

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND THE U.S. DEPARTMENT OF LABOR**

I. INTRODUCTION

This Memorandum of Understanding (MOU) serves to set forth the authorities, responsibilities, and procedures by which the Department of Labor (DOL) and the Department of Health and Human Services (HHS) will conduct statutorily mandated activities required to assist with claims processing under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA or Act). EEOICPA provides for timely, uniform, and adequate compensation of covered employees and, where applicable, survivors of such employees.

DOL and HHS will make every effort to ensure that activities conducted under this MOU, as well as those conducted through other mechanisms, are coordinated, nonduplicative, and supportive of a fair and timely compensation program for these workers and their survivors.

II. BACKGROUND

Part B of EEOICPA establishes a compensation program to provide lump-sum payments and medical benefits as compensation to covered employees suffering from designated illnesses that occurred as a result of their exposure to radiation, beryllium, or silica while in the performance of duty for Department of Energy (DOE) and certain of its vendors, contractors, and subcontractors. This law also provides for compensation payments to certain survivors of covered employees. In the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108-375 (codified as amended in scattered sections of Title 42 of the U.S.C.), Congress abolished Part D of EEOICPA and created a new Part E in its place. Part E established a new system of Federal payments for employees of DOE contractors and subcontractors, or their eligible survivors, who develop an illness due to exposure to toxic substances at certain DOE facilities.

EEOICPA instructed the President to carry out the compensation program under Part B through one or more Federal Agencies or officials as designated by the President. Pursuant to this statutory provision, the President issued Executive Order 13179 (E.O. 13179), entitled "Providing Compensation to America's Nuclear Weapons Workers," which assigned primary responsibility for administering the compensation program under Part B to DOL. This Executive Order assigned certain specific responsibilities to DOL and HHS that are enumerated in other sections of this MOU. EEOICPA also instructed the President to establish and appoint an Advisory Board on Radiation and Worker Health (ABRWH or Advisory Board).

III. PURPOSE

This MOU sets forth the guidelines for collaboration between DOL and HHS in carrying out their respective responsibilities under EEOICPA and E.O. 13179. This MOU is not intended to affect existing MOUs and Interagency Agreements (IA) between DOL and HHS or to preclude DOL and HHS from entering into MOUs and IAs for other purposes.

IV. AUTHORITIES

This MOU is consistent with, and is entered into under, the authority of EEOICPA and E.O. 13179.

V. RESPONSIBILITIES

A. General – Executive Order 13179

The responsibilities assigned to DOL by E.O. 13179 that are relevant to actual or potential interactions between DOL and HHS are as follows:

1. Administer and decide all questions arising under the Act not assigned to other agencies by the Act or by E.O. 13179, including determining the eligibility of individuals with covered occupational illnesses and their survivors and adjudicating claims for compensation and benefits.
2. Ensure the availability, in paper and electronic format, of forms necessary for making claims under EEOICPA.

The responsibilities assigned to HHS by E.O. 13179 that are relevant to actual or potential interactions between HHS and DOL are as follows:

1. Promulgate regulations establishing:
 - (a) guidelines to assess the likelihood that an individual with cancer sustained the cancer in the performance of duty at a DOE facility or an atomic weapons employer (AWE) facility (42 C.F.R. pt. 81, “Guidelines for Determining the Probability of Causation under EEOICPA”); and
 - (b) methods for arriving at, and providing reasonable estimates of, the radiation doses received by individuals applying for assistance under EEOICPA for whom there may be inadequate records of radiation exposure (42 C.F.R. pt. 82, “Methods for Radiation Dose Reconstruction under EEOICPA”).
2. Develop and implement procedures for considering and issuing determinations on petitions by classes of employees to be treated as members of the Special Exposure Cohort (SEC) (42 C.F.R. pt. 83, “Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort under EEOICPA”).

3. With the assistance of DOL, apply the methods developed under 1(b) above to estimate the radiation doses received by individuals applying for assistance under EEOICPA.

4. Provide the ABRWH with administrative services, funds, facilities, staff, and other necessary support services to carry out its functions under EEOICPA and the Federal Advisory Committee Act.

