

**GAO**

Testimony

Before the Subcommittee on Energy,  
Committee on Energy and Natural  
Resources, U.S. Senate

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# ENERGY EMPLOYEES COMPENSATION

## Case-Processing Bottlenecks Delay Payment of Claims

Statement of Robert E. Robertson, Director,  
Education, Workforce, and Income Security Issues



  
**Highlights**

Highlights of [GAO-04-298T](#), testimony before the Subcommittee on Energy, Committee on Energy and Natural Resources, U.S. Senate

## Why GAO Did This Study

The Department of Energy (Energy) and its predecessor agencies and contractors have employed thousands of workers in the nuclear weapons production complex. Some employees were exposed to toxic substances, including radioactive and hazardous materials, during this work and many subsequently developed illnesses. Subtitle D of the Energy Employees Occupational Illness Compensation Program Act of 2000 allows Energy to help its contractor employees file state workers' compensation claims for illnesses determined by a panel of physicians to be caused by exposure to toxic substances in the course of employment at an Energy facility. Energy began accepting applications under this program in July 2001, but did not begin processing them until its final regulations became effective on September 13, 2002.

The Congress mandated that GAO study the effectiveness of the benefit program under Subtitle D of this Act. This testimony is based on GAO's ongoing work on this issue and focuses on three key areas: (1) the number, status, and characteristics of claims filed with Energy; (2) the extent to which there will be a "willing payer" of workers' compensation benefits, that is, an insurer who—by order from, or agreement with Energy—will not contest these claims; and (3) the extent to which Energy policies and procedures help employees file timely claims for these state benefits.

[www.gao.gov/cgi-bin/getrpt?GAO-04-298T](http://www.gao.gov/cgi-bin/getrpt?GAO-04-298T).

To view the full product, including the scope and methodology, click on the link above. For more information, contact Robert E. Robertson at (202) 512-7215 or [robertsonr@gao.gov](mailto:robertsonr@gao.gov).

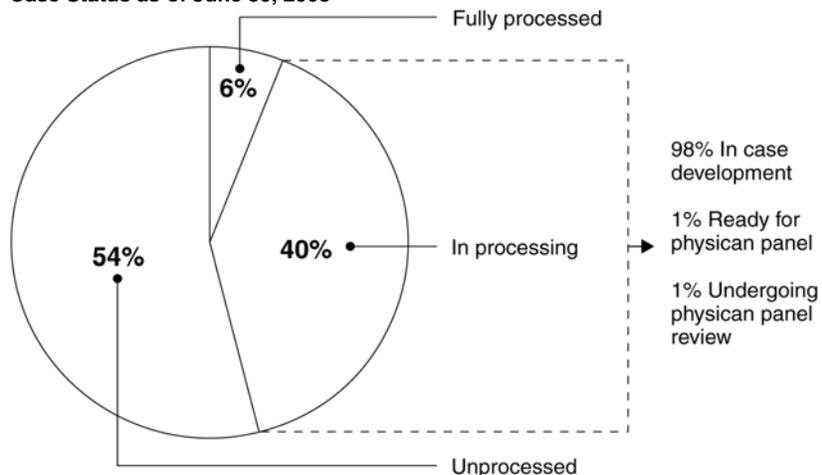
# ENERGY EMPLOYEES COMPENSATION

## Case-Processing Bottlenecks Delay Payment of Claims

### What GAO Found

As of June 30, 2003, Energy had completely processed only about 6 percent of the nearly 19,000 cases it had received. More than three-quarters of all cases were associated with facilities in nine states. Processing had not begun on over half of the cases and, of the remaining 40 percent of cases that were in processing, almost all were in the initial case development stage, as illustrated below.

Case Status as of June 30, 2003



Source: GAO analysis of Energy data.

While the majority of cases (86 percent) associated with major Energy facilities in nine states potentially have a willing payer of workers' compensation benefits, actual compensation is not certain. This figure is based primarily on the method of workers' compensation coverage used by Energy contractor employers and is not an estimate of the number of cases that will ultimately be paid. Since no claimants to date have received compensation as a result of their cases filed with Energy, there is no actual experience about how contractors and state programs treat such claims.

Claimants have been delayed in filing for state worker's compensation benefits because of two bottlenecks in Energy's claims process. First, the case development process has not always produced sufficient cases to allow the panels of physicians who determine whether the worker's illness was caused by exposure to toxic substances to operate at full capacity. While additional resources may allow Energy to move sufficient cases through its case development process, the physician panel process will continue to be a second, more important, bottleneck. The number of panels, constrained by the scarcity of physicians qualified to serve on panels, will limit Energy's capacity to decide cases more quickly, using its current procedures. Energy officials are exploring ways that the panel process could be more efficient.

