



EEOICPA BULLETIN NO.08-21

Issue Date: April 2, 2008

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Effective Date: April 2, 2008

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Expiration Date: April 2, 2009

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Subject: Combustion Engineering SEC.

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

The decision to initiate this petition occurred after the National Institute for Occupational Safety and Health (NIOSH) determined that it could not reconstruct a dose under 42 C.F.R. § 83.14. NIOSH submitted its findings to the petitioner and the Advisory Board on Radiation and Worker Health ("the Board"). On January 30, 2008, the Board submitted recommendations to the Secretary of Health and Human Services (HHS) to add to the SEC a class of employees who worked at Combustion Engineering in Windsor, Connecticut from January 1, 1965, through December 31, 1972.

On March 3, 2008, the Secretary of HHS designated the following class for addition to the SEC in a report to Congress.

Atomic Weapons Employer (AWE) employees who worked at the Combustion Engineering site in Windsor, Connecticut from January 1, 1965, through December 31, 1972, for a number of work days aggregating at least 250 work days or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

A copy of the Secretary's letter to Congress recommending the designation is included as **Attachment 1**. The SEC designation for this class became effective as of April 2, 2008, which was 30 days after the Secretary of HHS designated the class for addition to the SEC in a report to Congress. While Congress had the authority to reject the recommendation within the 30-day time frame, no action was taken to contradict the addition of this new SEC class.

References: Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. § 7384 *et seq.*; 42 C.F.R. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under EEOICPA; the March 3, 2008 letter to Congress from the Secretary of HHS in which Secretary Leavitt makes the designation.

Purpose: To provide procedures for processing SEC claims for workers at the Combustion Engineering site in Windsor, Connecticut.

Applicability: All staff.

Actions:

1. This class encompasses claims already denied, claims at NIOSH for dose reconstruction, and future claims yet to be submitted.
2. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has prepared a list of cases with claimed employment at the Combustion Engineering facility in Windsor, Connecticut during the period of the SEC class. It includes pending cases, cases previously denied and those at NIOSH. It also includes specified and non-specified cancer cases. **All** cases on this comprehensive list must be reviewed by the district office(s) and by the Final Adjudication Branch (FAB) to determine whether the SEC class criteria are satisfied. This comprehensive list will be provided to the appropriate district offices and FAB under separate cover.

The comprehensive list also includes cases identified by NIOSH that should be considered for inclusion in the SEC class. NIOSH will return dose reconstruction analysis records for cases with specified cancers to the appropriate district office along with a CD for each case. The CD contains all of the information generated to date, e.g., CATI report, correspondence, and dose information. Also included on the CD, in the Correspondence

Folder, should be a copy of the NIOSH letter sent to each claimant informing the claimant of the new SEC class and that his or her case is being returned to DOL for adjudication. A copy of the NIOSH letter to affected Combustion Engineering claimants is included as **Attachment 2**. The claims examiner (CE) must print out a hard copy of the NIOSH letter for inclusion in the case file.

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

Once a case file is returned from NIOSH (including those cases where DEEOIC has withdrawn from NIOSH) to the district office for potential inclusion in the SEC class, the CE enters status code "NW" (NIOSH, returned without a dose reconstruction) in ECMS B. The status effective date for the code entry is April 2, 2008. However, the code is not entered until the DEEOIC office actually receives the NIOSH-returned dose reconstruction record. Because Combustion Engineering is an Atomic Weapons Employer, there is no entitlement to Part E benefits.

If the case is still at NIOSH and does not qualify under this SEC provision, based on the guidance provided in this bulletin, then refer to the instructions in Action #13.

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

4. Based on this review, the CE determines whether the claimant has a specified cancer, as listed in the Federal (EEOICPA) Procedure Manual (PM) Chapter 2-600.5. If the employee has a

specified cancer, proceed to Action #5. If the employee does not have a specified cancer, proceed to Action #7.

5. If the employee has a specified cancer, the CE must determine if the worker was employed at least 250 work days at the Combustion Engineering facility in Windsor, Connecticut between January 1, 1965 and December 31, 1972. The CE may review EEOICPA Bulletin No. 02-09 for guidance on calculating 250 work days.

6. Once the CE has determined the employee has a diagnosed specified cancer and meets the employment criteria of the SEC classes, the CE should proceed in the usual manner for a compensable SEC claim and prepare a recommended decision.

