

U.S. Department of Labor

Office of Workers' Compensation Programs
Division of Energy Employees Occupational
Illness Compensation
Washington, DC 20210



RELEASE - TRANSMISSION OF REVISED MATERIAL TO BE
INCORPORATED INTO THE FEDERAL (EEOICPA) PROCEDURE MANUAL:
CHAPTER 2-1200 ESTABLISHING SURVIVORSHIP.

EEOICPA TRANSMITTAL NO. 16-07

June 2016

EXPLANATION OF MATERIAL TRANSMITTED:

This material is issued as procedural guidance to update, revise and replace the text of EEOICPA Procedure Manual (PM) Chapter 2-1200, Establishing Survivorship. This version incorporates changes that have arisen since the last publication of Chapter 2-1200, Establishing Survivorship:

- Removes pagination from the Chapter and the Page Number column from the Table of Contents.
- Removes the footer on all pages subsequent to the Table of Contents.
- Provides updated guidance regarding who may file a claim on a survivor's behalf and no requirement for filing a Part E claim when an accepted Part B claim exists for Section 4 "Filing a Claim for Survivor Benefits."
- Includes clarifying guidance regarding evidence used to establish causal relationship between exposure and death for Section 6 "Linking Employee's Death to an Occupational or Covered Illness."
- Includes new guidance for Section 8 "Surviving Child" regarding "Posthumously Conceived Children."

- Provides updated guidance regarding the allocation of compensation for multiple eligible survivor payees for Section 12(f) "Issues During the Payment Process."

Rachel P. Leiton

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

Filing Instructions:

Remove

PM Ch. 2-1200 and Exhibits

Insert

PM Ch. 2-1200 and Exhibits

File this transmittal behind Part 2 in the front of the 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.

TABLE OF CONTENTS

| <u>Paragraph and Subject</u> | <u>Date</u> | <u>Trans. No.</u> |
|--|-------------|-------------------|
| <u>Chapter 2-1200 Establishing Survivorship</u> | | |
| Table of Contents. | 06-16 | 16-07 |
| 1 Purpose and Scope. | 06-16 | 16-07 |
| 2 Policy | 06-16 | 16-07 |
| 3 Eligible Survivors | 06-16 | 16-07 |
| 4 Filing a Claim for Survivor Benefits. | 06-16 | 16-07 |
| 5 Establishing Employee's Death. . . | 06-16 | 16-07 |
| 6 Linking Employee's Death to an Occupational or Covered Illness. | 06-16 | 16-07 |
| 7 Surviving Spouse | 06-16 | 16-07 |
| 8 Surviving Child. | 06-16 | 16-07 |
| 9 Parents, Grandchildren, Grandparents | 06-16 | 16-07 |
| 10 Potential for Additional Survivors. | 06-16 | 16-07 |
| 11 Claims Involving Multiple Claimants. | 06-16 | 16-07 |
| 12 Issues During the Payment Process. | 06-16 | 16-07 |
| 13 Alternative to Filing a Survivor Claim Under Part E. | 06-16 | 16-07 |
| <u>Exhibits</u> | | |
| 1 Sample Letter to Potential Survivor Advising of Right to File Claim . | 06-16 | 16-07 |
| 2 Sample Alternative Filing Acknowledgement Letter. | 06-16 | 16-07 |
| 3 Sample Alternative Filing Determination Letter. | 06-16 | 16-07 |

Part 2 - Claims

Establishing Survivorship

1. Purpose and Scope. This chapter contains procedures for the development and review of survivor claims under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). It also describes the process followed when a non-covered spouse or child opts for the alternative to filing a Part E claim.

2. Policy. The Claims Examiner (CE) is responsible for processing survivor claims and ensuring that benefits are properly paid to eligible survivors under the provisions of 42 U.S.C. 7384s(e) and 7384u(e) for Part B and 42 U.S.C. 7385s-1(2), and 7385s-3 for Part E.

3. Eligible Survivors. If an employee eligible for EEOICPA benefits is deceased, one or more of the employee's survivors may file a claim for compensation under the EEOICPA. The claimant documents his or her relationship to the covered employee. If he or she does not present evidence to establish survivorship, the CE writes to the claimant requesting the necessary evidence. When developing a survivorship claim, the CE sends letters to all survivors claiming benefits, requesting medical and employment evidence sufficient to establish eligibility of the deceased employee. However, a request for documentation necessary to support the eligibility of a specific claimant is sent to that claimant.

When a survivor files a claim, the CE is responsible for adjudicating the claim(s) and for processing any compensation which may be payable in the order of eligibility outlined below.

a. Part B. Compensation may be payable to eligible survivors in the following order: spouse, children, parents, grandchildren, and grandparents of the deceased covered Part B employee.

b. Part E. Compensation may be payable to eligible survivors in the following order: spouse; then children who were under the age of 18 years at the time of the employee's death, or under the age of 23 years and continuously enrolled as a full-time student since attaining the age of 18 years at the time of the employee's death, or were any age and incapable of self-support at the time of the employee's death.

