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

I. INTRODUCTION

This Memorandum of Understanding (MOU) serves to set forth the authorities, responsibilities, and procedures between the Department of Health and Human Services (HHS) and the Department of Energy (DOE) to conduct statutorily mandated activities required to assist with claims processing under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA). The EEOICPA provides for timely, uniform, and adequate compensation of covered employees and, where applicable, survivors of such employees suffering from illnesses incurred by such employees in the performance of duty.

HHS and DOE 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

The Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), Public Law 106-398, 114 Stat. 1654, 1654A-1231 (October 30, 2000), was enacted as Title XXXVI of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (42 U.S.C. § 7384 et seq.). 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 the Department of Energy and certain of its vendors, contractors, and subcontractors. This law also provides for compensation payments to certain survivors of covered employees. In addition, the law requires DOE to assist DOE contractor employees who have illnesses caused by exposure to a toxic substance at a DOE facility to obtain benefits from State workers' compensation programs.

EEOICPA instructed the President to designate one or more Federal agencies to carry out the compensation program. Pursuant to this statutory provision, the President issued Executive Order 13179, titled "Providing Compensation to America's Nuclear Weapons Workers," which assigned primary responsibility for administering the compensation program to the Department of Labor (DOL). This Executive Order assigned certain specific responsibilities to HHS and DOE 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.

III. PURPOSE

This MOU sets forth the guidelines for collaboration between HHS and DOE in carrying out their respective responsibilities under EEOICPA and Executive Order 13179. This MOU is not intended to affect existing MOUs and Interagency Agreements (IA) between HHS and DOE or to preclude HHS and DOE 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 Executive Order 13179.

V. RESPONSIBILITIES

A. GENERAL - Executive Order 13179

<u>The responsibilities assigned to HHS by Executive Order 13179 that are relevant to actual or potential interactions between HHS and DOE are as follows:</u>

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 facility (42 C.F.R. Part 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 are inadequate records of radiation exposure (42 C.F.R. Part 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. Part 83, Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort under EEOICPA, proposed June 25, 2002).

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

4. Upon request from DOE, appoint physicians to serve on panels to consider individual workers' applications filed with DOE under its Worker Assistance Program established under Subtitle D of EEOICPA.

5. Provide the Advisory Board on Radiation and Worker Health with administrative services, funds, facilities, staff, and other necessary support services to carry out its functions under EEOICPA and the Federal Advisory Committee Act.

The responsibilities assigned to DOE by Executive Order 13179 that are relevant to actual or potential interactions between DOE and HHS are as follows:

1. Provide HHS and the Advisory Board on Radiation and Worker Health access, in accordance with law, to all relevant information pertaining to worker exposures, including access to restricted data and any other technical assistance needed to carry out their responsibilities.

2. Upon request from HHS, and as permitted by law, require a DOE contractor or subcontractor to provide information relevant to a claim under EEOICPA.

3. Identify and notify potentially eligible individuals of the availability of compensation under EEOICPA.

4. Designate and list atomic weapons employers (AWEs) and beryllium vendors pursuant to EEOICPA and update these lists as required.

5. Establish a Worker Assistance Program to assist DOE contractor employees (and their survivors) whose illness is caused by exposure to a toxic substance at a DOE facility in filing a State workers' compensation system claim. One element of this assistance shall include submission of an application filed with DOE to physician panels appointed by HHS. DOE shall obtain an agreement with a State prior to submitting any cases from that State for review by a physician panel.

B. 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, evaluating petitions by classes of employees for inclusion in the SEC, and evaluating residual contamination at AWEs and beryllium vendors.

In conducting these activities, HHS will strive for efficiency in collecting dose reconstruction information from DOE and its site contractors. 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 from DOE only the data and information relevant to individual worker claims to conduct dose reconstruction or evaluate SEC class petitions. In addition, as feasible, without delaying the individual dose reconstruction process and the consideration of SEC petitions, HHS will work with DOE 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 DOE over time.

