



RELEASE - TRANSMISSION OF REVISED MATERIAL TO BE
INCORPORATED INTO THE FEDERAL (EEOICPA) PROCEDURE MANUAL:
CHAPTER 2-1700, FAB Review Process.

EEOICPA TRANSMITTAL NO. 13-01

December 2012

EXPLANATION OF MATERIAL TRANSMITTED:

This material is issued as procedural guidance to update, revise and replace the text of EEOICPA Procedure Manual (PM) Chapter 2-1700, FAB Review Process. This version includes content previously part of Chapter 2-1800, FAB Decisions, including the following:

- Section 6, Objections and Review of the Written Record
- Section 7, Hearing Requests
- Section 8, Conduct of the Hearing
- Section 9, Post Hearing Actions

Additionally, the following exhibits have been removed from the previous version of Chapter 2-1700, FAB Review Process:

- Sample Cover Letter, Partial Acceptance/Partial Denial Recommended Decision
- Sample Waiver, Partial Acceptance/Partial Denial Recommended Decision

They have been replaced by the following exhibits:

- Exhibit 1, Sample Acknowledgement Letter, Review of the Written Record
- Exhibit 2, Sample Acknowledgement Letter, Hearing
- Exhibit 3, Sample Hearing Notice to Claimant Who Filed an Objection
- Exhibit 4, Sample Hearing Notice to Claimant Who Did Not File an Objection
- Exhibit 5, Waiver of Rights to Confidentiality
- Exhibit 6, Waiver of Rights to Confidentiality (Media)
- Exhibit 7, Sample hearing Script

Finally, this version also incorporates changes that have arisen since last publication of Chapter 2-1700, FAB Review Process, to include:

- Provides additional guidance on handling of Recommended Decisions, Final Decisions and Remand Orders returned by the Postal Service.
- Outlines handling of claims of non-responsive claimants
- Gives additional information regarding steps taken By FAB after new medical evidence is received.



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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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Exhibits

1 Sample Acknowledgment Letter, Review of Written Record
2 Sample Acknowledgment Letter, Hearing
3 Sample Hearing Notice to Claimant Who Filed an Objection
4 Sample Hearing Notice to Claimant Who Did Not File an Objection
5 Waiver of Rights to Confidentiality
6 Waiver of Rights to Confidentiality (Media)
7 Sample Hearing Script
8 Sample Letter to Postmaster
9 Sample Change of Address Letter

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 under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

2. Authority. The regulations governing the administration 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 (HR) 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 returning the case to the district office for additional development, 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. The FAB-DO is a distinct entity with a separate operational and management structure. 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.

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.

3. Organization. (Continued)

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

(b) Reconsideration requests are forwarded to FAB-NO, Attn: FAB Ops, and are assigned to an office different from that which issued the FD.

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

b. FAB Offices:

(1) Review RDs, conduct hearings, reviews of the written record, and issue FDs or Remand Orders on reviewed cases. The cases reviewed by FAB, and the cases for which FAB conducts hearings, can originate from any DO. A FAB Hearing Representative can be assigned a hearing anywhere in the nation; not just in his or her 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. Because each FAB office, including the FAB-NO, is separate and 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 HR for initial review. The CE or HR

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

timely reviews the RD for accuracy. The CE or HR reviews the evidence of record to ensure that all evidence and documentation referenced in the RD accurately describes what is in the file. The CE or HR also determines whether the claimant has filed a waiver, a written objection(s), or a request for a hearing. If some deficiency or defect is found which requires the case be remanded to the DO, the case is to be remanded immediately.

5. Waivers. A waiver gives a claimant(s) the opportunity to voluntarily relinquish their right to object to the findings and conclusions of law contained in a RD, either in part or in full. The 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.

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

b. 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.

However, in cases where the FAB has determined that the claimant is to be awarded less benefit than those identified in the RD, the FAB remands the claim to the DO for the issuance of a new RD.

c. 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.