ECMS Coding Reminder: The "SE" (Confirmed as SEC Claim) status code must be entered into ECMS B with a status effective date equal to the status effective date of the recommended decision to approve. (This is a change from previous guidance which tied the "SE" effective date to when the employment and medical criteria for SEC has been met). The SEC site code for "Combustion Engineering" must be selected from the drop down menu under the "SEC/SEC Desc" field on the claim screen.

7. As discussed earlier, the Secretary of Health and Human Services determined that it is not feasible for NIOSH to perform complete dose reconstructions for the class of employees who worked at the Combustion Engineering site in Windsor, Connecticut from January 1, 1965, through December 31, 1972.

However, NIOSH has indicated that partial dose reconstructions are possible based on occupational medical dose, some components of the internal dose and all external doses. Accordingly, for cases that had not been submitted to NIOSH and do not meet the criteria of the SEC class, the CE must refer these cases to NIOSH with a NIOSH Referral Summary Document (NRSD) to perform dose reconstructions. The CE enters status code "NI" (Sent to NIOSH) in ECMS B. The status effective date is the date of the Senior or Supervisory CE signature on the NRSD.

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

documents the date it was sent) for inclusion in the case file. The CE enters the status code "NI" (Sent to NIOSH), effective the date of the e-mail requesting NIOSH to proceed with dose reconstruction. The e-mail should include a brief statement of why the case should proceed with dose reconstruction, e.g., non-specified cancer, insufficient latency period or does not meet the 250 work day requirement. A hard copy printout of the e-mail is to be inserted in the case file. In addition, the CE is to notify the claimant by letter that the case is returned to NIOSH for dose reconstruction and the reason(s) it does not qualify for SEC class.

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

8. If the claim includes both a specified cancer and a non-specified cancer, medical benefits are only paid for the specified cancer(s), any non-specified cancer(s) that has a dose reconstruction that resulted in a probability of causation of 50 percent or greater, and any secondary cancers that are metastases of a compensable cancer. In these instances, the CE is to draft a recommended decision to accept the claim for the specified cancer (provided all criteria are met) and if necessary concurrently prepare a NRSD to NIOSH for a dose reconstruction for the non-specified cancer to determine eligibility for medical benefits. The CE enters the status code "SE" (Confirmed as SEC Claim) and the "NI" (Sent to NIOSH). The status effective date for the "SE" code is the date of the recommended decision to accept the specified cancer. The status effective date for the "NI" code is the date of the Senior or Supervisory CE signature on the NRSD.

9. If there is a final decision to deny based on a POC of less than 50% and a review of the evidence of record establishes likely inclusion in the SEC class, it will need to be reopened. In the exercise of the Director's discretion of the reopening process, the Director is delegating limited authority to the four District Directors to sign Director's Orders for reopening. This delegated authority is limited to reopenings based upon evidence that a Windsor Combustion Engineering employee meets

the criteria for placement into the Combustion Engineering SEC class as defined by this Bulletin. This delegated authority extends to any case potentially affected by this SEC class. However, if the District Director is unsure of whether the SEC is applicable to the case, the case should be referred to the National Office. A sample Director's Order is provided in **Attachment 3**. The Director is retaining sole signature authority for all other types of reopenings not otherwise delegated. Once a Director's Order is issued, the district office is responsible for issuing a new recommended decision.

10. For those cases which are reopened under the authority granted in this Bulletin, the District Director enters status code "MN" (NO Initiates Review for Reopening) in ECMS B with a status effective date as the effective date of this bulletin.

For all reopenings per this bulletin, upon completing the Director's Order to reopen the claim, the District Director enters status code "MD" (Claim Reopened - File Returned to DO) to reflect that the case has been reopened and is in the district office's jurisdiction. (The "MZ" status code is not necessary). The status effective date of the "MD" code is the date of the Director's Order.

Please note that while the "MD" code is generally input by National Office staff, entry of this code has been delegated to the District Director, just as the authority to grant reopenings has been in this specific circumstance.

11. Upon issuance of this Bulletin, FAB personnel must be vigilant for any pending Combustion Engineering cases that have a recommended decision to deny. All cases on the comprehensive list identified in action item 2 that are located at a FAB office must be reviewed for possible inclusion in the SEC class. If the employee worked at the Windsor Combustion Engineering facility during the time specified, has a specified cancer, and meets the 250 work day requirement, FAB is to review the case for the parameters of the SEC as specified in this Bulletin. If the criteria of the SEC are met, the FAB is to reverse the district office's recommended decision to deny and accept the case. The CE/HR enters status code "F6" (FAB Reversed to Accept) to reflect the FAB reversal. The "SE" (Confirmed as SEC Claim) status code must be entered with a status effective date equal to the status effective date of the final decision to approve.