Unlike Part B, the following claimants are not eligible for survivor benefits under Part E: adult children (with the

Part 2 - Claims

Establishing Survivorship

exception of those meeting the requirements of incapable of self-support at the time of the covered employee's death), parents, grandchildren, and grandparents of the deceased covered Part E employee.

c. Conviction of Fraud. A person convicted of fraud in the application for or receipt of benefits under the EEOICPA or any other federal or state workers' compensation law forfeits any entitlement to the EEOICPA benefits for any occupational illness or covered illness due to an exposure on or before the date of the conviction.

4. Filing a Claim for Survivor Benefits. A claim for survivor benefits must be in writing. The Division of Energy Employees Occupational Illness (DEEOIC) considers any written communication that requests survivor benefits under the EEOICPA as a claim for purposes of case creation and claim development. However, a claimant must submit a completed and signed Form EE-2 for DEEOIC to fully adjudicate the claim and issue a Recommended and Final Decision.

a. Acting on Survivor's Behalf. A person acting with legal authority on behalf of a survivor may file a claim under the EEOICPA for that survivor including individuals serving as Power of Attorney or Conservators. In the case of a minor child, it is preferable that a parent or legal guardian complete the form on the child's behalf. A legal guardian is a person with the responsibility for providing care and management of a child and his or her affairs.

b. No New Claim Needed for Part E. In some instances, a claimant may file for a Part B claim without knowledge that consideration exists for Part E benefits. In these situations, there is no need for a survivor to file a new claim for benefits under Part E when there is an existing, accepted Part B claim for that survivor, or when the survivor filed a Part D claim (Form 350.2) with Department of Energy (DOE). In these instances, the CE is to consider each survivor a claimant under both Part B and E. In any scenario where it is not clear as to the intent of a survivor to seek benefits under Part B or E, the CE must seek clarification from the survivor and, if necessary, obtain submission of a signed EE-2 claim form.

c. Excluding Claims Due to Tort or State Workers' Compensation Benefit. A survivor may choose to exclude

Part 2 - Claims

Establishing Survivorship

from his or her claim any condition caused by an exposure for which there has been a settlement from a tort action or, under Part E, any condition leading to receipt of a payment under a state workers' compensation program. This may preclude any need to reduce payable benefits. (Refer to Procedure Manual (PM) Chapter 3-0400, Tort Action and Election of Remedies and PM Ch. 3-0500, Coordinating State Workers' Compensation Benefits.)

5. Establishing Employee's Death. The first step a CE should take in a survivor claim is to obtain the necessary evidence to establish the death of an employee.

a. Death Certificate. The document used to verify the death of an employee is a death certificate, typically issued by an official state or local governing agency. For the most part, a death certificate lists the name of the decedent, date of death, his or her marital status at time of death, usual occupation, and cause of death certified by a physician or some other official. In cases where a death certificate has not included all of the causes of death, the CE must conduct additional development (i.e., requesting medical records from the last 12 months of the employee's life, referral to a Contract Medical Consultant (CMC), etc.) to verify the additional causes of death. A death certificate is required to be submitted to confirm the death of an employee in a survivor claim filed under Parts B and E.

(1) An official copy (stamped) of an employee's death certificate is not required. A copy can be accepted.

(2) Some states have implemented the use of electronic death certificates, which may be used to establish the death of the employee. To be acceptable, a printed copy of the electronic record must be obtained that identifies the certifying official. If a physician is the certifying official, his or her license number must also be included.

6. Linking Employee's Death to an Occupational or Covered Illness. For a compensable claim under Part B, it must be shown that the employee was diagnosed with an occupational illness including: cancer, chronic beryllium disease or chronic silicosis. The evidence does not need to show that any one of these conditions was linked to the employee's death, merely that

Part 2 - Claims

Establishing Survivorship

one or more was diagnosed. This also applies to an occupational illness that develops over the course of the employee's life and resolves by way of medical treatment.

However, for a compensable claim under Part E, the evidence must establish that an occupational exposure to a toxic substance was "at least as likely as not" a significant factor in causing, contributing to, or aggravating the death of the employee. For this determination, the CE may reference factual or medical evidence to assist in reaching a decision, including a death certificate or medical records proximate to the date of the employee's death. The CE must also be ready to evaluate the effect that an accepted consequential illness had on the death of an employee.