B. DOL Responsibilities

1. Provision of Data to HHS

Upon request by HHS, or upon request by DOL for a dose reconstruction, and consistent with applicable law, DOL will provide HHS and HHS contractors with access to, and copies of, data, documents, and information deemed by HHS to be relevant and necessary for carrying out its responsibilities under EEOICPA, including estimating radiation doses for individual-covered employees with cancer, conducting reworks of dose reconstructions when new information is available, conducting special reviews of dose reconstruction methodology such as Program Evaluation Reports (PERs), evaluating petitions by classes of employees for inclusion in the SEC, and evaluating residual contamination at AWEs and beryllium vendors.

DOL and HHS acknowledge that the actual data necessary to complete the responsibilities assigned to HHS will vary. DOL and HHS also recognize that information about worker exposures will vary from site to site. The Agencies will work cooperatively to coordinate research and data retrieval activities to assist in an efficient and effective claims process. DOL has established a Privacy Act System of Records, which includes the necessary routine uses required to carry out EEOICPA responsibilities for the following system of record:

(1) DOL/ESA-49, "Office of Workers' Compensation Programs, Energy Employees Occupational Illness Compensation Program Act File," established on April 8, 2002.

2. Protection of Personally Identifiable Information

Information determined to be Personally Identifiable Information (PII) must be protected in accordance with relevant statutes, Office of Management and Budget (OMB) guidelines, and DOL and HHS regulations and policies. HHS Privacy Act regulations are found at 45 C.F.R. pt. 5b, and HHS policies regarding PII may be found at <http://www.HHS.gov>. DOL Privacy Act regulations are found at 29 C.F.R. pt. 71, and DOL policies regarding PII may be found at <http://www.DOL.gov>.

For this MOU, all parties agree that PII must be protected in accordance with the Privacy Act of 1974, OMB Circular No. A-130, "Management of Federal Information Resources," and each Agency's departmental policies. Transmission of data between

Agencies will be in accordance with agreed-upon protocols, which will, at a minimum, include the following requirements:

1. Data stored on removable media (CD, DVD, USB Flash Drives, etc.) must be protected using encryption products that are Federal Information Processing Standards (FIPS) 140-2 certified.
2. Passwords used in conjunction with FIPS 140-2 certified encryption must meet the current DOL password requirements (which at this time include a minimum of 8 characters with at least one uppercase letter, one lowercase letter, one numeral (numbers 0-9), and one special character (!@#\$\$&)).
3. Transmission of removable media must be sent by express overnight service with signature and tracking required.
4. Data files containing PII that are being sent by e-mail must be encrypted with FIPS 140-2 certified encryption products.
5. Passwords used to encrypt data files must be sent separately from the encrypted data file (i.e., separate e-mail, telephone call, or separate letter).
6. Web sites established for the submission of information that includes PII must use FIPS 140-2 certified encryption methods.
7. In addition to other reporting requirements, the loss, or suspected loss, of PII must be reported immediately upon discovery to:

(a) For DOL, the DOL PII Breach Response Team (<http://www.dol.gov/owcp/procedure-manual/privacy.pdf>) and the HHS PII Breach Response Team.

(b) For HHS, the HHS PII Breach Response Team (<http://www.hhs.gov/ocio/policy/20080001.003.html>) and the DOL PII Breach Response Team.

3. Provision of Other Technical Assistance to HHS

DOL will provide assistance to HHS, upon request, in identifying and accessing information needed to reconstruct radiation doses and evaluate petitions from classes of workers to be included in the SEC, and for claims and petitions received from current and former employees and survivors at DOE and AWE facilities. Other technical assistance will be provided to HHS, upon request, to aid in the development of strategies to identify and prioritize for study DOE/AWE or beryllium vendor facilities where significant contamination may have remained after activities relating to the production of nuclear weapons were discontinued.

4. Timeliness of Provision of Information and Technical Assistance

DOL recognizes that time is of the essence in terms of providing information to HHS. DOL will provide all requested information to HHS in a timely and efficient manner. If the requested information cannot be provided in a timely manner, DOL will provide whatever portion of the requested information is available, as well as an estimate of when the remaining information will be produced. Following transmission of this estimate, DOL will continue to work to provide all requested information to HHS as quickly as possible, unless HHS notifies DOL that the remaining information is not required.

