



RELEASE - TRANSMISSION OF REVISED MATERIAL TO BE
INCORPORATED INTO THE FEDERAL (EEOICPA) PROCEDURE MANUAL:
CHAPTER 2-0500 ESTABLISHING COVERED EMPLOYMENT.

EEOICPA TRANSMITTAL NO. 16-08

July 2016

EXPLANATION OF MATERIAL TRANSMITTED:

This material is issued as procedural guidance to update, revise and replace Procedure Manual Chapter 2-0500, Establishing Covered Employment.

- Removes pagination from the Chapter and the Page number column from the Table of Contents.
- Removes the footer on all pages subsequent to the Table of Contents.
- Adds reference to capturing documents in the Office of Workers' Compensation Imaging System (OIS).
- Replaces all references to Energy Case Management System (ECMS) with Energy Compensation System (ECS).
- Adds information in Paragraph 2 regarding the non-applicability of the Joint Employer Doctrine to Atomic Weapons Employer Facility coverage.
- Adds clarification regarding use of dosimetry records in Paragraph 8(j).
- Updates forms and procedures in Paragraph 10 for verifying employment through the Social Security Administration.
- Updates information contact information from The Center for Construction Research and Training, formerly known as the Center to Protect Workers' Rights (CPWR) in Paragraph 11(b).

- Adds clarifying language in Paragraph 13(a)(4) regarding subcontractor employment at DOE facilities.

The following Exhibit has been updated for this chapter:

- Exhibit 2, SSA-581 Forms (Authorization to Obtain Earnings Data from the Social Security administration) is updated with the most current form.

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FILING INSTRUCTIONS:

Remove
PM Ch. 2-0500

Insert
PM Ch. 2-0500

File this Transmittal behind Part 2 in the front of the Unified Federal (EEOICPA) Procedure Manual.

Distribution: List No. 3: All DEEOIC Employees
List No. 6: Regional Directors, District Directors, Assistant District Directors, National Office Staff, and Resource Center Staff.

TABLE OF CONTENTS

<u>Paragraph and Subject</u>	<u>Date</u>	<u>Trans. No.</u>
<u>Chapter 2-500 Establishing Covered Employment</u>		
Table of Contents.	07-16	16-08
1 Purpose and Scope.	07-16	16-08
2 Facility Coverage.	07-16	16-08
3 Comparing Initial Claimed Employment to the Covered Facilities Database.	07-16	16-08
4 Matching Claimed Employment.	07-16	16-08
5 Verification of Employment	07-16	16-08
6 Employment Pathways Overview Document (EPOD).	07-16	16-08
7 Using the Oak Ridge Institute for Science and Education (ORISE) Database	07-16	16-08
8 Contacting the Department of Energy (DOE) and use of the Secure Electronic Record Transfer (SERT)	07-16	16-08
9 Contacting Corporate Verifiers	07-16	16-08
10 Verifying Employment through the Social Security Administration (SSA)	07-16	16-08
11 Center for Construction Research and Training (CPWR).	07-16	16-08
12 Other Employment Evidence.	07-16	16-08
13 Subcontractor Employment	07-16	16-08
14 Researcher Employment at DOE Facilities	07-16	16-08
15 Employees of Federal or State Governments.	07-16	16-08
16 Evaluating Evidence to Verify Employment	07-16	16-08
17 Developing Non-Covered Employment	07-16	16-08
18 Additions or Modifications to Facility Status.	07-16	16-08
19 Special Circumstances.	07-16	16-08

Exhibits

1	Form EE-5, Employment Verification.	07-16	16-08
	Sheet		
2	SSA-581 Forms (Authorization to Obtain Earnings Data from the Social Security Administration)	07-16	16-08
3	Telephone Contact Information for Inquiries to SSA	07-16	16-08
4	Sample Subcontractor Employment Memo	07-16	16-08

Part 2 - Claims

Establishing Covered Employment

1. Purpose and Scope. The Energy Employees Occupational Illness Compensation Program Act (EEOICPA or Act) lays out a set of employment criteria which must be satisfied before a claim can be considered for compensability. These criteria, taken together, form the basis of covered employment. This chapter provides guidance to Claims Examiners (CE) for gathering and evaluating evidence to determine whether the criteria for covered employment are satisfied under the EEOICPA.

a. OWCP Imaging System (OIS). Division of Energy Employees Occupational Illness Compensation (DEEOIC) employees responsible for claim management must image into OIS all documents received or created that relate to a claim. This guidance applies to all of the procedures described throughout this chapter.

b. Energy Case System (ECS). ECS is a claim status database used to manage case adjudication activities of the DEEOIC. Development of any employee case requires information input into ECS by Claim Examiners or Final Adjudication Branch staff to record component-level data on claimed and verified employment. DEEOIC staff is to access ECS user guides and training material available through shared resources.

2. Facility Coverage. The EEOICPA provides facility definitions that serve as the basis for determining covered employment. The following summaries provide a definition of each type of facility covered:

a. Atomic Weapons Employer (AWE) Facilities. An AWE facility means 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. Coverage at the facility may be extended after the period of processing or production of radioactive material for use in a weapon, if there is a finding in a National Institute for Occupational Safety and Health (NIOSH) report on residual radioactive contamination that the potential exists for residual radioactive contamination at that facility. This is the "residual radiation period." The Department of Energy (DOE) designates AWE

facilities.

(1) Coverage extends only to the employees who worked directly for the AWE at the AWE facility. Contractor or subcontractor services provided on-site or off-site for an AWE facility are not covered. Additionally, coverage is not provided for those employees of wholly-owned subsidiaries of AWE employers.

(2) The Joint Employer Doctrine does not apply. Courts have held that where the evidence shows that two or more employers exert significant control over the same employee, by jointly exercising the authority to determine the essential terms and conditions of employment to that employee, they can be held to be joint employers. However, this "joint employer doctrine" usually only applies in the labor law context, and is incompatible with the explicit intent of Congress, as expressed in the language of EEOICPA itself, to only extend coverage to employees of particular designated employers. This means that the evidence must establish that the employee worked directly for the AWE. Evidence that an employee worked for a parent company or other corporate entity somehow related to the AWE employee does not establish employment by the AWE.

(3) Atomic weapons employees are covered under Part B of the EEOICPA for cancer only. No coverage is afforded these employees under Part E of the EEOICPA.

(4) Designating additional AWE facilities is the responsibility of DOE; however, applicable time frames for AWE production activities at a particular facility are determined by the Department of Labor (DOL).

(5) Determinations as to whether an AWE facility has a period of residual radioactive contamination, and the length of that period, are the responsibility of NIOSH. Periodic reports are issued by NIOSH that list affected sites. Facilities with residual radioactive contamination

are covered as AWE facilities even if there is a change in the owner or operator of the facility. During the period of residual radiation, employees of subsequent owners or operators of the AWE facility are also defined as AWE employees and are afforded the same coverage under the EEOICPA. If there is a question regarding subsequent owners or operators of AWE facilities, the CE must refer the matter to the National Office for evaluation.

b. Beryllium Vendors. Beryllium Vendors are companies which are named in the Act, or DOE has determined processed or produced beryllium for sale to, or use by, DOE. The Act identifies some beryllium vendors by corporate name, and these are known as statutory beryllium vendors. Any employee of a statutory beryllium vendor who worked for the vendor during periods when the company was engaged in activities related to the production or processing of beryllium for sale to or use by DOE, has covered employment, regardless of work location. DOE, through publication in the Federal Register, designated other beryllium vendors, which are location-specific. DOE designated the final list of beryllium vendors on December 27, 2002.

