

EEOICP

The Energy Employees Occupational Illness Compensation Program

Developing Claims

Part 2



**U.S. Department of Labor
Office of Workers' Compensation Programs
Division of Energy Employees Occupational Illness Compensation**



Tips for Navigating through this Training

Each training page has embedded links to help you navigate through this training. Additionally, you may review the associated procedure manual or a list of DEEOIC acronyms.

- Procedure Manual tab

Procedure Manual

- Acronym tab

Acronyms

- Home tab - returns you to the beginning of training module



- Exit tab



- Next tab



- Previous page tab

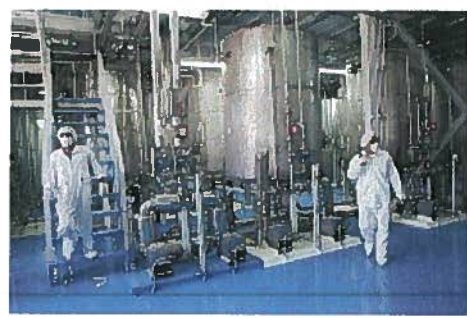


- Page number

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Also, links to documents and web pages (hyperlinks) are denoted with blue underlines.

Causation Development for Part E Cases





What we will cover in this Section

- EEOICPA Causation Standard
- Rules about Reasonable Development
- Basis for a Decision for Causation
- Development tools
- Referrals to a District Medical Consultant
- Writing the Recommended Decision
- Common Mistakes

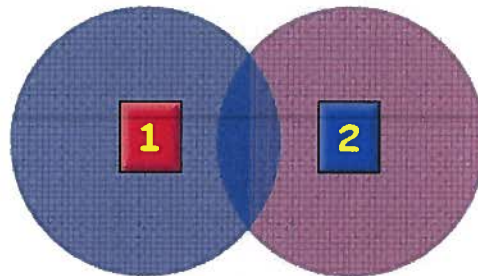




EEOICPA's Causation Standard

For Part E claims, your challenge is to establish that occupational exposure to at least one toxic substance while working at a DOE or RECA facility during a covered time period was “at least as likely as not” a significant factor in causing, contributing to, or aggravating the illness or death of the employee.

Exposure
(Presence,
Contact &
Plausibility)



“At least as likely as not”
a significant factor in
causing, contributing to,
or aggravating the illness
or death of the employee



General Rules About Reasonable Development

As discussed in the Exposure Section, generally you should use all available tools to the *fullest extent possible* and issue a decision once all development avenues have been reasonably explored. You should issue a decision accepting a claim for benefits as soon as the evidence supports an acceptance and all statutory criteria are met. Your determination should be based on the totality of evidence in the case file.



Denials must be weighed heavily and decisions issued only when additional development is unlikely to produce the evidence needed to reach an acceptance.

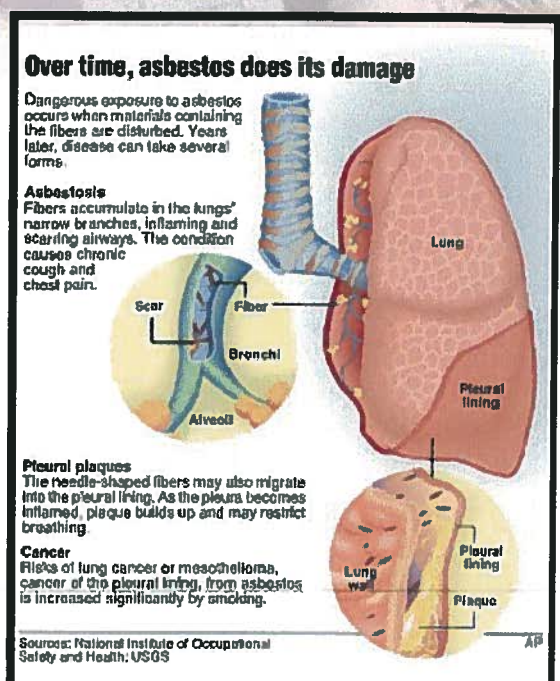
Note: You cannot use studies or reports obtained from the Internet or other sources to justify case decisions unless DEEOIC National Office has specifically authorized such usage. Nor should you base your decision on a vague reference to medical literature.



