



RELEASE - TRANSMISSION OF REVISED MATERIAL TO BE INCORPORATED INTO THE FEDERAL (EEOICPA) PROCEDURE MANUAL: CHAPTER 2-1600 RECOMMENDED DECISIONS, CHAPTER 2-1700 FAB REVIEW PROCESS, CHAPTER 2-1800 FAB DECISIONS, AND CHAPTER 2-1900 REOPENING PROCESS.

EEOICPA TRANSMITTAL NO.10-02

October, 2009

EXPLANATION OF MATERIAL TRANSMITTED:

- These four chapters are transmitted for placement in the new Unified Procedure Manual (PM) binder. These chapters consist of the consolidation of updated information and guidance as it pertains to the Program's administration of Parts B and E of the EEOICPA.
- New chapter 2-1600 replaces Part B chapter 2-1100, new chapters 2-1700 and 2-1800 replace Part B chapter 2-1300 and Part E chapter E-1100, and new chapter 2-1900 replaces Part B chapter 2-1400.
- These chapters incorporate changes that have arisen since last publication of the PM, including the following:
  - Chapter 2-1600 has been revised to clearly instruct claims staff to issue recommended decisions to all parties of a claim.
  - Chapter 2-1800 instructs FAB staff to issue Final decisions to all parties to a claim.
  - Chapter 2-1900 instructs claims staff to issue reopening decisions to all parties to a claim.

- o Chapter 2-1900 incorporates procedures from Bulletin 09-01, delegating authority to District Directors to reopen certain claims.

*Rachel P. Leiton*

Rachel P. Leiton  
Director, Division of  
Energy Employees Occupational Illness Compensation

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FILING INSTRUCTIONS:

File this transmittal behind Part 1 in the front of the new Unified Federal (EEOICPA) Procedure Manual.

Distribution: List No. 3: All DEEOIC Employees  
List No. 6: Regional Directors, District Directors, Assistant District Directors, National Office Staff, and Resource Center Staff.

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1. Purpose and Scope. The District Office (DO) issues Recommended Decisions for claims filed under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). A Recommended Decision is a written determination made by the Claims Examiner (CE) regarding the eligibility of a claimant to receive compensation benefits available under the EEOICPA. This chapter describes the procedures for issuing a Recommended Decision.
2. Authority. 20 C.F.R. § 30.300 grants the DO authority to make determinations with regard to compensability and issue Recommended Decisions with respect to EEOICPA claims. Under this section, the DO is authorized to recommend the acceptance or denial of a claim for benefits under the EEOICPA. All Recommended Decisions are forwarded to the Final Adjudication Branch (FAB) for review.
3. When a Recommended Decision is Required. A Recommended Decision is required in any instance where a claimant seeks an entitlement benefit provided for under either Part B or E of the EEOICPA. Entitlement benefits include medical benefits under Part B and/or E; lump-sum compensation under Part B; impairment or wage-loss award under Part E; and lump-sum survivor compensation under Part E.

Claims made under Part B or E of EEOIPCA can involve multifaceted elements, filed at varying points in time, involving a multitude of medical conditions, or periodic claims for monetary lump-sum benefits, i.e. recurring wage-loss and impairment. The question when a case element is in position to be decided and a Recommended Decision issued is dependent on several factors that the CE must consider. First, the CE must identify the parties seeking benefits; i.e. employee vs. survivor claim. This includes individuals who have filed claims or potential claimants who have not officially filed, but may be eligible. Secondly, the actual claimed entitlement benefit for which a decision is required must be identified. In some instances, there may be multiple benefits being sought under Part B and/or E, especially if more than one illness is being claimed.

### 3. When a Recommended Decision is Required. (Continued)

Based on examination of the evidence of record, development must then be completed in an attempt to overcome any defect in the case evidence that does not satisfy the eligibility criteria for a claimed benefit. Once development has occurred, the CE then performs an examination of the case evidence to determine whether there is sufficient basis to accept or deny a claim for benefit entitlement. At the conclusion of this assessment and all necessary development, a Recommended Decision is issued on the sufficiency of the claim. A Recommended Decision is required in the following situations:

a. When a Claim is Submitted. Documents containing words of claim are acceptable to begin the adjudication process; however, the necessary information required to allow adjudication must be submitted prior to the issuance of a decision. In the situation of written words of claim, the CE must seek completion of the applicable claim form.

(1) The CE may apply certain discretion to conclude that the nature of a new claim actually has been previously addressed in a prior determination under the Act. For example, a claim for "lung disease" is filed and denied lacking any diagnosed condition. Subsequent filing is made for "lung problems." While the exact wording of the claimed condition is dissimilar, the nature of the claim is not unique and, in this situation, would not require new adjudication unless the claimant provides evidence of a more specific diagnosis. Additionally, no Recommended Decision is needed if the claimed and diagnosed conditions are synonymous. In such instances, the claimant should be notified that the condition had previously been denied and no further action will be taken.

(2) New Medical Evidence. A claimant may submit new medical evidence or file a new claim form for a condition not yet claimed. If new medical evidence or a new claim is received for a

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3. When a Recommended Decision is Required. (Continued)

previously unclaimed condition prior to issuance of a Recommended Decision, the DO obtains a new claim form, incorporates the new condition into the existing claim and develops for all claimed conditions. Once development is complete, the DO issues a Recommended Decision that addresses all claimed conditions.

(a) If after a claim has been adjudicated and a Recommended and Final Decision have been issued, and the claimant files a claim for a new condition or submits medical evidence establishing a condition not previously claimed, the DO obtains a claim form, develops for the newly claimed condition and issues a new Recommended Decision.

b. On the Initiative of the Director of the Division of Energy Employees Occupational Illness Compensation (DEEOIC). The Director may at any time direct the issuance of a Recommended Decision relative to a claim for compensation under the EEOICPA. For example, the Director may determine that a Recommended Decision, rather than an administrative closure, is beneficial in certain instances. In other situations, upon the issuance of a Director's Order, the district office may be instructed to issue a new Recommended Decision to address new evidence.

c. At the Request of a Claimant. The claimant may request a decision be issued in connection with special claim circumstances. For example, the denial of continuing in-home nursing services, in lieu of a letter decision.

(1) Medical Benefits. In cases when a request for a particular medical treatment, medical supply, or surgery is approved or disallowed, a letter to the claimant advising that the benefit has been approved or explaining why it cannot be granted will often suffice without the issuance of a Recommended Decision. However, if a

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3. When a Recommended Decision is Required. (Continued)

claimant requests a formal decision, the request must be granted.

A Recommended Decision to accept or deny a claim for benefits is required in any case unless the DO determines that an administrative closure is in order. Many reasons exist to support an administrative closure (such as the withdrawal of a claim). In such cases, the DO administratively closes the claim without issuing a Recommended Decision. Instead, the DO issues a letter to the claimant and/or representative advising of the administrative closure, and addresses the steps required to reactivate the claim.

4. Who Receives a Recommended Decision. Each individual who files a claim under a case is a party to a Recommended Decision that decides benefit entitlement. Given the variant benefit filings that may exist in a single case, it may be necessary to divide entitlement claims to be addressed by separate Recommended Decisions. This will most often occur when one or more entitlement benefit claims can be decided based on the evidence of record, while concurrent development is required on the outstanding claimed components. This rule only applies to benefit entitlements for all claimants under Part B and E. It does not apply to individual claimant eligibility to a benefit. In other words, a recommended decision cannot be issued deciding any one claimant's eligibility to receive benefits, without including all claimants as party to the decision. The CE employs appropriate discretion to decide the most effective course to bring timely resolution to all entitlement claims; however, any entitlement decision that will result in a positive outcome should not be delayed pending development of other potential entitlement.

For example, two survivors of an employee file for lump sum compensation under Part B and E. Development is undertaken and both are found to be eligible to a Part B benefit of \$150K because the employee had lung cancer related to covered employment. However, under Part E, only one of the survivors has submitted evidence to establish that he or she was under the age of 18 at the time of the employee's death. The other survivor indicates he or she is having

#### 4. Who Receives a Recommended Decision. (Continued)

problems obtaining school transcripts to show full-time student status. In this situation, the CE proceeds to issue a decision on the benefit entitlement of both claimants under Part B, but would defer any decision on the Part E claim until the status of the second child's eligibility is resolved.

a. Non-Filing Claimants. The situation may arise where a potential survivor has been identified through development, but whose whereabouts are unknown or who does not wish to seek benefits. In these situations, it is impossible for the district office to include them as party to the Recommended Decision. In these situations, the CE may proceed with the issuance of the Recommended Decision to the remaining claimants; however, the decision must reference the fact that there is a non-filing potential claimant and that this individual's eligibility to benefits cannot be ascertained. Any lump-sum compensation payable in this situation will be allocated with the presumption that the non-filing claimant is eligible. The non-filing claimant's share of compensation is held in abeyance until such time a claim is filed and adjudicated or evidence of his or her death is received.

5. Writing a Recommended Decision. When the CE has completed development to allow for a decision involving an entitlement benefit, (lump-sum compensation, wage-loss/impairment award, survivor compensation, and medical benefit) the CE issues a decision. A Recommended Decision either recommends acceptance or denial of entitlement benefits in accordance with the legal criteria set out under the EEOICPA. The decision is a written narrative providing a descriptive explanation of the justification for the decision. The "audience" may include the claimant, the claimant's representative, a Congressional staff member, and/or appellate reviewers. Not all of these individuals will be experts in workers' compensation matters. Therefore, the CE must write as clearly and concisely as possible so that readers will not misinterpret the Recommended Decision.



5. Writing a Recommended Decision. (Continued)

Any decision issued must be well-written, use appropriate language to clearly communicate information, and address all the facets of the evidence that led to the conclusion, including all evidence the claimant submitted. Particularly with regard to the denial of benefits, the CE describes the specific reason(s) why the evidence fails to satisfy the eligibility requirements of the Act and any interpretive analysis relied upon to justify the decision.

When issuing a Recommended Decision, the CE addresses only the conditions which have been claimed under the Act, citing the statutory language upon which the decision is based, clearly distinguishing between Part B and Part E.

- a. Use Simple Words and Short Sentences. Avoid technical terms and bureaucratic "jargon", and explain the first time any abbreviation is used in the text. This approach assists readers at every level of education and knowledge base.
- b. Use the Active Rather than the Passive Voice. For example, the decision is to read "We received the medical report" rather than "The medical report was received."
- c. Divide Lengthy Discussions into Short Paragraphs.
- d. Confine the Discussion to Relevant Issues. These are the issues before the CE that need to be resolved. It may be necessary to state an issue is pending, but there is no need to discuss it in detail.
- e. Address All Matters Raised by the Claimant. This includes any issue or medical condition relevant to the decision, whether raised in the initial report of the claim or during adjudication. Make certain to address all claimed conditions (accepted or denied) in the discussion. If the CE recommends acceptance of a covered condition, and the claimant has also claimed other conditions that are clearly not covered, the CE must specifically recommend denial of any condition not covered under the Act.

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5. Writing a Recommended Decision. (Continued)

f. Claimant Addressees. The decision must be addressed to each claimant who has filed a claim seeking benefits under the case, and/or their authorized representative. This ensures that each person who has filed receives notification of a decision involving the claimed entitlement benefit, allows for the opportunity to object, and ensures uniformity in the decision process. The CE may not render a decision until development has been completed with regard to each individual claimant's potential eligibility to a unique entitlement benefit. Individual claimant deferrals are not permitted.

6. Content and Format. A Recommended Decision is comprised of a cover letter, a written decision, a Certificate of Service and an information sheet provided to a claimant explaining his or her right to challenge the recommendation. The CE is responsible for preparing the Recommended Decision and all its component parts. The format and content of a Recommended Decision is as follows:

a. Cover Letter. A cover letter provides context and summarizes the recommendation(s) of the DO. It advises that the accompanying decision is a recommendation, and that the case file has been forwarded to the FAB for review and the issuance of a Final Decision listing the address of the FAB office where the case file was forwarded. The cover letter also advises the claimant of his or her right to waive any objection or to file objections within 60 days of the date of the Recommended Decision.

A separate cover letter is addressed to each individual to whom the Recommended Decision will be delivered. This may include the employee, survivor(s), or representative(s). A separate cover letter must be issued to each claimant who is a party to the claim. In some instances, it may be necessary to tailor or individualize each cover letter to the specific circumstances affecting the claimant addressed. Exhibit 1 provides a sample cover letter for an acceptance or denial. Exhibit 2 provides a sample cover letter for a partial acceptance/partial denial.

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6. Content and Format. (Continued)

b. Written Decision. The written decision is comprised of an Introduction, a Statement of the Case, Findings of Fact, and Conclusions of Law. Exhibit 3 provides a sample Recommended Decision.

(1) Introduction. This portion of a Recommended Decision succinctly summarizes what is being recommended and under what portion of the Act. The CE treats all claimed conditions addressed in the decision as either accepted, denied or deferred pending further development. For instance, following is an example of introductory language:

"This is a Recommended Decision of the Denver District Office regarding the claim for benefits filed by [claimant] under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). For the reasons set forth below, the Denver District Office recommends acceptance of the claim for benefits under Part B of the EEOICPA for chronic beryllium disease, and that [claimant] be awarded compensation in the amount of \$37,500.00 under Part B of the Act. The district office also recommends that the claim for benefits under Part E for hearing loss be denied. The claim for skin cancer under both Part B and Part E is deferred pending further development.

(2) Statement of the Case. The Statement of the Case is a clear and concise narrative of the factual chronology of the case evidence leading up to the Recommended Decision. It describes the steps the CE has taken to develop the evidence, the outcome of any development, and any other relevant factual information derived during the examination of the case records. The Statement of the Case does not include any interpretation of the evidence conducted by the CE, nor should it be overly technical covering every minute detail of the case evidence. It is essentially a story of the case evidence. Basic information

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6. Content and Format. (Continued)

that is included in this portion of a decision includes:

(a) Name of the claimant or survivor and employee, when and where the claim was filed, and how the filing date was determined (e.g., postmark date, received in the DO or Resource Center);

(b) Benefit(s) the claimant is seeking. In the case of a survivor claim, the relationship of the claimant to the employee and documentation submitted in support of the relationship, if any;

(c) Claimed employment and evidence submitted to establish covered employment, if any;

(d) Claimed medical condition and medical evidence submitted to establish a diagnosed illness;

(e) Discussion of pertinent development actions undertaken by the DO, which focuses on the evidence used in reaching a decision to either accept or deny the claim. The CE describes the nature of each piece of evidence that was considered so that any reader will easily grasp how the evidence does or does not meet the statutory requirements.

In a recommended acceptance, pertinent issues may include specific medical documents received from the claimant or other sources which confirm the diagnosis of the claimed condition, and evidence establishing the claimed employment and exposure. Also, searches conducted in the Site Exposure Matrices (SEM), Occupational History Questionnaires (OHQ), records from

6. Content and Format. (Continued)

the Former Worker Program, and Document Acquisition Records (DAR) are important.

In a recommended denial, the CE discusses, particularly in relation to the denied element, what evidence was received, what evidence was needed, why the evidence was deficient, how the DO advised the claimant of the deficiencies in a clear manner, and the claimant's response.

(f) Other relevant evidence submitted.

(3) Findings of Fact. The Findings of Fact section of a Recommended Decision is a series of factual determinations the CE makes based on the evidence of record. Findings of fact must be set out in a clearly defined section headed "Findings of Fact," and each finding is listed numerically. In many instances, findings are inferences reasonably drawn from the evidence. A finding of fact does not need to be absolutely proven by the evidence of record to be listed in support of a conclusion offered. It is merely necessary for the CE to conclude that the evidence of record is sufficiently convincing to make the finding plausible. Findings of fact should ultimately support the conclusion being offered in a Recommended Decision

For example, a CE searches SEM. Based on the outcome of that search, the CE can determine that the employee was exposed to one or more toxic substances during the course of his or her employment. The CE's decision finding exposure would be listed in the Findings of Fact portion of the Recommended Decision.

(a) The CE makes findings from the evidence. These findings are critical in determining whether the claimant is awarded benefits. The CE must draw conclusions from the evidence or lack of evidence in the file

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6. Content and Format. (Continued)

and not just recite the Statement of the Case.

(b) The findings are fully substantiated. It is not sufficient to merely list the findings of fact. The CE must identify the evidence relied upon and state the rationale for the finding and how it relates to the claim.

(c) The findings are stated in logical sequence. Doing so helps ensure that the determination is derived from the facts.

(d) The medical evidence is addressed thoroughly. Regardless of the condition claimed, the CE must describe the medical evidence of record. For example, with respect to chest x-rays and other medical findings that on the whole make up the statutory requirements for pre/post January 1, 1993 chronic beryllium disease (CBD), the CE describes the nature of each piece of evidence that was used to make a determination, so that any reviewer will easily grasp how the medical evidence does or does not meet the statutory requirement.

(4) Conclusions of Law. A conclusion of law is a determination as to how the law is applied to the facts. In a section headed "Conclusions of Law," the CE explains in a logical progression why the claimant is or is not entitled to benefits under the EEOICPA.

(a) The CE cites conclusions and the relevant sections of the EEOICPA and the governing regulations. The citations must be accurate and specific to the issues addressed. However, the citations are not to be overly cited or repeated.

6. Content and Format. (Continued)

(b) The CE specifically states what medical benefits are being awarded, if any, and cites the appropriate part of the law (Part B and/or Part E). The medical condition that is diagnosed must be listed and the dates from which medical benefits are to be covered under the EEOICPA must be stated.

(c) This section must build to a clearly reasoned and stated logical conclusion. The CE must state whether or not the claimant is being awarded or denied benefits under the EEOICPA. In the case of a denial, the CE clearly and properly cites why the condition is being denied (i.e., lack of medical evidence, did not establish survivorship, employment not during covered period).

The conclusions of law should not state the specific lump-sum payment amount if the case is in posture to be recommended for denial. However, in all acceptances, including cases where coordination or offset of benefits applies, the decision must clearly explain how the monetary award was calculated.

(5) Signatory Line. The signature line must include the name, title, and signature of the person who prepared the recommendation and the name, title, and signature of the person who reviewed and certified the decision.

(6) Notice of Recommended Decision and Claimant's Rights. Provides information about the claimant's right to file specific objections to the Recommended Decision and to request either a review of the written record or an oral hearing before the FAB. A sample Notice of Recommended Decision and Claimant's Rights is included a part of Exhibit 3.

(7) Waiver of Rights. A waiver form is sent with each Recommended Decision and is to include the

6. Content and Format. (Continued)

file number, name of the employee, name of the claimant, and the date of the decision in the upper right hand corner. The claimant may waive his or her right to a hearing or review of the written record and request that the FAB issue a Final Decision. In this instance, the claimant is required to sign a waiver and return it to the FAB.

In cases of waiver, the FAB may issue a Final Decision that accepts the findings of the DO prior to the 60 calendar day review period. Exhibit 5 provides a sample Waiver of Rights for simple acceptances and denials.

(a) Right to Object. If the claimant has not submitted a written objection or waiver after 60 calendar days from the issuance of the Recommended Decision, his or her right to object has expired. The FAB may then issue a Final Decision.

(b) Bifurcated Waivers. In many instances, the DO accepts one element of a claim and denies another, all within one Recommended Decision. It is therefore possible for a claimant to waive the right to object to the acceptance portion of the decision and file an objection regarding the denied portion of the same decision. Claimants may also reserve their right to object. A claimant has 60 days from the date the Recommended Decision is issued to file an objection, and may waive this right at any time.

Exhibit 6 provides a sample Bifurcated Waiver of Rights for a partial acceptance/partial denial. Option 1 allows the claimant to waive the right to object to the benefits awarded but reserve the right to object to the findings of fact or conclusions of law. Option 2 allows the



6. Content and Format. (Continued)

claimant to waive the rights to object to all findings and conclusions.

(8) Further Rights of Action. When a recommended decision is issued, the following rights of action arise:

(a) Right to Object. A claimant who objects to all or part of the Recommended Decision must file any objections within 60 days from the date of issuance. The claimant may request an oral hearing with his or her timely written objection. There is no requirement that a claimant submit evidence with his or her objection.

(b) Review of the Written Record. If the claimant objects to all or part of the Recommended Decision, but does not request a hearing, the FAB reviews the written record and then issues a Final Decision or a Remand Order. The claimant may (but is not required to) submit new evidence in connection with the review.

(c) Oral Hearing. If the claimant objects to all or part of the Recommended Decision and wishes to have an oral hearing to state his or her objections, the FAB will conduct such a hearing. FAB hearing procedures are set out in EEOICPA PM 2-1700.

7. Types of Recommended Decisions. Due to the wide variety of possible benefit entitlements available under Part B and Part E, various claim elements may be in different stages of development and adjudication at any given time. Following are examples of several types of Recommended Decisions that may be necessary:

a. Acceptance. Where the entire case can be accepted and no outstanding claim elements [e.g., wage-loss, impairment, additional claimed illness, or a cancer claim pending dose reconstruction at the

7. Types of Recommended Decisions. (Continued)

National Institute for Occupational Safety and Health (NIOSH)] need further development, the CE issues a Recommended Decision to accept in full. The acceptance addresses all the elements that have been claimed.

b. Denial. If after all development is complete and all elements are in posture for denial, the CE issues a Recommended Decision recommending denial on a claim as a whole. The CE waits until every element of a claim has been developed, if possible, before issuing a denial.

(1) Addressing all claimed elements. The CE must be alert to the various adjudicatory issues in the case and clearly identify each element being denied.

(2) Where no objection is pending at the FAB, the CE develops all claim elements in posture for denial and, whenever possible, issues one comprehensive decision denying all possible claims for benefits under the EEOICPA as a whole. If other portions require further development, a partial denial/partial develop decision may also be necessary.

c. Partial Accept/Partial Deny. If the CE determines that no further development is necessary on a case file and concludes that some claim elements should be recommended for acceptance and some for denial, the CE issues a Recommended Decision that clearly sets forth those recommendations. The claimant is provided with a notice of his or her rights and a bifurcated waiver; which provides the claimant the opportunity to contest only the portion of his or her claim which was recommended for denial, or waive his or her right to object to the decision as a whole (see Exhibit 6).

For instance, if an illness that can be covered under both Part B and Part E of the Act (cancer, beryllium illness, chronic silicosis) is claimed and meets the

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7. Types of Recommended Decisions. (Continued)

evidentiary requirements only under Part E but not under Part B, (or vice versa) the CE states that the Part E benefits are being accepted and the B benefits are being denied.

(1) Example. A claim is filed for CBD and medical evidence is submitted that contains a medical diagnosis of CBD that is sufficient to meet the Part E causation burden, but does not meet the statutory criteria under Part B, the CE issues a Recommended Decision awarding benefits under Part E and denying benefits under Part B. The denial under Part B should clearly explain what evidence was lacking and why the case is being denied. The Recommended Decision clearly delineates the benefits being awarded and denied under Part B and Part E.

d. Partial Accept/Partial Develop. When a claim element is fully developed and ready for acceptance, but other elements remain for further development [e.g., wage-loss, impairment, another claimed illness, or a cancer pending dose reconstruction at NIOSH], the CE issues a Recommended Decision accepting the claimed illness and specifies all associated benefits awarded under the EEOICPA as a whole. With regard to other claim elements requiring further development, in the Recommended Decision the CE advises that these elements are deferred until fully developed and adjudication is possible. Partial adjudication of a claim should be avoided whenever possible.

(1) If an additional illness is outstanding, the CE continues development and issues another Recommended Decision as soon as a determination can be made. This situation may specifically arise in instances where a cancer claim is pending NIOSH dose reconstruction or undergoing a physician review for alleged synergistic effects of toxic exposure.