If no action is required FAB must follow the instructions specified in action item 13, below, to indicate that a review of the case was completed.

Every effort should be taken to avoid a remand of a potential SEC claim to the District Office. If FAB determines that the case cannot be approved based on the new SEC designation and that re-referral to NIOSH is appropriate (see action items 5 and 7) FAB must remand the case for district office action. The CE/HR enters status code "F7" (FAB Remanded) with "OTH" (No DO Error - Other) as the reason code.

12. The operational plan goal for the list of cases identified for review as part of this new SEC class is to complete the Part B recommended decision, return to NIOSH, or determine that no action is necessary within 45 days of the date of this Bulletin for at least 50% of the cases, and within 90 days for 95% of the cases. All cases requiring action due to this Bulletin should be completed within 120 days.

13. If after review or further development, the adjudicator determines that a case on the list does not require any action to be taken (either a new recommended decision to accept based on the SEC, a return to NIOSH, or a FAB reversal or remand) the CE/FAB HR must write a brief memo to the file that explains the case was reviewed under this bulletin, no additional action is necessary, and why. A case classified as not requiring any action is a case that does not meet the SEC criteria or there is no need to return it to NIOSH for partial dose reconstruction.

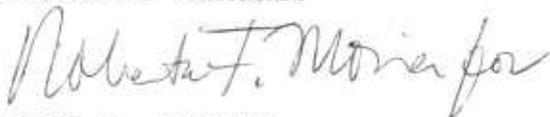
The CE enters the status code "NA" (No Action Necessary) and then selects the appropriate reason code from the reason code drop down list. The "NA" coding is specifically tied to the SEC review list generated by the DEEOIC and the "NA" code is restricted to ECMS B only because the SEC review list is derived from Part B data. For Combustion Engineering cases that were reviewed under this bulletin and require no additional action, the reason code that must be selected is "21S" (**Reviewed under 08-21, Combustion Engineering SEC**). Even if the case is an E/B case, the NA-21S must be coded into ECMS B only. The status effective date of the "NA" code is the date of the memo to the file stating review is complete and the CE has determined there is no further action necessary. For those instances in which further development is necessary, the "NA" code is not entered initially. The "NA" code is only entered when the CE determines, after any necessary development, that the case does not meet the SEC criteria or there is no need to return it to NIOSH for

partial dose reconstruction. For those cases on the DEEOIC list that were not withdrawn from NIOSH, the CE enters the "NA-21S" code only after the CE determines that the case does not meet the SEC criteria. These cases remain at NIOSH for completion of a partial dose reconstruction.

Please note that if the CE discovers that the claimant(s) is/are deceased, the CE must still enter the "NA-19S" code in addition to the closure code. The status effective date for the "NA" coding is the date of the memorandum to file.

14. In carrying out the policy outlined in this Bulletin, personnel must understand that the comprehensive list not only provides the "to do" list of cases requiring attention, but it also serves as a means of tracking progress. As part of tracking progress, the list becomes the "pending" list and it is the goal to successfully and accurately review cases and enter appropriate ECMS coding which will result in "the case being removed from the list" (in other words, will result in an indicator for reporting purposes showing that the initial review was completed and/or that subsequent action was taken). ECMS coding is at the claim level and so the failure to input a code that will remove the case from the pending list on even one claim associated with a case, will result in the case still showing up as still pending review or action. In terms of ECMS coding, it is crucial to be thorough and precise. The most obvious example of this is the use of the "C2" (administrative closure) code. "C2" will not remove a case from the pending list; the "NA" code must be entered for each claim to which it applies after input of the "C2" code. In terms of codes that will remove cases off the pending list, any recommended decision **on or after the SEC effective date** will remove it and proper use of the "NA" code will remove it from the pending list. These are not the only codes that will remove cases from the pending list, but rather are provided as examples to show their importance. Any additional questions regarding proper SEC coding must be directed to the Policy Branch.