7. Surviving Spouse. For either a Part B or Part E claim for spousal survivorship, the necessary documentation to establish a viable claim usually consists of a copy of the marriage certificate issued or recognized by a State Authority or an Indian Tribe Authority. A "Certificate of Blessing of Marriage" from a church is not considered the equivalent of a marriage certificate. A marriage license is also unacceptable. To be an eligible surviving spouse, the spouse must have been married to the employee for one year immediately prior to the death of the employee. This prior year includes the date of marriage, through the day prior to the date of death. For example, if an employee married on September 4, 2004 and died on September 3, 2005, the CE does not include September 3, 2005 when calculating the required 365-day term. The CE counts each calendar day from September 4, 2004 up through and including September 2, 2005.

a. In cases where evidence shows that the employee was previously married, it is not necessary to obtain proof of divorce. However, in the event that the evidence in a case raises concern as to the legitimacy of the marriage for which survivorship is being established, the CE must develop further and obtain a copy of the divorce decree (or death certificate if marriage ended due to death of spouse) validating that the marriage was dissolved.

b. In some instances, a common-law marriage may exist between the employee and the surviving partner. When the evidence does not sufficiently establish that the claimant had a licensed/certified marriage with the employee for the 365 days immediately prior to the employee's death - or where there is some evidence to suggest that the marriage

Part 2 - Claims

Establishing Survivorship

was not valid - the CE may have to gather sufficient evidence to make a determination as to whether the parties established a common-law marriage *in a state or other territory which authorizes such marriages*. As a general rule, in those states that legally permit it, the existence of a common-law marriage is determined by the law of the state where the alleged common-law marriage was allegedly entered into and that has the most significant relationship to both spouses and to the alleged marriage. If full development of the claim results in evidence that the alleged common-law marriage occurred in a state that does not allow the creation of such marriages within its borders - and no other state is involved - the inquiry may end there.

(1) The CE must develop evidence sufficient to establish that any claimed (or potential) common-law marriage meets two threshold issues. The first is *when* the common-law marriage was entered into, and the second is *where* it was entered into.

(2) Once the "when and where" elements have been established, the CE proceeds with additional development to document the five standard elements of a common-law marriage outlined in the *DEEOIC Common-Law Marriage Handbook*.

(3) Evidence which may be used to document a common-law marriage may consist of the following items, as delineated in the handbook: affidavits, marriage and divorce documents, death certificates, children's records, real estate documents, tax records, banking and loan documents, contracts including insurance documents, employment documents, medical records, tribal documents, wills, trusts, power of attorney documents, utility bills, letters, and/or other significant formal or informal documents.

(4) The burden to produce all necessary evidence and to establish each element of their eligibility by a preponderance of the evidence rests with the claimant(s). The purpose of development regarding a claimed common-law marriage is to obtain sufficient information and probative evidence to support a determination regarding whether a common-law marriage was ever created, and if so, its duration. If the

evidence is sufficient to reach a decision, the CE proceeds with adjudication. If the legality of the common-law marriage is not clear, or is in dispute, the case file, along with a memorandum of explanation, is referred to the National Office Policy Branch for guidance.

8. Surviving Child. A "child" of an individual under both Parts B and E of the EEOICPA can only be a biological child, a stepchild, or an adopted child of that individual. A person who is or was a dependent of the employee but does not fit within the definition of a qualifying "child" is not an eligible survivor. In the vast majority of situations, a birth certificate showing the employee as the parent of a child is sufficient to establish survivorship. Where the claimant claims to be a child of the deceased employee and the birth certificate does not list the deceased employee as the father or mother of the claimant, the CE must undertake development to ascertain the circumstances of the claim. In those situations where evidence is received that contradicts the paternity of the child or his or her connection to the employee, the CE must proceed with development. The CE must use discretion when evaluating evidence in support of a survivorship claim and weigh all evidence received in its totality.

a. Categories of eligible children.

(1) Biological Child. The term "biological child" is broad and refers to all persons with either a presumed or established genetic link to a deceased employee. Because a recognized natural child is presumed to have a genetic link to a deceased employee, a recognized natural child is one type of biological child. Another type of biological child is a person whose birth certificate lists the deceased employee as their mother or father, because these persons are also presumed to have a genetic link to their listed mother and father. However, these two presumptions may be rebutted if substantial evidence exists that rebuts the existence of the genetic links, consistent with 20 C.F.R. § 30.111(d). The final type of biological child is any person who can establish an actual genetic link to a deceased employee through the submission of probative DNA evidence that shows such a link.

(2) Stepchildren. Claims for eligibility as a stepchild will be decided by the District Offices (DO) unless there is an issue that cannot be determined by the CE. In circumstances where the status of a stepchild as a potentially eligible survivor cannot be determined, the matter is referred to the National Office Policy Branch.

(a) A stepchild is defined as any individual who establishes a parent-child relationship with the employee through the marriage of their parent to the employee. This determination is made once the CE receives documentation from the stepchild in support of their claimed relationship. This must include evidence of the marriage between the employee and the parent of the stepchild.

(b) Documentation supporting a regular parent-child relationship may include school records (e.g., report card) listing the employee as having a familial relationship to the stepchild, employment or tax returns showing that the covered employee claimed the stepchild as a dependent, photographs taken at family gatherings, newspaper articles, obituaries, insurance policies listing the stepchild as the son or daughter of the covered employee, wills, affidavits from biological children of the employee, and/or any other documents that refer to the stepchild and the deceased employee in a familial way.