5. Outreach

DOL will coordinate outreach efforts with HHS to inform the public of changes to SEC classes or other related programmatic changes, as required. DOL will coordinate efforts of the Joint Outreach Task Force with HHS.

6. Official Point of Contact

DOL designates the following individual as the official point of contact for this MOU:

Name: Shelby Hallmark
Title: Director, Office of Workers' Compensation Programs
Address: 200 Constitution Avenue, NW
S-3524
Washington, DC 20210
Telephone: (202) 693-0031
Fax: (202) 693-1465

C. HHS Responsibilities

1. Identification of Data Needs

HHS will evaluate and identify the data, documents, and information that are relevant and necessary for carrying out its responsibilities under EEOICPA, including estimating radiation doses for individual-covered employees with cancer, conducting reworks of dose reconstructions when new information is available, conducting special reviews of dose reconstruction methodology such as Program Evaluation Reports (PERs), evaluating petitions by classes of employees for inclusion in the SEC, and evaluating residual contamination at facilities of both AWEs and beryllium vendors. Additionally, HHS will complete dose reconstructions for uranium miners and millers, as requested by DEEOIC.

In conducting these activities, HHS will strive for efficiency in collecting data. To accomplish this goal, HHS will search relevant in-house data sources to ensure that requests for access to necessary information are not duplicative. HHS will request only the data and information HHS believes are relevant to accomplish its duties under EEOICPA. In addition, as feasible, without delaying the individual dose reconstruction

process and the consideration of SEC petitions, HHS will work with DOL to identify pertinent existing databases and general information needs relevant for entire processes, buildings, employment groups, or facilities. This approach of first using HHS-held data and information and then collecting individualized data and, in parallel, seeking general and group data will facilitate timely and cost-efficient dose reconstructions and evaluation of SEC class petitions. It is expected that this approach will best enable the expeditious accretion of information and diminish the impact on DOL and HHS resources over time.

HHS is responsible for determining what data and information are necessary for completing its responsibilities under EEOICPA, including performing dose reconstructions and evaluating SEC petitions, responding to issues raised by the ABRWH and the Centers for Disease Control and Prevention (CDC) contractors, and completing special reviews of dose reconstruction methodology.

HHS will be responsible for the management of all data collected by HHS employees and contractors, including data obtained from DOL and its contractors. HHS employees and contractors will safeguard all data in accordance with the National Institute for Occupational Safety and Health (NIOSH) Division of Compensation Analysis and Support (DCAS) policies, as well as guidance under the HHS Information Security Program Policy (<http://www.hhs.gov/ocio/policy/2004-0002.001.html>)

HHS amended its Privacy Act Systems of Records for an existing NIOSH System of Records, 09-20-0147, "Occupational Health Epidemiologic Studies - HHS/CDC/NIOSH" on August 15, 2002, and September 29, 2003, to add new routine uses required to carry out EEOICPA responsibilities and to revise the system name.

2. Protection of Personally Identifiable Information

Information determined to be Personally Identifiable Information (PII) must be protected in accordance with relevant statutes, Office of Management and Budget (OMB) guidelines, and DOL and HHS regulations and policies. HHS Privacy Act regulations are found at 45 C.F.R. pt. 5b, and HHS policies regarding PII may be found at <http://www.HHS.gov>. DOL Privacy Act regulations are found at 29 C.F.R. pt. 71, and may be found at <http://www.DOL.gov>.

For this MOU, all parties agree that PII must be protected in accordance with the Privacy Act of 1974, OMB Circular No. A-130, "Management of Federal Information Resources," and each Agency's regulations and policies. Transmission of data between Agencies will be in accordance with agreed-upon protocols which will, at a minimum, include the following requirements:

1. Data stored on removable media (CD, DVD, USB Flash Drives, etc.) must be protected using encryption products that are Federal Information Processing Standards (FIPS) 140-2 certified.