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Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss our work regarding the effectiveness of the benefit program under Subtitle D of the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) in assisting contractor employees in obtaining compensation for occupational illnesses. Congress mandated that we study this issue and report to the Senate Committees on Energy and Natural Resources and Appropriations and the House Committees on Energy and Commerce and Appropriations.

For the last several decades, the Department of Energy (Energy), and its predecessor agencies and contractors have employed thousands of individuals in secret and dangerous work in the nuclear weapons production complex. Over the years, employees were unknowingly exposed to toxic substances, including radioactive and hazardous materials, and studies have shown that many of these employees subsequently developed illnesses. The Energy Employees Occupational Illness Compensation Program provides for compensation to these employees who developed occupational illnesses and, where applicable, to their survivors. Congressional Committees, as well as individual Members of Congress, claimants, and advocates have raised concerns regarding Energy's processing of claims and the availability of benefits once claims have been decided.

As title XXXVI of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, which was signed into law on October 30, 2000, this legislation has two major components. Subtitle B provides eligible workers who were exposed to radiation or other toxic substances and who subsequently developed illnesses such as cancer and lung disease a one-time payment of up to \$150,000 and covers future medical expenses related to the illness. The Department of Labor administers these benefits, payable from a compensation fund established by the same legislation. Subtitle D allows Energy to help its contractor employees file state workers' compensation (WC) claims for illnesses determined by a panel of physicians to be caused by exposure to toxic substances in the course of employment at an Energy facility. The legislation did not set aside funding for payment of benefits under Subtitle D.

My testimony today reflects our ongoing review of the effectiveness of Energy's implementation of Subtitle D. We focused our work on three key areas: (1) the number, status, and characteristics of claims filed with Energy; (2) the extent to which there will be a "willing payer" of workers'

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compensation benefits; that is, an insurer who—by order from, or agreement with Energy—will not contest these claims; and (3) the extent to which Energy policies and procedures help employees file timely claims for state workers' compensation benefits.

In summary, as of June 30, 2003, Energy had fully processed about 6 percent of the nearly 19,000 cases received, and more than three-quarters of all cases were associated with facilities in nine states. Energy had not begun processing over half of the cases received. While some other case characteristics can be determined, such as illness claimed, systems limitations prevent reporting on other case characteristics, such as the reasons for ineligibility or basic demographics. While the majority of cases (86 percent) associated with major Energy facilities in nine states potentially have a willing payer of workers' compensation benefits, actual compensation is not certain. In certain states such as Ohio and Iowa, there are likely to be many cases that lack willing payers, and in some instances may be less likely to receive compensation than a comparable case with a willing payer in a different state. The 86 percent figure reflects the number of cases for which contractors and their insurers are likely to not contest a workers' compensation claim, rather than the number of cases that will ultimately be paid. For all claimants, actual compensation is not certain because of additional factors such as variations in state workers' compensation programs or contractors' uncertainty on how to compute the benefit. Claims for workers' compensation have been delayed by two bottlenecks in Energy's claims process. First, Energy's case development process has not always produced sufficient cases to keep physician panels operating at full capacity. While additional resources may allow Energy to move a sufficient number of cases through its case development process, the physician panel process will continue to be a second and more important bottleneck. The number of panels, constrained by the scarcity of physicians qualified to serve on panels, will limit Energy's capacity to decide cases more quickly, using its current procedures. Energy officials are exploring ways that the panel process could be made more efficient.

To perform our review, we analyzed data extracted from Energy's Subtitle D case management system for applications filed through June 30, 2003.<sup>1</sup>

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<sup>1</sup>We collected data as of this date to enable us to assess the reliability of Energy's data by (1) performing electronic testing for obvious errors in accuracy and completeness, (2) reviewing available documentation, and (3) interviewing agency officials and contractors knowledgeable about the data. We determined that the data elements used were sufficiently reliable for our purposes.

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We also reviewed the provisions of, and interviewed officials with, the workers' compensation programs in nine states accounting for more than three-quarters of Subtitle D cases filed, and we interviewed the contractors operating the major facilities in these states. In addition, we conducted site visits to three Energy facilities in Oak Ridge, Tennessee, the state with facilities accounting for the greatest number of Subtitle D claims. We also interviewed key program officials and other experts. We conducted our review from April 2003 through October 2003 in accordance with generally accepted government auditing standards.

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## Background

Energy oversees a nationwide network of 40 contractor-operated industrial sites and research laboratories that have historically employed more than 600,000 workers in the production and testing of nuclear weapons. In implementing EEOICPA, the President acknowledged that it had been Energy's past policy to encourage and assist its contractors in opposing workers' claims for state workers' compensation benefits based on illnesses said to be caused by exposure to toxic substances at Energy facilities.<sup>2</sup> Under the new law, workers or their survivors could apply for assistance from Energy in pursuing state workers' compensation benefits, and if they received a positive determination from Energy, the agency would direct its contractors to not contest the workers' compensation claims or awards. Energy's rules to implement the new program became effective in September 2002, and the agency began to process the applications it had been accepting since July 2001, when the law took effect.

