

GAO

Report to the Chairman, Subcommittee
on Immigration, Border Security, and
Claims, Committee on the Judiciary,
House of Representatives

September 2004

**ENERGY
EMPLOYEES
COMPENSATION**

**Many Claims Have
Been Processed, but
Action Is Needed to
Expedite Processing
of Claims Requiring
Radiation Exposure
Estimates**





Highlights of [GAO-04-958](#), a report to Chairman, Subcommittee on Immigration, Border Security, and Claims, Committee on the Judiciary, House of Representatives

Why GAO Did This Study

Subtitle B of the Energy Employees Occupational Illness Compensation Program Act, administered by the Department of Labor (Labor), provides eligible workers who developed illnesses from their work, or their survivors, with a onetime total payment of \$150,000, and coverage for medical expenses related to the illnesses. For some claims, Labor uses radiation exposure estimates (dose reconstructions) performed by the National Institute for Occupational Safety and Health (NIOSH), part of the Department of Health and Human Services' (HHS) Centers for Disease Control and Prevention (CDC), to determine if the illness claimed was "as least as likely as not" related to employment at a covered facility.

GAO was asked to determine (1) how well Labor's procedures and practices ensure the timely and consistent processing of claims that are not referred to NIOSH for dose reconstruction but are being processed by Labor and (2) how well Labor's and NIOSH's procedures and practices ensure the timely and consistent processing of claims that are referred for dose reconstruction. GAO did not assess the quality of Labor's claims decisions.

What GAO Recommends

HHS agreed with GAO's recommendation that the agency direct CDC to establish time frames for completing the remaining site profiles.

www.gao.gov/cgi-bin/getrpt?GAO-04-958.

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.

ENERGY EMPLOYEES COMPENSATION

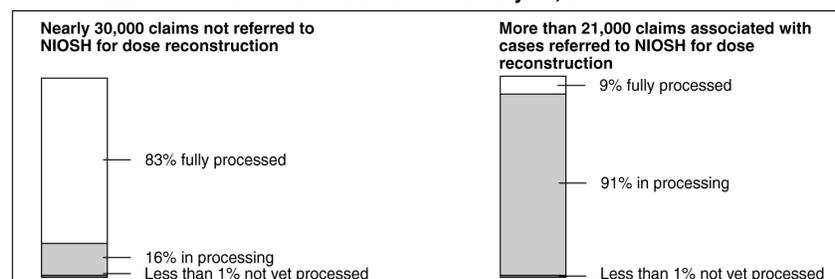
Many Claims Have Been Processed, but Action Is Needed to Expedite Processing of Claims Requiring Radiation Exposure Estimates

What GAO Found

In the first 2½ years of the program—July 31, 2001, through January 31, 2004—Labor had fully processed 83 percent of the nearly 30,000 claims that had not been referred to NIOSH for dose reconstruction (see the fig. below); these claims correspond to nearly 23,000 cases for individual workers. (Multiple claims can be associated with a case as eligible survivors may each file claims.) Labor took an average of 7 months to fully process these claims. About 42 percent of claims with final decisions were approved, resulting in \$625 million in lump-sum compensation payments. The remaining 58 percent of claims with final decisions were denied—the majority because they did not meet medical or employment eligibility criteria. Labor generally met its timeliness goals for processing claims and is working to ensure that claims are processed consistently by conducting accountability reviews and creating a task force to update its procedure manual.

In the first 2½ years of the program, Labor and NIOSH had fully processed about 9 percent of the more than 21,000 claims (which correspond to about 15,000 cases) that were referred to NIOSH for dose reconstructions, taking an average of 17 months to fully process claims. Fifty-one percent of the processed claims were approved, and Labor has paid out about \$65 million in lump-sum compensation. Forty-nine percent were denied because it was determined that the claimed illness was not at least as likely as not related to employment at a covered facility. A backlog of claims needing dose reconstruction developed because NIOSH needed time to get the necessary staff and procedures in place to complete the dose reconstructions and develop site profiles. Efforts are under way to develop site profiles that contain facility-specific information that is useful in completing dose reconstructions. However, processing claims associated with facilities that do not have site profiles, in some instances, has essentially stopped, and NIOSH has not established a time frame for completing these remaining site profiles because of limited expert resources and site complexities. As a result, some claimants could wait a considerable period of time to have their claims fully processed. To help ensure the consistency of claim decisions, HHS's Advisory Board is conducting an independent external evaluation of dose reconstruction decisions and site profiles.

Status of EEOICPA Subtitle B Claims as of January 31, 2004



Source: GAO's analysis of Labor's data.

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Abbreviations

CDC	Centers for Disease Control and Prevention
ECMS	Energy Case Management System
EMBPS	Energy Medical Bill Processing Subsystem
EEOICPA	Energy Employees Occupational Illness Compensation Program Act
GPRA	Government Performance and Results Act of 1993
HHS	Department of Health and Human Services
INEEL	Idaho National Engineering and Environmental Laboratory
NIOSH	National Institute for Occupational Safety and Health
NOCTS	NIOSH Office of Compensation Analysis and Support Claims Tracking System
OCAS	Office of Compensation Analysis and Support
RECA	Radiation Exposure Compensation Act

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United States Government Accountability Office
Washington, DC 20548

September 10, 2004

The Honorable John N. Hostettler
Chairman, Subcommittee on Immigration,
Border Security, and Claims
Committee on the Judiciary
House of Representatives

Dear Mr. Chairman:

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 serious illnesses.

The Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), enacted as Title XXXVI of Public Law 106-398 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, was signed into law on October 30, 2000. EEOICPA established two programs to help secure compensation for certain workers who developed occupational illnesses or for their survivors. The first program, established by Subtitle B, is administered by the Department of Labor (Labor). Under this program, eligible workers who were exposed to radiation or toxic substances and who subsequently developed specific kinds of cancers and other named conditions, or their survivors, receive a onetime total payment of \$150,000. Living and eligible Energy employees also receive coverage for future medical expenses related to the illness. Compensation of \$50,000 and payment of medical expenses from the date a claim is filed is also available for employees exposed to uranium previously awarded benefits by the Department of Justice under Section 5 of the Radiation Exposure Compensation Act (RECA). The second program, established by Subtitle D, is administered by Energy. This program allows Energy to help its employees file state workers' compensation claims for illnesses determined by a panel of physicians to be caused by exposure during employment at an Energy facility.

Several different federal agencies are involved with the implementation of the Subtitle B program, including Labor, the Centers for Disease Control and Prevention's (CDC) National Institute for Occupational Safety and Health (NIOSH), and Energy.¹ Labor has primary responsibility for administering the program; Labor receives the claims and determines whether the claimant meets the eligibility requirements. Labor may receive multiple claims associated with a single worker, as multiple survivors may each file a claim. When considering the compensability of certain claims, Labor relies on estimations of the levels of radiation particular workers were likely exposed to when working for Energy; these estimations are known as "dose reconstructions" and are developed by NIOSH. To avoid gathering similar information for each claim associated with a particular facility, NIOSH compiles facility-specific information in "site profiles." These site profiles assist NIOSH in completing the dose reconstructions. Dose reconstructions are not needed for certain workers from four designated locations, who constitute the "special exposure cohort."² Certain workers from these sites were designated as members of the special exposure cohort in legislation because it was believed that exposure records were insufficient and the reasonable likelihood was that the workers' radiation exposure caused their cancers.³ Finally, Energy provides employment and radiation records, where available, to Labor and NIOSH as appropriate.

While most of the concerns about EEOICPA have focused on Energy's implementation of Subtitle D,⁴ concerns have also been raised about Subtitle B claims, such as the length of time involved in completing dose reconstructions. Now that the program has been in place for a few years, you asked that we assess how well the program is working. We focused our work on two key areas: (1) how well Labor's procedures and practices

¹NIOSH is part of the Centers for Disease Control and Prevention within the Department of Health and Human Services (HHS).

²These four locations include three gaseous diffusion plants in Oak Ridge, Tennessee, Paducah, Kentucky, Portsmouth, Ohio, and an underground nuclear test site on Amchitka Island, Alaska.

³The statute created an Advisory Board on Radiation and Worker Health, which is responsible for advising the President whether workers at other locations should be added to the special exposure cohort. NIOSH provides support to the Advisory Board on this and other matters.

⁴GAO. *Energy Employees Compensation: Even with Needed Improvements in Case Processing, Program Structure May Result in Inconsistent Benefit Outcomes*, [GAO-04-516](#) (Washington, D.C.: May 28, 2004).

ensure the timely and consistent processing of claims that are not referred to NIOSH for dose reconstruction but are being processed by Labor and (2) how well Labor's and NIOSH's procedures and practices ensure the timely and consistent processing of claims that are referred for dose reconstructions.

To perform our review, we analyzed both Labor's and NIOSH's procedures and practices used to process claims. Specifically, we obtained and analyzed information on the goals used to assess timeliness and the quality assurance procedures. Also, we obtained information on NIOSH's efforts to complete site profiles needed to assist with the dose reconstruction process and on a recently introduced regulation for considering special exposure cohort petitions. We also interviewed officials from Labor's Office of Workers' Compensation Programs and its four district offices as well as NIOSH's Office of Compensation Analysis and Support. In addition, we interviewed several NIOSH contracted staff, claimants, and EEOICPA experts regarding their knowledge of, or experiences with, Subtitle B claims processing. Further, we analyzed data extracted from Labor's and NIOSH's case management systems for claims filed from the beginning of the program—July 31, 2001—through January 31, 2004. We determined that the data we used were sufficiently reliable for our purposes by performing electronic testing for obvious errors in accuracy and completeness, reviewing available documentation, and interviewing agency officials and contractors knowledgeable about the data. Using these data, we determined the number of claims received, the status of the claims, the average time taken to process the claims, and the approval rates of the claims. We did not assess the quality of Labor's decisions. In addition, we interviewed Labor and NIOSH officials to obtain updated information on the approval rates for cases that required dose reconstructions as of July 2004. We also interviewed NIOSH officials to obtain information on the average time taken to draft dose reconstructions as of July 2004 and the number of dose reconstructions completed in the first 9 months of fiscal year 2004.