(2) If the evidence concerning wage-loss and impairment, or an additional illness is

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7. Types of Recommended Decisions. (Continued)

insufficient to make a determination, the CE2 designated to the FAB conducts the necessary development after the Recommended Decision is issued and the case file is pending review at the FAB.

e. Partial Accept/Partial Deny/Partial Develop. If one portion of the claim is in posture for acceptance and another portion is in posture for denial, while yet a third portion requires additional development, the CE addresses all claim elements in one comprehensive Recommended Decision. Where one or more claim elements are accepted and other elements are either denied or deferred for additional development, the CE must clearly outline the status of each element that is accepted, denied and deferred. The claimant is provided with a notice of his or her rights and a bifurcated waiver (Exhibit 6).

f. Multiple Claimed Conditions and Employee's Death. While a survivor may claim that the employee contracted multiple illnesses, it is possible that the claim may be recommended for acceptance and award of full survivor benefits upon sufficient proof of only one illness. For instance, if the survivor claims that the employee contracted lung cancer, skin cancer, and prostate cancer and seeks benefits under Part E, and the evidence is sufficient to establish that it was at least as likely as not that the employee's exposure to a toxic substance at a covered facility during a covered time period was a significant factor in contributing to the employee's lung cancer and subsequent death, then the CE may recommend that the claim be accepted for survivor benefits under Part E without further development of the skin cancer and prostate cancer claims.

(1) In the Recommended Decision, the CE does not need to accept or deny the other claimed conditions unless they were previously claimed by the deceased employee. The Recommended Decision acknowledges the other claimed conditions and advises the surviving beneficiary that no

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7. Types of Recommended Decisions. (Continued)

decision will be made regarding these conditions, as no additional benefits would result. However, a decision must be made if the employee filed a claim for these conditions prior to his or her death, as payment of additional medical benefits may be warranted.

(2) In cases where the deceased employee received the maximum amount of benefits payable under the Act prior to death, and a survivor subsequently files a claim for new or additional conditions not previously claimed by the employee, the CE issues a Recommended Decision denying the claim and advising the claimant that the maximum payable benefits have been met.

8. Decision Issuance. After preparing a Recommended Decision, the CE routes the decision and case file to the SrCE for review, signature, date, and release.

a. Clearing the Recommended Decisions for Release. The SrCE or Supervisor reviews all Recommended Decisions. Requests for medical treatment, equipment/supplies, and surgery requests are reviewed by the CE. Medical bill processing is discussed further in EEOICPA PM 3-0200.

(1) Deficiency Identified. If the SrCE discovers a deficiency or other problem, the Recommended Decision is returned to the CE with a detailed explanation of why the decision is not in posture for release. When the SrCE has provided comments or has extensively edited the Recommended Decision, the CE is to revise the decision accordingly.

(2) Decision Approved. If the SrCE agrees with the decision, he or she signs and dates the Recommended Decision. (A GS-11 CE assigned as SrCE will have signature authority while in that capacity.) The date shown on the Recommended Decision must be the actual date on which the decision is mailed.

8. Decision Issuance. (Continued)

b. Mailing the Recommended Decision. The original signed and dated Recommended Decision is mailed to the claimant's last known address and to the claimant's designated representative, if any. Notification to either the claimant or the representative will be considered notification to both parties. See EEOICPA PM 2-1700 regarding decisions returned as undeliverable.

(1) A copy of the Recommended Decision is filed in the case record.

(2) The SrCE or CE enters the appropriate status codes in ECMS and reviews the entire ECMS record to ensure accuracy (see EEOICPA PM 2-2000 and 2-2100).

c. Forwarding the Case. Within one work day of mailing the Recommended Decision to the claimant, the case record must be sent to the appropriate FAB office.

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Sample Cover Letter for Recommended Acceptance

Dear Claimant Name:

Enclosed is the Notice of Recommended Decision of the District Office concerning your claim for benefits under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). The District Office recommends acceptance of your claim for skin cancer under Part B of the EEOICPA, and recommends awarding benefits in the amount of \$150,000.00. **Please note that this is only a RECOMMENDATION; this is not a FINAL Decision.** We caution you against making any financial commitments based on the Recommended Decision (***remove this sentence if the decision is a denial***). The Recommended Decision has been forwarded to the Final Adjudication Branch (FAB) for their review and issuance of the Final Decision.

Please read the Notice of Recommended Decision and Claimant Rights carefully. If you agree with the Recommended Decision and wish to waive any objections to it, you must follow the instructions for doing so provided in the section entitled "If You Agree with the Recommended Decision." If you submit or fax the attached Waiver Sheet (or a statement waiving the right to object) to the FAB, a final decision can be issued before the end of the sixty (60) day period for filing objections. The FAB address is:

U. S. Department of Labor, EEOICPA  
Final Adjudication Branch  
FAB Address  
City, State ZIP  
Fax Number:

If you disagree with the Recommended Decision, you must follow the instructions provided in the section entitled "If You Wish to Object to the Recommended Decision." Your objections must be filed within sixty (60) days from the date of the Recommended Decision by writing to the Final Adjudication Branch at the address listed above.

**State Workers' Compensation:** If you receive or have received any benefit (money, medical benefits, vocational rehabilitation etc.) from a state workers' compensation program for any of the same conditions being recommended for acceptance in this decision under Part E, you must notify the Final Adjudication Branch immediately. This includes any benefits received after the issuance of this recommended decision (**remove this paragraph if the decision is a denial or a Part B decision**).

**Tort Actions:** If the employee or any claimant receives or has received any form of benefit (money, medical benefits, etc.) based on a lawsuit claiming that the employee was harmed from the same type of exposure (e.g. asbestos, radiation, beryllium, or any other toxic substance) upon which the EEOICPA claim is being recommended for acceptance in this decision, the Final Adjudication Branch must be notified immediately. This includes any benefits received after the issuance of this recommended decision (**remove this paragraph if the decision is a denial**).

Should you have any questions concerning the recommendation, you may call the Final Adjudication Branch, toll free, at:

Sincerely,

Claims Examiner



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Sample Cover Letter for Partial Accept/Partial Denial

Dear Claimant Name:

Enclosed is the Notice of Recommended Decision of the District Office concerning your claim for compensation under the Energy Employees Occupational Compensation Program Act (EEOICPA). The District Office recommends acceptance of your claim for skin cancer under Part B of the EEOICPA, and recommends awarding benefits in the amount of \$150,000.00. The District office recommends denial of your claim for hearing loss under Part E. **Please note that this is only a RECOMMENDEATION; this is not a Final Decision.** We caution against making financial commitments based on the anticipated receipt of an award. The Recommended Decision has been forwarded to the Final Adjudication Branch (FAB) for their review and issuance of the Final Decision.

Please read the Notice of Recommended Decision and Notice of Rights of Action carefully, as it recommends an acceptance of some benefits and denial of others. You have several choices. Consider your options carefully as your choice will affect your ability to raise objections, as well as the steps the FAB takes in issuing a final decision.

The EEOICPA provides you with a sixty day time period to raise written objections to any finding of fact or conclusion of law contained in the Recommended Decision. Until this sixty day time period expires, the Final Adjudication Branch (FAB) will not issue a final decision, unless you specifically advise the FAB that you wish to waive your right to object. Unless the decision contains an error or other technical deficiency, the FAB will accept the findings of the district office and proceed with the issuance of a final decision.

**Filing an objection.** If you disagree with an aspect of the Recommended Decision, you may file a written objection. You should also advise the FAB whether you would like the FAB to consider your objections through a Review of the Written Record, an oral hearing, or a hearing by telephone. If you request a Review of the Written Record, the FAB will carefully consider your objections, any new evidence, as

well as all the evidence of record, before issuing a final decision. If you request an oral hearing, a hearing before a FAB hearing representative will be scheduled. If you request a hearing by telephone, a FAB hearing representative will conduct a hearing by telephone, rather than in person. During either form of hearing, you will be able to elaborate on your objections to the Recommended Decision and present additional evidence. FAB will fully consider these objections and any additional evidence you may submit prior to issuing a final decision. If you do not specify which option you prefer, a Review of the Written Record will be performed.

**Waiving your rights of objection.** If you agree with the recommended decision, you may consider waiving your rights of objection in writing. You may advise FAB of your wishes in this situation by selecting Option 2. When you advise FAB of your wish, FAB will issue a final decision without waiting for the sixty day time period to expire.

**Waiving your rights of objection to the aspect of the recommendation approving benefits.** Since the Recommended Decision recommends an acceptance of some benefits and a denial of others, you may wish for FAB to expedite an issuance of a final decision awarding you benefits, while retaining your right to object to the recommended denial of other benefits. You may advise FAB of your wishes in this situation in writing by selecting option 1 on the enclosed waiver form. If you choose to file objections, you must do so within the sixty day time period, following the directions described in "Filing an objection."

The FAB address is:

Final Adjudication Branch  
Attn: District Manager  
(FAB Office Address)

If you fail to file written objections to this decision within 60 days of the date of this decision your right to challenge this recommended decision will be waived for all purposes and you will not be able to seek further review of this decision at this time. Once a final decision is issued, you may file a request for reconsideration within 30 calendar days of the

issuance of a FAB final decision. Or you may request, in writing, that your claim be reopened at any time following a FAB final decision.

**State Workers' Compensation:** If you receive or have received any benefit (money, medical benefits, vocational rehabilitation etc.) from a state workers' compensation program for any of the same conditions being recommended for acceptance in this decision under Part E, you must notify the Final Adjudication Branch immediately. This includes any benefits received after the issuance of this recommended decision (**remove this paragraph if the decision is a denial or Part B decision**).

**Tort Actions:** If the employee or any claimant receives or has received any form of benefit (money, medical benefits, etc.) based on a lawsuit claiming that the employee was harmed from the same type of exposure (e.g. asbestos, radiation, beryllium, or any other toxic substance) upon which the EEOICPA claim is being recommended for acceptance in this decision, the Final Adjudication Branch must be notified immediately. This includes any benefits received after the issuance of this recommended decision (**remove this paragraph if the decision is a denial**).

Should you have any questions concerning the recommendation, you may call the Final Adjudication Branch, toll free, at: (FAB Office telephone number)

Sincerely,

Claims Examiner

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Sample Recommended Decision

**EMPLOYEE:** Steven C. Smith  
**CLAIMANT:** Steven C. Smith  
**FILE NUMBER:** 123-45-6789

**NOTICE OF RECOMMENDED DECISION**

This is a Recommended Decision of the Jacksonville District Office concerning a claim for benefits under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). The District Office recommends acceptance of the claim for reactive airway disease and the consequential illness of atrial fibrillation under Part E of the Act. The District Office further recommends denial of the claim for squamous cell carcinoma (SCC) of the arm under both Part B and Part E of the Act, and a denial of chronic obstructive pulmonary disease (COPD) under Part E of the Act. The claims for basal cell carcinoma (BCC) of the arm under both Part B and Part E of the Act are being deferred pending further development.

**STATEMENT OF THE CASE**

The evidence of record shows that on June 24, 2004, the employee, Steven C. Smith filed Form EE-1, Claim for Benefits under the EEOICPA. The employee claimed he had developed SCC of the arm, COPD, atrial fibrillation, reactive airway disease and BCC of the arm as a result of his employment at a Department of Energy (DOE) Facility.

Form EE-3, Employment History, states that the employee worked for E.I. DuPont at the Savannah River Site (SRS) in Aiken, S.C. from September 1974 to March 2004. The Oak Ridge Institute for Science and Education (ORISE) and the DOE confirmed employment with E.I. DuPont at the SRS from September 1, 1974 to June 1, 1989 and Westinghouse at the SRS from April 1, 1989 to February 29, 2004. The SRS located in Aiken, SC is a covered DOE facility as listed on their website of covered facilities.

Medical evidence submitted with the claim includes a medical narrative dated February 9, 1994, signed by Dr. Joseph Collins, M.D. who provided a background to the employee's airway dysfunction. Dr. Collins stated in his

report that in April 1992, the laboratory in which the employee worked was flooded and resulted in significant contamination and overgrowth of bacteria and fungi. As a result, the rugs were cleaned and a chemical reaction occurred between the cleansing agent and the rug, thereby creating a toxic chemical substance. The carpet cleaning process created a problem with shortness of breath and difficulty in breathing. The employee also had another reaction to a carpet cleansing in January 1993.

Dr. Collins stated that the airway symptoms that the employee exhibits are intermittent and occur with exposure to a variety of substances and situations, however, problems are enough to be clinically symptomatic, although there are no daily symptoms. In his narrative, Dr. Collins noted that the employee has no history of childhood asthma, hay fever, or food allergies; therefore, he concluded that the employee's clinical symptoms and presentation strongly suggest reactive airway disease.

Under Part E of the Act, specific criteria must be met to establish the employee contracted an illness through exposure at a DOE covered facility. A covered illness means an illness or death resulting from exposure to a toxic substance(s), and that this substance(s) was "at least as likely as not" a significant factor in causing, aggravating or contributing to the claimed illness(es).

An occupational history interview was conducted with the employee on November 12, 2008. He stated that he worked as a microbial scientist at the SRS; he was responsible for collecting and processing water and sediment samples. The employee also stated that he collected materials that were contaminated with heavy metals and organic contaminate. The District Office performed searches of the U. S. Department of Labor Site Exposure Matrices (SEM) for toxic substances that may have a health effect relating to reactive airway disease. The SEM does not link any toxic substances to the health effect of reactive airway disease.

Therefore, on April 14, 2009, the case file was referred to a District Medical Consultant (DMC) for further review to determine if the diagnosis of reactive airway disease is a sufficient diagnosis to conclude that the employee has a diagnosis of chronic obstructive pulmonary disease (COPD).

The DMC was also asked to review the case file to determine whether the exposure to toxic substances while employed at the DOE facility was a significant factor in aggravating, contributing to or causing his condition of atrial fibrillation.

On May 11, 2009, the District Office received the DMC's report. In her report, the DMC opined that Mr. Smith's condition of reactive airway disease does not fit into the criteria of COPD. He does not have evidence of chronic airway obstruction or chronic bronchitis. A second pulmonary opinion of Dr. Collins, dated February 9, 1994, showed that Mr. Smith's reactive airway disease was his only pulmonary diagnosis. Further supporting this is a PFT that was performed on September 13, 1995 which was normal. However, the DMC stated that it is at least as likely as not that Mr. Smith's exposure to toxic substances while working at DOE facilities was a significant factor in causing, contributing to, or aggravating his condition of reactive airway disease when exposed to well known environmental agents relating to a flooded indoor environment with contamination of significant microbial and fungal species while working at DOE facilities.

Addressing atrial fibrillation, the DMC stated that it is not at least as likely as not that Mr. Smith's exposure to toxic substances while working at DOE facilities was a significant factor in causing contributing to, or aggravating his condition of atrial fibrillation. However, the DMC concluded that it is at least as likely as not that Mr. Smith's treatment for reactive airway disease with bronchodilators was a significant factor in contributing to or aggravating his condition of atrial fibrillation.

For the claimed conditions of COPD and SCC of the arm, the employee was sent letters on November 20, 2008, December 19, 2008, January 27, 2009, and February 27, 2009. The District Office requested that the employee submit a narrative medical report from a physician about the claimed conditions along with a diagnosis, including a date of diagnosis, a history of the conditions, physical findings from examination and pathology reports. The employee was advised that he had 30 days to submit the required medical documentation. As of this date, no medical documentation

has been received to establish that the employee has been diagnosed with these conditions.

The employee has stated that he has not filed for or received compensation or medical coverage in connection with the conditions of reactive airway disease or atrial fibrillation; that he has not filed for state workers' compensation benefits in connection with the condition of reactive airway disease or rapid heart beat; and that he has never pled guilty or been convicted of any charges connected with an application for or receipt of federal or state workers' compensation.

#### **FINDINGS OF FACT**

1. The employee filed a claim for benefits on June 24, 2004.
2. The employee was a covered DOE contractor at the SRS in Aiken, SC from September 1, 1974 to February 29, 2004.
3. There is sufficient evidence to show that the employee's exposure to a workplace toxic substance was a significant factor that "at least as likely as not" caused, aggravated, or contributed to the illness of reactive airway disease
4. The evidence shows that the employee's illness of reactive airway disease contributed to, or aggravated his condition of atrial fibrillation.
5. No substantial medical records were submitted with the claim diagnosing the employee with COPD and SCC of the arm.

#### **CONCLUSIONS OF LAW**

The employee is a covered DOE contractor employee with a covered illness as those terms are defined in 42 U.S.C. § 7385s(1) and § 7385s(2).

It is "at least as likely as not" that exposure to a toxic substance at a DOE facility was a significant factor in aggravating, contributing to, or causing the employee's

reactive airway disease and the consequential illness of atrial fibrillation, and it is "at least as likely as not" that the exposure to such toxic substance was related to employment at a DOE facility, pursuant to 42 U.S.C. §7385s-4(c)(1)(A) and §7385s-4(c)(1)(B).

Therefore, it is recommended that the employee's claim for benefits under Part E of the Act be accepted for the covered illness of reactive airway disease and the consequential illness of atrial fibrillation and that the employee be awarded medical benefits for those illnesses, commencing on November 12, 2008, the date of filing, in accordance with 42 U.S.C. §7385s-8.

The medical evidence did not establish an occupational or covered illness for COPD and SCC of the arm under Parts B and E of the Act, at the DOE facility in accordance with 42 U.S.C. 7384 1 (15) and 42 U.S.C. 7385s (2). The employee's claim for benefits under the Energy Employees' Occupational Illness Compensation Program Act for COPD and SCC of the arm is therefore recommended for denial.

Prepared by:

\_\_\_\_\_  
(Name)  
Claims Examiner

\_\_\_\_\_  
Date

Reviewed and Certified by:

\_\_\_\_\_  
(Name)  
Senior Claims Examiner

\_\_\_\_\_  
Date



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Sample Notice of Recommended Decision and Claimant Rights**NOTICE OF RECOMMENDED DECISION AND CLAIMANT RIGHTS**

The District Office has issued the attached recommended decision on your claim under the Energy Employees Occupational Illness Compensation Program Act. This notice explains how to file objections to the recommended decision. This notice also explains what to do if you agree with the recommended decision and want the Final Adjudication Branch (FAB) to issue a final decision before the 60-day period to object has ended. Read the instructions contained in this notice carefully.

**IF YOU WISH TO OBJECT TO THE RECOMMENDED DECISION:**

If you disagree with all or part of the recommended decision, you **MUST** file your objections within sixty (60) days from the date of the recommended decision by writing to the FAB at:

**U.S. Department of Labor, DEEOIC  
Attn: Final Adjudication Branch  
FAB Address  
City, State ZIP  
Fax #:**

If you want an informal oral hearing on your objections, at which time you will be given the opportunity to present both oral testimony and written evidence in support of your claim, you **MUST** request a hearing when you file your objections. **If you have special needs (e.g., physical handicap, dates unavailable, driving limitations, etc.) relating to the scheduling (time and location) of the hearing, those needs must be identified in your letter to the FAB requesting a hearing.** In the absence of such a special need request, the FAB scheduler will schedule the hearing and you will be notified of the time and place. If you do not include a request for a hearing with your objections, the FAB will consider your objections through a review of the written record, which will also give you the opportunity to present written evidence in support of your claim. If you fail to file any objections to the recommended decision within the 60-day period, the

recommended decision may be affirmed by the FAB and your right to challenge it will be waived for all purposes.

**IF YOU AGREE WITH THE RECOMMENDED DECISION:**

If you agree with the recommended decision and wish for it to be affirmed in a final decision without change, you may submit a written statement waiving your right to object to it to the FAB at the above address. This action will allow the FAB to issue a final decision on your claim before the end of the 60-day period for filing objections. If you wish to object to only part of the recommended decision and waive any objections to the remaining parts of the decision, you may do so. In that situation, the FAB may issue a final decision affirming the parts of the recommended decision to which you do not object.

**BE SURE TO PRINT YOUR NAME, FILE NUMBER AND DATE OF THE RECOMMENDED DECISION ON ANY CORRESPONDENCE SUBMITTED TO THE FAB.**

Please be advised that the final decision on your claim may be posted on the agency's website if it contains significant findings of fact or conclusions of law that might be of interest to the public. If it is posted, your final decision will not contain your file number, nor will it identify you or your family members by name.

Sample Waiver

File Number:  
Employee:  
Claimant:  
Date of Decision:

Final Adjudication Branch  
U.S. Department of Labor - DEEOIC  
Attn.: District Manager  
FAB Address  
City, State ZIP

Dear Sir or Madam:

I, \_\_\_\_\_, being fully informed of my right to object to any of the findings of fact and/or conclusions of law contained in the recommended decision issued on my claim for compensation under the Energy Employees' Occupational Illness Compensation Program Act, do hereby waive those rights.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Sample Partial Accept/Partial Denial Bifurcated Waiver

File Number:  
Employee:  
Claimant:  
Date of Decision:

Final Adjudication Branch  
U.S. Department of Labor, EEOICPA  
FAB Street Address  
City, State, ZIP

Dear Sir or Madam:

File Number:

**(Option 1)**

I, \_\_\_\_\_, being fully informed of my right to object to any of the findings of fact and/or conclusions of law contained in the recommended decision issued on my claim for compensation under the Energy Employees Occupational Illness Compensation Program Act, do hereby waive those rights **only** as those rights pertain to the portion of my claim recommended for acceptance. I do, however, reserve my right to object to the findings of fact and/or conclusions of law contained in the recommended decision that recommend denial of claimed benefits.

I understand that should I choose to file an objection, I may either attach such objection to this form or submit a separate written objection to the address listed above within 60 days of the date of issuance of the recommended decision.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**(Option 2)**

I, \_\_\_\_\_, being fully informed of my right to object to any of the findings of fact and/or conclusions of law contained in the recommended decision issued on my claim for compensation under the Energy Employees Occupational Illness Compensation Program Act, do hereby waive those rights.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**(NOTE ON WAIVER:** If you wish to file a waiver of objections, please select and sign **only one** of the above options. Select Option 1 to waive your right to object to the portion of your claim recommended for acceptance but reserve your right to object to the recommended denial of benefits. Select the Option 2 to waive your rights to object to ALL findings and conclusions.)

Superseded

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1. Purpose and Scope. This chapter describes the functions of the Final Adjudication Branch (FAB), focusing on the administrative and preparatory aspects of its work. The new unified EEOICPA Procedure Manual (PM) 2-1800 addresses FAB decisions, including how the FAB reviews recommended decisions issued by District Offices (DOs), evaluates certain evidence and objections, schedules and conducts hearings, reviews requests for reconsideration of FAB final decisions, issues remand orders, and issues final decisions on claims filed pursuant to the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

2. Authority. The regulations governing the implementation of EEOICPA specify at 20 C.F.R. § 30.300 that each recommended decision (RD) is to be forwarded to the FAB for issuance of a final decision (FD). Section 30.310 allows a claimant to object, in writing, to all or part of the RD within 60 calendar days from the date the RD is issued. If a claimant requests a hearing within the 60 day time period, a FAB hearing representative will conduct a hearing, pursuant to 20 C.F.R. § 30.314. Otherwise, the objections will be responded to by a review of the written record, pursuant to 20 C.F.R. § 30.312.

Whether or not an objection is filed, the FAB reviews all RDs, all arguments and evidence of record, and issues a FD pursuant to 20 C.F.R. § 30.316 or a remand order pursuant to 20 C.F.R. § 30.317. Also, the FAB reviews claimant requests for reconsideration of a FD under 20 C.F.R. § 30.319. FAB can also issue a FD reversing the findings and conclusions of the RD in certain circumstances.

