Action Items and Advisory Board Requests
November 14-15, 2018 Meeting
Washington, DC

- **How many cases have been reopened as a result of Board recommendations?**

  DEEOIC has published Bulletin 19-03, which provides guidance to staff for the implementation of a review of 2,010 potentially effected cases due to the changes to causation standards updated as part of Version 2.3 of the Federal (EEOICPA) Procedure Manual. For each case identified as part of the screening process described in the bulletin that is likely to change from a denial to an acceptance due to changes to causation standards, DEEOIC will reopen the claim and it will issue a new recommendation. DEOIC is currently working with the District and FAB offices to determine a schedule for completing these reviews.

  Online link:

  https://www.dol.gov/owcp/energy/regs/compliance/PolicyandProcedures/finalbulletinshtml/EEOICPABulletin19-03.htm

- **Send the training page link again:**

  http://esa.esa.dol.gov/owcp/deeoic/NAT/Web_Training/training.htm

- **The Board requests to meet the DEEOIC Medical Director and Toxicologist in person**

  DEEOIC does not consider it appropriate to permit staff employees, including the Medical Director or Toxicologist, to interact with the Board in a public forum. DEEOIC requests that the Board submit any questions relating to medical health science topics to the program in writing. Attached to this submission is the current Curriculum Vitae for Dr. Armstrong (Medical Director) and Dr. Stokes (Toxicologist).

- **The Board would like to see annual statistics on cases and claims (Annual Report numbers for Part B versus Part E), especially by year for the most recent four years.**

  Attached to this submission is the annual web statistics for 2015 to 2018.

- **What percentage of cases now go to an IH? Are there categories of reasons for why cases are sent to an IH?**

  Generally, an IH referral will occur when certain criteria are satisfied, as described in the Federal (EEOICPA) Procedure Manual (PM) Chapter 15 (Version 2.3):

  1. Given the claim filed, DEEOIC obtains evidence to establish that an employee has a diagnosed medical illness and that the employee has verified covered Part E employment.

  2. DEEOIC then seeks to establish that the diagnosed illness has a medical health science link (health effect) to a particular toxic substance. To do this, DEEOIC applies health effect data

maintained in SEM or the opinion of a claimant's physician to determine such linkages. See PM 15.3 for more information.

3. Employment evidence from different sources can establish a potential exposure by the employee to one (or more) toxic substances that have a health effect link to the diagnosed condition. See PM 15.9 for more information.

Once these conditions are satisfied, DEEOIC will usually submit the claim, including relevant exposure data from the claim or developed by a CE, to the IH for a more detailed characterization of the employee's likely exposure (See PM 15.11). Depending on the unique features of a claim, validation of potential exposure by SEM or other records sources may not require an IH referral.

DEEOIC is developing a report that will identify the total number of Part E claims filed with a final decision to accept or deny that have an IH referral. DEEOIC will share the report with the Board once it becomes available.

- **Accountability review findings – please provide the online link:**

  https://www.dol.gov/owcp/energy/regs/compliance/accountability_reviews.htm

- **The Board requests to see the drafts of documents that will address auditing of industrial hygiene work and reports.**

  All IH referral reports undergo individual screening and/or certification by the Lead Industrial Hygienist for consistency and quality. Moreover, DEEOIC also evaluates the quality of IH development during the annual Accountability Review conducted for each district office. There are no further audits outside of these processes.

- **When will the medical audits conducted after 4th quarter 2017 and for 2018 be posted online?**

  Currently, DEEOIC has posted the quarterly audits through the 1st quarter of 2018. DEEOIC uploads all audit reports, as they become available, at the following online link:

  https://www.dol.gov/owcp/energy/regs/compliance/cmc_audits.htm

- **The Board requests, if they exist, the listing(s) of scientific articles or sources in support of Exhibits 15-4 and 18-1.**

  The causation and exposure standards listed in Exhibit 15-4 have developed over time, with some influenced by input from the Board. It would be helpful if the Board could identify particular standards that are the focus of interest so DEEOIC can provide background information.