We conducted our review from October 2003 to September 2004 in accordance with generally accepted government auditing standards. For a more complete explanation of our methodology, see appendix I.

Results in Brief

In the first 2½ years of the program—July 31, 2001, through January 31, 2004—Labor had fully processed 83 percent of the nearly 30,000 claims that had not been referred to NIOSH for dose reconstruction. It took Labor

an average of 7 months to fully process claims.⁵ About 42 percent of claims with final decisions were approved, resulting in \$625 million in lump-sum compensation payments. The remaining 58 percent of the fully processed claims with final decisions were denied, in most instances because they did not meet medical or employment eligibility criteria. Labor has generally met its performance goals for timely claims processing. Moreover, Labor has taken steps to help ensure that claims are processed consistently. For example, Labor has conducted accountability reviews and worked with its district offices to address problems identified through these reviews, such as errors in how information was entered into the case management system. In addition, Labor has established a task force to update its procedure manual to provide a single source for claims-processing guidance.

Labor and NIOSH face a large backlog of claims that had been referred to NIOSH for dose reconstruction. In the first 2½ years of the program, the agencies had fully processed about 9 percent of the more than 21,000 claims that require dose reconstructions, taking an average of 17 months to fully process claims.⁶ Fifty-one percent of the fully processed claims with final decisions were approved, based on the results of approximately 500 dose reconstructions, and Labor paid out about \$65 million in lump-sum compensation for these claims. Forty-nine percent were denied because the results of the dose reconstruction were used by Labor to determine that the claimed cancer did not meet the threshold of being “at least as likely as not” to have been caused by work-related exposure. However, more than 90 percent of claims referred to NIOSH for dose reconstruction, which involved about 14,000 individual workers, remained in processing in the first 2½ years of the program. NIOSH officials report that the backlog arose because of several factors, including the time needed to get the necessary staff and procedures in place for performing dose reconstructions and to develop site profiles. As of June 2004, 11 site profiles were fully completed, 9 were partially completed, and the remaining 10 that NIOSH anticipates doing had not been started. NIOSH’s progress in developing site profiles has helped accelerate the completion

⁵These 30,000 claims correspond to nearly 23,000 cases involving individual workers. Multiple claims can be associated with a single case when multiple survivors file claims related to the same worker.

⁶The more than 21,000 claims referred to NIOSH for dose reconstruction correspond to more than 15,000 cases involving individual workers for whom dose reconstructions need to be completed.

of dose reconstructions. Whereas the first 1,000 dose reconstructions took about 2 years to complete, the second 1,000 were completed in about 4 months, and the third 1,000 were completed in 11 weeks. However, in some instances, NIOSH has essentially stopped processing claims associated with facilities for which it has not yet developed profiles and has not established a time frame for completing these remaining site profiles because of limited expert resources and site complexities. As a result, some claimants could wait a considerable period of time to have their claims fully processed. To help ensure the consistency of claims decisions, HHS's Advisory Board is conducting an independent external evaluation of dose reconstruction decisions and site profiles.

To enhance program management and promote greater transparency with regard to the timeliness of completing dose reconstructions, we recommend that the Secretary of HHS direct CDC officials to establish time frames for completing the remaining site profiles. In commenting on a draft of this report, HHS agreed with the recommendation to establish time frames for completing the remaining site profiles. HHS's comments are provided in appendix IV.

Background

Several different federal agencies are involved with the implementation of EEOICPA's Subtitle B program, including Labor, CDC's NIOSH, and Energy. Labor's Office of Workers' Compensation Programs is responsible for adjudicating and administering claims filed by workers, former workers, or certain eligible survivors under the act. NIOSH, as part of the Centers for Disease Control and Prevention within the Department of Health and Human Services, is responsible for performing several technical and policy-making roles in support of Labor's program, including

- establishing by regulation methods for arriving at reasonable estimates of radiation doses received by an individual at a covered facility;
- establishing by regulation guidelines to be used by Labor to determine whether an individual sustained a cancer in the performance of duty for purposes of the compensation program if, and only if, the cancer was "at least as likely as not" related to the radiation dose received by the employee;⁷

⁷This is referred to as determining the "probability of causation."

-
- establishing procedures for considering petitions to be added to the special exposure cohort; and
 - providing the Advisory Board on Radiation and Worker Health with administrative and other necessary support services.

EEOICPA specified that the President appoint an Advisory Board to advise the Secretary, HHS, on its activities under the act. The Advisory Board, which is composed of scientists, physicians, and workers, advises the Secretary, HHS, on

- the development of methods used to perform dose reconstructions and guidelines to be used to assess the likelihood that an employee's cancer is "at least as likely as not" related to work-related radiation exposure,
- the scientific validity and quality of dose reconstruction efforts performed, and
- the addition of employees to the special exposure cohort.

Energy is responsible for providing Labor and NIOSH information to assist with processing claims. This information includes such things as employment verification, information specifying the estimated radiation dose of that employee during each employment period claimed, and facilitywide monitoring data.

Several requirements must be met for a claimant to be eligible for compensation under Subtitle B.⁸ For a worker (or eligible survivor) to qualify for benefits, the worker must have worked at a covered Energy facility or at a beryllium vendor facility, or for an atomic weapons employer during a covered time period, and developed one of the specified illnesses associated with exposure to radiation, beryllium, or silica. Covered medical conditions include all cancers (except chronic lymphocytic leukemia), beryllium disease, and chronic silicosis.⁹

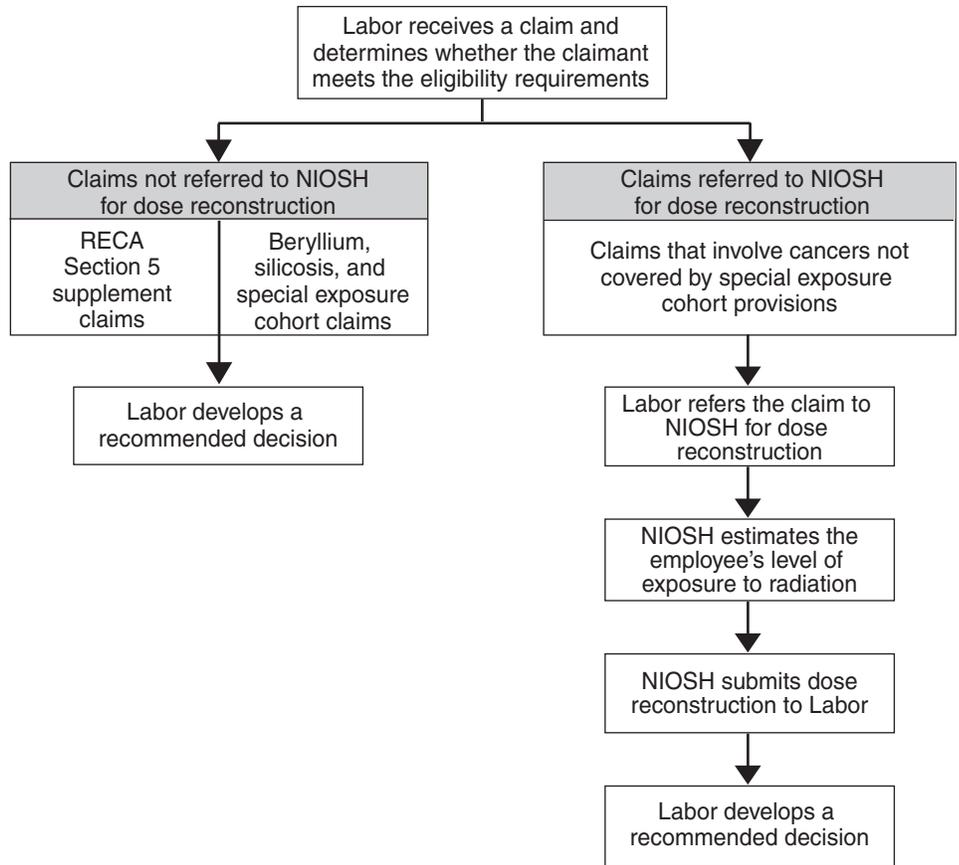
⁸Claimants who submit Subtitle B claims to Labor may also submit Subtitle D claims to Energy if they qualify for this program. There is no offset provision that would preclude a claimant receiving compensation under one of these programs from also receiving compensation under the other program.

⁹Beryllium disease primarily affects the lungs and is caused by people inhaling beryllium dust or fumes. Chronic silicosis is a lung disease caused by overexposure to crystalline silica, a major component of sand, rock, and mineral ores. Chronic silicosis is only covered for individuals who worked in nuclear test tunnels in Nevada and Alaska.

When a claim is filed, it is assigned to one of Labor's four district offices—Jacksonville, Florida; Cleveland, Ohio; Denver, Colorado; or Seattle, Washington—based on the geographical location of the covered worker's last employment. Upon receipt of a claim, Labor determines whether the Subtitle B claimant meets eligibility requirements for one of three claim types: RECA Section 5 supplement claims; beryllium, silicosis, and special exposure cohort cancer claims; and cancer claims not covered by special exposure cohort provisions.¹⁰ For the purposes of our report, we have grouped these three types of claims into two categories, based on whether or not the claims are referred to NIOSH for dose reconstruction during processing. As figure 1 shows, claims that are not referred to NIOSH for dose reconstruction include RECA Section 5 supplement claims and beryllium, silicosis, and special exposure cohort cancer claims. Claims that are referred to NIOSH for dose reconstruction include cancer claims not covered by special exposure cohort provisions.

¹⁰For RECA claims, Labor verifies with the Department of Justice that the claimant had been previously awarded compensation under the RECA program. For all other claims, Labor verifies that the claimant meets the employment and illness criteria.

Figure 1: Claims That Require Dose Reconstructions Are Processed Differently than Claims That Do Not



Source: GAO's analysis of Labor's and NIOSH's claim processes.

