

EEOICP Memorandum

Date: 10/9/01

To: District Offices

From: Branch of Policies, Regulations and Procedures

Re: Definition of “covered beryllium employee”

Questions have arisen from various sources regarding the definition of “covered beryllium employee” in section 3621(7) of the Energy Employees Occupational Illness Compensation Act (EEOICPA). The purpose of this memorandum is to provide clarification of that term.

Section 3621(7) defines a “covered beryllium employee” as including a “current or former employee of a beryllium vendor ... during the period when the vendor was engaged in activities related to the production or processing of beryllium for sale to, or use by, the Department of Energy.” Section 3621(6) identifies eight entities as beryllium vendors under the Act. The eight entities were identified by name, without limiting the definition to specific locations or facilities that actually processed beryllium on behalf of the DOE [those eight companies are the following: Atomics International; Brush Wellman, Incorporated, and its predecessor, Brush Beryllium Company; General Atomics; General Electric Company; NGK Metals Corporation and its predecessors, Kawecki-Berylco, Cabot Corporation, BerylCo, and Beryllium Corporation of America; Nuclear Materials and Equipment Corporation; StarMet Corporation and its predecessor, Nuclear Metals, Incorporated; Wyman Gordan, Incorporated].

Thus, any employee of a corporation that is defined as a beryllium vendor in the statute is a “covered beryllium employee” if he or she was employed by that corporation **at any time that the corporation produced or processed beryllium for the Department of Energy (DOE) at any of its facilities**. For example, if an individual was employed by General Electric in Phoenix during a period of time when GE was processing beryllium on behalf of DOE in Amarillo, the individual working for GE in Phoenix would be considered a “covered beryllium employee” under the Act. GE is one of the eight corporation defined as vendors in the Act, and the individual worked for GE during a time when GE was processing beryllium for DOE.

DOE is authorized by section 3622 of the Act and Executive Order 13179 to designate additional beryllium vendors in addition to the eight specifically listed in the statute. DOE has published a list in the Federal Register (66 FR 31218, June 11, 2001) identifying additional beryllium vendors (as well as atomic weapons employers and DOE facilities). These additional beryllium vendors were designated by facility, rather than by corporate name. Thus, in order for an employee who worked for a beryllium vendor

listed in the Federal Register that is not one of the eight corporations listed in the Act to be considered a “covered beryllium employee,” he or she must have worked **at the identified facility when the facility produced or processed beryllium for DOE**. Note that certain facilities of the eight entities defined in the statute as beryllium vendors appear on the Federal Register list. Employees of those entities, including employees at those facilities, meet the definition of “covered beryllium employee” if they worked for the entity at any time it produced or processed beryllium for DOE.

You should also note that for a “covered beryllium employee” to receive benefits under the EEOICPA, that individual (or his or her eligible survivor) must establish not only that the employee was a “covered beryllium employee,” but that the employee was exposed to beryllium in the performance of duty as specified in section 3623(a) of the EEOICPA, which requires presence at a DOE or beryllium vendor facility when beryllium dust, particles or vapor may have been present. This section, does not however, require a claimant to establish that the beryllium to which the employee was exposed have been processed or produced for DOE.

SUPERSEDED