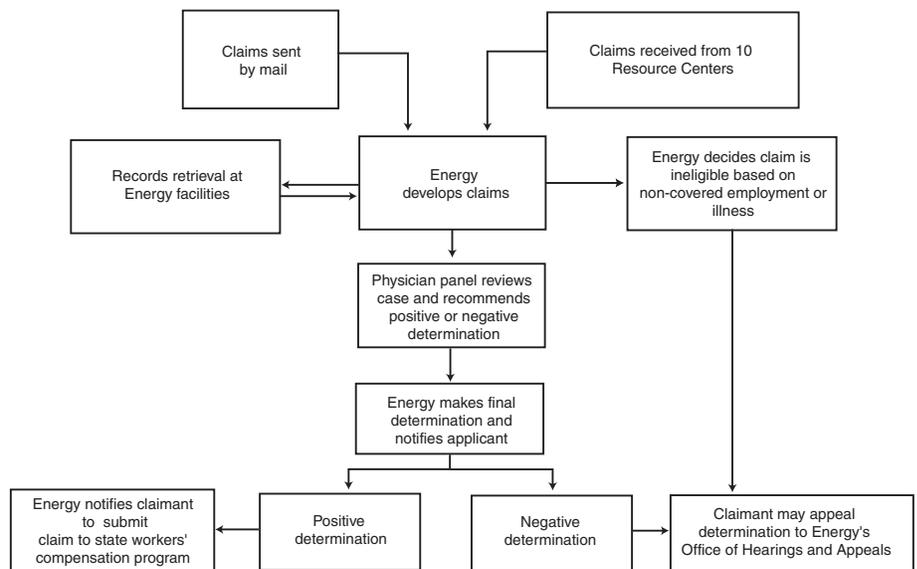
Energy's claims process has several steps, as shown in Figure 1. First, claimants file applications and provide all available medical evidence. Energy then develops the claims by requesting records of employment, medical treatment, and exposure to toxic substances from the Energy facilities at which the workers were employed. If Energy determines that the worker was not employed by one of its facilities or did not have an illness that could be caused by exposure to toxic substances, the agency finds the claimant ineligible. For all others, once development is complete, a panel of three physicians reviews the case and decides whether exposure to a toxic substance during employment at an Energy facility was at least as likely as not to have caused, contributed to, or aggravated the claimed medical condition. The panel physicians are appointed by the

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<sup>2</sup>Executive Order 13179 of December 7, 2000.

National Institute for Occupational Safety and Health (NIOSH) but paid by Energy for this work. Claimants receiving positive determinations are advised that they may wish to file claims for state workers' compensation benefits. Claimants found ineligible or receiving negative determinations may appeal to Energy's Office of Hearings and Appeals.

**Figure 1. Energy's Claims Process**



Source: GAO analysis of Energy Claims Process.

Each of the 50 states and the District of Columbia has its own workers' compensation program to provide benefits to workers who are injured on the job or contract a work-related illness. Benefits include medical treatment and cash payments that partially replace lost wages. Collectively, these state programs paid more than \$46 billion in cash and medical benefits in 2001. In general, employers finance workers' compensation programs. Depending on state law, employers finance these programs through one of three methods: (1) they pay insurance premiums to a private insurance carrier, (2) they contribute to a state workers' compensation fund, or (3) they set funds aside for this purpose as self-insurance. Although state workers' compensation laws were enacted in part as an attempt to avoid litigation over workplace accidents, the workers' compensation process is still generally adversarial, with employers and their insurers tending to challenge aspects of claims that they consider not valid.

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State workers' compensation programs vary as to the level of benefits, length of payments, and time limits for filing. For example, in 1999, the maximum weekly benefit for a total disability in New Mexico was less than \$400, while in Iowa it was approximately \$950. In addition, in Idaho, the weekly benefit for total disability would be reduced after 52 weeks, while in Iowa benefits would continue at the original rate for the duration of the disability. Further, in Tennessee, a claim must be filed within 1 year of the beginning of incapacity or death. However, in Kentucky a claim must be filed within 3 years of exposure to more substances, but within 20 years of exposure to radiation or asbestos.

