

federal register

FRIDAY, FEBRUARY 14, 1975

WASHINGTON, D.C.

Volume 40 ■ Number 32

PART III



DEPARTMENT OF LABOR

**Office of Workers'
Compensation Programs**

■

EMPLOYEES' BENEFITS

**Claims for Compensation Under the
Federal Employees' Compensation Act**

Title 20—Employees' Benefits
CHAPTER I—OFFICE OF WORKERS' COMPENSATION PROGRAMS, DEPARTMENT OF LABOR

EMPLOYEES' BENEFITS

Claims for Compensation Under the Federal Employees' Compensation Act

On October 27, 1972, there was published in the FEDERAL REGISTER new Parts 01, 02, and 03 of subchapter A of Chapter I of 20 CFR (37 FR 22979) which parts set forth provisions establishing the Office of Federal Employees' Compensation (OFEC) within the Employment Standards Administration of the Department of Labor, and further set forth the operating procedures to be followed by the OFEC. On January 31, 1970, subchapter B of Chapter I of 20 CFR was amended by adding thereto newly revised Parts 1 and 2 (35 FR 1284). On June 12, 1971, Part 3 of such subchapter was substantially revised (36 FR 11432). Part 25 of such subchapter was promulgated on June 10, 1948 (13 FR 3112). Each of these parts contained in the said subchapter B set forth provisions governing the administration and enforcement of the Federal Employees' Compensation Act (FECA), as amended and extended 5 U.S.C. 8101 et seq.

Pursuant to Employment Standards Order 2-74, effective September 27, 1974 (39 FR 34722-34723), the responsibility for the administration and enforcement of the FECA, as well as the Longshoremen's and Harbor Workers' Compensation Act, as amended and extended (33 U.S.C. 901 et seq.), and Title IV of the Federal Coal Mine Health and Safety Act, as amended (30 U.S.C. 901 et seq.), was transferred to the Office of Workers' Compensation Programs (OWCP). This same order abolished the Office of Federal Employees' Compensation and established the Office of Workers' Compensation Programs. In addition, Pub. L. 93-416, approved September 7, 1974, added significant amendments to the FECA. Of particular note from among these amendments are (1) a new section 8118 which provides for the continuation of an injured employee's regular pay for up to 45 days subsequent to a traumatic injury under certain circumstances; (2) an extension of section 8107 to permit the Director of OWCP to expand the compensation schedule to include certain internal and external organs; and (3) certain other provisions relating to the payment of benefits to persons entitled to a civil service annuity or compensation and/or military retirement, retainer pay, or compensation.

In light of the organizational changes brought about by Employment Standards Order 2-74 as well as the aforementioned amendments to the FECA it is apparent that substantial changes in Chapter I are appropriate. The purpose of this document is, therefore, to make such changes as are necessitated as well as to reorganize and update the existing provisions of Chapter I governing the administration of the FECA.

The provisions of 5 U.S.C. 553 for notice, public participation and delayed

effective date are not applicable to rules of agency management or agency personnel. Further, since the provisions of this Chapter are designed to relieve a restriction by implementing the amendments made by Pub. L. 93-416 that are for the benefit of employees, I find that good cause exists for making these provisions effective immediately.

Accordingly, Chapter I of Title 20 CFR is revised as follows:

1. The title of Chapter I, which presently reads "Bureau of Employees' Compensation, Department of Labor", is revised to read "Office of Workers' Compensation Programs, Department of Labor."

PARTS 01, 02, 03 [REVOKED]

2. Parts 01, 02, and 03 of Subchapter A—Organization and Procedures—are revoked;

PARTS 1, 2, 3—[REVOKED]

3. Parts 1, 2, and 3 of Subchapter B—Federal Employees' Compensation Act—are revoked;

4. A new Part 1 is added to Subchapter A—Organization and Procedures—and reads as follows:

PART 1—PERFORMANCE OF FUNCTIONS UNDER THIS CHAPTER

- Sec.
- 1.1 Establishment of the Office of Workers' Compensation Programs.
 - 1.2 Assignment of functions.
 - 1.3 Rules in this chapter.
 - 1.4 Cross-references.
 - 1.5 Abolition of Bureau of Employees' Compensation.
 - 1.6 Historical background.

AUTHORITY: (5 U.S.C. 301), Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; (5 U.S.C. 8145, 8149); Secretary of Labor's Order No. 13-71, 36 FR 8155; Employment Standards Order No. 2-74, 39 FR 34722.

§ 1.1 Establishment of the Office of Workers' Compensation Programs.

The Assistant Secretary of Labor for Employment Standards, by authority vested in him by the Secretary of Labor in Secretary's Order No. 13-71, 36 FR 8755, established in the Employment Standards Administration (ESA) an Office of Workers' Compensation Programs (OWCP) by Employment Standards Order No. 2-74, 39 FR 34722. The Assistant Secretary has further designated as the head thereof a Director who, under the general supervision of the Assistant Secretary, shall administer the programs assigned to that Office by the Assistant Secretary.

§ 1.2 Assignment of functions.

By Employment Standards Order No. 2-74, 39 FR 34722, the Assistant Secretary has delegated authority and assigned responsibility to the Director, OWCP, for the Department of Labor's programs under the following statutes:

(a) Federal Employees' Compensation Act (FECA), (5 U.S.C. 8101 et seq.), except 8149 as it applies to the Employees' Compensation Appeals Board.

(b) War Hazards Compensation Act (WHCA), (42 U.S.C. 1701 et seq.).

(c) War Claims Act (WCA), (50 U.S.C. App. 2003).

(d) Longshoremen's and Harbor Workers' Compensation Act (LHWCA), (33 U.S.C. 901 et seq.), except 921 as it applies to the Benefits Review Board.

(e) District of Columbia Workmen's Compensation Act (DCWCA) (36 D.C. Code 501 et seq.).

(f) Defense Base Act (DBA) (42 U.S.C. 1651 et seq.).

(g) Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1331).

(h) Nonappropriated Fund Instrumentalities Act (NFIA) (5 U.S.C. 8171 et seq.).

(i) Title IV of the Federal Coal Mine Health and Safety Act (FCMHSA), 83 Stat. 742, as amended by the Black Lung Benefits Act of 1972 (BLBA) (30 U.S.C. 901 et seq.).

§ 1.3 Rules in this chapter.

The rules in this chapter are those governing the OWCP functions under the Federal Employees' Compensation Act, the War Hazards Compensation Act, and the War Claims Act.

§ 1.4 Cross-references.

(a) The rules of the OWCP governing its functions under the Longshoremen's and Harbor Workers' Compensation Act and its extensions, the District of Columbia Workmen's Compensation Act, Defense Base Act, Outer Continental Shelf Lands Act, and Nonappropriated Fund Instrumentalities Act are set forth in Subchapter A of Chapter VI of this title.

(b) The rules of the OWCP governing its functions under the Black Lung Benefits Act program are set forth in Subchapter B of Chapter VI of this title.

(c) The rules and regulations of the Employees' Compensation Appeals Board are set forth in Chapter IV of this title.

(d) The rules and regulations of the Benefits Review Board are set forth in Chapter VII of this title.

§ 1.5 Abolition of Bureau of Employees' Compensation.

By Secretary of Labor's Order issued September 23, 1974, 39 FR 34723, issued concurrently with Employment Standards Order 2-74, 39 FR 34722, the Secretary revoked the prior Secretary's Order No. 18-67, 32 FR 12979, which had delegated authority and assigned responsibility for the various workers' compensation programs enumerated in § 1.2, except the Black Lung Benefits Act program not then in existence, to the Director of the former Bureau of Employees' Compensation.

§ 1.6 Historical background.

(a) Administration of the Federal Employees' Compensation Act and the Longshoremen's and Harbor Workers' Compensation Act was initially vested in an independent establishment known as the U.S. Employees' Compensation Commission. By Reorganization Plan No. 2 of 1946 (3 CFR 1943-1949 Comp., p. 1064; 60 Stat. 1095, effective July 16, 1946), the Commission was abolished and its functions were transferred to the Federal Security Agency to be performed by a newly created Bureau of Employees'

Compensation within such Agency. By Reorganization Plan No. 19 of 1950 (15 FR 3178, 64 Stat. 1263) said Bureau was transferred to the Department of Labor, and the authority formerly vested in the Administrator, Federal Security Agency, was vested in the Secretary of Labor. By Reorganization Plan No. 6 of 1950 (15 3174, 64 Stat. 1263), the Secretary of Labor was authorized to make from time to time such provisions as he shall deem appropriate, authorizing the performance of any of his functions by any other officer, agency, or employee of the Department of Labor.

(b) In 1972 two separate organizational units were established within the Bureau: an Office of Workmen's Compensation Programs (37 FR 20533) and an Office of Federal Employees' Compensation (37 FR 22979). In 1974 these two units were abolished and one organizational unit, the Office of Workers' Compensation Programs (OWCP), was established in lieu of the Bureau of Employees' Compensation (39 FR 34722).

5. A new Part 10 is added to Subchapter B—Federal Employees' Compensation Act—and reads as follows:

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

Subpart A—General Provisions

INTRODUCTION

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- 10.1 Statutory provisions.
- 10.2 Administration of the Act and this chapter.
- 10.3 Purpose and scope of this part.
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- 10.5 Definitions and use of terms.

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AUTHORITY: (5 U.S.C. 801); Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; (5 U.S.C. 8145, 8149); Secretary of Labor's Order No. 13-71, 36 FR 8155; Employment Standards Order No. 2-74, 39 FR 34722.

Subpart A—General Provisions

INTRODUCTION

§ 10.1 Statutory provisions.

(a) The Federal Employees' Compensation Act, as amended (5 U.S.C. 8101 *et seq.*) provides for the payment of workers' compensation benefits to civil officers and employees of all branches of the Government of the United States. The Act has been amended and extended a number of times to provide workers' compensation benefits to volunteers in the Civil Air Patrol, members of the Reserve Officer Training Corps, Peace Corps Volunteers, Job Corps enrollees, Volunteers In Service to America, members of the National Teachers Corps, certain student employees (see 5 U.S.C. 5351, 8144), employees of the Panama Canal Zone Government and the Panama Canal Company, employees of the Alaska Railroad, certain law enforcement officers not employed by the United States (see 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 Act provides for the payment of dollar benefits to enumerated classes of persons who are injured or disabled while in the performance of their duties in service to the United States and to

persons within such classes who become sick or disabled as a result of their employment with or service to the United States. The Act further provides for the payment of dollar benefits to certain survivors of persons who have died as a result of or while in the performance of employment or services rendered to the United States. In addition to dollar benefits, eligible beneficiaries who have become disabled as a consequence of a service related injury, disability, disease, or other compensable condition, shall be entitled to receive the full range of medical benefits and services made necessary by the compensable condition, which shall be provided at the expense of the United States. In the case of death due to a compensable injury, disability, disease or other condition certain burial expenses shall be paid, subject to the provisions of 5 U.S.C. 8134. In appropriate cases vocational rehabilitation services shall be provided to eligible beneficiaries.

(c) Each of the types of benefits and conditions of eligibility enumerated in this section is subject to the applicable provisions of the Act and the provisions of this part. This section shall not be construed to modify or enlarge upon the provisions of the Act except to the extent that the provisions of the Act shall be construed to permit the payment of benefits to the victim of an employment related latent or progressive disease or disability if the nature and extent of such disease or disability and the circumstances surrounding the filing of a claim for benefits predicated upon such disease or disability may be reasonably construed to fall within the intent of the provisions of the Act.

§ 10.2 Administration of the Act and this chapter.

(a) Pursuant to 5 U.S.C. 8145 and Secretary of Labor's Orders 13-71 (36 FR 8755) and 16-73 (38 FR 19130) the responsibility for administering the provisions of the Act were delegated to the Assistant Secretary of Labor for Employment Standards. Pursuant to Employment Standards Order 2-74 effective September 27, 1974 (39 FR 34722-34723) the responsibility for the administration and implementation of the Federal Employees' Compensation Act, except for 5 U.S.C. 8149 thereof as it pertains to the Employees' Compensation Appeals Board, was delegated and assigned to the Director, Office of Workers' Compensation Programs. The Director, Office of Workers' Compensation Programs and his or her designees shall, therefore, except as is otherwise provided by law have the exclusive authority for the administration, implementation, and enforcement of the provisions of this chapter.

(b) In the case of employees of the Canal Zone Government and the Panama Canal Company, the Federal Employees' Compensation Act is administered by the Governor of the Canal Zone, and inquiries pertaining to such coverage and eligibility should be directed to the Governor of the Canal Zone.

§ 10.3 Purpose and scope of this part.

(a) This Part 10 sets forth the rules applicable to the filing, processing, and payment of claims for workers' compensation benefits under the provisions of the Federal Employees' Compensation Act, as amended. This part is applicable to all claims filed on or after November 6, 1974. The provisions of this part are intended to afford guidance and assistance to any person seeking compensation benefits under the Act, as well as to personnel within the Department of Labor and other agencies of the United States who are required to perform some function with respect to the administration of any provision of the Act or the processing of any claim filed under the Act.