The types of individuals, group-based, or general information that may be relevant to HHS's responsibility include, but are not limited to, the following:

1. Individual worker monitoring data, such as dosimeter readings and bioassay sample results;
2. Employment history for individual workers;
3. Group worker monitoring data;
4. Workplace area monitoring data;
5. Process description information and process history;
6. Incident, safety, and accident reports;
7. Pertinent excerpts from employee medical records;
8. Information on the quantity and composition of radioactive substances, including the chemical form, particle size distribution, level of containment, and likelihood of dispersion; and
9. Identification, last known address, and phone numbers of current and former supervisors, occupational safety and health staff, and non-supervisory employees of DOE and its contractors, subcontractors, and AWEs with expertise on items 1-8 above.

A more complete list of information types that may be necessary and relevant for reconstructing individual doses or evaluating SEC petitions is shown in Table 1, attached. To achieve efficiency and minimize impact on DOE, HHS will request only the data and information necessary to complete a dose reconstruction or SEC petition evaluation.

HHS will be responsible for the management of all data collected by HHS employees and contractors, including data obtained from DOE and its contractors. HHS employees and contractors will maintain all data in accordance with relevant provisions of the Privacy Act. Should HHS have a question concerning the proper handling of a particular document or class of documents, HHS will consult with DOE.

HHS amended its Privacy Act Systems of Records for an existing National Institute for Occupational Safety and Health (NIOSH) system of records, 09-20-0147, "Occupational Health Epidemiologic Studies - HHS/CDC/NIOSH" on August 15, 2002, to include a new routine use required to carry out EEOICPA responsibilities.

2. Classification of Documents and Security Clearances

HHS personnel and contractors with appropriate security clearances will review documents and data deemed by HHS to be relevant and necessary for carrying out HHS responsibilities under EEOICPA. HHS will expedite completion of necessary applications for appropriate security clearances to facilitate DOE's clearance determinations and permit entry to DOE and DOE-owned contractor-operated facilities.

3. Requesting Data from DOE

HHS will direct requests for exposure information necessary to conduct dose reconstructions or evaluate SEC petitions to DOE or other points of contact identified by DOE. These requests will identify the specific type(s) of information needed, and, if appropriate, the identity of the employee(s) whose records are needed. These requests will indicate that a timely response is needed, and that if more than 60 days are required to provide the requested information, will ask to be notified promptly.

Approximately monthly, HHS will provide to DOE and each designated point of contact, a status report describing the number of requests sent, number of responses received to date, and a listing of any requests that are outstanding for more than 60, 90, 120, and 150 days. This report will also identify the status of follow-up requests for information.

4. Claimant Notification

HHS will provide final dose reconstruction results to DOE contemporaneously with reporting those results to the claimant and DOL.

5. Physician Panels

Upon request of DOE, HHS will appoint members of the physician panels funded and administered by DOE. HHS will consult with DOE concerning the appropriate disciplines and experience level needed by physician panel members based on expected distribution of cases to be referred to these panels. HHS will notify new panel members of their appointment, and transmit a list of appointed panel members to DOE. HHS will select panel members for reappointment in advance of the end of their term, and notify reappointed panel members and DOE of their reappointment. HHS, in consultation with DOE, will identify appropriate performance measures for physician panel members. HHS will evaluate the performance of physician panel members using these performance measures, and report the results to DOE. HHS will use the evaluations as it deems appropriate in considering reappointment of panel members to additional terms.

6. Provision of other Technical Assistance to DOE

Upon request, HHS will assist DOE with identifying, prioritizing, and, where possible, in accordance with applicable laws, accessing information held by NIOSH that is needed to process applications filed with DOE under Subtitle D of EEOICPA. DOE employees and contractors will maintain all data in accordance with relevant provisions of the Privacy Act. Should DOE have a question concerning the proper handling of a particular document or class of documents, DOE will consult with HHS. HHS also agrees to discuss with DOE how HHS can provide technical support to assist DOE in carrying out its responsibilities under Subtitle D.