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## Energy Has Fully Processed Few Cases, and Systems Limitations Complicate Program Management

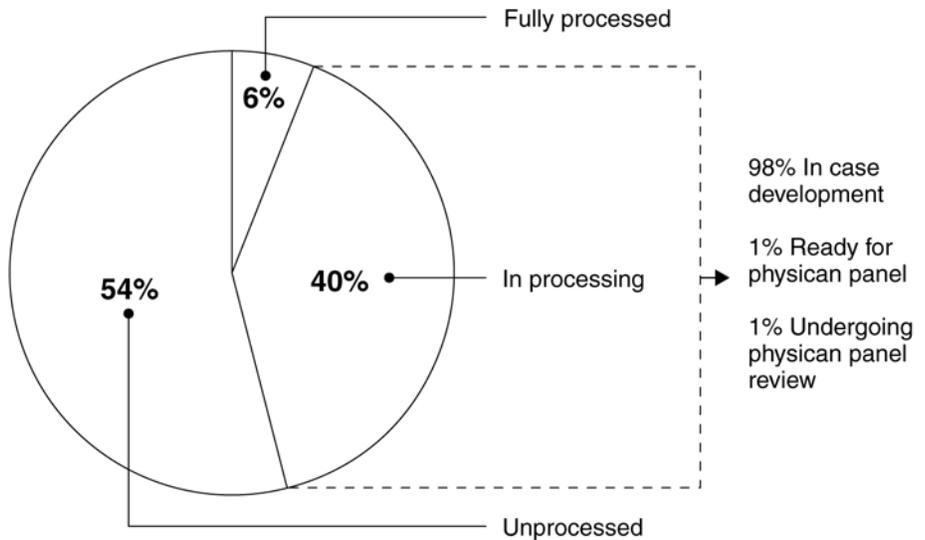
As of June 30, 2003, Energy had completely processed about 6 percent of the nearly 19,000 cases that had been filed, and the majority of all cases filed were associated with facilities in nine states. Forty percent of cases were in processing, but more than 50 percent remained unprocessed. While some case characteristics can be determined, such as illness claimed, systems limitations prevent reporting on other case characteristics, such as the reasons for ineligibility or basic demographics.

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## About 6 Percent of Cases Have Been Fully Processed

During the first 2 years of the program ending June 30 2003, Energy had fully processed about 6 percent of the nearly 19,000 claims it received. The majority of these claims had been found ineligible due to either a lack of employment at an eligible facility or an illness related to toxic exposure. Of the cases that had been fully processed, 42 cases—less than one third of one percent of the nearly 19,000 cases filed—had a final determination from a physician panel. More than two thirds of these determinations (30 cases) were positive. At the time of our study, Energy had not yet begun processing more than half of the cases, and an additional 40 percent of cases were in processing (see fig. 2). The majority of cases being processed were in the case development stage, where Energy requests information from the facility at which the claimant was employed. Fewer than 1 percent of cases in process were ready for physician panel review and an additional 1 percent were under panel review.

**Figure 2. Case Status as of June 30, 2003**



Source: GAO analysis of Energy data.