(c) Under Part B, where a stepchild was an adult at the time of the deceased employee's marriage, the evidence will be considered on a case-by-case basis. Evidence that may document eligibility includes records that the stepchild was the primary contact in medical dealings with the deceased employee, that the stepchild provided financial support for the deceased employee, and/or provided housing for the deceased employee, etc. Evidence consisting of medical reports, letters from the physician, or receipts showing that the stepchild purchased medical equipment, supplies or medication for the employee may be helpful. These items of evidence

will be considered on a case-by-case basis and each is weighed together to fully evaluate the eligibility of the survivorship claim.

(d) There is no minimum time requirement for a stepchild to have lived in the same household as the covered employee or for their parent to have been married to the employee, merely that a parent-child relationship existed. To determine if a parent-child relationship existed, the CE or Final Adjudication Branch (FAB) representative must consider the above information in conjunction with the following: Did the stepchild visit the employee during the holidays?; Did the stepchild take care of the employee for days at a time?; and is it logical that the stepchild and employee stayed at one another's home at any given time? As long as a reasonable basis exists to show that a parent-child relationship existed, the CE can make an affirmative finding.

(e) For claims involving a divorce between the biological parent and the stepparent, the dissolution of the marriage does not terminate the parent-child relationship for eligibility purposes. As such, because a parent-child relationship did exist at one time, the child is considered an eligible stepchild. An ongoing parent-child relationship following divorce is not necessary.

(f) The CE or FAB representative must consider the totality of the evidence when determining whether the stepchild qualifies, and must provide the rationale supporting whatever outcome in the Recommended and/or Final Decision.

(3) Adopted Child. An adopted child is defined as a child that is not biologically related to the employee, but whose parental responsibilities have been permanently transferred by a legal mechanism to the employee. The CE obtains the relevant legal document(s), whether state, tribal, or otherwise, confirming the transfer of responsibility to the

employee.

(4) Posthumously Conceived Children. Advances in medicine and science have enabled the storage of human reproductive material (egg, sperm or embryo) as to allow for posthumous conception of children. DEEOIC considers a posthumously conceived child of the employee to be an eligible survivor to the extent permitted by local or state law. In those survivor claims involving a posthumously conceived child, the assigned CE refers the case to the National Office Policy Branch so it can obtain a legal opinion from the Office of the Solicitor of applicable local or state law in deciding the status of the child as an eligible survivor under the Act.

b. Qualifications for eligibility under Part B vs. E.

(1) All Surviving Children. A surviving child is a biological, stepchild, or adopted child of the employee regardless of age.

(2) Part E Surviving Child Only. Under Part E, a "covered child" must also have been, *as of the date of the employee's death*: either under the age of 18 years, under the age of 23 years and a full-time student who was continuously enrolled in one or more educational institutions since attaining the age of 18 years, or any age and incapable of self-support regardless of their marital status.

(a) Student Status. To be considered a full-time student at the time of the employee's death, the child must have been continuously enrolled as a full-time student in one or more educational institutions since attaining the age of 18 years and must not have reached the age of 23 years, regardless of marital status or dependency on the employee for support.

(1) Enrollment as a full-time student generally consists of a 12-month period, with a break of no more than four months, during each year of post high school education.

(2) If the child's status as a full-time student is uncertain, the CE consults the academic institution to determine what was considered to be the minimum number of hours required to qualify as "full-time" (versus part-time), at the time of the child's enrollment, as this may vary from one institution to another.

(3) With certain programs such as co-op, intern, or graduate school programs, while the student might not actually be enrolled in any courses for a particular term, he/she could still be "registered" as a full-time student while fulfilling other requirements of the program.

(4) If a student is prevented by reasons beyond his or her control from continuing education for a period of reasonable duration, (such as a brief but incapacitating illness) the CE has discretion to determine whether the student's status as a continuously enrolled full-time student should be preserved. A suspension from school for a limited period should not affect the child's status as a continuously enrolled full-time student.

(5) Leaving school to care for a sick parent/employee, lack of funds to pay for school as a result of a parent/employee's illness, or dropping/failing out of school is not a sufficient basis to maintain the child's status as a continuously enrolled full-time student.

(6) Documentation to support eligibility includes transcripts from the accredited educational institution(s), school records, and affidavits.

(b) Incapable of Self-Support. To establish eligibility for benefits as a covered child who was incapable of self-support at the time of the employee's death, the child must have been

physically or mentally incapable of self-support, regardless of marital status or dependency on the employee for support, regardless of the temporary or permanent nature of the incapacity.

(1) A child is incapable of self-support if, at the time of the employee's death, his/her physical or mental condition was such that he/she was unable to obtain and retain a job or engage in self-employment that could provide him/her with a sustainable living wage.