(1) Beryllium vendor coverage extends to direct employees of the vendor, its contractors or subcontractors and to any Federal employee who may have been exposed to beryllium at a facility owned or operated by the vendor.

(2) Coverage for beryllium vendor employment is limited to those benefits available under Part B of the EEOICPA for beryllium sensitivity and chronic beryllium disease (CBD).

c. DOE Facilities. A DOE facility means any building, structure, or premise, including the grounds upon which such building, structure, or premise is located, in which operations are, or have been, conducted by, or on behalf of DOE (except for buildings, structures, premises, grounds, or operations covered by Executive Order 12344, dated February 1, 1982, pertaining to the Naval Nuclear Propulsion Program), and with regard to which DOE has or had either (A) a proprietary interest;

or (B) entered into a contract with an entity to provide management and operation, management and integration, environmental remediation services, construction, or maintenance services.

(1) The extent of benefits available to those who worked at DOE facilities is dependent upon the type of employment, specifically whether the employee was a DOE federal employee or an employee of a DOE contractor or subcontractor. Under Part B, coverage extends to both DOE federal employees and contractor or subcontractor employees working at the site, while under Part E coverage extends only to contractor or subcontractor employees.

(2) The definition of DOE includes its predecessor agencies:

(a) Manhattan Engineer District (MED) (August 13, 1942-December 31, 1946)

(b) Atomic Energy Commission (AEC) (January 1, 1947 - January 18, 1975)

(c) Energy Research and Development Administration (ERDA) (January 19, 1975-September 31, 1977)

(d) DOE (October 1, 1977 - present)

(3) Designations of DOE facilities or changes in DOE facility timeframes are the responsibility of DOL. Further information regarding how DOL assesses claims for DOE facility status is discussed later in this chapter.

d. Remediation Employment. At many AWE facilities, there is a DOE period of remediation designated some time after the years of active processing ended. When a facility is designated as a DOE facility for remediation only, in order to have covered employment at that location, the contractor performing the remediation work must have employed the employee. Any such remediation workers are eligible for the full range of benefits under both Parts B and E of the EEOICPA.

e. Facilities with multiple designations. Many facilities covered under the EEOICPA have multiple designations. Numerous combinations of AWE, Beryllium Vendor, and DOE facility designations may exist at the same facility. For those instances in which an employee works at such a facility during periods separately designated for different facility types, the employee will have eligibility for every category for which he/she has verified employment.

f. Radiation Exposure Compensation Act (RECA) Section 5. This is a category of employment involving miners, millers and ore transporters at uranium mining facilities. For information regarding the handling of these claims, please refer to Chapter 2-1100.

3. Comparing initial claimed employment to the covered facilities database. The first step the CE takes in assessing covered employment is determining which claimed employment listed on the EE-3 Employment History form corresponds with a covered AWE, Beryllium Vendor, or DOE facility. The CE does this by comparing what the claimant has communicated on the EE-3 with the facilities identified on the DOE EEOICPA Covered Facilities Database. The link to access this database can be found on the Division of Energy Employees Occupational Illness Compensation (DEEOIC) website. It can also be found in the Employment Pathways Overview Document (EPOD) which is referenced in paragraph 6 of this Chapter.

When performing the comparison between the claimed employment and the facility database, the CE must be diligent in assessing the evidence. While in many instances employment at a particular location or facility will be obvious, in other situations it may not. The CE reviews evidence presented by a claimant against the information stored in the database to assist in determining the location(s) where employment occurred. The CE must be mindful that often the name of a facility is different from the employer name provided by the claimant because multiple different operating contractors could have worked at DOE facilities over the years. Given these realities, the CE must cross-reference the data provided by the claimant with the information in the facility database. This can involve searching by facility

Part 2 - Claims

Establishing Covered Employment

name, state, location, employer name or contractor name using the key word search field. The "Find this Keyword" search feature is the broadest possible way to look for potential covered employment based on claimant statements.

The CE screens out certain employers from the review process if it is clear that it does not constitute covered employment. For example, employment as a shoe store clerk or department store cashier would not require action on the part of the CE as part of the review for potentially covered employment.

4. Matching Claimed Employment. The outcome of the initial employment facility screening will result in either part or all of the claimed employment having possibly occurred at a covered facility, or none of the claimed employment being linked to a facility. In any instance where the CE links all claimed periods of employment to a location identified on the facility database, he or she is to proceed to employment verification as discussed later in this chapter. Alternatively, if the CE is only able to match a portion of the claimed employment to a facility listed in the facility database, or there is no match found, he or she must communicate the findings to the claimant. The CE will contact the claimant to notify him or her who claimed employment may form the basis of a claim, and which does not appear to be linked to a covered facility. As part of this interaction, the CE is to give the claimant an opportunity to provide clarifying evidence. Paragraphs 16 and 17 of this chapter provide more information on the topic. This development may occur concurrently with other actions the CE takes on the claim, such as requests for additional medical or factual evidence.

When there is sufficient evidence to conclude that employment might have occurred at a covered facility, the CE proceeds with verification of employment. If the claimant does not respond to the inquiry, or does not provide any type of clarifying evidence, the CE may proceed with adjudication of the claim based upon the evidence of record. If there is no match between any claimed employment and a covered facility, the CE denies the claim. The CE will describe the situation clearly in the "Explanation of Findings" section of the recommended decision issued to the claimant.

Part 2 - Claims

Establishing Covered Employment

5. Verification of Employment. Once the CE matches claimed employment and a covered facility, the next step is employment verification. Employment verification is the process by which the CE establishes the factual accuracy of the claimed employment history. The CE has to collect evidence to establish that:

- a. The employer qualifies for consideration under the law as an AWE, Beryllium Vendor, DOE, or DOE contractor or subcontractor.
- b. The employee worked for the claimed employer.
- c. The employee performed services on the premises of the covered AWE, Beryllium Vendor or DOE facility.

The process of employment verification is a difficult and challenging hurdle in many cases. Because the atomic weapons program dates back to the early 1940s, and involves a large number of public and private organizations, locating pertinent individual employment records can be difficult. Moreover, records may be missing, degraded, lost, or destroyed.

As the statute allows latitude in the assessment of evidence, it is not necessary for the CE to collect evidence that establishes that the claimed employment is proven beyond a reasonable doubt, but merely that a reasoned basis exists to conclude that the employment occurred as alleged. This ensures that the claimant receives favorable treatment during the employment verification process. Once the CE has conducted an examination of the available factual evidence in support of the claimed employment, he or she must decide whether a sufficient basis exists to verify that each of the three elements of covered employment (5a, b and c above) is satisfied.

Furthermore, in matching claimed employment to covered employment, the CE is to be mindful that there are numerous classes in the Special Exposure Cohort (SEC), described in Chapter 2-0600. A CE always consults the most current list of SEC classes so that he or she promptly processes claims that contain evidence meeting SEC class definitions.

