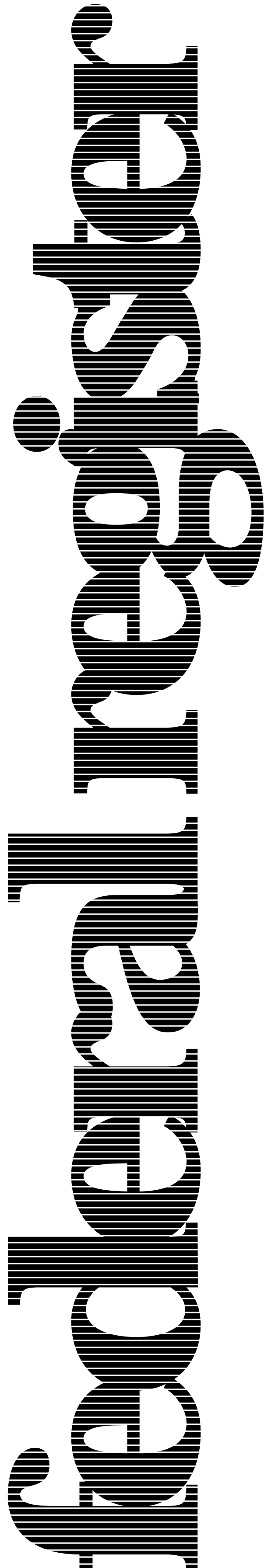

Tuesday
December 23, 1997

Part II

Department of Labor

Office of Workers Compensation Programs

20 CFR Parts 10 and 25

Claims for Compensation Under the Federal Employees' Compensation Act; Compensation for Disability and Death of Noncitizen Federal Employees Outside the United States; Proposed Rule

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Parts 10 and 25

RIN Number 1215–AB07

Claims for Compensation under the Federal Employees' Compensation Act; Compensation for Disability and Death of Noncitizen Federal Employees Outside the United States

AGENCY: Office of Workers' Compensation Programs, Employment Standards Administration, Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: The Department of Labor proposes to revise the regulations governing the administration of the Federal Employees' Compensation Act (FECA), which provides benefits to all civilian Federal employees and certain other groups of employees and individuals who are injured or killed while performing their jobs. The Office of Workers' Compensation Programs (OWCP) administers the FECA.

The existing rules have been entirely rewritten using plain English and have also been reorganized into a more accessible format. A number of significant changes are made in the proposed regulations, including new sections implementing amendments to the law which provide for suspension of benefits during incarceration and termination of benefits for conviction of fraud against the program; changes to the continuation of pay (COP) provisions, including reducing to 30 days the time within which COP may be used where there is a recurrence of disability; paying for an attendant as a medical expense instead of as a supplemental payment to the claimant; inclusion of OWCP nurse services in the definition of vocational rehabilitation services; clarifying the review process by distinguishing between modification on the Director's own motion (in which case no new evidence or argument is needed to reopen claim) and reconsideration at the request of the claimant (which will require the claimant to provide new evidence or argument to reopen the claim); restricting opportunities to postpone oral hearings; clarification of subpoena authority; streamlining the standards for review of attorney fees; provision of more detailed guidance in regard to claims involving the liability of a third party; and clarification of procedures with respect to claims filed by non-Federal law enforcement officers. Also included in the proposed regulations is a major revision of the medical fee schedule to include, for the first time, pharmacy and inpatient hospital bills.

DATES: Written comments must be submitted on or before February 23, 1998.

ADDRESSES: Send written comments to Thomas M. Markey, Director for Federal Employees' Compensation, Employment Standards Administration, U.S. Department of Labor, Room S–3229, 200 Constitution Avenue NW., Washington, DC 20210; Telephone (202) 219–7552.

FOR FURTHER INFORMATION CONTACT: Thomas M. Markey, Director for Federal Employees' Compensation, Telephone (202) 219–7552.

SUPPLEMENTARY INFORMATION: The FECA provides compensation for wage loss, medical care, and vocational rehabilitation to Federal employees and certain other individuals who are injured in the performance of their duties, or who develop illness as a result of factors of their Federal employment. It also provides monetary benefits to the survivors of employees who are killed in the performance of duty or die as the result of factors of their Federal employment.

The program's regulations were last substantially revised in 1987. Since then, new provisions have been added to the statute, and experience has shown that certain parts of the regulations need clarification or revision to improve and streamline the claims process. In addition, there has been a significant increase in the number and complexity of OWCP issues requiring adjudication, which has strained the administrative resources available to fulfill OWCP's statutory mandate to adjudicate and administer claims. In addition, several developments have enabled OWCP to devise a fee schedule applicable to hospital inpatient and pharmacy bills. For all of these reasons, the rules have been comprehensively rewritten.

The proposed rules look significantly different than the existing rules. This is both because they have been completely reorganized into a format reflecting the organization of the claims process itself and because they are presented in a question-and-answer format instead of the narrative form used in the existing rules. We believe that the new organization and style of the regulations presents the information in a way consistent with the needs of the user, and will help the reader more easily find information. In addition, unnecessary information has been eliminated and material which simply repeats the language of the statute itself has been removed from various portions of the regulations.

The regulations have been re-numbered and substantially re-worded. The sections have been grouped by type of claims, where appropriate, so that the reader who wants to know about filing death claims, for example, need only turn to one section to get essentially all the basic information about how such claims are filed.

A description of other significant changes made by these regulations follows. Cross references from new sections to the existing ones are made to allow the reader to better follow the changes.

Subpart A, General Provisions

This subpart is substantially the same as current subpart A (§§ 10.1 through 10.23), with the addition of material describing the penalties imposed as a result of the amendments to the FECA that added 5 U.S.C. 8148.

Introduction

Section 10.2 has been revised to reflect two changes: employees of the Alaska Railroad are no longer covered under the FECA; and administration of the FECA for Panama Canal Commission employees was returned to OWCP in 1989.

Definitions and Forms

Section 10.5 now includes definitions that used to appear in several later subparts. Definitions of terms defined in the FECA itself, such as *injury, organ* and United States Medical Officers and Hospitals, no longer appear in the regulations, because it is felt to be unnecessary to repeat these statutory provisions.

Section 10.5(a) revises the definition of *Benefits* or *Compensation* to clarify that those terms include the amounts paid out of the Employees' Compensation Fund for medical examinations conducted at the request of OWCP as part of the claims adjudication process, consistent with OWCP's longstanding practice.

Section 10.5(g) moves the definition for *Earnings From Employment Or Self-Employment* from its existing location in Section 10.125(c) and revises it to clarify that earnings from self-employment include a reasonable estimate of the cost to have someone else perform the duties of an individual who accepts no remuneration. This revision is consistent with several decisions by the Employees' Compensation Appeals Board (ECAB) in this area. See, e.g., Edward O. Hamilton, 39 ECAB 1131 (1988); William C. Austin, 39 ECAB 357 (1988).

Section 10.5(h) replaces the lengthy and cumbersome list which constituted the old definition for Employee with a shorter list that omits references to coverage afforded pursuant to other specific statutes, since the material omitted merely referenced other statutory provisions.

Section 10.5(i) simplifies and updates the definition of *Employer* or *Agency* by broadening it to make clear that it encompasses the various titles now used by different agencies for persons designated to perform the employer's tasks in the FECA claims process. This streamlining is not intended to in any way change existing practice.

The definition of *Knowingly* in section 10.5(n) is new. It adopts the definition for this term, consistently used by the ECAB in numerous forfeiture cases construing section 8106(b)(2). See, e.g., Garry Don Young, 45 ECAB 621 (1994); Lewis George, 45 ECAB 144 (1993).

Section 10.5(x) replaces the existing discussion of Recurrence Of Disability found in § 10.121, which merely provides that a recurrence occurs when the original injury causes the employee to stop work again. The definition of recurrence being added to the regulations reflects OWCP's understanding of the term recurrence as explained by the ECAB in numerous cases which have thoroughly examined both the medical and non-medical aspects of this issue. The new definition will also enable OWCP to recognize the changes that have occurred in the nature of federal employment in this era of continued government downsizing by specifically addressing some situations that arise as agencies close work sites. See, e.g., Terry R. Hedman, 38 ECAB 222 (1986); John W. Normand, 39 ECAB 1378 (1988); Don J. Mazurek (Docket No. 93–2063, January 23, 1995).

The definitions of *Occupational Disease* or *Illness, Physician* and *Student* have been shortened, with no intent to make a substantive change, by deleting (or simply referring to) definitional material which already appears in the FECA.

In § 10.6, current § 10.5(b) is updated to include a new category of ''dependents'' for purposes of implementing new section 8148 of the FECA. That amendment requires a suspension of benefits when a claimant is incarcerated for a felony, but allows instead payments of a portion of those benefits to eligible dependents.

Rights and Penalties

Sections which merely repeat provisions of the statute (such as the reference to the FECA as the exclusive remedy for employees and their families) have been removed. Proposed § 10.16 provides information about various provisions of criminal law relating to the FECA claims process. In addition to the description of the penalties, a statement has been added explaining that enforcement of the criminal laws applicable to FECA activities is solely within the jurisdiction of the Department of Justice. This is intended to eliminate confusion on the part of some individuals who ask that OWCP enforce these criminal law provisions.

Section 10.17 implements a recent addition to the FECA, section 8148(a). Pursuant to section 8148(a), any beneficiary convicted of defrauding the federal government in connection with a FECA claim forfeits his or her right to further compensation ''as of the date of such conviction.'' To implement this provision in a uniform manner consistent with the intent of the statute, the term ''conviction'' is interpreted in this section as occurring either on the date that a guilty plea is made in open court or the date that a verdict of guilty is returned after trial.

This interpretation, which is consistent with opinions issued by the Comptroller General and instructions issued by that office, ensures consistency among various government agencies and permits uniform application of these procedures despite variations among jurisdictions with respect to how the term ''conviction'' has been defined for other purposes. In addition, choice of the date a guilty plea is made in open court or a verdict of guilty is returned after trial facilitates implementation of the statutory provisions because the date is easy to ascertain following the submission of pertinent factual evidence, such as a copy of a plea agreement or a judgment order that has been filed in a criminal case.

Section 10.18 implements another recent addition to the FECA, section 8148(b). Pursuant to section 8148(b), which is similar to provisions of several state workers' compensation statutes and a provision in the Social Security Act, any beneficiary incarcerated for either a state or federal felony conviction forfeits his or her right to compensation during the period of such incarceration. However, this section also provides the OWCP with the discretionary authority to allocate ''a percentage of the benefits that would have been payable'' to an incarcerated beneficiary among his or her dependents using the percentages stated in section 8133(a)(1) through (5).

In exercise of this discretion, OWCP has selected the gross current entitlement of an incarcerated beneficiary as a ''percentage'' of such beneficiary's ''monthly pay'' under section 8101(4), and the proposed regulation provides that the resulting amount will be divided, using the percentages of section 8133(a)(1) through (5), among his or her dependents during the period of any such incarceration.

Subpart B, Filing Notices and Claims; Submitting Evidence

This subpart contains most of the information in current §§ 10.100 through 10.122, 10.130, and 10.140. The material in current § 10.102(e), which addresses the employer's authority to provide copies of forms and other records pertaining to a claim, is now addressed generally in subpart A, § 10.12. Current § 10.104, regarding physicians' reports, has been moved to subpart D (Medical and Related Benefits). Current § 10.109(a) (concerning the payment of the balance of schedule awards) has been moved to subpart E (Compensation and Related Benefits).

The discussion of development of claims by OWCP found in current § 10.110(b) has been omitted from the proposed regulations. This discussion has proven to be misleading, and was mistakenly assumed to be a commitment by OWCP to undertake development, despite the fact that it only describes what OWCP may, on an ad hoc basis, do even though the burden of proof to establish the elements of the claim is on the claimant at all times. The statements in current § 10.120 and § 10.121(d) requiring the employer to report termination of disability on Form CA–3 have been removed, as this procedure is no longer required. Current § 10.150, which describes OWCP's function within the sphere of workers' compensation law generally, has been entirely removed as unnecessary.

Notices and Claims for Injury, Disease, and Death—Employee or Survivor's Actions

In § 10.100 and 10.102, which discuss notices of injury and occupational disease, the statements that the employer (or another person) may file a notice of injury on the employee's behalf are new, although the practice it describes is a longstanding one. This provision is being added to the regulations to encourage prompt filing of claims. OWCP cannot provide case management services, which assist in a rapid return to work in the crucial early days of disability, without prompt notice. An informational statement that a claimant may withdraw a claim before

it has been adjudicated has also been added to these sections as well as to § 10.106.

Section 10.101 highlights the need for the employee to file a wage loss claim (form CA–7 or CA–8) in order to receive wage-loss benefits (compensation); this is in addition to the initial notice of injury (form CA–1 or CA–2) which must be filed for every injury, whether or not the injury results in lost wages. The need to file a separate claim for wage loss has in the past sometimes been a point of confusion among claimants, who do not realize that even though they filed the form notifying OWCP of an injury, OWCP has no way of knowing that the person has stopped work and lost wages unless the CA–7 or CA–8 claims for wage loss are also filed. In addition, the 10-day time frame within which the employee must file the wage-loss claim has been changed to 14 days to conform to the two-week pay cycle observed by most federal agencies and by OWCP. The longstanding practice that an employee may file a claim for permanent impairment (that is, for a schedule award) by letter if Form CA–7 has already been filed is specified in § 10.104.

Section 10.105 clarifies the circumstances under which a notice of recurrence (Form CA–2a) is required, rather than a new notice of injury (Form CA–1 or CA–2). The statement in (a) concerning the need to file a new notice of injury or episode of occupational disease is being added as a clarification that reflects current OWCP practice.

The statement in § 10.106 that the employer may file the claim on the survivor's behalf is new. It is added to encourage prompt filing of claims. The regulations also explain that the claim may be withdrawn before adjudication in order to conserve resources.

Notices and Claims for Injury, Disease, and Death—Employer's Actions

Proposed §10.110, which discusses the employer's responsibilities when a notice of traumatic injury or occupational disease has been received, shortens the time frame for submission of notices of injury and occupational disease from 10 to five work days, and the regulations now make clear that the employer should not wait for any supporting evidence before sending the form to OWCP. These changes reflect OWCP's increasing emphasis on early receipt of notices of injury and claims for compensation, which enables rapid initiation of adjudication and case management procedures, as well as payment of benefits, and an earlier return to work.

Proposed §10.111 discusses the employer's responsibilities when a claim for compensation due to disability or permanent impairment has been received. It also changes the time frames for submittal of a claim for initial disability when the employee is receiving continuation of pay. Similarly, a statement emphasizing that the employer should provide the employee with a Form CA–8 to claim continuing disability has been added to § 10.112. Both changes represent long-standing practice on the part of OWCP and most federal employers.

The statement that the employer may not charge for assisting survivors in filing claims, which is found in current §10.108, has been removed as unnecessary from §10.113, which discusses the employer's responsibilities when an employee dies from a work-related injury or disease.

Evidence and Burden of Proof

Section 10.115 describes, in a more comprehensive and specific manner than the existing regulations, the five basic requirements which have long been required of a claimant. It supplants the description in the existing § 10.110(a), which is more procedural and technical, and which contains information (such as what medical evidence is required) that is already in development letters and occupational disease checklists provided directly to the claimant. The need to submit supporting medical evidence when wage loss benefits are claimed is emphasized, as this requirement is not always clear to employees.

Section 10.116 includes a reference to OWCP's use of checklists to assist the claimant and employer in determining what information needs to be submitted for certain occupational disease cases. While these checklists have been in use for many years, and provide specific guidance on what information is required for different types of claims, they have not previously been mentioned in the regulations.

Decisions on Entitlement to Benefits

New §10.125 revises the language in existing §10.130 to include, in the list of authorities used to adjudicate claims, decisions of the Employees' Compensation Appeals Board interpreting the FECA itself. This statement is added to provide claimants and employers with a general idea of the precedents used in making determinations.

Sections 10.160–10.166 of the existing regulations authorize OWCP to appoint a representative and to supervise the management of the claimant's funds by the representative payee. Section 10.424 of the new regulations regarding representative payees provides that a representative payee will be appointed only in situations in which no court or administrative body authorized to do so has appointed a guardian or other party to manage the financial affairs of the claimant, since such an appointment constitutes sufficient authorization for payment of FECA benefits by OWCP to the party so appointed. Furthermore, OWCP no longer will attempt to supervise a representative payee's activities, but will instead rely upon appointment of a guardian under applicable state law and supervision in accordance with those procedures as necessary.

Subpart C, Continuation of Pay

This subpart covers the same material as current subpart C (§§10.200 through 10.209). The general rules found in current §10.201 have been rearranged and placed in different sections. The criteria for eligibility in current §10.201(a) are now found in § 10.205. Current §10.201(b) is now found at §10.215; current § 10.201(d) is now found at § 10.200; and current §§10.201(e) and (f) are now found at § 10.223.

Eligibility for COP

Sections 10.205 (d) and 10.207 address the time frames applicable for paying continuation of pay (COP) when there is a recurrence of injury. Under the current rule, COP is payable only when the disability begins within 90 days of the date of injury (see current §10.201). Similarly, when an injured employee returns to work but stops again, any remaining COP is payable for the additional time lost (see current §10.208(b)(3)). The proposed rules shorten the 90-day period to a 30-day period in both situations.

The 90-day period presently set forth in § 10.202(a) and (b) was initially adopted to ensure that injured workers (who filed claims for COP within 30 days) would receive the full 45 days of COP, while at the same time affording employers and OWCP sufficient time to develop and adjudicate claims. Such a grace period is no longer necessary since the employing agencies are referring Form CA–7s and CA–8s (claims for compensation) to OWCP in a timely manner and OWCP is adjudicating about 93 percent of these claims and, where appropriate, authorizing the payment of claims for disability compensation (CA–7s and CA–8s) within 14 days of receipt.

OWCP has focused on minimizing or eliminating lost work time entirely,

which requires early intervention in the case. When the employer pays COP, OWCP may not necessarily even know about lost work time. The artificial extension of the COP period under the 90-day rules makes it difficult to intervene in cases where lost time is continuing at the point when early intervention is crucial. It is no longer necessary to forego the opportunity for this early intervention to ensure that income is not disrupted. Indeed, since COP was first introduced, payment performance has improved measurably, and the time frames were reduced in 1987 from six months to the current 90 days. OWCP's early intervention efforts now support an additional reduction of the period to 30 days, which is the period chosen by Congress as the time frame within which the initial claim has to be filed.

Calculation of COP

Proposed §10.217 reworks material found in current § 10.201(b), which contains a lengthy discussion of when COP is payable. Among other things, the discussion addresses situations where an employee continues to work in a different position because he or she is unable to work in the job held on the date of injury. The existing rule has been re-written to remove excess verbiage and to make clear that COP is chargeable where the employee who continues to work, but in a different job, would otherwise incur a reduction in pay because of the injury, but for COP. There is no intention to change the substance of the current rule. Since the methods of computing pay differ among agencies, it is difficult to capture all the variables, so we invite comments particularly from agencies on whose practices these new rules could inadvertently have an unintended adverse effect.

Controversion and Termination of COP

Section 10.222(b) allows an employer to terminate COP when a preliminary notice of a disciplinary action issued before the injury becomes final or otherwise effective during the COP period. Current §10.201 states that the final written notice of termination of employment for cause must have been issued before the date of injury. The proposed change corrects an overly rigid rule and better reflects the disciplinary process itself. It simply ensures that the employee and the employer are put in the same position as that which would have existed but for the injury; the salary would not have continued because of the disciplinary action and therefore COP should not be paid.

Subpart D, Medical and Related Benefits

This subpart contains most of the information found in current subpart E (§§10.401 through 10.413), except that some of the material about medical reports and payments (§§10.410 through 10.413) has been moved to new subpart I. The definitions contained in current §10.400 have been shortened and moved to subpart A. This subpart also addresses the subjects of current §§10.104(a) and 10.305. Current §10.401(d), which addresses the status of federal health units, has been removed as superfluous. Current §10.406, which concerns dental benefits, has been removed entirely as dental care is just one of many specialized forms of treatment authorized under the FECA, and it presents no special issues which need to be addressed.

Emergency Medical Care

In §10.300, the statement that the employer need not issue a Form CA–16 more than one week after the occurrence of the claimed injury has been added. This statement reflects long-standing practice, consistent with a purpose behind the issuance of this form, which is designed to ensure that necessary immediate medical care is not hindered through uncertainty by the provider of who is responsible for payment. Section 10.301 addresses often-asked questions and reflects long-standing policy, by making clear that the physician designated on the CA–16 may refer a claimant for additional treatment and OWCP will pay the appropriate associated costs.

Section 10.303 is new and is intended to provide uniform guidance to employers who have questions about whether it is proper to use a Form CA–16 to authorize medical testing at OWCP expense when their employees experience an exposure to a workplace hazard. It has been a matter of longstanding practice for OWCP to discourage the use of Form CA–16 in this kind of situation and to remind employers that they may be under an obligation independent of the FECA to provide their employees with medical testing and/or other services. This regulation reflects this practice, as well as OWCP's policy regarding payment for preventive treatment.

Medical Treatment and Related Issues

In § 10.310, the references to cost-effectiveness with respect to appliances and supplies and to generic equivalents of prescribed medications are new. They reflect the need for OWCP to control costs wherever possible in the current medical environment. OWCP will not approve an elaborate appliance or service where a more basic one is suitable, and full reimbursement for the appliance or service may not be made without prior approval by OWCP.

OWCP receives many questions from employees and chiropractors concerning the parameters of chiropractic care, and § 10.311 provides more specific guidance. Two changes to current practice are made for administrative convenience: the definition of ''subluxation'' which appears in current § 10.400(e) has been moved to new § 10.5(aa), and a statement that OWCP will not necessarily require the x-ray or a report of the x-ray before adjudication has been added.

Section 10.312, which concerns the services of clinical psychologists, is also new. Treatment of FECA claimants by clinical psychologists has become much more common. Cases where a claimant exhibits or alleges both physiological and psychological conditions have presented problems concerning the proper scope of practice and the needs of OWCP for comprehensive medical reports addressing both conditions. Section 10.312 specifies that a clinical psychologist may treat a FECA claimant as a physician within the scope of practice allowed by applicable state law.

Section 10.313 has been added to address frequently asked questions concerning preventive measures. It reflects OWCP policy as stated in its internal procedures. What distinguishes situations where preventive treatment may be authorized from those where it may not be authorized is the presence of a verifiable work-related injury. Without such an injury, preventive treatment cannot be authorized.

Attendants

Section 10.314, which concerns the services of attendants, represents a significant departure from current practice. At present, an allowance may be paid directly to a claimant for the services of an attendant (limited by statute to a maximum of $1,500 per month). Because the payment is made directly to the claimant, OWCP has no opportunity to properly account for the expenditures, nor to monitor the quality of the services provided.

The payment is a tax-free augmentation of compensation, and as the proposed rule makes clear, the Director has determined that requests for this augmentation will no longer be considered. Individuals who have been awarded an attendant allowance before the effective date of the final rule, however, would continue to receive it as

long as the service is otherwise necessary. Although the augmentation payment will no longer be considered, and no new awards made, any necessary services will still be payable (up to $1500 per month) but by direct payments to the provider, as is generally the case for all other services.

There are several reasons for this change. Foremost among these is that it offers OWCP greater fiscal control and quality review, while continuing to ensure that any necessary personal care services will continue to be available to the claimant. First, augmentation itself is paid very rarely. The attendant services for which the supplemental income provided for under 5 U.S.C. 8111(a) is intended, is not often necessary without the concurrent need for medical services. Under these circumstances, the trained medical personnel necessary to perform the medical functions also take care of the personal care needs, and both are, and can continue to be paid for as a medical service.

Second, even when only personal care services are necessary, OWCP may pay for them directly under 5 U.S.C. 8103. The administrative resources expended in considering applications for this augmentation of compensation under section 8111(a) are excessive, and most are denied because there is no showing that the services are necessary. It is expected that fewer requests for these services will be received when the payments are made directly to the provider like almost all other services. Where the claimant can show that the services are necessary (by providing sufficient medical documentation), however, they will still be provided for.

Another reason for this change is that by paying the providers of such service, OWCP will gain both increased financial accountability and better quality control than now exists. Currently, the allowance is paid directly to the claimant resulting in OWCP having no effective administrative control; we are unable to determine whether the provider is charging too much for the services, for example, or even in some cases whether the allowance is actually being spent for the services. By paying for any necessary services directly, under section 8103, instead of providing an allowance to the claimant, under section 8111(a), these costs will be subject to the same administrative controls to which most other bills for services and supplies are subject. Bills will be submitted to OWCP directly by the provider; they will be subject through the OWCP fee schedule to a maximum monthly charge of $1,500; bills for services will be scrutinized to ensure the charges are correct; it will be OWCP, not the claimant, who will be responsible for resolving any problems with the payments; and a record of payments to the provider will be reported to the Internal Revenue Service on form 1099 at the end of each year.

In addition to financial accountability, the quality of services can better be monitored. Providing supplemental compensation to the injured employee under section 8111 has in many instances encouraged family members to take on the personal care services, even though they may not be trained or well-suited to this task. Paying the provider directly will give OWCP an added degree of review to ensure that the necessary services are being provided by a home health aide, licensed practical nurse or similarly trained individual better able to provide the care needed. Where a family member can show he or she has the appropriate qualifications and training, there will be nothing to prevent them from providing the service and receiving payment.

Section 10.316, which concerns an employee's request to change his or her primary treating physician, clarifies that an employee need not consult OWCP for approval when the physician initially selected refers the employee to a specialist appropriate to the nature of the injury. Examples of frequently-approved requests for a change of physician are also provided to illustrate the decision-making process.

Directed Medical Examinations

Sections 10.320 and 10.321 concern second opinion and referee examinations. A statement has been added to make clear that the claimant is not entitled to have anyone attend such examinations (except for a physician of his or her choice, at a second opinion examination) unless OWCP finds that exceptional circumstances, such as the need for having an interpreter for a hearing-impaired claimant, exist. This statement was added to address situations where representatives and other parties wished to sit in on examinations, even though this action can be disruptive. The statement that a case file may be sent for second opinion or referee review where an actual examination is not needed, or where the employee is deceased, reflects long-standing practice and is consistent with ECAB precedent on this issue.

In § 10.323, which addresses failure to report for or obstruction of a second opinion or referee examination, a sentence has been added providing that actions of an employee's representative will be considered the actions of the employee for the purposes of this section. This statement was added to address situations where representatives prevent or disrupt examinations, thereby hindering OWCP from obtaining information needed to adjudicate and manage claims and is consistent with ECAB precedent on this issue.

Medical Reports

In § 10.330, the list of contents for medical reports has been expanded to include the extent of disability and prognosis for recovery, as these items are especially useful in managing disability cases. Inclusion of these items reflects OWCP practice, and should help medical providers and employees provide OWCP the information it requires to reach a decision in the case.

To reduce confusion about submission of medical reports, the statement that use of form reports is not required has been added to § 10.331. Also, this section makes clear that reports must have signatures, although recognizing that many medical providers use signature stamps in lieu of actual signatures. OWCP reserves the right to request an original signature on any medical report. The use of Form CA–17 to obtain interim medical reports is expressly confined to employees with disabling traumatic injuries, as this form is not properly used with occupational disease cases.

Subpart E, Compensation and Related Benefits

This subpart contains most of the information found in current subpart D (§§ 10.300 through 10.324), and it addresses the subjects of current §§ 10.109, 10.126 through 10.128, and §§ 10.160 through 10.166. The very detailed guidance currently given with respect to the appointment and responsibilities of representative payees has been condensed into one paragraph, new § 10.424, as most of the current material is procedural rather than regulatory in nature.

No counterpart to current § 10.310, which provided for buy-back of annual or sick leave, is included in the new regulations. This process is not authorized or required by the FECA, nor is it controlled by OWCP. It is controlled by each employing agency, in accordance with its general rules regarding leave repurchase. The only relationship between those rules and FECA is the general prohibition against paying wage-loss compensation benefits for any specific period where leave has been used. OWCP needs to know, therefore, whether leave has been taken in order to determine whether

compensation is payable for the same period. By including a reference in the regulations to the repurchase of leave, however, OWCP has inadvertently given the impression that OWCP controls or supervises leave buy-back for injured workers, and disputes concerning leave buy-back have often been incorrectly submitted to OWCP for resolution. To avoid this confusion, the reference to leave buy-back has been removed. Individuals who wish to repurchase leave should consult with their employing agency. Compensation will not be paid where leave has been used. Once restoration of leave has been authorized, however, OWCP will entertain a claim for benefits for that period of time.

Compensation for Disability and Impairment; Compensation for Death

In § 10.400, which defines total disability, a statement explicitly recognizing OWCP's view that most employees will eventually return to work has been added. This statement represents long-standing policy as reflected in OWCP's case management procedures.

In § 10.404, which concerns payment of compensation for schedule impairment, a statement that OWCP uses the American Medical Association's *Guides to the Evaluation of Permanent Impairment* as its frame of reference for calculating such awards has been added. OWCP has used this publication in calculating schedule awards for many years, and the ECAB has approved its use. Since the publication is periodically updated, OWCP generally uses the newest edition in effect at the time of the decision in calculating loss of use.

OWCP has received a number of petitions over the years to add various internal organs to the list of schedule members. We have considered each organ suggested and, after much deliberation, decided against any additions. This decision is consistent with most state workers' compensation systems, which generally do not provide schedule awards for internal organs.

In § 10.406 and § 10.411, which concern maximum and minimum rates of compensation, the word ''basic'' has been prefixed to ''monthly pay'' to indicate that locality adjustments are not included in determinations of maximum and minimum rates of compensation. Also, statements have been added to recognize that compensation paid due to an assault which occurred during an attempted or actual assassination of a federal official in the performance of duty is exempted from the maximum rates.

In § 10.413, the provisions of current § 10.109 have been shortened so as not to repeat those appearing in the FECA itself.

In § 10.417, the second and third paragraphs provide that OWCP may, at least twice each year, request reports to verify student status or the inability of a child over 18 years of age to support himself or herself. This reporting schedule is consistent with most school enrollment schedules, and helps avoid situations where overpayments occur, by reminding recipients that individuals over the age of 18 who are not enrolled in school for any particular semester are not eligible for survivor benefits.

Adjustments to Compensation

Section 10.421(c) is new and reflects long-standing practice regarding the concurrent receipt of compensation from OWCP and severance or separation pay from the employer. With the increasing use of such benefits as the government downsizes, the frequency with which this is an issue has increased, and so a provision addressing this issue was included in the regulation. This provision is consistent with ECAB precedent on this issue.

Section 10.421(d) is also new and implements the changes made to the FECA when the Federal Employees' Retirement System (FERS) was instituted. Federal employees whose retirement benefits are provided by the FERS receive benefits under the Social Security (SSA) retirement system as part of their package of retirement benefits. Federal employees eligible to receive retirement benefits under the Civil Service Retirement Act (CSRA) must elect between FECA benefits and CSRS retirement benefits and cannot receive both at the same time. With the enactment of the FERS, Congress amended the dual benefit provisions of the FECA (section 8116(d)). A FECA beneficiary may receive FECA benefits and SSA benefits, except that OWCP is required to reduce FECA benefits by the amount of any SSA retirement benefits attributable to the individual's Federal employment.

In § 10.423, which concerns assignment of compensation payments to creditors, a statement concerning garnishment of benefits for alimony and child support has been added. The language reflects changes to various federal laws, making clear that FECA as well as other Federal benefits may be attached to fulfill alimony and child support obligations.

Overpayments

The regulations concerning overpayments have been extensively re-written to highlight and clarify a FECA beneficiary's obligation to be aware of the period for which benefits are paid, and the manner in which overpayments are declared, contested, and collected.

The language in § 10.430 has been added to describe how OWCP notifies a recipient of compensation that a payment has been made, whether by paper check or electronically. This language was added to clarify that a recipient is required to be aware of the time period for which each payment of compensation for wage loss or schedule award is received and to advise OWCP of any discrepancies noted. Absent affirmative evidence to the contrary, the beneficiary will be presumed to have received the notice of payment, whether mailed or transmitted electronically.

Sections 10.436 and 10.437 discuss the two circumstances under which an overpayment can be waived pursuant to section 8129(b). Section 10.436 discusses the criteria to be used in determining whether recovery would ''defeat the purpose'' of the FECA. Section 10.437 discusses the criteria to be used in determining whether recovery would ''be against equity and good conscience.'' Waiver under § 10.436 because recovery would defeat the purposes of FECA is available only to currently or formerly entitled beneficiaries, which continues the application of that provision in the existing regulations. In § 10.437, the manner in which OWCP applies the ''against equity and good conscience'' test for waiver of an overpayment is revised to provide that this particular test applies to all individuals who are ''without fault'' and have received compensation because of an error of fact or law, regardless of whether or not they are present or former beneficiaries under the Act. This change restores the statutory distinction between the application of the two tests for waiver contained in section 8129(b), which was unintentionally removed as a result of the 1987 revision of the regulations.

In new section 10.441, language has been added to clarify that an overpayment is a debt that is subject to the Debt Collection Act of 1982 and that if such a debt is not repaid OWCP will attempt to recover the debt by any available means including offset of salary, annuity benefits or referral for collection to a collection agency or to the Department of Justice.

Subpart F, Continuing Entitlement to Benefits

This subpart contains most of the information found in current §§ 10.123 through 10.128. It also includes some

material from current §§ 10.107 and 10.110.

Claims for Continuing Disability

The regulation concerning continuing receipt of compensation benefits, new § 10.500, has been written to include a specific statement that OWCP's goal is to return each disabled employee to work as soon as medically able. The definition of ''suitable work'' has also been revised to clarify the criteria by which it is determined that work is ''suitable''. These changes were made because these concepts are important to the program and important for both employees and employers to understand.