(2) Medical evidence must show that the child was diagnosed with a medical condition establishing that he/she was physically/mentally incapable of self-support at the time of the employee's death.

(3) Documentation to support the incapability of self-support can include medical records, social security disability records, tax returns showing that the covered child was claimed as a dependent, state guardianship documents, and affidavits.

Social Security Administration (SSA) or State disability records alone, showing lack of self support, should not be used to establish that the child is incapable of self-support. The CE must consider the evidence as a whole to determine if it demonstrates that the person was/is incapable of self-support for purposes of the EEOICPA.

(4) When medical evidence demonstrates incapacity for self-support, this determination will stand unless refuted by sustained work performance or other conflicting evidence.

(5) A child is not incapable of self-support merely because of an inability to obtain employment due to economic

conditions, lack of job skills, incarceration, etc.

(6) There is no specific timeframe required to establish that a child was incapable of self-support prior to the death of the employee (e.g., accident). It is only necessary to establish that the child was incapable of self-support on the day the employee died.

c. Non-spousal children.

In certain situations, a special provision of the EEOICPA allows for the division of benefits between an eligible spouse and an employee's child who is not related to the spouse.

(1) Under Part B only. If there is at least one child of the employee who is a minor at the time of payment, and who is not a recognized natural child or adopted child of the spouse, half of the payment is made to the covered spouse and the other half is made in equal shares to each child of the employee who is a minor at the time of payment, without regard to whether the child is a spousal child, or non-spousal child. A recognized natural child is a child acknowledged by the employee as their own during their lifetime. The Recommended Decision and Final Decisions must fully explain the distribution of compensation to the spouse and all children who have filed a claim.

(2) Under Part E only. If there is at least one child of the employee who is living at the time of payment, who qualifies as a "covered child" (i.e., under the age of 18 at the time of the employee's death, between the ages of 18 and 23 and continuously enrolled as a full-time student since attaining the age of 18 at the time of the employee's death, or any age and incapable of self-support at the time of the employee's death) and who is not a recognized natural or adopted child of the spouse, half of the payment is made to the covered spouse, and the other half is made in equal shares to each "covered child" of the employee, who is living at the time of payment,

Part 2 - Claims

Establishing Survivorship

without regard to whether the child is a spousal child or non-spousal child. Refer to the definition of a recognized natural child found under Part B above. The Recommended and Final Decisions must fully explain the distribution of compensation to the spouse and all children who have filed a claim.

9. Parents, Grandchildren and Grandparents. Under Part B only, parents, grandchildren (including biological, adopted and step-grandchildren), and grandparents may be eligible for survivor benefits, provided there is no surviving spouse or living child who is eligible to receive compensation. When adjudicating a survivorship claim for a parent, grandchild, or grandparent, documentation must establish the relationship of the survivor to the deceased employee (i.e., employee's birth certificate listing parent's name, parent's birth certificate showing grandparent's name, etc.). As DEEOIC issues payment of lump sum survivor benefits equally between eligible survivors, the CE must obtain evidence that establishes the status of all potential survivors in each category (parent, grandchild or grandparent). Parents, grandchildren and grandparents are not eligible for Part E survivor benefits.

10. Potential for Additional Survivors. When an additional potential survivor is identified on Form EE-2 or through some other development action, the CE contacts the individual by letter explaining their right to file a survivor claim (Exhibit 1).

a. Letter to Survivor. The letter to the survivor does not indicate whether the individual is qualified to receive benefits, as this is a function of the claims process. Rather, the letter outlines the general requirements for survivor eligibility. The CE explains that filing a claim does not guarantee that benefits will be payable, as both statutory and regulatory requirements must still be met before compensation can be awarded.

b. Form EE-2. The CE encloses a blank Form EE-2 with the correspondence. The potential survivor is asked to complete and submit the form within 30 days. Additional information on handling non-filing claimants can be found in the PM Ch. 2-1600, Recommended Decisions.

c. Additional Documentation. To ensure that compensation is paid to eligible survivors of the deceased employee, the

CE may require the survivor(s) to provide documents, affidavits, or records sufficient to substantiate the veracity of their claim.

11. Claims Involving Multiple Claimants. When a claim is filed, it is created in the Energy Compensation System (ECS) based on claimed employment and claimed illness(es). In some cases, multiple claimants will file a claim for one or more illnesses. And in some of these cases, not all claimants will claim the same illness(es). Therefore, in cases involving multiple claimants, an illness claimed by one claimant will be considered claimed by all parties to the case (unless the claimant specifically states they do not wish to claim the additional illness(es)) and should be documented accordingly in ECS for each claimant. This means that all illnesses will be addressed for all claimants without the request for additional claim forms.