6. Employment Pathways Overview Document (EPOD). The EPOD is a document that the National Office Policy Branch created to assist CEs in identifying facility-specific contact persons and resources to use in obtaining employment verification. The EPOD lists every facility published in the Federal Register as a covered facility under the Act (except RECA facilities) and provides an outline of the identified methods for verifying claimed employment at each location. DEEOIC staff access the EPOD through a shared employee directory.

The resources listed in the EPOD do not provide an exhaustive list of means for verifying employment at a facility, but represent what constitutes best practices for verifying employment given the programmatic experience gained since passage of the Act in 2000. Specifically, the EPOD identifies which methods, or combinations thereof, are appropriate to pursue for verification of covered employment in the most expeditious manner possible. If the EPOD is silent on verification at a facility, the CE is to utilize Social Security Records (Paragraph 10, below) and "other employment evidence" (Paragraph 12, below).

The facilities in the EPOD are listed alphabetically by state. On the first page of the EPOD, there is a list of states and, for those states with a large number of facilities; there are additional letters after the state name. These letters provide an index of the facilities in that state. The state names and letters allow the user to navigate through the document. For example, to navigate to South Carolina, the user places the cursor on South Carolina and presses "Ctrl + left click" at the same time and the utility will jump to South Carolina. Alternatively, if a user wants to view the S-50 Plant in Tennessee, the most expeditious method would be to move the cursor over the letter "S" after Tennessee and then press "Ctrl + left click" at the same time and the utility will jump to S-50.

7. Using the Oak Ridge Institute for Science and Education (ORISE) database. ORISE (the institute) developed a database as part of its mission to study the health and mortality of the DOE contractor work force. The database formed an important component of health studies, as it identified a significant portion of the population participating in these health studies. This database is instrumental in verifying

Part 2 - Claims

Establishing Covered Employment

covered employment for some employees. A CE will consider the data in ORISE accurate and valid employment information, even if it only provides partial affirmation of claimed employment. For every EEOICPA-covered facility for which there is some employment data in ORISE, the EPOD will indicate "ORISE - yes." When this occurs, the CE conducts an ORISE search in ECS. If there is no mention of ORISE in the EPOD for the facility, the CE proceeds to the next recommended method for verifying employment noted in the facility description in the EPOD or in this chapter. In any case where a CE accesses ORISE to obtain evidence in a claim, he or she bronzes the output, whether negative or positive, into OIS.

a. ORISE categorizes information in two sections, Employee Name and Employment. The Employee Name section identifies the employee's last name, first name, and middle initial. The employment section contains five columns of information. The first column entitled "Facility" lists all the facilities or employers (for which data exists in ORISE) where the employee worked. The second column indicates whether the employee was hired or terminated, followed by columns showing the hire/termination date, Job Title, and Badge No. ORISE was not created for the purpose of adjudicating claims, so information may be incomplete.

b. When using ORISE to assist with the adjudication of claims, the CE must consider the context of the information. For example, there may be data in ORISE confirming that an employee worked at a facility in 1949, but the CE must ensure that the covered period for this facility includes 1949. Additionally, for many employees, the information in ORISE is incomplete. For example, for some employees the database may show the employee's name and facility, but does not include specific hire and termination dates. If this is the case, the CE develops hire and termination dates using alternate methods described in paragraphs 8 through 12 in this chapter.

Note: There may be instances when the ORISE database returns search results showing "SSA Records Only." The DOE used this as an indicator, in the early days of the epidemiologic studies, to identify facilities for which

requests were sent to SSA for information. It has no impact on the processing of claims under the EEOICPA and is only a vestige of DOE use of the data in the mid-1980s.

c. If the information from the ORISE database verifies any portion of employment, the CE bronzes a copy of the ORISE employment results into the OIS case file.

d. The absence of data from ORISE cannot be used as the basis for finding that an employee did NOT work at a given facility either for the entire period claimed or for portions of claimed employment.

e. Some non-covered employers and/or facilities are present in ORISE. The CE needs to review the ORISE results for non-covered employers. For example, the Puget Sound Shipyard, for which ORISE ascribed the acronym PSSY, is not covered under the EEOICPA. In the event that ORISE "confirms" non-covered employment, it does not render such employment as covered under the EEOICPA.

8. Contacting DOE and using the Secure Electronic Record Transfer system (SERT). The CE transmits requests for employment verification electronically to DOE via the SERT system. The SERT is a DOE-hosted environment where DOL and NIOSH send and receive records and data in a secure manner.

When the CE cannot verify claimed employment through use of ORISE, the CE uses Form EE-5, found in Exhibit 1 of this chapter, to obtain employment information. To determine whether EE-5 referral to DOE is appropriate, the CE looks up the name of the facility(ies) and/or employers in the EPOD. If there is a notation in the EPOD indicating "EE-5 and DAR: SERT" for that facility, the CE proceeds with the EE-5 procedures specified in this paragraph.

a. EE-5. The CE completes the top portion of the EE-5 by providing the employee name, Social Security Number (SSN), claimed employer, and name of the claimed facility(ies). Only one completed EE-5 form per claimant request for employment verification is necessary.

In some cases, employees traveled to other DOE facilities to work and are considered "visitors" on site. As such, employment records verifying that the employee worked for that facility may not exist. However, there may be records establishing that he/she was on site. It has been found that the Document Acquisition Request (DAR) (the process by which the district office (DO) gathers DOE work records on specific employees) records have been useful in establishing that the employee was on site. Therefore, under these circumstances, it is appropriate to request DAR records without the need for the EE-5 employment verification process. Refer to paragraph 'i' below on requesting DAR records.

b. Submitting the request to DOE via the SERT. To prepare a request for employment verification, the CE scans and combines the EE-1 or EE-2, as appropriate, the EE-3, ORISE database search results and the EE-5 form as an Adobe PDF file and saves it to his/her computer. The CE then submits the completed package to DOE via the SERT. The SERT system contains a listing of the DOE Point of Contacts (POCs) and DOE Operations Offices, which are managed and maintained in the SERT system.

The CE accesses the SERT, creates a record request for the employee, uploads the PDF package, and sends the request to the appropriate DOE Operations Office(s). The SERT has the functionality to allow for the selection of multiple operations offices in cases where requests go to multiple facilities. The CE (requester) may also enter additional information in the 'Comments' section of the SERT that may be useful to the recipient (DOE) of the request. The field is also used for DOE to respond directly back to the DOL in response to comments.

c. Once the request is sent through the SERT, the CE bronzes a copy of the request in the case file.

d. Subcontractor employment indicated. Where claim documentation indicates subcontractor employment, the CE reviews the EE-3 and makes a preliminary determination as to whether the employee is claiming DOE subcontractor employment. If so, the CE notes this in the 'Comments'

section of the SERT and requests any information that DOE might have to help substantiate that the company was hired by DOE, or a DOE contractor, to provide a service on-site during the time period when the employment is claimed. Questions regarding subcontractor employment are referred to the same operations' office(s) as the EE-5 package.

e. Response from DOE. The CE will receive notification via email when DOE has the documents ready for download through SERT. The CE accesses the SERT, selects the applicable EE-5(s), downloads the file to his/her computer, and bronzes the response into OIS.

f. Upon receipt of an EE-5 from DOE via SERT, the CE reviews it for completeness. DOE is responsible for selecting one of three options provided on the form and attaching any relevant information. In addition, the DOE representative completing the form must certify its accuracy. The CE returns any form that does not meet these requirements to DOE for correction. The three options available to DOE and the appropriate procedural responses are as follows:

(1) For any of the claimed employment in which DOE selects "Option 1 - Verified Employment," the CE accepts this period as verified and no further action needs is required.