3. Organization. The Final Adjudication Branch (FAB) is a National Office organization with District Office locations (FAB-DOs) in: Jacksonville, Florida; Cleveland, Ohio; Denver, Colorado; and Seattle, Washington. While the FAB-DO is located with the adjudicatory DO, it is a distinct entity with a separate operational structure and managed by a separate on-site FAB manager. In addition to the FAB-DOs, a National Office FAB (FAB-NO) is located in Washington, D.C. The FAB Chief is located in the Washington, D.C., office and oversees the operations of the FAB-NO and the four FAB-DOs.

### 3. Organization. (Continued)

#### a. The FAB Chief and Assistant Branch Chiefs:

(1) Coordinate the administration of the four FAB-DOs and the FAB-NO. Oversee policy implementation, manage adjudication timeliness, and ensure general compliance with FAB procedures.

(a) Hearing requests received by FAB-DOs are sent to the FAB-NO for assignment. A hearing coordinator as designated by the FAB Chief assigns all hearings nationwide.

(2) Can redistribute certain case files at their discretion to ensure balanced case loads among the four FAB-DOs and the FAB-NO.

#### b. The FAB-NO and FAB-DOs:

(1) Reviews RDs, conducts hearings, reviews of the written record, and issues FDs or remand orders on reviewed cases. The cases reviewed by FAB-NO and the cases on which FAB-NO conducts hearings can originate from any DO. A FAB Hearing Representative can be assigned a hearing anywhere in the nation; not just in their FAB office's jurisdiction.

(2) Processes requests for reconsideration of FDs.

(3) Works with Co-Located Secondary Claims Examiners (CE2) who develop cases and issue RDs in certain cases with pending actions in the FAB unit.

4. Processing, Monitoring, and Transferring Case Files. When a DO issues a RD, it will forward the entire case file to its affiliated FAB-DO or the FAB-NO, as directed, for review and issuance of a FD. Upon receipt of the file, FAB assigns a docket number to each individual claimant. A separate docket number is assigned for claims under Part B and for claims under Part E. Once a docket number has been assigned, that docket number remains the docket number for the life of the claim. No new docket number is created after the issuance of a new RD. Because each FAB office, including the FAB-NO, is separate and



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4. Processing, Monitoring, and Transferring Case Files.  
(Continued)

distinct from the DOs, each maintains a separate mail and file operation.

a. Initial Screening/Review. A case file received from the DO is assigned and delivered to the responsible FAB Claims Examiner (CE) or Hearing Representative (HR) for initial review. The initial review should be completed within 15 days of the issuance of the RD. The CE or HR reviews the case file for accuracy and determines whether the claimant has filed a waiver, a written objection(s), or a request for a hearing.

(1) Should the claimant request a hearing, the case file is forwarded to the FAB-NO hearing coordinator.

(2) During the initial review, the CE or HR makes a preliminary determination of whether additional development is necessary prior to issuance of a FD. If so, the additional development should be done at the FAB.

(3) FAB is responsible for any adjudication issues before the FAB that need development, such as obtaining a marriage certificate or updating a State Workers' Compensation, tort, and fraud questionnaire.

(4) The Co-Located Secondary Claims Examiner (CE2) is responsible for any development issues on pending claim elements that are not currently being addressed by the FAB (i.e., pending claimed illnesses, NIOSH DRs, impairment and/or wage loss claims) where a RD has not been issued. In this instance, FAB forwards the case file to the CE2 for development and/or review of the new evidence received while the case file is at FAB on a pending adjudicatory issue. This includes receipt of impairment reports, NIOSH DRs, requests for wage loss, etc., if these issues are not before the FAB.

(5) Specific procedures for case processing by CE2 can be found in paragraph 8 below.

4. Processing, Monitoring, and Transferring Case Files.  
(Continued)

b. File Maintenance After FD.

(1) If a FD has been issued on all claim elements addressed by a RD, the FAB may return the case to the DO for processing payment, further development, or storage.

(2) If multiple RDs have been issued, and one RD is still pending and one FD has been issued awarding compensation, the FAB retains the file. The file will be sent to the originating DO upon request for issuance of payment. A red transfer sheet will be attached to the case alerting the DO that the case has a pending FD and must be returned to the FAB as soon as possible. Since this case will no longer show on any FAB report, the responsible FAB office must track the case manually to ensure that the case is returned in time to issue a timely FD on the pending claim. Once all claim issues before the FAB are complete, the file is returned to the DO for further development, adjudication or storage.

c. ECMS Coding. FAB CEs and HRs must check ECMS coding entered by the DO to ensure accuracy and must also properly record in ECMS all FAB actions taken while processing an FD. This includes updating status codes, entering notes, documenting telephone calls, tracking case file locations, and updating the medical or employment history.

Under no circumstances may FAB personnel delete any ECMS code that relates to timeliness. Timeliness codes can only be deleted by, or with the written pre-approval of, a FAB manager.

5. Objections, Hearing Requests, and Waivers. The regulations allow a claimant to file written objections to all or part of a RD. The claimant may also request a hearing on the RD. The claimant may waive these rights to all or part of a RD.

a. Objections.

5. Objections, Hearing Requests, and Waivers. (Continued)

(1) Timeliness. A claimant has 60 calendar days from the date of the RD to file an objection in writing. The claimant does not need to specify the basis for the objection for it to be considered but can merely state that he or she disagrees with a finding of fact, a conclusion of law, or the RD generally.

A written objection is considered timely if the envelope containing it is postmarked no later than the 60<sup>th</sup> calendar day after the RD issuance date (the date of the RD is not included in the 60 calendar days). If the 60<sup>th</sup> day falls on a non-business day, the envelope must be postmarked by the next business day for the objection to be considered timely filed. If no postmark is available, the date of the objection is considered to be the earliest date received in the DEEOIC office or resource center as determined by the date stamp. As long as at least one objection is timely filed by a claimant, the FAB must consider ALL objections filed by that claimant, even objections raised after the 60-day period has expired.

(2) Letter of Acknowledgment. Upon receipt of a timely filed written objection, the FAB acknowledges receipt of the objection in writing and informs the claimant that he or she may submit additional evidence in support of the claim within 20 days.

(3) Effect. The FAB considers a timely filed objection to be an objection to the entire RD, unless the claimant has also filed a written waiver of his or her right to object to a specified portion of the decision (see paragraph 5.c(3) below regarding bifurcated waivers) or the claimant specifies that the objections only pertain to a certain aspect of the RD. In the former case, the FAB can immediately issue a FD concerning the waived portion. In the latter case, the FAB must wait for the expiration of the full 60 days before issuing an FD on the aspect of the RD not objected to.

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5. Objections, Hearing Requests, and Waivers. (Continued)

(4) Processing Objections. Upon receipt of a timely written objection, the FAB must review the written record (RWR) prior to issuance of the FD.

(5) Objections Regarding Dose Reconstruction. If the claimant objects to the Department of Health and Human Service (HHS) reconstruction of the radiation dose to which the employee was exposed, FAB evaluates the factual findings upon which HHS based the dose reconstruction.

The DEEOIC Health Physicist (HP) serves as the liaison between NIOSH and DOL on all issues related to dose reconstruction. All objections related to dose reconstruction must be sent to a DEEOIC HP for review, unless the objections are solely related to factual findings, i.e., whether the facts upon which the dose reconstruction report was based were correct.

(a) Factual Objection: If the HR or CE determines that the factual evidence reviewed by NIOSH was properly addressed, the HR or CE accepts NIOSH's findings, in which case no referral to a DEEOIC HP is necessary. However, if the HR or CE determines that NIOSH did not review substantial factual evidence, he or she contacts a DEEOIC HP to determine if a rework of the dose reconstruction is necessary.

If the DEEOIC HP determines that a rework of the dose reconstruction is necessary, the HR or CE then remands the case to the DO for referral to NIOSH for a rework.

(b) Technical Objection: A technical objection may involve either methodology or application of methodology. Examples of methodology of dose reconstruction may include but is not limited to analyzing specific characteristics of the monitoring procedures in a given work setting; identifying events or processes that were unmonitored; identifying the types and quantities of radioactive materials involved and using

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5. Objections, Hearing Requests, and Waivers. (Continued)

current models for calculating internal dose. The NIOSH "efficiency" process of using overestimates and underestimates in dose reconstruction is another example of a methodology. Upon receipt of the technical objection(s), the HR or CE discusses it with his or her supervisor to obtain approval to submit the objection(s) for DEEOIC HP review. The HR or CE needs prior approval from a FAB supervisor on all technical objections submitted to the DEEOIC HP for review. FAB and Policy Branch take the following steps to track technical objections submitted for DEEOIC HP review.

(i) Prepare a memo to the DEEOIC HP that identifies only the NIOSH technical objections (not including any factual objections).

(ii) Attach the memo (in addition to the NIOSH dose reconstruction report, IREP summary for each cancer and CATI summary for each claimant from the NIOSH disc) to an e-mail message addressed to the DEEOIC HP with copies to addressees as directed by the Policy Branch.

(iii) The e-mail message should contain the following information in the subject line: the HR or CE's FAB office location; "Tech Obj - employee's last name"; the last 4 digits of the claim #; and the name of the covered facility, e.g., (FAB NO) Tech Obj-Smith 4112(Hanford).

(iv) The HR or CE spindles the memo in the file and documents ECMS Notes to explain that supervisory approval has been granted and that the aforementioned actions have been completed.

(v) Upon receipt of the technical objection(s), the DEEOIC HP determines

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5. Objections, Hearing Requests, and Waivers. (Continued)

whether the technical objection is one of application or methodology. As part of this review, he or she refers pertinent parts of the case and the objections to NIOSH for its opinion on the objections. NIOSH is asked to respond within 30 days. The DEEOIC HP then sends his or her written opinion (and NIOSH's opinion, if any) to FAB. Upon receipt of the DEEOIC HP's review of technical objections, the HR or CE spindles the HR's responses in the file.

(c) While the dose reconstruction is the responsibility of NIOSH, the calculation of the probability of causation is the responsibility of the DEEOIC. Therefore, FAB may consider objections to the manner in which the DO applied NIOSH's regulatory probability of causation guidelines.

b. Hearing Requests. A claimant has 60 calendar days from the date the DO issues a RD to file a written request for a hearing. A hearing request is considered timely if the envelope containing the request is postmarked no later than the 60<sup>th</sup> day after the RD issuance date. If no postmark is available, timeliness is determined based on the earliest date received in the DEEOIC office or resource center as shown by the date stamp. Should the claimant request a hearing, the case file is to be forwarded to the FAB-NO hearing coordinator for scheduling of a hearing and assignment of the case to a HR.

c. Waivers. FAB may issue a FD at any point after receiving a written notice of waiver. To expedite the FAB review process, the DO must immediately forward all signed waivers to FAB upon receipt.

(1) Implied Waivers. A claimant's rights to object and/or to request a hearing are considered waived if not timely exercised.

5. Objections, Hearing Requests, and Waivers. (Continued)

(2) Signed Waivers. A claimant may waive his or her rights to object and to request a hearing by submitting a signed waiver form to the DO or the FAB within 60 calendar days of the RD issuance date. The submission of a signed waiver denotes the claimant's willingness to accept the findings of fact and conclusions of law reached by the DO in the RD.

(3) Bifurcated Waivers. By submitting a bifurcated waiver, a claimant may waive his or her rights to object to one portion of the decision while retaining his or her rights to object to another portion of the decision. Exhibit 1 shows a sample cover letter for partial acceptance/partial denial that the DO issues with the recommended decision. Exhibit 2 shows the waiver form that is sent with partial acceptance/partial denial RDs. This waiver form provides the claimant with two options if he or she chooses to waive the right to object.

If the claimant files a bifurcated waiver, the FAB issues a timely FD adjudicating the waived portion of the RD if possible. FAB then issues a separate FD adjudicating the objected-to portion of the RD after a review of the written record or a hearing, as requested.

6. Receipt of New Medical Evidence or New Claim.

a. Transferring Documents. If the DO receives new medical evidence or a new claim while the case file is at FAB, the DO promptly transfers the documents to the FAB office where the case file is located. Since the district FAB does not have access to add a new claim to the case, the FAB transfers the case file to the CE2 to add a new claim or a new medical condition to an existing claim in ECMS and to develop the claim if necessary. If FAB receives new medical evidence or a new claim form while the case file is at a DO, FAB promptly transfers the documents to the DO where the case file is located.

6. Receipt of New Medical Evidence or New Claim. (Continued)

b. New Medical Evidence Received. If FAB has the case file, receives new medical evidence, and has not issued the FD, the CE or HR reviews the new medical evidence and determines if the evidence pertains to a claimed condition or to a new, as-yet-unclaimed condition.

(1) New Medical Evidence of a Claimed Condition. If the evidence is of a claimed condition and the RD recommends denial of benefits based on insufficient evidence relating to that condition, FAB has the discretion to determine if the new evidence, when reasonably considered with the totality of the evidence, is likely to support a reversal of the RD in favor of the claimant.

(a) If FAB concludes that the new medical evidence of the previously claimed condition supports a reversal of the RD to deny the condition, and no further development is needed, FAB reverses the decision in favor of the claimant and accepts the claim.

(b) If FAB concludes that the new medical evidence of the claimed condition does not support a reversal of the RD to deny, FAB reviews the RD for accuracy, reasoning, rationale and a thorough discussion of the evidence that supports the conclusions in the RD and either remands the decision for further development or upholds the denial.

(2) New Medical Evidence of an Unclaimed Condition. If new evidence is of a condition that has not been claimed, the FAB proceeds with its review of the case and issues the FD on the claimed conditions. Also, the FAB has the discretion to determine if the new evidence, when considered with the totality of the evidence, is likely to lead to acceptance of benefits if the claimant filed a new claim based on such evidence.



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6. Receipt of New Medical Evidence or New Claim. (Continued)

If FAB determines that coverage is likely, FAB sends the case to the CE2 who issues a letter to the claimant addressing receipt of the new evidence and explaining the ability to file a new claim form. In this situation, FAB may issue the FD on the claimed conditions without waiting for a response from the claimant.

c. New Claim Filed. If FAB has the case file, receives a new claim from a current claimant, and has not issued the FD, the CE or HR reviews the new claim and determines if any medical condition is being claimed for the first time. If not, FAB acknowledges receipt of the new claim in writing and advises that it will not lead to further development as no new medical conditions were claimed. However, in claims involving skin cancer, a subsequent claim for skin cancer may lead to the need for further development if it involves an additional skin cancer.

(1) New Condition Claimed, Case in Posture for Denial. If a claim for a new medical condition is filed while the case is at FAB for denial of benefits, FAB has the discretion to determine if the new claimed condition, when considered with the totality of the evidence, is likely to lead to acceptance of benefits for the condition presently before FAB.

(a) If FAB determines that coverage is likely, FAB remands the case to the DO without issuing a FD.

(b) If FAB determines that coverage is not likely, FAB does not remand the case. This issue should be forwarded to the CE2 for development. FAB issues a FD on the conditions adjudicated in the RD. FAB notes in the opening of the FD that the new claim was received and development is pending by the DO and that they will receive a new RD on the new claim.

After issuing the FD, the FAB returns the case file to the DO for development of the newly claimed medical condition and attaches a

6. Receipt of New Medical Evidence or New Claim. (Continued)

memorandum to the front of the case file alerting the DO to the new claim.

(2) New Condition Claimed, Case in Posture for Acceptance. If a claim for a new medical condition is filed while the case is at FAB in posture for acceptance of benefits, FAB forwards the case to the CE2 to acknowledge receipt of the new claim and to advise that the DO will develop the newly claimed condition. FAB issues a FD on the conditions adjudicated in the RD.

(3) New Claimant. If a new claim is received while the case is at FAB, and the claimant had not previously filed a claim, FAB has the discretion to determine if the entry of an additional claimant necessitates remand of the case.

(a) If FAB determines that the entry of a new claimant does not necessitate remand of the RD currently under review, FAB sends the new claim to the CE2 to enter it into ECMS within 5 days of receipt. The case is returned to FAB to issue a FD on the claim under review. Upon issuing the FD, a memorandum is spindled at the top of the case file stating that a new claimant has been added in ECMS and the case file is returned to the DO for development of the new claim.

Example: If the employee's widow is recommended for acceptance under Part E and the employee's mother files a claim, this would not necessitate a remand since the employee's mother would not be entitled to survivor benefits.

(b) If FAB determines that the entry of a new claimant necessitates a remand, FAB may remand the case for further development.

Example: If an additional eligible child files a claim, this would necessitate a remand.

7. One Year Requirement. To prevent undue delays in adjudication, 20 C.F.R. § 30.316(c) imposes a one-year limit on the amount of time a RD can be pending at the FAB before it automatically becomes a FD. Once the one year time frame has elapsed, there is essentially a regulatory/administrative final decision. FAB CEs and HRs must ensure that a FD is issued prior to the expiration of a one-year deadline. FAB managers ensure that cases are assigned or re-assigned so as to prevent the expiration of a one-year deadline.

a. No Objection or Hearing Request Filed. If the claimant did not object to the RD and did not request a hearing, and the RD has been pending at FAB for more than one year from the last date on which the claimant was allowed to file an objection or request a hearing, the RD becomes final on the one-year anniversary of that date. This would be 425 days [60 days to object + 365 days (one year)] after the RD date.

b. Objection or Hearing Request Filed. A RD awaiting either a hearing or a review of the written record at the FAB will automatically become a FD on the one-year anniversary of the date the objection or request for a hearing was received in the FAB (as indicated by the date stamp).

c. DEEOIC Director Reopened the Claim. A RD awaiting a FD following an order by the DEEOIC Director reopening the claim for a new FD shall be considered a FD on the one-year anniversary of the date of the Director's reopening order.

d. One-Year Event Occurs. If the one-year time limit has expired, the pending RD automatically becomes a FD, and the case shall be transferred to the FAB-NO for review.

The FAB CE/HR ensures the case file is sent to the FAB-NO to the attention of the FAB Operations Specialist. A memo from the district FAB Manager, through the FAB Chief, dated and signed by the FAB Chief, to the Director must be included with the case file. The FAB Operations Specialist ensures that the case file is sent to the National Office(NO) to the attention of the Office of the Director. The memo requests that the regulatory/administrative final

7. One Year Requirement. (Continued)

decision (based on the one-year rule) be vacated so a formal final decision can be issued.

Once the case file is received in the NO, an assessment will be undertaken to determine whether it is necessary to vacate the regulatory/administrative final decision. If a Director's Order is necessary, it will specify whether the case file needs to be returned to FAB for a FD or to the district office for a new RD based on the evidence of record. Once the file is received back in the FAB or DO, the DO or FAB proceeds as instructed by the Director's Order.

e. Jurisdiction. Upon expiration of the one-year time period described above, FAB has no jurisdiction to remand the case for further development or to take any action other than that described above.

8. CE2 Designated to the FAB. FAB offices are geographically located as noted in paragraph 3 above. However, since DO adjudicatory functions are sometimes required while a case is at FAB for review, each DO assigns certain CEs to handle DO development and adjudication while the case is at FAB.

This process eases the burden of file sharing and allows for case files to be maintained in one central location while RDs are pending review or FAB is addressing objections by conducting hearings or reviews of the written record and further DO-level development is required.

a. Reporting and Roles. These CEs are called Co-Located Secondary CEs (CE2s) because the FAB CE (or HR) is considered the primary CE while the case is in FAB's jurisdiction. This group of CE2s is referred to as the "Co-Located Unit." The Co-Located Unit reports to either the DO or to the Policy Branch.

b. Co-Located District Office Identifiers. Each co-located unit possesses a 'D02' field identifying the location of the office. The 'D02' field is populated when the ECMS "Co-Located Development" section (discussed below) is populated. The respective codes are as follows:

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8. CE2 Designated to the FAB. (Continued)

- (1) SEF - Seattle Co-Located FAB.
- (2) CLF - Cleveland Co-Located FAB.
- (3) JAF - Jacksonville Co-Located FAB.
- (4) DEF - Denver Co-Located FAB.
- (5) NAF - National Office Co-Located FAB.

c. Assign/Unassign CE2 Role. To enable or disable the CE2 role, the DD or designee e-mails the Unit Chief of the Policy, Regulations and Procedures Unit, with a copy to Energy Technical Support, requesting the role change. The e-mail contains the name of the CE and the reason for the request. The FAB manager to which the CE2 is co-located is also copied on the e-mail, so that FAB is aware of personnel changes that affect FAB workflow.

d. Development Memorandum for Co-Located Unit. A DO CE who prepares a RD must be aware of any outstanding claims issues not addressed in the RD and requiring further development. If more development is needed concurrent with FAB's review of the case, the CE prepares a memorandum on gold-colored paper addressed to the FAB manager from the Senior CE, Supervisor, or DD who is the final reviewer of the RD. The subject line should read: "Co-Located FAB Development for File No. [file number]."

The body of the memorandum addresses any outstanding claims issues that require development by the Co-Located Unit while the case is being reviewed by the FAB. When the RD is reviewed and signed, the memorandum is also reviewed and signed. Once this is done, the original memorandum is spindled on top of the case file documents.

e. Receipt of Case by the FAB. The FAB CE or HR reviews any co-located development memorandum and notes any further development needed. The FAB CE or HR may also become aware of issues during their review.

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8. CE2 Designated to the FAB. (Continued)

If DO development is needed, the FAB CE, HR or Manager completes the additional CE/location area titled "Co-located Development" on the case screen in ECMS. The fields that require completion are the "CE2" and "CE2 Assign Dt" fields. The "CE2" field represents the Secondary CE designated in the co-located development memorandum, whose identifier should be selected from the drop-down menu. The FAB CE or HR tabs over to the CE assign date, which automatically populates with the current date and time.

Only the FAB assigns the CE2 in ECMS. If DO development is required where no co-located memorandum exists in the case file, FAB writes a co-located memo to the CE2 outlining the issues that must be developed and sends the file to the co-located unit. The FAB CE or HR must not assign any development actions to the CE2 regarding matters before the FAB for review. The FAB CE or HR conducts any development necessary about matters before the FAB.

f. CE2 and FAB Coordination. Both the FAB CE or HR and the CE2 can make entries into ECMS without having to transfer the case file in the system. The FAB CE or HR and the CE2 should coordinate their work to ensure that the file is where it is needed and the work can be completed. If both the FAB CE or HR and the CE2 need the actual file, the FAB CE or HR's needs take precedence.

g. Development by CE2. When the FAB completes its initial review, the CE2 may request the case to determine whether the evidence of file is sufficient to issue a RD on an outstanding claim element. The CE2 codes ECMS to reflect those actions for the duration of FAB review. Jurisdiction should remain in the appropriate FAB office and not be changed to the DO.

(1) Issuing a RD. Should the record contain enough evidence to support a RD on any of the outstanding claim elements, the CE2 issues a RD. The Senior CE in the DO (or DD designee) reviews and signs the decision before issuance. Once the decision is reviewed and approved by the appropriate individual at the DO, the CE2 enters the RD code in ECMS that reflects the

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8. CE2 Designated to the FAB. (Continued)

posture of the decision and returns the case to the FAB. It is particularly important to issue a RD in cases such as this if the claim element is in posture for acceptance.

If additional elements of the claim require further development, the CE2 prepares a memorandum as outlined below. There is no need to rush to issue a RD denying a claim element if further claim elements are being deferred. In such a situation, the CE2 should wait until all claim elements are being denied before issuing a RD denial. An exception to this rule is if a hearing date has been requested or scheduled. In these cases, the CE2 issues a denial whenever possible prior to a hearing so that objections to all outstanding RDs can be entertained at one time, thus avoiding multiple hearings.