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



PETER M. TURCIC  
Director, Division of Energy Employees  
Occupational Illness Compensation

Attachment 1  
Attachment 2  
Attachment 3

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



THE SECRETARY OF HEALTH AND HUMAN SERVICES  
WASHINGTON, D.C. 20201

MAR - 3 2008

The Honorable Richard Cheney  
President of the United States Senate  
Washington, D.C. 20510

Dear Mr. President:

Pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000 and 42 C.F.R. § 83.14, the Centers for Disease Control and Prevention's (CDC) National Institute for Occupational Safety and Health (NIOSH) initiated a petition for a class of workers from the Combustion Engineering facility to be added to the Special Exposure Cohort (SEC).

On January 9, 2008, NIOSH presented its findings on the petition evaluation to the Advisory Board on Radiation and Worker Health (Board). The Board considered the petition, and on February 1, 2008, I received the Board's recommendation concerning this petition. I have also received the deliberations, findings, and recommendations of the Director of NIOSH and the Director of CDC. I have designated the following class for addition to the SEC:

Atomic Weapons Employer (AWE) employees who worked at the Combustion Engineering site in Windsor, Connecticut, from January 1, 1965, through December 31, 1972, for a number of work days aggregating at least 250 work days or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

The criteria and findings upon which this designation is based are provided in the enclosed report.

Please call me if you have any further questions regarding this matter.

Sincerely,

Michael O. Leavitt

Enclosure



NIOSH Tracking Number: NIOSH Claim ID  
Energy Employee: EE Name

National Institute for Occupational  
Safety and Health  
Robert A. Taft Laboratories  
4676 Columbia Parkway  
Cincinnati, OH 45226-1998  
Phone: 513-533-8423  
Fax: 513-533-6840

Claimant Name  
Address  
City, Name, State, Zip, Country

April 3, 2008

Dear Claimant Name:

As you may know, a petition to add a class of former employees at the Combustion Engineering site, Windsor, Connecticut, to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) was received by the National Institute for Occupational Safety and Health (NIOSH). This letter is to provide you with information on the status of this petition and the effect this petition may have on your claim.

On March 3, 2008, the Secretary of the Department of Health and Human Services (HHS), Michael Leavitt, designated the following class for addition to the SEC in a report to Congress:

Atomic Weapons Employer (AWE) employees who worked at the Combustion Engineering site in Windsor, Connecticut, from January 1, 1965, through December 31, 1972, for a number of work days aggregating at least 250 work days or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

Since Congress did not take any action within 30 days of the submission of this report, this designation became effective on April 2, 2008.

This letter is to let you know that your claim for benefits under EEOICPA may be affected by this new designation. Our records indicate that you, or the energy employee on the claim, worked at the Combustion Engineering site, Windsor, Connecticut, during the period from January 1, 1965 through December 31, 1972 and were diagnosed with an SEC-specified cancer.

All decisions regarding your status as a member of the SEC, and any resulting action on your EEOICPA claim, will be made by the Department of Labor (DOL). We have sent a list of all claims that are with NIOSH awaiting completion of a dose reconstruction that appear to involve employment at the Combustion Engineering site in Windsor during the period from January 1, 1965 through December 31, 1972 and an SEC-specified cancer to DOL for their review. Employment during this period and type of cancer are only two of the factors that DOL must consider to establish membership in the SEC. You will be informed of the results of this review when it is complete.

I hope this information is helpful. Should you have any further questions about the SEC process, or eligibility requirements for the new class of employees that has been added to the SEC, you should contact NIOSH at 1-800-CDC-INFO (1-800-232-4636; please press 1 to speak with an operator) or e-mail us at [ocas@cdc.gov](mailto:ocas@cdc.gov). Additional information on NIOSH activities under EEOICPA can also be found at our website [www.cdc.gov/niosh/ocas](http://www.cdc.gov/niosh/ocas).

Sincerely,

Larry Elliott  
Director,  
Office of Compensation, Analysis, and Support  
(800) 232-4636

Reps

Addressee  
Address  
City, State, Zip

Dear Mr./Mrs./Ms. Claimant:

I am writing in reference to your claim for benefits under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). On {date} your claim was denied, but since that date there have been new developments. The purpose of this letter is to let you know that I am vacating the {date} denial because these recent developments may affect the outcome of your claim. This means your claim will be reopened and reviewed and you will receive a new decision.

The reason for the reopening of your claim is that effective April 2, 2008, a class was designated into the Special Exposure Cohort (SEC) pertaining to those who were employed at the Combustion Engineering Site located in Windsor, Connecticut for 250 days between January 1, 1965 and December 31, 1972. Our records indicate you have claimed employment at Combustion Engineering during this timeframe and we will therefore re-examine your case to determine if you qualify for benefits under the rules of the new class in the SEC.

