DO/FAB for association with the case file. As noted previously in this bulletin, notes are not entered into ECMS regarding employment verification development activities and occupational history development conducted face-to-face at the RC when the case has yet to be created at the DO. Such interaction is tracked as outlined below. All face-to-face contact with the claimant at the RC regarding the completion of the occupational history questionnaire on created cases is captured in the ECMS Notes section by the RC staff member conducting the interview.

**\* ECMS Screen Usage:** When creating an ECMS notes entry, make certain to select the '*R FOR RESOURCE CENTER USE ONLY*' entry in the "Note Type" section in the upper left hand box of the screen.

7. RC staff members are equipped with the capability to edit entries populated into ECMS TMS and ECMS Notes. ECMS entries placed into the system by RC staff may be changed as needed by the RC ECMS user to correct errors, or at the request of the RC manager upon his/her final review of claim file material before it is forwarded to the DO. ECMS entries cannot be deleted. Accordingly, RC staff and RC managers must ensure that the data entered into ECMS is of high quality and free of errors prior to saving the entries into the system. Once an ECMS record is input at the RC level, only National Office (NO) DEEOIC staff may remove it. At the present time no capability to add or alter ECMS claim status codes has been granted to the RCs, and all coding operations related to RC activity on a case (aside from activities related to input in TMS or Notes as discussed above) are input at the DO level to correspond with the date of the activity. For this reason it will be important to include a very detailed check list coversheet to the DO as outlined below (See Attachment # 2).

8. In all instances discussed herein involving multiple worksites, the RC closest to the domicile of the claimant(s) performs the required development tasks. For instance, if employment is claimed at all 3 Gaseous Diffusion Plants, and the employee/claimant(s) reside in the Paducah, Kentucky, area, the Paducah RC will handle all required tasks with assistance from the other RCs as needed. If claimants reside in different states and the claim as a whole can be better served by utilizing more than one RC, RC involvement will occur as needed based upon the geographical location of the claimant. In all such cases, the RC forwards all documentation to the adjudicatory DO, even if the DO is not the DO with jurisdiction over the RC in question.

9. Most new EE-1/2 claim forms are filed directly with the RC located in the geographical area where the claimant(s) reside. EE-1/2s received directly in the DO undergo employment verification at the DO pursuant to procedural guidance already in place and such claims are only referred to the RC if the DO determines that an occupational history interview is required. Regardless of place of receipt, the date of filing for a claim is the earliest discernible date stamp or postmark (whichever is earliest) of a claim form or words of claim. Words of claim are any written statements received without a claim form that indicate a claimant's intention to seek benefits under the EEOICPA.

10. In certain instances no RC action is required. Neither initial employment verification nor occupational history development is undertaken in instances where there is no eligible survivor under the statute. In instances where it is obvious that no eligible survivor exists (especially in the case of adult children under Part E) no additional RC action takes place. The DO reviews all survivorship evidence and can direct the RC to undertake certain tasks if deemed necessary at a later date. Further, since occupational history development is conducted exclusively on Part E claims, no action is necessary where Part E employment is not claimed or confirmed. If employment is claimed or confirmed at an atomic weapons employer (AWE) or a beryllium vendor (BV), no occupational history interview is conducted. As noted below, occupational history

questionnaires are not conducted if the claimed conditions are as follows: beryllium illness or chronic silicosis. Finally, AWE contractors/subcontractors are not afforded coverage under the EEOICPA, and such claimed employment does not require occupational history development by the RC.

11. The RC staff takes initial employment verification actions on most new claims under the EEOICPA filed at a RC. The RC utilizes many DEEOIC tools, including procedures, bulletins, and employment verification updates and is given access to the DEEOIC Shared Drive for viewing of these materials. The RC conducts initial employment verification steps on claims submitted on behalf of Department of Energy (DOE) contractor/subcontractor, AWE, and BV employees for use by DEEOIC in the adjudication of claims filed under the EEOICPA. Additionally, the RCs are required to conduct occupational history interviews regarding certain claims filed under Part E of the EEOICPA as described herein. Prior to any development action (initial employment verification or occupational history development) the RC reviews ECMS to determine whether or not a claim already exists. If a claim does exist in ECMS B or E, the RC contacts the adjudicatory DO CE for guidance as to whether or not employment or occupational history development is required determined by the material already extant in the existing claim file. If documentation is present in the existing claim file to either confirm employment or properly document workplace exposure, the DO will advise the RC accordingly and no action is necessary at the RC level. This will be a case-by-case decision made at the DO level.

12. The RC does not conduct initial employment verification on claims submitted by Radiation Exposure Compensation Act (RECA) claimants. However, occupational history development is necessary on most RECA claims and should be attempted upon receipt of the EE-1/2 in the RC. Nonetheless, since the DO must begin employment verification with the Department of Justice (DOJ), all RECA claim forms are sent to the DO on the date of receipt in the RC for case create at the DO. Since the RECA claim forms are not held for 7 calendar days, as in most other cases, whenever possible the RC attempts to conclude the occupational history development on the date of receipt of the RECA claim forms prior to shipment to the DO. In instances where occupational history development cannot be completed at the RC on RECA claims upon the date of filing, the RC copies the RECA claim form documents and maintains a file at the RC while conducting occupational history development actions. In such instances the RC has 14 calendar days from the date the claim is received in the RC to conclude the occupational history development actions.

13. In all cases where employment verification is undertaken, the RC prepares a memorandum documenting all the dates on which employment verification actions were taken for each claimant. The memorandum is forwarded to the DO within seven (7) *calendar* days of receipt of the EE-1/2. The memo is accompanied by the Resource Center New Claim Check List (Attachment 2), listing all materials enclosed and further actions required. The RC manager verifies the contents of the referral package and signs the checklist. The dates in the memo are used for ECMS coding by the DO to correspond with the dates on which actions were taken at the RC. The RC strives to complete the occupational history interview within the same time frame if possible. Overall, the RC has 14 calendar days from the date of claim filing or DO assignment receipt in the RC to complete the occupational history development task. A great deal of information, evidence, and documentation will be provided to the RC in this new and expanded role, and the RC is to refrain from weighing evidence and making any determinations as to fact or law, or as to whether or not a claimant may or may not be entitled to benefits. All adjudicatory functions are retained by the DO.

14. Upon receipt of the initial claim file package (7 calendar days post filing) where additional DO development or follow up with the RC is required, the CE places a call up note into ECMS as a reminder that follow up actions are necessary. Additionally, the CE reviews the initial submission (and all material submitted from the RC thereafter) to determine whether or not additional tasks are necessary at the RC level. Materials received in the RC after the initial 7 calendar day memo are sent to the DO with the occupational history development package if such package can not be included with the 7 calendar day memo submission. All other evidence or documentation received

at the RC after all development is concluded (including printouts of TMS and ECMS Notes records) are submitted based upon RC procedures currently in place for the submission of documentation to the DO. No memo or checklist is required for these materials. The RC will prepare a list of all materials being submitted on a transmittal sheet outlining the material being sent separated by claim number. All such documentation is associated with the proper case file upon receipt in the DO pursuant to current mail and file procedures.

15. In general, the RC reviews claim materials, conducts the occupational history interview (Attachments 3 & 4), and reviews all pertinent evidence and documents with the claimant in person at the RC at the time of filing. If possible, all initial employment verification actions and occupational history development should be completed when the claimant(s) file their EE-1/2 at the RC. If EE-1/2 forms are received via U.S. Mail at the RC, the RC staff member reviews the claimed employment and contacts the claimant(s) to schedule an in person interview to complete the occupational history questionnaire. The RC attempts to complete all development steps described herein within 7 calendar days of receipt of the EE-1/2 in the RC. If development is incomplete within 7 calendar days, the RC forwards all materials on hand to the DO for case create with the above-mentioned memo and checklist outlining development to date and future development required. Regardless, the RC must complete the occupational history development actions within 14 calendar days of receipt of the claim or the assignment from the DO unless an extension is granted from the CE as outlined below.

16. Upon receipt of a claim, the RC staff member first reviews the EE-1/2, EE-3, and EE-4 forms to discern the type of facility claimed (i.e. DOE, BV, or AWE). Such determination is initially made by consulting the DOE covered facility website. The DOE website lists all major covered facilities, covered dates, and in certain instances primary contractors that worked at those facilities. This review will also be helpful in determining the need for an occupational history interview, as AWE and BV employment is not covered under Part E and no interview is required. If employment is claimed at a covered facility listed on the website, the RC staff member will first determine whether or not employment can be verified through the Oak Ridge Institute for Science and Education (ORISE) database. The ORISE database contains employment information regarding over 400,000 employees who worked at certain facilities from the 1940's to the early 1990's. ORISE is accessed via ECMS. Complete usage instructions regarding the ORISE database are outlined in EEOICPA Bulletin 02-34. The Bulletin contains a list of facilities included in the ORISE database. If employment is claimed at a facility listed as being within the ORISE network, the RC staff member will first proceed to develop employment by accessing ORISE. If ORISE information is unavailable or inconclusive, additional development is pursued as outlined below. In either case, the RC staff member prints out the results found in ORISE as part of the evidence of file. If employment is listed at a facility not on the ORISE list, ORISE is not consulted for verification.

17. If the ORISE data matches claimed employment within 6 months, the RC prints the record and prepares a memo of findings (EEOICPA Bulletin 02-34, Attachment 2) and no additional development steps are required. The RC prints out the ORISE database query result, prepares a memorandum stating the date the ORISE action was taken, and forwards all available materials to the DO accompanied by the checklist discussed above. The findings and associated memoranda are subject to CE review and can potentially serve as a basis for verifying and accepting claimed employment under the EEOICPA. In general, only 1 day of verified employment is required for beryllium illness and 250 days of employment for the Special Exposure Cohort (SEC), except Amchitka Island which requires 1 day. Claims filed for silicosis in Nevada and Alaska require 250 days of employment, while silicosis claims filed in any other state requires 1 day of employment. If the claimed employment cannot be confirmed through ORISE, or is only partially confirmed, the RC prints the ORISE record and proceeds to determine if other sources of employment verification are available as outlined below.

**\* ECMS Coding:** The DO CE enters the "OR" claim status code to correspond with the date the ORISE action was taken at the RC once the initial employment verification package is received in

the DO and the case is created. The ECMS status effective date is the date the RC searched ORISE.

18. In addition to ORISE, employment under the EEOICPA is verified by other means. Four distinct lists exist to provide guidance when attempting to verify employment. The lists are broken down as follows: List 1 includes facilities for which DOE has no records with which to verify employment and no corporate verifier exists; List 2 includes facilities whereby employment is verified by a corporate verifier; List 3 includes facilities for which DOE possesses records with which to verify employment; List 4 includes facilities where employment verification queries are directed to DOE in Germantown, Maryland. List 1, 2, and 3 are found in EEOICPA PM 2-400 as Exhibits 1, 2, and 3, respectively. All four lists are found in the ECMS Worksites Referral Key available on the DEEOIC Shared Drive. The lists are updated periodically on the Shared Drive as verifiers change or relocate. Employment verification is handled differently depending upon which list contains the claimed facility. Certain corporate verifiers prefer email requests for verification, and it is of the utmost importance that the RC use the requested method for each entity queried. Most contractor and subcontractor employment is verified without use of the four lists as outlined below. The RC seeks to verify employment from the designated verifier or other identified entity by use of the EE-5 (*DOE's Response to Employment History for Claim under the EEOICPA*) or other established verification request method.

19. Each adjudicatory DO District Director (DD) designates a primary RC employment verification Point of Contact (POC) and alternate designees in the case of absence of the primary, and provides the RC with this individual's name and contact information. A general DO email address will be created for each respective DO and provided to the RCs for all email contact. The employment verification POC will serve as the primary contact for all responses regarding initial employment verification requests made by the RCs. All EE-5s generated from the RC requests that the verifier respond directly to the DO employment verification POC. The general DO POC email address is carbon copied on all email requests for verification (where such request is the desired method of inquiry) and the email itself will provide the POC's name and contact information and request that the employment verification response be forwarded to the attention of the POC. As noted, the POC is designated by the DO DD, and the RC must be immediately informed if a POC replacement is made at the DO. The DO employment verification POC will review all employment verification responses, consult ECMS to determine the CE handling the claim in question, and will forward all employment responses to the handling CE within 1 calendar day of receipt of the response in the DO.

20. In instances where List 1 employment is claimed, the RC staff informs the claimant that DOE does not possess employment records for the facility claimed and no other knowledgeable source exists to verify employment. The RC advises the claimant to submit further evidence in support of his or her claimed employment directly to the adjudicatory DO. The following evidence, while certainly not exhaustive, may assist in evaluating the validity of a period of claimed employment: time and attendance forms; W-2 forms and other tax statements; wage and earnings statements; check stubs; correspondence from the employer addressed to the employee; notices of promotion, reassignment, layoff, etc; ID cards; minutes from employment related meetings; punch cards; sign in and out logs; security clearance applications; union records; letters and certificates of achievement or participation in a certain event. In addition, EE-4 forms (Employment Affidavit) from coworkers and others with first hand knowledge may be acceptable to establish employment in conjunction with other evidence, and the RC should assist the claimant in obtaining the EE-4 wherever possible. The RC prepares the claim package with the accompanying memo and check list outlining the actions taken and forwards all documents to the adjudicatory DO. The RC includes a copy of the DOE Verification of Employment Memorandum (see EEOICPA PM 2-400, Exhibit #5), which serves as acknowledgment that DOE has no employment information to provide. Finally, if the claimant is a walk-in at the RC, the RC requests the claimant sign a Social Security Administration (SSA) form, the SSA-581 (see EEOICPA PM 2-400, Exhibit #6) so that the DO may request SSA records in the future for use as a tool in additional employment development. The RC does not forward the SSA-581 to SSA, but sends it to the DO with the employment verification packet. This form is only provided to walk-in claimants until further guidance is provided and is not mailed to a claimant from the RC.

21. In instances where employment verification is possible (List #2, 3, or 4) the RC immediately prepares an EE-5 form, or other required verification method, and forwards it to each entity responsible for employment verification. The EE-1/2 and EE-3 accompanies the EE-5. Each request for verification requires that a response be forwarded to the adjudicatory DO POC as outlined in Action Item #19 above.

22. If employment is claimed with a contractor or subcontractor of DOE, the RC staff attempts to determine the DOE facility at which the claimed employment took place. The four lists described above are consulted for guidance and ORISE searches are conducted if possible. An EE-5 form (or other verification request) is sent to DOE with a request for a response to the adjudicatory DO employment verification POC. If the claimed employment is with a contractor or subcontractor of a BV, the RC staff identifies the BV. An EE-5 (or other verification request) is forwarded to the BV or corporate verifier with a request for a response to the adjudicatory DO employment verification POC. If no known verifier exists for the contractor/subcontractor, no further action is necessary at the RC level. Additionally, AWE contractors and subcontractors are not afforded coverage under the EEOICPA and no employment development is required. Once all required steps are completed, the RC forwards the memorandum, check list, and all associated materials to the DO for case create and additional development of employment.

23. As noted above, once all possible initial employment verification/occupational history development actions are concluded within the 7 calendar day post-assignment period in the RC, all claim forms, associated documentation, and the RC checklist is forwarded to the DO with a memorandum outlining RC activities to that point. Upon receipt of the 7 calendar day initial submission, the DO case create clerk reviews the claim material utilizing the case create check list (EEOICPA PM E-200, Exhibit #1) and creates the case in the DO. Once the case is created and the claim assigned to a CE, the CE reviews all claim file materials and employment verification/occupational history development materials for ECMS coding. The CE inputs coding in ECMS to correspond with the date on which the action actually took place at the RC. Please see below for general ECMS guidance for the DO CEs.

**\* ECMS Coding for Employment:** Based on the documentation received from the RC, the CE

enters the "ES" [with the appropriate Operations Center as the reason code] and/or "CS" claim status code, with a status effective date of the date on which such action(s) was taken in the RC in ECMS.

- \* **ECMS Coding for Occupational History Development:** The CE enters the "DO" claim status code, and selects the reason code "OH - Occupational History" with a status effective date of the date on which the occupational history questionnaire was completed by the RC as noted on the RC memo to the DO.
24. As noted above, the RCs are tasked with conducting occupational history development on Part E cases only regarding claims involving covered Part E employees and their eligible survivors. Whenever possible this step is conducted upfront during claim intake at the RC and the results forwarded to the DO within 7 calendar days of receipt of the claim or the assignment. Where this is not possible, the RC sends the claims package to the DO upon completion of employment verification within 7 calendar days of receipt of claim forms and proceeds to conduct the occupational history development. Occupational history development is not conducted if beryllium illness or chronic silicosis is being claimed, unless otherwise directed by the DO. In addition, as noted above no occupational history development is conducted in the case where only ineligible survivors are claiming benefits. In such instances, the claim file material is immediately forwarded to the DO upon completion of the employment verification portion and the DO will review for necessity of further occupational history development and assign development tasks to the RC as needed. Regardless, occupational history development must be conducted for all cancer claims arising out of Part E facilities.
  25. The RC has a total of 14 calendar days from the date of receipt of the claim or receipt of the assignment from the DO to conclude the occupational history development steps. If all actions cannot be completed within that timeframe, the RC must advise the DO CE of the reason for the delay and outline a reasonable timeframe in which to finalize all necessary actions. If an additional 7 calendar days elapses after the 14 calendar day due date, the RC must telephone or email the DO CE requesting a time extension and providing an action plan as to completion. As soon as the occupational history task is complete, all documentation is immediately forwarded to the DO with a memo noting the date on which the interview(s) was conducted for association with the case file. The RC maintains a copy of all case file materials until the occupational history development process is complete. Once all employment verification and occupational history development actions are finalized and it is confirmed by telephone conversation or email with the CE that the DO does not require further assistance, the RC destroys its copy of the materials.
  26. Depending upon the illness(es) claimed and the claimed or verified employment, the RC staff member determines whether or not a claim is being made under Part B or Part E of the EEOICPA, or both. By utilizing the DEEOIC case create worksheet (see EEOICPA PM E-200 [Draft] Exhibit # 1), the RC reviews the claim materials for a determination as to benefits being claimed to determine whether or not a claim is indeed a claim for Part E benefits. Claims submitted by AWE employees are excluded from Part E coverage unless such employment is claimed at a time in which the AWE was undergoing DOE remediation. DOE remediation periods can be ascertained by reviewing the DOE covered facility website mentioned above, but the RC should seek DO guidance before conducting an interview regarding such claims. Claims filed by contractors/subcontractors of DOE or Section 5 RECA workers are treated as Part E claims. At any time during this assessment period the RC may consult the DO for guidance as to whether or not an occupational history interview is necessary. The RC also reviews ECMS to determine whether or not a Part B case is already in existence. In such instances where a new Part E case is filed and a Part B case is found in ECMS, the RC contacts the DO to determine whether or not an occupational history interview is necessary. Sometimes DOE records will already exist in the Part B file that confirms occupational exposure, and further development is not necessary. Unless the DO instructs otherwise and until additional

guidance is set forth regarding this matter, occupational history development is required in instances where a DOE Former Worker Program (FWP) screening was conducted.

Occupational history development is not required if benefits are approved under Part B, or a positive DOE physician panel finding exists, or the claimed condition is beryllium illness or chronic silicosis. Nonetheless, in all cases the RC will consult ECMS for status of the Part B claim for acceptance and query the DO for guidance if a question arises as to whether or not an occupational history development action is required. Finally, if DOJ has accepted a RECA claim (views ECMS or contact DO CE to determine, or obtain such information from the claimant at time of filing) and the claim has yet to be accepted by DEEOIC, no occupational history development is necessary.

27. The main function of the RC staff member in his or her occupational history development role is to conduct the occupational history interview. Attachment 3 to this Bulletin is the interview format for DOE employees; Attachment 4 the format for RECA uranium workers. As noted above, in cases with multiple survivors all claimants must be interviewed, unless one or more claimants have been designated to represent all of the claimants with regard to the interview process. Sometimes one claimant will be more knowledgeable about possible worksite exposure, or more comfortable with consenting to a formal interview process than the other claimants. In such instances, a simple signed statement by the other claimants indicating their wish to designate a certain claimant to be interviewed in their stead will suffice. Such a signed statement is not a designation of an authorized representative and is only used in the interview process. Where an authorized representative has been appointed on a claim file with multiple claimants, there is no need to designate a claimant to participate in the interview process. Authorized representatives may determine how the interview process will be conducted, as they have been appointed by the claimant(s) to act in their capacity with regard to every aspect of their EEOICPA claim.

28. As noted above, much of the information gathered through the occupational history development process is sensitive in nature and is subject to Privacy Act mandates. Accordingly, the information developed may not be disclosed to any individual unless he/she is an authorized representative of the claimant or an authorized DEEOIC representative. As with ECMS and ORISE access, the RC staff has access to highly personal information regarding employees and claimants and it is imperative that this information and data remain secure and that the privacy of all individuals is guarded with the utmost care.

29. DEEOIC developed the DOE and RECA occupational history questionnaires for use by the RC staff and it is imperative that RC staff properly utilize the questionnaires so as to obtain the information DEEOIC requires in order to evaluate a claim for causation. The interview regarding the questionnaire may be conducted in person or via the telephone. On created cases, all telephonic activity regarding occupational history development is captured in the ECMS TMS screen; all in person activity conducted by RC staff is placed in the ECMS Notes screen. All required ECMS coding is input at the DO as outlined in Action Item # 14 above once the occupational history development task is complete and all documentation is returned to the DO.

30. The RC conducts and documents interviews and creates an electronic version of the interview to develop a detailed summary that includes, but is not limited to the following information: the jobs held and a summary of the duties or tasks performed; employer(s); dates of employment; the number of hours per week worked at a facility as well as the total estimated; which buildings/locations/facilities did the employee work in; the specific toxins exposed to; exposure level (direct, near, etc.); exposure frequency (every day, once a week, etc.); how many hours per week the job involved potential exposure to radiation and/or toxins; the type of biological monitoring done if any; exposure controls such as gloves, masks, etc.; medical screening performed on the employee; symptoms/illnesses, any other pertinent information regarding employment/disease/exposure; other relevant factors such as non-DOE work, etc. The RC reviews the case file materials and any CE instructions to determine exactly what information is relevant to the claim, including any identified non-claimed employment or illness. All pertinent information is

saved in the occupational history development summary, and a CD and paper version of the summary and the interview notes are forwarded to the appropriate DEEOIC DO within 2 business days of completion. The RC saves the summary to CD in a specific naming convention – 1 for the first interview, last name of employee and last four of the employee's SSN (1smith0000). Subsequent interviews are saved with the sequential number of the interview at the beginning of the file name (2smith0000).

31. The RC adheres to the script developed by DEEOIC when conducting interviews, completes the occupational history interview in detail, and takes notes to memorialize the conversation. The notes taken during the interview as well as the summary will become part of the official case file and is retained in the paper and electronic format summary and forwarded to DEEOIC upon completion of this task. Each interview should take approximately two to three hours. It is possible that multiple claimants will require an interview on one case file. It is of the utmost importance that all interviews follow the prepared script, but flexibility is allowed for appropriate follow-up questions that logically flow out of the results of the interview. If the interviewee has little or incomplete knowledge about a particular subject, the RC notes such deficiency in the notes and summary sections so that the DO is aware that information gathering was attempted regarding that topic. Overall, the RC interviewer is responsible for the proper conduct of the interview and for producing a comprehensive summary and questionnaire, including correct grammar and spelling. Finally, once the interview is completed, the RC staff member gives the claimant the interview confirmation letter (See Attachments 3 & 4) verifying the date of the interview and that the interview indeed took place.

32. The claims adjudication process has specific timeliness goals. Occupational history development is a very significant part of the process and requires timely scheduling and completion. It is imperative that an interview be scheduled and completed within the timeframes stated in this Bulletin, and that all reworks and follow-up interviews are conducted within 7 calendar days of receipt in the RC. In order to properly conduct the required interview, the RC staff will possess an understanding of work performed by DOE employees. Knowledge of the types of hazardous materials potentially present at DOE sites, the covered illness resulting from claimed exposures, the standard length of exposure for the illness to occur, and the medical diagnosis required to verify the illness is also necessary. The RC staff will possess sufficient knowledge of the EEOICPA, the DOE and Section 5 RECA sites, and hazardous materials to develop a comprehensive and logical summary. Tools are being developed by DEEOIC for use by the DOs and the RCs to better understand the relationship between certain toxins and certain diseases and to better identify which toxins were potentially present at which DOE/RECA Section 5 facilities. These tools, in the form of Exposure Matrices, will assist in the development of an employee's occupational history as it relates to exposure and illness. Additional guidance regarding the use of the Exposure Matrices will be forthcoming from DEEOIC National Office (NO). The Exposure Matrices will be web based and available for viewing on the Internet. While the Exposure Matrices will provide a valuable tool for evaluation, the RC staff member will consult with the DO CE at all times where questions arise as to the meaning of the information provided. The RC will craft the interview based upon all available exposure information and CE guidance.

33. Once all occupational history development steps are complete, the RC manager ensures the accuracy of the data populating the interview and the narrative provided in the summary and forwards the entire package to the adjudicatory DO. Once the DO receives the occupational history development package, it is reviewed thoroughly by the CE. As noted above, any part of the package may be returned by the DO if a deficiency is identified or an additional interview is deemed necessary. The CE will review the materials and update ECMS coding where necessary to correspond with the date upon which the development action occurred at the RC level. The CE utilizes the information obtained during the occupational development as a key tool for establishing causation (based upon employment and the claimed covered illness) in the adjudication process. Additionally, the CE proceeds to develop the claim pursuant to current procedural guidance. Where

necessary, the CE prepares the Document Acquisition Request (DAR) record request form as set out in EEOICPA PM E-400 (Draft) to obtain additional exposure evidence.

34. In addition to the new Part E claims, Part D/E claims filed prior to the issuance of this Bulletin could potentially require occupational history development at the RCs. The DO evaluates the older Part D/E claims on a case-by-case basis to determine whether or not a referral to the RC is required. When reviewing these cases, the CE examines the case file contents for the existence of DAR records, other DOE exposure records, and other employment records in general that might provide exposure evidence and eliminate the need for an occupational history interview. Additionally, the DO CE consults the web-based Exposure Matrices in conjunction with the case file material to ascertain the need for further development by the RC. If the CE determines that an occupational history interview is required due to a lack of other exposure and employment evidence in order to reach a decision as to causation, an assignment to the RC is made. Once the CE identifies that a Part D/E claim requires RC occupational history development, the DO refers the case file to the appropriate RC with precise instructions set out in a memo as to the information being sought in the interview. The RC has 14 calendar days from the date of receipt of the assignment from the DO to complete the occupational history development tasks outlined by the CE.

**\* ECMS Coding:** The DO CE codes assignments made to the RC on identified existing cases that require occupational history development utilizing the ‘**RC**’ code as the claim status code. The CE then uses the drop down box reason code entitled “*AS-Assignment.*” The status effective date is the date of the DO memo to the RC outlining the assignment task.

\* The ‘**DO**’ code is entered by the CE (see Action Item #23) once the occupational history assignment is completed and returned to the DO.

35. Upon review of a completed occupational history interview, the DO may determine that additional information is required and request the RC to conduct a follow-up interview, or identify an error that requires remedy as a rework of the interview. **Follow-up** interviews are conducted when the DO identifies additional issues through further development of the claim for causation that require RC assistance. **Reworks** are not generated out of an issue identified by the DO as an area in need of additional development, but arise when an error is found in the final product from the RC. Interview reworks are only conducted in instances where a deficiency (i.e. incomplete or inaccurate data) is identified by the CE. Follow-up assignments are made directly by the CE to the RC manager with an accompanying memo outlining instructions as to the required additional development needed. Reworks must be approved by a Senior CE and are forwarded to the RC manager by the DO DD with an accompanying memo outlining specific instructions as to the deficiency found and the required remedy. The RC must complete all follow-up and rework assignments from the DO within 7 calendar days of receipt in the RC. If additional time is needed for completion, the RC contacts the DO CE and the CE may grant reasonable time extensions.

**\* ECMS Coding for Follow-Up Assignment:** The DO codes follow-up assignments made to the RC utilizing the ‘**RC**’ code as the claim status code. The CE then uses the drop down box reason code entitled “*FW-Follow-up.*” The status effective date is the date of the DO memo to the RC outlining the follow-up task.

**\* ECMS Coding for Rework Assignment:** The DO codes rework assignments made to the RC utilizing the ‘**RC**’ code as the claim status code. The CE then uses the drop down box reason code entitled “*RK-Rework.*” The status effective date is the date of the DO DD’s memo to the RC outlining the rework task.

\* The ‘**DO**’ code is entered by the CE (see Action Item #23) once the follow-up/rework assignment is completed and returned to the DO.

36. On a monthly basis, each RC manager provides a report to DEEOIC NO addressed to the BOTA Branch Chief that identifies the number of requests for interviews, the number of occupational histories scheduled, the number of occupational histories completed, the number of occupational history reports sent to DEEOIC, and the average length of the interviews in half hour increments. This report will also include the number of occupational history reworks and the average length of the rework.

37. RC tasks as outlined in this Bulletin are considered extensions of the DO and each DO DD and respective RC manager is responsible for the proper conduct of each task. In order to evaluate the effectiveness of the RCs and timeliness of task completion, DEEOIC will conduct yearly Accountability Reviews (AR) of each RC. The ARs are designed to gauge RC compliance with DEEOIC procedural guidance and to determine the accuracy and timeliness of RC functions as they relate to initial employment verification, occupational history development, and ECMS accuracy. The AR will serve as a tool to identify strengths and weaknesses within the RC process.

Disposition: Retain until finalized procedures are issued.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections, and Resource Center Managers.

Attachment 1: [ECMS User's Reference Guide](#)

Attachment 2: [Resource Center New Claim Check List](#)

Attachment 3: [Occupational History Interview \(DOE Facility\)](#)

Attachment 4: [Occupational History Interview \(Miners/Millers/Ore Transporters\)](#)

## **05-06 Processing IAAP SEC Class 1949 - 1974 Claims**

EEOICPA BULLETIN NO.05-06

Issue Date: September 6, 2005

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Effective Date: September 6, 2005

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Expiration Date: September 6, 2006

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**Subject:** Processing Claims for Iowa Army Ammunition Plant SEC Class, 1949 - 1974

**Background:** Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and 42 C.F.R. Part 83, a petition was filed on behalf of a class of workers from the Iowa Army Ammunition Plant (IAAP) in Burlington, Iowa, to have IAAP added to the Special Exposure Cohort (SEC).

The National Institute for Occupational Safety and Health (NIOSH) reviewed the petition and decided it qualified for evaluation under 42 C.F.R. Part § 83.13. NIOSH submitted its findings to the petitioners and the Advisory Board on Radiation and Worker Health ("the Board"). On May 18, 2005, the Board submitted recommendations to the Secretary of Health and Human Services (HHS)

to add the IAAP as a SEC class. The Director of NIOSH also submitted a proposed decision on this petition.

On May 20, 2005, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress:

Employees of the Department of Energy (DOE) or DOE contractors or subcontractors employed by the Iowa Army Ammunition Plant, Line 1, during the period from March 1949 through 1974 and who were employed for a number of work days aggregating at least 250 work days either solely under this employment or in combination with work days within the parameters (excluding aggregate work day requirements) established for other classes of employees included in the SEC.

In their evaluation, NIOSH determined that, "... it lacks access to sufficient information to either estimate the maximum radiation dose for every type of cancer for which radiation doses are reconstructed that could have been incurred under plausible circumstances by any member of the class, or to estimate the radiation doses of members of the class more precisely than a maximum dose estimate with sufficient accuracy."

In that report, the Secretary of Health and Human Services determined that it is not feasible to undertake dose reconstructions for the class of employees employed at Iowa Army Ammunition Plant, Line 1, for the period from March 1949 through 1974 based upon the site profile prepared by the NIOSH. Thus, it appears that the only dose reconstructions that can be completed for members of the designated class are dose reconstructions based upon actual measured exposure of the individual worker whose dose is being reconstructed. The DOL letter to NIOSH is included as Attachment 1.

A letter from NIOSH, dated July 19, 2005, further clarified the designation of Line 1 used in the SEC class definition. The letter stated, "The designation of 'Line 1' in this class definition should be considered inclusive of all workers and activities involved in AEC operations at IAAP and not limiting or excluding workers, activities, or site locations that may have been involved in those operations." The NIOSH letter to DOL is included as Attachment 2.

The SEC designation is effective as of June 20, 2005, which is 30 days after the Secretary of the Department of HHS designated the class for addition to the SEC in a report to Congress. While Congress has the authority to reject the recommendation within 30 day time frame, no action was taken to contradict the addition of IAAP as a SEC class.

References: Energy Employees Occupational Illness Compensation Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; and the May 20, 2005 report to Congress from the Secretary of HHS, entitled, "HHS Designation of Additional Members of the Special Exposure Cohort, Designating a Class of Employees from Iowa Army Ammunition Plant, Burlington, Iowa."

Purpose: To provide procedures for processing claims for the new SEC class at the Iowa Army Ammunition Plant (IAAP). The new SEC class applies to DOE employees, DOE contractors or subcontractors employed by the IAAP and involved in AEC operations during the period from March 1949 through 1974 and who were employed for a number of work days aggregating at least 250 work days either solely under this employment or in combination with work days within the parameters established for other classes of employees included in the SEC.

Applicability: All staff.

Actions:

1. This new addition to the SEC affects the consideration of DOE employees, DOE contractors or subcontractors employed by the Iowa Army Ammunition Plant (IAAP), involved in AEC operations, during the period from March 1949 through 1974. It encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.

2. The DEEOIC has identified all Part B claims that were denied or are at NIOSH for dose reconstruction and submitted a list of cases to the appropriate district office. All IAAP cases that were with NIOSH for dose reconstruction as of June 20, 2005 have been coded as "NW" in ECMS. NIOSH has sent a CD for each of those cases. The CD contains all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also, included on the CD in the Correspondence Folder should be a copy of the NIOSH letter sent to each claimant informing them of the new SEC class and that their case is being returned to DOL for adjudication. A copy of the NIOSH letter to a claimant is included as Attachment 3. The claims examiner (CE) must print out a hard copy of the NIOSH letter for inclusion in the case file.
3. The CE must verify that the employee worked for the DOE or a DOE contractor or subcontractor employed by the IAAP and was involved in AEC operations. For cases that had been referred to NIOSH prior to the date the IAAP SEC class became effective, June 20, 2005, the CE should assume that the employee was involved in AEC operations, unless specific evidence exists to the contrary. For cases received by DOL after June 20, 2005, when the EE-5 Form is sent to DOE, the CE must specifically ask if the employee was involved in AEC operations at IAAP. If the returned EE-5 Form does not specifically affirm that the employee was involved in AEC operations at IAAP, the CE must ask the employee or survivor(s) to submit appropriate evidence, including an affidavit attesting to the employee's involvement in AEC operations at IAAP. Lack of positive affirmation by DOE that an employee was involved in AEC operations is not sufficient basis to deny a claim. If a determination cannot be made, the claimant is to be given the benefit of the doubt.
4. Based on this review, the CE then determines whether the claimant has a specified cancer, as listed in DEEOIC Procedure Manual Chapter 2-600.5. If the employee has a specified cancer, proceed to the next step. If the employee does not have a specified cancer, proceed to Action #7.
5. If the employee meets this criterion, the CE must determine that the worker was employed at least 250 work days within the March 1949 through 1974 period listed for the SEC class for IAAP. In determining whether the employment history meets the 250 work day requirement, the CE must consider employment either solely at IAAP or in combination with work days for other SEC classes, e.g., the three gaseous diffusion plants and the Mallinckrodt Chemical Works in St. Louis (1942 -1948). If the employee does not meet any of the employment criteria, proceed to Action #7.
6. Once the CE has determined that the person named in the claim has a diagnosed specified cancer and meets the employment criteria of the SEC class, the CE should proceed in the usual manner for a compensable SEC claim and prepare a recommended decision. Please note that if during the Part E claim review process for IAAP cases, information is found that specifically indicates that the employee was not involved in AEC operations, the district office should investigate further and take appropriate action, as necessary, including a determination if an overpayment was made.
7. As discussed earlier, the Secretary of Health and Human Services determined that it is not feasible for NIOSH to perform dose reconstructions for the class of employees involved in AEC operations at IAAP for the period from March 1949 through 1974. However, for cases with a non-specified cancer and/or that do not meet the employment criteria of the SEC class, NIOSH will attempt to perform dose reconstructions for members of the designated class, based upon actual measured exposure data for the individual workers. For cases with specified cancer where the 250 work day requirement is not met, or cases with non-specified cancer, the case should be returned to NIOSH for a dose reconstruction based on personal exposure data. If dosimetry data are available, NIOSH will proceed with a dose reconstruction. Upon receipt of the dose reconstruction report, the CE proceeds in the usual manner and prepares a recommended decision. The CE should code the case as "NI," but should not delete the "NW" code already present in ECMS. If no dosimetry data are available, NIOSH will be unable to perform a dose reconstruction. NIOSH will send the claimant a letter stating that it was unable to perform a dose reconstruction (a copy is attached as Attachment 4). This letter will be included on the NIOSH CD in the Correspondence Folder and

the CE must print out a hardcopy for inclusion in the case file. The CE proceeds in the usual manner and prepares a recommended decision to deny the claim.

8. If the claim includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any secondary cancers that are metastases of the specified cancer(s), and any non-specified cancers that have a dose reconstruction that resulted in a probability of causation of 50 percent or greater.

9. If a case with a denied final decision now meets the SEC class criteria, the CE must submit the case for reopening through the appropriate process in the district office. The case must be forwarded to the DEEOIC Director to reopen the claim per 20 C.F.R. Part § 30.320.

10. FAB personnel must be vigilant for any IAAP cases that have a recommended decision to deny. If the employee worked at IAAP and was involved in AEC operations during the period from March 1949 through 1974, has a specified cancer, and meets the 250 work day requirement, the recommended decision must be reversed and the case remanded in the usual manner.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

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Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

[Attachment 4](#)

## **05-07 ECMS Procedures related to Co-located FAB**

EEOICPA BULLETIN NO. 05-07

Issue Date: September 2, 2005

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Effective Date: September 2, 2005

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Expiration Date: September 2, 2006

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Subject: ECMS Procedures related to Co-located FAB.

Background: FAB offices are geographically located as set out under EEOICPA PM 2-1300. With the implementation of Part E, DO adjudicatory functions are sometimes required while a case is at FAB for review. Each district office assigns certain DO CEs to handle district office development and adjudication while the case is pending review at FAB. This group of designated CEs is referred to as the "Co-located FAB." The Co-located FAB may be physically located in the FAB or the DO, but will be managed by DO personnel, not the FAB. The individuals within the Co-located FAB will be referred to as secondary CEs. However, while the case is under the jurisdiction of the FAB, the FAB CE or Hearing Representative (HR) is considered the primary adjudicator. The August 26,

2005 release of ECMS (ECMS\_B version 1.8.4.0 and ECMS\_E version 1.0.5.0) will allow the case screen in ECMS to reflect the Co-located FAB's involvement with the case, as well as allow the secondary CEs to enter status codes and other information into ECMS while the file is assigned to a FAB District Office location in ECMS. This bulletin provides written guidance regarding the procedures that are to be followed regarding the Co-located FAB.

Reference: ECMS Release Notes (August 26, 2005)

Purpose: To provide ECMS procedures for cases that require DO development while located at FAB.

Applicability: All Staff

Actions:

1. When a CE prepares a recommended decision, he/she must be aware of any outstanding claim issues that need further development. If additional development is needed during the FAB's review of the case, the CE prepares a memorandum. The header of the memorandum is addressed to the FAB manager, from the Senior CE, Supervisor, or District Director (DD) who is the final reviewer of the recommended decision at the DO. The subject line reads "Co-located FAB development for (case #)." The body of the memorandum addresses any outstanding claims issues that require development while the case is being reviewed by the FAB. The memorandum must also designate a secondary CE, who is assigned to work the case for DO development while the case is being adjudicated by the FAB. Each DO will determine the CE to handle this development while the case is being adjudicated by the FAB. When the recommended decision is finalized, the signed memorandum accompanies the recommended decision to the FAB.
2. Once a case is transferred to the FAB, the FAB CE/HR must be aware if any DO development is needed on any portion of the case. The FAB CE/HR will become aware of such issues because of the Co-located FAB development memorandum. However, they may also become aware of issues during their review process. For example, the FAB CE/HR may come across an additional illness that needs development. If it is determined that DO development is needed, the FAB CE, HR or Manager must complete the additional CE/location area titled "Co-located Development" located on the case screen in ECMS. The fields that need completion in this section are the "CE2" and "CE2 Assign Dt" fields. The "CE2" field represents the Co-located FAB CE (secondary CE), who is designated in the Co-located FAB development memorandum. To complete the secondary CE assignment, the appropriate Co-located FAB CE is selected from the drop down menu. The FAB CE/HR tabs over to the CE assign date, which automatically populates with the current date and time. (This field can be manually input if needed.)

*Note: Only the FAB can assign the CE2 in ECMS, but actual workload assignments should be routed through the DO. If the FAB comes across secondary development that is needed on a case where there was no Co-located FAB development memorandum, they will notify the DD, or whoever the DD delegates, to determine which secondary CE should be assigned the additional development.*

3. Each Co-located FAB unit will have a code that will automatically populate the "DO2" field. The "DO2" field represents the DO that is handling the co-located FAB development. This field is populated when the "Co-located Development" section is activated in ECMS. The associated codes are:

- SEF – Seattle Co-located FAB
- CLF – Cleveland Co-located FAB
- JAF – Jacksonville Co-located FAB
- DEF – Denver Co-located FAB
- NAF – National Office Co-located FAB

*Note: The CEs/HRs will not need to complete this field, but it will be used for various reporting needs.*

4. When the Co-located development section has been completed in ECMS, it will be highlighted in white. This indicates that there is a simultaneous ownership in ECMS. Both the FAB CE/HR and the secondary CE will be able to make entries into ECMS without having to transfer the case file in the system.

*Note: The FAB CE/HR and the secondary CE will need to coordinate with each other to ensure that the file is where it is needed and the appropriate work can be completed on the case. If both the FAB CE/HR and the secondary CE need the actual file, the FAB CE/HR's need takes precedence.*

5. Once the Co-located Development section is activated and a secondary CE is assigned, any outstanding call-ups in ECMS from the DO CE will be automatically re-assigned to the secondary CE. Any call-ups that the FAB CE/HR enters will still function and be viewable for that FAB CE/HR.

6. Every secondary CE in the Co-located FAB will have a three character location identifier of DO1-DO9. (More location codes will be added if necessary.) As always, the case location code and case file jacket must be annotated to reflect any change in the file's physical location.

7. After the case is transferred out by the DO, and assigned to the FAB awaiting a Final Decision, the DO assignment will remain a FAB location code (FAC, FAJ, FAS, FAD, or FAB) for as long as the case is in the FAB's jurisdiction, even if the secondary CE is working on the case. The physical case file can be located with a FAB employee or a secondary CE while the DO listed in ECMS is one of the FAB location codes.

8. The secondary CE is to conduct all necessary development on all outstanding claim elements not related to the decision currently in front of the FAB CE/HR, and code ECMS appropriately to reflect those actions for the duration of the FAB review process. The secondary CE also determines when there is enough information available to issue a recommended decision (RD).

- If FAB completes their review process and the DO development issues are not completed with a recommended decision, the secondary CE ceases development. The secondary CE then prepares a memorandum to the DD explaining what development actions have been taken and what future actions are required to address any outstanding issues. **This memorandum is important because outstanding DO call-ups will not be re-assigned back to the DO (though they will be viewable).**

- If the secondary CE determines that there is enough evidence to support a RD on any outstanding claim elements, he/she issues the RD and keeps the file at FAB.

9. When the case file is ready to be returned to the DO, the person transferring the case file out of the office will press the "Unassign CE2" button in the Co-located Development portion of the case screen. This will deactivate the co-located development. If the individual who transfers cases to the DO from the FAB office does not currently have the ability to "unassign CE2", that capability can be requested by the FAB manager in an email to Energy Tech Support.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

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Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

## 2004 EEOICP Final Bulletins

### 04-01 NIOSH DR Reworks

EEOICPA BULLETIN NO.04-01

Issue Date: October 31, 2003

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Effective Date: October 31, 2003

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Expiration Date: October 31, 2004

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Subject: Instructions for Reworks of NIOSH Dose Reconstruction Reports

Background: Section 20 CFR 30.115(a) of the final regulations provides that the Office of Workers Compensation Programs (OWCP) will forward eligible claimant application packages to Health and Human Services (HHS) for dose reconstruction. When the dose reconstructions are received from the National Institute for Occupational Safety and Health (NIOSH), the Claims Examiner (CE) reviews the report in preparation for determining the probability of causation using NIOSH-IREP.

This Bulletin provides additional details on what to do when claimant information in the case file differs from information used in the dose reconstruction (DR) report. Also, details are provided for situations in which a case at NIOSH for dose reconstruction may be placed in a “pending status” while DOL develops additional information.

Reference: Final regulation 20 CFR 30.115(a) and EEOICPA Bulletin 03-03.

Purpose: Provide procedure for referring an issue back to NIOSH after a dose reconstruction has already been completed.

Applicability: All staff.

Actions:

1. The CE must notify NIOSH of any changes to information submitted on the NIOSH Referral Summary Document (NRSD) while the case is at NIOSH for dose reconstruction (DR). NIOSH currently provides weekly reports to the district offices listing the cases for which the NIOSH contractor started performing dose calculations in the past week. When a CE identifies one of his/her cases on the list, the CE must review the information in the case file against the information sent to NIOSH in the NRSD. Any revisions to information contained in the original NRSD must be forwarded to NIOSH using an amended NRSD (per the guidance given in Bulletin 03-03). This will allow NIOSH to use the correct information in their development of the DR report.
2. After the DR report is received by the CE from NIOSH, the CE must review it to ensure that the information in the case file is still consistent with the information contained in the NRSD. If there are any significant discrepancies between the information in the case file and the DR report the new information must be reviewed by NIOSH and a new DR may be necessary. “Significant” discrepancies, for example, would include changed employment facilities or dates; changed cancer site; different ICD-9 code; or major change in date of diagnosis.
3. For cases found to be in error, incomplete, or for which new information was recently received, the CE sends an E-mail message, with the amended NRSD attached, and forwards the case file to the Supervisory or Senior Claims Examiner (Sr. CE) outlining the issue(s) with the DR. The amended NRSD is prepared as necessary (using the guidance given in Bulletin 03-03). The CE must ensure that a copy of the E-mail message (printed from the sent file in order to document the date of issue) is placed in the case file. The CE must not enter the PoC data into ECMS when a

case is referred back to NIOSH.

There will be some situations that will not require a rework. One example is when the diagnosis date is found to be different, but is still within the same calendar year. For these cases, the results of the DR will not be significantly affected. If uncertain, contact the DEEOIC Health Physicist to discuss the issue.

Also, the CEs should remember that metastatic and consequential cancers should NOT be treated as additional primary cancers.

4. The Supervisory or Sr. CE reviews and approves the amended NRSD and forwards the information along with the amended NRSD and the case file to the district office (DO) person designated by the District Director to handle NIOSH information, i.e., the DO NIOSH liaison. The DO NIOSH liaison will review the case file and must contact the DEEOIC Health Physicist for a review prior to referral to NIOSH for a rework of the DR. The DO NIOSH liaison should create a spreadsheet to track cases sent for review and rework of the DR by NIOSH.

To expedite the process, the DO NIOSH liaison will use E-mail to send a description of the need for the rework of the DR to the DEEOIC Health Physicist. When this E-mail is sent, the DO NIOSH liaison must copy the Sr. CE, SCE, District Director and CE so they are aware that the issue has been sent to the DEEOIC Health Physicist for review. The CE must ensure that a copy of the E-mail message (printed from the sent file in order to document the date of issue) is placed in the case file.

When the E-mail is sent, the District Director enters the “**WS**” code in ECMS, by selecting the “**WS**” code on the ECMS claim status history screen. The status effective date is equal to the date of the “**WS**” memo to the National Office. ECMS checks the reason required table to determine if the status code entered requires that a reason code be selected. If a reason is required (e.g., entering “**WS**” will require selecting a reason code), then ECMS will display the reason\_cd field. The user clicks on reason\_cd list box. ECMS displays valid reason selections for the code entered. The District Director then selects "HP-Health Physicist Review" from the reason code list box. The "HP-Health Physicist Review" status code signifies that the additional information related to the DR is with the DEEOIC Health Physicist for a review as to whether a rework of the DR by NIOSH is necessary.

5. The DEEOIC Health Physicist serves as the central liaison between NIOSH and DOL on all dose reconstruction related issues. All requests for reworks of DR reports must be forwarded to the DEEOIC Health Physicist for review. The DEEOIC Health Physicist will review the request for rework and determine whether a rework is required. The DEEOIC Health Physicist will contact the CE if additional information is needed to make a determination, which may include requesting the case file. If the information would change the outcome of the DR or affects the accuracy of the case, the request for rework will be referred to NIOSH. If the information would not change the outcome of the DR, the DEEOIC Health Physicist will send an E-mail to the CE and the DO NIOSH liaison explaining the rationale for not continuing the review of the DR report. When the CE receives this response, he/she must proceed with the IREP calculation and enter the PoC value(s) into ECMS.

If the DEEOIC Health Physicist determines that a rework is necessary, he sends an E-mail to the designated OCAS contact person, who is currently the Technical Program Manager. The CE will be copied on the E-mail, along with the Sr. CE, SCE, District Director and the DO NIOSH liaison, so that he/she is aware that the rework will proceed. The CE must enter the “**WR**” status code in the Case Status screen in ECMS and use the date of the Health Physicist’s E-mail as the status effective date. The CE must ensure that a copy of the E-mail message (printed from the sent file in order to document the date of issue) is placed in the case file.

6. DOL has the responsibility to inform the claimant(s) that his/her dose reconstruction is undergoing additional review by NIOSH. When the DO is notified that the case will be referred to

NIOSH for rework, the CE must complete the following within three workdays. The CE must forward the amended NRSD as an electronic attachment via E-mail to the Public Health Advisor (PHA) at NIOSH assigned to the DO. The CE must send a letter to the claimant, using Attachment 1 as a model, explaining that the case has been returned to NIOSH for a review of the dose reconstruction. The CE must include in the body of the letter the reason that the case is being returned to NIOSH. The CE must send a copy of this letter to the Public Health Advisor at NIOSH assigned to the DO along with the weekly district office submissions to NIOSH. The dates on the amended NRSD and the letter to the claimant must both be the same, since this will be the date used for the new **NI** entry into ECMS (discussed below).

The CE does not need to return the entire case file to NIOSH. NIOSH will generally require no more than 60 days to complete the rework of the DR. For example, where only the diagnosis date changes, NIOSH should be able to complete the rework in much less than 60 days. Alternatively, for cases where the ICD-9 code changes, it could result in a major rework of the DR. After the new draft DR report is completed, NIOSH will send it to the claimant along with another OCAS-1 form. The claimant has up to 60 days to return the signed OCAS-1 form.

7. The Sr. CE, supervisor or other approved person in the DO will enter a new **NI** code on the ECMS Claim Status screen to signify that a case has been returned to NIOSH for review of the DR. The status effective date is the date on the letter that is sent to the claimant. When the new dose reconstruction report is received, the Sr. CE, supervisor or other approved person in the DO must enter a new **NR** code on the ECMS Claim Status screen using the date the new DR report is received in the DO as the status effective date.

8. The DO NIOSH liaison must notify the DEEOIC Health Physicist by E-mail when the DR report is received in the DO. This will allow the DEEOIC Health Physicist, who tracks the progress of DR reworks, to be aware of the completion of the rework.

9. Sometimes when a case is at NIOSH, it may require additional claims development by the CE. This additional development may be requested by NIOSH or DOL. When NIOSH places a file in “pending status” it does not stop the process, but may delay the DR completion. The action of placing a case in “pending status” alerts the NIOSH staff that clarification is needed on a specific issue that may affect the case.

A supervisor, Sr. CE, and the DO NIOSH liaison are the only people that can place or remove a “pending status” for a case at NIOSH. For cases that are not prompted by NIOSH, the supervisor, Sr. CE, or the DO NIOSH liaison must send an E-mail to the DO’s PHA (with copies to the other two DO individuals) with a request that NIOSH place the case in “pending status” while DOL develops the case for additional information. The supervisor, Sr. CE, or the DO NIOSH liaison must provide a brief explanation of the specific information the DO is attempting to clarify or obtain, e.g., employment, medical, smoking or race/ethnicity questionnaire, etc.

On receipt of the development information, DOL personnel must follow the procedures for preparing and forwarding an amended NRSD, as necessary, as discussed earlier. The supervisor, Sr. CE, or the DO NIOSH liaison must notify the appropriate PHA (with copies to the other two DO individuals) by E-mail to remove the case from “pending” status.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

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Occupational Illness Compensation

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## Attachment 1: Sample Letter to the Claimant

### **04-02 Case file transfer**

EEOICPA BULLETIN NO.04-02

Issue Date: October 3, 2003

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Effective Date: October 3, 2003

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Expiration Date: October 3, 2004

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Subject: Case Transfer Sheet.

Background: Case files are routinely transferred between the District Offices (DO), the Final Adjudication Branch (FAB), and National Office (NO).

Currently when a case file is transferred, the initiator completes a transfer sheet and attaches it to the outside of the jacket. However each office has been using different versions of a case transfer sheet. In order to maintain consistency throughout the program, one form has been created. The new form was created based on the various current forms and comments from the DO and FAB. The sheet will be available on the shared drive in Adobe format.

Reference: Procedure Manual Part 1-500.

Purpose: To provide procedures for using the new case transfer form for transferring cases between DO, FAB, and NO.

Applicability: All staff.

Actions:

1. When a case is ready for transfer, the person transferring the case (sender) uses the “**Case Transfer Sheet**” (sheet)(see Attachment 1).
2. Most of the fields are self-explanatory and must have an entry. The “**Reason for Transfer**” field contains several boxes to check.
  - When the case is transferred from the DO to FAB with a recommended decision, select the option “**FAB Review.**”
  - When the case is transferred to the NO with policy issues, e.g. stepchildren, employment verification, NIOSH dose reconstruction review, etc, select the option “**Policy/Procedure**” and provide an explanation for the request under the “**Comments**” field. This form will not replace the WS/WR forms.
  - When the case is transferred to the NO with a request to reopen or vacate a remand, select the option “**Reopen**”.
  - When the case is transferred to the NO for medical review of CBD or cancer, select the option “**Medical**”. This option is selected for any issues pertaining to medical.
  - When the case is transferred to the NO specifically for review by the Office of the Solicitor, e.g. power of attorney, offset, etc, select the option “**Solicitor**”. This selection must include an explanation in the “**Comments**” field.
  - When the case is transferred from FAB to DO and the final decision is not an affirmation,

select the option “**Remand/Reversal**”.

- When the case is transferred from FAB to DO and the final decision affirms the recommended decision, select the option “**Affirmation**”.

- When the case is transferred for any issue not specified, select the option “**Other**” and provide a corresponding note in the “**Comments**” field.

3. Upon completion, the form is printed and attached to the front outside jacket cover of the case being transferred.

4. The completed sheet is signed by both the sender (the initiator) and the authorizing signatory person. These may be the same person if the authorizing signatory is also the sender.

If the case is being transferred from the DO to the FAB for a final decision, the senior claims examiner may be the authorizing signatory. The designation of authorizing signatory is at the District Director’s discretion.

If the case is being returned by FAB to the DO, the hearing representative may be the authorizing signatory. The designation of authorizing signatory is at the discretion of the FAB Manager.

5. All cases sent to the NO require the authorization of the District Director or FAB Manager. Cases transferred from the NO are authorized by the Branch of Policies, Regulations & Procedures (BPRP) staff.

6. Once the case transfer sheet has been completed and signed by the appropriate individuals, the case is ready for transfer. The transfer of the case must be reflected in ECMS (see Procedure Manual Part 1-500 Section 3).

7. Upon receipt of the transferred case, the receiving office spindles the transfer sheet into the case and takes the action reflected on the transfer sheet. The receipt of the case must be reflected in ECMS (see Procedure Manual Part 1-500 Section 3).

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

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Occupational Illness Compensation

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[Attachment 1: Case Transfer Sheet](#)

### **04-03 Reopening claims**

EEOICPA BULLETIN NO.04-03

Issue Date: October 17, 2003

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Effective Date: October 17, 2003

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Expiration Date: October 17,2004

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Subject: Reopening Claims.

Background: At any time after the Final Adjudication Branch (FAB) has issued a decision, the

Director of the Division of Energy Employees Occupational Illness Compensation (DEEOIC) is given sole discretion to reopen a claim and/or vacate the FAB's decision. This rule applies to all decisions issued by the FAB.

The Director may exercise this discretion at any time after the FAB issues a final decision (FD), or any other type of decision. When a claim is reopened and/or a FAB decision vacated, the Director will issue a Director's Order that sets the FAB decision aside and outlines the course of action required to resolve the issue(s) identified in the Director's Order. The Director may reopen a claim and return it to the district office (DO) for further development and issuance of a new recommended decision (RD). The Director may also reopen a claim and vacate a final decision or vacate a remand order of the FAB and return the claim file to the FAB for the issuance of a final decision. 20 CFR § 30.320 gives the Director the unique power to conduct these actions, and the regulations make it clear that all matters pertaining to granting a reopening and/or vacating a FAB decision remain within the realm of the Director's authority. Unless otherwise authorized in this Bulletin, the DO and the FAB must comply precisely with any and all instructions provided by the Director in the Director's Order.

Additionally, at any time after the FAB issues a FD a claimant may submit in writing to the Director a specific request to reopen his or her claim. While every specific written request for a reopening submitted by a claimant after the issuance of the FAB's FD will be reviewed by the Director, in most circumstances new and compelling evidence must accompany the request in order for the Director to grant the reopening. The submission of new evidence regarding covered employment; exposure to radiation, beryllium or silica; a change in the probability of causation guidelines or dose reconstruction methods; or the addition of a class of employees to the Special Exposure Cohort (SEC) may prompt a reopening by the Director. If the Director deems the new evidence material to the claim, the Director may grant the request for a reopening and either return the claim to the DO for further development and the issuance of a new RD, or return the claim to the FAB for the issuance of a new FD.

A new RD or FD promulgated as a result of a reopening by the Director is subject to the adjudicatory process as outlined in Subpart D of the governing regulations.

Reference: 20 CFR § 30.319 and 20 CFR § 30.320.

Purpose: To provide guidance on reopening claims and/or vacating a FAB decision after the FAB has issued a decision.

Applicability: All staff.

Actions:

1. Pursuant to 20 CFR § 30.319 a claimant has 30 days from the date on which the FAB issues its final decision to request a reconsideration of that final decision. 20 CFR § 30.319(b) allows the FAB to use the postmark date, if available, as the filing date. Where the postmark date is not available, the FAB is to use the earliest date of receipt in any DO or FAB. Once a request for reconsideration is received in a DO or a district FAB, it must be forwarded to the National Office (NO) FAB for review. There is no requirement that evidence accompany the claimant's reconsideration request, and the FAB will consider each request on its own merits, provided that the request is submitted within the timeframe allowed under the governing regulations. If the FAB denies the request for reconsideration no new final decision will be issued.
2. Any specific request for reconsideration or other unspecific correspondence or evidence not specifically requesting a reopening that is filed within 30 days from the date on which the FAB issued its FD will be treated as a potential request for reconsideration. All such correspondence and/or evidence must be immediately forwarded to NO FAB for review. This will be program policy until further notice (3-6 months), at which time additional guidance will be provided. Once received in NO FAB, the specific request for reconsideration or unspecific correspondence or

evidence will be assigned to a NO FAB representative other than the FAB FD's author. During this time period any specific request for reopening bypasses NO FAB review and is sent immediately to the Director.

3. Once the specific request for reconsideration or unspecific correspondence or evidence is received in NO FAB, the NO FAB representative will weigh any new evidence and determine whether or not a reconsideration of the final decision is warranted. Only specific requests for reconsideration will automatically be treated as a request for reconsideration. All objections will nonetheless undergo review for the requisite evidence required for possible reconsideration. Evidence supporting the diagnosis of a covered condition, establishing covered employment, in support of survivorship, or other evidence showing the potential for coverage under the Act could warrant the granting of a request for reconsideration. This evidence review and evaluation remains at the NO FAB representative's discretion. With regard to all specific requests for reconsideration and all unspecific objections submitted directly by a claimant or a claimant's authorized representative, the claimant will be notified whether or not his or her request will be granted or denied. Should the NO FAB representative identify a piece of evidence material to the claim's outcome that warrants granting the reconsideration, the reconsideration will be granted and the claimant notified even if such evidence is not submitted directly by the claimant or the claimant's authorized representative. Should the NO FAB representative identify a piece of evidence not specifically requesting a reconsideration that is not submitted directly by the claimant or the claimant's authorized representative that fails to materially impact the outcome of the claim in question, the NO FAB will not treat this as a request for a reconsideration. Rather, the NO FAB representative will return such evidence to the DO with a memo explaining that the evidence is not material and does not warrant a reconsideration of the FAB's final decision. In order to avoid confusing the claimant, no notice will be sent to the claimant in such instances.

4. In some instances a specific request for reconsideration of a FAB final decision will be filed after 30 days from the date on which the final decision was issued. If such a request is received in the DO or district FAB it will be forwarded to the NO FAB immediately for review by a FAB representative other than the FD's author. If an objection is filed in excess of 30 days from the date on which the final decision was issued and specifically requests a reconsideration of that final decision, the FAB representative will review the request and any attached evidence. The FAB representative will evaluate any evidence submitted with the untimely request for reconsideration and determine whether or not that evidence warrants review by the Director for possible reopening. When conducting such a review, the FAB representative will look for evidence of covered employment; exposure to radiation, beryllium or silica; a change in the probability of causation guidelines or dose reconstruction methods; the possible addition of a class of employees to the SEC; or any other evidence material to the outcome of the claim. If the FAB representative determines that the evidence is new and relevant to the claim and warrants review by the Director, the FAB will issue a denial of request for reconsideration to the claimant and inform the claimant that his or her file is being forwarded to the Director for review as a possible reopening. The case file and all documents will be forwarded to the Director for review, and the untimely request for reconsideration will be treated as a request for a reopening. The NO FAB Branch Chief will prepare a memorandum to the Director outlining the issues identified for possible reopening. If the untimely request for reconsideration is not accompanied by any new and relevant evidence that might affect the outcome of the claim, the FAB representative will treat the request as a late request for reconsideration and deny it outright for failing to comply with the objection timeframe established in 20 CFR § 30.319.

5. Every timely or untimely specific request for reconsideration of a FAB final decision, whether received in the DO or the FAB, must be forwarded to the NO FAB for proper review and adjudication. As noted above, a NO FAB representative other than the FD's author will review all late requests for reconsideration as potential requests for a reopening and review the request for the requisite evidence required to warrant the Director's review.

6. In some instances 30 days or more after the date on which the FAB issued its final decision denying a claim, the DO or FAB will receive correspondence regarding that decision, or evidence related to that claim, that does not contain any specific language requesting a reconsideration or a reopening. Without exception, any correspondence or piece of new evidence that does not specifically request a reconsideration or reopening and is received after 30 days from the date on which the FAB issued its final decision denying compensation will be reviewed by a NO FAB representative other than the FD's author. Should such unspecified correspondence or evidence be received in the DO or the district FAB, the office in receipt will immediately forward the case file and all documentation to the NO FAB for review. This will not be warranted in accepted cases. The NO FAB representative will carefully examine all correspondence and/or evidence received to determine whether or not such correspondence and/or evidence is material to the claim and warrants review by the Director. When reviewing such evidence, the FAB representative will look for evidence of covered employment; exposure to radiation, beryllium or silica; a change in the probability of causation guidelines or dose reconstruction methods; the possible addition of a class of employees to the SEC; or any other evidence material to the outcome of the claim. If the FAB representative determines that the unspecified correspondence or evidence requires the Director's review, the FAB will send the case file and all documentation to the NO for the Director's review as a request for a reopening. In those instances where the unspecified evidence is not submitted by the claimant or fails to request any specific action and is not material to the outcome of the claim, the FAB representative will return such evidence to the DO with a memo explaining that the evidence does not warrant a reconsideration of the final decision and no further action will be taken. In order to avoid confusion, no letter will be sent to the claimant at that time, as the FAB has determined that the claimant did not request any specific action on his or her claim.

7. Any claimant correspondence that specifically requests a reopening in writing at any time after the issuance of a FAB final decision, whether received in the DO or the FAB, must be forwarded to the NO for review by the Director, whether or not this request is accompanied by evidence new and relevant to the case file. If the DO receives such a specific request for reopening, the DO will forward all documents and the claim file directly to the NO for the Director's review. There is no need for the DO to submit such requests to the FAB for evaluation, as only the Director is authorized to review a request to reopen a claim and make a determination as to whether or not such a request should be granted or denied. If a request for a reopening is received in the FAB, the FAB will forward all documentation and the claim file to NO for review by the Director. Under no circumstances is the FAB to make any determination regarding the viability of a specific request for reopening, as only the Director is granted the authority to evaluate a request for reopening filed after the FD is issued.

8. In certain instances the DO director may request that the Director of DEEOIC review any kind of FAB decision. Such a request may be made at any time after a FAB decision has been rendered, regardless of whether the decision is a FD, a remand order, or a reversal of the district office's recommended decision. Should the DO district director disagree with a FAB decision, that particular case file will be forwarded to the Director of DEEOIC for review. The district director will prepare a memorandum to the Director of DEEOIC outlining his or her concerns and requesting that the Director review the claim file. Pursuant to 20 CFR § 30.320, the Director will determine whether or not to reopen a case file by vacating a FAB final decision. In the case of remand orders, the Director will determine whether or not the order should be vacated as outlined in 20 CFR § 30.320(a), as a remand order is not a final decision and does not close a claim and require reopening.

9. In other instances it may be necessary for the Director to initiate review of a claim for possible reopening, even in the absence of an overt request from any other concerned party. In some cases, whether for administrative reasons, a change in the law, or for any other reason at the sole discretion of the Director, it may be necessary to reopen a claim and vacate a decision of the FAB. If the Director initiates such a review, the NO will request the case file from the DO.

10. Once the Director has reviewed a claim file for reopening and rendered a decision as to whether or not a reopening is in order, the claim file in question will be forwarded to the proper office for further handling and file maintenance. In instances where a claim is in posture for reopening and the FAB FD must be vacated and a new FD issued, a Director's Order will be issued reopening the file, vacating the FD, and returning the claim file to the FAB for the issuance of a new FD. In instances where a reopening is not required but a FAB remand order must be vacated, a Director's Order will be issued vacating the FAB remand order and the claim file will be returned to the FAB with instructions for further handling and the issuance of a new final decision. In instances where the claim is in posture for reopening and further development is required by the DO, a Director's Order will be issued vacating the FAB final decision and the claim file will be forwarded to the DO to perform the required further development and issue a new recommended decision. In cases where a claim is not in posture for reopening, a denial letter will be sent from the Director to the party requesting the reopening, and the claim file will be returned to the proper DO for file maintenance and storage. An unfavorable decision by the Director does not prevent a claimant or other interested party from filing subsequent requests for reopening. In each and every instance outlined above, the proper ECMS coding will be entered by all staff.

11. Once the Director has decided to reopen a claim or vacate a FAB remand order, the Director will draft a Director's Order vacating the final decision or remand order of the FAB and the file, depending upon the circumstances, will be returned to either the DO or the FAB pursuant to the process outlined above. Once the Director's Order is received in the DO or the FAB, it is imperative that the DO or the FAB adhere to strict compliance with the instructions outlined by the Director. In the case of a Director's Order vacating a FAB remand order, under no circumstances will the FAB deviate from the instructions in the Director's Order. In most cases, the DO must also strictly comply with the Director's instructions outlined in the Director's Order. However, district-specific knowledge of unique development procedures that might broaden the scope of the Director's Order may be utilized provided the DO's actions are in keeping with the spirit of the Director's Order. Should the DO or the FAB disagree with the Director's Order or any of the Director's findings, such disagreement must be channeled to the NO through the DO director or the FAB branch chief. Nonetheless, the Director will only entertain disagreements deemed material to the potential outcome of a claim. The procedural aspect of the reopening process remains solely in the realm of the Director's authority as granted by the governing regulations.

12. The reopening process, whether it originates with the claimant, the district office, the FAB, or under the auspices of the Director's own discretionary authority, requires certain ECMS codes for identification and tracking. The codes authorized under this bulletin are as follows:

MC - The claimant requests a reopening. The DO or FAB received a request for reopening directly from the claimant, or an untimely request for reconsideration containing the requisite evidence warranting further review by the Director. In this case, either the DO or the FAB enters the MC code into ECMS. The status effective date is the date the request was received in the DO or FAB. In keeping with the spirit of the governing regulations, the postmark date, if available, will be used as the date of receipt. The DO or FAB then prepares a cover memo to the Director outlining the facts of the case and the issue(s) at hand and forwards the case file to NO.

MQ - Reopening request received in NO. Only NO staff will enter this code into ECMS. When a reopening request is received in NO from either the claimant, the DO, or the FAB, this code is required to denote receipt of the request and to indicate that the case file is physically present at the NO. The status effective date will be the date of receipt of the request for a reopening in the NO.

MI - DO director requests a reopening. Except in the case of a FAB remand order sent to NO for a possible Director's Order, when the DO district director requests the Director of DEEOIC to review a claim for possible reopening, the DO will enter the MI code into ECMS prior to forwarding the file to the NO with a cover memo outlining the DO director's concerns. The WS code should never be used under these circumstances. The status effective date will be the date of the DO director's

memo to the Director of DEEOIC.

M7 – DO director submits a FAB remand order to NO for possible Director’s Order vacating the remand. When the DO director disagrees with a FAB remand order, the DO director will prepare a memo outlining his or her concerns and forward the memo and case file to the NO for review by the Director of DEEOIC. Under no circumstances should a WS code be utilized in this instance. The status effective date will be the date of the DO director’s memo to the Director of DEEOIC.

MN – NO initiates review for reopening. Only NO staff will enter this code into ECMS. When the Director reviews a claim under the Director’s own initiative for either administrative purposes, a change in the law, or for reasons within the sole discretion of the Director, the MN code must be entered into ECMS to denote that the claim file is in NO and on review for possible reopening and/or vacating of a FAB decision. The status effective date will be the date the claim file is received in NO.

MX – Claim not in posture for reopening. Only NO staff will enter this code in ECMS. After the Director has reviewed the request for reopening and has determined that the claim is not currently in posture for reopening, the NO will enter MX into ECMS to denote the status of the review. The status effective date will be the date of the Director’s decision to deny the request for reopening.

MF – Claim is in posture for reopening and must be returned to FAB for the issuance of a new final decision. Only NO staff will enter this code into ECMS. After the Director has determined that a claim must be reopened and a new FAB final decision must be promulgated, the MF code will be entered to denote that a reopening has been granted and the file returned to the FAB for the issuance of a new final decision. The status effective date will be the date of the order granting the reopening.

MD - Claim is in posture for reopening and must be returned to the DO for further development and the issuance of a new recommended decision. Only NO staff will enter this code into ECMS. After the Director has reviewed the request for a reopening and has deemed a file in posture for reopening and further development at the district level, the MD code will be entered to denote that a reopening has been granted and the file returned to the DO for further development and the issuance of a new recommended decision. The status effective date will be the date of the order granting the reopening.

MV – A FAB remand order must be vacated and a new final decision must be issued. After review of the case file and the FAB remand to the DO, the Director has determined that the remand order was improper and must be set aside and a new final decision issued. Only NO staff will enter this code into ECMS. The status effective date will be the date of the order vacating the FAB remand order.

MZ – Receipt of Director’s Order in DO/FAB. Once the Director’s Order and accompanying case file is received from NO in the DO/FAB, the DO/FAB will enter the MZ code into ECMS to denote date of receipt. The status effective date will be the date the Director’s Order is received in the DO/FAB.

Deleting obsolete ECMS codes. With the addition of the foregoing new ECMS codes, the following ECMS codes are now obsolete and will be removed from ECMS effective immediately: MO; MU; and ML.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs,

Representatives, District Office Mail & File Sections

## **04-04 Electronic Applications**

EEOICPA BULLETIN NO. 04-04

Issue Date: November 3, 2003

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Effective Date: October 31, 2003

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Expiration Date: November 3, 2004

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Subject: Processing Electronic Applications

Background: The Government Paperwork Elimination Act (GPEA) requires agencies to allow customers the option to submit information to the government electronically. Effective October 21, 2003, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) has the ability to accept claim forms and affidavits electronically. The following forms are included: Claim for Benefits Under The Energy Employees Occupational Illness Compensation Program Act (EE-1); Claim for Survivor Benefits Under The Energy Employees Occupational Illness Compensation Program Act (EE-2); Employment History for Claim Under The Energy Employees Occupational Illness Compensation Program Act (EE-3); and Employment History Affidavit for Claim Under The Energy Employees Occupational Illness Compensation Program Act Claim (EE-4). Claimants or affiants will be able to complete forms through the Department of Labor's, Office of Workers Compensation Programs (OWCP) web site and then electronically submit the completed form directly to the DEEOIC. Mailed forms will be sent directly from the individual to the appropriate District Office (DO).

In order for a claimant or affiant to submit a form electronically, he/she is required to submit the form with his/her electronic signature. The digital signature must be Access Certificates for Electronic Services (ACES) compliant. DOL has contracted with the Digital Signature Trust (DST) to establish digital signatures for DOL forms submission. When a person opens an EEOICP form on the DOL website, a dialogue box is displayed that asks if the user wants to get an electronic signature. The person is routed to the DST website if they want to obtain an electronic signature. The certification process takes approximately one week. Upon certification, the claimant or affiant may transmit the form electronically. Forms submitted electronically will be received by the DEEOIC National Office and then forwarded via e-mail to the designated point of contact (POC) and back-up in the respective District Office for processing.

Purpose: To provide procedures for processing electronic DEEOIC claim forms.

Applicability: Claims Examiners, Senior Claims Examiners, All Supervisors, and Technical Assistants.

Action:

1. When a form is electronically submitted, it is automatically sent via email to the **DEEOIC Form Mailbox** at [DEEOIC-FormsReceipt@dol.gov](mailto:DEEOIC-FormsReceipt@dol.gov). If the claimant or affiant has technical problems or questions, he/she may request assistance via the **DEEOIC Assistance Mailbox** at [DEEOIC-FormsAssistance@dol.gov](mailto:DEEOIC-FormsAssistance@dol.gov). The Branch of Outreach and Technical Assistance (BOTA) will be responsible for managing and responding to all emails submitted to both mailboxes on a daily basis.
2. When DEEOIC receives claim forms in the DEEOIC Form Mailbox, BOTA reviews the forms to

determine the appropriate DEEOIC Office (i.e. DO, FAB, NO).

3. Once BOTA determines the appropriate DEEOIC Office, a Branch member forwards the electronic file to the person designated in each DO as the point of contact and back-up.

When the point of contact receives the form, he/she must print the **form and e-mail** and forward immediately to the mailroom to be processed and incorporated into a new or existing case file according to procedures outlined in EEOICP PM Chapter 1, 200-500. The e-mail from BOTA must be treated as a postmark envelope; therefore it must be incorporated into the case file.

In the event the point of contact is out of the office, the designated back-up must process the claim form according to procedure.

4. When processing the form, the following ECMS guidelines must be followed:

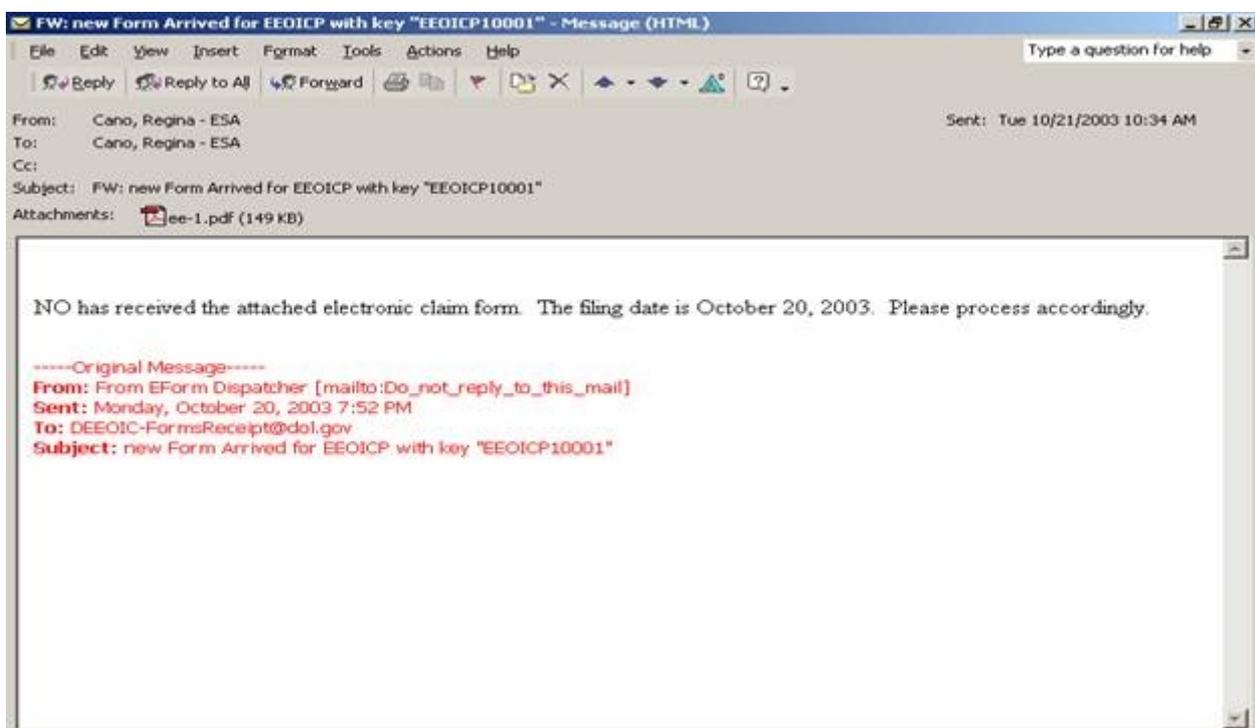
- (1) Standard operating procedure for determining the **filing date** is to use the postmark date indicated on the envelope or the received date stamped on the claim form by a DEEOIC office or Resource Center.