(2) Further Development Required. If the DO development does not lead to issuance of an additional RD, the CE2 completes whatever development is possible and returns the case to FAB. The CE2 prepares a memorandum on gold-colored paper to the FAB manager explaining what development actions have been taken and what future actions are required. The memorandum is spindled on top of the case file materials. Throughout the time the case is in FAB, the CE2 continues development and issues RDs on approved claim elements as the requisite evidence is received and evaluated.

h. RD Returned by Postal Service. If the case file is at FAB for review and issuance of a FD, and the FAB CE or HR receives a RD which has been returned by the Postal Service, the CE or HR transfers the case file to a CE2 for development. The CE2 reviews the case to determine whether the claimant notified the DO of his or her address change or whether the DO sent the RD to an incorrect address and whether ECMS or the case file contained the correct address. If the RD contains the address of record, the CE2 tries to determine the claimant's current address. The CE2 should request a forwarding address from the post office

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8. CE2 Designated to the FAB. (Continued)

closest to the claimant's last known address. See Exhibit 3.

(1) Correct Address Not Found. If the CE2 cannot obtain the claimant's current address, the CE2 writes a memorandum to the file and transfers the case back to the FAB CE or HR for remand to the DO for administrative closure until the claimant can be located. The memorandum must list the actions taken by the CE2 to try to locate the claimant and his or her address.

(2) Correct Address Found, Claimant Did Not Notify DO. In the event the claimant's current address is obtained by the CE2, and the claimant did not advise the DO in writing of that change, the CE2 sends the claimant a copy of the original dated RD and the original cover letter, along with a request for written notice of address change (See Exhibit 4), file a memorandum of such actions in the case file, and transfer the case file back to the FAB CE or HR for review and issuance of the FD. The FD is not issued until FAB receives written confirmation from the claimant.

(3) Correct Address Found, Claimant Notified DO. In the event the claimant's current address is obtained by the CE2, and the wrong-address problem was not the claimant's fault, the CE2 re-issues the RD to the claimant with a new issuance date and new cover letter. The CE2 spindles a memorandum explaining such actions on top of the case file. The CE2 shall then transfer the case file back to the FAB CE/HR from whom it was received.

(4) Multiple Claimants. If a case has multiple claimants, all claimants' RDs are returned by the Postal Service, and no current addresses can be obtained, the CE2 spindles a memorandum to that effect on the top of the case file and transfers the file back to the sending FAB CE or HR. The CE or HR then remands the case file to the DO for further



8. Secondary CEs (CE2) Designated to the FAB. (Continued)

development or administrative closure until the address(es) can be obtained.

If some claimants received their RDs and no current addresses can be located for other claimants, the CE2 spindles a memorandum to that effect on the top of the case file and transfers the file back to the FAB office. The CE or HR then issues a Notice of Final Decision and Remand Order adjudicating the claims of those claimants who received the RD and remanding the claims of those claimants for whom no current address could be obtained. The remand will be for administrative closure until an address can be obtained. If the FAB issues a final decision awarding compensation benefits, the claims of those claimants with unknown addresses must not only be remanded but the claimants' share of the compensation benefits must be held in abeyance.

- i. Transferring Case Back to DO. When the case file is ready for return to the DO, the person transferring the case file should click the "Unassign CE2" block in the co-located development portion of the ECMS case screen. This will deactivate the co-located development.

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SAMPLE COVER LETTER, PARTIAL ACCEPTANCE/PARTIAL DENIAL RD

Dear Claimant Name:

Enclosed is the Notice of Recommended Decision of the District Office concerning your claim for compensation under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). The District Office recommends partial acceptance of your claim for benefits. **Please note that this is only a RECOMMENDED Decision; this is not a Final Decision.** We caution against making financial commitments based on the anticipated receipt of an award. The Recommended Decision has been forwarded to the Final Adjudication Branch (FAB) for their review and issuance of the Final Decision.

Please read the Notice of Recommended Decision and Claimant Rights carefully, as it recommends an acceptance of some benefits and denial of others. You have several choices. Consider your options carefully as your choice will affect your ability to raise objections, as well as the steps the FAB takes in issuing a final decision.

The EEOICPA regulations provide you with a sixty day time period to raise written objections to any finding of fact or conclusion of law contained in the recommended decision. Until this sixty day time period expires, the FAB will not issue a final decision, unless you specifically advise the FAB that you wish to waive your right to object.

**Filing an objection and/or Requesting a Hearing.** If you disagree with any aspect of the recommended decision, you may file a written objection and/or request a hearing. You should also advise the FAB whether you would like the FAB to consider your objections through a Review of the Written Record, an oral hearing, or a hearing by telephone. If you request a Review of the Written Record, the FAB will carefully consider your objections, as well as all the evidence of record including any new evidence you submit, before issuing a final decision. If you request an oral hearing, a hearing before a FAB hearing representative will be scheduled in your area. If you request a hearing by telephone, a FAB hearing representative will conduct a hearing by telephone, rather than in person. During either

form of hearing, you will be able to elaborate on your objections to the recommended decision. FAB will fully consider these objections prior to issuing a final decision. If you do not specifically request a hearing, a Review of the Written Record will be performed.

**Waiving your rights of objection and a hearing.** If you are satisfied with the conclusions of the recommended decision and do not wish to raise an objection or request a hearing, you may consider waiving your rights of objection in writing. A waiver form has been enclosed for your convenience. You may advise FAB of your wish to waive your rights of objection by selecting Option 2. When you advise FAB in writing of your waiver of these rights, FAB will issue a final decision without waiting for the sixty-day time period to expire.

**Waiving your rights only to the aspect of the recommendation approving benefits.** If the recommended decision recommends an acceptance of some benefits and a denial of others, you may wish for FAB to expedite an issuance of a final decision awarding you benefits, while retaining your right to object and/or request a hearing as to the recommended denial of other benefits. You may advise FAB of your wishes in this situation in writing by selecting option 1 on the enclosed waiver form. If you choose to file objections or request a hearing, you must do so within the sixty-day time period.

You should send any objection, any request for a hearing, or any waiver of these rights to FAB at the following address:

U. S. Department of Labor  
Final Adjudication Branch  
Attn: District Manager  
Address  
City, State, Zip

If you fail to file written objections to this decision **within 60 days of the date of this decision** your right to challenge this decision before the FAB will be waived for all purposes.

**State Workers' Compensation and Tort Actions:** If you receive or have received any money (settlement, compensation benefits, etc.) from a state workers' compensation program or related to a tort action (law suit) for the same condition(s) being recommended for acceptance in this decision, you must notify the Final Adjudication Branch immediately. This includes any monies received after the issuance of this recommended decision.

Should you have any questions concerning the recommendation, you may call the Final Adjudication Branch, toll free, at: (xxx) xxx-xxxx.

Sincerely,

[Claims Examiner's Name]  
Claims Examiner

SAMPLE WAIVER, PARTIAL ACCEPTANCE/PARTIAL DENIAL RD

Dear [Claimant's Name]:

File Number: [File Number]

**(Option 1-Bifurcated Waiver)**

I, \_\_\_\_\_ (claimant), being fully informed of my right to object to the Final Adjudication Branch (FAB) any of the findings of fact and/or conclusions of law contained in the recommended decision issued on my claim for compensation under the Energy Employees Occupational Illness Compensation Program Act and my right to request a hearing, do hereby waive those rights **only** as those rights pertain to the benefits awarded. I do, however, reserve my right to object to the findings of fact and/or conclusions of law contained in the recommended decision that deny other claimed benefits and my right to request a hearing on those issues.

I understand that should I choose to file an objection with the FAB, I may either attach such objection to this form or submit a separate written objection to the address listed above within 60 days of the date of issuance of the recommended decision.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**(Option 2-Full Waiver)**

I, \_\_\_\_\_ (claimant), being fully informed of my right to object with the FAB any of the findings of fact and/or conclusions of law contained in the recommended decision issued on my claim for compensation under the Energy Employees Occupational Illness Compensation Program Act and my right to request a hearing, do hereby waive those rights.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**(NOTE ON WAIVER:** If you wish to file a waiver, please select and sign **only one** of the above options and return the signed/dated form to the address shown above.

SAMPLE LETTER TO POSTMASTER

Postmaster  
Any Town, Any State 12345-9998

Dear Postmaster:

Agency Control Number (if applicable): \_\_\_\_\_

Date: \_\_\_\_\_

**Address Information Request**

Please furnish this agency with the new address, if available for the following individual or verify whether or not the address given below is one at which mail for this individual is currently being delivered. If the following address is a post office box, please furnish the street address as recorded on the box-holder's application form.

Name: \_\_\_\_\_

Last Known Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I certify that the address information for this individual is required for the performance of this agency's official duties.

\_\_\_\_\_  
Signature of Agency Official

\_\_\_\_\_  
Title

\* \* \* \* \*  
\* \* \* \* \*

FOR POST OFFICE USE ONLY

\_\_\_ Mail is delivered to address given New Address:

\_\_\_ Not known at address given

\_\_\_ Moved, left no forwarding address

\_\_\_ No such address

\_\_\_ Other: (Specify) \_\_\_\_\_

Box Holder's Street Address:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

USPS Return Address:  
Postmark/Date Stamp

As per 39 USC 404..."the USPS does not disclose mailing information except in the following limited circumstances; Authorized disclosures include limited circumstances such as the following: (a) to other government agencies or bodies: when relevant to a decision concerning employment, security clearances, security or suitability investigations, contracts, licenses, grants or benefits"...

The correspondence in question fits within the aforementioned parameters and our agency is requesting the aforementioned information as formatted in the USPS Administrative Support Manual Section 352.44. Please respond to our office via return mail or fax with the aforementioned postal patron's new address/contact information.

If you have any questions regarding this letter you can call me at my direct number xxx-xxx-xxxx.

Physical Address:  
US Department of Labor - DEEOIC  
P.O. Box XXXX  
City, State Zip  
Fax Number: xxx-xxx-xxxx Attn: Co-located unit

Sincerely,

Claims Examiner  
Co-Located Unit - Office Location

SAMPLE CHANGE OF ADDRESS LETTER

Date: \_\_\_\_\_

File #: Claim Number

Employee: \_\_\_\_\_

Claimant: \_\_\_\_\_

**Name of Claimant**

**Address (Line 1)**

**Address (Line 2)**

**Address (Line 3)**

**Change of Address**

This will notify you of my change of address to the following:

\_\_\_\_\_

**Name**

\_\_\_\_\_

**Address**

\_\_\_\_\_

**City/State/Zip**

\_\_\_\_\_

**Phone Number**

Other Information:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



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1. Purpose and Scope. This chapter describes how the Final Adjudication Branch (FAB) reviews recommended decisions (RDs) issued by district offices (DOs) and issues final decisions (FDs) on claims filed pursuant to the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). It also describes how the FAB issues remand orders, conducts reviews of the written record, schedules and conducts hearings, and reviews requests for reconsideration of FAB final decisions.

2. Remand Orders. 20 C.F.R. § 30.317 gives FAB the authority to return cases to the DO without issuing a FD. A remand order is a written directive issued in lieu of a FD.

A remand order may instruct the DO to administratively close the case, perform further development, address an error or other deficiency contained in a RD, address new evidence or a new claim received prior to the issuance of the FD, or address a change in the law, regulations, policies or procedures.

A remand order can be warranted at any point during a review of the written record, before or after a hearing, or during the review of a RD. The FAB develops evidence rather than issues a remand order where such development will produce a timely FD. If substantial or prolonged development is necessary, the FAB will issue a remand order and return the file to the DO.

a. Automatic Remands.

(1) Claimant Dies. FAB remands a case if the claimant dies after the issuance of the RD but prior to issuance of the FD. Where there are multiple claimants and one or more, but not all, claimants die prior to the issuance of the FD, FAB will issue a Notice of Final Decision and Remand Order, which adjudicates the claims of the surviving claimants, adjusts compensation if applicable, and remands the claim of the deceased claimant(s) for administrative closure.

(2) Claimant Withdraws Claim. FAB remands a case for administrative closure if a claimant withdraws his or her claim prior the issuance of the FD.

2. Remand Orders. (Continued)

(3) Claimant Cannot be Located. When a RD is returned by the Postal Service and a current address for the claimant cannot be obtained by the Co-Located Unit within a reasonable period of time, FAB remands the case for administrative closure until a correct address can be obtained.

(4) SWC/Tort/Fraud Statements Not Obtained. Where signed statements regarding tort lawsuits, state workers' compensation (SWC) claims and whether fraud was committed in connection with an application for or receipt of any federal or state workers' compensation are required and not all claimants have submitted such statements, FAB remands the case if FAB cannot obtain such statements prior to the due date of the FD.

In this situation, the DO should attempt to obtain the claimants' signed statements and issue a new RD.

When a consequential injury is to be accepted, the CE must get a new signed SWC/Tort/Fraud affidavit from the claimant for that consequential injury.

b. Discretionary Remands. FAB is to use reasonable discretion and common sense when assessing a case for remand. If the RD provides sound reasoning, rationale and discussion and does not include material factual errors or erroneous application of law, the FAB must respect the DO's adjudicatory function. If FAB can make a reasonable determination that the outcome of the case would not be materially affected regardless of further development, FAB should exercise its discretion and not issue a remand order.

(1) Change in Law, Regulations or Policies. If FAB determines that a conclusion of law or the recommended determination in the RD is erroneous in light of a recent change in the law, regulations, or policy, FAB may remand the case. If this occurs, the remand order identifies the changed law, new Special Exposure Cohort (SEC) class, Program Evaluation Reports (PERs), or other regulatory or policy changes and the effect on the adjudication of the case.

## 2. Remand Orders. (Continued)

(2) Erroneous Application of Law, Regulations, Policies or Procedures. If FAB determines that the recommended determination in the RD resulted from a misapplication of the law, regulations, policies or procedures, FAB may remand the case. The remand order identifies the misapplication of law, regulations, policies or procedures and describes how it effects the adjudication of the case. To expedite a favorable decision, the FAB CE/HR can reverse the decision without issuing a remand order.

(3) Receipt of New Medical Evidence or a New Claim. If new medical evidence or a new claim is received while the case is at FAB, FAB may remand or reverse to accept the claim, as applicable.

For example, if the RD denies a claim for CBD on the basis of a lack of medical evidence and the claimant later submits medical evidence establishing CBD, the FAB may remand the claim or reverse the RD if all elements of adjudicatory process are complete.

If a new claim is received, the case will be remanded for development of the new claim if it will affect the outcome of the issue before the FAB. If filing of a new claim will not affect the issue before the FAB, the FAB can issue a FD and return the new claim to the DO for further development. If the FAB is not immediately ready to issue the FD, than the Co-Located Unit should create the new claim and begin development while the case is at FAB.

(4) Receipt of Other New Evidence. If FAB receives new evidence that was not a part of the file when the RD was issued and that is material to the recommended determination, (such as employment evidence, survivorship evidence, or evidence of a SWC/tort suit), FAB may remand the case or reverse the RD if it is advantageous to the claimant. The remand order will describe the new evidence and its possible effect on the adjudication of the case.

## 2. Remand Orders. (Continued)

(5) Evidence Already in File. If the RD fails to properly address material evidence in the file and the failure could have an effect on the adjudication of the claim, FAB may remand the case. The remand order will describe the evidence and its possible effect on the adjudication of the case. If advantageous to the claimant, and all adjudicatory issues are complete, FAB may reverse the RD and accept the claim.

For example, if evidence in the file sufficiently supports a diagnosis of a claimed cancer but the cancer was not included in the dose reconstruction, FAB may remand the case for a re-work of the dose reconstruction if a DEEOIC Health Physicist determines that a re-work is required.

(6) Miscalculation of Tort Offset or SWC Coordination. If FAB determines that the RD contains a finding of fact or conclusion of law that is based on a material miscalculation of the offset arising from a tort lawsuit or SWC coordination, FAB may remand the case.

(a) If a case is remanded for this reason, FAB includes its calculation worksheet in the file and, if necessary, a supplemental explanation of what FAB considers the evidentiary basis for its calculation.

(b) If FAB determines that the miscalculation was relatively minor and was not favorable to the claimant, FAB may exercise its discretion and issue a FD which corrects the calculation in the claimant's favor, without a remand.

(7) Procedural Problems. If FAB determines that the RD was not issued in a manner consistent with EEOICPA procedures, FAB may remand the case.

For example, if the DO sends a development letter and explicitly allows the claimant 30 days to provide evidence, but upon review of the letter it did not identify the specific evidence that was needed or a RD

## 2. Remand Orders. (Continued)

was issued before the 30 day period expired, FAB may determine that proper procedures were not followed and may remand the case.

c. Format of Remand Order. A remand order follows a narrative format and is directed to the individual claimant(s). It includes a brief discussion of the case's adjudicatory history, the basis for the remand, any explanation and supplemental documentation required and an explanation of the actions to be undertaken by the DO. A sample remand order is shown in Exhibit 1.

d. Notification and Transfer of File. When a remand order is issued, FAB inserts into the case file a copy of the remand order, certificate of service, and any supporting calculations or supplementary documentation. FAB sends a copy of the remand order, certificate of service, and cover letter to the claimant and the authorized representative, if any.

(1) The cover letter explains the remand order and the DO's responsibility for preparing a new recommended decision after further development. See Exhibit 1.

(2) A certificate of service, which certifies the remand order was mailed on a certain date, is also prepared for each individual recipient, attesting to the date the remand order is sent. See Exhibit 2.

(3) Upon issuance of a remand order, FAB transfers the case file to the DO that issued the RD.

e. Challenging a Remand Order. No procedure allows a claimant to directly challenge a remand order, but each DD has the authority to formally challenge a FAB remand order with the EEOICP Director if sufficient cause exists to do so.

## 3. Reviews of the Written Record. Where the claimant has submitted a timely written objection to the RD but has not requested a hearing, FAB conducts a review of the written record. If the claimant objects to one portion of the RD and agrees with the other portion, the FAB may issue a FD on the

### 3. Reviews of the Written Record. (Continued)

accepted portion and issue a separate "Final Decision Following a Review of the Written Record" on the objected portion. RDs addressing multiple claimants generally should be issued under one FD.

A review of the written record (RWR) is an analysis of the documentation contained in the case file to determine if the conclusions reached in the RD are accurate in light of the objections filed and the requirements of the EEOICPA.

- a. Acknowledgement. The FAB acknowledges receipt of the objection in writing. The letter to the claimant indicates that the claimant has an additional 20 calendar days from the date of the acknowledgement letter to submit new evidence in support of the objection.

For claims involving multiple claimants, a single objection from any one claimant is sufficient to warrant a review of the entire written record. Upon receipt of an objection in a case with multiple claimants, individual acknowledgments are sent to each claimant explaining the course of action to be undertaken. Because the submission of an objection is considered private, the acknowledgment letter to the claimant(s) that did not submit the objection should indicate that an objection was received but must not indicate the claimant who submitted the objection. A sample acknowledgement letter is shown in Exhibit 3. The appeal screen will be updated in ECMS only for the claimant(s) requesting the RWR.

- b. Conduct of Review of the Written Record. Guidelines for conducting a review of the written record are set out in 20 C.F.R. § 30.313. The FAB representative considers the written record forwarded by the DO and any additional evidence and/or argument submitted by the claimant.

After the RWR, FAB issues a FD, remands all or part of the case to the DO, or reverses all or a portion of the RD if advantageous to the claimant. A FD following a RWR contains a summation and examination of the claimant's

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3. Reviews of the Written Record. (Continued)

objections. The HR ensures that any decision is based on an objective analysis of the evidence, well-reasoned judgment and sound exercise of discretion.

4. Hearing Requests. An oral hearing permits the claimant, his or her authorized representative, and any witnesses to voice objections in person to a HR. Section 30.314 of the regulations describes how hearings are to be conducted.

a. Initial Handling of Hearing Requests. When a FAB office receives a timely request for an oral hearing and the HR determines that an error or other deficiency in the recommended decision or in the initial case adjudication precludes the need for a hearing, and the FAB supervisor agrees, the HR will notify the claimant that the hearing will not be scheduled and a remand order will be prepared. The claimant can still request that the hearing be scheduled. However, if the HR finds no basis for remand, the request, Hearing Review Checklist, and case file are immediately forwarded to the FAB-NO, noting any special requests or needs of the claimant. The hearing scheduler tracks incoming requests for oral hearings and assigns the hearing to an HR in one of the four FAB DOs or an HR at the NO.

b. Acknowledgement. Following the assignment of a hearing request to a FAB hearing scheduler, the hearing scheduler sends an acknowledgement letter to the claimant and any authorized representative confirming receipt of the hearing request. See Exhibit 4 for a sample acknowledgment letter. Each claimant involved with the case is to be sent an acknowledgment. The acknowledgement must be sent 30 days prior to the date of the hearing and includes the following notification:

(1) The hearing will be conducted within 200 miles roundtrip of the claimant's residence, absent compelling reasons to the contrary.

(2) All sworn testimony offered during the hearing will be transcribed for inclusion into the case file.



4. Hearing Requests. (Continued)

(3) The FAB at its discretion can schedule a telephone hearing. See paragraph d(2) below.

(4) If the claim involves multiple claimants, each is allowed to participate in the hearing.

c. Hearing Assignments. The hearing scheduler may assign a hearing to either a FAB-DO or NO HR. The hearing scheduler sends a hearing acknowledgment letter, schedules a date and time for the hearing, reserves the physical space for the proceedings, and arranges for a court reporter to be present. The hearing scheduler denotes the hearing assignment in ECMS and transmits the entire case file to the assigned HR. The hearing scheduler also issues the notice of hearing scheduling letter under the name of the HR assigned to the case.

d. Scheduling. Each claimant is provided written notice of the hearing at least 30 days prior to the scheduled date; advised that one week's notice must be provided to the FAB should he or she desire a person(s) other than himself or herself and his or her authorized representative to attend the hearing; and advised that no independent video or audio recording of the hearing is allowed. See Exhibits 5 and 6 for Sample Hearing Notice letters.

(1) Travel to Hearing. While the FAB will try to set the hearing within commuting distance of the claimant, the claimant may be required to travel up to 200 miles roundtrip to attend the hearing. There is no payment to the claimant for the expense of this travel. However, if an unusual circumstance causes the FAB to schedule a hearing that requires the claimant to travel more than 200 miles roundtrip, OWCP will reimburse him or her for reasonable and necessary travel expenses as outlined in 20 C.F.R 30.314(2).

(2) Telephonic Hearings. A hearing may be conducted by telephone at the FAB's discretion or by claimant request. Only the hearing scheduler can schedule such a hearing, which will include all the aspects of an in-person hearing.

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#### 4. Hearing Requests. (Continued)

(3) Scheduling Changes. The FAB will entertain any reasonable request for scheduling the time and place of a hearing, but such requests should be made when the hearing is requested. The hearing scheduler will make every effort to accommodate the scheduling request of the claimant. An in-person hearing may be changed, based upon a claimant or authorized representative request, to a telephonic hearing. This change must be coordinated through the hearing scheduler.

In most instances, once the hearing has been scheduled and written notice has been mailed, it cannot be postponed at the claimant's request for any reason except as indicated in paragraph 4 below. However, the hearing scheduler may accommodate minor scheduling changes requested by a claimant.

HRs may not make changes to the scheduled hearing time or place without supervisory approval. The change request must be made to the HR's supervisor and the supervisor will contact the hearing scheduling unit.

(4) Postponing a Hearing. The FAB may grant a postponement of a hearing when the claimant or his or her authorized representative has a medical reason that prevents attendance or when the death of the claimant's parent, spouse or child prevents attendance. The FAB will make every effort to accommodate timely requests to postpone a hearing.