(2) If DOE selects "Option 2 - No verification is possible, but other pertinent evidence exists," this indicates that DOE has some information on the employee, generally suggesting that the individual was on site or somehow associated with the facility, but the information is insufficient for DOE to provide verification. The CE develops the case further for employment as outlined in this chapter.

(3) If DOE selects "Option 3 - No evidence exists in regard to the claimed employment," it means that DOE has no evidence at all regarding the claimed employment. The CE develops the case further for employment as outlined in this chapter.

Part 2 - Claims

Establishing Covered Employment

g. Timeframes. If the CE does not receive a response from DOE within thirty (30) days of the initial submission, the CE accesses the SERT system, enters the claimant's information, locates and selects the request for employment verification, and sends a reminder to the DOE operations office, using the "reminder" button. A memo is not necessary, since the SERT system maintains the requestor's or CE's contact information and the initial request. The CE bronzes the notification in the case file. If DOE is ultimately unable to verify employment, the CE is to proceed with other available development actions.

h. No Response from DOE. If the CE does not receive a response from the DOE within sixty (60) days from the initial request, additional development is necessary.

(1) Contact DOE by telephone. If no response is received, the CE contacts the appropriate Operations Office by telephone or emails the DOE PoC and inquires about the request for employment verification. The CE asks the contact person whether a response to employment verification will be forthcoming. If DOE responds via telephone that they have no records to verify employment, the CE documents this in the case file with a memo outlining DOE's response. This serves as the "EE-5" for purposes of a DOE response.

(2) Contact the claimant. If, after sixty (60) days there is no response from DOE, the CE contacts the claimant for additional employment information. In cases where a response from DOE is received indicating that no records are available, the CE may contact the claimant for additional employment information immediately. In this case, the CE does not wait for sixty (60) days to lapse.

i. DAR Process. For cases involving DOE contractor employees, the CE makes a request to DOE for records useful for developing information regarding toxic exposures and other purposes. Although CEs use DAR records predominately in the adjudication of the toxic exposure component of Part E cases, DAR records can also contribute to the evidence of covered employment,

especially in cases involving DOE subcontractor employment or employees who are on official travel from one DOE facility to another and considered by DOE to be "visiting" on site. DAR records can include site medical records, job descriptions, radiological records, incident or accident reports, and others. In the past, requests for DAR records were made of DOE once employment was confirmed. However, with the implementation of the SERT system, the CE initiates a DAR request at the same time as the EE-5, employment verification request. In situations where DAR records are needed, the assigned CE should include the request for those records in the EE-5 package that is submitted to DOE through the SERT system. For more details on the DAR process, refer to Chapter 2-0700.

j. Dosimetry Records. It is general program policy for NIOSH to obtain dosimetry records from DOE as part of the dose reconstruction process. The dosimetry records become associated with the file when the DO receives NIOSH's final dose reconstruction report. Nevertheless, in cases where dose records may be useful for confirming that an individual was on-site, or was monitored for radiation exposure, the CE may request such records from DOE as part of employment development. Dosimetry records pertaining to different DOE facilities can represent different periods of site presence. If there is a question as to the dates of on-site presence represented by an employee's dosimetry records, the CE should seek clarification from the Policy Branch.

9. Contacting Corporate Verifiers. Private companies operate many of the facilities designated as AWE or beryllium vendor facilities under the EEOICPA. Neither DOE nor any of its predecessors have possession of these employment or personnel records. The DEEOIC refers to companies that have documentation pertaining to such covered facilities as corporate verifiers. Many of these companies are still in business, or have been bought by other companies that have retained records of past employees. Several of the companies retaining possession of relevant employee records have agreed to provide employment verification for purposes of adjudicating claims under the EEOICPA. For each facility that is identified as having a corporate verifier, the EPOD provides the name and contact information for the corporate

verifier. The CE follows the instructions listed in the EPOD to obtain such employment information. General procedures for handling corporate verifiers include:

- a. Contact the corporate verifier via EPOD instructions. This involves providing them with the information and/or forms they need to answer questions about the claimed employment. This can include providing them with copies of the EE-1 or EE-2 and/or a letter providing the employee's name, the case identification number (or the full SSN if required by the corporate verifier), date of birth, employer name, and the dates of claimed employment.

- b. Upon receipt of a response from the corporate verifier, the CE reviews it to determine if it is sufficient to verify the claimed period of employment. If the corporate verifier affirms the entire period of claimed employment, the CE accepts the period as factual. The CE obtains the verification from corporate verifiers in writing. While employment verification can be *initiated* through a phone call, there must be documentation from the verifier in the case file to substantiate a finding of covered employment. In some instances, a corporate verifier can verify that the employee worked for a specific company, but not the location of that employment. If the corporate verifier is unable to substantiate the claimed period of employment, or can only substantiate a portion of it, or can only substantiate employment with the company, but not at a covered location, the CE will need to request additional information from other sources. The CE can proceed with a request to the Social Security Administration (SSA) for information as described in paragraph 10 of this chapter, and should ask the claimant for additional information, as outlined in paragraph 12 of this chapter, as appropriate.

- c. If verification is for beryllium sensitivity or CBD, the CE need not verify all employment, only enough employment sufficient to substantiate the exposure at any time during a covered time period. For additional information regarding development of beryllium claims, refer to Chapter 2-1000.

Part 2 - Claims

Establishing Covered Employment

d. Corporate verifiers sometimes change. If a CE learns of a change in contact information or locates new contact information, this information must be sent to the National Office Employment Contact in the Policy Branch.

10. Verifying Employment through the SSA. The SSA records provide a history of quarterly wages and earnings for each company the employee worked for during the course of his/her career. Absent confirmation of employment through ORISE, DOE, or a corporate verifier, the CE requests additional information from the SSA. Also, for those facilities for which the EPOD does not provide any suggested employment verification pathway, the CE requests records from the SSA by following the procedures outlined below:

a. SSA earnings records are received from the claimant, if available, or the CE digitally faxes a completed Form SSA-581 to SSA to obtain this information (See Exhibit 2). The form is also located on the shared drive in the Forms folder within the Policies and Procedures folder). The process to obtain earnings records using Form SSA-581 is as follows:

(1) The CE completes 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 the employee; date of death of the 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 "Year(s) Requested" line. In the box entitled, Signature of Organization Official, the CE types his or her name (signature is not required) and in the "Office" box, select the correct district office location from the drop down menu. The CE dates the form and lists his or her direct phone number, along with the district office fax number. The CE capitalizes all entries on the SSA-581.

(2) The completed SSA-581 must be digitally faxed to SSA using fax number 877-278-7067. A cover letter is not required with the SSA-581. The CE is

responsible for bronzing into OIS the completed SSA-581 and fax receipt.