Claimed Condition

Use good judgement when reviewing a claim. If the claimed condition is generally a condition that arises out of occupational exposure, you must pursue additional development whenever possible.

If the condition is one that is less likely caused by occupational exposure (i.e., hereditary condition or condition brought on by lifestyle or personal risk factors **ONLY**), and the medical evidence does not otherwise substantiate an illness that arises out of, or is contributed to or aggravated by occupational exposure, you can be more certain that additional development might not be necessary and a decision can be issued.





Basis of Determination

There is no magic formula or statistical probability (as in the NIOSH cases) in reaching a decision. The determination is based on:

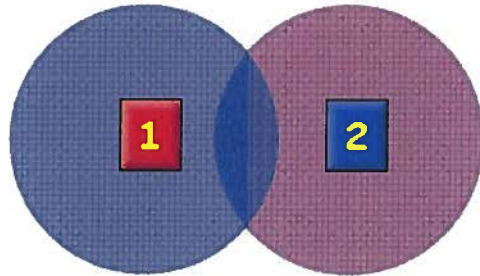
- the cumulative collection of evidence
- an objective review and analysis of the facts and evidence
- sound reasoning
- proper application of the law based on the intent of the EEOICPA





Now let us look at how the link is established.

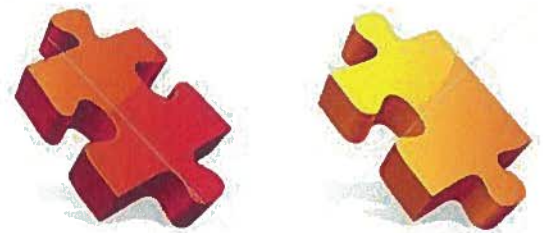
Establishing
Exposure
(Presence, Contact
& Plausibility)



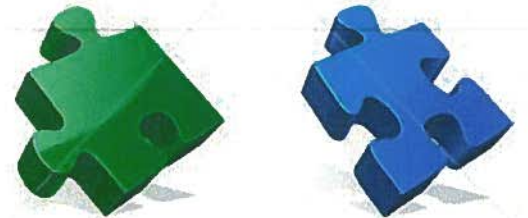
“At least as likely as not that exposure was a significant factor in causing, contributing to, or aggravating the illness or death of the employee ”

Development Tools

There are many tools that constitute the “pieces of the puzzle” which will help you determine whether a causal link exists. These include prior acceptances under Part B, EEOICPA final bulletins, and the Site Exposure Matrices which detail the presence of toxic substances at facilities and identifies the relationship between specific toxic substances and numerous illnesses.



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Other Development Tools

There are additional tools to utilize when developing for causation that include the medical evidence of record, documents and information from the Former Worker Program, an Occupational Health Questionnaire (OHQ), Document Acquisition Request (DAR) responses, the Center for Construction Research and Training (CPWR), and a District Medical Consultant (DMC) referral.

Prior Acceptances under Part B

Many claims with a prior acceptance under Part B are usually accepted under Part E as well. Before you can accept a Part E claim that was accepted under Part B, you must ascertain the following:

- Was there Part E covered [DOE contractor employment](#)?
- For survivor claims, was the employee's cause of death related to the accepted condition? If not, additional development is necessary.
- Does the survivor meet the eligibility requirements under Part E?

Remember - use only the findings of fact the Part B final decision, not the conclusions of law.

Bulletins

EEOICPA Bulletins assist in making simple determinations to accept a claim with limited development. EEOICPA Bulletins [06-08/06-13](#) are critical in assisting with causation development. These bulletins look at diagnostic criteria, exposure, and latency (function of duration and exposure). These bulletins are sometimes referred to as Occupational Illness Exposure Matrices, and are used to establish a Part E causal relationship between the covered illness and a toxic substance, as long as the occupational illness has the required exposure duration and latency.

A Word of Caution

EEOICPA Bulletins 06-10/06-14 were rescinded by [Bulletin 08-38](#). Those rescinded bulletins were not intended to automatically disqualify claims.

A denial requires a closer look at the evidence and more development to be certain that DOE work-related exposures during covered employment were not a significant factor in causing, contributing to, or aggravating the illness or death of the employee.