(b) This Subpart A describes generally the statutory and administrative framework governing the manner in which claims under the Act shall be processed, contains a statement of purpose and scope, together with provisions pertaining to definition and use of terms, the disclosure of program information, and other miscellaneous provisions relating to the administration of the Act.

(c) Subpart B of this part describes the procedure by which an individual claimant shall file a notice of injury and claim for benefits under the Act and further describes the administrative procedures applicable to the processing of each individual claim and the rules governing the termination and continuation of eligibility for benefits with respect to certain previously approved claims.

(d) Subpart C of this part describes special procedures applicable to the continuation of pay provisions contained in 5 U.S.C. 8118 as amended by Pub. L. 93-416, 88 Stat. 1146.

(e) Subpart D of this part contains provisions relating to the procedures governing the payment of dollar benefits for disability or death and further contains additions to the compensation schedule mandated by the new paragraph 22 of 5 U.S.C. 8107(c), Pub. L. 93-416, 88 Stat. 1145.

(f) Subpart E of this part contains the rules governing an employee's rights to obtain medical evidence in support of such employee's claim and further contains information describing the rights of a beneficiary to medical benefits under the Act.

(g) Subpart F of this part is reserved.

(h) Subpart G of this part contains the rules governing the adjustment and recovery from a third person under 5 U.S.C. 8132.

§ 10.4 Applicability of other parts within this chapter.

This revised Part 10 replaces many provisions contained in Subchapter A of this chapter as well as all of Parts 1, 2, and 3 of Subchapter B of this chapter. The provisions of Subchapter A of this chapter are applicable to this part only in so far as such provisions do not conflict with the provisions of this part. This revised Part 10 is applicable to Part 25 of this chapter except as modified by said Part 25.

§ 10.5 Definitions and use of terms.

(a) *Definitions.* For purposes of this subchapter except where the content clearly indicates otherwise, the following definitions apply:

(1) "The Act" means the Federal Employees' Compensation Act, 5 U.S.C. 8101 *et seq.*, as amended by Pub. L. 93-416 and as it may be hereafter amended.

(2) "Secretary" means the Secretary of the United States Department of Labor or a person authorized to perform his functions under the Act.

(3) "Department" means the United States Department of Labor.

(4) "Office" or "OWCP" means the Office of Workers' Compensation Programs, Employment Standards Administration, of the Department.

(5) "Director" means the Director of OWCP or a person designated by him or her to carry out his or her functions under the Act.

(6) "Benefits" or "Compensation" means benefits or compensation paid or payable under the Act and includes money paid on account of a loss of wages, ability to earn wages, money paid in the form of scheduled compensation, medical diagnostic and treatment services supplied pursuant to the Act and this part, money paid on account of death, and certain payments to individuals participating in an approved vocational rehabilitation program.

(7) "Claim" means an assertion in writing of an individual's entitlement to benefits under or pursuant to the Act, submitted in a form and manner authorized by the provisions of this part.

(8) "Claimant" means an individual whose claim for entitlement to benefits under the Act has been filed in accordance with the Act and the provisions of this part.

(9) "Beneficiary" means an individual who is entitled to a benefit under the Act and this part.

(10) "Entitlement" means entitlement to benefits as determined pursuant to the provisions of the Act and the procedures set forth in this part. A beneficiary is entitled to benefits as so determined when the determination is final.

(11) "Employee" means:

(i) 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;

(ii) 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;

(iii) 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;

(iv) An individual employed by the government of the District of Columbia;

(v) An individual appointed to a position on the office staff of a former President under section 1(b) of the Act of August 25, 1958 (72 Stat. 838);

(vi) An individual selected pursuant to Chapter 121 of Title 28, United States Code, and serving as a petit or grand juror and who is otherwise an employee for the purposes of this part as defined by subparagraphs (i), (ii), (iii), (iv), and (v) of this subsection;

(vii) Members of the Reserve Officers Training Corps;

(viii) Civil Air Patrol Volunteers;

(ix) Peace Corps Volunteers, volunteer leaders and volunteers with one or more minor children as defined in Section 2504 of Title 22, United States Code;

(x) Job Corps enrollees;

(xi) Youth Conservation Corps enrollees;

(xii) Volunteers In Service To America;

(xiii) Members of the National Teachers Corps;

(xiv) Members of the Neighborhood Youth Corps;

(xv) Student employees as defined in 5 U.S.C. 5351;

(xvi) Employees of the Canal Zone;

(xvii) Employees of the Alaska Railroad;

(xviii) Law enforcement officers not employees of the United States killed or injured under certain circumstances involving a crime against the United States; and,

(xix) Other persons performing service for the United States within the purview of the Act and all acts in amendments, substitution or extension thereof;

(xx) But does not include.

(A) A commissioned officer of the Regular Corps of the Public Health Service;

(B) A commissioned officer of the Reserve Corps of the Public Health Service on active duty;

(C) A commissioned officer of the Environmental Science Services Administration;

(D) A member of the Metropolitan Police or the Fire Department of the District of Columbia who is pensioned or pensionable under Sections 521-535 of Title 4, District of Columbia Code.

(12) "Official Superior" means officers and employees having responsibility for the supervision, direction or control of employees.

(13) "Employing Agency" or "agency" means any civil agency or instrumentality of the United States Government or any other organization, group or institution employing any individual defined as an "employee" by this section.

(14) "Injury" means injury induced by accident or trauma and includes a disease or latent disabling condition proximately caused by the employment for which benefits are provided under the Act. The term "injury" includes damage or destruction of medical braces,

artificial limbs, and other prosthetic devices which shall be replaced or repaired; except that eyeglasses and hearing aids would not be replaced, repaired, or otherwise compensated for, unless the damage or destruction is incident to a personal injury requiring medical services.

(15) "Traumatic Injury" means a wound or other condition of the body caused by external force, including stress or strain. The injury must be identifiable as to time and place of occurrence and member or function of the body affected, and be caused by a specific event or incident or series of events or incidents within a single day or work shift. Traumatic injuries are distinguished from occupational diseases or illnesses in that the latter are produced by systemic infections; continued or repeated stress or strain; exposure to toxins, poisons, fumes, etc., or other continued and repeated exposure to conditions of the work environment over a longer period of time. Traumatic injuries also include damage or destruction to prosthetic devices or appliances, exclusive of eyeglasses and hearing aids unless the eyeglasses and hearing aids were damaged incidental to a personal injury requiring medical services.

(16) "Monthly pay" means the monthly pay at the time of injury, or the monthly pay at the time disability begins, or the monthly pay at the time compensable disability recurs, if the recurrence begins more than 6 months after the injured employee resumes regular full-time employment with the United States, whichever is greater, except when otherwise determined under section 8113 of the Act with respect to any period.

(17) "Price index" means the Consumer Price Index (all items United States city average) published monthly by the Bureau of Labor Statistics.

(18) "Base month" means the month of July 1966 and each later month which is used as a basis for calculating an increase under 5 U.S.C. 8146a.

(19) "Organ" means a part of the body that performs a special function, and for purposes of this part excludes the brain, heart and back.

(20) "United States Medical Officers and Hospitals" means medical officers and hospitals of the Army, Navy, Air Force, Veterans' Administration, and United States Public Health Service, and any other medical officers or hospital designated as a United States medical officer or hospital by the Secretary.

(b) *Statutory terms.* The definitions contained in this part shall not be considered to derogate from the terms of the Act as amended.

(c) *Dependents and survivors.* In addition to basic disability benefits for employees the Act provides in section 8133 that certain monthly benefits shall be payable to certain enumerated survivors of employees who have died from an injury sustained in the performance of duty. Section 8110 of the Act provides that any employee who is found eligible for a basic benefit shall be entitled to

have such basic benefit augmented at a specified rate for certain persons living in the beneficiary's household or who are dependent upon the beneficiary for support. The provisions of 5 U.S.C. 8101, 8110, and 8133 defining the nature of such survivorship or dependency necessary to qualify a beneficiary for a survivor's benefit or augmented benefit shall be applicable as appropriate to the provisions of this part.

(d) *Inclusive terms.* As used in this part, the singular case includes the plural.

INFORMATION IN PROGRAM RECORDS

§ 10.10 Custody of records relating to Federal Employees' Compensation Act matters.

All records, medical and other reports, statements of witnesses and other papers relating to the injury or death of a civil employee of the United States or other person entitled to compensation or benefits from the United States under the Act and all amendments or extensions thereof, are the official records of the Office and are not records of the agency, establishment or department making or having the care or use of such records. Such records and papers pertaining to any such injury or death are confidential and no official or employee of a Government establishment who has investigated or secured statements from witnesses and others pertaining to a claim for benefits, or any person having the care or use of such reports, shall disclose information from or pertaining to such records to any person, except upon the written approval of the Office.

§ 10.11 Inspection and copying of records.

(a) *Confidentiality of records.* Records of the Office pertaining to an injury or death are confidential, and are generally exempt from disclosure to the public under Section 552(b)(6) of Title 5 U.S.C., the terms of which are applied in this section. (See also Part 70 of Title 29, Code of Federal Regulations regarding Department of Labor documents exempt from disclosure.)

(b) *Release to the employee or to his/her beneficiary.* If an employee or, in the case of death, such employee's beneficiary or the authorized representative of an employee or beneficiary requests information from the Office's records, such individual shall at the discretion of the Office be permitted to examine the records of the case in which such employee is an interested party or representative of such party. In considering any request for such information the Office shall judge the reasonableness thereof, and may in its discretion permit inspection of such record or part thereof, which in its opinion, will not result in damage or harm to the employee or beneficiary. Where the Office determines the release of information to the employee or to the employee's beneficiary is not in the best interest of the employee or his beneficiary, the Office may release the information to the employee's or beneficiary's representative or personal physician

upon receipt of written authorization from the employee or beneficiary. If the individual concerned is mentally incompetent, insane or deceased, the next of kin or legal representative must authorize in writing the release of records to the representative.

(c) *Release to other United States Government departments and agencies.*

(1) Information may be released to other departments and agencies which have proper need for the information upon request stating the specific purpose for which it will be used.

(2) In appropriate cases, the requesting department will be advised that the information will be withheld until the Department obtains the written request of the employee or beneficiary concerned.

(3) In honoring requests, the Office shall disclose only that information which is germane to the request.

(d) *Release to medical research or scientific organizations.* Information shall be released, upon the request of medical research or scientific organizations or other qualified researchers when the Office finds that the release of the requested information will not constitute a clearly unwarranted invasion of personal privacy. Where feasible, the Office shall delete identifying detail to prevent a clearly unwarranted invasion of personal privacy. The requesting organization or individual shall be advised that the information must be held in confidence and that any published reports resulting from such study shall not identify in any way the individuals whose records were examined.

(e) *Release to Federal or State courts or other administrative bodies.* Any officer or employee of the United States who is served with a demand for records or information relating to Federal Employees' Compensation Act matters, the disclosure of which has not been authorized, regardless of whether it may or may not be authorized by this section or Part 70 of Title 29, Code of Federal Regulations, shall promptly, and without awaiting appearance before the court or other authority, communicate through established channels the contents of the demand to the Solicitor of Labor. Such officer or employee shall await instructions concerning the response to the demand. If it is determined that the demand should be opposed, the United States attorney, his or her assistant or other appropriate legal representative shall be requested respectfully to inform the court or other authority that the Secretary of Labor has instructed the officer or employee to refuse to disclose the records or information sought. If instructions have not been received at the time when the officer or employee is required to appear before the court or other authority in response to the demand, the United States attorney, his or her assistant, or other appropriate legal representative shall be requested to appear with the officer or employee upon whom the demand has been served and request additional time in which to receive such instructions.

(f) *Release to parties involved in actions brought under 5 U.S.C. 8131.* When an employee or beneficiary is prosecuting an action for damages under 5 U.S.C. 8131, records shall be released as provided for in paragraph (b) of this section. Information from such records requested by other parties in interest in said action for damages may be released only upon the written authorization of the employee or beneficiary, or of the authorized representative, and all such requests shall be directed to the Office.

MISCELLANEOUS PROVISIONS

§ 10.20 Forms.

(a) Notice of injury, claims and certain specified reports required to be made with respect to any claim shall be made on approved forms as are prescribed by the Office. Supervisors are expected to maintain an adequate supply of the basic forms needed for the proper recording and reporting of injuries. Pamphlet CA-136, obtainable from OWCP, lists the forms to be stocked by the agencies; and also tells where the forms may be obtained.

(b) The basic forms cited in this chapter are:

Form No.	Title
(1) CA-1-----	Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation.
(2) CA-2-----	Federal Employee's 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-4-----	Claim for Compensation on Account of Occupational Disease.
(6) CA-5-----	Claim for Compensation by Widow, Widower and/or Children.
(7) CA-5b-----	Claim for Compensation by Parents, Brothers, Sisters, Grandparents, or Grandchildren.
(8) CA-6-----	Official Superior's Report of Employee's Death.
(9) CA-7-----	Claim for Compensation on Account of Traumatic Injury.
(10) CA-8-----	Claim for Continuing Compensation on Account of Disability.
(11) CA-16-----	Request for 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.