The language in § 10.500(a) has been added to inform claimants, employing agencies and others of OWCP's long-standing practice of requiring claimants to periodically submit medical evidence in support of continuing disability. It also includes a description, based on a consistent line of ECAB precedent, of the type of medical evidence necessary to support a claim for continuing compensation.

The language in new § 10.500(b) has been added to clarify that OWCP can require non-invasive testing and functional capacity evaluations and that failure to undergo such testing may result in suspension of benefits.

The discussion of weighing medical evidence in § 10.500(c) has been added to describe OWCP's long-standing method of evaluating medical evidence. It explains that the conclusions reached in medical reports are not necessarily accepted at face value. Instead, OWCP considers the entire report and determines the weight to be accorded it based on a number of factors, including the extent to which the report shows a familiarity with the history of the case, whether it contains objective findings (as opposed, for example, to unsubstantiated complaints), and the strength of the reasoning supporting any opinion rendered.

Return to Work—Employer's Responsibilities

The discussion of an employer's responsibilities to return an employee to work in § 10.505 has been revised to specifically reference the provisions of section 8151, which grants reinstatement rights to injured employees and requires employers to take steps to reemploy them. Language has also been added to inform employees, employers and others that the Office of Personnel Management (not OWCP) administers this provision. In the past, employees and former employees have sought OWCP intervention in disputes concerning reemployment rights based upon the mistaken belief that OWCP had jurisdiction over such matters and authority over agency decisions concerning employment decisions. This provision of the regulations is being added to correct that misunderstanding of OWCP's role in regard to reemployment.

Section 10.506 includes a new provision allowing employers to contact employees at reasonable intervals to request periodic medical reports addressing their ability to return to work. This statement is consistent with OWCP's case management procedures, which are designed to include the employing agency in the effort to return the injured employee to work. The provision is not intended to allow employers to obtain medical reports for any reason other than evaluation of an employee's ability to return to work.

The discussion of payment of relocation expenses, in § 10.508, has been revised to include a provision that OWCP may pay relocation expenses when the new employer is other than a federal employer, a situation which the current § 10.123(f) does not address. Requests for reimbursement in this context do not arise frequently, and the expenses claimed are usually modest.

Section 10.509 adds a discussion, not contained in the current regulations, of OWCP's practice with respect to injured employees who have returned to light-duty work and are separated when their employers eliminate their light-duty positions in a subsequent reduction-in-force (RIF) as part of a general agency downsizing at a particular work site. Consistent with established ECAB precedent, OWCP does not consider such a termination of employment to be a recurrence of employment-related disability, since it is not caused by a change in the nature or extent of the employee's accepted medical condition or a change in the duties of the light-duty position, which clearly would have continued to be available in the absence of the RIF.

In such cases, OWCP will determine the employee's wage-earning capacity based on his or her actual earnings in the former light-duty position, if such a determination is appropriate and has not already been made. Unless the employee has been working in a position for which the employer has prepared a written position description, OWCP will assume that the employee was engaged in non-competitive employment that does not represent the employee's wage-earning capacity. This requirement is consistent with ECAB precedent concerning wage-earning capacity determinations, which provides that OWCP may not use an unclassified or ''odd-lot'' position that has been specifically tailored to fit the work limitations of a particular injured employee to determine the wage-earning capacity of that employee.

Return to Work—Employee's Responsibilities

Section 10.516 incorporates into the regulations the procedures followed when OWCP rejects an employee's reasons for refusing a position that OWCP has found suitable. OWCP adopted these procedures several years ago in accordance with the decision of the ECAB in *Maggie Moore*, 42 ECAB 484 (1991). The proposed regulation provides for a 15-day period during which an employee may accept the offered job without penalty after OWCP has determined that his or her proffered reasons for declining to accept an offer of suitable work are not reasonable.

Section 10.518 adds a discussion of ''vocational rehabilitation services'' to the regulations. This definition is intended to clarify that such services include the services of registered nurses working at the direction of OWCP to assist employees in returning to work. These nursing services, which generally take place in the weeks immediately following the injury, are an integral part of OWCP's efforts to return injured employees to work. Vocational rehabilitation includes a variety of services, all of which are designed to assist an injured employee's return to work. Including this definition of vocational rehabilitation services clarifies that OWCP considers nursing services to be such services and that the benefits and sanctions set forth in section 8104 and section 8113(b), which apply to other vocational services, will also apply to nurse services. This discussion also states that OWCP considers vocational evaluation, testing, training and placement services, and functional capacity evaluations to be vocational rehabilitation services.

Section 10.520 incorporates into the regulations an explanation of how OWCP determines an employee's wage-earning capacity after completion of a vocational rehabilitation program. This discussion is intended to inform employees and others of OWCP's long-standing practice in this area and is consistent with ECAB precedent concerning determination of wage-earning capacity.

Reports of Earnings From Employment and Self-Employment

The FECA authorizes OWCP to require FECA claimants to report

earnings from employment or self-employment. The ''earnings'' from employment or self-employment that must be reported by any employee who is receiving compensation for either partial or total disability are defined in § 10.5(g). The language in § 10.525(b) has been added to clarify the distinction between the effects of having earnings, which may or may not result in a reduction of FECA compensation, and the effects of failing to report earnings, which can result in the forfeiture of all compensation paid or found to be payable during the reporting period.

The discussion of volunteer activity in § 10.526 has been added to clarify that employees receiving compensation for partial or total disability are required to report volunteer activity as part of their report of earnings from employment and self-employment. Volunteer service can be a valuable indicator of the kind of gainful employment that the employee may be able to undertake, and thus OWCP may be able to use this information to help determine the employee's wage-earning capacity.

The language in § 10.527 has been added to the regulations to inform employees and others of the fact that OWCP attempts to verify reports of earnings in a number of ways, including computer matches with the Office of Personnel Management and state workers' compensation agencies.

Reduction and Termination of Compensation

Sections 10.540 and 10.541 are new and reflect OWCP's long-standing practices with respect to how and under what circumstances it will provide beneficiaries with written notice that it intends to either reduce or terminate their compensation in the next 30 days, as well as the administrative steps it will take after it provides such notice. These provisions are to inform employees and others when and how OWCP notifies beneficiaries of its intention to terminate compensation and to clarify that, in situations when the beneficiary has no reasonable expectation that compensation will continue, OWCP will not provide this pre-termination notice.

Subpart G, Disallowances and Appeals

This subpart contains most of the information found in current §§ 10.130 through 10.145, except for the material found in current § 10.142, which is moved to subpart H.

Reconsiderations and Reviews by the Director

Review of a decision on application of the claimant is addressed in current § 10.138(b), and review of a decision on the Director's own motion is addressed in current § 10.138(a). Sections 10.605 through 10.610 revise and expand the description of reviewing a decision on application of the claimant and on the Director's own motion in order to clarify the difference between these two separate procedures. These provisions state that the Director's authority is not subject to a request or application. Further, these provisions adopt OWCP's long-standing position that the Director does not need new evidence or argument to review a decision and that the decision by the Director to review a decision is not a proper subject for review or appeal.

In many cases, claimants appear not to have understood the distinction between the two distinct review procedures authorized by section 8128(a). Some individuals, who remain dissatisfied with an OWCP decision after exhausting all their review and appeal rights, have asked the Director to review the decision with which they disagree pursuant to the Secretary's authority under section 8128(a), delegated to the Director, to review a decision on his or her own motion. The distinction between the Director's authority to review a decision on his or her own motion and a claimant's application for review is not new in practice. Claimants have never been entitled to ''apply'' for review outside the process described as a ''reconsideration'' in the review and appeal options accompanying all adverse decisions. When a request to the Director to review a decision on his or her own motion is received, it has been OWCP's long-standing practice to treat it as a reconsideration request rather than an additional avenue for claimants to seek review.

To alleviate the confusion that has been demonstrated in regard to this issue, § 10.610 specifically states that OWCP will not consider a request for review on the Director's own motion. The statutory provision authorizing a claimant to request review of a decision ''upon application'' is fulfilled by the application for reconsideration. Since no other mechanism for a claimant dissatisfied with a decision to obtain a review ''upon application'' is available, OWCP will continue to treat requests that the Director review a decision on his or her own motion as requests for reconsideration.

A number of ECAB cases have addressed the question of whether the Director is required to have new evidence or argument to review a decision under section 8128(a). In Eli Jacobs, 32 ECAB 1147 (1981), the ECAB held that the Director may reopen a claim at any time without specifying what standard, if any, applied to that decision. In a later decision, Daniel E. Phillips, 40 ECAB 1111, petition for reconsideration denied, 41 ECAB 201 (1989), however, over the dissent of one member of the panel, the ECAB held that to reopen and rescind acceptance of a claim, the Director must establish that the original decision was erroneous through the use of ''new or different evidence.'' The ECAB reached this conclusion without specifying any statutory or regulatory basis for this limitation. Its only rationale was its opinion that reopening a decision should not become a surreptitious route for OWCP to readjudicate a claim. In later cases that formulation was expanded to include allowing reopening and rescission of a prior decision through new or different evidence, legal argument or rationale. See, e.g., Beth A. Quimby, 41 ECAB 683 (1990); Billie C. Rae, 43 ECAB 192 (1991); Shelby J. Rycroft, 44 ECAB 795 (1993); Laura H. Hoexter (Nicholas P. Hoexter), 44 ECAB 987 (1993).

Section 10.610 adopts the long-standing position of the Director that the plain language of section 8128(a) authorizes the Director, without pre-condition, to review a decision ''at any time.'' The existing regulations contain a provision, carried over in § 10.608, limiting the right of a claimant to obtain a merit review and a new decision from OWCP to those situations in which the claimant meets one of the requirements set out in § 10.138(b). Without this limitation, the effective administration of the program could be undermined by taxing the limited resources available to administer the program through frivolous requests for review. Allowing the claimant to reopen the claim just to have the same evidence reviewed again would both waste the claims staff time and slow down the appellate process.

In view of the fact that the statute imposes no limitation upon the right of the Director to review a decision ''at any time,'' § 10.610 grants the Director an unconditional right to review any decision without requiring new evidence or argument. Effective administration of the program requires that the Director be able to review decisions at any time without having to supply new evidence or argument.

This does not mean, however, that the claimant has no recourse when the

Director reviews a decision and issues a new decision with which he or she disagrees. Any adverse decision is subject to the full range of review and appeal options which protects the claimant from arbitrary action. Congress clearly did not contemplate restricting the Director's ability to reopen a claim when it gave the Director authority to review a decision ''at any time''.

Consistent with this broad authority, § 10.610 provides that the determination whether or not to review a decision on his or her own motion is not subject to reconsideration, review or appeal. Since the Director has unfettered discretion in deciding whether or not to review a decision, and any claimant unhappy with a new decision issued after such a review by the Director is provided the same rights to seek reconsideration, review or appeal associated with any OWCP decision, no purpose would be served by allowing further review of the Director's decision to review a previous decision.

Hearings

In § 10.615 a provision has been added granting hearing representatives discretion to conduct an oral hearing by telephone or teleconference. Section 10.616(b) revises the time period in which a claimant can request a change in the format of a hearing. A request received by the Branch of Hearings and Review before the date OWCP issues a notice that the record is closed for written review, or has set a date for an oral hearing, will be granted. Later requests will be subject to OWCP's discretion.

Section 10.617(g) makes clear that the hearing representative may terminate a hearing at any time that he or she deems the actions of the claimant and his or her representative to be disruptive. This provision reflects current practice.

The discussion of issuing subpoenas, § 10.619, has been revised to set forth the criteria for issuing a subpoena. To alleviate confusion that has been demonstrated concerning the circumstances under which subpoenas can be issued, § 10.619(a) specifically provides, consistent with practice based upon ECAB precedent, that subpoenas will be issued at the request of a claimant only in connection with hearings. Moreover, it makes clear that this method of gathering evidence is to be used as a last resort. Because the hearing is an informal procedure, not bound by rules of evidence or formal rules of procedure, the need for subpoenas is limited and is sufficiently accommodated by providing that a subpoena can be issued for documents when the information is not available by other means and for witnesses when oral testimony is the best way to ascertain the facts. To avoid disruptions of the hearing process and encourage early and active development of the evidence, § 10.619(a)(1) provides that a subpoena must be requested within 60 days after the date of the original hearing request.

To clarify the role of a representative of the employer at a hearing, the discussion of this subject, in § 10.621(b), has been revised to specifically note that a hearing representative may deny a request by the claimant that the agency representative testify where the claimant cannot establish that such testimony would be relevant or because the representative does not have the appropriate level of knowledge.

Section 10.622 revises the rules concerning postponement of oral hearings to address problems that have arisen since the institution of the current rules concerning postponements in 1987. Oral hearings are scheduled at locations within a reasonable proximity to claimants' places of residence. As a result, hearings are scheduled throughout the country, several times a year in some locations and only once a year in other locations. For each trip, one hearing representative is assigned a number of cases as the ''docket''. Before the trip, the hearing representative must review each file, research the issues, and prepare the record, all of which requires many hours of work.

Scheduling and workload constraints prevent OWCP from sending the same hearing representative to the same city each time. Thus, when a hearing is postponed, it often requires that another hearing representative repeat the preparation for the hearing undertaken by the previous representative. Furthermore, in many cases it is too late to schedule another case for that slot on the docket, thus needlessly delaying hearings for other claimants.

The current rule, found at § 10.137, which allows a postponement for ''good cause'' if the request is received at least three days prior to the date of the hearing, has proven completely ineffective at controlling the waste of resources caused by postponements. Disputes over what constitutes ''good cause'' sometimes take longer and require more resources than rescheduling the hearing itself. The result is delay, not only for the claimant whose hearing was scheduled and postponed, but for other claimants adversely affected by the inefficiency of the current process.

Thus, new procedures are being adopted which provide that, once the oral hearing is scheduled, it cannot be postponed unless the hearing can be rescheduled on that same trip. In the event that an oral hearing cannot be rescheduled on that same trip, the claimant will be provided a review of the written record instead. The proposed limitation is a reasonable compromise which will improve the administration of the program. The program's resources must be preserved to ensure the best service to all those seeking a hearing. Constant and repeated postponement of oral hearings constitute a serious drain on those resources. The review of the written record by a hearing representative as a substitute for an oral hearing has served as an effective way to provide the review contemplated by the FECA on a more timely basis than resources otherwise would permit.

In most cases, the issues relate to written evidence (particularly medical evidence). A face-to-face hearing does little to clarify medical issues, since the determination, in most cases, must be made on the basis of written medical evidence in the file. A review of the written record has been selected, therefore, as an effective way to provide the review of the decision by a hearing representative where the claimant must postpone the hearing.

Another change to the oral hearing procedure is to allow a claimant to express a preference for scheduling an oral hearing. OWCP will attempt to comply with any scheduling preferences of which it is advised at the time of the original request. Once the notice of hearing is sent, the claimant can request a change in the day and the time of the hearing within the same docket.

Review by the Employees' Compensation Appeals Board (ECAB)

Claims on appeal often have continuing issues, such as payments of bills or actions on collateral issues such as recurrences, requiring actions by OWCP. Sometimes, because the case is under the jurisdiction of the ECAB, there are questions as to what can and cannot be done by OWCP when cases are before the ECAB. To clarify this issue, language has been added to the regulations, in § 10.626, which explains the circumstances under which OWCP still has jurisdiction over issues in cases pending before the ECAB.

Subpart H, Specialized Topics

This subpart contains most of the information found in current subparts G and H (§§ 10.500 through 10.624), as well as the material found in § 10.142.

Representation

Current § 10.143 states, with no elaboration, that a claimant may authorize any individual as a representative in a claim before OWCP. Section 10.700 more fully describes who may act as a representative, what authority a representative has, and specifies that there can be only one representative in a claim at a time. These provisions essentially incorporate current practice.

The FECA gives to the Director, as the Secretary's delegate, the authority to approve fees associated with representation of a claim under the FECA. In the past, OWCP claims personnel have reviewed all bills for representatives' services, even if the claimant did not disagree with the amount billed. To reduce the workload imposed by extensive review of bills with which claimants do not disagree, § 10.702 implements a new procedure by which OWCP would automatically approve all fees unless the represented party objects to the amount billed. In that case, OWCP will give that party an opportunity to submit further information. OWCP will then adjudicate the request according to the criteria set forth in § 10.703(c). This section adopts the criteria in the existing regulations at § 10.145(b), after removing items that are essentially duplicative.

Third-Party Liability

Current § 10.501 through § 10.507 essentially restate provisions of sections 8131 and 8132 of the FECA. Much of that material has, therefore, been removed as redundant. Sections 10.704 to 10.719 explain, interpret and clarify duties of FECA claimants and their counsel pursuant to sections 8131 and 8132 of the FECA. Section 10.705(b) incorporates into the regulations a specific reference to the fact that the Office of the Solicitor (SOL) administers the subrogation aspects of certain FECA claims for OWCP. (This does not, however, preclude an employing agency from participating in administering the subrogation aspect of its employees' cases under a specific agreement with OWCP.) Section 10.706 explains how a FECA beneficiary is informed of the obligation to pursue a claim against a third party. Section 10.707 provides a list of all actions that must be taken by a FECA beneficiary in order to comply with the requirement in section 8131 of the FECA that a claimant prosecute an action against a third party when required to do so by OWCP. The purpose of this section is to inform claimants that failure to comply with any of the requirements in this section could result in forfeiture of all FECA benefits arising out of the injury at issue. Section 10.708 further details the penalties that can be applied to a FECA beneficiary who fails to prosecute a claim or to assign it to the United States when requested to do so by indicating that OWCP may order forfeiture of such benefits or alternatively could suspend such benefits until the request to assign or prosecute is complied with. In many instances, review of the information available to OWCP indicates that there is a possibility of third party liability, which, upon further investigation by private counsel consulted by the FECA beneficiaries, is either not economical to pursue or simply not meritorious. Section 10.709 sets forth the procedure to be followed by a FECA beneficiary to be released from the obligation to prosecute an action against a third party.

Section 10.710 is being added to the regulations to clarify that any person who has filed a FECA claim that has been accepted or who has received FECA benefits in connection with a claim filed by another person must report any receipt of money or other property as a result of the liability arising out of that injury to OWCP or SOL within 30 days of receipt. Section 10.711 is being added to the regulations in order to provide a step by step explanation of the calculation of the refund to be paid to the United States and any credit against future benefits calculated in accordance with the formula contained in section 8132 of the FECA. The only change contemplated from existing practice by this formula is elimination of the opportunity to offset payment of medical expenses to federal facilities or other parties from any recovery. This practice has been allowed as an administrative accommodation, but rarely occurs and is no longer considered necessary. Any medical expenses paid directly by the FECA beneficiary should be submitted directly to OWCP for reimbursement as appropriate.

Section 10.712 incorporates into the regulations OWCP's longstanding practices in regard to what amounts are included in the gross recovery reported in connection with third party liability for an injury covered by the FECA. Section 10.713 is being incorporated into the regulations to require that a FECA beneficiary who receives a structured settlement (one which provides for payment of funds over a specified period of time rather than immediately) report as the gross recovery the present value of the right to receive all of the payments called for in the settlement. This requirement is in keeping with the plain language of section 8132 of the FECA, which covers the receipt of ''money or other property'' and the recognition that the right to receive a stream of payments in the future is clearly a valuable property right. This definition is intended to overrule the holding of the ECAB in Benjamin S. Purser, Jr., 42 ECAB 204 (1990).

Section 10.714 sets forth the manner in which OWCP calculates disbursements which it makes in connection with a FECA claim to be refunded in accordance with the formula set out in section 8132 and § 10.711 of these regulations. The only change from existing practice is to allow for subtraction from the total of refundable disbursements of the cost of any medical examination that the FECA beneficiary establishes that the employing agency should have made available at no charge to the employee under a statute other than the FECA. This change is being made to ensure that employees who sustain injuries covered by the FECA are not treated less favorably than those who receive such treatment but have not sustained injuries covered by the FECA.

OWCP has decided to impose interest charges on refunds due to the United States pursuant to section 8132 of the FECA as set forth in § 10.715. This is a change in current policy and is consistent with the Debt Collection Act of 1982. In view of the fact that certain FECA beneficiaries currently receiving compensation payments owe refunds and have refused to pay, a provision is being added to the regulations at § 10.716 allowing collection of such refund by withholding from payments currently payable under FECA. Section 10.717 is being added to the regulations to clarify OWCP's longstanding interpretation that, since an injury caused by medical malpractice in treating a FECA-covered injury is itself an injury covered by FECA, any recovery received in a negligence suit arising out of such malpractice is a recovery subject to section 8132 of the FECA. Similarly, § 10.718 is being added to the regulations to make clear another longstanding OWCP interpretation: that insurance payments to a beneficiary pursuant to a policy the beneficiary has purchased do not constitute a recovery pursuant to section 8132.

Section 10.719 is being added to the regulations to interpret the phrase ''same injury'' for the purposes of implementing section 8132 of the FECA. While an argument can be made that the statute intended that each recovery for a medical condition or wound should be

treated separately for the purpose of calculating any required refund or credit against future benefits (an argument which has been accepted by one district court, in *Benjamin S. Purser, Jr.* v. *United States Department of Labor*, 943 F.Supp. 898 (M.D. Tenn. 1996), the approach being adopted by these regulations is more consistent with the intent of section 8132 and the administration of the FECA. Attempting to separate out each different ''injury'' incurred in, for example, an automobile accident as a result of which an injured employee may have multiple medical conditions affecting numerous body parts in order to allocate a single settlement from the other driver into pieces appears to be an artificial exercise that serves no purpose set forth by the statute. Such an interpretation invites artful drafting of settlement agreements designed to negate the intended effect of the statute to, in part, shift the costs of FECA onto parties who have caused injuries covered under the FECA. Since each claim for FECA benefits arising out of a single incident is administered as one file, regardless of the number of wounds or medical conditions involved, attempting to separately account for the recovery attributable to each wound and to offset any credit against future benefits only to medical payments attributable to that wound would be nearly impossible, except in the most arbitrary manner and even then would be time-consuming, cumbersome and a source of immense delay and confusion.

Federal Grand and Petit Jurors

Current § 10.620 on the definition of jurors has been moved to the list of definitions at § 10.5(h), while current § 10.621 on the applicability of the other subparts of the regulations has been removed as unnecessary.

Peace Corps Volunteers

Current § 10.600 on the definition of Peace Corps volunteers, § 10.601 on the applicability of the FECA, § 10.602 on when disability compensation commences, § 10.603(a) through (c) on special pay rate considerations, and § 10.604 on the period of service of volunteers essentially restated provisions of the FECA and other relevant statutes and have therefore been removed as redundant.

Non-Federal Law Enforcement Officers

Current § 10.612(d) on the eligibility of non-federal law enforcement officers, § 10.617(c) on the adjudication of these claims, § 10.618 regarding consultation with the Attorney General and other agencies, and § 10.619 on cooperation with state and local agencies essentially restated provisions of the FECA and have therefore been removed as redundant.

Subsections (a) and (c) of § 10.735 combine current §§ 10.611 and 10.612, which have been rewritten to accommodate the question and answer format and to delete material that simply restated provisions of the FECA, without any attempt to make a substantive change. Subsection (b) is new and restates other parts of the FECA for use as a general rule. The last sentence of subsection (b) reflects OWCP's longstanding practice with respect to the issue of coverage under this subpart for individuals who only perform administrative functions in support of eligible officers.

The last sentence of § 10.736 is new and reflects a recent ECAB decision which construed the time limitation provision of 5 U.S.C. 8193(c)(3).

Section 10.738 has been rewritten with minor changes throughout to address a growing body of ECAB precedent regarding the nature and extent of coverage for officers who are injured in situations that involve potential federal crimes (as distinguished from actual crimes that have resulted in a criminal prosecution).

Section 10.739 is new and describes the type of objective evidence necessary to establish the existence of a potential federal crime for purposes of coverage consistent with several ECAB decisions on this point. An enumeration of the various methods for making this type of showing is necessary to assist OWCP in its adjudication of a growing number of these sorts of claims.

Section 10.741 is new and substantially rewrites the existing regulation at § 10.616 to reflect longstanding administrative practices regarding the interpretation of what constitutes ''comparable'' benefits consistent with ECAB precedent. Section 10.741(c) is added to the regulations to explain how these benefits are calculated in certain circumstances where the officer contributes to the fund which is the source of the benefit. These provisions are needed to provide OWCP with guidance in adjudicating these matters, which have generated a number of inquiries from officers and their representatives. This interpretation is consistent with OWCP's current practice in calculating how much of the eligible officer's FECA benefit must be offset as a result of the receipt of comparable benefits.

Subpart I, Information for Medical Providers

This subpart is designed to gather in one section all of the information needed by medical providers. It combines some of current §§ 10.410 through 10.413 with §§ 10.450 through 10.457.

It also contains proposed revisions in the rules establishing procedures for submission and reimbursement of inpatient hospital services and pharmaceutical bills under the FECA. These revisions would supplement rules in effect since 1986, which provide for a fee schedule for reimbursement of medical procedures and services. This fee schedule currently applies to all physician services as defined under the FECA, and to outpatient professional services.

Medical Bills

In § 10.801, references to National Drug Codes and Revenue Center Codes have been added to the list of codes which the medical provider must specify. References to UB–82 have been changed to UB–92, as the latter has become the standard billing form for hospitals. A statement that pharmacy bills are to be submitted on the Universal Claim Form has also been added.

Medical Fee Schedule

Sections 10.809 and 10.810 are new. OWCP believes that expanding its ability to control and monitor medical costs is a critical element in ongoing efforts to enhance the management of injuries under FECA. Under these rules, both pharmacy bills and inpatient hospital bills will be subject to cost containment methods.

Under the FECA, OWCP authorizes payment for medical services and establishes limits for fees for such services (March 10, 1986, 51 FR 8276–82, as amended). Since 1994, the schedule for payment of professional services has been based on the relative value units (RVU's) devised by the Department of Health and Human Services, Health Care Financing Administration (HCFA). When appropriate for the schedule, OWCP devises its own RVU's for procedures not covered under the HCFA schedule, for procedures without an assigned RVU under the HCFA schedule, for services HCFA covers under other schedules, and for services unique to OWCP, such as second opinion and impartial medical evaluations. In addition, OWCP devises its own conversion factors to meet program needs.

The Department recognizes the worth of using a schedule to reimburse

covered medical services in that it provides an equitable method to implement cost control measures, and it enhances the ability to manage injury claims, especially the appropriateness of the medical services provided and their relatedness to the compensable injury. These same principles underlie the extension of cost controls to pharmacy and hospital bills.

Pharmacy bills: At present, pharmacy payments, which constitute nearly 6% of the total medical outlays of the program, are not controlled by the fee schedule. These rules would reimburse pharmacies under a set schedule. To standardize payments for medicinal drugs, the program has devised a fee schedule based on the Average Wholesale Price (AWP) of each individual drug plus a dispensing fee established by the Director. AWP prices will be obtained from a file provided by a nationally recognized vendor containing medicinal drugs listed by their unique National Drug Codes (NDCs). AWP prices will be updated on a regular basis.

The AWP is set by the industry, and represents what pharmacies are expected to pay for the drug. The dispensing fee will be twenty percent of the cost of the drug up to a maximum of $12.50. Thus, if the AWP of a drug is $20.00, there would be a dispensing fee of $4.00, and the maximum allowable charge for the drug would be $24.00. If the AWP of the drug was $500.00, however, the dispensing fee would be limited to $12.50, and the maximum allowable charge would be $512.50.

The basic methodology is widely practiced. In all, 23 state workers' compensation programs have some form of control over drug costs through the use of a maximum allowable schedule; 17 of these states have a set schedule for prescription drugs and six more have reimbursement formulas based on average wholesale price similar to that proposed for the FECA program or comparable data. OWCP's Division of Coal Mine Workers' Compensation uses this formula for reimbursement of drugs under the Black Lung Benefits Act.

Hospital bills: Proposed § 10.810 concerns hospital bills. Currently, only hospital outpatient services are subject to a fee schedule. The OWCP now proposes to reimburse hospital inpatient services under a prospective payment system (PPS) that is based on the systems used by the Health Care Financing Administration's Medicare program (42 CFR parts 412 et al).

The OWCP now proposes to use the HCFA prospective payment system (PPS) using Diagnostic Related Groups (DRGs) (42 CFR part 412, et al.) as the foundation of a PPS for determining the allowable reimbursement for inpatient services covered under FECA. OWCP has already successfully converted the foundation of its professional medical fee schedule to the HCFA RVUs, and the use of the HCFA PPS will establish a common base for payment of medical services under both agencies. OWCP's proposal to use the HCFA PPS is compatible with hospital inpatient cost control measures used by other federal agencies such as the Department of Veterans Affairs (VA) and the Department of Defense, Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), who are also using DRG-based reimbursement systems. In addition, several state workers' compensation programs are using DRG-based systems to control the cost of inpatient services for work-related injuries.

The HCFA PPS is based on the premise that similar medical conditions and surgeries require similar inpatient services and resources, and that those conditions and surgeries can be categorized into DRGs according to the primary diagnoses and major surgical procedures performed, as coded under the International Classification of Diseases, 9th Revision (ICD–9–CM). Under the HCFA PPS, hospitals receive a fixed, predetermined reimbursement for each beneficiary's inpatient stay according to the assigned DRG and whether or not the length of stay is considered to be an outlier (the number of inpatient days is not within the nationally calculated range for the assigned DRG).

Under the HCFA PPS, the reimbursement rate is hospital-specific and is determined through a complex formula that considers national average costs for all inpatient services, geographic wage and overhead indices, medical education costs, patient mix, indigent care costs, and capital investments. The HHS PPS DRG rates are updated each year and are described in detail in the **Federal Register** (42 CFR part 412, et al.)

OWCP's decision to use the HCFA PPS as the foundation of its reimbursement system is based on research that explored available options, and on a study of FECA inpatient bills. OWCP reviewed a representative sample of inpatient services reimbursed under FECA, assigned DRGs in accordance with the HCFA DRG grouper rules, and used the HCFA pricer program to determine allowable amounts under Medicare.

In the study, fourteen DRGs accounted for 61% of the dollars billed and 64% of the inpatient stays. A wide range of diagnostic conditions and medical procedures were represented in the study, nevertheless, and they comprised a diverse list of DRGs. It is evident from the study analyses that there is considerable variation in the amounts different hospitals bill FECA for similar services. These billed amounts are greater by a mean of 45% than the amounts that would be allowed if the inpatient stay were paid under the HCFA PPS.

In instances of musculoskeletal soft tissue injuries, however, the OWCP study indicated that the injured worker under FECA may at times require a very short stay compared to that common for a patient under HCFA's Medicare program. For that reason, the billed amounts under FECA were in some cases actually less than that allowed under the HCFA PPS for the same DRG. Short inpatient stays, however, are not uncommon for work-related injuries and often are considered appropriate for post-trauma observation and for diagnostic procedures. Services at psychiatric and rehabilitation hospitals were excluded from this portion of the analysis because they are not currently subject to the HHS PPS for acute care.

Although there are differences in the medical conditions treated under the HCFA and the FECA beneficiary populations, the study indicated that the HCFA PPS using DRGs is well-suited to OWCP's efforts to expand its ability to monitor and control inpatient costs covered under FECA. Other federal agencies have reached similar conclusions, such as CHAMPUS (32 CFR part 199) and the VA (38 CFR 17.55).

HCFA currently collects comprehensive hospital-specific fiscal data, and has considerable experience in this regard. They have been paying for inpatient services under a PPS since October 1983. OWCP does not have the resources to collect such data now or in the foreseeable future. In addition, the Department believes that duplicate collection of data is not an efficient use of staff and resources.

It is proposed, therefore, that OWCP base reimbursement of inpatient services covered under FECA on the HCFA PPS as described below:

a. Hospitals must submit bills for inpatient services covered under FECA on the Standard Form UB–92, or its equivalent, with all common information completed. This information includes the hospital's Medicare number, the patient's Social Security number, the FECA claim number when available, the billed amount, and the primary conditions

treated and procedures performed coded under the current edition of the International Classification of Diseases, 9th Revision, Clinical Modification (ICD–9–CM), Volumes I, II, and III, and/or in accordance with that specified in the yearly update of the HCFA regulations (42 CFR part 412, et. al.)

b. OWCP's adaptation of the HCFA PPS includes use of the HCFA grouper and pricer programs, and an adjustment factor (AF) to the HCFA DRG maximum allowable, which considers the uniqueness of work-related injuries. For example, the median age of the FECA patient is about 42 years, rather than over 65, as is the case under the Medicare program. Secondly, a low volume of FECA patients is expected at any one hospital compared to the number of patients covered under the Medicare program. Thirdly, at times there will be a need for more comprehensive diagnostic and test procedures to determine the work-relatedness of conditions, and/or conditions that may delay return to work. Finally, FECA patients may have nationally common length of stays (LOSs) different than those for Medicare patients, and FECA's goal to return injured employees to work as soon as possible is not a Medicare goal for a retired population.

OWCP believes, however, that the HCFA PPS is well-suited to be the foundation of an OWCP PPS for inpatient services, and that it provides a comprehensive data resource not otherwise available to the Department. OWCP's proposal to use an adjustment factor (AF) to adapt the HCFA PPS to individual program needs is consistent with similar methods used by other federal and state agencies. The AFs used under the OWCP PPS are based on the results of comprehensive studies of inpatient services conducted by OWCP in 1996 and 1990, and on ongoing analyses of medical costs and services provided under FECA.

c. Under OWCP's proposed PPS, the HCFA allowable for a specific DRG at a particular facility constitutes OWCP's Threshold Amount (TA) for the DRG. The OWCP AF to each TA considers: (1) Lengths of stay (LOS) that are outside the HCFA LOS parameters; (2) LOS that are within the HCFA LOS parameters but under OWCP are consistently on the short or long end of the parameter for particular DRGs; and (3) cost outliers that are the result of unique care requirements, particularly expensive hardware such as that frequently used in joint replacements, or are attributable to inflated charges.