Since the claim form is transmitted electronically, the filing date for an electronically submitted form is the date the claimant electronically sends the claim form to the DEEOIC-Form Receipt Mailbox. This is the same date that the e-mail is received in the DEEOIC-Form Receipt Mailbox. The POC must refer to the **sent line** on the e-mail forwarded by BOTA to determine the filing date (refer to illustration 1).

- (2) The **receipt date** is the date the National Office, DEEOIC-Form Receipt Mailbox receives the claim form. The POC must refer to the **sent line** on the e-mail forwarded by BOTA to determine the receipt date. The DO must not use the date the point of contact received the e-mail from BOTA (refer to illustration 1).

Note: The filing date and DEEOIC receipt date will be the same date.

### **Illustration 1**



5. All questions submitted via the **DEEOIC Assistance Mailbox** ([DEEOIC-FormsAssistance@dol.gov](mailto:DEEOIC-FormsAssistance@dol.gov)) must reviewed by BOTA. BOTA refers technical or troubleshooting questions to Energy Technical Support. All other questions are answered by BOTA.

Disposition: Retain until the indicated expiration date.

Peter M. Turcic

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections;

#### **04-05 Handling medical documents from the DEEOIC bill payer**

EEOICPA BULLETIN NO. 04-05

Issue Date: November 13, 2003

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Effective Date: November 7, 2003

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Expiration Date: November 13, 2004

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Subject: Medical documents received from the medical bill pay contractor.

Background: The Division of Energy Employees Occupational Illness Compensation's medical bill processing contractor, currently Computer Sciences Corporation (CSC), is responsible for educating and enrolling providers in the Energy Employees Occupational Illness Compensation Program (EEOICP) and processing medical bills for services related to the accepted condition(s). Please consider future references to CSC in this Bulletin to be generic references to DEEOIC's medical bill pay contractor. CSC's responsibilities include processing all routine medical bills, consequential conditions, and prior approvals (i.e. fees related to copies of medical records required prior to acceptance of the claim, bills from District Medical Consultants or second opinion physicians, costs related to special medical devices or services, and travel reimbursements). Many times medical documents accompany the bills that are sent to CSC which need to be incorporated into the beneficiaries' case files.

CSC has been authorized to pay for services related to metastatic cancers. Metastatic cancers or secondary cancers develop as a result of the natural course of the primary cancer and are not considered consequential conditions. CSC routinely pays for most metastatic cancers and therefore until now the new accepted conditions have not been entered into the Energy Case Management System (ECMS). In addition, beneficiaries have not been advised that the metastatic cancers have been accepted.

As of November 12, 2003, CSC will begin forwarding copies of all medical documents (i.e. lab reports, pathology reports, hospital discharge summaries, physician summaries) to the office where the file is located, for integration into the case file. A cover memo from CSC outlining the required actions for the DO/FAB/NO, along with supporting medical documentation, will be submitted on a weekly basis.

Purpose: To provide procedures for processing medical documents and paid metastatic cancers submitted by the medical bill processing contractor.

Applicability: All Staff

Action:

1. On a weekly basis the DO/FAB/NO will receive a package from CSC that includes a memo and corresponding medical documents for each beneficiary. Upon receipt of the package from CSC, the mailroom staff must process the package according to procedures outlined in PM 1-200 (date stamp each memo and attached document(s) with the appropriate receipt date). The mailroom staff must review the name and case file number on the CSC memo(s) (Attachments 1 and 2) and forward the memo(s) and attached medical documents to the appropriate CE.

If a package or memo for a specific employee is sent to the DO in error, the mailroom staff must identify and forward the documents to the appropriate DO/FAB/NO office.

2. One category of medical documents, (i.e. hospital discharge summaries, physician summaries, pathology reports, radiology reports) forwarded by CSC ONLY require filing into the case file. These documents will be accompanied by a memo (Attachment 1) which informs staff that the documents are informational and no action is required (other than filing the information in the case file).

These medical documents usually pertain to conditions that have already been adjudicated and accepted by DEEOIC. In many cases, the payment of claims by CSC is straightforward; therefore, further development is not required by the DO/FAB/NO.

The CE must ensure the medical information is filed in accordance with the procedures outlined in PM Chapter 1-300 and 1-400.

3. The second category of medical records received by the CE pertains to the payment and acceptance of metastatic cancers by CSC. CSC is authorized to make a determination (based on medical documents or other resources) to accept and pay for the services related to the metastatic cancer. In these cases, CSC will forward information pertaining to the paid bill via a cover memo (Attachment 2) which includes the name of the employee, the case file number, the accepted metastatic cancer (primary and or metastatic cancer), the corresponding ICD-9 code(s), and the diagnosis date, if available. The memo will discuss CSC's justification for payment of the bill and include copies of the medical document(s) or bill(s) which prompted the decision.

If the CE receives the memo and attached medical documents that discuss CSC's payment of a metastatic cancer, he/she accepts the metastatic cancer as an accepted condition under the Employee Medical Condition Screen in ECMS. The CE must select "**MT**" (Metastatic Cancer) as the Condition type and enter the **ICD-9 code** provided on the memo from CSC in the ICD-9 field of ECMS. The CE must also enter the appropriate **Status Effective Date** in the Status Effective Date field which is the date of first manifestation of the metastatic cancer, and an "**A**" (*Accepted*) in the Condition Type Status field of ECMS. [Note: the medical condition type "**QN**" (Consequential Condition, Neoplasm) must not be used for a medical condition type of metastatic or secondary cancers.]

The use of the date of first manifestation as the status effective date allows the DEEOIC to pay for bills related to the diagnosis of the secondary cancer, which otherwise may be denied by the medical bill processing contractor.

When determining the appropriate **diagnosis date** for the Diagnosis Date field of ECMS, the CE must use the date provided by CSC on the cover memo. If no date is provided, the CE reviews the medical information submitted by CSC and or the medical information in the employee's case file to determine the appropriate diagnosis date for the metastatic cancer. If no date is provided, the CE must use the diagnosis date of the primary cancer. In some instances, a claim may be accepted for more than one primary cancer, therefore, the CE must review CSC's memo to determine the appropriate primary cancer.

If the primary cancer site is undetermined the secondary or metastatic cancer may be the cancer accepted by the program based on the medical evidence and dose reconstruction results from the National Institute for Occupational Safety and Health (NIOSH) supporting a probability of

causation of 50% or greater. In these situations, during the adjudication process or when updating ECMS based on information received by CSC, the CE must enter the appropriate ICD-9 code reflecting a secondary or metastatic cancer condition as an accepted primary cancer. The ICD9 range for metastatic cancers is 196-199.9. The CE must enter the acceptance code "A" as the condition status and "MT" as the condition type under the Medical Condition Screen in ECMS. If the CE fails to enter an appropriate Metastatic ICD9 code, ECMS will recognize the error and will not transmit the medical eligibility file to CSC for medical benefits.

**Note**— The CE must ensure that DEEOIC has accepted a cancer prior to entering the acceptance of the metastatic condition "MT" in ECMS. In addition, the CE must ensure that metastatic bills paid by CSC are indeed metastatic cancers and fall within the appropriate ICD9 range (196-199.9). If the CE determines that a cancer has not been accepted or the cancer does not fall within the appropriate range, he/she must notify the medical bill pay contractor. The CE sends a copy of CSC's memo, copies of accompanying documents, and a memo signed by the CE and his/her supervisor (i.e. Senior Claims Examiner or Unit Supervisor) outlining the issues and notifying CSC to suspend all payments related to this condition until the discrepancy can be resolved to:

Frank James  
Payment Systems Manager  
DEEOIC  
200 Constitution Ave, NW  
Room, C 4511  
Washington, DC 20210

A supervisor (i.e. Senior Claims Examiner or Unit Supervisor) must review the CSC memo, case file and issues presented by the CE in order to determine if the memo is justified. If so determined, his/her signature must be reflected on the memo.

4. The CE must communicate the acceptance of the metastatic cancer to the beneficiary (Attachment 3). The eligibility date for medical benefits related to the accepted condition is the status effective date.

5. If at anytime the CE has questions pertaining to a metastatic cancer bill paid by CSC, or disagrees with CSC's decision to accept the cancer, the CE must send a copy of CSC's memo, copies of accompanying documents, and a memo signed by the CE and his/her supervisor (i.e. Senior Claims Examiner or Unit Supervisor) outlining the issues to:

Frank James  
Payment Systems Manager  
DEEOIC  
200 Constitution Ave, NW  
Room, C 4511  
Washington, DC 20210

**Disposition:** Retain until incorporated into the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants,

Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections, ADP Branch Chief and Payment Systems Manager

[Attachment 1: Memo for CE from CSC - Informational Only](#)

[Attachment 2: Memo for CE from CSC - Metastatic](#)

[Attachment 3: Metastatic Cancer Letter](#)

## **04-06 90 day employment verification**

EEOICPA BULLETIN NO.04-06

Issue Date: November 7, 2003

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Effective Date: November 14, 2003

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Expiration Date: November 14, 2004

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Subject: Employment verifications over 90 days.

Background: Executive Order 13179 requires the Department of Energy (DOE) to verify employees' employment relevant to a claim filed under the EEOICPA. Sections 30.105(a) and 30.112 (b) of EEOICP regulations state that 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, that it can neither concur nor disagree with the information provided. Section 30.105(a) of EEOICP regulations indicates that DOE shall complete Form EE-5, DOE's Response to Employment History for Claim, as soon as possible and transmit the completed form to OWCP.

In the DEEOIC Procedure Manual Part 2-0400(3b), DOE is originally afforded 60 days to complete the EE-5 form. If the DOE fails to return the completed form within that time frame, the CE prepares a second request for the completed EE-5.

In an effort to receive timely employment verification information from DOE, effective immediately, the Director of DEEOIC will send a letter to DOE requesting their response to employment verifications that have been in their possession 90 or more days.

Reference: Procedure Manual Part 2-400.

Purpose: To provide procedures for employment verifications awaiting a response from DOE for 90 or more days.

Applicability: Claims Examiners, Claims Supervisors, District Directors, Hearing Representatives and All National Office staff.

### Actions:

1. Upon determination (via ECMS call-up or report) that an EE-5 has been with DOE 90 days or more, the Claims Examiner (CE) will review the case file to ensure all outstanding case issues have been completed. This includes survivorship and medical issues. If these issues have been resolved and the only outstanding issue is the DOE employment verification, the CE must notify his/her supervisor that the recommended decision or referral to the National Institute for Occupational Safety and Health (NIOSH) cannot be issued due to lack of DOE employment certification.

2. After certifying that the only outstanding issue in the case file is the lack of DOE employment verification, the supervisor will advise the District Director (DD). This action must be completed twice per month.

The supervisor must provide the DD with the employee's name, case number, date employment verification was requested from DOE, number of days the DO waited for employment verification response, and date case information was referred to the DD.

3. The supervisor must also keep a log of the same information including date employment verification is received. This log is for administrative tracking purposes only and is not associated with any one particular case. Finally the log must be reviewed and if possible, updated twice per month.

4. The DD must notify the DEEOIC Director via a memorandum (see Attachment 1) that a recommended decision or a referral to NIOSH is being held in abeyance because DOE has not provided employment verification after 90 days.

5. Following receipt of the DD's memorandum, the DEEOIC Director will alert the DOE of the outstanding employment verification and request they release the EE-5.

6. While there is no change in the ECMS code, the CE must include a note in the ECMS claim status history screen specifying these actions. He/she must also include a call-up for 45 days following this referral for follow-up purposes.

7. Upon receipt of the DOE response to the EE-5, the CE must notify his/her supervisor. This is important for tracking purposes.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

[Attachment 1: Memorandum](#)

## **04-07 Revised Emp Verification coding**

EEOICPA BULLETIN NO. 04-07

Issue Date: February 2, 2004

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Effective Date: February 2, 2004

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Expiration Date: February 2, 2005

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Subject: Revised ECMS Employment Verification Coding.

Background: This bulletin supplements EEOICPA Bulletin 03-07, "Employment Verification Codes." Unless otherwise discussed herein, all coding information provided in that Bulletin remains applicable (particularly the use of the "DE", "EC", "EX" codes). When requesting employment verification from the Department of Energy, the claims examiner (CE) forwards the

EE-5 form(s) directly to the appropriate DOE Operations Centers. In ECMS, to this point, the CE enters an “ES” (Employment Ver Sent to DOE) when sending the request to the Operations Center, and then an “ER” (Employment Ver Rec’d from DOE) upon receiving the EE-5 back from DOE. By entering just these claim status codes, there has been no linkage between the “ES” and “ER” in relation to a particular DOE Operations Center, especially when there are multiple EE-5 forms sent out. Presently it is not possible in ECMS to determine which EE-5 form is outstanding for which Operations Center, or to calculate precisely how much time elapsed from the date the EE-5 is sent to a particular Operations Center to the time it is received.

References: ECMS FAQs (Frequently Asked Questions) on the DEEOIC shared drive, and EEOICPA Bulletin 03-07, “Employment Verification Codes.”

Purpose: The purpose of this bulletin is to introduce instructions for capturing more specific information about ECMS coding applicable to sending and receiving EE-5 forms to and from DOE Operations Centers. The claims examiners will now be required to select a DOE Operations Center in conjunction with the “ES” and “ER” claim status codes in ECMS.

Applicability: All staff.

Actions:

When an EE-5 form requesting employment verification from a DOE Operations Center is sent, the CE enters an “ES” (Employment Ver Sent to DOE) in ECMS. The status effective date is equal to the date the request is sent to DOE. Upon receipt of an EE-5 from the DOE Operations Center, the CE enters an “ER” (Employment Ver Rec’d from DOE). The status effective date is equal to the date stamp of receipt of the EE-5 in the district office. This has not changed from previous guidelines.

2. There is a new field in ECMS on the Claim Status screen called the “reason cd” (reason code). This field is a drop-down box that corresponds with the “ES” and “ER” claim status codes. Included in the *reason cd* field is both the full name and a two-digit code representing each DOE Operations Center.

3. The CE selects the DOE Operations Center from the *reason cd* field that corresponds with the “ES” or “ER” claim status code being recorded in ECMS. The two-digit code and the DOE Operations Center are included on the same line, so only one selection will be made from the drop-down box. For example, if the EE-5 form is sent to the Chicago Operations Center, the CE selects “CH – Chicago Operations Center” from the *reason cd* drop-down menu. This field is required in order to save the “ES” and “ER” claim status codes.

<b>DOE Operations Center Code</b>	<b>DOE Operations Center</b>
AL	Albuquerque Operations Center
CH	Chicago Operations Office
GE	Germantown Facility
GR	Grand Junction Office
ID	Idaho Operations Office
KA	Kansas City Plant
LO	Los Alamos Site Operations
NE	Nevada Operations Office

OR	Oak Ridge Operations Office
OF	Ohio Field Office
PA	Pantex Plant
RI	Richland Operations Office
RO	Rocky Flats Field Office
SA	Savannah River Operations Office

4. The CE must enter an “ES” for each EE-5 that is sent to each Operations Center. The CE must also enter a corresponding “ER” for each EE-5 received from the Operations Center. For example, if a CE sends an EE-5 to the Richland Operations Office and to the Ohio Field Office, he/she enters the “ES” code with reason code “RI” for Richland, and a separate “ES” code with reason code “OF” for the Ohio Field Office. When the EE-5 forms are returned from each, the CE enters the “ER” code with the appropriate Operations Office from the drop down box.

5. If a CE sends one EE-5 to one Operations Center, and that Operations Center sends a copy of the EE-5 to more than one facility for response, the CE enters one “ES” code for the appropriate Operations Center. The CE is notified by DOE concerning how many copies were sent from the Operations Center to the facilities. Only after all EE-5 forms from that Operations Center are returned, the CE enters one corresponding “ER” code. For additional guidance concerning when to enter the “ER” code, please refer to item number four in Bulletin 03-07.

6. Back-fill will not be required. Effective the date of this bulletin, the use of the reason code field is required for both the “ES” and “ER” codes, regardless of whether the DOE Operations Center was entered initially in the reason code field for the “ES” prior to the issuance of this bulletin.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution: Distribution List No. 1: (Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections.)

#### **04-08 Revised procedures for deducting judgement of settlement payments**

EEOICPA BULLETIN NO.04-08

Issue Date: February 2, 2004

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Effective Date: February 2, 2004

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Expiration Date: February 2, 2005

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Subject: Revised procedures for deducting judgment or settlement payments.

Background: The Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA), 42 U.S.C. § 7384 *et seq.*, requires OWCP to “offset” or reduce the amount of EEOICPA benefits it pays to a claimant by the amount of any payment received from either a final

judgment or a settlement in a lawsuit (except a lawsuit for workers' compensation) seeking damages for any covered illness. If the evidence in the file suggests that this type of payment may have been received, the Claims Examiner (CE) designated in each district office to handle these matters must develop this aspect of the case further to determine if EEOICPA benefits that are payable to the claimant(s) must be reduced, and if so, by how much. Attachment 1 is the updated "EEOICPA Benefits Offset Worksheet" and provides step-by-step instructions to assist the designated CE to make these calculations.

All claimants are asked to state if they have received a payment from either a final judgment or a settlement in a lawsuit seeking damages for an occupational illness covered by the EEOICPA. For older claims, this question was asked on the obsolete Form EE/EN-15; for more recent claims, the question is asked on the current version of Forms EE-1 and EE-2. All claimants certify that they have reported these matters to OWCP when they sign the EN-20 to accept payment of EEOICPA benefits.

This Bulletin changes the policy regarding contingency settlements and certain settlements received by an employee's spouse. Contingency settlements no longer require National Office review, and are automatically assigned a zero dollar value by the CE. Settlements where both the employee and the employee's spouse sign a release, but all the settlement money is going to the spouse are now treated as separate settlements with the spouse only. Previously a settlement of that nature was considered a joint settlement. This Bulletin now makes it necessary for both the employee and the spouse to receive money in such a situation before the settlement will be considered a joint settlement.

References: 42 U.S.C. § 7385 and 20 C.F.R. § 30.505(b).

Purpose: To provide modified procedures and an updated Worksheet for making the required reduction of EEOICPA benefits.

Applicability: All staff.

Actions:

1. When the case file suggests that this type of payment has been received by someone (not just the employee or a deceased employee's survivor), a letter must be sent to the claimant asking for copies of documents in his or her possession relating to the lawsuit, such as any complaint (whether or not it was filed in court), any settlement agreement, and any itemized list of expenses submitted with an attorney's bill. The claimant should be asked to contact the attorney who brought the lawsuit to obtain copies of these documents if the claimant does not have them. The CE may also need to ask for more evidence or explanations before determining the actual dollar amount of the payment(s) made for the occupational illness covered by the EEOICPA, and to whom the payment(s) was made.
2. Attachment 1 consists of the updated "EEOICPA Benefits Offset Worksheet." This Worksheet is to be used by the CE to make the calculations necessary to determine how much to reduce or "offset" a claimant's EEOICPA benefits to reflect a payment received from a final judgment or a settlement in a lawsuit that sought damages for a covered illness. The Worksheet includes detailed instructions on how to compute the different figures that are entered on the Worksheet and used to calculate the amount of any required offset. After completing the Worksheet, the designated CE files it in the claimant's case record.
3. If the amount of the lump-sum payment to which the claimant is entitled is MORE than the offset, the balance due the claimant is listed on Line 7b of the Worksheet. This is the amount of the lump-sum payment that must be referenced in the recommended decision, together with an explanation of how this figure was calculated.
4. If the lump-sum payment is LESS than the offset, or a claimant awarded beryllium sensitivity monitoring has already received a settlement from another source to cover such monitoring and

such settlement must be absorbed prior to any payout under the EEOICPA, the amount of the “surplus” is listed on Line 7c of the Worksheet. Because a “surplus” can only be absorbed from payments due an employee for ongoing medical treatment payable in the future, no further action is required for a survivor claim. If there is a “surplus” to be absorbed in an employee’s claim, this must be noted in the recommended decision, along with an explanation that OWCP will not pay medical benefits and will apply the amount it would otherwise pay (either directly to a medical provider, or to reimburse an employee for ongoing medical treatment) to the remaining surplus until it is exhausted.

5. In situations involving a medical surplus, the FAB issues an award letter to the claimant containing special language. The FAB award letter accompanies the final decision and advises the claimant of the exact amount of the surplus. The award letter explains that an offset will be taken from medical benefits under EEOICPA until the surplus has been completely exhausted. The award letter further instructs the claimant to submit proof of payment of medical bills to the district office until notice is received that the surplus is exhausted. Additionally, claimants are instructed to advise medical providers to submit proof of payment of medical bills to the district office during this time.

6. In the case of a medical surplus as described above, upon issuance of the final decision the FAB representative will update ECMS in the *condition status* field with the “O” (Offset) code for the affected medical condition(s) on the medical condition screen for the Employee’s claim. The offset will only apply to the Employee’s claim, even in the event that the Employee died prior to adjudication of the case, and the survivor is entitled to compensation.

The ECMS process is as follows:

Offset for a Living Employee: For any medical condition(s) that will be affected by a medical surplus, the FAB representative:

- a) Updates the *condition status* field for the medical condition(s) from “A” (Accepted, entered by the district office) to “O” (Offset) on the Employee Medical Condition screen
- b) Confirms that the corresponding medical *status effective date* is equal to the Employee’s claim filing date
- c) Confirms that the corresponding data for the medical condition(s) is correct (condition type, ICD-9 code and diagnosis date)

Offset for a Deceased Employee: For any medical condition(s) that will be affected by a medical surplus, the FAB representative:

- a) Confirms the “C3” claim status code was entered in the Employee’s claim status history screen, with a *status effective date* of the date stamp of receipt of notification of the Employee’s death
- b) Adds or updates the actual date of the Employee’s death in the *DOD (Date of Death)* field in the Employee Census Information box of the case screen
- c) Updates through the Employee’s claim, the *condition status* field for the medical condition(s) to “O” (Offset) on the Employee Medical Condition screen
- d) Updates or confirms that the corresponding medical *status effective date* is equal to the Employee’s claim filing date
- e) Updates or confirms that the corresponding data for the medical condition(s) is correct (condition type, ICD-9 code and diagnosis date)

As an award automatically generates an eligibility file at the medical bill processing center, the “O” code acts as a “suspend” code and will not permit medical bill payment until the surplus is deleted and the “O” code is removed from the condition status screen. During the time in which the “O”

code remains in the medical condition status screen, the medical bill processing center will return all bills received on a medical surplus file to the claimant or the billing provider indicating that the bill can not be paid at this time due to a medical surplus.

7. During the time in which a medical surplus is in effect, the district office offset point of contact (POC) will be responsible for tracking surplus depletion. The FAB award letter will inform the claimant and medical providers to send all proofs of payment of medical bills to the offset POC. Should an unpaid bill be submitted to the offset POC during the surplus period, it will be returned to the claimant or the billing provider indicating that it can not be paid at that time due to the existence of a medical surplus. During the time in which the surplus is being monitored for depletion, the POC will tabulate the amounts of the proofs of payment until they equal or exceed the medical surplus amount. Once the proofs of payment monitored by the offset POC equal the medical surplus amount, all future medical bills in excess of the surplus amount will be paid under the EEOICPA.

8. Once the medical surplus is exhausted, the DO offset POC updates the medical condition(s) of the Employee's claim in ECMS to reflect that the offset(s) is complete. The POC will change the "O" (Offset) in the *status* field and replace it with an "A" (Accepted) code. If the Employee is deceased, the POC will confirm that the *eligibility end date* is equal to the actual date of the Employee's death. The POC then enters a comment into ECMS case notes indicating that the surplus is exhausted and that all future medical bills will be paid under the EEOICPA. Once the "A" code is entered into the Medical Condition Status screen in ECMS, the payment eligibility file will become active. The POC confirms that the *status effective date* is the Employee's claim filing date. Upon entering the "A" code into ECMS, the offset POC will send a letter advising the claimant that the surplus is exhausted. The letter will provide the claimant with the address of the medical bill processing center and instruct him or her to submit all future unpaid medical bills to that address for review and payment. At that point, the offset POC will send a copy of all proofs of payment received during the time in which the surplus was in force to the medical bill processing center. The medical bill processing center will maintain a record of these proofs of payment to guard against duplicate payment of bills.

9. During any period when medical benefits are not being paid because of the required reduction of EEOICPA benefits, if the CE finds it necessary in the course of normal case management to obtain a second opinion examination, a referee examination, or a medical file review, the costs for these procedures will be directly paid by OWCP and any reasonable expenses incurred by the covered employee will be reimbursed without being added to the surplus. Therefore, the offset will not apply to any prior approval medical conditions in ECMS, coded with a medical condition type of "PA." In such situations, the CE will enter a comment into ECMS case notes authorizing the medical bill processing center to pay all bills related to the second opinion. The CE must follow the procedures outlined in EEOICPA Bulletin 03-01 for the processing of bills related to a second opinion as outlined above.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

[Attachment 1: EEOICPA Benefits Offset Worksheet](#)

**04-09 CPWR**

Effective Date: March 1, 2004

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Expiration Date: March 1, 2005

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Subject: Center to Protect Workers' Rights (CPWR).

Background: The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has received numerous claims from employees who worked in jobs related to construction or trade (construction workers, electricians, plumbers, etc.) in the nuclear weapons industry. Given that these jobs are usually performed under a subcontract, obtaining reliable documentation to verify employment has proven difficult and time consuming.

To assist in the collection of relevant evidence, the DEEOIC has contracted with The Center to Protect Workers' Rights (CPWR) for assistance in obtaining records pertinent to construction and trade employees at DOE, Atomic Weapons Employer or Beryllium Vendor facilities. The DEEOIC has contracted with the CPWR due to their extensive access to records and their ongoing relationship to various worker advocate organizations. CPWR is a research, development, and training arm of the Building and Construction Trades Department (BCTD), of the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO). This unique relationship with the BCTD allows CPWR direct access to the 15 building and construction trades international unions, signatory contractors, union health and welfare and pension funds. As a consequence, they have access to employment records, union rosters and dispatch records. In addition, CPWR has an extensive institutional knowledge and working experience with several DOE sites.

CPWR has been tasked to research and provide employment information for construction/trade worker claims where the Department of Labor (DOL) has been unable to obtain reliable information through available resources (i.e. DOE, corporate verifiers). CPWR is solely an information collection agent of the DEEOIC. They serve no function in determining coverage for benefits, nor are they permitted to offer opinion as to the validity of the evidence presented to substantiate a claim. The CE retains the responsibility for evaluating evidence and making any judgment concerning covered employment. CPWR will be asked to provide any information or documentation that substantiates the following items:

- (1) Evidence that a contractual relationship existed between the covered facility and the identified employer (contractor) during a specific time period;
- (2) Evidence that the claimant was an employee of the covered employer during the claimed time period;
- (3) Evidence that the employee worked on site at the covered facility.

Initially CPWR will be unable to assist DEEOIC with each and every construction and trade claim. CPWR's assistance will be prioritized based on construction/trade claims by facility starting with the DOE facilities for Savannah River, Oak Ridge, Hanford, Paducah and Portsmouth. Additional DOE facilities will be added as the project progresses.

Reference: EEOICPA Bulletin 03-27, Establishing Covered Subcontractor Employment

Purpose: To provide procedures for obtaining employment documents from CPWR.

Applicability: All Staff

Actions:

1. When the CE reaches the point in case development where he or she has attempted employment verification through the DOE or a corporate verifier, and received a negative response, consideration is to be given for referring the case to CPWR.
2. A referral to CPWR is contingent on the facility where employment occurred and the type of job claimed. CPWR will coordinate with the National Office the submission of two lists. One will identify the facilities where CPWR can provide assistance. The second will identify the types of jobs to which CPWR is likely to have information, such as construction or building trades. These lists will be made available to each District Office and will be periodically updated. For a CPWR referral to proceed, the claimed employment must identify both a facility and job type appearing on the lists provided.
3. If a CE determines that any period of claimed employment satisfies both the facility and job type criteria for CPWR consideration, he or she must confer with the designated District Office Point of Contact (POC). The POC is selected by each District Office to serve as the principal liaison between DEEOIC and CPWR. There will be one POC per District Office. The designated POC is responsible for all communication between the district office and CPWR. Moreover, the POC is responsible for certifying outgoing referrals and reviewing incoming responses.
4. If the POC agrees that the situation requires a CPWR referral, the appropriate forms are to be prepared. There are two principle forms used to make a CPWR referral: A CP-1 Referral Sheet and CP-2 Employment Response Report (Attachments 1 & 2). The CP-1 provides general information concerning the employee's case file. The CP-2 is a form CPWR uses to respond to employment data requests made by the DEEOIC.
5. The CP-1 is to be completed by either the CE or the POC. Section 1 requires information concerning the case to be listed, such as employee name, claim type, file number and Social Security Number. In Section 2, the referring District Office is to be identified along with the number of attached CP-2 Employment Response Reports. Any special requests or other relevant information for CPWR is to be listed in the comment section.
6. For each claimed employer at a facility where CPWR can provide assistance, a separate CP-2 Employment Response Report is to be prepared by the CE. The CE or POC may make as many copies of the form as necessary. The CP-2 contains two sections. Section 1 is completed by the CE or POC and describes the employment to be researched by CPWR. It is important that the information specify both the periods of employment requiring verification and the type of evidence being requested such as evidence of contractual relationship, proof of employment with the claimed employer, or evidence of employment on the premise of the claimed facility. Section 2 of the CP-2 is reserved for CPWR to report any findings pertaining to the claimed employment.
7. Upon completion of the DOL's portions of the CP-1 and CP-2, the POC is to conduct a complete review of all the material. He or she is to ensure that the information contained in the referral forms is reported accurately and satisfies all the requirements for submission to CPWR. Once the review is completed and the POC is satisfied that the CP-1 and all CP-2 forms are completed correctly, he or she is to sign and date the CP-1. The CP-1 Referral Sheet is to be certified on the day the referral is mailed out of the district office.
8. Once the referral forms are completed and certified by the POC, copies of both the referral sheets and the case file are to be made. The POC or CE will attach the original CP-1 and CP-2 sheets to a copy of the case file. This constitutes a complete CPWR referral package. The entire package will be express mailed to CPWR. Copies of the CP-1 and CP-2 forms are to be inserted into the official case file.
9. On the same day that the referral package is mailed to CPWR, notification of CPWR involvement in the case is to be prepared for each known claimant. The CE or POC is to prepare a cover letter for each claimant that describes CPWR's involvement in the case (Attachment 3). This cover letter should be transmitted to the claimant(s) on the same date of referral to CPWR.

10. A referral to CPWR is performed concurrent to other required developmental actions, such as requests for wage information from the Social Security Administration, or development letters to the claimant. The CE should not delay undertaking other avenues of development of a case while awaiting a response from CPWR.

11. CPWR will initially be able to accept a limited number of referral response packages. The DEEOIC National Office will advise the district offices of the weekly allowable number of cases to be submitted to CPWR. Once the POC determines the number of cases to be sent to CPWR during a given week, he or she is to batch all the referrals and express mail them on Monday of each week to:

Anna Chen (anna\_chen@worldnet.att.net)

Zenith Administrators

201 Queen Anne Avenue, North

Suite 100

Seattle, WA 98109

1-800-866-9663 Anna Chen

12. The POC is the ultimate arbiter of all issues involving the CPWR referral process. He or she is not to certify for submission any referral package that does not meet the requirements for referral. Any incomplete or inaccurate referral package should be returned to the CE. The POC is to notify the CE of any deficiency and the steps necessary to correct the problem. CPWR is permitted to contact claimants directly. However, any request for claimant contact must be submitted to the POC, who will then provide the necessary contact information.

13. The POC is responsible for tracking all CPWR referrals and responses. For each referral, the District Office must track the following information:

- a. case number
- b. facility name(s),
- c. employer name(s),
- d. date of referral to CPWR,
- e. date response received from CPWR,
- f. CE initiating request.

Twice a month, the DO POC will send the National Office an email summarizing the number of CPWR referrals and responses for the preceding two week period, outstanding requests (>40 days), and the total number of referrals to date. Contractually, CPWR can process a limited number of claims during the contracted time period. Therefore, the report will assist the National Office in determining the number of requests allowed by each District office on a monthly basis.

14. The CE or POC is to enter the claim status code "US" (Union sent) in the claim status history screen in ECMS with the status effective date equal to the date of referral mailing. The "US" code signifies that all actions are complete pertaining to a CPWR mailing, including release of a completed referral package and mailing of a cover letter to the claimant(s).

15. After inputting the "US" code, a note must be entered in the "Worksite Desc" field on the main case screen in ECMS. For each facility where employment is claimed and for which CPWR is assisting in the collection of employment evidence, the CE or POC must enter a note. The note is not to replace any existing entry pertaining to the site. The CE or POC must enter the following note using the first twelve characters of the "Worksite Desc" field for outstanding CPWR referrals: "CPWR pending."

16. The CE will also enter a 40 day call-up in ECMS effective the date of referral. If a CE receives a call up notice indicating 40 days has elapsed and a response from CPWR has not been received, he/she will send notification via email to the POC. Upon receipt of the notification, the POC is to verify the delinquency and list it in their tracking program. The POC is then responsible for contacting CPWR by telephone or email to advise of the overdue request. The POC is to input a claim status code of “DE” (Developing Employment) in the claim status history screen of ECMS effective the date contact is made with CPWR concerning an overdue response. The CE or POC selects “CPWR” from the reason code list box. All phone calls or email are to be appropriately recorded in the case file. The POC has three working days to report all overdue referrals to CPWR. Moreover, he or she must update the status of the referral in the CPWR tracking program.

17. CPWR has thirty calendar days from receipt of a referral package to conduct appropriate research into the claimed employment, complete each CP-2 based on the evidence gathered, and express mail the response to the appropriate POC. Responses are to be bundled according to case file number.

18. District Office mailroom staff are to date stamp incoming responses according to established procedures and forward it to the designated POC. The POC is to enter the receipt date in the tracking database and immediately forward the CPWR response to the appropriate CE.

19. Upon receipt of a CPWR response, the CE or POC enters the claim status code “UR” (Received from Union) in the claim status history screen in ECMS with the status effective date equal to the date the referral was date stamped received by the DO.

20. When reviewing the CPWR response, the CE or POC is to ensure it is complete. The CE or POC checks to ensure that the number of CP-2 forms per bundle corresponds with the number of referrals identified on the CP-1 form. Each CP-2 form is to be marked according to the information found, submitted with any supporting documentation and signed by a representative of the CPWR. In particular, CPWR is required to complete the **Search Results** section on the CP-2 for each employer noting: the evidence located; whether it resulted in sufficient evidence to support the developmental components identified by the CE requiring assistance; comments to include where the information came from and how to interpret; a summary of all the evidence; contact information for potential affiants; and contact information for the CPWR employee who conducted the search.

21. When reviewing the evidence, generally, there are five categories of records that can be submitted to the CE for consideration. The categories are listed in the CPWR Research Results section of the CP-2 Employment Response Report and will be marked if corresponding evidence is submitted. These categories include: Union Dispatch/Log, Pension Fund, Health & Welfare, Facility/Site, DOE Former Worker Program, and other. To assist the CE in distinguishing between the categories of records, the evidence will be labeled as follows: A – Union Dispatch; B - Pension; C - Health Fund Records; D - Former Worker Program Records; E - Site Records.

**(A) Union dispatch/log** – records that show the placement of a worker to a specific jobsite and/or contractor. These records are filed at the local union hall or with the union steward on the jobsite. A dispatch record may provide the following information: worker’s name, social security number, job title, project being assigned to, the date of assignment, the company/employer, hire/termination date, and pay scale.

**(B) Pension fund** – records maintained by a pension fund established pursuant to a collective bargaining agreement between a building and construction trades union and one or more employers to act as a trust for the purpose of providing pension benefits to employees covered by the collective bargaining agreement.

**(C) Health and welfare** – records maintained by a health and welfare fund established pursuant to a collective bargaining agreement between a building and construction trades union and one or more employers, to act as a trust for the purpose of providing pension group health, life, disability and similar benefits to employees covered by the collective bargaining agreement.

**(D) Former Worker Program (FWP)** - These programs evaluated the long-term health conditions of former workers who may be risk of occupational diseases due to their former employment at certain DOE sites. These projects evaluate former workers at the following sites: Hanford Site, Nevada Test Site, Rocky Flats Environmental Technology Site, Portsmouth Gaseous Diffusion Plant, Paducah Gaseous Diffusion Plant, Oak Ridge Reservation, Savannah River Site, Idaho National Energy and Idaho National Engineering and Environmental Laboratory, Los Alamos National Laboratory, Alaska's Amchitka Island, and the Iowa Army Ammunition Plant. CPWR has access to a variety of records that have been collected by the FWP's.

Information reported in the FWP Work History Interview can be accepted as accurate and true so long as the interview occurred prior to October 20, 2000 and is the sole source of employment information available in the case file. Any data available in an interview conducted after October 20, 2000 must be substantiated by other collaborative documentation. In addition, FWP lists of contractor and subcontractor relationships at certain DOE facilities can be accepted as accurate and true.

**(E) Facility/Site** - records that CPWR has obtained previously or concurrently from the DOE facility such as a certified payroll, a personnel record, or a collective bargaining agreement.

22. The CE is responsible for carefully assessing the relevance of any evidence or information submitted by CPWR. Judgments regarding covered employment rely on a careful examination of not only the evidence submitted by CPWR, but other sources as well. The CE should be mindful to ensure that the evidence submitted by CPWR reasonably substantiates allegations of employment brought forth by an employee or survivors. The evidence must reasonably satisfy all the components necessary to establish covered employment. In any instance where the CE questions or does not understand the nature of the information supplied by CPWR, he or she must request the POC to contact CPWR for clarification.

23. Upon review of the evidence received from CPWR, the CE or POC must re-enter the "Worksite Desc" note field in ECMS and amend the "**CPWR Pending**" note for each worksite for which CPWR is providing assistance. He or she will delete the "CPWR Pending" and replace it with one of the following as the first characters of the note field:

**CPWR Assisted All** - when "ALL" of the data requested from CPWR assisted in establishing covered employment.

**CPWR Assisted Partial** - when a portion of the data requested from CPWR assisted in establishing covered employment.

**CPWR Assisted None** - when "NONE" of the data requested from CPWR assisted in establishing covered employment.

24. The DEEOIC is the ultimate arbiter of any disputes arising between the program and CPWR. If the POC encounters an instance where a question of interpretation has arisen that can not be resolved through normal discourse with CPWR, the issue should be referred to the Branch of Policies, Regulations and Procedures. A memo is to be prepared outlining the issue to be resolved. Copies of the completed referral form(s) and any other relevant employment documentation are to be attached. All referrals prepared for the National Office are to be certified by the appropriate POC and District Director.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

## **Occupational Illness Compensation**

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

[Attachment 1: CPWR-Referral](#)

[Attachment 2: CPWR-Employment Response Report](#)

### **04-10 Processing Cancellations of Lump Sum Payments**

EEOICPA BULLETIN NO. 04-10

Issue Date: March 16, 2004

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Effective Date: March 16, 2004

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Expiration Date: March 16, 2005

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**Subject:** Processing cancellations of lump sum payments.

**Background:** Between August 2001 and March 2003, payments that were cancelled and required re-issuance were processed by staff at the National Office through the Electronic Certification System. Effective March 17, 2003, DEEOIC began processing both the cancellation and re-issuance of lump sum payments directly through the Energy Case Management System (ECMS).

This bulletin is a revision of Bulletin 03-16 to include an updated Payment Cancellation form. The Payment Cancellation form has been changed to add Action 6. Action 6 is described in detail in Action number nine, bullet number four of this bulletin.

Recording a cancelled payment is critical to maintaining an accurate and comprehensive accounting of all DEEOIC funds disbursements. Multi-level reviews and concurrences by DEEOIC management of actions taken and documented by all parties – claimants, financial institution staff, government claimsstaff – is essential to safeguard the integrity and security of DEEOIC’s financial accounting processes and systems.

This bulletin provides written guidance regarding the procedures to be used and the policies to be followed for initiating and completing a payment cancellation, so that re-issuance of a lump sum payment can be made through ECMS. This bulletin replaces E-mail procedures entitled “New Payment Transaction Form to use for reissued payments sent to National Office,” dated August 14, 2002 as well as Bulletin 03-16.

**References:** ECMS Release Notes (March 17, 2003), EEOICPA Bulletin 02-12, “Compensation Payment Process,” ECMS FAQ’s, EEOICPA Bulletin 03-16, “Voids and Cancellations.”

**Purpose:** To provide revised procedures for the processing of payment cancellations.

**Applicability:** All staff.

**Actions:**

1. When a lump sum payment that was authorized in ECMS cannot be processed by the Department of Treasury, or the claimant never receives the payment, it will result in a cancellation of the lump sum payment.

**Cancellation by the Department of Treasury:** After the District Office authorizes the lump sum payment in ECMS, it is transmitted to the Department of Treasury for payment by check or

Electronic Funds Transfer (EFT). If the Department of Treasury is unable to process the payment, they will cancel the payment and send a form SF-1098 (“Schedule of Unavailable Check Cancellation Credits” or “Schedule of Cancelled EFT Items”) to the Fiscal Officer in the National Office.

**Cancellation initiated by Claimant:** After the District Office authorizes the lump sum payment in ECMS, it is transmitted to the Department of Treasury for payment by check or Electronic Funds Transfer (EFT). If the claimant does not receive the paper check or the EFT, the claimant contacts the District Office.

- The claimant notifies the Claims Examiner, who documents the call or correspondence in the notes section of the Case Notes screen in ECMS.
- If a claimant reports non-receipt of a check or EFT by telephone, the Claims Examiner must advise the claimant to document such non-receipt in writing.
- Upon receipt of the correspondence, the Claims Examiner transfers the case file in ECMS on the Case screen to the DO Fiscal Officer.
- The DO Fiscal Officer faxes a copy of the letter sent by the claimant with a memorandum explaining the need for cancellation to the NO Fiscal Officer.
- Upon receipt of the documentation, the NO Fiscal Officer sends an E-mail to the Department of Treasury requesting a tracer. A copy of the E-mail, along with a memorandum of explanation, is faxed to the DO Fiscal Officer to include in the case file. (Procedures for situations wherein the check has been cashed, or the EFT was already deposited will be forthcoming.)
- Once the Department of Treasury has successfully completed the tracer, the Department of Treasury will send a form SF-1098 to the Fiscal Officer in the National Office.

2. Upon receipt of the form SF-1098, the NO Fiscal Officer requests the case file from the DO Fiscal Officer.

3. The District Office transfers out the case file to “NAT” in ECMS on the Case screen, and mails the case file via express mail to the NO Fiscal Officer. The status effective date of the transfer is the same as the express mail date.

4. Upon receipt of the case file, the NO Fiscal Officer transfers in the file to “NAT” in ECMS on the Case screen. The status effective date of the transfer is the same date the case file is received. The NO Fiscal Officer confirms the address for a paper check, or bank account/routing numbers for an EFT. The SF-1098 is spindled inside the case file.

5. The NO Fiscal Officer completes and signs Action 1 of the “Payment Cancellation” form (Attachment 1), and spindles the form inside the case file. Once completed, the NO Fiscal Officer forwards the case file to the Branch Chief for review and signature (Action 2 of the “Payment Cancellation” form). Upon completion, the Branch Chief forwards the case file to the Director or Deputy Director for review and signature.

*Note: If an error is detected by the BPRP Branch Chief, the Transaction Cancelled section of the “Payment Cancellation” form is filled out. The case file is returned to the NO Fiscal Officer for review.*

6. ECMS permits only the Director or Deputy Director to initiate the on-line payment cancellation process. After reviewing the actions taken and documented in the case record, if the Director or Deputy Director agrees that the ECMS payment record needs to be voided, the payment cancellation is initiated in ECMS by the Director or Deputy Director at National Office:

- In ECMS, select “Initiate Void Compensation Transaction” from the Compensation menu

- At the Search Payment Record screen, enter the case SSN or name
- Click the “Initiate” button at the bottom of the Payment Update screen
- Click “YES” to confirm the Void Initiation

7. After the void is reviewed and initiated in ECMS, the Director or Deputy Director checks off Actions 3 and 4, and signs and dates the “Payment Cancellation” form. The case file is transferred out to the District Office in ECMS on the Case screen, and returned via express mail. The status effective date of the transfer is the same as the express mail date.

*Note: If an error is detected by the Director or Deputy Director, the Transaction Cancelled section of the “Payment Cancellation” form is filled out. The case file is returned to the BPRP Branch Chief for review.*

8. Upon receipt in the District Office, the case file is transferred in ECMS on the case screen, and forwarded to the District Director. The status effective date of the transfer is the same date the case file is received.

9. ECMS permits only the District Director to authorize the on-line payment cancellation process. After reviewing the actions taken and documented in the case record, if the District Director agrees that the ECMS payment record needs to be voided the payment cancellation is authorized in ECMS by the District Director at the District Office. The District Director must determine whether a repayment to the current payee will be required. For example, if the payment is cancelled because the employee or claimant died before receipt, he/she is not going to be paid a lump sum. In this instance, the “No Repayment Required” box must be checked so that any survivors can be paid.

- In ECMS, select “Authorize Void Compensation Transaction” from the Compensation menu
- At the Search Payment Record screen, all pending check cancellations to be authorized will appear in a grid view
- Highlight the record to be authorized, and click “Select”
- If no repayment of the cancellation is required, check the “No Repayment required” box. If repayment is required, the box is left blank
- Click the “Authorize” button at the bottom of the Payment Update screen
- Click “YES” to confirm the Void Authorization

10. After the payment cancellation is reviewed and authorized in ECMS, the District Director checks off Actions 5 and 7, and signs and dates the “Payment Cancellation” form. The District Director transfers the case file in ECMS on the Case screen to the DO Fiscal Officer.

*Note: If an error is detected by the District Director, the Transaction Cancelled section of the “Payment Cancellation” form is filled out. The case file is returned to the DO Fiscal Officer for review.*

11. After the void has been processed in ECMS:

- **If the lump-sum payment needs to be re-issued:**

The DO Fiscal Officer informs the Claims Examiner that the payment cancellation has been completed. The Fiscal Officer routes the case file to the Claims Examiner. The Claims Examiner confirms the SF-1098 is in the case file.

If the EN-20 is insufficient to process the re-issued payment, i.e. the bank routing/account numbers for EFT, or address for check, are **incorrect**, the Claims Examiner sends a letter of explanation to the claimant, along with a copy of the original EN-20 prepared by FAB. Upon receipt of the new EN-20, the Compensation Payment process is repeated, as per EEOICPA Bulletin 02-12.

If the EN-20 is sufficient to process the re-issued payment, i.e. the bank routing/account numbers for EFT, or address for check, are **correct**, but were incorrectly entered in ECMS for the original payment, the Compensation Payment process is repeated, as per EEOICPA Bulletin 02-12.

● **If the lump-sum payment does not need to be re-issued:**

The DO Fiscal Officer confirms that the void has been completed, and that the “No Repayment Required” box is checked on the View Comp. Transaction screen, under the “Void Transaction” tab. The case file is returned to the DO file room, and transferred to “FIL” in ECMS on the Case screen.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

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Director, Division of Energy Employees

Occupational Illness Compensation

Distribution: Distribution List No. 1: (Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections.)

[Attachment 1: Payment Cancellation](#)

**04-11 DE & NR claim status codes in ecms**

EEOICPA BULLETIN NO. 04-11

Issue Date: June 18, 2004

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Effective Date: June 16, 2004

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Expiration Date: June 18, 2005

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Subject: The use of Reason Codes for the 'DE' and 'NR' claim status codes in ECMS.

Background: This bulletin supplements the following:

Bulletin 02-13 "Chronic Lymphocytic Leukemia Cases;" Bulletin 03-07 "Employment Verification Codes;" Bulletin 04-01 "Instructions for Reworks of NIOSH Dose Reconstruction Reports." Unless otherwise discussed herein, all coding information provided in those bulletins remains applicable.

The reason code field in ECMS was introduced to further expand the definition of certain claim status codes. Two codes that require additional qualification upon entry in ECMS are the 'DE' (Developing Employment) and 'NR' (Received from NIOSH) codes. It is not enough just to select the claim status codes as before, since now there are multiple meanings for each of these codes. This bulletin will introduce and explain specific reason codes to use upon data entry of the 'DE' and 'NR' claim status codes in ECMS.

References: ECMS FAQs (Frequently Asked Questions) on the DEEOIC shared drive, Bulletin 02-13 "Chronic Lymphocytic Leukemia Cases;" Bulletin 03-07 "Employment Verification Codes;"

Bulletin 04-01 "Instructions for Reworks of NIOSH Dose Reconstruction Reports."

Purpose: The claims examiners will now be required to select a reason code in conjunction with the 'DE' and 'NR' claim status codes in ECMS. The purpose of this bulletin is to introduce instructions for capturing more specific information when coding in ECMS, applicable to the use of these claim status codes.

Applicability: All staff.

Actions:

1. **The 'DE' claim status code.** When developing initial or follow-up employment directly with the claimant, or as a follow-up to the Department of Energy (DOE), a corporate verifier, the Social Security Administration (SSA) or the Center to Protect Workers' Rights (CPWR), the CE enters the 'DE' (Developing Employment) claim status code in ECMS. The status effective date of the 'DE' code is either the date of the letter to the claimant, or the date of the follow-up action to the employment verifier. (This process has not changed.)
2. Upon entry in ECMS of the 'DE' code, the CE will now be required to select a specific reason code from the "reason cd" field. This field is a drop-down box that corresponds with the 'DE' claim status code. Included in the reason cd field are both the full reason for the 'DE' code and a two-digit code representing each option.
3. The reason codes available for the 'DE' claim status code are as follows:
  - a) Letter directly to claimant(s)-'LE': This is used for initial or follow-up letters mailed directly to the claimant, when asking for employment clarification or information.
  - b) Follow-up to DOE-'DE': This is used exclusively for follow-up to the DOE.
  - c) Follow-up to Corporate Verifier-'CS': This is used exclusively for follow-up to a Corporate Verifier.
  - d) Follow-up to CPWR-'US': This is used exclusively for follow-up to CPWR.
  - e) Follow-up to SSA-'SS': This is used exclusively for follow-up to the SSA, when sending a follow-up request to National Office.
4. The CE selects the specific reason for the use of the 'DE' code from the reason cd field upon entry in ECMS. The two-digit reason code and the 'DE' reasons are included on the same line, so only one selection will be made from the drop-down box.

Two Digit 'DE' reason code	DE reasons
LE	Letter directly to claimant(s)
DE	Follow-up to DOE
CS	Follow-up to Corporate Verifier
US	Follow-up to CPWR
SS	Follow-up to SSA (through NO)

4. **The 'NR' claim status code.** When a case is returned from NIOSH with a dose reconstruction or when, after full medical development, the only claimed primary cancer is CLL, the CE enters the

'NR' (Received from NIOSH) claim status code in ECMS. For the former, the status effective date is the date the dose reconstruction is date-stamped in the district office. For the latter use of the 'NR' code, the status effective date is the date of the Recommended Decision to deny based on CLL. (This process has not changed.)

5. Due to the new process of 'Reworks of NIOSH Dose Reconstruction Reports' (see Bulletin 04-01), there are times when a dose reconstruction will be received in the district office, and is found to be in error. If it is determined that the received dose reconstruction is not to be used, based on the review by the Health Physicist at National Office, ECMS needs to reflect that even though the 'NR' code was entered, a POC will not be entered in ECMS, and the case will eventually be reworked by NIOSH.

6. Upon entry in ECMS of the 'NR' code, the CE will now be required to select a specific reason code from the "reason cd" field. This field is a drop-down box that corresponds with the 'NR' claim status code. Included in the *reason cd* field are both the full reason for the 'NR' code and a two-digit code representing each option.

7. The reason codes available for the 'NR' claim status code are as follows:

a) Dose Reconstruction received, POC-'DR': This is used when the dose reconstruction is received in the district office. (Even though the CE might not have had an opportunity to review the dose reconstruction report yet, this is the appropriate reason code to use at this time.) Note: This code is used on every case returned from NIOSH, even if it must eventually be changed (see (b) below.)

b) Reworks of Dose Reconstruction, no POC-'RW': This is used exclusively if it is determined that the received dose reconstruction is not to be used, based on the review by the Health Physicist at National Office.

**Once the Health Physicist determines that the case must be returned to NIOSH for a rework, the CE changes the reason code for the 'NR' claim status code from 'DR' to 'RW.'** (Note: A new 'NR' claim status code is not to be entered in ECMS. Only the reason code for the existing 'NR' code is to be updated.)

Once the rework is prepared by the CE and a new Amended NIOSH Referral Summary Document (ANRSD) is ready to be forwarded back to NIOSH, a new 'NI' claim status code is entered in ECMS, with a status effective date of the ANRSD.

c) CLL only, no POC-'CL': This is used exclusively for cases never sent to NIOSH, where the only claimed cancer condition is CLL.

8. The CE selects the specific reason for the use of the 'NR' code from the *reason cd* field upon entry in ECMS. The two-digit reason code and the 'NR' reasons are included on the same line, so only one selection will be made from the drop-down box.

Two Digit 'NR' reason code	NR reasons
DR	Dose Reconstruction received, POC
RW	Reworks of Dose Reconstruction, no POC
CL	CLL only, no POC

9. Back-fill will not be required for the 'DE' code. There will be a programmatic back-fill done for the 'NR' code. However, there will be some cases that cannot be programmatically updated, and those cases will need to be reviewed and updated in the district offices. Once compiled, a list will be provided to each district office of those cases requiring manual back-fill entry.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution: Distribution List No. 1: (Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections.)

#### **04-12 Wholly owned subs**

EEOICPA BULLETIN NO. 04-12

Issue Date: September 16, 2004

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Effective Date: September 16, 2004

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Expiration Date: September 16, 2005

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Subject: Eligibility of Employees of Wholly-Owned Subsidiaries of Atomic Weapons Employers for Benefits under the EEOICPA.

Background: The Energy Employees Occupational Illness Compensation Program Act (EEOICPA) authorizes the Department of Energy (DOE) to designate covered atomic weapons employers (AWE). The statute further states that an AWE facility must be owned by a DOE-designated AWE, and have been 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. An individual is only considered a covered "atomic weapons employee" if he or she was employed by an AWE facility as defined under the EEOICPA statute and governing regulations. Accordingly, the EEOICPA does not cover AWE contractor and subcontractor employees, as the very nature of their employment fails to meet the definition of an "atomic weapons employee."

The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has received claims from employees and/or survivors of employees who worked for companies who were/are wholly-owned subsidiaries of DOE-designated AWEs. Wholly-owned subsidiaries are companies in their own right that share an affiliation with a parent company, but operate as a separate functional entity and provide for employees in accordance with their own distinct corporate administrative policies and regulations. The very separate and unique character of a wholly-owned subsidiary renders it, in effect, its own company with its own corporate identity. Due to the separate and distinct nature of a wholly-owned subsidiary and the strict regulatory and statutory definition of an AWE facility, a wholly-owned subsidiary of a DOE-designated AWE that is not itself designated as an AWE by the DOE can not be considered an AWE.

Any work performed by a wholly-owned subsidiary of a DOE-designated AWE in the service of that AWE is therefore viewed as work performed by a contractor to that AWE. As such, employees of wholly-owned subsidiaries of DOE-designated AWEs are not considered “atomic weapons employees” under the EEOICPA unless the wholly-owned subsidiary is itself designated as an AWE by the DOE. Thus, employees of AWE wholly-owned subsidiaries that do not meet the statutory and regulatory definition of an AWE under the EEOICPA are not “atomic weapons employees” and are to be treated as contractor employees of an AWE and not afforded coverage.

Reference: 42 U.S.C. § 7384 (l) (3), (4), and (5) and 20 C.F.R. § 30.5 (c) and (d).

Purpose: To provide guidance on determining eligibility for benefits by employees of wholly-owned subsidiaries whose parent company is a designated AWE.

Applicability: All staff.

Actions:

1. When a new claim for compensation is submitted, the CE is to review the documentation submitted with the EE-1 or EE-2. Based on this review, the CE completes the appropriate actions needed to verify employment. Refer to PM2-0400 and PM2-0500 for guidance.
2. If the employer is not a DOE, Be Vendor, or AWE, the CE determines if the employer is a subcontractor and/or subsidiary of a DOE, Be Vendor, or AWE. If the employing company is a subcontractor and/or subsidiary of DOE and/or Be Vendor, the CE continues processing the claim in accordance with PM2-0400 and PM2-0500.
3. If the employing company is a subcontractor and/or subsidiary of an AWE, the CE must deny the claim for no covered employment. Refer to PM2-0500 (7) (a) for further guidance on obtaining employment verification. The basis of the denial is that the subsidiary agency, although wholly-owned by the AWE, is a separate entity and considered an AWE contractor. As a result coverage cannot be afforded.
4. ECMS coding is the same as the established coding for developing employment and developing subcontractors.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

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Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Sections

## **2003 EEOICP Final Bulletins**

### **03-01 Medical Second Opinion.htm**

EEOICPA BULLETIN NO.03-01

Issue Date: May 2, 2003

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Effective Date: May 2, 2003

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Expiration Date: May 3, 2004

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Subject: Medical Second Opinions

Background: The attending physician is the primary source of medical evidence in most cases, but sometimes his or her report does not meet the needs of the Office. When this happens, the Claims Examiner (CE) may request a medical second opinion. The District Medical Consultant (DMC) may recommend a medical second opinion examination, but the CE usually initiates these medical examinations.

Section 20 CFR Part 30.410 of the Final Rule states that "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 where no actual examination is needed, or where the employee is deceased."

It is the policy of OWCP to ensure that medical second opinion examinations be of the highest quality possible and that the selection process for second opinion specialists be fair and well documented. Accordingly, it is desirable to provide policy guidance for the individuals involved in the process at the District Offices.

There are three key individuals involved in the process: the CE; the Medical Scheduler in each District Office, who is selected by the District Director; and the District Director or her/his designee, who oversees this process.

Reference: 20 CFR Part 30.410 and Section 10 of Chapter 2-300 of the EEOICP Procedure Manual Chapter 2-0300.10.

Purpose: To describe the process for requesting a medical second opinion examination.

Applicability: All staff.

Actions:

1. Roles and Responsibilities. The following individuals are responsible for the indicated actions.

Claims Staff. CEs are responsible for ensuring that all necessary information is sent to the Medical Scheduler to allow the medical second opinion to occur. The CE makes all required entries in ECMS for activities related to the medical second opinion. The CE is also responsible for advising the District Director or designee about problems with the quality or timeliness of medical reports, as well as any complaints received from claimants.

Medical Scheduler. This individual, designated by the District Director, is responsible for scheduling specific medical appointments. Only the Medical Scheduler selects physicians; claims staff does not have access to the Physicians Directory (PD) database.

District Director or designee. This individual is responsible for evaluating complaints about specific physicians and problems with the quality and timeliness of their reports.

2. When a CE determines that a second opinion is necessary, per instructions in PM Chapter 2-300.10, the CE prepares the case for referral. The CE must ensure that all medical second opinion examinations are scheduled through the Medical Scheduler.

The Medical Scheduler must make the appointment within a reasonable amount of time after initially requested by the CE. The claimant must be provided with 30 days prior notice of the scheduled appointment. The CE indicates any special period within which the examination is required. If the physician cannot see the patient within this period, another physician is selected, if possible.

3. The following information is prepared by the CE and given to the Medical Scheduler. Attachment 1 must be used to transmit the required information. The case file must be forwarded to the Medical Scheduler from the CE.

The CE completes all of the information required in Attachment 1 except for the section that provides the information on the second opinion physician. The Medical Scheduler completes this portion of the form. The section concerning required medical information, e.g., X-ray or CT scan films, lists information that the claimant must bring to the medical appointment (this medical information is requested in the letter to the claimant). The CE signs the form before forwarding it to the Medical Scheduler.

The Statement of Accepted Facts (SOAF) is a narrative summary of the factual findings in a case. The SOAF must include the claimant's name and case file number; a detailed description of the claimant's employment history; personal information, such as date of birth, date of death, etc.; exposure data, such as radiation, beryllium, silica; accepted condition(s); and any other diagnosed medical conditions. Additional medical information is contained in the case file, and need not be reiterated in the SOAF.

- The CE prepares a letter to the physician that lists the questions that he or she must specifically address (see Attachment 2 for a sample letter). The CE must limit the questions to only those that address the particular issue or problem for which clarification is required.
- For the information discussed above, one copy of each must be sent to the physician (except for Attachment 1) and one copy of each must be placed in the case file.
- The CE must be impartial if making a specific request to select or not select a certain physician.

4. When selecting a physician to conduct a second opinion, the Medical Scheduler ensures that an appropriate specialist is chosen. For example, if a second opinion is being arranged to examine a cancer patient, the most appropriate specialist is a medical oncologist. Physicians are selected from the Physicians Directory database to provide second opinion examinations.

In some instances, the Medical Scheduler may send a case file for second opinion review where actual examination is not needed, or where the employee is deceased.

5. The Medical Scheduler uses the Physicians Directory (PD) database to select a physician. The database can be accessed at <http://www.boardcertifieddocs.com/abms/default.asp>.

Enter the user ID and password (this information is available to each District Director). Click on "Advanced Search."

Enter the information for the location of the physician (zip code must be included). Sometimes, five digit zip code matching is too limited. In these instances, use the first three 3 numbers. For example, if 94105 is entered for the zip code and gets no matches, try 941\*\*.

Use the "Certification" or "Sub-Certification" selections to designate a specialist. The Sub-Certification selection contains the specialties of most interest to the DOL program. For example, use "Internal Medicine" as the "Certification" when looking for medical oncologist or a pulmonologist as a "Sub-Certification."

After the search is completed, the Medical Scheduler contacts the specialists, starting with the first name on the list or, if the list of physicians was

previously created (see next bullet item), use the next name on the list.

To allow for the rotation of specialists used for second opinions, the District Office must develop and maintain an internal tracking system (e.g., a spreadsheet) that will allow the Medical Scheduler to identify when a particular physician last provided a second opinion, and will also allow the Medical Scheduler to add contact information. If a physician subsequently indicates that he or she no longer wishes to be involved in the program, this information must be added to the system so the Medical Scheduler knows not to contact that physician.

For zip codes that have small numbers of available physicians, it may be necessary to use the same second opinion physician on a more regular basis. This is acceptable as long as the physician has not been involved with any medical examinations of the claimant. Also, in areas where there are limited numbers of qualified physicians available, the need for extended travel to see a physician will be addressed on a case by case basis.

The following guidance is intended to address possible problems that may arise in scheduling second opinion examinations.

The zip code used is normally that of the claimant's home address. Other zip codes must not be used unless no physicians in the claimant's zip code practice the necessary specialty. In this instance, the Medical Scheduler selects the closest neighboring zip code. Since zip codes are not always contiguous, it may be necessary to check a zip code map or internet site (e.g., <http://www.usps.com/zip4/> or <http://zip.langenberg.com/>) to find the neighboring zip code. If necessary, the scheduler could ask the claimant what larger cities are located within 100 miles of his/her residence.

The claimant has requested an examination elsewhere. For instance, if the claimant is away from home temporarily, the zip code of the temporary location may be used.

The Medical Scheduler must try to arrange for the second opinion examination within a reasonable distance of the residence of the employee. Unless unusual circumstances exist, the examination must be scheduled with a physician within 100 miles of the employee's residence. A distance of 25 miles or less is preferable. If extended travel is required, the arrangements and reimbursement are handled on a case by case basis.

The Medical Scheduler contacts the physician directly by telephone and establishes the date and time of the examination. The Medical Scheduler may select any physician for the second opinion so long as he/she carries the appropriate specialty and is willing to accept the patient for evaluation. Use directory assistance or an internet search to get the physician's phone number if it is not listed in the PD database.

Also, the Medical Scheduler should ensure that the physician is enrolled in our program. A DEEOIC provider number is required before the physician can be paid for his services. If the physician does not have a DEEOIC provider number, the Medical Scheduler must include a copy of the Provider Enrollment Form (Form OWCP-1168) and the complete provider package with the letter sent to the physician. After the completed form is returned, the Medical Scheduler forwards the completed form to the medical bill processing contractor, which provides the Medical Scheduler with a DEEOIC provider number for the physician.

The Medical Scheduler writes a cover letter to the physician that confirms the appointment and includes a description of the billing specifications (See Attachment 3). As noted in Attachment 3, the provider of any diagnostic testing, requested by the physician, must submit the bill directly to

the district office. The Medical Scheduler must ensure that this provider is an enrolled provider (see #8 above for further details). The Medical Scheduler also creates the HCFA-1500 form for the diagnostic testing service by filling in the appropriate information, including entering the code **V70.9** in section 21 and entering the code **PE001** in section 24D.

10. After contacting the physician, the Medical Scheduler notifies the claimant in writing of the following (see Attachment 5 for a sample letter):

The name and address of the physician to whom he or she is being referred as well as the date and time of the appointment.

Any request to forward x-rays, electrocardiograms, etc., to the specialist.

A warning that adjudication of the claim may be suspended for failure to report for examination.

Copies of travel reimbursement forms (see PM Chapter 2-300 (15)).

After the examination has been arranged, the Medical Scheduler sends the following items to the physician and also place copies of these documents in the case file:

The cover letter to the physician that includes a description of the billing specifications (See Attachment 3).

The SOAF and questions prepared by the CE.

Copies of all medical reports from the case record.

A Form HCFA-1500. The Medical Scheduler finalizes the package by partially completing the HCFA-1500, completing the boxes for the claimant's name, address, city, state, zip code, birth date, sex, and case file number (See Attachment 4). The Medical Scheduler also completes section 21 of this form by entering the code **V70.9** and by entering the code **PE001** in section 24D (these codes are to be used only when an actual exam is to be performed).

There is no dollar limit on second opinion examinations. If only a review of medical information is needed, use **V49.8** and **FR001** in sections 21 and 24D, respectively. There is a \$2,000 limit when only a review of the medical file is performed and this must be noted in the letter to the physician.

An express mail envelope and air bill in the package so that the physician may return the medical report and bill to the appropriate DO.

12. The Medical Scheduler forwards the entire case file to the CE after the package is sent to the second opinion physician. Upon receipt of the case from the Medical Scheduler, the CE must enter the code **2S** into the Claims Status screen in ECMS. The status effective date is the date that the package is sent to the second opinion physician.

13. The CE must enter the following information into ECMS. Go to the Medical Condition screen and press Insert key to add a line. On the Employee Medical Condition screen, enter the appropriate "V" code, either **V70.9** or **V49.8**, as appropriate, into the "ICD-9" field. Select "PA - Prior Approval" from the drop down choices in the "Condition Type" field. Enter in the "Status Effective Date" and "Eligibility End Date" fields the date of the scheduled examination. If no examination is scheduled, enter in these fields the same date associated with the status code **2S**.

14. The Medical Scheduler must enter a call-up for the CE in the system for the date of the appointment. The CE follows up by calling the physician's office to see if the claimant came for the appointment. If the claimant failed to appear for the appointment, the CE must call the claimant to inquire why he/she did not keep the appointment. The CE then requests the Medical Scheduler to reschedule the appointment. If the claimant fails to keep the second appointment or refuses to attend an appointment, the CE sends a letter and enters ECMS status code **DM** into the case status screen

with a status effective date being the date of the letter. The letter advises the claimant that no further adjudication of the outstanding issue may be undertaken until the claimant attends the scheduled appointment.

If the claimant keeps the appointment, the CE places a call-up for the Medical Scheduler in the system for 30 days from the date of the appointment. The Medical Scheduler is then responsible for follow-up with the physician's office for receipt of the report.

If someone accompanying the employee to the examination disrupts or obstructs the examination in such a manner that the physician cannot provide OWCP with the desired medical second opinion (for example, the person prevents the physician from obtaining clinical data necessary for preparation of the opinion, or will not permit the physician to obtain a pertinent history from the employee), the CE arranges for scheduling of another medical second opinion examination with a different physician. In this situation, the CE must create a new or modified Medical Condition record in ECMS (see Action #13 above) depending on whether the first physician will be paid for partial services. In its referral letter for this second attempt, the CE must inform the employee that nobody will be permitted to accompany him/her due to the disruption of the prior examination. The ONLY exception to this flat ban will be if OWCP determines that "exceptional circumstances" exist. This is to be strictly limited to such things as permitting an interpreter for a deaf employee.

If the employee refuses to attend the second examination, or someone the employee brings disrupts the examination again, further action on the claim is suspended. The CE sends a letter and enters ECMS status code **C2** into the case status screen with a status effective date being the date of the letter. The letter advises the claimant that no further adjudication of the outstanding issue may be undertaken until the employee submits to the directed examination.

If the claimant keeps the appointment, the CE places a call-up for the Medical Scheduler in the system for 30 days from the date of the appointment. The Medical Scheduler is then responsible for follow-up with the physician's office for receipt of the report.

15. The second opinion physician submits his/her medical review and completed Form HCFA-1500 to the Medical Scheduler. The Medical Scheduler retains the original of the HCFA-1500 and a copy of the medical report and forwards a copy of the HCFA-1500 and the original medical report to the CE.

16. Once the CE receives the medical narrative from the second opinion specialist, the report must be reviewed to determine if it meets OWCP's needs. The CE reviews the report for accuracy and completeness, ensuring that the report includes adequate discussion of the following: interpretation of test results and medical reports submitted for review; answers to each question posed; and the diagnosed medical condition(s).

The Medical Scheduler must be notified if a report is found to be deficient. This allows the Medical Scheduler to consider whether OWCP should continue to request second opinions from the physician. Also, it would allow the CE and Senior CE to see if this has been a problem with other reports from the physician.

17. If the report is found to be deficient, the CE prepares a letter to the physician requesting clarification of the initial report. The CE must advise the physician of the deficiencies in the initial report and request that the physician provide an addendum report that clarifies the deficiencies.

In preparing the request for clarification, the CE must include:

- a letter to the physician describing the deficiencies and any questions to be answered;

- copies of all the medical evidence; and

- the SOAF.

18. If the report adequately addresses the CE questions, the CE enters code **2R** into the Claims

Status screen in ECMS. The status effective date is the date the report is date-stamped into the office. The CE must modify the Medical Condition record in ECMS by updating the status effective and eligibility end dates, as needed, to coincide with the date of service on the HCFA-1500. Also, the CE selects "A – Approved" from the "Condition Status" field.

In some situations, the findings or opinions of a second opinion specialist or a DMC may differ from those of the claimant's attending physician. If the CE determines that the weight of the medical evidence (see PM Chapter 2-300.5) rests with the report of the second opinion physician, then action can proceed in accordance with that physician's conclusion. If, however, the opposing reports are found to be of equal probative value, the CE will need to resolve the conflict. The CE first sends the second medical opinion specialist's report to the claimant's attending physician to see if the physician agrees or disagrees with that report. If the claimant's attending physician disagrees, the case will be referred to a referee medical specialist. These referrals require the CE to create a new Medical Condition records in ECMS to facilitate payment (see Action #13 above). The CE then refers the case file to the Medical Scheduler.

19. When reviewing the bill, the Medical Scheduler must ensure that the:

Billing hours, charges, provider enrollment number, and case reviews are appropriate;

Claimant's name and SSN are correct;

Federal tax ID number is correct;

Date of service is correct; and

Bill is signed by the specialist and includes his/her name and address.

Provider number is entered in item 33.

The Medical Scheduler must never make any other marks or changes to the bill. Deficient bills must be returned to the physician.

20. If all required billing information is included, and the CE entered all appropriate codes into ECMS, the Medical Scheduler approves the bill by writing "APPROVED" in the top right hand corner along with his/her signature, district office location, and date. The writing must not be placed over any relevant bill information. All writing must be in black ink only, no red ink. See Attachment 6 for an example of a completed HCFA-1500 form.

21. #9; The CE must forward the copy of the narrative report along with the approved HCFA-1500 to DEEOIC's medical bill processing contractor at:

Energy Employees Occupational Illness Compensation Program

P.O. Box 727

Lanham-Seabrook, MD 20710-0727

22. The Medical Scheduler maintains a file that includes individual folders labeled with the names of the physicians. The Medical Scheduler places a copy of all completed medical reviews in the respective folder.

23. If the CE receives a request from the claimant for a copy of the second opinion specialist's report, the CE must attach a cover letter to the copied report which includes a disclaimer paragraph. For example, "Attached is a copy of the medical report that you requested. Please be advised that {Enter the physician's name} is a medical consultant for the Department of Labor. The Department of Labor made the final decision in this claim. Please do not contact {Enter the physician's name} regarding this report. If you have additional evidence to submit in support of your claim or if you have any questions or concerns regarding this report, please contact me on {Enter CE's contact number}."

24. The Medical Scheduler informs the District Director or designee of any unreasonably late reports, e.g., later than 60 days after the examination.

25. Any complaints regarding these matters must be made in writing. If the claimant complains about the conduct of the physician during the examination, the CE forwards the complaint and copies of the report, the SOAF and the questions to the physician, to the senior or supervisory CE for forwarding to the District Director or designee. The District Director or designee reviews the complaint and acts accordingly.

26. With the use of the PD database, the District Director or designee needs to be scrupulous about ensuring that the database is used appropriately. While the number of medical second opinion examinations may be small, there are still a few issues that need to be addressed.

Based on the quality of his or her medical report, a physician may be removed from the pool of physicians for future examinations at the recommendation of the Medical Scheduler. The District Director or designee reviews the documentation forwarded by the Medical Scheduler and decides whether continued use of the physician is appropriate. The District Director or designee then informs the Medical Scheduler of his or her decision so the tracking system can be updated, as appropriate.

Based on the timeliness of the medical report, a physician may also be removed from the pool of physicians to be considered for future examinations. The District Director or designee reviews the documentation forwarded by the senior or supervisory CE from the CE, decides whether removal is appropriate and informs the Medical Scheduler of this decision.

For example, if a physician provides a report one month late on a complex case, the District Director or designee may choose to take no action. On the other hand, if a physician takes several months to provide a report after many calls from the CE, or provides no report at all, the District Director or designee will direct the Medical Scheduler to annotate the tracking system to reflect the physician's removal from the pool of future referrals and include the specifics of the incident. No minimum number of complaints needs to be lodged before a physician can be removed from the pool. One complaint, if severe enough, may be sufficient.

The District Director or designee is responsible for reviewing all reports of complaints from employees and for taking appropriate actions.

If a physician has performed multiple examinations before without reported problems, and the complaint does not appear to be supported by the evidence in the case file, the District Director or designee may choose not to act on the complaint.

By contrast, if another complaint has recently been lodged against the physician, and both complaints have been supported by the case files in question, the District Director or designee may consider removing the physician from the pool of further reviews.

27. Any physician who expresses an interest in being added to the PD database, or who is identified by a staff member, is to be referred to the District Director or designee. The physician is told to contact the publisher of the PD database to be considered for addition to their directory

(BoardCertifiedDocs, Phone: (800) 401-9962 or at [mdc.customerservice@elsevier.com](mailto:mdc.customerservice@elsevier.com)).

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Attachments

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

**Information for Medical Second Opinion**

Employee's Name	Case No.
Two (2) copies of a <u>STATEMENT OF ACCEPTED FACTS</u> and <u>QUESTIONS TO THE SECOND OPINION PHYSICIAN</u> are attached. One copy of each should be mailed to the second opinion physician and one copy retained in the claimant's file.	
The following physicians have been involved with this case.	
1.	6.
2.	7.
3.	8.
4.	9.
5.	10.
Type of Specialist Requested:	Examination of employee required? <input type="checkbox"/> Yes <input type="checkbox"/> No

Name and address of specialist

Furnish the following X-rays, etc. (list items and give source and date)
Comments:
Provide specialist with:

<input type="checkbox"/> Copies of medical reports <input type="checkbox"/> Other (Specify)		
<input type="checkbox"/> Entire case file _____		
Signature		

**Questions for Second Opinion Physician**

**MEMO TO: MEDICAL SECOND OPINION SPECIALIST**

**RE:** {Claimant's Name}

**FILE:** XXX-XX-XXXX

Thank you for taking the time to examine our claimant. The purpose of your examination is to assess the patient's medical condition with respect to the stated condition(s) in the claim.