Site Exposure Matrices (SEM)

The SEM is a tool used to help establish the presence and contact with toxic substances. SEM identifies causative agents and is a living document. However, the SEM does not contain all information for every covered facility/site and is never used as the sole basis for a denial. The SEM can be used to accept a claim in conjunction with procedural guidance (Bulletins 06-08/06-13) and supporting evidence.



Basic SEM Searches and Their Relevance

SEM searches should be constructed based on the available information. Searching by health effect, a universal search will identify whether the condition *arises* from occupational exposures. A site specific search will help identify whether certain exposures could have occurred at the specific site. A universal labor category search will identify potential exposures for a certain job category. Be aware of potential overlaps in certain jobs, i.e., pipefitters and welders. Searches of labor processes/buildings/areas are useful when the employee's labor category is not reported in SEM. Use any combination that best reflects the most claimant favorable employee exposures.



Medical Evidence

We look to the medical evidence to help establish the *impact* of exposure to the medical condition. When was the condition diagnosed in relationship to when the covered employment began and what does the employee's treating physician report about the condition? In terms of exposure impact, the medical evidence should establish whether the physician attributes the condition to work-related exposure or to some other significant factors such as lifestyle or heredity, to other non-covered employment, or, whether the physician is uncertain of the etiology of the condition. You should be mindful, however, that the physician may not have known the specifics regarding the substances the employee was actually exposed to. If the physician is uncertain of the etiology of the condition, and did not have the appropriate exposure information, additional development may be necessary.



Former Worker Program (FWP)

The FWP began in 1996 and they evaluate the effects of the DOE's operations on the health of former workers at covered facilities. The FWP generates documentation related to medical conditions and workplace exposures. There are often times when valuable exposure information is contained in these records.

Process for FWP

Review the FWP screening records with the evidence of file when evaluating claimed exposures in order to see if the employee participated in the FWP before the enactment of EEOICPA. If so, the information supplied by the employee is considered probative evidence. If the employee participated in the FWP after the October 2000 enactment of EEOICPA, the information supplied by the employee must be corroborated by other evidence that supports the claimed exposure. If the employee participated in the FWP (typically by review of the EE-3), you must attempt to obtain the records.



Occupational History Questionnaire (OHQ)

The OHQ is data obtained from an interview conducted by a representative of a DOL resource center (RCs) with an employee or the survivors of an employee. The OHQ provides claimants with an opportunity to identify the areas the employee worked, the processes the employee was involved in, and the exposures the employee may have sustained. Information reported by the claimant in the OHQ will need to be corroborated by other evidence. However, statements in the OHQ which are self-reported are helpful to you in determining how or where to obtain additional information to assist the claimant.

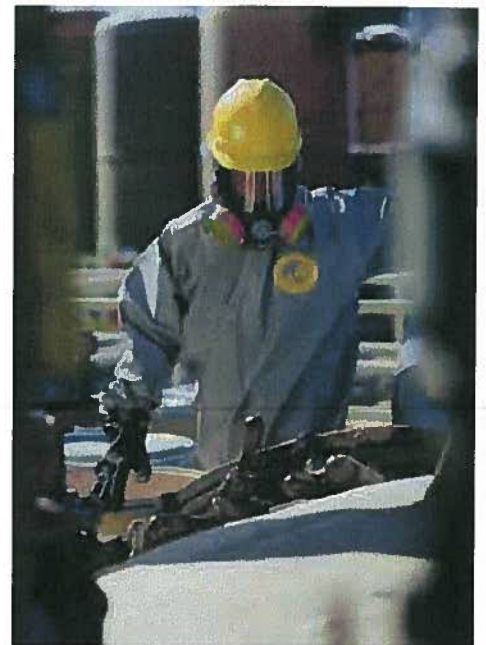
Document Acquisition Request (DAR)

The DAR is a means by which you gather DOE work records about the employee. The DAR information may vary from facility to facility, but the DOE response typically contains a myriad of documents including radiological dose records, incident or accident reports, industrial hygiene or safety records, pay and salary records, job descriptions, medical records, and other assorted documents.