In addition: (1) The proposed OWCP PPS per diem rate will not be less than that allowable under the HCFA DRG program when based on the 50th percentile LOS as reported in the **Federal Register** by HCFA for the Medicare program; and (2) the total dollar amounts reduced from billed amounts will be consistent with reduction rates under other portions of the OWCP medical fee schedule and with cost to charge ratios for inpatient services reported by HCFA.

The following abbreviations are used in OWCP's formulae for setting the AF:

TA—Threshold Amount—the HCFA Medicare program maximum allowable for a specific DRG at a particular facility.

TA/H50—Threshold Amount Per Diem rate—the daily rate when the TA is divided by the HCFA national 50th percentile LOS days.

HCFA LOS—The length of stay days as defined under the HCFA national data sets reported in the **Federal Register** yearly; three sets are used for these formulae:

H25 = 25th percentile
H50 = 50th percentile
H75 = 75th percentile

OWCP LOS—The actual number of inpatient days billed for covered services provided a claimant under FECA.

OWCP's formulae for setting the AF are:

(1) The OWCP DRG standard maximum allowable (MA)

The OWCP LOS is within the HCFA LOS parameters, the 25th (H25) to the 75th (H75) percentiles, and the billed amount is not greater than twice the OWCP TA.

$(TA \times 1.24)—[(TA/H50*0.12) * (H75–LOS)] = MA$

(2) The OWCP Short Stay Maximum Allowable (MASS)

The OWCP LOS is less than the HCFA 25th percentile (H25). Short stays regardless of billed amounts are covered under this formula.

$[(TA/H50) * (1.72*LOS)] + [(TA/H50*0.33) * (H50–LOS)] = MASS$

This formula allows for higher costs typically associated with the first days of an inpatient stay, and an incentive allowance for IP days less than the H25.

(3) The OWCP Long Stay and/or Cost Outlier Maximum Allowable (MACO)

The OWCP LOS is (a) greater than the HCFA 75th (H75) percentile LOS, considered a long stay, or (b) the billed amount is considered a cost outlier (greater than twice the TA) but the LOS is within the HCFA LOS parameters (H25 to H75).

$(TA \times 1.24) + [(\text{Billed Amount} - (TA \times 1.24)) \times 0.50] = MACO$

This formula adjusts for the outlier length of stay, or confinements with documented outlier costs when the length of stay is within the H25–H75. The costs beyond the OWCP MA, however, are only paid at 50% of the billed amount. There is no additional adjustment for number of inpatient days. If the long stay billed amount is less than the $TA \times 1.24$, then no charges are paid at the 50% rate.

These formulae always result in a payment greater than the HCFA Medicare program allowable per diem rate (TA/H50). They are consistent with reimbursement principles used by CHAMPUS, the VA, and state workers' compensation programs for short and long stays, and for cost outliers.

d. OWCP proposes to use a separate schedule to reimburse facilities not covered (FNCs) under the HCFA PPS, such as those that only provide rehabilitation or psychiatric services. The information required on each bill will be the same as that required of acute care facilities, including ICD–9–CM coding of diagnostic conditions being treated and any major procedures performed. During a two-year phase-in period, this FNC schedule is to be based on HCFA-calculated cost to charge ratio (CCR) data for acute care inpatient services, currently set at about 55%, on data shared by CHAMPUS and state workers' compensation programs, and on the 1996 OWCP inpatient hospital services study.

The FNC schedule will be applied to inpatient services provided at FNCs when CCR data is available to OWCP. When CCR data is not available, reimbursements will be negotiated prior to services based on locality FNC estimated CCR and available cost data.

FNC Per diem rate * CCR * 1.24 = FNC MA

Outlier costs will be negotiated based on the FNC formula.

20 CFR Part 25

Subpart A—General Provisions

Former § 25.3 regarding the use of local workers' compensation law and the Special Schedule has been deleted as unnecessary.

Subpart C—Extensions of the Special Schedule of Compensation

Section 25.200(a) now includes a specific statement that direct-hire employees of the U.S. Military Forces covered by the Philippine Medical Care Program and the Employees' Compensation Program pursuant to the agreement signed by the United States and the Republic of the Philippines on March 10, 1982 who are also members

of the Philippine Social Security System are not covered by the modified Special Schedule that is otherwise applicable in the Republic of the Philippines.

In addition, old reserved §§ 25.23 and 25.24 have been deleted as unnecessary. Furthermore, old § 25.25 has also been deleted to reflect OWCP's prior policy determination (and concomitant administrative practice) to apply the lesser of the provisions of local law in the Republic of Korea or FECA (not the special schedule).

Statutory Authority

Section 8149 of the Federal Employees' Compensation Act, (5 U.S.C. 8101, *et seq.*), provides the general statutory authority for the Secretary to prescribe rules and regulations necessary for administration and enforcement of the Act. Section 5 U.S.C. 8103 provides specific authority regarding medical treatment and care, including determining the appropriateness of charges. The Debt Collection Act of 1982, as amended authorizes imposition of interest charges and collection of debts by withholding funds due the debtor.

Executive Order 12866

This proposed regulatory action constitutes a ''significant'' rule within the meaning of Executive Order 12866. The Department believes, however, that this regulatory action will not have a significant economic impact on the economy, or any person or organization subject to the proposed changes. The proposed changes will have little or no effect on the level of benefits paid (which in any case involve payments almost exclusively to Federal employees from funds appropriated by Congress); nor will there be a significant economic impact upon the hospitals and pharmacies which, for the first time, will be subject to the fee schedules established by these rules. The total dollar amount paid for inpatient hospital services in fiscal year 1996 was $81,955,562.00, and subjecting these charges to the DRG schedule is expected to result in a 20 percent decrease in the amount paid, or about $16.4 million. The total dollar amount paid for pharmacy costs in fiscal year 1996 was $31.9 million, and subjecting these charges to the fee schedule is expected to result in a 10 to 15 percent decrease in the amount paid, or about $3–4.5 million. Insofar as the proposed amendments make it easier to seek benefits under the FECA and streamline the administration of the program, they would decrease administrative costs. The proposed changes have been reviewed by the Office of Management and Budget for consistency with the President's priorities and the principles set forth in Executive Order 12866.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995, as well as E.O. 12875, this rule does not include any federal mandate that may result in increased expenditures by state, local and tribal governments, or increased expenditures by the private sector of more than $100 million.

Paperwork Reduction Act

The new collection of information contained in this rulemaking has been submitted for review to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995. No person is required to respond to a collection of information request unless the collection of information displays a valid OMB control number.

The new information collection requirements contained in this proposed rule are set forth in §§ 10.801 and 10.802, and they relate to information required to be submitted by pharmacies and hospitals covering certain in-patient bills. The Department is proposing to create a new form (Universal Pharmacy Billing Form) which will be used by pharmacies in submitting claims for payment. Another form (the claimant reimbursement form) will be used by claimants seeking reimbursement for medical expenses for which they have paid the providers directly. The public reporting burden for these collections of information is estimated to average as follows: Universal Pharmacy Billing Form—It will take five (5) minutes to complete the form, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information; Claimant Reimbursement Form—we estimate it will take an average of ten (10) minutes to complete this form, including reviewing instructions, searching for existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The Department would like to solicit comments to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: New Collection.
Agency: Employment Standards Administration.
Title: Claimant Medical Reimbursement Form (CA–915).
OMB Number: None.
Affected Public: Individuals or households, Federal Government.
Total Respondents: 40,500.
Frequency: On occasion.
Total Responses: 40,500.
Average Time per Response: 10 minutes.
Total Hours: 6,723.
Total Burden Cost (capital/startup): 0.
Total Burden Cost (operating/maintenance): 0.

Type of Review: New Collection.
Agency: Employment Standards Administration.
Title: NCPDP Universal Pharmacy Billing Form (79–1A).
OMB Number: None.
Affected Public: Businesses or other for-profit; Not-for-profit Institutions; Individuals or households; Federal Government; State, Local or Tribal Government.
Total Respondents: 406,198.
Frequency: On occasion.
Total Responses: 406,198.
Average Time per Response: 5 minutes.
Total Hours: 33,714.
Total Burden Cost (capital/startup): 0.
Total Burden Cost (operating/maintenance): 0.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Office of information Management, U.S. Department of Labor, Room N–1301, 200 Constitution Avenue, Washington, DC, 20210; and to the Office of Information and Regulatory Affairs, Attn: ESA Desk Officer, OMB New Executive Office Bldg., 725 17th Street NW., Room 10235, Washington, DC 20003.

Regulatory Flexibility Act

The Department believes that the rule will have ''no significant economic impact upon a substantial number of small entities'' within the meaning of

section 3(a) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). The provisions of the proposed rules extending cost control measures to hospital inpatient services and pharmacies is the only provision of the regulations which may have a monetary effect on small businesses. That effect will not be significant on a substantial number of those businesses, however, for no one business bills a significant amount to OWCP for FECA-related services, and the effect on those bills which are submitted, while a worthwhile savings for the government in the aggregate, will not be significant for individual businesses affected.

The two new cost containment provisions are: (1) a set schedule for payment of pharmacy bills; and (2) a prospective payment system for hospital inpatient services. The two methodologies are fully explained in the text of the preamble, including the fact that the use of Diagnostic Related Groups (DRGs) for setting payment for in-patient hospital charges essentially is an adaptation of a system used by the Health Care Finance Agency (HCFA) in payment of Medicare bills. The use of Average Wholesale Prices (AWP) in setting the maximum reimbursable amount for pharmacy bills is also commonplace in the industry.

The method selected by OWCP is therefore one which contains efficiencies both for the government and providers. The government benefits because OWCP did not reinvent the wheel, but minimized resources by adopting existing and well-recognized systems already in place. The providers benefit because submitting a bill to OWCP and receiving payment will be almost the same process as submitting it to Medicare, a program with which hospitals are already familiar and have in place for billing, so they will not have to learn a new process and the FECA bills will not represent an unnecessary administrative cost because the FECA bill process will not be essentially distinguished from that for Medicare. Similarly, the pharmacies are used to billing through clearing houses and having charges subject to limits by private insurers. By adopting the uniform billing statement and a familiar cost control methodology, OWCP has kept close to the environment with which the pharmacies are already familiar. The methods chosen, therefore, represent a familiar environment to the providers.

The costs savings resulting from the implementation of these cost containment methods are significant only in the aggregate and will have no significant effect on any individual businesses. First, the need for cost containment in the FECA program is self evident and these methods are already utilized by Medicare, CHAMPUS and Veterans Administration among government entities, and for the private insurance carriers which cover Federal employees as part of the Federal employees' health benefit insurance programs. The costs to providers whose charges may be reduced are relatively small, both in incremental and in actual terms.

Incrementally, FECA bills simply do not represent a large share of any one provider's total business. Since Federal employees are spread throughout the United States and this system covers only those Federal employees who are injured on the job and require either prescription drugs or inpatient hospital care (a tiny subset of all employees), the number of bills submitted by any one provider which may be subject to these provisions is likely to be very small.

Second, in actual terms, the amount by which these bills might be reduced will not have a significant impact on any business. As noted earlier in this preamble, in fiscal year (FY) 1996, the program paid $81.9 million dollars on about 15,700 bills received for in-patient hospital services (an average charge of $5,225.00 per stay). The total number of hospitals on our provider files is about 5,000, for an average patient load of slightly over three FECA-claimant patients per hospital. If we assume that no hospital had more than three patients, then the average annual billings subject to these rules for any hospital would be about $15,775 (3×$5,225). As also noted earlier in the preamble, the DRG method will reduce the $81.9 million by about 20 percent, or $16.4 million. Thus, the average dollar amount of the reduction in bills submitted by any one hospital resulting from these rules would be about $3,150.00.

A similarly small actual dollar reduction applies to pharmacy charges. OWCP paid about $32,000,000 for pharmacy charges, although we cannot identify exactly what portion of this amount was paid to institutions, since much of this dollar figure represents reimbursements directly to claimants. We cannot identify with certainty the number of pharmacies who provided supplies, for the same reason, but there are about 4,000 pharmacies in our provider files. Similarly, we cannot determine the exact number of bills paid, since we capture only those submitted by a provider for direct payment and not those submitted by a claimant for reimbursement. Assuming for purposes of this analysis that the reimbursements were evenly divided among pharmacies already part of our provider files, we divide 4,000 providers in to the total number of dollars paid to get an average annual aggregate of charges paid to a provider of about $8,000.00. It is estimated that the schedule would result in an average reduction of five percent in pharmacy charges; based on these figures, the average pharmacy would see a reduction in the total amount of charges submitted of about $400.

These figures illustrate that the ''cost'' of these rules to any one provider is negligible. On the other hand, OWCP will see substantial aggregate cost savings as a result (estimated at $18,000,000). These savings benefit OWCP (by strengthening the integrity of the program), the employing agencies (which ultimately foot the bill for FECA through the chargeback system), and taxpayer and rate payers to whom the ultimate costs of the program are eventually charged through appropriations.

The Assistant Secretary for Employment Standards has certified to the Chief Counsel for Advocacy of the Small Business Administration that these rules will not have a significant impact on a substantial number of small entities. Accordingly, no regulatory impact analysis is required.

List of Subjects for 20 CFR Parts 10 and 25

Administrative practice and procedures, Claims, Government employees, Labor, Workers' compensation.

For the reasons set forth in the preamble, it is proposed that 20 CFR Chapter I be amended as follows:

1. It is proposed that part 10 be revised to read as follows:

PART 10—CLAIMS FOR COMPENSATION UNDER THE FEDERAL EMPLOYEES' COMPENSATION ACT, AS AMENDED

Subpart A—General Provisions

Sec.

Introduction

10.0 What are the provisions of the FECA, in general?
10.1 What rules govern the administration of the FECA and this chapter?
10.2 What do these regulations contain?
10.3 Have the collection of information requirements of this part been approved by OMB?

Definitions and Forms

10.5 What definitions apply to these regulations?
10.6 What special statutory definitions apply to dependents and survivors?

10.7 What forms are needed to process claims under the FECA?

Information in Program Records

10.10 Are all documents relating to claims filed under the FECA considered confidential?
10.11 Who maintains custody and control of FECA records?
10.12 How may a FECA claimant or beneficiary obtain copies of protected records?
10.13 What process is used by a person who wants to correct FECA-related documents?

Rights and Penalties

10.15 May compensation rights be waived?
10.16 What are the criminal law penalties for making a false report in connection with a claim under the FECA?
10.17 Is a beneficiary who defrauds the government in connection with a claim for benefits still entitled to those benefits?
10.18 Can a beneficiary who is incarcerated based on a felony conviction still receive benefits?

Subpart B—Filing Notices and Claims; Submitting Evidence

Notices and Claims for Injury, Disease and Death—Employee or Survivor's Actions

10.100 How and when is a notice of traumatic injury filed?
10.101 How and when is a claim for wage loss compensation on account of traumatic injury filed?
10.102 How and when is a notice of occupational disease filed?
10.103 How and when is a claim for wage loss compensation on account of occupational disease filed?
10.104 How and when is a claim for permanent impairment filed?
10.105 How and when is a claim for recurrence filed?
10.106 How and when is a notice of death and claim for benefits filed?

Notices and Claims for Injury, Disease and Death—Employer's Actions

10.110 What should the employer do when an employee files a notice of traumatic injury or occupational disease?
10.111 What should the employer do when an employee files an initial claim for compensation due to disability or permanent impairment?
10.112 What should the employer do when an employee files a claim for continuing compensation due to disability?
10.113 What should the employer do when an employee dies from a work-related injury or disease?

Evidence and Burden of Proof

10.115 What evidence is needed to establish a claim?
10.116 What additional evidence is needed in cases based on occupational disease?
10.117 What happens if the employer contests any of the facts as stated by the claimant?
10.118 Does the employer participate in the claims process in any other way?
10.119 What action will OWCP take with respect to information submitted by the employer?
10.120 May a claimant submit additional evidence?
10.121 What happens if OWCP needs more evidence from the claimant?

Decisions on Entitlement to Benefits

10.125 How does OWCP determine entitlement to benefits?
10.126 What does the decision contain?
10.127 To whom is the decision sent?

Subpart C—Continuation of Pay

10.200 What is continuation of pay?

Eligibility for COP

10.205 What other conditions must be met to receive COP?
10.206 May an employee who uses leave after an injury later decide to use COP instead?
10.207 May an employee who returns to work, then stops work again due to the effects of the injury, receive COP?

Responsibilities

10.210 What are the employee's responsibilities in COP cases?
10.211 What are the employer's responsibilities in COP cases?

Calculation of COP

10.215 How does OWCP compute the number of days of COP used?
10.216 How is the pay rate for COP calculated?
10.217 Is COP charged if the employee continues to work, but in a different job that pays less?

Controversion and Termination of COP

10.220 When is an employer not required to pay COP?
10.221 How is a claim for COP controverted?
10.222 When may an employer terminate COP which has already begun?
10.223 Are there other circumstances under which OWCP will not authorize payment of COP?
10.224 What happens if OWCP finds that the employee is not entitled to COP after it has been paid?

Subpart D—Medical and Related Benefits

Emergency Medical Care

10.300 What are the basic rules for authorizing emergency medical care?
10.301 May the physician designated on Form CA–16 refer the employee to another medical specialist or medical facility?
10.302 Should the employer authorize medical care if he or she doubts that the injury occurred, or that it is work-related?
10.303 Should the employer use a Form CA–16 to authorize medical testing when an employee is exposed to a workplace hazard just once?
10.304 Are there any exceptions to these procedures?

Medical Treatment and Related Issues

10.310 What are the basic rules for obtaining medical care?
10.311 What are the special rules for the services of chiropractors?
10.312 What are the special rules for the services of clinical psychologists?
10.313 Will OWCP pay for preventive treatment?
10.314 Will OWCP pay for the services of an attendant?
10.315 Will OWCP pay for transportation to obtain medical treatment?
10.316 After selecting a treating physician, may an employee choose to be treated by another physician instead?

Directed Medical Examinations

10.320 Can OWCP require an employee to be examined by another doctor?
10.321 What happens if the physician selected by OWCP does not agree with the physician selected by the employee?
10.322 Who pays for second opinion and referee examinations?
10.323 What are the consequences of failing to report for or obstructing a second opinion or referee examination?
10.324 May an employer require an employee to undergo a physical examination in connection with a work-related injury?

Medical Reports

10.330 What are the requirements for medical reports?
10.331 How and when should the medical report be submitted?
10.332 What additional medical information will OWCP require to support continuing payment of benefits?
10.333 What additional medical information will OWCP require to support a claim for a schedule award?

Medical Bills

10.335 How are medical bills submitted?
10.336 What are the time frames for submitting bills?
10.337 If OWCP reimburses an employee only partially for a medical expense, must the provider refund the balance of the amount paid to the employee?

Subpart E—Compensation and Related Benefits

Compensation for Disability and Impairment

10.400 What is total disability?
10.401 When and how is compensation for total disability paid?
10.402 What is partial disability?
10.403 When and how is compensation for partial disability paid?
10.404 When and how is compensation for a schedule impairment paid?
10.405 Who is considered a dependent in a claim based on disability or impairment?
10.406 What are the maximum and minimum rates of compensation in disability cases?

Compensation for Death

10.410 What are the rates of compensation payable in death cases?
10.411 What are the maximum and minimum rates of compensation in death cases?
10.412 Will OWCP pay the costs of burial and transportation of the remains?
10.413 If a person dies while receiving a schedule award, to whom is the balance of the schedule award payable?
10.414 What reports of dependents are needed in death cases?
10.415 What must a beneficiary do if the number of beneficiaries decreases?
10.416 How does a change in the number of beneficiaries affect the amount of compensation paid to the other beneficiaries?
10.417 What reports are needed when compensation payments continue for children over age 18?

Adjustments to Compensation

10.420 How are cost-of-living adjustments applied?
10.421 May a beneficiary receive other kinds of payments from the federal government concurrently with compensation?
10.422 May compensation payments be issued in a lump sum?
10.423 May compensation payments be assigned to, or attached by, creditors?
10.424 May someone other than the beneficiary be designated to receive compensation payments?

Overpayments

10.430 How does OWCP notify an individual of a payment made?
10.431 What does OWCP do when an overpayment is identified?
10.432 How can an individual present evidence to OWCP in response to a preliminary notice of an overpayment?
10.433 Under what circumstances can OWCP waive recovery of an overpayment?
10.434 If OWCP finds that the recipient of an overpayment was not at fault, what criteria are used to decide whether to waive recovery of it?
10.435 Is an individual responsible for an overpayment that resulted from an error by OWCP or another government agency?
10.436 Under what circumstances would recovery of an overpayment defeat the purpose of the FECA?
10.437 Under what circumstances would recovery of an overpayment be against equity and good conscience?
10.438 Can OWCP require the individual who received the overpayment to submit additional financial information?
10.439 May other issues be addressed at the pre-recoupment hearing?
10.440 How does OWCP communicate its final decision concerning recovery of an overpayment, and what appeal right accompanies it?
10.441 How are overpayments collected?

Subpart F—Continuing Entitlement to Benefits

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Authority: 5 U.S.C. 301, 8103, 8145 and 8149; 31 U.S.C. 3716 and 3717; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; Secretary's Order 5–96, 62 FR 107.

Subpart A—General Provisions

Introduction

§ 10.0 What are the provisions of the FECA, in general?

The Federal Employees' Compensation Act (FECA) as amended (5 U.S.C. 8101 *et seq.*) provides for the payment of workers' compensation benefits to civilian officers and employees of all branches of the Government of the United States. The regulations in this part describe the rules for filing, processing, and paying claims for benefits under the FECA.

(a) The FECA has been amended and extended a number of times to provide workers' compensation benefits to volunteers in the Civil Air Patrol (5 U.S.C. 8141), members of the Reserve Officers' Training Corps (5 U.S.C. 8140), Peace Corps Volunteers (5 U.S.C. 8142), Job Corps enrollees and Volunteers In Service to America (5 U.S.C. 8143), members of the National Teachers Corps (5 U.S.C. 8143a), certain student employees (5 U.S.C. 5351 and 8144), certain law enforcement officers not employed by the United States (5 U.S.C. 8191–8193), and various other classes of persons who provide or have provided services to the Government of the United States.

(b) The FECA provides for payment of several types of benefits, including compensation for wage loss, schedule awards, medical and related benefits, and vocational rehabilitation services for conditions resulting from injuries sustained in performance of duty while in service to the United States.

(c) The FECA also provides for payment of monetary compensation to specified survivors of an employee whose death resulted from a work-related injury and for payment of certain burial expenses subject to the provisions of 5 U.S.C. 8134.

(d) All types of benefits and conditions of eligibility listed in this section are subject to the provisions of the FECA and of this part. This section shall not be construed to modify or enlarge upon the provisions of the FECA.

§ 10.1 What rules govern the administration of the FECA and this chapter?

In accordance with 5 U.S.C. 8145 and Secretary's Order 5–96, the responsibility for administering the FECA, except for 5 U.S.C. 8149 as it pertains to the Employees' Compensation Appeals Board, has been delegated to the Assistant Secretary for Employment Standards. The Assistant Secretary, in turn, delegated the authority and responsibility for administering the FECA to the Director of the Office of Workers' Compensation Programs (OWCP). Except as otherwise provided by law, the Director, OWCP and his or her designees have the exclusive authority to administer, interpret and enforce the provisions of the Act.

§ 10.2 What do these regulations contain?

Part 10 of this chapter sets forth the regulations governing administration of all claims filed under the FECA, except to the extent specified in certain particular provisions. Its provisions are intended to assist persons seeking compensation benefits under the FECA, as well as personnel in the various federal agencies and the Department of Labor who process claims filed under the FECA or who perform administrative functions with respect to the FECA. Part 10 applies to part 25 of this chapter except as modified by part 25. The various subparts of this part contain the following:

(a) Subpart A: The general statutory and administrative framework for processing claims under the FECA. It contains a statement of purpose and scope, together with definitions of terms, descriptions of basic forms, information about the disclosure of OWCP records, and a description of rights and penalties under the FECA, including convictions for fraud.

(b) Subpart B: The rules for filing notices of injury and claims for benefits under the FECA. It also addresses evidence and burden of proof, as well as the process of making decisions concerning eligibility for benefits.

(c) Subpart C: The rules governing claims for and payment of continuation of pay.

(d) Subpart D: The rules governing emergency and routine medical care, second opinion and referee medical examinations directed by OWCP, and medical reports and records in general. It also addresses the kinds of treatment which may be authorized and how medical bills are paid.

(e) Subpart E: The rules relating to the payment of monetary compensation benefits for disability, impairment and death. It includes the provisions for identifying and processing overpayments of compensation.

(f) Subpart F: The rules governing the payment of continuing compensation benefits. It includes provisions concerning the employee's and the employer's responsibilities in returning the employee to work. It also contains provisions governing reports of earnings and dependents, recurrences, and reduction and termination of compensation benefits.

(g) Subpart G: The rules governing the appeals of decisions under the FECA. It includes provisions relating to hearings, reconsiderations, and appeals before the Employees' Compensation Appeals Board.

(h) Subpart H: The rules concerning legal representation and for adjustment and recovery from a third party. It also contains provisions relevant to three groups of employees whose status requires special application of the provisions of the FECA: federal grand and petit jurors, Peace Corps volunteers, and non-federal law enforcement officers.

(i) Subpart I: Information for medical providers. It includes rules for medical reports, medical bills, and the OWCP medical fee schedule, as well as the provisions for exclusion of medical providers.

§ 10.3 Have the collection of information requirements of this part been approved by OMB?

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control numbers 1215–0055, 1215–0067, 1215–0103, 1215–0115, 1215–0154, 1215–0155, 1215–0167, 1215–0176 and 1215–0182.

Definitions and Forms

§ 10.5 What definitions apply to these regulations?

Certain words and phrases found in this part are defined in this section or in the FECA statute. Some other words and phrases that are used only in limited situations are defined in the later subparts of these regulations.

(a) *Benefits* or *Compensation* means the money OWCP pays to or on behalf of a beneficiary from the Employees' Compensation Fund for lost wages, a loss of wage-earning capacity or a permanent physical impairment, as well as the money paid to beneficiaries for an employee's death. These two terms also include any other amounts paid out of the Employees' Compensation Fund for such things as medical treatment, medical examinations conducted at the request of OWCP as part of the claims adjudication process, vocational rehabilitation services, services of an attendant and funeral expenses, but does not include continuation of pay.

(b) *Beneficiary* means an individual who is entitled to a benefit under the FECA and this part.

(c) *Claim* means a written assertion of an individual's entitlement to benefits under the FECA, submitted in a manner authorized by this part.

(d) *Claimant* means an individual whose claim has been filed.

(e) *Director* means the Director of OWCP or a person designated to carry out his or her functions.

(f) *Disability* means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.

(g) *Earnings from employment or self-employment* means:

(1) Gross earnings or wages before any deductions and includes the value of subsistence, quarters, reimbursed expenses and any other goods or services received in kind as remuneration; or

(2) A reasonable estimate of the cost to have someone else perform the duties of an individual who accepts no remuneration. Neither lack of profits, nor the characterization of the duties as a hobby, removes an unremunerated individual's responsibility to report the estimated cost to have someone else perform his or her duties.

(h) *Employee* means, but is not limited to, an individual who fits within one of the following listed groups:

(1) A civil officer or employee in any branch of the Government of the United States, including an officer or employee of an instrumentality wholly owned by the United States;

(2) An individual rendering personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay, when a statute authorizes the acceptance or use of the service, or authorizes payment of travel or other expenses of the individual;

(3) An individual, other than an independent contractor or an individual employed by an independent contractor, employed on the Menominee Indian Reservation in Wisconsin in operations conducted under a statute relating to tribal timber and logging operations on that reservation;

(4) An individual appointed to a position on the office staff of a former President; or

(5) An individual selected and serving as a federal petit or grand juror.

(i) *Employer* or *Agency* means any civil agency or instrumentality of the United States Government, or any other organization, group or institution employing an individual defined as an "employee" by this section. These terms also refer to officers and employees of an employer having responsibility for the supervision, direction or control of employees of that employer as an "immediate superior," and to other employees designated by the employer to carry out the functions vested in the employer under the FECA and this part, including officers or employees delegated responsibility by an employer for authorizing medical treatment for injured employees.

(j) *Entitlement* means entitlement to benefits as determined by OWCP under the FECA and the procedures described in this part.

(k) *FECA* means the Federal Employees' Compensation Act, as amended.

(l) *Hospital services* means services and supplies provided by hospitals within the scope of their practice as defined by State law.

(m) *Impairment* means any anatomic or functional abnormality or loss. A permanent impairment is any such abnormality or loss after maximum medical improvement has been achieved.

(n) *Knowingly* means with knowledge, consciously, willfully or intentionally.

(o) *Medical services* means services and supplies provided by or under the supervision of a physician. Reimbursable chiropractic services are limited to physical examinations (and related laboratory tests), x-rays performed to diagnose a subluxation of the spine and treatment consisting of manual manipulation of the spine to correct a subluxation.

(p) *Medical support services* means services, drugs, supplies and appliances provided by a person other than a physician or hospital.

(q) *Occupational disease or illness* means a condition produced by the work environment over a period longer than a single workday or shift.

(r) *OWCP* means the Office of Workers' Compensation Programs.

(s) *Pay rate for compensation purposes* means the employee's pay, as determined under 5 U.S.C. 8114, at the time of injury, the time disability begins or the time compensable disability recurs if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States, whichever is greater, except as otherwise determined under 5 U.S.C. 8113 with respect to any period.

(t) *Physician* means an individual defined as such in 5 U.S.C. 8101(2), except during the period for which his or her license to practice medicine has been suspended or revoked by a State licensing or regulatory authority.

(u) *Qualified hospital* means any hospital licensed as such under State law which has not been excluded under the provisions of subpart I of this part. Except as otherwise provided by regulation, a qualified hospital shall be deemed to be designated or approved by OWCP.

(v) *Qualified physician* means any physician who has not been excluded under the provisions of subpart I of this part. Except as otherwise provided by regulation, a qualified physician shall be deemed to be designated or approved by OWCP.

(w) *Qualified provider of medical support services or supplies* means any person, other than a physician or a hospital, who provides services, drugs, supplies and appliances for which OWCP makes payment, who possesses any applicable licenses required under State law and who has not been excluded under the provisions of subpart I of this part.

(x) *Recurrence of disability* means an inability to work after an employee has returned to work, caused by a spontaneous and material change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical restrictions due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, non-performance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical restrictions.

(y) *Representative* means an individual properly authorized by a claimant in writing to act for the claimant in connection with a claim or proceeding under the FECA or this part.

(z) *Student* means an individual defined at 5 U.S.C. 8101(17). Two terms used in that particular definition are further defined as follows:

(1) ''Additional type of educational or training institution'' means a technical, trade, vocational, business or professional school accredited or licensed by the United States Government or a state government or any political subdivision thereof providing courses of not less than three months' duration, that prepares the individual for a livelihood in a trade, industry, vocation or profession.

(2) ''Year beyond the high school level'' means:

(i) The 12-month period beginning the month after the individual graduates from high school, provided he or she had indicated an intention to continue schooling within four months of high school graduation, and each successive 12-month period in which there is school attendance or the payment of compensation based on student attendance; or

(ii) If the individual has indicated that he or she will not continue schooling within four months of high school graduation, the 12-month period beginning with the month that the individual enters school to continue his or her education, and each successive 12-month period in which there is school attendance or the payment of compensation based on student status.

(aa) *Subluxation* means an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays.

(bb) *Surviving spouse* means the husband or wife living with or dependent for support upon a deceased employee at the time of his or her death, or living apart for reasonable cause or because of the deceased employee's desertion.

(cc) *Temporary aggravation* of a pre-existing condition means that factors of employment have directly caused that condition to be more severe for a limited period of time and have left no greater impairment than existed prior to the employment injury.

(dd) *Traumatic injury* means a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.

§ 10.6 What special statutory definitions apply to dependents and survivors?

(a) 5 U.S.C. 8133 provides that certain benefits are payable to certain enumerated survivors of employees who have died from an injury sustained in the performance of duty.

(b) 5 U.S.C. 8148 also provides that certain other benefits are payable to certain family members of employees who have been incarcerated due to a felony conviction.

(c) 5 U.S.C. 8110(b) further provides that any employee who is found to be eligible for a basic benefit shall be entitled to have such basic benefit augmented at a specified rate for certain persons who live in the beneficiary's household or who are dependent upon the beneficiary for support.

(d) 5 U.S.C. 8101, 8110, 8133 and 8148, which define the nature of such survivorship or dependency necessary to qualify a beneficiary for a survivor's benefit or an augmented benefit, apply to the provisions of this part.

§ 10.7 What forms are needed to process claims under the FECA?

(a) Notice of injury, claims and certain specified reports shall be made on forms prescribed by OWCP. Employers are expected to maintain an adequate

supply of the basic forms needed for the proper recording and reporting of injuries.

Form No.	Title
(1) CA–1	Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation.
(2) CA–2	Notice of Occupational Disease and Claim for Compensation.
(3) CA–2a	Notice of Employee's Recurrence of Disability and Claim for Pay/Compensation.
(4) CA–3	Report of Termination of Disability and/or Payment.
(5) CA–5	Claim for Compensation by Widow, Widower and/or Children.
(6) CA–5b	Claim for Compensation by Parents, Brothers, Sisters, Grandparents, or Grandchildren.
(7) CA–6	Official Superior's Report of Employee's Death.
(8) CA–7	Claim for Compensation Due to Traumatic Injury or Occupational Disease.
(9) CA–8	Claim for Continuing Compensation on Account of Disability.
(10) CA–12	Claim for Continuance of Compensation.
(11) CA–16	Authorization of Examination and/or Treatment.
(12) CA–17	Duty Status Report.
(13) CA–20	Attending Physician's Report.
(14) CA–20a	Attending Physician's Supplemental Report.