(3) If the faxed SSA-581 is deficient, the SSA contacts the CE directly to explain the deficiency, or the SSA emails the DEEOIC designated 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, and the reason(s) for the rejected SSA-581. The email list must be bronzed into OIS with redaction of names not related to the particular case.

(4) The POC forwards the email of a rejected SSA-581 to the assigned CE. After making the necessary corrections, the CE digitally faxes the corrected SSA-581 to FAX number 410-594-2054. Cover sheet is not required for resubmission due to a reject. The CE is responsible for bronzing into OIS any document received or created in response to a rejected SSA-581.

(5) 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 a contractor scans and indexes it into OIS.

(6) 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 was not received, the CE must refax the SSA-581 in accordance with Step 4. After the SSA-581 is refaxed, the CE must follow-up with the SSA within thirty (30) days. Otherwise, the CE obtains the status and monitors for SSA response.

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

(a) SSA-issued job code (8015). The four-digit job code appears in the "Requesting organization" section of the SSA-581 form.

(b) Name of your organization.

(c) A copy of the SSA-581 or earnings statement in question.

(d) The full SSN of the number holder (employee), or the control number from the earnings statement.

(8) Upon receipt of a completed SSA-L460, the CE documents receipt of the SSA response in ECS. Should the SSA fail to submit an SSA-L460 after following up within the established procedures, the CE proceeds with claim adjudication based upon the evidence contained in the case record.

11. Center for Construction Research and Training. The Center for Construction Research and Training, formerly known as the Center to Protect Workers' Rights (CPWR) and which continues to utilize the acronym 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). The DEEOIC contracted with CPWR to maintain a database of contractor/subcontractor employers at certain DOE facilities.

a. Web-accessible database. To substantiate the existence of a contract between DOE and a contractor, CPWR created a web-accessible database, which the CE can use in identifying and confirming the existence of contractor or subcontractor employers at certain covered facilities. Facilities for which CPWR has contractor and subcontractor information are identified in the EPOD as "CPWR." If the CE determines that the claimed employment involves subcontractor employment at a facility in which the EPOD indicates "CPWR has contractor/subcontractor information," the CE first reviews the EE-5, the DAR request, and any material received from DOE. If this information is insufficient for a finding of covered employment, the CE reviews the CPWR database for any information linking the claimed employer to the claimed DOE facility, by following these instructions:

(1) The CE goes to www.btcomp.org. A log-on screen appears. Each DO has been assigned one original user name and password.

(2) Upon access to the web site, a disclaimer notes that the database is a general information resource tool. It does not contain all of the documents that relate to DOE contractors and/or subcontractors. However, the DEEOIC considers the information available in the database to be accurate and correct. Once the CE accepts 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.

(3) 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 version of the name. The CE searches the database using various combinations of spellings or any known aliases for the employer name. This increases the likelihood of a positive outcome and reduces the number of false negative results. For example, if a CE enters the name "Bowles Construction Company," the database returns a negative result. However, if the CE enters "Bowles" or "Bowles Construction," the employer appears in the return.

(4) 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 returns all employers known by CPWR linked to that 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. In some instances, a contractor or subcontractor name might be linked to multiple covered facilities. In these instances, the detailed return for the employer is separated into sections by covered site.

(5) The CE may also 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. A unique document identification (Doc Id) has been assigned to each contractual finding. CPWR uses the Doc Id as a means of tracking. The Doc Id can also be used to search BtComp, if it is known.

(6) After the CE has accessed the database and conducted appropriate research to locate a contractor/subcontractor, the CE documents the case file in OIS. In the case of a positive result, the CE prints a copy of the screen for OIS bronzing. The printout must show all the results of the database search, including the employer name; site name; contractual relationship indicator; dates verified; type of work performed; a description of evidence; document ID; and date of database update. Generally, this information must be printed using a "landscape" print mode setting. The printout should also list the date of the database search, the date of the latest update of a facility, and any of the pertinent facts. If no results are found from a database search, the CE completes a "Memorandum to the File," noting the lack of information in the database for the claimed contractor/subcontractor. The CE bronzes the completed memo into OIS.

(7) The sole purpose of the database is to establish 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. Furthermore, the existence of a contract between the company and the DOE could be for a wide range of items or services. Under the EEOICPA, only contracts for services performed on the premises of the DOE facility are covered. Once a CE establishes that a contract existed between a company and the DOE, it

is still necessary to establish that the contract was for a covered service, per paragraph 13 of this chapter. In addition to the database results, additional development may be needed independent of the database to ensure that such evidentiary gaps are filled. The CE may contact the National Office Policy Branch regarding questions or other matters relating to the use of subcontractor database.

(8) If the contractor or subcontractor is not listed in the database, additional development is necessary. The CE is not to assume that a search of the database that does not return any results establishes that the claimed employer was not a contractor or subcontractor.

b. Requests for contractual information. In those instances in which BtComp.org does not return a positive result on a contractor or subcontractor, the DO POC will send a request via email to the CPWR designated point of contact at CPWR to research documentation supporting a contractual relationship with a DOE facility. (Note: This search will be at a facility level and not at the employee level. There will be no searches conducted for employee records). The request should include the name of the contractor/subcontractor, the name of the trade, the DOE site, and the time period of contracted work. The CPWR will research its records and respond directly to the DO POC, via email, with its findings within twenty (20) business days of receipt of the request.

c. Requests for supporting documentation. In cases where the CE conducts a search of BtComp, finds positive results, and needs a copy of the supporting documentation, the DOE POC sends the request to the to the National Office, to submit the request to CPWR. In its request, the DO references the BtComp Document-ID number and the reason for the request. CEs request this documentation if it is being used to resolve a discrepancy in the case file, or if the documentation is needed for litigation purposes. The processing of this type of request will be at the discretion of the National Office. The CPWR will respond with a copy of the documentation within five (5) business days of the receipt of the request.

d. Forwarding of contractual information. If a CE obtains documentation during case development that substantiates a contractual relationship between a contractor and/or subcontractor and a DOE facility not already included in the database, he or she is to forward a copy of that documentation to CPWR. The documentation is to be sent by the DO POC via USPS to the current CPWR contact person at CPWR located at 8484 Georgia Avenue, Suite 1000, Silver Spring, Maryland 20910, or scanned and emailed to the POC at CPWR that maintains these records. The CPWR will review the documentation, update BtComp, and retain the documentation in their files.

12. Other Employment Evidence. Evidence of employment by DOE, a DOE contractor, beryllium vendor, or atomic weapons employer may be made by the submission of any trustworthy contemporaneous records that on their face, or in conjunction with other such records, establish that the employee was so employed, along with the location and time period of such employment. No single document noted in this section is likely to provide all elements needed for a finding of covered employment, but rather each piece of evidence can contribute valuable elements needed to make a finding of covered employment.