Once you have reviewed the enclosures, please conduct a physical exam of the claimant. In a separate medical narrative please list a history of the employee's injury, physical findings on exam, diagnostic test results, and a diagnosis. **IN ADDITION, YOU MUST PROVIDE AN UNEQUIVOCAL RESPONSE TO THE FOLLOWING QUESTIONS:**

Based on your physical examination of the claimant, and review of the records, are the findings consistent with a diagnosis of \_\_\_\_\_? **NOTE:** Use a separate item number for each medical condition that is addressed.

Please respond YES or NO and provide the rational which justifies your conclusion.

**Letter to Physician**



**U. S. DEPARTMENT OF LABOR EMPLOYMENT STANDARDS  
ADMINISTRATION  
OFFICE OF WORKERS' COMPENSATION PROGRAMS  
DIVISION OF ENERGY EMPLOYEES' OCCUPATIONAL**

**ILLNESS  
COMPENSATION  
200 CONSTITUTION  
AVE  
ROOM C-4511  
WASHINGTON DC  
20210  
TELEPHONE: (202)  
693-0081**

{Date}

File Number: XXX-XX-XXXX

Employee: {Name}

{Name and Address}

Dear Dr. \_\_\_\_\_:

Arrangements have been made with your office for the above named claimant to undergo an

independent medical assessment on {Date} at {Time}.

The purpose of the examination is to assess this employee's medical condition with respect to the stated condition(s) in the claim. Enclosed is a copy of the pertinent medical evidence from the case file; a Statement of Accepted Facts, which presents a broad history of the case; and a list of questions to be addressed. You are advised to review this information prior to the examination to garner an understanding of the case context.

[NOTE: This sentence can be used if required - The patient has been instructed to bring with them **{Identify specific medical information}**. However, you are authorized to refer the employee for any non-invasive diagnostic testing which you feel is required to address the questions raised by the District Office. The provider of such services must submit billing directly to the address listed above for payment. The above listed case file number must appear on any billing submitted.

You are ensured payment by the Office of Workers' Compensation Program (OWCP) for services rendered. Enclosed in this package is a Form HCFA-1500 with appropriate authorization codes. This form must be used to bill for your service. If you have any difficulties completing the form, please contact me. Please be aware that payment cannot be processed until a report is received which addresses the particular questions being raised.

Please note that you must not release your report to the claimant or representative, but should instead refer any request for it to the Department of Labor Claims Examiner.

Also, please note that the rescheduling of an examination cannot be done without the authorization of the DOL's District Office.

If there are any questions or concerns, please contact me directly at the District Office at XXX-XXX-XXXX. You may fax the report with the completed billing form attached to XXX-XXX-XXXX.

Sincerely,

{Medical Scheduler's name and title}

Attachment 4, Form HCFA-1500 (Partially Completed)

Letter to Claimant



**U. S. DEPARTMENT OF LABOR** EMPLOYMENT STANDARDS  
ADMINISTRATION  
OFFICE OF WORKERS' COMPENSATION PROGRAMS  
DIVISION OF ENERGY EMPLOYEES' OCCUPATIONAL

ILLNESS  
COMPENSATION  
200 CONSTITUTION  
AVE  
ROOM C-4511  
WASHINGTON DC  
20210  
TELEPHONE: (202)

{Date}

File Number: XXX-XX-XXXX

{Name and Address}

Dear Mr/s. \_\_\_\_\_:

This letter is in reference to your EEOICPA claim.

We have arranged for you to undergo an evaluation with {Dr. \_\_\_\_\_} on {Date} at {Time}. This examination is designated as a medical second opinion assessment. The purpose of the examination is to assess your medical condition(s) with respect to your claim for benefits.

The address for the physician is as follows:

{\_\_\_\_\_, MD

Address

Phone Number}

Upon receipt of this letter, please phone the physician's office to confirm the appointment and to obtain any special instructions pertaining to the examination.

The Division of Energy Employees Occupational Illness Compensation is covering the cost of the examination and any non-invasive diagnostic testing required by the doctor.

You are responsible for obtaining and taking with you {state any medical information required to be brought to the examination, e.g., X-ray or CT scan films}. In addition, if the selected doctor requires you to undergo diagnostic testing at a separate facility, you are required to make arrangements to have the tests completed. Failure to undergo testing when instructed by the selected doctor may result in the suspension of further adjudication of your claim.

Please be aware, you are required to attend the examination as scheduled by the District Office. You are not permitted to reschedule the examination unless you obtain authorization from the District Office. If you will be unable to attend the examination as scheduled, please contact the District Office. Further adjudication of your claim may be suspended as a result of obstruction or refusal of examination scheduled by the District Office. This suspension will continue until you cooperate completely with the instructions pertaining to the examination. Accordingly, you must attend the examination and adhere to instructions in regards to obtaining any necessary diagnostic tests.

We have attached a Medical Travel Refund Request (OWCP - Form 957. You may claim any reasonable and necessary expense incurred in obtaining the required examination. Please see the instructions on the Form 957 for further information on how to claim reimbursement. It is your responsibility to make the necessary arrangements to attend the examination.

If you have any questions or concerns, please contact me at the District Office at XXX-XXX-XXXX or fax XXX-XXX-XXXX.

Sincerely,

{Medical Scheduler's Name and Title}

Attachment 6, Form HCFA-1500 (Completed)

**03-02 Referring case files to the District Medical Consultant (DMC)**

Effective Date: June 5, 2003

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Expiration Date: June 5, 2004

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**NOTE: This bulletin replaces Bulletin 02-26, Referrals to Dr. Lee Newman.**

Subject: Referring case files to the District Medical Consultants (DMC) for review.

Background: The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has negotiated contracts with several physicians to fulfill the role of District Medical Consultant (DMC) for the district offices (DO).

The DMC's role will be two-fold: 1) evaluating medical evidence and rendering medical opinions and 2) interpreting test results.

The District Director (DD) will designate an individual in each district office (DO) who will process and track the referrals and coordinate with Computer Sciences Corporation (CSC) to ensure prompt payment of the bills. For the purposes of this bulletin, this individual is called the Medical Scheduler.

The Medical Scheduler will be provided with a list of the DMCs, their addresses, telephone numbers, specialties and points of contact.

The DMCs are located in various states across the U.S. and the Medical Scheduler will make the referral selections based upon the DMC's specialty.

Reference: EEOICPA Procedure Manual Chapter 2-300.9.

Purpose: To provide guidance on the procedures for referring case files to the DMC's.

Applicability: All staff.

Actions:

1. Once designated, the Medical Scheduler creates and maintains a DMC file system that contains individual file folders labeled with the names of the DMCs.
2. Each time a medical review is completed, the Medical Scheduler places a copy of the report in the DMC's folder.
3. CEs will refer claims to a DMC for medical review if they are unable to interpret medical evidence and have no success with obtaining clarification from the treating physician and/or have a specific question(s) on the medical evidence (PM Chapter 2-300.9). Examples of situations when a referral is needed may include:

Medical tests are submitted which do not provide a clear interpretation (i.e., pathology report, LPT, X-ray, CT scan).

Pre-1993 medical evidence is submitted that includes a lung biopsy report that is inconclusive.

When a CE identifies a claim for referral to a DMC, the CE must complete the District Medical Consultant Referral Form (Attachment 1) and include it in the front of the referral package described below. All referral packages to the DMC are prepared by the CE and given to the Medical Scheduler. The package must include the following information.

The CE completes all of the information required in Attachment 1 except for the section that provides the information on the DMC. The Medical Scheduler completes this portion of the form. The section concerning required medical information, e.g., X-ray or CT scan films, lists information that may be included for the review. The CE signs the form before forwarding it to the Medical Scheduler.

A cover letter to the DMC that includes a description of the billing specifications (See Attachment 2).

The Statement of Accepted Facts (SOAF) is a narrative summary of the factual findings in a case. The SOAF must include the claimant's name and case file number; a detailed description of the claimant's employment history; personal information, such as date of birth, date of death, etc.; exposure data, such as radiation, beryllium, silica; accepted condition(s); and any other diagnosed medical conditions. Additional medical information is contained in the medical evidence that is sent to the DMC, and need not be reiterated in the SOAF.

The CE must limit the questions to only those that address the particular issue or problem for which clarification is required. Questions to the DMC must not be general, but specific to each statutory requirement. For example, in a pre-1993 CBD claim, a general question is, "Based upon your review of the enclosed medical evidence, do you feel that the claimant had CBD?" Specific questions are, "Is the lung pathology consistent with CBD? Does the x-ray show characteristic abnormalities? Does the record show a clinical course consistent with a respiratory disorder?" In a claim for silicosis, specific questions are, "Is the CAT scan result consistent with silicosis?" or "Is the lung biopsy result consistent with silicosis?" In a cancer claim, a specific question is, "Based upon your review of the medical evidence of record and the pathology report, is there evidence of cancer? If so, please provide the specific cancer diagnosis and the date the cancer was diagnosed."

The Form HCFA-1500. The CE completes the following portions of the HCFA-1500 that will be sent in the package to the DMC: employee's name, address, birth date, sex, and SSN. If the employee is deceased, the CE does not need to fill in the address. The CE also completes section 21 of this form by entering the code **V49.8** and by entering the procedure code **FR001** in section 24D. Lastly, the CE must also enter a **1** in section 24C (Type of Service) and a **1** in 24E (Diagnosis Code). (See Attachment 3)

• For the information discussed above, one copy of each must be sent to the DMC (except for Attachment 1) and one copy of each must be placed in the case file.

5. Upon receipt of the package from the CE, the Medical Scheduler compares the list of physicians provided on the District Medical Consultant Referral Form to the list of DMCs. If a DMC has already seen the claimant, the Medical Scheduler schedules the review with an alternate DMC.
6. When the Medical Scheduler receives the package from the CE, the Medical Scheduler ensures that all of the required documents listed in action number 4 above are included. The Medical Scheduler includes an express mail envelope and airbill and fills in his/her name and mailing address so that the physician can return the completed report and bill to the proper district office.
7. If the package from the CE is incomplete, the Medical Scheduler returns the package to the CE annotating the deficiencies in a memorandum placed on the front of the case file.

8. Once the package is complete and ready to forward to the DMC, the Medical Scheduler telephones the DMC and verifies that the DMC is available to perform the review. If not, the Medical Scheduler either determines when the DMC will be available or refers the package to a different DMC.
9. Once the package is mailed to the DMC, the Medical Scheduler notifies the CE, via email, so that the CE may enter the **MS** status code (sent to medical consultant) into the ECMS claims status screen. The status effective date for the **MS** code is the date on the letter from the Medical Scheduler to the DMC. The CE also enters the name of the DMC in the comments/notes field.
10. After entering the **MS** code, the CE enters a call-up note in ECMS for a 30-day follow-up on the referral. If the CE does not receive the narrative report and bill within 30 days from the date the request was mailed to the DMC, the CE notifies the Medical Scheduler. The Medical Scheduler will then follow-up with the DMC, by telephone, and obtain the date(s) of completion and mailing.
11. Upon completion of the review, the DMC completes sections 24 A, F, G; 25; 28; 30; 31; and 33 of the HCFA-1500. (See Attachment 4) The DMC returns the narrative report and the completed HCFA-1500 to the Medical Scheduler within 30 days.
12. The Medical Scheduler retains the original of the Form HCFA-1500 and a copy of the medical report and forwards the original medical report and a copy of the Form HCFA-1500 to the CE. The Medical Scheduler places a copy of the narrative report in the respective DMC folder.
13. Upon receipt of the narrative report and the copy of the HCFA-1500, the CE enters the **MR** status code (received back from medical consultant) into the ECMS claims status screen. The status effective date for the **MR** code is the date the report from the DMC is stamped "received" by the DO.
14. The CE uses the copy of the HCFA-1500 to enter the code **V49.8** and the date(s) on which the DMC performed and completed the review (see item number 24A on Attachment 4). In some instances a claim may have more than one **V49.8** code entered into ECMS. If the V code is not entered into ECMS, CSC will be unable to process the bill. The CE may shred the copied HCFA-1500 after the V code information is entered into ECMS.
15. The CE should take the following steps to complete the process of entering the prior approval code **V49.8** into ECMS.

The CE must first access the case update screen.

The CE highlights any area in the "medical condition" box and presses the insert key. The next screen should have "medical condition (insert)" written at the top.

The CE must click the down arrow in the box next to "reported ind" and change the Y to N. Tab to the next field and click on the down arrow in the "cond type" field and select "PA-Prior Approval". Tab to the ICD 9 field and enter **V49.8**. Tab to the note field and enter the phrase, "Medical Records Review Conducted by Dr. {Enter the DMC's Name}". Tab to the "cond status" field and select "A-Accepted". Tab to the "status effective date" and "elig end dt" fields and enter the dates listed in item 24A of the HCFA-1500.

Save the entries and close the record.

16. The CE reviews the report for accuracy and completeness ensuring that the narrative report includes a discussion of the following:

Interpretation of test results and medical reports submitted for review; and

Answers to each question posed.

17. If the narrative report is accurate and complete the CE notifies the Medical Scheduler, via email,

so that the Medical Scheduler may approve the bill and forward it to CSC for processing.

18. If the report is deficient or requires clarification, the CE prepares a memorandum to the DMC requesting a second review. The CE advises the DMC of the deficiencies or item(s) that require clarification and requests that the DMC review the claim again and provide an addendum report that includes the deficient information.

19. In preparing the request for clarification, the CE must include:

A letter to the physician describing the deficiencies and any questions to be answered;

Copies of all the medical evidence; and

The SOAF.

20. Upon completion of the addendum package, the CE forwards it to the Medical Scheduler who prepares and mails the package to the DMC. The CE enters the **DM** status code (developing medical) into the ECMS claims status screen. The status effective date for the **DM** code is the date on the letter/memo mailed to the DMC. The Medical Scheduler will not approve the bill until all of the proper information is received from the DMC.

21. When reviewing the completed Form HCFA-1500, the Medical Scheduler ensures that the:

Billing hours and charges are appropriate. The maximum amount payable for a case review is \$2,000.

Claimant's name and SSN are correct.

The Federal tax ID number is entered (may use SSN or EIN).

Date of service is entered.

Form is signed by the DMC and includes his/her name and address.

Provider number is entered in item 33

22. If all the required information is included, the Medical Scheduler approves the bill by writing "APPROVED" in the top right hand corner along with his/her signature and date. The writing must not be placed over any relevant bill information. The writing should be in black ink only, no red ink. (See Attachment 4)

23. If the Form HCFA-1500 is not approved by the Medical Scheduler, CSC will return the bill for approval. Any bills with a "V code" (i.e., V49.8), must not be mailed to CSC without the appropriate approval as described in action number 22 of this Bulletin and as shown in Attachment 4. The CE must ensure that all the information shown on Attachment 4 is entered on the bill before forwarding to CSC. In some instances, the Medical Scheduler may have to contact the DMC to obtain the required information.

24. The Medical Scheduler forwards the approved HCFA-1500 to CSC. The mailing address for CSC is:

Energy Employees Occupational Illness Compensation Program

P.O. Box 727

Lanham-Seabrook, MD 20703-0727

25. Once CSC processes the bill, the DMC usually receives the payment within 9-14 days.

26. Any problems encountered when dealing with the DMC's or a member of their staff should be reported to Anita Brooks at: [abrooks@fenix2.dol-esa.gov](mailto:abrooks@fenix2.dol-esa.gov). The email should include the name and number of the staff member and the DMC, the nature of the problem, any resolutions attempted, and any other relevant information.

27. If the CE receives a request from the claimant for a copy of the DMC's report, the CE must attach a cover letter to the copied report which includes a disclaimer paragraph. For example, "Attached is a copy of the medical report that you requested. Please be advised that {Enter the DMC's name} is a medical consultant for the Department of Labor. The Department of Labor will make the final decision in this claim. Please do not contact {Enter the DMC's name} regarding this report. If you have additional evidence to submit in support of your claim or if you have any questions or concerns regarding this report, please contact me on {Enter the DO's toll free number}."

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Attachments:

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

**District Medical Consultant Referral Form**

Employee's Name	Case No.
Two (2) copies of a <u>STATEMENT OF ACCEPTED FACTS</u> and <u>QUESTIONS TO THE DMC</u> are attached. One copy of each should be mailed to the second opinion physician and one copy retained in the claimant's file.	
The following physicians have been involved with this case.	
1.	6.
2.	7.
3.	8.
4.	9.
5.	10.
Medical Condition(s) Claimed:	

Name and address of DMC:

X-rays attached?		
<input type="checkbox"/> Yes <input type="checkbox"/> No		
Comments:		
Provide specialist with:		
<input type="checkbox"/> Copies of medical reports <input type="checkbox"/> Other (Specify) _____		
Signature	District Office	Date



**U. S. DEPARTMENT OF LABOR EMPLOYMENT STANDARDS  
ADMINISTRATION**

**OFFICE OF WORKERS' COMPENSATION PROGRAMS**

**DIVISION OF ENERGY EMPLOYEES' OCCUPATIONAL**

**ILLNESS  
COMPENSATION**

**{STREET ADDRESS  
OF DO}**

**{CITY, STATE AND ZIP  
CODE OF DO}**

**{TELEPHONE  
NUMBER OF DO}**

{Date}

File Number: XXX-XX-XXXX

Employee: {Name}

{Dr.'s Name and Address}

Dear Dr. \_\_\_\_\_:

Thank you for your willingness to participate in the Energy Employees Occupational Illness Compensation Program (EEOICP) as a medical consultant. Your role as a medical consultant will be to evaluate the medical evidence, interpret test results and render your medical opinion.

You are ensured payment by the Office of Workers' Compensation Programs for services rendered. The enclosed package includes a copy of all the pertinent medical evidence from the case file, a Statement of Accepted Facts (SOAF) which presents a broad history of the case, and a list of questions to be addressed. In addition, I have enclosed an express mail envelope and airbill that you may use to return your report and bill.

Enclosed in this package is a Form HCFA-1500 with appropriate authorization codes. This form

must be used to bill for your service. You need to complete sections 24 A, F, and G; 25; 28; and 30. Please provide your signature and date in section 31. Also, provide the information for section 33, including your Provider Number. If you have any difficulties completing the form, please contact me. Please return this form to me and be aware that the OWCP can not process payment until a report is received which addresses the particular questions being raised.

Please note that you should not release your report to the claimant or representative, but should instead refer any request for it to the DOL claims examiner.

If there are any questions or concerns, please contact me directly at the District Office on XXX-XXX-XXXX.

Sincerely,

{Medical Scheduler's name and title}

### **03-03 Issues concerning NIOSH**

EEOICPA BULLETIN NO.03-03

Issue Date: October 4, 2002

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Effective Date: September 23, 2002

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Expiration Date: September 23, 2003

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Subject: Issues Concerning Cases Sent to NIOSH

Background: Section 20 C.F.R 30.115(a) of the interim final regulations currently provides that the Office of Workers Compensation Programs (OWCP) will forward eligible claimant application packages to HHS for dose reconstruction. This Bulletin provides additional details related to issues with the NIOSH Referral Summaries sent to NIOSH. For many issues this information reiterates or expands on information supplied in Bulletin 02-03, which was subsequently incorporated into Section 7 of Chapter 2-600 of the Procedure Manual. The last issue listed below alters previous guidance as a result of NIOSH experience gained during the dose reconstruction process.

The items addressed below were discussed in a telephone conference call between DOL National Office staff and NIOSH staff on September 10, 2002, and in subsequent follow-up discussions.

The primary corrective actions for most of these issues involve better quality control during the compilation of the NIOSH Referral Summary, including review by a supervisor or Senior CE before sending the form to NIOSH (required in the Procedure Manual, Chapter 2-600, Section 7(e)).

Reference: Interim final regulation 30 CFR 30.115(a); Procedure Manual, Chapter 2-600, Section 7; and EEOICPA Bulletin 02-03.

Purpose: To address issues concerning NIOSH Referral Summaries sent to NIOSH.

Applicability: All staff.\_

Actions:

The following issues were raised concerning NIOSH Referral Summaries. Corrective actions are discussed for each issue.

1. Transposition errors have occurred on some NIOSH Referral Summaries. It appears that some information on the Referral Summaries may have been filled in by "cutting and pasting" from another source. In the process, some information did not make it into the Referral Summary, e.g.,

complete addresses or case numbers. The CE should ensure that all sections of the Referral Summary are accurately completed. The signing supervisor or Senior CE should be aware of these potential problems when reviewing the Summary before it is sent to NIOSH.

2. Sometimes there are errors in the cancer reported and the proper use of ICD-9 codes. Again, the CE should ensure that the cancer(s) and the appropriate ICD-9 code(s) are accurately reported on the Referral Summary.

3. Employment information is not always complete before the Referral Summary is sent to NIOSH. The primary problem is that some employment information has not been verified before sending the Referral Summary to NIOSH. The CE should ensure that all employment dates included on the Referral Summary have been verified before sending it to NIOSH.

For multi-facility sites, the CE should report the site name, not just the contractor name, or use the contractor name followed by the appropriate sites in parentheses. Using Oak Ridge as an example, the CE should clearly state that employment was verified specifically at Y-12, X-10, and/or K-25, not just the contractor name. The CE could state the contractor name followed by all appropriate Oak Ridge sites in parentheses (Y-12, X-10, K-25). If the CE cannot verify which specific site(s) the employee worked, the CE should state this, and list the possible sites.

4. Sometimes the package sent to NIOSH does not contain all of the required information. Specifically, copies of the signed smoking history or race/ethnicity forms are not always included with the package when appropriate. The CE should ensure that all required information for a case is sent to NIOSH in one package.

If the CE receives no response to the initial questionnaire within 30 days, mail another questionnaire. The CE must inform the claimant in this letter that the case will be administratively closed if the requested information is not supplied within 30 days. In addition, this letter should note that the claimant can answer that he or she does not know the answer to the questionnaire. If another 30 days elapses (60 days total), the CE should inform the claimant by letter that the case will be administratively closed, but that the case can be re-opened if the requested information is supplied.

If the CE has information in the employee's medical record that provides information that could be used to complete the questionnaire and the claimant does not respond, the CE may complete the form using the information in the medical records, and proceed with sending the case to NIOSH. The CE should advise NIOSH in these instances that the information was obtained from medical evidence. In addition, if information in the medical record contradicts information obtained on the questionnaire the CE should pursue clarifying the discrepancy with the claimant prior to referral to NIOSH.

5. Sometimes CEs obtain additional information on a case after it has been referred to NIOSH. This additional information has been forwarded to NIOSH inconsistently. Almost 2,000 documents containing supplemental information have been received from the four District Offices. This represents a significant workload on the NIOSH staff, and thus a uniform system of referring revised information is necessary.

CEs should not make amendments to the NIOSH Referral Summary by resubmitting the entire form. Simply "cut and paste" the appropriate block from the Referral Summary (e.g., EE Covered Cancer Information or Verified Employment Period) into a Word document, fill in the correct information, and send a hard copy to NIOSH. Please title the sheet "Amended NIOSH Referral Summary Information" and include the employee's name and DOL case number (Energy Employee SSN). Please clearly mark any amendments and separate them from Referral Summaries that are submitted with the DO's weekly package to NIOSH.

If the CE needs to submit information not required in the NIOSH Referral Summary, such as additional medical information, please label this information as supplemental when it is sent to

NIOSH with the weekly transmittal.

6. CEs are not always responsive to NIOSH inquiries. All calls from NIOSH are to be handled as expeditiously as possible. If a CE must do additional research to respond to a NIOSH claims specialist, the CE must advise the specialist of the status of the response and keep the specialist informed in a timely manner. Currently NIOSH needs to process the NIOSH Referral within 1.5 weeks (i.e., quality review the batch and send a request to DOE for dose data) and NIOSH would like to resolve any issues before sending the DOE request.
7. Not all DOs use the NIOSH Referral Summary format contained in the Procedure Manual. All of the DOs must use the NIOSH Referral Summary format contained in the Procedure Manual, Chapter 2-600, Exhibit 1. NIOSH personnel are familiar with the standard format, which DOL developed in association with them. This format assists them in their data entry.
8. Some duplicate Referral Summaries have been sent to NIOSH. The CE needs to ensure that the names and case numbers are accurate on the NIOSH Referral Summary so that duplicates are not sent to NIOSH.
9. DOL must begin to send NIOSH copies of the recommended and final decisions in cases where they have done a dose reconstruction. The CE is to send a copy of the recommended decision to NIOSH. The appropriate hearing representative in the FAB unit at the District Office or National Office should send a copy of the final decision to NIOSH, including those that have involved a hearing. The recommended and final decisions should be sent as part of the weekly package from the DO to NIOSH.
10. There have been a few instances when NIOSH has not been informed of changes in a case, e.g., the death of the employee. The CE should ensure that NIOSH is kept informed of any changes in cases that are at NIOSH for dose reconstruction.
11. NIOSH has recently identified that it is not necessary for the CE to list persons other than claimants and authorized representatives (lawyers or power of attorneys) on the NIOSH Referral Summary. NIOSH may identify co-workers and/or other contacts associated with the case during the dose reconstruction process. These types of other contacts will be added to the case by NIOSH at a later point.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

**03-04 RECA indicator**

EEOICPA BULLETIN NO.03-04

Issue Date: October 25, 2002

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Effective Date: October 25, 2002

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Expiration Date: October 25, 2003

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Subject: RECA (Radiation Exposure Compensation Act) Indicator

Background: The RECA Indicator in ECMS has been expanded to show whether the DOJ (Department of Justice) confirmed the claimant or deceased employee was a Radiation Exposure Compensation Act (RECA) recipient. The RECA indicator must be entered on all DEEOIC cases. This includes RECA and non-RECA cases in the four District Offices. The only time the RECA Indicator is not used in the District Office is when all of these conditions have been met.

1) The claimant did not indicate on the EE-1 or EE-2  
whether s/he received a RECA award letter.

2) The claim is non-RECA.

3) A payment is not being issued.

Reference: ECMS v.1.4.11.13 Release Notes, Updated 8/29/02.

Purpose: To notify the District Offices that entry of the RECA Indicator is mandatory. The indicator is to be used on RECA and non-RECA cases. Additionally, the bulletin describes how the list box has been expanded and to provide guidance on its usage.

Applicability: All staff.

Actions:

1. At Case Create (*ECMS, Claim Screen*), the Case Create Clerk (CCC) reviews the EE-1 (Item 14) or EE-2 (Item 20) to determine

if the claimant received an award letter from the Department of Justice (DOJ) under the Radiation Exposure Compensation Act. The CCC inputs the Recvd RECA Ind (Received RECA Indicator) which is either *Y* or *N*:

*Y* – Yes – The claimant checked the *Y* box indicating that  
s/he or the deceased employee received a RECA  
award letter.

*N* – No - The claimant checked the *N* box indicating that  
s/he or the deceased employee did not receive  
a RECA award letter.

2. The CCC is responsible for entering a *Y* when the Yes box is checked and a *N* when the No box is checked. This applies to RECA and non-RECA claims that are received in the District Office. However, if neither box is checked, the CCC does not make any entry in the RECA list box.

3. The Claims Examiner (CE) reviews the claim to ensure the *Y/N* entered by the CCC is accurate.

4. If neither box is checked, the CE is responsible for reviewing the claim. In particular, the CE looks at whether the employee was a uranium worker (Box 10 on the EE-1; Box 16 on the EE-2). If after reviewing the claim, the CE determines that it may be a RECA claim filed by a uranium worker or a survivor of a uranium worker, the CE leaves the RECA Indicator (*Y/N*) blank until confirmation is received from DOJ.

5. The CE contacts the DOJ on all RECA claims in which the claimant indicated that s/he received an award letter or one in which the CE suspects an award letter may have been received. The CE sends the request to DOJ and enters the DJ status code along with the status effective date (date request is made) in ECMS (*Case Status* screen). The EEOICPA PM 2-900(5) notes that the DOJ must confirm the eligibility of a claimant for RECA benefits. (Note: Requests should not be sent to DOJ if the DOJ letter is in the case file.)

6. After a confirmation letter is received from the DOJ, the CE inputs one of the following RECA

Indicator codes in ECMS (*Claim Update* screen).

**4** – To be used when the claimant is confirmed as a RECA

IV award recipient.

**5** – To be used when the claimant is confirmed as a RECA V

award recipient.

**X** – The claimant is non-RECA. (Note: The CE may enter the **X** indicator at any time to confirm his/her determination that the case is non-RECA. That is, an **X**

entry is not tied solely to receipt of a letter from DOJ that confirms non-RECA status.)

7. If the DOJ response indicates that the claimant has a pending claim with DOJ, the DEEOIC case should be closed (Closure Code **C9**) until the DOJ claim has been adjudicated. The **Y/N** code is not changed. It remains **Y** or **N** until the claim is reopened and the CE determines whether the **Y** or **N** should be replaced with the **4**, **5**, or **X** code.

8. If the DOJ confirms the claimant was a RECA IV or V award recipient or that the claimant is non-RECA, the RECA Indicator must be **4**, **5**, or **X** at the time the recommended acceptance or denial decision is issued. ECMS will not allow a payment to be made on a RECA claim unless the RECA Indicator is in place.

9. If a letter was not sent to the DOJ because there was no indication that the claimant was a RECA recipient, the CE must still enter the RECA Indicator **X** at the time the recommended acceptance or denial decision is issued. ECMS will not allow a payment to be made on a non-RECA claim unless the RECA Indicator is in place.

10. The only time the RECA Indicator does not have to read **4**, **5**, or **X** at the time of recommended decision is when all of the following conditions have been met:

- The claimant did not indicate on the EE-1/EE-2 whether s/he received a RECA award letter.
- The CE determines the claim is non-RECA.
- Payment is not being made on the case.

11. The Senior Claims Examiner is responsible for ensuring the RECA Indicator has been correctly entered on all RECA and non-RECA cases prior to signing recommended decisions.

12. Backfill will not be done on cases without the RECA indicator in ECMS.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees Occupational

Illness Compensation

Distribution List No. 1: (Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections.)

### **03-05 Subcontractor code**

EEOICPA BULLETIN NO.03-05

Issue Date: October 11, 2002

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Effective Date: September 27, 2002

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Expiration Date: October 11, 2003

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Subject: Subcontractor Code

Background: DEEOIC cases in which the employee worked for one or multiple subcontractors present unique employment issues for the Claims Examiner (CE) during the adjudication process. In order to flag a DOE case as one in which the claimant has indicated that s/he worked for a subcontractor at a DOE facility, a new code (**S**) has been added to the DOE *Y/N* list box in Energy Case Management System (ECMS) *Employment Classifications Field*, Case Screen.

Reference: ECMS v.1.4.11.14 Release Notes, dated September 27, 2002.

Purpose: To address when and how subcontractor information will be captured in ECMS effective September 27, 2002.

Applicability: All staff.

Actions:

1. When the EE-1 or EE-2 claim is received in the DO and the claimant has checked either Box 10 (on the EE-1) or Box 16 (on the EE-2) to indicate that employment was through a DOE facility, the Case Create Clerk (CCC) selects **Y** from the DOE list box (*Employment Classifications Field*, Case Screen).

**Y Employee worked at a DOE facility as a federal employee, contractor or subcontractor**

2. If the EE-3 form (Employment History for Claim) or another type of employment documentation (e.g. affidavit) shows that the employee worked for a private employer at a DOE facility (e.g. Joe's Electric Company at Hanford), and the CE determines that there is a reasonable link between the employer (a subcontractor) and a DOE facility, the CE flags the case as one in which a subcontractor has been identified. To do this, the CE selects **S** from the DOE list box in the *Employment Classifications Field*, Case Screen. The **S** code permanently replaces the **Y** code.

**S A subcontractor at a DOE facility has been identified**

3. After entering the **S** code, the CE continues to develop the employment aspect of the claim in order to ascertain whether employment can be verified with a DOE subcontractor.

4. If the CE determines that the employee did not work for a verified subcontractor at a DOE facility, the **S** code remains in the DOE list box (*Employment Classifications Field*, Case Screen). It is not necessary that employment with a subcontractor at a DOE facility be confirmed in order for the **S** code to be used.

5. The CE only enters the **S** code once regardless of whether the employee worked for one or multiple DOE subcontractors.

6. Effective September 27, 2002 the District Offices enter the **S** code on all cases in which a subcontractor at a DOE facility has been identified.

7. The National Office (NO) will not do backfill on cases where a subcontractor has been identified. The District Office, at its own discretion, may do backfill. File documentation must exist to confirm the proper use of the **S** code.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual

PETER M. TURCIC

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Illness Compensation

Distribution List No. 1: (Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections.)

### **03-06 ECMS noncovered condition**

EEOICPA BULLETIN NO. 03-06

Issue Date: November 6, 2002

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Effective Date: November 6, 2002

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Expiration Date: November 6, 2003

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Subject: Claims Filed for Non-Covered Condition(s) and Claims Filed with No Reported Condition(s).

Background: Recent analysis of denied claims has shown that more detailed information is required to definitively capture and report in the Energy Case Management System (ECMS) medical condition types on claims that are:

1. denied due to lack of claimed medical condition; or
2. denied due to lack of a covered condition.

With the exception of specific cancers, most non-covered conditions currently fall into the ECMS condition type of "Other Condition – not in table." The use of this "Other Condition" category obscures the types of conditions that are being recommended for denials in the District Offices. Further definition is required. To achieve this objective, more comprehensive condition types, which fall into the category of non-covered conditions, have been added to the condition type listbox in ECMS.

These codes are to be used at the outset of development by the Case Create Clerk (CCC) and Claims Examiner (CE) in order to help identify those claims that do not meet the criteria to receive compensation under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

Reference: ECMS Frequently Asked Questions (FAQs).

Purpose: To provide guidance to District Office personnel in capturing and updating medical condition data in ECMS. To more clearly identify claims denied because no condition was ever claimed, claims denied due to non-covered conditions, and the frequency of conditions by type that are being denied as non-covered.

Applicability: All staff.

Actions:

1. The CCC looks at all the conditions claimed on the EE-1 (Box 8) or EE-2 (Box 14) claim

form and matches each covered and non-covered condition with a code from the listbox in the *Cond Type* field on the *Medical Condition Screen*.

If no condition is reported on the EE-1 or EE-2, the CCC selects **NR** (no condition reported) from the listbox in the *Cond Type* field on the *Medical Condition* screen.

The ECMS *Medical Condition Type* listbox has been expanded (beyond covered and consequential conditions) to include specific non-covered medical condition types. These additional condition types are identified in the table below. If any of these conditions are reported on the EE-1 or EE-2 claim form, they are entered by the CCC as noted above.

<b>CODE</b>	<b>Non-Covered Medical Condition Types</b>
99	Other Condition - not listed in table
AN	Anemia
AS	Asbestosis
BK	Back or Neck problems
BT	Benign Tumors, Polyps, Skin Spots
BU	Burns
CL	CLL (Chronic Lymphocytic Leukemia)
CT	Cataracts
DI	Diabetes
HF	Heart Failure/ Heart Attacks/Hypertension
HL	Hearing Loss
HM	Other Heavy Metal Poisoning (e.g. chromium, cadmium, arsenic, lead, uranium, thorium, and plutonium)
MC	Multiple Chemical Sensitivity
MP	Mercury Poisoning
NE	Neurological Disorder
NR	No condition reported
OL	Other Lung Conditions: Bronchitis; Asthma; Pulmonary Edema (except for RECA claims)
PD	COPD (Chronic Obstructive Pulmonary Disease); Emphysema
PK	Parkinson's Disease
PL	Pre-Leukemia (note: review attached reference for specific conditions)
PS	Psychological Conditions
RN	Renal Conditions (kidney failure, kidney stones)
TH	Thyroid Conditions (e.g. Hypothyroidism)

2. The CCC selects from the listbox any conditions shown on the claim form. For example, if the illness claimed is hearing loss, the CCC selects **HL** from the listbox in the *Cond Type* field on the *Medical Condition* screen.

3. The CCC selects **99** (Other Condition – not in table) from the listbox if the reported condition does not appear in the listbox. S/he also types the reported condition in the *Note Text Field* as it appears on the claim form. For example, if the condition reported on the claim form is not in the listbox (e.g. cuts/bruises), the CCC selects **99** from the listbox and in the *Note* section s/he types “cuts/bruises.”

4. If no condition is reported on the EE-1 or EE-2, the CCC selects **NR** from the listbox.

5. The CE verifies the accuracy of the information entered by the CCC and makes changes as needed. For example, if the claimed illness on the EE-1 or EE-2 is asbestosis and the *Medical Condition* screen shows that **OL** (Other Lung Condition) had been incorrectly entered as the *Cond Type*, the CE changes the claimed illness to **AS** (asbestosis).

6. The CE updates the *Condition Type* field on the *Medical Condition* screen as new conditions are reported during case development. The CE enters these updates as they occur. For example, recent medical evidence submitted by the claimant shows his/her physician is also linking COPD and multiple chemical sensitivity to his/her work exposure. (The claim was originally filed for CBD.) The CE selects the appropriate codes for COPD and multiple chemical sensitivity from the listbox in the *Condition Type* field on the *Medical Condition* screen. The *Claim* screen would then show the three claimed conditions:

**BD** = CBD

**PD** = COPD

**MC** = Multiple Chemical Sensitivity

7. When the selection is made from the listbox for non-covered conditions (e.g. COPD and multiple chemical sensitivity) or no condition reported, the *Medical Condition Status Field* on the *Claim* screen defaults to the **R** (reported) status code. This status code will not be changed by the CE to **A** (accept) or **D** (deny) as the **A** and **D** codes are exclusively reserved for covered conditions. An **A** or **D** status code would never be used in conjunction with a non-covered condition.

Note: Only when a covered condition is claimed, does the CE develop the condition and determine whether the covered condition will be **A** (accepted) or **D** (denied). The only time this procedure would not apply is the rare situation when benefits for a condition covered under the EEOICPA are not payable because the claimed condition could not have developed at the employee’s work site.

For example, if an employee worked at Savannah River and filed a claim for silicosis, the claimed condition, silicosis, would be considered a non-covered condition and the *Medical Condition Status* field would remain in the **R** status to indicate the condition is non-covered.

8. ICD-9 codes should not be entered for non-covered conditions.

9. Before a recommended decision is signed by a Senior Claims Examiner (SrCE), s/he must ensure that the recommended decision accurately cites all non-covered medical conditions claimed and that correct codes from the listbox have been entered into ECMS. The SrCE is responsible for adding any conditions that were omitted (e.g. conditions that were reported after the initial entries were made by the CCC or while the CE processed the claim) or correcting any entries that were made in error (e.g. the condition was incorrectly identified).

10. If a claim was filed, but no medical condition was ever reported by the claimant, the SrCE ensures the recommended decision reflects this and that ECMS contains the **NR** code.

11. Backfill of medical condition types for cases denied due to lack of a claimed condition or lack of a covered condition will be mandatory in all District Offices. This backfill project will be completed through the National Office.

Disposition: Retain until incorporated into the EEOICPA Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: (Claims Examiners, Supervisory Claims Examiner, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections.)

### **03-07 Employment verification codes**

EEOICPA BULLETIN NO. 03-07

Issue Date: November 1, 2002

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Effective Date: October 7, 2002

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Expiration Date: November 1, 2003

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Subject: Employment Verification Codes

Background: The purpose of this bulletin is to review employment verification status codes that are currently being used in the District Office (DO) and to introduce two new codes that track the employment verification process on the ECMS. The new codes are **EC**(*Employment Verification Process Complete*) and **EX** (*Except DOE*). **EC** (*Employment Verification Process Complete*) is used by the Claims Examiner (CE) when the employment verification development process ceases because the requested employment information is no longer necessary. **EX**(*Except DOE*) is used by the CE when the case is in posture for a recommended decision except for employment verification data that has been requested from a Record Center at the Department of Energy (DOE).

The bulletin also describes a change in the use of the **ER, CR** (received) codes. These codes will only be used when a response which addresses all the requested employment periods is received from the Department of Energy (DOE) or from a corporate verifier.

References: ECMS Frequently Asked Questions (FAQs), Updated 10/7/02

Purpose: To provide District Offices with procedures for using the employment verification codes in ECMS.

Applicability: All staff.

Actions:

1. When an employment verification request is sent to a Record Center at DOE, a corporate verifier, and/or the Social Security Administration, the CE enters the "sent" entry: **ES**(*Employment Verification Sent to DOE*); **CS** (*Request for Corporate Verification*); or **SS** (*Release of Package to Social Security Administration*) on the *case status* screen in ECMS. (Note: The **OS** [*ORISE Sent Employment Request*] code has been retired. The CE verifies ORISE [*Oak Ridge Institute for Science and Education*] employment through the ORISE online database as described in Bulletin 02-34, *Procedures for Using the On-Line ORISE Database*.)
2. The CE enters the *status effective date* for the **ES, CS, or SS** code. This date equals the date the request is sent to the Department of Energy (DOE), corporate verifier, or the National Office for

referral to the Social Security Administration (SSA).

3. The CE enters the *status effective date* for the "received" codes. The **SR** (Social Security Package Received) code is entered into the *case status* screen in ECMS on the date the response is received in the District Office. The *status effective date* for the **OR** (ORISE Employment Evidence Received) code is entered into the *case status* screen in ECMS on the date the CE keys his/her request for employment verification through the ORISE online database. (Note: The **SR** and **OR** codes are used regardless of whether the data from SSA and ORISE addresses all, part, or none of the employment periods.)

4. The CE only uses the **ER** (Employment Ver Received Back from DOE) code or the **CR** (Response from Corporation) code when the response from DOE or the corporate verifier is sufficient to establish that all the information available has been provided. For example, the response:

Addresses all of the claimed employment.

Addresses part of the claimed employment (The response is insufficient to adjudicate the employment verification issue, but the response confirms all the information they have.)

Indicates they have no employment records.

5. The CE enters the *status effective date* for the **ER** or **CR** code on the *case status screen* in ECMS. This date equals the date the response is received in the District Office.

6. The CE enters **DE** (Developing Employment) code on the *case status* screen in ECMS when the response from DOE or the corporate verifier requires further clarifications. Situations requiring the **DE** code (not **ER** or **CR**) include: the EE-5 is returned blank, the information provided is confusing or incomplete, or the response does not indicate which period of employment is or is not verified.

7. The CE enters the *status effective date* for the **DE** code

into the *case status* screen in ECMS. This date equals the date the follow up request is made.

8. Cases remain in the **DE** status until a response is received that meets the requirement set forth in item 4. At that time, an **ER** or **CR code** is entered into ECMS.

9. If due to the complexity of the case, employment verification requests are sent to multiple sources, such as DOE and a corporate verifier, a "sent" entry (**ES, CS**) is made in ECMS for each source. The *status effective date* for each entry equals the date the specific request is made.

10. When multiple "sent" codes (**ES, CS**) exist in ECMS, and the CE receives a single response that confirms all outstanding employment dates, the claim is coded **EC** (*Employment Verification Process Complete*). **EC** signifies a response has been received that fully addresses the employment issue and further employment development is unnecessary. For example, employment verification requests are sent to the Department of Energy and a corporate verifier. The response from the corporate verifier confirms all employment periods. The CE enters code **CR** and code **EC** into ECMS. (Note: In those situations where only one employment verification is sent {e.g. **CS**}, the CE enters the "received" code {e.g. **CR**} when the response is received. The CE does not enter **EC** as multiple requests were not sent out.)

11. Similarly, the CE uses the **EC** code when multiple requests are sent to the one source. For example, the employee worked for three different subcontractors at one DOE facility. An EE-5 was sent to DOE for employment verification on each subcontractor and three separate **ES** entries were made in ECMS.

A single response from DOE verifies all three periods of employment. The CE enters code **ER** and code **EC** into ECMS. (Note: If only one request was made for employment verification on the three subcontractors, the CE would enter **ER** if the response verified the three periods of employment.)

12. The CE also uses the **EC** (*Employment Verification Process Complete*) code when issuing

recommended decisions to deny

benefits if s/he determines that further development of the employment verification issue is unnecessary. For example, a

recommended decision is to be issued denying benefits because there is insufficient or no medical evidence to support the claimed condition(s). Any and all efforts to obtain employment verification cease as such information will not change the decision to deny the claim on medical grounds. The **EC** code is used in this situation regardless whether one or multiple outstanding "sent" codes (**ES**, **CS**, **SS**) appear in ECMS. (Note: It is also appropriate to use the **EC** code when issuing a recommended decision to deny benefits because the outstanding employment verification requests will not provide "covered employment" or survivor status cannot be established).

13. If a response to an outstanding employment verification request is received from DOE or a corporate verifier, or Social Security Administration after the case is coded **EC** or after a recommended decision is issued, the employment verification "received" code (**OR**, **ER**, **CR** or **SR**) must still be entered on a claimant's ECMS record if it meets the requirements set forth at item 3 or item 4.

14. The CE enters a single **EC** code when the decision is made to cease efforts to obtain employment verification regardless of how many outstanding employment verifications exist. There is no need for multiple **EC** codes to close out each **ES**, **CS**, and/or **SS** code. The **EC** code closes out any and all outstanding **ES**, **CS**, and/or **SS** code.

15. Whenever an **EC** code is entered into ECMS, the CE completes the EC Code Justification Memo (Attachment I) for the case file. The form must be used whenever an **EC** code is entered into the system in order to record in the case file the reason that the **EC** code is entered into ECMS. This is particularly important when there are more than one employment verification status codes in the ECMS for a particular case.

16. The CE enters the *status effective date* for the **EC** code. This date is the same as the date the CE completes, signs, and dates the EC Code Justification Form.

17. The CE enters **EX** into the *case status* screen in ECMS to indicate that all evidence sufficient to either render a

recommended decision or refer the case to NIOSH has been

received except employment verification from the Department of Energy. Development for all other outstanding issues, including medical conditions and/or survivorship, is complete.

18. The *status effective date* to be entered along with the **EX** code is the date the CE receives the last piece of correspondence that would be sufficient to render a decision on the case (or to refer to NIOSH). For example, development is undertaken to determine if a particular individual is considered a survivor under EEOICPA. This is the only pending development action other than employment verification. The CE requests a birth certificate, and the birth certificate is returned. The *status effective date* equals the date the CE receives the birth certificate.

19. If after coding a case **EX**, the CE determines that an attempt will be made to obtain the employment verification data from a source other than DOE, a case may be coded **SS**, **CS**, **OR**, or **DE**.

20. When an **EX** code exists in ECMS and employment verification is subsequently received sufficient to render a decision or refer the case to NIOSH, the CE enters the appropriate "received" code (**ER**, **CR**, **SR**, **OR**) into ECMS. (Note: If more than one employment verification request is sent, and at least one is returned that addresses the outstanding employment verification issue(s), the CE also must enter the **EC** code.)

21. The importance of accurate and comprehensive use of the **EX** code, along with all other employment verification status codes, cannot be over-emphasized. National Office management

will rely on reports that list cases with **EX** codes - and no subsequent status codes of **SS, CS, OR, DE, ER, CR, SR, or EC** – to prioritize employment verification requests pending at DOE.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution: Distribution List No. 1: (Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections)

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**EC Code Justification Memo**

**Employee Name:** \_\_\_\_\_ **SSN:** \_\_\_\_\_

**Claimant Name(s)(if other than employee:** \_\_\_\_\_

**Response to employment verification requests are no longer required based on the following criteria:**

- \_\_\_\_\_ **ORISE verification received**
- \_\_\_\_\_ **DOE employment verification received**
- \_\_\_\_\_ **Corporate verification received**
- \_\_\_\_\_ **Social Security verification received**
- \_\_\_\_\_ **Rec. Decision–Deny –**
- \_\_\_\_\_ **Medical evidence insufficient**
- \_\_\_\_\_ **Employment evidence insufficient**
- \_\_\_\_\_ **Survivor evidence insufficient**
- \_\_\_\_\_ **Other:** \_\_\_\_\_

\_\_\_\_\_  
**Claims Examiner:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Attachment 1**

**03-08 Diagnosed cancer and claimed employment at a beryllium vendor**

EEOICPA BULLETIN NO.03-08

Issue Date: December 16, 2002

\_\_\_\_\_  
Effective Date: December 16, 2002

\_\_\_\_\_  
Expiration Date: December 16, 2003

Subject: Diagnosed cancer and claimed employment at a beryllium vendor.

Background: The Division of Energy Employees Occupational Illness Compensation (DEEOIC) is in receipt of several claims where an individual has claimed cancer as a result of employment at a

facility designated solely as a beryllium vendor. This has raised questions concerning the process for making a determination of coverage for these employees.

The definition of a covered employee with cancer includes no provision for coverage of a diagnosed cancer stemming from employment with a beryllium vendor. The language in the EEOICPA limits coverage to an employee with a specified cancer who is a member of the Special Exposure Cohort or an employee with cancer who was employed at a Department of Energy (DOE) facility or atomic weapons employer facility.

Reference: 42 U.S.C. § 7384l (9)

Purpose: To provide guidance on handling a claim where the employee has claimed cancer as a result of employment with a beryllium vendor.

Applicability: All staff.

Actions:

1. Upon receipt of a claim for compensation, the CE should review the documentation submitted with the EE-1 or EE-2. Based on this review, the CE should determine whether the claimant has identified cancer as a claimed condition.
2. If a claim for cancer has been made, the CE should review the EE-3 to determine the employer and facility location where employment activities took place. If the claimed employment occurred at a beryllium vendor facility and there is no indication the vendor concurrently served as a DOE facility or atomic weapons employer, a letter for the claimant is to be prepared.
3. The letter should advise the claimant that the claimed condition can not be covered given the facility type. The CE should note that for a beryllium vendor, a covered condition is limited to either beryllium sensitivity or chronic beryllium disease. The claimant should be granted 30 days to provide evidence the employee had a beryllium illness at the facility or that he/she was employed for either a covered DOE facility, or atomic weapon employer. Notification should be given that any response will be carefully reviewed and a determination will be made based on the evidence of record.
3. After 30 days, the CE should review any documentation submitted by the claimant. If the claimant has not provided any evidence of a covered beryllium illness or evidence to suggest the employee had a covered cancer employment at a DOE facility or atomic weapons employer, a recommended decision is to be prepared denying coverage under the Act. The CE should include in the findings of fact that the claimed condition is not covered given the facility type. In the conclusion of law, the CE should reference 42 U.S.C. § 7384l (9) and explain there is no provision for coverage of cancer as a result of employment with a designated beryllium vendor.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

**03-09 Travel over 200 Miles Round Trip**

EEOICPA BULLETIN NO. 03-09

Issue Date: October 31, 2003

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Effective Date: October 31, 2003

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Expiration Date: October 31, 2004

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Subject: Travel over 200 Miles Round Trip

Background: The Energy Employees Occupational Illness Compensation Program (EEOICP) will reimburse specific transportation costs associated with travel to medical appointments for approved claims.

When the employee receives his/her medical benefits package from the Division of Energy Employees Occupational Illness Compensation (DEEOIC) he/she is instructed to submit a written request to the District Office (DO) for approval of travel over 200 miles (roundtrip). Many times, the employee neglects to submit a request in writing and often calls the DO for approval or submits his/her claim for reimbursement after the travel has occurred. These actions often require further development by the CE which causes a delay in reimbursement for the employee.

Effective immediately, CE's can authorize travel or reimbursements, before or after claimant travel. Such authorization will remain at the CE's discretion after due consideration of evidence supporting the travel in question.

Purpose: To clarify the policies and procedures for granting and processing travel requests over 200 miles round trip.

Applicability: All staff.

Actions:

1. Upon receipt of a request for travel authorization over 200 miles round trip (i.e., in writing, by telephone or subsequent to the travel), the CE must first determine if the travel is warranted.
2. If the travel involves a request to travel to a physician that has already been treating the employee, the CE may authorize the travel over the phone (following up with the approval package discussed below).
3. If the request is to travel to the employee's first choice of physician, the CE may approve the travel to that physician. The CE may approve all future travel for appointments with that physician.
4. If the travel involves a referral to a physician other than the treating physician, the employee must submit a copy of the referral from the treating physician. If the referral is due to a change in physicians, the CE must inform the employee of the procedure for changing physicians which is found in the EEOICPA PM Chapter 2-300(18).
5. If the request is via telephone call, and medical justification is required, the CE may not authorize the request over the telephone. The CE must inform the employee that he/she must submit the request, in writing, along with the medical justification.
6. If the request involves travel for special treatment, the CE must obtain a prescription or narrative statement from the treating physician relating the need for the special treatment to the approved diagnosed condition(s).
7. If the request involves authorization for a companion, the CE must obtain medical justification from the treating physician. Medical justification must be in the form of a narrative medical report from the treating physician relating the diagnosed medical condition, the special treatment and the need for the companion. The mere fact that a physician states the employee needs

to be observed following a medical procedure is not sufficient to approve a companion and will not be authorized. In this instance, the CE may authorize an overnight stay in the hospital for the employee in lieu of a companion. The CE must use discretion when authorizing a companion request and may only approve a companion when there is a definite medical need.

8. If the employee is requesting travel with a companion, and the travel itself is justified, the CE may approve the travel for the employee, but must request justification for the companion.

9. Upon completion of all development, the CE approves the travel request by mailing an approval package to the employee.

The package must include the following: an approval letter and an additional copy; two copies of the OWCP-957; an express air mail envelope (prepaid); and an air bill.

10. The approval letter must include the following: an explanation of the applicable per diem rates (daily rate authorized for meals, lodging and mileage per federal regulations); explanation of what is approved (rental car etc.); and instructions to submit the reimbursement request directly to the medical bill processing contractor. When calculating the current per diem rates the CE may refer to the Government Travel Information page on the DOL website at <http://omap/travel.htm>.

The letter must inform the employee that receipts must be submitted for meals, lodging, and if applicable, airfare and rental car/gas. Gasoline expenses are only reimbursable if a rental car is authorized. Reimbursement for meals will be for the cost of the meal, up to the per diem rate. Receipts for tips, local transportation (i.e. bus or taxi fares) are not required for amounts up to \$75.

The letter must also advise the employee that he/she will only receive  $\frac{3}{4}$  of the per diem rate for meals and incidental expenses for travel days.

11. If a companion is authorized to travel, he/she will be entitled to per diem for meals, incidental expenses such as local transportation costs (i.e. taxi, bus) and lodging ONLY if he/she occupied a separate room. Reimbursements for mileage are payable to the employee only. Both the expenses for the companion and employee must be submitted on an OWCP-957. The expenses for the companion will be reimbursed to the employee.

12. The reimbursement request submitted to the medical bill processing contractor by the employee must include: a copy of the approval letter, the completed OWCP-957 and all applicable receipts.

13. The District Office must complete the following information on the Express Mail Air Bill Label:

- Employees'/Sender's name, address, and phone number
- Medical bill processing contractor/Recipient's company name, address and telephone number.
- District Office's express mail account number.

14. In the event the CE receives a completed OWCP-957, approved or not, directly from the employee, the CE must review the request for reimbursement to ensure the travel was warranted and within the approved per diem for the given locale according to procedures described in this bulletin.

15. If approved, the CE must write the approved amount and sign and date the OWCP-957 in the top right hand corner and forward it directly to the medical bill processing contractor.

16. If a request for travel is denied, the CE must notify the employee in writing. The denial letter must include a detailed discussion concerning the reason for the denial. In addition, the following paragraph must be included, "This is the final agency decision on your request for prior approval."

17. Upon approval or denial of a travel request, the CE must enter a **note** in the **case notes**

**field** of ECMS. He/she must select the note type of "T" Travel Authorization and enter the following information:

**Approvals:**

Approved; date(s) of travel; location of travel; mode of transportation; hotel per diem rate; meals and incidental per diem rate; other relevant information (i.e. companion approved or denied); Travel date of approval.

Example: Approved; 10/21/03-10/25/03; Denver, CO; air; \$112; \$46.00; Companion denied. Approved on 09/20/03.

**Denials:**

Denied; date(s) of travel; location; Date of denial.

Example: Denied; 10/30/03-10/31/03; Denver, Colorado. Denied on 09/15/03.

18. Upon receipt of the package from the employee, the medical bill processing contractor will reimburse the employee directly. However, if the employee completes the form in error, or neglects to submit the proper information, the billing facility will return the package to the employee for proper completion.

Disposition: Retain until incorporated in the Federal EEOICPA Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: (Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections)

**03-10 Department of Energy requests for DEEOIC claimant files**

EEOICPA BULLETIN NO. 03-10

Issue Date: December 16, 2002

Expiration Date: December 16, 2003

Subject: Department of Energy requests for DEEOIC claimant files.

Background: The Department of Energy (DOE) is responsible for development and implementation of Part D of the Energy Employees Occupation Illness Compensation Program Act (EEOICPA) in which a DOE contractor employee or survivor can seek assistance from the DOE in filing a claim with the appropriate State workers' compensation system based on an illness or death that arose out of exposure to a toxic substance during the course of employment at a DOE facility.

Claimants who apply to DEEOIC often apply for assistance under DOE's Program. Therefore, to assist the claimant in limiting the burden of duplicate requests for case development information, DEEOIC, under the routine use provision of the Privacy Act, will provide case information to the DOE on a case by case basis for the claimants who have applied to the DOL program and DOE for state assistance. DEEOIC information released to DOE is limited to the eligible DOE contractor employee.

DEEOIC has been receiving and accommodating DOE requests for copies of DOL case files for the past few months. Currently, requests from the DOE are being made by nurse case workers to the DEEOIC National office via E-mail where it is routed to the appropriate District or Final Adjudication Branch Office.

DEEOIC has instructed the DOE that future requests must be made from a DOE official by submitting a request form *Request for Department of Labor EEOICPA Case Information* (attachment 1) to the appropriate District Office point of contact (attachment 2).

Reference: Privacy Act of 1974, as amended (5 U.S.C 552a)

Purpose: To provide procedures for processing DOE record requests.

Applicability: All staff.

Action:

1. The DOE will submit the form *Request for Department of Labor EEOICPA Case Information* (attachment 1) to the designated District Office Point of Contact (POC) via E-mail or Fax. Assignments for POC's have been established by each District Office which are listed on Attachment 2. Faxed requests must be date stamped as soon as they are retrieved from the fax machine in the District Office and given to the designated point of contact.
2. Upon receipt of the request, the POC must determine if there is a record of the claim in ECMS. If the POC determines that ECMS does not have record of the file, the POC should complete section 2 "Acknowledgment of Records Sent" on page 2 of attachment 1, mark the box "no records for the named individual," and mail, fax or email the response to the DOE requestor designated on the request form. The POC should make a copy of the request and response and keep a separate file for such DOE requests.
3. If the POC determines that DOL has a case for the named individual, he/she should enter the code DR (Documents Requested) under the claim status screen in ECMS. The status effective date should be the date in which the request was received by the POC via email. If the request is faxed, the status effective date is the date the document was date stamped as received by the DO.
4. If it is determined the file is with the Final Adjudication Branch (FAB), the POC must fax or forward the email to the FAB Manager in the appropriate District Office. If the file is at the National FAB Office the POC must forward the request to the Branch Chief. In the notes section of ECMS, under the appropriate claim number, the POC should enter the name of the FAB official to whom the request is made. The FAB official will be responsible for further processing of the request.
5. The DEEOIC will not provide information to the DOE that the Resource Centers have already provided. Therefore, the POC or FAB official must review the request form (attachment 1) to determine if the DOE indicated a date in which they received information from the Resource Center. If a date is provided by the DOE, the POC or FAB official should make copies of claimant records only after the date indicated by the DOE. The POC or FAB official must complete appropriate sections on page 2 of request form (attachment 1). He/she must make a copy of the information requested by the DOE from the claimants file.
6. Upon making copies of the claimant's record, and completion of the appropriate sections in attachment 1, the POC or FAB official must make a copy of attachment 1 and place the copy in the claimant's file.
7. The POC or FAB official will prepare and Federal Express the package to the requesting DOE official to include the signed original of page 2 "Acknowledgment of Records Sent" and the copied documents.
8. The POC or FAB official must enter the code DS (Documents Sent) under the claim status screen in ECMS. The status effective date should be the date reflected by the POC or FAB official on attachment 1, section "Acknowledgment of Records Sent."
9. There may be instances in which DEEOIC has records for an individual, however, it may be inappropriate or unnecessary to copy the file. Instances may include:

File is in beginning phase of development, i.e. employment verification or medical is still being developed. Depending on the urgency of the claim, the DOE may want to resubmit the request at a later date when further DEEOIC development has occurred.

Recommended/Final Decisions issued based on a non-covered condition. DEEOIC does not develop employment information in cases for non-covered conditions and will not have substantial information in the case file to assist the DOE with case development. Additionally, DEEOIC does not develop medical evidence for non-covered conditions and therefore will not have any substantive medical information that will be of benefit to DOE.

Under such circumstances, the POC or FAB official should call the requestor in DOE and explain the status of the case. He or she should ask DOE whether the DOE wants to reconsider the request. If the DOE still wants a copy of the file, the POC or FAB official should copy and forward the package to the DOE according to the procedures in this bulletin (including coding ECMS). The POC or FAB official should only code ECMS with a "DR" and "DS" in circumstances when a copy of a file is sent to the DOE.

Upon further consideration, if DOE determines that they do not need a copy of the file, the POC or FAB official must state in the comments section on page 2 of attachment 1 that the "DOE requestor [enter name] withdrew request". The POC or FAB official must then copy the request for the case file and forward the original to the requestor at the DOE. The POC or FAB official must enter the code DW (Document Request Withdrawn) under the claim status screen in ECMS. The status effective date will be the date the DOE withdrew the request.

10. If at anytime the POC or FAB official has questions regarding the request made by the DOE, he/she may contact the DOE requestor directly via email or telephone.

11. Processing of the DOE request should not take more than 15 days. If at anytime the request reaches 15 days outstanding, the POC or FAB official must contact the DOE via e mail, fax or mail explaining the progress and or delay in processing the DOE's request. The POC or FAB official must place a copy of the email, or letter in the claimant's file.

12. If the POC or FAB official receives a duplicative request for file information, the POC or FAB official must check the claimant's file to determine if any additional information was added to the file since the last request. If yes, the POC or FAB official must process the DOE request for the additional information, following the procedures outlined in this bulletin (including coding ECMS).

If no new information was entered into the file since the DOE's last request, the POC or FAB official must complete appropriate sections on page 2 of request form (attachment 1). In addition, in the comments section, he/she should state, "no new information added since the DOE's request made on [enter date]. The POC or FAB official must then copy the request form for the case file, and forward the original to the requestor at the DOE.

Note-- For privacy reasons, when discussing claimant information via email, the POC or FAB official can not use the full name and social security number together in an email transmission. However, the POC or FAB official can use the first three letters of the last name, along with the complete social security number and date of birth.

Disposition: Retain until the indicated expiration date.

PETER M. TURCIC

Director, for Division of Energy Employees

Federal Employees' Compensation Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners District

Medical Advisers, Systems Managers, Technical Assistants, Rehabilitation Specialists, and

Staff Nurses, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections, ADP Coordinators

Date:

To: (DOL District Office)

From: (DOE Federal Official, phone number & address/email address)

[the named individual] has filed for state assistance under Part D of the EEOICPA. To assist in the development of the case the Department of Energy requests copies of the documents indicated in the box below. The employee's last place of employment was [list facility].

EMPLOYEE INFORMATION
Last First (If emailing request, <u>do not</u> use full name with SSN, use only first three letters of last name)
Social Security Number Date of Birth
SURVIVOR INFORMATION (IF APPLICABLE)
Last First (If emailing request, <u>do not</u> use full name with SSN, use only first three letters of last name)
Social Security Number Date of Birth
Please check box to indicate information needed from the DOL case file
<input type="checkbox"/> Information added to file after Resource Center submission to DOE on {enter date received from RC}
<input type="checkbox"/> No records have been provided by Resource Center, please send all applicable records.

Other (specify):

*Acknowledgement of Records Sent to the DOE –FOR DOL USE ONLY*

The following section is to be filled out by the DOL District or FAB Office and sent to the DOE with the copied documents. A copy of the request and acknowledgement should be placed in the DOL case file.

Date:

Case file number:

The following records have been sent to DOE:

- No records for the named individual
- Information added to file after Resource Center submission to DOE on [enter date received from RC]
  - All claim records related to the employee or the named survivor. (Do not send documents related to other survivors from the case unless a signed release is provided by the DOE)
- No records sent
  - Other (specify)

Comments:

DEEOIC Office:

DEEOIC Official:

Date Sent:

December 2002 9; EEOICPA Bulletin 03-10 ; Attachment 1

Contact Information for DOE Records Requests

District Office 1—Jacksonville, Florida

Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee

U.S. Department of Labor, DEEOIC

214 North Hogan Street, Suite 910

Jacksonville, FL 32202

(904) 357-4705 (main #)

Records Point of Contact

Shirley Stone Direct (904) 357-4795, Ext. 7-4404 Fax (904) 357-4704

Email: [shstone@jac.dol-esa.gov](mailto:shstone@jac.dol-esa.gov)

District Office 2—Cleveland, Ohio

Connecticut, Delaware, District of Columbia, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virgin Islands, Virginia, West Virginia, and Wisconsin

U.S Department of Labor, DEEOIC

1001 Lakeside Avenue, Suite 350

Cleveland, OH 44114

(216) 802- 1300 (main #)

Records Point of Contact

Leila Tirone

E-mail: [tironele@cle.dol-esa.gov](mailto:tironele@cle.dol-esa.gov) Direct (216) 802-1350 Fax (216) 802-1308/1315

District Office 3- Denver, Colorado

Arkansas, Colorado, Kansas, Louisiana, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming

U.S. Department of Labor, DEEOIC

1999 Broadway, Suite 1120

P.O. Box 46550

Denver, Co 80201-6550

(720) 264-3060 (main #)

Records Point of Contacts

John Martin (Primary) Valerie Saleh (CC Valerie on all requests)

Direct (720) 264-3087 Fax (720) 264-3099 Direct (720) 264-3066

Email [jmartin@den.dol-esa.gov](mailto:jmartin@den.dol-esa.gov) Email [vsaleh@den.dol-esa.gov](mailto:vsaleh@den.dol-esa.gov)

District Office 4—Seattle, Washington

Alaska, Arizona, California, Hawaii, Idaho, Iowa, Marshall Islands, Missouri, Nevada, Oregon, and Washington

U.S. Department of Labor, DEEOIC

719 2<sup>nd</sup> Avenue, Suite 601

Seattle, Washington 98104

(206) 373-6750 (main #)

Records Point of Contact

Sheila Wilson ; Direct (206) 373-6753 Fax (206) 373-6794

Email: [swilson@sea.dol-esa.gov](mailto:swilson@sea.dol-esa.gov)

December 2002 EEOICPA Bulletin 03-10

Attachment

### **03-11 Additional cancers considered as primary cancer**

EEOICPA BULLETIN NO.03-11

Issue Date: November 19, 2002

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Effective Date: November 19, 2002

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Expiration Date: November 19, 2003

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Subject: Additional Cancers Considered as Primary Cancers

Background: 20 CFR 30.5 (dd)(6) states that specified cancers are "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." The Department of Labor (DOL) forwarded a list of six medical conditions to the National Cancer Institute (NCI) for their review and classification to determine which conditions could be considered as cancers under the EEOICPA. The six medical conditions sent to NCI were:

- myelofibrosis with myeloid metaplasia;
- polycythemia vera with leukocytosis and thrombocytosis;
- polycythemia rubra vera;
- myelodysplastic syndromes;
- carcinoid tumors or carcinoid syndrome; and
- monoclonal gammopathies of undetermined significance.

On October 8, 2002, DOL received a letter from Dr. E. G. Fiegel, the Acting Director of NCI's Division of Treatment and Diagnosis, detailing NCI's evaluation of the above mentioned six medical conditions.

According to Dr. Fiegel, NCI recognizes myelofibrosis with myeloid metaplasia, polycythemia vera with leukocytosis and thrombocytosis, polycythemia rubra vera, and myelodysplastic syndromes as reportable cancers. These hematological conditions are not reportable as leukemia, non-Hodgkin's lymphoma, or multiple myeloma, but have distinct categories (except in the case of polycythemia rubra vera and polycythemia vera with leukocytosis and thrombocytosis, which share the same category). One of the functions of bone is to manufacture blood cells in the bone marrow. Accordingly, myelofibrosis with myeloid metaplasia, polycythemia rubra vera and its variant polycythemia vera with leukocytosis and thrombocytosis, and myelodysplastic syndrome(s) should be considered as bone cancer for purposes of having a "specified cancer" as a member of the Special Exposure Cohort, since all are malignancies of the bone marrow.

Carcinoid syndrome and monoclonal gammopathies of undetermined significance are not currently recognized as malignant conditions by NCI. Consequently, these conditions should not be considered as cancers.

Carcinoid tumors, except of the appendix, are recognized as malignant conditions by NCI and should be considered to be primary cancers of the organs in which they are located. If the organ is one on the specified cancer list, the carcinoid tumor may be considered as a specified cancer. Carcinoid tumors are found in greatest amounts in the small intestine and then in decreasing frequency in the appendix, rectum, lung, pancreas and very rarely in the ovaries, testes, liver, bile ducts and other locations.\_

Reference: Energy Employees Occupational Illness Compensation Program Act of 2000, As Amended, 42 U.S.C. § 7384 *et seq.*, Section 7384l(17); interim final rule 20 CFR Part 30, Section 30.5 (dd); and a letter from Dr. E. G. Fiegel, NCI, to R. Leiton, DOL, dated October 8, 2002.

Purpose: To notify District Offices of the classification of six additional medical conditions as primary cancers for eligible SEC claimants under the EEOICPA.

Applicability: All staff.

Actions:

The CE should consider: (1) myelofibrosis with myeloid metaplasia; (2) polycythemia rubra vera; (3) polycythemia vera with leukocytosis and thrombocytosis; and (4) myelodysplastic syndrome(s) to be bone cancer, which is a specified primary cancer per EEOICPA Section 7384l(17)(B).

2. Carcinoid tumors, except of the appendix, are recognized as malignant conditions by NCI. If the organ is one on the specified cancer list, the CE should consider the carcinoid tumor as a specified cancer (per EEOICPA Section 7384l(17)).

3. Carcinoid syndrome and monoclonal gammopathies of undetermined significance are not currently recognized as malignant conditions by NCI. Consequently, these conditions should not be considered cancers by the CE. If no other medical conditions are claimed that qualify the employee as having a covered condition, the claim should be denied.

The CE must look for any other cases of the medical conditions discussed above that could make the claimant eligible for benefits, either as a member of the SEC or through dose reconstruction. A preliminary review of the ECMS is underway to determine which cases may have already been denied or sent to NIOSH. That list will be forwarded to each District Office under separate cover. Using that list, the District Office must pull any cases for review in accordance with this bulletin. If modification orders are required, the District Office should send the case to the National Office.

The CE must continue to distinguish these medical conditions from bone or other specified cancers, as appropriate, using the appropriate ICD-9 codes on all paperwork and in ECMS.

For the conditions to be considered as bone cancers, the ICD-9 code for a myeloid metaplasia is 289.8, polycythemia rubra vera and its variant polycythemia vera with leukocytosis and thrombocytosis is 238.4, and myelodysplastic syndrome is 238.7. The ICD-9 code for malignant neoplasm of the bone is 170.

Carcinoid tumors, except of the appendix, should be recorded by the organ of the specified cancer. For example, the CE should use the ICD-9 code of 170 for a carcinoid tumor in the small intestine.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

**03-12 WS-WR codes**

EEOICPA BULLETIN NO. 03-12

Issue Date: October 18, 2002

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Effective Date: October 7, 2002

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Expiration Date: October 18, 2003

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Subject: **WS/WR** Codes

Background: The purpose of this bulletin is to introduce two new status codes **WS** (Washington, DC: Sent To) and **WR** (Washington, DC: Received Back From). The codes are used for tracking claims on ECMS when a referral has been made to the Branch of Policy, Regulations, and Procedures (BPRP) at the National Office (NO) from the District Office (DO) for resolution of policy or procedural issues. The **WS/WR** codes should only be used when the Claims Examiner's (CE's) work on a case cannot proceed until the outstanding issue is resolved. The referral is made to the Branch Chief for BPRP resolution of the issue through the CE's Supervisor and the District Director. The referral can be made in the form of a case file, copies of pertinent documents from a case file, or electronic mail (e-mail).

References: ECMS FAQs (Frequently Asked Questions), Updated 10/7/02

Purpose: To provide District Offices with procedures for using the **WS** and **WR** status codes. The bulletin also addresses use of the WS/WR - Referral/Response Form (Attachment 1) that must accompany all referrals to the BPRP.

Applicability: All staff.

Actions:

1. The CE identifies an outstanding policy or procedural issue in a case that requires NO attention. The CE is unable to process the claim until the issue is resolved at the NO level. For example, a CE is processing a claim in which the claimant submitted evidence indicating that the time period for his Atomic Weapons Employer (AWE) should be expanded. Such action by the NO would cover all his periods of employment with the AWE. In another case, a final decision authorizing benefits has been issued by the Final Adjudication Branch. The case file contains a Power of Attorney document. Before the compensation payment can be made, the Power of Attorney document must be reviewed at NO.
2. The CE details the issue(s) for the referral to BPRP on the WS/WR - Referral/Response Form for his/her Supervisory Claims Examiner's signature and the District Director's signature. The CE also identifies the manner in which the referral (case file, copies of pertinent documents, or e-mail) is to be made and places the form in the case file.
3. The Supervisory CE and District Director review the case file and the WS/WR -Referral/Response Form. If they agree that the outstanding issue in the case requires NO attention and agree with the manner (case file, copies of pertinent documents, or e-mail) in which the referral is to be made, they both sign and date the form.
4. If the form is transmitted as an attachment to an e-mail, the Supervisory Claims Examiner and District Director type their names and dates on the e-mail attachment. A signed and dated hardcopy of the form is placed in the case file. If a case file is forwarded to NO, the form is spindled down "on top" in the case file. If copies of case records are forwarded to NO, the referral form is placed "on top" of the copied documents.
5. The District Director enters the **WS** (Washington, DC – sent to) status code in the *Case Status* screen in ECMS. The **WS** status code signifies that the case is awaiting a NO response on a policy or procedural issue.
6. The status effective date for the **WS** code the District Director enters in the *Case Status* screen in ECMS equals the date s/he signs and dates the WS/WR - Referral/Response Form and forwards

the form along with the case file or copies of case file documents to the DO mailroom staff for shipping to the BPRP Branch Chief in the NO. If the documents are faxed or if the form is e-mailed to the BPRP, the status effective date is the date the fax or e-mail is transmitted.

7. Use of the **WS** code is restricted to the District Director to ensure the District Director agrees with the CE's rationale

for the referral to BPRP and also agrees that the CE cannot proceed working on the case until the outstanding issue is resolved.

8. Upon receipt of the referral in the National Office, the case file is reviewed to ensure the referral is appropriate. Appropriate referrals are assigned to a NO staff member by the Branch Chief, BPRP for a timely response. The response is provided in the BPRP Section of the **WS/WR - Referral/Response Form**.

9. The CE enters **WR** (Washington, DC: Received Back From) into the *Case Status* screen in ECMS when s/he receives the response to his/her inquiry from the BPRP enabling him/her to proceed with working on the case.

10. The status effective date for the **WR** code the CE enters into the *Case Status screen* in ECMS equals the date the DO receives the response from National Office. For a case file forwarded to NO, the **WR** date equals the date the file is received back in the DO. For copies of documents from the case file or an e-mail forwarded to the NO, the **WR** date equals the date the response is received in the DO.

11. All responses faxed or e-mailed by the NO must be immediately associated with the case file in the DO.

12. An inappropriate case referral to the NO is returned to the DO. An explanation for the return of the referral is provided in the BPRP Section of the **WS/WR - Referral/Response Form**.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

**PETER M. TURCIC**

**Director, Division of Energy Employees**

### **Occupational Illness Compensation**

Distribution: Distribution List No. 1: (Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections.)

**WS/WR - REFERRAL/RESPONSE FORM**

Employee Name: \_\_\_\_\_ Case #: \_\_\_\_\_ District  
Office: \_\_\_\_\_  
Claimant's Name (if other than employee): \_\_\_\_\_ Relationship:  
\_\_\_\_\_

Manner of Referral: Case File: \_\_\_\_\_ Copies of Documents: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

Type of Issue(s): Policy: \_\_\_\_\_ Procedure: \_\_\_\_\_

Medical \_\_\_\_\_ Employment \_\_\_\_\_ Survivorship \_\_\_\_\_ Other: \_\_\_\_\_

**DO: Issue(s)**

CE's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

SCE's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

DD's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**BPRP: Response**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**(Attachment 1)**

**03-13 Dupont Employment Verification**

EEOICPA BULLETIN NO.03-13

Issue Date: December 16, 2002

Effective Date: December 16, 2002

Expiration Date: December 16, 2003

Subject: Verifying employment of Dupont employees at the Hanford nuclear weapons site.

Background: The Department of Energy (DOE) has reported that they have no records in their possession which allow them to verify allegations of employment by E.I. Du Pont contractor or subcontractor employees at the Hanford nuclear facility in Washington. In an effort to expedite the process of employment verification for these employees, the CE is to forgo submitting the EE-5 to the DOE. Verification of claimed employment is to be sought from other sources such as the Du Pont corporate records center, the claimant or the Social Security Administration.