If the claimant files a bifurcated waiver objecting to the denial of a claim, but waiving his right to object to another portion which has been accepted, the FAB issues a

5. Waivers. (Continued)

timely FD adjudicating the waived portion of the RD. FAB then issues a separate FD adjudicating the objected-to portion of the RD after a review of the written record or a hearing, or upon the expiration of the 60-day period in which the claimant may submit objections or new evidence. However, in cases in which a claim is recommended for denial based on multiple components, and the claimant objects to one or more portions of the denial, the FAB must issue a single FD adjudicating all components of the RD.

If FAB receives a bifurcated waiver that is unclear, or does not specify to which portion of the decision the claimant objects, FAB contacts the claimant for clarification prior to conducting its review and issuing its decision.

6. Objections and Review of the Written Record. The regulations allow a claimant to file written objections to all or part of a RD. When the claimant has submitted a timely written objection to a RD, but has not requested a hearing, FAB conducts a review of the written record.

a. 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 in general.

A written objection is considered timely if the envelope containing it is postmarked no later than the 60th calendar day after the RD issuance date (the date of the RD is not included in the 60 calendar days). If the 60th 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 it is received, 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. Any

6. Objections and Review of the Written Record. (Continued)

objection filed after the 60-day objection period has passed is reviewed by FAB to determine if it is material to the outcome of the claim.

b. Review of the Written Record. A review of the written record 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.

If the claimant objects to one portion of the RD and agrees with the other portion, the FAB may issue a FD on the 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.

(1) 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. A sample acknowledgement letter is shown in Exhibit 1. It is the policy of the Division of Energy Employee's Occupational Illness Compensation (DEEOIC) that the acknowledgement letter to the claimant(s) that did not submit the objection should indicate that an objection was received, but should not indicate the basis of the objection. Each claimant's response to any objections is reflected in ECS.

(2) 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

6. Objections and Review of the Written Record. (Continued)

representative considers the written record forwarded by the DO and any additional evidence and/or argument submitted by the claimant.

After the review of the written record, 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 review of the written record contains a narrative summation of the claimant's objections, and the HR/CEs assessment of the evidence in response to those objections. The HR/CE ensures that any decision is based on an objective analysis of the evidence; and applies well-reasoned judgment, sound exercise of discretion, and correct application of law, regulations, and DEEOIC policy and procedures.

7. Hearing Requests. An oral hearing permits the claimant, his or her authorized representative, and any witnesses to voice objections to a HR.

a. Initial Handling of Hearing Requests. When a timely request for an oral hearing is received in the DO, action is immediately taken to forward the request to the FAB-NO. The referring office makes note of 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 five FAB offices.

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 2 for a sample acknowledgment letter. Each claimant party to the FD is to be sent an acknowledgment. The acknowledgement must be sent 30 days prior to the date of the hearing and includes the following notifications:

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

7. Hearing Requests. (Continued)

compelling reasons to the contrary.

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

(3) The FAB, at its discretion, may schedule a telephone or video conference 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 an HR from any one of the five FAB offices. The hearing scheduler sends a hearing acknowledgment letter, schedules a date and time for the hearing, reserves the physical space for the proceedings, arranges for a court reporter to record the proceedings, and transmits the entire case file to the assigned HR. All pertinent information relating to the hearing and related correspondence is captured in ECS.

d. Scheduling. Each claimant is provided written notice of the hearing at least 30 days prior to the scheduled date (unless waived by the claimant); advised that a one week 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 3 and 4 for Sample Hearing Notice letters.

(1) Travel to Hearing. While the FAB will try to set the hearing within a reasonable distance of the claimant, the claimant may be required to travel up to 200 miles roundtrip to attend the hearing. There is no reimbursement 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

7. Hearing Requests. (Continued)

travel expenses as outlined in 20 C.F.R 30.314(2).

In instances when multiple claimants request a hearing, the hearing is scheduled nearest the first claimant who requested a hearing. The remaining claimants are given the option to attend the hearing in person or participate via telephone.

(2) Telephonic and Video Conference Hearings. A hearing may be conducted by telephone or video conference 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.

(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 to a telephone hearing if a claimant or authorized representative so requests. This change must be coordinated through the hearing scheduler.