(c) Copies of the forms enumerated in this paragraph are available for public inspection at the Office of the Federal Register.

§ 10.21 Waiver of compensation rights invalid.

No official superior or other person is authorized to 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 Act. No waiver of compensation rights shall be valid.

§ 10.22 Exclusiveness of remedy.

The benefits provided to employees and to survivors of employees by the Act constitute the exclusive remedy against the United States for employment related injuries or deaths. The injury or death of an employee gives rise to no right to recover damages from the United States exclusive of the Act.

§ 10.23 Penalties.

(a) Any person who makes a false statement to obtain Federal employees' compensation or who accepts compensation payments to which he or she is not entitled is subject to a fine of no more than \$2,000 or imprisonment for no more than one year, or both.

(b) Any person charged with the responsibility of making reports in connection with an injury who willfully fails, neglects, or refuses to do so; knowingly files a false report; induces, compels, or directs an injured employee to forego filing a claim; or willfully retains any notice, report, or paper required in connection with an injury, is subject to a fine of no more than \$500 or imprisonment for no more than one year, or both.

Subpart B—Notice of Injury and Claim for Compensation, Administrative Procedures

NOTICE OF INJURY OR DEATH

§ 10.100 How to file a notice of injury.

(a) *Traumatic injury.* Whenever any employee sustains a traumatic injury which he or she believes to have occurred while in the performance of duty, such employee shall immediately give written notice of the injury to his or her official superior. If the employee is unable to give such notice for any reason, such notice may be given by any person with knowledge of the injury on behalf of the injured employee. Form CA-1, Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation, is approved by the Office for the giving of such notice.

(b) *Occupational disease.* Whenever an employee has reason to believe that he or she is suffering from an employment related occupational disease or disability which has not been traumatic in onset, such employee or any person acting on behalf of such employee shall ment related occupational disease or disability to such employee's official superior in the manner prescribed in paragraph (a) of this section, except that notice is given on Form CA-2, Federal Employees' Notice of Occupational Disease and Claim for Compensation. If for any reason it is impractical to give such notice to the employee's official superior in the case of an occupational disease or disability, notice of the disease or disability may be given to any official of the employee's employing agency or to the Office.

§ 10.101 Report of death.

(a) *Traumatic injury.* When an employee dies because of a traumatic injury

sustained while in the performance of duty, such employee's official superior shall immediately report such death to the Office by telephone or telegraph. As soon thereafter as is practicable such official superior shall complete and send to the Office a form CA-6, Official Superior's Report of Employees' Death.

(b) *Occupational disease.* When an employee dies while in the performance of duty as a result of an occupational disease such employee's official superior shall immediately report such death in the manner prescribed in paragraph (a) of this section. If for any reason it is impracticable for such employee's official superior to report such employee's death due to an occupational disease or disability, such report may be made by any official superior of the employing agency or any other person acting on behalf of the deceased employee's survivors.

§ 10.102 When a notice of injury or report of death must be given.

(a) *Traumatic injury.* In the case of a traumatic injury or death due to a traumatic injury notice of such injury or death must be given pursuant to 5 U.S.C. 8119, within 30 days from the date on which the injury or death occurred. The failure to give notice within the period specified by this paragraph may result in a loss of compensation rights.

(b) *Occupational disease.* In the case of the onset of an occupational disease or disability notice of such onset or death shall be given within 30 days from the date on which the claimant has been informed by competent medical authority or by the exercise of reasonable diligence should have been made aware that he or she is suffering from an occupational disease or disability or in the case of death, within 30 days from the date of such death. In the case of a death due to an occupational disease or disability the 30 day period specified in this section does not apply until such time as the deceased employee's survivors or official superior should by the exercise of reasonable diligence be aware that the employees' death was due to an employment related occupational disease or disability. The failure to give notice within the time period specified by this paragraph may result in a loss of compensation rights.

§ 10.103 Report of injury by official superior and physician.

(a) The official superior is required to promptly submit to the Office a written report of every injury or occupational disease when it is likely to (1) result in a medical charge against the Office, (2) result in disability for work beyond the day or shift of injury, (3) require prolonged treatment, (4) result in future disability, (5) result in permanent disability or (6) result in a continuation of pay pursuant to 5 U.S.C. 8118. Portions of Forms CA-1 or CA-2 are provided for this purpose. The official superior shall also furnish the Office with a report of any investigation made and any other statements or data which may properly relate to the circumstances of the injury. If the injury need not be

reported to the Office, the Form CA-1 or CA-2 shall be retained as a permanent record in the employee's personnel folder.

(b) In all cases reported, the Office shall be furnished with an immediate medical report from the attending physician. This report may be made: (1) on Part B of Form CA-16; (2) on Form CA-20, Attending Physician's Report; or (3) by narrative report on the physician's letterhead stationery.

(c) Other reports shall be submitted by the official superior and attending physician as described elsewhere in this part or as may be required by the Office.

CLAIMS FOR COMPENSATION

§ 10.105 Time for perfecting a claim for compensation.

(a) *Claim for disability compensation.* An injured employee is required to file a written claim for compensation within 3 years after the injury before compensation may be paid. If, however, the official superior had actual knowledge of the injury within 30 days, or if written notice was given within 30 days, compensation is allowed regardless of whether a written claim was made within 3 years after the injury. Actual knowledge must be such as to put the official superior reasonably on notice of an on-the-job injury.

(b) *Claim for death compensation.* If the employee dies, a written claim for compensation by or on behalf of the survivors is required before compensation may be paid. This claim is to be filed within 3 years after the death, unless within 30 days of such death, the official superior had actual knowledge of the death, due to an employment related injury or disease or written notice of such death was given to the official superior within 30 days of such death. The timely filing of a disability claim because of an on-the-job injury will satisfy the time requirements for a death claim based on the same injury.

(c) *Claim predicated upon a latent disability.* In a case of latent disability, or death due to a latent disability, the time for filing a claim does not begin to run until the employee has a compensable disability or dies and is aware or his survivors are aware, or by the exercise of reasonable diligence should have been aware, of the causal relationship of the compensable disability or death to the employment. In such a case, the time for giving notice of injury or death begins to run when the employee is aware or the survivors are aware, or by the exercise of reasonable diligence should have been aware that the employee's condition or death is causally related to his or her employment, whether or not there is a compensable disability or death.

(d) The time limitations described in this section do not begin to run against a minor until such minor reaches 21 years of age or has had a legal representative appointed; or run against an incompetent individual while such individual is incompetent and has no duly appointed legal representative; or run against any individual whose failure to comply is ex-

cused by the Secretary of Labor on the ground that notice could not be given because of exceptional circumstances.

§ 10.106 How to file a claim for disability compensation.

(a) A claim may be filed by delivering it to the Office, or to any person designated by the Office to receive claims. The employee's official superior is so designated to receive claims on behalf of the Office, and the injured employee may submit his claim to such official superior for transmission to the Office unless special circumstances require a different procedure. The official superior shall submit the injured employee's claim to the Office within 2 working days.

(b) Notwithstanding the filing of any document provided for by Paragraph (a) of this section, no disability compensation shall be payable unless the employee completes the front of a Form CA-4 and submits it to his or her official superior. The employee and the official superior shall complete the Form CA-4. The official superior also shall complete Items 1-4 on the front of the attached Form CA-20 and insert the appropriate Office address on the back thereof, and then detach the Form CA-20 and send it to the attending physician for completion and submission to the Office. The official superior shall forward the completed Form CA-4 to the Office within 2 working days.

(c) Except as provided in Subpart C of this part, whenever an employee, as a result of an injury in the performance of duty, is disabled with loss of pay for more than 3 days, the official superior shall furnish to the employee a Form CA-4 for the purpose of claiming compensation, and shall advise the employee of his or her rights under the Act.

(d) Claims for compensation for permanent disability which involve the loss, or loss of use, of a member or function of the body, or loss, or loss of use of any other important external or internal organ of the body excluding the heart, brain, and back, as listed in 5 U.S.C. 8107 (see § 10.304), shall be filed on Form CA-4 or CA-7 as appropriate which the official superior shall furnish.

(e) Claims for serious disfigurement of the face, head, or neck shall be made on Form CA-4 or CA-7 as appropriate (which shall be furnished by the official superior). If any compensation has been paid or is payable for any such prior disfigurement the date of such prior injury, the amount of compensation and the source thereof shall be stated in the said CA-4 or CA-7.

(f) Form CA-4 shall be filed with the Office upon termination of disability if the duration of disability should be less than 10 calendar days, or at the expiration of 10 calendar days from the date pay stops if disability continues beyond that date.

§ 10.107 Application for augmented compensation for disability.

(a) While the disabled employee has one or more dependents as defined in 5 U.S.C. 8110 such employee's basic compensation for disability shall be aug-

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mented as provided in said section. Form CA-4 includes an application for such augmented compensation.

(b) Augmented compensation payable while a disabled employee has an unmarried child as defined by 5 U.S.C. 8110 which would otherwise terminate because the child reaches the age of 18, may be continued while the child is a student regularly pursuing a full-time course of study or training as defined by the above said section of the Act.

(c) The disabled employee claiming augmented compensation under this section shall furnish, when so required by the Office, proof of continuing entitlement to augmented compensation as set forth in paragraph (a) of this section.

(d) The disabled employee receiving augmented compensation under this section shall promptly notify the Office of the happening of any event which would terminate an employee's continued entitlement to augmented compensation under the provisions of 5 U.S.C. 8110. Any checks or payments received after the occurrence of such event shall be returned promptly to the Office.

§ 10.108 How to file an original claim for death benefits.

An original claim for death benefits may be filed by any survivor of a deceased employee (see section 8133 of the Act) or any other person acting on behalf of such survivor. Form CA-5 is provided by the Office for this purpose, and should be executed as provided therein. An original death claim may be filed by delivering a completed Form CA-5 to the Office, or to any person designated by the Office to receive such claim. The deceased employee's former official superior is so designated to receive such claims on behalf of the Office, and the person claiming benefits should submit the claim to such former official superior, unless special circumstances require a different procedure. The official superior shall, when it is practicable, furnish to all persons likely to be entitled to compensation for death of an employee, a Form CA-5 or CA-5b with information as to the use of the form for making claim for compensation and procedure in respect of filing such form. The furnishing of assistance in preparing such form or in obtaining evidence relating to the claim shall be without charge by the official superior. Any claim or paper purporting to claim compensation on account of death, submitted to the deceased employee's former official superior, shall be transmitted promptly to the Office.

§ 10.109 Claims for balance of schedule due at death from other causes.

(a) If an employee files a valid claim for a scheduled loss (permanent disability which involves the loss or loss of use of a member or function of the body as provided in 5 U.S.C. 8107) in his or her lifetime and dies from causes other than the injury, before the entire amount due for such schedule is paid, claim for such unpaid balance may be made on an application form approved by the Office as follows: By the widow, widower, or child

in the proportions and upon the conditions and in the order named in 5 U.S.C. 8109(a) (3) (D). If there is no surviving widow, widower, or child, then a claim for such unpaid balance may be made pursuant to § 10.108 in the proportions and upon the conditions and in the order as follows: To the parent or parents wholly dependent for support upon the decedent. If there is no parent wholly dependent then to a partially dependent parent or parents in equal shares with any partially dependent brother, sister, grandparent or grandchild. If one or more of the brothers, sisters, grandparents, or grandchildren are wholly dependent and a parent or parents and other brothers, sisters, grandparent, or grandchildren are partially dependent, then 75 percent will be awarded to such wholly dependent person or persons equally and the balance divided equally among such partially dependent persons. In the event there is no surviving widow, widower, child, or wholly dependent parent, and the foregoing apportionment of such compensation would result in injustice, the Office may, in its discretion, make such other apportionment as justice would require.

(b) The right of any survivor referred to in paragraph (a) of this section shall be conditioned upon his or her being alive to receive any payment and any such survivor shall not have a vested right to any such payment. Claims for continuation of payments under 5 U.S.C. 8109 shall be made in like manner and governed by § 10.124.

(c) The entitlement of any survivor to payments under 5 U.S.C. 8109 shall cease upon the happening of any event which would terminate such right under 5 U.S.C. 8133. The termination of such right shall be governed by § 10.125. In the event of any reapportionment made necessary by such termination prompt notification shall be made to the Office in accordance with § 10.126.

(d) As to the disposition of any balance not paid under the foregoing paragraphs see § 10.306.

EVIDENCE

§ 10.110 Affidavit or report by employee of employment and earnings.