2. Passwords used in conjunction with FIPS 140-2 certified encryption must meet the current HHS password requirements (which at this time include a minimum of 8 characters with at least one uppercase letter, one lowercase letter, one numeral (numbers 0-9), and one special character (!@#\$\$&)).
3. Transmission of removable media must be sent by express overnight service with signature and tracking required.
4. Data files containing PII that are being sent by e-mail must be encrypted with FIPS 140-2 certified encryption products.
5. Passwords used to encrypt data files must be sent separately from the encrypted data file (i.e., separate e-mail, telephone call, or separate letter).
6. Web sites established for the submission of information that includes PII must use FIPS 140-2 certified encryption methods.
7. Remote access to systems and databases that contain PII must use two-factor authentication for logon access control.
8. In addition to other reporting requirements, the loss, or suspected loss, of PII must be reported immediately upon discovery to:

(a) For HHS, the HHS PII Breach Response Team (<http://www.hhs.gov/ocio/policy/20080001.003.html>) and the DOL PII Breach Response Team.

(b) For DOL, the DOL PII Breach Response Team (<http://www.dol.gov/owcp/procedure-manual/privacy.pdf>) and the HHS PII Breach Response Team.

3. Requesting Data from DOL

HHS will direct requests to DOL for data, documents, and information deemed by HHS to be relevant and necessary for carrying out its responsibilities under EEOICPA, including estimating radiation doses for individual-covered employees with cancer, conducting reworks of dose reconstructions when new information is available, conducting special reviews of dose reconstruction methodology such as Program Evaluation Reports (PERs), evaluating petitions by classes of employees for inclusion in the SEC, and evaluating residual contamination at AWEs and beryllium vendors.

4. Programmatic Changes and Outreach

HHS will inform DOL of updates to SEC class definitions and changes in methodology (PERs) in a timely manner. HHS will coordinate outreach efforts with DOL to inform the public of changes to SEC classes or other related programmatic changes, as required.

5. Official Point of Contact

HHS designates the following individual as the official point of contact for this MOU:

Name: John Howard, MD
Title: Director, National Institute for Occupational Safety and Health
Address: Patriots Plaza Building
Suite 9200
395 E Street, SW
Washington, DC 20201
Telephone: (202) 245-0625
Fax: (202) 245-0628

VI. DISPOSITION OF RECORDS

Each party is to be responsible for the disposition of records in its possession in accordance with its own records retention authorities.

VII. RESPONDING TO FREEDOM OF INFORMATION ACT REQUESTS

Determinations regarding release of information exchanged pursuant to this MOU that is responsive to a valid request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, will be made by the Agency from which the information originated.

VIII. DURATION

This MOU will be effective for a period not to exceed three (3) years from the date of execution; however, it will be reviewed annually to ensure that the business need and details remain current.

IX. DISPUTE RESOLUTION

Any disputes under this agreement shall be resolved in the manner prescribed in Treasury Financial Manual, Volume I, Bulletin No. 2007-03, Attachment 1, sec. VII, as prescribed by OMB memo M-07-03.

X. EFFECT OF AGREEMENT

This agreement is an internal Government agreement and is not intended to confer any right upon any private person.

Nothing in this agreement shall be interpreted as limiting, superseding, or otherwise affecting either agency's normal operations or decisions in carrying out its statutory or regulatory duties. This agreement does not limit or restrict the parties from participating in similar activities or arrangement with other entities.

This agreement does not itself authorize the expenditure or reimbursement of any funds. Nothing in this agreement obligates the parties to expend appropriations or enter into any contract or other obligations.

This agreement will be executed in full compliance with the Privacy Act of 1974.

XI. MODIFICATION OR CANCELLATION

This MOU, or any of its specific provisions, may be cancelled or amended by mutual, written agreement of both parties at any time. Cancellation of this MOU by one of the parties may be accomplished by a 90-day advance written notification by either HHS or DOL to the other party.

XII. RESPONSIBLE OFFICIALS

U.S. DEPARTMENT OF LABOR

U.S. DEPARTMENT OF HEALTH
AND HUMAN SERVICES

By: [Signature on file]
Shelby Hallmark
Director
Office of Workers'
Compensation Programs

By: [Signature on file]
John Howard, M.D.
Director
National Institute for Occupational
Safety and Health

Date: 1/7/2011

Date: 1/14/2011