The claimant or authorized representative should provide at least 24 hours notice and a reasonable explanation supporting his or her inability to attend the scheduled hearing. In such cases, a new hearing will be set for the next hearing trip. Supervisory approval is needed to postpone a hearing.

(5) Failure to Attend. If a claimant does not attend the hearing at the designated time and place, and makes no effort to contact the HR to request a rescheduling based on one of the reasons outlined in paragraph d(4) above, the claimant will not be allowed

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#### 4. Hearing Requests. (Continued)

to reschedule his or her hearing. In such instances, the claimant will be considered to have withdrawn the hearing request, and a Review of the Written Record (RWR) will be undertaken. If new evidence or argument accompanied the objection, it will be reviewed in the RWR.

(6) Cancellation of Hearing. The FAB acknowledges the cancellation in writing and gives the claimant 10 days from the date of the acknowledgement to submit additional evidence. The FAB representative then conducts a review of the written record.

e. Review of Case File. Prior to the hearing, the HR reviews the evidence of record, as well as any additional evidence or materials submitted by the claimant. If the additional evidence received establishes compensability or the need for further development and the FAB supervisor agrees, the HR will notify the claimant and/or authorized representative that the claim will be remanded and the hearing will be canceled. If the evidence is sufficient to warrant reversal in favor of the claimant, FAB may issue a reversal. If the claimant and/or authorized representative states he/she wants to proceed with the hearing, the hearing will be conducted as scheduled.

Moreover, the HR conducts whatever additional investigation is deemed necessary to prepare for the proceedings. The HR contacts the claimant by telephone prior to the hearing to confirm they are planning to attend the hearing at the arranged date, time and location.

The HR reviews the adjudicatory history of the case file as a whole to determine the proper handling of additional evidence and/or objections that might be received at the hearing. This is particularly important when more than one RD is pending.

f. Multiple RDs. Since more than one RD denying benefits can be issued prior to a hearing and additional objections and hearing requests may result, measures are needed to streamline the hearing process.

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#### 4. Hearing Requests. (Continued)

If more than one RD is pending, the HR contacts each objecting claimant and advises that all objections, not just those pertaining to the RD that is the subject of the hearing request, may be discussed during the hearing. The claimant(s) will be encouraged to bring relevant evidence, even if it concerns a pending RD for which a timely objection was not filed. All telephonic contact prior to the hearing is documented in ECMS.

(1) Hearing Requests on Multiple Pending RDs. When additional timely hearing requests are submitted based on other recommended denials prior to the hearing date, the HR contacts the requesting party to advise that all objections will be considered at the previously scheduled hearing so that one hearing may serve to accept evidence and testimony on several different RDs. This process is designed to avoid multiple hearings where possible.

The HR notes the conversation with the claimant in ECMS, confirming that the claimant was advised that all outstanding objections will be considered at the hearing. The HR updates the appeal screen in ECMS for each RD and each claimant requesting the hearing.

Separate hearing request acknowledgments and hearing notices are not required. The HR must be prepared to entertain objections about all RDs issued up to the date of the hearing and will take testimony and evidence on all outstanding objections. Each RD in question is considered in a single FAB decision once the FAB hearing process is concluded.

(2) Hearing Request on One RD, Request for Review of the Written Record (RWR) on Another. If a claimant has requested a hearing on one outstanding RD and an RWR on the other, the HR allows the claimant to present evidence about the objections at the hearing, as long as FAB has not issued a FD on the RWR request. [If FAB has issued a FD on the request for RWR, see paragraph (4) below.]

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#### 4. Hearing Requests. (Continued)

(a) The objection and evidence are considered at the hearing and treated with all other objections and evidence in the post-hearing FAB decision. No review of the written record decision is issued. Coding in ECMS should be changed to reflect a Request for a Hearing, rather than a Request for a Review of the Written Record.

(b) In cases with multiple claimants when one claimant requests a review of the written record and another requests a hearing, no decision is issued to either claimant until the hearing process is complete. FAB can contact the claimant who requested an RWR and ask if he or she would like to address objections to the RD for which an RWR was requested at the time of the hearing on the other RD. If he or she agrees, the RWR is changed to a hearing in ECMS. If he or she declines, his or her objections will be reviewed as part of the hearing decision. Coding in ECMS should be changed to reflect a Request for a Hearing rather than a Request for a Review of the Written Record and a note should be added to ECMS explaining this action. All claimants, whether they request a hearing or not, are served with notice of the hearing and are afforded the opportunity to be present at the hearing and participate. The RWR objections and the objections discussed at the hearing will be discussed in one FD.

(3) Hearing Request on One RD, No Objection Filed on Another. While awaiting a hearing on one RD, a FD may be issued on another RD for which no objection has been filed following the expiration of the 60 day period. At the hearing, the HR will take testimony and evidence on any outstanding RD that has been issued up to the hearing date. If testimony or evidence is presented about a RD for which the 60 day post-decision objection period has expired and a FD has not been issued, all testimony and evidence will be entered into the record. The timeliness of such

#### 4. Hearing Requests. (Continued)

objections will be addressed when the post-hearing FAB decision is issued.

(4) Hearing Request on One RD, FD Issued on Another.  
A claimant may request a hearing on one RD and a reconsideration of a previously issued FD within 30 days of its issuance.

(a) If a FD has been issued and a hearing is held regarding an outstanding RD within the 30 day post-decision reconsideration period, the HR reviews any new evidence related to the previously issued FD as a request for reconsideration. Reconsideration requests cannot be assigned to a FAB representative who has had prior involvement with the claim. If the FD was issued by the HR present at the hearing, the reconsideration request should be assigned to another FAB representative. A decision on the reconsideration should be issued separately from the hearing decision.

(b) If the claimant presents evidence or argument pertaining to a FD at the hearing and the hearing date is outside of the 30 day post-decision reconsideration period, the HR reviews the evidence as a possible reopening.

5. Conduct of the Hearing. The hearing is an informal proceeding and the HR is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure. Generally, the hearing is scheduled to last one hour, but the HR should not specifically limit the hearing to one hour and should never tell a claimant that he or she is limited to one hour. Also, the HR must bring a tape recorder to the hearing in case a court reporter is not present. The HR must ensure that the court reporter is using required back-up recorders.

a. Convening. At the scheduled time and place, the HR will meet with the court reporter, the claimant, and any authorized representative.

5. Conduct of the Hearing. (Continued)

(1) If any other individual(s) is in attendance, the HR will request the identity of this individual(s) and have the claimant(s) sign a "Waiver of Right to Confidentiality" (See Exhibit 7) before convening the hearing. The claimant(s) sign a separate waiver (see Exhibit 8) if he or she requests that a member of the media be present.

(2) If there are multiple claimants present, each is required to sign a waiver of confidentiality.

(3) At the start of the hearing, the HR indicates to the court reporter that he or she wishes to open the record of the hearing. He or she will note the date and time, identify all persons present by name, and enter a brief narrative into the record describing the events leading to the hearing, including the specific objection(s) raised by the claimant. If no specific objections have been raised, the HR should indicate this.

For hearings addressing NIOSH Dose Reconstruction issues, the HR strictly follows the hearing script shown as Exhibit 9. The HR advises participants that he or she can discuss issues of a factual nature about the information provided to NIOSH and the application of methodology (see example below), but is not permitted to consider in the final decision objections to the methodology employed by NIOSH in preparing the dose reconstruction report.

APPLICATION OF METHODOLOGY

A claimant may present argument to the FAB that NIOSH made an error in the application of methodology such as applying the radiation dose estimate methods to his or her individual circumstances. Other examples of objections include: did NIOSH identify all sources of exposure to the worker; were the air samples chosen to represent the air breathed by the worker appropriate; is the group of co-workers appropriate for determining exposure to the worker; and were proper assumptions made about the particular physical or chemical form of radioactive material that was used in the facility where the employee worked and its

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5. Conduct of the Hearing. (Continued)

solubility class. Another application issue might involve the use of "worst case" approach (which is a NIOSH method). The application aspect of this issue might be whether the "worst case" selected was the worst case (e.g., there were 20 more people working there that were not monitored and the worst case was based only on monitored individuals).

Example of Application of Methodology. The objection alleges that NIOSH did not properly consider the "proximity to the source." The NIOSH exposure matrix considers that the worker was one foot away from uranium billets/rods for six hours and one meter away for four hours. NIOSH considers this to adequately account for times when the worker would touch the uranium rods/billets, since there would also be times when the worker was at a much greater distance. This exposure matrix is drawn as the example of highest possible exposure, as no individual exposure records are available. The objection indicates that the worker handled the uranium metal more often than NIOSH allowed in the exposure matrix. This is a challenge to the application of the dose reconstruction methodology and can be addressed as part of the hearing process.

METHODOLOGY

20 CFR 30.318(b) provides that the "methodology" NIOSH uses in making radiation dose estimates is binding on the FAB. The "methodology" NIOSH uses is the dose reconstruction, which is addressed in the statute and 42 CFR Part 82.

"Methodology" is dictated by sections 7384n(c) and (d) of the statute. For example, those methods must be based on the radiation dose received by the employee (or a group of employees performing similar work) and the upper 99 percent confidence interval of the probability of causation in the radioepidemiological tables published under the Orphan Drug Act. The Act also requires NIOSH to consider the type of cancer, past health-related activities (such as smoking), and information on the risk of developing a radiation-related cancer from workplace exposure.



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5. Conduct of the Hearing. (Continued)

The "methods" of dose reconstruction are set out in 42 CFR Part 82 and include: analyzing specific characteristics of the monitoring procedures in a given work setting; identifying events or processes that were unmonitored; identifying the types and quantities of radioactive materials involved; evaluating production processes and safety procedures; applying certain assumptions that err reasonably on the side of overestimating exposures while achieving efficiency; and using current models for calculating internal dose published by the International Commission on Radiological Protection (ICRP). The NIOSH "efficiency" process of using overestimates and underestimates in dose reconstruction is another example of a methodology. It is these "methods" that cannot be addressed by FAB. Any questions related to the content of NIOSH-IREP software are related to methodology, whereas questions related to the Department of Labor's probability of causation calculation (which relies on NIOSH-IREP software) can be considered.

Example of Objections to Methodology. The radiation dose to the claimant's gall bladder was calculated using the highest recorded doses from other co-workers at the facility as the basis for the claimant's dose estimate. This was noted in the text of the dose reconstruction report as being "the highest reasonably possible radiation dose." No uncertainty values were assigned to the claimant's estimate because it was considered that the claimant's "dose was no higher than this estimate."

b. Testimony and Evidence. The HR will administer an oath to each person giving testimony. The HR should make clear at the outset that he or she cannot receive testimony from participants who are not under oath. If a witness arrives late, he/she must be sworn in before testifying. An attorney must not be sworn in since he or she simply presents arguments, objections or evidence but not testimony.

(1) A court reporter shall record oral testimony and place it into the record. A court reporter may use only audio (not video) equipment. Moreover, neither

5. Conduct of the Hearing. (Continued)

the claimant(s), any authorized representative or anyone else present at the hearing may bring audio or video equipment to obtain an independent record of the hearing.

(2) Any evidence or testimony a claimant wishes to enter into the record is entered, even if it pertains to a RD that was previously issued and the 60-day post-decision timeframe to object has expired. The HR will accept all testimony and evidence presented at the hearing.

(3) During the claimant's testimony, the HR should note any additional questions or areas for exploration and make appropriate inquiries. The claimant can raise additional objections at this time. The HR should ask questions or request the claimant to elaborate so the objections are clearly understood.

(4) Each exhibit is marked separately and identified on the record by name and number with a brief description of its content. The HR will state on the record that the exhibit is being entered into the evidence of record.

(5) During the testimony the HR states whether there is a need to interrupt testimony and go off the record. When it is time to return on the record, the HR indicates this and, once back on record, provides a brief description of why it was necessary to go off the record. Time and issues discussed off the record should be kept to a minimum.

(6) The HR spells unfamiliar words or names to help the court reporter maintain an accurate record of the hearing.

c. Conclusion. When all testimony has been given and all the exhibits marked and clarifications made, the HR explains that the record will remain open 30 days after the date of the hearing to permit the submission of additional written evidence or argument on the issue(s) in question.

5. Conduct of the Hearing. (Continued)

The HR also advises that the claimant will receive a copy of the transcript and will have 20 days from the date of mailing to request changes in writing to the record.

The HR then closes the proceedings by noting the time and date.

6. Post-Hearing Actions. After the hearing, the HR obtains a copy of the transcript from the reporting service. FAB sends the claimant a copy of the hearing transcript within seven calendar days of the transcripts receipt in the FAB.

A cover letter accompanies the transcript, reminding the claimant that he or she has 20 days from the date of the letter to comment on the accuracy of the transcript in writing. The claimant is also advised that the record will remain open 30 days from the hearing date for the submission of additional evidence.

a. Collecting Comments and Additional Evidence. The HR keeps the hearing record open for 30 calendar days after the hearing. At his or her discretion, the HR may choose to grant the claimant an extension for the submission of new evidence. However, the HR may only grant one extension not to exceed another 30 calendar days.

(1) If the claimant submits additional evidence within 30 days after the date of the hearing, or comments on the transcript, the HR will enter such evidence into the record and weigh it when issuing the decision.

(2) If the claimant does not submit additional evidence within 30 days after the date of the hearing, and does not comment on the transcript, the HR reaches a decision based on examination of the evidence of record. However, the HR must consider all evidence submitted, even if it arrives after the 30 day period, prior to issuing a FD.

b. Final Decision. After examining the documents associated with the hearing, the HR prepares a FD if a determination can be made without further development.

## 6. Post-Hearing Actions. (Continued)

c. Disposition of Case File. Once FAB issues a decision on the RD considered at the hearing, the case file is returned to the DO. However, if FAB reviewed multiple RDs and additional FAB review is required after a hearing decision has been issued on only one of the RDs, the case file remains at FAB until such pending action is resolved.

(1) Reconsiderations. If FAB is reviewing a FD for reconsideration and has held a hearing on another RD, the case file remains at FAB until all review is completed. In such instances, if a remand order is issued based upon any of the RDs considered at the hearing but the reconsideration is outstanding, or if the HR grants the reconsideration and remands that issue but a FD following a hearing is outstanding, the Secondary CE (CE2) designated to work FAB issues receives the remand order and addresses all issues contained therein.

If reconsideration is not granted, once the request for reconsideration is reviewed and a decision issued, the case file is returned to the DO as long as no other outstanding issues remain.

(2) Remand Orders. As noted above, if the case file remains at FAB for additional action, the CE2 addresses the remand order.

If no additional FAB action is required, the case file is immediately returned to the DO, which addresses the remand order and issues a new RD.

d. Cases Returned to DO. Where there are no outstanding issues as outlined above, the case file is returned to the DO that issued the contested RD.

7. FAB Final Decisions. The FAB reviews the case record and all evidence of file and makes findings of facts and conclusions of law. The FAB CE issues an independent decision and ensures that the claim has been thoroughly developed and a correct conclusion has been reached.

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## 7. FAB Final Decisions. (Continued)

There are several types of FAB FDs:

a. Acceptances. When FAB receives a RD accepting benefits, the FAB makes findings of fact and conclusions of law and issues the FD to accept, provided no technical or procedural errors exist.

(1) If the RD accepts the claim in full and independent review by FAB concludes the acceptance is correct, FAB issues the FD awarding benefits in full. In such instances FAB issues the FD within 30 days of receipt of the waiver or upon expiration of the 60 day post-RD objection period, whichever comes first. If a claimant submits a waiver on day 59, this does not grant an additional 30 days to issue a FD. To be issued timely, the FD must be issued upon expiration of the 60 day objection period.

(2) If the DO has issued a RD accepting one or more claim element(s) while denying and/or deferring other elements, the FAB issues the FD as soon as possible to expedite the claimant's receipt of benefits. FAB does not wait to issue the FD until the elements under development at the DO are adjudicated, as those elements will usually require their own RDs and FDs once development is completed.

(a) A bifurcated waiver (see EEOICPA PM 2-1700, Exhibit 2) is issued with RDs that are partial acceptances/partial denials.

If the claimant mistakenly selects both options, or provides an ambiguous response, a FAB representative contacts the claimant and requests clarification in writing.

If the claimant advises in writing that he or she did not wish to waive his or her right to object, the waiver code is removed from ECMS by a FAB manager and a note put into ECMS explaining why it was deleted.

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7. FAB Final Decisions. (Continued)

(b) Where there are multiple claimants, FAB must wait until all waivers are received before issuing the FD. However, as stated above, receipt of a waiver on day 59 for example, does not grant an additional 30 days to issue a FD. To be issued timely, it must be issued within the 75 day period.

(c) If no waiver is submitted, FAB issues the FD once the 60-day post-RD objection period expires.

(d) If a claimant files a timely written objection, FAB cannot issue a FD until the objection is duly considered, either through the hearing process or a review of the written record. Contested decisions are addressed below.

One exception to the situation described above is where a claimant waives the right to object to the accepted portion of the claim but does object to the denied portion. In that instance, FAB issues the FD accepting the approved portion and considers the objection as outlined below.

b. Denials. When FAB receives a RD denying the claim in full or in part, FAB reviews the RD and independently reviews the case to ensure that it has been adjudicated consistent with the law, regulations, policies and procedures. If there is evidence in the case that warrants a reversal, the FAB CE/HR reverses the decision with approval from the FAB chief and issues benefits to the claimant without delay. If the claimant submits additional evidence, the FAB CE/HR reviews such evidence and determines whether it is sufficient to accept the case. If it is sufficient, and there are no outstanding development issues (such as SWC/Tort information), the FAB CE/HR may reverse the decision immediately and accept the case. If the evidence is sufficient to warrant further development, FAB remands the case. Provided no technical or procedural errors exist, FAB upholds the RD and issues a final decision to deny the claim.

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7. FAB Final Decisions. (Continued)

If the RD denies one claim element and develops another claim element, the designated CE2 continues to develop the claim element that is not before the FAB.

(1) For non-contested denials, absent any technical or procedural error, the FAB issues a FD accepting the RD findings and denying the claim for benefits in cases where no timely objection is filed or a waiver is received. Where no waiver is received, the FD is issued as soon as possible after the 60-day post-RD objection period expires.

(2) For contested denials, the FAB considers the timely filed written objection by either conducting a hearing or a review of the written record before a FD is issued, as appropriate.

c. Contested Decisions. After considering a timely filed written objection by conducting a hearing or reviewing the written record, FAB issues a decision based upon its independent findings. The FAB can issue a FD, a remand order returning the case file to the DO for further development or some other action, or a FD reversing a RD denying benefits. Remand orders and FD reversals are discussed below and can be issued on both contested and non-contested claims.

(1) A review of the written record (RWR) is performed after a claimant has objected to the findings of a RD without requesting an oral hearing. The FAB will review the written record, the claimant's objection, and any additional evidence submitted to determine whether the RD findings can be reversed to accept the claim or remanded for further development. Once this review is complete, the FAB issues a decision accordingly.

(2) Once the FAB conducts the hearing and satisfies all of the requirements of the hearing process, a decision is issued. While the hearing itself may entertain objections raised from several RDs, one FAB decision will be issued that addresses each contested RD after the resolution of the entire hearing process.

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7. FAB Final Decisions. (Continued)

(3) Each FAB decision following a hearing outlines the facts of the case, lists and comprehensively addresses the objection(s) raised at the hearing through testimony, exhibits presented, objections noted in the hearing request letter and subsequent letters, briefly outlines the hearing process, and thoroughly discusses the findings and/or conclusions of the FAB. In the case of an RWR, the FAB CE/HR must review all objections raised in the RWR objection letter and respond to each objection clearly and comprehensively.

d. Remand Orders. Should the FAB find a technical, procedural, or some other error requiring a remand order, the FAB returns the case file to the DO with instructions as to how to proceed further. Remand orders are largely issued in instances where further development is required at the DO level.

(1) FAB does not issue a remand order where FAB personnel can conduct minor development to resolve the issue at hand. Such minor development is conducted by FAB staff, not the CE2. An example is a missing divorce certificate, birth certificate, or an updated SWC/Tort Questionnaire. If FAB cannot resolve the issue in a timely manner, the FAB CE/HR will remand the case.

(2) Where a case is at FAB for review of one claim element and a remand order is issued on another claim element, the designated CE2 addresses the remand order. If there are no outstanding issues before FAB, the remand order and case file is returned to the DO that issued the RD.

(3) FAB may also issue remand orders in part, returning one portion of the claim to the DO for further action and issuing a FD on other portions of the claim.

(4) A remand order is written in narrative format to the claimant(s), but does not contain the normal sections of a FD (Statement of Case, Findings of Fact,



7. FAB Final Decisions. (Continued)

and Conclusions of Law). However, it should discuss the objections raised and provide an overview of the hearing process.

e. Reversal. A reversal is a FD issued when the evidence shows that either the RD denied benefits in error or new and compelling evidence warrants overturning a RD denial and accepting a claim for benefits.

(1) A reversal can be issued when a case is denied in full or in part. In partial denials, the FAB may reverse to accept if the portion of the claim denied by the RD is found to be in posture for acceptance, a DO error is identified, or new evidence is received that warrants a reversal.

(2) A decision reversing the RD is used only where a denial is reversed to accept benefits. The rationale for reversals must be clearly stated in the body of the decision and forwarded with the case file to the FAB Chief for review and approval. A reversal cannot be issued without such approval.

(3) When considering a reversal, FAB must be mindful of tort offset/SWC coordination and determine whether anyone received a settlement that might reduce the EEOICPA benefit.

f. Reconsiderations. FAB-NO and all DO FABs have authority to review requests for reconsideration and issue decisions according to 20 C.F.R. 30.319.

8. Preparation of FDs. As with RDs, multiple FAB decisions are possible on one case. Given the requirement that any RD deciding the eligibility of any one claimant to receive benefits include all claimants' party to the decision; a FD cannot be issued deciding any one claimant's eligibility to receive benefits without including all claimants as party to the decision. Accordingly, it is the responsibility of the FAB to remand any RD which does not comply with these procedures and instruct the DO to issue a new RD to address the eligibility of each party to the claim. This may require the reopening of certain claims (see EEOICPA PM 2-1900).

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## 8. Preparation of FDs. (Continued)

FAB decisions are written to be as transparent to the claimant as possible and are designed to avoid confusion on the part of the recipient. The FAB decision clearly identifies the Part of the Act under which benefits are awarded or denied so that the claimant clearly understands the decision. They include statutory/regulatory language in the conclusions of law when outlining the benefits being awarded or denied.

a. Three Components. The FAB representative must prepare three components before issuing a FD (a sample of a complete FD is shown as Exhibit 10):

(1) A cover letter explaining that a final decision has been reached. The cover letter must clearly identify what is being accepted or denied and under what part of the Act. This letter provides general information about the FD process and the administrative review available to the claimant.

(2) The final decision.

(3) Certificates of service certify that each listed claimant and his or her authorized representative was mailed a copy of the FD. A separate certificate of service is created for each claimant, but a claimant and his or her authorized representative may appear on the same certificate of service.

An acceptance may include two other components: (1) a medical benefits letter explaining entitlement to medical benefits for an accepted condition; and/or (2) an Acceptance of Payment form (EN-20), which is required before a payment can be issued.

b. Formatting and Content, FD for Acceptances, Contested Decisions, Denials, and Reversals. Where a FD is prepared for an acceptance, contested decision, denial or reversal, it must contain the following sections in the following sequence:

(1) Statement of the Case. This section sets out the case history up to the point of the issuance of the FD, including FAB actions, and other pertinent

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## 8. Preparation of FDs. (Continued)

information in a clear, concise narrative. No analysis of the facts or law and no citations appear in this section.