The attached Director's Order is the legal mechanism that vacates your final decision and reopens this case. Please read this over carefully. If any of the basic information (such as medical condition) changed since your final decision was issued please contact this office immediately and ask for your assigned claims examiner.

If you have any questions about the Director's Order, please feel free to call this district office at our toll-free number of (xxx)xx-xxxx.

Sincerely,

{Name of District Director}  
District Director

**EMPLOYEE:** [Employee Name]  
**CLAIMANT:** [Claimant(s) Name]  
**FILE NUMBER:** [File Number]  
**DOCKET NUMBER:** [Insert Docket Number]

### **DIRECTOR'S ORDER**

On {date} you were issued a final decision denying your claim for benefits under Part B of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA or the Act). However, under the EEOICPA regulations (20 C.F.R. § 30.320) a final decision may be reopened at any time on motion of the Director of the Division of Energy Employees Occupational Illness Compensation (DEEOIC). Because of new developments described in this Director's Order, the {date} Final Decision under Part B of the Act is hereby vacated and your case reopened under this provision.

#### **History of the Case**

{Provide a concise and accurate synopsis of the claim's history. Some sample paragraphs are provided here, though these should be altered to tailor-fit the specifics of the case.}

The evidence of record shows that {claimant name} filed Form EE-2 (Claim for Survivor Benefits under the EEOICPA) under Part B on {date}. It was asserted that {employee and relationship} developed {cancer type} as a result of employment at Combustion Engineering in Windsor, CT. Medical documentation established the claimed condition.

Under the Act, all cancer cases must be referred to the National Institute for Occupational Safety and Health (NIOSH), a division of the Department of Health and Human Services (HHS) in order to receive a dose reconstruction. A dose reconstruction allows the Department of Labor to run a program that provides a number called the probability of causation (PoC). Under Part B of the Act, a cancer is "at least as likely as not" related to employment at a covered facility if the PoC is 50% or greater. In your case, the PoC was calculated to be {XX.XX%}. As a result, on {date}, the district office issued a recommended decision denying the claim under Part B of the Act, because the PoC was less than 50%.

The recommended decision was forwarded to the Final Adjudication Branch (FAB) for an independent assessment and issuance of a final decision. On {*date*}, the FAB issued a Final Decision, affirming the recommended decision to deny the claim.

### **Recent Developments**

Under the Act, there is a provision that allows for payment of some cases regardless of a previous PoC. This provision becomes available when employees are included in a class of the Special Exposure Cohort (SEC), which is defined in 42 U.S.C. § 7384q of the Act. To be included as a member in a class of the SEC, the employee must be diagnosed with a specified cancer and meet all the employment requirements of the SEC class.

NIOSH evaluates petitions that are submitted to them for review, and they determine whether a new SEC class will be added. Effective April 2, 2008, a new class of employees who worked at Combustion Engineering were added to the SEC. The designations by the National Institute for Occupational Safety and Health (NIOSH) state:

Atomic Weapons Employer (AWE) employees who worked at the Combustion Engineering site in Windsor, Connecticut from January 1, 1965, through December 31, 1972, for a number of work days aggregating at least 250 work days or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

### **Analysis** (*Note: This paragraph is particularly important*)

Based on the designation of this new class into the SEC, the district office has reviewed the file and finds there is sufficient evidence to warrant reopening of this claim. The evidence of record shows that the employee worked {describe evidence that shows the employee worked at Combustion Engineering during the designated years for the new classes in the SEC.} This demonstrates that the employee performed work at Combustion Engineering for at least 250 work days within the designated time period for the SEC class. Moreover, the evidence establishes the employee was diagnosed with, {type of cancer} a SEC-specified cancer.

Therefore, the above findings indicate potential eligibility as a member of the SEC. Accordingly, the Final Decision dated {*date*} is hereby vacated and the case is reopened so that a new recommended decision can be issued.

If you disagree with the recommended decision, you will have the opportunity to file an objection and request an oral hearing or a review of the written record.

{city of district office}

{Name of District Director}  
District Director

**CERTIFICATE OF SERVICE**

I hereby certify that on  
sent by regular mail to the following:

a copy of the Director's Order was

*Addressee*  
*Address*  
*City, State, Zip*

{Name of District Director}  
District Director