



DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Part 30

RIN 1240-AA19

Claims for Compensation Under the Energy Employees Occupational Illness

Compensation Program Act

AGENCY: Office of Workers' Compensation Programs, Department of Labor.

ACTION: Final rule.

SUMMARY: The Office of Workers' Compensation Programs (OWCP) is publishing this final rule to update its criteria for establishing beryllium sensitivity. This change brings OWCP's regulations into alignment with a statutory provision that was enacted as part of the National Defense Authorization Act for Fiscal Year 2024 on December 22, 2023. The new provision provides an additional way by which both previously ineligible and new claimants can establish beryllium sensitivity due to occupational exposure to beryllium.

DATES: This final rule is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Rachel D. Pond, Director, Division of Energy Employees Occupational Illness Compensation, Office of Workers' Compensation Programs by mail at U.S. Department of Labor, Room C-3510, 200 Constitution Avenue NW, Washington, DC 20210; by email at DEEOIC-public@dol.gov (please put "RIN 1240-AA19" in the subject line); or by telephone at 202-693-0081 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Part B of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), 42 U.S.C. 7384 *et seq.*,

provides uniform lump-sum payments and medical benefits to covered employees or, where applicable, to their survivors of the Department of Energy (DOE), its predecessor agencies and certain of its vendors, contractors and subcontractors who were diagnosed with a radiogenic cancer, chronic beryllium disease, beryllium sensitivity or chronic silicosis, as a result of exposure to radiation, beryllium, or silica while employed at covered facilities. Part B of EEOICPA also provides smaller uniform lump-sum payments and medical benefits to individuals found eligible by the Department of Justice for an award under section 5 of the Radiation Exposure Compensation Act (RECA), 42 U.S.C. 2210 (note), or, where applicable, to their survivors. Part E of EEOICPA provides variable lump-sum payments (based on a worker's permanent impairment and/or qualifying calendar years of established wage-loss) and medical benefits for covered DOE contractor employees and, where applicable, provides variable lump-sum payments to survivors of such employees (based on a worker's death due to a covered illness and any qualifying calendar years of established wage-loss). Part E also provides these same payments and benefits to uranium miners, millers and ore transporters covered by section 5 of RECA and, where applicable, to survivors of such employees.

A claimant who successfully establishes a claim under Part B for beryllium sensitivity is eligible for medical monitoring (including all tests for chronic beryllium disease), treatment and therapy for this illness effective on the date of filing. Previously, a claimant could establish beryllium sensitivity under Part B by presenting one abnormal beryllium lymphocyte proliferation test (BeLPT) that was performed on blood or lung lavage cells. Section 5501(b) of Public Law 118-31, the National Defense Authorization Act for Fiscal Year 2024, amended section 7384l(8)(A) of EEOICPA to provide that beryllium sensitivity can now also be established by submitting three borderline BeLPTs performed on blood cells over a period of three years.

OWCP has already aligned its case adjudication procedures with this new statutory provision by issuing EEOICPA Bulletin No. 24-01 on January 30, 2024. This final rule will also bring OWCP's regulations into conformance with both the above amendment to EEOICPA and its procedures. Specifically, OWCP is amending §§ 30.5(h) and (p)(1), 30.205(b)(1) and 30.207(b) of 20 CFR part 30 by adding new text to incorporate the recently enacted amendment to EEOICPA, that an alternative to establishing beryllium sensitivity can be by submitting three borderline beryllium LPTs performed on blood cells over a period of 3 years.

OWCP's implementation of this action without opportunity for public comment is based on the good cause exception in 5 U.S.C. 553(b)(B), in that seeking public comment is impracticable, unnecessary, and contrary to the public interest. Pursuant to 5 U.S.C. 553(d)(3), an agency may "for good cause found" also dispense with the 30-day delay in the effective date of a rule. OWCP has determined that seeking public comment is both impracticable and unnecessary because it has no discretion to change an entitlement criterion enacted by Congress. Thus, this rule merely aligns the regulations with the self-effectuating changes provided by the National Defense Authorization Act for Fiscal Year 2024. Furthermore, OWCP finds that seeking public comment and delaying this rule's effective date would be contrary to the public interest because it would cause confusion regarding the availability of benefits to newly eligible claimants seeking compensation for beryllium sensitivity under Part B of EEOICPA if the four sections listed above are not updated expeditiously to reflect their eligibility.

Executive Orders 12866: Regulatory Planning and Review; Executive Order 14094: Modernizing Regulatory Review; and Executive Order 13563: Improving Regulation and Regulatory Review

The Office of Management and Budget has determined that this rule is not a significant regulatory action under Executive Order 12866, and a Regulatory Impact Analysis is not

required. No action is warranted for Executive Order 13563 as the rule is not significant and no Regulatory Impact Analysis is required.