Documentation from the following sources may be considered:

a. Records or documents created by any federal government agency (including verified information submitted for security clearance and dosimetry badging), any tribal government or any state, county, city or local government office, agency, department, board or other entity or other public agency or office.

b. Records or documents created as a byproduct of any regularly conducted business activity, or by an entity that acted as a contractor or subcontractor to DOE.

c. DEEOIC internal resources. The DEEOIC DOs each have gained experience with the facilities covered under this program. In the adjudication of claims, each office will accumulate documentation substantiating various subcontractor relationships. Once such a relationship has been established at a facility for a

given time period, the CE can use this information in the adjudication of other cases in which the same subcontractor employment is claimed during the same time period. Therefore, as noted in paragraph 11, any such documentation accumulated during the course of adjudicating a claim that substantiates a contractual relationship with a covered DOE facility, must be forwarded to CPWR. CPWR will then update the BtComp database based on information substantiated by this documentation.

d. Affidavits or other types of signed statements attesting to the accuracy of a claim. The CE requests that the claimant use the EE-4 Employment History Affidavit to collect statements from knowledgeable parties. Statements provided by way of an affidavit are considered in conjunction with other evidence submitted in support of a claim. Affidavits are particularly appropriate as a means of demonstrating that an employee worked at a particular location and are best used in concert other information, such as SSA records. Affidavits alone are usually insufficient to prove the existence of a contractual relationship between DOE and a company.

The CE has the discretion to assign probative weight to different affidavits. For example, the CE may find that an affidavit from a former CEO of an employer has significantly more probative value than that of one from a temporary worker who had no reason to be well-informed on his/her employer's contractual relationship with DOE or a DOE contractor. The CE must use his or her own judgment to ascertain what weight to give to any given piece of evidence, including affidavits. The CE is to assess the probative value of affidavits by applying these general parameters:

(1) Affiliation of affiant to employee (co-worker vs. family member). Affidavits from co-workers and managers carry more weight than those from family members, as they would be in a better position to provide details about work.

(2) Descriptive vs. vague employment information.

More detailed affidavits carry more weight than vague, generalized statements because more specific information is more easily corroborated than that which is ambiguous.

(3) First-hand knowledge vs. second-hand knowledge. An affidavit not containing first-hand knowledge has very little probative value, as it is nothing more than hearsay.

(4) Compliments other evidence from file vs. contradictions. When documentation in the file supports portions of an affidavit, the probative value of the remainder of the content of that affidavit is high. In the alternative, when an affidavit is in conflict with other material in the file, its probative value is diminished.

13. Subcontractor Employment. Subcontractor employment at beryllium vendors and DOE facilities is covered under the Act, provided that certain developmental elements are met.

a. Definitions.

(1) Contractor. An entity engaged in a contractual business arrangement with DOE to provide services, produce material, or manage operations.

(2) Subcontractor. An entity engaged in a contracted business arrangement with a DOE contractor to provide a service on-site.

(3) 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 DOE within the boundaries of the facility. Examples of workers providing such services include janitors, construction and maintenance workers. 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.

(4) 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." Only employees who are employed by the company named in the contracting documentation are covered. Employees of parent companies or subsidiaries companies of the contracting company are not covered and the joint employer doctrine also does not apply.

b. Standard. Mere presence by the employee on the premises of a facility does not confer covered employment. There are three developmental components that must be met before a determination of covered subcontractor employment can be reached. These elements are:

(1) the claimed period of employment occurred during the covered time frame as alleged; and

(2) a contract to provide "covered services" existed between the claimed subcontractor and a DOE contractor at the facility or the identified vendor (during the covered time frame); and

(3) the employment activities (work or labor) took place on the premises of the covered facility.

c. Subcontractor employment at beryllium vendor facilities. Under the Act, persons providing a service on the premises of beryllium vendors during covered time periods are entitled to the same benefits as employees of the beryllium vendor during those same covered time periods. For some beryllium vendors, the corporate verifier for the vendor at which the subcontractor performed work has records of subcontractor employees and, therefore, in verifying beryllium vendor subcontractor employment the CE first contacts the corporate verifier for any information he or she has on

the individual and his or her subcontractor employer. In those situations in which an employee is alleging beryllium sub-contractor employment and the beryllium vendor is unable to confirm employment, the CE uses SSA records, affidavits and other evidence as described in this chapter.

d. Subcontractor employment at DOE facilities.

Because DOE generally did not keep records of employees of subcontractors, the CE is faced with particular evidentiary challenges in establishing subcontractor employment. To establish each of the elements needed, a CE generally will find it necessary to gather and evaluate documentation from multiple sources, including DOE, the SSA and CPWR.

e. Developing subcontractor employment. The CE will likely have to use an assortment of documentary evidence to make a finding of covered subcontractor employment. For example, SSA records may show that the employee worked for Sentell Brothers, thus establishing verified earnings. Documentation from CPWR may show that Sentell Brothers was a subcontractor during the period of verified earnings at K-25, X-20, Y-12 and Oak Ridge in general. The DOE may also provide documentation showing that the employee had a clearance to work at K-25 doing construction or dosimetry badging information specific to K-25. In this situation, the CE likely has sufficient documentation to make a determination that the employee worked as a K-25 subcontractor employee during the time period for which the earnings, the contractual information and the presence on the premises requirements are all met.

For all instances in which the CE is required to evaluate potential subcontractor employment, the CE writes a memo to the file delineating every period of claimed subcontractor employment and specifying the evidence in the case file that supports each of the following:

- (1) the claimed subcontractor was in a contractual relationship with a DOE contractor,

(2) the subcontractor provided a service to DOE on the premises of the DOE facility, and

(3) the employee was engaged in providing that service on site, including the number of days the employee was engaged in that service.

The memo should also provide an explanation as to why the standard was or was not met (see Exhibit 4 for sample memo).

14. Researcher Employment at DOE Facilities. A DOE contractor employee is also defined as "An individual who is or was in residence at a Department of Energy facility as a researcher for one or more periods aggregating at least 24 months." In order for an employee to meet the "researcher" provision under the Act, the following criteria must be met:

a. Research. There needs to be probative evidence in the file that the individual was actually performing research on the premises of the DOE facility. Visiting the site, obtaining medical tests on-site, or similar non-work related reasons that people may have for being on-site at a DOE facility, does not qualify under this provision. Evidence useful in documenting that an individual was performing research on-site includes published journal articles, affidavits, or some other documentation affirming that the individual was engaged in research.

b. Living on-site not required. Although some DOE facilities provide dormitory-style accommodations which often house researchers, "in residence" can be satisfied by working "on the premises," and the individual need not have been living on the premises of the DOE facility.

c. Research can be unpaid. There is no requirement that the researcher is/was paid for the work.

15. Employees of Federal or State governments other than DOE and its predecessors. Employees of federal and state governments, (other than direct employees of DOE, ERDA, the AEC or MED) can be DOE contractor employees, as outlined in this paragraph.

a. Standard. A civilian employee of a state or federal government agency can be considered a "DOE contractor employee" if

(1) the government agency employing the individual is found to have entered into a contract with DOE for the accomplishment of one or more services on the premises of that DOE facility that such government agency was not statutorily obligated to perform, and

(2) DOE compensated the agency for that service.

b. Proof of contract. The DO contacts the federal or state agency directly in an effort to obtain the desired information. The District Director is responsible for managing any necessary coordination with federal and state agencies. Any time documentation is obtained from these agencies, copies are to be provided to the National Office. The CE should not pressure a state or federal agency to produce employment or contractual records.

c. If the evidence is unclear as to whether employment by a state or federal agency can be determined to be DOE contractor employment using the guidance in this paragraph, the CE obtains clarification from the claimant. The CE reviews any documentation submitted by the claimant and undertakes any additional development necessary to clarify the individual's employment status, including any needed input from the National Office Policy Branch.