The Office may require a partially disabled employee to submit an affidavit or other report as to his or her earnings either from employment or self-employment. If such individual, when required, fails within a reasonable time to submit such affidavit or report or if in such affidavit or report the employee knowingly omits or understates any part of such earnings or remuneration such employee shall forfeit his or her right to compensation with respect to any period for which such affidavit or report was required to be made, and any compensation already paid may be recovered by deducting the amount thereof from compensation payable to him or her or otherwise according to law. Earnings from employment referred to in this section or elsewhere in this part means gross earnings or wages before any deductions whatsoever have been taken out of such

wages, and include the value of subsistence, quarters, or other advantages received in kind as part of the wage or remuneration. In general, earnings from self-employment means the rate of pay the employee estimates it would cost him or her to have someone else perform the work the employee is performing.

§ 10.111 Submission of other evidence.

Any claimant or person acting on behalf of such claimant may submit to the Office such evidence including documentary evidence, statements of witnesses or physicians, and any other evidence, which the claimant deems pertinent to the final determination of his claim.

TERMINATION AND CONTINUATION OF ELIGIBILITY

§ 10.120 Report of termination of disability or return to work.

In all cases reported to the Office the official superior is required to notify the Office immediately when the injured employee returns to work or when his or her disability ceases. Form CA-3, Report of Termination of Disability and/or Payment, is provided for this purpose. It shall be used unless a report of termination of disability is made to the Office on Form CA-1 or CA-2, or CA-4, or CA-7 as appropriate, or in some other manner.

§ 10.121 Recurrence of disability for work.

(a) The official superior shall notify the Office if, after the employee returns to work, the same injury causes such employee to stop work again. This report shall be made on Form CA-2a, Notice of Employee's Recurrence of Disability and Claim for Pay/Compensation. If the injured employee does not return to duty prior to the date this form is submitted to the Office, an additional report shall be made on Form CA-3 or in a similar manner when the employee returns to work or his/her disability ceases.

(b) If the employee wishes to claim compensation as a result of the recurrence, a Form CA-4, CA-7, or CA-8 is required as appropriate. All parts of the appropriate form plus a medical report on Form CA-20 (or in narrative form), must be completed.

§ 10.122 Claims for continued compensation for disability.

Form CA-8, Claim for Continuing Compensation on Account of Disability, is provided to claim compensation for additional periods of time after Form CA-4 is submitted to the Office. While disability continues, claim on this form shall be submitted every 2 weeks until the employee is otherwise instructed by the Office. The employee shall complete and sign the face of the form, and the official superior shall complete the reverse side. The official superior also shall complete items 1-6 on the front of the attached Form CA-20a and insert the appropriate Office address on the back thereof, and then detach the Form CA-20a and send it to the attending physician for completion and submission to the Office. The official superior will for-

ward the completed Form CA-8 to the Office within 2 working days.

§ 10.123 Employee's obligation to return to work or to seek work when able.

When total disability to perform work ceases and the employee is able to perform a part of his usual duties, or to perform work of a different nature, the employee must seek such suitable work as he or she is able to perform, either in Government or private employment, unless it has already been provided for such employee, and shall accept such work or offer of work secured for him or her. An employee who has not been regularly employed during the period covered by such employee's claim, and who is only partially disabled, shall state in his or her claim what efforts he or she has made to obtain suitable employment giving the names and addresses of persons or concerns to whom the employee has applied for work. If the employee has not been offered or has not been able to secure work which he or she is able to do, he or she shall so state. If a partially disabled employee refuses to seek suitable work or refuses or neglects to work after suitable work is offered to, procured by, or secured for the employee, he or she shall not be entitled to any compensation.

§ 10.124 Continuance of compensation on account of death.

(a) A beneficiary to whom an award of compensation has been made on account of an employee's death, pursuant to his or her original claim, shall submit to the Office additional claims for continuance of compensation to the Office once each year. Form CA-12 is provided by the Office for this purpose, and will be sent to the beneficiary when an additional claim is required. Failure to submit the form may result in suspension of compensation.

(b) A beneficiary to whom an award of compensation has been made for a child, brother or sister, or grandchild after he or she has reached the age of 18 because he or she continues to regularly pursue a full-time course of study or training shall furnish, when so required by the Office, proof of continuing entitlement to such compensation. Failure to submit the proof may result in suspension of compensation.

(c) Compensation payable on behalf of a child, brother or sister, or grandchild under 5 U.S.C. 8133, which would otherwise be terminated because such individual reached 18 years of age, shall be continued if he or she is a student at the time he or she reaches age 18 for so long a period as he or she continues as a student or marries. An individual shall be considered a student while regularly pursuing a full-time course of study or training at an institution which is—

(1) A school or college or university operated or directly supported by the United States, or by any State and local government or political subdivision thereof, or

(2) A school or college or university which has been accredited by a State or by a State-recognized or nationally recognized accrediting agency or body, or

(3) A school or college or university not so accredited but whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited, or

(4) A technical, trade, vocational, business, or professional school accredited or licensed by the Federal, or a State government or any political subdivision thereof providing courses of not less than 3 months duration, that prepare the child for a livelihood in a trade, industry, vocation, or profession; but not after he or she reaches the age of 23 or has completed 4 years of education beyond the high school level, except that, where the child's 23rd birthday occurs during a semester or other enrollment period, he or she shall continue to be considered a student until the end of such semester or other enrollment period. A child shall not be deemed to have ceased to be a student (1) during any interim between school years if the interim does not exceed 4 months and the child shows to the satisfaction of the Office that he or she has a bona fide intention of continuing to pursue a full-time course of education or training during the semester or other enrollment period immediately following the interim or (2) during periods of reasonable duration during which, in the judgment of the Office the child is prevented by factors beyond his or her control from pursuing his or her education.

§ 10.125 Termination of right to compensation for death.

When a beneficiary who is receiving compensation on account of death ceases to be entitled to such compensation, by reason of remarrying before age 60, marrying, reaching the age of 18, ceasing to be dependent, or ceasing to be a student, or becoming capable of self-support, the beneficiary or someone in his or her behalf shall immediately notify the Office of such fact. If such beneficiary receives a check which includes payment of compensation for any period after the date when he or she ceased to be entitled to it, for any of the above reasons, he shall promptly return it to the Office. On remarriage before reaching age 60, a widow or widower entitled to compensation under 5 U.S.C. 8133, shall be paid a lump sum equal to twenty-four times the monthly compensation payments (excluding compensation on account of another individual) to which he or she was entitled immediately before the remarriage.

§ 10.126 Change in status of beneficiaries affecting compensation for death.

When two or more beneficiaries are receiving compensation on account of the death of an employee and any event occurs which may require a reapportion-

ment of the amount of compensation payable to one or more of them, such beneficiary, or someone on his or her behalf, shall promptly notify the Office giving the date of the event and all essential facts. Such reapportionment may become necessary when any such beneficiary dies or marries, when a child, grandchild brother, or sister of the decedent becomes 18 years old or if over 18, becomes capable of self-support or ceases to be a student, or when a parent or grandparent of the decedent ceases to be dependent, or when a posthumous child of the decedent is born.

DETERMINATIONS OF CLAIMS, HEARING AND REVIEW PROCEDURES

§ 10.130 Processing of claims.

Claims for compensation for disability and death are processed by claims examiners of the Office, whose duty it is to apply the law to the facts as reported, received, or obtained upon investigation. The Federal Employees' Compensation Act, as amended, requires determination of a claim, with findings of fact and a decision for or against the payment of compensation, upon consideration of the claim presented by the claimant, the report by his or her immediate official superior, and the completion of such investigation as the Office may deem necessary. There is no required procedure for the production of evidence, and evidence in written form is accepted. The final authority in the Office in the determination of a claim is vested in the Director of the Office. The decision shall contain findings of fact and a statement of reasons. A copy of the decision, together with information as to the right to a hearing, to a review, and to an appeal to the Employees' Compensation Appeals Board, shall be mailed to the claimant at his or her last known address.

§ 10.131 Request for a hearing.

Any claimant not satisfied with a decision of the Office shall, upon written request made within 30 days after the date of issuance of such decision, be afforded an opportunity for a hearing before an Office representative designated by the Director. The request for hearing shall be made to the Director, Office of Workers' Compensation Programs, U.S. Department of Labor, Washington, D.C. 20211. At such hearing, the claimant shall be afforded an opportunity to present evidence in further support of his or her claim.

§ 10.132 Time and place of hearing; prehearing conference.

(a) The Office representative shall set the time and place of the hearing, and shall mail written notice thereof to the claimant at least 10 days prior to the hearing. The hearing will, when practicable, be set at a time and place convenient for the claimant. The Office representative may, and when so requested by the claimant shall, afford the claimant a prehearing conference to clarify the issues in his or her claim and, when necessary, shall postpone the hearing for this purpose. Request for such confer-

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ence may be made to the Office representative orally or in writing.

(b) A hearing may be postponed or cancelled upon the request of the claimant if such request is received by the Office or official of the Office assigned to conduct the hearing at least 48 hours prior to the time of the hearing or at the option of the Office. The unexcused failure of a claimant to appear at a hearing or late notice may result in the assessment of costs against such claimant.

§ 10.133 Conduct of hearing.

(a) In conducting the hearing, the Office representative shall not be 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, but may conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose the representative shall receive such relevant evidence as may be adduced by the claimant and shall, in addition, receive such other evidence as such representative may determine to be necessary or useful in evaluating the claim. Evidence may be presented orally or in the form of written statements and exhibits. The hearing shall be recorded, and the original of the complete transcript shall be made a part of the claims record.

(b) Pursuant to 5 U.S.C. 8126 the Office may whenever necessary: (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 proceedings conducted for the purpose of determining the validity of any claim under this part.

§ 10.134 Termination of hearing; decision; review of decision.

The Office representative shall fix the time within which he or she will receive evidence, and shall terminate the hearing by mailing a copy of his tentative decision, setting forth the basis therefor, to the claimant at his or her last known address. Such tentative decision shall become the final decision unless revised within 30 days. A copy of any revision of the tentative decision, setting forth the basis therefor, shall be mailed to the claimant at his or her last known address within such 30 day period.

§ 10.135 Withdrawal of request for hearing; abandonment.

A claimant may withdraw his or her request for a hearing at any time prior to the mailing of the decision, by written notice to the Office representative so stating, or by orally so stating at the hearing. A claimant shall be deemed to have abandoned his or her request for a hearing if he or she fails to appear at the time and place set for the hearing and does not within 10 days after the time set for the hearing, show good cause for such failure to appear.

§ 10.136 Review of decision.

An award for or against the payment of compensation may be reviewed by the Office under 5 U.S.C. 8128(a) at any time, on its own motion or on application of the claimant. No formal application for review is required, but a written request for review, stating reasons why the decision should be changed and accompanied by evidence not previously submitted to the Office, is necessary to invoke action. Such request shall be made to the Director, Office of Workers' Compensation Programs, U.S. Department of Labor, Washington, D.C. 20211.

§ 10.137 Review by Employees' Compensation Appeals Board.

Final decisions of the Office are subject to review by the Employees' Compensation Appeals Board (ECAB), U.S. Department of Labor, under the rules of procedure set forth in Part 501 of this title.

§ 10.138 [Reserved]

§ 10.139 [Reserved]

§ 10.140 Participation in claims process by employing agency.

Procedures conducted with respect to claims filed under the Act are intended to be nonadversary in character. Accordingly, a claimant's employing agency shall not have the right, except as provided in Subpart C of this part, to actively participate in the claims adjudication process. An employing agency may, however, in its discretion, submit affidavits and other relevant and probative statements regarding any particular claim. Such evidence shall be reviewed by the Office and acted upon as appropriate.

§ 10.141 Representation of the Director.

The Director shall be represented in proceedings with respect to any claim conducted before the Employees' Compensation Appeals Board by attorneys from the Office of the Solicitor of Labor. The Office of the Solicitor may, pursuant to the Secretary of Labor's Order of September 23, 1974 (39 FR 34723), refuse to represent the Director with respect to any particular case or matter as appropriate.

§ 10.142 Representation of claimants.

Any claimant may appoint an individual to represent his or her interest in any proceeding for determination of a claim under this part. Such appointment shall be made in writing or on the record at the hearing. A written notice appointing a representative shall be signed by the claimant or his or her legal guardian and shall be sent to the Office. In any case such representative must be qualified under § 10.143.

§ 10.143 Qualification of representative.

(a) *Attorney.* Any attorney in good standing who is admitted to practice before a court of a State, territory, district, or insular possession or before the Supreme Court of the United States or

other Federal court and is not, pursuant to any provision of law, prohibited from acting as a representative may be appointed as a representative.

(b) *Other person.* Any other person with the approval of the Office may be appointed as a representative so long as that person is not, pursuant to any provision of law, prohibited from acting as a representative.

§ 10.144 Authority of representative.