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 or authorized representative.

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

The HR contacts the claimant(s) by telephone prior to the hearing to confirm they are planning to attend the hearing at the arranged date, time and location.

7. Hearing Requests. (Continued)

(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 claimant or authorized representative should provide at least 24 hours notice. The FAB will make every effort to accommodate timely requests to postpone a hearing.

In such cases, a new hearing will be set for the next hearing trip. Hearing scheduling unit supervisor 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 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 will be undertaken. If new evidence or argument accompanied the objection, it will be reviewed in the review of the written record.

(6) Cancellation of Hearing. If upon review, the HR determines that an error or other deficiency in the RD 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.

When a hearing is canceled for any reason, 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

7. Hearing Requests. (Continued)

evidence or materials submitted by the claimant, and conducts whatever additional investigation is deemed necessary to prepare for the proceedings. 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.

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

If more than one RD is pending a FD, 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 RD for which a timely objection was not filed. All telephonic contact prior to the hearing is documented in ECS.

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

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

7. Hearing Requests. (Continued)

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 on Another. If a claimant has requested a hearing on one outstanding RD and a review of the written record on another, the HR allows the claimant to present evidence about the objections which are not the subject of the hearing, so long as FAB has not issued a FD on the review of the written record request.

[If FAB has issued a FD on the request for review of the written record, see paragraph (4) below.]

(a) The objections and evidence are considered at the hearing and addressed in the post-hearing FAB decision. No review of the written record decision is issued. ECS must be updated 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 may contact the claimant who requested a review of the written record and ask if he or she would like to address objections to the RD for which a review of the written record was requested at the time of the hearing on the other RD. If he or she agrees, the Review of the Written Record is changed to a hearing in ECS. If he or she declines, his

7. Hearing Requests. (Continued)

or her objections will be reviewed as part of the hearing decision. Coding in ECS must be updated 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 ECS 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 request for Review of the Written Record objections and the objections discussed at the hearing will be addressed in one FD.

(3) Hearing Request on One RD, No Objection Filed on Another. While awaiting a hearing on one RD, the FAB may issue a FD on another RD if the 60-day period for objecting has passed without objection from the claimant. However, if at the time of a hearing, there is one or more pending RDs, the claimant may offer testimony or evidence in response to any of the pending decisions, even if outside of the 60-day period in which to object. The FAB HR must subsequently address such testimony or evidence to determine whether a FD or Remand Order is appropriate.

(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

7. Hearing Requests. (Continued)

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 evidence is referred to the DD with jurisdiction over the case file for reopening consideration.

8. 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.

(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 Exhibits 5) before convening the hearing. The claimant(s) sign a separate waiver (see Exhibit 6) 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

8. Conduct of the Hearing. (Continued)

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 National Institute for Occupational Safety and Health (NIOSH) Dose Reconstruction issues, the HR strictly follows the hearing script shown as Exhibit 7. 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 FD 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, or that NIOSH did not address a specific incident discussed in the phone interview. 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

8. Conduct of the Hearing. (Continued)

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 way NIOSH performs 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.

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 also related to methodology,

8. Conduct of the Hearing. (Continued)

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 or 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 the claimant(s), any authorized representative nor 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

8. Conduct of the Hearing. (Continued)

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.

The HR is responsible for maintaining order during the hearing. The HR should keep testimony on point. Should any of the hearing attendees cause a disruption or unreasonable delay in the proceedings, the hearing representative will warn the disruptive attendee and terminate the hearing if the warning goes unheeded.

(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.

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.

9. Post-Hearing Actions. After the hearing, the HR obtains a copy of the transcript from the reporting service. FAB must timely send the claimant a copy of the hearing transcript.

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 independently assesses the evidence, analyzes the conclusions of the RD for appropriate application of law, regulations and procedures, and evaluates the objections. If a determination can be made without further development, the HR issues a FD.

c. Disposition of Case File. Once the HR issues the FD, the case file is returned to the DO that issued the contested decision, unless additional FAB review is needed on an outstanding RD.