Reference: 42 U.S.C. § 7384l (11), 20 C.F.R. § 30.105

Purpose: To provide guidance on obtaining employment verification for Dupont contractor and

subcontractor employees of the Hanford nuclear facility in Washington.

Applicability: All staff.

Actions:

1. When a new claim for compensation is submitted, the claims examiner (CE) should review the documentation submitted with the EE-1 or EE-2. Based on this review, the CE should determine whether the claimant has identified employment with E.I. Du Pont de Nemours & Company at the Hanford facility.
2. Upon a finding that the claimed employee was employed for E.I. Du Pont de Nemours at the Hanford facility, the CE is to insert a single copy of the November 15, 2002 Memorandum from Steven Cary into the case file (Attachment 1). It will not be necessary for the CE to submit the EE-5 to the Department of Energy for completion. This memorandum will serve as the Department of Energy's response to the EE-5 Employment Verification form.
3. Once the CE has inserted the memorandum in the file, he or she must obtain employment verification documentation from sources other than the DOE. Potential sources of evidence include the Du Pont Corporation, the claimant, or the Social Security Administration. Refer to Bulletin 02-02 and PM 2-400 to 2-500 for further guidance on employment verification.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections



## Department of Energy

Washington, DC 20585

November 15, 2002

MEMORANDUM FOR: PETER M. TURCIC  
Director  
Division of Energy Employee Occupational Illness  
Office of Workers' Compensation Programs  
U.S. Department of Labor

FROM: STEVEN V. CARY *Stv Cary*  
Acting Director, Office of Worker Advocacy  
U.S. Department of Energy

SUBJECT: Verification of Employment for Dupont and subcontractors  
at Hanford Facility 1943-1946

This memorandum will serve as DOE's Form EE-5 for any claim alleging employment at the Dupont Corporation or its subcontractors at the Hanford facility between 1943 and 1946. DOE has no records that would allow it to verify allegations of employment for Dupont and its subcontractors at this facility, nor has it been able to locate pertinent records not in its possession. DOL will attempt to obtain any necessary verification of allegations of employment at such facilities through means other than DOE records.

The Department of Labor (DOL) regulations implementing the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) provide, at 20 CFR § 30.105, that after a claimant files a claim under the EEOICPA, the Department of Energy (DOE) shall complete and transmit to DOL a Form EE-5 in which DOE certifies that it concurs with the employment information provided by the claimant, that it disagrees with such information or that it can neither concur nor disagree after making a reasonable search of its records and a reasonable effort to locate records not in its possession. The purpose of this memorandum is to comply with this requirement by informing DOL of employers at certain facilities for which it has been unable to locate any records that would allow it to concur or disagree with allegations concerning employment at such facilities.

Requests for verification of allegations of employment for employers at facilities not cited in this memorandum should continue to be routed in accordance with the directions set forth in EEOICPA Procedure Manual (Chapter 2-400, Exhibit 1).

Should there be any questions about this matter, please contact the Office of Worker Advocacy at 202 586-2407. Thank you.



Printed with soy ink on recycled paper

### 03-14 Revised Medical Condition Status codes

EEOICPA BULLETIN NO. 03-14

Issue Date: April 7, 2003

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Effective Date: April 7, 2003

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Expiration Date: April 7, 2004

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Subject: Revised use of *Medical Condition Status* codes in ECMS.

Background: This bulletin covers changes to how existing medical condition status codes **A, C, D, & R** will be coded in ECMS.

This change is necessary in order to reflect the true status of the medical development at the time of adjudication. It will enable the CE to accurately record the medical history of the claim and assist in identifying when the medical portion of a claim is completed. Previously, for case denials, the CE was instructed to change all medical status codes to **D**. With this procedural change, that will no longer be required, and the medical *cond status* code will be related to the medical evidence that is known at the time of the Recommended Decision.

In addition, the **C** code in the Energy Case Management System (ECMS) medical *cond status* listbox in the *Medical Condition* screen is being redefined from "RECLASSIFIED" to "COVERED".

Reference: ECMS Frequently Asked Questions (FAQs).

Purpose: To notify District Office personnel regarding the change in ECMS usage of the **A, C, D, & R** codes in the medical *cond status* listbox in the *Medical Condition* screen.

Applicability: All staff.

Actions:

Claimed Medical Condition(s)

· **Using the R status code:** When a medical condition is added in ECMS, either at the time of case creation or in the adjudication of a claim, the medical *cond status* listbox in the *Medical Condition* screen will default to an **R** status code. The **R** status code equals what is "Reported" on the EE-1 or EE-2 form by the claimant. For all covered conditions claimed under EEOICPA, the **R** code will remain unchanged during the adjudication of a claim until the medical development has been completed. The status effect dt in the Medical Condition screen remains blank.

· **Non-covered conditions:** As described in item #7 from Bulletin 03-06 for non-covered medical conditions, the medical condition status code defaults to **R** in the ECMS medical *cond status* listbox for "REPORTED." For non-covered conditions, this status code will **not** be changed by the CE to **A** or **D**, since those codes are exclusively reserved for covered conditions. An **A** or **D** status would **never** be used in conjunction with a claimed non-covered medical condition because the condition was never developed and thus is neither accepted nor denied.

For example, if a claimant submits an EE-1 form claiming cancer but only worked for a beryllium vendor (where cancer is not a covered condition under EEOICPA), this would be an instance where the cancer would be a non-covered condition. Therefore, the claimed medical condition (cancer) would stay as an **R** status code in the medical *cond status* listbox.

· **Cancer conditions at NIOSH:** When a case is sent to NIOSH, all pending cancer medical condition status codes in the ECMS medical *cond status* listbox remain in an **R** or "Reported" status. The determination of acceptance or denial for medical

conditions sent to NIOSH can not be made until **after** the dose reconstruction is returned. Even though the medical evidence confirms that the employee has cancer (thus the case is at NIOSH), that condition could not be given an **A** or "Accepted" status in the ECMS medical *cond status* listbox until the probability of causation is determined to be at least 50%. Conversely, if the probability of causation is less than 50%, the medical condition would be coded **D** or "Denied" in the ECMS medical *cond status* listbox since the covered condition is denied.

For Covered Medical Conditions (i.e. cancer, beryllium sensitivity, chronic beryllium disease, chronic silicosis)

· **Using the A status code:** For each covered medical condition claimed on an EE-1 or EE-2, if the CE determines that the medical evidence meets the criteria necessary to accept the condition, the CE enters an **A** in the ECMS medical *cond status* listbox for "ACCEPTED" in the *Medical Condition* screen. This does not mean the **case** is accepted, just that the medical adjudication is complete for each claimed condition and the evidence is acceptable. The case could then either be accepted or denied, but the **A** would signify the medical development was complete and that the medical evidence met the established criteria for the particular claimed medical condition.

For claimed medical conditions with a diagnosis date prior to the filing date, the *status effect dt* in the *Medical Condition* screen must be the date the claim is postmarked or the date the claim is received by DOL or a Resource Center, whichever is the earliest determinable date but not earlier than July 31, 2001.

For claimed medical conditions with a diagnosis date after the filing date, the *status effect dt* in the *Medical Condition* screen must be equal to the date of diagnosis.

· **Using the C status code:** For cases that are ready for a recommended decision and contain covered medical conditions that have not been fully developed due to insufficient employment or survivor issues, the CE enters a **C** in the ECMS medical *cond status* listbox for "COVERED." This means that the medical condition is covered under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), though by the time a recommended decision was rendered, the medical development was incomplete and the **case** was denied for a non-medical reason.

For example, on an EE-1 form, cancer is checked. During the adjudication of the claim however, covered employment could not be verified. Since this effectively prevents payment of compensation or benefits, adjudication of the medical portion ceases and a recommended decision is rendered. At this point, the CE places the **C** code in the ECMS medical *cond status* listbox for "COVERED." This would identify those cases that have not been fully adjudicated for medical evidence in the event the claimant submits additional employment evidence later on.

· **Using the D status code:** For claims in which all medical development is complete, whether or not employment is verified, and the evidence still does not establish (a) that the employee had the condition or (b) that the medical statutory evidence has been met, the CE enters a **D** in the ECMS medical *cond status* listbox for "DENIED" when the recommended decision is issued.

For example, a claimant has filed for beryllium sensitivity (BeS) and the employment has been verified. The medical evidence does not support that the employee had BeS, and therefore the medical *cond status* would be changed to D for "Denied."

The CE enters the A, C, or D status codes into the ECMS medical *cond status* listbox when the case is in posture for a recommended decision.

Before a recommended decision is signed by a Senior Claims Examiner (SrCE), s/he must ensure that the correct medical condition status codes in the medical *cond status* listbox have been entered into ECMS. The SrCE is responsible for ensuring that ECMS accurately reflects the status of each claimed medical condition.

The Final Adjudication Branch (FAB) is responsible for ensuring that these medical *cond status* codes have been entered correctly by the DO prior to issuing a final decision. If additional medical evidence is submitted by the claimant prior to the issuance of a final decision, the FAB follows the established procedure and remands the case to the DO.

If the case is remanded from FAB to the district office, due to the receipt of new medical evidence, the CE addresses the remand issue and develops the medical condition. If the new evidence changes the status of the medical condition, the CE is required to update the medical *cond status* listbox with the actual status reflective of the new medical development.

Backfill will not be required on claims where a final decision has been issued. However, for any case still being adjudicated (for example, a remanded case) and for cases with final approvals that are being further developed for possible new approved medical conditions, it is the responsibility of all claims adjudication personnel to review and bring all medical condition records into compliance with this bulletin.

Disposition: Retain until incorporated into the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

### **03-16 Cancellation of Lump Sum Payment**

EEOICPA BULLETIN NO. 03-16

Issue Date: March 17, 2003

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Effective Date: March 17, 2003

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Expiration Date: March 17, 2003

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Subject: Processing cancellations of lump sum payments from the Department of Treasury in ECMS.

Background: Between August 2001 and March 2003, payments that were cancelled and required re-issuance were processed by staff at the National Office through the Electronic Certification System. Effective March 17, 2003, DEEOIC will begin processing both the cancellation and re-issuance of lump sum payments directly through the Energy Case Management System (ECMS).

Recording a cancelled payment is critical to maintaining an accurate and comprehensive accounting of all DEEOIC funds disbursements. Multi-level reviews and concurrences by DEEOIC management of actions taken and documented by all parties – claimants, financial institution staff, government claims

staff – is essential to safeguard the integrity and security of DEEOIC's financial accounting

processes and systems.

This bulletin provides written guidance regarding the procedures to be used and the policies to be followed for initiating and completing a payment cancellation, so that re-issuance of a lump sum payment can be made through ECMS. This bulletin replaces E-mail procedures entitled "New Payment Transaction Form to use for reissued payments sent to National Office", dated August 14, 2002.

References: ECMS Release Notes (March 17, 2003), EEOICPA Bulletin 02-12, "Compensation Payment Process", ECMS FAQ's.

Purpose: To provide procedures for the processing of payment cancellations.

Applicability: All staff.

Actions:

1. When a lump sum payment that was authorized in ECMS cannot be processed by the Department of Treasury, or the claimant never receives the payment, it will result in a cancellation of the lump sum payment.

**Cancellation by the Department of Treasury:** After the District Office authorizes the lump sum payment in ECMS, it is transmitted to the Department of Treasury for payment by check or Electronic Funds Transfer (EFT). If the Department of Treasury is unable to process the payment, they will cancel the payment and send a form SF-1198 ("Schedule of Unavailable Check Cancellation Credits" or "Schedule of Cancelled EFT Items") to the Fiscal Officer in the National Office.

**Cancellation initiated by Claimant:** After the District Office authorizes the lump sum payment in ECMS, it is transmitted to the Department of Treasury for payment by check or Electronic Funds Transfer (EFT). If the claimant does not receive the paper check or the EFT, the claimant contacts the District Office.

The claimant notifies the Claims Examiner, who documents the call or correspondence in the notes section of the Case Notes screen in ECMS.

If a claimant reports non-receipt of a check or EFT by telephone, the Claims Examiner must advise the claimant to document such non-receipt in writing.

Upon receipt of the correspondence, the Claims Examiner transfers the case file in ECMS on the Case screen to the DO Fiscal Officer.

The DO Fiscal Officer faxes a copy of the letter sent by the claimant with a memorandum explaining the need for cancellation to the NO Fiscal Officer.

Upon receipt of the documentation, the NO Fiscal Officer sends an E-mail to the Department of Treasury requesting a tracer. A copy of the E-mail, along with a memorandum of explanation, is faxed to the DO Fiscal Officer to include in the case file. (Procedures for situations wherein the check has been cashed, or the EFT was already deposited will be forthcoming.)

Once the Department of Treasury has successfully completed the tracer, the Department of Treasury will send a form SF-1198 to the Fiscal Officer in the National Office.

2. Upon receipt of the form SF-1198, the NO Fiscal Officer requests the case file from the DO Fiscal Officer.

3. The District Office transfers out the case file to "NAT" in ECMS on the Case screen, and mails the case file via express mail to the NO Fiscal Officer. The status effective date of the transfer is the same as the express mail date.

4. Upon receipt of the case file, the NO Fiscal Officer transfers in the file to "NAT" in ECMS on the Case screen. The status effective date of the transfer is the same date the case file is received. The NO Fiscal Officer confirms the address for a paper check, or bank account/routing numbers for an EFT. The SF-1198 is spindled inside the case file.

5. The NO Fiscal Officer completes and signs Action 1 of the "Payment Cancellation" form (Attachment 1), and spindles the form inside the case file. Once completed, the NO Fiscal Officer forwards the case file to the Branch Chief for review and signature (Action 2 of the "Payment Cancellation" form). Upon completion, the Branch Chief forwards the case file to the Director or Deputy Director for review and signature.

*Note: If an error is detected by the BPRP Branch Chief, the Transaction Cancelled section of the "Payment Cancellation" form is filled out. The case file is returned to the NO Fiscal Officer for review.*

6. ECMS permits only the Director or Deputy Director to initiate the on-line payment cancellation process. If the Director or Deputy Director agrees that the ECMS payment record needs to be voided, after reviewing the actions taken and documented in the case record, the payment cancellation is initiated in ECMS by the Director or Deputy Director at National Office:

In ECMS, select "Initiate Void Compensation Transaction" from the Compensation menu

At the Search Payment Record screen, enter the case SSN or name

Click the "Initiate" button at the bottom of the Payment Update screen

Click "YES" to confirm the Void Initiation

7. After the void is reviewed and initiated in ECMS, the Director or Deputy Director checks off Actions 3 and 4, and signs and dates the "Payment Cancellation" form. The case file is transferred out to the District Office in ECMS on the Case screen, and returned via express mail. The status effective date of the transfer is the same as the express mail date.

*Note: If an error is detected by the Director or Deputy Director, the Transaction Cancelled section of the "Payment Cancellation" form is filled out. The case file is returned to the BPRP Branch Chief for review.*

8. Upon receipt in the District Office, the case file is transferred in ECMS on the case screen, and forwarded to the District Director. The status effective date of the transfer is the same date the case file is received.

9. ECMS permits only the District Director to authorize the on-line payment cancellation process. If the District Director agrees that the ECMS payment record needs to be voided, after reviewing the actions taken and documented in the case record, the payment cancellation is authorized in ECMS by the District Director at the District Office.

In ECMS, select "Authorize Void Compensation Transaction" from the Compensation menu

At the Search Payment Record screen, all pending check cancellations to be authorized will appear in a grid view

Highlight the record to be authorized, and click "Select"

If no repayment of the cancellation is required, check the "No Repayment required" box. If repayment is required, the box is left blank

Click the "Authorize" button at the bottom of the Payment Update screen

Click "YES" to confirm the Void Authorization

10. After the payment cancellation is reviewed and authorized in ECMS, the District Director

checks off Actions 5 and 6, and signs and dates the "Payment Cancellation" form. The District Director transfers the case file in ECMS on the Case screen to the DO Fiscal Officer.

*Note: If an error is detected by the District Director, the Transaction Cancelled section of the "Payment Cancellation" form is filled out. The case file is returned to the DO Fiscal Officer for review.*

11. After the void has been processed in ECMS:

**If the lump-sum payment needs to be re-issued:**

The DO Fiscal Officer informs the Claims Examiner that the payment cancellation has been completed. The Fiscal Officer routes the case file to the Claims Examiner. The Claims Examiner confirms the SF-1198 is in the case file.

If the EN-20 is insufficient to process the re-issued payment, i.e. the bank routing/account numbers for EFT, or address for check, are **incorrect**, the Claims Examiner sends a letter of explanation to the claimant, along with a copy of the original EN-20 prepared by FAB. Upon receipt of the new EN-20, the Compensation Payment process is repeated, as per EEOICPA Bulletin 02-12.

If the EN-20 is sufficient to process the re-issued payment, i.e. the bank routing/account numbers for EFT, or address for check, are **correct**, but were incorrectly entered in ECMS for the original payment, the Compensation Payment process is repeated, as per EEOICPA Bulletin 02-12.

**If the lump-sum payment does not need to be re-issued:**

The DO Fiscal Officer confirms that the void has been completed, and that the "No Repayment Required" box is checked on the View Comp. Transaction screen, under the "Void Transaction" tab. The case file is returned to the DO file room, and transferred to "FIL" in ECMS on the Case screen.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution: Distribution List No. 1: (Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections.)

Check, as Applicable

**Action 1:**

*If Initiated by Claimant*

Letter Received from Claimant

E-mail sent to Dept of Treasury

Received SF-1198

*If Initiated by Dept of Treasury*

Received SF-1198

\_\_\_\_\_  
Print Name  
*(NO Fiscal Officer)*

\_\_\_\_\_  
Signature  
*(NO Fiscal Officer)*

\_\_\_\_\_  
Date

**Action 2:**

Reviewed by Branch Chief, BPRP

\_\_\_\_\_  
Print Name  
*(Branch Chief)*

\_\_\_\_\_  
Signature  
*(Branch Chief)*

\_\_\_\_\_  
Date

**Action 3:**

Reviewed by Director, or Deputy Director, EEOICP

**Action 4:**

"Initiated Void Compensation Transaction" in ECMS (Director or Deputy Director)

\_\_\_\_\_  
Print Name  
*(Director or Deputy)*

\_\_\_\_\_  
Signature  
*(Director or Deputy)*

\_\_\_\_\_  
Date

**Action 5:**

Reviewed by District Director, DO

**Action 6:**

"Authorized Void Compensation Transaction" in ECMS (District Director)

\_\_\_\_\_  
Print Name  
*(District Director)*

\_\_\_\_\_  
Signature  
*(District Director)*

\_\_\_\_\_  
Date

Transaction Cancelled

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**03-17 Implementation of 20 CFR 30 Final Rule**

EEOICPA BULLETIN NO.03-17

Issue Date: March 3, 2003

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Effective Date: February 24, 2003

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Expiration Date: March 3, 2003

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Subject: Implementation of Final Rule 20 CFR Part 30.

Background: 20 CFR Part 30, "Claims for Compensation Under the Energy Employees Occupational Illness Compensation Program Act of 2000, as Amended," was issued as a final rule on December 26, 2002.

This rule became effective on February 24, 2003, and applies to all claims filed on or after that date. This rule also applies to any claims that are pending on February 24, 2003.

Many portions of the rule were revised. The more substantial revisions that require actions by the CE are discussed below. Revised items that are already addressed in the Procedure Manual or other bulletins are not covered in this bulletin.

Attachment 1 summarizes the revisions made to the Final Rule 20 CFR Part 30. Notations are included for those revisions already included in the Procedure Manual or a bulletin.

Attachment 2 lists where the sections were originally published in the interim final rule compared to the final rule, as well as any additions or deletions of entire sections. Please note that additions and deletions of just part of a section are NOT on this list.

Reference: Final Rule 20 CFR Part 30; Public Laws 107-20 and 107-107.

Purpose: To address issues related to revisions made to the Final Rule 20 CFR Part 30.

Applicability: All staff.

Actions:

1. Unpaid lump-sum payments of compensation may be subject to garnishment to collect overdue alimony and child support. A request of this type is processed at the district office. The CE must ensure that the request is accompanied by a copy of the pertinent State agency or court order. If such a request is received currently, the district office should forward it to the National Office for processing. (Section 30.15(b))

2. A person filing a claim must inform OWCP of any changes to the information reported on the EE-1 or EE-2 claim forms. This is necessary since the EE/EN-15 will no longer be used. Information previously requested on the EE-15 form will now be requested on the new EE-1 and EE-2 forms (available soon). The CE should be aware of any changes to information contained on the EE-1 or EE-2 forms. Chapter 2-200, "Establishing Survivorship," will be revised to delete the need to use the EE/EN-15 forms. For claims that have been submitted, to date, on the old EE-1 and EE-2 forms, the CE must continue to send out the EE-15. The EE-15 is only unnecessary when the claim is submitted on the new EE-1 or EE-2. (Sections 30.100(c)(1) and 30.101(d)(1))

Alternative methods of establishing the requisite period of covered employment in the absence of supporting DOE data are addressed in section 30.112, which is a new section. PM Chapter 2-400, "Establishing Employment Using the EE-5 or Other Evidence," addresses many of these methods. The CE must become familiar with the content of this section.

One issue not previously addressed concerns DOE (1) certifying that it disagrees with the claimant's employment information or (2) noting that it can neither concur nor disagree with the claimant's employment information. The CE needs to evaluate the evidence submitted by the claimant to determine whether the claimant has established covered employment by a preponderance of the evidence. These issues will become simpler when an upcoming revision of the

EE-5 form becomes available.

Another issue concerns situations where the only evidence of covered employment is an affidavit from the claimant, and DOE either disagrees with the assertion of covered employment or cannot concur or disagree with the assertion of covered employment. In this case, the language of the new regulation is stronger in suggesting that the CE may reject the claim based upon a lack of evidence of covered employment.

4. A new Section 30.114 gives additional guidance as to how evidence will be evaluated. PM Chapter 2-300, "Developing and Weighing Medical Evidence," addresses many of these types of medical evidence. Although the claimant's evidentiary burden of proof has not been changed, this section reflects the flexible standard for considering a claimant's medical evidence in view of the fact that there may be missing information in the record.

5. A new Section 30.212 now specifically addresses claims for cancer not based on membership in the SEC. PM Chapter 2-500, "Establishing Covered Employment with the Department of Energy," addresses many of these issues. The CE must be familiar with the content of this new section, especially with regard to whether the evidence of record supports expanding the relevant time frame for a DOE or AWE facility.

6. Sections 30.220 – 30.225 are relevant to the medical benefits available for consequential injuries of all the occupational illnesses covered under the Act. The CE must review the requirements of these sections concerning chronic silicosis (Sections 30.220 and 30.222) and uranium employees (Section 30.225). A new section 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. The requirement for all cases is that an illness, injury, impairment or disability sustained as a consequence of a covered medical condition must be established with a fully rationalized medical report by a physician that shows the relationship between the illness, injury, impairment or disability and the accepted medical condition. Further instructions regarding consequential injuries will be provided in a transmittal to be released shortly.

7. The requirement that the claimant raise a specific objection to a particular finding of fact or conclusion of law in the recommended decision is removed. FAB personnel must be aware that the claimant needs to state his/her objection to the decision. The claimant does not need to specify precisely the content of the objection in order to be considered. Also, the postmark on the claimant's letter or the date that the written statement is received at FAB, whichever is earlier, should be used as the "filing" date with regards to the 60 day requirement to respond after the issuance of the recommended decision. PM Chapter 2-1300, "Review Process," addresses this issue and will be revised. (Sections 30.310(b), 30.311(a), 30.312 and 30.314(b))

8. It is OWCP's policy to schedule the FAB hearing, whenever possible, at a location that is within a reasonable distance from the claimant's residence. FAB personnel must schedule the hearing at a location that is within 200 miles (roundtrip) of the claimant's residence. In unusual circumstances, a hearing may be scheduled at a distance greater than 200 miles roundtrip. In these cases, the claimant is reimbursed for reasonable and necessary travel expenses. PM Chapter 2-1400, "Hearings and Reviews of the Written Record," will be revised to address this issue. (Section 30.314(a))

9. The past requirement that a recommended decision is automatically affirmed if no final decision is issued within one year of receipt of the case file from the district office has been changed. The final regulation states that the recommended decision is automatically affirmed one year after the receipt of a written objection and/or request for hearing, or one year from the date of the expiration of the 60 days (for submission of objections) after the recommended decision. PM Chapter 2-1400, "Hearings and Reviews of the Written Record," Section 5 will be revised to address this issue. (Section 30.316(c))

10. The claimant may request that OWCP reopen his or her claim at any time after the FAB has

issued a final decision by submitting new and material evidence of covered employment or exposure to radiation, beryllium or silica; or by identifying a material change in the probability of causation guidelines, dose reconstruction methods or an addition of a class of employees to the SEC that occurred after the FAB issued a final decision on the claim. If the Director concludes that the information submitted is material to the claim, the claim will be reopened and returned to the district office for a new determination on the merits of the claim. A specific statement was added that the Director can vacate any other (non-final) decision of FAB. The language no longer refers to a "modification order," and now simply states that a case may be "reopened." The FAB letters currently reflect this change. (Section 30.320)

11. The general restriction is removed on who may accompany a claimant during a second opinion examination. 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. This change to Section 10(e) of PM Chapter 2-300, "Developing and Weighing Medical Evidence," will be reflected in the upcoming bulletin on Medical Second Opinions. (Section 30.410)

12. The general restriction is removed on who may accompany a claimant during a referee examination. 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 referee examination. The CE should be aware of this change to Section 11(d) of PM Chapter 2-300, "Developing and Weighing Medical Evidence," which will be reflected in a future revision. (Section 30.411)

13. Covered employees whose sole occupational illness is beryllium sensitivity are now entitled to the same medical treatments as those with CBD. The letter that is currently sent out to the employees covered for beryllium sensitivity reflects this change. PM Chapter 2-700, "Eligibility Criteria for Beryllium Illness," will be revised to include this requirement. (Section 30.507)

14. Section 30.603 is a new section added to reflect the statutory limits on attorney fees enacted in section 3151(a)(6) of Public Law 107-107. All DEEOIC personnel must be familiar with these limits. The fee limitations shall not apply with respect to representative services that are not rendered in connection with a claim pending before OWCP.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

### **Summary of Revisions to Final Rule 20 CFR Part 30**

NOTE: Revisions addressed in the Procedure Manual or a bulletin are indicated.

#### Section 30.2

Language indicating that OWCP will provide information on the types and availability of medical testing and diagnostic services has been added to section 30.2(a). **Informational**

#### Section 30.5(dd)

Rewritten to clarify that as a specified cancer, lung cancer does not have a required latency period.

Addition of renal cancers to the list of specified cancers made by section 2403(a) of Public Law 107-20.

Modification of the provision for leukemia made by section 3151(a) (1) of Public Law 107-107.

**Addressed in PM Chapter 2-600.**

#### Section 30.15

Addition of new paragraph (b) noting that unpaid lump-sum payments of compensation may be subject to garnishment to collect overdue alimony and child support.

#### Sections 30.100(c)(1) and 30.101(d)(1)

Addition of requirement that person filing a claim inform OWCP of any changes to the information reported on the claim form. This was necessary when the decision was made to drop the EE/EN-15 and ask for the same information up front.

#### Section 30.112

New section 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 section 30.112 from the interim final rule has been renumbered as section 30.113 to accommodate this new section.

#### Section 30.114

New section 30.114 gives additional guidance as to how evidence will be evaluated.

Although the claimant's evidentiary burden of proof has not been changed, the section reflects the flexible standard for considering a claimant's evidence in view of the fact that there may be gaps in the record.

#### Section 30.115

Replaces the exemption in former section 30.115(b) with a clause in section 30.115(a) exempting any non-radiogenic cancer listed by the Department of Health and Human Services in 42 C.F.R. section 81.30 from referral for a 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).

**Addressed in Bulletin 02-13, "Chronic Lymphocytic Leukemia Cases."**

#### Section 30.213

Divided for clarity into two sections to reflect the two methods to claim benefits for cancer.

Section 30.213 in the interim final rule has been renumbered as section 30.214.

New section 30.212 now specifically addresses claims for cancer not based on membership in the SEC.

Section 30.212 in the interim final rule has been renumbered as section 30.213.

#### Sections 30.215, 30.217 and 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 section 30.220, 30.222 and 30.225) have been revised.

New section 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.

Sections 30.310(b), 30.311(a), 30.312 and 30.314(b)

Removed the requirement that the claimant raise a specific objection to a particular finding of fact or conclusion of law.

Section 30.314(a)

Revised to state that it is OWCP's policy to schedule the FAB hearing, whenever possible, at a location that is within a reasonable distance from the claimant's residence.

Section 30.316(c)

The event that will commence the one-year period for deeming a recommended decision to be affirmed has been changed from the receipt of the case file from the district office to the receipt of a written objection and/or hearing request, or the expiration of 60 days from the date the recommended decision is issued in the absence of a written objection and/or hearing request.

Section 30.320

Claimant can request that OWCP reopen his or her claim at any time by submitting new and material evidence of covered employment or exposure to radiation, beryllium or silica; or by identifying a material change in the probability of causation guidelines, dose reconstruction methods or an addition of a class of employees to the SEC that occurred after the FAB issued a final decision on the 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.

Specific statement that Director can vacate any other (non-final) decision of FAB.

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Section 30.404

Modified to establish a roundtrip distance of up to 200 miles as what OWCP will generally consider a reasonable distance to travel.

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.

**Addressed in Section 15 of PM Chapter 2-300, "Developing and Weighing Medical Evidence."**

Section 30.410

General restriction on who may accompany claimant during a second opinion examinations has been lifted.

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

General restriction on who may accompany claimant during a referee examination has also been lifted.

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 referee examination.

Sections 30.500, 30.501 and 30.502

Completely rewritten to reflect enactment of section 3151(a)(4) of Public Law 107-107, which amended the survivor provisions in section 7384s(e) and 7384u(e) of EEOICPA.

Definition for "widow or widower" from section 30.5(gg) of the interim final regulations has been modified and consolidated with the other statutory definitions in section 30.500.

**Addressed in PM Chapter 2-200, "Establishing Survivorship."**

Section 30.505

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.

Paragraphs (b), (c) and (d) from former section 30.505 are retained in final section 30.505, and the remaining paragraphs from former section 30.505 are now in final section 30.506.

Section 30.505(b)

More thoroughly defines the type of payment that will necessitate an offset, and how OWCP will determine the value of any such payment.

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.

Provides that an offset will result in the reduction of an unpaid lump-sum payment first.

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.

**Addressed in Bulletin 02-20, "Offsetting Compensation Payments."**

Section 30.506

Renumbered as section 30.507 following the split of former section 30.505 into two sections.

Revised to state that covered employees whose sole occupational illness is beryllium sensitivity are entitled to the same medical benefits provided to other covered employees.

Section 30.603

New section added to reflect the statutory limits on attorney fees enacted in section 3151(a)(6) of Public Law 107-107.

Sections 30.615 and 30.616

To conform regulations to section 3151(a)(5) of Public Law 107-107, which amended the election of remedy provisions in section 7385d of EEOICPA, prior section 30.615 and 30.616 have been rewritten as section 30.615 through 30.619.

Prior section 30.617 has been renumbered as section 30.620 to accommodate these changes.

**Addressed in Bulletin 02-05, "Election of Remedies."**

**Interim Final Rule (IFR) to Final Rule (FR) Section Comparisons**

IFR section: FR section:

1.1.....1.1

1.2.....1.2

1.3.....1.3

1.4.....	1.4
1.5.....	1.5
1.6.....	1.6
30.0.....	30.0
30.1.....	30.1
30.2.....	30.2
30.3.....	30.3
30.5.....	30.5
30.10.....	30.10
30.11.....	30.11
30.12.....	30.12
30.15.....	30.15
30.16.....	30.16
30.17.....	30.17
30.100.....	30.100
30.101.....	30.101
30.102.....	30.102
30.105.....	30.105
30.106.....	30.106
30.110.....	30.110
30.111.....	30.111
30.112 (new section)	
30.112.....	30.113, 30.114
30.115.....	30.115
30.200.....	30.200
30.205.....	30.102
30.206.....	30.206
30.207.....	30.207
30.210.....	30.210
30.211.....	30.211
30.212.....	30.213
30.213.....	30.214, 30.212 (new section)
30.214.....	30.215
30.215.....	30.220
30.216.....	30.221
30.217.....	30.222
30.220.....	30.225

30.226 (new section)	
30.300.....	30.300
30.305.....	30.305
30.306.....	30.306
30.307.....	30.307
30.310.....	30.310
30.311.....	30.311
30.312.....	30.312
30.313.....	30.313
30.314.....	30.314
30.315.....	30.315
30.316.....	30.316
30.317.....	30.317
30.318.....	30.318
30.319.....	30.319
30.320 (deleted)	30.320 (new section)
30.400.....	30.400
30.401.....	30.401
30.402.....	30.402
30.403.....	30.403
30.404.....	30.404
30.405.....	30.405
30.406.....	30.406
30.410.....	30.410
30.411.....	30.411
30.412.....	30.412
30.415.....	30.415
30.416.....	30.416
30.417.....	30.417
30.420.....	30.420
30.421.....	30.421
30.422.....	30.422
30.500 (deleted)	30.500 (new section)
30.501 (deleted)	30.501 (new section)
30.502 (deleted)	30.502 (new section)
	30.505.....30.505, 30.506
30.506.....	30.507

30.507.....	30.508
30.510.....	30.510
30.511.....	30.511
30.512.....	30.512
30.513.....	30.513
30.600.....	30.600
30.601.....	30.601
30.602.....	30.602
30.603 (new section)	
30.605.....	30.605
30.606.....	30.606
30.607.....	30.607
30.608.....	30.608
30.609.....	30.609
30.610.....	30.610
30.611.....	30.611
30.615 (deleted)	30.615 (new section)
30.616 (deleted)	30.616 (new section)
30.617.....	30.620
30.617 (new section)	
30.618 (new section)	
30.619 (new section)	
30.700.....	30.700
30.701.....	30.701
30.702.....	30.702
30.703.....	30.703
30.705.....	30.705
30.706.....	30.706
30.707.....	30.707
30.708.....	30.708
30.709.....	30.709
30.710.....	30.710
30.711.....	30.711
30.712.....	30.712
30.713.....	30.713
30.715.....	30.715
30.716.....	30.716

30.717.....	30.717
30.718.....	30.718
30.719.....	30.719
30.720.....	30.720
30.721.....	30.721
30.722.....	30.722
30.723.....	30.723
30.724.....	30.724
30.725.....	30.725
30.726.....	30.726

### **03-18 Covered Facilities update to the Federal Register**

EEOICPA BULLETIN NO. 03-18

Issue Date: March 5, 2003

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Effective Date: March 5, 2003\_

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Expiration Date: March 5, 2004\_

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Subject: Covered Facilities Update to the Federal Register

Background: A revised listing of covered facilities under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) was published in the Federal Register on December 27, 2002 (Attachment 1). This rule applies to all claims filed under the EEOICPA retroactive to the program's inception on

July 31, 2001.

The changes are summarized in Attachment 2 and include the addition of new Beryllium Vendors, Atomic Weapons Employers, and DOE facilities. The Federal Register listing also includes revisions to previous listings. The Federal Register can be accessed on line at [www.archives.gov/index.html](http://www.archives.gov/index.html). The ECMS covered facilities list has been updated.

Reference: Federal Register: Volume 67, Number 249, Pages 79068-79074.

Purpose: To notify the District Offices of changes to the Federal Register listing of covered facilities and to provide procedures for processing claims affected by these changes.

Applicability: Claims Examiners, Senior Claims Examiners, All Supervisors, ADP Coordinators and Technical Assistants.

Action:

1. At the time that a claim is initially reviewed the claims examiner (CE) is to reference the covered facilities list as published in the Federal Register to determine covered employment under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).
2. If the covered facility is one of the recent additions as described in Attachment 2, the CE is to forward the employment verification request to Roger Anders at the US Department of Energy (DOE) in Germantown, MD via Federal Express. The DOE will attempt to identify a corporate verifier to verify the claimed employment. The CE will send an EE-5 and cover memo to DOE. On

the cover memo, the CE is to identify the employment as a newly identified covered facility. The CE must input the status code **ES** (Employment Sent) into the ECMS Claims Status History page with the effective date as indicated on the cover memo. Once the verification is received from DOE, the CE will enter the status code **ER** (Employment Received) into the ECMS Claims Status History page with the status effective date as the date received and reflected by the mailroom staff. The CE only uses the **ER** code when the response from the DOE is sufficient to establish that all the information available has been provided (EEOICPOA Bulletin No. 03-07).

3. If the DOE is unable to identify a corporate verifier to verify the claimed employment, or if DOE is otherwise unable to verify the employment, the CE must request additional employment information i.e., payroll records, Forms W-2 and SSA records per EEOICPA guidelines.

4. If the District Office (DO) CE determines he/she has pending claims (no recommended decision has been issued) for a newly identified covered facility, the CE is to notify the claimant that the claimed employer was added to the Federal Register as a covered DOE facility and will be considered for coverage under the EEOICPA. The CE is to proceed with employment verification as indicated in items (2) & (3).

5. If the DO CE or Final Adjudication Branch (FAB) receives an objection to, or identifies a claim regarding a newly identified covered facility after a recommended decision was issued, but prior to the Final Decision being issued, the DO CE is to update the notes section in ECMS and forward the request to, or notify the FAB. On receipt of an objection or notification from the DO, The FAB is to vacate the recommended decision and remand the claim to the District Office for further development. The FAB is to enter the status code (F7) into the ECMS Claims Status History page with the status effective date as the date of the remand order.

6. If the DO CE receives a written request for reconsideration **within 30 days** of a **Final Decision** regarding a newly identified covered facility, the CE is to update the notes section in ECMS and forward this information to the FAB for review of the recommended decision. If the FAB receives a request for reconsideration, or identifies a claim **within 30 days** of issuing a **Final Decision** regarding a newly identified covered facility, the FAB will grant the reconsideration request, conduct a review of the recommended decision and issue a new decision on the claim.

7. If the DO CE or FAB receives an inquiry regarding a claim in which an Affirmed Final Decision was issued and the evidence of record establishes that the employee was employed with a covered DOE facility during a covered time frame, the CE or FAB is to enter the status code **MC** (Request for Modification from claimant) into the ECMS Claims Status History page and forward the claim to the National Office, Branch of Policy Regulations and Procedures for a modification order.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

### Summary of Changes to the Facility List Database Since 6/11/2001

#### Alabama

**Facility Name:** Speedring, Inc.

**Location:** Culman

**Change:** Time Period changed From: unknown

To: 1971-1998.

Duplicate AKA removed.

Facility Description revised to reflect new information.

**Date of Change:** 9/24/2001

**California**

**Facility Name:** Atomics International – Los Angeles County.

**Location:** Los Angeles

**Change:** A separate listing was created for this facility, which was originally included in the listing for the Energy Technology Engineering Center (Atomics International/ Rocketdyne).

**Date of Change:** 7/31/2002

**Facility Name:** Ceradyne, Inc.

**Location:** Costa Mesa

**Change:** A separate listing was created for this beryllium vendor location (Ceradyne previously covered only for Santa Ana location)

**Date of Change:** 12/27/02

**Facility Name:** City Tool & Die MFG

**Location:** Santa Clara

**Change:** Newly designated beryllium vendor

**Date of Change:** 12/27/02

**Facility Name:** C.L. Hann Industries

**Location:** San Jose

**Change:** Newly designated beryllium vendor

**Date of Change:** 12/27/02

**Facility Name:** EDM Exotics

**Location:** Hayward

**Change:** Newly designated beryllium vendor

**Date of Change:** 12/27/02

**Facility Name:** Electrofusion

**Location:** Fremont

**Change:** Newly designated beryllium vendor

**Date of Change:** 12/27/02

**Facility Name:** Energy Technology Engineering Center (ETEC)

**Location:** Santa Susanna, Area IV

**Change:** The listing for this facility was significantly revised, including the creation of a new facility listing for Atomics International – Los Angeles County.

Facility Name changed from the Energy Technology Engineering Center (Atomics International/Rocketdyne).

AKAs limited to Nuclear Development Field Laboratory (NDFL) and Liquid Metal Engineering Center (LMEC).

Facility Type changed from BE DOE to DOE only.

Time Period changed from DOE 1955-1995; 1970s-present (remediation) to DOE 1955-1988; remediation 1988-present.

Facility Description completely revised.

**Date of Change:** 7/31/2002

**Facility Name:** General Atomics

**Location:** La Jolla

**Change:** Dates from BE:Uncertain to BE: 1959-1967

**Date of Change:** 12/03/02

**Facility Name:** Hafer Tool

**Location:** Oakland

**Change:** Newly designated beryllium vendor

**Date of Change:** 12/27/02

**Facility Name:** Hexcel Products

**Location:** Berkeley

**Change:** Newly designated beryllium vendor

**Date of Change:** 12/27/02

**Facility Name:** Jerry Carroll Machining

**Location:** San Carlos

**Change:** Newly designated beryllium vendor

**Date of Change:** 12/27/02

**Facility Name:** Lebow

**Location:** Goleta

**Change:** Newly designated beryllium vendor

**Date of Change:** 12/27/02

**Facility Name:** Philco-Ford

**Location:** Newport Beach

**Change:** Newly designated beryllium vendor

**Date of Change:** 12/27/02

**Facility Name:** Pleasanton Tool & Manufacturing

**Location:** Pleasanton

**Change:** Newly designated beryllium vendor

**Date of Change:** 12/27/02

**Facility Name:** Poltech Precision

**Location:** Fremont

**Change:** Newly designated beryllium vendor

**Date of Change:** 12/27/02

**Facility Name:** Robin Materials

**Location:** Mountain View

**Change:** Newly designated beryllium vendor

**Date of Change:** 12/27/02

**Facility Name:** Ron Witherspoon, Inc.

**Location:** Campbell

**Change:** Newly designated beryllium vendor

**Date of Change:** 12/27/02

**Facility Name:** Tapemation

**Location:** Scotts Valley

**Change:** Newly designated beryllium vendor

**Date of Change:** 12/27/02

**Colorado**

**Facility Name:** Coors Porcelain

**Location:** Golden

**Change:** Time Period changed from 1940s-1980s to 1947-1975.

Facility Description significantly revised to reflect new information.

**Date of Change:** 1/28/2002

**Facility Name:** Grand Junction Operations Office

**Location:** Grand Junction

**Change:** New listing.

**Date of Change:** 8/20/2001

**Connecticut**

**Facility Name:** Bridgeport Brass Co., Havens Laboratory

**Location:** Bridgeport

**Change:** Time Period changed from 1954-1962 to 1952-1962.

**Date of Change:** 11/19/2001

**Facility Name:** Combustion Engineering

**Location:** Windsor

**Change:** AKA S1C deleted

**Date of Change:** 9/21/2001

**Facility Name:** Machlett Laboratories

**Location:** Springdale

**Change:** Newly designated beryllium vendor

**Date of Change:** 12/27/02

**Hawaii**

**Facility Name:** Kauai Test Facility

**State:** Hawaii

**Location:** Kauai

**Change:** New listing.

**Date of Change:** 7/31/2001

**Idaho**

**Facility Name:** Northwest Machining & Manufacturing

**State:** Idaho

**Location:** Meridian

**Change:** Newly designated beryllium vendor

**Date of Change:** 12/27/02

**Iowa**

**Facility Name:** Iowa Ordnance Plant

**Location:** Burlington

**Change:** Time Period expanded from 1953-1974 to 1947-1974.

AKA Iowa Army Ammunition Plant added.

**Date of Change:** 3/13/2002

**Illinois**

**Facility Name:** Allied Chemical Corp. Plant

**State:** Metropolis

**Change:** Time Period expanded from 1962-1964 to 1959-1976.

Facility Description revised.

**Date of Change:** 11/08/2001

**Facility Name:** Metallurgical Laboratory

**Location:** Chicago

**Change:** Facility Name changed from University of Chicago.

Beryllium Vendor designation added to Facility Type.

Time Period expanded to include BE dates 1942-1946.

Facility Description revised.

**Date of Change:** 10/7/2002

**Indiana**

**Facility Name:** Dana Heavy Water Plant

**Location:** Dana

**Change:** Facility Type changed from AWE to DOE on database. (Appeared correctly as a DOE on the 6/10/2001 Federal Register listing.)

Time Period changed from 1952-1957 to 1943-1957.

AKA added: Wabash River Ordnance Plant

**Date of Change:** 1/28/2002

**Louisiana**

**Facility Name:** Ethyl Corp.

**Location:** Baton Rouge

**Change:** Newly designated beryllium vendor

**Date of Change:** 12/27/02

**Massachusetts**

**Facility Name:** Franklin Institute

**Location:** Boston

**Change:** Time Period defined From: unknown  
To: 1962

**Date of Change:** 12/19/2001

**Facility Name:** Metals and Controls Corp.

**Location:** Attleboro

**Change:** AKAs added: M&C Nuclear, Metals and Controls Nuclear.

Time Period clarified From: #9; 1959-unknown

To: #9; 1952-1967.

Facility Description revised.

**Date of Change:** 9/12/2001

**Facility Name:** Norton Co.

**Location:** Worcester

**Change:** Time Period changed from 1945-1949 to 1943-1961.

Facility Description revised.

**Date of Change:** 11/16/2001

**Facility Name:** Nuclear Metals, Inc.

**Location:** Concord

**Change:** AKA added: Whitaker, Nuclear Metals Division.

Time Period changed 9; From: AWE 1942-1960 To: BE 1954-1985 & AWE 1954-1990.

Facility Description revised.

**Date of Change:** 9/17/2002

**Facility Name:** Winchester Engineering & Analytical Center

**Location:** Winchester

**Change:** AKA added: AEC Raw Materials Development Laboratory.

Facility Description revised to include current ownership of this location by the FDA.

**Date of Change:** 7/17/2001

**Michigan**

**Facility Name:** Speedring Systems, Inc.

**Location:** Detroit

**Change:** Time Period extended from 1968 to 1963 and 1968.

Facility Description revised.

**Date of Change:** 9/24/2001

**Facility Name:** Wolverine Tube

**Location:** Detroit

**Change:** Time Period changed from: 1943-uncertain  
To: 1943-1946.

**Date of Change:** 11/19/2001

**Missouri**

**Facility Name:** Kansas City Plant

**Location:** Kansas City

**Change:** Remove Beryllium Vendor designation.

**Date of Change:** 12/3/2002

**Facility Name:** Mallinckrodt Chemical Co., Destrehan St. Plant

**Location:** St. Louis

**Change:** Facility Type changed from AWE DOE to DOE.

**Date of Change:** 12/7/2001

**Facility Name:** Tyson Valley Powder Farm

**Location:** St. Louis

**Change:** Time Period changed from 1940-1947 to 1942-1949.

**Date of Change:** 9/23/2002

**New Jersey**

**Facility Name:** American Peddinghaus Corp.

**Location:** Moonachie

**Change:** Location Name corrected from Moonachle to Moonachie.

**Date of Change:** 9/21/2001

**Facility Name:** DuPont Deepwater Works

**Location:** Deepwater

**Change:** AKA added: Chambers Chemical and Dye Works

**Date of Change:** 2/22/2002

**Facility Name:** J.T. Baker Chemical Co.

**Location:** Phillipsburg

**Change:** changed dates from Uncertain to 1948; 1957-1958

**Date of Change:** 12/03/2002

**Facility Name:** National Beryllia

**Location:** Haskell

**Change:** Time Period changed from 1973 to 1968-1973.

Facility Description revised.

**Date of Change:** 11/20/2001

**Facility Name:** New Brunswick Laboratory

**Location:** New Brunswick

**Change:** Facility Description revised to include information about the Lab moving to Argonne in 1977.

**Date of Change:** 11/6/2001

**Facility Name:** Stevens Institute of Technology

**Location:** Hoboken

**Change:** Newly designated beryllium vendor

**Date of Change:** 12/27/02

**Facility Name:** United Lead Co.

**Location:** Middlesex

**Change:** Added beryllium vendor designation

**Date of Change:** 12/27/02

**New Mexico**

**Facility Name:** Accurate Machine & Tool

**Location:** Albuquerque

**Change:** Newly designated beryllium vendor

**Date of Change:** 12/27/02

**Facility Name:** Albuquerque Operations Office

**Location:** Albuquerque

**Change:** New listing.

**Date of Change:** 7/31/2001

**Nevada**

**Facility Name:** Nevada Test Site

**Location:** Mercury

**Change:** Facility Description revised to add contractor information about Holmes & Narver and for Raytheon Services.

**Date of Change:** 6/26/2002

**New York**

**Facility Name:** Bethlehem Steel

**Location:** Lackawanna

**Change:** Time Period changed from 1949-1951 to 1949-1952.

**Date of Change:** 3/25/2002

**Facility Name:** Carborundum Company

**Location:** Niagara Falls

**Change:** New AWE listing.

**Date of Change:** 4/16/2002

**Facility Name:** Environmental Measurements Laboratory

**Location:** New York

**Change:** New DOE listing

**Date of Change:** 7/31/2001

**Facility Name:** Fairchild Hiller Corporation

**Location:** Farmingdale, Long Island

**Change:** Newly designated beryllium vendor

**Date of Change:** 12/27/02

**Facility Name:** Hooker Electrochemical

**Location:** Niagara Falls

**Change:** Time Period changed from early 1940s to 1943-1948.

Facility Description revised.

**Date of Change:** 1/31/2002

**Facility Name:** Lake Ontario Ordnance Works

**Location:** Niagara Falls

**Change:** Time Period changed from 1944-1953; 1983-1986 (remediation) to 1944-1997.

Facility Description revised.

**Date of Change:** 2/20/2002

**Facility Name:** Linde Ceramics Plant

**Location:** Tonawanda

**Change:** Under Time Period, DOE remediation period changed from uncertain-1998 to 1996-1997.

Facility Description revised.

**Date of Change:** 6/19/2002

**Facility Name:** Peek Street Facility

**Location:** Schenectady

**Change:** AKA – reference to Sacandaga site deleted.

Time Period changed from unknown to 1947-1954.

**Date of Change:** 4/16/2002

**Facility Name:** Radium Chemical Co.

**Location:** New York

**Change:** Beryllium Vendor designation added to Facility Type.

Time Period changed from mid1940s to 1943-1950.

AKA changed to Joseph J. Kelly.

Facility Description revised.

**Date of Change:** 10/7/2002

**Facility Name:** Rensselaer Polytechnic Institute

**Location:** Troy

**Change:** Changed from an AWE to a BE

Dates changed from "Unknown" to 1951-1952; 1963 and the description was revised.

**Date of Change:** 12/23/2002

**Facility Name:** SAM Laboratories, Columbia University  
(previously Columbia University)

**Location:** New York

**Change:** Facility Type changed from AWE DOE to DOE.

Time Period changed from 1939-1943s DOE 1985 (remediation) to 1940-1947.

AKAs changed to: SAM Laboratories; Special Alloyed Materials Laboratories; Substitute Alloy Materials

Laboratories.

Facility Description revised.

**Date of Changes:** 3/27/2002; 12/3/02

**Facility Name:** Separations Process Research Unit (at Knolls Lab.)

**Location:** Schenectady

**Change:** Time Period changed from 1950-1953; 1996-present (remediation) to 1950-1965.

Facility Description revised to include date facility taken over by the Naval Nuclear Propulsion Program.

**Date of Change:** 4/8/2002

**Facility Name:** University of Rochester Atomic Energy Project

**Location:** Rochester

**Change:** Facility Name changed from University of Rochester Medical Laboratory.

Facility Type changed from AWE to DOE.

Time Period changed from 1942-1980s to 1943-1986.

Facility Description revised.

**Date of Change:** 7/2/2002

**Facility Name:** West Valley Demonstration Project

**Location:** West Valley

**Change:** Facility Type changed from AWE to AWE DOE. AWE Time Period changed from 1966-1972 to 1966-1973.

**Date of Change:** 5/16/2002

### Ohio

**Facility Name:** Ajax Magnethermic Corp.

**Location:** Youngstown

**Change:** Time Period changed from 1958-1961 to 1958-1962.

**Date of Change:** 3/19/2002

**Facility Name:** Brush Beryllium Co. (Elmore)

**Location:** Elmore

**Change:** Time Period changed from 1957-1990 to 1957-2001.

**Date of Change:** 9/21/2001

**Facility Name:** Copperweld Steel

**Location:** Warren

**Change:** Time Period changed from 1943 to 1943-1946.

**Date of Change:** 11/19/2001

**Facility Name:** General Electric Company (Ohio)

**Location:** Cincinnati/Evendale

**Change:** BE Time Period 1951-1970 added.

**Date of Change:** 5/28/2002

**Facility Name:** Harshaw Chemical Co.

**Location:** Cleveland

**Change:** Time Period changed from 1942-1953 to 1942-1955.

Facility Description revised.

**Date of Change:** 12/11/2001

**Facility Name:** Horizons, Inc.

**Location:** Cleveland

**Change:** Time Period changed from 1940s-1956 to 1944-1956.

**Date of Change:** 11/19/2001

**Facility Name:** Kettering Laboratory, University of Cincinnati

**Location:** Cincinnati

**Change:** Time Period changed from 1950 to 1947-1950.

**Date of Change:** 9/21/2001

**Facility Name:** Portsmouth Gaseous Diffusion Plant

**Location:** Piketon

**Change:** Time Period changed from 1954-1993 to 1954-1998.

**Date of Change:** 5/3/2002

### **Oklahoma**

**Facility Name:** Kerr-McGee

**Location:** Guthrie

**Change:** Time Period changed from 1960s to 1962-1973.

**Date of Change:** 11/20/2001.

**Facility Name:** Eagle Picher

**Location:** Quapaw

**Change:** Newly designated beryllium vendor

**Date of Change:** 12/27/02

### **Pennsylvania**

**Facility Name:** Aliquippa Forge

**Location:** Aliquippa

**Change:** AWE Time Period changed from late 1940s-1950 to 1947-1950.

**Date of Change:** 11/19/2001

**Facility Name:** Aluminum Co. of America (ALCOA)(Pennsylvania)

**Location:** Kensington

**Change:** Time Period changed from 1940s to 1944-1945.

**Date of Change:** 11/19/2001

**Facility Name:** Beryllium Corp. of America (Hazleton)

**Location:** Hazelton

**Change:** AKAs added: Cabot Corp., Beryllium Corp. of America (Ashmore). AKA deleted: NGK Metals Corp.

Time Period changed from: 1942-1962 (probably into the 1970s) to 1957-1979.

**Date of Change:** 3/14/2002

**Facility Name:** Beryllium Corp. of America (Reading)

**Location:** Reading

**Change:** AKAs added: Kawecki-Berylco, Berylco, NGK Metals Corp., Cabot Corp., Beryllium Corp. of America (Tuckerton).

Time Period changed from 1947-1961 to 1943-1979.

Facility Description revised.

**Date of Change:** 3/14/2002

**Facility Name:** McDanel Refractory

**Location:** Beaver Falls

**Change:** Facility Name corrected from McDaniel Refractory.

AKAs added: Vesuvius McDanel; Vesuvius Division of Cookson Group.

**Date of Change:** 10/9/2001

**Facility Name:** Nuclear Materials and Equipment Corp.(NUMEC) (Apollo)

**Location:** Apollo

**Change:** Time Period changed from late 1950s-1983 to 1957-1983.

**Date of Change:** 10/17/2002

**Facility Name:** Nuclear Materials and Equipment Corp. (NUMEC) (Parks Township)

**Location:** Parks Township

**Change:** Time Period changed from late 1950s-1980 to 1957-1980.

**Date of Change:** 10/17/2002

**Facility Name:** Shippingport Atomic Power Plant

**Location:** Shippingport

**Change:** Naval Reactors designation added.

Time Period changed from 1957-1982; 1983-1995 (remediation) #9; to 1984-1995 (remediation) only.

**Date of Change:** 4/25/2002

**Facility Name:** Superior Steel Co.

**Location:** Carnegie

**Change:** Time Period changed from 1955-1957 to 1952-1957.

**Date of Change:** 10/19/2001

**Facility Name:** Vitro Manufacturing (Canonsburg)

**Location:** Canonsburg

**Change:** Time Period changed from 1948-1967 to 1942-1957.

**Date of Change:** 10/16/2001

**Facility Name:** Westinghouse Nuclear Fuels Division (Cheswick)

**Location:** Cheswick

**Change:** Newly designated AWE.

**Date of Change:** 12/27/02

### Tennessee

**Facility Name:** Clarksville Facility

**Location:** Clarksville

**Change #1:** Time Period changed from 1958-1965 to 1949-1965.

Facility Description revised.

**Date of Change #1:** 6/26/2002

**Change #2:** Added language regarding beryllium use.

**Date of Change #2:** 12/23/2002

**Facility Name:** Manufacturing Sciences Corp.

**Location:** Oak Ridge

**Change:** Newly designated beryllium vendor

**Date of Change:** 12/27/02

**Facility Name:** Oak Ridge Gaseous Diffusion Plant

(K-25)

**Location:** Oak Ridge

**Change:** Facility Description revised to include Martin Marietta Energy Systems to list of contractors.

**Date of Change:** 2/26/2002

**Facility Name:** S-50 Oak Ridge Thermal Diffusion Plant

**Location:** Oak Ridge

**Change #1:** New listing.

**Date of Change #1:** 7/31/2001

**Change #2:** Expand datespan from:1944-1945

To: 1944-1951

Add language regarding work of Fairchild involving beryllium

**Date of Change #2:** 12/23/2002

**Facility Name:** W.R. Grace (Tennessee)

**Location:** Erwin

**Change:** Time Period changed from 1958-1969 to 1958-1970.

**Date of Change:** 5/16/2002

**Facility Name:** Y-12 Plant

**Location:** Oak Ridge

**Change:** Facility Description revised to include BWXT to list of contractors.

**Date of Change:** 11/6/2001

Texas

**Facility Name:** Medina Modification Center

**Location:** San Antonio

**Change:** Added language regarding beryllium use.

**Date of Change:** 12/23/2002

Virginia

**Facility Name:** BWX Technologies, Inc. (Virginia)

**Location:** Lynchburg

**Change:** Facility Name changed from Babcock & Wilcox Co. (Virginia).

Beryllium Vendor added to Facility Type.

Time Period changed to include BE 1995-2001.

AWE time period expanded from: #9; 1959; 1968-1972 to: 1959; 1968-1972; 1985-2001

**Date of Change:** 10/1/2002; 12/3/02 (expansion of BE dates)

**Wisconsin**

**Facility Name:** A. O. Smith

**Location:** Milwaukee

**Change:** Newly designated beryllium vendor

**Date of Change:** 12/27/02

**Facility Name:** Allis-Chalmers Co.

**Location:** West Allis, Milwaukee

**Change:** Time Period changed from early 1940s to 1944-1943.

Facility Description revised.

**Date of Change:** 12/11/2001

**03-19 Department of Energy Requests for DEEOIC claimant files**

EEOICPA BULLETIN NO. 03-19

Issue Date: March 17, 2003

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Effective Date: March 17, 2003

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Expiration Date: March 17, 2004

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**Subject:** Department of Energy requests for DEEOIC claimant files.

**Background:** The Department of Energy (DOE) is responsible for development and implementation of Part D of the Energy Employees Occupation Illness Compensation Program Act (EEOICPA) in which a DOE contractor employee or survivor can seek assistance from DOE in filing a claim with the appropriate State workers' compensation system based on an illness or death that arose out of exposure to a toxic substance during the course of employment at a DOE facility.

Claimants who apply to DEEOIC often apply for assistance under DOE's Program. Therefore, to assist the claimant in limiting the burden of duplicate requests for case development information, DEEOIC, under the routine use provision of the Privacy Act, will provide case information to the DOE on a case by case basis for the claimants who have applied to the DOL program and DOE for state assistance. DEEOIC information released to DOE is limited to the eligible DOE contractor employee and survivor filing the DOE claim.

It was discovered with the current process outlined in Bulletin 03-10, that the established point of contacts in the DO were unable to code ECMS if the case file was assigned to the Final Adjudication Branch (FAB) or the National Office. Changes have been made to the procedures which require FAB or the National Office to enter all required codes if the file is assigned to them.

Note— This bulletin replaces Bulletin 03-10, Department of Energy requests for DEEOIC claimant files.

**Reference:** Privacy Act of 1974, as amended (5 U.S.C 552a)

Purpose: To provide revised procedures for processing DOE record requests.

Applicability: All staff.

Action:

1. The DOE will submit the form ***Request for Department of Labor EEOICPA Case Information*** (Attachment 1) to the designated District Office Point of Contact (POC) via E-mail or Fax. Assignments for POC's have been established by each District Office which are listed on Attachment 2. Faxed requests must be date stamped as soon as they are retrieved from the fax machine in the District Office and given to the designated point of contact.
2. Upon receipt of the request, the POC must determine if there is a record of the claim in ECMS. If the POC determines that ECMS does not have record of the file, the POC should complete section 2 "Acknowledgment of Records Sent" on page 2 of attachment 1, mark the box "no records for the named individual," and mail, fax or email the response to the DOE requestor designated on the request form. The POC should make a copy of the request and response and keep a separate file for such DOE requests.
3. If the POC determines that DO has a case for the named individual, he/she should enter the code **DR** (Documents Requested) under the claim status screen in ECMS. The status effective date should be the date in which the request was received by the POC via email. If the request is faxed, the status effective date is the date the document was date stamped as received by the DO.
4. If it is determined the file is with the Final Adjudication Branch (FAB), the POC must fax or forward the email to the FAB Manager in the appropriate District Office. If the file is at the National Office in FAB or the Branch of Policies, Regulations and Procedures, the POC must forward the request to the designated Branch Chief. The POC should include in the email or fax cover sheet the date the request was received and the need to process the request. The FAB or NO official should place a copy of the email or fax cover sheet in the case file. The FAB or NO official will be responsible for processing the request as outlined in this Bulletin, including entering the code **DR** (Documents Requested) under the claim status screen in ECMS. The status effective date should be the date on which the request was received by the POC via email. If the request is faxed, the status effective date is the date the document was date stamped as received by the DO.
5. The DEEOIC will not provide information to the DOE that the Resource Centers have already provided. Therefore, the processing official must review the request form (Attachment 1) to determine if the DOE indicated a date in which they received information from the Resource Center. If a date is provided by the DOE, the processing official should make copies of claimant records only after the date indicated by the DOE. The processing official must complete appropriate sections on page 2 of request form (Attachment 1). He/she must make a copy of the information requested by the DOE from the claimants file.
6. Upon making copies of the claimant's record, and completion of the appropriate sections of the request form, the processing official must make a copy of the request form and place the copy in the claimant's file.
7. Copies of records are limited to the employee and if applicable the survivor named on the DOE request. DEEOIC staff may be held **personally** liable for releases of information that violate the Privacy Act. Therefore, the processing official must review the copies to assure information is limited to the employee and the applicable survivor. For survivors not named on the DOE request form, a signed release by the survivor(s) must be provided to the DOL granting permission for DEEOIC to release his/her records.
8. The processing official will prepare and express mail the package to the requesting DOE official to include the signed original of page 2, "Acknowledgment of Records Sent," and the copied documents.
9. The processing official must enter the code **DS** (Documents Sent) under the claim status screen in

ECMS. The status effective date should be the date reflected by the processing official on the request form, section "Acknowledgment of Records Sent."

10. There may be instances in which DEEOIC has records for an individual; however, it may be inappropriate or unnecessary to copy the file. Instances may include:

File is in beginning phase of development, i.e. employment verification or medical evidence is still being developed. Depending on the urgency of the claim, the DOE may want to resubmit the request at a later date when further DEEOIC development has occurred.

Recommended/Final Decisions issued based on a non-covered condition. DEEOIC does not develop employment information in cases for non-covered conditions and will not have substantial information in the case file to assist the DOE with case development. Additionally, DEEOIC does not develop medical evidence for non-covered conditions and therefore will not have any substantive medical information that will be of benefit to DOE.

Under such circumstances, the processing official should call the requestor in DOE and explain the status of the case. He or she should ask DOE whether the DOE wants to reconsider the request. If the DOE still wants a copy of the file, the processing official should copy and forward the package to the DOE according to the procedures in this bulletin (including coding ECMS). The processing official should only code ECMS with a "DR" and "DS" in circumstances when a copy of a file is sent to the DOE.

Upon further consideration, if the DOE determines that they do not need a copy of the file, the processing official must state in the comments section on page 2 of the request form that the "DOE requestor [enter name] withdrew request". The processing official must then copy the request for the case file and forward the original to the requestor at the DOE. The official must enter the code **DW** (Document Request Withdrawn) under the claim status screen in ECMS. The status effective date will be the date the DOE withdrew the request.

11. If at anytime the POC or FAB official has questions regarding the request made by the DOE, he/she may contact the DOE requestor directly via email or telephone.

12. Processing of the DOE request should not take more than 15 days. If at anytime the request reaches 15 days outstanding, the processing official must contact the DOE via e mail, fax or mail explaining the progress and or delay in processing the DOE's request. The processing official must place a copy of the email, letter or transcribed telephone conversation in the claimant's file.

13. If the processing official receives a duplicative request for file information, the official must check the claimant's file to determine if any additional information was added to the file since the last request. If yes, the official must process the DOE request for the additional information, following the procedures outlined in this bulletin (including coding ECMS).

If no new information was entered into the file since the DOE's last request, the official must complete appropriate sections on page 2 of the request form. In addition, in the comments section, he/she should state, "No new information added since the DOE's request made on [enter date]. The official must then copy the request form for the case file, and forward the original to the requestor at the DOE.

Note-- For privacy reasons, when discussing claimant information via email, the processing official can not use the full name and social security number together in an email transmission. However, the use of the first three letters of the last name, along with the complete social security number and date of birth is permitted.

Disposition: Retain until the indicated expiration date.

PETER M. TURCIC

Director, for Division of Energy Employees

Federal Employees' Compensation Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners District

Medical Advisers, Systems Managers, Technical

Assistants, Rehabilitation Specialists, and

Staff Nurses, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections, ADP Coordinators

Date:

To: (DOL District Office)

From: (DOE Federal Official, phone number & address/email address)

**[the named SSN]** has filed for state assistance under Part D of the EEOICPA. To assist in the development of the case the Department of Energy requests copies of the documents indicated in the box below. The employee's last place of employment was **[list facility]**.

**EMPLOYEE INFORMATION**

**Last First**

**(If emailing request, do not use full name with SSN, use only first three letters of last name and DOB)**

**Social Security Number Date of Birth**

**SURVIVOR INFORMATION (IF APPLICABLE)**

**Last First**

**(If emailing request, do not use full name with SSN, use only first three letters of last name and DOB)**

**Social Security Number Date of Birth**

**Please check box to indicate information needed from the DOL case file**

Information added to file after Resource Center submission to DOE on **{enter date received from RC}**

No records have been provided by Resource Center, please send all applicable records.

Other (specify):

***Acknowledgement of Records Sent to the DOE –FOR DOL USE ONLY***

The following section is to be filled out by the DOL District or FAB Office and sent to the DOE with the copied documents. A copy of the request and acknowledgement should be placed in the DOL case file.

Date:

Case file number:

The following records have been sent to DOE:

No records for the named individual

Information added to file after Resource Center submission to DOE on **[enter date received from RC]**

All claim records related to the employee or the named survivor. (Do not send documents related to other survivors from the case unless a signed release is provided by the DOE)

No records sent

Other (specify)

Comments:

DEEOIC Office:

DEEOIC Official:

Date Sent:

## **Contact Information for DOE Records Requests**

### **District Office 1—Jacksonville, Florida**

Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee

U.S. Department of Labor, DEEOIC

214 North Hogan Street, Suite 910

Jacksonville, FL 32202

(904) 357-4705 (main #)

#### **Records Point of Contact**

Shirley Stone Direct (904) 357-4795, Ext. 7-4404 Fax (904) 357-4704

Email: shstone@jac.dol-esa.gov

### **District Office 2—Cleveland, Ohio**

Connecticut, Delaware, District of Columbia, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virgin Islands, Virginia, West Virginia, and Wisconsin

U.S. Department of Labor, DEEOIC

1001 Lakeside Avenue, Suite 350

Cleveland, OH 44114

(216) 802- 1300 (main #)

#### **Records Point of Contact**

Leila Tirone

E-mail: tironele@cle.dol-esa.gov Direct (216) 802-1350 Fax (216) 802-1308/1315

### **District Office 3- Denver, Colorado**

Arkansas, Colorado, Kansas, Louisiana, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming

U.S. Department of Labor, DEEOIC

1999 Broadway, Suite 1120

P.O. Box 46550

Denver, Co 80201-6550

(720) 264-3060 (main #)

#### **Records Point of Contacts**

John Martin (Primary) Valerie Saleh (CC Valerie on all requests)

Direct (720) 264-3087 Fax (720) 264-3099 Direct (720) 264-3066

Email jmartin@den.dol-esa.gov Email vsaleh@den.dol-esa.gov

### **District Office 4—Seattle, Washington**

Alaska, Arizona, California, Hawaii, Idaho, Iowa, Marshall Islands, Missouri, Nevada, Oregon, and Washington

U.S. Department of Labor, DEEOIC

719 2<sup>nd</sup> Avenue, Suite 601

Seattle, Washington 98104

(206) 373-6750 (main #)

**Records Point of Contact**

Sheila Wilson ; Direct (206) 373-6753 Fax (206) 373-6794

Email: swilson@sea.dol-esa.gov

**03-20 Quality Control Checklists**

EEOICPA BULLETIN NO. 03-20

Issue Date: July 29, 2003

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Effective Date: July 29, 2003

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Expiration Date: July 29, 2004

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Subject: Quality Control Checklists

Background: The purpose of this bulletin is to introduce and explain the procedures for the Quality Control(QC)checklists. There are four categories of checklists, which include: Initial Development, Follow-Up Development, NIOSH Referral and Recommended Decisions. The checklists will be used to assure quality control of the claims process at the time of each type of action and/or during random review by the Supervisory Claims Examiner (SCE). Each checklist has two sections: 1)Questions relevant to the quality control of the action, and 2)Data integrity of ECMS elements. Included with each checklist is an "Errors for QC Checklist" page, where an explanation of any errors for either section would be explained. [The following procedures will be updated when the Quality Control Checklists are moved on-line into ECMS.]

Previous instructions from the "DEEOIC Quality Control Checklist Policy" memo dated July 10, 2002, noted that "the original QC checklists were developed to help correct errors that were observed in recommended decisions/development letters to claimants and to provide additional guidance for the Energy Case Management System (ECMS)."

Prior to the issuance of the draft Procedure Manual (January 2002), these documents were developed for Claims Examiners (CE) and Senior/Supervisory CEs to help identify any errors (i.e. factual, policy, grammatical, etc). The original intent was to have them serve as a mechanism to ensure that accurate/non-redundant information was being requested from claimants in a courteous manner. These procedures incorporate a more detailed method of review to ensure the quality of work in each District Office.

References: "DEEOIC Quality Control Checklist Policy" memo dated July 10, 2002.

Purpose: To provide the District Offices with procedures for using the Quality Control Checklists.

Applicability: Claims Examiners, Senior Claims Examiners, All Supervisors, District Directors.

Actions:

The CE selects the appropriate checklist, based on the development or decision action.

For **Initial Development** checklist (Attachment 1) and **Follow-Up Development** checklist (Attachment 2):

These checklists are completed by **trainee CE's** for every initial and follow-up development letter written.

The trainee CE prepares Initial Development action or Follow-Up Development action, including but not limited to, letter(s) or correspondence to claimants and/or employment verification facilities. The CE uses either the Initial Development checklist (Attachment 1) for first action, or Follow-Up Development checklist (Attachment 2) for subsequent actions, and fills in the Employee SSN and Employee Name fields. The CE will also either enter all relevant data EXCEPT CLAIM STATUS CODES into the appropriate ECMS fields (employee data, claimant data, worksite data, and medical condition type data), or ensure that they were entered correctly by the case create clerk. On Section 2 of the checklist, for "Claim Status Code," the CE will write the recommended claim status code for the type of development action that is being taken (i.e. **DE,DO,ES**). The CE will NOT enter the claim status code into ECMS until the development letter has been approved and returned by the Senior CE, and has been dated. The status effective date that will be entered by the CE along with the status code will be the date on the development letter (this will be the date that the letter is ready to be sent). The checklist and the correspondence representing the development action is put together on the inside of the case file jacket.

For the first three months that a **trainee CE** has been assigned a caseload, the **trainee CE** routes the case file to the Senior Claims Examiner (SrCE), and completes the location change in ECMS on the Case screen. The checklists will be completed by the SrCE and shared with the Supervisory Claims Examiner (SCE) as part of the training and mentoring process. The checklists may also be completed by the SCE as part of the training and developmental process.

The SCE may require that CE's other than trainees complete these checklists. In this instance, the CE follows the same procedures as discussed above, except the CE will provide the checklists to the SCE not to the SrCE for review and correction.

3. For **NIOSH Referral** checklist (Attachment 3) and **Recommended Decisions** checklist (Attachment 4):

These checklists are completed by **all CE's**.

The CE prepares the NIOSH Referral Summary Document (NRSRD) or the Recommended Decision (RD). The CE uses either the NIOSH Referral checklist or Recommended Decisions checklist and fills in the Employee SSN and Employee Name fields. The CE will also either enter all relevant data EXCEPT CLAIM STATUS CODES related to NIOSH referral/Recommended Decision into the appropriate ECMS fields (employee data, claimant data, worksite data, and medical condition type data), or ensure that they were previously entered correctly. On Section 2 of the checklist, for "Claim Status Code," the CE will write the recommended claim status code for the type of development action that is being taken (i.e. **NI**, or recommended decision codes). The CE will NOT enter the claim status code into ECMS until the action has been approved and returned by the Senior CE, and has been dated. The status effective date that will be entered by the CE along with the status code will be the date on the NRSRD or recommended decision (this will be the date that the letter is ready to be sent). The checklist and the correspondence representing the NIOSH Referral Summary Document or Recommended Decision action is put together on the inside of the case file jacket. The CE routes the case file to the SrCE, and completes the location change in ECMS on the Case screen.

4. The SrCE reviews each item on the checklist, marking the boxes appropriately. For Section 1 of the checklist, (the quality control questions), the SrCE answers either "Yes", "No", or "N/A" for each question. For each "No" answer, the SrCE completes the Errors for QC Checklist. The **Errors for QC Checklist** (Attachment 5) is a continuation page for each checklist, wherein the SrCE explains deficiencies for all of the "No" responses. If there are errors noted on the checklist for

which the SrCE needs to see the corrections, the SrCE will mark the checklist in the "Check here to Return to SrCE/SCE" box.

For Section 2 of the checklist, (the ECMS data elements), the SrCE checks the data entry in ECMS for each numbered question. Each question requires a "Yes" or "No" answer, depending on whether all of the data elements listed below a question are correct. If all elements in ECMS for that question are correct, the SrCE checks the "Yes" box and continues to the next question. If any of the data elements for a question are incorrect, the SrCE checks the "No" box, and then checks off each individual element that is incorrect. For each "No" answer, the SrCE completes the **Errors for QC Checklist**. If there are errors noted on the checklist for which the SrCE needs to see the corrections, the SrCE will mark the checklist in the "Check here to Return to SrCE" box.

After the SrCE completes the checklist, he/she provides a copy to the CE and maintains the original copies in a folder. Separate folders should be maintained for each type of checklist. The complete contents of the **Initial Development** and **Follow-up Development** folders may be provided to the SCE. A random sample of the **NIOSH Referral** and **Recommended Decisions** checklists, from a list provided by the SCE, will be provided to the SCE periodically as required for appraisal purposes.

The SrCE records the completion of each review by writing on the inside of the case file jacket, as follows:

*[for Initial Development]:*

**Review Type Location of SrCE Date Checklist Completed**

DI (e.g.) CBB (review completion date)

*[for Follow-Up Development]:*

**Review Type Location of SrCE Date Checklist Completed**

DF (e.g.) CBC (review completion date)

*[for NIOSH Referral]:*

**Review Type Location of SrCE Date Checklist Completed**

NI (e.g.) CBB (review completion date)

*[for Recommended Decisions]:*

**Review Type Location of SrCE Date Checklist Completed**

RD (e.g.) CBC (review completion date)

The SrCE routes the file to the CE, and changes the location in ECMS on the Case screen. The CE makes all corrections based on the checklist and the Errors for QC Checklist, if any.

9. For **Initial Development** checklist and **Follow-Up Development** checklist:

- a. If the "Check here to Return to SrCE" box is checked, the **trainee CE** routes the photocopy of the checklist, with the case file, to the SrCE/SCE for verification. After the SrCE/SCE reviews the corrections, the SrCE/SCE initials next to each "No" answer, verifying the corrections were made by the **trainee CE**. The SrCE/SCE returns the photocopy of the checklist to the **trainee CE**.
- b. If the SrCE/SCE did not check the "Check here to Return to SrCE/SCE" box, no further action on the checklist is required.