A representative, appointed and qualified as provided in this part may make or give, on behalf of the claimant he or she represents, any request or notice relative to any proceeding before the Office under the Act, including formal hearing and review. A representative shall be entitled to present or elicit evidence and make allegations as to facts and law in any proceeding affecting the claimant he or she represents and to obtain information with respect to the claim of such claimant to the same extent as such party. Notice to any claimant of any administrative action, determination, or decision, or request to any party for the production of evidence may be sent to the representative of such claimant, and such notice or request shall have the same force and effect as if it has been sent to the claimant.

§ 10.145 Fees for services.

(a) No fee for representation services rendered in respect to a claim under this part shall be valid, unless prior approval of such fee has been obtained from the Office.

(b) The fee approved by the Office will be determined on the basis of the actual necessary work performed and will generally include but are not limited to the following factors:

- (1) Usefulness of the representative's services to the claimant.
- (2) The nature and complexity of the claim.
- (3) The actual time spent on development and presentation of the claim.
- (4) The amount of compensation accrued and potential future payments.
- (5) Customary local charges for similar services.
- (6) Professional qualifications of the representative.

(c) In every case where a representative's fee is desired, an application for approval of the fee shall be made to the Office. Each request for approval of a fee shall be accompanied by a complete itemized statement, in duplicate, describing the services rendered. Such itemization shall contain the following information:

- (1) The dates that services began and ended in addition to all dates on which conferences were held, documents or letters prepared, telephone calls made, etc.
- (2) A description of each service rendered with the amount of time spent on each type of service.
- (3) The amount of the fee which the representative desires for services performed.

(4) The amount of fees requested, charged or received for services rendered on behalf of the claimant before any State or Federal court or agency, in a similar or related matter.

(5) A statement explaining the basis for the amount of the fee requested.

(d) The Office will arrange for the claimant to review the request for a fee and to comment as to the services provided and as to the reasonableness of the fee.

(e) In considering any request for such a fee, the Office will not recognize such items as:

(1) Work performed before any other State or Federal agency or court including the Employees' Compensation Appeals Board, and any State or Federal Court.

(2) Any contract for the payment of an agreed sum or any contingent contract.

(3) Expenses incurred by the representative for services performed.

(f) The Office will not pay or assist in the collection of any representative fee. Neither will compensation payments be routinely forwarded to the representative with or without the claimant's approval.

(g) Any claimant aggrieved or adversely affected by an award of a fee, may request a hearing or reconsideration by the Office. Thereafter, the appeals procedure described in this subpart may be utilized by the claimant.

(h) A representative aggrieved or adversely affected by an award of a fee, may utilize the appeals procedure described in this subpart.

(i) Any person who receives a fee, other consideration or gratuity on account of services rendered with respect to a claim under this part, unless approved by the Office, or who solicits employment for himself or another in respect to a case or claim, under (or to be brought under) this Act shall be guilty of a misdemeanor and upon conviction of each offense, will be punished by a fine of not more than \$1,000 or imprisoned not to exceed 1 year or both such fine and imprisonment.

§ 10.146 [Reserved]

§ 10.147 [Reserved]

§ 10.148 [Reserved]

§ 10.149 [Reserved]

§ 10.150 Statement relative to substantive rules.

(a) The principal function of the Office and its subordinate parts is that of adjudicating claims for workers' compensation. This function is quasi-judicial in character and involves the application of statutes and principles of law to resolve factual situations. This field of activity is within the specialized branch of the law generally referred to as "workers' compensation," and has its own particularized principles which have general applicability to workers' compensation statutes (State and Federal), as such statutes have certain common or underlying similarity in respect to the meaning of terms and phrases, and in

respect to scope, jurisdiction, and general basic concepts of employer liability.

(b) In the administration of the Act, the Office has one general policy, which is to follow and to adhere to the principles of workers' compensation law as stated in the opinions of the Supreme Court, the Federal Circuit Courts of Appeal, and the District Courts of the United States, as they may appropriately be applied or have been determined by the Employees' Compensation Appeals Board (ECAB) to apply in like situations arising under the Act. In addition, decisions and opinions of the judicial tribunals of the several States furnish principles of law of general applicability in the specialized field of workers' compensation, which form parts of the foundation of general principles relied upon in the application and interpretation of the Act. The Office applies the provision of the Act applicable in respect to a particular case or situation, to the extent that such provision can readily be applied without extrinsic aid, but where such aid is necessary the source thereof is the body of principles embodied in authoritative decisions of the courts and the ECAB within such well-recognized branch of the law.

Subpart C—Continuation of Pay

GENERAL

§ 10.200 Statutory provisions.

(a) Pub. L. 93-416, approved September 7, 1974; significantly revised 5 U.S.C. 8118 to provide that an employee ["Employee" for the purposes of this subpart means only such employees as are enumerated in § 10.5(a)(11) (i), (iii), (iv), (vi)] who has filed a claim for a period of wage loss due to a traumatic injury shall be entitled under certain circumstances, to have his regular pay continued for a period not to exceed 45 days pending the OWCP's determination of such employee's claim for compensation under the Act.

(b) Pursuant to 5 U.S.C. 8118(e), pay continued under this subpart shall not be considered compensation and shall be subject to all applicable taxes and other payroll deductions.

PROCEDURES

§ 10.201 Right to continuation of pay.

(a) An employee who sustains a disabling, job-related traumatic injury is entitled to the continuation of his or her regular pay for a period not to exceed 45 days without a break in time unless such right is controverted by the employee's employing agency.

(b) The entitlement to compensation of any person excluded from the continuation of pay provisions of the Act shall begin from the date of pay loss, subject to other applicable sections of the Act.

§ 10.202 Controversion by employing agency.

(a) The employing agency may, on the basis of the information submitted by the employee, or secured on investiga-

tion, controvert a claim and terminate an employee's pay only if:

(1) The disability is a result of an occupational disease or illness; or

(2) The employee falls within the exclusions of 5 U.S.C. 8101(1) (B) or (E); or

(3) The employee is neither a citizen nor resident of the United States or Canada (i.e., a foreign national employed outside of the United States or Canada); or

(4) The injury occurred off the employing agency's premises and the employee was not engaged in official "off premise" duties; or

(5) The injury was caused by the employee's willful misconduct, the employee intended to bring about the injury or death on himself or herself or another person or the employee's intoxication was the proximate cause of the injury; or

(6) The injury was not reported on Form CA-1, within 30 days following the injury; or

(7) Work stoppage first occurred six months or more following the injury; or

(8) The employee initially reports the injury after his or her employment has terminated; or

(9) The employee is enrolled in the Civil Air Patrol, Peace Corps, Job Corps, Youth Conservation Corps, Work Study Programs, or other similar groups.

(b) In all other cases, the employing agency may controvert an employee's right to continuation of pay, however, such employee's regular pay shall not be interrupted during the 45 day period unless the controversion is sustained by the Office and until the employing Agency is so notified.

§ 10.203 Manner of controversion.

An employing agency may controvert a claim for purposes of this subpart by completing the indicated portion on Form CA-1, Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation, and submitting detailed information in support of the controversion to the Office.

§ 10.204 Termination of continuation of pay.

(a) Where pay is continued after an employee stops work due to a disabling traumatic injury, such pay shall not be terminated until:

(1) The agency receives medical information from the attending physician to the effect that the employee is no longer disabled; or

(2) The agency receives notification from the Office that pay should be terminated; or

(3) The expiration of 45 days.

(b) The 45 days during which pay may be continued pursuant to this subpart are calendar days and if the employee has stopped work due to the disabling effects of the injury, the period starts at the beginning of the first full day or first full shift during which the disability begins provided such disability began within six months of the occurrence of the injury. The agency will keep the employee in a pay status for any fraction of a day or shift on which the disability

begins with no "charge" to the 45 day period. If the employee stops work for only a portion of a day or shift (other than the day or shift when disability begins), such day or shift will be considered as one calendar day. If the employee is not immediately disabled due to the injury, the 45 days will begin on the first full day or the first full shift when disability begins.

(c) Where pay is continued at a rate subsequently determined by the Office to be incorrect, the Office shall notify the agency of the correct pay rate and the agency will make the necessary adjustment.

§ 10.205 Regular pay defined.

(a) For a regular full time or part-time worker in the regular work force of the agency who works the same number of hours per week, the weekly pay rate shall be equal to the number of hours regularly worked each week times the hourly pay rate on the date of injury, exclusive of overtime.

(b) For a regular part-time worker in the regular work force of the agency who does not work the same number of hours per week the weekly pay rate shall be the average weekly earnings for the one year period prior to the date of injury, exclusive of overtime.

(c) For an irregular WAE, intermittent, etc., worker who is not a part of the agency's regular full or part-time work force, the weekly pay rate shall be the average of the employee's weekly earnings during the one year prior to the injury, but the average annual earnings may not be less than 150 times the average daily wage earned within one year prior to the date of injury. (The daily wage rate shall be the hourly rate times 8.) Premium, night or shift differential, Sunday or holiday pay, or other extra pay should be included in all instances; however, overtime pay must not in any instance (i.e., either regular or irregular employment) be made a part of the continuation of pay rate.

§ 10.206 Agency accounting and reporting of continuation of pay.

(a) Pending development of a system within the Office for directly capturing and tabulating data on continuing payments to employees under 5 U.S.C. 8118, each agency and instrumentality of the United States having an employee who was in a continuation of pay status during the calendar quarter shall submit a report to the Office within 30 days after the end of each quarter (address: Director, Office of Workers' Compensation Programs, U.S. Department of Labor, Washington, D.C. 20211).

(b) Quarterly reports are to include data on all continuation of pay cases paid in the quarter for only those employees who have returned to work or exceeded the 45-day period by the last pay date of the reporting agency or instrumentality during the quarter (employees who have not returned to work or exceeded the 45-day period by the

last pay date of the quarter are to be reported in the following quarter).

(c) Reported summary data for employees returning to work during the quarter is to include:

(1) Total number of employees provided such continuation of pay.

(2) Total number of workdays or shifts (full workdays) for which these employees were paid during the quarter (and the earlier quarter if return to work did not occur during such earlier quarter).

(3) Total amount paid to all employees during the quarter (and the earlier quarter if return to work did not occur during such earlier quarter).

OFFICIAL SUPERIOR'S AND BENEFICIARIES' RESPONSIBILITIES

§ 10.207 Official superior's responsibility in continuation of pay case.

(a) Upon receiving notice that an employee has suffered an employment related traumatic injury an official superior shall:

(1) Promptly authorize medical care in accordance with Subpart E of this part;

(2) Provide the employee with Form CA-1 for reporting the injury and upon receipt of the completed form, return to the employee the "Receipt of Notice of Injury";

(3) Advise the employee of the right to elect continuation of regular pay or use annual or sick leave, if the injury is disabling;

(4) Inform the employee whether continuation of pay will be controverted, and if so, whether pay will be terminated, and the basis for such action;

(5) Promptly submit Form CA-1 fully completed by both employee and official superior together with all other pertinent information and documents to the Office within two working days following the official superior's receipt of such completed form from the employee.

(6) If the official superior controverts the claim (whether or not pay is terminated), explanation for the controversion will be submitted to the OWCP on the official superior's portion of Form CA-1 and/or by separate narrative report.

(7) In addition, such official superior shall report to the Office any injury resulting in probable disability or death in accordance with this part, and thereafter make any additional reports as the Office may require.

(b) In the case of a traumatic injury for which the continuation of pay may be appropriate, the injured employee's official superior shall to the best of his or her ability inform such employee of the advantages and disadvantages of the continuation of pay provisions of the Act. Special attention shall be drawn to the fact that continued pay is subject to taxes and all other regular payroll deductions as well as to the fact that an employee who chooses not to elect continuation of pay may be without income for an undetermined period of time sub-

sequent to the onset of his or her disability.

§ 10.208 Recurrence of disability.

(a) Should an employee suffer a recurrence of disability, and again stop work and the initial claim has been approved by the Office, the official superior shall promptly complete Form CA-2a. The employee shall advise the official superior whether he or she wishes to continue to receive regular pay or charge the absence to sick or annual leave.

(b) If the employee so elects, the official superior shall again continue regular pay, providing the 45 calendar days were not all "used" during the initial period of disability. This is applicable, however, only during a six month period beginning from the date the employee first returned to work following the initial disability. If a recurrence happens after the six months have expired, the employing agency should not continue regular pay, although some of the 45 days may remain "unused". In such instances, the employee is entitled only to compensation payable by the Office.

(c) If the 45 day entitlement period has been exhausted, or six months have expired since the employee first returned to work, the employing agency is not required to continue regular pay. The Office shall be responsible for initiating payment of compensation. In such instance, the employee shall file claim for any wage loss on the appropriate Form CA-7 or CA-8.

(d) If the recurrence happens less than six months following the most recent prior medical treatment received by the employee, the official superior shall authorize required medical care by use of Form CA-16. If the recurrence happens more than six months after the most recent prior medical care, authorization for further medical care must be obtained from the Office.

§ 10.209 Employee's responsibilities in continuation of pay cases.

(a) When an employee sustains a traumatic, disabling injury in the performance of duty, the employee or someone acting on his or her behalf must give a written report on Form CA-1 to such employee's official superior within two working days following the injury. It must be shown on the form whether the employee wishes to receive sick or annual leave [see § 10.210(a)] or request continuation of regular pay for the period of disability.

(b) Upon reporting the injury, the employee will be authorized to obtain medical treatment if required. If treatment is obtained, the employee must inquire from the treating physician the earliest date that the employee is able to return to work.

(c) A "Duty Status Report," Form CA-17 will be used to obtain interim medical reports concerning the employee's duty status. If during the 45 day period the treating physician indicates the employee is able to return to work and the employee refuses to do so, the

continued absence from work may result in an overpayment. The period of absence from the job which resulted in the overpayment will be determined by the Office in the course of adjudication of the claim. The official superior and the employee will be notified of the period of disability which is approved by the Office and the official superior may then require the employee to resolve any overpayment.

(d) If medical evidence shows disability is expected to continue beyond 45 days and compensation is desired after expiration of the period, Form CA-7, must be completed and filed with the appropriate OWCP district office not more than 5 working days after the termination of the 45 days.

(e) The provisions of Subpart D of this part relating to the buy-back of leave and to collection of overpayments are applicable as appropriate to the provisions of this subpart.

§ 10.210 Election of annual or sick leave.

(a) In any case, an employee may use annual or sick leave to his credit at the time such employee's disability begins, but such employee's compensation for disability does not begin, and the time periods specified by 5 U.S.C. 8117 do not begin to run, until the termination of continuation of pay (see § 10.204) or until the use of annual or sick leave ends.

(b) If a claim for the continuation of pay is denied by the Secretary subsequent to the making of such payments, such payments shall, at the option of the employee, be charged to sick or annual leave or shall be deemed overpayments of pay within the meaning of Section 5584 of Title 5, United States Code.

**Subpart D—Payment of Compensation
COMPENSATION RATES**

§ 10.300 Maximum and minimum compensation.

(a) *Disability.* Compensation for disability may not exceed 75 percent of the monthly pay of the highest step of grade 15 of the General Schedule. For total disability, it may not be less than 75 percent of the monthly pay of the first step of grade 2 of the General Schedule or actual pay, whichever is less.

(b) *Death.* Compensation for death is computed on a minimum pay equal to the first step of grade 2 of the General Schedule. The total compensation may not exceed the employee's pay or 75 percent of the monthly pay of the highest step of grade 15 of the General Schedule, except that compensation is allowed to exceed the employee's monthly pay if such excess is created by authorized cost of living increases.

§ 10.301 Temporary total disability rate.

(a) Compensation based on loss of wages is payable, subject to the provisions of 5 U.S.C. 8117, after the 45th day in traumatic injuries or from the beginning of pay loss in all other types of injuries.

(b) When an injured employee loses pay due to temporary total disability resulting from an injury, compensation

is payable at the rate of 66⅔ percent of the pay rate established for compensation purposes. The compensation rate is increased to 75 percent when there are one or more dependents. Dependents include a wife or husband; an unmarried child under 18 years of age or if over 18, incapable of self-support, or a student (until reaching 23 years of age or completing four years of school beyond the high school level); or a wholly dependent parent. Compensation begins when the employee starts to lose pay if the injury causes permanent disability or if there is pay loss for more than 14 days, otherwise compensation begins on the fourth day after pay stops. Compensation may not be paid while an injured employee receives pay for leave or is otherwise in a continuation of pay status. The employee has the right to elect whether to receive pay for leave or to receive compensation.

§ 10.302 Permanent total disability rate.

When the injury causes permanent total disability, an injured employee is entitled to compensation until death unless the employee is medically or vocationally rehabilitated. Some, although not all, of the examples of permanent total disability are loss, or loss of use, of both arms; or both feet; or both legs; or both eyes or the sight thereof. Compensation for total disability equals 66⅔ percent of the employee's pay, and 75 percent when there is a dependent [see § 10.301(b) 1]. The employee may receive additional compensation, not to exceed \$500 per month, when the services of a full time attendant are needed because of the disability.

§ 10.303 Partial disability rate.

(a) *Loss of wage-earning capacity.* An injured employee may receive compensation computed on loss of wage-earning capacity when unable to return to usual employment because of partial disability as a result of the injury. The compensation will equal 66⅔ percent of the employee's loss. It will equal 75 percent of the loss when there is a dependent [see § 10.301(b) 1]. The compensation will be paid so long as there is a loss of wage-earning capacity.

(b) *Scheduled awards.* Compensation is provided for specified periods of time for the permanent loss or loss of use, of each of certain members, organs, and functions of the body. Compensation for proportionate periods of time is payable for partial loss, or loss of use of each member, organ, or function. The compensation for scheduled awards will equal 66⅔ percent of the employee's pay, and 75 percent of the pay when there is a dependent. Proper and equitable compensation, not to exceed \$3,500 may be paid for serious disfigurement of the face, head, or neck, if of a character likely to handicap a person in securing or maintaining employment. Compensation for loss of wage-earning capacity may be paid after the schedule expires.

§ 10.304 Schedule compensation rate.

(a) Pursuant to 5 U.S.C. 8107, compensation is provided for the permanent partial or permanent total loss of use of

specified members of the body and internal and external organs as well as for serious disfigurement of the face, head, or neck. A new section, 5 U.S.C. 8107(c) (22) added by Pub. L. 93-416, 88 Stat. 1145, provides that in addition to the member and organs specifically enumerated in the compensation schedule the Secretary may provide for the payment and schedule compensation not to exceed 312 weeks of compensation for such internal and external organs as is deemed appropriate. Pursuant to authority contained in 5 U.S.C. 8107(c) (22) certain specified internal and external organs are added to the compensation schedule as follows:

	Weeks
Breast (one)-----	52
Kidney (one)-----	156
Larynx -----	160
Lung (one)-----	156
Penis -----	205
Testicle (one)-----	52
Tongue -----	160

(b) The organs added to the compensation schedule in paragraph (a) of this section have been so added subsequent to studies undertaken by the OWCP. Continuing study in this area may, in the future, result in the further extension of the compensation schedule. Such further extensions shall have retroactive application back to the effective date of this section if such retroactive application is deemed appropriate by the Director.

(c) Schedule compensation rates shall be determined as provided in § 10.302 and § 10.303 of this part. Such amounts as are determined appropriate pursuant to the Act and this part are:

(1) Payable regardless of whether the cause of the impairment originates in a part of the body other than the impaired member or organ;

(2) Payable regardless of whether the disability also involves another impairment of the body; and

(3) In addition to compensation for temporary total or temporary partial disability.

§ 10.305 Death benefit rates, conditions of eligibility.

(a) When there are no children entitled to compensation the employee's widow or widower may receive compensation equal to 50 percent of the employee's pay until death or remarriage. Upon remarriage, a widow or widower will be paid a lump sum equal to 24 times the monthly compensation being paid on his or her own behalf, except that if such remarriage occurs on or after the age of 60, the lump sum payment shall not be made and compensation shall continue until the beneficiary's death.

(b) When there is a child entitled to compensation, the compensation for the widow or widower will equal 45 percent of the employee's pay plus 15 percent for each child, but shall not exceed 75 percent of the employee's pay. A child is entitled to compensation until he or she dies, marries, or reaches 18 years of age, or if over 18 and incapable of self-support, until he or she becomes capable of self-support. If an unmarried child is a

student when reaching 18 years of age, compensation may be continued for as long as the child remains a student or until he or she marries. It may not, however, be continued beyond the end of the semester or enrollment period after the child reaches 23 years of age or has completed four years of school beyond the high school level.

§ 10.306 Burial and transportation benefits.

In the case of an employment related death of an employee a sum, not to exceed \$800, may be paid for funeral and burial expenses. When an employee's home is within the United States, an additional sum may be paid for transporting the remains to the home if the employee dies away from home, official duty station, or outside the United States. An additional sum of \$200 is paid to the personal representative of the decedent for reimbursement of the costs of termination of the decedent's status as an employee of the United States.

ADJUSTMENTS TO BENEFITS

§ 10.310 Buy back of annual or sick leave.

An employee may decide to take sick and/or annual leave in order to avoid possible interruption of income. If such employee does so decide and his or her claim for compensation is subsequently approved, such employee may arrange with his or her employing establishment to "buy back" the leave used and have it reinstated to such employee's account. The compensation to which the employee is entitled, may be used to pay a part of the "buy back" cost and the employee shall be obligated to pay the balance. The amount the employee will be required to pay will depend on several factors such as length of the period of disability and the amount of Federal income tax which is withheld from his or her leave pay. The employing agency shall help the employee determine how much the "buy back" cost will be in his or her case. If an employee uses leave and decides to buy it back, such employee may file a claim for compensation on Form CA-4 while still in leave status. In the interim, the Office shall consider and resolve any points at issue. No compensation payments shall be paid, however, while the employee is still in leave status. Arrangements to "buy back" leave, shall be made with the employing agency. Such agency shall make arrangements to have compensation paid directly to its account for the part of the "buy back" cost which is covered. Salary continuation payments made under 5 U.S.C. 8118 shall not be considered compensation as defined by the Act. If an employee elects to use annual or sick leave during the initial 45 day period of salary continuation pursuant 5 U.S.C. 8118, such employee may not "buy back" his or her leave by claiming compensation for such period.

§ 10.311 Lump sum awards.

(a) The liability of the United States for compensation to a beneficiary in the case of death or of permanent total or

permanent partial disability may be discharged by a lump-sum payment equal to the present value of all future payments of compensation computed at 4 percent true discount compounded annually if—

(1) The monthly payment to the beneficiary is less than \$50 a month; or

(2) The beneficiary is or is about to become a nonresident of the United States; or

(3) The Secretary of Labor determines that it is for the best interest of the beneficiary.

(b) The probability of the death of the beneficiary before the expiration of the period during which he or she is entitled to compensation shall be determined according to the most current United States Life Tables, as developed by the United States Department of Health, Education, and Welfare, which shall be updated from time to time, but the lump-sum payment to a widow or widower of the deceased employee may not exceed 60 months' compensation. The probability of the happening of any other contingency affecting the amount or duration of compensation shall be disregarded.

(c) On remarriage, a widow or widower, entitled to compensation under 5 U.S.C. 8133, shall be paid a lump sum equal to 24 times the monthly compensation payment (excluding compensation on account of another individual) to which he or she was entitled immediately before the remarriage.

(d) No claimant possesses an absolute right to a lump sum award. Lump sum awards shall be made exclusively by the Director, acting within his or her discretion, and no lump sum award shall be made unless it is apparent to the Director that such an award is in the best interests of the claimant.

§ 10.312 Assignment of claim, claims of creditors.

An assignment of a claim for compensation is void. Compensation and claims for compensation are exempt from claims of creditors.

§ 10.313 Dual benefits.

(a) *Civil service annuity and compensation.* Except as is otherwise provided by law a person may not concurrently receive compensation pursuant to the Act and a retirement or survivor annuity from the Civil Service Commission. Such beneficiary shall elect to receive the more advantageous benefits.

(b) *Military retirement/retainer pay and compensation.* 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).

§ 10.314 Overpayments.

(a) Whenever by reason of an error of fact or law an overpayment has been made to an individual who is entitled to further payments, proper adjustment shall be made by decreasing subsequent

payments of compensation, having due regard to 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 resulting hardship upon such individual. In the event such individual dies before such adjustment has been completed a similar adjustment shall be made by decreasing subsequent payments, if any, payable under this Act with respect to such individual's death.

(b) Where there are no further payments due and an overpayment has been made to an individual by reason of an error of fact or law such individual, as soon as the mistake is discovered or his attention is called to the same, shall refund to the Office any amount so paid, or upon failure to make such refund the Office may proceed to recover the same.

(c) There shall be no adjustment or recovery under paragraphs (a) or (b) of this section, by the United States in any case where incorrect payment has been made to an individual who is without fault and where adjustment or recovery would defeat the purpose of this Act or would be against equity and good conscience.

(d) If a claim for compensation is denied by the OWCP, continuation of pay made under 5 U.S.C. 8118, shall, at the option of the employee, be charged to sick or annual leave or shall be deemed overpayments of pay within the meaning of Section 5584, Title 5 U.S.C.

Subpart E—Furnishing Medical Treatment

§ 10.400 Medical treatment, hospital services, transportation, etc.

(a) All medical services, appliances, drugs, and supplies which in the opinion of the Office are necessary for treatment of an injury as provided by the Act shall be furnished to employees of the United States and to others covered by the Act. These may be furnished by or upon the order of either U.S. medical officers and hospitals, or at the employee's option, by or on the order of physicians or hospitals designated or approved by the Office, for injuries sustained while in the performance of duty, including diseases proximately caused by the conditions of employment, whether resulting in loss of time or not, as well as the necessary means of transportation incident to the securing of such services, appliances, drugs, and supplies. An injured employee will be furnished transportation, or be reimbursed for transportation expense, and shall be reimbursed for expenses incident to the securing of services, appliances and supplies necessary in the treatment of an injury related condition, when authorized by the Office or by the employee's official superior. All duly qualified physicians as defined in § 10.402 are considered designated or approved by the Office.