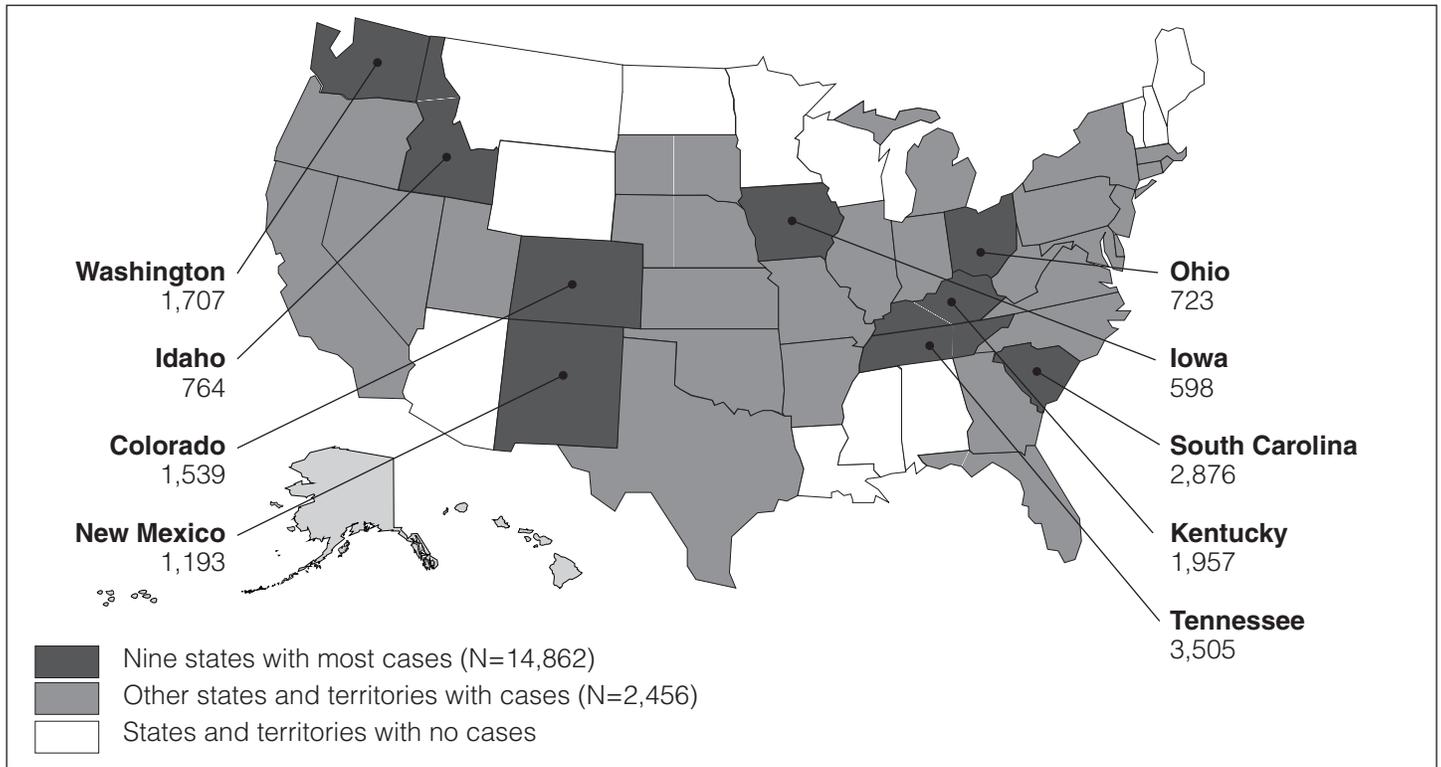
A majority of cases were filed early during program implementation, but new cases continue to be filed. Nearly two-thirds of cases were filed within the first year of the program, between July 2001 and June 2002. However, in the second year of the program—between July 2002 and June 30, 2003—Energy continued to receive more than 500 cases per month. Energy officials report that they currently receive approximately 100 new cases per week.

### Energy Facilities in Nine States Account for More than 75 percent of Cases

While cases filed are associated with facilities in 38 states or territories, the majority of cases are associated with Energy facilities in nine states (see fig. 3).<sup>3</sup> Facilities in Colorado, Idaho, Iowa, Kentucky, New Mexico, Ohio, South Carolina, Tennessee, and Washington account for more than 75 percent of cases received by June 30, 2003. The largest group of cases is associated with facilities in Tennessee.

<sup>3</sup>See Energy's website at: <http://tis.eh.doe.gov/advocacy/index.html> for more information on the current distribution of cases across facilities and states.

**Figure 3. Distribution of Cases by Employee's Last Energy Facility Worked**



Source: GAO analysis of Energy data.

Workers filed the majority of cases, and cancer is the most frequently reported illness. Workers filed about 60 percent of cases, and survivors of deceased workers filed about 36 percent of cases. In about 1 percent of cases, a worker filed a claim that was subsequently taken up by a survivor. Cancer is the illness reported in more than half of the cases. Diseases affecting the lungs accounted for an additional 14 percent of cases. Specifically, chronic beryllium disease is reported in 1 percent of cases, and beryllium sensitivity, which may develop into chronic beryllium disease, is reported in an additional 5 percent. About 7 percent of cases report asbestosis, and less than 1 percent claimed silicosis.

### Systems Limitations Complicate Program Management

Systems limitations prevent Energy officials from aggregating certain information important for program management. For example, the case management system does not collect information on the reasons that claimants had been declared ineligible or whether claimants have

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appealed decisions. Systematic tracking of the reasons for ineligibility would make it possible to identify other cases affected by appeal decisions that result in policy changes. While Energy officials report that during the major systems changes that occurred in July 2003, fields were added to the system to track appeals information, no information is yet available regarding ineligibility decisions. In addition, basic demographic data such as age and gender of claimants are not available. Gender information was not collected for the majority of cases. Further, insufficient edit controls—for example, error checking that would prevent claimants' dates of birth from being entered if the date was in the future—prevent accurate reporting on claimants' ages.

Insufficient strategic planning regarding data collection and tracking have made it difficult for Energy officials to completely track case progress and determine whether they are meeting the goals they have established for case processing. For example, Energy established a goal of completing case development within 120 days of case assignment to a case manager. However, the data system developed by contractors to aid in case management was developed without detailed specifications from Energy and did not originally collect sufficient information to track Energy's progress in meeting this 120-day goal. Furthermore, status tracking has been complicated by changes to the system and failure to consistently update status as cases progress. While Energy reports that changes made as of July 2003 should allow for improved tracking of case status, it is unclear whether these changes will be applied retroactively to status data already in the system. If they are not, Energy will still lack complete data regarding case processing milestones achieved prior to these changes.

