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Authority: 42 U.S.C. 7384q; E.O. 13179, 65 FR 77487, 3 CFR, 2000 Comp., p. 321.

Subpart A—Introduction

§ 83.0 Background information on the procedures in this part.

The Energy Employees Occupational Illness Compensation Program Act, as amended (“EEOICPA” or “the Act”), 42 U.S.C. 7384 *et seq.*, provides for the payment of compensation benefits to covered employees and, where applicable, survivors of such employees, of the United States Department of Energy (“DOE”), its predecessor agencies and certain of its contractors and subcontractors. Among the types of illnesses for which compensation may be provided are cancers. There are two methods set forth in the statute for claimants to establish that a cancer incurred by a covered worker is compensable under EEOICPA. The first is to establish that the cancer is at least as likely as not related to covered employment at a DOE or Atomic Weapons Employer (“AWE”) facility pursuant to guidelines issued by the Department of Health and Human Services (“HHS”), which are found at 42 CFR part 81. The second method to establish that a cancer incurred by a covered worker is compensable under EEOICPA is to establish that the worker is a member of the Special Exposure Cohort (“the Cohort”) and suffered a specified cancer after beginning employment at a DOE or AWE facility.

Section 3621(14) of EEOICPA (42 U.S.C. 7384l(14)) includes certain classes of employees in the Cohort. Section 3626 of the Act (42 U.S.C. 7384q) authorizes the addition to the Cohort of other classes of employees. This authority has been delegated to the Secretary of HHS by Executive Order 13179.

§ 83.1 What is the purpose of the procedures in this part?

EEOICPA authorizes the President to add classes of employees to the Cohort, while providing Congress with the opportunity to review and expedite or reverse these decisions. The President delegated his authority to the Secretary of HHS. This part specifies the procedures by which HHS will determine whether to add new classes of employees from DOE and AWE facilities to the Cohort. HHS will consider adding new classes of employees in response to petitions by or on behalf of such classes of employees. The procedures specify requirements for petitions and for their consideration. These requirements are intended to ensure that petitions are submitted by authorized parties, are justified, and receive uniform, fair, scientific consideration. The procedures are also designed to give petitioners and interested parties opportunity for appropriate involvement in the process, and to ensure that the process is timely and consistent with requirements specified in EEOICPA. The procedures are not intended to provide a second opportunity to qualify a claim for compensation, once HHS has completed the dose reconstruction and DOL has determined that the cancer subject to the claim was not “at least as likely as not” caused by the estimated radiation doses. DOL has established procedures separate from those covered by this rule, under 20 CFR part 30, for cancer claimants who want to contest the factual determinations or how NIOSH conducted their dose reconstructions.

§ 83.2 How will DOL use the designations established under the procedures in this part?

DOL will adjudicate compensation claims for members of classes of employees added to the Cohort according to the same general procedures that apply to the statutorily defined classes of employees in the Cohort. Specifically, DOL will determine whether the claim is for a qualified member of the Cohort with a specified cancer, pursuant to the procedures set forth in 20 CFR Part 30.

Subpart B—Definitions

§ 83.5 Definitions of Terms Used in the Procedures in this part.

(a) *Advisory Board on Radiation and Worker Health* (“the Board”) is a federal advisory committee established under EEOICPA and appointed by the President to advise HHS in implementing its responsibilities under EEOICPA.

(b) *Atomic Weapons Employer* (“AWE”) is a statutory term of EEOICPA which means any entity, other than the United States, that:

(1) Processed or produced, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling; and

(2) Is designated by the Secretary of Energy as an atomic weapons employer for purposes of EEOICPA.

(c) *Class of employees* means, for the purposes of this rule, a group of employees who work or worked at the same DOE or AWE facility, and for whom the availability of information and recorded data on radiation exposures is comparable with respect to the informational needs of dose reconstructions conducted under 42 CFR part 82.

(d) *HHS* is the U.S. Department of Health and Human Services.

(e) *DOE* is the U.S. Department of Energy, which includes predecessor agencies of DOE, including the Manhattan Engineering District.

(f) *DOL* is the U.S. Department of Labor.

(g) *Employee*, for the purposes of these procedures, means a person who is or was, for the purposes of EEOICPA, an employee of DOE, a DOE contractor or subcontractor, or an Atomic Weapons Employer.

(h) *NIOSH* is the National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

(i) *Radiation* means ionizing radiation, including alpha particles, beta particles, gamma rays, x rays, neutrons, protons and other particles capable of producing ions in the body. For the purposes of the proposed procedures, radiation does not include sources of non-ionizing radiation such as radio-frequency radiation, microwaves, visible light, and infrared or ultraviolet light radiation.

(j) *Secretary* is the Secretary of Health and Human Services.

(k) *Specified cancer* as defined in § 3621 of EEOICPA (42 U.S.C. 7384l(17)) and the DOL regulation implementing EEOICPA (20 CFR 30.5(dd)) means: