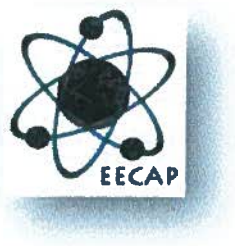


DEEOIC's Proposed Rules Changes: Additional Facts

§30.5(x)(2)(iii) would cut off compensation and medical care for sick workers who delivered and removed materials at DOE facilities:

- **1080** claimants have already filed claims
- **347** sick workers have already been compensated and received medical benefits for delivering and removing the same materials

§30.205(j) and 30.206(a) changes the definition of a beryllium vendor site and would:

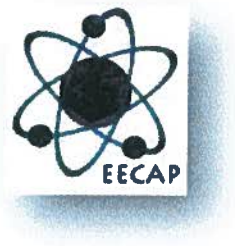
- Remove **80%** of the beryllium vendor sites from EEOICPA
  - There are currently **75** beryllium vendor sites
  - Only **15** of them fit into the new definition

§30.230 and §30.5(w) establish a start date before which sick workers could not file claims:

- More than **251** claims have already been filed before either of DOL's proposed start dates
  - **124** of those claims were approved and paid
- There is no start date in the statute

§30.232(b) requires a "fully rationalized medical report" from a sick workers' doctor

- These reports take between **6-10 hours** to write
- Most treating physicians are not capable, nor have the time, to write such a report
- Of over 200 Parkinson's disease claims from June 27, 2006-February 5, 2014 **0%** treating physicians' reports were deemed probative enough to be used to approve a claim



Proposed Rules Changes

I was very happy to see that the Board will be reviewing DEEOIC's proposed rules changes. I suggest that more time will be needed than until early May. A lot of the implications of the changes are not immediately obvious and it will take a lot of work to truly understand how these changes will impact the sick workers. I encourage the Board to review the rules, line by line, and consult with the advocate community on the potential problems they see with the changes.

DOL published two documents on what the Board can and cannot weigh in on. That DOL would try to control a non-independent Board was one of the advocates' main concerns and part of why we advocated for an independent board. I do not feel that it is appropriate for DOL to dictate what the board can and cannot review. The Board needs the flexibility to investigate what they feel is relevant and the legislation which established the board allows for this.

EECAP has already made detailed public comments on the rules changes but here is some additional information on several sections.

- §30.5(x)(2)(iii) restricts the definition of who is eligible for EEOICPA by removing workers who provided "delivery or removal of goods from the premises of a DOE facility". A look at previous claims shows that around **1080** claims filed for people "delivering or removing goods" have been adjudicated with 347 of those claims being approved and 589 being denied. These previously approved claims have paid $77,739,510 in compensation and $14,058,821 in medical benefits to these sick workers. It seems arbitrary and capricious to restrict eligibility for workers transporting goods so late in the program's history, especially when so many of the claims were approved and paid.
- §30.205(j) and 30.206(a) redefine who is covered for beryllium claims by removing the phrase, "or a facility owned, operated, or occupied by a beryllium vendor" and changing it to "a facility owned **and** operated by a beryllium vendor". A review of current beryllium vendors shows that this wording will remove 80% of them from EEOICPA. Of the current 75 beryllium vendor sites only 15 of them are "a facility owned and operated by a beryllium vendor".
- §30.230 and §30.5(w) offer two different dates (August 13 and January 1, 1942) to be used as the earliest any claimant can claim coverage under EEOICPA. The Einstein/Szilard letter to President Roosevelt recommending the US begin the nuclear program was dated August 2, 1939. According to *DOE's Manhattan*

District History, Book 1, Vol 1[1], a memo, dated February 20, 1940, discussed the first transfer of funds for the Manhattan Project. I suggest that either of those dates would be better than DOL's suggested dates, **if** it is appropriate to dictate a start date to eligibility.

  - In reviewing DOL's data, there have been **251** claims filed with employment dates between January 1, 1939 and August 1, 1942. Of those claims 124 were approved and 96 were denied. Setting a 1942 employment start date is inequitable for any claimants with work in the early years who have not yet filed claims.

- §30.232(b) requires a "fully rationalized medical report". Doctors who have written these reports say such a report takes between 6-10 hours to write. However most doctors do not have the experience, let along the time, to provide a report which meets DEEOIC's requirements. This means many valid claims are denied. This is a major stumbling block for most claimants. EECAP investigated Parkinson's disease claims[2] from June 27, 2006 to February 5, 2014 and found that NO personal physicians' reports led to any claims' approvals.
  - In October 2014 DEEOIC finally approved **one** Parkinson's claim based on a non-DOL physician's letter[3]. This claim is especially interesting because DEEOIC had previously denied it numerous times based on D/CMCs' reports.
    - One in 2008 from Dr. Hunt[4]
    - Two in 2009 from Dr. Orgel[5], which needed a further clarification[6]
    - One in 2013 from Dr. Gresch[7]
    - Between the letters from Dr. Orgel and Dr. Gresh an independent physician provided a report[8] recommending the claim be approved which DEEOIC found not to be "probative" enough, partly because of spelling and cut and paste errors. Unlike the letter from Dr. Orgel the claims examiner did not ask this doctor for clarification. In many ways this letter was more detailed than the D/CMC reports.
- DOL's document, *Recommendation: proposed changes not within the scope of the Advisory Board*, discusses changes in sections §30.700 to 30.726. OWCP states these changes are being made to conform to existing FECA regulatory schemes.

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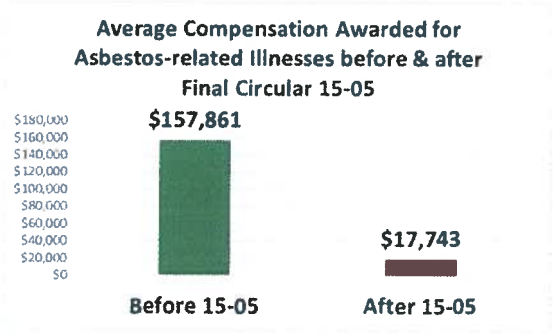
[1] http://www.osti.gov/includes/opennet/includes/MED_scans/Book%201%20-%20General%20-%20Volume%201%20-%20General.pdf
[2] http://www.eecap.org/PDF_Files/EECAP/2014-10-27_pd_fd_report.pdf
[3] http://www.eecap.org/PDF_Files/Claim_Examp/2014-10-15_dr_letter_red.pdf
[4] http://www.eecap.org/PDF_Files/Claim_Examp/2008-12-27_Hunt_Report_Redacted.pdf
[5] http://www.eecap.org/PDF_Files/Claim_Examp/2009-7-13_Orgel_DMC_report_Redacted.pdf
[6] http://www.eecap.org/PDF_Files/Claim_Examp/2009-8-7_Orgel_DMC_report_Redacted.pdf
[7] http://www.eecap.org/PDF_Files/Claim_Examp/2013-6-14_cmc_report_red.pdf
[8] http://www.eecap.org/PDF_Files/Claim_Examp/2009-3-18_UC_Freeman_report_Redacted.pdf

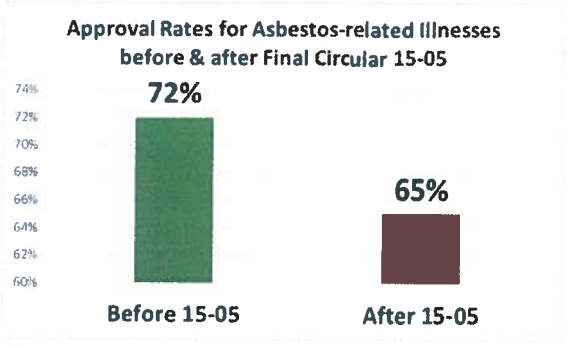
EEOICPA and FECA are very different programs. EEOICPA is a remedial statute and must be interpreted more liberally than FECA, which is not remedial. While I know it is a pain for OWCP to have to administer the two programs differently it is improper to cut claimants' benefits and increase claimants' burden of proof for their administrative convenience.

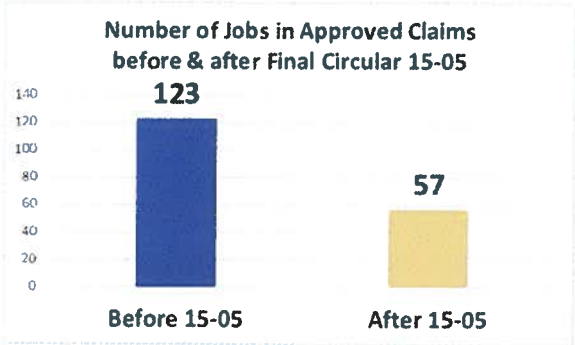
For additional EECAP comments on DOL's proposed rules changes: http://www.eecap.org/EECAP_blog.htm *Understanding DOL's Rules Changes, Parts 1-7*

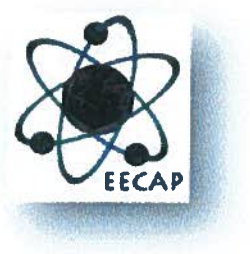
Final Circular 15-05: How It affects Asbestos-related Illnesses Approval Rates

- **$157,861**—average compensation paid per worker before Final Circular 15-05
- **$17,743**—average compensation paid per worker after Final Circular 15-05
- **72%** of cases were approved before Final Circular 15-05
- **65%** of cases were approved after Final Circular 15-05
- **57** jobs are covered in Final Circular 15-05
- **123** jobs with approved claims before Final Circular 15-05
    a. Jobs before Final Circular 15-05 were self-reported when claim was filed









Final Circular 15-05: How It affects Asbestos-related Illnesses Approval Rates

DOL issued *Final Circular 15-05, Occupational Exposure Guidance Relating to Asbestos*, on December 17, 2014. Advocates have had grave concerns about this circular, as well as its cousin, 15-06, since their release.

This circular greatly increases claimants' burden of proof as they now need to prove that DOE was behaving in a way that contradicted their asbestos safety policies for each individual claim with work dates after 1986 for an asbestos-related illness claim to be approved. EEOICPA was established, partly, because exposure records did not exist, had been falsified, or destroyed. This circular puts claimants in a Catch-22 situation of providing documentation that may not exist.

EEOICPA was also implemented because DOE lied to the workers about their safety and did not follow their published safety guidelines. Why did DOL decide DOE suddenly began telling the truth in 1986?

Does this document actually represent a policy change rather than just providing guidance to Claims Examiners as is the role of circulars?

I analyzed historical claim payment data for asbestos-related illnesses from the beginning of EEOICPA through July 23, 2015 and found some interesting facts.

Final Circular 15-05 lists only 57 covered jobs. If you don't have one of these jobs and cannot prove exposure your claim will be denied. Historically, claims have been approved on workers holding one or more of 123 jobs. This means that 15-05 will only approve 46% of jobs that have been approved in the past. This makes it much harder, if not impossible, for workers without one of the 57 jobs listed in 15-05 to get their claim approved.

- Prior to 15-05's start date of December 17, 2014
  - 3289 cases were filed which contained a claimed condition of some type of asbestos related illness
    - 2362 of these cases were approved
      - 72% approval rate
      - Average compensation per worker of $157,861
  - The 5 most often compensated job titles (in order) before December 17th were:
    - Pipefitter—10%
    - Electrician—9%

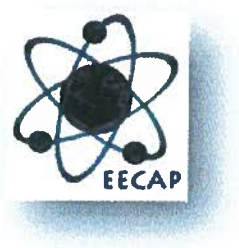
        - Laborer—8%
        - Carpenter—4%
        - Sheet Metal Worker—3%

    - After 15-05's start date of December 17, 2014
    - 57 cases were filed which contained a claimed condition of some type of asbestos related illness
        - 37 of these cases were approved
            - 65% approval rate
            - Average compensation per worker of $17,743, which is about 11% of the pre-15-05 rate
    - The 5 most often compensated job titles (in order) after December 17th were:
        - Laborer—9%
        - Sheet Metal Worker—7%
        - Machinist—5%
        - Janitor—5%
        - Pipefitter—5%

Sheet metal worker, one of the top five jobs approved before December 17, 2014 is not even listed in Final Bulletin 15-05.

Is it fair to people who applied for EEOICPA coverage after the release of Final Circular 15-05 to be held to a different standard than workers who applied before December 17, 2014? The program is 16 years old. It seems a little late to make such substantial changes in claims adjudication.

For more in depth analysis on this issue please see the April 14, 2016 Radioactive Daughter Blog (http://www.eecap.org/EECAP_blog.htm).



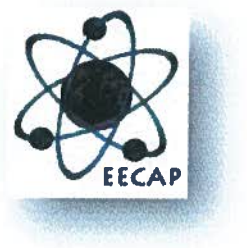
Final Circular 15-05: Jobs Historically Paid for Asbestos-related Illnesses before December 17, 2014

1. area mechanic maintenance
2. asbestos worker
3. assembler
4. barrier operator
5. boiler operator
6. boilermaker
7. brick mason
8. bricklayer
9. bus driver
10. carpenter
11. cement mason supervisor
12. chemical engineer
13. chemical hot cell technic
14. chemical operator
15. chemical operator supervisor
16. chemical processing
17. chemical technician
18. clerk
19. clerk packer
20. construction
21. construction foreman
22. construction laborer
23. consultant engineer
24. d&d worker
25. draftsman
26. driver
27. electrical engineer
28. electrical worker

29. electrician
30. electrician supervision
31. electronic tech
32. engineer
33. engineering assistant
34. engineering technologist
35. escort
36. experimental operator
37. extra heavy duty driver
38. fabrication shop
39. field mechanic
40. fire chief
41. fireman
42. fitter
43. foreman sheet metal
44. foreman, sup -power
45. general maintenance
46. health and safety technician
47. heavy equipment mechanic
48. high voltage electrician
49. hot cell technician
50. inspections
51. insulation apprentice
52. insulation helper
53. insulation installer
54. insulation worker
55. insulator
56. janitor
57. jr engineer technician
58. lab technician
59. laboratory supervisor
60. laborer
61. line1 -truck driver
62. lineman
63. machine operator
64. machinist
65. mailroom clerk
66. maintenance
67. maintenance machinist
68. maintenance mechanic
69. maintenance milling
70. maintenance supervisor

71. maintenance worker
72. manufacturing technician
73. material handler
74. mechanic
75. mechanic maintenance
76. mechanical maintenance foreman
77. mechanical supervisor
78. metallurgist
79. metallurgy researcher
80. millwright
81. operation specialist
82. operations
83. operator
84. operator supervisor
85. painter
86. pipefitter
87. pipefitter welder
88. pipewelder
89. plant engineer
90. plumber
91. pneumatic tool repair
92. power department
93. process operator
94. production boilermaker
95. production operator
96. production process operator
97. production worker
98. program manager
99. radiation control supervisor
100. radiation monitor
101. radiation safety officer
102. radiation supervisor
103. reactor operator
104. research metallurgist
105. science technician
106. security
107. security guard
108. Security inspector
109. sheet metal worker
110. site security worker
111. station operator engineer
112. steam-pipefitter

113. steel worker
114. supervisor
115. tech support
116. technician
117. tour guide
118. transport-laundry tech
119. truck driver
120. utility mechanic
121. vacuum operator
122. warehouse
123. welder



Final Circular 15-05: Jobs Covered for Asbestos-related Illnesses within Circular

1. Automotive mechanic
2. Boilermaker
3. Brick & tile mason
4. Bricklayer
5. Carpenter
6. Concrete and terrazzo worker
7. Demolition technician
8. Drywaller
9. Electrical mechanic
10. Electrician
11. Electrician
12. Floor covering worker
13. Furnace & saw operator
14. Furnace builder
15. Furnace operator
16. Furnace puller
17. Furnace technician
18. Furnace tender
19. Furnace unloader
20. Glass installer
21. Glazer
22. Glazier
23. Grinder operator
24. Heavy equipment operator
25. Insulation trade worker
26. Insulation worker
27. Insulator
28. Insulator
29. Ironworker
30. Ironworker-rigger
31. Laborer
32. Machinist (machine grinding)

33. Maintenance mechanic
34. Maintenance mechanic (general grinding)
35. Mason
36. Mason (concrete grinding)
37. Millwright
38. Operating Engineer
39. Painter
40. Pipefitter
41. Plasterer
42. Plumber steamfitter
43. Plumber/pipefitter
44. Plumbing & pipefitting mechanic
45. Plumbing technician
46. Roofer
47. Sheet metal fabricator/installer
48. Sheet metal mechanic
49. Steamfitter
50. Tilesetter
51. Tool grinder
52. Vehicle maintenance mechanic
53. Vehicle mechanic
54. Welder
55. Welder (general grinding)
56. Welder burner
57. Welder mechanic