For **NIOSH Referral** checklist and **Recommended Decisions** checklist:

- a. If the SrCE answered "No" to any questions on the checklist:
  - i. If the "Check here to Return to SrCE" box is checked off, the CE

routes the photocopy of the checklist, with the case file, to the SrCE/SCE for verification. After the SrCE/SCE reviews the corrections, the SrCE/SCE initials next to each "No" answer, verifying the corrections were made by the CE. The SrCE/SCE returns the photocopy of the checklist to the CE.

ii. If the SrCE/SCE did not check the "*Check here to Return to SrCE*" box, no further action on the checklist is required. The CE routes the file to the SrCE/SCE, and changes the location in ECMS on the Case screen.

b. If the SrCE/SCE answered "Yes" to all questions on the checklist, since there are no changes for the CE to make, no further action on the checklist is required.

11. For the **Initial Development** checklist and **Follow-Up Development** checklist, the **trainee CE** completes the development action by mailing out the development letter(s) or correspondence. For the first three months that a trainee CE has been assigned a case assignment, the SrCE shares the checklists with the SCE as part of the mentoring and training process.

12. For the **NIOSH Referral** checklist and **Recommended Decisions** checklist, once the review process is complete and the package/decision is ready to be sent, the current process in each DO for sending the packages and coding ECMS will be followed. It is the responsibility of each District Office to ensure that the proper status codes for cases sent to NIOSH and for recommended decisions are entered into ECMS with the proper status effective dates (the date on the NRSD or decision). The **NIOSH Referral** and **Recommended Decisions** checklists are completed by the SrCE and a random sample, designated by the supervisor, will be provided to the SCE periodically as required for appraisal purposes. All checklists will be provided to DO management after the results of the performance sampling have been shared with the employee.

13. The QC Checklist review process is now complete. It is then within the discretion of the CE as to whether or not s/he wants to maintain the photocopy of the completed checklist.

14. Checklists without case or claims examiner identifiers may be provided to management at any time for training and quality control measures. Other than outlined in this bulletin, the checklists completed by the SrCE may not be used in establishing the rating record for the CE's they are mentoring.

15. The checklists will be used for new actions subsequent to the date of this bulletin. Training on the bulletin and the associated checklists will be provided in the District Offices.

#### 16. **Analysis of Results**

The original completed Quality Control Checklists are maintained by the SrCE or SCE as indicated. On a quarterly basis, the District Offices are required to prepare the **Analysis Reports for QC Checklists** (Attachments 6-9) for the DO's Regional Director, and Deputy Director of EEOICPA. This analysis must be completed by the SrCE's, given that management will not be reviewing the checklists for NIOSH referrals and recommended decisions until after the appraisal period. The reports are then sent via E-mail to the Regional Director and DEEOIC Deputy Director.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution: Distribution List No. 1: (Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections.)

### **03-21 Coverage of Uniformed Members of the military**

EEOICPA BULLETIN NO.03-21

Issue Date: April 2, 2003

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Effective Date: April 2, 2003

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Expiration Date: April 2, 2004

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Subject: Coverage of Uniformed Members of the Military

Background: DEEOIC has received several claims for compensation under the Act brought by persons, or their survivors, who based their claims exclusively upon service in the United States military. These claims raised questions as to whether members of the military would qualify as "covered employees" under EEOICPA. The military services include the Army, Navy, Air Force, and Marine Corps. Other organizations within the military, such as the Army Corps of Engineers, would also be affected.

It has been determined that a claimant seeking benefits under EEOICPA cannot obtain such benefits based upon service in the military. However, civilian personnel employed in the military services may be eligible for benefits under EEOICPA.

Reference: Energy Employees Occupational Illness Compensation Act of 2000, 42 U.S.C. § 7384 *et seq.*

Purpose: To provide procedures for processing claims from uniformed members of the military.

Applicability: All staff.

Actions:

1. When a new claim for compensation is submitted, the claims examiner (CE) reviews the documentation submitted with the EE-1 or EE-2 and EE-3 forms. Based on this review, the CE determines whether the claimant has identified any service in the U.S. military.
2. Development of any non-military employment should proceed in the usual manner. If the evidence is unclear as to whether employment is military or non-military, the claimant should be asked to provide clarification. The CE must review any documentation submitted by the claimant and undertake any additional development necessary to clarify the individual's employment status. Upon finding that the claimed employee has military service, and it is the sole "employment" listed on the EE-3 form, the CE must deny the claim. The CE will issue recommended decisions denying the claim on the basis that service in the U.S. military service does not qualify as covered employment under any provision of the EEOICPA.
3. In the conclusions of law portion of the recommended decision, the CE explains that there is no provision for coverage of military service under the EEOICPA. The following wording should be inserted as a summary of the DEEOIC policy. "It has been determined that Congress did not expressly direct that military personnel be included as covered employees under the Act. Military personnel suffering from injuries resulting from Government service are already covered under a separate benefits program for veterans."
4. If military service is just a part of the employment claimed on the EE-3 form, the CE will only

undertake development concerning the non-military claimed employment period(s).

5. The handling of cases involving civilian employees of any of the military services, including the Army Corps of Engineers, will be the subject of a future bulletin, currently under development. The CE must hold all such cases until formal guidance, in the form of a bulletin, is issued.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

### **03-22 Reissue - ECMS Closure Codes**

EEOICPA BULLETIN NO. 03-22

Issue Date: April 2, 2003

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Effective Date: April 2, 2003

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Expiration Date: April 2, 2004

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Subject: Reissue -- ECMS Closure Codes

Background: The purpose of this bulletin is to introduce new procedures for the use of closure codes in ECMS. Bulletin 02-23, "ECMS Closure Codes", required the input of a closure code for each claim. Subsequently, the determination was made that only claims in certain postures would need an actual closure code. This bulletin outlines the instances in which a closure code is required on a claim.

A new closure code, C2 -- Closed, Administrative Closure, has been added to ECMS. The code, CC -- Appealed to District Court, is not a closure code, and thus will not be addressed in this bulletin. It does remain a valid claim status code.

**Note - This bulletin replaces Bulletin 02-23, ECMS Closure Codes.**

References: ECMS FAQs (Frequently Asked Questions) on the DEEOIC shared drive, and EEOICPA Bulletin 02-23, "ECMS Closure Codes".

Purpose: To clarify when and how ECMS closure codes should be used.

Applicability: All staff.

Actions:

The CE is required to input the following ECMS closure codes in the Claim Status History screen as appropriate.

#### **C0 CLOSED - ADMINISTRATIVE ERROR**

- Use this claim status code if a claim is created in error.

#### **C1 CLOSED - CLAIM WITHDRAWN BY CLAIMANT**

· Use this claim status code if the claimant withdraws an unadjudicated claim.

### **C2 CLOSED - ADMINISTRATIVE CLOSURE**

· Use this claim status code if the claimant does not complete and return required forms, and therefore adjudication cannot continue. These include: EE-15, NIOSH Smoking and Race questionnaires, NIOSH OCAS-1.

### **C3 CLOSED - EMPLOYEE DIED**

· Use this claim status code when the employee dies. This code can be used on adjudicated and unadjudicated claims.

· If submitted, bills on unadjudicated and denied cases will be rejected for processing and payment.

· Bills on approved cases will be accepted for processing and possible payment.

### **C8 CLOSED - SURVIVOR DIED PRIOR TO PAYMENT BEING MADE**

· Use this claim status code on a survivor claim if the survivor dies before compensation is paid.

### **C9 CLOSED - RECA CLAIM**

· Use this claim status code if a claim is filed with EEOICP prior to adjudication by the Department of Justice.

2. The following status codes have been determined as unnecessary, and therefore deactivated in ECMS: C4 (Closed, FAB Affirmed DO Denial); C5 (Closed, FAB Reversed DO Recommended Decision and Issued Denial); C7 (Closed, Survivor Paid). All currently used C4, C5, and C7 codes will be programmatically removed from ECMS.

3. Due to the addition of the new C2 code, all previously deactivated C2 codes (Closed, Employee Died, all benefits paid) and all previously deactivated C6 codes (Closed, Employee Died, no activity for 12 months) will be systematically changed to C3 (Closed, Employee Died).

Backfill will not be required.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution: Distribution List No. 1: (Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections.)

**03-23 Review of Dose Reconstruction in the Final Adjudication Branch Hearing Process**

Effective Date: May 2, 2003

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Expiration Date: May 3, 2004

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Subject: Review of Dose Reconstruction in the Final Adjudication Branch Hearing Process

Background: 20 CFR 30.318(a) provides for the review by the Final Adjudication Branch (FAB) of any objections raised by the claimant related to the factual findings upon which NIOSH based its dose reconstruction. If these factual findings are not supported by substantial evidence, the case must be remanded to the district office for referral to NIOSH.

The first sentence of 20 CFR 30.318(b) provides that the methodology NIOSH uses in making radiation dose estimates, established by regulations issued by HHS at 42 CFR 82, is "binding on the FAB." Dose reconstruction is considered to be the "methodology" defined herein. Some of that "methodology" is dictated by 42 U.S.C. 7384n(c) and (d). For example, NIOSH dose reconstruction methods must "be based on the radiation dose received by the employee (or a group of employees performing similar work) . . . and the upper 99 percent confidence interval of the probability of causation in the radioepidemiological tables published under the . . . Orphan Drug Act." The Act also requires NIOSH to consider the type of cancer, past health-related activities (such as smoking), and information on the risk of developing a radiation-related cancer from workplace exposure.

The "methods" of dose reconstruction are set out in 42 CFR Part 82 and include: analyzing specific characteristics of the monitoring procedures in a given work setting; identifying events or processes that were unmonitored; identifying the types and quantities of radioactive materials involved; evaluating production processes and safety procedures; applying certain assumptions that err reasonably on the side of overestimating exposures while achieving efficiency; and using current models for calculating internal dose published by the International Commission on Radiological Protection (ICRP). The NIOSH "efficiency" process of using overestimates and underestimates in dose reconstruction is another example of a methodology. It is these "methods" that cannot be addressed by FAB.

A separate issue from methodology (discussed above) is addressed in the second sentence of 20 CFR 30.318(b), namely "application." This portion of the rule notes that a claimant may present arguments to the FAB that NIOSH made an error in applying the radiation dose estimate methods to his or her individual circumstances. The rule grants the FAB authority to address issues concerning application. Some examples of application include: did NIOSH identify all sources of exposure to the worker; were the air samples chosen to represent the air breathed by the worker appropriate; is the group of co-workers appropriate for determining exposure to the worker; and are appropriate assumptions made about the particular physical or chemical form of radioactive material that was used in the facility where the employee worked and its solubility class. Another application issue might involve the use of the "worst case" approach (which is a NIOSH method). The application aspect of this issue might be whether the "worst case" selected, i.e., the case that provides for the highest radiation dose, was indeed the worst case.

A meeting between DOL and NIOSH management was held in Cincinnati, OH, on November 13 – 14, 2002. The primary topic of discussion was the DOL – NIOSH approach to handling objections to recommended decisions that involve technical issues related to NIOSH dose reconstructions. The actions described below are the product of those deliberations and subsequent discussions between DOL and NIOSH.

Training for district office staff and FAB staff was provided by the DEEOIC Health Physicist as part of the NIOSH training conducted in the National and District Offices in January and the FAB training in February 2003.

Reference: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384n(c) and (d); final rule 20 CFR § 30.318; and 42 CFR Part 82.

Purpose: To provide procedures for FAB review of claimant objections to NIOSH dose reconstruction decisions.

Applicability: FAB staff and DEEOIC Health Physicist.

Actions:

1. The DEEOIC Health Physicist serves as the central liaison between NIOSH and DOL on all dose reconstruction related issues. All objections that come to the Final Adjudication Branch (FAB), that are related to dose reconstruction, must be forwarded to the DEEOIC Health Physicist for review, except as noted in Item 2. This process of consulting the DEEOIC Health Physicist occurs for every case in which a claimant provides objections to matters involving dose reconstruction (at least initially, until further notice).

2. After a recommended decision has been issued, the claimant may submit written objections and request a review of the written record (RWR) or hearing. When a FAB representative reviews the objections to a dose reconstruction, he/she will note that the objection involves dose reconstruction. The Hearing Representative (HR)/CE will review the claimant's objections and first determine whether the objections are solely related to factual findings, i.e., whether the facts upon which the dose reconstruction report was based were correct. This is the only determination the HR/CE may make on his/her own. If the HR/CE determines, after the hearing or the RWR, that the factual evidence reviewed by NIOSH was properly addressed, the HR/CE will accept NIOSH's findings (no referral to the DEEOIC Health Physicist is necessary). If the HR/CE determines that there is substantial factual evidence that was not reviewed by NIOSH, he/she remands the case to the DO for referral to NIOSH for review (no referral to the DEEOIC Health Physicist is necessary). Hearing representatives will NOT determine on their own whether an objection addresses methodology or application. The DEEOIC Health Physicist will make this determination.

Once the HR/CE identifies a technical objection involving methodology or application, either before or after the hearing or through the RWR, he or she must send the technical objection and associated information to the DEEOIC Health Physicist. The DEEOIC Health Physicist reviews the objections and the case. He will then determine whether the objections raised are objections as to factual findings, application or methodology. As part of his review, he will refer pertinent parts of the case and the objections (in writing with specific questions) to NIOSH for their opinion on the objections. Any response from the NIOSH Office of Compensation Analysis and Support (OCAS) to the DEEOIC Health Physicist will be in writing and represent NIOSH's overall opinion on the issues presented. NIOSH will be requested to respond to DOL's inquiries within 30 days of the date they receive the inquiry.

The DEEOIC Health Physicist then forwards the case and his opinion (and NIOSH's opinion, if any) to the FAB. The DEEOIC Health Physicist's opinion and the NIOSH response will NOT be given to the claimants with the final decision (but would be available from the case file).

If none of the objections are deemed plausible by the DEEOIC Health Physicist, the hearing representative incorporates the DEEOIC Health Physicist's findings on these technical issues into the final decision.

If there are any objections to dose reconstruction related to the factual findings the DEEOIC Health Physicist determines to be unsupported by substantial evidence or to an application of methodology issue that should be considered by NIOSH, he notifies the FAB hearing representative and the case is remanded to the district office with instructions to refer back to NIOSH. In most cases, NIOSH

will perform a new dose reconstruction (based on the circumstances of the remand). Remanded cases will more than likely contain new facts that were not previously reviewed in the case by NIOSH.

When a particular objection is directed at NIOSH's methodology, the hearing representative will state in the decision that, based on 20 CFR § 30.318(b), this issue cannot be addressed. However, the hearing representative will only make this statement if so advised by the DEEOIC Health Physicist.

The hearing representative includes a discussion in the remand order of the facts of the case. The hearing representative also includes a separate document for the claims examiner (CE) to forward to NIOSH. This document contains the list of questions to be addressed by NIOSH. The CE prepares a cover letter to forward the FAB questions to NIOSH.

No time frame is imposed on NIOSH regarding how long it will take to return remanded cases (given that a new dose reconstruction may be required).

The DEEOIC Health Physicist tracks trends with regard to the types of objections received, and notifies NIOSH of these trends as necessary. The trends provided to NIOSH include the type of issues raised, case numbers, names, SSN, etc.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

Distribution List No. 4: FAB National Office & Regional FAB Units

Distribution List No. 6: Regional Directors, District Directors, Assistant District Directors, National Office Staff

### **03-24 Probability of Causation Instructions for Certain Special Circumstances**

EEOICPA BULLETIN NO.03-24

Issue Date: May 2, 2003

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Effective Date: May 2, 2003

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Expiration Date: May 3, 2004

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Subject: Probability of Causation Instructions for Certain Special Circumstances

Background: Section 20 CFR 30.115(a) of the final regulations provides that the Office of Workers Compensation Programs (OWCP) will forward eligible claimant application packages to Health and Human Services (HHS) for dose reconstruction. When the dose reconstructions are received from the National Institute for Occupational Safety and Health (NIOSH), the Claims Examiner (CE) determines the probability of causation (PoC) using NIOSH-IREP (42 CFR 81, Subpart E). This Bulletin provides additional details for the processing of claims related to seven issues involving multiple cancers.

The items addressed below were compiled from discussions arising out of the NIOSH training sessions held in each of the district offices in January 2003. These issues have been resolved through communication between DOL and NIOSH.

Reference: Final regulation 20 CFR 30.115(a); 42 CFR 81, Subpart E; and Procedure Manual, Chapter 2-600.

Purpose: Provide procedures for processing PoC for cases involving certain special circumstances with regard to multiple cancers.

Applicability: All staff.

Actions:

When a claimant provides evidence that the covered employee had multiple skin cancers, including relatively large numbers of skin cancers (e.g., greater than 12), the CE will proceed in the following manner. Each malignant skin neoplasm, e.g., basal or squamous cell cancer, will be considered as a separate primary cancer, unless it is noted in the medical record that the neoplasm is a metastatic lesion. For NIOSH dose calculations, the date of diagnosis and the location (e.g., arm, neck, back) for each skin cancer are important and should be indicated in the medical section of the NIOSH Referral Summary Document.

Since IREP only accommodates 12 entries for the equation used in multiple primary cancer situations, the CE must use the 12 primary skin cancers with the highest probabilities of causation (PoCs). If there are more than 12 primary skin cancers and the PoC result is still below 50%, the CE will contact the DOL Health Physicist and he will create an Excel spreadsheet based on the equation for calculating the PoC for multiple primary cancers.

Multiple primary cancer locations for other organs are also a possibility. If more than one primary cancer location is identified for an organ in the medical records, e.g., multiple sites of primary cancer in the lung, the CE should note that fact in the medical section of the NIOSH Referral Summary Document. The CE notes the cancer locations within organ and the diagnosis date. NIOSH will perform dose calculations for each primary cancer site in a specific organ. When the dose reconstruction results are reported by NIOSH, the CE will calculate PoC values for each of the primary cancers in that organ.

2. For cases involving multiple primary cancers wherein the PoC for the cancers is greater than 50% (calculated using the multiple primary cancer equation in 42 CFR 81.25), all of the primary cancers will be covered for medical benefits.

3. In some cases, multiple primary cancers may be present, including CLL, and the PoC is greater than 50%. One situation might involve two or more primary cancers, one of which is CLL, and the PoC based on the other primary cancer(s) is greater than 50% (CLL has a PoC = 0). Another situation might involve a claimant who previously received an award (PoC greater than 50%) and later develops CLL. In these cases, the medical benefits for CLL will be covered.

4. As part of their efficiency review process during dose reconstruction, NIOSH performs preliminary PoC calculations. When a covered employee has more than one primary cancer, NIOSH will only perform dose reconstruction on the cancers until they yield, together, a preliminary PoC greater than 50%. If all primary cancers claimed have not gone through dose reconstruction when the 50% threshold has been reached, NIOSH will not complete dose reconstruction for the rest of the cancers. The CE will only use the dose reconstruction results for the primary cancers provided by NIOSH as long as these data result in a PoC of greater than 50%. The calculation of additional PoCs for the remaining primary cancers, which were not calculated, would only make the final numerical value of the PoC larger. All of the cancers, including those for which NIOSH did not perform a dose calculation, are covered for medical benefits.

5. In cases where there are only secondary cancers and no primary cancers, NIOSH will stop the dose reconstruction after they find a cancer that results in a PoC greater than 50%. They will

provide only the dose reconstruction data for that secondary cancer to the DO for the CE to calculate the PoC. All of the secondary cancers are covered for medical benefits even if no dose reconstruction was performed for a secondary cancer. EEOICP Procedure Manual Chapter 2-600.11(e) provides additional guidance for these situations.

6. There may be cases where there are only secondary cancers and NIOSH's preliminary estimate of the PoC is less than 50%. In these events, NIOSH will send all of the dose reconstructions for the secondary cancers. The CE will perform the IREP calculations for all of the secondary cancers, which is the current practice. The CE selects the site producing the highest estimate for the PoC to adjudicate the claim.

7. For leukemia cases, NIOSH will provide dose reconstruction results for all of the leukemia models, as applicable. Following the standard approach, the CE will make the final PoC determination based on the leukemia model that yields the highest PoC.

Disposition: Retain until incorporated in the Federal (EEOICP) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

### **03-25 Use of Revised EE-5 Employment Verification Form**

EEOICPA BULLETIN NO. 03-25

Issue Date: May 5, 2003

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Effective Date: May 5, 2003

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Expiration Date: May 5, 2003

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Subject: Use of Revised EE-5 Employment Verification Form.

Background: The purpose of this bulletin is to introduce a revised EE-5 Employment Verification Form. Compared to the earlier version, the revised EE-5 incorporates many changes that will enable the district offices to more quickly and accurately collect employment data from the Department of Energy (DOE).

References: 20 CFR § 30.105, PM 2-0400.3-4

Purpose: To provide the district offices with a revised EE-5 Employment Verification Form.

Applicability: Claims Examiners, Senior Claims Examiners, All Supervisors, District Directors.

Actions:

1. The revised EE-5 Employment Verification Sheet replaces all earlier versions. The claims examiner (CE) is to use the revised version in all future instances where employment verification is required by the DOE.
2. The CE is to use established policy and procedure in identifying the appropriate DOE employment verification action site or operation center handling employment verifications for DOE

facilities. Refer to PM 2-0400 & Bulletin 02-02.

3. After the CE determines the DOE action site responsible for verifying claimed employment, a cover letter is to be prepared for the attention of the appropriate DOE point of contact (Attachment 1).
4. Attached to the cover letter will be a separate EE-5 Employment Verification Sheet (Attachment 2) for each claimed employer the DOE must comment on. For each EE-5 required, the CE is to complete the Employee Information section providing the employee name, SSN, claimed employer name and the facility where employment is alleged to have occurred. The form allows the DOE to complete the Employee Information section in situations where they possess information on the employee that was not provided in the claimed work history. The CE is to also include a copy of the EE-1 or 2 Claim for Benefits and EE-3 Employment History. The entire package is to be mailed directly to the responsible DOE point of contact.
5. The CE is not to release an EE-5 unless the claimant has specified employment at a DOE facility covered by the appropriate DOE action site. To make this determination, the CE is to compare claimed employment locations to the list of DOE facilities maintained on the OWA web site or in the Federal register. Because the claimant is asked to identify the entire work history of an alleged employee, it may be difficult to ascertain whether or not the location of employment duties occurred at a DOE facility. As such, the CE must be careful to identify any claimed employment that may potentially be linked to a covered facility. If the claimant has identified an employer without a clear location of where employment occurred and the CE suspects that it may have been at a DOE facility, clarification must be obtained. The CE may suspect employment at a DOE facility, if the claimant indicates employment occurred at a location where work was performed in conjunction with atomic weapons, radioactive materials or DOE weapon programs.
6. #9; If the CE determines that clarification is required, a letter should be prepared advising the claimant that employment must be claimed at a covered facility type such as a DOE facility. The claimant is to be asked to specify the name of the DOE facility where employment is alleged to have occurred. The CE can refer the claimant to the list of covered facilities provided in the Federal Register or online at the DOE webpage. A period of thirty days is to be granted to the claimant to provide evidence establishing claimed employment at a covered DOE facility. If after thirty days the claimant has not responded, or provided evidence that does not identify a claimed DOE facility, the CE can conclude that the claimed employment is not eligible for consideration under EEOICPA. The conclusion of the CE to exclude the employer from consideration is to be noted in the Statement of Facts prepared by the CE in the Recommended Decision.
7. Upon receipt of an EE-5 from the DOE action site, the CE should review it for completeness. The DOE is responsible for marking one of the three options provided on the form and attaching any relevant information. In addition, the DOE representative completing the form must certify its accuracy. Any form that does not meet these requirements is to be returned to the DOE action site for completion. In this situation, the CE should input code DE in ECMS effective the date of resubmission.

8. Once DOE has marked one of the options and signed the EE-5, it is considered the final comment from DOE in regard to claimed employment. No further employment verification information should be sought from the DOE after a completed EE-5 has been received by the CE.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution: Distribution List No. 1: (Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation

Chiefs, Hearing Representatives, District Office Mail & File Sections.)



**U. S. DEPARTMENT OF LABOR** EMPLOYMENT STANDARDS ADMINISTRATION  
OFFICE OF WORKERS' COMPENSATION PROGRAMS  
DIVISION OF ENERGY EMPLOYEES' OCCUPATIONAL

ILLNESS COMPENSATION

(District Office Address)

(Date)

EMPLOYEE NAME:

CLAIM FILE NUMBER:

(DOE Operations Address)

To Whom It May Concern:

A claim for benefits under the Energy Employees' Occupational Illness Compensation Program Act (EEOICPA) has been submitted with respect to the employee named above, claiming employment at a Department of Energy facility. He or she is claiming that employment for the Department of Energy or one of its contractors or subcontractors has contributed to a covered illness. Your facility has been identified as having possession of or access to records that can verify the accuracy of claimed employment.

Included as an attachment to this cover letter is a copy of the claimant's EE-1 or EE-2 Claim for Benefits, the EE-3 Employment History and an EE-5 Employment Verification Sheet.

I have reviewed the claimed work history provided by the claimant and have determined that your site is responsible for verifying the accuracy of a claimed period of employment. Marked on the attached EE-5 is the name of the employee, employee SSN, employer name and the facility where employment is alleged to have occurred.

Please conduct a reasonable search of existing records to determine whether the claimed employment history is accurate. Verify any period of employment including any that is not noted on this form or by the claimant on the EE-3 Employment History. You may make as many copies of the Employment Verification Sheet as necessary.

Please return the completed Employment Verification Sheets to the address provided above. If you have received this request in error or if you have any other concerns, please feel free to contact me directly at \*\*\*-\*\*\*-\*\*\*\* or fax \*\*\*-\*\*\*-\*\*\*\*.

Sincerely,

Claims Examiner

Attachments:

EE-1/2 Claim for Benefits

EE-3 Employment History

## EMPLOYMENT VERIFICATION SHEET

This form is used to verify the employment history of an employee named in a claim for compensation under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA). The employment verification and certification must be completed by an official of the Department of Energy. All attached documentation (EE-1 or EE-2 Claim for Benefits and EE-3 Employment History) should be reviewed prior to completion.

EMPLOYEE INFORMATION (completed by DOE or DOL )			
Employee Last Name	First Name	MI	Social Security Number
Employer Name	Department of Energy Facility		

EMPLOYMENT VERIFICATION (completed by DOE)
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You must select ONE of the following three options and provide the appropriate response. If the employee worked for multiple employers at the facility, you may request additional Employment Verification Sheets from the district office handling the claim or make a copy of a blank sheet.

**OPTION 1 — VERIFIED EMPLOYMENT**

<b>Verified Period 1</b>	From / / to / /	Location of Employment Activities, if known (Building, Laboratory, Site, Mine, etc.)
<input type="checkbox"/> DOE employee <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor		
<b>Verified Period 2</b>	From / / to / /	Location of Employment Activities, if known (Building, Laboratory, Site, Mine, etc.)
<input type="checkbox"/> DOE employee <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor		
<b>Verified Period 3</b>	From / / to / /	Location of Employment Activities, if known (Building, Laboratory, Site, Mine, etc.)
<input type="checkbox"/> DOE employee <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor		
<b>Verified Period 4</b>	From / / to / /	Location of Employment Activities, if known (Building, Laboratory, Site, Mine, etc.)
<input type="checkbox"/> DOE employee <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor		

**OPTION 2 — NO VERIFICATION IS POSSIBLE, BUT OTHER PERTINENT EVIDENCE EXISTS**

The Department of Energy has conducted a reasonable search of available records and is unable to verify the accuracy of the claimed period of employment. However, evidence has been identified that may assist the DOL claims examiner reach a determination of covered employment. Check all that apply and attach pertinent documentation to this form. If needed, a narrative statement can be prepared to summarize findings or provide clarification.

- |  |   |
|--|---|
| <input type="checkbox"/> Security Clearance                                  | <input type="checkbox"/> Medical Health Records |
| <input type="checkbox"/> Proof of Contractual or Subcontractual Relationship | <input type="checkbox"/> Employee ID Badge      |
| <input type="checkbox"/> Dosimeter Badge Number                              | <input type="checkbox"/> Other _____            |

**OPTION 3 — NO EVIDENCE EXISTS IN REGARD TO THE CLAIMED EMPLOYMENT**

The Department of Energy has conducted a reasonable search of available records and is unable to identify any evidence that can be used to either concur or disagree with the accuracy of claimed employment. Furthermore, no documentation or other evidence has been identified that could assist the Department of Labor in making a determination of covered employment.

CERTIFICATION (completed by DOE)
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By signing this employment sheet, the Department of Energy is acknowledging that it has conducted a reasonable search of available records and that the information provided on this sheet accurately reflects the results of that search. For any period of claimed employment that is not verified by this form, the Department of Energy acknowledges that it can neither concur nor disagree with the accuracy of claimed employment.

Print Name \_\_\_\_\_ Telephone No: ( \_\_\_\_\_ ) \_\_\_\_\_

Address \_\_\_\_\_

Signature \_\_\_\_\_ Date: \_\_\_\_\_

## **INSTRUCTIONS FOR COMPLETING EE-5**

DOE is to conduct a reasonable search of existing records in its possession or in the possession of certain of its contractors or other vendors. The purpose of this record search is to determine if any documentation exists that can be used to verify the accuracy of claimed employment for an employee of the DOE or certain DOE contractors or subcontractors. The EE-5 is intended to serve as the official response to the accuracy of claimed employment.

The EE-5 is routed to the appropriate action site based on referral guidance provided by the DOE. The facility where employment is claimed determines the DOE site handling the request. If you have received this form in error, please contact the referring district office. The EE-5 Employment Verification Sheet is to be completed by an individual authorized to respond on behalf of the DOE.

### **EMPLOYEE INFORMATION**

The DOL claims examiner will generally be responsible for listing employee name, SSN, claimed employer or DOL facility where employment is alleged to have occurred. This information will be derived from the EE-1 or EE-2 claim form and the EE-3 work history. A DOE representative may also complete this section in situations where employee information is available that was not listed by the claimant or identified by the claims examiner.

### **EMPLOYMENT VERIFICATION**

Select **ONE** of the three options and provide the appropriate response:

#### **Option 1 - Verified Employment**

If sufficient evidence exists that would allow the DOE to conclude that any period of claimed employment is verifiable, Option 1 should be marked. By verifying employment, the DOE representative is certifying that documentation or other data exists that substantiates the following:

1. The employee worked for the claimed employer;
2. The claimed employer is/was either the DOE or a DOE contractor/subcontractor; and
3. The employee was engaged in employment activities on the premise of the covered facility.

For each period of verifiable employment, list the start and end date. Identify each separate period of continuous employment. For certain contractors or subcontractors, it may be necessary to list multiple periods of continuous employment. If more space is needed, complete a new Employment Verification Sheet and attach all the sheets for same employer together. Specify the location within the premise of the covered facility where employment activities occurred. Be as specific as possible. Mark whether the employee worked directly for the facility as a Department of Energy employee or a contractor or subcontractor at the covered site.

#### **Option 2 - No Verification is Possible, but Other Pertinent Evidence Exists**

In certain situations, it may be that the DOE does not have sufficient evidence to verify the accuracy of the claimed period of employment (The three criteria listed above), but other evidence exists that may be helpful in making a determination of covered employment. If this is the case, Option 2 should be marked and the type of evidence that exists is to be identified.

For example, an individual claims his father worked as a contractor at a covered DOE facility. Research conducted by the DOE representative is unable to identify any personal information to verify employment. However, records are found that establish the facility did have a contract with the employee's company. In this situation, the DOE representative will mark that verification is not possible, but other information is available. Check the entry next to "Proof of Contractual or Subcontractual relationship" and attach a copy of the pertinent evidence to the form or provide a signed statement summarizing the findings.

#### **Option 3 - No Evidence Exists in Regard to the Claimed Employment**

If a reasonable search of records has failed to produce any documentation or other information that can be used to verify the accuracy of the claimed period of employment, Option 3 should be selected. This is only to be marked if the DOE is reasonably certain that no documentation exists pertaining to the employee or his or her employer. Selecting Option 3 indicates that DOE can neither concur nor disagree with the accuracy of alleged employment.

### **CERTIFICATION**

Each separate employer sheet is to be signed by an official of the DOE responsible for the accuracy of any employment verification data provided. If the same individual is certifying multiple employer sheets, it is only necessary to provide contact information on the first sheet. All employer sheets must be signed by a representative of the DOE to be considered complete. The completed sheet is to be returned to the referring Department of Labor district office.

## **03-26 Government agency employment**

EEOICPA BULLETIN NO.03-26

Issue Date: June 3, 2003

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Effective Date: June 3, 2003

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Expiration Date: June 3, 2004

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**Subject:** Eligibility status of an employee of a government agency who can be considered to be a "DOE contractor employee."

**Background:** A number of EEOICPA claims have been filed by current or former employees of state or federal government agencies seeking coverage as a "DOE contractor employee." Many of these claims involve government employees who were conducting contracted work at a DOE facility. Other claims involve employees of regulatory agencies who performed inspections or other duties required by their agency mission at a DOE facility where a contract or an agreement was established. These claims raise the question whether an employee of a state or federal agency can be considered a "Department of Energy contractor employee" within the meaning of EEOICPA, 42 U.S.C. § 7384l(11).

It has been determined that a civilian employee of a state or federal government agency can be considered a "DOE contractor employee" if the government agency employing that individual is (1) found to have entered into a contract with DOE for the accomplishment of one or more services it was not statutorily obligated to perform, and (2) DOE compensated the agency for that activity. This Bulletin does not address EEOICPA eligibility status of uniformed members of the military services. That issue is addressed in EEOICPA Bulletin 03-21. However, a civilian employee of the Department of Defense (DOD) may be eligible for EEOICPA benefits as a "DOE contractor employee." For example, a substantial number of the employees of the United States Army Corps of Engineers (Corps) are civilian, rather than military, employees and the Manhattan Engineer District was a part of the Corps. The Corps also performed work at DOE facilities pursuant to contracts with the Atomic Energy Commission. If a civilian employee of the DOD meets the criteria required to be considered a "DOE contractor employee" he or she is not excluded from EEOICPA coverage merely because they were employed by DOD.

The policy and procedures outlined in this Bulletin only apply to state and federal agencies that have/had a contract or an agreement with a designated DOE facility. Atomic Weapons Employers, Beryllium Vendors, and RECA recipients are excluded.

**"Contract" is defined as:** an agreement that something specific is to be done in return for some payment or consideration. This definition may be satisfied where such an exchange has taken place and the agreement is in the form of a memorandum of understanding, a cooperative agreement, or an actual written contract. An oral agreement may also constitute a contract within the meaning of EEOICPA and be sufficient to make the government agency a "DOE contractor."

**Reference:** Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. §§ 7384l(9)(B)(ii)(II); 7384l(11); 7384l(14); 7384r(d); and 20 CFR § 30.112.

**Purpose:** To provide procedures for processing claims from state and federal government employees seeking EEOICPA coverage as a "DOE contractor employee."

**Applicability:** All staff.

**Action:**

1. When a new claim for compensation is received, the claims examiner (CE) must determine whether the employee is a covered employee under the EEOICPA. EEOICPA makes compensation payable in certain situations to a "DOE contractor employee." To determine if an employee of a state or federal agency is a "DOE contractor employee" the first criterion to be met is whether the

agency performed a service for the DOE. The second criterion is whether the DOE compensated the agency for that activity.

2. While developing the case, the CE must collect as much information as possible from the claimant or the DOE to establish that a contract or an agreement between the state or federal agency and the DOE existed. The CE may conclude that person is a "DOE contractor employee" without obtaining a copy of the actual written contract or agreement. However, it is important to acquire enough evidence to conclude that the employee was employed by a state or federal agency, which performed one or more services for the DOE, and the agency was compensated for the work performed for the DOE. The CE may also conclude that the employee is a "DOE contractor employee" where the document establishing the arrangement between DOE and the state or federal agency is something other than a contract such as a memorandum of understanding or a cooperative agreement. Further, an oral agreement may be considered a contract for the purpose of determining whether an entity is a "DOE contractor."

3. The CE must evaluate the employment history and obtain contractual information and employment verification from the DOE and the state or federal agency. The district office contacts the federal or state agency directly in an effort to obtain the desired information. The District Director will designate an individual in the district office to be responsible for coordinating and contacting federal and state agencies. This approach should facilitate better communications with the agencies, especially for agencies with numerous requests. The point of contact is to provide copies of contracts and contacts to the National Office so that a database can be developed. The burden to establish employment and contractual relationships primarily falls on the claimant, pursuant to 20 CFR § 30.112 and the DOE, pursuant to 42 U.S.C. § 7384v(c). Accordingly, the CE should not pressure a state or federal agency to produce employment or contractual records.

4. Development of any employment for an employee of a state or federal agency proceeds in the usual manner. If the evidence is unclear as to whether employment by a state or federal agency can be determined using the guidance of this Bulletin, the claimant should be asked to provide clarification. The CE must review any documentation submitted by the claimant and undertake any additional development necessary to clarify the individual's employment status. Upon finding that the employee does not meet the definition of a "DOE contractor employee" for a state or federal agency, and this is the sole employment listed on the EE-3 form, the CE must deny the claim. The CE will issue a recommended decision denying the claim on the basis that the employment at the state or federal agency does not qualify the claimant as "DOE contractor employee" as defined in the EEOICPA.

5. If the claimant provides information or identifies himself/herself as military personnel, the CE must send a letter to the claimant stating that uniformed military personnel are ineligible for benefits under the EEOICPA as outlined in EEOICPA Bulletin 03-21. Only civilian employees who performed services for the DOE via military contracts are considered DOE contract employees. Civilian employees of the military for the sake of this program may be contractor or a federal/state employee who worked for a military entity.

6. If at any time the CE is unable to make a determination whether a federal or state employee is eligible under the EEOICPA, the CE refers the issue to the National Office. The referral is made to the Branch Chief for BPRP resolution of the issue through the CE's Supervisor and the District Director. The referral can be made in the form of a case file, copies of pertinent documents from a case file, or electronic mail (E-mail) and includes a summary of the issue and any supporting facts/documents, i.e., copies of payment stubs, employment verification, affidavits, and contracts/agreements.

The CE uses the WS/WR guidance provided in EEOICP Bulletin 03-12 to track this request in ECMS.

Disposition: Retain until incorporated in the Federal (EEOICP) Procedure Manual

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

### **03-27 Estalishing covered subcontractor employment**

EEOICPA BULLETIN NO.03-27

Issue Date: May 28, 2003

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Expiration Date: May 29, 2004

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Subject: Establishing covered subcontractor employment.

Background: The Energy Employees Occupational Illness Compensation Program Act (EEOICPA) extends coverage to subcontractors who have been employed by the Department of Energy (DOE) or a beryllium vendor to perform services at certain covered facilities. Subcontractors of Atomic Weapons Employers are not eligible per 42 U.S.C. §7384l (3). In addition, subcontractor employees who were employed by a DOE facility or beryllium vendor performing activities related to construction and or maintenance are covered employees as defined by section 7384l (B)(11) of EEOICPA and are not limited to the criteria defined under duty station.

For the purposes of this program, the following definitions will apply:

**Contractor** – An entity engaged in a contractual business arrangement with the Department of Energy to provide services, produce materials or manage operations at a beryllium vendor or Department of Energy facility.

**Subcontractor** – An entity engaged in a contracted business arrangement with a beryllium vendor contractor or a contractor of the Department of Energy to provide a service at a beryllium vendor or Department of Energy facility.

**Service** – In order for an individual working for a subcontractor to be determined to have performed a “service” at a covered facility, the individual must have performed work or labor for the benefit of another within the boundaries of a DOE or beryllium vendor facility. Example of workers providing such services would be janitors, construction and maintenance workers.

**Delivery of Goods-** The delivery and loading or unloading of goods alone is not a service and is not covered for any occupation, including workers involved in the delivery and loading or unloading of goods for construction and or maintenance activities.

**Duty Station** – The physical site where a subcontractor employee reports or reported to work at a DOE or beryllium vendor facility. Construction and maintenance workers are deemed to report directly to a DOE facility or Beryllium vendor in instances where they reported to a union hall or a construction or maintenance contracting site and were “dispatched” to a DOE or beryllium vendor facility. Other service contract employees are required to have reported to work at a DOE facility or beryllium vendor.

**Contract** – An agreement to perform a service in exchange for compensation, usually

memorialized by a memorandum of understanding, a cooperative agreement, an actual written contract, or any form of written or implied agreement, is considered a contract for the purpose of determining whether an entity is a “DOE contractor.”

Establishing covered employment for subcontractor employees under the EEOICPA may be complex. The potential exists for hundreds of subcontractor employees to have been engaged, at various times, in employment related activities at DOE and beryllium vendor facilities. In most instances, personnel records pertaining to subcontractors are difficult to locate. Records that do exist, such as security logs or health records are often insufficient to reliably verify employment for a particular employee. As a consequence, the CE must sometimes use affidavits and other types of evidence that have varying degrees of probative value in determining the factual basis of a claim. Given the complexity of establishing covered employment for subcontractor employment, detailed procedural guidance is required.

Reference: 42 U.S.C. § 7384l(7), 42 U.S.C. § 7384l(11)

Purpose: To provide guidance on establishing covered employment for subcontractor employees.

Applicability: All staff.

Actions:

1. Upon the initial review of a non-RECA primary claim, the CE must ensure two criteria are met. First, the CE is to decide whether the claimed condition on the EE-1 or EE-2, is appropriate for the type of employment facility where employment is alleged to have occurred. For example, a claim for beryllium sensitivity or chronic beryllium disease must indicate employment for a beryllium vendor or a DOE facility where beryllium was present; chronic silicosis must indicate employment mining tunnels at DOE facilities in Nevada or Alaska; or cancer must indicate employment at a DOE facility or atomic weapons employer. Second, if a covered condition has been claimed, the medical documentation must substantiate the presence of cancer, beryllium illness, or silicosis (EEOICPA PM 2-400). If the evidence of record does not satisfy either of these initial elements, the CE must request such evidence from the claimant. After appropriate development, the CE is to determine whether or not the evidence is sufficient to proceed with additional development or that the claim is to be denied for failure to establish a covered condition.
2. After it is determined that a covered medical condition has been claimed, the CE is to review the employment history provided on the EE-3(Employment History Form)or other pertinent employment documentation provided by the claimant. The first item that the CE must discern is the name of the employer. An employer can be an individual or a private business that hired the employee to perform a service in exchange for a wage. In order for a subcontractor employee to be determined to have performed work or labor for DOE or a beryllium vendor, the individual must have performed a “service” for the benefit of the DOE or beryllium vendor within the boundaries of the facility. For all such employees, mere delivery of goods alone, including the loading or unloading of goods, is insufficient to establish that a service was performed for the benefit of DOE or beryllium vendor. For all such employees, the employee must establish that his/her duty station is/was on the premise of the DOE or beryllium vendor facility. Construction or maintenance workers who initially report to a union hall or construction or maintenance facility but are then “dispatched” to a DOE or beryllium vendor facility to perform these types of services are deemed to have a duty station at the DOE or beryllium vendor facility. Examples of jobs associated with construction and maintenance include: asbestos workers, boiler workers, bricklayers, carpenters, electrical workers, elevator constructors, iron workers, laborers, operating engineers, plasterers and cement masons, painters, roofers, sheet metal workers, plumbers, construction workers, and pipe fitters.
3. Once the CE has reviewed all employment documentation initially submitted by the claimant, he or she must compare the claimed work history against the web-based list of covered facilities provided by the Department of Energy as per established procedures.

Subcontractors will not appear on the web based DOE list of covered facilities. Only major contractors are listed under each facility. The web based list contains the name of the facility, the facility type, dates and a brief historical summary of the facility which should be utilized by the CE throughout the development of employment.

4. If the CE compares the work history provided by the claimant with the list of covered facilities and is unable to locate the claimed facility, the CE prepares a letter to the claimant. The letter advises the claimant that he/she has not identified employment that would qualify for coverage under the EEOICPA. The letter instructs the claimant to provide clarification or evidence within 30 days as to whether or not employment occurred at one of the covered facilities. If after thirty days no response or evidence is received to identify employment at a covered facility, the CE may prepare a recommended decision denying coverage due to the fact that employment at a covered facility has not been identified.

5. Once the CE has determined that the claimant identified employment with a subcontractor performing covered services at a DOE or beryllium vendor facility during a covered time period, the CE must determine the relationship between the employer and the facility where the employment was claimed. The CE reviews the name of the DOE facility claimed; the city, state or any other description of where the employment activities took place (duty station); the name of the company the employee worked for; and the type of services performed. The CE will also consider the employee's position title to determine the type of services performed. Based on this information, the CE will often be able to infer the relationship.

An example of direct employment for a Be vendor (a DOE contractor) is employment for Brush Wellman in Elmore, Ohio. Alternatively, if a claimant states that he/she worked for ABC Electric Company at the Brush Wellman facility in Elmore, Ohio, the CE is to proceed with an initial finding that the claimant is identifying subcontractor employment, hired by ABC Electric Company to perform work or labor at a covered Be vendor facility. An example of direct DOE employment would be if the claimant identified employment at the Portsmouth Gaseous Diffusion Plant (GDP) in Piketon, OH, working for Goodyear Atomic Corporation, an established contractor at the Portsmouth GDP. However, if the claimant stated he/she was hired by Grinnel Corporation to perform work for the Goodyear Atomic Corporation, the CE would find that the claimant is identifying subcontractor employment by an independent contractor (Grinnel Corporation) hired to perform work or labor at a covered facility.

**Caution:** The CE must be careful to note that in some instances, a specific employer may serve as a contractor at one facility, and a subcontractor at another. Moreover, the CE should be aware that different names can sometimes refer to the same facility e.g. Berylco-Beryllium Corporation of America. Therefore, evidence must be thoroughly evaluated to determine whether the employee may have worked as a subcontractor at a DOE or beryllium vendor facility.

If the employee claims employment for a subcontractor, including construction and or maintenance, at a DOE facility or beryllium vendor and the CE identifies the contractor as a possible subcontractor, the code "S" (subcontractor) must be entered in the "Employment Classification" screen in ECMS indicating a subcontractor has been potentially identified per EEOICPA Bulletin 03-05. If the relationship is unclear to the CE further development of the situation is necessary.

If the employee has claimed subcontractor employment during a period that the facility was designated an AWE, the CE is to prepare a letter to the claimant advising him or her that such employment is not covered under the Act. The CE is to reference 42 U.S.C. §7384l (3) and state that this section of the EEOICPA only extends coverage to direct employees of an AWE. For example, if a claimant states that the employee worked for XYZ Company at Simonds Saw & Steel, in Lockport, NY, the CE must make an initial finding the claimant is identifying employment that is not covered under the EEOICPA.

The claimant must be granted 30 days to either demonstrate direct employment for the AWE or other employment that would qualify him/her for consideration under the EEOICPA. If after thirty days the claimant has not provided a response, or produced a response that does not qualify him/her for further consideration, and has no other period of claimed employment that may qualify for benefits, the CE can proceed with a recommended denial of benefits on the grounds that there is no evidence of covered employment.

6. If the CE determines that the claimant is alleging employment at a covered facility but determines that the claimant was not performing a “service” as defined above, the CE prepares a letter to the claimant. The letter advises the claimant that he/she has not identified or submitted evidence that he/she performed a “service” for the benefit of the DOE as defined above. An example of a service is the installation or maintenance of electrical lines. However, the mere delivery of the material used to install the lines **would not** be a service. The claimant is to be provided 30 days to submit evidence that during his/her employment he/she performed a “service” for the benefit of the DOE. If after 30 days no response or evidence is submitted to establish that the claimant performed a service, the CE prepares a recommended decision denying coverage due to the fact that the evidence did not establish that the employee performed a service under the EEOICPA.

7. There are three developmental components that must be met before a decision of covered employment can be reached. The CE must determine whether **1)** the claimed period of employment occurred during a covered time frame as alleged, **2)** a contract to provide “covered services” existed between the claimed subcontractor and the DOE employer or Be vendor at a covered facility (during a covered time frame), and **3)** whether employment activities (work or labor) took place on the premises of the covered facility.

8. The first developmental component in establishing covered subcontractor employment is to verify the claimed period of employment. The CE is to verify employment with the DOE as outlined in EEOICPA PM 2-400. The CE is to refer to EEOICPA Bulletin 02-34, “Procedures for using the on-line ORISE database,” for any facility that is included in the ORISE database.

9. The CE is to complete the Employee Information section on Form EE-5, Employment Verification Sheet, with the employee name, SSN, employer name and DOE facility where the employment is alleged to have occurred. The CE forwards Form EE-5, the DOE cover letter and copies of Forms EE-1 or EE-2 and Form EE-3 (or other employment evidence) to the appropriate DOE point of contact (POC) or the appropriate corporate verifier.

The DOE should complete Form EE-5 by verifying the claimed employment, to include the dates and location of employment activities and whether the employee was a DOE employee, contractor or subcontractor. The DOE should supply copies of any records pertaining to the employee such as, a security clearance record, security logs, health records or dose records that would assist the DOL in verifying employment, verifying a contractual relationship, or respond that no evidence exists. Any primary records connected to radiation dose monitoring should not be submitted (these will be requested by NIOSH at a later date if a non-SEC cancer is established), but the DOE should be asked to summarize the information reported in such records, i.e., the complete monitoring history dates will assist in determining covered SEC employment for 250 days and whether a contract existed between the employer and the DOE.

10. At the same time as the development of employment with the DOE, the CE will prepare an initial development letter to the claimant and request a signed Form SSA-581 and any other employment information that would establish covered subcontractor employment.

The letter outlines the types of evidence that could establish covered employment including affidavits, pay stubs, tax records, union documentation, pension records and copies of contracts if available. The CE will not ask the claimant to provide a copy of the original contract. The CE will provide the claimant with Form SSA-581 and instructions for its completion. The CE advises the

claimant that in the absence of alternative employment evidence, the DOL will request SSA records on receipt of the signed form. The CE provides the claimant with 30 days to provide a response and a signed Form SSA-581.

11. Once a response is received from the DOE, the CE is to review the evidence to determine if it is sufficient to establish the components of covered employment. If the DOE or corporate verifier has reported on the EE-5 that the claimed period of employment is completely accurate, the CE can find that 1) employment has been verified, 2) that a contract existed between the subcontractor and the DOE employer and 3) that the employment activities took place on the premises of the covered facility. If the DOE was unable to verify employment as alleged, the CE will need to review Form EE-5 and any other information provided by the DOE. It may be that the DOE is able to provide evidence substantiating one or two of the required covered employment components, but not all. For example, the DOE may not have sufficient evidence to verify the claimed dates of employment, but they do know that the claimed employer (subcontractor) did have a contract to provide services at a covered facility during a specified time frame. In any event, if the DOE is unable to verify employment, the CE is to continue to develop employment to meet the three requirements of covered subcontractor employment as indicated. The CE must enter Code **ER** or **CR** as appropriate in the claims status history screen in ECMS with the effective date as the date received in the DO for any claim in which the DOE provided a complete response, a response in which they provided all available information, or when they have no employment records (EEOICPA Bulletin 03-07).

12. On receipt of a claimant's response to the initial development letter, which should include a signed SSA-581, the CE is to review any documentation submitted to determine if the evidence submitted proves that the employee worked for the claimed employer. The CE has the discretion to determine whether the evidence is sufficient to prove employment without information from the SSA (the claimant may have submitted Forms W-2 or other tax related documents). However, the existing evidence must be of sufficient quality to convince the CE that the claim of the employee is accurate. In the recommended decision, the CE must include a complete and thorough discussion of the rationale and evidence upon which the conclusions are based. Outside of verification by the DOE or a corporate verifier, a single source of evidence affirming the period of claimed employment is generally not sufficient. It will take multiple pieces of collaborative documentation to reliably establish the accuracy of claimed employment. Moreover, should the CE decide that the SSA employment verification is unnecessary to prove the employment occurred as alleged, he or she must continue to develop the two remaining components of covered subcontractor employment, i.e., evidence of a contractual relationship and that the employee worked on the premises of a covered facility.

If the CE decides that the evidence proves the claim of employment without the SSA records, it must also be true that the SSA records will not assist in a determination concerning the existence of a contract or the presence of the employee on the premises of the covered facility.

However, if the CE reviews the information from the claimant and is not convinced that it is sufficient to verify employment, the SSA-581 claims package should immediately be referred to the National Office.

13. After the SSA responds to the request for employment evidence, the CE will need to review the information in conjunction with the other evidence in the case. The CE must determine whether the first component of covered employment, proving that the employee worked for the employer as alleged, is substantiated. On receipt of SSA records requested by the NO the CE enters the **SR** code with the effective date the response is received in the office regardless of whether the information addresses all, part, or one of the employment periods (EEOICPA Bulletin 02-14).

14. For more detailed specifics regarding the verification of employment for a DOE facility and or beryllium vendor, the CE should refer to EEOICPA Bulletin 02-02.

15. It is not necessary to prove beyond a reasonable doubt the accuracy of the alleged period of

employment. Rather, the evidence must be of such a convincing quality to assure the adjudicator of the reasonableness of the claim. The CE has the discretion to assign probative value to certain forms of evidence. For example, the CE may find that an affidavit from a former CEO of the employer has significantly more probative value than that of one from a relative who may benefit from any award granted. The CE must use his or her own judgment to ascertain whether the evidence taken as a whole is sufficient to verify employment. In most instances, it will be the totality of multiple separate pieces of different evidence that prove that the employee worked for the employer as alleged. A single affidavit affirming the claimed period of employment at a covered facility will generally not suffice. On the other hand, for example, if the CE obtains an affidavit from a co-worker in conjunction with notes from the work site nurse indicating visits for check-ups, a stronger case can be made affirming the claim of employment.

16. If the CE determines that the evidence does not establish the claimed period of employment, the CE is to issue a recommended decision to deny based on lack of evidence to establish covered employment at a DOE facility.

17. If the CE concludes that the evidence is sufficient to verify the claimed dates of covered employment, it is then necessary to determine the existence of a contractual connection between the employee's primary employer and the covered beryllium vendor or DOE facility. This is the second component of covered contractual employment. The evidence must establish that a contractual relationship existed, that it existed during a covered time frame for the facility, and that the contract was for services that constitute covered services.

To establish this component of covered employment, it is not necessary for the claimant, the Department of Energy or another entity to provide the actual contract or subcontract for the CE to affirm the existence of covered employment (although if available it would assist in establishing a contractual relationship). It is the totality of all the evidence received that will determine whether a contract or subcontract did exist.

For example, if the claimant is alleging that he/she worked as an electrician installing and/or repairing electrical lines for ABC Electric at the Medina Facility in Texas during a covered time frame, the SSA has confirmed employment for that same period, and the Electrician Local Union provided a statement on union letterhead that states they contracted with ABC Electric Co. to perform work at the Medina Facility during the covered time period, the CE can proceed with a finding that the employee performed a covered service at a covered facility during a covered time period for a DOE subcontractor employer.

Another example would be if the claimant is alleging he/she worked as a construction laborer for Grinnel at the Portsmouth GDP in Piketon, OH and the DOE provided a Personnel Clearance Master Card (security clearance record) indicating the employee's name and job title, the name of the DOE facility, the company requesting security clearance (Grinnel), and the dates clearance was requested and/or granted, the CE can proceed with a finding that the Grinnel had a contract with Portsmouth GDP as a subcontractor. A Personnel Clearance Master Card is evidence that security clearance was requested by the subcontractor for the employee to perform work at the DOE facility and is sufficient to establish evidence of a contractual relationship (20 CFR 30.206(d)(1)).

**However, it is not sufficient, in and of itself, to establish that the individual employee was present on site at the facility.**

18. If the CE determines that the evidence does not establish that a contractual relationship existed between the claimed employer and the DOE facility, the CE issues a recommended decision to deny based on lack of evidence to establish a contractual relationship (component 2).

19. Should the evidence substantiate that a contract or subcontract existed during a covered time period, the CE must then make a finding concerning the employee's duty station and the type of work performed. The employee must have performed a service on the premise of the facility. With the exception of construction and maintenance workers, the employee must also have reported to

work at the facility (duty station must have been at the facility).

Construction and maintenance workers are determined to have a duty station at the covered facility if they performed construction or maintenance on the premise.

20. The premise of a covered facility is defined differently according to its classification under the statute.

**42 U.S.C. 7384l (12)** defines a DOE facility as any building, structure, or premise, including the grounds upon which such building structure, or premise is located (A) 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 Executive Order No. 12344, dated 2/1/82 pertaining to the Naval Nuclear Propulsion Program); and (B) 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.

**42 U.S.C. 7384n(a)** provides that a covered beryllium employee shall, in the absence of substantial evidence to the contrary, be determined to have been exposed to beryllium in the performance of duty for the purpose of the compensation program if, and only if, the covered beryllium employee was 1) employed at a DOE facility; or 2) present at a DOE facility or a facility owned and operated by a beryllium vendor, because of employment by the United States, a beryllium vendor, or a contractor or subcontractor of the DOE; during a period when beryllium dust, particles, or vapor may have been present at such facility.

In making a finding regarding the presence of the employee on the premise of the covered facility, the ideal form of the evidence will be security logs, health records or a summary of the radiation dose monitoring. Security logs are defined as signature logs that provide the employees name and dates of entry or exit at the DOE facility. They are different from security clearance records in that they provide evidence of entry onto the premises of the facility, whereas the security clearance documents just provide evidence that security clearance was requested but does not establish presence on the facility.

In many instances the CE will be required to utilize affidavits (Form EE-4 or other form of affidavit). It will be left to the judgment of the CE to determine whether the evidence of file is sufficient to establish the presence of the employee on the premises of the covered facility. As a general rule, a single affidavit from a spouse or family member without other collaborative documentation is insufficient to make a reasonable finding of fact. However, an affidavit from a co-worker is of much greater value. Other examples of documentation are punch cards, time and attendance forms, minutes from employment related meeting(s) that list the claimant in attendance and written correspondence from the employer.

21. If the CE can verify that the employee worked for a subcontractor during a covered time frame **on the premises** of a designated DOE or beryllium vendor facility, a finding can be made for covered employment. In the case of a subcontractor employee not involved with construction or maintenance, the CE must also find that the employee's duty station was at the facility. The CE may then proceed with the normal adjudication of any outstanding issues regarding the claim.

22. If the CE cannot verify the employee's presence on the premises of a designated DOE or beryllium vendor facility, and cannot verify the duty station if necessary, the CE issues a recommended decision to deny based on lack of evidence to place the claimant on site at the covered facility.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

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## Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, District Directors, Hearing Representatives, District Office Mail & File Sections

### **03-28 EEOICPA coverage of the citizens of Marshall Island**

EEOICPA BULLETIN NO.03-28

Issue Date: June 19, 2003

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Expiration Date: June 19, 2004

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#### **NOTE: This bulletin replaces Bulletin 02-22, Suspension Code for Marshall Islands Cases**

Subject: EEOICPA Coverage of Citizens of the Marshall Islands

Background: DEEOIC has received claims for compensation under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA or Act) from citizens of the Republic of the Marshall Islands (RMI). These claims are based on employment related exposure arising from the United States' nuclear weapons testing program conducted in the RMI. The Department of Energy (DOE) facility, known as the Pacific Proving Ground, was a weapons test site in the South Pacific from 1946 to 1962. The district offices were previously instructed (per Bulletin 02-22) to halt adjudication on these cases while the National Office researched the Marshallese eligibility.

In 1986, the United States and the Marshall Islands terminated their trust territory relationship through enactment of the Compact of Free Association (Compact). The Compact is a comprehensive document encompassing a variety of agreements, including a number of socio-economic, agricultural, and monetary compensation programs. Under the Compact, the RMI became an independent sovereign nation and U.S. laws ceased to apply unless otherwise specified.

It has been determined that RMI citizens are not eligible for benefits under the EEOICPA as a result of employment in the Marshall Islands. Claims alleging exposure in the Marshall Islands from claimants who are not RMI citizens should be referred to the National Office.

Reference: Energy Employees Occupational Illness Compensation Act of 2000, 42 U.S.C. § 7384 *et seq.*

Purpose: To provide procedures for processing claims from citizens of the Marshall Islands.

Applicability: All staff.

#### Actions:

1. Any claim in which the EE-1 or EE-2 form indicated the employee was a non-U.S. citizen and worked for the Department of Energy in the Marshall Islands should have been coded **HM (Hold - Marshall Islands)** on the claim status screen in ECMS. **HM** is a suspension code that indicates the claim is from the Marshall Islands and all adjudication is on hold until notified by the National Office to release the hold status and commence the adjudicatory process per Bulletin 02-22. This Bulletin provides the notification to proceed with the adjudication of these cases.
2. When a new claim for compensation is submitted, the claims examiner (CE) reviews the documentation submitted with the EE-1 or EE-2 and EE-3 forms. Based on this review, the CE

determines whether the claimant identified any employment in the Marshall Islands.

3. Development of any claims relating solely to employment in the Marshall Islands should proceed in the usual manner. The CE must review any documentation submitted by the claimant and undertake any additional development necessary to clarify the individual's employment status and citizenship. Upon finding that the claimed employee is/was a citizen of the RMI, and that the only claimed employment was in the RMI, the CE must deny the claim. The CE shall issue a recommended decision denying the claim because interpreting EEOICPA to apply to such claims would constitute an invasion of the sovereignty of the RMI. The ramifications of this interpretation are further addressed in the next Action.

4. In the conclusions of law portion of the recommended decision, the CE shall explain that there is no provision for coverage of claims based upon employment in the RMI by citizens of the RMI under the EEOICPA. The following wording should be inserted as a summary of the DEEOIC policy:

Since interpreting EEOICPA to apply to claims by RMI citizens based upon employment in the RMI would constitute an invasion of the sovereignty of the RMI, the presumption against applying a statute extraterritorially is invoked. Furthermore, there appears to be no contrary intent by Congress to rebut that presumption and, to the extent that Congress has expressed any intent, its approval of the Compact of Free Association between the United States and the RMI suggests that it did not intend for EEOICPA to apply extraterritorially in this situation.

5. Claims of RMI citizens that do not relate solely to employment in the Marshall Islands and claims of persons other than RMI citizens alleging employment-related exposure in the Marshall Islands should be referred to the National Office.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

### **03-29 Interim procedures for processing claim for new medical condition**

EEOICPA BULLETIN NO. 03-29

Issue Date: June 30, 2003

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Effective Date: June 30, 2003

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Expiration Date: June 30, 2004

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Subject: Interim procedures for processing claims for new medical conditions on existing EEOICP claims.

Background: New guidelines have been established for the filing of additional medical conditions after initial filing of a claim. If a new medical condition is claimed after a Final Decision, the new condition is considered a new claim. However, ECMS is not equipped currently to accept a new

claim for an already existing claimant. ECMS will be reconfigured to accept new claims for existing claimants, but until that time, this bulletin addresses the temporary procedures set up to accommodate new medical conditions for adjudicated claims.

References: Policy teleconference, dated 3-6-03; ECMS FAQ's.

Purpose: To provide interim procedures to the District Offices and FAB on how to process new claims for existing claimants.

Applicability: All staff.

Actions:

When a case has a Final Decision, and a current claimant on the case submits a subsequent claim form for a new covered medical condition, the new claim filing is recorded in ECMS by entry of claim status code '**RD**'. (Specific data entry instructions are contained in Action items 2-11, below.) A new claim form for new covered medical conditions is required once a Final Decision is issued. Please note: this does not apply to consequential conditions. New covered conditions, including all cancers, CBD, Beryllium Sensitivity, and Chronic Silicosis, would only be considered new medical conditions if they were not previously addressed in a Final Decision. If the claimant only submits new medical evidence for a covered condition, e.g., medical test results indicating the presence of a covered condition, then the District Office or FAB will send a letter requesting that the claimant submit a new claim form. The DO or FAB will only request a claim form and develop the evidence further if it is apparent that coverage is likely. The letter will address the receipt of the new evidence and explain the need for an EE-1 or EE-2 claim form in order to establish the new claim. If, however, the claimant submits new medical evidence only for a non-covered medical condition, a claim form would not be requested. If a claimant does submit a new claim form for a new non-covered condition, or states that he/she wants the medical condition to be considered, the CE must develop and adjudicate the new claim.

If the case file is at the District Office, and a new claim form is received after a Final Decision has been issued, the CE enters the new claim in ECMS by entering an '**RD**'- **Development Resumed** - in the claim status history screen of ECMS. The status effective date of the '**RD**' code will be the date stamp of receipt in a DOL Office (either district office or FAB office) on the claim form or the date stamp of receipt on the initial piece of evidence that instigated the claim, whichever is earliest. Once the '**RD**' code and effective date are entered in ECMS, the CE enters the newly claimed medical condition on the Medical Condition screen in ECMS. The CE reviews the new condition and begins development of the new medical evidence.

Development of the case will continue through new Recommended and Final Decisions. All of the previously entered ECMS claim status codes in the claim status history are all still relevant for the case, and will apply to the new claim. They do not need to be re-entered following the '**RD**' code. However, all new development for the claim is now required to be entered in ECMS, including all further development claim status history codes.

If the new medical condition becomes an accepted condition, and the CE enters an "**A**" in the *cond status field*, then the *med status effective date* is determined by the following:

- If the original claim was for Beryllium Sensitivity, and was Accepted, and the new claim is for CBD, the *med status effective date* of the CBD is the same as the acceptance date of the Beryllium Sensitivity.
- For all other medical conditions, if the diagnosis date is prior to the new claim filing date, the *med status effective date* would be the new claim filing date.

5. If the case file is at FAB and a new claim form or medical evidence for a new covered medical condition is received prior to a Final Decision, and the case is in posture for **Acceptance of benefits**, FAB will enter the new claim in ECMS by entering an '**RD**'- **Development Resumed** - in

the claim status history screen of ECMS. The status effective date of the 'RD' code will be the date stamp of receipt (in DOL or the Resource Center) on the claim form or the date stamp on the initial piece of evidence that instigated the claim, or the postmark, whichever is earliest. Once the 'RD' code and effective date are entered in ECMS, the FAB sends out a letter to the claimant, addressing the receipt of the new claim form, and instructing the claimant that the District Office will further develop the new condition when the case is returned to the DO. The FAB CE enters the 'DO' - **Developing Other** - claim status code in ECMS on the claim status history screen, using the status effective date of the letter. The FAB CE then enters the newly claimed medical condition on the Medical Condition screen in ECMS. The FAB CE will not begin development of the new medical condition. This will be done by the DO CE upon return in the District Office (see Action item 3).

6. FAB will then issue a Final Decision based exclusively on the Recommended Decision as quickly as possible so that any lump sum payments and/or medical benefits can be awarded, and return the case file to the District Office for development of the new medical condition. The new medical condition will neither be addressed in the Final Decision, nor will it be considered a Remand. When returning the case file to the District Office, the new claim form is attached to the front cover, with a memo alerting the DO of the new claim form.

7. There is, however, one exception to Action item 6: if the newly claimed medical condition can be accepted without any further development by the FAB, the accepted condition will also be addressed in the Final Decision. For example, if the District Office's recommendation is to accept benefits for an SEC cancer, and prior to the Final Decision the claimant submits all the evidence necessary to show s/he has another primary SEC cancer, the newly claimed condition would also be part of the Final Decision. Only accepted new medical conditions can be included in the Final Decision, having not been addressed in the Recommended Decision. This would not be allowable for a new claimed condition that is for denial of benefits. All denied elements of a Final Decision must have been addressed in the Recommended Decision.

8. If the case file is at FAB, prior to a Final Decision, and the case is in posture for Denial of benefits, and a new claim form is submitted (for a covered or non-covered condition), or medical evidence for a new medical condition is received, the case will be Remanded back to the District Office.

9. When a case is at FAB and a Final Decision has already been issued, and a new claim form for a new medical condition is received, the new claim form will be entered in ECMS by FAB upon receipt(see Action item 5). The case file will then be returned to the District Office, with a memo alerting the DO of the new claim form.

10. At any time during the development process, prior to the District Office's rendering of a Recommended Decision, any new claimed medical conditions will be added to the existing claim and developed. Regardless of how the new medical condition is claimed, either by a new EE-1 or EE-2 form, or by medical evidence submitted, the new condition is still part of the original claim. In this situation, the 'RD' - **Development Resumed** - claim status code would not be entered in ECMS. This code is only for claims in which a Recommended Decision has already been issued.

If a case has a Final Decision, and the claimant sends in additional medical evidence for the original medical condition(s) or a new claim form for the same medical condition(s) already adjudicated, this is not considered a new claim. For either of these occurrences, the 'RD' - **Development Resumed** - claim status code would not be entered in ECMS. Development cannot be resumed for any claims after a Final Decision without either a new claimed medical condition or a Modification Order. [Guidance is forthcoming regarding reopening claims.] New evidence for previously adjudicated medical conditions must be reviewed by either FAB or National Office.

12. All of the above Action items are temporary procedures for the handling of new claims for new medical conditions. When ECMS is reconfigured to accept new claims for existing claimants, ECMS will be updated with the specific claim information, and further instructions will be provided

at that time.

Disposition: Retain until permanent procedures are distributed.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution: Distribution List No. 1: (Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, Operation Chiefs, District Directors, FAB District Managers, Hearing Representatives, District Office Mail & File Sections.)

### **03-30 Verifying Employment for Bechtel Power Corporation employees at the Hanford site**

EEOICPA BULLETIN NO. 03-30

Issue Date: August 13, 2003

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Effective Date: August 13, 2003

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Expiration Date: August 13, 2003

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Subject: Verifying employment for Bechtel Power Corporation employees at the Hanford site.

Background: The Department of Energy (DOE) has reported that they have no records in their possession which allow for the verification of employment of employees or subcontractors of the Bechtel Power Corporation at the Hanford site in Washington.

In an effort to expedite the process of employment verification for employees or subcontractors of Bechtel Power Corporation, the claims examiner (CE) is to forgo submitting the EE-5 to the DOE. Verification of claimed employment is to be sought from other sources such as the claimant or the Social Security Administration.

This bulletin does not apply to employees or subcontractors of Bechtel National or any other Bechtel Corporation or subsidiary.

Reference: 42 U.S.C. § 7384l (11), 20 C.F.R. § 30.105

Purpose: To provide guidance on obtaining employment verification for employees or contractor employees of Bechtel Power Corporation at the Hanford site in Washington.

Applicability: All staff.

Actions:

1. When a new claim for compensation is received, the CE reviews the documentation accompanying the EE-1 or EE-2. Based on this review, the CE determines whether the claimant has identified direct or subcontractor employment with Bechtel Power Corporation at the Hanford site.
2. Once the CE has determined that the individual is claiming work at the Bechtel Power Corporation at the Hanford site, the CE is to insert a single copy of the April 9, 2003 Memorandum from Thomas Rollow (Attachment 1) and the July 8, 2003 correspondence from Roger Anders (Attachment 2) confirming that Bechtel Power was a subcontractor at the Hanford Site. It will not be necessary for the CE to submit the EE-5 to the Department of Energy for completion. Both the Memorandum from Thomas Rollow and the correspondence from Roger Anders will serve as the

Department of Energy's response to the EE-5 Employment Verification form.

3. Once the CE has inserted the required documentation in the file, he or she must seek employment verification documentation from sources other than the DOE. Potential sources of information include the claimant, or the Social Security Administration. Refer to PM 2-400 to 2-500 for further guidance on employment verification.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

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Director, Division of Energy Employees

Occupational Illness Compensation

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[Attachment 1: Memorandum from Tom Rollow](#)

[Attachment 2: Correspondence from Roger Anders](#)

### **03-32 Certification by NCI of Certain Primary Cancers**

EEOICPA BULLETIN NO.03-32

Issue Date: August 27, 2003

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Effective Date: August 27, 2003

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Expiration Date: August 27, 2004

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Subject: Clarification by NCI of Certain Primary Cancers

Background: 20 CFR 30.5 (dd)(6) states that specified cancers are "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." The Department of Labor (DOL) forwarded five issues to the National Cancer Institute (NCI) for their review and classification to determine which conditions could be considered as cancers under the EEOICPA. The five issues sent to NCI were:

- Definition of brain cancer;
- Cancers of the pleura and the lung;
- Considering cancer of the urethra as a cancer of the urinary bladder; and
- Clarification of the terminology related to a diagnosis of polycythemia vera.
- Clarification regarding the classification of essential thrombocytosis.

The NCI's responses to these five issues are as follows.

Regarding the definition of brain cancer, it is appropriate to consider only malignancies of the brain under this category, excluding intracranial endocrine glands and other parts of the central nervous

system (CNS). Under this definition, the brain is the part of the central nervous system contained within the skull, i.e., the intracranial part of the CNS consisting of the cerebrum, cerebellum, brain stem, and diencephalon. Benign and borderline tumors of the brain would be excluded from this definition, including borderline astrocytomas.

Cancers of the pleura are different from lung cancers. NCI noted that the tissues of these two organs are different as well as the etiologies of their malignancies. Accordingly, the pleura and the lung are separate organs and a cancer of the pleura is not lung cancer.

Concerning the urethra, it is contiguous with the urinary bladder and is lined by the same type of urothelial cells as the bladder. NCI noted that urethral cancer is so similar to bladder cancer from epidemiologic, biologic, and clinical perspectives that it is appropriate to consider cancer of the urethra as a cancer of the urinary bladder.

In Bulletin 03-11, polycythemia rubra vera and its variant polycythemia vera with leukocytosis and thrombocytosis were considered as bone cancer. We requested clarification as to whether all of the descriptors were necessary in a diagnosis of polycythemia vera. Leukocytosis and thrombocytosis are supplemental descriptors of polycythemia vera. NCI noted that a diagnosis of polycythemia vera (also called polycythemia rubra vera, P. vera, primary polycythemia, proliferative polycythemia, spent-phase polycythemia, or primary erythremia) is sufficient by itself to be classified as a malignancy of the bone marrow.

Our final question for clarification involves the classification of essential thrombocytosis. NCI recognizes essential thrombocytosis as a synonym of essential thrombocythemia. The current NCI tumor coding book (ICD-O-3) identifies essential thrombocythemia as a malignancy. It is in the same category as polycythemia vera, which DOL considered to be a bone cancer (see Bulletin 03-11). Since essential thrombocytosis is a malignancy of the bone marrow, it should be considered as bone cancer.

Reference: Energy Employees Occupational Illness Compensation Program Act of 2000, As Amended, 42 U.S.C. § 7384 *et seq.*, Section 7384l(17); 20 CFR Part 30, Section 30.5 (dd); and letters from A. Fritz, NCI, to P. Turcic, DOL, dated April 28, 2003, and Dr. E. G. Fiegel, NCI, to J. Kotsch, DOL, dated July 28, 2003.

Purpose: To notify District Offices of the clarification of five medical conditions as primary cancers.

Applicability: All staff.

Actions:

1. The Claims Examiners (CEs) in the district offices and FAB, as well as the FAB Hearing Representatives (HRs) must consider brain cancer, per EEOICPA Section 7384l(17), to include only malignancies of the brain, excluding intracranial endocrine glands and other parts of the central nervous system (CNS). Under this definition, the brain is the part of the CNS contained within the skull, i.e., the intracranial part of the CNS consisting of the cerebrum, cerebellum, brain stem, and diencephalon. Benign and borderline tumors of the brain are excluded from this definition, including borderline astrocytomas.
2. Cancers of the pleura and the lung are separate organs. A cancer of the pleura is not lung cancer. If cancer of the pleura is claimed, the CE/HR does not consider this malignancy as lung cancer, which is a specified cancer (per EEOICPA Section 7384l(17)).
3. Cancer of the urethra should be considered by the CE/HR as a cancer of the urinary bladder, which is a specified cancer per EEOICPA Section 7384l(17).
4. The CE/HR must consider a diagnosis of primary polycythemia vera (also called polycythemia rubra vera, P. vera, primary polycythemia, proliferative polycythemia, spent-phase polycythemia, or primary erythremia) to be bone cancer, which is a specified primary cancer per EEOICPA Section

7384l(17)(B).

5. The CE/HR must consider essential thrombocytosis or essential thrombocythemia as bone cancer, which is a specified primary cancer per EEOICPA Section 7384l(17)(B).

6. The CE/HR must look for any other cases of the medical conditions discussed above that could make the claimant eligible for benefits, either as a member of the SEC or through dose reconstruction. The District Office/FAB must perform a review of the ECMS to determine which cases may have already been denied or sent to NIOSH. Using the results of that review, the District Office/FAB must pull any cases for review in accordance with this bulletin. If modification orders are required, the District Office/FAB must send the case to the National Office.

7. The CE/HR must continue to distinguish these medical conditions from other specified cancers, as appropriate, using the appropriate ICD-9 codes on all paperwork and in ECMS.

For the conditions to be considered as cancer of the urinary bladder, the ICD-9 codes are 189.3 and 188.9 for the urethra and urinary bladder, respectively.

For the conditions to be considered as bone cancers, the ICD-9 code for polycythemia rubra vera and its variant polycythemia vera with leukocytosis and thrombocytosis is 238.4, essential thrombocytosis is 238.7, and essential thrombocythemia is 289.9. The ICD-9 code for malignant neoplasm of the bone is 170.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual

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Occupational Illness Compensation

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## **2002 EEOICP Final Bulletins**

### **02-01 Modification orders**

EEOICPA BULLETIN NO.02-01

Issue Date: March 28, 2002

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Effective Date: December 28, 2001

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Expiration Date: March 26, 2003

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Subject: Modification Orders and ECMS Status Code Updates

Background: On December 28, 2001, the President signed into effect amendments to the EEOICPA. Prior to the enactment of the amendments, the National Office was in the process of issuing payment on a number of claims. As of the day of enactment, any claim with a payment pending and that was affected by the changes to the statute was withdrawn from the payment process. In most of these situations, a payee was disqualified due to changes in the definition of eligible survivor.