Regulatory Flexibility Act of 1980

An analysis under the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (RFA), 5 U.S.C. 601-612, is not needed for this rule. The RFA imposes certain requirements on Federal agency rules that are subject to the notice and comment requirements of 5 U.S.C. 553(b). OWCP is invoking the good cause exception to notice-and-comment procedures for this final rule. Accordingly, OWCP is not required to either certify that the final rule would not have a significant economic impact on a substantial number of small entities or conduct a regulatory flexibility analysis.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, requires that OWCP consider the impact of paperwork and other information collection burdens imposed on the public. OWCP has determined that this final rule does not require any collection of information or alter any existing information collections.

Unfunded Mandates Reform Act of 1995 and Executive Order 13132

OWCP has reviewed this final rule in accordance with the requirements of Executive Order No. 13132, 64 FR 43225 (Aug. 10, 1999), and the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*, and has found no potential or substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. As there is no Federal mandate contained herein that could result in increased expenditures by State, local, or Tribal governments or by the private sector, OWCP has not prepared a budgetary impact statement.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This regulatory action does not have Tribal implications, as specified in Executive Order 13175, 65 FR 67249 (Nov. 9, 2000), which focuses on policy directives that burden or otherwise interfere with Tribal self-government and sovereignty by limiting the administrative discretion of Tribal governments. OWCP has determined that the final rule does not have substantial direct effects on Tribal governments, on the relationship between the Federal Government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Because this rulemaking does not in any way impinge on an aspect of Tribal self-government or sovereignty, Executive Order 13175 does not apply to this action.

Executive Order 12630: Governmental Actions and Interference with Constitutionally Protected Property Rights

OWCP has reviewed this final rule in accordance with Executive Order 12630, 53 FR 8859 (Mar. 15, 1988), and has determined that it does not contain any “policies that have takings implications” in regard to the “licensing, permitting, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property.”

Executive Order 13211: Energy Supply, Distribution, or Use

OWCP has reviewed this final rule and has determined that the provisions of Executive Order 13211, 66 FR 28355 (May 18, 2001), are not applicable as there are no direct or implied effects on energy supply, distribution, or use.

List of Subjects in 20 CFR Part 30

Administrative practice and procedure, Cancer, Claims, Kidney diseases, Leukemia, Lung diseases, Miners, Radioactive materials, Tort claims, Underground mining, Uranium, Workers’ compensation.

Text of the Rule

For the reasons stated in the preamble, OWCP amends 20 CFR part 30 as follows:

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

1. The authority citation for part 30 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3716 and 3717; 42 U.S.C. 7384d, 7384t, 7384u
and 7385s-10; Executive Order 13179, 65 FR 77487, 3 CFR, 2000 Comp., p. 321;
Secretary of Labor's Order No. 10-2009, 74 FR 58834.

2. Amend § 30.5 by revising paragraphs (h) and (p)(1) to read as follows:

§ 30.5 What are the definitions used in this part?

* * * * *

(h) *Beryllium sensitization or sensitivity* means that the individual has either:

(1) An abnormal beryllium lymphocyte proliferation test (LPT) performed on either
blood or lung lavage cells; or

(2) Three borderline beryllium LPTs performed on blood cells over a period of 3
years.

* * * * *

(p) * * *

(1) Beryllium sensitivity as established by either:

(i) An abnormal beryllium LPT performed on either blood or lung lavage cells; or

(ii) Three borderline beryllium LPTs performed on blood cells over a period of 3
years.

* * * * *

3. Amend § 30.205 by revising paragraph (b)(1) to read as follows:

**§ 30.205 What are the criteria for eligibility for benefits relating to beryllium
illnesses covered under Part B of EEOICPA?**

* * * * *

(b) * * *

(1) Beryllium sensitivity as established by either:

(i) An abnormal beryllium LPT performed on either blood or lung lavage cells; or

(ii) Three borderline beryllium LPTs performed on blood cells over a period of 3

years.

* * * * *

4. Amend § 30.207 by revising paragraph (b) to read as follows:

§ 30.207 How does a claimant prove a diagnosis of a beryllium disease covered under Part B?

* * * * *

(b) Beryllium sensitivity or sensitization is established with either:

(1) An abnormal beryllium LPT performed on either blood or lung lavage cells; or

(2) Three borderline beryllium LPTs performed on blood cells over a period of 3

years.

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Signed at Washington, DC, this tenth day of July 2024.

Christopher J. Godfrey,

Director, Office of Workers' Compensation Programs.

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