Depending on the type of claim, Labor must complete certain claims-processing tasks before a decision can be made as to whether the claimant should receive compensation. Claims for the \$50,000 RECA Section 5 supplement are the least complex. For these, Labor verifies with the Department of Justice that an award determination has previously been made and documents the identity of the claimant. For claims involving beryllium disease, silicosis, or a specified cancer for workers at a special

exposure cohort facility, the employment and illness are verified.¹¹ After the verification is completed for a claim, Labor develops a recommended decision that is issued to the claimant. The claimant may agree with the recommended decision or may object and request either a review of the written record or an oral hearing. In either case, the Final Adjudication Branch (a separate entity within Labor's Office of Workers' Compensation Programs) will review the entire record, including the recommended decision and any evidence or testimony submitted by the claimant and will issue a final decision. A claimant can appeal the decision in the U.S. District Courts or have the case reopened if new evidence is provided to Labor.

Other claims are referred to NIOSH for dose reconstruction. Such claims include those involving a claimed cancer not covered by the special exposure cohort provisions.¹² Before a determination of compensability can be made, a dose reconstruction must be conducted for the probability of causation to be established. In these instances, once Labor determines a worker was a covered employee and that he or she had a diagnosis of cancer, the case is referred to NIOSH. Using scientific and other collected information, NIOSH performs a dose reconstruction and provides the results to Labor. Labor uses these results to assess whether the employee's cancer was "at least as likely as not" related to the radiation dose received by the employee in order to determine compensability.

The purpose of a dose reconstruction is to characterize the extent to which workers were exposed to radiation present in the workplace and to assist Labor in determining the probability that a person's cancer was "at least as likely as not" caused by radiation. Dose reconstructions rely on information that was periodically collected to monitor radiation levels by Energy or other covered facilities and on information collected during interviews with the claimant. For example, when such information is available, NIOSH officials gather information that was collected to monitor a worker's radiation exposure, such as readings from a worker's

¹¹These specified cancers include leukemia, multiple myeloma, lymphomas, as well as lung, thyroid, breast, esophagus, stomach, pharynx, small intestine, pancreas, bile duct, gall bladder, salivary gland, bladder, brain, colon, ovary, liver, bone, and renal cancers. Additional criteria, such as how soon the cancer developed after the first exposure to radiation, must also be met for many of these cancers.

¹²These claims involve such things as cancers incurred at a non-special exposure cohort facility or workers who did not have sufficient employment duration to qualify for the special exposure cohort.

monitoring badges, urinalysis results, and radon monitoring results. They also obtain information from workplacewide monitoring readings, such as general air-sampling results, radon monitoring results, and work-required medical screening x-rays. NIOSH officials also conduct interviews with claimants to obtain information on their employment history, how they were monitored for radiation exposure, whether they were aware of any particular incidents during which they may have been exposed to radiation, and whether medical screening had indicated they may have been exposed to radiation. In cases where NIOSH officials cannot fully characterize the likely level of radiation exposure, they estimate the level of exposure using reasonable scientific assumptions that give the claimant all the benefit of the doubt, according to NIOSH officials.

Compensation is limited to \$150,000 per worker for all claims that are not related to RECA Section 5 supplements. When multiple survivors of the same worker file claims, the compensation amount is divided among eligible survivors. Moreover, while multiple claims associated with a single worker may be filed with Labor, only one dose reconstruction is needed in such instances. See appendix II for detailed information about the claim-processing steps used by Labor and NIOSH.

Labor Processes Claims Not Referred to NIOSH for Dose Reconstructions in a Timely Manner and Has Taken Steps to Ensure Consistency

In the first 2½ years of the program—July 31, 2001, through January 31, 2004—Labor had fully processed 83 percent of claims not referred to NIOSH for dose reconstruction. During the first year of the program, Labor was not able to meet one of its primary Government Performance and Results Act of 1993 (GPRA) timeliness goals, but since then GPRA goals have been met and Labor has set higher goals for the future.¹³ Labor also established interim goals for processing claims. In addition, Labor has instituted various procedures to promote consistency, including conducting accountability reviews and updating its procedures manual.

¹³GPRA requires federal agencies to establish standards measuring their performance and effectiveness.

Labor Has Fully Processed Most Claims Not Referred to NIOSH for Dose Reconstructions and Has Generally Met its Timeliness Goals for Claims Processing

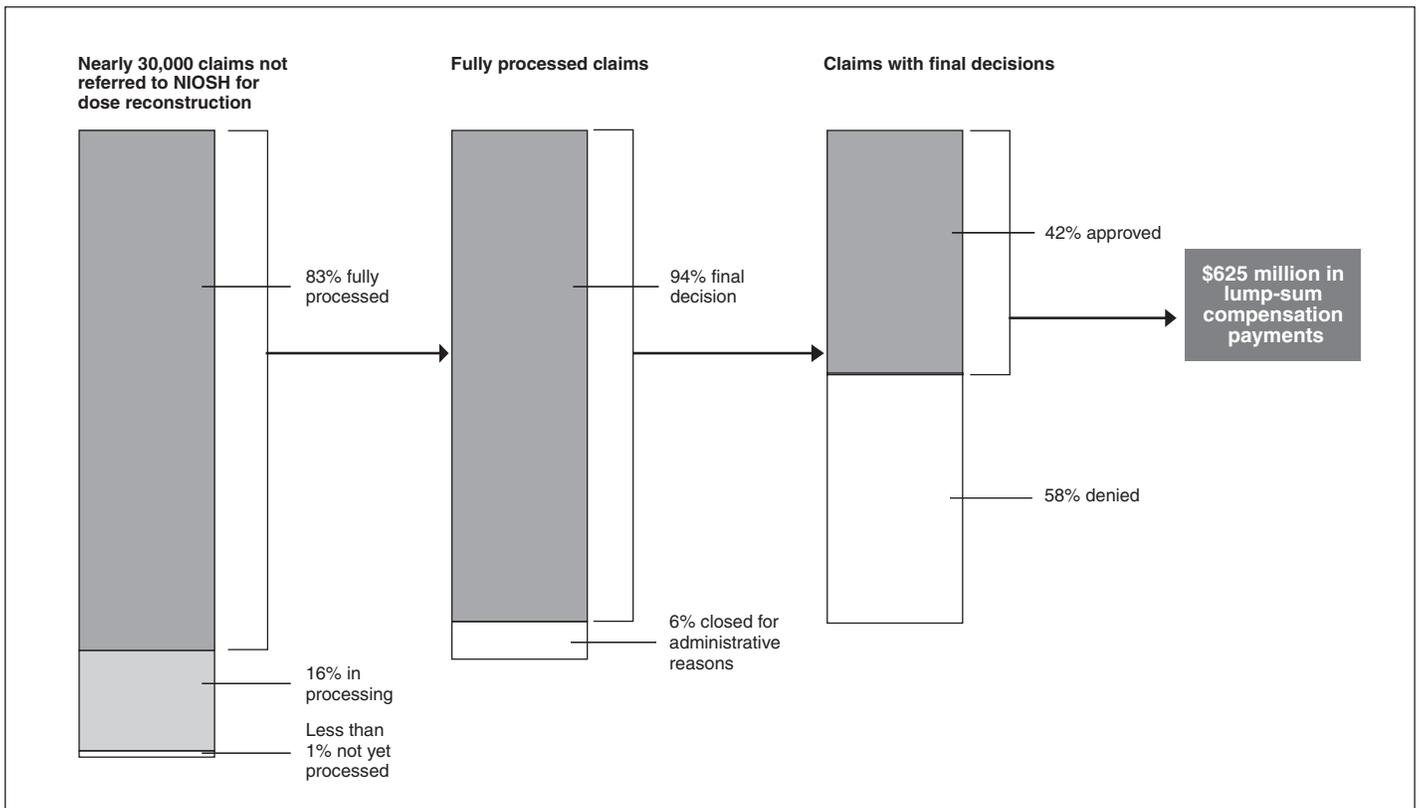
As of January 31, 2004, Labor had fully processed 83 percent of the nearly 30,000 claims for benefits under Subtitle B that had not been referred to NIOSH for dose reconstruction.¹⁴ As shown in figure 2, an additional 16 percent of claims were in processing, and less than 1 percent had not yet begun processing.¹⁵ Of the claims that were fully processed, 94 percent had final decisions, and the remainder had been closed without a final determination for administrative reasons.¹⁶ Forty-two percent of claims with final decisions were approved, resulting in more than \$625 million in lump-sum compensation payments. The remaining 58 percent were denied, in most instances because they did not meet medical or employment eligibility criteria. On average, it took about 7 months to fully process claims not needing dose reconstruction.

¹⁴These 30,000 claims correspond to nearly 23,000 cases involving individual workers. Multiple claims can be associated with a single case when multiple survivors file claims related to the same worker.

¹⁵Some of the claims still in processing may be referred to NIOSH for dose reconstruction as claim processing continues.

¹⁶Claims can be closed for various administrative reasons, including claimants withdrawing the claim or dying prior to the final processing of the claim. In the event that a claimant dies prior to final processing, an eligible survivor may file a new claim.

Figure 2: Status of Claims Not Referred to NIOSH for Dose Reconstruction as of January 31, 2004



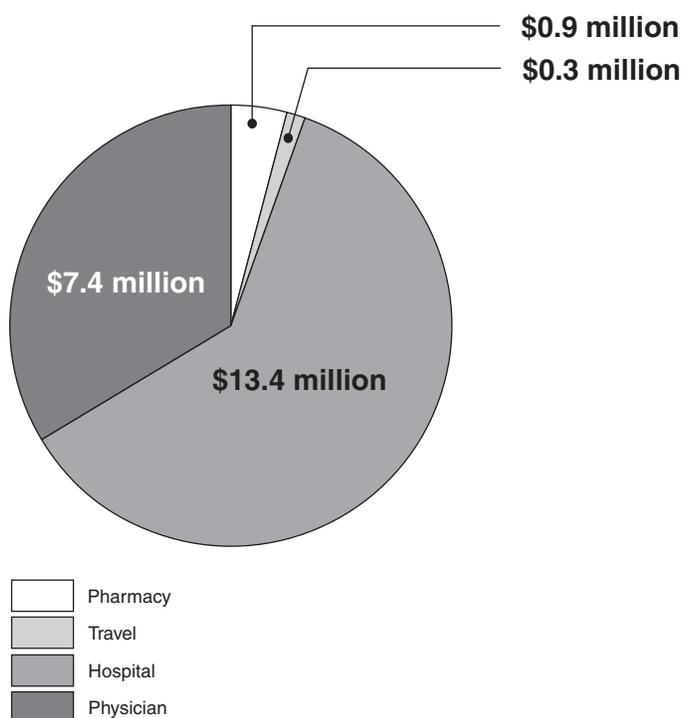
Source: GAO's analysis of Labor's data.