What to Look for in DAR Response

In terms of DAR responses, you can use the medical evidence (in the DAR) to determine whether the site records show that the employee was treated for the claimed condition or for an exposure event. Also use the medical evidence from the DAR to determine whether the employee regularly submitted to medical evaluations to determine whether he or she should/could wear personal protective equipment (masks, breathing apparatus, etc.).





Additional Information in DAR Responses

Use incident or accident reports from the DAR to determine whether the plant records establish an exposure event and whether the plant records place the employee in an area where significant exposures existed. You may also use industrial hygiene reports to determine whether the employee participated in a medical or chemical monitoring program due to asbestos exposure or as a result of the employee working with beryllium.





Evaluating the DAR Response

In reviewing the DAR response, consider how complete the response is. If there are no industrial hygiene records available, it is possible that chemical monitoring was deemed unnecessary or the potential exposures were comparatively light. However, the possibility also exists that records were destroyed. You should consider all of the evidence. The DAR response can often be used to place an employee in a given building, which assists in improving a SEM search and in evaluating exposure. In some cases, the DAR response is the only way to place an employee in a specific building.

Once the DAR response is received, review both the questionnaire and the contents of the CD to confirm that all requested documents have been received and that the specific questions about exposure have been adequately answered. **Any documents identified on the CD as material to the claim must be printed and placed in the case file.**



Is Claimed Condition Known to Originate from Occupational Exposures? (click on the buttons)

NO

If the employee claims he was exposed to toxic substances during work but the condition is not known to originate from occupational exposures and if there is no evidence in the DAR of industrial hygiene monitoring you will need to develop the case further.

YES

As discussed in the training for establishing exposure, if the claimed condition is one that is known to be linked to an occupational exposure, refer the claim to a National Office specialist (industrial hygienist).



Toxic Exposure Development Letter

If you have completed development on a claim and you are still not able to establish a causal link, then notify the claimant of this in a toxic exposure development letter. Your development letter should be specific and descriptive as to the efforts taken to attempt to establish this link. Tailor the letter to the issue and provide an explanation of why additional information is necessary. In writing the development letter, consider the audience and do not use bureaucratic jargon and confusing acronyms. Make sure the tone of the development letter conveys that you are trying to assist the claimant.



Note: Do not provide the claimant with copies of your SEM searches because the claimant now has access to an expanded publicly accessed version of SEM.



Addressing Exposure in the Development Letter

In making the determination whether to specifically identify exposures in a development letter, consider the purpose and likely outcome of providing this information. The occupational history is a useful tool to give you a sense of what the claimant knows. Providing this information to the claimant is considered appropriate when it is likely to elicit a probative response from the claimant. However, avoid just providing lists of exposures to a claimant who is not really in a position to address the question with any type of reliable response.

Language on Causation in Development Letters

If the universal SEM search identifies no link for the condition, then inform the claimant the DEEOIC has been unable to identify any relationship between the employee's condition and exposure to toxic substances. If the SEM search identifies a link between the condition and certain toxins, but we have no specific exposure information, inform the claimant that there is a potential link between exposure and the condition, but we are unable to establish that the exposure occurred.

When the Claimant Responds with a Medical Opinion...

When a medical opinion is provided by a claimant, consider

- Is the physician a treating physician or a consulting (record review only) physician
- Is the physician an appropriate specialist (field of expertise)
- Does the physician have knowledge of specific exposure (toxin, duration, mode of exposure)
- Is the medical opinion unequivocal and non-speculative
- Does the medical opinion provide a sound rationale supported by scientific evidence



When the Evidence Is Not Enough to Make a Decision

Weigh the employment, exposure, and medical evidence to reach a conclusion regarding whether the link exists between exposure (during covered employment) and the employee's illness or death. Sometimes the evidence is still not sufficient to make a decision. In those circumstances, you may establish causation by referring a claim to a specialist qualified to review medical evidence and determine the impact of occupational exposure, such as a District Medical Consultant (DMC).

The [DMC](#) assists with determining whether exposure to a toxic substance is "at least as likely as not" a significant factor related to the illness or death of the employee. Review by the DMC is limited to the case record.

Note: You should only use the services of the DMC for direction and clarification.