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## While A Majority of Cases Potentially Have A Willing Payer, Actual Compensation Is Not Certain

Our analysis shows that a majority of cases associated with major Energy facilities in nine states<sup>4</sup> will potentially have a willing payer of worker's compensation benefits. This finding reflects the number of cases for which contractors and their insurers are likely to not contest a workers' compensation claim, rather than the number of cases that will ultimately be paid. The contractors considered to be willing payers are those that have an order from, or agreement with, Energy to not contest claims. However, there are likely to be many claimants who will not have a willing

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<sup>4</sup>The nine states are Colorado, Idaho, Iowa, Kentucky, New Mexico, Ohio, South Carolina, Tennessee, and Washington. The cases in these states represent more than three-quarters of the cases filed nationwide. The results of our analysis cannot necessarily be applied to the remaining 25 percent of the cases filed nationwide.

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payer in certain states, such as Ohio and Iowa. For all claimants, additional factors such as state workers' compensation provisions or contractors' uncertainty on how to compute the benefit may affect whether or how much compensation is paid.

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### A Majority of Cases in Nine States Potentially Have a Willing Payer

A majority of cases in nine states will potentially have a willing payer of workers' compensation benefits, assuming that for all cases there has been a positive physician panel determination and the claimant can demonstrate a loss from the worker's illness that has not previously been compensated. Specifically, based on our analysis of worker's compensation programs and the different types of workers compensation coverage used by the major contractors, it appears that approximately 86 percent of these cases will potentially have a willing payer—that is, contractors and their insurers who will not contest the claims for benefits. It was necessary to assume that all cases filed would receive a positive determination by a physician panel because sufficient data are not available to project the outcomes of the physician panel process. More specifically, there are indications that the few cases that have received determinations from physician panels may not be representative of all cases filed, and sufficient details on workers' medical conditions were not available to enable us to independently judge the potential outcomes. In addition, we assumed that all workers experienced a loss that was not previously compensated because sufficient data were not available to enable us to make more detailed projects on this issue.

As shown in table 1, most of the contractors for the major facilities in these states are self-insured, which enables Energy to direct them to not contest claims that receive a positive medical determination.<sup>5</sup> In addition, the contractor in Colorado, which is not self-insured but has a commercial policy, took the initiative to enter into an agreement with Energy to not contest claims. The contractor viewed this action as being in its best interest to help the program run smoothly. However, it is unclear whether the arrangement will be effective because no cases in Colorado have yet received compensation. In such situations where there is a willing payer, the contractor's action to pay the compensation consistent with Energy's

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<sup>5</sup>EEOICPA allows Energy, to the extent permitted by law, to direct its contractors not to contest such WC claims. Energy's regulations prohibit the inclusion of the costs of contesting such claims as allowable costs under the contract, but allow the costs incurred as the result of a WC award as reimbursable costs to the full extent permitted under the contract.

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order to not contest a claim will override state workers' compensation provisions that might otherwise result in denial of a claim, such as failure to file a claim within a specified period of time. However, since no claimants to date have received compensation as a result of their cases filed with Energy, there is no actual experience about how contractors and state workers' compensation programs treat such cases.

About 14 percent of cases in the nine states we analyzed may not have a willing payer. Therefore, in some instances these cases may be less likely to receive compensation than a comparable case for which there is a willing payer, unless the claimant is able to overcome challenges to the claim. Specifically, these cases that lack willing payers involve contractors that (1) have a commercial insurance policy, (2) use a state fund to pay workers' compensation claims, or (3) do not have a current contract with Energy. In each of these situations, Energy maintains that it lacks the authority to make or enforce an order to not contest claims. For instance, an Ohio Bureau of Workers' Compensation official said that the state would not automatically approve a case, but would evaluate each workers' compensation case carefully to ensure that it was valid, and thereby protect its state fund.

**Table 1. Extent to Which Cases in 9 States Will Potentially Have Willing Payers**

Types of Workers Compensation Coverage	Energy Facility, State	Number of Cases as reported in Energy data
<b>Cases That Will Potentially Have a Willing Payer</b>		
Self-insurance	Idaho National Engineering Lab, Idaho	
	Paducah Gaseous Diffusion Plant, Kentucky <sup>a</sup>	724
	Los Alamos National Lab, New Mexico	978
	Savannah River Site, South Carolina	1,043
	Oak Ridge K-25, X-10, and Y-12 Plants, Tennessee	2,873
	Hanford Site, Washington	3,325
Commercial policy, agreement with Energy not to contest claims	Rocky Flats Plant, Colorado	1,664
Subtotal of cases with a Willing Payer		86% or 12,095
<b>Cases That May Not Have a Willing Payer</b>		
Commercial Policy, no agreement with Energy to not contest claims; leases Energy facility	Paducah Gaseous Diffusion Plant, Kentucky <sup>a</sup>	977
State Fund	Portsmouth Gaseous Diffusion Plant, Ohio	506
No Current Contractor	Iowa Ordnance Plant, Iowa	563
Subtotal of cases without a Willing Payer		14% or 2,046

Source: GAO analysis of Energy data and interviews with current contractors.