a. Findings for Each Survivor. Once appropriate development is completed and review of evidence undertaken, one comprehensive Recommended Decision addressing the claims of all filing parties is to be issued. Each party to the claim must receive an individual finding in the decision with respect to his or her eligibility. The decision references each survivor who has filed a claim and specifies whether they are entitled to receive compensation, the amount of compensation payable to each eligible survivor, and the basis for the conclusions reached.

b. Reopening After a Final Decision. Given the procedure requiring each individual in a multi-claimant case be party to a decision on entitlement of benefits, all claims associated with the case must be reopened before a new decision can be issued (Refer to PM Ch. 2-1900, Reopening Process).

b. Individual Addresses. The Recommended Decision does not include the addresses of the various claimants. Instead, a cover letter is addressed to each claimant and a copy of the decision is sent to all filing parties.

c. Lack of Form EE-2. The CE may encounter a situation where a survivor has made a claim for benefits in writing but has not filed Form EE-2. Alternatively, the CE may have evidence indicating the existence of a potentially

Part 2 - Claims

Establishing Survivorship

eligible survivor, but is unable to contact the survivor to obtain a completed Form EE-2. Under these circumstances, the CE issues a Recommended Decision (See PM Ch. 2-1600, Recommended Decisions).

12. Issues During the Payment Process.

a. Death Before Payment. If the employee/survivor is alive when the Final Decision is issued but dies before payment is received, the employee's/survivor's claim must be administratively closed. Receipt of payment is defined as the date the payee's bank receives the Electronic Funds Transfer (EFT) or the date the payee or someone legally able to act for the employee in receiving the payment receives the paper check.

(1) Any compensation payment (whether check or EFT) received after the employee/survivor's death must be returned to the Treasury Department, and the payment must be cancelled in ECS. (Refer to PM Ch. 3-0600 Compensation Payments for the payment cancellation steps.)

(2) The CE appropriately develops any survivor claims and issues a new Recommended Decision to all survivors who have filed a claim.

b. Death Due to Non-Covered Illness, Part E. If a covered Part E employee dies after filing a claim but before any payment is received, and if the employee's death was caused solely by a non-covered illness, the survivor (any survivor including the spouse) has the election of benefits option. The survivor may elect to receive compensation (wage loss and/or impairment) that the employee would have received had he not died prior to payment. It is not necessary for the employee to have filed a claim specifically for wage-loss or impairment in order to have the election of benefit option available. As long as the employee filed a Part E claim, claims for impairment and wage-loss are assumed. However, if the employee received any compensation for impairment or wage-loss, prior to his death, such payment voids the election of benefit option.

(1) When an election of benefits is available, the CE contacts the survivor via telephone or letter advising

the survivor of the option to receive the benefits that the employee would have received had he/she not died prior to receiving payment. The CE obtains a verbal response and follows with written confirmation of the survivor's option.

(2) The survivor could be awarded the impairment benefit the employee would have received, but only if the medical evidence meets all the criteria in the American Medical Association's Guides to the Evaluation of Permanent Impairment, and conforms with the regulations regarding medical evidence used to support an award for impairment. (Refer to PM Ch. 2-1300, Impairment Ratings.)

(3) Also, the survivor could be awarded the wage-loss benefit the employee would have received. (Refer to PM Ch. 2-1400, Wage-Loss Determinations.)

(4) Under the election, survivor benefits are payable up to the aggregate limit under Part E.

(5) The survivor is not entitled to the \$125,000 lump-sum payment because death was not caused by the employee's covered illness(es).

c. Change in Child Status. Under Part B, a non-spousal child who is a minor at the time of filing may be advised in the Final Decision that he or she be approved for compensation. While DEEOIC makes every effort to make lump sum payment in a timely manner, if at the time of payment a child no longer meets the state law definition of a minor, the CE may not award. Under this unique situation, the CE takes action to vacate the Final Decision so that a new decision may be issued finding that the non-spousal child is an ineligible survivor. DEEOIC staff is to take all necessary and appropriate steps to avoid this scenario.

d. Survivor's Death. An eligible survivor must be alive to receive any payment awarded under the Act. If one eligible survivor in a multiple survivor claim dies before payment is received, the CE administratively closes the deceased survivor's claim and issues a new Recommended Decision reapportioning compensation among the remaining eligible survivors.

Part 2 - Claims

Establishing Survivorship

e. Survivor Compensation Part B. A survivor may receive one lump sum payment under Part B for each employee for whom he/she qualifies as an eligible survivor. If a survivor files a claim for benefits and a lump sum payment has previously been paid to the employee, the CE denies the survivor's claim because the maximum allowable benefit has already been paid. The maximum benefit under Part B is \$150,000.

f. Survivor Compensation, Part E. An eligible survivor is entitled to the basic lump sum survivor compensation of \$125,000 if it is determined that an accepted illness caused, contributed to, or aggravated the death of the employee. In the case of a claim with multiple eligible survivor payees, the CE must allocate the lump sum survivor compensation based on who qualifies as a survivor.