It was determined that the final decisions issued by FAB for these cases would be vacated on the

motion of the Director and remanded to the district offices for issuance of a new recommended decision. The determination to vacate a final decision of the FAB on motion of the Director is being designated as a "Modification Order." Comparatively, a "Remand Order" is an action taken by FAB to reverse or modify a recommended decision prior to the release of a final decision.

Given that this was the first instance in which a modification order was issued, procedures were needed in order to provide guidance to the district offices. In addition, new claim status codes have been developed to track claims containing a modification order. A series of "M" status codes have been added to ECMS.

Reference: 20 CFR § 30.320

Purpose: To notify the District Offices of the process for handling modification orders.

Applicability: All staff.

Actions:

1. The National Office is responsible for issuing any modification order. A modification order will originate from the Director of the Division of Energy Employees Occupational Illness Compensation. The modification order will contain language describing the basis for vacating a final decision and explain the action to be undertaken by the district office. Once the Director signs the modification order, the case file is packaged for return to the appropriate district office.
2. Any case file received by the district office (DO) that includes a modification order is to be treated as a priority claim action. The case file should be logged as received in the DO and referred to the responsible claims examiner (CE).
3. Once the CE has received the case file and has had an opportunity to review the material, it is necessary to verify the claim status in ECMS. Depending on the nature of the modification order, the following M codes are to be applied:

**ML** - Modification order has been issued due to change in law. This code is to be entered into ECMS when the basis for a modification order is a legislatively authorized change to EEOICPA.

**MU** - Modification Order has been released due to change in the underlying facts of the case. This includes the following scenarios, subsequent to the issuance of a final decision:

- Payee death prior to payment
- New survivor identified
- Technical error

**MO** - Modification Order has been released for some other administrative reason. This status code is entered whenever the basis for a modification does not fall into any other "M" claim status category.

The effective date for code input corresponds to the date affixed on the signed modification order.

The National Office or National FAB office is responsible for entering M codes in ECMS. However, the DOs are to ensure that the appropriate code has been input in the ECMS.

4. Prior to the addition of M status codes in ECMS, the F7 (FAB Remand) code was input for any case that contained a modification order. If the CE reviewing the claims status history in ECMS notes the F7 code was input in a case file containing a modification order, he/she should revise the ECMS coding to accurately reflect the claims status history. The F7 claim status code should be deleted and replaced with the appropriate M code.

5. After the CE has verified the correct case status in ECMS, he/she may proceed to take action consistent with instructions provided in the modification order.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual

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Illness Compensation

**02-02 DOL employment verification**

EEOICPA BULLETIN NO.02-02

Issue Date: March 29, 2002

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Effective Date: March 11, 2002

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Expiration Date: March 29, 2003

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Subject: Department of Labor verification of employment at certain facilities

Background: Since the inception of the Energy Employees' Occupational Illness Compensation Program, the Department of Energy (DOE) has been responsible for conducting employment verifications for each claim received by the Division of Energy Employees Occupational Illness Compensation (DEEOIC). For certain atomic weapon employer (AWE) facilities and beryllium (Be) vendor facilities, DOE did not initially have access to personnel records that could verify employment. In order to overcome this difficulty, DOE made arrangements with corporate entities to obtain information concerning past or present employees of particular facilities. These corporate verifiers had access to personnel records that were otherwise unavailable to the government. Using information collected from these corporate verifiers, DOE was able to complete form EE-5. Unfortunately, the DOE was unable to identify a corporate verifier for some of the AWE or Be vendor facilities. For employees who worked at a facility for which there are no employment records and no corporate verifier, DOE has been unable to conduct employment verification.

In an effort to streamline the process of employment verification, the DEEOIC will assist DOE in the process of verifying employment for employees who worked at AWE and Be vendor facilities for which corporate verifiers have been identified. In addition, for those facilities for which the DOE has not identified a corporate verifier and does not have access to employment records, DOL will request employment information from the claimant, and if necessary, the Social Security Administration (SSA).

The DOE has produced three lists naming facilities for which they (1) are unable to obtain any employment verification documentation, (2) have identified a corporate employment verifier or (3) have access to employment records. The CE will reference these lists to ascertain the correct routing procedure for employment verification.

Reference: 20 CFR 30.105

Purpose: To notify the District Offices of the process for verifying employment at certain AWE or Be vendor facilities.

Applicability: All staff.

Actions:

1. Attached to this bulletin are three lists (Attachments 1, 2 and 3). The lists are designated as follows:

List 1: No Corporate Verifier

This list provides the names of AWE and Be vendor facilities where the DOE has no employment records and has not been able to locate a verifier.

List 2: Known Corporate Verifiers

This list provides the names of AWE and Be vendor facilities where the DOE has identified a corporate entity that owns the facilities' employment records. Moreover, the list will provide specific instructions for how each corporate entity is to be contacted with requests for employment verification.

List 3: DOE Verifiers

This list provides the names of AWE and Be vendor facilities where the Department of Energy, or one of its contractors, owns the employment records, and DOE is able to verify employment directly.

2. Each list should be maintained by the District Office and distributed to all CEs. When necessary, revision to the lists will be transmitted to the district offices in the form of an updated bulletin.

3. Resource centers no longer submit employment verification packages to the DOE. Instead all new claim packages prepared at a resource center are referred directly to the responsible District Office (DO). Once received by the DO, the case create clerk will input the appropriate tracking data and refer the claim to the appropriate claims examiner (CE).

4. Upon receipt of a new primary claim, the CE is to determine whether a covered condition is being claimed on the EE-1 or EE-2. If there is no indication that a covered condition is claimed, the CE is to develop medical documentation to establish the existence of a covered condition. A primary claim is not to be developed for employment verification unless a covered condition has been claimed.

5. After it is determined that a covered medical condition has been claimed, the CE is to review the employment history provided on the EE-3, Employment History form. For each potential DOE employer, contractor or subcontractor, AWE, or Be employer, the CE will need to determine the course of action necessary to obtain employment verification. This process begins with a comparison of the claimed employers provided on the EE-3 and lists 1, 2 or 3.

6. If the CE reviews the employment history and notes a claimed employer from List 1 or 2, a single copy of the DOE Verification of Employment Memorandum is to be printed out and spindled to the case file (Attachment 4). This memorandum substitutes for the EE-5. The insertion of the memo into the case file record will serve as DOE's response to the claimed employment.

7. For a claimed employer appearing on List 1: No Corporate Verifier, the CE will first review any evidence substantiating the period of employment. This evidence can include contemporaneous evidence, such as wage statements, tax documentation, union records, pension information or affidavits. The CE must determine whether the documentation is sufficient to verify the entire claimed period of employment. It is not necessary for the evidence to be so conclusive as to substantiate the employment beyond all possible doubt. However, the evidence should be of sufficient quality to convince the CE of the validity of the period of employment being claimed. The CE should apply reasonable discretion in weighing any evidence submitted by a claimant.

The CE should be aware of the fact that the amount of documentation required depends on the type of claim. For a claim of beryllium illness, the evidence need only establish the presence of the employee at a designated vendor. Conversely, for a cancer claim, the CE would need to verify the entire period of employment being claimed. The CE can accept as factual any period of employment for which there is sufficient and reliable documentation.

If the evidence is deficient for any period of claimed employment, the CE is to prepare correspondence to the claimant requesting additional information. Attached to the request should be a blank SSA-581 form (Attachment 5). The SSA-581 authorizes the release of earnings information from the Social Security Administration. The CE should advise the claimant in the cover letter that the SSA-581 should be completed for the reason that it may become necessary for the Department of Labor to obtain earnings records from the Social Security Administration. Once the correspondence is prepared and released to the claimant, ECMS is to be updated with a DE status code.

The claimant should be provided up to thirty days to respond. If after 30 days, the claimant does not produce any new evidence or provides evidence that does not support the period of claimed employment, the CE should prepare the case for referral to the SSA. The CE, at his or her discretion, can grant an extension to the period of time the claimant may take to produce documentation. However, the period of time permissible is not to exceed sixty days.

The package to SSA should include a cover letter requesting SSA to perform an earnings search on the named employee. Attached to the cover letter should be SSA form 581 that indicates the name of the employee, employee SSN, and the years of employment to be researched. In addition, a signed release from the claimant must be attached. Upon release of the package to the SSA, the CE will input code SS.

Depending on the response from the SSA, the CE is to either accept the period of employment as verified or deny the claimed period of employment due to lack of viable documentation. The CE should document receipt of the SSA response by entering code SR into ECMS.

8. For any employer named appearing on List 2: Known Corporate Verifiers, the CE is to review the "Contacting Instructions" provided by the DOE. This is an attachment to List 2 that provides details concerning how a CE is to contact individual corporate verifiers. Each corporate verifier has particular requirements concerning the information to be provided. These corporations have no obligation to supply information to DOL, as there is no formal contract or payment to them. Therefore, it is important that the CE complies with the instructions listed in the "Contacting Instructions."

It is not necessary for the CE to submit a copy of documentation from the case file to the corporate verifier. Instead, a cover letter providing the details of the request should be submitted. In most instances, the cover letter will include the employee name, SSN, date of birth, employer name and the dates of claimed employment. The CE will input code CS into ECMS, to represent a request for evidence from a corporate verifier.

Once the CE has received a response from the corporate verifier, code CR should be entered into ECMS. Any response should then be reviewed to determine if it is sufficient to verify the claimed period of employment. If the corporate verifier affirms the entire period of employment being claimed, the CE is to accept the period as factual. If the corporate verifier is unable to substantiate the claimed period of employment or can substantiate a portion of it, the CE is to request additional information from the claimant. In particular, the CE will need to advise the claimant that the DOL has been unable to verify employment for certain dates through independent means. Moreover, the claimant is to submit any contemporaneous documentation substantiating employment for any unverified period of employment. Code DE should be input in any instance where the CE is sending an inquiry to the claimant requesting employment evidence. Upon receipt of additional evidence, the CE will review it to determine whether it is sufficient to make a finding accepting the claimed period of employment as factual.

9. For any employer named that appears on List 3: DOE Verifiers, the CE will need to prepare an employment package for referral to the DOE Workers' Advocacy Office in Germantown, Maryland. The DOs should follow the same routine that has been in place for case referrals to the Germantown office. The referral package will contain an EE-5 form with the top portion completed by the CE, a

copy of the primary claim form and a copy of the EE-3 Employment History form. The package will then be sent to the Germantown Office for the EE-5 to be completed. ECMS will be updated with the ES status code. When DOE completes the EE-5 and returns it to the DO, the CE should update ECMS with the ER status code. If DOE verifies the period of claimed employment, the CE should accept the employment period as factual. Otherwise, the CE should prepare a request for the claimant to submit any contemporaneous documentation substantiating the period of claimed employment. ECMS should be updated with the DE status code in this instance. If the claimant is unable to provide reliable evidence sufficient to establish the claimed period of employment, the CE is to issue a finding that employment at the named facility has not been substantiated.

10. Any other employment claimed by the employee should continue to be verified through the appropriate operations center listed on the EEOICPA Claims Routing Guidance list.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

#### Energy Employees Occupational Illness Compensation Program Act:

##### Employment Verifications:

#### **List 1: No Corporate Verifier**

Listed below are those facilities which appear on the Department of Energy (DOE) Covered Facilities List which meet the following criteria:

1. The Department of Energy has no employment records pertaining to them.
2. The Department of Energy has not been able to locate a corporate entity which does own these facilities employment records.

This list will be periodically updated.

Facility Name Location

(As it appears on the DOE Covered Facilities List):

Aliquippa Forge Aliquippa, PA

**Also Known As:** Vulcan Crucible Steel Co.

**Also Known As:** Universal Cyclops, Inc.

Anaconda Co. Waterbury, CT

**Also Known As:** Anaconda Co.

**Also Known As:** American Brass Co.

**Also Known As:** Fabric Metal Goods Plant

and West Tube Mill

**Also Known As:** Anamet, Inc.

Armour Research Foundation Chicago, IL

**Also Known As:** ARF

**Also Known As:** Institute of Technology

**Also Known As:** IIT

Associated Aircraft Tool

and Manufacturing Co. Fairfield, OH

**Also Known As:** Force Control Industries

**Also Known As:**

**Also Known As:** Former Dixie Machinery ownership

Birdsboro Steel & Foundry Birdsboro, PA

Clarksville Facility Clarksville, TN

**Also Known As:**

**Also Known As:** Mason & Hanger - Base

Copperweld Steel Warren, OH

Crane Co. Chicago, IL

Dana Heavy Water Plant Dana, IN

**Also Known As:** Ordance Works

Dow Chemical Company Walnut Creek, CA

**Also Known As:** ,

Du Pont Deepwater Works Deepwater, NJ

**Also Known As:** Du Pont Deepwater Works

**Also Known As:** Chambers Chemical and Dye Works

**Also Known As:** E.I. Du Pont de Nemours and Co.

**Also Known As:** Dyeworks-Carney's Point

**Also Known As:** Deepwater Dyeworks

Du Pont-Grasselli Research Laboratory Cleveland, OH

**Also Known As:** Standard Oil of

Edgerton Germeshausen & Grier, Inc. Boston, MA

Frankfort Arsenal Philadelphia, PA

Gerity-Michigan Corp. Adrian, MI

**Also Known As:** successor to Canton Drop Forging

and Manufacturing

GSA 39<sup>th</sup> Street Warehouse Chicago, IL

**Also Known As:** Resco Air Conditioning and Heating Co.

Heppenstall Co. Pittsburgh, PA

**Also Known As:** Tippins Inc

Horizons, Inc. Cleveland, OH

**Also Known As:** Celcon Metals Co.

**Also Known As:** Lamotite, Inc.

Lake Ontario Ordnance Works Niagara Falls, NY

**Also Known As:** LOOW

**Also Known As:** Storage Site (NFSS)

La Pointe Machine and Tool Co. Hudson, MA

Madison Site (Speculite) Madison, IL

**Also Known As:** Madison Site (Speculite)

Middlesex Sampling Plant Middlesex, NJ

**Also Known As:** MSP

Mitts & Merrel Co. Saginaw, MI

**Also Known As:** Genesse Packing Co.

Monsanto Chemical Co. Dayton, OH

**Also Known As:** Laboratory

**Also Known As:** Project

National Beryllia Haskell, NJ

**Also Known As:** Cercom Quality Products

**Also Known As:** General Ceramics

National Bureau of Standards,

Van Ness Street Washington, DC

**Also Known As:** University of the

Naval Research Laboratory Washington, DC

Oliver Corp. Battle Creek, MI

Painesville Site (Diamond Magnesium Co.) Painesville, OH

**Also Known As:** Uniroyal

**Also Known As:** Lonza Chemical

Philadelphia Naval Yard Philadelphia, PA

**Also Known As:** Abelson's Pilot Plant

**Also Known As:** Koppers Co.

**Also Known As:** Naval Boiler & Turbine Laboratory

Picatinny Arsenal Dover, NJ

Pinellas Plant Clearwater, FL

Seneca Army Depot Romulus, NY

Seymour Specialty Wire Seymour, CT

**Also Known As:** Reactive Metals Inc.

**Also Known As:** National Distillers and Chemical Co.

**Also Known As:** Bridgeport Brass Co.

Shattuck Chemical Denver, CO

**Also Known As:** Dawn Mining Corp.

**Also Known As:** Denn Mining Corp

Simonds Saw and Steel Co. Lockport, NY

**Also Known As:** Simonds Saw and Steel Div., Guteri

Special Steel Corp.

**Also Known As:** Allegheny-Ludlum Steel Corp.

South Albuquerque Works Albuquerque, NM

**Also Known As:** American Car and Foundry

**Also Known As:** ACF Industries, Inc.

Superior Steel Co. Carnegie, PA

**Also Known As:** Copper Weld Inc.

**Also Known As:** and Block 102J210

United Nuclear Corporation Hematite, MO

**Also Known As:** Mallinckrodt Chemical Works,

Chemicals Div.

University of California Berkeley, CA

**Also Known As:** Resources & Development

Vitro Manufacturing (Canonsburg) Canonsburg, PA

**Also Known As:** Vitro Manufacturing (Canonsburg)

**Also Known As:** Vitro Rare Metals Co.

Vulcan Tool Co. Dayton, OH

Westinghouse Atomic Power East Pittsburgh, PA

Development Plant

**Also Known As:** Plant

Westinghouse Electric Corp. (New Jersey) Bloomfield, NJ

**Also Known As:** North American Phillips Lighting

Winchester Engineering  
and Analytical Center Winchester, MA

**Also Known As:** Public Health Service; N.E. Radiological Laboratory

**Also Known As:** Northeastern Radiological Health Laboratory

**Also Known As:** National Lead Co.

**Also Known As:** AEC Raw Materials Development Laboratory

Energy Employees Occupational Illness Compensation Program Act:

Employment Verifications:

**List 2: Known Corporate Verifiers**

**&**

**Contact Instructions**

Listed below are those facilities which appear on the Department of Energy (DOE) Covered Facilities List which meet the following criteria:

1. The Department of Energy has no employment records pertaining to them.
2. The Department of Energy has located a corporate entity which owns employment, or other, records which enable the corporate entity to verify the employment of people who used to work for these facilities.
3. The Department of Energy will provide contact information for DOL to use in requesting information from corporate verifiers. This information will arrive under separate cover.

This list will be periodically updated.

Facility Name Location

(As it appears on the DOE Covered Facilities List):

Allegheny-Ludlum Steel Watervliet, NY

Allied Chemical Corp. Plant Metropolis, IL

**Also Known As:** General Chemical Division

Aluminum Co. of

America (Pennsylvania) New Kensington, PA

**Also Known As:** Aluminum Research Laboratories

**Also Known As:** New Kensington Works (of ALCOA)

Pine and 9th Sts

America Chain and Cable Co. Bridgeport, CT

Armco-Rustless Iron & Steel Baltimore, MD

**Also Known As:** Armco Steel

Ashland Oil Tonawanda, NY

**Also Known As:** Ashland #1

**Also Known As:** Ashland #2

**Also Known As:** Ashland Oil Company

**Also Known As:** Haist Property

**Also Known As:** E. Haist and co owners

Babcock & Wilcox Co. (Virginia) Lynchburg, VA

**Also Known As:** Tubular Products Div., Lone Star Tech

Baker-Perkins Co. Saginaw, MI

**Also Known As:** APV Chemical Company

Beryllium Corporation

of America (Hazleton) Hazleton, PA

**Also Known As:** Cabot Corporation

**Also Known As:** Beryllium Corp. of (Ashmore)

**Also Known As:** Berylco

**Also Known As:** Kawecki-Berylco

Beryllium Corporation

of America (Reading) Reading, PA

**Also Known As:** Kawecki-Berylco

**Also Known As:** Berylco

**Also Known As:** NGK Metals Corp.

**Also Known As:** Cabot Corporation

**Also Known As:** Beryllium Corp. of (Tuckerton)

Beryllium Production Plant

(Brush Luckey Plant) Luckey, OH

**Also Known As:** Brush Beryllium

**Also Known As:** Luckey Site

Bethlehem Steel Lackawana, NY

Bliss & Laughlin Steel Buffalo, NY

**Also Known As:** B & L Steel

**Also Known As:** Cold Drawn

Blockson Chemical Co. Joliet, IL

**Also Known As:** Blockson Chemical Group

**Also Known As:** Olin Mathieson

**Also Known As:** Olin

Bridgeport Brass Co. Adrain, MI

**Also Known As:** Bridgeport Brass Co.

**Also Known As:** Uranium Metal Extrusion Plant

**Also Known As:** General Motors, Chevrolet Mfg. Div.

**Also Known As:** National Distillers and Chemical Corp.

**Also Known As:** Martin

**Also Known As:** A.C. Spark Plug

Bridgeport Brass Co.,

Havens Laboratory Bridgeport, CT

**Also Known As:** Reactive Metals, Inc.

**Also Known As:** Piedmont Mfg.

Brush Beryllium Co. (Detroit) Detroit, MI

Brush Beryllium Co. (Cleveland) Cleveland, OH

**Also Known As:** Brush Wellman Co.

**Also Known As:** Motor Wheel Corp.

**Also Known As:** Magnesium Reduction

Brush Beryllium Co. (Elmore) Elmore, OH

Brush Beryllium Co. (Lorain) Lorain, OH

Carboloy Co. Detroit, MI

**Also Known As:** General Electric Metallurgical Products Department

Ceradyne, Inc. Santa Ana, CA

Chapman Valve Indian Orchard, MA

**Also Known As:** Chapman Valve Manufacturing Co.

**Also Known As:** Crane Co.

Cincinnati Milling Machine Co. Cincinnati, OH

**Also Known As:** Cincinnati Milacron, Inc.

Combustion Engineering Windsor, CT

**Also Known As:** Asea Brown Boveri

Connecticut Aircraft

Nuclear Engine Laboratory (CANEL) Middletown, CT

**Also Known As:** Pratt and Whitney Corp.

**Also Known As:** Advanced Nuclear Engineering Lab

**Also Known As:** United Aircraft Corp.

Coors Porcelain Golden, CO

**Also Known As:** Coors Ceramic

Electro Metallurgical Niagara Falls, NY

**Also Known As:** ElectroMet Corp.

**Also Known As:** Umetco Minerals Corp.

**Also Known As:** Union Carbide Corp.

**Also Known As:** Electro-Metallurgical Corp.

Elk River Reactor Elk River, MN

**Also Known As:** Facility

**Also Known As:** United Power Association

Fenn Machinery Co. Hartford, CT

**Also Known As:** Fenn Manufacturing Co.

Fenwal, Inc. Ashland, MA

General Atomics La Jolla, CA

**Also Known As:** GA

**Also Known As:** Division of General Dynamics

**Also Known As:** John Jay Hopkins Laboratory for Pure  
and Applied Science

General Electric

Co.(Ohio) Cincinnati/

Evendale, OH

**Also Known As:** GE Evendale

**Also Known As:** GE Cincinnati

**Also Known As:** GE Lockland

**Also Known As:** Air Force Plant 36

General Electric Plant

(Indiana) Shelbyville, IN

General Electric Vallecitos Pleasanton, CA

Granite City Steel Granite City, IL

**Also Known As:** Old Betatron Building

**Also Known As:** General Steel Castings

Hallam Sodium Graphite Reactor Hallam, NE

**Also Known As:** Hallam Nuclear Power Facility

**Also Known As:** HNFP

**Also Known As:** Hallam Nuclear Power Facility

Harshaw Chemical Co. Cleveland, OH

**Also Known As:** HarshawFiltrol Partners

**Also Known As:** Uranium Refinery

Heald Machine Co. Worcester, MA

Herring-Hall Marvin Safe Co. Hamilton, OH

**Also Known As:** Herring Hall and Marvin Safe Co.

**Also Known As:** Diebold Safe Co.

**Also Known As:** HHM Safe

Hooker Electrochemical Niagara Falls, NY

**Also Known As:** Hooker Chemical Co.

**Also Known As:** Occidental Chemical Corp.

**Also Known As:** Occidental Chemical Corp., Speciality Chemical Div.

**Also Known As:** Hooker Chemical and Plastics Corp.

Huntington Pilot Plant Huntington, WV

Jessop Steel Co. Washington, PA

Koppers Co., Inc. Verona, PA

LaCrosse Boiling

Water Reactor LaCrosse, WI

Ladish Co. Cudahy, WI

Linde Air Products Buffalo, NY

**Also Known As:** Linde Air Products Div. Of Union Carbide Corp.

**Also Known As:** Linde

**Also Known As:** Linde Center

**Also Known As:** Plant

**Also Known As:** Plant

**Also Known As:** Linde Chandler Plant

Linde Ceramics Plant Tonawanda, NY

**Also Known As:** Laboratory

**Also Known As:** Linde Air

**Also Known As:** Praxair

Mallinckrodt Chemical Co.,

Destrehan St. Plant St. Louis, MO

**Also Known As:** Downtown Site

Massachusetts Institute

of Technology Cambridge, MA

**Also Known As:** MIT,

McDaniel Refractory Co. Beaver Falls, PA

**Also Known As:** Vesuvius McDanel

**Also Known As:** Vesuvius Division of Cookson Group

Metals and Controls Corp. Attleboro, MA

**Also Known As:** M&C Nuclear

**Also Known As:** Metals and Controls Nuclear Corp.

**Also Known As:** M & C

**Also Known As:** Instruments

Norton Co. Worcester, MA

Nuclear Materials

and Equipment

Corp. (NUMEC) (Apollo) Apollo, PA

**Also Known As:** Babcock & Wilcox

**Also Known As:** Atlantic Richfield Corp. (ARCO)

Nuclear Materials and Equipment

Corp. (NUMEC)

(Parks Township)Parks Township, PA

**Also Known As:** Babcock & Wilcox

**Also Known As:** Atlantic Richfield Corp. (ARCO)

Nuclear Metals, Inc. Concord, MA

**Also Known As:** NMI

**Also Known As:** Starmet, Inc.

**Also Known As:** MIT Met Lab

**Also Known As:** Whittaker Corp. Nuclear Metals Division

Piqua Organic Moderated Reactor Piqua, OH

**Also Known As:** Nuclear Power Facility

**Also Known As:** PNPF

Reed Rolled Thread Co. Worcester, MA

Shippingport Atomic Power Plant Shippingport, PA

**Also Known As:** Shippingport

Speedring, Inc. Culman, AL

**Also Known As:** Axsys Technologies

Sylvania Corning Nuclear Corp.

Bayside Laboratories Bayside, NY

**Also Known As:** Corning Nuclear Corp. - Bayside Laboratories

**Also Known As:** Sylvania Electric Products, Inc

**Also Known As:** Metallurgical Laboratory

**Also Known As:** Sylvania Electric Company, Atomic Energy Division

**Also Known As:** Bayside Laboratories

**Also Known As:** Sylcor

Sylvania Corning Nuclear Corp.

Hicksville Plant Hicksville, NY

**Also Known As:** General Telephone and Electronics Laboratories (GTE)

**Also Known As:** Sylcor

Tennessee Valley Authority Muscle Shoals AL

**Also Known As:** Uranium Recovery Pilot Plant and Laboratory

**Also Known As:** TVA

Torrington Co. Torrington, CT

University of Chicago Chicago, IL

**Also Known As:** Eckhardt Hall

(+ West Stands, New Chem. Lab and

Annex, Ryerson Physical Lab, \ Kent Chem. Lab)

U. S. Steel Co.,

National Tube Division McKeesport, PA

Ventron Corporation Beverly, MA

**Also Known As:** Metal Hydrides Corp.

**Also Known As:** Ventron Div., Morton Thiokol, Inc.

W. E. Pratt Manufacturing Co. Joliet, IL

**Also Known As:** William E. Pratt Manufacturing Co.

**Also Known As:** Klassing Handbrake

**Also Known As:** Altrachem, Inc.

**Also Known As:** subsidiary of Joslyn Mfg and Supply

W. R. Grace (Tennessee) Erwin, TN

**Also Known As:** Nuclear Fuels Services

**Also Known As:** Davison Chemical

Wyman Gordon Inc. Grayton, North

Grafton, MA

## **CORPORATE VERIFIER CONTACT INSTRUCTIONS**

### **FOR LIST 2 FACILITIES**

Allegheny-Ludlum Steel former workers:

Send lists of names, social security numbers, dates of birth, and dates of employment to:

Director of Employee Relations

Attn: David Murphy

Allegheny-Ludlum Steel

100 River Road

Brackenridge, PA 15154

Phone: 724-226-5809

Allied Chemical Corporation Plant, Metropolis, Illinois former workers:

Send or fax lists of names, social security numbers, dates of birth, and dates of employment to:

Pat George

Honeywell

Highway 45 North

Metropolis, Illinois 62960

Phone: 618-524-6395

Fax: 618-524-6209

Aluminum Co. of America (Alcoa) (Pennsylvania) former workers:

Send lists of names, social security numbers, dates of birth, and dates of employment to:

Anna Mae Litman

ALCOA, Incorporated

201 Isabella Street

Pittsburgh, PA 15212-5858

Phone: 412-553-4415

American Chain and Cable Co. former workers:

Send lists of names, social security numbers, dates of birth, and dates of employment to:

Sally Brennen

FKI

425 Post Road

Fairfield, CT 06430

Phone: 203-255-7141

She has some employment information about some American Chain and Cable workers. If she has no information on a claimants employment history, then go to the Social Security Administration to confirm his employment.

Armco-Rustless Iron & Steel former workers:

Fax lists of names, social security numbers, dates of birth, employment location, and dates of employment to:

(This is a secure fax facility.)

Karen Dearth

Fax: 513-425-2676

(There is no cost unless they have to go off-site to find the records to verify employment.)

Ashland Oil, Tonawanda, New York former workers:

Send lists of names, social security numbers, dates of birth, and dates of employment to:

Geneva Massie

Ashland Incorporated

5200 Blazer Parkway

Dublin, Ohio 43017

Phone: 614-790-3333 (Ask for the Human Resources Department)

Babcock & Wilcox Co. (Virginia) former workers:

Send lists of names, social security numbers, dates of birth, and dates of employment to:

Kim Thomas

Framatone

3315 Old Forest Road

Lynchburg, VA 24501

Phone: 434-832-2757

Fax: 434-832-2345 (Attn: Kim Thomas)

If Kim Thomas does not have the employment records, contact Sonya Cox, BWX Technologies, on 434-522-6850. (Fax: 434-522-6736)

Baker-Perkins Co. former workers:

Send lists of names, social security numbers, dates of birth, and dates of employment to:

Ms. Chris Linehan

Invensys

5100 River Road

Schiller Park, IL 60176

Phone: ? (Ask Peggy Murnighan on 847-928-3635)

Beryllium Corporation of America, Hazleton, PA plant former workers:

Send lists of names, social security numbers, dates of birth, and dates of employment to:

Virginia Leonard

Cabot Corporation

157 Concord Road

Billerica, MA 01821

Phone: 978-670-6225

Fax: 978-667-5260

E mail address: Virginia\_Leonard@cabot-corp.com

Beryllium Corporation of America, Reading, PA plant former workers: (They have nothing to do with the Beryllium Corporation of America, Hazleton, PA plant.)

Send lists of names, social security numbers, dates of birth, and dates of employment to:

Carl Harris

NGK Metals Corporation

P.O. Box 13367

Reading, PA 19612-3367

Phone: 610-921-5145

Beryllium Production Plant (Brush Luckey Plant) (Luckey, Ohio) former workers:

Send names, social security numbers, dates of birth, and dates of employment to:

Brush Wellman

Attn: HR Department  
17876 St. Clair Avenue  
Cleveland, Ohio 44110

Contact: Becky Calhoun in HR on 216-383-6862 and Dennis Habrat (who does the employment verifications) on 216-383-6803.

Bethlehem Steel Corporation, Lackawana, New York plant former workers:

Send lists of names, social security numbers, dates of birth, and dates of employment to:

(Also include name of plant and its location)

Bethlehem Steel Corporation

Customer Call Center

Attn: Supervisor of Customer Call Center

Martin Tower

Bethlehem, PA 18016

Contact Myrna Riveria on 610-694-7222 or Bill Bauer on 610-694-7603 (email address: [William.bauer@bethsteel.com](mailto:William.bauer@bethsteel.com) )

Bliss & Laughlin Steel former workers:

E mail lists of names, social security numbers, dates of birth, and dates of employment to:

Sarah Mastrobuono at [smastrobuono@republictech.com](mailto:smastrobuono@republictech.com)

Phone: 330-670-3145

If Sarah is not in, Waneta Negrette in Harvey, Illinois on 708-225-8207 should be able to help.

Blockson Chemical Company, Joliet, Illinois plant workers:

Send lists of names, social security numbers, dates of birth, and dates of employment to:

Dolores Ennico

Olin Corporation

501 Merritt 7

P.O. Box 4500

Norwalk, CT 06856-4500

Phone: 203-750-3479

Bridgeport Brass Company and Bridgeport Brass Company, Havens Laboratory workers:

Send lists of names, social security numbers, dates of birth, and dates of employment to:

Michael Bramnick

Associate General Counsel

Millennium Chemicals Inc.

230 Half Mile Road

Red Bank, NJ 07701

Phone: 732-933-5170

Fax: 732-933-5270

E mail: [micheal.bramnick@millenniumchem.com](mailto:micheal.bramnick@millenniumchem.com) or [www.millenniumchem.com](http://www.millenniumchem.com)

Brush Beryllium Company; Cleveland, Detroit, Elmore, and Lorain plant former workers:

Send lists of names, social security numbers, dates of birth, and dates of employment to:

Brush Wellman

Attn: HR Department

17876 St. Clair Avenue

Cleveland, Ohio 44110

Dennis Habrat on 216-383-6803 does the verifications.

Carboloy Company former workers:

For workers who got a G.E. pension:

Send lists of names, social security numbers, dates of birth, name of company worked for, and dates of employment to:

General Electric Retirement Services

P.O. Box 6024

Schenectady, New York 12301

For workers who did not get a G.E. pension:

Phone: 1-800-367-2884 (Put in a claimants SSN and a person will come on the line. Ask him or her which G.E. plant of facility might be able to verify employment.

Ceradyne, Incorporated former workers:

Call Jill Baldwin on 714-549-0421, ext. 234. Jill can usually do it over the phone if given full name and social security number.

Chapman Valve former workers:

Send lists of names, social security numbers, dates of birth, and dates of employment to:

Jennifer Kulhman

Crane Valve

3201 Walnut Avenue

Long Beach, CA 90807

Phone: 562-426-2531, ext. 430

Cincinnati Milling Machine Company former workers:

Send lists of names, social security numbers, dates of birth, and dates of employment to:

Milacron, Incorporated

Attn: Payroll Department

2090 Florence Avenue

Cincinnati, Ohio 45206

Phone: 513-487-5626

Combustion Engineering, Windsor, Connecticut plant former workers:

Call Jo Ann Berko and she will do the verification over the phone.

Phone: 203-750-2359

Connecticut Aircraft Nuclear Engine Laboratory (CANEL) former workers:

Fax lists of names, social security numbers, dates of birth, and dates and place of employment to:

Becky Landry

United Technologies

Middletown, CT

860-755-4935 (this number goes directly into her computer)

If there are any problems, call her on 860-565-6361

Coors Porcelain plant workers:

Send lists of names, social security numbers, dates of birth, and dates of employment to:

CoorsTek

Attn: Sue Kadnuck

600 Ninth Street

Golden, CO 80401

Phone: 303-277-4080

Fax: 303-277-4060

Electro Metallurgical former workers:

Fax lists of names, social security numbers, dates of birth, and dates of employment to:

Betty Batista

Union Carbide

Fax: 203-794-6531

Phone: 203-794-3106

Ms Batista has employment information on Electro Metallurgical employees up to the date when Union carbide divested Electro Metallurgical to Morgan-Crucible.

Ms. Batistas mailing address is:

Union Carbide Corporation

39 Old Ridgebury Road

Human Resources G-2

Danbury, CT 06817-0001

Elk River Reactor former employees:

Send lists of names, social security numbers, dates of birth, and dates of employment to:

Barbara Theno

Employee Relations Manager

Great River Energy

17845 East Highway 10

Elk river, Minnesota 55330

Phone: 763-241-3753

Fenn Machinery Co. former workers:

Call Darlene Jones, Fenn Manufacturing Company human resources division on 860-594-4418.  
Give her claimants name and social security number and she will confirm employment.

Fenwal, Inc former workers:

Send lists of names, social security numbers, dates of birth, and dates of employment to:

Phil Mongada

Director of Human Resources

Kidde-Fenwal

400 Main Street

Ashland, MA 01721

Phone: 508-881-2000, ext. 2486

General Atomics former workers:

Fax lists of names, social security numbers, dates of birth, and dates of employment to:

Yolanda at 858-455-2244

Phone: 858-455-2225

General Electric Company (Ohio) former workers:

For workers who got a G.E. pension:

Send lists of names, social security numbers, dates of birth, name of company worked for, and dates of employment to:

General Electric Retirement Services

P.O. Box 6024

Schenectady, New York 12301

For workers who did not get a G.E. pension:

Phone: 1-800-367-2884 (Put in a claimants SSN and a person will come on the line. Ask him or her which G.E. plant of facility might be able to verify employment.

General Electric Plant (Indiana) former workers:

For workers who got a G.E. pension:

Send lists of names, social security numbers, dates of birth, name of company worked for, and dates of employment to:

General Electric Retirement Services

P.O. Box 6024

Schenectady, New York 12301

For workers who did not get a G.E. pension:

Phone: 1-800-367-2884 (Put in a claimants SSN and a person will come on the line. Ask him or her which G.E. plant of facility might be able to verify employment.

General Electric Vallecitos former workers:

For workers who got a G.E. pension:

Send lists of names, social security numbers, dates of birth, name of company worked for, and dates of employment to:

General Electric Retirement Services

P.O. Box 6024

Schenectady, New York 12301

For workers who did not get a G.E. pension:

Phone: 1-800-367-2884 (Put in a claimants SSN and a person will come on the line. Ask him or her which G.E. plant of facility might be able to verify employment.

Granite City Steel former workers:

Send lists of names, social security numbers, dates of birth, and dates of employment to:

National Steel Corporation

Attn: Lydia Kachigian

1951 State Street

Granite City, IL 62040

Phone: 618-451-4938

Lists of names, social security numbers, dates of birth, and dates of employment can be faxed to Lydia at 618-451-4115.

Hallam Sodium Graphite Reactor (Hallam, Nebraska) former workers:

Send names, social security numbers, dates of birth, and dates of employment to:

Gary A. Kruse

Human Resources Department

Nebraska Public Power

P.O. Box 499

1414 15<sup>th</sup> Street

Columbus, Nebraska 68602-0499

Phone: 402-563-5309

Harshaw Chemical Company former workers:

Send lists of names, social security numbers, dates of birth, and dates of employment to:

Ms. Jan Strine

5<sup>th</sup> Floor

Engelhard Corporation

101 Wood Avenue

Iselin, NJ 08830

Phone: 1-800-432-9191 (Ask for Jan)

Heald Machine Company former workers:

Send lists of names, social security numbers, dates of birth, and dates of employment to:

Milacron, Incorporated

Attn: Payroll Department

2090 Florence Avenue

Cincinnati, Ohio 45206

Phone: 513-487-5626

Herring-Hall Marvin Safe Company former workers:

First call the claimant (or survivor) and obtain, as best you can, the specific date of the last day that the person was employed by the Herring-Hall Marvin Safe Company. The Diebold Company, which has the Herring-Hall Marvin Safe Company records, files records of people who retired in the 1940s, 1950s, or 1960s by the date of their last day of work with Herring-Hall.

Send name, social security number, and date of last day as an employee to:

Kevin Nazdock

Diebold, Incorporated

5995 Mayfair Road

North Canton, Ohio 44720

Phone: 330-490-4401

Hooker Electrochemical former workers:

Send lists of names, social security numbers, dates of birth, and dates of employment to:

Lu Ann Raymond

Occidental Chemical Corporation

P.O. Box 344

Niagara Falls, New York 14302-0344

Phone: 716-278-7743

Huntington Pilot Plant workers:

Send lists of names, social security numbers, dates of birth, and dates of employment to:

Amy Knight

Health and Welfare Associate

INCO Limited

3200 Riverside Drive

Huntington, WV 25705

Phone: 304-526-5374

Fax: 304-526-5309

Jessop Steel Co. (Washington, Pennsylvania) former workers:

Send or fax names, social security numbers, dates of birth, and dates of employment to:

Director of Employee Relations

Attn: David Murphy

Allegheny-Ludlum Steel

100 River Road

Brackenridge, PA 15154

Phone: 724-226-5809

Fax: 724-226-5173

Koppers Co., Inc. former workers:

Call Steve Simond, Hansen North America, on 732-919-2319 and give him the workers name and social security number. If a worker got a Koppers pension, Mr. Simond will be able to verify his employment over the telephone. If a worker did not get a Koppers pension, we will have to go to the Social Security Administration to verify his employment.

LaCrosse Boiling Water Reactor former workers:

Send lists of names, social security numbers, dates of birth, and dates of employment to:

Dairyland Power Cooperative

Attn: Pattilynn Brendum

P.O. Box 817

LaCrosse, WI 54602

Phone: 608-787-1341

Ladish Co. former workers:

Call Darlene (Ladish Corporation personnel office) on 414-747-3488. Given her the name, social security number, dates of employment, and, if you have it, employee number of the person whose employment you need to verify. Darlene will do the verification over the phone.

If needed the corporate mailing address and phone number is:

Ladish Company, Incorporated

Corporate Offices

5481 S. Packard Avenue

Cudahy, WI 53100

Phone: 414-747-2611

Linde Air Products (Buffalo, NY) plant former workers:

Send lists of names, social security numbers, dates of birth, and dates of employment to:

T. M. Dugan

Praxair, Inc.

175 East Park Drive

Tonawanda, NY 14151-0044

Phone: 716-879-2027

Fax: 716-879-7117

Linde Ceramics Plant former workers:

Send lists of names, social security numbers, dates of birth, and dates of employment to:

T. M. Dugan

Praxair, Inc.

175 East Park Drive

Tonawanda, NY 14151-0044

Phone: 716-879-2027

Fax: 716-879-7117

Mallinckrodt Chemical Company, Destrehan St. Plant former workers:

Send lists of names, social security numbers, dates of birth, and dates of employment to:

Ms. Pat Duft

Mallinckrodt Corporate Headquarters

675 McDonnell Blvd.

St. Louis, MO 63042

Phone: 314-654-6314

Fax: 314-654-6486

Massachusetts Institute of Technology former workers:

Send lists of names, job titles, social security numbers, dates of birth, and dates of employment to:

(Also try to indicate whether the claimant was an academic or a nonacademic employee)

Sarah Heaney

Massachusetts Institute of Technology

77 Massachusetts Avenue

Building E19-235

Cambridge, MA 02139

Phone: 617-253-9489

Fax: 617-258-8501

McDaniel Refractory Co. former workers:

Send lists of names, social security numbers, dates of birth, and dates of employment to:

Judy Bergman

Vesuvius-McDanel

510 Ninth Avenue

Beaver Falls, PA 15010

Phone: 724-843-8300, ext. 248

Metals and Controls Corporation former workers:

Send lists of names, social security numbers, dates of birth, and dates of employment to:

Frank J. Veale

Texas Instruments

MS: 10-2

34 Forest Street

Attleboro, MA 02703

Phone: 508-236-1804

Norton Company former workers:

Fax lists of names, social security numbers, dates of birth, and dates of employment to:

Carol Ormand

Fax No: 508-795-2828

Her mailing address is:

Carol A. Ormand

Human Resources

Saint-Gobain Abrasives

One New Bond Street

Box Number 15008

Worcester, MA 01615-0008

Phone: 508-795-2167

Nuclear Metals, Inc. former workers:

Send lists of names, social security numbers, dates of birth, and dates of employment to:

Janet Hammon

Starmet Corporation

2229 Main Street

Concord, MA 01742

Phone: 978-369-5410, ext. 249

Nuclear Materials and Equipment Corporation (NUMEC) Apollo PA and Parks Township plant  
former workers:

Send lists of names, social security numbers, dates of birth, and dates of employment to:

Julia Pankey

Comp. And Benefits Coord.

BWXT Services, Incorporated

2016 Mt. Athos Road

Lynchburg, VA 24504

Phone: 434-522-5501

Piqua Organic Moderated Reactor former workers:

Call in lists of names, social security numbers, dates of birth, and dates of employment to:

Judy Payner, Finance Office, City of Piqua, Ohio on 937-778-2069

If Judy is busy, Diana in the Human Resources office can help. She is on 937-778-2052.

Reed Rolled Thread Co. former workers:

Fax lists of names, social security numbers, dates of birth, and dates of employment to:

Janet Olson

Reed-Rico

18 Industrial Drive

Holden, MA 01520-1895

Fax: 508-926-5383

Phone: 508-926-5273

Shippingport Atomic Power Plant former workers:

Call Dave Hershberger, Duquesne Light human resources department on 412-393-6378. Give him employee name, employee number (if available), dates of employment, and other other information that he might need. He will verify over the phone.

For verifications of employees who no longer work for Duquesne, try Dawn Laitres, First Energy on 724-682-5245.

Spreedring, Inc. former workers:

Send lists of names, social security numbers, dates of birth, and dates of employment to:

Judy Bradford

Axsys Technologies

P.O. Box 1588

Cullman, AL 35056-1558

Phone: 256-737-5200 (Ask for Judy)

(If Judy is out, Christie Mize on 256-737-5282 can help. Her fax number is 256-737-5249.)

Sylvania Corning Nuclear Corporation, Bayside Laboratories and Hicksville Plant former workers:

Send lists of names, social security numbers, dates of birth, and dates of employment to:

Verizon Communications

Attn: Lisa Davis Jackson

MC;SV1W3ESC

Coppell, Texas 75015-2270

Phone: 214-285-1439

Tennessee Valley Authority, Muscle Shoals, Alabama former workers:

Send lists of names, social security numbers, dates of birth, and dates of employment to:

Tennessee Valley Authority

Attn: Employee Service Center

400 West Summit Hill Drive

Knoxville, TN 37902

Phone: 256-386-2601 (Ask for Human Resources [employment verification]). (N.B. TVA may have to recall records from a federal records center or from the National Personnel Records Center in St. Louis to verify employment. If so, it may take them 4 to 6 weeks to give a response.)

Torrington Co. (Torrington, Connecticut) former workers:

Fax names, social security numbers, dates of birth, and dates of employment to:

Daisy Decker

Human Resources Department

The Torrington Company

Torrington, CT 06790-1008

Phone: 860-626-2623 (Ask to be transferred to Daisy Decker)

Fax: 860-496-3603

University of Chicago former workers:

Send lists of names, social security numbers, dates of birth, and dates of employment to:

Annetha Bartley

University of Chicago

5801 Ellis

Room 501

Chicago, Illinois 60637

Phone: 773-702-8816

U. S. Steel Co., National Tube Division (McKeesport, Pennsylvania) former workers:

Fax names, social security numbers, dates of birth, and dates of employment to:

Beverly Detrick

United States Steel Corporation

Monroeville, PA 15146

Phone: 412-433-6617

Fax: 412-433-6617

Ventron Corporation (Metal Hydrides Corporation) former workers:

Call Vanessa Gibson-Cooper of Rohm and Haas Corporation human resources on 215-592-2868.

Give her name and social security number and she will verify over the phone.

W.E. Pratt Manufacturing Company former workers:

Send lists of names, social security numbers, dates of birth, and dates of employment to

Vivian Curran

Joslyn Manufacturing

3700 South Morgan Street

Chicago, IL 60609

Phone: 773-927-1420, ext. 1274

Fax: 773-927-6862

W. R. Grace (Tennessee) plant former workers. This is now the Nuclear Fuels Services, Erwin, Tennessee plant.

Send lists of names, social security numbers, dates of birth, and dates of employment to:

Ruth Salts

Nuclear Fuels Services

1205 Banner Hill Road

Erwin, TN 37650

Phone: 423-743-1712

Fax: 423-743-9025

Wyman Gordon Inc, former workers:

Send lists of names, social security numbers, dates of birth, and dates of employment to:

Alice Moore

Wyman Gordon, Incorporated

244 Worcester Street

North Grafton, MA 01536-8001

Phone: 508-839-8363

Energy Employees Occupational Illness Compensation Program Act:

Employment Verifications:

**List 3: DOE Verifiers**

Listed below are those facilities which appear on the Department of Energy (DOE) Covered Facilities List which meet the following criteria:

1. The Department of Energy, or one of its contractors, owns the employment records.
2. The Department of Energy, through the Office of Worker Advocacy Germantown, performs employment verifications of people who used to work at these facilities.

This list will be periodically updated.

Facility Name Location

(As it appears on the DOE Covered Facilities List):

Albany Research Center Albany, OR

**Also Known As:** ARC

**Also Known As:** Bureau of Mines

**Also Known As:** Metallurgical Research Center

**Also Known As:** Metallurgical Corp.

Battelle Laboratories ,

**Also Known As:** Battelle Columbus Laboratories (BCL)

**Also Known As:** Battelle Memorial Institute (BMI)

Battelle Laboratories ,

**Also Known As:** Battelle Memorial Institute (BMI)

**Also Known As:** Battelle Columbus Laboratories (BCL)

**Also Known As:** Plutonium Facilities

Columbia University New York,

**Also Known As:** Pupin Hall

**Also Known As:** Havemeyer Hall

**Also Known As:** Nash Building

**Also Known As:** Prentiss Hall

**Also Known As:** Schermerlimon Hall

Energy Technology Engineering Center

(Atomics International/Rocketdyne) Santa Susana

(Canoga Park), CA

**Also Known As:** North American Aviation

**Also Known As:** Rocketdyne Propulsion and Power

**Also Known As:** Rockwell International

**Also Known As:** Boeing,

**Also Known As:** Nuclear Development Field Laboratory (NDFL)

**Also Known As:** Energy Systems Group

**Also Known As:** Liquid Metal Engineering Center

**Also Known As:** Atomics International

Extrusion Plant (Reactive Metals, Inc.) Ashtabula, OH

**Also Known As:** Reactive Metals, Inc.

**Also Known As:** RMI

Ordnance Plant ,

**Also Known As:** Army Ammunition Plant

**Also Known As:** Ordnance Plant

**Also Known As:** Silas Mason Co.

**Also Known As:** Mason & Hanger

Laboratory for Energy-Related Health Research, Laboratory of Biomedical and Environmental Sciences, Laboratory of Radiobiology and Environmental Health, Nuclear Fuels Services,

Peek Street Facility Schenectady, NY

**Also Known As:** Knolls Atomic Power Laboratory

**Also Known As:** Knolls Atomic Power Lab of General Electric Co.

Sacandaga Facility Glenville, NY

Separations Process Research Unit(at Knolls Lab.) Schenectady, NY

University of Rochester Atomic Energy Project Rochester, NY

Waste Isolation Pilot Plant ,

**Also Known As:** WIPP

Weldon Spring Plant Weldon Spring, MO

**Site Characterization Project ,**



Department of Energy  
Washington, DC 20585

February 27, 2002

MEMORANDUM FOR: Peter M. Turcic  
Director  
Division of Energy Employee Occupational Illness  
Office of Workers' Compensation Programs  
U.S. Department of Labor

FROM: Steven V. Cary *Steven Cary*  
Acting Director, Office of Worker Advocacy  
U.S. Department of Energy

SUBJECT: Verification of Employment

RECEIVED OWCP  
2002 JAN 19 A 11: 04  
DIVISION OF EEOICP  
U.S. DOL  
WASHINGTON, D.C.

The Department of Labor (DOL) regulations implementing the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) provide, at 20 CFR § 30.105, that after a claimant files a claim under the EEOICPA, the Department of Energy (DOE) shall complete and transmit to DOL a Form EE-5 in which DOE certifies that it concurs with the employment information provided by the claimant, that it disagrees with such information or that it can neither concur nor disagree after making a reasonable search of its records and a reasonable effort to locate records not in its possession. The purpose of this memorandum is to comply with this requirement by informing DOL of certain facilities for which it has been unable to locate any records that would allow it to concur or disagree with allegations concerning employment at such facilities.

Requests for verification of allegations of employment at facilities not on either list should continue to be routed to DOE in accordance with the directions set forth in EEOICPA Procedure Manual (Chapter 2-400). DOE has not received requests for verification of allegations of employment at many facilities on the covered facility list. When claims concerning such facilities are received, DOE will search relevant records and amend the lists as necessary (provided by Roger Anders to DOL under separate cover.)

This memorandum will serve as DOE's Form EE-5 for any claim alleging employment at the facilities set forth on List 1 and List 2.

- **List 1**--The facilities designated as List 1 are facilities for which DOE has no records that would allow it to verify allegations of employment at those facilities, nor has it been able to locate pertinent records not in its possession. DOL will attempt to obtain any necessary verification of allegations of employment at such facilities through means other than DOE records.



- **List 2**--The facilities designated as List 2 are facilities for which DOE has no records that would allow it to verify allegations of employment at those facilities. However, DOE has information concerning other entities that may be able to locate relevant records concerning allegations of employment at such facilities and has made arrangements for those entities to provide information concerning allegations of employment at the facilities on List 2. DOE will separately provide DOL with instructions for contacting the entities specified on List 2. DOL will contact those entities and request that they provide DOL with information concerning allegations of employment at such facilities and that they forward a copy of such information to DOE.

### AUTHORIZATION TO OBTAIN EARNINGS DATA FROM THE SOCIAL SECURITY ADMINISTRATION

Social Security Administration  
Attention: DERO  
300 N. Greene Street  
Baltimore, Maryland 21290-0300

Requesting Organization: Job No. 8015JC  
Name and Address:

U.S. DEPARTMENT OF LABOR - EEOICP  
ATTN: LORRAINE MILLER  
200 CONSTITUTION AVE., NW, - ROOM C4511  
WASHINGTON DC 20210-

Name: \_\_\_\_\_ Please Print Social Security Number: \_\_\_\_\_

Other Last Name(s), Such as  
Maiden Name, Used to Report  
Your/or the Deceased's Earnings: \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
\_\_\_\_\_  
Date of Death: \_\_\_\_\_  
(if applicable)

Please furnish the requesting organization shown above, or its designees, an itemized statement of all amounts of earnings reported to my record, or to the record identified above, for the periods specified by that organization, and the identification numbers, names, and addresses of the reporting employers.

TO BE COMPLETED BY OFFICIAL OF REQUESTING ORGANIZATION ONLY	
Periods Requested: _____	through _____
Signature of Organization Official: _____	
Telephone Number: _____	FAX Number: _____

I am the individual to whom the record/information applies or that person's parent (if a minor) or legal guardian, or a person who is authorized to sign on behalf of the individual to whom the record/information applies. I know that if I make any representation which I know is false to obtain information from Social Security records, I could be punished by a fine or imprisonment or both.

Address/DAYTIME Telephone Number  
of Social Security Number Holder: \_\_\_\_\_  
(or Authorized Representative) Address ( )

Relationship:  Natural or  Legal  Other (Specify)  
(if other than SSN holder)  Adoptive Parent  Guardian

\_\_\_\_\_  
Date Signed Signature of Social Security Number Holder  
(or Authorized Representative)

#### **PRIVACY ACT STATEMENT:**

Section 205 (c) (2) (A) of the Social Security Act allows us to ask for the information you give us on this form. The information is needed so that the Social Security Administration can quickly identify your record or the record of the deceased individual who is the subject of a request you are making and prepare the earnings statement you want. You do not have to give us this information. However, without the information we may not be able to process your request. The information you provide will be used primarily for issuing the earnings statement you request. The information you provide may be given out if a Federal law requires that we give out the information; if a Congressman or the President's office needs this information to answer questions you ask them; or the Department of Justice needs the information for investigating or prosecuting violations of the Social Security Act.

We may also use the information you give us when we match records by computer. Matching programs compare our records with those of other Federal, State, or local government agencies. Many agencies may use matching programs to find or prove that a person qualifies for benefits paid by the Federal government. The law allows us to do this even if you do not agree to it.

Explanations about these and other reasons why information about you may be used or given out are available in Social Security offices. If you want to learn more about this, contact any Social Security office.

#### **PAPERWORK REDUCTION ACT STATEMENT**

This information collection meets the clearance requirements of 44 U.S.C. §3507, as amended by Section 2 of the Paperwork Reduction Act of 1995. You are not required to answer these questions unless we display a valid Office of Management and Budget control number. We estimate that it will take you about 2 minutes to read the instructions, gather the necessary facts, and answer the questions.



Department of Energy  
Washington, DC 20585

February 27, 2002

MEMORANDUM FOR: Peter M. Turcic  
Director  
Division of Energy Employee Occupational Illness  
Office of Workers' Compensation Programs  
U.S. Department of Labor

FROM: Steven V. Cary *Steven Cary*  
Acting Director, Office of Worker Advocacy  
U.S. Department of Energy

SUBJECT: Verification of Employment

RECEIVED OWCP  
2002 JAN 19 A 11: 04  
DIVISION OF EEOICP  
U.S. DOL  
WASHINGTON, D.C.

The Department of Labor (DOL) regulations implementing the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) provide, at 20 CFR § 30.105, that after a claimant files a claim under the EEOICPA, the Department of Energy (DOE) shall complete and transmit to DOL a Form EE-5 in which DOE certifies that it concurs with the employment information provided by the claimant, that it disagrees with such information or that it can neither concur nor disagree after making a reasonable search of its records and a reasonable effort to locate records not in its possession. The purpose of this memorandum is to comply with this requirement by informing DOL of certain facilities for which it has been unable to locate any records that would allow it to concur or disagree with allegations concerning employment at such facilities.

Requests for verification of allegations of employment at facilities not on either list should continue to be routed to DOE in accordance with the directions set forth in EEOICPA Procedure Manual (Chapter 2-400). DOE has not received requests for verification of allegations of employment at many facilities on the covered facility list. When claims concerning such facilities are received, DOE will search relevant records and amend the lists as necessary (provided by Roger Anders to DOL under separate cover.)

This memorandum will serve as DOE's Form EE-5 for any claim alleging employment at the facilities set forth on List 1 and List 2.

- **List 1**--The facilities designated as List 1 are facilities for which DOE has no records that would allow it to verify allegations of employment at those facilities, nor has it been able to locate pertinent records not in its possession. DOL will attempt to obtain any necessary verification of allegations of employment at such facilities through means other than DOE records.

- **List 2**--The facilities designated as List 2 are facilities for which DOE has no records that would allow it to verify allegations of employment at those facilities. However, DOE has information concerning other entities that may be able to locate relevant records concerning allegations of employment at such facilities and has made arrangements for those entities to provide information concerning allegations of employment at the facilities on List 2. DOE will separately provide DOL with instructions for contacting the entities specified on List 2. DOL will contact those entities and request that they provide DOL with information concerning allegations of employment at such facilities and that they forward a copy of such information to DOE.

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Requesting Organization: Job No. 8015JC  
Name and Address:

U.S. DEPARTMENT OF LABOR - EEOICP  
ATTN: LORRAINE MILLER  
200 CONSTITUTION AVE., NW, - ROOM C4511  
WASHINGTON DC 20210-

Name: \_\_\_\_\_ Please Print Social Security Number: \_\_\_\_\_

Other Last Name(s), Such as  
Maiden Name, Used to Report  
Your/or the Deceased's Earnings: \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
\_\_\_\_\_  
Date of Death: \_\_\_\_\_  
(if applicable)

Please furnish the requesting organization shown above, or its designees, an itemized statement of all amounts of earnings reported to my record, or to the record identified above, for the periods specified by that organization, and the identification numbers, names, and addresses of the reporting employers.

TO BE COMPLETED BY OFFICIAL OF REQUESTING ORGANIZATION ONLY	
Periods Requested: _____	through _____
Signature of Organization Official: _____	
Telephone Number: _____	FAX Number: _____

I am the individual to whom the record/information applies or that person's parent (if a minor) or legal guardian, or a person who is authorized to sign on behalf of the individual to whom the record/information applies. I know that if I make any representation which I know is false to obtain information from Social Security records, I could be punished by a fine or imprisonment or both.

Address/DAYTIME Telephone Number  
of Social Security Number Holder: \_\_\_\_\_  
(or Authorized Representative) Address ( )

Relationship:  Natural or  Legal  Other (Specify)  
(if other than SSN holder) Area Code Number  
Adoptive Parent Guardian

\_\_\_\_\_  
Date Signed Signature of Social Security Number Holder  
(or Authorized Representative)

Form SSA-581 (1-2002) EF (1-2002) Destroy All Prior Editions  
Your Name Please Print  
See reverse for Privacy Act Statement

#### **PRIVACY ACT STATEMENT:**

Section 205 (c) (2) (A) of the Social Security Act allows us to ask for the information you give us on this form. The information is needed so that the Social Security Administration can quickly identify your record or the record of the deceased individual who is the subject of a request you are making and prepare the earnings statement you want. You do not have to give us this information. However, without the information we may not be able to process your request. The information you provide will be used primarily for issuing the earnings statement you request. The information you provide may be given out if a Federal law requires that we give out the information; if a Congressman or the President's office needs this information to answer questions you ask them; or the Department of Justice needs the information for investigating or prosecuting violations of the Social Security Act.

We may also use the information you give us when we match records by computer. Matching programs compare our records with those of other Federal, State, or local government agencies. Many agencies may use matching programs to find or prove that a person qualifies for benefits paid by the Federal government. The law allows us to do this even if you do not agree to it.

Explanations about these and other reasons why information about you may be used or given out are available in Social Security offices. If you want to learn more about this, contact any Social Security office.

#### **PAPERWORK REDUCTION ACT STATEMENT**

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EEOICPA BULLETIN NO.02-03  
Issue Date: April 1, 2002

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Effective Date: March 22, 2002

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Expiration Date: April 1, 2003

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Subject: NIOSH Referral Summary

Background: The Claims Examiners (CEs) in the District Offices are required by EEOICPA Section 7384n(d)(1) (and 20 CFR 30.115(a)) to forward claimant's application package to NIOSH for dose reconstruction. The NIOSH Referral Summary (shown in Attachment 1) replaces the Statement of Accepted Facts (SOAF), which has been used to transmit case files to NIOSH. The SOAF will now be used primarily for medical referrals. The NIOSH Referral Summary is a tabular form containing the medical and employment information accepted by the CE as factual. This form will provide NIOSH with the necessary information to proceed with the dose reconstruction process.

Much of the information in the NIOSH Referral Summary is entered into ECMS. The intent in the future is to automate the NIOSH Referral Summary and have most, if not all, of the fields entered electronically from ECMS.

Reference: Energy Employees Occupational Illness Compensation Program Act of 2000, As Amended, 42 U.S.C. § 7384 *et seq.*, Section 7384n(d)(1) (and 20 CFR 30.115(a)).

Purpose: To notify the District Offices of the NIOSH Referral Summary to be used for sending cases to NIOSH for dose reconstruction.

Applicability: All staff.\_

Actions:

1. Attached to this bulletin is the NIOSH Referral Summary (Attachment 1). This tabular form contains the medical and employment information accepted by the CE as factual.
2. The NIOSH Referral Summary should include information on the Energy Employee (EE) including the employee's full name, gender, date of birth, date of death (if applicable), and address and phone number (if applicable). In cases involving survivors (there may be one or more), provide contact information including the full name, address, and phone number. In cases of multiple survivors, indicate which survivor would prefer to be contacted (if known), e.g., because they are the most knowledgeable or accessible by phone. Also, if the CE is aware of other contacts, including other family members, co-workers, representatives, attorneys, and people providing affidavits, the CE should provide the full name, address, and phone number for each person. For all phone numbers discussed above, the phone type should be entered on the form in the block following the phone number, e.g., home, work, cell, day, evening, vacation home. This is helpful when there are multiple contact numbers listed.
3. The NIOSH Referral Summary should include the findings of the CE concerning medical factors. The medical information should include, for each cancer: whether it is primary or secondary (use a "X"), cancer description or type, along with the ICD-9 code, and the date of diagnosis. List all primary cancers, or all secondary cancers if no primary cancers are determined. It is not necessary to list the secondary cancers if there are primary cancers established. For the date of cancer diagnosis, the year of diagnosis is required, but the full date should be entered, if possible. Other covered conditions should be indicated (by a "X") when a SEC cancer claim is

submitted, but the claimant is filing for non-SEC cancer medical benefits, or in case of other claim benefits scenarios (details can be provided on the form).

4. The NIOSH Referral Summary should include the findings of the CE regarding the employee's verified employment period for each DOE or AWE employment period. For each employment period include: employer/facility name, start and end date at the facility, employee number (if available from EE-3), dosimetry badge number (if available from EE-3), and the employee's job title (the description is not required). Verified employment could extend beyond the covered employment periods. It is no longer necessary to provide NIOSH with the covered periods, as dose reconstruction will be performed for all verified employment. When applicable, the CE should select the facility name from the Federal Register Notice of List of Facilities Covered by the Energy Employees Occupational Illness Compensation Act of 2000. Also, indicate information related to the method of employment verification (with a "X"), i.e., DOE could not verify employment, employment verification based on affidavit or other credible evidence, or employee worked for a sub/sub contractor not listed in DOE Office of Worker Advocacy facility online database.

5. Other information that is relevant to NIOSH dose reconstruction includes race/ethnicity information (for skin cancer) and smoking history (for lung cancer). These cancers may be either primary or secondary cancers (sites to which a malignant cancer has spread). The CE should develop this information only for individuals with skin or lung cancers. The CE should request this information from the claimant early in the process so that it is available when the case is sent to NIOSH. A sample development letter for skin cancer claimants is shown in Attachment 2. A sample development letter for lung cancer claimants is shown in Attachment 3. For the race/ethnicity information, mark one or more of the five designations shown on the NIOSH Referral Summary (Attachment 1). For the smoking history, indicate the smoking level (at the time of cancer diagnosis) using one of the seven designations shown in the NIOSH Referral Summary (Attachment 1). The smoking categories include: Never Smoked - employee who smoked no more than 100 cigarettes before the date of cancer diagnosis; Former Smoker - employee who quit smoking more than five years before the date of cancer diagnosis; and Current Smoker - employee who smoked cigarettes at the time of the cancer diagnosis or who quit smoking fewer than five years before the date of the cancer diagnosis (the cigarette smoking level should be designated as one of the following: less than 10 per day, 10 – 19 per day, 20 – 39 per day, or 40 or more per day).

6. For pertinent cases already sent to NIOSH that did not have race/ethnicity or smoking history information, the CEs must develop that information. The National Office will use ECMS to sort cases already sent to NIOSH. The National Office will provide the District Office with a list of cases requiring race or ethnicity information or smoking history. Once received, the DO should send development letters to all of those individuals identified. When the information is received from the claimant, the CE should complete a new NIOSH Referral Summary with the race/ethnicity and smoking history sections completed. The new form should then be forwarded to NIOSH along with the weekly packages.

7. Finally, at the bottom of the NIOSH Referral Summary, provide the information related to the CE's completion of this summary, which includes the District Office, the CE's name and direct dial phone number, and the date prepared. On a temporary basis, a review by the supervisor is required. The reviewer's name and the date of the review should be noted.

8. The evidence in file must support any finding made by the CE and documented in the NIOSH Referral Summary. The CE should make a copy of the NIOSH Referral Summary and place it in the case file record.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

## Occupational Illness Compensation

## NIOSH Referral Summary Document

DOL Case Number: [Energy Employee (EE) SSN]

Case File Contact Information:

### Energy Employee:

EE Full Name: [First, Middle, Last, Suffix]	
EE Gender: [M, F, U]	
Date of Birth: [Month, Day, Year]	
Date of Death (If applicable): [Month, Day, Year]	
EE Full Address (If applicable): [Street Address, City, State, Zip]	
EE Phone Number (If applicable): [Phone Number, Phone Type]	

### Survivor(s) (SV) [Create a table for each SV]:

SV Full Name (s) (If applicable): [First, Middle, Last, Suffix]	
SV Full Address (If applicable): [Street Address, City, State, Zip]	
SV Phone Number (If applicable): [Phone Number, Phone Type]	
SV Relationship (If applicable): [Relationship]	

### Other Contact(s) (OC) [Create a table for each OC]:

OC Full Name (s) (If applicable):	
OC Full Address (If applicable): [Street Address, City, State, Zip]	
OC Phone Number (If applicable): [Phone Number, Phone Type]	
OC Relationship (If applicable): [Relationship]	

Medical and Employment Information:

**EE Covered Cancer Information [For each cancer, list the following information]:**

Primary [ <input type="checkbox"/> ] or Secondary (Metastatic) [ <input type="checkbox"/> ]	
Cancer Description / Type	
Associated ICD-9 Code	
Date of Cancer Diagnosis	

**Other Covered Condition:**

SEC Cancer Claim, but filing for Non-SEC cancer medical benefits [ <input type="checkbox"/> ]
Other claim for benefits scenario [ <input type="checkbox"/> ]

Energy Employee Verified Employment History:

Verified Employment Period (List all breaks in employment at the DOE or AWE Facility):

Employer / Facility Name	
Start Date at the Facility (Full Date if Possible)	
End Date at the Facility (Full Date if Possible)	
Employment Badge Number (If available)	
Dosimetry Badge Number (If available)	
Job Title (Description not required)	
Employer / Facility Name	
Start Date at the Facility (Full Date if Possible)	
End Date at the Facility (Full Date if Possible)	
Employment Badge Number (If available)	
Dosimetry Badge Number (If available)	
Job Title (Description not required)	

Employer / Facility Name	
Start Date at the Facility (Full Date if Possible)	
End Date at the Facility (Full Date if Possible)	
Employment Badge Number (If available)	
Dosimetry Badge Number (If available)	
Job Title (Description not required)	

**Employment Verification Information Valuable to NIOSH:**

<input type="checkbox"/> DOE could not verify employment
<input type="checkbox"/> Employment Verification based upon Affidavit or Other Credible Evidence.
<input type="checkbox"/> EE worked for a sub/sub contractor not listed in DOE Office of Worker Advocacy facility online database.

**Other Information Relevant to NIOSH Dose Reconstruction, if Available:**

If the claim is for skin cancer or a secondary cancer for which skin cancer is a likely primary cancer, list one or more of the following:	<input type="checkbox"/> American Indian or Alaska Native
	<input type="checkbox"/> Asian or Native Hawaiian or Pacific Islander
	<input type="checkbox"/> Black
	<input type="checkbox"/> White-Hispanic
	<input type="checkbox"/> White-Non-Hispanic
	<input type="checkbox"/> Not given
If the claim is for lung cancer or a secondary cancer for which lung cancer is a likely primary cancer, select one of the following (Note: Currently refers to time of cancer diagnosis):	<input type="checkbox"/> Never smoked
	<input type="checkbox"/> Former smoker
	<input type="checkbox"/> Current smoker (? cig/day)
	<input type="checkbox"/> <10 cig/day (currently)
	<input type="checkbox"/> 0-19 cig/day (currently)
	<input type="checkbox"/> 20-39 cig/day (currently)
	<input type="checkbox"/> 40+ cig/day (currently)

**DOL Information:**

District Office	
Claims Examiner Name	
Claims Examiner Phone Number	
Date Prepared for NIOSH	

Reviewed By	
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U. S. DEPARTMENT OF LABOR EMPLOYMENT STANDARDS  
ADMINISTRATION

OFFICE OF WORKERS' COMPENSATION  
PROGRAMS

DIVISION OF ENERGY EMPLOYEES' OCCUPATIONAL

ILLNESS COMPENSATION

200 CONSTITUTION AVE

ROOM C-4511

WASHINGTON DC 20210

TELEPHONE: (202) 693-0081

March 28, 2002 Employee:

File Number:

JOE CLAIMANT

1234 W. MAIN STREET

WASHINGTON, D.C.

Dear Mr. Claimant:

This letter concerns your claim for compensation under the Energy Employees Occupational Illness Compensation Program. We have reviewed the claim and found that the exposed employee was diagnosed with skin cancer.

The next step in determining whether you are eligible for benefits is calculating whether the diagnosed cancer is reasonably related to exposure to radioactive materials during the course of covered employment. The calculation of probability of causation is based on many factors, such as the length of exposure and proximity to radiological sources, safety protection worn, the type of cancer diagnosed, etc.

We calculate the probability of causation by using a computer program to determine whether the diagnosed cancer is reasonably related to exposure during covered employment. For certain types of cancer, such as skin cancer or a cancer which has spread to more than one location in the body, the computer program requires that we include information about the exposed employee's race or ethnic identification as an additional factor in order to complete the calculation.

Therefore, we are asking you to complete the attached questionnaire in full and return it to the address that appears at the bottom of the questionnaire. Please return the questionnaire within 30 days to avoid any delay in the claims process.

It is important that you complete the questionnaire and return it to us so that we can perform the probability of causation calculation. If we do not receive a fully completed questionnaire, we will be unable to perform a calculation of probability. Without a calculation of probability, we will not be able to determine whether you are entitled to benefits under this program and no award of benefits will be made.

Remember as the claimant, it is ultimately your responsibility to submit the necessary information to establish a claim under the EEOICPA. If you have any questions or concerns, please contact the District Office at XXX-XXX-XXXX or fax XXX-XXX-XXXX.

Sincerely,

Claims Examiner

Employee:

File Number:

The National Institute for Occupational Safety and Health (NIOSH) has developed a computer program known as the Interactive Radioepidemiological Program (IREP) that is used to calculate the probability of causation between a diagnosed cancer and employment. More information can be obtained about this program by contacting NIOSH at 1-800-35-NIOSH.

For skin cancer claims, racial or ethnic identification is necessary to accurately perform the IREP calculation. It is a required element of the computer program. In order to proceed with a determination of causation, please mark the box(es) that best match(es) the racial or ethnic identification of the employee named above:

American Indian or Alaskan Native

Asian, or Native Hawaiian or Other Pacific Islander

Black or African Decent

Hispanic

White or Caucasian

Any person who knowingly makes any false statement, misrepresentation, concealment of fact or any other act of fraud to obtain compensation as provided under the EEOICPA or who knowingly accepts compensation to which that person is not entitled is subject to civil or administrative remedies as well as felony criminal prosecution and may, under appropriate criminal provisions, be punished by a fine or imprisonment or both.

I certify that the information provided is accurate and true.

Print Name \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

**Return to: [Insert District Office address]**



U. S. DEPARTMENT OF LABOR EMPLOYMENT STANDARDS  
ADMINISTRATION

OFFICE OF WORKERS' COMPENSATION  
PROGRAMS

DIVISION OF ENERGY EMPLOYEES' OCCUPATIONAL

ILLNESS COMPENSATION

200 CONSTITUTION AVE

ROOM C-4511

WASHINGTON DC 20210

TELEPHONE: (202) 693-0081

March 28, 2002 Employee:

File Number:

JOE CLAIMANT

1234 W. MAIN STREET

WASHINGTON, D.C.

Dear Mr. Claimant:

This letter concerns your claim for compensation under the Energy Employees Occupational Illness Compensation Program.

We have reviewed the claim and found that the exposed employee was diagnosed with one of the following:

§ Primary Trachea

§ Bronchus

§ Lung

The next step in determining whether you are eligible for benefits is calculating whether the diagnosed cancer is reasonably related to exposure to radioactive materials during the course of covered employment. The calculation of probability of causation is based on many factors, such as the length of exposure and proximity to radiological sources, safety protection worn, the type of cancer diagnosed, etc.

We calculate the probability of causation by using a computer program to determine whether the diagnosed cancer is reasonably related to exposure during covered employment. For a claim involving primary trachea, bronchus, or lung cancer or cancers that have spread to more than one location in the body, the computer program requires that we include information about the employee's smoking history prior to the diagnosis of cancer.

Therefore, we are asking you to complete the attached questionnaire in full and return it to the address that appears at the bottom of the questionnaire. Please return the questionnaire within 30 days to avoid any delay in the claims process.

It is important that you complete the questionnaire in full and return it to us so that we can perform the probability of causation calculation. If we do not receive a fully completed questionnaire, we will be unable to perform a calculation of probability. Without a calculation of probability, we will not be able to determine whether you are entitled to benefits under this program and no award of benefits will be made.

Remember as the claimant, it is ultimately your responsibility to submit the necessary information to establish a claim under the EEOICPA. If you have any questions or concerns, please contact the

District Office at XXX-XXX-XXXX or fax 202-693-1465.

Sincerely,

Claims Examiner

Employee:

File Number:

1. Check the box that best describes the smoking history of the employee named above.

**Never Smoked** – Employee who smoked no more than 100 cigarettes before the date of cancer diagnosis.

**Former Smoker** - Employee who quit smoking more than five years before the date of cancer diagnosis

**Current Cigarette Smoker** - Employee who smoked cigarettes at the time of the cancer diagnosis or who quit smoking fewer than five years before the date of the cancer diagnosis

2. If you checked **Current Cigarette Smoker** above, please check the box below that corresponds with the number of cigarettes smoked per day at the time of the cancer diagnosis:

	Less than 10 per day
	10 – 19 per day
	20 – 39 per day
	40+ per day

\* Generally 20 Cigarettes Per Pack

Any person who knowingly makes any false statement, misrepresentation, concealment of fact or any other act of fraud to obtain compensation as provided under the EEOICPA or who knowingly accepts compensation to which that person is not entitled is subject to civil or administrative remedies as well as felony criminal prosecution and may, under appropriate criminal provisions, be punished by a fine or imprisonment or both.

I certify that the information provided is accurate and true.

Print Name \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

**Return to: [Insert District Office address]**

**02-04 Rectal cancer**

EEOICPA BULLETIN NO. 02-04

Issue Date: April 1, 2002

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Effective Date: April 1, 2002

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Expiration Date: April 1, 2003

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Subject: Rectal Cancer as a Specified Primary Cancer

Background: The District Offices have reviewed some Special Exposure Cohort (SEC) cases from gaseous diffusion plants where the only cancer diagnosis was rectal cancer. The specified cancer list in EEOICPA Section 7384l(17) includes colon cancer, but not rectal cancer. The intent of this Bulletin is to clarify the relationship of these two cancers and their inclusion as specified primary cancers under EEOICPA Section 7384l(17).

The colon and rectum form a long, muscular tube called the large intestine (also called the large bowel). The colon is the first 6 feet of the large intestine, and the rectum is the last 8 to 10 inches. The rectum is composed of the same tissue/cell type as the colon.