As of January 31, 2004, the majority of approved claims that were not referred to NIOSH for dose reconstructions reported cancer as a claimed illness, and Labor had reimbursed claimants whose claims were approved nearly \$22 million in medical and travel-related expenses. About 55 percent of approved claims not referred for dose reconstruction claimed cancer, 12 percent reported chronic beryllium disease, 10 percent reported beryllium sensitivity, and 4 percent reported chronic silicosis.¹⁷ Approved claimants with ongoing medical and travel-related expenses related to the occupational illness for which they were compensated under

¹⁷The illnesses reported here are not mutually exclusive; claimants may report multiple illnesses and may have reported an illness that we did not report here. Therefore the totals for the illnesses reported here do not add to 100 percent.

Subtitle B are entitled to reimbursement for these expenses.¹⁸ As shown in figure 3, more than half of the nearly \$22 million paid was reimbursement for claimants' hospital expenses.

Figure 3: Payments for Medical and Travel-Related Expenses Made for Approved Claims Not Referred to NIOSH for Dose Reconstruction as of January 31, 2004



Source: GAO's analysis of Labor's data.

Labor has generally met the two broad GPRA goals it established for timeliness of processing Subtitle B claims, as shown in table 1. These goals were (1) to complete the initial processing of claims within specified time

¹⁸About one-third of the approved claims were filed by workers rather than survivors; these workers would be eligible for medical and travel-related expenses.

periods, depending upon the type of claim, 75 percent of the time,¹⁹ and (2) to complete the final decision processing of claims within specified time periods 75 percent of the time.²⁰ Labor did not establish different GPRA goals for claims not referred to NIOSH for dose reconstruction versus those needing dose reconstruction; rather, the GPRA goals are overall goals that apply to Labor's processing of all Subtitle B claims. The initial processing time frames and the final decision processing time frames encompass all of the activities Labor must complete to fully process a claim. In its fiscal year 2002 annual report, Labor stated that it set these GPRA goals to provide a clear indication to claimants that their claims would be processed efficiently. The report further stated that the agency wanted to send a strong message to the new program's staff that they should share this strong commitment in processing claims. In its 2003 strategic plan, Labor indicated that it planned to set higher processing goals through 2008 by increasing the goals by 2 percentage points each year.

Labor officials cited several factors that contributed to not meeting the GPRA goal for initial processing in fiscal year 2002. For example, in the program's first year, the district offices received more than 34,000 claims and actually had a backlog of claims to process even before they began operating the program on July 31, 2001. In addition, several start-up problems, most notably unanticipated delays in obtaining the employment information from Energy necessary to proceed with initial claims processing, also prevented Labor from achieving this goal during the first year, according to Labor officials. Labor officials also stated that they have addressed many of these initial problems and Energy has greatly improved its responsiveness rate. Labor officials report that Energy is typically responding to a request within 30 days, which exceeds Labor's goal of obtaining a response from Energy within 60 days. Labor officials have also

¹⁹Initial processing of claims includes such activities as recommending that a claim be denied because it does not meet the eligibility criteria or referring a claim to NIOSH for dose reconstruction. Labor has specified various time periods for initial processing, including processing claims for Energy employees or contractors within 120 days 75 percent of the time and processing claims for employees of atomic weapons employers or beryllium vendor facilities within 180 days 75 percent of the time.

²⁰Final decision processing of claims includes such activities as issuing a recommended decision for approved claims and timely responding to a request for a hearing. Labor has specified time periods for these activities, including issuing final decisions for approved claims within 75 days of the recommended decision 75 percent of the time and issuing final decisions in formal hearings within 250 days of the request for hearing 75 percent of the time.

used other sources, such as labor unions, to help provide necessary employment verification.

Table 1: Labor’s Performance with Respect to Its GPRA Goals for Subtitle B, Fiscal Years 2002 and 2003

Labor’s GPRA goals	Completion rate goals for both FY 2002 and FY2003	Actual completion rate for FY 2002	Actual completion rate for FY 2003
Complete the initial processing of claims within various specified time periods	75% of the time	48% of the time	79% of the time
Complete the final decision processing of claims within various specified time periods	75% of the time	76% of the time	76% of the time

Source: GAO analysis of Labor documents.

Note: Shaded cells represent goals that were achieved.

To assist Labor officials in knowing how well claims are being processed, and ultimately meeting its GPRA goals, Labor has also established a number of interim processing goals. These interim processing goals specify time frames for completing activities such as initiating the employment and illness verification process and issuing the lump-sum payments. Initially, the district offices had difficulty meeting some of these interim goals. However, over time they have been better able to meet these goals. For example, in fiscal year 2002, Labor set an interim goal to initiate the employment and illness verification process within 25 days 90 percent of the time. While the district offices achieved only a 76 percent rate in fiscal year 2002, they improved their rate to over 98 percent in fiscal year 2003. Similarly, in fiscal year 2002, an interim goal was set to issue a lump-sum payment to a claimant within 15 days of approving a claim 90 percent of the time. District offices achieved a 77 percent rate in fiscal year 2002 but improved their performance to achieve a 93 percent rate in fiscal year 2003.

Labor Has Taken Steps to Ensure Consistency, Including Accountability Reviews and a Major Update of its Procedures Manual

Labor has taken several steps to help ensure that Subtitle B claims are processed consistently. For example, Labor requires that claim decisions undergo several levels of review. After a claims examiner develops a recommended decision, a senior claims examiner reviews that recommended decision, and a claims manager, who reviews a sample of such decisions, might review it as well. Labor's Final Adjudication Branch then reviews the recommended decision before making a final decision and awarding compensation, if appropriate. If during any of these reviews the reviewer determines that there was not enough information to make a decision, the case is sent back to the claims examiner for further development.

To further promote consistency, Labor performs accountability reviews each year on the EEOICPA program as it does with its other similar compensation programs. In completing the reviews, Labor samples claims in each of its four district offices as well as its Final Adjudication Branch offices. The purpose of the reviews is to assess the quality of work being performed in each office and to guide managers in developing training and implementing any needed corrective actions. The reviews focus on such tasks as processing claims in a timely manner, making payments appropriately, assigning staff to appropriate roles, and coding claims appropriately in the case management system. The accountability reviews have proven very useful in identifying training needs, according to Labor officials. For example, after an accountability review showed that actions had been taken in some claims but were not reflected through status codes in the case management system, some district offices held training courses to help their claims examining staff better understand how to use codes properly. In addition to providing training, the district offices are required to correct any problems identified during the reviews. Labor officials told us they expect to continue to conduct accountability reviews each year.

Labor has also taken steps to improve staff access to updates in claims-processing procedures. Some district offices raised concerns that the procedures manual, originally issued in January 2002, did not always reflect Labor's most recent guidance and needed to be revised. For example, a supervisor in one of the district offices said that the bulletins announcing changes to the system are not available from a central source and that he has struggled at times to determine the proper procedure. According to Labor officials, because the program is relatively new and the law was vague in some areas, Labor has issued many different policies to define how staff should handle different situations. In addition, guidance was not always centrally located because, in issuing policy clarifications, Labor did not consistently use one format; rather, it issued

policies in bulletins, e-mails, and documentation of telephone calls. To address the district offices' concerns, Labor created a task force composed of 10 team members, including staff from the four district offices and headquarters. The task force is working to develop a comprehensive procedures manual that would include all the bulletins, teleconference calls, and other communications containing policy changes that have been issued since the beginning of the program. Officials said that they are in the final stages of completing the manual.

Claims Needing Dose Reconstructions Face Large Processing Backlog

In the first 2½ years of the program—July 31, 2001, through January 31, 2004—Labor and NIOSH fully processed about 9 percent of the claims referred to NIOSH for dose reconstruction, leaving a large backlog of these claims. NIOSH officials report that the backlog resulted because time was needed to develop the necessary regulations and get staff and procedures in place for performing dose reconstructions. NIOSH now has its staff and procedures in place and has an extensive effort under way to complete site profiles that expedite the dose reconstruction process. However, NIOSH's time frame for completing the remaining profiles is uncertain, and as a result, some claims associated with facilities that do not have site profiles may take a considerable period of time to be fully processed. To ensure the consistency of claim decisions, NIOSH's Advisory Board is overseeing an effort to evaluate dose reconstruction decisions and site profiles. Finally, with the recent issuance of special exposure cohort regulations, the backlog of claims needing dose reconstructions may be reduced if additions are made to the special exposure cohort, thereby eliminating the need for performing dose reconstructions on these claims.

**Relatively Few Claims
Needing Dose
Reconstructions Have
Been Fully Processed, and
NIOSH Cites a Number of
Factors Affecting Its
Ability to Complete Dose
Reconstructions**

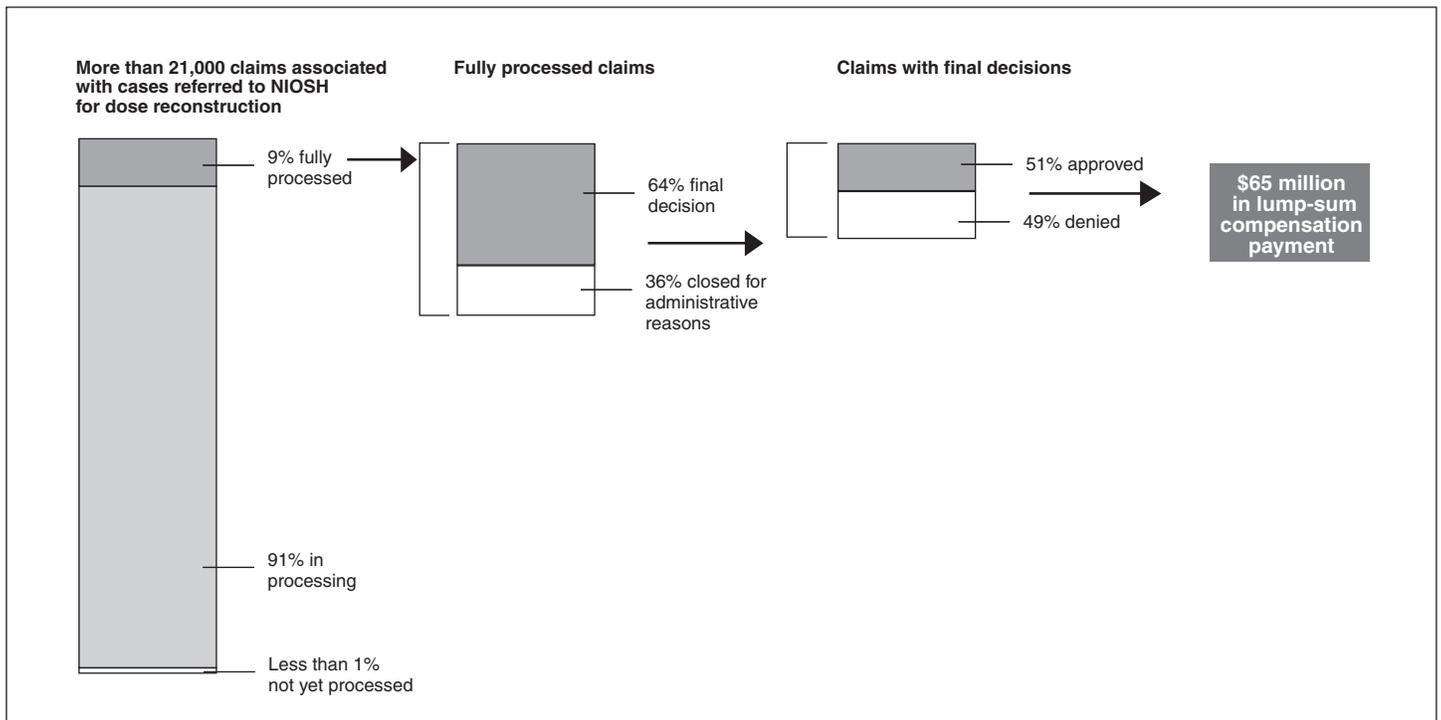
As of January 31, 2004, Labor, using dose reconstructions provided by NIOSH, had fully processed relatively few of the claims referred to NIOSH for dose reconstruction. Of the more than 21,000 claims requiring dose reconstruction, 9 percent were fully processed, 91 percent were in processing, and less than 1 percent had not yet begun processing, as shown in figure 4.²¹ Of the 9 percent that had been fully processed, 64 percent had final decisions, while the remaining claims were closed for administrative reasons.²² Our analysis showed that dose reconstructions had been started for about one-third of the claims that were in processing. The remaining claims were either waiting or undergoing development prior to the initiation of the dose reconstruction.²³ In some cases where a site profile has not yet been developed, these claims are essentially on hold until the site profile is developed.

²¹These 21,000 claims correspond with more than 15,000 cases involving individual workers for whom dose reconstructions would need to be completed. Multiple survivor claims can be associated with the same worker, and hence there are more claims to be processed by Labor than dose reconstructions to be completed by NIOSH. See appendix III for additional comparative information on the status of claims and cases. The approximately 19,000 claims that were in processing as of January 31, 2004, corresponded to about 14,000 dose reconstructions that needed to be completed.

²²Claims can be closed for various administrative reasons, including a claimant withdrawing the claim or dying prior to the final processing of the claim. In the event that a claimant dies prior to final processing, an eligible survivor may file a new claim.

²³NIOSH develops a claim prior to completing a dose reconstruction by completing such activities as interviewing claimants and obtaining individuals' radiation exposure records from Energy or other sources as appropriate.

Figure 4: Status of Claims Referred to NIOSH for Dose Reconstruction as of January 31, 2004



Source: GAO's analysis of Labor's data.

Fifty-one percent of claims with final decisions as of January 31, 2004, were approved, resulting in \$65 million in lump-sum compensation payments.²⁴ Forty-nine percent were denied because the results of the dose reconstruction were used by Labor to determine that the claimed illness was not “at least as likely as not” to have been caused by work-related radiation exposure.²⁵ However, approval rates for cases with final decisions have subsequently decreased, and as of July 2004, Labor officials reported that the approval rate for cases that required dose reconstruction was about 30 percent.

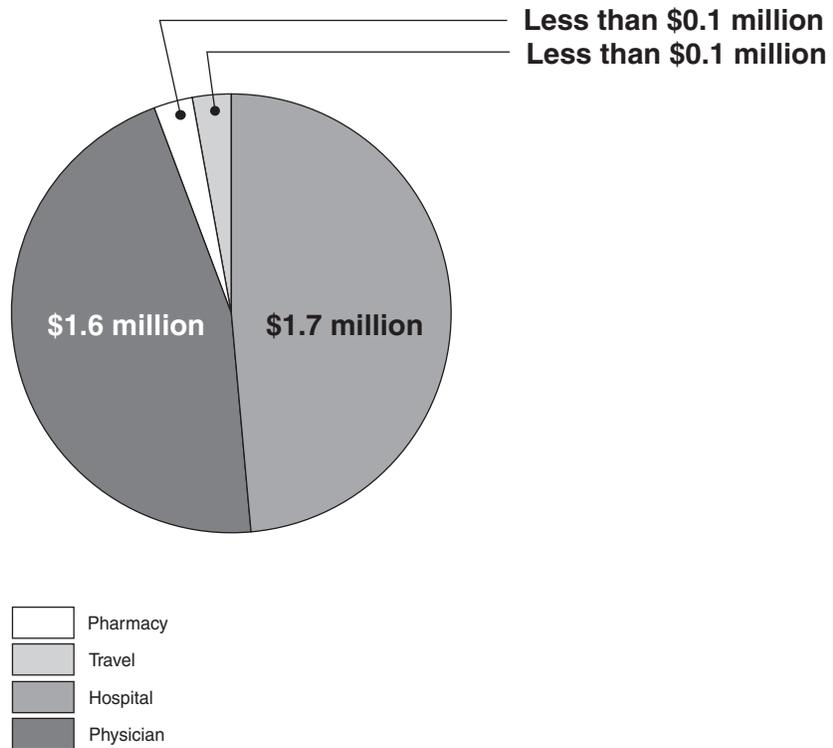
²⁴These claim approval decisions were based on the results of about 500 dose reconstructions.

²⁵These claim denial decisions were based on the results of about 500 dose reconstructions.

Claims referred to NIOSH for dose reconstruction have taken longer to fully process than those that do not require dose reconstruction, and some claims in processing at NIOSH may face a long wait for dose reconstruction before returning to Labor for decisions. Of the Subtitle B claims that were fully processed, as of January 31, 2004, those that required dose reconstruction took an average of about 17 months to fully process, compared with about 7 months for claims that did not require dose reconstruction. However, the claims requiring dose reconstruction that had not yet been fully processed had already been pending for an average of 19 months. Approximately 15 of these months, on average, had been spent in processing at NIOSH and 4 months had been spent in processing at Labor.

All approved claims that had required dose reconstruction reported cancer, and Labor reimbursed claimants for more than \$3 million in medical and travel-related expenses as of January 31, 2004. Almost all of the reimbursements were for hospital and physician expenses, as shown in figure 5.

Figure 5: Payments for Medical and Travel-Related Expenses Made for Approved Claims Referred to NIOSH for Dose Reconstruction as of January 31, 2004



Source: GAO's analysis of Labor's data.

Unlike Labor, which was able to immediately begin processing claims at the start of the program on July 31, 2001, NIOSH needed time to develop the necessary regulations and to get staff and procedures in place to perform dose reconstructions. Two necessary regulations were finalized in May 2002.²⁶ In a May 2004 report to Congress,²⁷ NIOSH reported that many of the key program pieces, such as recruiting and training staff, were not

²⁶Guidelines for Determining the Probability of Causation, 42 CFR Part 81, May 2, 2002, and Methods for Radiation Dose Reconstruction under the Employees Occupational Illness Compensation Program Act of 2000, 42 CFR Part 82, May 2, 2002.

²⁷As required by the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136), NIOSH issued a report to Congress, titled *Access to Information for Performance of Radiation Dose Reconstruction*.

completed until 2003, contributing to the delays in its ability to complete dose reconstructions. NIOSH also highlighted the difficulties it has encountered in collecting information from Labor, Energy and other employers, and claimants. For instance, NIOSH reported that information such as employment history and cancer diagnosis provided by Labor is, at times, inaccurate or incomplete. NIOSH also reported that obtaining information from Energy or other employers has been difficult because individual exposure records cannot always be located. Finally, while the intent of conducting an interview with the claimant is to obtain useful information, NIOSH officials report, however, that this will not hinder a dose reconstruction.

NIOSH has been working to improve its ability to develop dose reconstructions and address its backlog of claims needing dose reconstruction. In March 2004, the Director of NIOSH testified that NIOSH has steadily increased its capacity to complete dose reconstructions and that much of the program's development is complete.²⁸ NIOSH officials stated that they continue to work with Labor staff to establish a better understanding of what information, such as ethnicity and smoking history, is needed by NIOSH to perform a dose reconstruction, and officials stated that Labor is now typically providing this information. In addition, NIOSH has worked with Energy facilities to provide requested information in a more timely fashion. Improvements have been made in this area, and officials report that Energy generally provides the information within NIOSH's time frame of 60 days. While NIOSH officials are working with claimants to better educate them about the information NIOSH wants to collect during the interview, NIOSH officials said that it was important to realize that these interviews are voluntary and are not the sole source of information. Information provided during the interviews is helpful, but a dose reconstruction is not dependent upon an interview being conducted, according to NIOSH officials.