Upon finding that the employee does not meet the definition of a "DOE contractor employee" who worked for a state or federal agency, and where this is the sole employment listed on the Form EE-3, the CE issues a recommended decision denying the claim on the basis that the employment by the state or federal agency does not qualify the claimant as a "DOE contractor employee" as defined in the EEOICPA.

d. Uniformed Members of the Military. A claimant cannot obtain EEOICPA benefits based upon service in the military. If the claimant provides information or identifies himself/herself as military personnel, the CE

sends a letter to the claimant stating that uniformed military personnel are ineligible for benefits under the EEOICPA. Only civilian employees who performed services on the premises of DOE facilities, via contracts, are DOE contractor employees.

16. Evaluating Evidence to Verify Employment. Once the CE receives all available evidence, he or she has to determine if the evidence is sufficient to verify the three components of covered employment listed in paragraph 5 of this chapter. The CE evaluates all evidence carefully and uses discretion regarding documentation that reasonably establishes the presence of the employee at a particular facility during certain periods of time. Additionally, with regard to subcontractor employment, the evidence must reasonably satisfy all the components necessary to establish covered employment. If employment with other state or federal entities is claimed, then all the components discussed in paragraph 15 of this chapter must be fulfilled. In weighing the evidence submitted in support of covered employment, the CE considers the totality of the evidence and draws reasonable conclusions.

17. Developing non-covered employment. There will be instances in which the CE is only able to match a portion of the claimed employment to a facility and/or employer listed in the facility database, or there may be no match found. In these instances, the CE communicates this to the claimant. The CE prepares a letter to the claimant explaining which employment is covered under the Act and which is not, including any pertinent dates. A description of what constitutes an AWE facility, Beryllium Vendor facility or a DOE facility should be included in the letter. In the event that the claimant believes some of this non-covered employment should be covered under the Act, the CE asks the claimant to supply any pertinent evidence substantiating the claim. Namely, the CE asks the claimant to provide evidence demonstrating that the claimed place of work met the definition of an AWE, Beryllium Vendor or DOE facility during the years the employee worked there. For example, a CE may ask the claimant to submit evidence such as contractual documents, business reports, internal memos, purchase orders, news articles, affidavits, etc. A period of thirty (30) days is granted to the claimant to submit evidence in support of

extending covered employment to additional facilities/employers and/or years.

After appropriate development, the CE decides whether any evidence submitted warrants a referral to the National Office. If the claimant submits pertinent evidence supportive of adding a facility/employer and/or years of coverage, the CE prepares a brief memo to the file explaining the circumstances of the situation and requests a review of the case file by the National Office. The CE submits a request to the National Office to make a determination regarding the new evidence of an additional covered facility/employer or years.

18. Additions or modifications to facility status. While the EEOICPA defines what constitutes an AWE facility, a Beryllium Vendor facility and a DOE facility, updates are periodically made to facility designations as new information becomes available. The National Office Policy Branch is responsible for reviewing new evidence and deciding whether changes should occur to facility designations. As such, the Policy Branch is responsible for evaluating requests for changes to the covered facility listing or modification of facility designations, depending on the nature of facility evidence, the Policy Branch undertakes different actions.

a. Atomic Weapons Employer Facility. New designations are the responsibility of DOE. Accordingly, requests for new AWE designations are referred to DOE.

(1) Time frame changes relating to specific years of processing at an AWE facility are the responsibility of DOL. Evidence must be presented clearly demonstrating that the AWE processed or produced material that emitted radiation and was used in the production of an atomic weapon at the AWE facility.

b. Beryllium Vendor. The statutory deadline for adding additional Beryllium Vendors was December 31, 2002, and therefore no additional Beryllium Vendors can be designated under the Act.

(1) Time frame changes relating to Be Vendors are the responsibility of DOL. Evidence must be presented clearly demonstrating that the Beryllium

Vendor had a contractual agreement involving beryllium with DOE, or its predecessors, and that the company is performing/or did perform those beryllium-related contractual tasks in the years to be added to coverage.

c. Department of Energy Facility. Facility and/or time frame changes relating to DOE facility listings are the responsibility of DOL. Under the EEOICPA, a DOE facility means any building, structure, or premise, including the grounds upon which such building, structure, or premise is located 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 12344, dated February 1, 1982, pertaining to the Naval Nuclear Propulsion Program); and with regard to which DOE has or had either (A) a proprietary interest; or (B) entered into a contract with an entity to provide management and operation, management and integration, environmental remediation services, construction, or maintenance services.

Interpreting and applying the definition of a DOE facility is within the adjudicatory authority of the DEEOIC. To determine whether a facility is a DOE facility under the Act, certain parameters must be met.

(1) Operations. To show that operations were performed on behalf of DOE, the evidence must demonstrate that DOE paid for operations at that location. These operations are not limited to those involving radiation or weapons. Everyday operations such as providing library services in a technical library are sufficient to meet this statutory requirement.

(2) Proprietary Interest. To show that DOE had a proprietary interest, evidence that DOE owned the building, structure or premises, such as a deed or affirmative statement from DOE acknowledging ownership is required. Proprietary interest can also include instances in which DOE is contractually permitted a sufficient level of use and control over the property to support a

determination that the property constituted a DOE facility. DOE ownership of intellectual property or equipment, regardless of size, does not fulfill the proprietary interest definition. Moreover, DOE permitting, safety oversight, or licensing of work relating to use of radioactive material does not convey proprietary interest.

(3) Contracts. To show that DOE entered into a contract with an entity to provide management and operation, management and integration, environmental remediation services, construction, or maintenance services, the best possible evidence is to produce the contract. Typically, contracts with DOE or its predecessors identify the contract type on the first page, so in those cases in which contracts are located, it is generally not difficult to discern contract type. The contracts identified in this portion of the law are among the more common and significant contracts used throughout the DOE complex in the following ways:

(a) Management and Operation (M&O) contracts are those contracts that DOE often had with major companies to manage and operate large DOE facilities, such as Union Carbide and Carbon at K-25 and Y-12.

(b) Management and Integration (M&I) contracts were also used by DOE to run major DOE sites, but an M&I contractor generally had numerous smaller site contractors for which the M&I's job was to "integrate" the work of the smaller companies. The Idaho National Laboratory is an example of a DOE facility which has been run from time to time by M&I contract. Companies holding M&O and M&I contracts at DOE facilities are generally considered the "prime contractor" for that facility, though sometimes facilities will change from the M&O model to the M&I model.

(c) Contracts for environmental remediation services, construction, or maintenance services are also common throughout DOE, but

are generally smaller in size than the major M&O's and M&I's. DOE used remediation contracts to clean up radiation at numerous AWE facilities. In these instances, the locations are designated as DOE facilities for the period of remediation under the DOE contract and the remediation workers are covered.

(d) Some common types of contracts issued by DOE that do not meet the statutory definition include research & development, output, and procurement.