Because of this anatomical similarity, it is DOL's intent to consider rectal cancer as the same as colon cancer. Consequently, rectal cancer should now be considered a primary specified cancer based on colon cancer being listed in EEOICPA Section 7384l(17) and used as such for determining eligibility for members of the Special Exposure Cohort (SEC) per EEOICPA Section 7384l(14).

Reference: Energy Employees Occupational Illness Compensation Program Act of 2000, As Amended, 42 U.S.C. § 7384 *et seq.*, Sections 7384l (14) and (17).

Purpose: To notify District Offices to consider rectal cancer as similar to colon cancer, which is a specified primary cancer.

Applicability: All staff.

Actions:

1. The CE should consider rectal cancer as being the same as colon cancer, which is a specified primary cancer per EEOICPA Section 7384l(17). The rationale is based on the fact that the rectum and the colon are composed of the same tissue/cell types. Anatomically, it is appropriate to consider cancers of the colon and rectum to be the same.
2. Since colon and rectal cancers are considered anatomically similar, rectal cancer can now be considered as a specified primary cancer in determining eligibility for members of the Special Exposure Cohort (SEC) per EEOICPA Section 7384l(14).
3. The CE should continue to distinguish colon from rectal cancers using the appropriate ICD-9 codes on all appropriate paperwork. For example, the ICD-9 codes for a malignant neoplasm of the colon is 153 and for the rectum it is 154.1. For cancers that arise at the junction of these two areas, the ICD-9 code 154.0, for the rectosigmoid junction, can be used.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

**02-05 Election of remedies**

EEOICPA BULLETIN NO.02-05

Issue Date: April 1, 2002

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Effective Date: December 28, 2001

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Expiration Date: April 1, 2003

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Subject: Effect of tort suits against beryllium vendors and atomic weapons employers on eligibility for compensation under EEOICPA

Background: Section 7385(d) of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), per December 28, 2001 amendments to the National Defense Authorization Act for 2002, determines the effect of tort suits filed against a beryllium vendor or atomic weapons employer on the rights of otherwise eligible individuals to receive compensation under the EEOICPA.

Reference: 42 U.S.C. 7385(d)

Purpose: To notify the District Offices of the effect of tort suits against beryllium vendors and atomic weapons employers on eligibility for compensation.

Applicability: All staff.

Actions:

1. If an otherwise eligible individual filed such a tort suit before October 30, 2000, and the suit remained pending as of the date of enactment of the National Defense Authorization Act for 2002 (December 28, 2001), then the individual is not eligible for compensation under EEOICPA unless he or she dismisses the tort action before December 31, 2003.
2. If an otherwise eligible individual filed a tort suit against a beryllium vendor or atomic weapons employer between October 30, 2000, and December 28, 2001, that individual is not eligible for compensation under EEOICPA unless he or she dismisses the tort action before the later of April 30, 2003, and the date that is 30 months after the date that he or she becomes aware that the covered employee may have a covered illness connected to exposure in the performance of duty under section 3623.
3. If an otherwise eligible individual files such a tort suit after December 28, 2001, and a final court decision is entered against the individual, he or she will not be eligible for compensation under EEOICPA.
4. If no final decision is entered in a tort suit filed after December 28, 2001, then the otherwise eligible individual will not be eligible for compensation unless he or she dismisses the tort suit before the later of April 30, 2003, and the date that is 30 months after the date that he or she becomes aware that the covered employee may have a covered illness connected to exposure in the performance of duty under section 3623.
5. Section 7385(d) of the EEOICPA, as amended, affects only the rights of the individual otherwise eligible for compensation under the Act. Typically, the "otherwise eligible individual," who must take action to avoid forfeiting compensation, will be either a "covered beryllium employee" or a "covered employee with cancer," as those terms are defined in the regulations at 20 C.F.R. §§ 30.205 and 30.210. Such an "otherwise eligible individual" also could be a survivor of a deceased covered employee with no cause of action in his or her own right. In either of those situations, where the only plaintiff is an individual who is otherwise eligible for benefits under EEOICPA, the entire tort suit would have to be dismissed in a timely manner in order to preserve either the covered employee's or the survivor's entitlement to EEOICPA benefits.
6. Tort suits covered by section 7385(d) can also have multiple plaintiffs with separate causes of action, however. For example, a tort suit brought by a living covered employee could include his or her spouse as a plaintiff with the spouse's own cause of action for loss of consortium due to the

covered employee's exposure to beryllium or radiation. If such another plaintiff is not an "otherwise eligible individual," he or she need not take any action pursuant to section 7385(d). Thus, if a covered employee is living, his wife is not eligible for compensation under EEOICPA and the continued pendency, or settlement, of a suit in which the wife is advancing her own cause of action would have no effect on the covered employee's eligibility for compensation. Similarly, in a case where the covered employee is deceased and a spouse is eligible for EEOICPA compensation, other family members, such as children, who may also have brought suit based upon the covered employee's death, would not have to dismiss their causes of action. Only the individual who is "otherwise eligible" for compensation under EEOICPA is required to take action regarding his or her tort suit in order to preserve his or her eligibility. Finally, tort suits that terminate, either by settlement, final decision, or withdrawal, before December 28, 2001, do not effect eligibility for compensation under EEOICPA, but the amounts recovered in such actions may be offset against compensation awarded under the Act.

7. Section 3641 of the EEOICPA provides that the payment of benefits to an individual, or to a survivor of that individual, must be offset by the amount of a payment made pursuant to a final award or settlement on a claim based on injuries incurred by that individual on account of the exposure of an employee covered by the EEOICPA to beryllium, radiation or silica. In a situation that involves multiple plaintiffs where OWCP confirms that the covered employee has timely dismissed his or her cause of action for injuries due to exposure to beryllium or radiation but the covered employee's spouse (the only other plaintiff in this example) has settled or won his or her cause of action for loss of consortium, OWCP will not offset the EEOICPA benefits that are payable to the covered employee by the amount of the settlement paid to the spouse. Section 3641 only applies to awards or settlements paid to or for covered employees for occupational illnesses covered by the EEOICPA. Therefore, because the settlement of the spouse's cause of action for loss of consortium is not paid to or for the covered employee, OWCP will not offset the covered employee's EEOICPA benefits by the amount of the settlement payment to the spouse. Care should be taken, however, to determine that the settlement or award actually represents a recovery only by someone other than the individual "otherwise eligible" for benefits under EEOICPA.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

## **02-06 Expanding covered time frames**

EEOICPA BULLETIN NO.02-06

Issue Date: May 7, 2002

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Effective Date: May 7, 2002

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Expiration Date: May 7, 2003

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Subject: Expanding covered time frames for atomic weapon employers and beryllium vendors.

Background: The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has received numerous claims where the period of alleged employment falls completely outside of the covered time frame, as shown on the Department of Energy (DOE) web site, for a designated atomic weapon employer (AWE) or Beryllium (Be) vendor. Neither the statute nor the regulations address how a Claims Examiner (CE) is to handle such a situation. Accordingly, procedures are required for determining whether an expansion of the covered time frames for designated AWEs or

Be vendors is warranted.

While the responsibility for designating AWE or Be vendor sites rests with the DOE, the DEEOIC is responsible for establishing the covered time frames for each designated employer. Deciding covered time frames relies on the presence of probative evidence substantiating a connection between the DOE and an entity that either supplied beryllium for use by the DOE or processed radioactive material for use in the production of an atomic weapon.

The procedures outlined in this bulletin describe how a claimant is to be granted the opportunity to expand the covered time frame for designated AWE and BE vendor facilities. The DEEOIC will review any additional documentation submitted by a claimant in order to determine if it is of sufficient probative value to warrant the expansion of the covered time frame for a designated AWE or Be vendor. This will ensure any decision issued is based on all available documentation.

Reference: 42 USC 7384l (3)-(6)

Purpose: To notify the District Offices of the procedures for handling a claim where the claimed period of employment falls outside of the established time frame for a designated AWE or Be vendor.

Applicability: All Staff

Actions:

1. The CE must identify each period of claimed employment for a designated AWE or Be vendor. To determine employer designation, the CE should cross-reference claimed employers against the list of designated AWEs or Be vendors in the Federal Register or provided by the DOE on their covered facilities web site.
2. Once the CE identifies claimed employment at a designated AWE or Be Vendor facility, action should be taken to verify employment. The evidence of file must show employment occurred as alleged. The CE should follow the normal routine for verifying employment as discussed in the DEEOIC procedure manual and prior program bulletins. If, after appropriate development, there is insufficient evidence to verify employment, the CE should not accept the claimed period of employment as factual.
3. If the CE verifies employment at a designated AWE or Be vendor facility, the dates should be compared against the recognized covered time frame for the employer. The CE should initially consult the DOE sponsored facilities web page to determine whether the period of verified employment falls within the covered time frame. The dates provided on the web site are considered sufficiently reliable in deciding whether employment occurred at an AWE or BE vendor during a covered time frame. However, the CE must be aware that any challenge to the listed dates by the claimant or in any instance where the information provided on the web site is unclear or speculative, the National Office is responsible for clarification. If there is a dispute or some other discrepancy over the dates of coverage listed on the DOE sponsored facilities web page, the CE should contact the National Office for guidance.
4. If the claimed period of employment has been verified, but is completely outside of the covered time frame listed on the DOE web site or established upon consultation with the National Office, the CE should prepare a letter for the claimant. The letter must explain the deficiency concerning the claimed dates of employment. The CE must describe the requirement that employment at a designated AWE or Be vendor must be established during a covered time frame. A description of what constitutes an AWE or Be vendor should be provided along with the existing dates of coverage for the named facility. The claimant should also be asked to supply any pertinent evidence substantiating that the named AWE or Be vendor time frames should be expanded. Pertinent evidence includes any documentation supporting that the employee was present when the facility contracted with the DOE to provide services related either to processing beryllium for the U.S. Government or radioactive materials for use in atomic weapons. For example, the claimant can be

asked to submit evidence such as contractual documents, business reports, internal memos, purchase orders, news articles, affidavits, etc. A period of 30 days can be granted to the claimant to submit evidence in support of the claim. At the discretion of the CE, extensions may be granted up to a maximum of 60 days.

5. After appropriate development, the CE must decide whether any evidence submitted warrants a referral to the National Office. If the claimant has submitted pertinent evidence in regard to expanding the covered time frame for the named facility, the CE will prepare a brief memo to file explaining the circumstances of the situation and request a review of the case file by the National Office. The memo should request the NO to make a determination regarding the expansion of the dates of AWE or Be vendor designation. The memo along with the entire case file should be transferred to the National Office. If the claimant is unable to provide additional information or provides documentation that is not pertinent to the covered time frame, the CE will proceed with a finding that verified employment could not be established during a covered time frame for the facility. It should be noted that mere exposure to residual radiation subsequent to a period of AWE designation is not sufficient to warrant a referral to the National Office. The employee must demonstrate employment during a period of time that the facility was actively engaged in activities related to processing radioactive materials to be used in U.S. atomic weapons.

6. When the claim is received by National Office, a review of the new evidence will be conducted to determine if it warrants expansion of the covered dates of AWE or Be vendor designation. The National Office will obtain copies of all pertinent documentation concerning the claimed AWE or Be Vendor from DOE. Any new evidence submitted by the claimant will be reviewed in conjunction with the DOE documentation to determine if sufficient evidence exists to expand the covered time frame for the facility. Once the National Office has completed its evaluation, a memo will be prepared describing the findings. The memo will reference specific documentation, or lack thereof, substantiating the determination. The memo will be spindled into the case file along with relevant evidence establishing the covered time frame. Copies of all documentation from the Department of Energy and the claimant will be maintained in a centralized file location at the National Office.

7. The case file will be returned to the District Office. Once the case has been received, the CE will proceed to develop any outstanding items and issue a recommended decision. For the recommended decision, the CE should summarize the findings from the NO employment time frames memo in the statement of the case section of the decision. The CE can advise the claimant that the memo and other employment records are available for review if requested in writing to the district office. A copy of the NO memo and the pertinent documentation supporting the covered time frames will not be attached to the recommended decision.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

Peter M. Turcic

Director, Division of

Energy Employees Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

## **02-07 Statutory vendors and employment verification**

EEOICPA BULLETIN NO.02-07

Issue Date: May 7, 2002

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Effective Date: May 7, 2002

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Expiration Date: May 7, 2003

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Subject: Covered time frames for the eight statutory beryllium vendors.

Background: The Energy Employees Occupational Illness Compensation Program Act (EEOICPA) specifically identifies eight corporate entities as beryllium vendors. In doing so, the Act has been interpreted to expand coverage to any employee engaged in beryllium related employment activities occurring concurrently with any period that the company was processing beryllium for the Department of Energy (DOE). These beryllium vendors include the following: Atomic International; Brush Wellman, Incorporated and its predecessor, Brush Beryllium Company; General Atomics; General Electric Company; NGK Metals Corporation and its predecessors, Kawecki-Berylco, Cabot Corporation, Berylco, and Beryllium Corporation of America; Nuclear Materials and Equipment Corporation; StarMet Corporation and its predecessor, Nuclear Metals, Incorporated; and Wyman Gordan, Incorporated.

While the EEOICPA specifically designates these eight corporate entities as beryllium vendors, it is silent on the issue of when each was producing or processing beryllium for sale to, or use by, the DOE. Given this situation, it is within the purview of the Division of Energy Employees Occupational Illness Compensation (DEEOIC) to establish the covered time frames for the statutory beryllium vendors.

The National Office of the DEEOIC has reviewed records maintained by the Department of Energy. Based on this review, the covered time frame for each statutorily named beryllium vendor has been decided. Provided as an attachment to this bulletin is a list of the designated statutory vendors and the corresponding covered time frame for each (Attachment 1). The attachment provides the name of the beryllium vendor, a description of the vendor and a summary of the evidence used to establish the effective date.

The effective dates of coverage are to be used by the Claims Examiner (CE) in determining whether or not an employee, contractor or subcontractor was present at a designated beryllium vendor during a time when the vendor engaged in producing or processing beryllium for use by the Department of Energy.

Reference: 42 USC § 7384l (6) and (7)

Purpose: This bulletin serves to enumerate the covered time frames for the eight statutory vendors named in the EEOICPA. In addition, it provides procedure clarification concerning the use of these time frames in determining covered beryllium employment.

Applicability: All Staff

Actions:

1. Upon receipt of a claim for compensation, the CE reviews the EE-3 Employment History form to determine whether any period of employment for a statutory beryllium vendor is claimed. Consideration should also be granted to contractors or subcontractors of the named vendor.
2. If there is any indication provided on the EE-3 that the named individual was employed at a statutory vendor as an employee, contractor or subcontractor, the CE must verify the employment. The CE should follow the normal routine established in the procedure manual and program bulletins for verifying employment. It is not necessary for the CE to verify the entire period of claimed employment with a beryllium vendor. Once the CE has verified that the individual was employed during any period of covered employment, the CE need not attempt to verify additional claimed employment.

3. If a claimed period of employment is verifiable and the employee was an employee, subcontractor or contractor of a statutory vendor, the CE must determine whether any period of verified employment occurred during a time when the vendor was engaged in processing or producing beryllium for the DOE. It is only necessary for the CE to establish one instance where the period of verified employment overlaps a covered time frame for the named vendor. The CE must consider the fact that these particular eight statutory vendors have been specifically designated in the statute as covered beryllium vendors. A vendor may contain many different facilities located in various locations. The Act does not limit the covered employer to the particular facilities, thus employment with any facility of a statutory vendor during a period when the vendor was concurrently processing beryllium for the DOE is covered. This is true even if the employee was engaged in processing beryllium unrelated to any DOE operation.

The CE should use the information provided in Attachment 1 in making this determination. The CE should compare the dates of verified employment to the dates that have been determined by the National Office to be the time frame when the vendor was engaged in beryllium work for the Department of Energy. If any period of verified employment falls within the covered time frame for the statutory vendor, the CE can proceed with a finding that the employee is a covered beryllium employee as defined in 42 USC § 7384l (7). If the period of verified employment falls completely outside of the covered time frame for the vendor, the CE should follow the procedure for expanding covered time frames (See EEOICPA Bulletin 02-06).

4. If the claimant desires to review the records maintained by the National Office in regard to the covered time frames for the statutory vendors, a signed written request must be submitted to the appropriate district office. The district office will forward any such request directly to the National Office.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual

PETER TURCIC

Director, Division of

Energy Employees Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

# Statutory Beryllium Vendors

## Covered Time Frames

### 1. Atomics International

1954-1966

<b>Summary Description</b>	
<p>Atomics International was contracted by the AEC in the late 1940s to design and test nuclear reactor fuel. Beginning in 1954, some of the work for the contracts was performed at the Van Own building at the Atomics International in Canoga Park. There was a machine shop at this location that processed beryllium components. The last document establishing a beryllium relationship between Atomic International and AEC is an accident report from 1965-66.</p>	
<b>Supporting Documentation</b>	
1954	<p>The start date is established in a Tiger Team Assessment from April 1991. They reported that DOE Rockwell's Canoga Park facility (Atomics International was a component of North American Aviation. The parent company eventually became Rockwell International) was used starting in 1954 to work on reactors. This work was conducted in a building where beryllium machining took place.</p>
1966	<p>A report from the AEC lists all accidents and incidents in AEC facilities involving radioactive material. Included in the document is a description of an accident that occurred when two employees were moving an irradiated beryllium temperature probe at the Canoga Park facility.</p>

## 2. Brush Wellman Inc. and Brush Beryllium Company 1943-2001

<b>Summary Description</b>	
Brush Wellman was the largest producer of beryllium related materials used by the AEC. The first contract that was made for the company to provide beryllium metal and beryllium fluoride was dated August 18, 1943. The last shipment of beryllium products to an organization linked to the atomic weapons production was 04/10/2001. This was reported to the Dept. of Energy in a listing provided by the company. There is a large pool of documentation supporting beryllium production for AEC and Dept. of Energy between the start and end dates.	
<b>Supporting Documentation</b>	
1943	Excerpt from the Manhattan District History reveals the first contract for beryllium metal and beryllium fluoride was entered into effect on August 18, 1943.
2001	Contract listings from the Brush Wellman company describe shipments of beryllium products to Los Alamos National Lab through April 10, 2001.

### 3. General Atomics

#### 1959-1967

<b>Summary Description</b>	
<p>General Atomics was involved in the Experimental Beryllium Oxide Reactor Project (EBOR). This was a project to develop a use for beryllium in gas-cooled reactors. General Atomics was awarded the program in January 1958. In September, 1959, General Atomics began using beryllium oxide in the project. The EBOR project was terminated in FY 1967.</p>	
<b>Supporting Documentation</b>	
1959	<p>In a description of the Experimental Beryllium Oxide Reactor Project, a background summation of the project reveals that General Atomics was awarded the project and that use of beryllium oxide began in 1959. This description was included in a Memorandum from the Director of the Division of Reactor Development and Technology.</p>
1967	<p>The same memo as above recommends the termination of the EBOR project in 1967 due to technical problems and other uncertainties.</p>

## 4. General Electric

### 1951-1970

<b>Summary Description</b>	
The Department of Energy relationship with General Electric in Lockland, Ohio, starts in 1951 as part of the Aircraft Nuclear Propulsion Project. The relationship is shown to terminate in 1970.	
<b>Supporting Documentation</b>	
1951	Aircraft Nuclear Propulsion Facility - Evendale indicates that General Electric was conducting research and development of the aircraft nuclear propulsion project. This was being supported by the Air Force and the AEC.
1951	Memo describes that 2300 pound of beryllium fluoride has been sent to X-10 for use in the aircraft reactor program.
1954	Lockland Area Office memo describes the use of beryllium and beryllium compounds under the General Electric Company contract.
1960	Atomic Energy Commission Toxic Hazards of Beryllium As Related to the Reactor Development Program (Appendix c).
1970	A memo from the Acting Director of Materials Licensing indicates that the existing AEC contract with GE is in the process of termination. Dated June 11, 1970

## 5. NGK Metals Corporation and Predecessors 1943-1979

<b>Summary Description</b>	
<p>NGK and its predecessors produced beryllium for use by the AEC. This relationship began in 1943 as part of the Manhattan Project. The Beryllium Corporation in Hazelton was asked by representatives of the Manhattan Engineering Program to to conduct analysis of beryllium. By 1979, only Brush Wellman and Kawecki-Berylco were processing beryllium for the AEC. In September, 1979, KBI terminated its beryllium metal production lines.</p> <p>The NGK predecessor organizations include the following entities:</p> <ul style="list-style-type: none"> <li>◆ Berylco</li> <li>◆ Kawecki-Berylco</li> <li>◆ Cabot Corporation</li> <li>◆ Beryllium Corporation of America.</li> </ul>	
<b>Supporting Documentation</b>	
1943	<p>An excerpt from the Manhattan District History (Addendum 5.16) notes that on August 23, 1943, Lt. Col. Ruhoff to Mr. Gravely, Beryllium Corporation, that an analysis of beryllium material be conducted by the company. This is the first instance of contact between the Manhattan Engineering Project and the Beryllium Corp to engage in work connected to beryllium material</p>
1946	<p>An excerpt from the Manhattan District History (pg. K-17) reveals that Beryllium Corporation of Reading, PA entered into contract to supply AEC with 1,000 pounds of high purity beryllium metal. Although the evidence suggests a contract was never finalized, there is no evidence to support a argument that there was absolutely no beryllium produced for the AEC under those preliminary arrangements.</p>
1947	<p>A monthly status and progress report from New York operations dated 12/8/1947, noted the construction of a beryllium casting plant at the Beryllium Corp in Reading, PA.</p>
1979	<p>End date established in September, 1979. An Information Memorandum from Director of Military Operations to Secretary of Dept. of Energy describes the termination of KBI product lines.</p>

## 6. Nuclear Materials and Equipment NUMEC 1960-1968

<b>Summary Description</b>	
<p>NUMEC is listed a statutory beryllium vendor under the EEOICPA. The company produced braze materials for use at the Hanford operations. Braze contains zircaloy alloy and <b>beryllium</b> powder.</p>	
<b>Supporting Documentation</b>	
1960	<p>A December 3, 1959 Office Memorandum describes a contract that would be</p>

	coming into effect in 1960 to supply beryllium coatings for UO <sub>2</sub> .
1960	Atomic Energy Commission Toxic Hazards of Beryllium As Related to the Reactor Development Program (Appendix c).
1961	Regulatory Activities Document indicates that NUMEC was licensed for the production of plutonium-berllium neutron sources.
1962	NUMEC correspondence dated February 19, 1963 reveals contracts existed with the AEC through at lease1962
1965	DOE notes indicate that an order for 5000 braze rings was make in September 1965. (No primary source documents are in file)
1968	An "Information Report on NUMEC Powder Metallurgical Braze Rings" dated March 4, 1968 provides a summary of all of the information to date concerning braze rings fabricated by NUMEC. The report indicates that to date the AEC committed \$84,000 in purchase of powered compacts with NUMEC.

## 7. StarMet Corporation and its Predecessor Nuclear Metals 1954-1986

<b>Summary Description</b>	
Starmet/Nuclear Metals originated out of a MIT laboratory operation. MIT was involved in a variety of beryllium related operations. Nuclear Metals assumed control of the MIT laboratory in 1954. Nuclear Metals produced beryllium products for the AEC until 1986.	
<b>Supporting Documentation</b>	
1954	In a memo discussing a claim for compensation involving a patient with beryllium disease, there is a discussion of the fact that on July 1, 1954, Nuclear Metals took over the MIT beryllium operation.
1984	A September 6, 2001 correspondence noted that Nuclear Metals Incorporated was the sole supplier of Beryllium Braze rings 1962-1984.
1986	An October 11, 2001, letter to Roger Anders reveals that in 1983, Nuclear Metals, Inc received a three-year sub-contracted to produce beryllium. Final delivery was made in 1986

## 8. Wyman Gordon 1959-1965

<b>Summary Description</b>	
The dates for Wyman Gordon are derived from notes taken by an employee of the Department of Energy. The notes were taken at a classified records center. While the employee was able to review documents that establish covered dates 1959 to 1965, the source documents could not be copied.	
<b>Supporting Documentation</b>	
1959-1965	DOE employee notes

**02-08 GDP times**

EEOICPA BULLETIN NO.02-08

Issue Date: May 7, 2002

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Effective Date: May 7, 2002

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Expiration Date: May 7, 2003

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Subject: Clarification of the onset period for specified cancers and the 250-day employment requirement at a Gaseous Diffusion Plant.

Background: Issues have arisen as to how exposure to ionizing radiation at a Gaseous Diffusion Plant (GDP) should be determined with respect to: (1) the 250-day GDP employment requirement and (2) the time period between first radiation exposure at a GDP and diagnosis of a specified cancer.

Regarding the first issue, for inclusion in the Special Exposure Cohort (SEC), the employee must have been employed for an aggregate of at least 250 workdays before February 1, 1992, at a GDP located in Paducah, KY, Portsmouth, OH, or Oak Ridge, TN (per EEOICPA Section 7384l(14)). The employee may accumulate the days of service at more than one GDP to satisfy the 250 workday requirement (per 20 CFR 30.213(b)).

The second issue addresses the length of time following first exposure to radiation at a GDP until the diagnosis of the employees' specified cancer. EEOICPA Section 7384l(17) defines specified cancers for inclusion in the SEC. The Act also states that certain onset time requirements need to be met in order to qualify for SEC inclusion. For most cancers, an eligible employee must have developed a specified cancer 5 years after first exposure. In the case of leukemia, an onset time of more than two years after initial occupational exposure is required. There are no delay of onset periods for primary or secondary lung, bone, and renal cancers.

Reference: Energy Employees Occupational Illness Compensation Program Act of 2000, As Amended, 42 U.S.C. § 7384 *et seq.*, Sections 7384l (14) and (17) and 20 CFR 30.213(b).

Purpose: To clarify the onset period for specified cancers and the 250-day employment requirements for workers at a GDP.

Applicability: All staff.

Actions:

1. For inclusion in the SEC the CE must first determine that the employee was employed for an aggregate of at least 250 workdays before February 1, 1992, at a GDP located in Paducah, KY, Portsmouth, OH, or Oak Ridge, TN (per EEOICPA Section 7384l(14)). The individual may be employed at more than one GDP to satisfy the 250 workday requirement (per 20 CFR 30.213(b)).
2. Additional information for the CE to consider involves when the radiation monitoring requirements in EEOICPA Section 7384l(17)(A)(i) and (ii) should be applied. During the construction period at the GDPs, the dosimetry badging requirements generally do not apply since radioactive material was not present on the site. Once radioactive material (uranium) was on site for enrichment, the dosimetry badging or comparable exposure aspects of Section 7384l(17)(A)(i) and (ii) would apply.
3. Next, the CE must address the second criterion, which relates to the determination of the time of onset of a specified cancer after initial exposure to radiation at a GDP. The first day of employment at any of the three GDPs "starts the clock" for determining the time of onset of a specified cancer, i.e., it is the first day of exposure. The date of diagnosis "stops the clock" and must meet the requirements for the time of onset for the specified cancer stated in EEOICPA Section 7384l(17) (the periods are discussed further below).
4. A number of specified cancers are listed in the Act. For these specified cancers, the CE must determine that the date of diagnosis is at least 5 years after first exposure at a GDP (per EEOICPA Section 7384l(17)). There are no delay of onsets for primary or secondary lung, bone, and renal cancers.

5. For leukemia, the CE must determine that the date of diagnosis is greater than two years after initial occupational exposure at the GDP (per EEOICPA Section 7384l(17)).
6. The CE should consider the following example in assessing GDP employment using the above criteria. In this example, an employee started at a K-25 (a GDP site) and worked 1 year before leaving to work at Y-12 (non-GDP site). After working at Y-12 for 4.5 years, he was diagnosed with a specified cancer. Since he accumulated over 250 aggregate workdays of GDP employment and the cancer was diagnosed 5 years after first exposure at the GDP, he is eligible as a member of the SEC.
7. Another example that the CE should consider in making determinations regarding the above criteria involves the following situation. In this example, an employee started at Y-12 (a non-GDP site), worked for 4.5 years, and then spent 1 year at K-25 (a GDP site). A specified cancer was diagnosed after only one year at K-25. In this case, while the employee has accumulated over 250 aggregate workdays of GDP employment it has not been 5 years between first exposure at K-25 and cancer diagnosis. Consequently, the employee would not yet be eligible as a member of the SEC.
8. If the employee worked at a GDP but does not qualify as a member of the SEC, e.g., has a non-specified cancer, the case needs to go to NIOSH for dose reconstruction.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual

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Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

## **02-09 Counting 250 workdays**

EEOICPA BULLETIN NO.02-09

### **Issue Date:**

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Effective Date: May 7, 2002

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Expiration Date: May 7, 2003

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Subject: Determination of 250 workdays of employment for EEOICPA claimants.

Background: The eligibility criteria for members of the Special Exposure Cohort (SEC) and claimants of chronic silicosis include a minimum requirement of 250 workdays of employment. Eligibility for inclusion in the SEC requires that the employee be employed for an aggregate of at least 250 workdays before February 1, 1992, at a Gaseous Diffusion Plant (GDP) (per 20 CFR Part 30.213(a)(1)). The employee may accumulate the 250 workdays at more than one GDP (20 CFR 30.213(b)). The eligibility requirements for benefits for chronic silicosis include a requirement of the worker's presence for an aggregate of at least 250 workdays during the mining of tunnels at a DOE facility in Nevada or Alaska for tests or experiments related to an atomic weapon (per 20 CFR

30.215(a)).

In most cases, the determination of 250 workdays of employment is straightforward. However, there are some cases, where the employee worked for less than a year, where additional guidance is required to calculate the 250 workdays.

Reference: Energy Employees Occupational Illness Compensation Program Act of 2000, As Amended, 42 U.S.C. § 7384 *et seq.*, Sections 7384l (14) and (17) and 20 CFR Parts 30.213(a)(1) and (b) and 30.215(a).

Purpose: To clarify the determination of the 250 workday requirement for members of the SEC and claimants for chronic silicosis.

Applicability: All staff.

Actions:

1. This approach for determining 250 workdays is applicable to employees at GDPs and workers involved in the mining of tunnels at a DOE facility in Nevada or Alaska for tests or experiments related to an atomic weapon.
2. For the purposes of this Bulletin, a workday will be considered as equivalent to a work shift. Additional hours worked as overtime will not add up to additional workdays, e.g., two hours overtime for four days is not equivalent to another (8-hour) workday. However, two work shifts worked back-to-back would be two work shifts, i.e., two workdays. For an employee whose work shift spans midnight, e.g., 11 PM to 7 AM shift, the work shift is still just one workday.
3. When the employment information shows that the employee worked for a particular period, the CE should not as a rule attempt to discern and deduct from the workday count, infrequent periods of non-presence or non-work, like sick leave, strikes, layoffs or vacation time that may be specified. However, if the employment evidence clearly establishes that the employee was not present and/or working at the GDP facility or mining site for an extended period(s) while on the company payroll, this extended period(s) should not be credited towards meeting the 250 workday requirement.
4. The period of 250 workdays starts with the worker's first day of employment at the GDP or mining site. There may be breaks in employment, but the workdays may only be accumulated at eligible sites, i.e., the three GDPs located in Paducah, KY, Portsmouth, OH, or Oak Ridge, TN, and the mining of tunnels at a DOE facility in Nevada or Alaska.

5. Where the number of days is not apparent in the employee's primary employment record, e.g., from employer, union (records for pension, dues, union local records, etc.), the following table may be used for conversion:

250 days =	50 five-day weeks, or
	42 six-day weeks, or
	12 months (five-day weeks), or
	10 months (six-day weeks), or
	2,000 hours
One month =	21 days (if evidence indicates six-day weeks, 25 days

6. Where records of an employee's earnings are available, such as W-2 Forms or Bureau of Data Processing records from the Social Security Administration, but the periods of employment are not, estimate the 250 workdays as follows. Divide the annual wages earned at the GDP(s) or mining site(s) by the employee's hourly rate to determine the number of hours worked. If the number is greater than 2,000 hours, it meets the 250 workday requirement. The problem with converting dollar amounts to workdays is that they may be rough estimates of actual employment. As such, this method should only be used when all primary employment data is lacking.

7. There will be some situations where the above approach will not be applicable. These cases will need to be treated on a case-by-case basis. For example, non-40 hour workweek for some employees, e.g., firefighters, security guards, will be handled on a case-by-case basis (until more information and experience are gained).

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual

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**02-11 ECMS release notes**

EEOICPA BULLETIN NO.02-11

Issue Date: June 19, 2002

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Effective Date: June 7, 2002

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Expiration Date: June 7, 2003

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Subject: Updated Energy Claims Management System (ECMS)- Release Notes (v.1.4.9.88)

Background: The ECMS is updated periodically to incorporate recent changes and improvement.

Reference: ECMS User Reference Guide (updated 4/22/02), ECMS frequently Asked Questions (FAQs) (updated 4/15/2002).

Purpose: This bulletin serves to notify Division of Energy Employees Occupational Illness Compensation (DEEOIC) District Office (DO) staff of the updated version of ECMS. This version of ECMS incorporates several changes and enhancements based on feedback from the DOs. The Release Notes (v.1.4.9.88) explain the changes on a screen by screen basis. If a change affects many screens in the same matter, it is grouped together under the name of the change like “Description in List Boxes.” If an illustration of the change is presented, the screen is also presented with a shadow setting text box to point to the changes on the screen.

Applicability: All Staff

Actions:

1. DEEOIC staff will immediately incorporate these ECMS changes into their case adjudication process.
2. This is the first release containing the notes & Call-up function. This is a significant improvement for processing claims and caseload management. DO staff should begin to use this feature to remind them of any upcoming action dates associated with a particular claim.
3. This is the first release that requires that a CE assignment be made prior to entering any claim status codes. The CE assignment is made on the Case Screen. While in most instances CE assignment is entered at the time of case create, a Supervisor CE, Senior CE, Ops Chief, or DD may modify CE assignments.
4. This release also modifies the SCE-payment certification process. SCEs will now have three options available to them in ECMS they did not have before – certify, reject or cancel a payment.
  - Certify – this option allows the SCE signature & date to be recorded in the certification box. It also "locks" the payment transaction.
  - Reject – this option "unlocks" the transaction before certification and clears the CE signature and date. Upon return to the CE, the CE will then reprocess the transaction before proceeding with payment processing.
  - Cancel – this option allows the SCE to cancel out of the payment screen without any changes to the payment transaction.
5. This release includes new codes for transferring cases to local FAB offices located in the individual DOs. Cases going from DOs to their local FAB office for final decisions must be transferred using one of the following codes before the local FAB office can update those cases.

**Local FAB office codes: Jacksonville FAB – FAJ**

Cleveland FAB – FAC

Denver FAB - FAD

Seattle FAB - FAS

(The National Office FAB will remain FAB)

6. To transfer a case (within a DO or between DOs the NO, local and NO FAB), a user with the role of SCEX must transfer it in the ECMS Case Screen. A notation that matches the ECMS data (for “location”, “date”, and “by”) must also be made to the case jacket each time a case is transferred. Cases coming back to DOs from their local FAB office must also be transferred to regular DO codes before these cases can be updated. The regular DO codes remain unchanged.

District Office codes: Jacksonville – JAC

Cleveland - CLE

Denver - DEN

Seattle - SEA

7. The “Notes and Call-ups” are intended primarily as a tool for CEs, senior and supervisory CEs in managing their caseloads. Even though use of the notes and call-up functions is voluntary, the CE should follow the guideline set forth in this bulletin to maintain consistency. Each call-up is a note that has an ‘action date’ associated with it that is used to display pending actions by date and type.

8. Each ECMS note consists of up to 255 characters of text and case number, note type code (see below for codes), claim type associated with note, District Office Code, call-up date priority (values 1=highest priority through 5=lowest priority), public flag (when public = y, the note is public, otherwise it is private), update, current owner id, and date created by/transferred to current owner.

9. When to use which Note type codes?

A – Adjudication	Use this code when the note/call-up pertains to a development issue (i.e. employment, medical, survivor) requiring resolution.
B – Bill processing	Use this code when the note/call-up pertains to any matter related to medical bills or medical services related to the case.
F – FAB related	Use this code when the note/call-up pertains to FAB (i.e. hearings/reviews, final decision expected).
I – Inquiry	Use this code when the note/call-up pertains to an inquiry that needs to be made or answer is expected.
L – Lump sum compensation	Use this code when the note/call-up pertains to lump sum payments.
O – Other	Use this code when the note/call-up pertains to any miscellaneous item.

10. When to use Private or Public designation?

- The default is Public – meaning that the note is visible by all authorized ECMS user. Such notes would be included in the case file for any FOIA requests.
- Private notes are those that only the owner can see and update. A new CE, for example, might want to place a reminder of some procedure or policy reference they need to be cognizant of when they take the next action noted in the call-up. Such a note would not be intended as a permanent part of the file, but rather a personal job aid for new staff who would delete it after taking the call-up action.
- Supervisors might want to track a particularly difficult case for customer service to help ensure that DO standards are being met (i.e. telephone calls are returned promptly, action items are being followed).

11. What determines the priority and what do the numbers mean?

- Assigning a priority is strictly at the discretion of the owner of the note (1 = highest priority, 5 = lowest priority). A user can sort their notes and call-ups in the Manage view based on priority; however, it is not a required item. The default is ‘1’.

12. When do I delete a note or call-up?

- Any note that is marked as private should either be deleted after it has served its purpose or made public.
- For public notes, the owner of the note should delete it once it has served its purpose.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual

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## **02-12 Compensation payment process**

EEOICPA BULLETIN NO. 02-12

Issue Date: July 31, 2002

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Effective Date: March 15, 2002

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Expiration Date: July 31, 2003

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Subject: Compensation Payment Process

Background: Between August 2001 and March 2002, lump sum payments were processed by staff at the National Office and issued to claimants through the Electronic Certification System (ECS) at the National Office. During the week of March 11, 2002, team members from the Branch of Automated Data Processing, Coordination and Control (BADPCC) and the Branch of Policy, Regulations, and Procedures (BPRP) conducted training on the compensation transaction process in each District Office (DO). Effective March 15, 2002 the District Offices began processing and issuing payments directly to claimants through the Energy Case Management System (ECMS). This bulletin provides written guidance regarding the procedures to be used and the policies to be followed in processing a compensation payment. Flowcharts which were referenced during the training are attached. Attachment 1 shows the actions involved in processing an Electronic Funds Transfer (EFT) transaction. Attachment 2 shows the actions involved in processing a paper check transaction.

Reference: 20 CFR 30.0.

Purpose: To provide procedures to District Office personnel with respect to the compensation payment process.

Applicability: All staff.

Actions:

1. When a final decision is issued by the Final Adjudication Branch (FAB) notifying a claimant that s/he is entitled to compensation, FAB enters the AOP (Acceptance of Payment) Sent Date (the date of the acceptance of payment letter to the claimant) in ECMS and sends the letter EE-20 with enclosure, form EN-20, to the claimant for completion. All completed EN-20 forms are received and date stamped in the District Office mailroom. They are then distributed to the claims examiner (CE) or the payee change assistant (PCA) based on the method of payment requested by the claimant. If payment is requested by EFT, the PCA is given the form EN-20. S/he enters the AOP Received Date (the date EN-20 was received back from the claimant), the AOP amount, and EFT data on the ECMS payee screen. The PCA then forwards the EN-20 to the CE. If payment is

requested by paper check, the CE is given the form EN-20. S/he enters the AOP Received Date and AOP Amount on the ECMS payee screen.

2. The CE ensures that the claimant (or an authorized representative with an appropriate Power of Attorney) signed the form EN-20. The CE pays particular attention to whether the payment is to be issued to the claimant or to his/her authorized representative with Power of Attorney. In order for a compensation payment to be made out to an authorized representative with Power of Attorney, the file must contain evidence that the Power of Attorney document was reviewed by the DOL's Office of the Solicitor and any deficiencies in the document were corrected prior to creating a compensation payment.

3. The CE is responsible for taking any follow-up action on a deficient form EN-20. If the EN-20 is not signed, the CE makes a copy for the case file and returns the original to the claimant for signature. If the EN-20 has crossouts, erasures, or clarification is needed (e.g., on a bank routing number and/or account number) the CE contacts the bank and/or the claimant (preferably by phone) for clarification. Telephone calls must be documented for the case file. Clarification from either the claimant or bank must be in writing and must be dated and signed. After

clarification is received, the CE attaches the letter of clarification to the original form EN-20 and forwards both documents to the PCA who enters the correct EFT data into ECMS. The CE, at his/her discretion, may request that a new form EN-20 be completed before a payment is created.

Faxed EN-20 forms will not be accepted nor will faxed EFT clarifications. If the EN-20 has an incorrect bank routing number, the CE can obtain the correct routing number by using the Federal Reserve Financial Services Internet web site (<http://www.fededirectory.frb.org>)

4. The CE reviews the claimant's address as reported in the Corrections Section and the Certification Section of the form EN-20 by matching each address: a) to the address on the EE-1/EE-2 or to the most recent change of address in the case, and b) to the on-line address for the case. If the claimant provides an address in the Corrections Section and/or the Certification Section of the EN-20 which is different from the address of record, the CE should contact the claimant (preferably by phone) to verify if the change of address is permanent or only a temporary payment address. The CE should document the content of the telephone call for the case file. If a permanent change of address has been reported and if payment is to be made by paper check, the change of address must be processed by the PCA prior to the CE creating the payment. If the change of address is a payment only, temporary address and the claimant has requested a paper check, the CE should advise the claimant that s/he must submit a brief written statement concerning the address change for the case file. (Faxes will not be accepted.) The statement must be in the case file prior to creating the payment. After receiving confirmation from the claimant that s/he wants the paper check to go to a temporary address, the CE enters the payment only address into the ECMS compensation screen when s/he creates the payment. If payment is to be made by EFT and there is a permanent change of address, the CE should flag the case file for later follow up. To avoid delays in making the payment, the EFT compensation transaction should be completed prior to processing the change of address.

*Note: International EFTs are not allowed as they are not part of the U.S. Treasury Bank/Routing system. A claimant living outside of the U.S. can set up a bank account in an U.S. Bank and use a worldwide ATM machine to withdraw funds. For international payments, paper checks are another option. Paper checks are sent via the mail to the claimant's address.*

5. Before creating the payment in ECMS, the CE completes the Payment Transaction Form (PTF) using information found on the form EN-20 or in the case file. A separate PTF must be completed for each payee receiving compensation. The PTF is electronically accessible. (Attachment 3 is a copy of the PTF that should be used in each DO.) The CE must be careful in entering the employee, payee, and payment information on the PTF as it is the source document for each

payment. The PTF must reflect either a paper check address or an EFT bank routing number, account number, and account type. In addition, the PTF cannot contain any cross-outs, whiteouts, or erasures. The document must be error free.

6. After the PTF is completed, the CE creates the payment. The CE creates a separate compensation payment transaction for each payee. The required on-line data entered by the CE includes:

EFT PAPER CHECK

- Employee and payee SSN(s)
- payee's mailing address, but only *if it is a temporary payment address*. (If paper check is going to payee's permanent address, never enter it as ECMS automatically defaults to it)
- bank routing number (must be nine characters, all numeric with no embedded spaces, dashes, or special characters)
- payee's savings or checking account number (no dashes or spaces allowed)

EFT PAPER CHECK

- payee's account type (savings or checking)
- amount of payment

*Note: Payments keyed for more than \$150,000 on an individual non-RECA case and more than \$50,000 on an individual RECA case will reject. In addition, a compensation transaction cannot be completed without each payee's social security number.*

7. If payment for a minor child is to be made through EFT, the compensation should be deposited into the parent's or legal guardian's bank account. If payment is to be made through paper check, it should be made out in care of the parent or legal guardian. For example, a paper check would be keyed onto the address field in ECMS as follows:

Marian Smith

For John Smith, Jr.

8. Once the payment data has been created on the ECMS compensation screen, the CE clicks the SAVE button and the compensation transaction is saved. The CE's name (based on user ID) and the transaction date automatically appear on the compensation screen. **The CE signs and dates the**

**PTF in the Approvals Section, (Item #1 – Creation).** The CE changes the case file location in ECMS to the Senior or Supervisory CE location (DO discretion) and forwards the hard copy case file with the PTF(s) to the Senior or Supervisory CE’s location for certification of the payment.

9. The Supervisory or Senior CE compares the information recorded on the PTF (employee’s social security number; in a survivor’s claim, the payee’s social security number; the payment amount; and the information required for EFT or a paper check) with documents (EE-1, EE-2, EN-20) in the case file to ensure the PTF is correct. S/he then compares the information recorded on the PTF with the data entered into ECMS to ensure the on-line data is correct. If the Supervisory or Senior CE determines that an error exists, s/he clicks the REJECT button on the ECMS certify screen.

This clears the CE’s user ID and creation data from the transaction. The Supervisory or Senior CE indicates in the Transaction Cancelled section of the PTF the reason the compensation transaction was cancelled. Corrections must not be made to the PTF or to the on-line data by the certifier. The case file and the PTF are returned to the CE for corrections. The CE starts again by completing a new PTF, entering the on-line data as necessary, and forwarding the case to the Supervisory or Senior CE for certification. All PTFs are maintained as part of the case file.

10. When the Supervisory or Senior CE is satisfied that the PTF information and on-line data are correct, s/he clicks the CERTIFY button in ECMS. His/her name (based on user ID) and the certification date appear on the compensation screen. **The Supervisory or Senior CE signs and dates the PTF in the Approvals Section, (Item #2 - Certification).** The Supervisory or Senior CE changes the case file location in ECMS and forwards the hard copy case with the PTFs to the Fiscal Officer’s location for verification of the payment.

*Note: When the payment is certified, the record is automatically locked by ECMS and no changes can be made to the record in its locked status. However, if an error is detected after the payment is certified and locked, the record can be unlocked by the certifier. (ECMS also allows the record to be unlocked by the Chief of Operations, Fiscal Officer, or District Director.) Unlocking the record erases the created and certified statuses on the compensation screen. ECMS automatically returns the record to the CE. The certifier returns the hard copy case file and PTF to the CE. The CE will access the unlocked record and correct whatever error was made.*

11. The Fiscal Officer ensures that data from the PTF has been correctly entered into the ECMS compensation screen. It is not the Fiscal Officer’s responsibility to review the PTF for accuracy. The Fiscal Officer only compares the information on the PTF with the information that has been entered into ECMS. If an error is detected, the Fiscal Officer hits the CANCEL button. The CANCEL button leaves everything “as is.” The Fiscal Officer then unlocks the transaction by selecting UNLOCK Transaction from the ECMS compensation menu, highlighting the record in the list of payments which are locked, and clicking the UNLOCK button. This places the ECMS record back in posture for the CE to correct the payment. The Fiscal Officer is prohibited from making corrections to the PTF or to the on-line data. S/he should indicate in the Transaction Cancelled section of the PTF the reason the transaction was cancelled. The hard copy of the case file and the PTF are returned to the CE for corrective action. The CE starts again by completing a new PTF, entering the corrected on-line data in ECMS, and forwarding the case and PTF to the Supervisory or Senior CE for certification and then to the Fiscal Officer for verification of the corrected payment.

12. When the Fiscal Officer is satisfied that the PTF and on-line data in ECMS are correct, the Fiscal Officer clicks the VERIFY button. His/her name (based on user ID) and the verification date appear on the compensation screen. Once the payment is verified in ECMS, the payment is placed

in a verified status and remains locked. **The Fiscal Officer signs and dates the PTF in the Approvals Section, (Item #3- Verification).** The Fiscal Officer changes the case file location in ECMS to the District Director's location and forwards the hard copy case file with the PTF(s) to the District Director for authorization of the payment.

*Note: If an error is detected after the payment is verified, only the Fiscal Officer, Chief of Operations, or District Director can unlock the record. Unlocking the record erases the created, certified, and verified statuses on the compensation screen. The ECMS record is automatically returned to the CE. The Fiscal Officer returns the hard copy case file and PTF to the CE for corrective action.*

13. The District Director compares the information recorded on the PTF (employee's social security number; in a survivor's claim, the payee's social security number; the payment amount; and the information required for EFT or a paper check) with documents (EE-1, EE-2, EN-20) in the case file to ensure the PTF is correct. The District Director compares the PTF with the on-line ECMS data to ensure the on-line data is correct. If an error is detected, the District Director hits the CANCEL button. The CANCEL button leaves everything "as is." The District Director then unlocks the transaction by selecting UNLOCK Transaction from the ECMS compensation menu, highlighting the record in the list of payments which are locked, and clicking the UNLOCK button. This places the ECMS record back in posture for the CE to correct the payment. The District Director is prohibited from making changes to the PTF or to the ECMS on-line data. The District Director indicates in the Transaction Cancelled section of the PTF the reason the compensation transaction was cancelled. The hard copy case file and PTF are returned to the CE for corrective actions. The CE creates the amended payment in ECMS. The payment will also be certified and verified before it is returned to the District Director for authorization.

14. When the District Director is satisfied that the PTF information and on-line data are correct, the District Director clicks the AUTHORIZE button. His/her name (based on user ID) and the authorization date appear on the compensation screen. The payment is then ready for transmission to the Department of the Treasury. **The District Director signs and dates the PTF in the Approvals Section, (item # 4 - Authorization).**

*Note: If an error is detected after the payment is authorized but not transmitted to the Department of the Treasury, only the District Director can unlock the record from its authorized status. If unlocked, the created, certified, verified, and authorized statuses are erased on the compensation screen, and the ECMS record is automatically returned to the CE. The District Director returns the hard copy case file and PTF to the CE for corrective actions. The CE creates the amended payment in ECMS. The payment is certified and verified before it is returned to the District Director for authorization.*

15. If it is determined by the DO that a payment should not be released (e.g. the payee died) the payment transaction can be deleted. Payment transactions that have not been transmitted to the Department of the Treasury are deleted by clicking the DELETE ICON (-) on the Compensation Payment Update screen. The Fiscal Officer and District Director can delete compensation payments in their own DO.

16. After the payment has been transmitted, the District Director or Fiscal Officer (DO discretion) ensures that the PTF used to create the payment is photocopied and placed in the case file. The original PTF is retained in a folder secured by lock and key. These copies of PTFs should be filed chronologically oldest to most current.

17. The District Director or Fiscal Officer releases the case file to FILES and changes the case file

location in ECMS.

18. Each week the Fiscal Officer takes all the PTFs completed for the week and prints a benefits transaction report. The report consists of a separate page for each

case in which a compensation transaction was created. The report identifies the payee, where the payment was sent, and the amount of the payment. The Fiscal Officer compares each page of the report to the corresponding PTFs to ensure the compensation transaction was made in accordance with the information approved on the PTF. Each page from the

benefits transaction report is attached to the corresponding PTF. The documentation is then filed by the Fiscal Officer or District Director (at DO discretion) to ensure an accurate log of payments is maintained. A copy of the benefit transaction report, by case number, can be copied for individual case files.

19. When an EFT deposit or paper check is returned to the Treasury Department by the bank or post office, the

Treasury Department notifies the National Office. The NO Fiscal Officer, in turn, contacts the DO to report non-receipt of the issued payment by the claimant. If the claimant's address or EFT data has changed, the claimant must complete a new EN-20 before compensation is reissued.

20. If the creator, certifier, verifier, or authorizer is not available to perform his/her payment function, backups can be used.

- Any CE, Senior CE, or Supervisory CE can create the payment.
- Any Supervisory or Senior CE in the DO can certify

the payment as long as s/he did not create the payment.

- The District Director should be notified when the Fiscal Officer is unavailable to verify payments. Either the District Director or Chief of Operations can, in the Fiscal Officer's absence, verify payments. However, ECMS will not allow him/her to authorize the same payment.
- The National Office must be advised when the District Director is unavailable to authorize payments. ECMS will be adjusted so that payments can be authorized on a temporary basis by either the Chief of Operations or the Regional Director.
- For security reasons, absolute separation of PCA, CE, certifier, verifier, and authorizer must be maintained.

Disposition: Retain until incorporated in the EEOICPA Procedure Manual.

PETER M. TURCIC

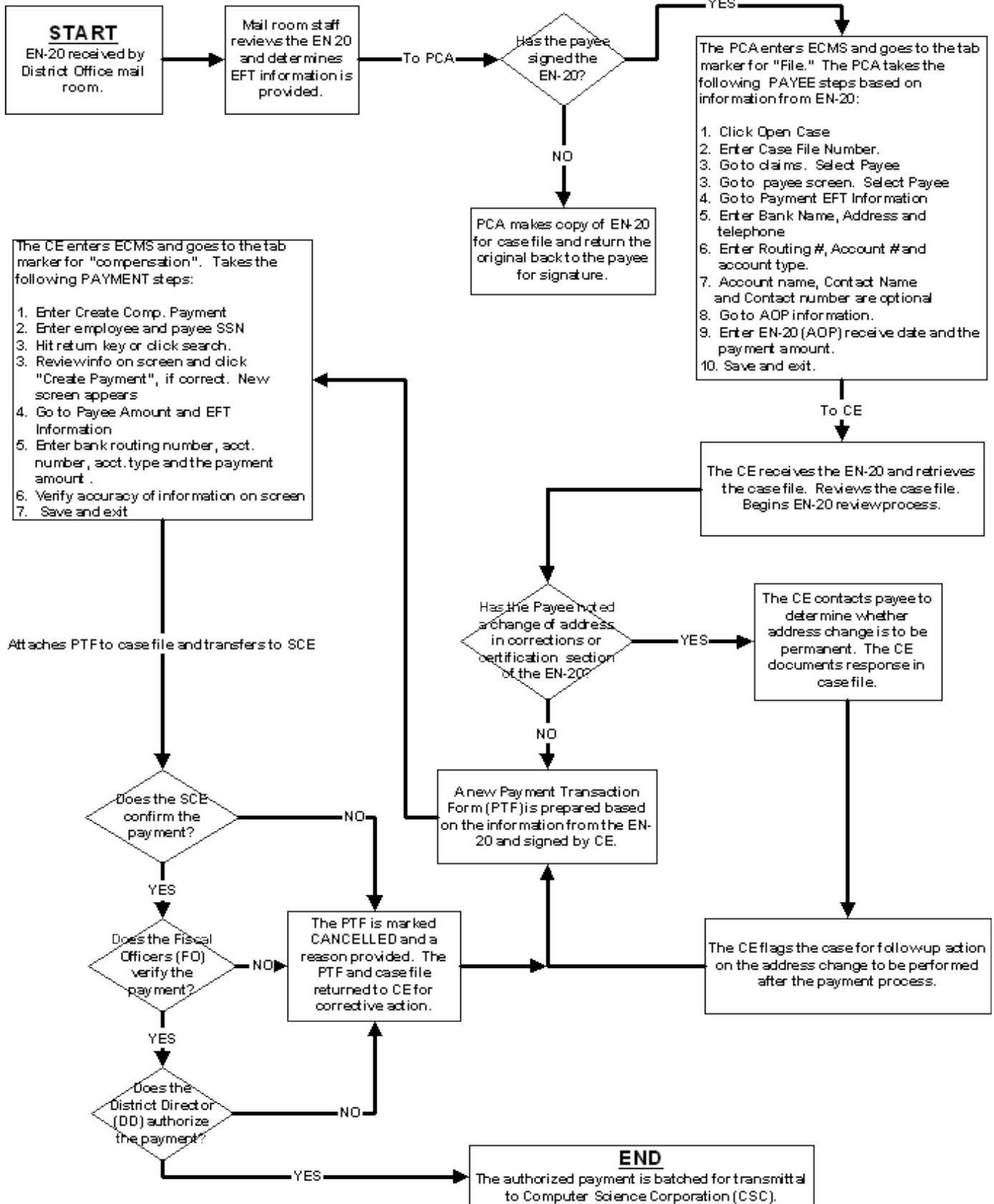
Director, Division of Energy Employees

Occupational Illness Compensation

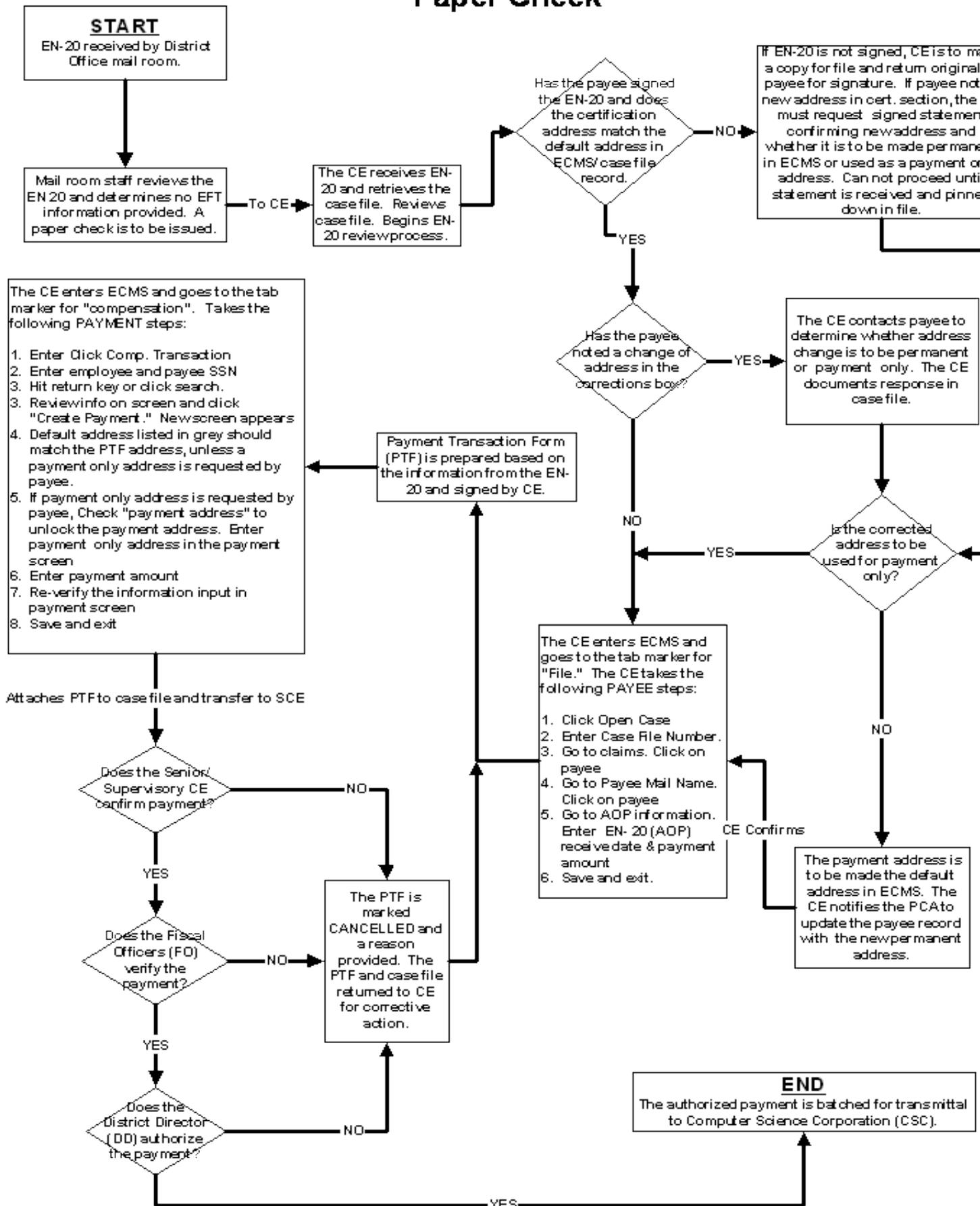
Distribution List No. 1: (Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections.

# Compensation Payment Process

## EFT Transaction



# Compensation Payment Process Paper Check





## 02-13 Chronic lymphocytic leukemia

EEOICPA BULLETIN NO.02-13

Issue Date: July 12, 2002

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Effective Date: June 20, 2002

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Expiration Date: June 20, 2003

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Subject: Chronic Lymphocytic Leukemia Cases

Background: Section 20 CFR 30.115(a) of the interim final regulations currently provides that the Office of Workers Compensation Programs (OWCP) will refer all non-SEC cancer claims to NIOSH for dose reconstruction before the probability of causation is determined.

On May 2, 2002, the Department of Health and Human Services (HHS) published guidelines (42 CFR 81) OWCP must use to determine the probability of causation for non-SEC cancer claims. Section 81.30 of these guidelines directs OWCP to assign a probability of causation of zero for certain non-radiogenic cancers listed. As of the date of this bulletin, the only non-radiogenic cancer listed by HHS in their guidelines is chronic lymphocytic leukemia (CLL).

Given the HHS guidelines, referring a non-SEC claim for CLL to NIOSH for dose reconstruction serves no useful purpose. Accordingly, an exception to the normal process for determining the probability of causation is needed. The procedures described in this bulletin explain how claims solely for non-radiogenic cancers like CLL are exempt from undergoing a dose reconstruction with NIOSH.

Reference: Interim final regulations 30 CFR 30.115(a) and 42 CFR Parts 81.21 and 81.30.

Purpose: To explain the process for handling Chronic Lymphocytic Leukemia claims.

Applicability: All staff.

Actions:

1. Upon review of a new claim for compensation, the CE should identify any instance where (CLL) has been claimed or identified through the review of medical records.
2. If CLL has been claimed or otherwise been documented in the case file, the CE should undertake appropriate claim development according to established policy and procedure. The evidence of record must be sufficient to establish the necessary medical and employment components for any covered claim under the program.
3. Once steps have been taken to establish a diagnosis of CLL and covered cancer employment, the CE must insert in the case file a letter from NIOSH (Attachment 1). This letter will serve as the dose reconstruction for all instances of CLL.
4. The CE must then assess whether any other covered cancer has been established in the case records.
5. If the CE determines that a diagnosis of CLL exists in conjunction with another type of cancer, a NIOSH referral summary should be prepared. The CE should reference CLL as a diagnosed cancer along with any other cancer established in the case record. The referral summary should then be sent to NIOSH.
6. NIOSH will conduct the dose reconstruction on each cancer aside from CLL and provide the

dose reconstruction report. In determining the probability of causation, the CE must apply the results of the dose reconstruction for all established cancers except CLL in the IREP. Given the outcome of the probability of causation calculation, the CE should then prepare a recommended decision including separate findings for each claimed cancer.

The CE should include a finding in the recommended decision that explains that the diagnosis of CLL was valid, but given the HHS published guidelines, it has been assigned a probability of zero and, as such, the condition is denied from coverage under the program. The CE should cite the appropriate regulations pertaining to this finding. In particular, the CE should cite 42 CFR 81.30.

7. If the CE determines that CLL is the sole cancer established, it is not necessary to prepare a NIOSH referral summary or to refer the case record to NIOSH. As NIOSH has identified CLL as a non-radiogenic cancer, a dose reconstruction is unnecessary. Once this determination is made, the CE should input claim adjudication code "NR" (NIOSH Dose Reconstruction Received) in ECMS. For the IREP Version entry, the CE should list "N/A."

8. The CE should then prepare a recommended decision denying compensation benefits for the reason that per NIOSH regulations, the diagnosis of CLL has a zero probability of causation. The CE should cite the appropriate regulations for this finding in the recommended decision.

9. NIOSH has prepared a list of case files presently undergoing review for dose reconstruction that contain references to CLL. This list will be presented to the District Office (DO) under separate cover. The list identifies claim records where CLL is the sole condition claimed. In addition, it identifies case records that contain some sort of discrepancy concerning CLL. Each DO is to review this list to determine the case records for which they are responsible.

10. If the DO reviews the list and finds a case record where CLL is the only diagnosed condition, a letter is to be prepared to NIOSH. The letter should explain the finding of the DO and advise that a dose reconstruction is unnecessary. NIOSH should also be advised to return all case file records. The DO may then proceed with the issuance of a recommended decision denying benefits given the diagnosis of CLL.

11. If NIOSH has identified a discrepancy in the medical evidence pertaining to a diagnosis of CLL, the DO should examine the case file to determine what corrective action is necessary. In some instances, the CE merely has to ensure that the appropriate ICD-9 code has been applied to a diagnosed CLL. Once this action would be completed, the CE can prepare a letter to NIOSH noting the corrective action taken by the CE and stating whether a dose reconstruction is necessary.

Other discrepancies noted by NIOSH may require additional development of the evidence by the CE. If this is the situation, the CE should prepare a letter to NIOSH advising that no further action on the dose reconstruction should occur until clarification is provided. The CE should then take whatever steps are necessary to resolve the factual or medical discrepancies raised by NIOSH. Once any outstanding issue has been resolved, NIOSH should be advised of the outcome and whether to proceed with a dose reconstruction.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections



National Institute for Occupational Safety and Health  
Robert A. Taft Laboratorium  
4676 Columbia Parkway  
Cincinnati, OH 45226  
Phone: 513-841-4498  
Fax: 513-458-7125

June 20, 2002

Pete Turcic  
Department of Labor  
Office of Energy-Related Compensation  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2002 JUN 24 P 3:45  
DIVISION OF EEOICP  
U.S. DOL  
WASHINGTON, D.C.

Dear Mr. Turcic:

The Department of Health and Human Services (DHHS) published a final rule on Guidelines for Determining the Probability of Causation Under the Energy Employees Occupational Illness Compensation Program Act of 2000 on May 2, 2002 (42 CFR 81). Two sections of this final rule contain provisions dealing with chronic lymphocytic leukemia (CLL):

**Section 81.21 Cancers requiring the use of NIOSH-IREP**

(a) DOL will calculate probability of causation for all cancers, except chronic lymphocytic leukemia as provided under Section 81.30, using NIOSH-IREP.

**Section 81.30 Non-radiogenic cancers**

The following cancers are considered non-radiogenic for the purposes of EEOICPA and this part. DOL will assign a probability of causation of zero to the following cancers:

(a) Chronic lymphocytic leukemia (ICD-9 code 204.1)

The NIOSH-IREP does not include a dose response model for CLL. This is because no elevation of CLL incidence has been observed in studies of populations exposed to external and internal ionizing radiation. In addition to these studies, most expert committees have listed CLL as a cancer that appears non-radiogenic. In summary, CLL has not been shown to be associated with radiation exposure but is strongly associated with attained age.

Because of the fact that any EEOICPA claim where CLL is the only cancer will always produce a probability of causation of zero, there is no basis for transferring such claims to NIOSH for dose reconstruction.

Sincerely,

Larry Elliott, Director, CIH, MSPH  
Office of Compensation  
Analysis and Support

## 02-14 Requests for employment information from Social Security Administration

EEOICPA BULLETIN NO.02-14

Issue Date: October 28, 2002

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Effective Date: October 28, 2002

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Expiration Date: October 28, 2003

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**Subject:** Requests for employment information from Social Security Administration.

**Background:** Employment verification is an integral part of claims processing under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). Although the Department of Energy (DOE) is responsible for conducting employment verification, the ultimate responsibility for adjudicating claims lies with the Department of Labor (DOL). Sometimes DOE does not have records sufficient to verify employment. Therefore, it becomes necessary for the Department of Labor (DOL) to search for other resources for verification. One such resource is the Social Security Administration (SSA).

Bulletin 02-02 outlines an alternative method for employment verification in which the Claims Examiner (CE) attempts to obtain employment records from corporate verifiers. Other resources for such records include the Oak Ridge Institute for Science and Education (ORISE) electronic database, and the claimant's personal records. Referral to SSA is the last resort in the effort to obtain employment data.

**Reference:** 42 USC Section 7384u(b), Reference PM Chapter 2-400 page 5 number 8 and Bulletin 02-02.

**Purpose:** To notify District Offices of the process for obtaining employment information from the Social Security Administration (SSA).

**Applicability:** All staff.

**Actions:**

1. Once the CE has exhausted all other avenues for obtaining relevant employment records, he/she is to prepare correspondence to the claimant requesting additional employment information. [For additional information in this regard, please review Bulletin 02-02]. Attached to the request should be a blank SSA-581 form (Attachment 1). The SSA-581 authorizes release of earnings information from the Social Security Administration.
2. In the written correspondence to the claimant, the CE should request any documents that the claimant may possess that would assist in verifying employment. The CE should further advise that in the event that employment cannot be verified by other means, DOL may request employment records from SSA. The claimant should be advised that completion of the SSA-581 form is a crucial part of this process. Once the correspondence is prepared and released to the claimant, the CE should update the case status screen in ECMS by entering code (DE) Developing Employment. The status effective date is the date on the correspondence to the claimant.
3. The claimant is to complete the following portions of the SSA-581: name; social security number; date of birth of employee; address/daytime telephone number of employee; date signed; signature of social security number holder or authorized representative.

4. When a survivor for a deceased individual completes a SSA 581 form, the claims examiner must request that the survivor provide proof of death if not already contained in the case file. Proof of death includes a copy of the death certificate, mortuary or interment record, or court issued document. When a SSA-581 request for a deceased individual is sent to national office the entire package should include the original and completed SSA-581 form, a copy of proof of death and a copy of the EE-2 form.

5. Once the claimant has completed the SSA-581 form, the claims examiner will complete the following sections:

(a) “To be completed by Official of Requesting Organization only”. The claims examiner will fill in the years or employment history requested in the section provided on the form. The claims examiner will be able to identify the time period for employment history needed for the SSA-581 request by searching the Energy Case Management System (ECMS), the claimant case file, or other documents provided including the EE-1 or EE-2, etc.

(b) The claims examiner will make sure that the upper right hand corner of the form allocated for “Job Number” has job number 8015JC as well as a typed name of the district office and address of the requesting district office in the space provided just below this number.

(c) The claims examiner will sign “Signature of Organization Official” as well as provide the claims examiner’s telephone number and fax number.

(d) The claims examiner will update the case status screen in ECMS by entering SS (Sent to Social Security) status code. The status effective date is the date the SSA-581 form is sent to national office. This is the date that appears on the cover letter that is sent to national office accompanying the SSA-581 request.

6. The claims examiner will create a cover letter which includes the following information: The United States Department of Labor has received a claim for benefits under the Energy Employees Occupational Illness Compensation Program Act for the referenced individual. The United States Department of Labor is hereby seeking specific employment information regarding the above-indicated dates of employment. Attached is the signed SSA-581 form. The cover letter should also include in the upper right hand corner of the letter the employee name, employee social security number, date of birth, date of death (if applicable) and the periods of employment history requested. The claims examiner will make a copy of the SSA-581 form and place a copy of the form along with a copy of the cover letter in the case file. The claims examiner will then send the completed SSA-581 form and the cover letter to:

Energy Employees Occupational  
Illness Compensation Program  
Attention: Lorraine Miller  
200 Constitution Ave NW  
Suite C4511  
Washington, DC 20210

7. After the national office receives the completed SSA-581 form, the form is logged into a spreadsheet assigning a control number for each SSA-581 request, identifying the district office and tracking the estimated cost for each request. A copy of the SSA-581 form is placed in a central file. The original SSA-581 is mailed to SSA.

8. The processing time is approximately eight weeks for SSA to provide the completed earnings information. Once SSA has completed the request, SSA will mail a completed SSA-L460 form (the

end product of the SSA-581) to the requesting district office at the address specified in the upper right hand corner of the original SSA-581 form. Each district office must keep a log in the form of a spreadsheet that contains each SSA-581 request submitted. This log will identify employee name, social security number, date of death (if applicable), person signing form/relationship, i.e., child or spouse, date the SSA-581 form is sent to national office and the date the completed SSA-581 (SSA-L460) is received in the district office. This updated spreadsheet will be submitted to national office to Lorraine Miller on the 28<sup>th</sup> day of each month.

9. Depending on the response from the SSA, the CE is to either accept the period of employment as verified or deny the claimed period of employment due to lack of viable documentation. The claims examiner should document receipt of the SSA-L460 (end product of SSA-581 form) response by entering code **SR** (Social Security Administration Response received) into ECMS. The status effective date is the date the SSA-L460 is date stamped into the office.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

Peter M. Turcic

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution: List No 1 – Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operations Chiefs, Hearing Representatives, District Office Mail and File Sections

## **02-15 Chondrosarcoma**

EEOICPA Bulletin No.02-15

Issue Date: July 15, 2002

Effective Date: June 12, 2002

Expiration Date: June 12, 2003

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Subject: Chondrosarcoma of the Cricoid Cartilage of the Larynx as a Specified Primary Cancer

Background: The Department of Labor (DOL) recently forwarded the medical evidence in a case file to the National Cancer Institute (NCI) for their review and opinion to determine if, for purposes of being considered a specified cancer under the EEOICPA, chondrosarcoma of the cricoid cartilage of the larynx can be considered a bone cancer.

The expert medical opinion obtained from the NCI indicates that while it is possible to make histologic distinctions between chondrosarcomas and osteosarcomas, the biologic and neoplastic aspects of cartilaginous and calcified bony tissue share many characteristics in common and seem to be vulnerable to similar influences. There is a good deal of evidence that radiation effects on the bony skeleton and the non-calcified cartilaginous tissue are likely to be quite similar, and the NCI expert was aware of no evidence to the contrary. Thus, it seems to the expert that a sarcoma arising in the cricoid would fit under the general rubric of a bone cancer.

Accordingly, for purposes of being considered a specified cancer under the EEOICPA, DOL has determined that chondrosarcoma of the cricoid cartilage of the larynx will be considered as a bone cancer.

Reference: Energy Employees Occupational Illness Compensation Program Act of 2000, As Amended, 42 U.S.C. § 7384 *et seq.*, Sections 7384l (14) and (17) and a letter from Dr. R. Kaplan, NCI, to Dr. V. Miller, DOL, dated June 12, addressing this chondrosarcoma case (see Docket No.4230-2002).

Purpose: To notify District Offices that chondrosarcoma of the cricoid cartilage of the larynx is considered a bone cancer, which is a specified primary cancer for eligible SEC claimants under the EEOICPA.

Applicability: All staff.

Actions:

The CE should consider chondrosarcoma of the cricoid cartilage of the larynx as a specified primary cancer in determining eligibility for members of the Special Exposure Cohort (SEC) per EEOICPA Section 7384l(14). The rationale is that the biologic and neoplastic aspects of cartilaginous and calcified bony tissue share many characteristics in common and seem to be vulnerable to similar influences.

The CE should look for any other cases with this type cancer that could be eligible as members of the SEC. A preliminary review of the ECMS searching for ICD-9 code 161.3 did not find any other employees at SEC sites, however the cancer may have not been entered into ECMS using this code.

The CE should review all incoming SEC claims for this condition. If found, and all other relevant SEC criteria have been met, issue a Recommended Decision for acceptance of the claim as bone cancer.

4. The CE should continue to distinguish chondrosarcoma of the cricoid cartilage of the larynx from bone cancers using the appropriate ICD-9 codes on all paperwork and in ECMS. For example, the ICD-9 codes for a malignant neoplasm of the laryngeal cartilage is 161.3, and for bone it is 170.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual

Peter M. Turcic

Director, Division of Energy Employees Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

## **02-16 Ureter Cancer as a Specified Primary Cancer**

EEOICPA BULLETIN NO.02-16

Issue Date: July 15, 2002

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Effective Date: June 12, 2002

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Expiration Date: June 12, 2003

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Subject: Ureter Cancer as a Specified Primary Cancer

Background: The Department of Labor (DOL) recently forwarded the medical evidence in a case file to the National Cancer Institute (NCI) for their review and opinion to determine if, for purposes of being considered a specified cancer under the EEOICPA, ureter cancer can be considered urinary bladder cancer.

The expert medical opinion obtained from the NCI indicates that superficial transitional cell carcinomas of the urinary epithelium are biologically identical wherever they arise within the urinary tract and indeed, they are often multifocal. The etiologic (including environmental) influences on urothelial carcinogenesis and the tendency of patients who have developed a tumor in one location to develop additional tumors elsewhere in the urinary tract point to the clinical

interchangeability of bladder and upper-tract transitional cell tumors. The NCI expert's opinion, therefore, is that it is logically inconsistent to treat those that arise within the bladder differently than those arising in the ureter or renal pelvis.

For these reasons, the NCI expert considers that the ureter tumor belongs in the category with tumors of the urinary bladder.

Reference: Energy Employees Occupational Illness Compensation Program Act of 2000, As Amended, 42 U.S.C. § 7384 *et seq.*, Sections 7384l (14) and (17) and a letter from Dr. R. Kaplan, NCI, to Dr. V. Miller, DOL, dated June 12, 2002, addressing this ureter cancer case (see Docket No.4216-2002).

Purpose: To notify District Offices that ureter cancer is considered a urinary bladder cancer, which is a specified primary cancer for eligible SEC claimants under the EEOICPA.

Applicability: All staff.

Actions:

1. The CE should consider ureter cancer as a urinary bladder cancer, which is a specified primary cancer per EEOICPA Section 7384l(17).
2. The CE should look for any other cases with this type cancer that could be eligible as members of the SEC. A preliminary review of the ECMS searching for ICD-9 code 189.2 did not find any other employees at SEC sites, however the cancer may have not been entered into ECMS using this code.
3. The CE should review all incoming SEC claims for this condition. If found, and all other relevant SEC criteria have been met, issue a Recommended Decision for acceptance of the claim as urinary bladder cancer.
4. The CE should continue to distinguish ureter cancer from urinary bladder cancers using the appropriate ICD-9 codes on all paperwork and in ECMS. For example, the ICD-9 code for a malignant neoplasm of the ureter is 189.2, and for the urinary bladder it is 188.