10. Receipt of New Claim or New Medical Evidence. 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.

a. 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 Pertaining to Claimed Condition. If the evidence pertains to a previously 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 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 does not support a reversal of the RD to deny, FAB upholds the denial.

(c) If FAB concludes that the new medical evidence does not support a reversal of the RD, but that further development is needed, FAB remands the case to the DO.

(2) New Medical Evidence of an Unclaimed Condition. If new evidence is of a condition that has not yet been claimed, 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. FAB then proceeds with its review of the case and issues the FD on the claimed conditions.

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

b. 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 the conditions are determined to be duplicative, 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 certain instances, a subsequent claim for a condition such as skin cancer may lead to the need for further development.

In the event the claim is for a condition which has not previously been claimed, the FAB transfers the case file to the CE2 to add a new claim or a new medical condition to an existing claim 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.

(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, the issue is forwarded to the CE2 for development. FAB then issues a FD on the matter adjudicated in the RD and notes in the opening of the FD that the development of the new claim is pending by the DO.

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

(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 for a review of a RD awarding benefits, the case is forwarded to the CE2 to acknowledge receipt of the new claim and to advise that the DO will develop the newly claimed condition. FAB then proceeds to issue a FD on the conditions adjudicated in the RD.

(3) New Claimant. In multi-claimant cases, if a new claim is received while the case is at FAB, and the claimant had not previously filed a claim, FAB remands the case to the district office for development of the new claim.

11. 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 FD. 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).

11. One Year Requirement. (Continued)

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 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 to the attention of the Office of the Director. The memo requests that the regulatory/administrative FD (based on the one-year rule) be vacated so a formal FD can be issued.

Once the case file is received in the National Office, an assessment will be undertaken to determine whether it is necessary to vacate the regulatory/administrative FD. The Director may choose to allow an administratively finalized decision to stand and not issue a Director's Order. However, if a Director's Order is deemed necessary, it will specify whether the case file needs to be returned to FAB for a FD or to the DO 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.

12. CE2 Designated to the FAB. FAB offices are geographically located as noted in section 3 above. However, since DO adjudicatory functions are sometimes required while a case is at FAB, 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 hearing or review 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. Assign CE2 Role. To enable the CE2 role, the District Director (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.

c. 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 claim 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.

d. 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.

12. CE2 Designated to the FAB. (Continued)

If DO development is required where no co-located memorandum exists in the case file, FAB writes a 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.

e. CE2 and FAB Coordination. 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 needs of the FAB CE or HR take precedence.

f. 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 inputs the appropriate action status in ECS. 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 or journey level 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 returns the case to the FAB and reflects the transfer of the case in ECS. It is particularly important to issue a RD if the claim element is in posture for acceptance.

If additional elements of the claim require development, the CE2 prepares a memorandum as outlined below. There is no need to rush to issue a RD denying a claim element if alternate elements are being deferred. In such a situation, the CE2 should wait until the deferred elements are resolved before proceeding with a RD. An exception to this rule is if

12. CE2 Designated to the FAB. (Continued)

a hearing date has been requested or scheduled. In these cases, the CE2 proceeds with any appropriate denial 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 permit the CE2 to issue an additional RD, he or she completes whatever development is possible and returns the case to FAB. The CE2 prepares a memorandum on gold-colored paper to the DD explaining what development actions have been taken and what future actions are required. The memorandum is spindled on top of the case file. 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.

g. RD Returned by Postal Service. If the case file is at the FAB for review of a RD, and the Postal Service returns the RD sent to a claimant as undeliverable, the assigned FAB CE or HR should quickly ascertain whether a simple mailing mistake (e.g. typographical error) occurred that is easily rectified, or whether the claimant's mailing address is no longer valid. If the FAB CE or HR determines that the claimant's mailing address is invalid, he or she transfers the case record to a CE2 for development. Once the CE2 receives the transfer; he or she evaluates the case evidence to identify any information that could help locate the claimant. The CE2 investigation should include making a reasonable effort to obtain new information that may assist in identifying the claimant's valid mailing address. For example, the CE2 should request a forwarding address from the Post Office closest to the claimant's last known address. See Exhibit 8.