A survivor may receive more than the basic \$125,000 survivor benefit if the deceased, covered Part E employee experienced compensable wage-loss as a result of any covered illness prior to his or her attainment of normal Social Security retirement age as defined by the Social Security Act. The additional benefit of \$25,000 or \$50,000 is dependent upon the number of years for which the employee experienced wage-loss (Refer to PM Ch. 2-1400, on Wage-Loss Determinations). The maximum lump sum survivor compensation under Part E is \$175,000.

g. Aggregate Compensation Payable under Part E. The total amount of compensation payable, excluding medical benefits, may not exceed \$250,000 per covered employee. The CE does not develop for additional medical conditions in a survivor claim once the aggregate compensation amount is reached, unless the potential for covering medical expenses exists. If a survivor files a claim for benefits and the aggregate compensation amount has been reached, the CE must deny the survivor's claim.

13. Alternative to Filing a Survivor Claim Under Part E. A non-covered spouse or child of a deceased DOE contractor employee or Radiation Exposure Compensation Act (RECA) Section 5 uranium worker may submit a written request for an informal evaluation of whether the employee contracted a covered illness as a result of employment at a covered facility. Once the alternative filing review is complete, the CE issues a

determination letter to the claimant. No Recommended or Final Decision is required.

a. Written Notice. An individual seeking a determination regarding the cause of an employee's illness must send a letter to the DEEOIC requesting an alternative filing determination.

(1) Alternative filing requests may be submitted to the resource centers or the district offices.

(2) Only individuals listed in Subtitle E of the EEOICPA as potential survivors (i.e., spouses or children of an employee) may seek a determination letter regarding an employee.

(3) The survivor seeking a determination letter must provide evidence of a familial relationship with the employee.

b. Acknowledgement Letter. The CE sends each requester a letter acknowledging receipt of their request to receive an alternative determination letter, upon submission of their filing (Exhibit 2). The acknowledgement letter serves to explain the alternative filing process and offers the requester the opportunity to pursue full adjudication of the claim.

(1) The requester is notified that the alternative filing will result in the issuance of a determination letter, following development of the claim. The CE explains what will be contained in the determination letter and discusses the steps necessary to reach a determination on an alternative filing.

(2) If the requester has not already received a Final Decision denying his or her claim, the acknowledgement letter gives the requester the opportunity to opt out of the alternative filing process and to pursue full adjudication of the claim leading to a Recommended/Final Decision. Upon receipt of a requester's decision requesting a Recommended and Final Decision, the CE sends a follow-up letter informing the requester that full development will be completed and outlines the evidence required to adjudicate the claim. If full adjudication of the

claim is requested, the requester is to submit a completed form EE-2.

(3) The "Alternative to Filing" letter must explicitly instruct the requester that the determination reached cannot be used in any claim for benefits under the EEOICPA. The CE instructs the requester that the information presented in the forthcoming determination letter does not represent a final agency decision on the illness or causation.

c. Review of the Evidence. In accordance with the instructions contained in the EEOICPA PM, the CE undertakes full development of the alternative filing. The CE gathers any evidence necessary to arrive at a determination on the claim, including sending the case file to a CMC or National Office health specialist for resolution of a question of exposure, diagnosis, or causation.

d. Determination Letter. Upon completion of development on the alternative filing, the CE sends a determination letter to the requester (Exhibit 3).

(1) The CE prepares the written determination using clear language that the reader can easily understand. In the narrative of the decision, the CE provides sufficient discussion of the case evidence to describe the justification of the decisional outcome. The letter does not take the format of a Recommended Decision, and no appeal rights or waiver is required.

(2) The determination letter must reach a conclusion about whether the employee contracted an illness as a result of exposure while employed at a covered facility.

(3) The letter must state that the requester is not afforded any appeal or review rights as a result of the conclusion reached.

(4) The CE reiterates that the determination cannot be used as evidence in a claim for benefits under EEOICPA.

(5) The CE explains that the requester may seek full adjudication on the claim, including issuance of a Recommended and Final Decision, at any time.

(6) A Senior CE or supervisor reviews the determination and prepares it for the District Director's (DD) signature.

e. Receipt of Form EE-2. If the survivor files a Form EE-2, the CE renders a Recommended Decision on eligibility, which is then reviewed by the FAB for issuance of a Final Decision.

Sample Letter to Potential Survivor Advising of
Right to File Claim

Dear Claimant Name:

We have been advised that you may be an eligible survivor of the above-named employee under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA).

Enclosed is Form EE-2, Claim for Survivor Benefits under EEOICPA. If you wish to be included in the claim for survivor benefits under our program, please complete the EE-2 form and return it to this office at the address noted above at your earliest convenience.

Once we receive your completed form, your claim will be added to the existing case file. We will use the Case ID number referenced above, so please include this Case ID number in any future correspondence or telephone inquiries concerning your claim.