Referrals to the DMC

A case is referred to the DMC through a [medical scheduler](#) (MS). When referring a case to the DMC, provide the MS with

- two copies of the following (one copy will be provided to the DMC and the other will be maintained in the file)
- a completed DMC Referral Form (placed at the front of the package)
- a OWCP -1500 (billing form)
- a Statement of Accepted Facts (SOAF)

Referrals to the DMC should include a list of questions to be addressed by the DMC specific to the medical issue for resolution, and copies of the entire medical record to be evaluated (for external DMCs only). The entire file is provided directly to the DMC for internal referrals.

The Statement of Accepted Facts

[A Statement of Accepted Facts](#)(SOAF) is prepared to provide a frame of reference for the physician reviewing the medical evidence. The SOAF allows the physician to place the medical questions posed in a larger context of the requirements of the employee's job or conditions which prevailed in the working place. It is a written summary of the findings of the facts pertinent to the medical issue. A proper SOAF should preclude the physician from making their own findings of facts.



What is Needed for a Referral to the DMC

In order to refer a claim to a DMC, you will need current medical records, including records at the time of diagnosis. For survivor claims, you will also need records at the time of the employee's death, including an autopsy report if the death certificate indicates an autopsy was performed. The DMC Referral must include a specific causation question.



Required Elements of a SOAF

There are several different mandatory elements that a [SOAF](#) must include:

- Identifying information including the claimant's name, date of birth/date of death (if applicable), and the case file number
- Description of the medical evidence, including any accepted conditions or other diagnosed medical conditions and the dates of the diagnoses (include both claimed and verified medical conditions)
- Accurate descriptions of verified employment, job descriptions, and work locations
- Detailed description of the claimant's exposure data, including to the extent possible the duration and frequency of the exposure (identified by review and correlation of OHQ, SEM, DAR, or if necessary industrial hygienist review, which are specifically identified as being related to the verified condition)
- other pertinent information
- a history of the case

Ask the Right Questions!

Identify all issues when requesting a review by the DMC and make sure the right questions are asked. Also make sure that all questions are asked utilizing the proper causal relationship standard of proof. For example, rather than ask, “Was asbestosis a cause of death?” ask, “Is it at least as likely as not that asbestosis was a significant factor in causing, contributing to or aggravating the employee’s death?”

Note: You are not to rely upon the DMC for non-medical issues, i.e. requesting legal conclusions such as whether an employee has cancer as defined by EEOICPA.

Once You Receive the DMC's Report

You will use the DMC's opinion and the evidence of record to render a determination whether it is "at least as likely as not" that DOE work-related exposure at a covered facility was a significant factor in aggravating, contributing to or causing the employee's illness or death. If the DMC provides a positive opinion, you will accept the claim. If the DMC cannot provide such an opinion, you must advise the claimant of the need for medical rationale supporting causation.



If Claimant Requests DMC's Report

If you receive a request from the claimant for a copy of the DMC's report, a copy should be provided. Attach a cover letter to the copied report which includes a disclaimer paragraph informing the claimant that the DMC is a medical consultant for the DOL and that the DOL will issue a recommended decision based upon the evidence, including but not limited to the medical consultant's report.

The DMC's Role

The DMC's role is not to provide an opinion on whether the evidence meets any statutory criteria. If the DMC cannot substantiate that the exposure was a significant factor in causing, contributing to, or aggravating the illness or death of the employee, advise the claimant of the need for additional evidence and rationale supporting a causation link.

The DMC Referral to the Industrial Hygienist

When DMC Referrals for Causation do not adequately identify a *route* and *extent of exposure* then the DMC should refer the case to the [Industrial Hygienist](#) (IH) through the DO. DMC contacts the MS within 3 days of receiving referral and requests an IH. MS forwards the DMC's IH Referral to you to complete a SOAF and Questions and after you complete then normal procedures are followed for an IH Referral (CE to Senior/Supervisor to HPSA).



Based on All the Available Evidence...

Can you render a recommended decision based on the available evidence? In essence, is it *plausible*, based upon all the above development and given the evidence at hand, that you have established that the employee's illness arose out of the occupational exposure to toxic substances at the covered DOE facility ("the link")?

Issuing a Recommended Decision

It is possible for you to render a recommended decision on the Part E claim if it is not pending a dose reconstruction and all evidence has been received.