(b) An employee has only an initial choice of physicians. A change of physicians will be permitted only upon approval of the Office after the employee submits an explanation for his or her desire to change.

(c) The medical facilities of the U.S. Public Health Service generally are available at any time for the furnishing of medical treatment. The medical facilities of the Army, Navy, Air Force and Veterans Administration may be used when previous arrangements have been made on a case-by-case basis with the director of the hospital or clinic.

(d) Federal health service units or other occupational health service facilities established under the provisions of the Act of August 8, 1946, as amended (5 U.S.C. 7901), are not U.S. medical officers and hospitals as used in this part. Under criteria established by the Bureau of the Budget (now Office of Management and Budget) in Circular No. A-72 of June 18, 1965, these health service units or occupational health service facilities shall only provide emergency diagnosis and first (initial) treatment of injury or illness such as is necessary during working hours and that are within the competence of the professional staff and facilities of the health service unit or facility (see paragraph 4.a of OMB Circular A-72). Any other treatment and medical care by these units or facilities in instances of injury or illness sustained in the performance of duty must be specifically authorized by a physician providing medical care under the specific authorization of the Office (see paragraph 4.d of OMB Circular A-72).

(e) The official superior shall give the injured employee an opportunity to select the appropriate physician to whom he or she wishes to be referred. In medical emergencies, any qualified physician in the area shall be authorized to provide medical care as appropriate.

(f) The attending physician shall arrange for necessary hospital care at semi-private rates (unless the nature of the case requires care in a private room) special nursing services, x-ray examination, and consultations by specialists. In cases of an emergency nature or cases involving unusual circumstances the Office may in the exercise of its discretion authorize treatment otherwise than as provided for in this part, or it may approve payment for medical expenses incurred otherwise than as authorized in this part.

§ 10.401 Physician and medical services, etc., defined.

(a) The term "physician" as used in this subpart includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. The term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.

(b) The term "medical, surgical, and hospital services and supplies" as used in this part, includes services and supplies by surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, osteopathic practitioners and hospitals within the scope of their practice as defined by State law. Reimbursable

chiropractic services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. Also included for payment or reimbursement are physical examinations (and related laboratory tests) and x-rays performed by or required by a chiropractor to diagnose a subluxation of the spinal column. A chiropractor may interpret his or her x-rays as may any other physician as used in this subpart.

§ 10.402 Official authorization for treatment.

(a) When an employee sustains an injury by accident under circumstances entitling the employee to medical treatment, the employee's official superior shall promptly issue to the employee a request for examination and/or treatment on Form CA-16. The employee shall carry the Form CA-16, where practical, from the place of employment to the physician. Form CA-16 shall be used primarily for an injury sustained by accident, but may also be used to authorize examination and treatment for disease or illness, provided the official superior has contacted the Office for instructions on authorizing examination and treatment. In emergency situations, the Office shall be contacted by telephone.

(b) In determining the use of medical facilities, consideration must be given to availability, the employee's condition, and the method and means of transportation. Generally, 25 miles from the place of injury, the employing agency, or the employee's home is a reasonable distance to travel but other pertinent factors must also be taken into consideration.

§ 10.403 Emergency treatment.

In cases of injury by accident where emergency treatment is necessary, any qualified local physician may render initial treatment. If oral authorization for such treatment is given by the official superior, Form CA-16 shall be issued within 48 hours thereafter. Animal bites and eye injuries are considered medical emergencies and medical care by the nearest qualified physician is permissible. Further treatment, if necessary, shall be obtained as soon as practicable at the employee's option as provided in this part. It is the duty of the official superior to authorize initial medical treatment for acute injuries, exclusive of disease or illness, and to transfer the employee at the employee's option to the care of a local U.S. medical officer or hospital or, at the employee's option, to a private physician or hospital designated or approved by the Office for any subsequent treatment needed. If unable to comply promptly with this requirement, the official superior shall communicate with the Office for instructions.

§ 10.404 Medical treatment for recurrence of disability.

If an injured employee complains of a recurrence of disability (whether or not he or she is disabled for work), after having recently been discharged from medical treatment, on account of an injury by accident recognized as compen-

sable by the Office under circumstances from which it may reasonably be inferred that such disability is the result of such injury, and the place of employment is the same as at the time of such injury, the official superior in his discretion may issue a Form CA-16, provided that not more than 6 months shall have elapsed since the final action of the Office upon the case. In any case in which the employee complains of a recurrence of disability with respect to which there may be doubt that the disability is the result of the injury or in any case in which the final action of the Office shall have been taken more than 6 months prior to complaint the official superior shall communicate with the Office and request instructions, stating all of the pertinent facts in the communication. In all other cases the employee shall communicate with the Office and request such treatment.

§ 10.405 Medical treatment in doubtful cases.

Cases of a doubtful nature, so far as compensability is concerned, shall be referred by the official superior to a United States medical officer or hospital, or at the employee's option, to a private physician or hospital designated or approved by the Office, or as otherwise provided in this part, using a Form CA-16 for medical services as indicated in 6B of the form. This authorizes the necessary diagnostic studies and emergency treatment pending receipt of advice from the Office. A statement of all pertinent facts relating to the particular case shall also be forwarded immediately to the Office for consideration. If the medical examination or other information received subsequent to the issuance of authorization for treatment discloses that the condition for which treatment was rendered is not due to an injury, the person issuing the authorization shall immediately notify the physician or hospital that no further treatment shall be rendered at the expense of the Office. In cases of an emergency or cases involving unusual circumstances, the Office may, in the exercise of its discretion, authorize treatment otherwise than as provided for in this part, or it may approve payment for medical expenses incurred otherwise than as authorized in this section. No authority for examination or for medical or other treatment shall be given by the official superior in any case already disallowed by the Office.

§ 10.406 Authority for dental treatment.

All necessary dental treatment, including repairs to natural teeth, false teeth, and other prosthetic dental devices, needed to repair damage or loss caused by an employment related injury shall be obtained at the employee's option from a U.S. Medical Officer or hospital, or from a private dentist, physician or hospital, upon authorization obtained in advance from the Office.

§ 10.407 Medical examination.

(a) An injured employee shall be required to submit to examination by a U.S. Medical Officer or by a qualified pri-

vate physician approved by the Office as frequently and at such times and places as in the opinion of the Office may be reasonably necessary. The injured employee may have a qualified physician, paid by him or her, present at the time of such examination. For any examination required by the Office an injured employee shall be paid all expenses incident to such examination which, in the opinion of the Office are necessary and reasonable, including transportation and actual loss of wages incurred in order to submit to the examination authorized by the Office.

(b) If the employee refuses to submit himself or herself for or in any way obstructs any examination, the employee's right to claim compensation under the Act shall be suspended until such refusal or obstruction ceases. No compensation shall be payable while such refusal or obstruction continues, and the period of such refusal or obstruction shall be deducted from the period for which compensation is payable to the employee.

§ 10.408 Medical referee examination.

If there should be a disagreement between the physician making the examination on the part of the United States and the injured employee's physician, the Office shall appoint a third physician, qualified in the appropriate speciality, who shall make an examination. The physician appointed shall be one not previously connected with the case.

§ 10.409 Furnishing of orthopedic and prosthetic appliances, and dental work.

When an orthopedic or prosthetic appliance, such as an artificial eye or limb is deemed to be necessary by the attending physician by reason of an injury which has been found by the Office to have occurred in the performance of duty, application therefor may be made to the Office, stating the necessity therefor, the approximate cost of such appliance, and a brief description thereof. The term "injury" includes damage or destruction of medical braces, artificial limbs and other prosthetic devices which shall be replaced or repaired at Office expense, [see § 10.5(a) (14)]. Applications for repairs to such an appliance furnished by the Office will be made in the same manner. Where an artificial denture is necessary in such cases, application therefor may similarly be made.

§ 10.410 Recording and submission of medical reports.

(a) Medical officers and private physicians and hospitals shall keep adequate records of all cases treated by them so as to be able to supply the Office with a history of the employee's accident, the exact description, nature, location, and extent of injury, the x-ray findings or other studies, if x-ray examination or other studies have been made, the nature of the treatment rendered, and the degree of impairment arising from the injury.

(b) Form CA-16 provides for the furnishing of the initial medical report. Form CA-20 may also be used for the initial report and for subsequent report. The medical report Form CA-20a attached to Form CA-8 is to be utilized in instances where continued compensation is claimed on such form. These reports shall be forwarded promptly to the Office. In cases of disabling traumatic injuries Form CA-17 shall be used to obtain interim reports concerning the employee's duty status. These reports are necessary to support continuation of pay up to 45 days.

(c) Detailed supplementary reports in narrative form shall be made by the physician at approximately monthly intervals in all cases of serious injury or disease, especially injuries of the head and back, and including all cases requiring hospital treatment or prolonged care. The supplementary report shall show the date the employee was first examined or treated, the patient's complaint, the condition found on examination, the diagnosis and medical opinion as to any relationship between the impairment and the injury or employment factors alleged, report as to any other impairments found not due to injury, the treatment given or recommended for the injury alleged, the extent of impairment affecting the employment as a result of the injury, the actual degree of loss of active or passive motion of an injured member, the amount of atrophy or deformity in a member, the decrease, if any, in strength, the disturbance of sensation, the prognosis for recovery, and all other material findings. If the services of a specialist are required in the examination or treatment of the employee, a report of his findings upon examination, his diagnosis, his opinion as to the relationship between the impairment and the injury and/or conditions of employment, the medical rationale for his opinion, the treatment recommended by him, a statement of the extent of impairment as a result of the injury or employment and the prognosis shall be forwarded to the Office for consideration in conjunction with other reports. The requirement of this section or of any section in this part with respect to the form of medical, dental, hospital or other reports may be waived by the Office.

§ 10.411 Submission of bills for medical services, appliances and supplies.

All charges for medical, hospital, surgical, or other treatment or care of, or appliances and supplies furnished to injured employees, supported by medical evidence as provided in § 10.410 shall be itemized on the physicians, billhead stationery hospital's or supplier's as appropriate and shall be forwarded promptly to the Office for consideration. Charges may also be submitted at the time of submission of the initial report by completing item 14 on the back of Form CA-16. A separate bill shall be submitted when the employee is discharged from treatment except when treatment extends for

more than 30 days, in which event, bills shall be submitted at the end of each 30 day period.

§ 10.412 Reimbursement for medical expenses, transportation costs, loss of wages, and incidental expenses.

If bills for medical, surgical, nursing, dental, or hospital services or supplies, or appliances, have been paid by an injured employee on account of an injury incurred while in the performance of duty, an itemized bill, receipted and signed by the person who has received payment, together with a medical report as provided in § 10.410 may be submitted to the Office for consideration. If payment has been made to a hospital, corporation or firm, the receipted bill shall bear the signature or initials of the person acting for the payee. If receipted by a mechanical stamp or device, which shows clearly its intent and purpose, the usual formalities attendant to the receipting of bills may be dispensed with. Where the means of transportation is not furnished by the United States Government, a claim for reimbursement of the cost of necessary transportation, and of necessary incidental expenses incurred by an injured employee for travel for the purpose of securing medical or hospital treatment, appliances or supplies, or for medical examination, should be submitted promptly to the Office for consideration. Standard Forms 1012 and 1012a properly executed, shall be used for this purpose. Where transportation by automobile is used, reimbursement may be made at the rate per mile fixed by law, executive administrative, or other order for employees of the United States authorized to travel at Government expense.

Subpart F—[Reserved]

Subpart G—Cases Involving the Liability of a Third Party

§ 10.500 Prosecution of third party action by beneficiary.

If an injury or death for which benefits are payable under the Act is caused under circumstances creating a legal liability upon some person other than the United States to pay damages therefor, the Office may require the beneficiary to prosecute an action for damages against such third person. When so required, such cause of action shall be prosecuted in the name of the injured employee or of his or her personal representative by an attorney of the beneficiary's choice.

§ 10.501 Assignment of third party.

If an injury or death for which benefits are payable under the Act is caused under circumstances creating a legal liability upon some person other than the United States to pay damages therefor, the beneficiary shall, if required by the Office assign any right of action he may have to the United States. All such assignments shall be in writing and no such cause of action shall vest in the United States unless and until the assignment is accepted by the Office.

§ 10.502 Refusal to assign or prosecute claim when required; effect.

Refusal on the part of a beneficiary to assign his right of action to the United States or to prosecute an action in his own name when required to do so pursuant to § 10.500 or § 10.501, shall deprive the beneficiary of all rights to benefits under the Act.

§ 10.503 Distribution of damages recovered by beneficiary.