(b) Copies of the forms listed in this paragraph are available for public inspection at the Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. They may also be obtained from district offices, employers (i.e., safety and health offices, supervisors), and the Internet.

Information in Program Records

§ 10.10 Are all documents relating to claims filed under the FECA considered confidential?

All records relating to claims for benefits, including copies of such records maintained by an employer, are considered confidential and may not be released, inspected, copied or otherwise disclosed except as provided in the Freedom of Information Act and the Privacy Act of 1974. All FECA-related records are covered by the government-wide Privacy Act system of records entitled DOL/GOVT–1 (Office of Workers' Compensation Programs, Federal Employees' Compensation Act File). The routine uses to which such records may be put are set forth in the Notice published in the **Federal Register** by the Department of Labor. The regulations and routine uses promulgated by the Department of Labor control decisions regarding access to all FECA-related records.

§ 10.11 Who maintains custody and control of FECA records?

All documents covered by DOL/GOVT–1 are official records of OWCP and, as such, are maintained by and under the control of OWCP. While an employer may establish procedures an injured employee or FECA beneficiary should follow in requesting access to documents it maintains, any decision issued in response to such a request must comply with the rules and regulations of the Department of Labor.

§ 10.12 How may a FECA claimant or beneficiary obtain copies of protected records?

(a) A claimant seeking copies of his or her official FECA file should address a request to the District Director of the OWCP office having custody of the file. A claimant seeking copies of FECA-related documents in the custody of the employer should follow the procedures established by that agency. In responding to a claimant's request, the employer must comply with the rules and regulations of the Department of Labor which govern all aspects of safeguarding the records.

(b) Any appeal from a decision denying access to the FECA-related documents must be filed with the Solicitor of Labor as provided in 29 CFR part 71.

§ 10.13 What process is used by a person who wants to correct FECA-related documents?

Any request to amend a record covered by DOL/GOVT–1 should be directed to the district office having custody of the official file. No employer has the authority to issue determinations with regard to requests for the correction of records contained in or covered by DOL/GOVT–1. Any request for correction received by an employer must be referred to OWCP for review and decision.

Rights and Penalties

§ 10.15 May compensation rights be waived?

No employer or other person may require an employee or other claimant to enter into any agreement, either before or after an injury or death, to waive his or her right to claim compensation under the FECA. No waiver of compensation rights shall be valid.

§ 10.16 What are the criminal law penalties for making a false report in connection with a claim under the FECA?

(a) A number of statutory provisions make it a crime to file a false or fraudulent claim or statement with the government in connection with a claim under the FECA. Included among these provisions are sections 287, 1001, 1920, and 1922 of title 18, United States Code. Enforcement of these and other criminal provisions that may apply to claims under the FECA are within the jurisdiction of the Department of Justice.

(b) In addition, administrative proceedings may be initiated under the Program Fraud Civil Remedies Act of 1986 (PFCRA), 31 U.S.C. 3801–12, to impose civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted or presented, false, fictitious or fraudulent claims or written statements to OWCP in connection with a claim under the FECA. The Department of Labor's regulations implementing the PFRCA are found at 29 CFR part 22.

§ 10.17 Is a beneficiary who defrauds the government in connection with a claim for benefits still entitled to those benefits?

When a beneficiary either pleads guilty to or is found guilty on charges of defrauding the federal government in connection with a claim for benefits, the beneficiary's entitlement to any further compensation benefits will terminate effective the date either the guilty plea is accepted or a verdict of guilty is returned after trial, for any injury occurring on or before the date of such guilty plea or verdict. Termination of entitlement under this section is not affected by any subsequent change in or recurrence of the beneficiary's medical condition.

§ 10.18 Can a beneficiary who is incarcerated based on a felony conviction still receive benefits?

(a) Whenever a beneficiary is incarcerated in a state or federal jail, prison, penal institution or other correctional facility due to a state or federal felony conviction, he or she forfeits all rights to compensation benefits during the period of incarceration. A beneficiary's right to compensation benefits for the period of his or her incarceration is not restored after such incarceration ends, even though payment of compensation benefits may resume.

(b) If the beneficiary has eligible dependents, OWCP will pay compensation to such dependents at a reduced rate during the period of his or her incarceration, by applying the percentages of 5 U.S.C. 8133(a)(1) through (5) to the beneficiary's gross current entitlement.

(c) If OWCP's decision on entitlement is pending when the period of incarceration begins, and compensation is due for a period of time prior to such incarceration, payment for that period will only be made to the beneficiary following his or her release.

Subpart B—Filing Notices and Claims; Submitting Evidence

Notices and Claims for Injury, Disease, and Death—Employee or Survivor's Actions

§ 10.100 How and when is a notice of traumatic injury filed?

(a) To claim benefits under the FECA, an employee who sustains a work-related traumatic injury must give notice of the injury in writing on Form CA–1, which may be obtained from the employer. The employee must forward this notice to the employer. Another person, including the employer, may give notice of injury on the employee's behalf. The person submitting a notice shall include the Social Security Number (SSN) of the injured employee.

(b) For injuries sustained on or after September 7, 1974, a notice of injury must be filed within three years of the injury. (The form contains the necessary words of claim.) The requirements for filing notice are further described in 5 U.S.C. 8119. Also see § 10.205 concerning time requirements for filing claims for continuation of pay.

(1) If the claim is not filed within three years, compensation may still be allowed if notice of injury was given within 30 days or the employer had actual knowledge of the injury or death within 30 days after occurrence. This knowledge may consist of written records or verbal notification. An entry into an employee's medical record may also satisfy this requirement if it is sufficient to place the employer on notice of a possible work-related injury or disease.

(2) OWCP may excuse failure to comply with the three-year time requirement because of truly exceptional circumstances (for example, being held prisoner of war).

(3) The claimant may withdraw his or her claim (but not the notice of injury) by so requesting in writing to OWCP at any time before OWCP determines eligibility for benefits.

§ 10.101 How and when is a claim for wage loss compensation on account of traumatic injury filed?

(a) Form CA–7 is used to claim compensation for initial periods of disability.

(1) An employee who is disabled with loss of pay for more than three calendar days due to an injury, or someone acting on his or her behalf, must file Form CA–7 before compensation can be paid.

(2) The employee shall complete the front of Form CA–7 and submit the form to the employer for completion and transmission to OWCP. The form should be completed as soon as possible, but no more than 14 calendar days after the date pay stops due to the injury or disease.

(3) The requirements for filing claims are further described in 5 U.S.C. 8121.

(b) Form CA–8 is used to claim compensation for additional periods of disability after Form CA–7 is submitted to OWCP.

(1) It is the employee's responsibility to submit Form CA–8. Without receipt of such claim, OWCP has no knowledge of continuing wage loss. Therefore, while disability continues, the employee should submit a claim on Form CA–8 each two weeks until otherwise instructed by OWCP.

(2) The employee shall complete the front of Form CA–8 and submit the form to the employer for completion and transmission to OWCP.

(3) The employee is responsible for submitting, or arranging for the submittal of, medical evidence which establishes both that disability continues and that the disability is due to the work-related injury. Form CA–20a is attached to Form CA–8 for this purpose.

§ 10.102 How and when is a notice of occupational disease filed?

(a) To claim benefits under the FECA, an employee who has a disease which he or she believes to be work-related must give notice of the condition in writing on Form CA–2, which may be obtained from the employer. The employee must forward this notice to the employer. Another person, including the employer, may do so on the employee's behalf. The person submitting a notice shall include the Social Security Number (SSN) of the injured employee. The claimant may withdraw his or her claim (but not the Notice of Injury) by so requesting in writing to OWCP at any time before OWCP determines eligibility for benefits.

(b) For occupational diseases sustained as a result of exposure to injurious work factors that occurs on or after September 7, 1974, a notice of occupational disease must be filed within three years of the onset of the condition. (The form contains the necessary words of claim.) The requirements for timely filing are described in § 10.100(b)(1) through (3).

(c) However, in cases of latent disability, the time for filing claim does not begin to run until the employee has a compensable disability and is aware, or reasonably should have been aware, of the causal relationship between the disability and the employment (see 5 U.S.C. 8122(b)).

§ 10.103 How and when is a claim for wage loss compensation on account of occupational disease filed?

Compensation for the initial period of disability, additional periods of disability, and impairment of a body part is claimed as described in §§ 10.101 and 10.104.

§ 10.104 How and when is a claim for permanent impairment filed?

Form CA–7 is used to claim compensation for impairment to a body part covered under the schedule established by 5 U.S.C. 8107. If Form CA–7 has already been filed to claim disability compensation, an employee may file a claim for impairment compensated according to the schedule by sending a letter to OWCP which specifies the nature of the benefit claimed.

§ 10.105 How and when is a claim for recurrence filed?

(a) A recurrence should be reported on Form CA–2a if it causes the employee to lose time from work and incur a wage loss. However, a notice of recurrence should not be filed for time loss due to traumatic injury during the period covered by continuation of pay. Also, a notice of recurrence should not be filed when a new injury or event contributing to an occupational disease has occurred. In these instances, the employee should file Form CA–1 or CA–2.

(b) The employee has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.

(1) The employee must include a statement with Form CA–2a describing his or her duties upon return to work after the original injury, stating whether there were any other injuries or illness, and giving a general description of his or her physical condition during the intervening period. The employer may submit comments concerning the employee's statement.

(2) The employee should arrange for the submittal of a detailed medical report from the attending physician as described on Form CA–2a. The employee should also submit, or arrange for the submittal of, similar medical reports for any examination and/or treatment received after returning to work following the original injury.

§ 10.106 How and when is a notice of death and claim for benefits filed?

(a) If an employee dies from a work-related traumatic injury or an occupational disease, any survivor may file a claim for death benefits using Form CA–5 or CA–5b, which may be obtained from the employer. The survivor must provide this notice in writing and forward it to the employer. Another person, including the employer, may do so on the survivor's behalf. The claimant may also submit the completed Form CA–5 or CA–5b directly to OWCP. The claimant shall disclose the SSNs of the survivors in addition to the SSN of the deceased employee. The claimant may withdraw his or her claim (but not the notice of death) by so requesting in writing to OWCP at any time before OWCP determines eligibility for benefits.

(b) For deaths that occur on or after September 7, 1974, a notice of death must be filed within three years of the death. The form contains the necessary words of claim. The requirements for timely filing are described in § 10.100(b)(1) through (3).

(c) However, in cases of death due to latent disability, the time for filing the claim does not begin to run until the claimant is aware, or reasonably should have been aware, of the causal relationship between the death and the employment (see 5 U.S.C. 8122(b)).

(d) The filing of a notice of injury will satisfy the time requirements for a death claim based on the same injury. If an injured employee or someone acting on the employee's behalf does not file a claim before the employee's death, the right to claim compensation for disability other than medical expenses ceases and does not survive.

(e) A survivor must be alive to receive any payment; there is no vested right to such payment. A report as described in § 10.414 of this part must be filed once each year to support continuing payments of compensation.

Notices and Claims for Injury, Disease, and Death—Employer's Actions

§ 10.110 What should the employer do when an employee files a notice of traumatic injury or occupational disease?

(a) The employer shall complete the agency portion of Form CA–1 (for traumatic injury) or CA–2 (for occupational disease) no more than five calendar days after receipt of notice from the employee. The employer shall also complete the Receipt of Notice and give it to the employee.

(b) The employer must transmit the form to OWCP within five calendar days if the injury or disease will likely result in:

(1) A medical charge against OWCP;

(2) Disability for work beyond the day or shift of injury;

(3) The need for more than two appointments for medical examination and/or treatment on separate days, leading to time loss from work;

(4) Future disability;

(5) Permanent impairment; or

(6) Continuation of pay pursuant to 5 U.S.C. 8118.

(c) The employer should not wait for submittal of supporting evidence before sending the form to OWCP.

(d) If none of the conditions in paragraph (b) of this section applies, the Form CA–1 or CA–2 shall be retained as a permanent record in the Employee Medical Folder in accordance with the guidelines established by the Office of Personnel Management.

§ 10.111 What should the employer do when an employee files an initial claim for compensation due to disability or permanent impairment?

(a) When an employee is disabled by a work-related injury and loses pay for more than three calendar days, or has a permanent impairment or serious disfigurement as described in 5 U.S.C. 8107, the employer shall furnish the employee with Form CA–7 for the purpose of claiming compensation.

(b) If the employee is receiving continuation of pay (COP), the employer should give Form CA–7 to the employee by the 30th day of the COP period and submit the form to OWCP by the 40th day of the COP period. If the employee has not returned the form to the employer by the 40th day of the COP period, the employer should ask him or her to submit it as soon as possible.

(c) Upon receipt of Form CA–7 from the employee, or someone acting on his or her behalf, the employer shall complete the appropriate portions of the form. As soon as possible, but no more than five working days after receipt from the employee, the employer shall forward the completed Form CA–7 and any accompanying medical report to OWCP.

§ 10.112 What should the employer do when an employee files a claim for continuing compensation due to disability?

(a) If the employee continues in a leave-without-pay status due to a work-related injury after the period of compensation initially claimed on Form CA–7, the employer shall furnish the employee with Form CA–8 for the purpose of claiming continuing compensation.

(b) Upon receipt of Form CA–8 from the employee, or someone acting on his or her behalf, the employer shall complete the appropriate portions of the form. As soon as possible, but no more than five working days after receipt from the employee, the employer shall forward the completed Form CA–8 and any accompanying medical report to OWCP.

§ 10.113 What should the employer do when an employee dies from a work-related injury or disease?

(a) The employer shall immediately report a death due to a work-related traumatic injury or occupational disease to OWCP by telephone, telegram, or telefax. No more than 10 working days after notification of the death, the employer shall complete and send Form CA–6 to OWCP.

(b) When possible, the employer shall furnish a Form CA–5 or CA–5b to all persons likely to be entitled to compensation for death of an employee. The employer should also supply information about completing and filing the form.

(c) The employer shall promptly transmit Form CA–5 or CA–5b to OWCP. The employer shall also promptly transmit to OWCP any other claim or paper submitted which appears to claim compensation on account of death.

Evidence and Burden of Proof

§ 10.115 What evidence is needed to establish a claim?

Forms CA–1, CA–2, CA–5 and CA–5b describe the basic evidence required. OWCP may send any request for additional evidence to the claimant and to his or her representative, if any. Evidence should be submitted in writing. The evidence submitted must

be reliable, probative and substantial. Each claim for compensation must meet five requirements before OWCP can accept it. These requirements are as follows:

(a) The claim was filed within the time limits specified by the FECA;

(b) The injured person was, at the time of injury, an employee of the U.S. as defined in 5 U.S.C. 8101(1) and § 10.5(h) of this part;

(c) The fact that an injury, disease or death occurred;

(d) The injury, disease or death occurred while the employee was in the performance of duty; and

(e) The medical condition for which compensation or medical benefits is claimed is causally related to the claimed injury, disease or death. For wage loss benefits, the claimant must also submit medical evidence showing that the condition claimed is disabling. The rules for submitting medical reports are found in §§ 10.330 through 10.333.

§ 10.116 What additional evidence is needed in cases based on occupational disease?

(a) The employee must submit the specific detailed information described on Form CA–2 and on any checklist (Form CA–35, A–H) provided by the employer. OWCP has developed these checklists to address particular occupational diseases. The medical report should also include the information specified on the checklist for the particular disease claimed.

(b) The employer should submit the specific detailed information described on Form CA–2 and on any checklist pertaining to the claimed disease.

§ 10.117 What happens if the employer contests any of the facts as stated by the claimant?

(a) An employer who has reason to disagree with any aspect of the claimant's report shall submit a statement to OWCP that specifically describes the factual allegation or argument with which it disagrees and provide evidence or argument to support its position. The employer may include supporting documents such as witness statements, medical reports or records, or any other relevant information.

(b) Any such statement shall be submitted to OWCP with the notice of traumatic injury or death, or within 30 calendar days from the date notice of occupational disease or death is received from the claimant. If the employer does not submit a written explanation to support the disagreement, OWCP may accept the claimant's report of injury as established. The employer may not use a disagreement with an aspect of the claimant's report to delay forwarding the claim to OWCP or to compel or induce the claimant to change the claim.

§ 10.118 Does the employer participate in the claims process in any other way?

(a) The employer is responsible for submitting to OWCP all relevant and probative factual and medical evidence in its possession, or which it may acquire through investigation or other means. Such evidence may be submitted at any time.

(b) The employer may ascertain the events surrounding an injury and the extent of disability where it appears that an employee who alleges total disability may be performing other work, or may be engaging in activities which would indicate less than total disability. This authority is in addition to that given in § 10.118(a). However, the provisions of the Privacy Act apply to any endeavor by the employer to ascertain the facts of the case (see §§ 10.10 and 10.11).

(c) The employer does not have the right, except as provided in subpart C of this part, to actively participate in the claims adjudication process.

§ 10.119 What action will OWCP take with respect to information submitted by the employer?

OWCP will consider all evidence submitted appropriately, and OWCP will inform the employee, the employee's representative, if any, and the employer of any action taken. Where an employer contests a claim at time of the initial submittal and the claim is later approved, OWCP will notify the employer of the rationale for approving the claim.

§ 10.120 May a claimant submit additional evidence?

A claimant or a person acting on his or her behalf may submit to OWCP at any time any other evidence relevant to the claim.

§ 10.121 What happens if OWCP needs more evidence from the claimant?

If the claimant submits factual evidence, medical evidence, or both, but OWCP determines that this evidence is not sufficient to meet the burden of proof, OWCP will inform the employee of the additional evidence needed. The claimant will be allowed up to 30 calendar days to submit the evidence required. OWCP is not required to notify the claimant a second time if the evidence submitted in response to its first request is not sufficient to meet the burden of proof.

Decisions on Entitlement to Benefits

§ 10.125 How does OWCP determine entitlement to benefits?

(a) In reaching any decision with respect to FECA coverage or entitlement, OWCP considers the claim presented by the claimant, the report by the employer, and the results of such investigation as OWCP may deem necessary.

(b) OWCP claims staff apply the law, the regulations, and its procedures to the facts as reported or obtained upon investigation. They also apply decisions of the Employees' Compensation Appeals Board and administrative decisions of OWCP as set forth in FECA Program Memoranda.

§ 10.126 What does the decision contain?

The decision shall contain findings of fact and a statement of reasons. It is accompanied by information about the claimant's appeal rights, which may include the right to a hearing, a reconsideration, and/or a review by the Employees' Compensation Appeals Board. (See subpart G of this part.)

§ 10.127 To whom is the decision sent?

A copy of the decision shall be mailed to the employee's last known address. If the employee has a designated representative before OWCP, a copy of the decision should also be mailed to the representative. Notification to either the employee or the representative will be considered notification to both. A copy of the decision will also be sent to the employer.

Subpart C—Continuation of Pay

§ 10.200 What is continuation of pay?

(a) For most employees who sustain a traumatic injury, the FECA provides that the employer must continue the employee's regular pay during any periods of resulting disability, up to a maximum of 45 calendar days. This is called continuation of pay, or COP. The employer, not OWCP, pays COP. Unlike workers' compensation benefits, COP is subject to taxes and all other payroll deductions that are made from regular income.

(b) While the employer must generally continue the pay of an employee entitled to COP, the employer may make certain preliminary determinations regarding an employee's entitlement to COP (including not paying salary under § 10.220 or terminating COP under § 10.221), and may in all circumstances controvert the payment. OWCP has the exclusive authority to finally determine questions of entitlement and all other issues relating to COP.

(c) The FECA excludes certain persons from eligibility for COP. COP cannot be authorized for members of these excluded groups, which include but are not limited to: persons rendering personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay; volunteers (for instance, in the Civil Air Patrol and Peace Corps); Job Corps and Youth Conservation Corps enrollees; individuals in work-study programs, and grand or petit jurors (unless otherwise federal employees).

Eligibility for COP

§ 10.205 What other conditions must be met to receive COP?

(a) To be eligible for COP, a person must:

(1) Have a ''traumatic injury'' as defined at § 10.5(dd) which is job-related and the cause of the disability;

(2) File Form CA–1 within 30 days of the date of the injury (but if that form is not available, using another form would not alone preclude receipt); and

(3) Begin losing time from work due to the traumatic injury within 30 days of the injury.

(b) OWCP may find that the employee is not entitled to COP for other reasons consistent with the statute (see § 10.220).

§ 10.206 May an employee who uses leave after an injury later decide to use COP instead?

On Form CA–1, an employee may elect to use accumulated sick or annual leave, or leave advanced by the agency, instead of electing COP. The employee can change the election between leave and COP for prospective periods at any point while eligibility for COP remains. The employee may also change the election for past periods and request COP in lieu of leave already taken for the same period. In either situation, the following provisions apply:

(a) The request must be made to the employer within one year of the date the leave was used or the date of the written approval of the claim by OWCP, whichever is later.

(b) Where the employee is otherwise eligible, the agency shall restore leave taken in lieu of any of the 45 COP days. Where any of the 45 COP days remain unused, the agency shall continue pay prospectively.

(c) The use of leave may not be used to delay or extend the 45-day COP period or to otherwise affect the time limitation as provided by 5 U.S.C. 8117. Therefore, any leave used during the period of eligibility counts towards the 45 day maximum entitlement to COP.

§ 10.207 May an employee who returns to work, then stops work again due to the effects of the injury, receive COP?

If the employee recovers from disability and returns to work, then becomes disabled again and stops work, the employer shall pay any of the 45 days of entitlement to COP not used during the initial period of disability where:

(a) The employee completes Form CA–2a and elects to receive regular pay;

(b) OWCP did not deny the original claim for disability;

(c) The disability recurs and the employee stops work within 30 days of the time the employee first returned to work following the initial period of disability; and

(d) Pay has not been continued for the entire 45 days.

Responsibilities

§ 10.210 What are the employee's responsibilities in COP cases?

An employee who sustains a traumatic injury which he or she considers disabling, or someone authorized to act on his or her behalf, must take the following actions to ensure continuing eligibility for COP. The employee must:

(a) Complete and submit Form CA–1 to the employing agency as soon as possible, but no later than 30 days from the date the traumatic injury occurred.

(b) Ensure that medical evidence supporting disability resulting from the claimed traumatic injury, including a statement as to when the employee can return to his or her date of injury job, is provided to the employer within 10 calendar days after filing the claim for COP.

(c) Ensure that relevant medical evidence is submitted to OWCP, and cooperate with OWCP in developing the claim.

(d) Ensure that the treating physician specifies work restrictions and provides them to the employer and/or representatives of OWCP.

(e) Provide to the treating physician a description of any specific alternative positions offered the employee, and ensure that the treating physician responds promptly to the employer and/or OWCP, with an opinion as to whether and how soon the employer could perform that or any other specific position.

§ 10.211 What are the employer's responsibilities in COP cases?

Once the employer learns of a traumatic injury sustained by an employee, it shall:

(a) Provide a Form CA–1 and Form CA–16 to authorize medical care in accordance with § 10.300. Failure to do so may mean that OWCP will not uphold any termination of COP by the employer.

(b) Advise the employee of the right to receive COP, and the need to elect among COP, annual or sick leave or leave without pay, for any period of disability.

(c) Inform the employee of any decision to controvert COP and/or terminate pay, and the basis for doing so.

(d) Complete Form CA–1 (or other form approved by the Secretary) and return it, along with all other available pertinent information, (including the basis for any controversion), to OWCP within five calendar days after receiving the completed form from the employee.

Calculation of COP

§ 10.215 How does OWCP compute the number of days of COP used?

COP is payable for a maximum of 45 calendar days, and every day used is counted toward this maximum. The following rules apply:

(a) Time lost on the day or shift of the injury does not count toward COP. (Instead, the agency must keep the employee in a pay status for that period);

(b) The first COP day is the first day disability begins following the date of injury (providing it is within the 30 days following the date of injury), except where the injury occurs before the beginning of the work day or shift, in which case the date of injury is charged to COP;

(c) Any part of a day or shift (except for the day of the injury) counts as a full day toward the 45 calendar day total;

(d) Regular days off are included if COP has been used on the regular work days immediately preceding and following the regular day(s) off; and

(e) Leave used during a period when COP is otherwise payable is counted toward the 45 day COP maximum as if the employee had been in a COP status.

§ 10.216 How is the pay rate for COP calculated?

The employer shall calculate COP using the period of time and the weekly pay rate.

(a) The pay rate for COP purposes is equal to the employee's regular ''weekly'' pay (the average of the weekly pay over the preceding 52 weeks).

(1) The pay rate excludes overtime, but includes applicable premium, Sunday and holiday pay, night and shift differential or other extra pay.

(2) Changes in pay or salary (for example, promotion, demotion, within-grade increases, termination of a

temporary detail, etc.) which would have otherwise occurred during the 45-day period are to be reflected in the weekly pay determination.

(b) The weekly pay for COP purposes is determined according to the following formulas:

(1) For full or part-time workers (permanent or temporary) who work the same number of hours each week of the year (or of the appointment), the weekly pay rate is the hourly pay rate (A) in effect on the date of injury multiplied by (×) the number of hours worked each week (B): $A \times B$ = Weekly Pay Rate.

(2) For part-time workers (permanent or temporary) who do not work the same number of hours each week, but who do work each week of the year (or period of appointment), the weekly pay rate is an average of the weekly earnings, established by dividing (÷) the total earnings (excluding overtime) from the year immediately preceding the injury (A) by the number of weeks (or part of a week) worked in that year (B): $A \div B$ = Weekly Pay Rate.

(3) For intermittent, seasonal and on-call workers, whether permanent or temporary, who do not work either the same number of hours or every week of the year (or period of appointment), the weekly pay rate is the average weekly earnings established by dividing (÷) the total earnings during the full 12-month period immediately preceding the date of injury (excluding overtime) (A), by the number of weeks (or part of a week) worked during that year (B) (that is, $A \div B$); or 150 times the average daily wage earned in the employment during the days employed within the full year immediately preceding the date of injury divided by 52 weeks, whichever is greater.

§ 10.217 Is COP charged if the employee continues to work, but in a different job that pays less?

If the employee cannot perform the duties of his or her regular position, but instead works in another job with different duties with no loss in pay, then COP is not chargeable. COP must be paid and the days counted against the 45 days authorized by law whenever an actual reduction of pay results from the injury. This includes work which results in loss of salary or premium (that is, Sunday or night differential) pay authorized for the employee's normal administrative workweek.

Controversion and Termination of COP

§ 10.220 When is an employer not required to pay COP?

An employer shall continue the regular pay of an eligible employee without a break in time for up to 45 calendar days, except when:

(a) The disability was not caused by a traumatic injury;

(b) The employee is not a citizen of the United States or Canada;

(c) No written claim was filed within 30 days from the date of injury;

(d) The injury was not reported until after employment has been terminated;

(e) The injury occurred off the premises and was otherwise not within the performance of official duties;

(f) The injury was caused by the employee's willful misconduct, intent to injure or kill himself or herself or another person, or was proximately caused by intoxication by alcohol or illegal drugs; or

(g) Work did not stop until more than 30 days following the injury.

§ 10.221 How is a claim for COP controverted?

When the employer stops an employee's pay for one of the reasons in § 10.220, the employer must controvert the claim for COP on Form CA–1, explaining in detail the basis for the refusal. The final determination on entitlement to COP always rests with OWCP.

§ 10.222 When may an employer terminate COP which has already begun?

(a) Where the employer has continued the pay of the employee, it may be stopped only when at least one of the following circumstances is present:

(1) Medical evidence which on its face supports disability due to a work-related injury, is not received within 10 calendar days after the claim is submitted (unless the employer's own investigation shows disability to exist);

(2) The medical evidence from the treating physician shows the individual is not disabled from his or her regular position;

(3) Medical evidence from the treating physician shows that the employee is not totally disabled and the employee refuses a written offer of a suitable alternative position as determined by OWCP;

(4) The employee returns to work with no loss of pay;

(5) The employee's period of employment expires or employment is otherwise terminated (as established prior to the date of injury);

(6) OWCP directs the employer to stop COP; and/or

(7) COP has been paid for 45 calendar days.

(b) An employer may not interrupt or stop COP to which the employee is otherwise entitled because of a disciplinary action, unless a preliminary notice was issued to the employee before the date of injury and the action becomes final or otherwise takes effect during the COP period.

(c) An employer must file a controversion with OWCP, setting forth the basis on which it terminated COP, no later than the effective date of the termination.

§ 10.223 Are there other circumstances under which OWCP will not authorize payment of COP?

When OWCP finds that an employee refuses or obstructs a required medical examination, the right to COP is suspended until the refusal or obstruction ceases. COP already paid or payable for the period of suspension is forfeited. If already paid, the COP may be charged to annual or sick leave or considered an overpayment of pay consistent with 5 U.S.C. 5584.

§ 10.224 What happens if OWCP finds that the employee is not entitled to COP after it has been paid?

Where OWCP finds that the employee is not entitled to COP after it has been paid, the employee may chose to have the time charged to annual or sick leave, or considered an overpayment of pay under 5 U.S.C. 5584. The employer must correct any deficiencies in COP as directed by OWCP.

Subpart D—Medical and Related Benefits

Emergency Medical Care

§ 10.300 What are the basic rules for authorizing emergency medical care?

(a) When an employee sustains a work-related traumatic injury that requires medical examination, medical treatment, or both, the employer shall authorize such examination and/or treatment by issuing a Form CA–16. This form may be used for occupational disease or illness only if the employer has obtained prior permission from OWCP.

(b) The employer shall issue Form CA–16 within four hours of the claimed injury. If the employer gives verbal authorization for such care, he or she should issue a Form CA–16 within 48 hours. The employer is not required to issue a Form CA–16 more than one week after the occurrence of the claimed injury. The employer may not authorize examination or medical or other treatment in any case that OWCP has disallowed.

(c) Form CA–16 must contain the full name and address of the qualified physician or qualified medical facility authorized to provide service. The authorizing official must sign and date

the form and must state his or her title. Form CA–16 authorizes treatment for 60 days from the date of issuance, unless OWCP terminates the authorization sooner.

(d) The employee has an initial choice of physician. The employer shall allow the employee to select a qualified physician, after advising him or her of those physicians excluded under subpart I of this part. The physician may be in private practice, including a health maintenance organization (HMO), or employed by a federal agency such as the Department of the Army, Navy, Air Force, or Veterans Affairs. Any qualified physician may provide initial treatment of a work-related injury in an emergency. See also § 10.825(b).

§ 10.301 May the physician designated on Form CA–16 refer the employee to another medical specialist or medical facility?

The physician designated on Form CA–16 may refer the employee for further examination, testing, or medical care. OWCP will pay this physician or facility's bill on the authority of Form CA–16. The employer should not issue a second Form CA–16.

§ 10.302 Should the employer authorize medical care if he or she doubts that the injury occurred, or that it is work-related?

If the employer doubts that the injury occurred, or that it is work-related, he or she should authorize medical care by completing Form CA–16 and checking block 6B of the form. If the medical and factual evidence sent to OWCP shows that the condition treated is not work-related, OWCP will notify the employee, the employer, and the physician or hospital that OWCP will not authorize payment for any further treatment.

§ 10.303 Should the employer use a Form CA–16 to authorize medical testing when an employee is exposed to a workplace hazard just once?

(a) Simple exposure to a workplace hazard, such as an infectious agent, does not constitute a work-related injury entitling an employee to medical treatment under the FECA. The employer therefore should not use a Form CA–16 to authorize medical testing for an employee who has merely been exposed to a workplace hazard, unless the employee has sustained an identifiable injury or medical condition as a result of that exposure. OWCP will authorize preventive treatment only under certain well-defined circumstances (see § 10.313).

(b) Employers may be required under other statutes or regulations to provide their employees with medical testing and/or other services in situations described in paragraph (a) of this section. For example, regulations issued by the Occupational Safety and Health Administration at Chapter XVII of Title 29 of the Code of Federal Regulations require employers to provide their employees with medical consultations and/or examinations when they either exhibit symptoms consistent with exposure to a workplace hazard, or when an identifiable event such as a spill, leak or explosion occurs and results in the likelihood of exposure to a workplace hazard. In addition, 5 U.S.C. 7901 authorizes employers to establish health programs whose staff can perform tests for workplace hazards, counsel employees for exposure or feared exposure to such hazards, and provide health care screening and other associated services.

§ 10.304 Are there any exceptions to these procedures?

In cases involving emergencies or unusual circumstances, OWCP may authorize treatment in a manner other than as stated in this subpart.

Medical Treatment and Related Issues

§ 10.310 What are the basic rules for obtaining medical care?

(a) The employee is entitled to receive all medical services, appliances or supplies which a qualified physician prescribes or recommends and which OWCP considers necessary to treat the work-related injury. The employee need not be disabled to receive such treatment. If there is any doubt as to whether a specific service, appliance or supply is necessary to treat the work-related injury, the employee should consult OWCP prior to obtaining it.

(b) Any qualified physician or qualified hospital may provide such services, appliances and supplies. A qualified provider of medical support services may also furnish appropriate services, appliances, and supplies. OWCP may apply a test of cost-effectiveness to appliances and supplies. With respect to prescribed medications, OWCP may require the use of generic equivalents where they are available.

§ 10.311 What are the special rules for the services of chiropractors?

(a) The services of chiropractors that may be reimbursed are limited by the FECA to treatment to correct a spinal subluxation. The costs of physical and related laboratory tests performed by or required by a chiropractor to diagnose such a subluxation are also payable.

(b) In accordance with 5 U.S.C. 8101(3), a diagnosis of spinal ''subluxation as demonstrated by X-ray to exist'' must appear in the chiropractor's report before OWCP can consider payment of a chiropractor's bill.