While NIOSH reports that it has improved its ability to complete dose reconstructions, it has not established any performance goal for the overall timeliness of processing the claims referred to NIOSH for dose reconstruction. Specifically, no GPRA goals were established in fiscal year 2002 or 2003 for NIOSH's processing of Subtitle B cases, but a GPRA goal, covering part of the dose reconstruction process, was established for

²⁸Testimony of Dr. John Howard, Director, NIOSH, before the Senate Energy and Natural Resources Committee, March 30, 2004.

fiscal year 2004. Despite not having GPRA goals earlier in the program, NIOSH did establish and track some interim processing goals.²⁹ NIOSH did not want to establish any overall timeliness goal for completing dose reconstructions, but rather wanted staff to complete them in as scientifically sound and efficient a manner as possible. NIOSH's GPRA goal for fiscal year 2004 is to have draft dose reconstructions sent to 80 percent of all claimants within 60 calendar days of the claim being assigned to staff to perform a dose reconstruction. As of July 2004, NIOSH officials reported that currently, an average of 70 days was required to conduct a dose reconstruction after a case was assigned to a dose reconstructionist. While NIOSH has developed innovative solutions to process claims from more than 70 different sites regardless of whether a site profile exists, the majority of these claims typically involve facilities that do have a site profile either completed or partially completed. However, since claims associated with facilities that do not have site profiles are typically not assigned to staff for dose reconstruction, it is possible that NIOSH could meet the GPRA goal and that some claimants could still wait a considerable period of time to have their cases fully processed.

NIOSH has accelerated the rate at which it is completing dose reconstruction. For example, it took NIOSH a little more than 2 years from when it received its first referral from Labor to complete the first 1,000 dose reconstructions. In contrast, NIOSH completed the second 1,000 dose reconstructions in less than 4 months and the third 1,000 dose reconstructions in 11 weeks. NIOSH established a target of completing 8,000 dose reconstructions in fiscal year 2004. To assist in meeting this goal, NIOSH is aiming to complete 200 dose reconstructions per week. As of June 2004, NIOSH was averaging about 150 dose reconstructions a week and had completed about 2,100 dose reconstructions in the first 9 months of fiscal year 2004.

²⁹For example, these processing goals established specified time frames for activities such as receiving dose-monitoring data from Energy and conducting claimant interviews. NIOSH officials stated that program performance with respect to these goals has improved substantially over time.

Completed Site Profiles Have Helped Accelerate Claims Processing, but NIOSH Has Not Established Time Frames for Completing the Remaining Profiles

To facilitate the dose reconstruction process, NIOSH is developing site profiles that compile information such as hazardous materials present at the site, facilitywide monitoring information, and information on workers at the site who may have been exposed to radiation. NIOSH officials believe that these site profiles will enhance the efficiency of performing dose reconstructions by eliminating the need to duplicate efforts in gathering information. The site profiles for larger sites consist of six documents, which are called Technical Basis Documents: an introduction, a site description, an occupational medical dose document, an occupational environmental dose document, an occupational internal dose document, and an occupational external dose-monitoring document. NIOSH officials are also compiling worker profiles, which provide information on the worker's job, work location within the facility, and time periods worked. NIOSH sometimes uses the worker profiles to obtain proxy information when some information is not available for a particular claimant.

NIOSH initially expected to conduct dose reconstructions while developing site profiles for the facilities involved but encountered difficulties in doing so. By pursuing both efforts at the same time, NIOSH officials had hoped to avoid facing a backlog of claims by completing a substantial number of dose reconstructions. However, NIOSH determined that it was necessary to first complete the site profiles to complete a high volume of dose reconstructions because it was too inefficient to collect general site-related information on a case-by-case basis. In addition, while Energy has supported NIOSH's efforts in locating site-specific information, there have been some delays in providing this information, particularly when the information requested is from classified documents. When requests for classified documents are made, delays have occurred because of the time needed for Energy to comply with procedures for ensuring national security.

NIOSH currently has an extensive effort under way to develop site profiles, and this effort has helped expedite the processing of claims. NIOSH has established over a dozen teams, each composed of three to six experts, and made each team responsible for developing a different site profile. NIOSH prioritized its efforts by targeting those facilities that have the largest number of claims needing dose reconstruction; 15 of the 30 sites NIOSH anticipates completing a site profile for represent about 80 percent of the claims submitted for dose reconstruction. As of June 2004, 11 site profiles were fully completed, while 9 other site profiles were partially completed (see table 2).

Table 2: Completed and Partially Completed Site Profiles as of June 2004

Completed site profiles	Partially completed site profiles
<ul style="list-style-type: none">• Bethlehem Steel, New York• Blockson Chemical Company, Illinois• Fernald Environmental Management Project, Ohio• Hanford, Washington• Huntington Pilot Plant, West Virginia• Iowa Army Ammunition Plant, Iowa• Mallinckrodt Chemical Company, Missouri• Rocky Flats Plant, Colorado• Savannah River Site, South Carolina• Tennessee Valley Authority Muscle Shoals Site, Alabama• Y-12 National Security Complex, Tennessee	<ul style="list-style-type: none">• Idaho National Engineering and Environmental Laboratory, Idaho• Los Alamos National Laboratory, New Mexico• Mound Site, Ohio• Nevada Test Site, Nevada• Oak Ridge Gaseous Diffusion Plant (K-25), Tennessee• Oak Ridge National Laboratory (ORNL or X-10), Tennessee• Paducah Gaseous Diffusion Plant, Kentucky• Pantex Plant, Texas• Portsmouth Gaseous Diffusion Plant, Ohio

Source: NIOSH.

In cases where a site profile has been completed, NIOSH has been able to better process the claims needing dose reconstruction associated with those facilities. For instance, since the first of six Technical Basis Documents for the Savannah River site profile was approved, in July 2003, NIOSH had completed about 500 dose reconstructions for that site by January 31, 2004, whereas NIOSH had completed fewer than 10 dose reconstructions for that site prior to July 2003. While some site profiles are only partially completed, NIOSH is still able to use the completed Technical Basis documents, as applicable, to develop dose reconstructions. For example, at the Idaho National Engineering and Environmental Laboratory (INEEL), the occupational internal dose document is still being finalized. However, if NIOSH has a claim that only needs the use of other INEEL site profile documents that are finalized, such as the occupational medical dose document or the occupational external dosimetry documents, a dose reconstruction can be developed for this claim. In addition, completed site profiles may be modified as additional relevant information is identified and incorporated. Claims originally denied based upon a prior version of a site profile are re-examined to determine the effect that the new information may have on the compensability of the claim. In turn, Labor can make any appropriate modifications to its earlier claim decisions.

Despite efforts to complete the remaining site profiles, NIOSH officials said that their time frame for completing these profiles is uncertain. The site profiles that have been completed have taken on average 4 to 6 months to complete. NIOSH reported that the pace at which it can complete additional site profiles is constrained by the limited expert resources available to conduct this specialized work and by the complexity of the history and variety of operations at particular sites. In addition, NIOSH officials said that it generally takes longer to complete site profiles for atomic weapons employer sites because many of these sites are no longer operating or are privately owned, making it difficult to locate records. Because the number of available staff needed to complete site profiles is very limited, NIOSH officials stated that they have had to balance their use of these resources. As site profiles are completed, resources are reallocated to assist with the completion of additional site profiles.

HHS's Advisory Board Is Conducting an Evaluation to Ensure Claims Decisions Are Consistent

HHS's Advisory Board has a major effort under way to ensure claims decisions are being made consistently. Specifically, HHS's Advisory Board is responsible under the statute for (1) reviewing a reasonable sample of individual dose reconstructions for scientific validity and quality, (2) advising on the development of guidelines to determine probability of causation and methods for dose reconstruction, and (3) reviewing special exposure cohort petitions. To assist the Advisory Board, HHS entered into a contract with an organization in October 2003 to carry out some of these tasks. The contractor is currently developing its plans for completing these tasks and expects to conduct the evaluation over the next 5 years and to provide interim status reports each year.³⁰

Performing an independent review to examine the consistency of individual dose reconstructions decisions is an important aspect of effective program management for the Subtitle B program. In the past, GAO reported concerns that a similar program that compensates veterans with diseases caused by radiation exposure did not have an independent review of its dose reconstructions.³¹ Such a review could result in greater public confidence and mitigate concerns about dose reconstructions.

³⁰ GAO is doing follow-up work to examine issues related to the contractor receiving timely access to information needed to conduct the evaluation.

³¹ GAO. *Veterans' Benefits: Independent Review Could Improve Credibility of Radiation Exposure Estimates*, [GAO/HEHS-00-32](#) (Washington, D.C.: Jan. 28, 2000).

NIOSH officials have also stated that the evaluation of the individual dose reconstructions and site profiles is an important exercise to complete. The Chair of the Advisory Board said that while the board is confident in what NIOSH's findings have been to date, it is important to have an independent review completed in order to validate these findings.

HHS Issued Regulations That Would Eliminate the Need for Dose Reconstructions for Claims Granted Special Exposure Cohort Status

After HHS had twice received public comments on proposed regulations concerning how individuals or groups could apply for special exposure cohort status, the agency issued final regulations on May 28, 2004.³² The Secretary of HHS is responsible for developing procedures for considering petitions to be added to the special exposure cohort. HHS originally published a proposal for these procedures on June 25, 2002, and subsequently received a number of public comments. Many of these comments pertained to the feasibility of completing dose reconstructions and establishing time limits for completing dose reconstructions. Because HHS needed to make substantial changes to the procedures to address public comments, the agency issued a second notice of proposed rule making on March 7, 2003, and solicited public comments through May 6, 2003. Again many of the comments related to completing dose reconstructions in a feasible and timely manner.

HHS's regulations establish procedures that describe how petitions can be submitted and reviewed for special exposure cohort consideration. These requirements are intended to ensure that petitions are submitted by authorized parties, are justified, and receive uniform, fair, and scientific consideration. The procedures are also designed to give petitioners and interested parties opportunities for appropriate involvement in the process. The procedures are not intended to provide a second opportunity

³²As the regulations were being developed, five different pieces of legislation were introduced by members of Congress that would add certain workers to the special exposure cohort. Specifically, Representative Quinn introduced H.R. 3689 on December 8, 2003, to add certain workers from a Bethlehem Steel plant in New York. Representative Mark Udall introduced H.R. 3843 on February 25, 2004, to add certain workers from the Rocky Flats site in Colorado. Representative Tom Udall introduced H.R. 4388 on May 18, 2004, to add certain workers from the Los Alamos National Laboratory in New Mexico. Senator Bond introduced S. 2047 on February 2, 2004, to add certain workers from the Mallinckrodt facilities (including the St. Louis downtown facility, the Weldon Springs facility, and the Hematite facility) in Missouri and Iowa Army Ammunition Plant in Iowa. As of June 2004, none of the bills had been passed. On June 17, 2004, however, Senator Bond offered an amendment to S. 2400 (the National Defense Authorization Act for Fiscal Year 2005) that included the same text as S. 2047. The Defense Authorization Act passed the Senate on June 23, 2004, with the Bond amendment included.

to qualify a claim for compensation, once NIOSH has completed a dose reconstruction and Labor has determined that the claimed cancer was not “at least as likely as not” to have been caused by the estimated radiation doses.³³

With the implementation of the regulations, some of the claims in NIOSH’s backlog could be eligible for special exposure cohort status and consequently reduce the backlog of claims requiring dose reconstruction. If a petition to add a particular group to the special exposure cohort is submitted and approved, NIOSH would not need to develop an individual dose reconstruction for such a claim. Rather, Labor would verify the claimant’s employment and illness and follow the review process currently used for existing special exposure cohort groups. As of July 30, 2004, NIOSH had received eight special exposure cohort petitions and was determining whether the petitions were eligible for consideration.

Conclusions

Labor’s procedures and practices have helped the agency to fully process most of the claims that had not been referred to NIOSH for dose reconstruction. Because this program is relatively new, Labor has issued many different policies to define how staff should handle different situations and is working to develop a comprehensive procedures manual that would contain these policies. In addition, the accountability reviews performed each year have allowed Labor to identify and correct problems as they occur and provide additional training to staff as needed. To ensure consistency in the processing of claims during this period of change, it will continue to be important for Labor to maintain these ongoing efforts.

In contrast, relatively few claims requiring dose reconstructions have been fully processed. NIOSH faces the challenge of balancing multiple objectives—scientific soundness and timeliness—in completing dose reconstructions. However, while NIOSH has placed considerable focus on ensuring scientific soundness, it has not established a clear vision for claimants or the Congress with regard to the time frames within which they can expect dose reconstructions to be completed. NIOSH established a GPRA goal for fiscal year 2004 that specifies a time frame for completing draft dose reconstructions once a claim is assigned to staff to perform a dose reconstruction. However, claims associated with facilities that do not

³³ GAO is doing follow-up work to examine issues related to the adequacy of the regulations on special exposure cohort status.

have site profiles are typically not assigned to staff for dose reconstruction, and this waiting period is not reflected in the GPRA goal. NIOSH learned from its initial implementation experience that completing site profiles is a critical element for efficiently processing claims requiring dose reconstruction. While NIOSH had completed 11 site profiles and partially completed 9 profiles as of June 2004, it had not established any time frames for completing these 9 site profiles or the remaining 10 site profiles that it expects to develop. Without such time frames, claimants do not have a good understanding of when their dose reconstruction might be completed. While it is important to avoid the extreme of establishing time frames that are unreasonable and would set up NIOSH for failure, it is equally important to avoid the other extreme of not setting any expectations for the timely completion of dose reconstructions for which site profiles have not been completed. Moreover, now that NIOSH has more experience in developing site profiles, it is in a better position to identify and take account of factors that can lead to differences in the amount of time required to complete site profiles for different facilities.

Recommendation

To enhance program management and promote greater transparency with regard to the timeliness of completing dose reconstructions, we recommend that the Secretary of HHS direct CDC officials to establish time frames for completing the remaining site profiles.

Agency Comments and Our Evaluation

We provided a draft of this report to both Labor and HHS for comment. Labor did not have any comments on the report. HHS said that the report was balanced, thorough, and constructive, and that it agreed with GAO's recommendation to establish time frames for completing the remaining site profiles. HHS also provided updated information on the number of site profiles already completed and the total number of site profiles that it anticipates compiling, and we revised the report to incorporate this information. HHS added that it has used innovative solutions to complete dose reconstructions in some instances in which site profiles do not exist and we modified the report to incorporate this information. Moreover, HHS provided additional information to explain how completed site profiles function as "living documents" and are modified as additional relevant information is identified. Finally, HHS raised questions about the accuracy of certain statistics we cited about cases that had been fully processed by Labor, while acknowledging that Labor is a more authoritative source on this topic. We believe that these statistics accurately describe what they were intended to measure, and Labor did not raise any issue about their accuracy; hence, we did not revise the

figures. HHS's comments are provided in appendix IV. HHS also provided technical comments, which we have incorporated as appropriate.

Copies of this report are being sent to the Secretary of Labor and the Secretary of Health and Human Services, appropriate congressional committees, and other interested parties. The report will be made available at no charge on GAO's Web site at <http://www.gao.gov>. If you have any questions about this report, please contact me at (202) 512-7215. Other contacts and staff acknowledgments are listed in appendix VI.

Sincerely yours,

A handwritten signature in black ink that reads "Robert Robertson". The signature is written in a cursive style with a large initial "R" and a stylized "B".

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

Appendix I: Scope and Methodology

To determine how well the Department of Labor's (Labor) procedures and practices ensure the timely and consistent processing of claims that are not referred to the National Institute of Occupational Safety and Health (NIOSH) for dose reconstruction but are being processed by Labor, we reviewed Labor's regulations, procedures, and practices related to processing claims. In addition, we interviewed officials from Labor's Office of Workers' Compensation Programs and its four district offices in Cleveland, Ohio; Denver, Colorado; Jacksonville, Florida; and Seattle, Washington to discuss their procedures and practices. In addition, we obtained and analyzed information on Labor's Government Performance and Results Act (GPRA) goals and interim processing goals for fiscal year 2002 through the second quarter of fiscal year 2004. We also obtained and analyzed accountability review documents for fiscal years 2002 and 2003. We interviewed Labor officials to obtain information on the department's efforts to revise its procedures manual used by staff in processing claims. Last, for background purposes, we interviewed several claimants and Energy Employees Occupational Illness Compensation Act (EEOICPA) experts regarding their knowledge of or experiences with Subtitle B claims processing.

To determine how well Labor's and the NIOSH procedures and practices ensure the timely and consistent processing of claims that are referred to NIOSH for dose reconstruction, we reviewed Labor's and NIOSH's regulations, procedures, and practices related to processing claims. Along with the work we performed at Labor as described earlier, we interviewed officials from NIOSH's Office of Compensation Analysis and Support (OCAS) to discuss their procedures and practices. In addition, we obtained and analyzed information on NIOSH's GPRA goals and interim processing goals for fiscal year 2002 through the second quarter of fiscal year 2004. We also reviewed several of the completed site profiles and obtained information on NIOSH's time frames for completing additional site profiles needed to assist with the dose reconstruction process. We reviewed recently introduced regulations for considering petitions to be added to the special exposure cohort as well as different pieces of legislation introduced that would establish additional sites as special exposure cohort sites. We also interviewed the Advisory Board chair and reviewed key documents pertaining to the evaluation of dose reconstructions that the Advisory Board is overseeing. Last, for background purposes, we interviewed several NIOSH contract staff, claimants, and EEOICPA experts regarding their knowledge of or experiences with Subtitle B claims processing.

To determine the number, status, and other characteristics of Subtitle B claims filed through January 31, 2004, we analyzed administrative data extracted from Labor's and NIOSH's case management systems for applications filed from the beginning of the program—July 31, 2001—through January 31, 2004. Neither agency publishes standardized data extracts from their systems, so we requested that they provide customized extracts for our analysis. Specifically, we received an extract from the NIOSH Office of Compensation Analysis and Support Claims Tracking System (NOCTS) and several files extracted from Labor's Energy Cases Management System (ECMS) and Energy Medical Bill Processing Subsystem (EMBPS).

Because multiple claims can be associated with a single worker, the systems and the extracts received from both agencies contain data collected at two levels—the case level and the claim level. For example, if multiple children of a deceased worker file claims, all claims will be associated with a single case, which is linked to the worker. At the case level, the extracts contained information about the worker, such as date of birth and date of death (if applicable), the facilities at which the employee worked, the employee's dates of employment, and the status of the case as it moves through the development process. At the claim level, the extracts contained information related to the individual claimants, such as the date the claim was signed, the claimant's relationship to the worker, and the status of the claim as it progressed through processing.