If you have knowledge of other individuals who may also be entitled to claim benefits as a survivor of your [enter survivor's relationship to deceased], please include their contact information on the EE-2 form, including name, address, and telephone number (if known).

For claims under Part B of the EEOICPA, the definition of an "eligible survivor" and the order of payment are as follows:

1. If there is a living spouse (married to the employee for at least one year immediately before the death):
 - a. Spouse receives entire amount;
 - b. UNLESS there is at least one child of the employee who is a minor at the time of payment and not a child of the spouse - in which case half of the award goes to the spouse and the rest is split between all living minor children of the employee.
2. If there is no living spouse, the award will be given in the following order:
 - a. Living children;

Part 2 - Claims

Establishing Survivorship

-
- b. If none of the above, to living parents of the employee;
 - c. If none of the above, to living grandchildren of the employee;
 - d. If none of the above, to living grandparents of the employee.

For claims under Part E of the EEOICPA, the definition of an "eligible survivor" and the order of payment are as follows:

1. If there is a living spouse (married to the employee for at least one year immediately before the death):
 - a. Spouse receives entire amount;
 - b. UNLESS there is at least one living child of the employee at the time of the payment who is also a "covered child" under Part E (i.e., under the age of 18 years at the time of the employee's death, or under the age of 23 years and continuously enrolled as a full-time student since attaining the age of 18 at the time of the employee's death, or any age and incapable of self-support at the time of the employee's death) and not a child of the spouse - in which case half of the award goes to the spouse and the rest is split between all "covered children" of the employee living at the time of payment.
2. If there is no living spouse, the award will be split between all "covered children" of the employee who are living at the time of payment.

Although there is no time limit for the filing of a claim for benefits under the EEOICPA, we ask that you respond to this request within 30 days from the date of this letter in order to prevent any delay in the adjudication and awarding of benefits for this case.

Also, please note that filing a claim does not guarantee your eligibility for benefits under the EEOICPA. Additional investigation will be required to determine if all statutory and regulatory requirements have been met before compensation can be awarded.

Sample Alternative Filing Acknowledgement Letter

Date

Employee:

Case ID:

Requester name

Address

City, State, Zip Code

Dear Mr./Mrs. Requester:

I am writing concerning the alternative filing request you filed under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) to receive a determination as to whether your **[employee relationship to survivor]** contracted an illness as a result of exposure to a toxic substances while working at **[facility]**.

Under the EEOICPA implementing regulations (20 CFR § 30.101(f)), a finding can be made by the program acknowledging the hazards faced by a deceased employee who worked in the Department of Energy atomic weapons program, even when there are no qualifying survivors eligible to receive benefits.

The Division of Energy Employees Occupational Illness Compensation (DEEOIC) will investigate the details of your **[relationship's]** employment history to determine if **he/she** contracted an illness as a result of occupational exposure to a toxic substance while working at a DOE facility. You will receive a determination letter outlining the results of this investigation.

You should be aware that the information gathered as a result of this investigation does not change your eligibility to receive compensation under the EEOICPA. Additionally, the results reported to you cannot be used as evidence that your **[relationship's]** illness was caused by **his/her** employment for the purposes of any law suit or workers' compensation program, including the EEOICPA.

Part 2 - Claims

Establishing Survivorship

Should you wish to have your case fully investigated and adjudicated, you can choose to file a claim at any time. If you file a claim, after gathering and assessing the necessary evidence, you would receive a recommended and final decision. You will need to complete and submit a form EE-2 (which can be found on DOL's website at <http://www.dol.gov/owcp/energy/regs/compliance/EEOICPForms/ee-2.pdf>, the District Offices, or any Resource Center) to begin the adjudication process.

Sincerely,

Claims Examiner,
(City) Office

Sample Alternative Filing Determination Letter

Date

Employee:

Case ID:

Requester name

Address

City, State, Zip Code

Dear Mr./Mrs. Requester:

I am writing concerning the alternative filing request you filed under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) to receive a determination as to whether your **[employee relationship to survivor]** contracted an illness as a result of exposure to toxic substances while working at **[facility]**.

The following determination is intended to provide a measure of closure to you and your family, and should serve as recognition of your **[employee's relationship to the claimant]**'s extraordinary service and sacrifice on behalf of our country.

[Description of the findings]

Again, this assessment DOES NOT change your eligibility for benefits or establish causation under the Act, and is not subject to further agency or judicial review.

If you so desire, DOL will undertake full adjudication of the facts of this case. You will need to complete and submit a form EE-2 (which can be found on DOL's website at, <http://www.dol.gov/owcp/energy/regs/compliance/EEOICPForms/ee-2.pdf>, the District Offices, or any Resource Center) to begin the adjudication process. The outcome of a full investigation

of the circumstances of the claim may not result in a change of your status as an ineligible survivor, and upon issuance of a final decision in your case, you still may not be entitled to EEOICPA benefits.

Sincerely,

District Director,
(City) Office