(c) A chiropractor may interpret his or her x-rays to the same extent as any other physician. To be given any weight, the medical report must state that x-rays support the finding of spinal subluxation. OWCP will not necessarily require submittal of the x-ray, or a report of the x-ray, but the report must be available for submittal on request.

(d) A chiropractor may also provide services in the nature of physical therapy under the direction of a qualified physician.

§ 10.312 What are the special rules for the services of clinical psychologists?

A clinical psychologist may serve as a physician only within the scope of his or her practice as defined by state law. Therefore, a clinical psychologist may not serve as a physician for conditions that include an organic component unless the applicable state law allows clinical psychologists to treat organic conditions. A clinical psychologist may also perform testing, evaluation and other services under the direction of a qualified physician.

§ 10.313 Will OWCP pay for preventive treatment?

The FECA does not authorize payment for preventive measures such as vaccines and inoculations, and in general, preventive treatment may be a responsibility of the employing agency under the provisions of 5 U.S.C. 7901 (see § 10.303). However, OWCP can authorize treatment for the following conditions, even though such treatment is designed, in part, to prevent further injury:

(a) Complications of preventive measures which are provided or sponsored by the agency, such as an adverse reaction to prophylactic immunization.

(b) Actual or probable exposure to a known contaminant due to an injury, thereby requiring disease-specific measures against infection. Examples include the provision of tetanus antitoxin or booster toxoid injections for puncture wounds; administration of rabies vaccine for a bite from a rabid or potentially rabid animal; or appropriate measures where exposure to human immunodeficiency virus (HIV) has occurred.

(c) Conversion of tuberculin reaction from negative to positive following exposure to tuberculosis in the performance of duty. In this situation, the appropriate therapy may be authorized.

(d) Where injury to one eye has resulted in loss of vision, periodic

examination of the uninjured eye to detect possible sympathetic involvement of the uninjured eye at an early stage.

§ 10.314 Will OWCP pay for the services of an attendant?

Yes, the OWCP will pay for the services of an attendant up to a maximum of $1,500 per month, where the need for such services has been medically documented. In the exercise of the discretion afforded by 5 U.S.C. 8111(a), the Director has determined that, except where payments were being made prior to [insert the effective date of the final rule], direct payments to the claimant to cover such services will no longer be made. Rather, the cost of providing attendant services will be paid under section 8103 of the Act. This decision is based on the following factors:

(a) The additional payments authorized under section 8111(a) should not be necessary since OWCP will authorize payment for personal care services under 5 U.S.C. 8103, whether or not such care includes medical services, so long as the personal care services have been determined to be medically necessary and are provided by a home health aide, licensed practical nurse, or similarly trained individual.

(b) A home health aide, licensed practical nurse, or similarly trained individual is better able to provide quality personal care including assistance in feeding, bathing, and using the toilet. In the past, provision of supplemental compensation directly to injured employees may have encouraged family members to take on these responsibilities even though they may not have been trained to provide such services. By paying for the services under section 8103, OWCP can better determine whether the services provided are necessary and/or adequate to meet the needs of the injured employee. In addition, a system requiring the personal care provider to submit a bill to OWCP will result in greater fiscal accountability as the amount billed will be subject to OWCP's fee schedule.

§ 10.315 Will OWCP pay for transportation to obtain medical treatment?

The employee is entitled to reimbursement of reasonable and necessary expenses, including transportation needed to obtain authorized medical services, appliances or supplies. To determine what is a reasonable distance to travel, OWCP will consider the availability of services, the employee's condition, and the means of transportation. Generally, 25 miles from the place of injury, the work site, or the employee's home, is considered a reasonable distance to travel. The standard form designated for federal employees to claim travel expenses should be used to seek reimbursement under this section.

§ 10.316 After selecting a treating physician, may an employee choose to be treated by another physician instead?

(a) When the physician originally selected to provide treatment for a work-related injury refers the employee to a specialist for further medical care, the employee need not consult OWCP for approval. In all other instances, however, the employee must submit a written request to OWCP with his or her reasons for desiring a change of physician.

(b) OWCP will approve the request if it determines that the reasons submitted are sufficient. Requests that are often approved include those for transfer of care from a general practitioner to a physician who specializes in treating conditions like the work-related one, or the need for a new physician when an employee has moved. The employer may not authorize a change of physicians.

Directed Medical Examinations

§ 10.320 Can OWCP require an employee to be examined by another doctor?

OWCP sometimes needs a second opinion from a medical specialist. The employee must submit to examination by a qualified physician as often and at such times and places as OWCP considers reasonably necessary. The employee may have a qualified physician, paid by him or her, present at such examination. However, the employee is not entitled to have anyone else present at the examination unless OWCP decides that exceptional circumstances exist. For example, where a hearing-impaired employee needs an interpreter, the presence of an interpreter would be allowed. Also, OWCP may send a case file for second opinion review where actual examination is not needed, or where the employee is deceased.

§ 10.321 What happens if the physician selected by OWCP does not agree with the physician selected by the employee?

If a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser or consultant, OWCP shall appoint a third physician to make an examination (see 5 U.S.C. 8123(a)). This is called a referee examination. OWCP will select a physician who is qualified in the appropriate specialty and who has had no prior connection with the case. The employee is not entitled to have anyone present at the examination unless OWCP decides that exceptional circumstances exist. For example, where a hearing-impaired employee needs an interpreter, the presence of an interpreter would be allowed. Also, a case file may be sent for referee medical review where there is no need for an actual examination, or where the employee is deceased.

§ 10.322 Who pays for second opinion and referee examinations?

OWCP will pay second opinion and referee medical specialists directly. OWCP will reimburse the employee all necessary and reasonable expenses incident to such an examination, including transportation costs and actual wages lost for the time needed to submit to an examination required by OWCP.

§ 10.323 What are the consequences of failing to report for or obstructing a second opinion or referee examination?

If an employee refuses to submit to or in any way obstructs an examination required by OWCP, his or her right to compensation under the FECA is suspended until such refusal or obstruction stops. The action of the employee's representative is considered to be the action of the employee for purposes of this section. The employee will forfeit compensation otherwise paid or payable under the FECA for the period of the refusal or obstruction, and any compensation already paid for that period will be declared an overpayment and will be subject to recovery pursuant to 5 U.S.C. 8129.

§ 10.324 May an employer require an employee to undergo a physical examination in connection with a work-related injury?

The employer may have authority independent of the FECA to require the employee to undergo a medical examination to determine whether he or she meets the medical requirements of the position held or can perform the duties of that position. Nothing in the FECA or in this part affects such authority. However, no agency-required examination or related activity shall interfere with the employee's initial choice of physician or the provision of any authorized examination or treatment, including the issuance of Form CA–16.

Medical Reports

§ 10.330 What are the requirements for medical reports?

In all cases reported to OWCP, a medical report from the attending physician is required. This report should include:

(a) Dates of examination and treatment;

(b) History given by the employee;

(c) Physical findings;

(d) Results of diagnostic tests;

(e) Diagnosis;

(f) Course of treatment;

(g) A description of any other conditions found but not due to the claimed injury;

(h) The treatment given or recommended for the claimed injury;

(i) The physician's opinion, with medical reasons, as to causal relationship between the diagnosed condition(s) and the factors or conditions of the employment;

(j) The extent of disability affecting the employee's ability to work due to the injury;

(k) The prognosis for recovery; and

(l) All other material findings.

§ 10.331 How and when should the medical report be submitted?

(a) Form CA–16 may be used for the initial medical report; Form CA–20 may be used for the initial report and for subsequent reports; and Form CA–20a may be used where continued compensation is claimed. Use of medical report forms is not required, however. The report may also be made in narrative form on the physician's letterhead stationery. The report should bear the physician's signature or signature stamp. OWCP may require an original signature on the report.

(b) The report shall be submitted directly to OWCP as soon as possible after medical examination or treatment is received, either by the employee or the physician. (See also § 10.210.) The employer may request a copy of the report from OWCP. The employer should use Form CA–17 to obtain interim reports concerning the duty status of an employee with a disabling traumatic injury.

§ 10.332 What additional medical information will OWCP require to support continuing payment of benefits?

In all cases of serious injury or disease, especially those requiring hospital treatment or prolonged care, OWCP will request detailed narrative reports from the attending physician at periodic intervals. The physician will be asked to describe continuing medical treatment for the condition accepted by OWCP, a prognosis, a description of work limitations, if any, and the physician's opinion as to the continuing causal relationship between the employee's condition and factors of his or her federal employment.

§ 10.333 What additional medical information will OWCP require to support a claim for a schedule award?

To support a claim for a schedule award, a medical report must contain accurate measurements of the function of the organ or member. These measurements may include: the actual degree of loss of active or passive motion or deformity; the amount of atrophy; the decrease, if any, in strength; the disturbance of sensation; and pain due to nerve impairment.

Medical Bills

§ 10.335 How are medical bills submitted?

Usually, medical providers submit bills directly to OWCP. The rules for submitting and paying bills are stated in subpart I of this part. An employee claiming reimbursement of medical expenses should submit an itemized bill as described in § 10.802.

§ 10.336 What are the time frames for submitting bills?

To be considered for payment, bills must be submitted by the end of the calendar year after the year when the expense was incurred, or by the end of the calendar year after the year when OWCP first accepted the claim as compensable, whichever is later.

§ 10.337 If OWCP reimburses an employee only partially for a medical expense, must the provider refund the balance of the amount paid to the employee?

(a) The OWCP fee schedule sets maximum limits on the amounts payable for many services (see § 10.805). The employee may be only partially reimbursed for medical expenses because the amount he or she paid to the medical provider for a service exceeds the maximum allowable charge set by the OWCP fee schedule.

(b) If this happens, OWCP shall advise the provider of the maximum allowable charge for the service in question and ask the provider to refund to the employee, or credit to the employee's account, the amount he or she paid which exceeds the maximum allowable charge. The provider may request reconsideration of the fee determination as provided by § 10.812.

(c) If the provider does not refund to the employee or credit to his or her account the amount of money paid in excess of the charge which OWCP allows, OWCP may make reasonable reimbursement to the employee after reviewing the facts and circumstances of the case.

Subpart E—Compensation and Related Benefits

Compensation for Disability and Impairment

§ 10.400 What is total disability?

(a) Permanent total disability is presumed to result from the loss of use of both hands, both arms, both feet, or both legs, or the loss of sight of both eyes. However, the presumption of permanent total disability as a result of such loss may be rebutted by evidence to the contrary, such as evidence of continued ability to work and to earn wages despite the loss.

(b) Temporary total disability is defined as the inability to return to the position held at the time of injury or earn equivalent wages, or to perform other gainful employment, due to the work-related injury. Except as presumed under paragraph (a) of this section, an employee's disability status is always considered temporary pending return to work.

§ 10.401 When and how is compensation for total disability payable?

(a) Compensation is payable when the employee starts to lose pay if the injury causes permanent disability or if pay loss continues for more than 14 days. Otherwise, compensation is payable on the fourth day after pay stops. Compensation may not be paid while an injured employee is in a continuation of pay status or receives pay for leave.

(b) Compensation for total disability is payable at the rate of 66⅔ percent of the pay rate if the employee has no dependents, or 75 percent of the pay rate if the employee has at least one dependent.

§ 10.402 What is partial disability?

An injured employee who cannot return to the position held at the time of injury (or earn equivalent wages) due to the work-related injury, but who is not totally disabled for all gainful employment, is considered to be partially disabled.

§ 10.403 When and how is compensation for partial disability paid?

(a) 5 U.S.C. 8115 outlines how compensation for partial disability is determined. If the employee has actual earnings which fairly and reasonably represent his or her wage-earning capacity, those earnings may form the basis for payment of compensation for partial disability. If the employee's actual earnings do not fairly and reasonably represent his or her wage-

earning capacity, or if the employee has no actual earnings, OWCP uses the factors stated in 5 U.S.C. 8115 to select a position which represents his or her wage-earning capacity. However, OWCP will not secure employment for the employee in the position selected for establishing a wage-earning capacity.

(b) Compensation for partial disability is payable as a percentage of the difference between the employee's pay rate for compensation purposes and the employee's wage-earning capacity. The percentage is 66⅔ percent of this difference if the employee has no dependents, or 75 percent of this difference if the employee has at least one dependent.

(c) The formula which OWCP uses to compute the compensation payable for partial disability employs the following terms: pay rate for compensation purposes, which is defined in § 10.5(s) of this part; current pay rate, which means the salary or wages for the job held at the time of injury at the time of the determination; and earnings, which means the employee's actual earnings, or the salary or pay rate of the position selected by OWCP as representing the employee's wage-earning capacity.

(d) The employee's wage-earning capacity in terms of percentage is computed by dividing the employee's earnings by the current pay rate. The comparison of earnings and ''current'' pay rate for the job held at the time of injury need not be made as of the beginning of partial disability. OWCP may use any convenient date for making the comparison as long as both wage rates are in effect on the date used for comparison.

(e) The employee's wage-earning capacity in terms of dollars is computed by first multiplying the pay rate for compensation purposes by the percentage of wage-earning capacity. The resulting dollar amount is then subtracted from the pay rate for compensation purposes to obtain the employee's loss of wage-earning capacity.

§ 10.404 When and how is compensation for a schedule impairment paid?

Compensation is provided for specified periods of time for the permanent loss or loss of use of certain members, organs and functions of the body. Such loss or loss of use is known as permanent impairment. Compensation for proportionate periods of time is payable for partial loss or loss of use of each member, organ or function. OWCP evaluates the degree of impairment to schedule members, organs and functions as defined in 5 U.S.C. 8107 according to the standards set forth in the specified (by OWCP) edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* available from the Order Department, OP–025493, American Medical Association, P.O. Box 109050, Chicago, Illinois, 60610.

(a) 5 U.S.C. 8107(c) provides a list of schedule members. Pursuant to the authority provided by 5 U.S.C. 8107(c)(22), the Secretary has added the following organs to the compensation schedule for injuries that were sustained on or after September 7, 1974:

Member	Weeks
Breast (one)	52
Kidney (one)	156
Larynx	160
Lung (one)	156
Penis	205
Testicle (one)	52
Tongue	160
Ovary (one)	52
Uterus/cervix and vulva/vagina	205

(b) Compensation for schedule awards is payable at 66⅔ percent of the employee's pay, or 75 percent of the pay when the employee has at least one dependent.

(c) The period of compensation payable under 5 U.S.C. 8107(c) shall be reduced by the period of compensation paid or payable under the schedule for an earlier injury if:

(1) Compensation in both cases is for impairment of the same member or function or different parts of the same member or function, or for disfigurement; and

(2) OWCP finds that compensation payable for the later impairment in whole or in part would duplicate the compensation payable for the pre-existing impairment.

(d) Compensation not to exceed $3,500 may be paid for serious disfigurement of the face, head or neck which is likely to handicap a person in securing or maintaining employment.

§ 10.405 Who is considered a dependent in a claim based on disability or impairment?

(a) Dependents include a wife or husband; an unmarried child under 18 years of age; an unmarried child over 18 who is incapable of self-support; a student, until he or she reaches 23 years of age or completes four years of school beyond the high school level; or a wholly dependent parent.

(b) Augmented compensation payable for an unmarried child, which would otherwise terminate when the child reached the age of 18, may be continued while the child is a student as defined in 5 U.S.C. 8101(17).

§ 10.406 What are the maximum and minimum rates of compensation in disability cases?

(a) Compensation for total or partial disability may not exceed 75 percent of the basic monthly pay of the highest step of grade 15 of the General Schedule. (Basic monthly pay does not include locality adjustments.) However, this limit does not apply to disability sustained in the performance of duty which was due to an assault which occurred during an attempted assassination of a federal official described under 10 U.S.C. 351(a) or 1751(a).

(b) Compensation for total disability may not be less than 75 percent of the basic monthly pay of the first step of grade 2 of the General Schedule or actual pay, whichever is less. (Basic monthly pay does not include locality adjustments.)

Compensation for Death

§ 10.410 What are the rates of compensation payable in death cases?

The rates of compensation payable in death cases are stated in 5 U.S.C. 8133.

§ 10.411 What are the maximum and minimum rates of compensation in death cases?

(a) Compensation for death may not exceed the employee's pay or 75 percent of the basic monthly pay of the highest step of grade 15 of the General Schedule, except that compensation may exceed the employee's basic monthly pay if such excess is created by authorized cost-of-living increases. (Basic monthly pay does not include locality adjustments.) However, the maximum limit does not apply when the death occurred during an assassination of a federal official described under 18 U.S.C. 351(a) or 18 U.S.C. 1751(a).

(b) Compensation for death is computed on a minimum pay rate equal to the basic monthly pay of an employee at the first step of grade 2 of the General Schedule. (Basic monthly pay does not include locality adjustments.)

§ 10.412 Will OWCP pay the costs of burial and transportation of the remains?

In a case accepted for death benefits, OWCP will pay up to $800 for funeral and burial expenses. When an employee's home is within the U.S. and the employee dies outside the U.S., or away from home or the official duty station, an additional amount may be paid for transporting the remains to the employee's home. An additional amount of $200 is paid to the personal representative of the decedent for reimbursement of the costs of

terminating the decedent's status as an employee of the United States.

§ 10.413 If a person dies while receiving a schedule award, to whom is the balance of the schedule award payable?

The circumstances under which the balance of a schedule award may be paid to an employee's survivors are described in 5 U.S.C. 8109. Therefore, if there is no surviving spouse or child, OWCP will pay benefits as follows:

(a) To the parent, or parents, wholly dependent for support on the decedent in equal shares with any wholly dependent brother, sister, grandparent or grandchild;

(b) To the parent, or parents, partially dependent for support on the decedent in equal shares when there are no wholly dependent brothers, sisters, grandparents or grandchildren (or other wholly dependent parent); and

(c) To the parent, or parents, partially dependent upon the decedent, 25 percent of the amount payable, shared equally, and the remaining 75 percent to any wholly dependent brother, sister, grandparent or grandchild (or wholly dependent parent), share and share alike.

§ 10.414 What reports of dependents are needed in death cases?

If a beneficiary is receiving compensation benefits on account of an employee's death, OWCP will ask him or her to complete a report once each year on Form CA–12. The report requires the beneficiary to note changes in marital status and dependents. If the beneficiary fails to submit the form (or an equivalent written statement) within 30 days of the date of request, OWCP shall suspend compensation until the requested form or equivalent written statement is received. The suspension will include compensation payable for or on behalf of another person (for example, compensation payable to a widow on behalf of a child). When the form or statement is received, compensation will be reinstated at the appropriate rate retroactive to the date of suspension, provided the beneficiary is entitled to such compensation.

§ 10.415 What must a beneficiary do if the number of beneficiaries decreases?

The circumstances under which compensation on account of death shall be terminated are described in 5 U.S.C. 8133(b). A beneficiary in a claim for death benefits should promptly notify OWCP of any event which would affect his or her entitlement to continued compensation. The terms ''marriage'' and ''remarriage'' include common-law marriage as recognized and defined by state law in the state where the beneficiary resides. If a beneficiary, or someone acting on his or her behalf, receives a check which includes payment of compensation for any period after the date when entitlement ended, he or she must promptly return the check to OWCP.

§ 10.416 How does a change in the number of beneficiaries affect the amount of compensation paid to the other beneficiaries?

If compensation to a beneficiary is terminated, the amount of compensation payable to one or more of the remaining beneficiaries may be reapportioned. Similarly, the birth of a posthumous child may result in a reapportionment of the amount of compensation payable to other beneficiaries. The parent, or someone acting on the child's behalf, shall promptly notify OWCP of the birth and submit a copy of the birth certificate.

§ 10.417 What reports are needed when compensation payments continue for children over age 18?

(a) Compensation payable on behalf of a child, brother, sister, or grandchild, which would otherwise end when the person reaches 18 years of age, shall be continued if and for so long as he or she is not married and is either a student as defined in 5 U.S.C. 8101(17), or physically or mentally incapable of self-support.

(b) At least twice each year, OWCP will ask a beneficiary receiving compensation based on the student status of a dependent to provide proof of continuing entitlement to such compensation, including certification of school enrollment.

(c) Likewise, at least twice each year, OWCP will ask a beneficiary or legal guardian receiving compensation based on a dependent's physical or mental inability to support himself or herself to submit a medical report verifying that the dependent's medical condition persists and that it continues to preclude self-support.

Adjustments to Compensation

§ 10.420 How are cost-of-living adjustments applied?

(a) In cases of disability, a beneficiary is eligible for cost-of-living adjustments under 5 U.S.C. 8146(a) where injury-related disability began more than one year prior to the date the cost-of-living adjustment took effect. The employee's use of continuation of pay as provided by 5 U.S.C. 8118, or of sick or annual leave, during any part of the period of disability does not affect the computation of the one-year period.

(b) Where an injury does not result in disability but compensation is payable for permanent impairment of a covered member, organ or function of the body, a beneficiary is eligible for cost-of-living adjustments under 5 U.S.C. 8146(a) where the award for such impairment began more than one year prior to the date the cost-of-living adjustment took effect.

(c) In cases of recurrence of disability, where the pay rate for compensation purposes is the pay rate at the time disability recurs, a beneficiary is eligible for cost-of-living adjustments under 5 U.S.C. 8146(a) where the effective date of that pay rate began more than one year prior to the date the cost-of living adjustment took effect.

(d) In cases of death, entitlement to cost-of-living adjustments under 5 U.S.C. 8146(a) begins with the first such adjustment occurring more than one year after the date of death. However, if the death was preceded by a period of injury-related disability, compensation payable to the survivors will be increased by the same percentages as the cost-of-living adjustments paid or payable to the deceased employee for the period of disability, as well as by subsequent cost-of-living adjustments to which the survivors would otherwise be entitled.

§ 10.421 May a beneficiary receive other kinds of payments from the federal government concurrently with compensation?

(a) 5 U.S.C. 8116(a) provides that a beneficiary may not receive wage-loss compensation concurrently with a federal retirement or survivor annuity. The beneficiary must elect the benefit that he or she wishes to receive, and the election, once made, is revocable.

(b) An employee may receive compensation concurrently with military retired pay, retirement pay, retainer pay or equivalent pay for service in the Armed Forces or other uniformed services, subject to the reduction of such pay in accordance with 5 U.S.C. 5532(b).

(c) An employee may not receive compensation for total disability concurrently with severance pay or separation pay. However, an employee may concurrently receive compensation for partial disability or permanent impairment to a schedule member with severance pay or separation pay.

(d) Pursuant to 5 U.S.C. 8116(d), a beneficiary may receive compensation under the FECA for either the death or disability of an employee concurrently with benefits under title II of the Social Security Act on account of the age or death of such employee. However, this provision of the FECA also requires OWCP to reduce the amount of any such

compensation by the amount of any Social Security Act benefits that are attributable to the federal service of the employee.

(e) To determine the employee's entitlement to compensation, OWCP may require an employee to submit an affidavit or statement as to the receipt of any federally funded or federally assisted benefits. If an employee fails to submit such affidavit or statement within 30 days of the date of the request, his or her right to compensation shall be suspended until such time as the requested affidavit or report is received. At that time compensation will be reinstated retroactive to the date of suspension provided the employee is entitled to such compensation.

§ 10.422 May compensation payments be issued in a lump sum?

(a) In exercise of the discretion afforded under 5 U.S.C. 8135(a), OWCP has determined that lump-sum payments will not be made to persons entitled to wage-loss benefits (that is, those payable under 5 U.S.C. 8105 and 8106). Therefore, when OWCP receives requests for lump-sum payments for wage-loss benefits, OWCP will not exercise further discretion in the matter. This determination is based on several factors, including:

(1) The purpose of the FECA, which is to replace lost wages;

(2) The prudence of providing wage-loss benefits on a regular, recurring basis; and

(3) The high cost of the long-term borrowing that is needed to pay out large lump sums.

(b) However, a lump sum payment may be made to an employee entitled to a schedule award under 5 U.S.C. 8107 where OWCP determines that such a payment is in the employee's best interest. Lump-sum payments of schedule awards generally will be considered in the employee's best interest only where the employee does not rely upon compensation payments as a substitute for lost wages (that is, the employee is working or is receiving annuity payments). An employee possesses no absolute right to a lump-sum payment of benefits payable under 5 U.S.C. 8107.

(c) Lump-sum payments to surviving spouses are addressed in 5 U.S.C. 8135(b).

§ 10.423 May compensation payments be assigned to, or attached by, creditors?

(a) As a general rule, compensation and claims for compensation are exempt from the claims of private creditors. This rule does not apply to claims submitted by federal agencies. Further, any attempt by a FECA beneficiary to assign his or her claim is null and void. However, pursuant to provisions of the Social Security Act, 42 U.S.C. 659, and regulations issued by the Office of Personnel Management (OPM) at 5 CFR part 581, FECA benefits, including survivor's benefits, may be garnished to collect overdue alimony and child support payments.

(b) Garnishment for child support and alimony may be requested by providing a copy of the state agency or court order to the district office handling the FECA claim.

§ 10.424 May someone other than the beneficiary be designated to receive compensation payments?

A beneficiary may be incapable of managing or directing the management of his or her benefits because of a mental or physical disability, or because of legal incompetence, or because he or she is under 18 years of age. In this situation, absent the appointment of a guardian or other party to manage the financial affairs of the claimant by a court or administrative body authorized to do so, OWCP in its sole discretion may approve a person to serve as the representative payee for funds due the beneficiary.

Overpayments

§ 10.430 How does OWCP notify an individual of a payment made?

(a) In addition to providing narrative descriptions to recipients of benefits paid or payable, OWCP includes on each periodic check an indication of the period for which payment is being made. A form is sent to the recipient with each supplemental check which states the date and amount of the payment and the period for which payment is being made. For payments sent by electronic funds transfer (EFT), a notification of the date and amount of payment appears on the statement from the recipient's financial institution.

(b) By these means, OWCP puts the recipient on notice that a payment was made and the amount of the payment. If the amount received differs from the amount indicated on the written notice or bank statement, the recipient is responsible for notifying OWCP of the difference. Absent affirmative evidence to the contrary, the beneficiary will be presumed to have received the notice of payment, whether mailed or transmitted electronically.

§ 10.431 What does OWCP do when an overpayment is identified?

Before seeking to recover an overpayment or adjust benefits, OWCP will advise the beneficiary in writing that:

(a) The overpayment exists, and the amount of overpayment;

(b) A preliminary finding shows either that the individual was or was not at fault in the creation of the overpayment;

(c) He or she has the right to inspect and copy Government records relating to the overpayment; and

(d) He or she has the right to present evidence which challenges the fact or amount of the overpayment, and/or challenges the preliminary finding that he or she was at fault in the creation of the overpayment. He or she may also request that recovery of the overpayment be waived.

§ 10.432 How can an individual present evidence to OWCP in response to a preliminary notice of an overpayment?

The individual may present this evidence to OWCP in writing or at a pre-recoupment hearing. The evidence must be presented or the hearing requested within 30 days of the date of the written notice of overpayment. Failure to request the hearing within this 30-day time period shall constitute a waiver of that right.

§ 10.433 Under what circumstances can OWCP waive recovery of an overpayment?

(a) OWCP may consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment. Each recipient of compensation benefits is responsible for taking all reasonable measures to ensure that payments he or she receives from OWCP are proper. The recipient must show good faith and exercise a high degree of care in reporting events which may affect entitlement to or the amount of benefits. A recipient who has done any of the following will be found to be at fault with respect to creating an overpayment:

(1) Made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; or

(2) Failed to provide information which he or she knew or should have known to be material; or

(3) Accepted a payment which he or she knew or should have known to be incorrect. (This provision applies only to the overpaid individual.)

(b) Whether or not OWCP determines that an individual was at fault with respect to the creation of an overpayment depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the

individual's capacity to realize that he or she is being overpaid.

§ 10.434 If OWCP finds that the recipient of an overpayment was not at fault, what criteria are used to decide whether to waive recovery of it?

If OWCP finds that the recipient of an overpayment was not at fault, repayment will still be required unless:

(a) Adjustment or recovery of the overpayment would defeat the purpose of the FECA (see § 10.436), or

(b) Adjustment or recovery of the overpayment would be against equity and good conscience (see § 10.437).

§ 10.435 Is an individual responsible for an overpayment that resulted from an error by OWCP or another government agency?

(a) The fact that OWCP may have erred in making the overpayment, or that the overpayment may have resulted from an error by another Government agency, does not by itself relieve the individual who received the overpayment from liability for repayment if the individual also was at fault in accepting the overpayment.

(b) However, OWCP may find that the individual was not at fault if failure to report an event affecting compensation benefits, or acceptance of an incorrect payment, occurred because:

(1) The individual relied on misinformation given in writing by OWCP (or by another governmental agency which he or she had reason to believe was connected with the administration of benefits) as to the interpretation of a pertinent provision of the FECA or its regulations; or

(2) OWCP erred in calculating cost-of-living increases, schedule award length and/or percentage of impairment, or loss of wage-earning capacity.

§ 10.436 Under what circumstances would recovery of an overpayment defeat the purpose of the FECA?

Recovery of an overpayment will defeat the purpose of the FECA if such recovery would cause hardship to a currently or formerly entitled beneficiary because:

(a) The beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses; and

(b) The beneficiary's assets do not exceed a specified amount as determined by OWCP from data furnished by the Bureau of Labor Statistics. A higher amount is specified for a beneficiary with one or more dependents.

§ 10.437 Under what circumstances would recovery of an overpayment be against equity and good conscience?

(a) Recovery of an overpayment is considered to be against equity and good conscience when any individual who received an overpayment would experience severe financial hardship in attempting to repay the debt.

(b) Recovery of an overpayment is also considered to be against equity and good conscience when any individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse. In making such a decision, OWCP does not consider the individual's current ability to repay the overpayment.

(1) To establish that a valuable right has been relinquished, it must be shown that the right was in fact valuable, that it cannot be regained, and that the action was based chiefly or solely in reliance on the payments or on the notice of payment. Donations to charitable causes or gratuitous transfers of funds to other individuals are not considered relinquishments of valuable rights.

(2) To establish that an individual's position has changed for the worse, it must be shown that the decision made would not otherwise have been made but for the receipt of benefits, and that this decision resulted in a loss.

§ 10.438 Can OWCP require the individual who received the overpayment to submit additional financial information?

(a) The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of the FECA, or be against equity and good conscience. This information will also be used to determine the repayment schedule, if necessary.

(b) Failure to submit the requested information within 30 days of the request shall result in denial of waiver, and no further request for waiver shall be considered until the requested information is furnished.

§ 10.439 May other issues be addressed at the pre-recoupment hearing?

At the pre-recoupment hearing, the OWCP representative will consider all issues in the claim on which a formal decision has been issued. The hearing will thus fulfill OWCP's obligation to provide pre-recoupment rights and a hearing under 5 U.S.C. 8124(b). Pre-recoupment hearings shall be conducted in exactly the same manner as provided in § 10.615 through § 10.622.

§ 10.440 How does OWCP communicate its final decision concerning recovery of an overpayment, and what appeal right accompanies it?

(a) OWCP will send a copy of the final decision to the individual from whom recovery is sought; his or her representative, if any; and the employing agency.

(b) The only review of a final decision concerning an overpayment is to the Employees' Compensation Appeals Board. The provisions of 5 U.S.C. 8124(b) (concerning hearings) and 5 U.S.C. 8128(a) (concerning reconsiderations) do not apply to such a decision.

§ 10.441 How are overpayments collected?

(a) When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship. Should the individual die before collection has been completed, collection shall be made by decreasing later payments, if any, payable under the FECA with respect to the individual's death.

(b) When an overpayment has been made to an individual who is not entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. The overpayment is subject to the provisions of the Debt Collection Act of 1982 and may be reported to the Internal Revenue Service as income. If the individual fails to make such refund, OWCP may recover the same through any available means, including offset of salary, annuity benefits, or other Federal payments, including tax refunds as authorized by the Tax Refund Offset Program, or referral of the debt to a collection agency or to the Department of Justice.

Subpart F—Continuing Entitlement to Benefits

§ 10.500 What are the basic rules governing continuing receipt of compensation benefits?

OWCP's goal is to return each disabled employee to suitable work as

soon as medically able. ''Suitable work'' is defined as employment which is: appropriate to the nature of the injury; the degree of physical impairment; the employee's usual work; the employee's age; the employee's qualifications for other work; and the availability of the work.

(a) Benefits are available only while the effects of a work-related condition continue. Compensation for wage loss due to disability is available only for any periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury. Payment of medical benefits is available for all treatment necessary due to a work-related medical condition. The employee is responsible for providing sufficient medical evidence to justify payment of any compensation sought.

(1) To support payment of continuing compensation, narrative medical evidence must be submitted whenever OWCP requests it but not less than once a year. It must contain a physician's rationalized opinion as to whether the specific period of alleged disability is causally related to the employee's accepted injury or illness.

(2) The physician's opinion must be based on the facts of the case and the complete medical background of the employee, must be one of reasonable medical certainty and must include objective findings in support of its conclusions. Subjective complaints of pain are not sufficient, in and of themselves, to support payment of continuing compensation. Likewise, medical restrictions based solely on the fear of a possible future injury are also not sufficient to support payment of continuing compensation. See § 10.330 for a fuller discussion of medical evidence.

(b) OWCP may require any kind of non-invasive testing to determine the employee's functional capacity. In addition, OWCP may direct the employee to undergo a second opinion or referee examination in any case it deems appropriate (see §§ 10.320 and 10.321).

(c) In considering the medical and factual evidence, OWCP will weigh the probative value of the attending physician's report, any second opinion physician's report, any other medical reports, or any other evidence in the file. If OWCP determines that the medical evidence supporting one conclusion is more consistent, logical, and well-reasoned than evidence supporting a contrary conclusion, OWCP will use the conclusion that is supported by the weight of the medical evidence as the basis for awarding or denying further benefits. If medical reports that are equally well-reasoned support inconsistent determinations of an issue under consideration, OWCP will direct the employee to undergo a referee examination to resolve the issue. The results of the referee examination will be given special weight in determining the issue.