(2) Objections. This section discusses any objection raised by the claimant in writing or through an oral hearing and includes FAB's response to the objection. No analysis of the law or citations appear in this section.

(3) Findings of Fact. This section is a recitation of all facts pertinent to the ultimate decision rendered by the FAB. The findings of fact are the most significant findings from the Statement of the Case that are needed to support the FD ruling. Each finding is numbered sequentially in bullet form. The findings should draw conclusions from the evidence of record, not simply recite the statement of the case.

(4) Conclusions of Law. This section contains the statutory and regulatory analysis used by the FAB reviewer to reach his or her decision. This section must be well reasoned and provide appropriate legal citations. It should not, however, consist of a list of statutory references without any explanation. An overall legal conclusion supporting the decision must be reached. The conclusions of law must specifically identify whether or not benefits are being awarded and under which Part.

### c. Objections to NIOSH Dose Reconstruction Decisions.

Detailed procedures for objections to the NIOSH process and referrals to the DEEOIC Health Physicist are found in EEOICPA PM 2-1700.

(1) Factual objections in FD. If the claimant submits a factual objection and the factual findings reported to NIOSH are supported by the evidence of record, the FAB CE/HR addresses the objections in the FD. No referral to the DEEOIC Health Physicist is necessary. If the factual findings reported to NIOSH do not appear to be supported by the evidence of record and the health physicist determines that a

8. Preparation of FDs. (Continued)

rework of the dose reconstruction is necessary, the FAB CE/HR remands the case to the DO.

(2) Technical Objections in FD. A technical objection involving either methodology or application must be referred to the DEEOIC Health Physicist. If the DEEOIC Health Physicist deems none of the technical objections plausible, the FAB CE/HR incorporates the findings on these technical issues into the FD.

However, if the DEEOIC Health Physicist determines that there is substantial factual evidence that NIOSH had not previously considered and/or that NIOSH should consider an issue relating to application of methodology, he or she notifies the FAB CE/HR, who then remands the case, after supervisory approval, to the DO with instructions to refer the case back to NIOSH. In most cases, NIOSH will perform a new dose reconstruction based on circumstances of the remand.

(3) Objections to Methodology in FD. When an objection is directed at NIOSH's methodology, the FAB CE/HR states in the decision that the objection cannot be addressed based on 20 CFR § 30.318(b) (methodology that NIOSH uses in arriving at reasonable estimates of radiation doses). The FAB CE/HR makes this statement only if so advised by the DEEOIC Health Physicist. Objections related to the content of NIOSH-IREP software are related to methodology. However, the calculation of the probability of causation using the IREP software is the responsibility of the DEEOIC; therefore, FAB should address these objections in the FD.

d. Return of FD by Postal Service. Should FAB receive a returned FD, the FAB CE/HR will attempt to obtain the new or updated address for the claimant and re-mail the decision. If the case has already been returned to the DO, FAB staff may request the file. Upon receiving a returned FD, the FAB CE/HR contacts the claimant by phone to confirm the correct address and request a change of address in writing, if needed.

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## 8. Preparation of FDs. (Continued)

(1) Correct Address Found, Claimant Did Not Notify DO or FAB. Upon receiving the new address in writing, the FAB CE/HR photocopies the returned mail and sends it to the claimant along with another certificate of service for the new date and new address and a short cover letter explaining that "a decision was previously issued and a copy is attached and is being sent to you at your new address. Your appeal rights are as explained in the attachments to the final decision." The returned mail, certificate of service and cover letter are to be spindled in the file, and a note written in ECMS describing the actions taken. ECMS should not be coded with a new FD issuance date.

(2) Correct Address Found, Claimant Notified DO or FAB. If the FD was returned because the FAB CE/HR used the incorrect address, a new decision will have to be issued with a new issuance date. Only the claimant whose FD was returned receives a new decision. The returned mail and the new FD with attachments are to be spindled in the file and a note written in ECMS describing the actions taken. The new issuance date should be coded in ECMS.

(3) Correct Address Not Found. If the FAB CE/HR cannot obtain the claimant's correct address, the final decision is no longer valid and the FAB CE/HR issues a remand order to the DO for administrative closure.

9. Claimant Rights Following the Issuance of FAB Final Decisions. A claimant may seek review of a FD by filing a request for reconsideration or by filing a request for reopening of the claim. This paragraph discusses requests for reconsideration and provides guidance relating to the initial receipt of requests for reopening.

a. Receipt of a Request for Review.

(1) A request for reconsideration will be considered timely if it was filed within 30 calendar days of the date of issuance of the FD. Pursuant to 20 C.F.R. § 30.319(b), the request will be considered to be

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9. Claimant Rights Following the Issuance of FAB Final Decisions. (Continued)

"filed" on the date the claimant mails it to the FAB, as determined by the postmark, or on the date the written request is actually received by the DO or FAB, whichever is the earliest determinable date. A request for reopening may be filed at any time after the FD is issued.

(2) Any correspondence from a claimant or authorized representative which is received in the DO or FAB within 30 calendar days after the FD is issued, and which contains either an explicit request for reconsideration or language which could be reasonably interpreted as an intent to disagree with the FD, will be considered a timely filed request for reconsideration.

If new evidence is received in the DO or FAB within 30 calendar days after the FD issuance, and the new evidence relates to an issue which was adjudicated and denied in the FD, this new evidence will be considered a timely filed request for reconsideration. If the DO receives the request for reconsideration, it must be sent to the FAB office which issued the FD as soon as possible.

(3) Upon receipt of correspondence or new evidence which constitutes a timely filed request for reconsideration, FAB will send a letter to the claimant acknowledging receipt of the correspondence or evidence and advising that such receipt is considered a timely filed request for reconsideration.

(4) If correspondence received within 30 calendar days of the FD specifically requests a reopening instead of reconsideration, it will be handled as a reopening request by the DO. If both reconsideration and reopening are requested, FAB will process the reconsideration request first and then forward the claim to the DO to process the reopening request.

(5) A request for reopening may take several forms:

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9. Claimant Rights Following the Issuance of FAB Final Decisions. (Continued)

(a) Any correspondence or evidence containing or accompanied by a specific request for reopening, which is received at any time after the issuance of the FD, will be treated as a reopening request.

(b) If FAB receives correspondence or evidence without a specific request for reopening after the deadline for a timely reconsideration request, and the FD denied the claim to which the correspondence or evidence relates, FAB will review the evidence for possible reopening.

If FAB determines that such correspondence or evidence meets the evidentiary requirements set forth in 20 C.F.R. § 30.320(b), the FAB-DO district manager or the FAB-NO Branch Chief will prepare a memorandum to the EEOICP Director outlining the case history and the nature of the evidence and forward the case file to the EEOICP Director for review for possible reopening.

Should the evidentiary requirements not be met, FAB will associate the correspondence or evidence with the case file. In either case the claimant will not be notified of the actions taken by the FAB, because the claimant has not requested a specific action.

(6) Upon receipt of a request for review:

(a) Any request for reconsideration, along with the case file, is forwarded to FAB and assigned to a FAB CE/HR for review. A reconsideration request will not be assigned to a FAB CE/HR who issued the final decision for the specific claim element being addressed in the reconsideration request. The FAB CE/HR will screen the case to determine if the correspondence constitutes a request for reconsideration and, if so, if the request was timely filed.

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9. Claimant Rights Following the Issuance of FAB Final Decisions. (Continued)

(b) All requests for reopening received in the DO are initially reviewed by the DD. If a reopening request is received in FAB, the FAB-DO district manager or FAB-NO Branch Chief will transfer the request, any supporting evidence, and the case file to the DD for review.

(7) Upon receipt of a timely request for reconsideration, the FD in question will no longer be deemed "final" until a decision is reached on the reconsideration request. Receipt of a request for reopening does not have a similar effect and the subject FD remains "final" until such time as the EEOICP Director issues an order reopening the claim.

(8) A reconsideration request does not come with reconsideration rights, but only reopening rights. Therefore, if FAB denied a request for reconsideration and the claimant subsequently files another request for reconsideration of the same FD, FAB will not entertain the subsequent request. In this case, no denial order needs to be issued and no acknowledgment letter needs to be sent.

b. Processing an Untimely Request for Reconsideration.

(1) Any request for reconsideration which is not accompanied by a specific request for a reopening is considered a request for reconsideration. Any such request which is filed after the above-noted deadline for filing timely reconsideration requests is an untimely filed request for reconsideration.

(a) No letter is sent to acknowledge receipt of an untimely request for reconsideration. FAB issues a Denial of Request for Reconsideration advising the claimant that the request for reconsideration was not filed within 30 days of the issuance of the final decision and must be denied.



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9. Claimant Rights Following the Issuance of FAB Final Decisions. (Continued)

(b) If FAB concludes that any evidence received with an untimely request for reconsideration may warrant a reopening, FAB may forward the request to the District Director of the DO with jurisdiction over the claim for review.

(2) If an untimely filed request for reconsideration is accompanied by a specific request for reopening, FAB issues a Denial of Request for Reconsideration based on the untimely filing. The FAB CE/HR then forwards the reopening request with the case file to the DD of the office with jurisdiction over the claim for review for possible reopening.

c. Processing a Timely Request for Reconsideration. Upon determining that a request for reconsideration has been timely filed, the FAB CE/HR reviews the request and any accompanying evidence and decides whether to grant or deny the request. If, based on a review of the new evidence or argument submitted, the FAB CE/HR considers a review of the record to be warranted, the request will be granted.

(1) To warrant a review of the evidence, the evidence or argument must be of sufficient weight and probative value to convince the FAB CE/HR that the potential exists to alter a material finding of fact or conclusion of law referenced in the FD.

For example, if the FD denies a claim for CBD because the medical evidence was insufficient to establish CBD and the claimant submits a reconsideration request along with new medical evidence that could meet the statutory requirements for establishing CBD, the FAB may grant the reconsideration request.

(a) A timely request for reconsideration may be denied if it does not contain sufficient probative evidence or substantiated argument that directly contradicts a material finding of fact or conclusion of law set forth in the FD.

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9. Claimant Rights Following the Issuance of FAB Final Decisions. (Continued)

For example, if the FD denies a claim for skin cancer because the calculation of probability of causation was less than 50% and the claimant submits a reconsideration request but does not submit any additional medical or employment evidence that would alter the dose reconstruction, the FAB may deny the reconsideration request.

(b) Mere disagreement with the findings or conclusions of the FD is not sufficient to grant a reconsideration request. Such requests are to be denied on the grounds that no new information was presented that would affect the FD.

(2) If FAB grants the request for reconsideration, FAB performs a detailed review of the record. Specific procedures for conducting this review can be found in paragraph 6 above.

(a) Granting reconsideration will not necessarily result in a reversal of the FD. It merely denotes that the FAB CE/HR considers the argument or evidence presented by the claimant to be of sufficient weight and quality to require a thorough review of the case and issuance of a new FD.

(b) Upon granting the request for reconsideration, the existing FD is considered vacated and a new FD is required. If, after the review, FAB concludes that the case should be remanded to the DO for further development, FAB may issue an order granting the request for reconsideration and remanding the case to the DO for issuance of a new RD.

Otherwise, FAB issues an order granting the request for reconsideration and a new FD on the claim. A new FD that is issued after FAB grants a request for reconsideration will be "final" upon the date it is issued.

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9. Claimant Rights Following the Issuance of FAB Final Decisions. (Continued)

(3) If FAB denies the request for reconsideration, a review of the record is not performed. In the case of a denial, FAB issues an order denying the request for reconsideration and the FD which formed the basis for the request is considered "final" upon the issuance of the order denying the request.

(4) If a timely request for reconsideration is accompanied by a specific request for a reopening, then upon the issuance of a denial of request for reconsideration FAB forwards the case file to the DD of the office with jurisdiction over the claim for processing of the reopening request.

If FAB grants the request for reconsideration and issues a new FD, there is no need to process the reopening request and the case file is transferred to the DO.

10. Alternative Filing, Part E. If a claimant is denied as an ineligible survivor under Part E, he or she has the right to alternatively receive a non-decision determination regarding the employee's claimed illness(es). FAB advises the claimant of this right in the cover letter of the FD (see Exhibit 11 for a sample letter).

SAMPLE REMAND ORDER

**EMPLOYEE:** [Employee's Name]  
**CLAIMANT:** [Claimant's Name]  
**FILE NUMBER:** [Last 4 digits of file #]  
**DOCKET NUMBER:** [Docket Number]  
**DECISION DATE:** [Decision Date]

REMAND ORDER

This order of the Final Adjudication Branch (FAB) concerns your claim for benefits under the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA or the Act), 42 U.S.C. § 7384 *et seq.* Your case is remanded to the EEOICP district office for consideration of the new medical evidence received that established a cancer diagnosis.

On November 9, 2005, you filed a claim for survivor benefits under the Act, based upon the claim that the employee contracted skin cancer, seizures and heart problems while employed at the Iowa Ordnance Plant. You submitted no medical evidence to establish that the employee was diagnosed with cancer.

On May 16, 2006, the district office issued a recommended decision concluding that there was insufficient evidence to establish an occupational illness under Part B of the Act and that there was insufficient evidence to establish a covered illness under Part E of the Act. Therefore, it was recommended that your claim for survivor benefits under the Act be denied. On May 30, 2006, you filed objections to the recommended decision and requested a hearing.

On August 18, 2006, a hearing was conducted on your objections. At, and subsequent to, the hearing, you submitted additional medical evidence. The medical records submitted support a

finding that the employee was diagnosed with basal cell carcinoma, i.e. skin cancer. This new evidence is sufficient to warrant further development of the claim.

Pursuant to 20 C.F.R. § 30.317: "At any time before issuance of its final decision, the FAB may . . . return the claim to the district office for further development and/or issuance of a new recommended decision without issuing a final decision, whether or not requested to do so by the claimant." Therefore, the May 16, 2006 recommended decision is vacated and the case is being returned to the EEOICP district office for further development and issuance of a new recommended decision.

Washington, DC

Hearing Representative  
Final Adjudication Branch

SAMPLE REMAND ORDER COVER LETTER

Date

Claimant Name  
Address

Last 4 Digits of File Number:

Dear Claimant:

Enclosed please find the Remand Order concerning your claim for compensation under the Energy Employees Occupational Illness Compensation Program Act.

Please note that the remand order is directed to the EEOICP district office. Unless you are contacted by that office for additional information, you are not required to take any action at this time. I regret any inconvenience caused to you by this remand.

Your file is being returned to the district office. Future correspondence, inquiries, or telephone calls may be directed to the district office. Thank you for your cooperation.

Sincerely,

Hearing Representative  
Final Adjudication Branch

CERTIFICATE OF SERVICE

I hereby certify that on \_\_\_\_\_, a copy of the Notice of Final Decision(or Remand Order) was sent by regular mail to the following:

Claimant Name  
Claimant Address

Hearing Representative  
Final Adjudication Branch

Superseded

SAMPLE ACKNOWLEDGMENT LETTER, REVIEW OF WRITTEN RECORD

Date

Claimant Name and Address

Employee:

Claimant:

Last 4 Digits of Claim Number:

Dear Claimant Name:

On [date objection letter received], the Final Adjudication Branch (FAB) received a letter of objection dated [date of letter] stating objections to the (district office) district office's recommended decision of (date of RD) which recommends denial of your claim for benefits under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

The objections, along with the information in the file, will be carefully considered and included in our final decision. If you have any additional evidence that you wish to be considered, it must be received by the FAB within 20 calendar days of this letter. After that date, a review of the written record will be made and a final decision will be issued. Any evidence you wish to be considered should be submitted to:

U.S. Department of Labor  
DEEOICP  
Final Adjudication Branch  
P.O. Box XXXX  
City, State Zip Code

If you wish, you may submit such evidence via fax to (xxx) xxx-xxxx. Please ensure that your file number shown above is noted on any documentation you send to this office.

Sincerely,

Hearing Representative  
Final Adjudication Branch



SAMPLE ACKNOWLEDGMENT LETTER, HEARING

Dear Claimant Name:

The Final Adjudication Branch of the Energy Employees Occupational Illness Compensation Program has received and docketed your letter dated February 1, 2008, objecting to the recommended decision of the DISTRICT OFFICE dated December 11, 2007. Your request for a hearing has been noted and a hearing will be scheduled.

Please be advised that your notification of the time, date and location of your hearing will be mailed at least 30 days prior to the date set for your hearing. The hearing will be conducted within reasonable distances or via phone. At the hearing, you will be provided the opportunity to present your objections to the recommended decision, along with any additional evidence you would like to present. This testimony will be made under oath and transcribed by a court reporter for inclusion in your case file. If there is more than one claimant involved in this case, each is allowed to participate in the hearing. You may designate an attorney or other individual to be present and to represent you at the hearing. You are not, however, required to have a representative present at the hearing.

If you prefer, you may have a hearing by telephone instead of in person. You should request that in writing as soon as possible so we can make appropriate arrangements. You may send that request by fax to (xxx) xxx-xxxx - ATTN: Hearings Unit. Any additional correspondence should be directed to:

U.S. Department of Labor, EEOICP  
Attn: Final Adjudication Branch  
PO Box xxxx  
City, State ZIP

Thank you for your cooperation.

Sincerely,

Program Specialist

SAMPLE HEARING NOTICE TO CLAIMANT WHO FILED AN OBJECTIONRE: NOTICE OF HEARING

Dear Claimant Name:

A hearing has been scheduled concerning the above referenced claim under the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended, 42 U.S.C. § 7384 et seq. (EEOICPA or the Act). The hearing will begin promptly at TIME AM/PM on DAY, DATE at the following location:

BUILDING NAME  
STREET ADDRESS  
CITY, ST ZIP-CODE  
(XXX) XXX-XXXX (for directions only)

Please bring a photo I.D. so that you may be admitted into the building.

The specific issue to be addressed at the hearing: [If it is a Part E hearing request: The issue to be addressed at the hearing is whether you are entitled to compensation and benefits under Part E of the EEOICPA. If it is a Part B and Part E hearing request: The issues to be addressed at the hearing are whether you are entitled to compensation and benefits under Part B and Part E of the EEOICPA.]

You must inform me of any person other than your authorized representative that will be attending the hearing with you not later than XXXXXX (1 week prior to the date of the hearing). Please be aware that in such circumstances, all claimants who have requested this hearing must sign a "WAIVER OF RIGHTS TO CONFIDENTIALITY." Additionally, I will need to determine whether proper room arrangements can be made to accommodate the number of people expected to attend the hearing.

Please be advised that the security requirements of the XXXXXXXX (Federal Building) require me to provide a list of all attendees. Anyone not on the list will not be admitted to the building and will not be able to attend the hearing.

The hearing is an informal process, and I am not bound by common law or statutory rules of evidence or by technical or formal

rules of procedure. During the hearing, you may state your arguments and present new written evidence and/or testimony in support of the claim. Oral testimony will be made under oath or affirmation and is recorded. The recording of the hearing proceedings is then transcribed and placed in the record. You will be provided a copy of the hearing transcript. You or anyone else present may not make your own video or audio recording of the hearing.

I determine the conduct of the hearing and may terminate the hearing at any time I determine that all relevant evidence has been obtained or because of misbehavior on the part of the claimant and/or representative, or any other persons in attendance at or near the place of the hearing.

[Add this paragraph if the hearing concerns the POC] Since the issues raised relate to the dose reconstruction process, it is important for you to know that the National Institute for Occupational Safety and Health (NIOSH) has full authority under the regulations to complete the dose reconstruction as prescribed in its rules. The dose reconstruction is used by the Department of Labor to determine the probability that the claimed cancer is related to employment at a covered facility. During the hearing, I am not authorized to address NIOSH methodology and therefore will not be in a position to discuss the way in which NIOSH prepares the dose reconstruction. You may present your objections at the hearing, including any evidence or information you wish to submit and all arguments, evidence and information will be entered into the record. However, I can discuss only issues of a factual nature regarding the information you provided to NIOSH, and which that agency used to perform the dose reconstruction.

I have attached additional information regarding the hearing procedures for your review. If you have any questions concerning these procedures, please feel free to contact me at (xxx) xxx-xxxx.

Sincerely,

Hearing Representative  
Final Adjudication Branch

Enclosure

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HEARING PROCEDURES

BEFORE THE DATE OF THE HEARING: Before the date of the hearing, please submit any additional evidence that you wish me to consider. However, if such evidence is submitted on the date of the hearing or within thirty (30) days after the hearing, it will still be carefully considered and made part of the record. You must notify me at least one (1) week prior to the date of the hearing if persons other than claimants involved with the case, to include any properly appointed authorized representatives, will be attending the hearing. Please be aware that in such circumstances, all claimants who have requested this hearing must sign a "WAIVER OF RIGHTS TO CONFIDENTIALITY." Additionally, I will need to determine whether proper room arrangements can be made to accommodate the number of people expected to attend the hearing.

The hearing is an informal process, and I am not bound by common law or statutory rules of evidence or by technical or formal rules of procedure. During the hearing, you may state your arguments and present new written evidence and/or testimony in support of the claim. Oral testimony will be made under oath or affirmation and is recorded. The recording of the hearing proceedings is then transcribed and placed in the record. You will be provided a copy of the hearing transcript. You may not make your own video or audio recording of the hearing.

NO POSTPONEMENT WILL BE GRANTED UNLESS EXTREMELY COMPELLING CIRCUMSTANCES EXIST: If you are hospitalized for a reason which is not elective, or where the death of your parent, spouse, or child prevents attendance at the hearing, a postponement may be granted upon proper documentation. Please contact the Final Adjudication Branch at (XXX) XXX-XXXX, if an emergency arises. If a postponement cannot be granted, the request for a hearing will automatically convert to a request for a review of the written record. If you do not appear at the scheduled time and place, the request for a hearing will automatically convert to a request for a review of the written record.

**WITHDRAWAL OF REQUEST FOR HEARING:** At any time after requesting a hearing, you can request a change to review of the written record by making a written request to the Final Adjudication Branch. Once such a change is made, no further opportunity for a hearing will be provided, and I will review the written record.

**HEARING BY TELEPHONE:** If you would like to have a hearing by telephone, please contact the Final Adjudication Branch at (XXX) XXX-XXXX. Any testimony presented at the telephone hearing will be made under oath or affirmation and the testimony will be recorded by a court reporter and made part of the record. Telephone hearings can not be conducted on cell phones.

**REPRESENTATION:** You may designate a person to represent you to help you prepare your case and/or present your case at the hearing. Your representative can be an attorney, but he or she need not be. There are rules concerning the maximum fee an attorney can charge you.

**AFTER THE HEARING:** I will furnish a transcript of the hearing to you (at no charge) within a few weeks after the hearing. You will then have twenty (20) days from the date it is sent to submit any comments to me. You will also have thirty (30) days after the hearing is held to submit additional evidence or argument, unless an extension is granted. Only one such extension may be granted. After the hearing, I will study the record and make findings based on the evidence, including testimony taken at the hearing, and issue a written decision.

SAMPLE HEARING NOTICE TO CLAIMANT WHO DID NOT FILE AN OBJECTION

Dear Claimant Name:

A hearing has been scheduled concerning the above referenced claim under the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended, 42 U.S.C. § 7384 et seq. (EEOICPA or the Act). The file indicates that you did not file an objection to the recommended decision of the district office. However if you wish, you may participate in the hearing. The option to participate by telephone is available, but you must let me know immediately. The hearing will begin promptly at TIME AM/PM on DAY, DATE at the following location:

BUILDING NAME  
STREET ADDRESS  
CITY, ST ZIP-CODE  
(XXX) XXX-XXXX (for directions only)

Please bring a photo I.D. so that you may be admitted into the building.