19. Special Circumstances. There are some special circumstances regarding eligibility for benefits pertinent to the Naval Nuclear Propulsion Program and EEOICPA claims from citizens of the Republic of the Marshall Islands, as outlined below.

a. Naval Nuclear Propulsion. As noted in the section above, the statutory definition of a DOE facility specifically excludes, "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." As a consequence of this exclusion, the DEEOIC is unable to find covered employment for those AEC employees and AEC contractors who worked at locations devoted to Naval Nuclear Propulsion operations.

b. Marshall Islands. The DEEOIC has received claims for compensation under the EEOICPA from citizens and nationals of the Republic of the Marshall Islands (RMI). The Marshallese base their claims on employment related exposure arising from the United States' nuclear weapons testing program conducted in the RMI. The DOE facility known as the Pacific Proving Ground was a weapons test site in the South Pacific from 1946 to 1962.

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.

For purposes of the administration of the EEOICPA, this Compact has been interpreted as precluding coverage for RMI citizens and nationals. If the CE determines that a claim for benefits is from a citizen or nationals of the Marshall Islands, the CE explains, in the conclusions of law portion of the recommended decision, that there is no provision under the EEOICPA for coverage of claims based upon employment in the RMI by citizens or nationals of the RMI. The CE inserts the following wording in the conclusions of law as a summary of the DEEOIC policy:

Since interpreting the EEOICPA to apply to claims by Republic of the Marshall Islands (RMI) citizens or Nationals 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 the 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 the EEOICPA to apply extraterritorially in this situation.

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)

Last name	First Name	MI	SSN
Employee Last Name	First Name	MI	Social Security Number
Employer		Facility	
Employer Name		Department of Energy Facility	

EMPLOYMENT VERIFICATION (completed by DOE)

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

Verified Period 1	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	
Verified Period 2	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	
Verified Period 3	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	
Verified Period 4	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.

_____ Security Clearance	_____ Medical Health Records
_____ Proof of Contractual or Subcontractual Relationship	_____ Employee ID Badge
_____ Dosimeter Badge Number	_____ 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)

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: _____

EE-5 Employment Verification

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 DOE 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.

IMPORTANT INFORMATION

**Privacy Act Statement
Collection and Use of Personal Information**

Section 205(c)(2)(A) of the Social Security Act, as amended, authorizes us to collect this information. We will use the information you provide to obtain earnings data. Furnishing us this information is voluntary. However, failing to provide us with all or part of the information may prevent an accurate and timely decision on any claim filed. We rarely use the information you supply us for any purpose other than to produce an itemized statement of earnings. However, we may use the information for the administration of our programs including sharing information:

1. To comply with Federal laws requiring the release of information from our records (e.g., to the Government Accountability Office and Department of Veterans Affairs); and,
2. To facilitate statistical research, audit, or investigative activities necessary to ensure the integrity and improvement of our programs (e.g., to the Bureau of the Census and to private entities under contract with us).

A complete list of when we may share your information with others, called routine uses, is available in our Privacy Act System of Records Notice 60-0059, entitled, Earnings Recording and Self-Employment Income System. Additional information about this and other system of records notices and our programs is available online at www.socialsecurity.gov or at your local Social Security office.

We may share the information you provide to other health agencies through computer matching programs. Matching programs compare our records with records kept by other Federal, State or local government agencies. We use the information from these programs to establish or verify a person's eligibility for federally funded or administered benefit programs and for repayment of incorrect payments or delinquent debts under these programs.

Paperwork Reduction Act Statement - This information collection meets the requirements of 44 U.S.C. § 3507, as amended by section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget control number. We estimate that it will take about 2 minutes to read the instructions, gather the facts, and answer the questions. *Send only comments relating to our time estimate above to: SSA, 6401 Security Blvd, Baltimore, MD 21235-6401.*

SSN Range (Last 4 digits)	Module Number	Help Desk Telephone No.
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

Part 2 - Claims

Establishing Covered Employment

Note: In cases of subcontractor employment, the evidence varies greatly between employees and facilities, so there is no "one-size fits all." Sometimes proof of employment with SSA in conjunction with a DOE clearance and a job category that could only be performed on site (plumber) is sufficient, other times more is needed. What follows is an outline that attempts to include most everything, but keep in mind this is just a model. As long as the memo delineates the evidence used to support 1) employment with a company that had 2) a contract to perform services on site at a DOE facility and 3) the employee was so employed providing those services on that site during those years, then the memo is complete.

DATE:

MEMORANDUM TO: FILE

FROM: CE

SUBJECT: Subcontractor Employment

This is a case involving a claim of subcontractor employment. Mr. Johnson claimed subcontractor employment at (name of facility) for the following period(s) of time (list period claimed on claim form). He stated that he worked as a (name of trade, job title) for the following employers (list the names of the companies for whom he claims to have been employed) at (name of facility) doing (identify service on site). Evidence in the file regarding employment was submitted, and is summarized below (use only those items for which there is corresponding evidence).

DOE provided (and then specify what DOE provided, such as clearance records, infirmary records, dose records). List those here with the date of each record and any other pertinent information on the record, such as name of employer or location of work.

Example 1: July 10, 1984 report from the BNL health unit reporting that he got something in his eyes while welding some pipe in the XX building.

Exhibit 4

Example 2: DOE provided a clearance card indicating that Mr. Johnson was granted a "Q" clearance on June 10, 1984 to August 30, 1984. The clearance card identifies his employer as Smalls Mechanical Contractors, Inc.

Records from the SSA were also obtained. For the period claimed, they identify the following employers during the noted years (list).

Example: 1985 Smalls Mechanical Contractors, Inc.

A review of the CPWR database was conducted and it showed (explain which subcontractors show up in database and for what periods of time, for example some case files still have detailed union log sheets, some have news clipping about subcontractors linking them to a facility - all this needs to be delineated)

Example: Smalls Mechanical Contractors, Inc. - CPWR BtComp database indicates that Smalls was a BNL subcontractor for the period of June 18, 1984 through August 30, 1985.

Other documentation submitted included (list anything else submitted in the case that bears on the question of whether the employee provided a service on site at the facility for a given employer during the years so employed)

Example: A newsclipping from the Tri-Cities Herald shows a photo of a ribbon-cutting ceremony at Hanford for the construction of XYZ and identifies Smalls Mechanical Contractors, Inc. as one of the subcontractors on the project.

The following affidavits were also submitted (list every single affiant and what they attest - OK to summarize...if same affiant attests more than once, that also needs to be noted, especially if the attestations are inconsistent with each other).

Example: Paul Smith, work associate and friend, attested that the employee worked for Smalls

Exhibit 4

Mechanical Contractors at BNL from June 1984 to August 1985. The work involved the cryogenics lab and the Isabelle project.

After reviewing all this documentation, I conclude that Mr. Johnson's employment for (list dates) is a covered DOE subcontractor. For this period, SSA records (or union records or whatever evidence is used) demonstrate he worked for (name of company), and according to CPWR, there was a subcontract in place between (company) and (facility) for (years). Additionally, there was an infirmary record from DOE which identifies Mr. Johnson as having been onsite during the period. His co-worker Mr. Smith also attested to the period.....

With regard to the period (dates), I find that the evidence falls short of meeting the standard for covered subcontractor employment because...and then give reason - no evidence of being onsite, no evidence of contract, dates don't match up.