7. Official Point of Contact

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

Name:	John Howard, M.D.
Title:	Director, National Institute for Occupational Safety and Health
Address:	Room 715H 200 Independence Avenue, S.W. Washington, D.C. 20201
Telephone:	(202) 401-6997; Facsimile (202) 205-2207

C. DOE Responsibilities

1. Provision of Data to HHS

Upon request by HHS and consistent with applicable law, DOE 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, evaluating petitions by classes of employees for inclusion in the SEC, and evaluating residual contamination at AWEs and beryllium vendors. This access includes access to restricted data, as defined in section 11 of the Atomic Energy Act of 1954 (42 U.S.C. § 2014 (y)).

DOE will provide HHS with data and information of the types described in section B. 1. above (items 1-9), and Table 1 (attached) as needed and where such information exists, to enable HHS to process current individual dose reconstructions and SEC class petitions, and to achieve more timely and cost-effective processing of future dose reconstructions and SEC class petitions. The primary strategy for achieving such increased timeliness and cost-effectiveness will be to provide HHS with information and records on a process, building, employment group, or facility-wide basis, which will gradually reduce the need for HHS to request information and records on a case-by-case basis for dose reconstructions and SEC class petitions at the time they are being processed.

DOE and HHS understand that while all the material in section B.1. above (items 1-9), and Table 1 (attached) is potentially relevant to each claim, the actual data necessary will vary among claims. DOE 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.

DOE has established a new Privacy Act System of Records which includes the necessary routine uses required to carry out EEOICPA responsibilities for the following system of records:

1. DOE-10, Worker Advocacy Records.

DOE has amended its Privacy Act Systems of Records to include new routine uses required to carry out EEOICPA responsibilities for the following systems of records:

1. DOE-05, Personnel Records of Former Contractor Employees;
2. DOE-33, Personnel Medical Records;
3. DOE-35, Personnel Radiation Exposure Records;
4. DOE-71, The Radiation Accident Registry;
5. DOE-72, The Department of Energy Radiation Study Registry;
6. DOE-73, The US-DTPA Registry; and
7. DOE-88, Epidemiologic and Other Health Studies, Surveys and Surveillances.

DOE will seek to amend its Privacy Act Systems of Records to include a new routine use disclosure to HHS and its contractors pursuant to EEOICPA for the following systems of records:

1. DOE-2, DOE-Personnel Supervisor Maintained Personnel Records;
2. DOE-13, Payroll and Leave Records; and
3. DOE-38, Occupational and Industrial Accident Records.

DOE maintains a moratorium on destruction of records that may be useful for epidemiological purposes, and will continue to use that authority to maintain any records which are needed for dose reconstruction.

For the purpose of independently reviewing any records, information or data that HHS determines are relevant and necessary for carrying out its responsibilities under EEOICPA, and as consistent with applicable laws, DOE will allow HHS personnel, HHS contractors, and the Advisory Board, with appropriate clearances, access to DOE and DOE-owned contractor-operated facilities. DOE will provide HHS personnel and contractors copies of all records, information or data deemed relevant by HHS. Because EEOICPA requires timely compensation for covered employees, DOE will provide copies of records, information and data in a timely manner.

Upon request by NIOSH, DOE will provide certification that record searches requested by NIOSH have been completed. Although DOE will work to provide a comprehensive response to NIOSH requests, additional information relevant to a claim may be identified at a later date. When DOE identifies such additional information, DOE will immediately notify HHS that the new information has been found and will send HHS the additional information without delay.

2. Classification of Documents and Security Clearances

DOE and its contractors will continue to perform classification reviews of documents and data necessary for HHS to carry out its responsibilities under EEOICPA. HHS personnel, HHS

contractors, and the Advisory Board, with appropriate security clearances, will, in the course of carrying out responsibilities under EEOICPA, review classified and controlled documents and data to identify those that are needed to carry out various responsibilities under EEOICPA. DOE will, wherever possible and in a timely manner, declassify, downgrade, or redact these documents and data. DOE will facilitate HHS personnel and contractors obtaining appropriate security clearances. HHS and DOE will establish procedures to address those documents and data that cannot be declassified but may be necessary to complete dose reconstructions.