Note: Table includes the cases from the facilities in these states with the largest number of cases filed but does not include the remaining 721 cases (5 percent) from other facilities in these states.

<sup>a</sup>While an Energy contractor previously operated the Paducah Gaseous Diffusion Plant, the plant is currently operated by a private entity that leases the facility. In addition, an Energy contractor is currently performing environmental clean-up at the facility. We split the cases filed for the Paducah facility evenly between the current operator and the clean-up contractor, based on discussions with the clean-up contractor.

Concerns about the extent to which there will be willing payers of benefits have led to various proposals for addressing this issue. For example, the state of Ohio proposed that Energy designate the state as a contractor to provide a mechanism for reimbursing the state for paying the workers' compensation claims. However, Energy rejected this proposal on the grounds that EEOICPA does not authorize the agency to establish such an arrangement. In a more wide-ranging proposal, legislation introduced in this Congress<sup>6</sup> proposes to establish Subtitle D as a federal program with uniform benefits administered by the Department of Labor.

<sup>6</sup>H.R. 1758, sponsored by Representative Ted Strickland, was introduced on April 10, 2003.

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## Multiple Factors Make Compensation Not Certain

In contrast to Subtitle B provisions that provide for a uniform federal benefit that is not affected by the degree of disability, various factors may affect whether a Subtitle D claimant is paid under the state workers' compensation program, or how much compensation will be paid. Beyond the differences in the state programs that may result in varying amounts and length of payments, these factors include the demonstration of a loss resulting from the illness and contractors' uncertainty on how to compute compensation.

Even with a positive determination from a physician panel and a willing payer, claimants who cannot demonstrate a loss, such as loss of wages or medical expenses, may not qualify for compensation. On the other hand, claimants with positive determinations but not a willing payer may still qualify for compensation under the state program if they show a loss and can overcome all challenges to the claim raised by the employer or the insurer.

Contractors' uncertainty on how to compute compensation may also cause variation in whether or how much a claimant will receive in compensation. While contractors with self-insurance told us that they plan to comply with Energy's directives to not contest cases with positive determinations, some contractors were unclear about how to actually determine the amount of compensation that a claimant will receive. For example, one contractor raised a concern that no guidance exists to inform them about whether they can negotiate the degree of disability, a factor that could affect the amount of the workers' compensation benefit. Other contractors will likely experience similar situations, as Energy has not issued guidance on how to consistently compute compensation amounts.

While not directly affecting compensation amounts, a related issue involves how contractors will be reimbursed for claims they pay. Energy uses several different types of contracts to carry out its mission, such as operations or cleanup, and these different types of contracts impact how workers' compensation claims will be paid. For example, a contractor responsible for managing and operating an Energy facility was told to pay the workers' compensation claims from its operating budget. The contractor said that this procedure may compromise its ability to conduct its primary responsibilities. On the other hand, a contractor cleaning up an Energy facility was told by Energy officials that its workers' compensation claims would be reimbursed under its contract, and therefore paying claims would not affect its ability to perform cleanup of the site.

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## Bottlenecks In Energy's Claims Process Delay Filing Of Workers Compensation Claims

As a result of Energy's policies and procedures for processing claims, claimants have experienced lengthy delays in receiving the determinations they need to file workers' compensation claims. In particular, the number of cases developed during initial case processing has not always been sufficient to allow the physician panels to operate at full capacity. Moreover, even if these panels were operating at full capacity, the small pool of physicians qualified to serve on the panels would limit the agency's ability to produce more timely determinations. Energy has recently allocated more funds for staffing for case processing, but is still exploring methods for improving the efficiency of its physician panel process.

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## Sufficient Cases Have Not Always Been Available for Physician Panel Review

Energy's case development process has not consistently produced enough cases to ensure that the physician panels are functioning at full capacity. To make efficient use of physician panel resources, it is important to ensure that a sufficient supply of cases is ready for physician panel review. Energy officials established a goal of completing the development of 100 cases per week by August 2003 to keep the panels fully engaged. However, as of September 2003, Energy officials stated that the agency was completing development on only about 40 cases a week. Further, while agency officials indicated that they typically assigned 3 cases at a time to be reviewed within 30 days, several panel physicians indicated that they received fewer cases, some receiving a total of only 7 or 8 during their first year as a panelist.