(d) Once OWCP has advised the employee that it has accepted a claim and has either approved continuation of pay or paid medical benefits or compensation, benefits will not be terminated or reduced unless the weight of the evidence establishes that:

(1) The disability for which compensation was paid has ceased;

(2) The disabling condition is no longer causally related to the employment;

(3) The employee is only partially disabled;

(4) The employee has returned to work;

(5) The beneficiary was convicted of fraud in connection with a claim under the FECA, or the beneficiary was incarcerated based on any felony conviction; or

(6) OWCP's initial decision was in error.

Return to Work—Employer's Responsibilities

§ 10.505 What actions must the employer take?

Upon authorizing medical care, the employer should advise the employee in writing as soon as possible of his or her obligation to return to work under § 10.210 and as defined in this subpart. The term ''return to work'' as used in this subpart is not limited to returning to work at the employee's normal worksite or usual position, but may include returning to work at other locations and in other positions. In general, the employer should make all reasonable efforts to place the employee in his or her former or an equivalent position, in accordance with 5 U.S.C. 8151(b)(2), if the employee has fully recovered within one year. The Office of Personnel Management (not OWCP) administers this provision.

(a) Where the employer has specific alternative positions available for partially disabled employees, the employer should advise the employee of the specific duties and physical requirements of those positions.

(b) Where the employer has no specific alternative positions available for an employee who can perform restricted or limited duties, the employer should advise the employee of any accommodations the agency can make to accommodate the employee's limitations due to the injury.

(c) The employer must make any job offer in writing. The offer must include a description of the duties of the position, the physical requirements of those duties, and the date by which the employee is either to return to work or notify the employer of his or her decision to accept or refuse the job offer. The employer must send a complete copy of any job offer to OWCP when it is sent to the employee.

§ 10.506 May the employer monitor the employee's medical care?

The employer may monitor the employee's medical progress and duty status by obtaining periodic medical reports. Form CA–17 is provided for this purpose. To aid in returning an injured employee to suitable employment, the employer may also contact the employee's physician in writing concerning the work limitations imposed by the effects of the injury and possible job assignments. When such contact is made, the employer shall send a copy of any such correspondence to OWCP and the employee, as well as a copy of the physician's response when received. The employer may also contact the employee at reasonable intervals to request periodic medical reports addressing his or her ability to return to work.

§ 10.507 How should the employer make an offer of suitable work?

Where the attending physician or OWCP notifies the employer in writing that the employee is partially disabled (that is, the employee can perform some work but not return to the position held at date of injury), the employer should act as follows:

(a) If the employee can perform in a specific alternative position available in the agency, and the employer has advised the employee of the specific duties and physical requirements, the employer should notify the employee immediately of the date of availability.

(b) If the employee can perform restricted or limited duties, the employer should determine whether such duties are available or whether an existing job can be modified. If so, the employer shall advise the employee of the duties, their physical requirements and availability.

§ 10.508 May relocation expenses be paid for an employee who would need to move to accept an offer of reemployment?

If possible, the employer should offer suitable reemployment in the location where the employee currently resides. If this is not practical, the employer may

offer suitable reemployment at the employee's former duty station or other location. Where the distance between the location of the offered job and the location where the employee currently resides is at least 50 miles, OWCP may pay such relocation expenses as are considered reasonable and necessary if the employee has been terminated from the agency's employment rolls and would incur relocation expenses by accepting the offered reemployment. OWCP may also pay such relocation expenses when the new employer is other than a federal employer. To determine whether a relocation expense is reasonable and necessary, OWCP shall use as a guide the federal travel regulations for permanent changes of duty station.

§ 10.509 If an employee's light-duty job is eliminated due to downsizing, what is the effect on compensation?

(a) In general, an employee will not be considered to have experienced a compensable recurrence of disability as defined in § 10.5(x) merely because his or her employer has eliminated the employee's light-duty position in a reduction-in-force or some other form of downsizing. When this occurs, OWCP will determine the employee's wage-earning capacity based on his or her actual earnings in such light-duty position if this determination is appropriate on the basis that such earnings fairly and reasonably represent the employee's wage-earning capacity and such a determination has not already been made.

(b) For the purposes of this section only, a ''light-duty position'' means a classified position that conforms to the established physical restrictions of the injured employee and for which the employer has already prepared a written position description such that the position constitutes ''regular'' federal employment. In the absence of a ''light duty position'' as described in this paragraph, OWCP will assume that the employee was instead engaged in non-competitive employment which does not represent the employee's wage-earning capacity, i.e., work of the type provided to injured employees who cannot otherwise be employed by the federal government or in any well-known branch of the general labor market.

Return to Work—Employee's Responsibilities

§ 10.515 What actions must the employee take?

(a) If an employee can resume regular federal employment because total disability has ceased, he or she must do so. No further compensation for wage loss is payable once the employee has recovered from the work-related injury to the extent that he or she can perform the duties of the position held at the time of injury, or earn equivalent wages.

(b) If an employee cannot return to the job held at the time of injury due to partial disability from the effects of the work-related injury, but has recovered enough to perform some type of work, he or she must accept suitable work. (See § 10.500 for a definition of ''suitable work''.) This work may be with the original employer or through job placement efforts made by or on behalf of OWCP.

(c) If the employer has advised an employee in writing that specific alternative positions exist within the agency, the employee shall provide the description and physical requirements of such alternate positions to the attending physician and ask whether and when he or she will be able to perform such duties.

(d) If the employer has advised an employee that it is willing to accommodate his or her work limitations, the employee shall so advise the attending physician and ask him or her to specify the limitations imposed by the injury. The employee is responsible for advising the employer immediately of these limitations.

(e) From time to time, OWCP may require the employee to report his or her efforts to obtain suitable employment, whether with the federal government, state and local governments, or in the private sector.

§ 10.516 How will an employee know if OWCP considers a job to be suitable?

OWCP shall advise the employee that it has found the offered work to be suitable and afford the employee 30 days to accept the job or present any reasons to counter OWCP's finding of suitability. If the employee presents such reasons, and OWCP determines that the reasons are unacceptable, it will notify the employee of that determination and that he or she has 15 days in which to accept the offered work without penalty. At that point in time, OWCP's notification need not state the reasons for finding that the employee's reasons are not acceptable.

§ 10.517 What are the penalties for refusing to accept a suitable job offer?

(a) 5 U.S.C. 8106(c) provides that a partially disabled employee who refuses to seek suitable work, or refuses to or neglects to work after suitable work is offered to or arranged for him or her, is not entitled to compensation. An employee who refuses or neglects to work after suitable work has been offered or secured for him or her has the burden to show that this refusal or failure to work was reasonable or justified.

(b) After providing the two notices described in § 10.516, OWCP will terminate the employee's entitlement to further compensation under 5 U.S.C. 8105, 8106, and 8107, as provided by 5 U.S.C. 8106(c)(2). However, the employee remains entitled to medical benefits as provided by 5 U.S.C. 8103.

§ 10.518 Does OWCP provide services to help employees return to work?

(a) OWCP may, in its discretion, provide vocational rehabilitation services as authorized by 5 U.S.C. 8104. These services include assistance from registered nurses working under the direction of OWCP. Among other things, these nurses visit the worksite, ensure that the duties of the position do not exceed the medical limitations as represented by the weight of medical evidence established by OWCP, and address any problems the employee may have in adjusting to the work setting. The nurses do not evaluate medical evidence; OWCP claims staff perform this function.

(b) Vocational rehabilitation services may also include vocational evaluation, testing, training, and placement services with either the original employer or a new employer, when the injured employee cannot return to the job held at the time of injury. These services also include functional capacity evaluations, which help to tailor individual rehabilitation programs to employees' physical reconditioning and behavioral modification needs, and help employees to meet the demands of current or potential jobs.

§ 10.519 What action will OWCP take if an employee refuses to undergo vocational rehabilitation?

Under 5 U.S.C. 8104(a), OWCP may direct a permanently disabled employee to undergo vocational rehabilitation. If an employee without good cause fails or refuses to apply for, undergo, participate in, or continue to participate in a vocational rehabilitation effort when so directed, OWCP will act as follows:

(a) Where a suitable job has been identified, OWCP will reduce the employee's future monetary compensation based on the amount which would likely have been his or her wage-earning capacity had he or she undergone vocational rehabilitation. OWCP will determine this amount in accordance with the job identified through the vocational rehabilitation planning process, which includes

meetings with the OWCP nurse and the employer. The reduction will remain in effect until such time as the employee acts in good faith to comply with the direction of OWCP.

(b) Where a suitable job has not been identified, because the failure or refusal occurred in the early but necessary stages of a vocational rehabilitation effort (that is, meetings with the OWCP nurse, interviews, testing, counseling, functional capacity evaluations, and work evaluations), OWCP cannot determine what would have been the employee's wage-earning capacity.

(c) Under the circumstances identified in paragraph (b) of this section, in the absence of evidence to the contrary, OWCP will assume that the vocational rehabilitation effort would have resulted in a return to work with no loss of wage-earning capacity, and OWCP will reduce the employee's monetary compensation accordingly (that is, to zero). This reduction will remain in effect until such time as the employee acts in good faith to comply with the direction of OWCP.

§ 10.520 How does OWCP determine compensation after an employee completes a vocational rehabilitation program?

After completion of a vocational rehabilitation program, OWCP may adjust compensation to reflect the injured worker's wage-earning capacity. Actual earnings will be used if they fairly and reasonably reflect the earning capacity. The position determined to be the goal of a training plan is assumed to represent the employee's earning capacity if it is suitable and performed in sufficient numbers so as to be reasonably available, whether or not the employee is placed in such a position.

Reports of Earnings From Employment and Self-Employment

§ 10.525 What information must the employee report?

(a) An employee who is receiving compensation for partial or total disability must advise OWCP immediately of any return to work, either part-time or full-time. In addition, an employee who is receiving compensation for partial or total disability will periodically be required to submit a report of earnings from employment or self-employment, either part-time or full-time. (See § 10.5(g) for a definition of ''earnings''.)

(b) The employee must report even those earnings which do not seem likely to affect his or her level of benefits. Many kinds of income, though not all, will result in reduction of compensation benefits. While earning income will not necessarily result in a reduction of compensation, failure to report income may result in forfeiture of all benefits paid during the reporting period.

§ 10.526 Must the employee report self-employment?

The employee is required to report self-employment, including volunteer work or any other kind of activity which shows that the employee is no longer totally disabled for work.

§ 10.527 Does OWCP verify reports of earnings?

To make proper determinations of an employee's entitlement to benefits, OWCP may attempt to verify the earnings reported by the employee through a variety of means, including but not limited to computer matches with the Office of Personnel Management and inquiries to the Social Security Administration. Also, OWCP may perform computer matches with records of state workers' compensation administrations to determine whether private employers are paying workers' compensation insurance premiums for recipients of benefits under the FECA.

§ 10.528 What action will OWCP take if the employee fails to file a report of activity indicating an ability to work?

OWCP periodically requires each employee who is receiving compensation benefits to complete an affidavit as to any work, or activity indicating an ability to work, which the employee has performed for the prior 15 months. If an employee who is required to file such a report fails to do so within 30 days of the date of the request, his or her right to compensation for wage loss under 5 U.S.C. 8105 or 8106 is suspended until OWCP receives the requested report. At that time, OWCP will reinstate compensation retroactive to the date of suspension if the employee remains entitled to compensation.

§ 10.529 What action will OWCP take if the employee files an incomplete report?

(a) If an employee knowingly omits or understates any earnings or work activity in making a report, he or she shall forfeit the right to compensation with respect to any period for which the report was required. A false or evasive statement, omission, concealment, or misrepresentation with respect to employment activity or earnings in a report may also subject an employee to criminal prosecution.

(b) Where the right to compensation is forfeited, OWCP shall recover any compensation already paid for the period of forfeiture pursuant to 5 U.S.C. 8129 and other relevant statutes.

Reports of Dependents

§ 10.535 How are dependents defined, and what information must the employee report?

(a) Dependents are defined in § 10.405. While the employee has one or more dependents, the employee's basic compensation for wage loss or for permanent impairment shall be augmented as provided in 5 U.S.C. 8110. (The rules for death claims are found in § 10.414.)

(b) An employee who is receiving augmented compensation on account of dependents must advise OWCP immediately of any change in the number or status of dependents. The employee should also promptly refund to OWCP any amounts received on account of augmented compensation after the right to receive augmented compensation has ceased. Any difference between actual entitlement and the amount already paid beyond the date entitlement ended is an overpayment of compensation and may be recovered pursuant to 5 U.S.C. 8129 and other relevant statutes.

(c) An employee who is receiving augmented compensation shall be periodically required to submit a statement as to any dependents, or to submit supporting documents such as birth or marriage certificates or court orders, to determine if he or she is still entitled to augmented compensation.

§ 10.536 What is the penalty for failing to submit a report of dependents?

If an employee fails to submit a requested statement or supporting document within 30 days of the date of the request, OWCP will suspend his or her right to augmented compensation until OWCP receives the requested statement or supporting document. At that time, OWCP will reinstate augmented compensation retroactive to the date of suspension, provided that the employee is entitled to receive augmented compensation.

§ 10.537 What reports are needed when compensation payments continue for children over age 18?

(a) Compensation payable on behalf of a child that would otherwise end when the child reaches 18 years of age will continue if and for so long as he or she is not married and is either a student as defined in 5 U.S.C. 8101(17), or physically or mentally incapable of self-support.

(b) At least twice each year, OWCP will ask an employee who receives compensation based on the student status of a child to provide proof of continuing entitlement to such

compensation, including certification of school enrollment.

(c) Likewise, at least twice each year, OWCP will ask an employee who receives compensation based on a child's physical or mental inability to support himself or herself to submit a medical report verifying that the child's medical condition persists and that it continues to preclude self-support.

(d) If an employee fails to submit proof within 30 days of the date of the request, OWCP will suspend the employee's right to compensation until the requested information is received. At that time OWCP will reinstate compensation retroactive to the date of suspension, provided the employee is entitled to such compensation.

Reduction and Termination of Compensation

§ 10.540 When and how is compensation reduced or terminated?

(a) Except as provided in paragraphs (b) and (c) of this section, where the evidence establishes that compensation should be either reduced or terminated, OWCP will provide the beneficiary with written notice of the proposed action and give him or her 30 days to submit relevant evidence or argument to support entitlement to continued payment of compensation. This notice will include a description of the reasons for the proposed action and a copy of the evidence upon which OWCP is basing its determination. Payment of compensation will continue until any evidence or argument submitted has been reviewed and an appropriate decision has been issued, or until 30 days have elapsed if no additional evidence or argument is submitted.

(b) OWCP will not provide such written notice when the beneficiary has no reasonable basis to expect that payment of compensation will continue. For example, when a claim has been made for a specific period of time and that specific period expires, no written notice will be given. Written notice will also not be given when a beneficiary dies, when OWCP either reduces or terminates compensation when an employee returns to work, when OWCP terminates medical benefits only after a physician indicates that further medical treatment is not necessary or has ended, or when OWCP denies payment for a particular medical expense.

(c) OWCP will also not provide such written notice when compensation is suspended or forfeited due to one of the following: a beneficiary's conviction for fraud in connection with a claim under the FECA, a beneficiary's incarceration based on any felony conviction, an employee's failure to report earnings from employment or self-employment, an employee's failure or refusal to either continue performing suitable work or to accept an offer of suitable work, or an employee's refusal to undergo or obstruction of a directed medical examination or treatment for substance abuse.

§ 10.541 What action will OWCP take after issuing written notice of its intention to reduce or terminate compensation?

(a) If the beneficiary submits evidence or argument prior to the issuance of the decision, OWCP will evaluate it in light of the proposed action and undertake such further development as it may deem appropriate, if any. Evidence or argument which is repetitious, cumulative, or irrelevant will not require any further development. If the beneficiary does not respond within 30 days of the written notice, OWCP will issue a decision consistent with its prior notice. OWCP will not grant any request for an extension of this 30-day period.

(b) Evidence or argument which refutes the evidence upon which the proposed action was based will result in the continued payment of compensation. If the beneficiary submits evidence or argument which fails to refute the evidence upon which the proposed action was based but which requires further development, OWCP will not provide the beneficiary with another notice of its proposed action upon completion of such development. Once any further development of the evidence is completed, OWCP will either continue payment or issue a decision consistent with its prior notice.

Subpart G—Review Process

§ 10.600 How can final decisions of OWCP be reviewed?

There are three methods for reviewing an initial final decision of the OWCP (§§ 10.125–10.127 discuss how decisions are made). These methods are: reconsideration by the district office; a hearing before an OWCP hearing representative; and appeal to the Employees' Compensation Appeals Board (ECAB). For each method there are time limitations and other restrictions which may apply, and not all options are available for all decisions, so the employee should consult the requirements set forth below. Further rules governing appeals to ECAB are found at part 501 of this title.

Reconsiderations and Reviews by the Director

§ 10.605 What is reconsideration?

The FECA provides that the Director may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee shall exercise this right through a request to the district office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."

§ 10.606 How does a claimant request reconsideration?

(a) An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by OWCP in the final decision.

(b) The application for reconsideration, including all supporting documents, must:

(1) Be submitted in writing;

(2) Set forth arguments and contain evidence that either:

(i) Shows that OWCP erroneously applied or interpreted a specific point of law;

(ii) Advances a relevant legal argument not previously considered by OWCP; or

(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.

§ 10.607 What is the deadline for requesting reconsideration?

(a) An application for reconsideration must be sent within one year of the date of the OWCP decision for which review is sought. If submitted by mail, the application will be deemed timely if postmarked by the U.S. Postal Service within the time period allowed. If there is no such postmark, or it is not legible, other evidence such as (but not limited to) certified mail receipts, certificate of service, and affidavits, may be used to establish the mailing date.

(b) OWCP will consider an untimely application for reconsideration only if the application demonstrates clear evidence of error on the part of OWCP in its most recent merit decision. The application must establish, on its face, that such decision was erroneous.

§ 10.608 How does OWCP decide whether to grant or deny the request for reconsideration?

(a) A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence and/or argument that meets at least one of the standards described in § 10.606(b)(2). If reconsideration is granted, the case is

reopened and the case is reviewed on its merits (see § 10.609).

(b) Where the request is timely but fails to meet at least one of the standards described in § 10.606(b)(2), or where the request is untimely and fails to present any clear evidence of error, OWCP will deny the application for reconsideration without reopening the case for a review on the merits. A decision denying an application for reconsideration cannot be the subject of another application for reconsideration. The only review for this type of non-merit decision is an appeal to the ECAB (see § 10.625), and OWCP will not entertain a request for reconsideration or a hearing on this decision denying reconsideration.

§ 10.609 How does OWCP decide whether new evidence requires modification of the prior decision?

When application for reconsideration is granted, OWCP will review the decision for which reconsideration is sought on the merits and determine whether the new evidence or argument requires modification of the prior decision.

(a) After OWCP decides to grant reconsideration, but before undertaking the review, OWCP will send a copy of the reconsideration application to the employer, which will have 15 days from the date sent to comment or submit relevant documents. OWCP will provide any such comments to the employee, who will have 15 days from the date the comments are sent to him or her within which to comment. If no comments are received from the employer, OWCP will proceed with the merit review of the case.

(b) A claims examiner who did not participate in making the contested decision will conduct the merit review of the claim. When all evidence has been reviewed, OWCP will issue a new merit decision, based on all the evidence in the record. A copy of the decision will be provided to the agency.

(c) An employee dissatisfied with this new merit decision may again request reconsideration under this subpart or appeal to the ECAB. An employee may not request a hearing on this decision.

§ 10.610 What is a review by the Director?

The FECA specifies that an award for or against payment of compensation may be reviewed at any time on the Director's own motion. Such review may be made without regard to whether there is new evidence or information. If the Director determines that a review of the award is warranted (including, but not limited to circumstances indicating a mistake of fact or law or changed conditions), the Director (at any time and on the basis of existing evidence) may modify, rescind, decrease or increase compensation previously awarded, or award compensation previously denied. A review on the Director's own motion is not subject to a request or petition and none shall be entertained.

(a) The decision whether or not to review an award under this section is solely within the discretion of the Director. The Director's exercise of this discretion is not subject to review by the ECAB, nor can it be the subject of a reconsideration or hearing request.

(b) Where the Director reviews an award on his or her own motion, any resulting decision is subject as appropriate to reconsideration, a hearing and/or appeal to the ECAB. Jurisdiction on review or on appeal to ECAB is limited to a review of the merits of the resulting decision. The Director's determination to review the award is not reviewable.

Hearings

§ 10.615 What is a hearing?

A hearing is a review of an adverse decision by a hearing representative. Initially, the claimant can choose between two formats: an oral hearing or a review of the written record. At the discretion of the hearing representative, an oral hearing may be conducted by telephone or teleconference. In addition to the evidence of record, the employee may submit new evidence to the hearing representative.

§ 10.616 How does a claimant obtain a hearing?

(a) A claimant, injured on or after July 4, 1966, who has received a final adverse decision by the district office may obtain a hearing by writing to the address specified in the decision. The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought. The claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.

(b) The claimant may specify the type of hearing desired when making the original hearing request. If the request does not specify a format, OWCP will schedule an oral hearing. The claimant can request a change in the format of the hearing by making a written request to the Branch of Hearings and Review. A request received by the Branch of Hearings and Review before either the date OWCP issues notice that the record is closed for written review, or the date OWCP issues a notice that OWCP has set a date for an oral hearing, will be granted. A request received after that date will be subject to OWCP's discretion. The decision to grant or deny a change of format is not reviewable.

§ 10.617 How is an oral hearing conducted?

(a) The hearing representative retains complete discretion to set the time and place of the hearing, including the amount of time allotted for the hearing, considering the issues to be resolved.

(b) Unless otherwise directed in writing by the claimant, the hearing representative will mail a notice of the time and place of the oral hearing to the claimant and any representative at least 30 days before the scheduled date. The employer will also be notified at least 30 days before the scheduled date.

(c) The hearing is an informal process, and the hearing representative is not bound by common law or statutory rules of evidence, by technical or formal rules of procedure or by section 5 of the Administrative Procedure Act. During the hearing process, the claimant may state his or her arguments and present new written evidence in support of the claim.

(d) Testimony at oral hearings is recorded, then transcribed and placed in the record. Oral testimony shall be made under oath.

(e) OWCP will furnish a transcript of the oral hearing to the claimant and the employer, who have 15 days from the date it is sent to comment. Any comments received from the employer shall be sent to the claimant, who will be given an additional 15 days to comment from the date OWCP sends any agency comments.

(f) The hearing remains open for the submittal of additional evidence until the date the decision is mailed to the claimant's last known address and to any representative. A copy of the decision will also be mailed to the employer.

(g) The hearing representative determines the conduct of the oral hearing and may terminate the hearing at any time he or she determines that all relevant evidence has been obtained, or because of misbehavior on the part of the claimant and/or representative at or near the place of the oral presentation.

§ 10.618 How is a review of the written record conducted?

(a) The hearing representative will review the official record and any additional evidence submitted by the claimant and by the agency. The hearing representative may also conduct whatever investigation is deemed necessary. New evidence and arguments may be submitted at any time up to the

time the hearing is closed, but it should be submitted as soon as possible to avoid delaying the hearing process.

(b) The claimant should submit, with his or her application for review, all evidence or argument that he or she wants to present to the hearing representative. A copy of all pertinent material will be sent to the employer, which will have 15 days from the date it is sent to comment. (Medical evidence is not considered ''pertinent'' for review and comment by the agency, and it will therefore not be furnished to the agency. OWCP has sole responsibility for evaluating medical evidence.) Any comments received from the employer shall be sent to the claimant, who will be given an additional 15 days to comment from the date OWCP sends any agency comments.

§ 10.619 May subpoenas be issued for witnesses and documents?

A claimant may request a subpoena, but the decision to grant or deny such a request is within the discretion of the hearing representative. The hearing representative may issue subpoenas for the attendance and testimony of witnesses, and for the production of books, records, correspondence, papers or other relevant documents. Subpoenas are issued for documents only if they are relevant and cannot be obtained by other means, and for witnesses only where oral testimony is the best way to ascertain the facts.

(a) A claimant may request a subpoena only as part of the hearings process, and no subpoena will be issued under any other part of the claims process. To request a subpoena, the requestor must:

(1) Submit the request in writing and send it to the hearing representative as early as possible but no later than 60 days (as evidenced by postmark, electronic marker or other objective date mark) after the date of the original hearing request.

(2) Explain why the testimony or evidence is directly relevant to the issues at hand, and a subpoena is the best method or opportunity to obtain such evidence because there are no other means by which the documents or testimony could have been obtained.

(b) No subpoena will be issued for attendance of employees of OWCP acting in their official capacities as decision-makers or policy administrators. For hearings taking the form of a review of the written record, no subpoena for the appearance of witnesses will be considered.

(c) The hearing representative issues the subpoena under his or her own name. It may be served in person or by certified mail, return receipt requested, addressed to the person to be served at his or her last known principal place of business or residence. A decision to deny a subpoena can only be appealed as part of an appeal of any adverse decision which results from the hearing.

§ 10.620 Who pays the costs associated with subpoenas?

(a) Witnesses who are not employees or former employees of the federal government shall be paid the same fees and mileage as paid for like services in the District Court of the United States where the subpoena is returnable, except that expert witnesses shall be paid a fee not to exceed the local customary fee for such services.

(b) Where OWCP asked that the witness submit evidence into the case record or asked that the witness attend, OWCP shall pay the fees and mileage. Where the claimant requested the subpoena, and where the witness submitted evidence into the record at the request of the claimant, the claimant shall pay the fees and mileage.

§ 10.621 What is the employer's role when an oral hearing has been requested?

(a) The employer may send a representative to observe the proceeding, but the agency representative cannot give testimony or argument or otherwise participate in the hearing, except where the claimant or the hearing representative specifically asks the agency representative to testify.

(b) The hearing representative may deny a request by the claimant that the agency representative testify where the claimant cannot show that the testimony would be relevant or where the agency representative does not have the appropriate level of knowledge to provide such evidence at the hearing. The employer may also comment on the hearing transcript, as described in § 10.618(b).

§ 10.622 May a claimant withdraw a request for or postpone a hearing?

(a) The claimant and/or representative may withdraw the hearing request at any time up to and including the day the hearing is held, or the decision issued. Withdrawing the hearing request means the record is returned to the jurisdiction of the district office and no further requests for a hearing on the underlying decision will be considered.

(b) OWCP will entertain any reasonable request for scheduling the oral hearing, but such requests should be made at the time of the original request; scheduling is at the sole discretion of the hearing representative, and is not reviewable. Once the oral hearing is scheduled and OWCP has mailed appropriate written notice to the claimant, the oral hearing cannot be postponed at the claimant's request for any reason, unless the hearing representative can reschedule the hearing on the same docket (that is, during the same hearing trip). When the request to postpone a scheduled hearing cannot be accommodated on the docket, no further opportunity for an oral hearing will be provided. Instead, the hearing will take the form of a review of the written record and a decision issued accordingly. In the alternative, a teleconference may be substituted for the oral hearing at the discretion of the hearing representative.

Review by the Employees' Compensation Appeals Board (ECAB)

§ 10.625 What kinds of decisions may be appealed?

Only final decisions of OWCP may be appealed to the ECAB. However, certain types of final decisions, described in this part as not subject to further review, cannot be appealed to the ECAB. Decisions that are not appealable to the ECAB include: decisions concerning the amounts payable for medical services, decisions concerning exclusion and reinstatement of medical providers, decisions by the Director to review an award on his or her own motion, and denials of subpoenas independent of the appeal of the underlying decision. In appeals before the ECAB, attorneys from the Office of the Solicitor of Labor shall represent OWCP.

§ 10.626 Who has jurisdiction of cases on appeal to the ECAB?

While a case is on appeal to the ECAB, OWCP has no jurisdiction over the claim with respect to issues which directly relate to the issue or issues on appeal. The OWCP continues to administer the claim and retains jurisdiction over issues unrelated to the issue or issues on appeal and issues which arise after the appeal as a result of ongoing administration of the case. Such issues would include, for example, the ability to terminate benefits where an individual returns to work while an appeal is pending at the ECAB.

Subpart H—Special Provisions

Representation

§ 10.700 May a claimant designate a representative?

(a) The claims process under the FECA is informal. Unlike many workers' compensation laws, the employer is not a party to the claim, and OWCP acts as an impartial evaluator of the evidence. Nevertheless, a claimant may appoint one individual to represent his or her

interests, but the appointment must be in writing.

(b) There can be only one representative at any one time, so after one representative has been properly appointed, OWCP will not recognize another individual as representative until the claimant withdraws the authorization of the first individual. In addition, OWCP will recognize only certain types of individuals (see § 10.701).

(c) A properly appointed representative who is recognized by OWCP may make a request or give direction to OWCP regarding the claims process, including a hearing. This authority includes presenting or eliciting evidence, making arguments on facts or the law, and obtaining information from the case file, to the same extent as the claimant. Any notice requirement contained in this subpart or the FECA is fully satisfied if served on the representative, and has the same force and effect as if sent to the claimant.

§ 10.701 Who may serve as a representative?

A claimant may authorize any individual to represent him or her in regard to a claim under the FECA, unless that individual's service as a representative would violate any applicable provision of law (such as 18 U.S.C. 205 and 208). A federal employee may act as a representative only:

(a) On behalf of immediate family members, defined as a spouse, children, parents, and siblings of the representative, provided no fee or gratuity is charged; or

(b) While acting as a union representative, defined as any officially sanctioned union official, provided such representation would not conflict with any other provision of law, and no fee or gratuity is charged.

§ 10.702 How are fees for services paid?

A representative may charge the claimant a fee and other costs associated with the representation before OWCP. The claimant is solely responsible for paying the fee and other charges. The claimant will not be reimbursed by OWCP, nor is OWCP in any way liable for the amount of the fee. Administrative costs (mailing, copying, messenger services, travel and the like, but not including secretarial services, paralegal and other activities) need not be approved before the representative collects them. Before any fee for services can be collected, however, the fee must be approved by the Secretary. (Collecting a fee without this approval may constitute a misdemeanor under 18 U.S.C. 292.)

§ 10.703 How are fee applications approved?

(a) *Fee application.* (1) The representative must submit the fee application to the district office and/or the Branch of Hearings and Review, according to where the work for which the fee is charged was performed. The application shall contain the following:

(i) An itemized statement showing the representative's hourly rate, the number of hours worked and specifically identifying the work performed and a total amount charged for the representation (excluding administrative costs).

(ii) A statement of agreement or disagreement with the amount charged, signed by the claimant. The statement must also acknowledge that the claimant is aware that he or she must pay the fees and that OWCP is not responsible for paying the fee or other costs.

(2) An incomplete application will be returned with no further comment.

(b) *Approval where there is no dispute.* Where a fee application is accompanied by a signed statement indicating the claimant's agreement with the fee as described in paragraph (a)(2) of this section, the application is deemed approved.

(c) *Disputed requests.* (1) Where the claimant disagrees with the amount of the fee, as indicated in the statement accompanying the submission, OWCP will evaluate the objection and decide whether or not to approve the request. OWCP will provide a copy of the request to the claimant and ask him or her to submit any further information in support of the objection within 15 days from the date the request is forwarded. After that period has passed, OWCP will evaluate the information received to determine whether the amount of the fee is substantially in excess of the value of services received by looking at the following factors:

(i) Usefulness of the attorney's services;

(ii) The nature and complexity of the claim;

(iii) The actual time spent on development and presentation of the claim; and

(iv) Customary local charges for similar services.

(2) Where the claimant disputes the attorney's request and files an objection with OWCP, an appealable decision will be issued.

Third Party Liability

§ 10.705 When must an employee or other FECA beneficiary take action against a third party?

(a) If an injury or death for which benefits are payable under the FECA is caused, wholly or partially, by someone other than a federal employee acting within the scope of his or her employment, the claimant can be required to take action against that third party.

(b) The Office of the Solicitor of Labor (SOL) is hereby delegated authority to administer the subrogation aspects of certain FECA claims for OWCP. Either OWCP or SOL can require a FECA beneficiary to assign his or her claim for damages to the United States or to prosecute the claim in his or her own name.

§ 10.706 How will a beneficiary know if OWCP or SOL has determined that action against a third party is required?

When OWCP determines that an employee or other FECA beneficiary must take action against a third party, it will notify the employee or beneficiary in writing. If the case is transferred to SOL, a second notification may be issued.

§ 10.707 What must a FECA beneficiary who is required to take action against a third party do to satisfy the requirement that the claim be "prosecuted"?

At a minimum, a FECA beneficiary must do the following:

(a) Seek damages for the injury or death from the third party, either through an attorney or on his or her own behalf;

(b) Either initiate a lawsuit within the appropriate statute of limitations period or obtain a written release of this obligation from OWCP or SOL unless recovery is possible through a negotiated settlement prior to filing suit;

(c) Refuse to settle or dismiss the case for any amount less than the amount necessary to repay OWCP's refundable disbursements, as defined in § 10.714, without receiving permission from OWCP or SOL;

(d) Provide periodic status updates and other relevant information in response to requests from OWCP or SOL;

(e) Submit detailed information about the amount recovered and the costs of the suit on a "Statement of Recovery" form approved by OWCP; and

(f) Pay any required refund.

§ 10.708 Can a FECA beneficiary who refuses to comply with a request to assign a claim to the United States or to prosecute the claim in his or her own name be penalized?

When a FECA beneficiary refuses a request to either assign a claim or prosecute a claim in his or her own name, OWCP may determine that he or she has forfeited his or her right to all past or future compensation for the injury with respect to which the request is made. Alternatively, OWCP may also suspend the FECA beneficiary's compensation payments until he or she complies with the request.