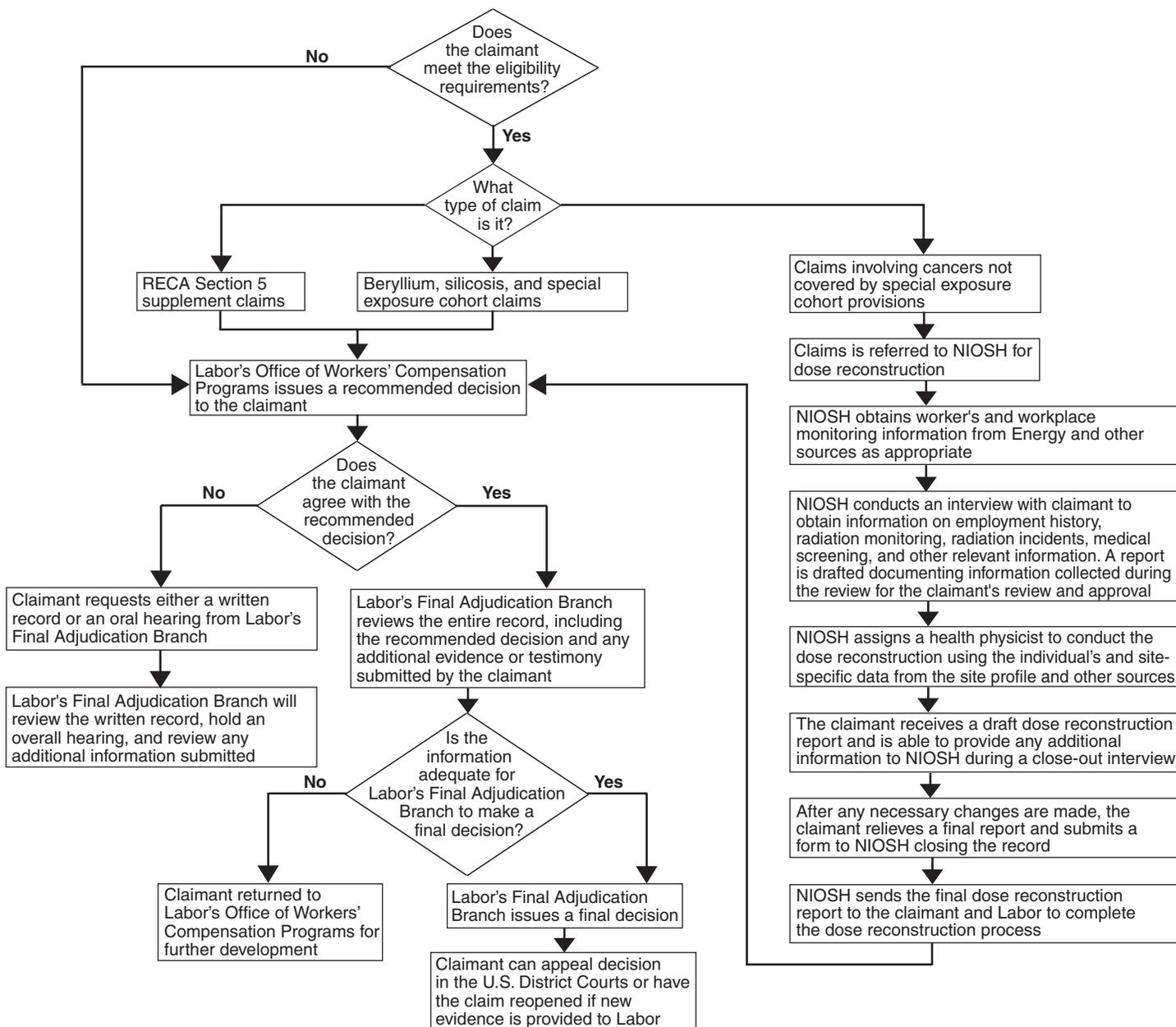
The Labor files were merged to produce claim- and case-level data files and were subsequently merged with the NIOSH extract. Throughout this report, we have reported our statistics at the claim level. Where case-level statistics have been reported, they have been merged with the claim-level data so that they could be reported at the claim level.

We interviewed key Labor and NIOSH officials and contractors and reviewed available system documentation, such as design specifications and system update documents. We tested the data sets to determine that they were sufficiently reliable for our purposes. Specifically, we performed electronic testing to identify missing data or logical inconsistencies. We did not assess the quality of Labor's claims decisions. We then computed descriptive statistics, including frequencies and cross-tabulations, to determine the number and status of claims received as of January 31, 2004.

In order to provide more current information, we interviewed Labor and NIOSH officials to obtain updated information on the approval rates for cases that required dose reconstructions as of July 2004. We also

interviewed NIOSH officials to obtain information on the average time taken to draft dose reconstructions as of July 2004 and the number of dose reconstructions completed in the first 9 months of fiscal year 2004.

Appendix II: Labor's and NIOSH's Claim-Processing Steps



Source: GAO's analysis of Labor's and NIOSH's claim processes.

Appendix III: Comparison of Claim- and Case-Level Information Regarding Claims Referred to NIOSH for Dose Reconstructions as of January 31, 2004

While Labor makes and reports its decisions on the claim level, NIOSH reports its dose reconstruction results on the case level because only one dose reconstruction is completed for each worker regardless of the number of claims filed by survivors. Table 3 presents information on the status of claims referred to NIOSH for dose reconstructions at both the claim and case levels as of January 31, 2004.

Table 3: Information on the Status of Claims Referred to NIOSH for Dose Reconstructions at the Claim and Case Levels as of January 31, 2004

Status	Claims	Cases
Fully processed	1,900	1,600
In processing	19,000	14,000
Not yet processed	Fewer than 50	Fewer than 50
Total	More than 21,000	More than 15,000

Source: GAO's analysis of Labor's data.

Appendix IV: Comments from the Department of Health and Human Services



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

AUG 31 2004

Mr. Robert E. Robertson
Director, Education, Workforce,
and Income Security Issues
United States Government Accountability Office
Washington, D.C. 20548

Dear Mr. Robertson:

Enclosed are the Department's comments on your draft report entitled, "Energy Employees Compensation—Many Claims Have Been Processed, But Action Is Needed to Expedite Processing of Claims Requiring Radiation Exposure Estimates" (GAO-04-958). The comments represent the tentative position of the Department and are subject to reevaluation when the final version of this report is received.

The Department provided several technical comments directly to your staff.

The Department appreciates the opportunity to comment on this draft report before its publication.

Sincerely,

A handwritten signature in cursive script, appearing to read "L. Morris".

Lewis Morris
Chief Counsel to the Inspector General

Enclosure

The Office of Inspector General (OIG) is transmitting the Department's response to this draft report in our capacity as the Department's designated focal point and coordinator for Government Accountability Office reports. OIG has not conducted an independent assessment of these comments and therefore expresses no opinion on them.

COMMENTS OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) ON THE U.S. GOVERNMENT ACCOUNTABILITY OFFICE'S (GAO'S) DRAFT REPORT "ENERGY EMPLOYEES COMPENSATION: MANY CLAIMS HAVE BEEN PROCESSED, BUT ACTION IS NEEDED TO EXPEDITE PROCESSING OF CLAIMS REQUIRING RADIATION EXPOSURE ESTIMATES" (GAO-04-958)

HHS appreciates the opportunity to review GAO's draft report on this important program. HHS welcomes independent assessments as a way to improve performance, and believes that the review is balanced, thorough, and constructive. Following are HHS comments regarding the draft report.

GAO Recommendation

To enhance program management and promote greater transparency with regard to the timeliness of completing dose reconstructions, we recommend that the Secretary of HHS direct NIOSH to establish timeframes for completing the remaining site profiles.

HHS Comments

Throughout the document (including pages 4, 24, 25 [Table 2]), HHS's Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH), is referred to as having fully completed 7 site profiles and having partially completed 13 as of June 2004. To be accurate, all such references and the information contained in Table 2 on page 25 should identify 11 fully complete and 9 partially complete profiles. Four of the profiles labeled partially complete in the draft report should be labeled as fully complete. These are Bethlehem Steel, Huntington Pilot Plant, Blockson Chemical, and Tennessee Valley Authority. These four Atomic Weapons Employer (AWE) profiles may have been mislabeled, assuming that these profiles needed six chapters (similar to Department of Energy [DOE] weapons complex sites) to be complete. AWE sites do not necessarily require the six Technical Basis Document (TBD) chapters that are found in the completed DOE weapons complex Site Profiles (SP).

In addition, it is important to note that SP and TBD, which are deemed "complete," are ready for use in dose reconstruction for claims where the information contained in these documents allows for estimating radiation doses with sufficient accuracy to yield a decision from the Department of Labor (DOL) for a given claim. Furthermore, these SP and TBD "living documents" which mean that they are modified as additional relevant information is identified and incorporated. Any non-compensable claim processed under a prior version of a SP is re-examined against the new information to determine the effect that new information may have on the compensability of the claim as required by 42 CFR 82.27(b).

In various passages, the draft report indicates that NIOSH is “planning to complete the remaining 40 site profiles.” NIOSH does not have plans for, nor does it envision the need for, these site profiles. During an interview with GAO staff, NIOSH officials indicated that they would most likely develop site profiles only for sites where there are more than 40 cases. NIOSH officials further indicated that this strategy was designed to effectively utilize resources, and they explained that many AWE sites with similar production process and exposure scenarios would use an already completed TBD. If the cut point is 40 cases, NIOSH will have a total of 30 site profiles. NIOSH understands and accepts the GAO recommendation that a timetable needs to be established for the unfinished site profiles. NIOSH will aggressively pursue the completion of all SP and TBD necessary to provide scientifically sound dose estimates that are fair to the claimant.

The draft report indicates that NIOSH has “essentially stopped processing claims at sites where profiles do not exist” (*Highlights*, paragraph 2, line 13; Page 5, paragraph 1, line 4). In fact, NIOSH has developed innovative solutions to process claims (i.e., complete dose reconstructions) where site profiles are still under development. Using complex wide technical information bulletins, NIOSH has been able to process cases from more than 70 different DOE and AWE sites. While it is true that many claims will need a full site profile in order to achieve the scientific accuracy necessary to complete a dose reconstruction, NIOSH has completed and continues to complete dose reconstructions for claims in which sufficient scientific accuracy can be achieved without the use of fully developed SP.

The statistics “9 percent fully processed” (Page 18, paragraph 1, line 6), “64 percent final decisions” and “36 percent closed for administrative reasons” (Page 19, Figure 4) do not appear accurate to NIOSH officials. This may be due to the metric being tracked (final decisions from DOL). From a NIOSH perspective, it was indicated to GAO that, as of the end of July 2004, 25 percent of the cases submitted had been returned to DOL with completed dose reconstructions. However, DOL should be consulted for accuracy of each of these statistics because NIOSH does not have full access to these numbers and a lag time exists between NIOSH completion of dose reconstruction cases and final decisions by DOL.

Appendix V: GAO Contacts and Staff Acknowledgments

GAO Contacts

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Staff Acknowledgments

In addition to the above contacts, Melinda L. Cordero and Rosemary Torres Lerma made significant contributions to this report. Luann Moy and William Bates assisted with methodology and data analysis, Margaret Armen provided legal support, and Amy E. Buck assisted with the message and report development.

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