The specific issue to be addressed at the hearing: [If it is a Part E hearing request: The issue to be addressed at the hearing is whether you are entitled to compensation and benefits under Part E of the EEOICPA. If it is a Part B and Part E hearing request: The issues to be addressed at the hearing are whether you are entitled to compensation and benefits under Part B and Part E of the EEOICPA.]

You must notify me at least one (1) week prior to the date of the hearing if persons other than claimants involved with the case, and a properly appointed authorized representative, will be attending the hearing. Please be aware that in such circumstances, all claimants who have requested this hearing must sign a "WAIVER OF RIGHTS TO CONFIDENTIALITY."

Additionally, I will need to determine whether proper room arrangements can be made to accommodate the number of people expected to attend the hearing.

Please be advised that the security requirements of the XXXXXXXX (Federal Building) require me to provide a list of all attendees. Anyone not on the list will not be admitted to the building and will not be able to attend the hearing.

The hearing is an informal process, and I am not bound by common law or statutory rules of evidence or by technical or formal rules of procedure. During the hearing, you may state your arguments and present new written evidence and/or testimony in support of the claim. Oral testimony will be made under oath or affirmation and is recorded. The recording of the hearing proceedings is then transcribed and placed in the record. You will be provided a copy of the hearing transcript. You or anyone else present may not make your own video or audio recording of the hearing.

I determine the conduct of the hearing and may terminate the hearing at any time I determine that all relevant evidence has been obtained or because of misbehavior on the part of the claimant and/or representative, or any other persons in attendance at or near the place of the hearing.

[Add this paragraph if the hearing concerns the POC] Since the issues raised relate to the dose reconstruction process, it is important for you to know that the National Institute for Occupational Safety and Health (NIOSH) has full authority under the regulations to complete the dose reconstruction as prescribed in its rules. The dose reconstruction is used by the Department of Labor to determine the probability that the claimed cancer is related to employment at a covered facility. During the hearing, I am not authorized to address NIOSH methodology and therefore will not be in a position to discuss the way in which NIOSH prepares the dose reconstruction. You may present your objections at the hearing, including any evidence or information you wish to submit and all arguments, evidence and information will be entered into the record. However, I can discuss only issues of a factual nature regarding the information you provided to NIOSH, and which that agency used to perform the dose reconstruction.

I have attached additional information regarding the hearing procedures for your review. If you have any questions concerning these procedures, please feel free to contact me at (xxx) xxx-xxxx.

Sincerely,

Name of Hearing Representative  
Hearing Representative  
Final Adjudication Branch

Enclosure

Superseded



WAIVER OF RIGHTS TO CONFIDENTIALITY

I, \_\_\_\_\_, (File Number \_\_\_\_\_),  
residing at \_\_\_\_\_, am aware that persons  
other than claimants involved in the above case or their  
authorized representative may be present at a hearing convened  
under the Energy Employees Occupational Illness Compensation  
Program Act (EEOICPA) on \_\_\_\_\_, at \_\_\_\_\_ AM/PM in  
\_\_\_\_\_, in the State of \_\_\_\_\_.

I have requested the presence of these persons, or accept  
their presence at this proceeding, and I hereby waive any right  
to confidentiality of records, documents or other materials  
contained in files maintained by the Office of Workers  
Compensation Programs and disclosed during the hearing. I  
further waive any right to privacy under the Privacy Act of 1974  
in the disclosure of records, documents or other materials  
related to my claim that may be released during the course of  
the hearing.

Acknowledged and signed this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
(signature)

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WAIVER OF RIGHTS TO CONFIDENTIALITY (MEDIA)

I, \_\_\_\_\_, (File Number \_\_\_\_\_) residing at \_\_\_\_\_, am aware that representatives of the print and/or broadcast media may be present at a hearing convened under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) on \_\_\_\_\_, at \_\_\_\_\_ AM/PM in \_\_\_\_\_, in the State of \_\_\_\_\_.

I have requested the presence of these persons, or accept their presence at this proceeding, and I hereby waive any right to confidentiality of records, documents or other materials contained in files maintained by the Office of Workers Compensation Programs and disclosed during the hearing. I further waive any right to privacy under the Privacy Act of 1974 in the disclosure of records, documents or other materials related to my claim that may be released during the course of the hearing.

Acknowledged and signed this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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(signature)

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SAMPLE HEARING SCRIPTCONVENING THE HEARING**I. OPENING, AUTHORITY, AND NARRATIVE**

We will now open the record. Today is \_\_\_\_\_, and it is \_\_\_\_\_AM/PM. My name is \_\_\_\_\_ and I have been designated to conduct this hearing and to receive the objections of EMPLOYEE/CLAIMANT. (At this point indicate whether or not claimant is represented by counsel or other authorized representative). This case is identified under claim number xxx-xx-xxxx and carries docket number xxxx-2008.

This hearing is convened under the Energy Employees Occupational Illness Compensation Program Act (I will make future references to it as the Act), and is governed by the provisions of Title 20, Section 30.314 of the Code of Federal Regulations. These regulations provide claimants with the right to object to a recommended decision of a district office. While this hearing is informal and not governed by rules of evidence, I will administer an oath or affirmation to every person providing testimony today. I will first review the history of your claim as it appears in the written record. You may then present testimony, argument, and any additional evidence addressing the merits of your claim.

On DATE OF FILING, you submitted an EE-(1 or 2) form to the NAME OF LOCATION district office claiming benefits under the Act. On your EE-1/2 form, you claimed LIST FORM OF CANCER as the claimed condition related to employment under the Act. You also submitted an EE-3 form indicating employment at LIST FACILITY, DATES OF EMPLOYMENT AND COVERED PERIOD FOR FACILITY. You submitted evidence establishing your employment at NAME FACILITY and submitted BRIEFLY OUTLINE MEDICAL EVIDENCE establishing a cancer diagnosis.

Since YOUR/THE EMPLOYMENT did not qualify YOU/THE EMPLOYEE for membership in the special exposure cohort, the DISTRICT OFFICE forwarded your claim file information to the National Institute for Occupational Safety and Health (hereinafter referred to as NIOSH) for radiation dose reconstruction. The district office undertook such an action pursuant to the instructions set out in the regulations governing the Act. The Act and implementing

regulations mandate that when a claimant with covered employment establishes a cancer diagnosis, NIOSH will prepare a radiation dose reconstruction. The Department of Labor then applies a formula to the dose reconstruction in order to determine whether the employee's cancer is as least as likely as not related to the covered employment.

NIOSH provided a report of the dose reconstruction and DISTRICT OFFICE found that there was a % probability that YOUR/THE EMPLOYEE'S cancer was causally related to employment under the Act. As such, it was determined that the cancer was not found to be at least as likely as not related to employment under the Act. Accordingly, the DISTRICT OFFICE issued its recommended decision on DATE OF RD recommending denial of your claim for benefits under the Act.

## II. STATEMENT OF OBJECTION AND NIOSH DISCLAIMER

On DATE OF OBJECTION, you filed your objection to the recommended decision and requested an oral hearing. You have objected specifically that the NIOSH dose reconstruction failed to show enough exposure so the DO could find that YOUR/THE EMPLOYEE'S cancer was at least as likely as not related to YOUR/THE EMPLOYEE'S employment.

At this time I would like to say something about the NIOSH dose reconstruction. NIOSH is given full authority under the regulations that govern the Act to conduct the dose reconstruction used by the Department of Labor to determine the probability that a cancer is related to employment. I am, therefore, not in a position to discuss the way in which NIOSH goes about preparing the dose reconstruction report. However, I can discuss issues of a factual nature regarding the information you provided to NIOSH, and challenges to the application of NIOSH's methodology. I am here to take your objections and enter them into the evidence of record, but I am not permitted to consider objections to NIOSH methodology at this time.

## III. ADMINISTER OATH AND TAKE EVIDENCE

As stated previously, while the hearing is designated as an informal process, anyone giving testimony today is required to do so under Oath. Mr./Ms. Claimant, will you please raise your hand? (Administer Oath: "Do you swear/affirm to tell the truth

in the testimony you are about to give in these proceedings today?"

Mr./Ms. Claimant, will you please, for the record, state your full name and address, and then proceed to give your testimony for the record.

AT THIS POINT, ALLOW THE CLAIMANT TO GIVE ORAL TESTIMONY AND ENTER SUCH DOCUMENTS AS THE CLAIMANT MAY DESIRE INTO THE RECORD AS EVIDENCE. IDENTIFY AND MARK EACH AND EVERY EXHIBIT AND NUMBER EACH EXHIBIT SEQUENTIALLY.

#### **IV. CLOSING**

Before closing, I will advise Mr./Ms. Claimant of what will transpire from this date forward. These proceedings will be transcribed, and a copy of the transcript will be provided to you. I will leave the record open for another 30 days for you to submit any additional evidence. You also have 20 days from the date of mailing of the transcript to offer any corrections or comments on the transcript. Any such additional evidence or comments will be included in the record and considered, along with your hearing testimony and all of the evidence already in the record, prior to issuance of the final decision. If there is no other testimony to be given in this matter, I will close the hearing. It is now \_\_\_\_ A.M/P.M. and this hearing is closed.

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SAMPLE COMPLETE FINAL DECISION

Dear Claimant Name:

Enclosed please a Final Decision on your claim for compensation under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). Your claim under Part E has been approved for \$125,000.

I have enclosed the Acceptance of Payment form (EN-20), which is required before the Office of Workers' Compensation Programs can issue payment to you. You must complete the form in permanent ink and there can be no cross outs or other marks. Do not use white out or correction tape. Any alteration of the form will result in it being rendered unusable for purposes of issuing payment. If you make a mistake or need another form, please contact the district office handling your claim. You must submit the form with an original signature. Faxes or other copied version of the EN-20 is not acceptable. A second copy of the form is attached in case a mistake is made. Only one form needs to be returned. Please check with your financial institution before returning the form to us to verify the routing number and your account number so that your money arrives promptly and to the correct account.

Please email the completed and signed original EN-20 to:

U.S. Department of Labor  
DEEOIC, District Office  
P.O. Box XXXX  
City, State ZIP

Please be advised that the final decision on your claim may be posted on the agency's website if it contains significant findings of fact or conclusions of law that might be of interest to the public. If it is posted, your final decision will not contain your file number, nor will it identify you or your family members by name.

Any future correspondence, inquiries, or telephone calls should be directed to the (District Office) district office. Thank you for your cooperation.

Sincerely,

Hearing Representative  
Final Adjudication Branch

Superseded

**EMPLOYEE:** [Name]  
**CLAIMANT:** [Name]  
**FILE NUMBER:** [Number]  
**DOCKET NUMBER:** [Number]  
**DECISION DATE:** [Date]

NOTICE OF FINAL DECISION

This is the decision of the Final Adjudication Branch (FAB) concerning your claim for compensation under the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA or the Act), 42 U.S.C. § 7384 *et seq.* For the reasons set forth below, the FAB accepts and approves your claim for compensation under Part E.

STATEMENT OF THE CASE

On October 5, 2001, you filed a Form EE-2 (Claim for Survivor Benefits under the EEOICPA) with the Department of Labor (DOL). You also filed a Form OWAL (Request for Review by Medical Panels under the EEOICPA) with the Department of Energy (DOE). You filed these claims as the surviving spouse of [Employee], based on the condition of lung cancer. You provided medical evidence including a pathology report dated February 11, 1994, diagnosing [Employee] with poorly differentiated large cell carcinoma of the right lung.

A representative of the DOE verified that [Employee] was employed at the Hanford site, a DOE facility, as a nuclear process operator from December 16, 1954 to July 5, 1957, and from October 1, 1962 to April 30, 1993.

You submitted a copy of a marriage certificate showing you and [Employee] were married on April 4, 1956. You also submitted a copy of the employee's death certificate which showed that he died as a result of lung cancer, and that you were his surviving spouse at the time of his death on July 14, 1997.



On January 19, 2006, the FAB issued a final decision under Part B of the Act to deny your claim for benefits, finding that the employee's lung cancer was not "at least as likely as not" (a 50% or greater probability) caused by radiation doses incurred while he was employed at the Hanford site.

In developing your claim under Part E, the Seattle district office analyzed the evidence of record and reviewed DOL's Site Exposure Matrices (SEM), in an effort to determine the type of toxic substances the employee could potentially have been exposed to while working at the Hanford site as a nuclear process operator. SEM was also searched to determine whether there was a possible association between the toxic substances the employee was exposed to and his lung cancer.

Source documents used to compile SEM establish that the employee's occupational category as nuclear process operator, and/or work location in Area 200, at the Hanford site likely exposed him to toxic substances (arsenic, beryllium, cadmium, cadmium oxide, chromic acid, chromium, chromium III, sodium chromate, sulfuric acid and vinyl chloride space (Monomeric)), that are known to cause lung cancer.

On November 20, 2006, the district office forwarded your file, including the information obtained from SEM, to a District Medical Consultant (DMC) for a medical opinion of the claim. On November 26, 2006, the DMC opined that it is "at least as likely as not" that [Employee]'s exposure to arsenic, beryllium, cadmium, cadmium oxide, chromic acid, chromium, chromium III, sodium chromate, sulfuric acid and vinyl chloride space (Monomeric) contributed to his death from lung cancer.

Based on the DMC opinion and the evidence of record, the district office concluded that there was sufficient evidence of exposure meeting the "at least as likely as not" criteria that toxic exposure at a DOE facility was a significant factor in aggravating, contributing to, or causing the employee's death.

On December 8, 2006, the Seattle district office issued a recommended decision to accept your claim based on the condition of lung cancer and to award you compensation in the amount of \$125,000.00 under Part E.

The evidence of record includes a letter dated December 13, 2006, in which you indicated that neither you nor your spouse have filed a lawsuit or received a settlement relevant to the claimed exposures. You also indicated that you and your spouse have never filed for or received any payments, awards or benefits from a state workers' compensation claim in relation to the claimed condition, or pled guilty to or been convicted of any charges connected with an application for or receipt of federal or state workers' compensation. Further, you indicated that your spouse had no minor children or children incapable of self-support, who were not your natural or adopted children, at the time of his death.

After considering the evidence of record, the FAB hereby makes the following:

FINDINGS OF FACT

1. On October 5, 2001, you filed a claim for survivor benefits with DOL and DOE under the EEOICPA.
2. You are the surviving spouse of [Employee] and were married to him for at least one year immediately prior to his death.
3. [Employee] was employed at the Hanford site, a covered DOE facility, as a nuclear process operator, from December 16, 1954 to July 5, 1957, and from October 1, 1962 to April 30, 1993.
4. The employee was diagnosed with lung cancer on February 11, 1994 after starting work at a covered DOE facility.
5. Previously the FAB issued a final decision under Part B of the Act to deny your claim for benefits, finding that the employee's lung cancer was not "at least as likely as not" (a 50% or greater probability) caused by radiation doses incurred while employed at the Hanford site.
6. On November 26, 2006, the DMC opined that, in the absence of evidence to the contrary, it is at least as likely as not that [Employee]'s work exposure to arsenic, beryllium, cadmium, cadmium oxide, chromic acid, chromium, chromium III, sodium chromate, sulfuric acid and vinyl chloride

space (Monomeric) was a significant factor in contributing to his death from lung cancer.

7. The evidence of record supports a causal connection between the employee's death due to lung cancer and his exposure to toxic substances at a DOE facility.
8. You have never filed a lawsuit and received a settlement or award based on the claimed exposures; at the time of your spouse's death, he had no had no minor children or children incapable of self-support who were not your natural or adopted children; and you or your spouse have not ever filed a state workers' compensation claim for your spouse's claimed condition.

Based on the above-noted findings of fact in this claim, the FAB hereby makes the following:

#### CONCLUSIONS OF LAW

The undersigned has reviewed the recommended decision issued by the district office on December 8, 2006. I find that you have not filed any objections to the recommended decision, and that the sixty-day period for filing such objections has expired. See 20 C.F.R. §§ 30.310(a) and 30.316(a).

Source documents used to compile SEM establish that the employee's occupational category as nuclear process operator, and/or work location in Area 200, at the Hanford site likely exposed him to toxic substances (arsenic, beryllium, cadmium, cadmium oxide, chromic acid, chromium, chromium III, sodium chromate, sulfuric acid and vinyl chloride space (Monomeric)), that are known to cause lung cancer.

On November 26, 2006, the DMC opined that, in the absence of evidence to the contrary, it is at least as likely as not that [Employee]'s exposure to arsenic, beryllium, cadmium, cadmium oxide, chromic acid, chromium, chromium III, sodium chromate, sulfuric acid and vinyl chloride space (Monomeric) was a significant factors in contributing to his death from lung cancer.

The evidence of record establishes that the employee was a DOE contractor employee as defined by § 7385s(1). The employee was diagnosed with a "covered illness," lung cancer, as defined by § 7385s(2). The employee contracted that "covered illness" through exposure to a toxic substance at a DOE facility. You are the employee's surviving spouse. Accordingly, you are entitled to compensation benefits in the amount of \$125,000.00 under Part E.

Seattle, WA,

Hearing Representative  
Final Adjudication Branch

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SAMPLE COVER LETTER, ALTERNATIVE FILING

Dear Claimant Name:

Enclosed please find the Notice of Final Decision which denies your claim for compensation and benefits under the Energy Employees' Occupational Illness Compensation Program Act (EEOICPA). If you disagree with this decision, you may request reconsideration. Such a request must be in writing and must be made within 30 days of the date of issuance of this decision. It must clearly state the grounds upon which reconsideration is being requested. In order to ensure that you receive an independent evaluation of the evidence, your request for reconsideration will be reviewed by a different Final Adjudication Branch hearing representative than that who issued the final decision. Your request for reconsideration should be sent to:

U.S. Department of Labor  
DEEOIC  
Final Adjudication Branch  
P. O. Box XXX  
CITY, STATE ZIP CODE

If your claim was denied because you have not established covered employment or a covered illness and you have new evidence of either covered employment or a covered illness, you may request a reopening of your claim. If your claim was denied because a cancer was not causally related to work-related exposure to radiation and you can identify either a change in the probability of causation guidelines, a change in the dose reconstruction methods or an addition of a class of employees to the Special Exposure Cohort, you may also request a reopening of your claim.

These requests to reopen your claim must be in writing and be sent, along with your supporting information, to the following address:

U.S. Department of Labor  
DEEOIC, DISTRICT DIRECTOR  
P.O. BOX XXX  
CITY, STATE ZIP CODE

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While you do not meet the statutory definition of an eligible survivor as set out under Part E of the EEOICPA, you may seek an alternative filing review pursuant to 42 U.S.C. § 7385s-4(d). You may request such a review by writing to:

U.S. Department of Labor  
DEEOIC, DISTRICT DIRECTOR  
ADDRESS

Alternative filing reviews assess a facility where alleged employment and exposure took place and render a determination as to potential causation. Should you wish to receive this type of review; the district office will provide you with a determination. Please note, however, that such a determination does not change your eligibility for benefits or establish causation under the Act, and is not subject to further agency or judicial review.

Please be advised that the final decision on your claim may be posted on the agency's website if it contains significant findings of fact or conclusions of law that might be of interest to the public. If it is posted, your final decision will not contain your file number, nor will it identify you or your family members by name.

Except as provided above, all future correspondence, inquiries or telephone calls should be directed to the district office. Thank you for your cooperation.

Sincerely,

Hearing Representative

Enc: Notice of Final Decision

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<u>Exhibit</u>			
1 Sample Director's Order to Reopen . . . . .		10/09	10-02
2 Sample Denial of a Request for Reopening . . . . .		10/09	10-02

1. Purpose and Scope. This chapter describes the process by which the Director of the Division of Energy Employees Occupational Illness Compensation (DEEOIC) reopens claims for benefits under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) and vacates decisions of the Final Adjudication Branch (FAB).

2. Authority. Under 20 C.F.R. § 30.320, the Director of the DEEOIC has the authority to reopen a claim and vacate a FAB decision at any time after the FAB has issued a final decision pursuant to 20 C.F.R. § 30.316. Also, under 20 C.F.R. § 30.320(a), the Director may vacate a FAB remand order. The Director may reopen a claim and vacate a final decision or vacate a FAB remand order, regardless of whether a claimant requests such action.

The Director is granted sole discretion over the process by which a claim is reopened and/or a FAB decision is vacated. In the exercise of this discretion, the Director has delegated certain functions and authority to staff in the National Office and District Offices, such as the Branch Chief of the Policy Branch, the Unit Chiefs for the Unit of Policies, Regulations and Procedures (UPRP), and the District Directors (DDs), or Assistant District Directors (ADDs) at the discretion of the DD, of the four District Offices (DOs). The Director can grant authority to other individuals in the program as necessary to streamline the reopening process.

The Director is retaining sole signature authority for remand reviews or extremely complex or precedent setting reopenings. The DEEOIC Director's decision regarding reopening a claim or vacating a FAB decision is not reviewable.

3. Claimant's Explicit Request for Reopening. The regulations allow a claimant, at any time after the FAB has issued the final decision, to file a written request seeking reopening of his or her claim for benefits under the EEOICPA, pursuant to 20 C.F.R. § 30.320(b). The regulations allow that such a request may be filed:



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3. Claimant's Explicit Request for Reopening. (Continued)

Provided that the claimant also submits new evidence of either covered employment or exposure to a toxic substance, or identifies either a change in the PoC guidelines, a change in the dose reconstruction methods or an addition of a class of employees to the Special Exposure Cohort.

There is no limit as to how many times a claimant may request a reopening. Each request will be evaluated for any evidence of a new or compelling nature which is material to the outcome of the claim and which might warrant a reopening.

a. Timeliness. A claimant may file a request for reopening at any time after the FAB has issued a final decision.

b. Initial Review. All correspondence in which a claimant explicitly requests that a claim be reopened, whether received in a district FAB office or DO, is forwarded to the DD with jurisdiction over the case file. Requests for reopening received in the National Office FAB are not forwarded to the National Office, but rather reviewed by the FAB-NO. The DD conducts an initial review of the correspondence to determine whether the request is accompanied by new evidence, or other information as required by regulation, which is of a sufficient and material nature and extent to warrant a reopening.

c. New Evidence. If the initial review reveals that new evidence has been submitted with the request for reopening, the DD determines whether the nature and extent of such evidence satisfies the requirements of 20 C.F.R. § 30.320, and whether it is sufficient to warrant reopening. The DD also considers whether, based on the totality of the evidence, the nature and extent of the new evidence might affect the outcome of the claim. If it does, then the DD reopens the case by issuing a Director's Order to vacate the pertinent final decision or portion of the final decision. The only circumstances in which a DD can reopen a case are as follows:

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3. Claimant's Explicit Request for Reopening. (Continued)

(1) Employment. In instances where the denial was based on employment issues: employment records that establish previously denied or unverified time periods of covered Department of Energy, DOE contractor/subcontractor, atomic weapons employer, beryllium vendor employment, or Radiation Exposure Compensation Act (RECA) section 5 employment.

(2) Survivorship. In instances where the denial was based on survivorship issues: records or documents that demonstrate a relationship between a previously denied survivor and the covered employee. Or, cases under Part B where an employee claim has received a final decision to approve, but the claimant died before payment could be made.

(3) SEM. In instances where an update to the Site Exposure Matrices (SEM) or the submission of new factual evidence establish a previously denied, closed, or unverified toxic substance exposure, which is known to be linked to the claimed illness(es). Or, in cases where new evidence of exposure is received that demonstrates a clear link to the claimed illness(es). Evidence demonstrating a link between exposure and a claimed illness must meet the criteria outlined in procedures to be eligible for reopening under this bulletin.