§ 10.709 What happens if a beneficiary directed by OWCP or SOL to take action against a third party does not believe that a claim can be successfully prosecuted at a reasonable cost?

If a beneficiary consults an attorney and is informed that a suit for damages against a third party for the injury or death for which benefits are payable is unlikely to prevail or that the costs of such a suit are not justified by the potential recovery, he or she should request that OWCP or SOL release him or her from the obligation to proceed. This request should be in writing and provide evidence of the attorney's opinion. If OWCP or SOL agrees, the beneficiary will not be required to take further action against the third party.

§ 10.710 Under what circumstances must a recovery of money or other property in connection with an injury or death for which benefits are payable under the FECA be reported to OWCP or SOL?

Any person who has filed a FECA claim that has been accepted by OWCP (whether or not compensation has been paid), or who has received FECA benefits in connection with a claim filed by another, is required to notify OWCP or SOL of the receipt of money or other property as a result of a settlement or judgment in connection with the circumstances of that claim. This includes an injured employee, and in the case of a claim involving the death of an employee, a spouse, children or other dependents entitled to receive survivor's benefits. OWCP or SOL should be notified in writing within 30 days of the receipt of such money or other property or the acceptance of the FECA claim, whichever occurs later.

§ 10.711 How much of any settlement or judgment must be paid to the United States?

The statute permits a FECA beneficiary to retain, as a minimum, one-fifth of the net amount of money or property remaining after a reasonable attorney's fee and the costs of litigation have been deducted from the third-party recovery. The U.S. shares in the litigation expense by allowing the beneficiary to retain, at the time of distribution, an amount equivalent to a reasonable attorney's fee proportionate to the refund due the United States. After the refund owed to the United States is calculated, the FECA beneficiary retains any surplus remaining, and this amount is credited, dollar for dollar, against future compensation for the same injury, as defined in § 10.719. OWCP will resume the payment of compensation only after the FECA beneficiary has been awarded compensation which exceeds the amount of the surplus.

(a) The refund to the United States is calculated as follows, using the Statement of Recovery form approved by OWCP:

(1) Determine the gross recovery as set forth in § 10.712;

(2) Subtract the amount of attorney's fees actually paid, but not more than the maximum amount of attorney's fees considered by OWCP or SOL to be reasonable, from the gross recovery (Subtotal A);

(3) Subtract the costs of litigation, as allowed by OWCP or SOL (Subtotal B);

(4) Subtract one fifth of Subtotal B from Subtotal B (Subtotal C);

(5) Compare Subtotal C and the refundable disbursements as defined in § 10.714. Subtotal D is the lower of the two amounts.

(6) Multiply Subtotal D by a percentage that is determined by dividing the gross recovery into the amount of attorney's fees actually paid, but not more than the maximum amount of attorney's fees considered by OWCP or SOL to be reasonable, to determine the government's allowance for attorney's fees, and subtract this amount from Subtotal D.

(b) The credit against future benefits (also referred to as the surplus) is calculated as follows:

(1) If Subtotal C, as calculated according to paragraph (a)(4) of this section, is less than the refundable disbursements, as defined in § 10.714, there is no credit to be applied against future benefits;

(2) If Subtotal C is greater than the refundable disbursements, the credit against future benefits (or surplus) amount is determined by subtracting the refundable disbursements from Subtotal C.

(c) An example of how these calculations are made follows. In this example, a federal employee sues another party for causing injuries for which the employee has received $22,000 in benefits under the FECA, subject to refund. The suit is settled and the injured employee receives $100,000, all of which was for his injury. The injured worker paid attorney's fees of $25,000 and costs for the litigation of $3,000.

(1) Gross recovery	$100,000
Attorney's fees	−25,000
(2) Subtotal A	75,000
(3) Costs of suit	−3,000
Subtotal B	−72,000
One-fifth of Subtotal B	−14,400
(4) Subtotal C	57,600
Refundable Disbursement	22,000
(5) Subtotal D (lower of Subtotal C or refundable disbursements)	22,000
(6) Government's allowance for attorney's fees [25,000/100,000×22,000]	−5,500
(Attorney's fees divided by gross recovery then multiplied by Subtotal D) Refund to the United States	16,500
(7) Credit against future benefits [57,600−22,000] (Subtotal C minus refundable disbursements)	35,600

§ 10.712 What amounts are included in the gross recovery?

(a) When a settlement or judgment is paid to, or for, one individual, the entire amount, except for the portion representing damage to real or personal property, is reported as the gross recovery. If a settlement or judgment is paid to or for more than one individual or in more than one capacity, such as a joint payment to a husband and wife for personal injury and loss of consortium or a payment to a spouse representing both loss of consortium and wrongful death, the gross recovery to be reported is the amount allocated to the injured employee. If a judge or jury specifies the percentage of a contested verdict attributable to each of several plaintiffs, OWCP or SOL will accept that division.

(b) In any other case, where a judgment or settlement is paid to or on behalf of more than one individual, OWCP or SOL will determine the appropriate amount of the FECA beneficiary's gross recovery and advise the beneficiary of its determination. FECA beneficiaries may accept OWCP's or SOL's determination or demonstrate good cause for a different allocation. Whether to accept a specific allocation is at the discretion of SOL or OWCP.

§ 10.713 How is a structured settlement (that is, a settlement providing for receipt of funds over a specified period of time) treated for purposes of reporting the gross recovery?

In this situation, the gross recovery to be reported is the present value of the right to receive all of the payments included in the structured settlement, allocated in the case of multiple recipients in the same manner as single payment recoveries.

§ 10.714 What amounts are included in the refundable disbursements?

The refundable disbursements of a specific claim consist of the total money paid by OWCP from the Employees' Compensation Fund with respect to that claim to or on behalf of a FECA beneficiary, less charges for any medical file review (i.e., the physician does not examine the employee) done at the request of OWCP. Charges for medical examinations also may be subtracted if the FECA beneficiary establishes that the examinations were required to be made available to the employee under a statute other than the FECA by the employing agency or at the employing agency's cost.

§ 10.715 Is a beneficiary required to pay interest on the amount of the refund due to the United States?

If the refund due to the United States is not submitted within 30 days of receiving a request for payment from SOL or OWCP, interest shall accrue on the refund due to the United States from the date of the request. The rate of interest assessed shall be the rate of the current value of funds to the United States Treasury as published in the **Federal Register** (as of the date the request for payment is sent). Waiver of the collection of interest shall be in accordance with the provisions of the Department of Labor regulations on Federal Claims Collection governing waiver of interest, 29 CFR 20.61.

§ 10.716 If the required refund is not paid within 30 days of the request for repayment, can it be collected from payments due under the FECA?

If the required refund is not paid within 30 days of the request for payment, OWCP can, in its discretion, collect the refund by withholding all or part of any payments currently payable to the beneficiary under the FECA with respect to any injury. The waiver provisions of §§ 10.432 through 10.440 do not apply to such determinations.

§ 10.717 Is a settlement or judgment received as a result of allegations of medical malpractice in treating an injury covered by the FECA a gross recovery that must be reported to OWCP or SOL?

Since an injury caused by medical malpractice in treating an injury covered by the FECA is also an injury covered under the FECA, any recovery in a suit alleging such an injury is treated as a gross recovery that must be reported to OWCP or SOL.

§ 10.718 Are payments to a beneficiary as a result of an insurance policy which the beneficiary has purchased a gross recovery that must be reported to OWCP or SOL?

Since payments received by a FECA beneficiary pursuant to an insurance policy purchased by someone other than a liable third party are not payments in satisfaction of liability for causing an injury covered by the FECA, they are not considered a gross recovery covered by section 8132 that requires filing a Statement of Recovery and paying any required refund.

§ 10.719 If a settlement or judgment is received for more than one wound or medical condition, can the refundable disbursements paid on a single FECA claim be attributed to different conditions for purposes of calculating the refund or credit owed to the United States?

(a) All wounds, diseases or other medical conditions accepted by OWCP in connection with a single claim are treated as the same injury for the purpose of computing any required refund and any credit against future benefits in connection with the receipt of a recovery from a third party, except that an injury caused by medical malpractice in treating an injury covered under the FECA will be treated as a separate injury for purposes of section 8132.

(b) If an injury covered under the FECA is caused under circumstances creating a legal liability in more than one person, other than the United States, to pay damages, OWCP or SOL will determine whether recoveries received from one or more third parties should be attributed to separate conditions for which compensation is payable in connection with a single FECA claim. If such an attribution is both practicable and equitable, as determined by OWCP or SOL, in its discretion, the conditions will be treated as separate injuries for purposes of calculating the refund and credit owed to the United States under section 8132.

Federal Grand and Petit Jurors

§ 10.725 When is a federal grand or petit juror covered under the FECA?

(a) Federal grand and petit jurors are covered under the FECA when they are in performance of duty as a juror, which includes that time when a juror is:

(1) In attendance at court pursuant to a summons;

(2) In deliberation;

(3) Sequestered by order of a judge; or

(4) At a site, by order of the court, for the taking of a view.

(b) A juror is not considered to be in the performance of duty while traveling to or from home in connection with the activities enumerated in paragraphs (a)(1) through (4) of this section.

§ 10.726 When does a juror's entitlement to disability compensation begin?

Pursuant to 28 U.S.C. 1877, entitlement to disability compensation does not commence until the day after the date of termination of service as a juror.

§ 10.727 What is the pay rate of jurors for compensation purposes?

For the purpose of computing compensation payable for disability or death, a juror is deemed to receive pay at the minimum rate for Grade GS–2 of the General Schedule unless his or her actual pay as an "employee" of the United States while serving on court leave is higher, in which case the pay rate for compensation purposes is determined in accordance with 5 U.S.C. 8114.

Peace Corps Volunteers

§ 10.730 What are the conditions of coverage for Peace Corps volunteers and volunteer leaders injured while serving outside the United States?

(a) Any injury sustained by a volunteer or volunteer leader while he or she is located abroad shall be presumed to have been sustained in the performance of duty, and any illness contracted during such time shall be presumed to be proximately caused by the employment. However, this presumption will be rebutted by evidence that:

(1) The injury or illness was caused by the claimant's willful misconduct, intent to bring about the injury or death of self or another, or was proximately caused by the intoxication by alcohol or illegal drugs of the injured claimant; or

(2) The illness is shown to have preexisted the period of service abroad; or

(3) The injury or illness claimed is a manifestation of symptoms of, or consequent to, a preexisting congenital defect or abnormality.

(b) If the presumption that an injury or illness was sustained in the performance of duty is rebutted as provided by paragraph (a) of this section, the claimant has the burden of proving by the submittal of substantial and probative evidence that such injury or illness was sustained in the performance of duty with the Peace Corps.

(c) If an injury or illness, or episode thereof, comes within one of the exceptions described in paragraph (a)(2) or (3) of this section, the claimant may nonetheless be entitled to compensation. This will be so provided he or she meets the burden of proving by the submittal of substantial, probative and rationalized medical evidence that the illness or injury was proximately caused by factors or conditions of Peace Corps service, or that it was materially aggravated, accelerated or precipitated by factors of Peace Corps service.

§ 10.731 What is the pay rate of Peace Corps volunteers and volunteer leaders for compensation purposes?

The pay rate for these claimants is defined as the pay rate in effect on the date following separation, provided that the rate equals or exceeds the pay rate on the date of injury. It is defined in accordance with 5 U.S.C. 8142(a), not 8101(4).

Non-Federal Law Enforcement Officers

§ 10.735 When is a non-federal law enforcement officer covered under the FECA?

(a) A law enforcement officer (officer) includes an employee of a state or local government, the governments of U.S. possessions and territories, or an employee of the United States pensioned or pensionable under sections 521–535 of Title 4, D.C. Code, whose functions include the activities listed in 5 U.S.C. 8191.

(b) Benefits are available to officers who are not ''employees'' under 5 U.S.C. 8101, and who are determined in the discretion of OWCP to have been engaged in the activities listed in 5 U.S.C. 8191 with respect to the enforcement of crimes against the United States. Individuals who only perform administrative functions in support of officers are not considered officers.

(c) Except as provided by 5 U.S.C. 8191 and 8192 and elsewhere in this part, the provisions of the FECA and of subparts A, B, and D through I of this part apply to officers.

§ 10.736 What are the time limits for filing a claim?

OWCP must receive a claim for benefits under 5 U.S.C. 8191 within five years after the injury or death. This five-year limitation is not subject to waiver. The tolling provisions of 5 U.S.C. 8122(d) do not apply to these claims.

§ 10.737 How is a claim filed, and who can file a claim?

A claim for injury or occupational disease should be filed on Form CA–721; a death claim should be filed on Form CA–722. All claims should be submitted to the officer's employer for completion and forwarding to OWCP. A claim may be filed by the officer, the officer's survivor, or any person or association authorized to act on behalf of an officer or an officer's survivors.

§ 10.738 Under what circumstances are benefits payable?

(a) Benefits are payable when an officer is injured while apprehending, or attempting to apprehend, an individual for the commission of a federal crime. However, either an actual federal crime must be in progress or have been committed, or objective evidence (of which the officer is aware at the time of injury) must exist that a potential federal crime was in progress or had already been committed. The actual or potential federal crime must be an integral part of the criminal activity toward which the officer's actions are directed. The fact that an injury to an officer is related in some way to the commission of a federal crime does not necessarily bring the injury within the coverage of the FECA. The FECA is not intended to cover officers who are merely enforcing local laws.

(b) For benefits to be payable when an officer is injured preventing, or attempting to prevent, a federal crime, there must be objective evidence that a federal crime is about to be committed. An officer's belief, unsupported by objective evidence, that he or she is acting to prevent the commission of a federal crime will not result in coverage. Moreover, the officer's subjective intent, as measured by all available evidence (including the officer's own statements and testimony, if available), must have been directed toward the prevention of a federal crime. In this context, an officer's own statements and testimony are relevant to, but do not control, the determination of coverage.

§ 10.739 What kind of objective evidence of a potential federal crime must exist for coverage to be extended?

Based on the facts available at the time of the event, the officer must have an awareness of sufficient information which would lead a reasonable officer, under the circumstances, to conclude that a federal crime was in progress, or was about to occur. This awareness need not extend to the precise particulars of the crime (the section of Title 18, United States Code, for example), but there must be sufficient evidence that the officer was in fact engaged in actual or attempted apprehension of a federal criminal or prevention of a federal crime.

§ 10.740 In what situations will OWCP automatically presume that a law enforcement officer is covered by the FECA?

(a) Where an officer is detailed by a competent state or local authority to assist a federal law enforcement authority in the protection of the President of the United States, or any other person actually provided or entitled to U.S. Secret Service protection, coverage will be extended.

(b) Coverage for officers of the U.S. Park Police and those officers of the Uniformed Division of the U.S. Secret Service who participate in the District of Columbia Retirement System is adjudicated under the principles set forth in paragraph (a) of this section, and does not extend to numerous tangential activities of law enforcement (for example, reporting to work, changing clothes). However, officers of the Non-Uniformed Division of the U.S. Secret Service who participate in the District of Columbia Retirement System are covered under the FECA during the performance of all official duties.

§ 10.741 How are benefits calculated?

(a) Except for continuation of pay, eligible officers and survivors are entitled to the same benefits as if the officer had been an employee under 5 U.S.C. 8101. However, such benefits may be reduced or adjusted as OWCP in its discretion may deem appropriate to reflect comparable benefits which the officer or survivor received or would have been entitled to receive by virtue of the officer's employment.

(b) For the purpose of this section, a comparable benefit includes any benefit that the officer or survivor is entitled to receive because of the officer's employment, including pension and disability funds, state workers' compensation payments, Public Safety Officers' Benefits Act payments, and state and local lump sum payments. Health benefits coverage and proceeds of life insurance policies purchased by the employer are not considered to be comparable benefits.

(c) The FECA provides that, where an officer receives comparable benefits,

compensation benefits are to be reduced proportionally in a manner that reflects the relative percentage contribution of the officer and the officer's employer to the fund which is the source of the comparable benefit. Where the source of the comparable benefit is a retirement or other system which is not fully funded, the calculation of the amount of the reduction will be based on a per capita comparison between the contribution by the employer and the contribution by all covered officers during the year prior to the officer's injury or death.

(d) The non-receipt of compensation during a period where a dual benefit (such as a lump sum payment on the death of an officer) is being offset against compensation entitlement does not result in an adjustment of the respective benefit percentages of remaining beneficiaries because of a cessation of compensation under 5 U.S.C. 8133(c).

Subpart I—Information for Medical Providers

Medical Records and Bills

§ 10.800 What kind of medical records must providers keep?

Agency medical officers, private physicians and hospitals are required to keep records of all cases treated by them under the FECA so they can supply OWCP with a history of the injury, a description of the nature and extent of injury, the results of any diagnostic studies performed, the nature of the treatment rendered and the degree of any impairment arising from the injury.

§ 10.801 How are medical bills to be submitted?

(a) All charges for medical and surgical treatment, appliances or supplies furnished to injured employees, except for treatment and supplies provided by nursing homes, shall be supported by medical evidence as provided in § 10.800. The physician or provider shall itemize the charges on the standard Health Insurance Claim Form, HCFA 1500 or OWCP 1500, (for professional charges), the UB–92 (for hospitals), the Universal Claim Form (for pharmacies), or other form as warranted, and submit the form promptly to OWCP.

(b) The provider shall identify each service performed using the Physician's Current Procedural Terminology (CPT) code, the Health Care Financing Administration Common Procedure Coding System (HCPCS) code, the National Drug Code (NDC), or the Revenue Center Code (RCC), with a brief narrative description. Where no code is applicable, a detailed description of services performed should be provided.

(c) The provider shall also state each diagnosed condition and furnish the corresponding diagnostic code using the ''International Classification of Disease, 9th Edition, Clinical Modification'' (ICD–9–CM), or as revised. A separate bill shall be submitted when the employee is discharged from treatment or monthly, if treatment for the work-related condition is necessary for more than 30 days.

(1)(i) Hospitals shall submit charges for medical and surgical treatment or supplies promptly to OWCP on the Uniform Bill (UB–92). The provider shall identify each outpatient radiology service, outpatient pathology service and physical therapy service performed, using HCPCS/CPT codes with a brief narrative description. The charge for each individual service, or the total charge for all identical services, should also appear in the UB–92.

(ii) Other outpatient hospital services for which HCPCS/CPT codes exist shall also be coded individually using the coding scheme noted in this paragraph. Services for which there are no HCPCS/CPT codes available can be presented using the RCCs described in the ''National Uniform Billing Data Elements Specifications'', current edition. The provider shall also furnish the diagnostic code using the ICD–9–CM. If the outpatient hospital services include surgical and/or invasive procedures, the provider shall code each procedure using the proper CPT/HCPCS codes and furnishing the corresponding diagnostic codes using the ICD–9–CM.

(2) Pharmacies shall itemize charges for prescription medications, appliances, or supplies on the Universal Claim Form and submit them promptly to OWCP. Bills for prescription medications must include the NDC assigned to the product, the generic or trade name of the drug provided, the prescription number, the quantity provided, and the date the prescription was filled.

(3) Nursing homes shall itemize charges for appliances, supplies or services on the provider's billhead stationery and submit them promptly to OWCP.

(d) By submitting a bill and/or accepting payment, the provider signifies that the service for which reimbursement is sought was performed as described and was necessary. In addition, the provider thereby agrees to comply with all regulations set forth in this subpart concerning the rendering of treatment and/or the process for seeking reimbursement for medical services, including the limitation imposed on the amount to be paid for such services.

(e) Bills submitted by providers must: be itemized on the Health Insurance Claim Form (for physicians), the UB–92 (for hospitals), or the Universal Claim Form (for pharmacies); contain the signature or signature stamp of the provider; and identify the procedures using HCPCS/CPT codes, RCCs, or NDCs. Otherwise, OWCP may return the bill to the provider for correction and resubmission.

§ 10.802 How should an employee prepare and submit requests for reimbursement for medical expenses, transportation costs, loss of wages, and incidental expenses?

(a) If an employee has paid bills for medical, surgical or dental services, supplies or appliances due to an injury sustained in the performance of duty, he or she may submit an itemized bill on the Health Insurance Claim Form, HCFA 1500 or OWCP 1500, together with a medical report as provided in § 10.800, to OWCP for consideration.

(1) The provider of such service shall state each diagnosed condition and furnish the applicable ICD–9–CM code and identify each service performed using the applicable HCPCS/CPT code, with a brief narrative description of the service performed, or, where no code is applicable, a detailed description of that service.

(2) The bill must be accompanied by evidence that the provider received payment for the service from the employee and a statement of the amount paid. Acceptable evidence that payment was received includes, but is not limited to, a signed statement by the provider, a mechanical stamp or other device showing receipt of payment, a copy of the employee's canceled check (both front and back) or a copy of the employee's credit card receipt.

(b) If services were provided by a hospital, pharmacy or nursing home, the employee should submit the bill in accordance with the provisions of § 10.801(a). Any request for reimbursement must be accompanied by evidence, as described in paragraph (a) of this section, that the provider received payment for the service from the employee and a statement of the amount paid.

(c) OWCP may waive the requirements of paragraphs (a) and (b) of this section if extensive delays in the filing or the adjudication of a claim make it unusually difficult for the employee to obtain the required information.

(d) OWCP will not accept copies of bills for reimbursement unless they bear the original signature of the provider,

with evidence of payment. Payment for medical and surgical treatment, appliances or supplies shall in general be no greater than the maximum allowable charge for such service determined by the Director, as set forth in § 10.805.

(e) An employee will be only partially reimbursed for a medical expense if the amount he or she paid to a provider for the service exceeds the maximum allowable charge set by the Director's schedule. In this instance, OWCP shall advise the provider of the maximum allowable charge for the service in question and allow the provider the opportunity to refund to the employee, or credit to the employee's account the amount paid by the employee which exceeds the maximum allowable charge, or request reconsideration of the fee determination as provided by § 10.812.

(f) If the provider fails to make appropriate refund to the employee, or to credit the employee's account, within 60 days after the date of this notification by OWCP, or the date of a subsequent reconsideration decision which continues to disallow all or a portion of the appealed amount, OWCP shall initiate exclusion procedures as provided by § 10.815.

(g) After notification as provided in paragraph (e) of this section, OWCP may make reasonable reimbursement to the employee, based on a review of the facts and circumstances of the case, if the provider does not refund or credit to the employee's account the amount of money paid in excess of the charge allowed by OWCP.

§ 10.803 What are the time limitations on OWCP's payment of bills?

OWCP will pay providers and reimburse employees promptly for all bills received on an approved form and in a timely manner. However, no bill will be paid for expenses incurred if the bill is submitted more than one year beyond the end of the calendar year in which the expense was incurred or the service or supply was provided, or more than one year beyond the end of the calendar year in which the claim was first accepted as compensable by OWCP, whichever is later.

Medical Fee Schedule

§ 10.805 What services are covered by the OWCP fee schedule?

(a) Payment for medical and other health services furnished by physicians, hospitals and other providers for work-related injuries shall not exceed a maximum allowable charge for such service as determined by the Director, except as provided in this section.

(b) The schedule of maximum allowable charges does not apply to charges for services provided in nursing homes, but it does apply to charges for treatment furnished in a nursing home by a physician or other medical professional.

(c) The schedule of maximum allowable charges also does not apply to charges for appliances, supplies, services or treatment furnished by medical facilities of the U.S. Public Health Service or the Departments of the Army, Navy, Air Force and Veterans Affairs.

§ 10.806 How are the maximum fees defined?

For professional medical services, the Director shall maintain a schedule of maximum allowable fees for procedures performed in a given locality. The schedule shall consist of: an assignment of a value to procedures identified by Health Care Financing Administration Common Procedure Coding System/ Current Procedural Terminology (HCPCS/CPT) code which represents the relative skill, effort, risk and time required to perform the procedure, as compared to other procedures of the same general class; an index based on a relative value scale that considers skill, labor, overhead, malpractice insurance and other related costs; and a monetary value assignment (conversion factor) for one unit of value in each of the categories of service.

§ 10.807 How are payments for particular services calculated?

Payment for a procedure identified by a HCPCS/CPT code shall not exceed the amount derived by multiplying the relative values for that procedure by the geographic indices for services in that area and by the dollar amount assigned to one unit in that category of service.

(a) The "locality" which serves as a basis for the determination of average cost is defined by the Bureau of Census Metropolitan Statistical Areas. The Director shall base the determination of the relative per capita cost of medical care in a locality using information about enrollment and medical cost per county, provided by the Health Care Financing Administration (HCFA).

(b) The Director shall assign the relative value units (RVUs) published by HCFA to all services for which HCFA has made assignments, using the most recent revision. Where there are no RVUs assigned to a procedure, the Director may develop and assign any RVUs that he or she considers appropriate. The geographic adjustment factor shall be that designated by Geographic Practice Cost Indices for Metropolitan Statistical Areas as devised for HCFA and as updated or revised by HCFA from time to time. The Director will devise conversion factors for each category of service, and in doing so may adapt HCFA conversion factors as appropriate using OWCP's processing experience and internal data.

(c) For example, if the unit values for a particular surgical procedure are 2.48 for physician's work (W), 3.63 for practice expense (PE), and 0.48 for malpractice insurance (M), and the dollar value assigned to one unit in that category of service (surgery) is $61.20, then the maximum allowable charge for one performance of that procedure is the product of the three RVUs times the corresponding geographical indices for the locality times the conversion factor. If the geographic indices for the locality are 0.988 (W), 0.948 (PE), and 1.174 (M), then the maximum payment calculation is:

$$[(2.48)(0.988) + (3.63)(0.948) + (0.48)(1.174)] \times \$61.20$$
$$[2.45 + 3.44 + .56] \times \$61.20$$
$$6.45 \times \$61.20 = \$394.74$$

§ 10.808 Does the fee schedule apply to every kind of procedure?

Where the time, effort and skill required to perform a particular procedure varies widely from one occasion to the next, the Director may choose not to assign a relative value to that procedure. In this case the allowable charge for the procedure will be set individually based on consideration of a detailed medical report and other evidence. At its discretion, OWCP may set fees without regard to schedule limits for specially authorized consultant examinations, for examinations performed under 5 U.S.C. 8123, and for other specially authorized services.

§ 10.809 How are payments for medicinal drugs determined?

Payment for medicinal drugs prescribed by physicians shall not exceed the amount derived by multiplying the average wholesale price of the medication by the quantity or amount provided, plus a dispensing fee.

(a) All prescription medications identified by National Drug Code (NDC) will be assigned an average wholesale price representing the product's nationally recognized wholesale price as determined by surveys of manufacturers and wholesalers. The Director will establish the dispensing fee.

(b) The NDCs, the average wholesale prices, and the dispensing fee shall be reviewed from time to time and updated as necessary.

§ 10.810 How are payments for inpatient medical services determined?

(a) OWCP will pay for inpatient medical services according to pre-determined, condition-specific rates based on the Prospective Payment System (PPS) devised by HCFA (42 CFR parts 412, 413, 424, 485, and 489). Using this system, payment is derived by multiplying the diagnosis-related group (DRG) weight assigned to the hospital discharge by the provider-specific factors.

(1) All hospital discharges will be classified according to the DRGs prescribed by the HCFA in the form of the DRG Grouper software program. On this list, each DRG represents the average resources necessary to provide care in a case in that DRG relative to the national average of resources consumed per case.

(2) The provider-specific factors will be provided by HCFA in the form of their PPS Pricer software program. The software takes into consideration the type of facility, census division, actual geographic location (MSA) of the hospital, case mix cost per discharge, number of hospital beds, intern/beds ratio, operating cost to charge ratio, and other factors used by HCFA to determine the specific rate for a hospital discharge under their PPS. The Director may devise pricer adjustment factors as appropriate using OWCP's processing experience and internal data.

(3) OWCP will base payments to facilities excluded from HCFA's PPS on consideration of detailed medical reports and other evidence.

(4) The Director shall review the pre-determined hospital rates at least once a year, and may adjust any or all components when he or she deems it necessary or appropriate.

(b) The Director shall review the schedule of fees at least once a year, and may adjust the schedule or any of its components when he or she deems it necessary or appropriate.

§ 10.811 When and how are fees reduced?

(a) OWCP shall accept a provider's designation of the code to identify a billed procedure or service if the code is consistent with medical reports and other evidence. Where no code is supplied, OWCP may determine the code based on the narrative description of the procedure on the billing form and in associated medical reports. OWCP will pay no more than the maximum allowable fee for that procedure.

(b) If the charge submitted for a service supplied to an injured employee exceeds the maximum amount determined to be reasonable according to the schedule, OWCP shall pay the amount allowed by the schedule for that service and shall notify the provider in writing that payment was reduced for that service in accordance with the schedule. OWCP shall also notify the provider of the method for requesting reconsideration of the balance of the charge.

§ 10.812 If OWCP reduces a fee, may a provider request reconsideration of the reduction?

(a) A physician or other provider whose charge for service is only partially paid because it exceeds a maximum allowable amount set by the Director may, within 30 days, request reconsideration of the fee determination.

(1) The provider should make such a request to the OWCP district office with jurisdiction over the employee's claim. The request must be accompanied by documentary evidence that the procedure performed was incorrectly identified by the original code, that the presence of a severe or concomitant medical condition made treatment especially difficult, or that the provider possessed unusual qualifications. In itself, board-certification in a specialty is not sufficient evidence of unusual qualifications to justify an exception. These are the only three circumstances which will justify reevaluation of the paid amount.

(2) A list of OWCP district offices and their respective areas of jurisdiction is available upon request from the U.S. Department of Labor, Office of Workers' Compensation Programs, Washington, D. C. 20210. Within 30 days of receiving the request for reconsideration, the OWCP district office shall respond in writing stating whether or not an additional amount will be allowed as reasonable, considering the evidence submitted.

(b) If the OWCP district office issues a decision which continues to disallow a contested amount, the provider may apply to the Regional Director of the region with jurisdiction over the OWCP district office. The application must be filed within 30 days of the date of such decision, and it may be accompanied by additional evidence. Within 60 days of receipt of such application, the Regional Director shall issue a decision in writing stating whether or not an additional amount will be allowed as reasonable, considering the evidence submitted. This decision shall be final, and shall not be subject to further review.

§ 10.813 If OWCP reduces a fee, may a provider bill the claimant for the balance?

A provider whose fee for service is partially paid by OWCP as a result of the application of its fee schedule or other tests for reasonableness in accordance with this subpart shall not request reimbursement from the employee for additional amounts.

(a) Where a provider's fee for a particular service or procedure is lower to the general public than as provided by the schedule of maximum allowable charges, the provider shall bill at the lower rate. A fee for a particular service or procedure which is higher than the provider's fee to the general public for that same service or procedure will be considered a charge "substantially in excess of such provider's customary charges" for the purposes of § 10.815(d).

(b) A provider whose fee for service is partially paid by OWCP as the result of the application of the schedule of maximum allowable charges and who collects or attempts to collect from the employee, either directly or through a collection agent, any amount in excess of the charge allowed by OWCP, and who does not cease such action or make appropriate refund to the employee within 60 days of the date of the decision of OWCP, shall be subject to the exclusion procedures provided by § 10.815(h).

Exclusion of Providers

§ 10.815 What are the grounds for excluding a provider from payment under the FECA?

A physician, hospital, or provider of medical services or supplies shall be excluded from payment under the FECA if such physician, hospital or provider has:

(a) Been convicted under any criminal statute of fraudulent activities in connection with any federal or state program for which payments are made to providers for similar medical, surgical or hospital services, appliances or supplies;

(b) Been excluded or suspended, or has resigned in lieu of exclusion or suspension, from participation in any federal or state program referred to in paragraph (a) of this section;

(c) Knowingly made, or caused to be made, any false statement or misrepresentation of a material fact in connection with a determination of the right to reimbursement under the FECA, or in connection with a request for payment;

(d) Submitted, or caused to be submitted, three or more bills or requests for payment within a twelve-month period under this subpart containing charges which the Director finds to be substantially in excess of such provider's customary charges, unless the Director finds there is good

cause for the bills or requests containing such charges;

(e) Knowingly failed to timely reimburse employees for treatment, services or supplies furnished under this subpart paid by OWCP;

(f) Failed, neglected or refused on three or more occasions during a twelve-month period, to submit full and accurate medical reports, or to respond to requests by OWCP for additional reports or information, as required by the FECA and § 10.800 of this subpart;

(g) Knowingly furnished treatment, services or supplies which are substantially in excess of the employee's needs, or of a quality which fails to meet professionally recognized standards; or

(h) Collected or attempted to collect from the employee, either directly or through a collection agent, an amount in excess of the charge allowed by OWCP for the procedure performed, and has failed or refused to make appropriate refund to the employee, or to cease such collection attempts, within 60 days of the date of the decision of OWCP.

§ 10.816 What will cause OWCP to automatically exclude a physician or other provider of medical services and supplies?

(a) OWCP shall automatically exclude a physician, hospital, or provider of medical services or supplies who has been convicted of a crime described in § 10.815(a), or has been excluded or suspended, or has resigned in lieu of exclusion or suspension, from participation in any program as described in § 10.815(b).

(b) The exclusion applies to participating in the program and to seeking payment under the FECA for services performed after the date of the entry of the judgment of conviction or order of exclusion, suspension or resignation, as the case may be, by the court or agency concerned. Proof of the conviction, exclusion, suspension or resignation may be by a copy thereof authenticated by the seal of the court or agency concerned.

§ 10.817 When are OWCP's exclusion procedures initiated?

Upon receipt of information indicating that a physician, hospital or provider of medical services or supplies (hereinafter the provider) has engaged in activities enumerated in paragraphs (c) through (h) of § 10.815, the Regional Director, after completion of inquiries he or she deems appropriate, may initiate procedures to exclude the provider from participation in the FECA program. For the purposes of this section, ''Regional Director'' may include any officer designated to act on his or her behalf.