  Attached to this submission is a contractor analysis Econometrica, Inc conducted in 2005, which is the source for Exhibit 18-1.

- **How many claims are there for Parkinson's/Parkinsonism/related conditions?**

  DEEOIC has generated a report of all claims filed with the following ICD-9/10 coding:

  ICD-9
  332 Parkinson's disease
  332.1 Secondary Parkinsonism
  332.0 Paralysis agitans

  ICD-10
  G20 Parkinson's disease
  Hemiparkinsonism
  Idiopathic Parkinsonism or
  Parkinson's disease
  Paralysis agitans
  Parkinsonism or Parkinson's disease NOS
  G21-G21.9 Secondary Parkinsonism
  G31.83- Dementia with Parkinsonism

- **Is it possible to see recent data on claim filings from different specific DOE sites? #claims filed and accepted or denied by DOE site for recent 3 years (by year and by B versus E) would be a useful starting point.**

  DEEOIC does not keep data on the number of claims by DOE site. A given claim can include employment from multiple sites. DEEOIC does not understand the nature of this request and it asks the Board to provide clarification and specifically link the request to one of its assigned responsibilities.

- **Information/data on the volume of public submissions to SEM, and the turnaround time, that is, are they verified or not and how long it takes to make a decision on them?**

  For CY2016, CY2017 and CY2018, there were 62, 62 and 57 submissions to the SEM website, respectively and the average response time was 6.0 days, 6.6 days and 4.5 days, respectively. The actual response time is extended when DOE verification of submitted information is necessary.

  The average response time to the submitter includes: receipt, verification, research, and submittal of a draft reply to DOL; editing (if needed) and approval of the draft reply by DOL; and transmission of the approved reply to the submitter by the SEM Site Administrator.

  Public submittals to the SEM website or by mail can be generally classified as seeking information, suggesting changes in SEM, or being inappropriate for further evaluation.

Submissions are considered valid except in those rare cases when they are obviously submitted in error, e.g., inputs for work in non-DOE facilities.

If a document authored by DOE is submitted, it is used without further verification unless there is reason to question its authenticity. In such cases, the SEM contractor contacts DOE for verification. Sometimes documents are submitted that the submitter says were authored by DOE but have no identifying markings. In these situations, the SEM contractor contacts DOE to verify the document prior to use in SEM. The public often submits suggestions with no or inadequate supportive documentation. In such cases, the submitter is requested to provide documentation that supports their submittal. Documentation submitted with requests to make changes in health effects are provided to Dr. Jay Brown, Haz-Map, for evaluation.

- **Once aware of a new record/record source for the SEM, how does DOL (or the contractor) analyze the information for particular locations to make decisions about whether or how to add the new record(s) to the SEM? How and which Paragon staff evaluate the information?**

  A record used to make changes in SEM is one that provides valid information (1) specific to a DOE or RECA site, (2) applicable to many/all DOE or RECA sites, or (3) is not applicable to a DOE site but is applicable to SEM health effects and chemicals. Information specific to a DOE or RECA site is applied only to the SEM profile for that site. Information applicable to multiple sites is applied to the SEM profiles of all those sites. General information is applied to the SEM profile of the involved chemical or health effects.

  How to add information to SEM is defined in SEM procedures. SEM team members involved with the review of source documents are engineers, chemists, technical managers, or similar with education and experience in the review of technical information. All have work experience in nuclear facilities and most have experience in DOE facilities where they authored and/or used such documents in the past.

  SEM team members and Dr. Jay Brown review and evaluate the usefulness of resource materials. Chemical information is reviewed almost exclusively by the project chemist. Disease information is reviewed by Dr. Jay Brown. Site-specific information about labor categories, work processes, incidents and toxic material usage is evaluated by SEM researchers and the project manager. In all cases, staff with the National Office reviews and approves new information included in SEM.