You can issue a recommended decision on a claim if it can render compensation and/or benefits for some accepted conditions while others are pending a dose reconstruction. DEEOIC wants to award benefits as soon as possible.

Cancer Claims at NIOSH

For cancer claims under Part E, you can pend the claim for receipt of the dose reconstruction report when due process periods have elapsed (for the toxic development letter to the claimant) and you may not accept the claim for causation. Prepare a memorandum (referred to as the toxic exposure development memorandum) to the file stating that toxic exposure development is complete and code ECMS “NI” (Status Code for “**Sent to NIOSH**”) with the status effective date equal to the date of the memo.



Decision Writing 101

When writing the decision, clearly identify

- development efforts
- what records were collected or reviewed
- whether the employee/claimant participated in an occupational history interview
- all verified employment
- all medical records establishing the condition
- accepted exposures determined to be related to the condition

You should be confident of your opinion as a claims professional and make a sound decision based on the evidence.



The Recommended Decision for Causation

The recommended decision should be a sound and rational decision based on a thorough review and objective determination. The decision should address how the determination was made regarding whether it is “at least as likely as not” that DOE work related exposures were a significant factor that caused, contributed to, or aggravated the illness or death of the employee. The recommended decision should be written so that regardless of the audience, the decision can be understood and can stand on its own (remember, the claimant doesn’t have the file!).

Medical Condition Coding Status

When a medical condition is input into ECMS, the medical condition status defaults to **“R”** (Status effective code for **“Reported”**).

The medical condition status is updated with an **“A”** (Status effective code for **“Accepted”**) or **“D”** (Status effective code for **“Denied”**) at the time the Recommended Decision is issued.

Common Mistakes

A common mistake occurs by denying a claim because the condition listed on the death certificate is not an illness derived from occupational exposures. Development must be conducted to determine if exposure was a contributing factor. **IT IS IMPERATIVE** that the medical records proximate to the time of death be evaluated to determine if exposures were a significant factor that caused, contributed to, or aggravated the condition listed on the death certificate. This may require a DMC referral.



Other Common Mistakes

Another common mistake is to deny a survivor claim after the employee's initial filing without offering [the election of benefits](#). This occurs when the employee's cause of death cannot be related to exposures during covered DOE employment.

It is also an error to pend an entire claim under Part E while waiting for a dose reconstruction under Part B. Continue to develop for other claimed illnesses for Part E.

Reminder!

It is imperative that the program consistently conveys the message that we are doing our utmost to assist the claimants in the establishment of their claims.



Knowledge Check

Now let's apply what we have learned to some case studies.



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1. For establishing causation, you must (choose the best answer)

- establish that occupational exposure to a toxic substance during covered DOE employment was "at least as likely as not" a significant factor in causing, contributing to, or aggravating the illness or death of the employee
- use your best judgement with SEM to establish causation.
- just refer the case to the National Office Specialist for them to decide causation

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2. You should use all available tools to the fullest extent possible and issue a decision once all development avenues have been reasonably explored.

- True
- False

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3. If the condition is one that is less likely caused by occupational exposure (i.e., hereditary condition or condition brought on by lifestyle or personal risk factors ONLY), and the medical evidence does not otherwise substantiate an illness that arises out of, or is contributed to or aggravated by occupational exposure, you can be more certain that additional development might not be necessary and a decision can be issued.

True

False

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4. Your determination is based on

- the cumulative collection of evidence
- an objective review and analysis of the facts and evidence
- sound reasoning
- proper application of the law based on its intent
- none of the above
- all of the above

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5. Which answer doesn't fit? Tools you will use in your determining causation include:

- DAR Records
- SEM
- EEOICPA Bulletins
- Prior acceptance under Part B
- Wage Loss Calculator

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6. For cases where you have a prior acceptance for a Part B claim, you will use information from the conclusions of law from the Part B decision in the Part E decision.

True

False

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7. EEOICPA Bulletin 06-13 is referred to as Occupational Illness Matrix and assists with determinations to accept a claim with limited development by providing diagnosis, exposure, and latency criteria.

True

False

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8. SEM contains all information for every covered facility and site.