(1) Correct Address Not Found. If the CE2 cannot obtain the claimant's current address, the CE2 places a memorandum in the file listing the actions taken to locate the claimant, and then administratively closes

12. CE2 Designated to the FAB. (Continued)

the claim until receipt of the claimant's valid mailing address.

(2) Correct Address Found, Claimant Did Not Notify DO. In the event the CE2 obtains the claimant's current address, and the claimant did not notify the DEEOIC in writing of that change, the CE2 sends the claimant a copy of the RD from the file. The CE is to prepare a separate request to the claimant asking for written notice of his or her address change (See Exhibit 9). The letter is to allow 30 days for the claimant to submit written confirmation of his or her address change. The CE then files a memorandum into the case describing the actions taken regarding the address problem, and transfers the case file back to the FAB. The FAB does not issue the FD until receipt of a written confirmation from the claimant of the correct mailing address. If the claimant does not submit a written confirmation of his or her address change within the 30 days requested, the FAB administratively closes the claim.

(3) Correct Address Found, Claimant Notified DO. In the event the CE2 obtains written confirmation of the claimant's proper address, and the wrong-address problem was not the claimant's fault, the CE2 coordinates with the DO to re-issue the RD to the claimant with a new issuance date. In a multiple person claim, the CE must reissue the RD to all claimants, with a brief explanation of the matter contained in the RD cover letter. The CE2 spindles a memorandum explaining the situation into the case file. The CE2 then transfers the case file back to the assigned FAB CE/HR.

(4) Multiple Claimants. If a case has multiple claimants, and the Postal Service returns one or more claimants' RDs because of an incorrect address, the CE2 undertakes development individually for each returned RD in accordance with the instruction provided above. At the conclusion of the CE2's

12. CE2 Designated to the FAB. (Continued)

development, he or she prepares a memorandum for the case describing the outcome of development, which could include administrative closure for claimants with an invalid address. The CE2 then returns the case to the FAB. The FAB CE or HR may then proceed to issue a FD to all claimants for which a valid and confirmed mailing address exists. Claims administratively closed due lack of correct mailing address, or failure to return written confirmation of a new address within a 30 days, are referenced in the FD; however, the effected claimants are not party to the decision. The FAB explains in the FD that any shares of payable compensation on an administratively closed claim is held in abeyance until the claimant provides written confirmation of his or her correct mailing address.

h. FD Returned by Postal Service. If the FAB has issued a FD and the Postal Services returns it as undeliverable, the responsible CE or CE2 staff person is to ascertain the correct mailing address for the effected claimant. If the assigned staff person obtains written confirmation of a new address from the claimant, he or she is to mail a copy of the FD to the claimant's new address. In the event that the assigned staff person is unable to obtain a written confirmation of a new address, he or she is to refer the claim to the appropriate DO contact to initiate an administrative reopening. The assigned DO staffer will draft a Director's Order for the file explaining that the mailing address of the claimant is invalid, attempts to obtain a valid address were unsuccessful, and that a reopening is necessary to allow for an administrative closure. In a multiple claimant situation, reopening and administrative closure will only apply to those claims where the DO cannot confirm an address. However, later, if the DO receives written confirmation of a valid address on an administratively closed claim, it may then become necessary to reopen the other claims to permit for a reissuance of a unified FD.

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 you object 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).

Your 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

SAMPLE ACKNOWLEDGMENT LETTER, HEARING

Dear Claimant Name:

The Final Adjudication Branch of the Division of Energy Employees Occupational Illness Compensation (DEEOIC) has received and docketed your letter dated _____, objecting to the recommended decision of the district office dated _____. 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 a reasonable distance from your home at a government building or DEEOIC Resource Center. The hearing may be conducted with a FAB hearing representative in the hearing room or at another location via video teleconferencing. The hearing may also be held via telephone. 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,

Hearing Representative

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). 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

Enclosure

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,

Hearing Representative

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)

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.

(signature)

SAMPLE HEARING SCRIPT FOR A HEARING INVOLVING NIOSH DR ISSUESCONVENING 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.

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

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