§ 10.818 How is a provider notified of OWCP's intent to exclude him or her?

The Regional Director shall initiate the exclusion process by sending the provider a letter, by certified mail and with return receipt requested, which shall contain the following:

(a) A concise statement of the grounds upon which exclusion shall be based;

(b) A summary of the information, with supporting documentation, upon which the Regional Director has relied in reaching an initial decision that exclusion proceedings should begin;

(c) An invitation to the provider to:

(1) Resign voluntarily from participation in the FECA program without admitting or denying the allegations presented in the letter; or

(2) Request that the decision on exclusion be based upon the existing record and any additional documentary information the provider may wish to provide;

(d) A notice of the provider's right, in the event of an adverse ruling by the Regional Director, to request a formal hearing before an administrative law judge;

(e) A notice that should the provider fail to answer (as described in § 10.819) the letter of intent within 30 calendar days of receipt, the Regional Director may deem the allegations made therein to be true and may order exclusion of the provider without conducting any further proceedings; and

(f) The name and address of the OWCP representative who shall be responsible for receiving the answer from the provider.

§ 10.819 What requirements must the provider's reply and OWCP's decision meet?

(a) The provider's answer shall be in writing and shall include an answer to OWCP's invitation to resign voluntarily. If the provider does not offer to resign, he or she shall request that a determination be made upon the existing record and any additional information provided.

(b) Should the provider fail to answer the letter of intent within 30 calendar days of receipt, the Regional Director may deem the allegations made therein to be true and may order exclusion of the provider.

(c) By arrangement with the official representative, the provider may inspect or request copies of information in the record at any time prior to the Regional Director's decision.

(d) The Regional Director shall issue his or her decision in writing, and shall send a copy of the decision to the provider by certified mail, return receipt requested. The decision shall advise the provider of his or her right to request, within 30 days of the date of the adverse decision, a formal hearing before an administrative law judge under the procedures set forth in § 10.820. The filing of a request for a hearing within the time specified shall stay the effectiveness of the decision to exclude.

§ 10.820 How can an excluded provider request a hearing?

A request for a hearing shall be sent to the official representative named under § 10.818(f) and shall contain:

(a) A concise notice of the issues on which the provider desires to give evidence at the hearing;

(b) Any request for a more definite statement by OWCP;

(c) Any request for the presentation of oral argument or evidence; and

(d) Any request for a certification of questions concerning professional medical standards, medical ethics or medical regulation for an advisory opinion from a competent recognized professional organization or federal, state or local regulatory body.

§ 10.821 How are hearings assigned and scheduled?

(a) If the designated OWCP representative receives a timely request for hearing, the OWCP representative shall refer the matter to the Chief Administrative Law Judge of the Department of Labor, who shall assign it for an expedited hearing. The administrative law judge assigned to the matter shall consider the request for hearing, act on all requests therein, and issue a Notice of Hearing and Hearing Schedule for the conduct of the hearing. A copy of the hearing notice shall be served on the provider by certified mail, return receipt requested. The Notice of Hearing and Hearing Schedule shall include:

(1) A ruling on each item raised in the request for hearing;

(2) A schedule for the prompt disposition of all preliminary matters, including requests for more definite statements and for the certification of questions to advisory bodies; and

(3) A scheduled hearing date not less than 30 days after the date the schedule is issued, and not less than 15 days after the scheduled conclusion of preliminary matters, provided that the specific time and place of the hearing may be set on 10 days' notice.

(b) The purpose of the designation of issues is to provide for an effective hearing process. The provider is entitled to be heard on any matter placed in issue by his or her response to the Notice of Intent to Exclude, and may designate ''all issues'' for purposes of

hearing. However, a specific designation of issues is required if the provider wishes to interpose affirmative defenses, or request the issuance of subpoenas or the certification of questions for an advisory opinion.

§ 10.822 How are subpoenas or advisory opinions obtained?

(a) The provider may apply to the administrative law judge for the issuance of subpoenas upon a showing of good cause therefor.

(b) A certification of a request for an advisory opinion concerning professional medical standards, medical ethics or medical regulation to a competent recognized or professional organization or federal, state or local regulatory agency may be made:

(1) As to an issue properly designated by the provider, in the sound discretion of the administrative law judge, provided that the request will not unduly delay the proceedings;

(2) By OWCP on its own motion either before or after the institution of proceedings, and the results thereof shall be made available to the provider at the time that proceedings are instituted or, if after the proceedings are instituted, within a reasonable time after receipt. The opinion, if rendered by the organization or agency, is advisory only and not binding on the administrative law judge.

§ 10.823 How will the administrative law judge conduct the hearing and issue the recommended decision?

(a) To the extent appropriate, proceedings before the administrative law judge shall be governed by 29 CFR part 18.

(b) The administrative law judge shall receive such relevant evidence as may be adduced at the hearing. Evidence shall be presented under oath, orally or in the form of written statements. The administrative law judge shall consider the Notice and Response, including all pertinent documents accompanying them, and may also consider any evidence which refers to the provider or to any claim with respect to which the provider has provided medical services, hospital services, or medical services and supplies, and such other evidence as the administrative law judge may determine to be necessary or useful in evaluating the matter.

(c) All hearings shall be recorded and the original of the complete transcript shall become a permanent part of the official record of the proceedings.

(d) Pursuant to 5 U.S.C. 8126, the administrative law judge may:

(1) Issue subpoenas for and compel the attendance of witnesses within a radius of 100 miles;

(2) Administer oaths;

(3) Examine witnesses; and

(4) Require the production of books, papers, documents, and other evidence with respect to the proceedings.

(e) At the conclusion of the hearing, the administrative law judge shall issue a written decision and cause it to be served on all parties to the proceeding, their representatives and the Director.

§ 10.824 How can a party request review by the Director of the administrative law judge's recommended decision?

(a) Any party adversely affected or aggrieved by the decision of the administrative law judge may file a petition for discretionary review with the Director within 30 days after issuance of such decision. The administrative law judge's decision, however, shall be effective on the date issued and shall not be stayed except upon order of the Director.

(b) Review by the Director shall not be a matter of right but of the sound discretion of the Director.

(c) Petitions for discretionary review shall be filed only upon one or more of the following grounds:

(1) A finding or conclusion of material fact is not supported by substantial evidence;

(2) A necessary legal conclusion is erroneous;

(3) The decision is contrary to law or to the duly promulgated rules or decisions of the Director;

(4) A substantial question of law, policy, or discretion is involved; or

(5) A prejudicial error of procedure was committed.

(d) Each issue shall be separately numbered and plainly and concisely stated, and shall be supported by detailed citations to the record when assignments of error are based on the record, and by statutes, regulations or principal authorities relied upon. Except for good cause shown, no assignment of error by any party shall rely on any question of fact or law upon which the administrative law judge had not been afforded an opportunity to pass.

(e) A statement in opposition to the petition for discretionary review may be filed, but such filing shall in no way delay action on the petition.

(f) If a petition is granted, review shall be limited to the questions raised by the petition.

(g) A petition not granted within 20 days after receipt of the petition is deemed denied.

(h) The decision of the Director shall be final with respect to the provider's participation in the program, and shall not be subject to further review by any court or agency.

§ 10.825 What are the effects of exclusion?

(a) OWCP shall give notice of the exclusion of a physician, hospital or provider of medical services or supplies to:

(1) All OWCP district offices;

(2) All federal employers;

(3) The HCFA;

(4) The State or Local authority responsible for licensing or certifying the excluded party; and

(5) All employees who are known to have had treatment, services or supplies from the excluded provider within the six-month period immediately preceding the order of exclusion.

(b) Notwithstanding any exclusion of a physician, hospital, or provider of medical services or supplies under this subpart, OWCP shall not refuse an employee reimbursement for any otherwise reimbursable medical treatment, service or supply if:

(1) Such treatment, service or supply was rendered in an emergency by an excluded physician; or

(2) The employee could not reasonably have been expected to have known of such exclusion.

(c) An employee who is notified that his or her attending physician has been excluded shall have a new right to select a qualified physician.

§ 10.826 How can an excluded provider be reinstated?

(a) If a physician, hospital, or provider of medical services or supplies has been automatically excluded pursuant to § 10.816, the provider excluded will automatically be reinstated upon notice to OWCP that the conviction or exclusion which formed the basis of the automatic exclusion has been reversed or withdrawn. However, an automatic reinstatement shall not preclude OWCP from instituting exclusion proceedings based upon the underlying facts of the matter.

(b) A physician, hospital, or provider of medical services or supplies excluded from participation as a result of an order issued pursuant to this subpart may apply for reinstatement one year after the entry of the order of exclusion, unless the order expressly provides for a shorter period. An application for reinstatement shall be addressed to the Director for Federal Employees' Compensation, and shall contain a concise statement of the basis for the application. The application should be accompanied by supporting documents and affidavits.

(c) A request for reinstatement may be accompanied by a request for oral argument. Oral argument will be allowed only in unusual circumstances where it will materially aid the decision process.

(d) The Director for Federal Employees' Compensation shall order reinstatement only in instances where such reinstatement is clearly consistent with the goal of this subpart to protect the FECA program against fraud and abuse. To satisfy this requirement the provider must provide reasonable assurances that the basis for the exclusion will not be repeated.

2. It is proposed that part 25 be revised to read as follows:

PART 25—COMPENSATION FOR DISABILITY AND DEATH OF NONCITIZEN FEDERAL EMPLOYEES OUTSIDE THE UNITED STATES

Subpart A—General Provisions

25.1 How are claims of federal employees who are neither citizens nor residents adjudicated?
25.2 In general, what is the Director's policy regarding such claims?
25.3 What is the authority to settle and pay such claims?
25.4 What type of evidence is required to establish a claim under this part?
25.5 What special rules does OWCP apply to claims of third and fourth country nationals?
25.6 How does OWCP adjudicate claims of non-citizen residents of possessions?

Subpart B—The Special Schedule of Compensation

25.100 How is compensation for disability paid?
25.101 How is compensation for death paid?
25.102 What general provisions does OWCP apply to the Special Schedule?

Subpart C—Extensions of the Special Schedule of Compensation

25.200 How is the Special Schedule applied in the Republic of the Philippines?
25.201 How is the Special Schedule applied in Australia?
25.202 How is the Special Schedule applied for Japanese seamen?
25.203 How is the Special Schedule applied to non-resident aliens in the Territory of Guam?

Authority: 5 U.S.C. 301, 8137, 8145 and 8149; 1946 Reorganization Plan No. 2, sec. 3, 3 CFR 1943–1948 Comp., p. 1064; 60 Stat. 1095; Reorganization Plan No. 19 of 1950, sec. 1, 3 CFR 1943–1953 Comp., p. 1010; 64 Stat. 1271; Secretary's Order 5–96, 62 FR 107.

Subpart A—General Provisions

§ 25.1 How are claims of federal employees who are neither citizens nor residents adjudicated?

This part describes how OWCP pays compensation under the FECA to employees of the United States who are neither citizens nor residents of the United States, any territory or Canada, as well as to any dependents of such employees. It has been determined that the compensation provided under the FECA is substantially disproportionate to the compensation for disability or death which is payable in similar cases under local law, regulation, custom or otherwise, in areas outside the United States, any territory or Canada. Therefore, with respect to the claims of such employees whose injury (or injury resulting in death) has occurred subsequent to December 7, 1941, or may occur, the regulations in this part shall apply.

§ 25.2 In general, what is the Director's policy regarding such claims?

(a) Pursuant to 5 U.S.C. 8137, the benefit features of local workers' compensation laws, or provisions in the nature of workers' compensation, in effect in areas outside the United States, any territory or Canada shall, effective as of December 7, 1941 and as recognized by the Director, be adopted and apply in the cases of employees of the United States who are neither citizens nor residents of the United States, any territory or Canada, unless a special schedule of compensation for injury or death has been established under this part for the particular locality, or for a class of employees in the particular locality.

(b) The benefit provisions adopted under paragraph (a) of this section are those dealing with money payments for injury and death (including medical benefits), as well as those dealing with services and purposes forming an integral part of the local plan, provided they are of a kind or character similar to services and purposes authorized by the FECA.

(1) Procedural provisions, designations of classes of beneficiaries in death cases, limitations (except those affecting amounts of benefit payments), and any other provisions not directly affecting the amounts of the benefit payments, in such local plans, shall not apply, but in lieu thereof the pertinent provisions of the FECA shall apply, unless modified in this section.

(2) However, the Director may at any time modify, limit or redesignate the class or classes of beneficiaries entitled to death benefits, including the designation of persons, representatives or groups entitled to payment under local statute or custom whether or not included in the classes of beneficiaries otherwise specified by this subchapter.

(c) Compensation in all cases of such employees paid and closed prior to [insert the effective date of the final rule] shall be deemed compromised and paid under 5 U.S.C. 8137. In all other cases, compensation may be adjusted to conform with the regulations in this part, or the beneficiary may by compromise or agreement with the Director have compensation continued on the basis of a previous adjustment of the claim.

(d) Persons employed in a country or area having no well-defined workers' compensation benefits structure shall be accorded the benefits provided—either by local law or special schedule—in a nearby country as determined by the Director. In selecting the benefit structure to be applied, equity and administrative ease will be given consideration, as well as local custom.

(e) Compensation for disability and death of non-citizens outside the United States under this part, whether paid under local law or special schedule, shall in no event exceed that generally payable under the FECA.

§ 25.3 What is the authority to settle and pay such claims?

In addition to the authority to receive, process and pay claims, when delegated such representative or agency receiving delegation of authority shall, in respect to cases adjudicated under this part, and when so authorized by the Director, have authority to make lump sum awards (in the manner prescribed by 5 U.S.C. 8135) whenever such authorized representative shall deem such settlement to be for the best interest of the United States, and to compromise and pay claims for any benefits provided for under this part, including claims in which there is a dispute as to questions of fact or law. The Director shall, in instructions to the particular representative concerned, establish such procedures in respect to action under this section as he or she may deem necessary, and may specify the scope of any administrative review of such action.

§ 25.4 What type of evidence is required to establish a claim under this part?

Claims of employees of the United States who are neither citizens nor residents of the United States, any territory or Canada, if otherwise compensable, shall be approved only upon evidence of the following nature without regard to the date of injury or death for which claim is made:

(a) Appropriate certification by the Federal employing establishment; or

(b) An armed service's casualty or medical record; or

(c) Verification of the employment and casualty by military personnel; or

(d) Recommendation of an armed service's ''Claim Service'' based on investigations conducted by it.

§ 25.5 What special rules does OWCP apply to claims of third and fourth country nationals?

(a) *Definitions.* A ''third country national'' is a person who is neither a citizen nor resident of the United States who is hired by the United States in the person's country of citizenship or residence for employment in another foreign country, or in a possession or territory of the United States. A ''fourth country national'' is a person who is neither a citizen nor resident of either the country of hire or the place of employment, but who otherwise meets the definition of third country national. ''Benefits applicable to local hires'' are the benefits provided in this part by local law or special schedule, as determined by the Director. With respect to a United States territory or possession, ''local law'' means only the law of the particular territory or possession.

(b) *Benefits payable.* Third and fourth country nationals shall be paid the benefits applicable to local hires in the country of hire or the place of employment, whichever benefits are greater, provided that all benefits payable on account of one injury must be paid under the same benefit structure.

(1) Where no well-defined workers' compensation benefits structure is provided in either the country of hire or the place of employment, the provisions of § 25.2(d) shall apply.

(2) Where equitable considerations as determined by the Director so warrant, a fourth country national may be awarded benefits applicable to local hires in his or her home country.

§ 25.6 How does OWCP adjudicate claims of non-citizen residents of possessions?

An employee who is a bona fide permanent resident of any United States possession, territory, commonwealth or trust territory will receive the full benefits of the FECA, as amended, except that the application of the minimum benefit provisions provided therein shall be governed by the restrictions set forth in 5 U.S.C. 8138.

Subpart B—The Special Schedule of Compensation

§ 25.100 How is compensation for disability paid?

Compensation for disability shall be paid to the employee as follows:

(a) *Permanent total disability.* In cases of permanent total disability, 66⅔ percent of the monthly pay during the period of such disability.

(b) *Temporary total disability.* In cases of temporary total disability, 66⅔ percent of the monthly pay during the period of such disability.

(c) *Permanent partial disability.* In cases of permanent partial disability, 66⅔ percent of the monthly pay, for the following losses and periods:

(1) Arm lost: 280 weeks' compensation.

(2) Leg lost: 248 weeks' compensation.

(3) Hand lost: 212 weeks' compensation.

(4) Foot lost: 173 weeks' compensation.

(5) Eye lost: 140 weeks' compensation.

(6) Thumb lost: 51 weeks' compensation.

(7) First finger lost: 28 weeks' compensation.

(8) Great toe lost: 26 weeks' compensation.

(9) Second finger lost: 18 weeks' compensation.

(10) Third finger lost: 17 weeks' compensation.

(11) Toe, other than great toe, lost: 8 weeks' compensation.

(12) Fourth finger lost: 7 weeks' compensation.

(13) Loss of hearing: One ear, 52 weeks' compensation; both ears, 200 weeks' compensation.

(14) Phalanges: Compensation for loss of more than one phalanx of a digit shall be the same as for the loss of the entire digit. Compensation for loss of the first phalanx shall be one-half of the compensation for the loss of the entire digit.

(15) Amputated arm or leg: Compensation for an arm or a leg, if amputated at or above the elbow or the knee, shall be the same as for the loss of the arm or leg; but, if amputated between the elbow and the wrist, or between the knee and the ankle, the compensation shall be the same as for the loss of the hand or the foot.

(16) Binocular vision or percent of vision: Compensation for loss of binocular vision, or for 80 percent or more of the vision of an eye shall be the same as for the loss of the eye.

(17) Two or more digits: Compensation for loss of two or more digits, one or more phalanges of two or more digits of a hand or foot may be proportioned to the loss of use of the hand or foot occasioned thereby, but shall not exceed the compensation for the loss of a hand or a foot.

(18) Total loss of use: Compensation for a permanent total loss of use of a member shall be the same as for loss of the member.

(19) Partial loss or partial loss of use: Compensation for permanent partial loss or loss of use of a member may be for proportionate loss of use of the member.

(20) Consecutive awards: In any case in which there shall be a loss or loss of use of more than one member or parts of more than one member set forth in paragraphs (c)(1) through (19) of this section, but not amounting to permanent total disability, the award of compensation shall be for the loss or loss of use of each such member or part thereof, which awards shall run consecutively, except that where the injury affects only two or more digits of the same hand or foot, paragraph (c)(17) of this section shall apply.

(21) Other cases: In all other cases within this class of disability the compensation during the continuance of disability shall be that proportion of compensation for permanent total disability, as determined under paragraph (a) of this section, which is equal in percentage to the degree or percentage of physical impairment caused by the disability.

(22) Compensation under paragraphs (c)(1) through (21) of this section for permanent partial disability shall be in addition to any compensation for temporary total or temporary partial disability under this section, and awards for temporary total, temporary partial, and permanent partial disability shall run consecutively.

(d) *Temporary partial disability.* In cases of temporary partial disability, during the period of disability that proportion of compensation for temporary total disability, as determined under paragraph (b) of this section, which is equal in percentage to the degree or percentage of physical impairment caused by the disability.

§ 25.101 How is compensation for death paid?

If the disability causes death, the compensation shall be payable in the amount and to or for the benefit of the persons, determined as follows:

(a) To the undertaker or person entitled to reimbursement, reasonable funeral expenses not exceeding $200.

(b) To the surviving spouse, if there is no child, 35 percent of the monthly pay until his or her death or remarriage.

(c) To the surviving spouse, if there is a child, the compensation payable under paragraph (b) of this section, and in addition thereto 10 percent of the monthly wage for each child, not to exceed a total of 66⅔ percent for such surviving spouse and children. If a child has a guardian other than the surviving spouse, the compensation payable on account of such child shall be paid to such guardian. The compensation of any child shall cease when he or she dies, marries or reaches the age of 18 years, or if over such age and incapable of self-

support, becomes capable of self-support.

(d) To the children, if there is no surviving spouse, 25 percent of the monthly pay for one child and 10 percent thereof for each additional child, not to exceed a total of 66⅔ percent thereof, divided among such children share and share alike. The compensation of each child shall be paid until he or she dies, marries or reaches the age of 18, or if over such age and incapable of self-support, becomes capable of self-support. The compensation of a child under legal age shall be paid to its guardian, if there is one, otherwise to the person having the custody or care of such child, for such child, as the Director in his or her discretion shall determine.

(e) To the parents, if one is wholly dependent for support upon the deceased employee at the time of his or her death and the other is not dependent to any extent, 25 percent of the monthly pay; if both are wholly dependent, 20 percent thereof to each; if one is or both are partly dependent, a proportionate amount in the discretion of the Director. The compensation to a parent or parents in the percentages specified shall be paid if there is no surviving spouse or child, but if there is a surviving spouse or child, there shall be paid so much of such percentages for a parent or parents as, when added to the total of the percentages of the surviving spouse and children, will not exceed a total of 66⅔ percent of the monthly pay.

(f) To the brothers, sisters, grandparents and grandchildren, if one is wholly dependent upon the deceased employee for support at the time of his or her death, 20 percent of the monthly pay to such dependent; if more than one are wholly dependent, 30 percent of such pay, divided among such dependents share and share alike; if there is no one of them wholly dependent, but one or more are partly dependent, 10 percent of such pay divided among such dependents share and share alike. The compensation to such beneficiaries shall be paid if there is no surviving spouse, child or dependent parent. If there is a surviving spouse, child or dependent parent, there shall be paid so much of the above percentages as, when added to the total of the percentages payable to the surviving spouse, children and dependent parents, will not exceed a total of 66⅔ percent of such pay.

(g) The compensation of each beneficiary under paragraphs (e) and (f) of this section shall be paid until he or she, if a parent or grandparent, dies, marries or ceases to be dependent, or, if a brother, sister or grandchild, dies, marries or reaches the age of 18 years, or if over such age and incapable of self-support, becomes capable of self-support. The compensation of a brother, sister or grandchild under legal age shall be paid to his or her guardian, if there is one, otherwise to the person having the custody or care of such person, for such person, as the Director in his or her discretion shall determine.

(h) Upon the cessation of any person's compensation for death under this subpart, the compensation of any remaining person entitled to continuing compensation in the same case shall be adjusted, so that the continuing compensation shall be at the same rate such person would have received had no award been made to the person whose compensation ceased.

(i) In cases where there are two or more classes of persons entitled to compensation for death under this subpart, and the apportionment of such compensation as provided in this section would result in injustice, the Director may in his or her discretion modify the apportionments to meet the requirements of the case.

§ 25.102 What general provisions does OWCP apply to the Special Schedule?

(a) The definitions of terms in the FECA, as amended, shall apply to terms used in this subpart.

(b) The provisions of the FECA, unless modified by this subpart or otherwise inapplicable, shall be applied whenever possible in the application of this subpart.

(c) The provisions of the regulations for the administration of the FECA, as amended or supplemented from time to time by instructions applicable to this subpart, shall apply in the administration of compensation under this subpart, whenever they can reasonably be applied.

Subpart C—Extensions of the Special Schedule of Compensation

§ 25.200 How is the Special Schedule applied in the Republic of the Philippines?

(a) *Modified special schedule of compensation.* Except for injury or death of direct-hire employees of the U.S. Military Forces covered by the Philippine Medical Care Program and the Employees' Compensation Program pursuant to the agreement signed by the United States and the Republic of the Philippines on March 10, 1982 who are also members of the Philippine Social Security System, the special schedule of compensation established in subpart B of this part shall apply, with the modifications or additions specified in paragraphs (b) through (k) of this section, in the Republic of the Philippines, to injury or death occurring on or after July 1, 1968, with the following limitations:

(1) *Temporary disability.* Benefits for payments accruing on and after July 1, 1969, for injuries causing temporary disability and which occurred on and after July 1, 1968, shall be payable at the rates in the special schedule as modified in this section.

(2) *Permanent disability and death.* Benefits for injuries occurring on and after July 1, 1968, which cause permanent disability or death, shall be payable at the rates specified in the special schedule as modified in this section for

(i) All awards not paid in full before July 1, 1969, and

(ii) Any award paid in full prior to July 1, 1969: Provided, that application for adjustment is made, and the adjustment will result in additional benefits of at least $10. In the case of injuries or death occurring on or after December 8, 1941 and prior to July 1, 1968, the special schedule as modified in this section may be applied to prospective awards for permanent disability or death, provided that the monthly and aggregate maximum provisions in effect at the time of injury or death shall prevail. These maxima are $50 and $4,000, respectively.

(b) *Death benefits.* 400 weeks' compensation at two-thirds of the weekly wage rate, shared equally by the eligible survivors in the same class.

(c) *Death beneficiaries.* Benefits are payable to the survivors in the following order of priority (all beneficiaries in the highest applicable classes are entitled to share equally):

(1) Surviving spouse and unmarried children under 18, or over 18 and totally incapable of self-support.

(2) Dependent parents.

(3) Dependent grandparents.

(4) Dependent grandchildren, brothers and sisters who are unmarried and under 18, or over 18 and totally incapable of self-support.

(d) *Burial allowance.* 14 weeks' wages or $400, whichever is less, payable to the eligible survivor(s), regardless of the actual expense. If there is no eligible survivor, actual burial expenses may be paid or reimbursed, in an amount not to exceed what would be paid to an eligible survivor.

(e) *Permanent total disability.* 400 weeks' compensation at two-thirds of the weekly wage rate.

(f) *Permanent partial disability.* Where applicable, the compensation provided in paragraphs (c)(1) through (19) of § 25.100, subject to an aggregate

limitation of 400 weeks' compensation. In all other cases, provided for permanent total disability that proportion of the compensation (paragraph (e) of this section) which is equivalent to the degree or percentage of physical impairment caused by the disability.

(g) *Temporary partial disability.* Two-thirds of the weekly loss of wage-earning capacity.

(h) *Compensation period for temporary disability.* Compensation for temporary disability is payable for a maximum period of 80 weeks.

(i) *Maximum compensation.* The total aggregate compensation payable in any case, for injury or death or both, shall not exceed $8,000, exclusive of medical costs and burial allowance. The weekly rate of compensation for disability or death shall not exceed $35.

(j) *Method of payment.* Only compensation for temporary disability shall be payable periodically. Compensation for permanent disability and death shall be payable in full at the time the extent of entitlement is established.

(k) *Exceptions.* The Director in his or her discretion may make exceptions to regulations in this section by:

(1) Reapportioning death benefits, for the sake of equity.

(2) Excluding from consideration potential death beneficiaries who are not available to receive payment.

(3) Paying compensation for permanent disability or death on a periodic basis, where this method of payment is considered to be in the best interest of the beneficiary.

§ 25.201 How is the Special Schedule applied in Australia?

(a) The special schedule of compensation established by subpart B of this part shall apply in Australia with the modifications or additions specified in paragraph (b) of this section, as of December 8, 1941, in all cases of injury (or death from injury) which occurred between December 8, 1941 and December 31, 1961, inclusive, and shall be applied retrospectively in all such cases of injury (or death from injury). Compensation in all such cases pending as of July 15, 1946, shall be readjusted accordingly, with credit taken in the amount of compensation paid prior to such date. Refund of compensation shall not be required if the amount of compensation paid in any such case, otherwise than through fraud, misrepresentation or mistake, and prior to July 15, 1946, exceeds the amount provided for under this paragraph, and such case shall be deemed compromised and paid under 5 U.S.C. 8137.

(b) The total aggregate compensation payable in any case under paragraph (a) of this section, for injury or death or both, shall not exceed the sum of $4,000, exclusive of medical costs. The maximum monthly rate of compensation in any such case shall not exceed the sum of $50.

(c) The benefit amounts payable under the provisions of the Commonwealth Employees' Compensation Act of 1930–1964, Australia, shall apply as of January 1, 1962, in Australia, as the exclusive measure of compensation in cases of injury (or death from injury) according on and after January 1, 1962, and shall be applied retrospectively in all such cases, occurring on and after such date: Provided, that the compensation payable under the provisions of this paragraph shall in no event exceed that payable under the FECA.

§ 25.202 How is the Special Schedule applied for Japanese seamen?

(a) The special schedule of compensation established by subpart B of this part shall apply as of November 1, 1971, with the modifications or additions specified in paragraphs (b) through (i) of this section, to injuries sustained outside the continental United States or Canada by direct-hire Japanese seamen who are neither citizens nor residents of the United States or Canada and who are employed by the Military Sealift Command in Japan.

(b) *Temporary total disability.* Weekly compensation shall be paid at 75 percent of the weekly wage rate.

(c) *Temporary partial disability.* Weekly compensation shall be paid at 75 percent of the weekly loss of wage-earning capacity.

(d) *Permanent total disability.* Compensation shall be paid in a lump sum equivalent to 360 weeks' wages.

(e) *Permanent partial disability.* (1) The provisions of § 25.100 shall apply to the types of permanent partial disability listed in paragraphs (c)(1) through (19) of that section: Provided that weekly compensation shall be paid at 75 percent of the weekly wage rate and that the number of weeks allowed for specified losses shall be changed as follows:

(i) Arm lost: 312 weeks.
(ii) Leg lost: 288 weeks.
(iii) Hand lost: 244 weeks.
(iv) Foot lost: 205 weeks.
(v) Eye lost: 160 weeks.
(vi) Thumb lost: 75 weeks.
(vii) First finger lost: 46 weeks.
(viii) Second finger lost: 30 weeks.
(ix) Third finger lost: 25 weeks.
(x) Fourth finger lost: 15 weeks.
(xi) Great toe lost: 38 weeks.
(xii) Toe, other than great toe lost: 16 weeks.

(2) In all other cases, that proportion of the compensation provided for permanent total disability in paragraph (d) of this section which is equivalent to the degree or percentage of physical impairment caused by the injury.

(f) *Death.* If there are two or more eligible survivors, compensation equivalent to 360 weeks' wages shall be paid to the survivors, share and share alike. If there is only one eligible survivor, compensation equivalent to 300 weeks' wages shall be paid. The following survivors are eligible for death benefits:

(1) Spouse who lived with or was dependent upon the employee.

(2) Unmarried children under 21 who lived with or were dependent upon the employee.

(3) Adult children who were dependent upon the employee by reason of physical or mental disability.

(4) Dependent parents, grandparents and grandchildren.

(g) *Burial allowance.* $1,000 payable to the eligible survivor(s), regardless of actual expenses. If there are no eligible survivors, actual expenses may be paid or reimbursed, up to $1,000.

(h) *Method of payment.* Only compensation for temporary disability shall be payable periodically, as entitlement accrues. Compensation for permanent disability and death shall be payable in a lump sum.

(i) *Maxima.* In all cases, the maximum weekly benefit shall be $130. Also, except in cases of permanent total disability and death, the aggregate maximum compensation payable for any injury shall be $40,000.

(j) *Prior injury.* In cases where injury or death occurred prior to November 1, 1971, benefits will be paid in accordance with regulations previously promulgated, contained in the 20 CFR, parts 1 to 399, edition revised as of January 1, 1971.

§ 25.203 How is the Special Schedule applied to non-resident aliens in the Territory of Guam?

(a) The special schedule of compensation established by subpart B of this part shall apply, with the modifications or additions specified in paragraphs (b) through (k) of this section, to injury or death occurring on or after July 1, 1971 in the Territory of Guam to non-resident alien employees recruited in foreign countries for employment by the military departments in the Territory of Guam. However, the Director may, in his or her discretion, adopt the benefit features

and provisions of local workers' compensation law as provided in subpart A of this part, or substitute the special schedule in subpart B of this part or other modifications of the special schedule in this subpart C, if such adoption or substitution would be to the advantage of the employee or his beneficiary. This schedule shall not apply to any employee who becomes a permanent resident in the Territory of Guam prior to the date of his or her injury or death.

(b) *Death benefits.* 400 weeks' compensation at two-thirds of the weekly wage rate, shared equally by the eligible survivors in the same class.

(c) *Death beneficiaries.* Beneficiaries of death benefits shall be determined in accordance with the laws or customs of the country of recruitment.

(d) *Burial allowance.* 14 weeks' wages or $400, whichever is less, payable to the eligible survivor(s), regardless of the actual expense. If there is no eligible survivor, actual burial expenses may be paid or reimbursed, in an amount not to exceed what would be paid to an eligible survivor.

(e) *Permanent total disability.* 400 weeks' compensation at two-thirds of the weekly wage rate.

(f) *Permanent partial disability.* Where applicable, the compensation provided in paragraphs (c)(1) through (19) of § 25.100, subject to an aggregate limitation of 400 weeks' compensation. In all other cases, that proportion of the compensation provided for permanent total disability (paragraph (e) of this section) which is equivalent to the degree or percentage of physical impairment caused by the disability.

(g) *Temporary partial disability.* Two-thirds of the weekly loss of wage-earning capacity.

(h) *Compensation period for temporary disability.* Compensation for temporary disability is payable for a maximum period of 80 weeks.

(i) *Maximum compensation.* The total aggregate compensation payable in any case, for injury or death or both, shall not exceed $24,000, exclusive of medical costs and burial allowance. The weekly rate of compensation for disability or death shall not exceed $70.

(j) *Method of payment.* Compensation for temporary disability shall be payable periodically. Compensation for permanent disability and death shall be payable in full at the time the extent of entitlement is established.

(k) *Exceptions.* The Director may in his or her discretion make exception to the regulations in this section by:

(1) Reapportioning death benefits for the sake of equity.

(2) Excluding from consideration potential beneficiaries of a deceased employee who are not available to receive payment.

(3) Paying compensation for permanent disability or death on a periodic basis, where this method of payment is considered to be in the best interest of the employee or his or her beneficiary(ies).

Signed at Washington, D.C., this 28th day of November, 1997.

Alexis M. Herman,

Secretary of Labor.

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