Disposition: Retain until incorporated in the Federal

(EEOICPA) Procedure Manual

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

## **02-17 Use of bronchoalveolar lavage lpt**

Division of Energy Employees Occupational Illness Compensation (DEEOIC)

EEOICPA Bulletin No.02-17

Issue Date: July 23, 2002

Effective Date: July 23, 2002

Expiration Date: July 23, 2003

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Subject: New interpretation in the use of the Bronchoalveolar Lavage Beryllium Lymphocyte Proliferation Test (BAL BeLPT) in diagnosing chronic beryllium disease (CBD).

Background: To establish eligibility for benefits under the EEOICPA for diagnoses of CBD confirmed on or after January 1, 1993, the covered employee must first prove sensitization with a positive beryllium lymphocyte proliferation test (BeLPT) performed on either blood or lung lavage cells. Secondly, the covered employee must provide lung pathology consistent with CBD that includes one of the following:

- a. A lung biopsy showing granulomas, or a lymphocytic process consistent with CBD;
- b. A computerized axial tomography (CAT) scan showing changes consistent with CBD;
- c. Pulmonary function or exercise testing showing pulmonary deficits consistent with CBD.

Guidance on interpreting a lung biopsy showing granulomas, or a lymphocytic process consistent with CBD was obtained through a consult with Dr. Lee Newman of the National Jewish Medical and Research Center. Dr. Newman explained that a lymphocytic process consistent with CBD can be measured in the lungs by any one of the following methods: (1) biopsies showing lymphocytes (part of the population of so called mononuclear cells) in bronchial or interstitial (alveolar) lung tissue; (2) biopsies showing the non-caseating granuloma; (3) bronchoalveolar lavage (BAL) showing an increase in the percentage of lymphocytes in the differential cell count (typically >10% lymphocytes is considered a BAL lymphocytosis); (4) BAL Beryllium Lymphocyte Proliferation Test (BeLPT) showing that the lymphocytes washed from the lungs show a pathologic ability to respond to beryllium salts.

Dr. Newman interpreted the term lung biopsy as any sampling of lung tissue. He indicated that acceptable lung tissue samples directly indicative of lung pathology may include any one of the following:

- a. Lung tissue obtained from whole lung specimens at the time of autopsy;
- b. Lung tissue obtained by open or video-assisted thoracotomy;
- c. Lung tissue obtained by bronchoscopic transbronchial biopsy;
- d. Lung tissue obtained by bronchoalveolar lavage (which includes alveolar and bronchial epithelial cells, macrophages, lymphocytes, neutrophils, eosinophils, and other lung cells).

Tissue samples obtained by any one of these methods can be used to document a lymphocytic process consistent with CBD.

Reference EEOICPA: EEOICPA Section 7384l(13)(A)

**Purpose:** To notify the office of procedures for handling certain claims for CBD.

**Applicability:** All staff.

**Actions:**

1. CE's should review all incoming and pending cases for CBD for evidence of a BAL and/or BAL BeLPT consistent with a lymphocytic process consistent with CBD.
2. The file must contain a narrative report from a physician that contains an evaluation of the BAL BeLPT and a discussion of how it relates to CBD. This is especially important when the BAL BeLPT is the only test used in the diagnosis.
3. The Blood Lymphocyte Proliferation Test (BeLPT) is defined as a laboratory test that examines how a type of disease-fighting blood cell called a lymphocyte reacts to beryllium. The blood cells' reaction to beryllium determines whether the test results are normal or abnormal. If the cells do not react very strongly to beryllium, the test is normal. If the cells react very strongly, the test is abnormal.  
The Bronchoalveolar Lavage Beryllium Lymphocyte Proliferation Test (BAL BeLPT) is defined as a laboratory test performed on lung tissue that is washed from the lungs. The lung wash contains lung tissue that is obtained via intranasal insertion of a bronchoscope into the lung. When the bronchoscope is lowered into the lower lung, a saline solution is washed into the airways and retrieved (lung washing). The retrieved solution is cultured in the presence of beryllium salts. A reaction/response to the beryllium salts represents a

lymphocytic process.

An abnormal BeLPT test performed on either blood or lung lavage cells and lung tissue obtained through a positive BAL BeLPT showing a lymphocytic process and established by a physician as being consistent with CBD, are sufficient to support the diagnosis of CBD. The CE may not use a positive BAL BeLPT solely to support a claim for CBD on or after January 1, 1993.

4. In claims that contain a normal or borderline LPT and the lung tissue biopsy confirms the presence of granulomas consistent with CBD, the CE may accept the claim for CBD. The lung biopsy is considered the “gold standard.” However, the following steps must be followed before accepting a claim in this manner.
  1. If the claimant is living, the CE should contact the treating physician and obtain a detailed narrative report detailing the past history of the claimant’s LPT results (if possible). Specifically, the physician should address whether the claimant has a past history of positive LPT’s with recent normal or borderline LPT results. The CE should note that if the claimant has a history of steroid use, this may cause a false negative on the LPT result.
  2. If the claimant is deceased, the CE should try to obtain as much information as possible on past LPT results and possible steroid use. If exhaustive efforts produce little or no results and the claim contains the normal/borderline LPT result along with a biopsy of the lung tissue showing the presence of granulomas, the CE may accept the claim.
  3. If there is no LPT and the lung tissue biopsy confirm the presence of granulomas consistent with CBD, the CE may accept the claim.

In these instances, the tissue evidence must be very obvious and the recommended decision must address all the statutory requirements for CBD claims in a well-reasoned manner. (i.e. LPT negative due to steroid medication giving a “false negative”).

Disposition: Retain until incorporated into the Procedure Manual.

Peter M. Turcic

Director, Division of Energy Employees Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

## **02-18 Use of ORISE databases**

EEOICPA BULLETIN NO. 02-18

Issue Date: July 11, 2002

Expiration Date: July 11, 2003

Subject: Interim procedures for obtaining employment verification information from ORISE.

Background: The DEEOIC continues to explore and develop ways to improve the efficiency of the employment verification process. Recently, the program has started to receive employment information from a database maintained by the Oak Ridge Institute for Science and Education (ORISE) by sending lists of claims for which employment verification had been requested but not yet received.

The DEEOIC is working with the Department of Energy (DOE) to establish an Internet-based means of access to the data. In the interim, a temporary procedure is needed for obtaining employment verification information from ORISE. Because ORISE is able to provide a very quick turnaround, if the claim involves an employee who worked at a facility that is included in the

ORISE database, the initial employment verification inquiry will be made to ORISE, rather than the usual DOE records contact.

Purpose: To provide interim procedures for obtaining employment verification information from ORISE.

Applicability: Claims Examiners, Senior Claims Examiners, All Supervisors, Technical Assistants, and mail room staff.

Action:

At the time that a claim is initially reviewed, if the claims examiner (CE) determines that a request for employment verification is appropriate, the CE must first check the list of facilities that are included in the ORISE database (Attachment 1).

If the employee worked at one of the facilities on that list, the CE should send an EE-5, with the top portion completed, and a copy of the EE-3 (Employment History) to ORISE.

The EE-5 packages for ORISE should be gathered in one central place in the office and mailed to ORISE once a day via overnight mail to the following address:

Jolene Jones  
ORISE/CER  
210 Badger Ave.  
Oak Ridge, TN 37830

The CE should place a copy of the EE-5 in the case file, and enter the status code XX OS on ECMS.

When the response from ORISE is received, the CE should enter status code YY OR on ECMS, using the date it was received as the status date. The CE should then review the information sent by ORISE. If it is sufficient to verify employment for the case, the code status code EC should be entered. If it is not sufficient, the CE should proceed to request employment verification in the usual manner, by sending an EE-5 package to the appropriate DOE records contact, and entering a status code of ES on ECMS.

If the employee worked at a facility that is not included on the ORISE database, the CE should request employment verification in the usual manner.

7. The ORISE verifications consist of one or more pages showing employment dates, facilities, job titles, and other information. Attachment 2 lists the facilities and the corresponding numeric codes for those facilities. The "HT" column shows "H" for "hire" and T for "termination." The dates that are in the date column next to these codes are the hire and termination dates for the individual. The translations for the codes in the "pay" column are as follows:

H = hourly

W = weekly

M = monthly

O = operations (hourly)

S = salaried

C = construction

8. Some of the sheets show the employee's name and facility, but do not have any specific dates. These are individuals that worked at the facility, but for whom the database contains no specific dates.

9. The information available on the database is limited to certain time periods, which are different

for each facility. Attachment 1 shows the earliest hire date and the latest termination date in the database for each facility. If an individual employee worked prior to or after those dates, that employment would not be reflected in the printout from ORISE. These dates do not necessarily correlate with the dates the facility was in operation.

If the information from the ORISE database is used for employment verification, a copy of the memorandum from DOE stating that data contained in the ORISE database is reliable and may be used as affirmation of employment must be placed in the case file (Attachment 3).

11. The absence of data from ORISE may not be used as the basis for stating that an employee did NOT work at a given facility.

If the claim is for a member of the SEC, and is for a specified cancer, the CE should determine whether the ORISE information confirms employment for the required number of days at the facility, during the required timeframe. If yes, place a memorandum in the file describing the relevant dates and facilities.

If the claim is for chronic beryllium disease or beryllium sensitivity, the CE should determine whether the ORISE information confirms employment at a DOE facility for at least one day when beryllium was present. If yes, place a memorandum in the file describing the relevant information.

14. If the claim is for non-SEC cancer, the CE should determine whether the ORISE information is sufficient to confirm each period of claimed DOE employment, and that the individual is a "covered employee." If yes, place a memorandum in the file describing the relevant information in the file. The dates provided by ORISE need not be precisely the same as those reported on the EE-3, however, they should be within 6 months of each other. For example, if an employee claims employment at a facility from 2/1/63-3/4/68, and ORISE confirms 3/1/63-5/1/68, the employment is confirmed. The most generous interpolation of those dates, e.g. 2/1/63-5/1/68, should be used as the period of employment in the NIOSH Referral Memo.

If the claim is for chronic silicosis, the CE should determine whether the ORISE information confirms employment for the required number of days at the facility. If yes, place a memorandum in the file describing the relevant dates and facilities.

16. If the CE is unable to verify or can only partially verify employment through use of the ORISE information, additional appropriate development, to include sending an EE-5 to the appropriate DOE records contact, should be undertaken.

Please Note that the employment history as described on the EE-3 and the employment information as reflected in the ORISE data do not have to match exactly in order for the actions described above to take place. In addition, it should be noted that the absence of information on the ORISE database should not in and of itself be the basis for a denial of the claim.

The data that was used for this exercise was obtained from ECMS on approximately May 13, 2002. If cases were coded inaccurately, or if DOE has responded since that time, the information from ORISE may not be useful.

Training should be conducting on these procedures as soon as possible.

Disposition: Retain until the indicated expiration date.

PETER M. TURCIC

Director, for Division of Energy Employees

Federal Employees' Compensation Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners District

Medical Advisers, Systems Managers, Technical  
Assistants, Rehabilitation Specialists, and

Staff Nurses, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

<b>Contents of CER Data Model - 4/1/2002</b>					
<b>Facility Name</b>	<b>Total</b>	<b># with Hire Date</b>	<b>Earliest Hire</b>	<b># with Term Date</b>	<b>L</b>
Argonne	4994	4999	03/05/1942		163
Baneberry	891	0			
Battelle-Columbus	90	90	05/05/1952		68
Bethlehem	57	0			
Bettis	12462	3587	07/22/1940		138
Brookhaven	155	154	11/11/1946		136
CARL	3	3	07/15/1949		3
CEER	5	5	02/01/1960		5
Charleston NS	167	167	03/29/1938		88
Electro Met	329	292	07/15/1933		177
Energy Systems Group	45	45	06/11/1952		39
Fermi Lab	10	10	07/01/1968		3
Fernald	7300	7290	08/29/1950		6298
General Dynamics-Groton	295	294	06/01/1939		220
Hanford	7	7			5
Hanford	129	0			
Hanford-Construction	13206	12953	02/13/1947		8651
Hanford-Operations	56588	51734	01/01/1944		37724
Harshaw	757	0			
Holmes&Narver	20644	20380	08/10/1933		19140
INEEL	66	153	03/22/1951		111
Ingalls	7163	0			
K-25	47941	47809	01/04/1943		44683
KAPL	10432	9918	09/15/1943		6826
Knolls-Idaho	2	2	03/01/1967		1
Knolls-Kesserling	3	3	08/15/1974		3

Knolls-Windsor	12	12	07/12/1956	11
Lawrence Berkeley	434	429	01/01/1942	367
Lawrence Livermore-NTS	485	482	01/10/1952	380
Lawrence Livermore-NTS	21738	21621	01/01/1942	13981
Linde	1551	1550	01/13/1941	1545
Los Alamos	23288	428	01/25/1943	341
Mallinckrodt	3259	3503	09/30/1930	2907
Mare Island Shipyard	127	126	02/12/1940	79
Middlesex	387	39	12/11/1943	8
Mound	7415	6299	09/05/1940	4524
MREM -Hanford	8	0	12/01/1944	
Naval Reactor Facility	61	61	09/19/1951	49
New Brunswick Lab	10	0		
Newport News	180	180	04/13/1936	76
Norfolk Shipyard	115	110	04/08/1940	65
ORNL	26940	26694	01/29/1943	22143
Pacific Test Site	5	0		
Paducah	5727	3902	01/12/1944	2494
Pantex	7422	0		
Pearl Harbor Shipyard	58	58	07/15/1939	21
PETC	1156	1146	09/30/1935	817
PNL	3	3	04/07/1947	1
Portsmouth Gas Diff	9237	8	08/03/1953	10
Portsmouth Shipyard	21226	171	07/28/1939	88
REECO-NTS	132	78	02/02/1952	67
Rocky Flats	9586	920	07/15/1951	905
Rust Engineering	2686	2678	11/20/1962	2349
SAM Labs	2309	2174	01/15/1940	2093
Sandia	24685	24681	07/16/1939	17742
Savannah River	21472	21049	11/06/1950	14328
Savannah River Lab	111	1		

Shippingsport	17	17	01/16/1942	6
TEC	47107	47126	01/12/1941	47120
Y-12	23773	23473	05/04/1947	17774
Zia	15310	0		

**Lookup Facility Codes for ORISE Work Histories**

<b>LOW</b>	<b>LABEL</b>
10	AMES – AMES
11	OR – *TEC & OTHERS (SSS)
12	OR – *Y-12 & OTHERS (SSS)
13	ASH – ASHTABULA
14	BART – BARTLESVILLE
15	OR – *K-25 & OTHERS (SSS)
16	BATE – BATES
17	OR – *X-10 & OTHERS (SSS)
18	BATT – BATTELLE-COLUMBUS
19	BET – BETTIS ATOMIC POWER LAB

<b>LOW</b>	<b>LABEL</b>
20	BROO – BROOKHAVEN
21	LIN – LINDE
22	SR – SAVANNAH RIVER
23	SRPL – SAVANNAH RIVER PLANT
26	CEER – CENTER FOR ENERGY & ENVIRONMENT RESEARCH
27	CNS – CHARLESTON NAVAL SHIPYARD
28	CARL – COMPARITIVE ANIMAL RESEARCH LAB
29	ESG – ENERGY SYSTEMS GROUP

<b>LOW</b>	<b>LABEL</b>
30	ENVM – ENVIRONMENTAL MEASURMENTS

31	OR – *OAK RIDGE EMPLOYEES (SSS)
32	FERM – FERMI
33	FMCL – FRANKLIN MCLEAN
34	GDYN – GENERAL DYNAMICS-GROTON SHIPYARD
35	GFER – GRAND FORKS ENERGY RES
36	ICP – IDAHO CHEMICAL PROCESSING
37	INEL – IDAHO NATIONAL ENG LAB
38	ING – INGALLS
39	ITR – INHALATION TOXICOLOGY RESEARCH

<b>LOW</b>	<b>LABEL</b>
40	KCP – KANSAS CITY PLANT
41	KAPL – KNOLLS ATOMIC POWER LAB
42	KNIS – KNOLLS - IDAHO SITE
43	KNWS – KNOLLS - WINDSOR SITE
44	LRLA – LAB OF RADIOBIOLOGY - L.A.
45	LRSF – LAB OF RADIOBIOLOGY - SAN FRAN
46	LARA – LARAMIE
47	LAWB – LAWRENCE BERKELEY
48	LLNT – LAWRENCE LIVERMORE - NTS
49	<u>HANM – MREM CODE FOR NANFORD INCIDENTS/ACCIDENT</u>

<b>LOW</b>	<b>LABEL</b>
50	HANP – HANFORD PRODUCTION – PHASING OUT THIS CODE
51	HANF – HANFORD – PHASING OUT THIS CODE
52	LANL – LOS ALAMOS NATIONAL LABORATORY
53	RF – ROCKY FLATS
54	BANE – BANE BERRY

55	LLL – LAWRENCE LIVERMORE LAB
56	- *LOS ALAMOS-MOUND-ROCKY FLATS (SSS)
57	SIMO - SIMONDS SAW & STEEL
58	- *WELDERS (SSS)
59	ELEC – ELECTRO METALLURGICAL CO

<b>LOW</b>	<b>LABEL</b>
60	REM5 – REM5 (SSS)
61	MSEX – MIDDLESEX
62	ARG – ARGONNE (5 REM ONLY)
63	MARE – MARE ISLAND SHIPYARD
64	MORG – MORGANTOWN
65	MDPR – MSU/DOE PLANT RESEARCH
66	NRF – NAVAL REACTORS FACILITY
67	REEC – REECO - NEVADA TEST SITE
68	NBL – NEW BRUNSWICK LAB
69	NNSY – NEWPORT NEWS SHIPYARD

<b>LOW</b>	<b>LABEL</b>
70	NORF – NORFOLK SHIPYARD
71	NOTR – NOTRE DAME RESEARCH LAB
72	ORAU – OAK RIDGE ASSOCIATED UNIVERSITIES
73	PNWL – PACIFIC NORTHWEST LAB
74	PTS – PACIFIC TEST SITE
75	PANT – PANTEX AMARILLO PLANT
76	PHSY – PEARL HARBOR SHIPYARD
77	PINE – PINELLAS
78	PETC – PITTSBURGH ENERGY TECHNOLOGICAL CENTER
79	PORT – PORTSMOUTH GASEOUS DIFFUSION

<b>LOW</b>	<b>LABEL</b>
80	PSY – PORTSMOUTH SHIPYARD
81	PPPL – PRINCETON PLASMA PHYSICS LAB
82	PSSY – PUGET SOUND SHIPYARD
83	RLD – RADIOBIOLOGY LAB - DAVIS
84	RLU – RADIOBIOLOGY LAB - UTAH
85	SAN – SANDIA NATIONAL LABORATORY
86	SHIP – SHIPPINGSPORT ATOMIC POWER
87	SLA – STANFORD LINEAR ACCELERATOR
88	UROC – UNIVERSITY OF ROCHESTER
89	URF – URANIUM RESOURCES FACILITY

<b>LOW</b>	<b>LABEL</b>
90	KNKE – KNOLLS - KESSELRING SITE
91	HNC – HANFORD - OPERATIONS
92	HCON – HANFORD - CONSTRUCTION
93	- *DISCREPANCIES, UNKNOWN, NOMATCH (SSS)
94	HAR – HARSHAW
95	RUST – RUST ENGINEERING
96	ALOO – ALOO (LASL)
97	ZIA – ZIA (LASL)
98	HN – HOLMES & NARVER - NTS

<b>LOW</b>	<b>LABEL</b>
100	OR – UNION CARBIDE(X10, Y12, K25)
101	MED – MANHATTAN ENGINEERING DISTRICT
102	LOOW – LAKE ONTARIO ORDINANCE WORKS
103	- *ALL OAK RIDGE - STILL EMPLOYED

104	- *MED SITES ALL
105	MREM – MREM SYSTEM NON-DOE EMPLOYEES
106	- *CAROLYN MURPHYS GROUP (SSS)
107	OR – OAK RIDGE (GENERAL) – TEC, X10, Y12, K25
108	BETH – BETHLEHEM STEEL
109	MMES – NON-OR MARTIN MARIETTA ENERGY SYSTEMS

LOW	LABEL
110	FC – FERCLEVE CORPORATION
111	TVA – TENNESSEE VALLEY AUTHORITY
112	NUC – GENERAL CATEGORY FOR NUCLEAR POWER PLANT
113	LANO – NOT LOS ALAMOS LAB. WORKERS (OTHERS)
114	CHOO – CHICAGO OPERATIONS OFFICE
115	IAAP – IOWA ARMY AMUNITION PLANT BURLINGTON IA
116	NTS – NEVADA TEST SITE

## 02-19 Processing NIOSH cases

EEOICPA BULLETIN NO.02-19

Issue Date: July 23, 2002

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Effective Date: July 23, 2002

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Expiration Date: July 23, 2003

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Subject: Processing NIOSH Cases

Background: Section 20 C.F.R 30.115(a) of the interim final regulations currently provides that the Office of Workers Compensation Programs (OWCP) will forward eligible claimant application packages to HHS for dose reconstruction. The final rule 42 CFR Part 82 details the responsibilities of NIOSH in the reconstruction of an employee's dose. The final rule 42 CFR Part 81 details DOL's responsibilities in calculating the probability of causation based on NIOSH's dose reconstruction for the employee.

This Bulletin provides additional details related to the cases sent to and received from NIOSH. The items addressed below were discussed and agreed to in a meeting between DOL and NIOSH in

Cincinnati, Ohio, on May 8 – 9, 2002.

Reference: Interim final regulation 30 CFR 30.115(a) and (c), 30.210(b); Final Regulation 42 CFR Part 81 Subpart E; and Final Regulation 42 CFR Part 82.4 and Subpart D.

Purpose: To provide additional details related to DOL cases sent to and received from NIOSH.

Applicability: All staff.

Actions:

1. NIOSH regulations state that they will interview all claimants. Thus even if DOL has not established a covered survivor, NIOSH still needs to know who the actual claimants are (individuals that filed EE-2). On the NIOSH Referral Summary, the CE should list only those individuals that have filed a claim. The CE should not list other possible survivors.

If NIOSH receives calls from individuals who allege they are survivors and are not on the NIOSH Referral Summary, NIOSH will refer them to DOL. If the CE receives a call, the CE should advise the individual of the requirements under EEOICPA. The individual should further be advised that in order to be considered a claimant and to be interviewed by NIOSH s/he must file an EE-2. If an EE-2 is received, the CE should advise NIOSH that the individual is a claimant and can be interviewed by NIOSH.

The CE should still list other contacts and representatives on the NIOSH Referral Summary, clearly indicating that these individuals are not claimants.

2. The OCAS-1 Form is provided to the claimant after completion of the dose reconstruction report. The claimant's signature on the OCAS-1 Form does not mean that the claimant agrees with the dose reconstruction, rather the claimant is only agreeing to the process and agreeing that s/he provided NIOSH with all evidence s/he had.

The claimant is allowed up to 60 days to sign the OCAS-1 Form during which time the claimant may provide additional facts. If additional information is submitted, NIOSH will review the evidence, prepare a new dose reconstruction report, and send a new OCAS-1 Form to the claimant for an additional 60-day comment period.

If the claimant does not sign the OCAS-1 Form or submit comments within 60 days, NIOSH will send the claimant a letter informing the individual that NIOSH will administratively close the case. NIOSH will then send a letter to DOL addressing the administrative closure of the case. The CE should then administratively close the case by entering code "NO" in the case status screen and the description "NIOSH Administrative Closure" will appear. The CE should enter the date of receipt of the NIOSH letter (date stamp) as the status effective date. Thereafter the CE should send a letter to the claimant advising that the case has been administratively closed by NIOSH due to a lack of signature on the OCAS-1 Form. In order to re-open the case, the claimant must advise DOL of intent to sign the OCAS-1 Form. The claimant should be further advised that DOL is unable to complete the adjudication process without NIOSH's findings.

3. If the case has multiple claimants NIOSH will wait 60 days for receipt of all OCAS-1 Forms signed by each claimant. If, after 60 days, NIOSH receives only one signed OCAS-1 Form, NIOSH will forward the dose reconstruction package to DOL.

The CE should send a development letter to the claimant(s) that did not sign the OCAS-1 Form. The claimant(s) should be asked to provide within 30 days information or reasons s/he did not sign the OCAS-1 Form. The CE should consider any arguments given by claimant(s), and if substantive, refer the case back to NIOSH. Substantive arguments would include discovery of additional relevant information related to dose reconstruction, e.g., information or documents concerning radiological exposures, other co-workers, or operations and radiological controls at the specific facility. If arguments for refusals to sign are not provided or not substantive, or if no response is received within 30 days, the CE should issue a recommended decision awarding (or

denying) benefits to all eligible claimants (even those claimants that did not sign the form). One signed OCAS-1 Form will be sufficient to render the decision.

4. When the case is returned from NIOSH, all case file documents will be forwarded to DOL via compact disc (CD), since all documents referred to NIOSH and used in the dose reconstruction are optically scanned into the NIOSH computers. NIOSH will uniquely identify (on the label on the CD case) the case by District Office and Social Security Number. The CD will include the dose reconstruction input file (Excel spreadsheet) to be used for the IREP probability of causation calculation.

NIOSH will have the pertinent documents (dose reconstruction report, other records of import to CE) at the front of the CD so that the CE can include those documents in the hard copy for review purposes. The CE should print out the dose reconstruction report and the OCAS-1 Form and include these as hard copies in the DOL case file.

The CE should keep the NIOSH CD with the case file. Also, after the CE runs the probability of causation calculation, a hard copy of the DOL IREP run and an electronic file of that calculation, on a 3.5 inch diskette, should also be retained in the case file.

5. Information contained on the NIOSH CD will include:

- Dose reconstruction files, including phone interview report (CATI – Computer Assisted Telephone Interview); dosimetry data; the NIOSH Report of Dose Reconstruction under EEOICPA; NIOSH's probability of causation calculation; the OCAS-1 Form; the NIOSH-IREP input file; and pertinent AEC/DOE reports, journal articles or other documents.
- Correspondence, including NIOSH letters to claimants, phone conversation notes, and Internet E-mails.
- DOE files (data files listed in order of importance on the CD), including DOE dose and work history information and other DOE documents that NIOSH requested, such as incident reports and special studies.
- DOL files, including a copy of the case file optically imaged by NIOSH and the OCAS tracking sheets (signatures and dates).

The CE should note that NIOSH will incorporate all important information from the above sources into the dose reconstruction report. Publicly available documents will be referenced by citation. Documents not publicly available will be placed in the record and, as noted above, will be included on the CD.

6. It is not necessary for the CE to review all of the documents on the CD. Those documents that normally will not require review include the DOE documents, the claimant interview, the NIOSH-run probability of causation calculation, and the NIOSH conducted closing interview. As a note, NIOSH does run the probability of causation (POC) calculation for each employee. This reduces unnecessary time for NIOSH in completing the dose reconstruction, and the POC results are incorporated into the dose reconstruction findings. NIOSH's IREP run is utilized for their internal purposes only. The CE should not use NIOSH's IREP calculations as a basis for a determination in the claim. The CE will always run the IREP separately.

7. If, during the course of an interview, NIOSH determines that there is additional covered employment, they will identify any differences in a cover memo to DOL upon return of the case record. NIOSH will perform dose reconstruction on all verified employment (even if they identified more than DOL had originally stated) and forward the case record to DOL with the completed dose reconstruction report. If the CE determines that the new verified employment is not established for any reason, the CE should refer the case back to NIOSH for a new dose reconstruction.

8. In recommended decisions (sample recommended decision attached), the CE will rely on

NIOSH's dose reconstruction report and should not question those findings. Appeal occurs at the FAB level. A notice of claimant rights goes out with recommended decision. The recommended decision should include a discussion of the scope of the FAB's review of the dose reconstruction process. The FAB will only remand the case if there is evidence that NIOSH did not review relevant factual material.

If the claimant wishes to argue the results of the dose reconstruction, the NIOSH decision is binding on the FAB, unless the argument on the dose reconstruction process is significant. The FAB may make this determination of "significant evidence/argument" by referring the case to the National Office health physicist.

If FAB remands a case to the district office for forwarding to NIOSH for reconsideration, NIOSH will amend their dose reconstruction report based on their review. NIOSH will then forward the case back to the district office for a new recommended decision (after a new OCAS-1 Form is sent to the claimant).

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

## **Sample Recommended Decision**

### **Statement of the Case**

On September 30, 2001, Peter James filed a claim for benefits under EEOICPA seeking a \$150,000 award of compensation.

**The Department of Energy confirmed that Mr. James was a DOE employee at the Y-12 Plant in Oak Ridge, Tennessee from 1970-1990. The Department of Energy confirmed that he was monitored through the use of a dosimetry badge for exposure to radiation.**

Mr. James submitted a medical report from Dr. Chou dated November 10, 2000 indicating that he has been receiving treatment for cancers of the kidney and lung. Mr. James also submitted a pathology report dated October 21, 1999, which showed that he has a malignant tumor in his right kidney that was most consistent with primary renal cancer. A second pathology report dated July 6, 2000 showed that he was also diagnosed with primary lung cancer.

A copy of the case file along with a NIOSH Referral Summary was forwarded to NIOSH for dose reconstruction in December 2001. On May 30, 2002, the Office received the "NIOSH Report of Dose Reconstruction under EEOICPA," dated May 28, 2002, which provided the estimates of dose to the primary kidney and primary lung sites. NIOSH estimated annual doses totaling 15 rem for the kidney and 20 rem for the lung. Based on these dose estimates, the calculation of probability of causation was completed using NIOSH-IREP, which is an interactive software program. The probability of causation for the two primary cancers was determined to be 55%.

### **Findings of Fact**

Peter James filed a claim for benefits on September 20, 2001.

Mr. James was a covered DOE employee at the Y-12 Plant located in Oak Ridge, Tennessee from

1970 through 1990.

Mr. James was monitored through the use of a dosimetry badge for exposure to radiation during his employment at the Y-12 Plant.

On October 21, 1999, Mr. James was diagnosed with primary renal cancer.

On July 6, 2000, Mr. James was diagnosed with primary lung cancer. These diagnoses were made after Mr. James began his employment with the Department of Energy.

NIOSH reported annual dose estimates for the kidney and lung from the date of initial radiation exposure at Y-12 to the date of cancer diagnosis. A summary and explanation of information and methods applied to produce these dose estimates, including Mr. James' involvement through an interview and review of the dose report, are documented in the "NIOSH Report of Dose Reconstruction under EEOICPA," dated May 28, 2002.

Based on the dose reconstruction performed by NIOSH, the probability of causation (the likelihood that a cancer was caused by radiation exposure incurred by the employee while working at Y-12) was calculated for the two primary cancers. The probability of causation values were determined using the upper 99 percent credibility limit, which helps minimize the possibility of denying claims to employees with cancers likely to have been caused by occupational radiation exposures. It was shown that the Mr. James' renal and lung cancers were "at least as likely as not" (a 50% or greater probability) caused by radiation doses incurred while employed at the Y-12 Plant.

### **Conclusions of Law**

The dose reconstruction estimates were performed in accordance with 7384n(d) of EEOICPA and 42 CFR Part 82 §82.26. The Probability of Causation was completed in accordance with 7384n(c) (3) of EEOICPA and Subpart E of 42 CFR Part 81. Further, the calculation based on two primary cancer sites was completed in accordance with 42 CFR Part 81 §81.25. The claimant is entitled to compensation in the amount of \$150,000 pursuant to 7384s of EEOICPA. He is also entitled to medical benefits for primary renal cancer and primary lung cancer.

### **02-20 Offsetting compensation payments**

EEOICPA BULLETIN NO.02-20

Issue Date: July 19, 2002

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Effective Date: July 19, 2002

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Expiration Date: July 19, 2003

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**Subject:** Deducting payments received for final judgments or settlements from EEOICPA benefits.

**Background:** The Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA), 42 U.S.C. § 7384 *et seq.*, requires OWCP to "offset" or reduce the amount of EEOICPA benefits it pays to a claimant by the amount of any payment received from either a final judgment or a settlement in a lawsuit (except a lawsuit for worker's compensation) seeking damages for any occupational illness covered by the EEOICPA. If the evidence in the case file suggests that this type of payment may have been received, the Claims Examiner (CE) will have to develop the case and determine if any EEOICPA benefits that are payable to the claimant(s) must be

reduced, and if so, by how much.

Since a payment received from either a final judgment or a settlement in a lawsuit can be for multiple injuries and can be split among multiple parties, the actual amount of the reduction of EEOICPA benefits will depend on how much of the payment was for an occupational illness of a covered employee under the EEOICPA. It will also depend on much it cost the claimant(s) to get the payment (attorney fees and other costs of the lawsuit) since some of these costs can be applied against the payment to lower the amount of the reduction of EEOICPA benefits. Once these two figures are determined, any unpaid EEOICPA benefits must be reduced on a dollar-for-dollar basis. This guidance has been prepared to help the CE make these required reductions.

References: 42 U.S.C. § 7385 and 20 C.F.R. § 30.505(b).

Purpose: To explain how to make the required reduction of EEOICPA benefits.

Applicability: All staff.

Actions:

1. All claimants are asked to state if they have received a payment from either a final judgment or a settlement in a lawsuit seeking damages for an occupational illness covered by the EEOICPA. This question is currently asked on Form EE/EN-15, so in many instances the CE will not see anything in the case file that suggests that such a payment has been made before the claimant returns the EN-15 to OWCP. Other claimants may state that they received this type of payment in response to the questions about civil lawsuits that are on the current version of Forms EE-1 and EE-2.

Once the case file suggests that this type of payment has been made to any person (not just the claimant), the CE must send a letter to the claimant asking for copies of any complaint that was filed in court, any settlement agreement or sheet, and an itemized list of any expenses or other deductions listed on any settlement sheet. The claimant should be asked to contact the attorney who represented him/her in the lawsuit to obtain this evidence if the claimant does not have it. The CE should ask for any further documents or explanations that may be needed to determine the actual dollar amount of the payment(s) made for the occupational illness covered by the EEOICPA, and to whom the payment(s) was made.

2. EEOICPA benefits are not to be reduced if the benefits awarded by the Department of Justice under section 5 of the Radiation Exposure Compensation Act (RECA) were reduced by the full amount of the payment received by the covered uranium employee or his or her survivor(s). In this type of case, the CE only needs to document that the RECA benefits awarded were reduced by the Department of Justice by the full amount of the payment. However, if the amount of the payment exceeded the \$100,000 that can be awarded under section 5 of the RECA, the CE will have to reduce the claimant's EEOICPA benefits to account for the amount of the payment that exceeded \$100,000.

3. A settlement payment can include both an initial cash payment and future payments. These are called "structured" settlements. To determine the dollar value of a structured settlement, the CE must combine the amount of any initial payment and the present value of the future payments. If the future payments are funded through an annuity, the CE may accept the purchase price of the annuity as the present value of the future payments. If the claimant wants the CE to use a different method of computing the present value, the claimant may make a written request to the CE, but the claimant will have the burden to submit enough evidence and analysis to allow the CE to decide if the different method should be used.

4. Some settlements include payments that are contingent on a future event that may or may not take place, such as the diagnosis of an additional medical condition. The CE should not attempt to put a dollar value on a contingent payment; instead, any case that involves one of these must be referred to the National Office.

5. Settlements may be reached with covered employees that entitle them to payments for certain past medical expenses. In such cases, only payments for medical expenses that would also be payable by OWCP are to be included in the amount of the reduction of the claimant's EEOICPA benefits. For example, medical expenses incurred prior to the date of filing under EEOICPA would not be payable by OWCP and should not be offset.
6. When a covered illness is aggravated by medical malpractice, any payment on a final judgment or settlement relating to the malpractice is an amount that must be reported to OWCP. However, no reduction of EEOICPA benefits is required if the only payments received by a covered employee were for medical treatment provided prior to the date the covered employee filed his or her claim for EEOICPA benefits. In all other claims involving a payment on a final judgment or settlement for medical malpractice, the CE should refer the case to the National Office.
7. If a payment for a final judgment or settlement has been made solely to a living covered employee, then the entire payment (except for any part that is a payment for something other than an occupational illness covered by the EEOICPA or for medical expenses for services provided prior to the date the EEOICPA claim was filed) is a payment for a covered illness.
8. If a joint payment is made to both a living covered employee for a covered illness and to the spouse (or other family members) for "loss of consortium," the payment must be allocated between the parties, since only the amount of the joint payment allocated to the covered employee will be the amount of the payment for the covered illness. If a judge or jury specified how to allocate the joint payment between the parties, the CE should usually accept that allocation if it appears reasonable. In any other case involving a joint payment, the CE will allocate 75% of the payment to the covered employee as the payment for the covered illness, with the remaining 25% representing the claim of the spouse or other family members for loss of consortium. The covered employee may accept this standard allocation or demonstrate good cause for a different one. Whether to make a different allocation is at the discretion of the CE. However, a different allocation cannot be made unless the claimant can establish that a cause of action for loss of consortium was actually asserted, and that such a cause of action is recognized by state law.
9. Where the claimant(s) is the survivor of a covered employee who received a payment for a covered illness under the EEOICPA while he or she was still alive, the CE should follow the directions described above in Items 7 and 8 to determine the amount of the payment for the covered illness. This means that any payment the covered employee received for his or her covered illness is the amount used to reduce the EEOICPA benefits paid to the survivor(s).
10. Where the claimant(s) is the survivor of a deceased covered employee and the claimant received a payment for a final judgment or settlement in a lawsuit where he or she did not seek damages for his/her own injuries, the payment the claimant received is actually for the deceased covered employee's covered illness and the CE should follow the directions in Item 7 to determine the amount of the payment for the covered illness.
11. If a covered employee dies while a lawsuit is pending and the surviving claimant(s) is also a plaintiff in the same lawsuit, a payment received from a final judgment or a settlement may include amounts received for the claimant's own cause of action. If a judge or jury specified how to allocate a joint payment between the parties, the CE should usually accept that allocation if it appears reasonable. In any other case, the CE will allocate 50% of the joint payment to the deceased covered employee as payment for the covered illness, with the remaining 50% allocated to the spouse or other family members for loss of consortium and wrongful death. The claimant(s) may either accept this standard allocation or demonstrate good cause for a different one. Whether to make a different allocation is at the discretion of the CE, and a different one will not be made unless it can be established that causes of action for loss of consortium or wrongful death were actually asserted in the lawsuit, and that such causes of action are recognized by state law.
12. After the CE has determined the amount of the payment for a covered illness, reasonable

attorney fees and costs of the lawsuit may be deducted from this figure to arrive at the net amount of the required reduction of EEOICPA benefits. To determine the deduction for attorney fees, the CE should first divide the total amount of attorney fees that were actually paid by the total payments received due to the final judgment or settlement to arrive at the percentage of the total payments that is represented by the total fees. In general, any fee that exceeds 40% of the total payments will be deemed unreasonable and the amount allowed for attorney fees will be reduced to that percentage. To determine the amount of attorney fees to be deducted from the payment for the covered illness, the payment for the covered illness should be multiplied by the lower of the actual attorney fees percentage as calculated above, or 40%. If the attorney fee percentage exceeds 40%, the claimant should be informed and given an opportunity to establish that an attorney fee in excess of 40% is reasonable.

13. Only some of the costs of bringing a lawsuit may be deducted from the amount of the payment for the covered illness. Costs that are allowable are any out-of-pocket expenditures that are not part of the normal overhead of a law firm's operation, such as filing fees, travel expenses, record copy services, witness fees, court reporter costs for transcripts of hearings and depositions, postage, and long distance telephone calls. Costs that are considered normal overhead costs of a firm will be disallowed, such as in-house record copying, secretarial or paralegal services, and co-counsel fees. THESE COSTS MUST BE ITEMIZED WHEN SUBMITTED TO THE CE FOR CONSIDERATION. Any costs that are not itemized will be disallowed. The costs of a lawsuit with multiple parties should be allocated among the parties in the same way that the total judgment or settlement is allocated. In any case in which costs are disallowed, the claimant should be given an opportunity to establish that such costs are reasonable and should be allowed.

14. These calculations will determine how much OWCP must reduce the amount of any unpaid EEOICPA benefits to which the claimant is entitled, beginning with the lump-sum payment. If the amount of the lump-sum payment is less than the amount of the required reduction (*i.e.*, a "surplus" remains), ongoing EEOICPA medical benefits payable in the future will be reduced up to the amount of the remaining surplus. This means that OWCP will stop paying medical benefits and will apply the amount it would otherwise pay to reimburse a covered employee for ongoing EEOICPA medical treatment to the remaining surplus until it is exhausted. Covered employees should be encouraged to submit reimbursement requests for medical treatment, even though they will not be reimbursed, because the amounts they paid will reduce the surplus and shorten the time during which medical benefits cannot be paid.

15. During any period when medical benefits are not being paid because of the required reduction of EEOICPA benefits, and if the CE finds it necessary in the course of normal case management to obtain a second opinion examination, a referee examination, or a medical file review, the costs for these procedures will be directly paid by OWCP and any reasonable expenses incurred by the covered employee will be reimbursed without being added to the surplus.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

**02-22 Marshall Island**

EEOICPA BULLETIN NO. 02-22

Issue Date: August 5, 2002

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Effective Date: August 5, 2002

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Expiration Date: August 5, 2003

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Subject: Suspension Code for Marshall Islands Cases

Background: Approximately 75 EE-1 and EE-2 claims have been filed in the Seattle District Office by employees and survivors of the Department of Energy (DOE) facility known as the Pacific Proving Ground in the Marshall Islands. The Pacific Proving Ground was a weapons test site in the South Pacific from 1946 to 1962. Not all of these employees were U.S. citizens. The District Office was instructed to halt adjudication on these cases while the National Office researches the Marshallese eligibility.

Reference:

Purpose: To provide guidance to District Office personnel on placing Marshall Islands cases in a suspended status.

Applicability: All staff.

Actions:

1. Any claim in the DO in which the EE-1 or EE-2 form indicates the employee was a non-U.S. citizen and worked for the Department of Energy in the Marshall Islands should be coded **HM (Hold - Marshall Islands)** under the claim status screen in ECMS. **HM** is a suspension code that indicates the claim is from the Marshall Islands and all adjudication is on hold until notified by the National Office to release the hold status and commence the adjudicatory process.
2. The status effective date for the **HM** code should be the day following the last action taken on the claim. For example, if the last action on a claim involved the development of employment evidence and the claim was coded DE on 4/1/02, the status effective date for the **HM** code would be 4/2/02. If the last action was the creation of the case, the status effective date would be the day following case creation.
3. Any claim that comes into the DO from the Marshall Islands in the future and the claimant is Marshallese should also be coded **HM**. The status effective date on the claim would be the day following case creation.
4. Any claimant, whose claim has been coded **HM**, should be sent a copy of the attached letter.
5. A recommended decision should immediately be issued on any claim containing evidence that the employee is/was a U.S. citizen and was employed by Pacific Proving Ground. These claims should not be coded **HM**.
6. A recommended decision should immediately be issued on any claim in which it has been established that a covered condition is not claimed. These claims should not be coded **HM**.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

## Occupational Illness Compensation

Distribution List No. 1: (Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections.)



U. S. DEPARTMENT OF LABOR  
ADMINISTRATION

EMPLOYMENT STANDARDS

WORKERS' COMPENSATION PROGRAMS

OFFICE OF

DIVISION OF ENERGY

EMPLOYEES' OCCUPATIONAL

ILLNESS COMPENSATION

Date

Claimant Name

Claimant Address

Dear (Claimant):

We are writing to advise you that our office has received your claim for benefits under the Energy Employees Occupational Illness Compensation Act (EEOICPA). The claim that you filed indicates you (or insert employee's name) were an employee of the Department of Energy in the Marshall Islands and that you (or insert employee's name) are not a citizen of the United States.

Your claim raises complicated issues regarding the eligibility of non- U.S. citizens for coverage under EEOICPA. We are in the process of attempting to resolve these issues. Unfortunately, this process will take additional time before a decision may be rendered on your claim. In the interim, no further information will be required from you.

We appreciate your patience in this matter.

Sincerely,

Claims Examiner

**02-25 Telephone management system**

EEOICPA BULLETIN NO. 02-25

Issue Date: September 16, 2002

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Effective Date: September 9, 2002

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Expiration Date: September 9, 2003

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Subject: Telephone Management System (TMS)

Background: In June 2002, at a Manager's Meeting held in Denver, CO, one of the topics discussed was improving customer service between the offices and stakeholders. At the meeting it was determined that an automated telephone management system would be developed by the Branch of Automated Data Processing, Coordination and Control (BADPCC) and the Branch of Policy, Regulations, and Procedures (BPRP).

October 1, 2002 was established as the target date for implementing the automated telephone system in each office. The key components identified for the new system were: a) a system that records and tracks responses to telephone messages; b) a system that provides user and management reports to permit efficient monitoring and oversight of telephone activity; and c) a system that is

accessible from Energy Case Management System (ECMS) application screens.

Purpose: To establish policy and procedural requirements related to telephone usage and provide guidance on the use of the new ECMS Telephone Management System (TMS).

[There is no single "TMS" Screen in ECMS. TMS refers to a combination of screens and functions in ECMS. For example, the phone message screen is accessed by clicking the red phone icon, and phone message reports are accessed by clicking on the ECMS Reports icon. Throughout this bulletin, "TMS" is used loosely, to refer to one or more screens or functions related to on-line telephone tracking and management.]

Applicability: All staff.

Actions:

1. Training for all users of TMS was conducted in each site within the Division of Energy Employees Occupational Illness Compensation (DEEOIC) by District Office (DO) and/or Final Adjudication Branch (FAB) claims personnel who received prior training ("train the trainer" methodology) from National Office personnel, including staff from the Branch of Outreach and Technical Assistance (BOTA), BPRP and BADPCC. Train the trainer sessions were held on August 29, 2002. District and FAB training was conducted for all DEEOIC personnel by the trainers the following week, September 3rd through the 6<sup>th</sup>. The training was mandatory for all office staff who have contact with stakeholders over the telephone. Using TMS for recording and tracking all phone calls became mandatory effective Monday, September 9, 2002.
2. ECMS Release Notes describing TMS are available on the Shared Drive. The Release Notes should be reviewed by all DEEOIC personnel, as they contain detailed instructions on how to use the automated telephone management system.
3. Effective Monday, September 9, each office was required to discontinue using its previous system for tracking and recording incoming telephone calls, and utilize ECMS/TMS for this purpose. (Note that local phone tracking systems could be used through September 13, but only to close out previously opened, non-returned messages pending closure in local systems as of September 9, 2002. The BADPCC will assist offices to load historical phone records from local systems into ECMS/TMS.)
4. The rule that governs *who* must create the automated ECMS/TMS telephone message is: if you answer the phone, you create the phone record in ECMS, unless you immediately transfer the caller to another person within the office, and that person picks up the phone and speaks with the caller. That second person becomes responsible for creating the phone message record in ECMS/TMS.  
  
In this circumstance, the first person must record the incoming call (caller name, date/time, employee social security number, referred to whom) in a manual log. Office management must maintain/retain their log and use it as a quality assurance tool to ensure that all transferred calls are logged into ECMS. DO management may exercise discretion to eliminate this manual logging procedure ONLY by establishing and enforcing rules that require the person answering the call to always create the automated ECMS/TMS phone message record, even if he/she transfers the call.
5. Callers must never be transferred to someone's voicemail without the caller's explicit knowledge and consent. The person transferring the call must ensure that the call is picked up so that the caller is not inadvertently dropped or transferred to a voicemail message.
6. Mandatory rules describing the types of calls that must be entered and tracked in ECMS/TMS are contained in the following paragraphs. Office management at each DEEOIC site may establish local/discretionary policies that expand the "must enter and track" criteria for phone calls. Please note, all calls tracked in ECMS/TMS must be entered within one hour of the time it was received.

- a. An automated telephone record must be created for every telephone call that requires a return call, regardless of whether the caller is a DEEOIC claimant or a representative or other interested party to a DEEOIC claim (including NIOSH, DOE, and DOJ). For example, calls taken by a contact representative, workers' compensation assistant (WCA), supervisor, etc. that require the caller to speak with the claims examiner (CE) or any other member of the district office staff will be entered into the system and assigned to a specific individual for a return call.
- b. All incoming calls from DEEOIC claimants, survivors, attorneys, Congressional Offices and/or any other parties to a DEEOIC claim (including NIOSH, DOE, and DOJ) must be recorded in TMS, whether or not a return call is required. If an incoming telephone call is answered completely (i.e., final response given - no return call needed) by the person receiving the call, he/she immediately must enter the call into the system and close it out by entering "Y" in the *Direct Call* field.
- c. Calls that result in the office sending informational packets or application forms related to the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), to potential claimants or any other persons must be recorded in TMS with a description in the text field of what was sent, when, and to whom.
- d. Calls from medical representatives, members of interest groups, or elected officials (or their staff members) must be recorded in TMS whether or not either a) a return call is necessary or b) any informational packet or other documentation needs to be sent.
- e. Outgoing calls - those initiated by claims personnel - to a claimant or a party to the claim must be recorded/entered as a phone message into ECMS/TMS. Users must select "G – Out-Going" in the *Call Reason* field to identify the phone message as one generated from within, NOT received from the outside. The outgoing call falls under the category of a "direct call." After entering all appropriate data to record the call, users must click on "Y" in the *Direct Call* field, and ensure that the phone message is closed. If an outgoing call generates the need for a call-up (to remind the CE to take additional future action, for example), the person making the call first must document the call in the phone message screen, then open the Notes and Call-ups screen to enter a call-up note and date.

The above criteria involves calls that are either case-specific or general in nature. If a caller identifies a particular case, than the call should be entered in the ECMS phone message screen for that case. However, if a caller requests general information, or is simply not referring to one particular case, the call must still be entered into ECMS. Each office has created a "dummy" case record in ECMS for recording such general calls.

7. Even though the ECMS Notes & Call-ups Screen may previously have been used to record outgoing calls, effective immediately all telephone contacts, whether incoming or outgoing, must be documented in one place: the ECMS/TMS phone message screen. This procedure promotes ease of use and data consistency - all phone calls are in one place, all call-ups and notes are in another.
8. When a call requiring TMS entry is taken, the required data that must be entered into TMS are:
  - **Call Reason** (select from list; use "other" if none apply)
  - **Claim Type** (select from list; "other" values are available for calls unrelated to existing claims)
  - **Note** (The individual taking the call enters a note - up to 2000 characters - describing the substance of the inquiry. This note is known as the Primary Phone Message.)
  - **Caller Name** (enter name of caller)
  - **Call For** (enter name and/or title/position of person that caller asked to speak with; use "N/A" if specific person was not requested)
  - **Relation** (select from list - caller's relationship to the claimant identified in *Claim Type* field)
  - **Direct Call** ("Y" if direct answer was provided by person entering phone record - "N" if direct

answer was not provided and callback is required)

- **Received by** (system will default to logged-in user id)
- **Received date** (system will default to current date)
- **Callback No.** (enter caller's phone number, if provided by caller)
- **Assign to** (select from list - any user in DO). The user name entered in the **Assign to** field becomes the "**owner**" of the telephone note.
- **Callback Completed** ("Y" or "N" - phone call will remain open and pending until "Y" is entered and saved to this field.
- **(Callback Completed) On** (system generated date)

9. The note field of the Primary Phone Message must not be modified or updated, except in two instances:

- a. By the creator of the message, and then only to correct or clarify the text entered on the date of call creation.
- b. By the owner of the message (or supervisory personnel), to explain why he/she is reassigning the message to another user.

10. Return/completed call messages must be entered on a supplemental message screen (*Callback/Addendum Notes*) that is accessed via the bottom portion of the phone message screen. (The TMS user moves the cursor into one of the rows in the grid and then depresses the <INSERT> key to add a new *callback/addendum note*.)

11. Any telephone call that is entered into the TMS will remain an open call until it is returned (i.e., return call and response provided to caller) and then closed out in TMS.

12. When a call is received and completed by the same individual (no assignment or call-back needed), the individual must click the "Y" in the *Direct Call* box. A direct call is one in which the question(s) posed by the caller is answered directly at the time of the call. In this instance, the "Y" prompts the TMS to close out the call by entering the call received and completed dates simultaneously.

13. When a user logs into ECMS, TMS displays a message identifying the number of pending phone messages which have been logged for (that is, assigned to, or owned by) the user signing in. By selecting the "*Open Phone Msgs*" option, TMS displays all the outstanding calls that do not contain a completed call date.

14. The owner (user name appearing in the *Assign to* field) of the phone call is responsible for returning the call and closing out the TMS phone message. After returning an open or pending call, s/he must take two actions to close out the pending call in ECMS/TMS.

- a. First, the user creates a *Callback/Addendum Note* by opening the pending phone message in ECMS/TMS, then moving the cursor into the *Callback/Addendum Note* grid and depressing the <INSERT> key. A blank *callback/addendum note* will appear on the screen - the user enters the details of the return call here. A *callback note* must comprehensively describe the reply to the caller's inquiry. TMS will allow up to 1000 characters. After this addendum note is saved, it appears as a new row in the grid view at the bottom of the "parent" Phone Message Screen. Double clicking on the specific row for a *Callback/Addendum note* displays the full text of the note.

- b. Second, after the addendum note is entered and saved, the CE or other user must return to the parent telephone message *Add/Update* screen and click the "Y" in the *Callback Completed* box, and ensure that the (*Callback Completed*) *On* date reflects the actual return call date. If "Y" is selected, the call will no longer appear on the pending phone messages list. If "N" is selected, the TMS system will not close out the call and the call will appear on the owner's pending phone message list.

15. Once a phone call is assigned to a person, it is owned by that person. TMS permits only the person who owns a call, or supervisory personnel, to reassign a phone call. TMS permits reassignment of an individual phone message from within that message screen - the current owner simply selects the new owner of the message from among the list of users in the *Assign To* box. When reassignment is accomplished in this manner, the owner must type his/her user ID and the date within the "Note" portion of the primary message, along with a brief reason for the reassignment. The owner will reassign a phone call only when he/she does not actually speak to the caller. The call will not be closed out until a return call is made. For example, a customer service representative answers a call and refers it to CE-1. CE-1 receives the referral and becomes the owner; however the case is actually managed by CE-2. CE-1 does not return the call, and reassigns the case to CE-2. CE-2 then becomes responsible for ensuring that the call is returned timely.

TMS also permits block/group reassignments from the *Manage Phone Message* screen.

Because of system flexibility in permitting reassignments, local office management must establish policies to govern call reassignments by phone message owners. For example, each office should determine whether supervisory permission or intervention is required to correct erroneous phone call assignments, and - due to workload considerations - to make reassignments to cover CE absences or other situations requiring backup coverage.

16. If the owner of a pending call (a CE, for example) returns a phone call and the caller wants to speak to someone else (e.g., a supervisor or district director), the CE must close out his/her call and create a new phone message, assigning it to the appropriate person. This situation is different from that described in number fifteen (above) because in this scenario the CE actually returns the phone call prior to referral to another individual, and the current call is closed out.

17. Phone messages should never be deleted, except by supervisors, and only to remove an entirely erroneous account of a phone call. If, for example, a call from a claimant is mistakenly attached to a case record belonging to another unrelated individual, only a supervisory person may delete the phone call record.

18. While in any one of the telephone screens, the user may go into another ECMS screen to check status, etc. on the case.

19. All claim-related telephone call messages must be printed and filed in the case jacket, but only after the phone call record is closed, i.e., for calls requiring a response, after the response is recorded in the *Callback/Addendum Note*. (Users may do a screen print or use the *Message Text Report* in ECMS Reports. The *Message Text Report* will print a single *Primary Note*, with all associated *Callback Notes*, or multiple *Primary Notes* and associated *Callback Notes*, based on a user-entered date range.)

All general calls not related to a specific case must be printed and kept in a central location in the office for reference and tracking purposes.

20. All DEEOIC offices are responsible for returning and closing calls within two calendar days of the date of receipt of the call. This requirement is tied to the date and time of the received call, not to the date and time the call is assigned to a particular person. That is, all callers must receive a return call within two days. Reassigning a call from one person/call owner to another does not close the call out or extend the time period for response.

Disposition: Retain until further notice.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: (Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs,

Hearing Representatives, District Office Mail & File Sections.)

## **02-26 Referrals to Dr. Newman**

EEOICPA BULLETIN NO.02-26

Issue Date: September 13, 2002

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Effective Date: September 13, 2002

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Expiration Date: September 13, 2003

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Subject: Referrals to Dr. Lee Newman

Background: Section 78841 (8) (A) & (13) requires Claims Examiners (CEs) to adjudicate claims for Chronic Beryllium Disease (CBD) and Beryllium Sensitivity (BeS) based on certain criteria. Prior to January 1, 1993 standard medical terminology for Beryllium tests and diagnoses did not exist. This has made it difficult for the CEs in the District Offices to review and interpret medical evidence for CBD and BeS prior to January 1, 1993. Since the diagnosis of CBD is relatively new, ongoing research continues. Therefore, it is also sometimes difficult for CEs to apply the criteria for CBD to diagnoses that were made after 1/1/93.

The National Office has established a contractual and billing agreement with Dr. Lee Newman, of the National Jewish Medical and , to obtain medical opinions, services, advice, policy and translation of medical aspects of a claim. Therefore, in the event a CE is unable to interpret medical evidence for a Beryllium Sensitivity or Chronic Beryllium Disease case, and has no success with the claimants physician, Dr. Lee Newman may be consulted. Dr. Newman is not considered a second opinion. He is to be consulted for interpretation of medical evidence relevant to Beryllium cases.

For tracking and budgetary purposes the National Office will manage all referrals and completed evaluations.

Reference: Energy Employees Occupational Illness Compensation Program Act of 2000, As Amended, 42 U.S.C. 7384 *et seq.*, Section 73841(8)(A) and (13).

Purpose: To notify the District Offices of the procedures for referring a claim to Dr. Lee Newman.

Applicability: Claims Examiners, Senior Claims Examiners, All Supervisors, Technical Assistants, and mail room staff

Actions:

1. The CEs should consider consulting Dr. Newman if they are unable to interpret medical evidence for a Beryllium Sensitivity or Chronic Beryllium Disease case, and have no success with clarification from the claimants physician. Examples of situations when a referral is needed may include:

Pre 1993 medical evidence is submitted that includes a lung biopsy report that is inconclusive, a positive LPT and x-rays that show granulomas in the lungs.

Medical tests are submitted which do not provide clear diagnosis or interpretation i.e. LPT, BAL LPT.

2. When the CE determines Dr. Newman is to be consulted, a package should be prepared for Dr. Newman that includes:

Memo which is addressed to Dr. Newman and includes contact information for the CE and a return address for the National Office; states the reason for the referral detailing evidence being sent, and questions the CE needs answered. (See attachment for format)

Copies of Medical Records in question.

3. The CE should mail or fax the referral package to the National Office.

U.S. Department of Labor

Attention: Anita Brooks

ESA/OWCP, DEEOIC

Room C4511

200 Constitution Avenue, N.W

,

Fax Number: (202) 693-1465 attn: Anita Brooks

4. The CE should enter the code **MS** (Medical Consult Sent) under the claims status screen in ECMS with the status effective date as the date sent to the National Office.

5. The National Office will Federal Express or Fax completed evaluations to the CE within 24 hours of receipt from Dr. Newman.

6. Upon receipt of the report from the National Office, the CE should enter the code **MR** (Medical Consult Received) under the claim status screen in ECMS with the status effective date as the date received from the National Office.

7. General questions regarding Beryllium can be e-mailed to Anita Brooks in the National Office at [abrooks@esa-dol.gov](mailto:abrooks@esa-dol.gov) who will answer or forward to Dr. Newman's staff for assistance. Examples of questions may include; What does the acronym BALLPT mean? What type of symptoms do CBD patients normally exhibit? What are the possible side effects for steroid treatment?

8. All bills are to be handled by the National Office.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

**Occupational Illness Compensation**



**U. S. DEPARTMENT OF LABOR EMPLOYMENT STANDARDS  
ADMINISTRATION**  
OFFICE OF WORKERS COMPENSATION PROGRAMS  
DIVISION OF ENERGY EMPLOYEES OCCUPATIONAL

ILLNESS COMPENSATION  
200 CONSTITUTION AVE  
ROOM C-4511  
WASHINGTON DC 20210  
TELEPHONE: (202) 693-0081

**Request for Medical Evidence Consultation**

**To: Lee S. Newman, MD., M.A., F.C.C.P. From: {Claims Examiner}**

Departmental Head, Division of Environment  
and Occupational Health Sciences Phone Number: {CE phone #}  
National Jewish Medical and Research Center  
Re: {Claimant Name}

Date:

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{insert reason for referral, medical evidence submitted and questions that need to be answered}

Please return your completed evaluation and billing information to the following address:

U.S. Department of Labor

**Attention: Anita Brooks**

ESA/OWCP, DEEOIC  
Room C4511  
200 Constitution Avenue, N.W  
Washington, DC 20210

Thank you for your cooperation.

Sincerely,

**Claims Examiner**

For DOL National use only:

Date Materials Mailed to Consultant:

Date Materials Received from Consultant:

Date Final Evaluation Mailed to CE:

**02-28 Tonsil cancer**

Issue Date: September 10, 2002

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Effective Date: September 5, 2002

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Expiration Date: September 5, 2003

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Subject: Tonsil Cancer as a Specified Primary Cancer

Background: The National Office recently reviewed the medical evidence in a case file to determine if, for purposes of being considered a specified cancer under the EEOICPA, tonsil cancer can be considered pharynx cancer.

The DOL Interim Final Regulations, 20 CFR 30, states in Section 30.5(dd)(6) that the "specified cancers" 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." The information on the National Cancer Institute website ([http://cis.nci.nih.gov/fact/6\\_37.htm](http://cis.nci.nih.gov/fact/6_37.htm)) indicates that the pharynx has three parts. One of these parts is the oropharynx, which includes "the soft palate (the back of the mouth), the base of the tongue, and the tonsils." Based on this definition from NCI, we consider that a cancer of the tonsils is a cancer of the pharynx. As the tonsils are part of the pharynx, tonsil cancer should be considered a specified cancer for SEC cases.

Reference: Energy Employees Occupational Illness Compensation Program Act of 2000, As Amended, 42 U.S.C. § 7384 *et seq.*, Sections 7384l(9), (14) and (17); 20 CFR 30, Section 30.5(dd) (6); and the NCI website ([http://cis.nci.nih.gov/fact/6\\_37.htm](http://cis.nci.nih.gov/fact/6_37.htm)).

Purpose: To notify District Offices that cancer of the tonsils is considered a pharynx cancer, which is a specified primary cancer for eligible SEC claimants under the EEOICPA.

Applicability: All staff.

Actions:

The CE should consider tonsil cancer as a pharynx cancer, which is a specified primary cancer per EEOICPA Section 7384l(17) and the DOL Interim Final Regulations, 20 CFR 30.5(dd)(4), in determining eligibility for members of the Special Exposure Cohort (SEC).

The CE should look for any other cases with this type cancer that could be eligible as members of the SEC. A preliminary review of the ECMS, searching for ICD-9 codes 146 and 146.0, identified six claims at SEC sites.

The CE should review all incoming SEC claims for this condition. If found, and all other relevant SEC criteria have been met, issue a Recommended Decision for acceptance of the claim as pharynx cancer.

4. The CE should continue to distinguish tonsil cancer from pharynx cancers using the appropriate ICD-9 codes on all paperwork and in ECMS. For example, the ICD-9 code for a malignant neoplasm of the tonsil is 146.0, and for the three parts of the pharynx it is 146 for the oropharynx, 147 for the nasopharynx, and 148 for the hypopharynx.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual

PETER M. TURCIC

Director, Division of Energy Employees

## Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections

### **02-30 Marshall Island - updated**

EEOICPA BULLETIN NO. 02-30

Issue Date: September 12, 2002

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Effective Date: September 12, 2002

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Expiration Date: September 12, 2003

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Subject: Reissue --Suspension Code for Marshall Islands Cases-

Background: Approximately 75 EE-1 and EE-2 claims have been filed in the Seattle District Office by employees and survivors of the Department of Energy (DOE) facility known as the Pacific Proving Ground in the Marshall Islands. The Pacific Proving Ground was a weapons test site in the South Pacific from 1946 to 1962. Not all of these employees were U.S. citizens. The District Office was instructed to halt adjudication on these cases while the National Office researches the Marshallese eligibility.

Reference:

Purpose: To provide guidance to District Office personnel on placing Marshall Islands cases in a suspended status.

Applicability: All staff.

Actions:

1. Any claim in the DO in which the EE-1 or EE-2 form indicates the employee was a non-U.S. citizen and worked for the Department of Energy in the Marshall Islands should be coded **HM (Hold - Marshall Islands)** under the claim status screen in ECMS. **HM** is a suspension code that indicates the claim is from the Marshall Islands and all adjudication is on hold until notified by the National Office to release the hold status and commence the adjudicatory process.
2. The status effective date for the **HM** code should be the day following the last action taken on the claim. For example, if the last action on a claim involved the development of employment evidence and the claim was coded DE on 4/1/02, the status effective date for the **HM** code would be 4/2/02. If the last action was the creation of the case, the status effective date would be the day following case creation.
3. Any claim that comes into the DO from the Marshall Islands in the future and the claimant is Marshallese should also be coded **HM**. The status effective date on the claim would be the day following case creation.
4. Any claimant, whose claim has been coded **HM**, should be sent a copy of the attached letter.
5. A recommended decision should immediately be issued on any claim containing evidence that the employee is/was a U.S. citizen and was employed by Pacific Proving Ground. These claims

should not be coded **HM**.

6. A recommended decision should immediately be issued for a U.S citizen claim in which it has been established that a covered condition is not claimed. These claims should not be coded **HM**.

**Note**—this bulletin amends and replaces the previous bulletin, No. 02-22.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

PETER M. TURCIC

Director, Division of Energy Employees

Occupational Illness Compensation

Distribution List No. 1: (Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections.)



**U. S. DEPARTMENT OF LABOR  
ADMINISTRATION**

**EMPLOYMENT STANDARDS**

**OFFICE OF**

**WORKERS' COMPENSATION PROGRAMS**

**DIVISION OF ENERGY**

**EMPLOYEES' OCCUPATIONAL**

**ILLNESS COMPENSATION**

Date

Claimant Name

Claimant Address

Dear (Claimant):

We are writing to advise you that our office has received your claim for benefits under the Energy Employees Occupational Illness Compensation Act (EEOICPA). The claim that you filed indicates you (or insert employee's name) were an employee of the Department of Energy in the Marshall Islands and that you (or insert employee's name) are not a citizen of the United States.

Your claim raises complicated issues regarding the eligibility of non- U.S. citizens for coverage under EEOICPA. We are in the process of attempting to resolve these issues. Unfortunately, this process will take additional time before a decision may be rendered on your claim. In the interim, no further information will be required from you.

We appreciate your patience in this matter.

Sincerely,

Claims Examiner

### **02-34 ORISE online employment verification**

EEOICPA BULLETIN NO. 02-34

Issue Date: September 30, 2002

Expiration Date: September 30, 2003

Subject: Procedures for using the on-line ORISE database.

Background: The program has been receiving employment information from a database maintained by the Oak Ridge Institute for Science and Education (ORISE) by sending lists of claims for employment verification directly to ORISE rather than the Department of Energy (DOE) point of contact.

The ORISE database includes over 400,000 employees from the 1940's until the early 1990's and has been an effective tool in verifying employment for EEOICP claimants. In order to streamline the use of the database, DEEOIC and the DOE have established an Internet-based means of access to the data. Claims Examiners will be able to access the database with an individual password and acquire employment data for a specific claim, eliminating the need to send individual requests to ORISE.

Reference: EEOICPA Bulletin No. 02-28; Interim procedures for obtaining employment verification from ORISE. ECMS Resource Users Guide and ECMS FAQ's.

Purpose: To provide procedures for obtaining employment verification information from the online ORISE database.

Applicability: Claims Examiners, Senior Claims Examiners, All Supervisors, ADP Coordinators and Technical Assistants.

Action:

At the time that a claim is initially reviewed, if the claims examiner (CE) determines that a request for employment verification is appropriate, the CE must first check the list of facilities that are included in the ORISE database (Attachment 1).

2. If the employee worked at a facility that is not included in the ORISE database, the CE should request employment verification through the usual manner, depending on the routing instructions for that particular facility.

If the employee worked at one of the facilities on the attached list, the CE should log on to the ORISE database through the secure web site address which can be obtained from the ECMS Resource Users Guide and ECMS FAQ's on the secure shared drive.

Upon accessing the web site, a security alert screen will come up which assigns a security certificate that authenticates that the CE is an authorized user and is using a secure site. The CE will have a choice of YES, NO or View Certificate. Please select Yes to continue.

A web page "The Department of Energy, Case Management System", with the login and password field at the bottom will be displayed. The CE will be required to enter his/her user name and password. Instructions for the username and temporary password can be obtained through the ECMS Resource Users Guide and ECMS FAQ's on the secure shared drive.

6. Once logged in, a web page that lists privacy and security information will appear. On the left side of the web page the CE will see buttons for *Search ORISE*, *Change Password* and *Logout*.

7. For security reasons, the CE should change his/her password by selecting the *Change Password* button.

To search the ORISE database, the CE must select the *Search ORISE* button. A screen will appear which provides fields for the first name, last name and social security number of the employee. The CE must enter at a minimum a partial last name and social security number for the individual for whom the search is being conducted.

Once the employee name and social security number is entered, the system will search the database and provide the results at the bottom of the page under *ORISE Search Results*. If the database finds a match, the name and social security number will

appear. The CE must select the result to review the employment data.

The ORISE data is categorized in two rows of data. The first row is categorized by Facility and lists all the facilities where the employee worked. The second row is categorized in columns by Facility, Hire/Terminate Dates, Dept. Code, Job Title, and Badge Number and provides employment data specific to the facility(s) where the employee worked. For example, if the employee worked at three facilities, then the CE would see three rows of information pertaining to each of the identified facilities, hire/terminate dates, dept. code, job title and badge number.

If the information from the ORISE database is used for employment verification, the CE should print a copy of the ORISE employment results, and place it in the case file along with the EE-5, and the memorandum from DOE stating that data contained in the ORISE database is reliable and may be used as affirmation of employment. (Attachment 2).

The CE should enter the status code **OR** in ECMS only if ORISE information is used to verify employment. It will no longer be necessary to enter an OS (ORISE sent) status code.

13. Some of the data will show the employee's name and facility, but do not have any specific dates. These are individuals that worked at the facility, but for whom the database contains no specific dates.

14. The information available on the database is limited to certain time periods, which are different for each facility. Attachment 1 shows the earliest hire date and the latest termination date in the database for each facility. If an individual employee worked prior to or after those dates, that employment would not be reflected in the ORISE information. These dates do not necessarily correlate with the dates the facility was in operation.

15. If the claim is for a member of the SEC, and is for a specified cancer, the CE must determine whether the ORISE information confirms employment for the required number of days at the facility, during the required timeframe. If yes, place a memorandum in the file describing the relevant dates and facilities.

16. If the claim is for chronic beryllium disease or beryllium sensitivity, the CE should determine whether the ORISE information confirms employment at a DOE facility for at least one day when beryllium was present. If yes, place a memorandum in the file describing the relevant information.

17. If the claim is for non-SEC cancer, the CE must determine whether the ORISE information is sufficient to confirm each period of claimed DOE employment, and that the individual is a "covered employee." If yes, place a memorandum in the file describing the relevant information in the file. The dates provided by ORISE need not be precisely the same as those reported on the EE-3, however, they should be within 6 months of each other. For example, if an employee claims employment at a facility from 2/1/63-3/4/68, and ORISE confirms 3/1/63-5/1/68, the employment is confirmed. The most generous interpolation of those dates, e.g. 2/1/63-5/1/68, should be used as the period of employment in the NIOSH Referral Memo.

18. If the claim is for chronic silicosis, the CE must determine whether the ORISE information confirms employment for the required number of days at the facility. If yes, place a memorandum in the file describing the relevant dates and facilities.

19. If the CE is unable to verify or can only partially verify employment through use of the ORISE information, the CE will send an EE-5 and a copy of the ORISE information to the appropriate DOE records contact. The CE will send a cover memo to DOE indicating that the ORISE information is incomplete and thus additional information is required by the DOE. The CE must enter the status code **ES** (Employment Sent) in ECMS with the effective date as the date indicated on the cover memo. In addition, once the verification is received from the DOE, the CE must enter the status code **ER** (Employment Received) in ECMS with the

status effective date as the date received and reflected by the mailroom staff. #9;

20. Effective this bulletin, ORISE will not process or return

outstanding requests sent by the CE. The CE should search the online database for employment information pertaining to the outstanding requests sent to ORISE; and enter the status code of OR (ORISE received) regardless if employment information was obtained.

21. The absence of data from ORISE may not be used as

the basis for stating that an employee did NOT work at a given facility.

22. As a reminder, if the CE sends an employment verification package to DOE, and he/she does not receive a response within 30 days, the CE must follow up with DOE by submitting a cover memo and a EE-5. The cover memo must state it is a follow up to a previous request and include the DOE point of contact and the date it was originally sent to the DOE. The CE must enter the status code of **DE**(Developing Employment)in ECMS with the status effective date as the date indicated on the cover memo. In addition, once the CE receives the EE-5 back from the DOE, he/she must enter the status code of **ER** in ECMS with the status effective date as the date received and reflected by the mailroom staff.

**Please Note-** The employment history as described on the EE-3 and the employment information as reflected in the ORISE data do not have to match exactly in order for the actions described above to take place.

In addition, it should be noted that the absence of information on the ORISE database should not in and of itself be the basis for a denial of the claim.

The data that was used for this exercise was obtained from ECMS on approximately May 13, 2002. If cases were coded inaccurately, or if DOE has responded since that time, the information from ORISE may not be useful.

ADP coordinators should contact the Energy Tech Support for application and/or technical questions at: ENERGY-TECH-SUPPORT@fenix2.DOL-ESA.gov.

**Training should be conducting on these procedures as soon as possible.**

Disposition: Retain until the indicated expiration date.

PETER M. TURCIC

Director, for Division of Energy Employees

Federal Employees' Compensation Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners District

Medical Advisers, Systems Managers, Technical

Assistants, Rehabilitation Specialists, and

Staff Nurses, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Sections, ADP Coordinators

### Contents of CER Data Model - 4/1/2002

Facility Name	Total	# with Hire Date	Earliest Hire	# with Term Date	L
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Argonne	4994	4999	03/05/1942	163
Baneberry	891	0		
Battelle-Columbus	90	90	05/05/1952	68
Bethlehem	57	0		
Bettis	12462	3587	07/22/1940	138
Brookhaven	155	154	11/11/1946	136
CARL	3	3	07/15/1949	3
CEER	5	5	02/01/1960	5
Charleston NS	167	167	03/29/1938	88
Electro Met	329	292	07/15/1933	177
Energy Systems Group	45	45	06/11/1952	39
Fermi Lab	10	10	07/01/1968	3
Fernald	7300	7290	08/29/1950	6298
General Dynamics-Groton	295	294	06/01/1939	220
Hanford	7	7		5
Hanford	129	0		
Hanford-Construction	13206	12953	02/13/1947	8651
Hanford-Operations	56588	51734	01/01/1944	37724
Harshaw	757	0		
Holmes&Narver	20644	20380	08/10/1933	19140
INEEL	66	153	03/22/1951	111
Ingalls	7163	0		
K-25	47941	47809	01/04/1943	44683
KAPL	10432	9918	09/15/1943	6826
Knolls-Idaho	2	2	03/01/1967	1
Knolls-Kesserling	3	3	08/15/1974	3
Knolls-Windsor	12	12	07/12/1956	11
Lawrence Berkeley	434	429	01/01/1942	367
Lawrence Livermore-NTS	485	482	01/10/1952	380
Lawrence Livermore-NTS	21738	21621	01/01/1942	13981
Linde	1551	1550	01/13/1941	1545

Los Alamos	23288	428	01/25/1943	341
Mallinckrodt	3259	3503	09/30/1930	2907
Mare Island Shipyard	127	126	02/12/1940	79
Middlesex	387	39	12/11/1943	8
Mound	7415	6299	09/05/1940	4524
MREM -Hanford	8	0	12/01/1944	
Naval Reactor Facility	61	61	09/19/1951	49
New Brunswick Lab	10	0		
Newport News	180	180	04/13/1936	76
Norfolk Shipyard	115	110	04/08/1940	65
ORNL	26940	26694	01/29/1943	22143
Pacific Test Site	5	0		
Paducah	5727	3902	01/12/1944	2494
Pantex	7422	0		
Pearl Harbor Shipyard	58	58	07/15/1939	21
PETC	1156	1146	09/30/1935	817
PNL	3	3	04/07/1947	1
Portsmouth Gas Diff	9237	8	08/03/1953	10
Portsmouth Shipyard	21226	171	07/28/1939	88
REECO-NTS	132	78	02/02/1952	67
Rocky Flats	9586	920	07/15/1951	905
Rust Engineering	2686	2678	11/20/1962	2349
SAM Labs	2309	2174	01/15/1940	2093
Sandia	24685	24681	07/16/1939	17742
Savannah River	21472	21049	11/06/1950	14328
Savannah River Lab	111	1		
Shippingsport	17	17	01/16/1942	6
TEC	47107	47126	01/12/1941	47120
Y-12	23773	23473	05/04/1947	17774
Zia	15310	0		