True

False

9. Choose the best statement below.

- We look at medical evidence to establish the impact of exposure.
- Medical records have no value in establishing exposure and causation, but have value in establishing the condition.
- Medical records cannot establish whether the physician attributes the condition to work-related exposure or to some other factor such as lifestyle or heredity.

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10. FWP

- ④ is an interview conducted by the Resource Centers and provide documentation of the employee's work history and exposures.
- ④ generates documentation related to medical conditions and workplace exposures, and often provide valuable exposure information.
- ④ is a matrix providing what toxins were present at certain sites as well as what illnesses are caused by certain toxins.

11. Occupational History Questionnaire

- is information reported by the claimant and will need to be corroborated.
- is information reported to us by the Department of Energy and does not need to be verified.
- are never conducted for Part E claims.

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12. The DAR is a means to gather DOE work records.

- True
- False

13. What is the best statement regarding DAR medical records?

- You may use the medical evidence found in the DAR to determine the employee's diagnosis.
- You may use the medical evidence found in the DAR for NIOSH referrals.
- You may use the medical evidence in the DAR to determine whether the plant records show that the employee was treated for the claimed condition or for an exposure event.

14. You will write a toxic exposure development letter when

- you have completed all development and are ready to issue a final decision.
- you have questions for the National Office "Specialists".
- you have completed development and are still unable to establish a causal link between the employment, exposure and illness.

15. Which is not a common mistake made when CE's are developing for exposure?

- Denying a claim because the condition listed on the death certificate is not an illness derived from occupational exposures.
- Denying a survivor's claim after the employee's initial filing without offering the election of benefits to the survivor (employee's death was not related to exposures during covered DOE employment).
- Using findings of facts from previously accepted Part B claims.

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Congratulations! You have completed the Developing for Causation Session of the DEEOIC Claims Examiner Training.



Enter your name in the field below and click OK to retrieve your certificate of completion.

OK



Certificate of Completion

This certifies that

Student Name

**has successfully completed the Session on Developing
for Causation of the
on-line Claims Examiner Training**

Date

Part E Election of Benefits Remedies

Under Part E, if the employee dies after filing a claim but before compensation is paid, and the cause of death was not related to his or her accepted condition, then the survivor may elect to receive what compensation the employee would have received if he or she was still alive - impairment and wage loss.

Emphasis is on the fact that the employee must have filed first! Benefits can include wage loss and impairment.

Part E Covered Employment

Remember that an employee of an atomic weapons employer, an employee of the Department of Energy, or a Department of Energy predecessor agency such as the Atomic Energy Commission (AEC), Manhattan Engineering District (MED), or Energy Research and Development Agency (ERDA) are not covered under Part E.

A Living Document

A living document is a document which may be continually edited and updated by either a limited or unrestricted group and often when there are changes in the regulations or information supporting this document. Examples of a living documents are SEM and NIOSH Site Profiles.

Findings of Fact (in a SOAF)

A SOAF is prepared to provide a frame of reference for the physician reviewing the medical evidence. The SOAF allows the physician to place the medical questions posed in the larger context of the requirements of the employee's job or conditions which prevailed in the working place. It is a written summary of the CE's findings of the facts pertinent to the medical issue. A proper SOAF should preclude the physician from making their own findings of facts.

Industrial Hygienist

The Industrial Hygienist (IH) addresses issues about *routes of exposure* and may verify whether or not a toxic exposure was/could have been present during a certain *work process at a given site*, or if a *certain labor category* could have come into contact with a given toxic substance in the performance of his or her duty at the site.

Bulletin 06-13

Occupational Illness Exposure Matrix

Medical Condition ICD9	Toxic Substance	Exposure Duration (DEBOIC has determined 250 aggregate work days equals one year)	Latency
Asbestosis 501	Asbestos	≥ 250 aggregate work days	≥ 10 years
Hemangiosarcoma 155 - all	Polyvinyl Chloride	≥ 250 aggregate work days	≥ 20 years
Laryngeal Cancer 161 - all	Asbestos	≥ 250 aggregate work days	≥ 15 years
Leukemia 202.4 203.1 204 - all 205 - all 206 - all 207 - all 208 - all	Benzene	≥ 250 aggregate work days	≥ 365 calendar days
Mesothelioma 163 - all	Asbestos	≥ 250 aggregate work days	≥ 20 years