Energy was slow to implement its case development operation. Initially, agency officials did not have a plan to hire a specific number of employees for case development, but they expected to hire additional staff as they were needed. When Energy first began developing cases, in the fall of 2002, the case development process had a staff of about 14 case managers and assistants. With modest staffing increases, the program quickly outgrew the office space used for this function. Though Energy officials acknowledged the need for more personnel by spring 2003, they delayed hiring until additional space could be secured in August. As of August 2003, Energy had more than tripled the number of employees dedicated to case development to a about 50, and Energy officials believe that they will now be able to achieve their goal of completing development of 100 cases a week that will be ready for physician panel review. Energy officials cited a substantial increase in the number of cases ready for physician panel review during October 2003, and reported preparing more than a hundred cases for panel review in the first week of November 2003.

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Energy shifted nearly \$10 million from other Energy accounts into this program in fiscal year 2003, and plans to shift an additional \$33 million into the program in fiscal year 2004, to quadruple its case-processing operation. With additional resources, Energy plans to complete the development of all pending cases as quickly as possible and have them ready for the physician panels. However, this would create a large backlog of cases awaiting review by physician panels. Because most claims filed so far are from workers whose medical conditions are likely to change over time, creation of such a backlog could further slow the decision process by making it necessary to update medical records before panel review.

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### The Ability to Produce More Timely Decisions May Be Limited By Small Pool Of Qualified Physicians and Gaps in Information They Need to Quickly Decide Cases

Even if additional resources allow Energy to speed initial case development, the limited pool of qualified physicians<sup>7</sup> for panels will likely prevent significant improvements in processing time. Currently, approximately 100 physicians are assigned to panels of 3 physicians. In an effort to improve overall processing time, Energy has requested that NIOSH appoint an additional 500 physicians to staff the panels. NIOSH has indicated that the pool of physicians with the appropriate credentials and experience (including those already appointed) may be limited to about 200. Even if Energy were able to increase the number of panel physicians to 200, with each panel reviewing 3 cases a month, the panels would not be able to review more than 200 cases in any 30-day period given current procedures. Thus, even with double the number of physicians currently serving on panels, it would take more than 7 years to process all cases pending as of June 30, 2003, without consideration of the hundreds of new cases the agency is receiving each month.<sup>8</sup>

Energy officials are exploring ways that the panel process could be made more efficient. For example, the agency is currently planning to establish permanent physician panels in Washington, DC. Physicians who are willing to serve full-time for a 2 or 3-week period would staff these panels. In addition, the agency is considering reducing the number of physicians

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<sup>7</sup>The criteria NIOSH uses to evaluate qualifications for appointing physicians to these panels include: (1) board certification in a primary discipline; (2) knowledge of occupational medicine; (3) minimum of 5 years of relevant clinical practice following residency; and (4) reputation for good medical judgment, impartiality, and efficiency.

<sup>8</sup>This 7-year estimate assumes that none of the pending cases would be determined ineligible on the basis of non-covered employment or illnesses because we did not possess a sufficient basis for projecting the number of additional cases that would be determined ineligible in the future.

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serving on each panel—for example, initially using one physician to review a case, assigning a second physician only if the first reaches a negative determination, and assigning a third physician if needed to break a tie. Energy staff are currently evaluating whether such a change would require a change in their regulations.

Agency officials have also recommended additional sources from which NIOSH might recruit qualified physicians and are exploring other potential sources. For example, the physicians in the military services might be used on a part-time basis. In addition, physicians from the Public Health Service serve on temporary full-time details as panel physicians.

Panel physicians have also suggested methods to Energy for improving the efficiency of the panels. For example, some physicians have stated that more complete profiles of the types and locations of specific toxic substances at each facility would speed their ability to decide cases. In addition, one panel physician told us that one of the cases he reviewed received a negative determination because specific documentation of toxic substances at the worker's location was lacking. While Energy officials reported that they have completed facility overviews for about half the major sites, specific data are available for only a few sites. Agency officials said that the scarcity of records related to toxic substances and a lack of sufficient resources constrain their ability to pursue building-by-building profiles for each facility.

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Mr. Chairman, this completes my prepared statement. I would be happy to respond to any questions you or other Members of the Committee may have at this time.

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## Contacts and Acknowledgments

For information regarding this testimony, please contact Robert E. Robertson, Director, or Andrew Sherrill, Assistant Director, Education, Workforce, and Income Security at (202) 512-7215. Individuals making contributions to this testimony include Amy E. Buck, Melinda L. Cordero, Beverly Crawford, Patrick DiBattista, Corinna A. Nicolaou, Mary Nugent, and Rosemary Torres Lerma.

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