If an injury for which benefits are payable under the Act is caused under circumstances creating a legal liability upon some person other than the United States to pay damages therefor, and, as a result of suit brought by the beneficiary or by someone on his or her behalf, or as a result of settlement made by him or her or on his or her behalf in satisfaction of the liability of such other person, the beneficiary shall recover damages or receive any money or other property in satisfaction of the liability of such other person on account of such injury or death, the proceeds of such recovery shall be applied as follows:

(a) If an attorney is employed, a reasonable attorney's fee and cost of collection, if any, shall first be deducted from the gross amount of the settlement;

(b) The beneficiary is entitled to retain one-fifth of the net amount of the money or other property remaining after the expenses of a suit or settlement have been deducted, plus an amount equivalent to a reasonable attorney's fee proportionate to any refund to the United States;

(c) There shall then be remitted to the Office, the benefits which have been paid on account of the injury, which shall include payments made on account of medical or hospital treatment, funeral expense, and any other payments made under the Act on account of the injury or death;

(d) Any surplus then remaining may be retained by the injured employee or his dependents, and the net amount of damages received by the beneficiary shall be credited against future payment of benefits to which the beneficiary may be entitled under the Act on account of the same injury or death.

§ 10.504 Distribution of damages where cause of action is assigned.

If recovery is realized upon a cause of action assigned to the United States pursuant to 5 U.S.C. 8131, the money or other property so received shall be applied in the following manner: After deducting the amount of any payments made under the Act in respect of the injury or death on account of which the cause of action arose, and the expense of such realization or collection, which sum shall be placed to the credit of the proper fund of the Office, the surplus, if any, of such amount received shall be paid to the beneficiary and credited pro tanto upon any future payment of benefits payable to him on account of the same injury. However, the beneficiary is entitled to not less than one-fifth of the net amount of a settlement or recovery

remaining after the expenses of such realization or collection have been deducted.

§ 10.505 Office may require beneficiary to settle or compromise third party suit.

Where a beneficiary under the Act has commenced an action in his or her own name or has initiated such action through an administrator of a deceased person to recover damages against the third party liable for the injury or death, the Office shall, at all times, have authority to require the beneficiary or such administrator to settle or compromise such action whenever it shall determine that further prosecution of the cause of action is not warranted. Refusal on the part of such beneficiary or other person acting in the interest of the beneficiary to make such settlement or to effect such compromise when so directed shall be deemed to be sufficient cause for refusal on the part of the Office to pay or cause to be paid any benefits under the Act on account of the same injury or death, or the Office may suspend or cause to suspend the payment of benefits under the Act during the period of such refusal.

6. Part 25 of Subchapter B—Federal Employees' Compensation Act—is revised to read as follows:

PART 25—COMPENSATION FOR DISABILITY AND DEATH OF NONCITIZEN FEDERAL EMPLOYEES OUTSIDE THE UNITED STATES

Subpart A—General Provisions

- Sec. 25.1 General statement.
- 25.2 General adoption of local law.
- 25.3 General provisions relating to special schedule.
- 25.4 Authority to settle and pay claims.
- 25.5 Applicable criteria.
- 25.6 Third and fourth country nationals.
- 25.7 Non-citizen residents of possessions.

Subpart B—Special Schedule of Compensation

- 25.11 Compensation for disability.
- 25.12 Compensation for death.
- 25.13 General provisions.

Subpart C—Extensions of Special Schedule of Compensation

- 25.21 Republic of the Philippines.
- 25.22 Australia.
- 25.23 [Reserved]
- 25.24 [Revoked]
- 25.25 Republic of Korea.
- 25.26 Japanese seamen.
- 25.27 Territory of Guam (nonresident aliens).

AUTHORITY. (Sec. 32, 39 Stat. 749, as amended; (5 U.S.C. 8145, 8149); 1946 Reorg. Plan No. 2, sec. 3, 3 CFR 1943-1948 Comp., p. 1064; 60 Stat. 1095; 1950 Reorg. Plan No. 19, sec. 1, 3 CFR 1949-1953 Comp., p. 1010; 64 Stat. 1271, unless otherwise noted)

Subpart A—General Provisions

§ 25.1 General statement.

The provisions of this part shall apply in respect to compensation, under the Federal Employees' Compensation Act, payable only to employees of the United States who are neither citizens nor residents of the United States, any territory, or Canada, or payable to any dependents of such employees. It has previously been determined, pursuant to 5 U.S.C. 8137, that the amount of com-

ensation, as provided under such Act, 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, in respect to cases of such employees whose injury (or injury resulting in death) has occurred subsequent to December 7, 1941, or may occur, the following provisions shall be applicable.

§ 25.2 General adoption of local law.

(a) Pursuant to the provisions of 5 U.S.C. 8137, the benefit features of local workers' compensation laws, or provisions in the nature of workers' compensation, in effect in the areas referred to in § 25.1, shall, effective as of December 7, 1941, by adoption and adaptation, as recognized by the Director, Office of Workers' Compensation Programs, apply in the cases of the employees specified in § 25.1: *Provided, however*, That there is not established and promulgated under this part, for the particular locality, or for a class of employees in the particular locality, a special schedule of compensation for injury or death.

(b) The benefit provisions as thus adopted or adapted are those dealing with the money payments for injury and death (including provisions dealing with medical, surgical, hospital and similar treatment and care), 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 Federal Employees' Compensation Act. 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 Federal Employees' Compensation Act shall apply, unless modified by further specification in this section. 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 the effective date of the regulations in this part 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

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Director. In selecting the benefit structure to be applied, equity and administrative feasibility shall be given due consideration, as well as local custom.

(e) Compensation for disability and death of noncitizens 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 Federal Employees' Compensation Act.

§ 25.3 General provisions relating to special schedule.

The special schedule established by Subpart B of this part is intended as the vehicle of general basic provisions, to be adapted, with such modifications as may be necessary, and as local conditions outside the United States require. The application of this special schedule will be by specific and appropriate provision in the regulations in this part, such provision specifying the locality to which applied, and the particular modifications of or additions to the schedule, as may be made.

§ 25.4 Authority to settle and pay 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 (a) 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 (b) to compromise and pay claims for any benefits provided for under this part, including claims in which there is a dispute as to jurisdiction or other facts, or questions of law. The Director shall, in administrative instructions to the particular representative concerned, establish such procedures in respect to action under this section as may be deemed necessary, and may specify the scope of any administrative review of such action.

§ 25.5 Applicable criteria.

The following criteria shall apply to cases of employees specified in § 25.1 and such cases, 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.

(79 Stat. 592)

§ 25.6 Third and fourth country nationals.

(a) Definitions.

- (1) A third country national is a per-

son 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.

(2) 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 otherwise meets the definition of third country national.

(3) "Benefits applicable to local hires" are the benefits provided in this part by local law or special schedule, as determined by the Director. In relation to a United States territory or possession, local law means only the law of the particular territory or possession.

(b) Benefits payable.

(1) 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.

(2) 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.

(3) Where equitable considerations as determined by the Director so warrant, a fourth country national may be awarded benefits applicable to local hires in his home country.

§ 25.7 Noncitizen residents of possessions.

An employee who is a bona fide permanent resident of any United States possession, territory, commonwealth or trust territory shall be accorded the full benefits of the basic law (Federal Employees' Compensation Act, as amended), provided that the application of the minimum benefit provisions therein shall be governed by the restrictions set forth in 5 U.S.C. 8138.

Subpart B—Special Schedule of Compensation

§ 25.11 Compensation for disability.

Compensation for disability shall be paid to the employee as follows:

(a) *Permanent total disability.* In case of disability, total in character and permanent in quality, 66⅔ per centum of the monthly pay during the continuance of such disability.

(b) *Temporary total disability.* In case of disability, total in character and temporary in quality, 66⅔ per centum of the monthly pay during the continuance of such disability.

(c) *Permanent partial disability.* In case of disability, partial in character and permanent in quality, 66⅔ per centum 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-week' 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 per centum of vision: Compensation for loss of binocular vision, or for 80 per centum 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 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 sections (1) to (19), inclusive, of this paragraph 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 com-

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 paragraph (c) (1) to (21), inclusive, 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 case of disability, partial in character and temporary in quality, during the continuance 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.

§ 25.12 Compensation for death.

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 widow, if there is no child, 35 per centum of the monthly pay until her death or remarriage.

(c) To the widower, if there is no child and if wholly dependent for support upon the deceased employee at the time of her death, 35 per centum of the monthly pay until his death or remarriage.

(d) To the widow or widower, if there is a child, the compensation payable under paragraph (b) or (c) of this section, and in addition thereto 10 per centum of the monthly wage for each child, not to exceed a total of 66% per centum for such widow or widower and children. If a child has a guardian other than the surviving widow or widower, 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.

(e) To the children, if there is no widow or widower, 25 per centum of such monthly pay for one child and 10 per centum thereof for each additional child, not to exceed a total of 66% per centum 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.

(f) To the parents, if one is wholly dependent for support upon the deceased

employee at the time of his death and the other is not dependent to any extent, 25 per centum of such monthly pay; if both are wholly dependent, 20 per centum 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 widow, widower, or child, but if there is a widow, widower, 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 widow, widower, and children, will not exceed a total 66% per centum of such pay.

(g) 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 per centum of such pay to such dependent if more than one are wholly dependent; 30 per centum 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 per centum of such pay divided among such dependents share and share alike. The compensation to such beneficiaries shall be paid if there is no widow, widower, child, or dependent parent. If there is a widow, widower, 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 widow, widower, children, and dependent parents, will not exceed a total of 66% per centum of such pay.

(h) The compensation of each beneficiary under paragraphs (f) and (g) 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 grandparent 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 child, for such child, as the Director in his or her discretion shall determine.

(i) Upon the cessation of any person's compensation for death under this subpart, the compensation of any remaining person entitled to the continuation of 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 was terminated.

(j) In case there are two or more classes of persons entitled to compensation for death under this subpart, and the apportionment of such compensation as above provided would result in injustice, the Director may in his or her discretion modify the apportionments to meet the requirements of the case.

§ 25.13 General provisions.

(a) The definitions of terms in the Federal Employees' Compensation Act of

September 7, 1916, as amended shall apply to terms used in this subpart.

(b) The provisions of such Act unless modified by this subpart, or unless otherwise inapplicable, shall be applied whenever possible in the application of this subpart.

(c) The provisions of the regulations for the administration of the Federal Employees' Compensation Act, as amended, and as 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 Special Schedule of Compensation

§ 25.21 Republic of the Philippines.

(a) *Modified special schedule of compensation.* 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 cases are entitled to share equally):

(1) Widow, dependent widower, 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 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 subparagraphs (1) through (19) of paragraph (c) of the special schedule, 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 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 extent of entitlement is established.

(k) *Exceptions.* The Director in his or her discretion may make exceptions to these regulations 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.

§ 25.22 Australia.

(a) The special schedule of compensation established by Subpart B of this part shall apply with the modifications or additions specified in paragraph (b) of this section, as of December 8, 1941, in Australia, 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 Federal Employees' Compensation Act.

(5 U.S.C. 8137, 8138, 8145, 8149); Reorganization Plan No. 19 of 1950 (64 Stat. 1271, 3 CFR 1949-1953 Comp., p. 1010); and General Order No. 46 (Rev.), (24 FR 8472)

§ 25.23 [Reserved]

§ 25.24 [Reserved]

§ 25.25 Republic of Korea.

(a) *Modified special schedule of compensation.* 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 Korea, 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 specified 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 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 injury or death occurring on or after December 1, 1954, 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 survivor or survivors in the following order of priority:

(1) Spouse.

(2) Unmarried children who were supported by or lived with the deceased employee at the time of death.

(3) Parents who were supported by or lived with the deceased employee at the time of death.

(4) Unmarried grandchildren who were supported by or lived with the deceased employee at the time of death.

(5) Grandparents who were supported by or lived with the deceased employee at the time of death.

(6) Unmarried brothers and sisters who were supported by or lived with the deceased employee at the time of death.

(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 subparagraphs (1) through (19) of paragraph (c) of the special schedule, 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 of 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 extent of entitlement is established.

(k) *Exceptions.* The Director may in his or her discretion make exception to these regulations 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.

§ 25.26 Japanese seamen.

(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 (i) of this section, as of November 1, 1971, 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 in 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 § 25.11 shall apply to the types of permanent partial disability enumerated in paragraph (c), subparagraphs (1)-(19) of that section, *Provided*, That weekly compensation shall be paid at 75 percent of the weekly wage rate, and *Further provided*, 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 [paragraph (d) of the 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 (temporary disability, permanent disability, and death) 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 accord with regulations previously promulgated.

§ 25.27 Territory of Guam (nonresident aliens).

(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 nonresident 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 subparagraphs (1) through (19) of paragraph (c) of § 25.11, 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 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 beneficiary(s).

(5 U.S.C. 8137, 8145, 8149)

Signed at Washington, D.C. this 7th day of February, 1975.

HERBERT A. DOYLE, JR.,
Director, Office of Workers'
Compensation Programs.

[FR Doc. 75-4173 Filed 2-13-75; 8:45 am]