- **Could the Solicitor's Office and the EEOICP explain how they interpret the statute regarding the definition of "toxic substance"?**

  The regulatory definition of "toxic substance" used by the Department of Labor originates from the definition of that term that the Department of Energy (DOE) used to administer former Part D of the Act. With the repeal of Part D in 2004, and the transference of all of the requests for assistance that had been filed with DOE to DOL for processing as claims under the newly

enacted Part E, DOL adopted DOE's definition of "toxic substance" when it promulgated its regulations for administering those claims, since it would have been unfair to change the meaning of the term from what had been used by DOE.

To further elaborate, DOL also refers the Board to the Act itself at 42 U.S.C. § 7385s-4(c)(1) which states:

> (1) In any other case, a Department of Energy contractor employee shall be determined for purposes of this part to have contracted a covered illness through exposure at a Department of Energy facility if—
>
> > (A) it is at least as likely as not that exposure to a toxic substance at a Department of Energy facility was a significant factor in aggravating, contributing to, or causing the illness; and
> >
> > (B) it is at least as likely as not that the exposure to such toxic substance was related to employment at a Department of Energy facility.

This section of the law speaks to substances, not states of matter (vapors, gases, dusts and fumes) as the Board has discussed in prior interactions with the program. Accordingly, the regulatory definition of a toxic substance applies to a material that has the potential to cause illness or death due to its radioactive, chemical, or biological nature.

Definition from DEEOIC Regulations 20 C.F.R § 30.5(ii) :

Toxic substance means any material that has the potential to cause illness or death because of its radioactive, chemical, or biological nature.

Online link:

https://www.dol.gov/owcp/energy/regs/compliance/law/FinalRuleInRegister.pdf

Definition from Federal (EEOICPA) Procedure Manual (Version 2.3) Chapter 15.2:

Toxic Substances. The program defines a toxic substance as any material that has the potential to aggravate, contribute to, or cause an illness or death because of its radiological, chemical, or biological nature.

> a. A substance is considered a physical material and not a field or a wave. Therefore, DEEOIC does not recognize noise, radio waves, microwaves, infrared light waves, or visible light waves as toxic substances.
>
> b. Radioactive substances are toxic substances for purposes of Part E adjudication.

Online link:

https://www.dol.gov/owcp/energy/regs/compliance/PolicyandProcedures/procedure_manual_2.3-2018.07.pdf

In addition to this, the program has a statutory duty to identify the actual toxic substance that an employee encountered, because the program has to offset any award of compensation against a tort recovery for the same exposure. Similarly, the program has a statutory duty to coordinate an award with a State Workers Compensation payment for the same covered illness, and the regulatory definition of a covered illness at 20 CFR 30.5(r) is "an illness or death resulting from exposure to a toxic substance."

- **Is there a process for the IH to ask questions or ask for additional information without interviewing the claimant?**

  Yes, the IH can contact a CE directly (or vice versa) to ask questions or seek clarification on any referral.

  From the Federal (EEOICPA) Procedure Manual (version 2.3) Chapter 15.11a(2):

  > The IH may also assist the CE in making determinations regarding likely exposure when the evidence is unclear or inconsistent. This may include issues with routes of exposure (e.g., whether a toxic substance would have been encountered through inhalation, skin contact, skin absorption, or ingestion). This may also include issues with claimed exposures where the evidence is insufficient to suggest the possibility or the evidence is not consistent. For example, an IH can confirm whether or not a toxic substance was encountered in a certain labor category or during a certain work process. This can be accomplished by phone, email, or through formal referral if deemed appropriate by the NO [National Office] IH. The CE then documents both the inquiry and the response in the case file.

- **Is there information in SEM or otherwise on bystander exposures across the sites?**

  No

- **How many conditions are in SEM? How many aliases are there in the SEM? Are aliases used elsewhere besides the SEM?**

  There are 124 active occupational diseases currently in SEM. There are 237 occupational disease aliases currently in SEM. The aliases in SEM come primarily from Haz-Map. There are a few based on DOL-National Office policy decisions.