(4) PoC. In instances where the decision to deny was based upon a dose reconstruction returned from NIOSH with a Probability of Causation (PoC) of less than 50%, and the claimant has submitted a diagnosis of a new cancer which results in a PoC of 50% or greater.

d. Change in Law, Regulations or Policies. If the initial review reveals that the claimant has identified a change in the law, regulations, or policies governing the EEOICP, the DD determines whether the nature and extent of such information

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3. Claimant's Explicit Request for Reopening. (Continued)

satisfies the requirements of 20 C.F.R. § 30.320, and whether it is sufficient to warrant reopening.

The DD also considers whether, based on the totality of the evidence, the nature and extent of the new information might affect the outcome of the claim. If it does, then the DD reopens the case by issuing a Director's Order to vacate the pertinent final decision or portion of the final decision.

e. No New Evidence. If the initial review reveals that the claimant has submitted no new evidence and has not identified any change in the law, regulations or policies governing his or her claim, the DD still considers the merits of the reopening request and determines whether, based on the totality of the evidence, the nature and extent of the claimant's request might affect the outcome of the claim. If the review results in a determination that the case warrants a reopening, the DD proceeds with reopening the case by issuing a Director's Order to vacate the pertinent final decision or portion of the final decision.

f. Denial by District Director. If the DD determines that the evidence submitted, and/or the change in law, regulations, or policies identified by the claimant, is insufficient to support a reopening, the DD issues a Denial of Request for Reopening based on the claimant's failure to satisfy the evidentiary requirements set forth in 20 C.F.R. § 30.320(b). See paragraph 8 below for procedures for denying a specific request for reopening.

g. Referral to DEEOIC Director. If the DD cannot determine whether the evidence submitted, and/or the change in law, regulations, or policies identified by the claimant, is sufficient to warrant a reopening, or if the request presents complex issues or an issue that has not previously been addressed in DEEOIC policy guidance, the DD refers the case to National Office for review and consideration. The DD prepares

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3. Claimant's Explicit Request for Reopening. (Continued)

a memorandum to the DEEOIC Director recommending that the case be reviewed for possible reopening.

In the memorandum, the DD outlines the case history and the evidence of record and explains why the new evidence, or other information, is material to the outcome of the claim. The case file is transferred to the National Office (NO) for possible reopening. See paragraph 7 below for procedures regarding cases sent to the DEEOIC Director for review.

4. Claimant's Nonspecific Correspondence or Evidence. Any nonspecific correspondence or evidence received prior to the deadline for a timely request for reconsideration of a final decision shall be reviewed as a request for reconsideration, pursuant to DEEOIC procedures.

If correspondence or evidence is received in a FAB office or DO after the deadline for a timely request for reconsideration of a final decision, and the final decision denied the claim to which the correspondence or evidence relates, the correspondence or evidence is reviewed for probative value to determine whether or not a reopening is warranted.

a. Received in FAB-NO. If such nonspecific correspondence or evidence is received in the National Office FAB (FAB-NO) after the deadline for a request for reconsideration, the case is assigned to a FAB-NO Hearing Representative (HR) for evaluation. The HR assigned to review the case is to be a HR who has had no prior association with the case file.

The HR evaluates the evidence to determine whether it meets the evidentiary requirements set forth in 20 C.F.R. § 30.320(b). The HR also examines the case file, correspondence and evidence with regard to procedural errors and/or changes in the law, regulations, or policy.

If the HR determines that a reopening may be warranted, he or she transfers the case file to the

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#### 4. Claimant's Nonspecific Correspondence or Evidence.

(Continued)

FAB-NO Branch Chief along with a draft memorandum to the DEEOIC Director regarding the reopening.

b. Received in DO or DO FAB. If such nonspecific correspondence or evidence is received in a DO or a DO FAB after the deadline for a request for reconsideration, the correspondence or evidence is transferred, along with the case file, to the DD with jurisdiction over the case file. The DD reviews the evidence to determine whether it meets the evidentiary requirements set forth in 20 C.F.R. § 30.320(b), and examines the case file, correspondence and evidence with regard to procedural errors and/or changes in the law, regulations, or policy. If it does, the DD reopens the case by issuing a Director's Order to vacate the pertinent final decision or portion of the final decision.

c. Case Referred to the DEEOIC Director. If the DD is unsure of whether the evidentiary requirements set forth in 20 C.F.R. § 30.320(b) are met, or if some other circumstance of a compelling nature is present where authority to handle has not been delegated to the field, the DD refers the case to National Office for review and consideration. The DD prepares a memorandum to the DEEOIC Director recommending that the Director, or his or her designated representative, review the case for possible reopening.

Since the claimant has not requested a specific action, he or she is not notified that the case has been sent to the DEEOIC Director for review and possible reopening. The DEEOIC Director, or his or her designated representative, reviews the materials and issues a decision based upon the merits, if and only if a reopening is warranted. The Director, or his or her designated representative, does not issue a decision if a reopening is not warranted, and returns the case file to the appropriate DO with a brief memorandum outlining his or her rationale. See paragraph 7 below for procedures regarding cases sent to the DEEOIC Director for review.

#### 4. Claimant's Nonspecific Correspondence or Evidence.

(Continued)

d. Case Not Referred to the DEEOIC Director. Should the evidentiary requirements not be met, the FAB-NO HR or DD simply returns the nonspecific correspondence/evidence to the DO for filing in the case file. A National Office Policy Analyst drafts a brief memorandum to accompany the correspondence/evidence indicating that it was reviewed and found to be insufficient to warrant any further action. No decision denying a reopening will be issued in this situation, as the claimant did not request any specific action.

5. DD Communications About a FAB Decision. Under certain circumstances the DD may wish to communicate his or her concerns about a FAB decision (either a remand order or a final decision) to the Director of DEEOIC. In such instances, the case file is transferred to the Director of DEEOIC for review. The DD prepares a memorandum to the Director of DEEOIC outlining his or her concerns and requests the Director's review.

6. Review on Motion of Director. The Director of DEEOIC has the authority to determine if a claim should be reopened by vacating a FAB Final Decision or vacating a FAB Remand Order, even in the absence of a request. Such an action may occur for administrative reasons, due to procedural error, or due to a change in the law, regulations, agency policy, or it may occur for any other reason at the sole discretion of the Director. If the Director initiates such a review, the NO requests the case file from the District or FAB Office or delegates the authority to reopen through procedural bulletins.

7. Reopening a Claim and Vacating a FAB Decision. Only the Director of DEEOIC has the authority to reopen a claim by vacating a FAB Final Decision, except as specifically delegated in procedural guidance. The Director may use this authority at any time after any type of FAB decision is issued, including Final Decisions or Remand Orders. (See Exhibit 1).

7. Reopening a Claim and Vacating a FAB Decision.  
(Continued)

Should the Director, or his or her designated representative, vacate a FAB decision, a Director's Order is issued with instructions for the future handling of the claim. The case file is then returned to the DO, if necessary, or the FAB office responsible for carrying out the specified instructions.

a. Return of Case File to DO. Should the Director, or his or her designated representative, determine that additional development by the DO and/or a new Recommended Decision (RD) are required, the Director's Order contains instructions and the case file is returned to the DO with jurisdiction. The new RD is subject to the adjudicatory process as outlined in the regulations, and the claimant is afforded the right to file an objection within 60 days of its issuance.

(1) DO Disagreement. Should the DO disagree with the Director's Order or any of the Director's findings, such disagreement must be channeled through the DD to the NO. The Director will entertain only disagreements deemed material to the potential outcome of a claim. The procedural aspect of the reopening process remains solely in the realm of the Director's authority as granted by the regulations.

b. Return of Case File to FAB. Should the Director, or his or her designated representative, determine that only a new FAB decision is required, the Director's Order is issued with instructions and the case file returned to the appropriate FAB office. The new FAB decision is subject to the adjudicatory process as outlined in the regulations and may be reopened or vacated by the process set out in this chapter.

(1) Instructions to the FAB. Under no circumstances will the FAB deviate from the instructions contained in a Director's Order.

7. Reopening a Claim and Vacating a FAB Decision.  
(Continued)

The FAB must strictly comply with the Director's instructions.

(2) FAB Disagreement. Should the FAB disagree with the Director's Order or any of the Director's findings, such disagreement must be channeled through the FAB-NO Branch Chief to the NO. The Director will entertain only disagreements deemed material to the potential outcome of a claim. The procedural aspect of the reopening process remains solely in the realm of the Director's authority as granted by the regulations.

8. Reopening Multiple Claimant Claims. Given the procedure requiring each individual in a multi-claimant case record be party to a decision on entitlement benefits, situations may arise which require a prior final decision be reopened in order for a new recommended decision to be issued. This may be the result of new evidence presented after a final decision; or the development of new circumstances that necessitate reopening, such as the identification of a new potentially eligible survivor. In some situations, the new evidence may only directly affect one claimant; however, if there is any evidence justifying the reopening of one claim, all claims associated with the case file must be reopened, and a new recommended decision is issued to all parties to the claim.

9. Denying a Specific Request for a Reopening. The decision whether or not to reopen a claim is within the discretion of the Director. However, as described in paragraph 2 above, the Director has delegated authority to other individuals within the DEEOIC to deny some reopening requests.

a. Denial of the Reopening Request. If a reopening request is unsupported by new evidence, the request is denied by the Director or his or her representative to whom reopening authority has been delegated as described above.



9. Denying a Specific Request for a Reopening.

(Continued)

b. Issuing the Denial. The Denial of a Request for a Reopening is a formal denial of a reopening request accompanied by a cover letter to the claimant, and the claimant's authorized representative when required, that outlines the deficiencies in the reopening request warranting the denial. The Denial of a Request for a Reopening is accompanied by a Certificate of Service. Exhibit 2 shows a sample Denial of a Request for Reopening.

c. Post-Denial Actions. After a request for a reopening has been denied, whether by the Director of the DEEOIC or by his or her representative to which reopening authority has been delegated, the case file will be returned to the appropriate office, if not already there, for storage or further action as necessary.

10. Denying a Request to Vacate a FAB Remand Order. As noted above, only the Director of DEEOIC may vacate a FAB remand order. Requests to vacate FAB remand orders are usually generated from within DEEOIC. Should the Director agree with the remand order, he or she will deny the request to vacate by issuing a memorandum to the requesting party that outlines his or her findings. Only where the request is generated by the claimant is a formal denial issued by the Director.

11. ECMS Coding. All ECMS codes reflecting reopening requests, requests to vacate FAB decisions, and decisions granting or denying such requests must be properly entered pursuant to DEEOIC procedures.

Susan Spouse  
123 Street  
City, ST 12345

Dear Ms. Spouse:

I am writing in reference to your claim for survivor benefits under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

On July 20, 2007, the Final Adjudication Branch (FAB) issued a final decision denying your claim for benefits under Part E of the EEOICPA. The FAB found insufficient evidence to support a causal connection between your late husband's accepted pulmonary conditions and his death.

The EEOICPA allows for review by the Director of the Division of Energy Employees Occupational Illness Compensation (DEEOIC) of decisions issued by the FAB. It is within the Director's discretion to review and reopen such claims as necessary.

New medical evidence has been submitted in support of your claim that a link exists between Mr. Spouse's accepted pulmonary conditions and his death. Accordingly, the July 20, 2007 Part E final decision must be vacated. The attached Director's Order explains the reasons for reopening your Part E claim and instructs the Denver District Office to issue a new recommended decision.

Your file is being returned to:

U.S. Department of Labor, DEEOIC  
Denver District Office  
1999 Broadway, Suite 1120  
PO Box 46550  
Denver, CO 80201-6550

If you have any questions about the Director's Order, you may contact the Unit for Policies, Regulations and Procedures at 202-693-0081.

Sincerely,

[Name]  
[Title]  
DEEOIC

**EMPLOYEE:** Joe Spouse  
**CLAIMANT:** Susan Spouse  
**FILE NUMBER:** 123-45-6789  
**DOCKET NUMBER:** 00000000-2007

### DIRECTOR'S ORDER

The Energy Employees Occupational Illness Compensation Program Act (EEOICPA) regulations state that a final decision, or any other decision issued by the Final Adjudication Branch (FAB), may be reopened at any time on motion of the Director of the Division of Energy Employees Occupational Illness Compensation (DEEOIC). It further states that the case may be reopened without regard to whether new evidence or information is presented or obtained, and that the decision whether or not to reopen a case is solely within the discretion of the Director of the DEEOIC.

For the reasons set forth below, the July 20, 2007 Part E final decision is vacated. The case is returned to the Denver District Office to proceed as outlined below. The acceptance of your Part B claim is unaffected by this Director's Order.

### BACKGROUND

The evidence of record shows that you filed for benefits under Parts B and E of the EEOICPA as the surviving spouse of the employee, Joe Spouse. You claimed that your late husband developed chronic silicosis, pulmonary fibrosis, and pneumoconiosis as a result of his employment as a uranium worker.

Joe Spouse's death certificate, signed by James Doctor, M.D., verifies his date of death as April 19, 2003. The immediate cause of death is listed as multi-organ failure due to hepatocellular cancer. Other significant conditions contributing to his death were listed as colon polyps, hypertension, coronary artery disease, and renal cysts.

A marriage certificate verifies that you were married to the employee on [Date]. The employee's death certificate lists you as his surviving spouse at the time of his death.

The district office verified that you were awarded benefits as Joe Spouse's surviving beneficiary under Section 5 of the Radiation Exposure Compensation Act (RECA). The accepted medical conditions were chronic silicosis, pulmonary fibrosis, and pneumoconiosis.

On October 20, 2006, the District Office issued a recommended decision finding you entitled to compensation under Part B of the EEOICPA in the amount of \$50,000, based on your receipt of the RECA award. On December 11, 2006, the FAB issued a final decision affirming the findings of the district office and accepted your claim for benefits under Part B.

With regard to your Part E claim, the district office requested that you submit evidence to establish a causal link between the employee's death due to hepatocellular cancer and the approved conditions of chronic silicosis, pulmonary fibrosis, and pneumoconiosis.

When no additional evidence was provided, the District Office issued a recommended denial of your Part E claim on May 7, 2007. The district office concluded that a connection had not been established between the employee's accepted RECA conditions and his death. On July 20, 2007, the FAB issued a final decision affirming the findings of the district office and denied Part E benefits.

By letter dated October 15, 2008, you submitted a request to reopen your Part E claim. New medical documents were provided detailing the employee's medical condition from May 2002 through his death. The district office forwarded your case file to the Office of the Director for review and consideration of reopening your Part E claim.

## **DISCUSSION**

We have carefully reviewed your case file. Sufficient evidence has been submitted to warrant reopening of your Part E survivor claim.

The record now includes a progress note dated January 18, 2003, which indicates that the employee had a history of chronic obstructive pulmonary disease (COPD), for which he used an albuterol inhaler. The note states that the employee reported having chronic dyspnea for several months, which became worse over the previous month. An April 15, 2003 progress note indicates that the employee's oxygen saturation was maintained at 96% on two liters of oxygen. These records suggest that the employee was treated for a pulmonary condition in the months prior to his death.

For the reason that new medical evidence may establish a connection between the employee's accepted pulmonary conditions and his death, the July 20, 2007 final decision is no longer valid. Additional investigation is warranted to evaluate all factors that contributed to the employee's death.

### CONCLUSION

The July 20, 2007 final decision denying your Part E claim is vacated. The case is returned to the Denver District Office for further development. The claim should be referred to a District Medical Consultant (DMC) to determine whether or not the medical evidence of record is sufficient to establish that the employee's accepted pulmonary conditions were a significant factor in aggravating, contributing to, or causing his death.

Upon completion of all necessary development, a new recommended decision will be issued. Should you disagree with the recommended decision, you will be afforded the opportunity to raise such objection and request either an oral hearing or review of the written record.

Washington, D.C.

[Name]  
[Title]  
DEEOIC

**CERTIFICATE OF SERVICE**

I hereby certify that on \_\_\_\_\_  
was sent by regular mail to the following:

a copy of the Director's Order

Susan Spouse  
123 Street  
City, ST 12345

[Name]  
[Title]  
DEEOIC

Superseded

<Date>

Jane Claimant  
PO Box 12345  
City, State 67890

Dear Ms. Claimant:

I am writing in reference to your claim for benefits under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

On December 7, 2005, the Final Adjudication Branch (FAB) issued a final decision to deny your claim for breast cancer under Part B, because the probability of causation did not exceed the 50% threshold for compensability. On October 24, 2006, the FAB issued a final decision to deny your claim for breast cancer under Part E, because documentation did not establish that the condition was related to exposure to toxic substances.

The regulations provide that a claimant may file a written request that the Director of the Division of Energy Employees Occupational Illness Compensation (DEEOIC) reopen his/her claim. The decision whether or not to reopen a claim under this section is solely within the discretion of the Director.

On December 9, 2008, you requested reopening of your claim for benefits under Parts B and E of the EEOICPA. I have reviewed the objections and the evidence on file and find that your case is not in posture for reopening at this time. The attached Denial of Reopening Request provides further explanation of why there is insufficient basis to warrant reopening.

Your case file is being returned to:

U.S. Department of Labor, DEEOIC  
Jacksonville District Office  
400 West Bay Street, Room 722  
Jacksonville, Florida 32202

If you have any questions about this Denial of Reopening Request, you may contact the Unit of Policies, Regulations and Procedures at 202-693-0081.

Sincerely,

Director,  
Division of Energy Employees  
Occupational Illness Compensation

Superseded



**EMPLOYEE:** Jane Claimant

**CLAIMANT:** Jane Claimant

**FILE NUMBER:** XXX-XX-XXXX

**DOCKET NUMBERS:** XXXXX-2005  
XXXXXXXX-2006

### DENIAL OF REOPENING REQUEST

The Energy Employees Occupational Illness Compensation Program Act (EEOICPA) regulations provide that a claimant may file a written request that the Director of the Division of Energy Employees Occupational Illness Compensation (DEEOIC) reopen his/her claim. The regulations state that in order to support the request to reopen, a claimant must submit evidence of either covered employment or exposure to a toxic substance, or identify either a change in the probability of causation guidelines, a change in the dose reconstruction methods or an addition of a class of employees to the Special Exposure Cohort (SEC). The decision whether or not to reopen a claim under this section is solely within the discretion of the Director.

For the reasons set forth below, the request to vacate the December 7, 2005 Part B and the October 24, 2006 Part E final decisions of the Final Adjudication Branch (FAB) is denied. The case is returned to the Jacksonville District Office.

### BACKGROUND

The evidence of record shows that you, Jane Claimant, filed a claim for benefits under the EEOICPA. You claimed that you developed breast cancer as a result of your employment at a covered Department of Energy (DOE) facility. Medical records establish a diagnosis of breast cancer. Documentation confirms you were a DOE contractor employee at this facility from 1975 to 1997.

Your case was referred to the National Institute for Occupational Safety and Health to prepare a radiation dose reconstruction. The DEEOIC used the information supplied in the dose reconstruction report to determine whether your breast cancer is "at least as likely as not" related to radiation exposure during your employment at the Pinellas Plant. In this case, the dose reconstruction estimates resulted in a 18.26% probability. For compensability, the probability that cancer is work related must be 50% or greater.

On August 22, 2005, the district office recommended denial of your claim for benefits under Part B finding that your breast cancer was not “at least as likely as not” caused by radiation exposure at a covered DOE facility. On December 7, 2005, the FAB affirmed the findings of the district office and issued a final decision denying your claim.

The district office undertook development of your claim under Part E to determine a link between your claimed illnesses and exposure to a toxic substance. As part of this development, the district office conducted a search of the Department of Labor’s (DOL) Site Exposure Matrix (SEM), which acts as a repository of information related to toxic substances potentially present at a covered DOE facility. SEM data also shows whether there is a scientifically established relationship between specific toxic substance exposure and disease. However, source documents did not establish exposure to a specific toxic substance which could have caused, contributed to or aggravated your breast cancer.

In addition to the SEM search, the district office requested that you provide additional information in support of your claim under Part E. Specifically, by letter dated June 30, 2006, the district office requested information to support a link between your claimed conditions and exposure to a toxic substance. No further documentation was received.

On August 15, 2006, the district office recommended denial of your claim for breast cancer under Part E finding that the evidence was not sufficient to establish that the conditions developed as a result of work related exposure to a toxic substance at a covered DOE facility. By final decision dated October 24, 2006, the FAB affirmed the findings of the district office denying your claim for benefits under Part E of the EEOICPA.

By fax received on December 9, 2008, you requested reopening of your claim. Due to the nature of the request, your case file was transferred to the Office of the Director for review and consideration of reopening your claim under Parts B and E of the EEOICPA.

## **DISCUSSION**

After a careful assessment of your case record, I have concluded there is insufficient evidence to warrant reopening your claim. The request for reopening cited several technical objections challenging NIOSH’s dose reconstruction methodology. Furthermore, it challenged the Part E decision by

presenting a list of toxic substances along with human and non-human toxicity excerpts.

To determine the probability of whether you sustained cancer in the performance of duty, the district office referred your case to the Department of Health and Human Services (HHS) NIOSH for radiation dose reconstruction. NIOSH reported annual dose estimates from the date of initial radiation exposure during covered employment, to the date the cancer was first diagnosed. A summary and explanation of information and methods applied to produce these dose estimates, including your involvement through an interview and review of the dose report, are documented in the "NIOSH Report of Dose Reconstruction under EEOICPA." On July 26, 2005, you signed the OCAS-1, indicating the NIOSH Draft Report of Dose Reconstruction had been reviewed and agreeing that it identified all of the relevant information provided to NIOSH. The district office received the final NIOSH Report of Dose Reconstruction on August 2, 2005.

Methodology used by HHS in arriving at reasonable estimates of radiation doses received by an employee is binding on the DEEOIC. However, on May 20, 2009, a DEEOIC Health Physicist reviewed the dose reconstruction performed by NIOSH and the objections presented.

In the letter requesting reopening, you raised a number of points of contention with regard to your Part B claim.

These objections to the Part B decision denying your claim are challenges to the dose reconstruction methodology which is binding on the DEEOIC. Therefore, there is no basis for requiring a rework of the dose reconstruction and as such, the Health Physicist found no rationale to support reopening your claim.

In addition to the Health Physicist review, a DEEOIC Toxicologist reviewed the objections with regard to your Part E denial. In your request for reopening, you presented references pertaining to toxic chemical substances and their potential link to breast cancer. The DEEOIC toxicologist reviewed the most recent published literature of occupational medicine regarding toxic chemical exposure in the workplace and the potential development of adverse health effects. Review of the occupational desk references used by occupational health physicians and epidemiologists, which were peer reviewed by scientists, and the review of individual published studies that have investigated breast cancer, did not show a causal link between occupational exposures described in your letter and the development of breast cancer. As such, the toxicologist opined that it is

not "at least as likely as not" that exposure to toxic chemical substances at a covered DOE facility during a covered time period was a significant factor in aggravating, contributing to, or causing the employee's breast cancer.

In conclusion, I find there is no new technical evidence provided that requires a reopening of your Part B claim. As for Part E, the assessment on your claim was conducted appropriately and there is no link between toxic substance exposure and the claimed illness.

### CONCLUSION

Based upon the foregoing discussion, I find there is insufficient basis to warrant a reopening of the December 7, 2005 Part B and the October 24, 2006 Part E Final Decisions of the FAB. However, if you should obtain new and probative evidence that establishes a link between toxic substance exposure and your claimed conditions of breast cancer, the DEEOIC will reconsider its position.

Washington, D.C.

Director  
Division of Energy Employees  
Occupational Illness Compensation

**CERTIFICATE OF SERVICE**

I hereby certify that on \_\_\_\_\_ a copy of the Director's Order  
was sent by regular mail to the following:

Jane Claimant  
PO Box 12345  
City, State 67890

Director  
Division of Energy Employees  
Occupational Illness Compensation

Superseded