3. Provision of Other Technical Assistance to HHS

DOE 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 for claims and petitions received from current and former employees and survivors of AWEs. Other technical assistance will be provided to HHS, upon request, to aid in the development of strategies to identify and prioritize for study AWE or beryllium vendor facilities where significant contamination may have remained after activities relating to the production of nuclear weapons was discontinued.

4. Timeliness of Provision of Data and Technical Assistance

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

5. DOE Contractor and AWE Communication and Assistance

DOE will work with its current and former contractor community and other relevant parties such as AWEs, to facilitate access to information and records needed by HHS. DOE and HHS will work together to develop clauses to be added to agreements with DOE contractors to ensure that DOE contractors collect and maintain information needed to carry out DOE obligations under this MOU, and HHS and its agents have the necessary access to that information.

6. Physician Panels

DOE will notify HHS when additional appointments are needed for physician panels. When additional appointments are requested, DOE will provide HHS with information on the number of appointments needed, the jurisdiction and location(s) of the panels where appointments are needed, and the expertise needed in the members to be appointed. DOE will send each appointed panel member a welcome letter and program information.

Table 1
Examples of Potentially Relevant Information for Reconstructing Doses and Evaluating Special Exposure Cohort Petitions

NIOSH considers the following types of information as potentially relevant in conducting dose reconstructions and evaluating petitions from classes of workers for inclusion in the Special Exposure Cohort. The necessity and availability of this information is expected to vary substantially from case to case, and this is not an exhaustive list of all information that may be required for HHS to perform its duties under EEOICPA. HHS will attempt to target its requests to those records necessary for specific dose reconstructions.

Worker monitoring data

(1) external dosimetry data, including external dosimeter readings (film badge, TLD, neutron dosimeters)
(2) pocket ionization chamber data.

Internal dosimetry data

(1) urinalysis results
(2) fecal sample results
(3) *In Vivo* measurement results
(4) incident investigation reports
(5) breath radon and/or thoron results
(6) nasal smear results
(7) external contamination measurements

Monitoring program data

(1) analytical methods used for bioassay analyses
(2) performance characteristics of dosimeters for different radiation types
(3) historical detection limits for bioassay samples and dosimeter badges
(4) bioassay sample and dosimeter collection/exchange frequencies
(5) documentation of record keeping practices used to censor data and/or administratively assigned dose

Workplace monitoring data

(1) surface contamination surveys
(2) general area air sampling results
(3) breathing zone air sampling results
(4) radon and/or thoron monitoring results
(5) area radiation survey measurements (beta, gamma and neutron)
(6) fixed location dosimeter results (beta, gamma and neutron)

Workplace characterization data

(1) Information on the external exposure environment, including: radiation type (gamma, x-ray, neutron, beta, other charged particle); radiation energy spectrum; uniformity of exposure (whole body vs partial body exposure); irradiation geometry; and work-required medical screening x rays.

Information characterizing internal exposure

(1) radionuclide(s) and associated chemical forms
(2) results of particle size distribution studies
(3) respiratory protection practices

Process descriptions for each work location

(1) general description of the process
(2) characterization of the source term (i.e., the radionuclide and its quantity)
(3) extent of encapsulation
(4) methods of containment
(5) other information to assess potential for airborne dispersion

7. Official Point of Contact

DOE designates the following individual as the official point of contact for this Memorandum of Understanding:

Name:	Beverly Cook
Title:	Assistant Secretary for Environment, Safety and Health
Address:	U.S. Department of Energy 1000 Independence Avenue, S.W. EH-1, Room 7A-097 Washington, D.C. 20585
Telephone:	(202) 586-0264

VI. DURATION

This MOU, effective when signed by both parties, shall initially remain in effect through fiscal year 2007. The parties' current intent is to renew this agreement at that time.

VII. MODIFICATION OR CANCELLATION

This MOU or any of its specific provisions, may be canceled 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 DOE to the other party.

VIII. RESPONSIBLE OFFICIALS

U. S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

By: Claude A. Allen

Claude Allen
Deputy Secretary

Date: 4/4/03

U.S. DEPARTMENT OF ENERGY

By: _____

Kyle McSlarrow
Deputy Secretary

Date: 4/4/03