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2000 Comp., p. 321; Secretary of Labor's Order No. 4-2001, 66 FR 29656.

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Subpart A—General Provisions

INTRODUCTION

§ 30.0 What are the provisions of EEOICPA, in general?

Part B of the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA or Act), 42 U.S.C. 7384 *et seq.*, provides for the payment of compensation benefits to covered Part B employees and, where applicable, survivors of such employees, of the United States Department of Energy (DOE), its predecessor agencies and certain of its contractors and subcontractors. Part B also provides for the payment of supplemental compensation benefits to other covered Part B employees who have already been found eligible for benefits under section 5 of the Radiation Exposure Compensation Act, as amended (RECA), 42 U.S.C. 2210 note, and where applicable, survivors of such persons. Part E of the Act provides for the payment of compensation benefits to covered Part E employees and, where applicable, survivors of such employees. The regulations in this part describe the rules governing filing, processing, and paying claims for benefits under both Part B and Part E of EEOICPA.

(a) Part B of EEOICPA provides for the payment of either lump-sum monetary compensation for the disability of a covered Part B employee due to an occupational illness or for monitoring for beryllium sensitivity, as well as for medical and related benefits for such illness. Part B also provides for the payment of monetary compensation for the disability of a covered Part B employee to specified survivors if the employee is deceased at the time of payment.

(b) Part E of EEOICPA provides for the payment of monetary compensation for the established wage-loss and/or impairment of a covered Part E employee due to a covered illness, and for medical and related benefits for such covered illness. Part E also provides for

the payment of monetary compensation for the death (and established wage-loss, where applicable) of a covered Part E employee to specified survivors if the covered Part E employee is deceased at the time of payment.

(c) All types of benefits and conditions of eligibility listed in this section are subject to the provisions of EEOICPA and this part.

§ 30.1 What rules govern the administration of EEOICPA and this chapter?

In accordance with EEOICPA, Executive Order 13179 and Secretary's Order No. 4-2001, the primary responsibility for administering the Act, except for those activities assigned to the Secretary of Health and Human Services (HHS), the Secretary of Energy and the Attorney General, has been delegated to the Assistant Secretary of Labor for Employment Standards. The Assistant Secretary, in turn, has delegated the responsibility for administering the Act to the Director of the Office of Workers' Compensation Programs (OWCP). Except as otherwise provided by law, the Director of OWCP and his or her designees have the exclusive authority to administer, interpret and enforce the provisions of the Act.

§ 30.2 In general, how have the tasks associated with the administration of EEOICPA claims process been assigned?

(a) In E.O. 13179, the President assigned the tasks associated with administration of the EEOICPA claims process among the Secretaries of Labor, HHS and Energy, and the Attorney General. In light of the fact that the Secretary of Labor has been assigned primary responsibility for administering EEOICPA, almost the entire claims process is within the exclusive control of OWCP. This means that all claimants file their claims with OWCP, and OWCP is responsible for granting or denying compensation under the Act (see §§ 30.100 through 30.102). OWCP also provides assistance to claimants and potential claimants by providing information regarding eligibility and other program requirements, including information on completing claim forms and the types and availability of medical testing and di-

agnostic services related to occupational illnesses under Part B of the Act and covered illnesses under Part E of the Act. In addition, OWCP provides an administrative review process for claimants who disagree with its recommended and final adverse decisions on claims of entitlement (see §§ 30.300 through 30.320).

(b) However, HHS has exclusive control of the portion of the claims process under which it provides reconstructed doses for certain radiogenic cancer claims (see § 30.115). HHS also has exclusive control of the process for designating classes of employees to be added to the Special Exposure Cohort under Part B of the Act, and has promulgated regulations governing that process at 42 CFR part 83. Finally, HHS has promulgated regulations at 42 CFR part 81 that set out guidelines that OWCP follows when it assesses the compensability of an employee's radiogenic cancer (see § 30.213). DOE and DOJ must, among other things, notify potential claimants and submit evidence that OWCP deems necessary for its adjudication of claims under EEOICPA (see §§ 30.105, 30.112, 30.206, 30.212 and 30.221).

§ 30.3 What do these regulations contain?

This part 30 sets forth the regulations governing administration of all claims that are filed with OWCP, except to the extent specified in certain provisions. Its provisions are intended to assist persons seeking benefits under EEOICPA, as well as personnel in the various federal agencies and DOL who process claims filed under EEOICPA or who perform administrative functions with respect to EEOICPA. The various subparts of this part contain the following:

(a) *Subpart A.* The general statutory and administrative framework for processing claims under both Parts B and E of EEOICPA. It contains a statement of purpose and scope, together with definitions of terms, information regarding the disclosure of OWCP records, and a description of rights and penalties involving EEOICPA claims, including convictions for fraud.

(b) *Subpart B.* The rules for filing claims for entitlement under

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EEOICPA. It also addresses general standards regarding necessary evidence and the burden of proof, descriptions of basic forms and special procedures for certain cancer claims.

(c) *Subpart C.* The eligibility criteria for occupational illnesses and covered illnesses compensable under Parts B and E of EEOICPA, respectively.

(d) *Subpart D.* The rules governing the adjudication process leading to recommended and final decisions on claims for entitlement filed under Parts B and E of EEOICPA. It also describes the hearing and reopening processes.

(e) *Subpart E.* The rules governing medical care, second opinion and referee medical examinations and impairment evaluations directed by OWCP as part of its adjudication of entitlement, and medical reports and records in general. It also addresses the kinds of medical treatment that may be authorized and how medical bills are paid.

(f) *Subpart F.* The rules relating to the payment of monetary compensation available under Parts B and E of EEOICPA. It includes provisions on medical monitoring for beryllium sensitivity, on the identification, processing and recovery of overpayments of compensation, and on the maximum aggregate amount of compensation payable under Part E.

(g) *Subpart G.* The rules concerning the representation of claimants in connection with the administrative adjudication of claims before OWCP, subrogation of the United States, the effect of tort suits against beryllium vendors and atomic weapons employers, and the coordination of benefits under Part E of EEOICPA with state workers' compensation benefits for the same covered illness.

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

(i) *Subpart I.* The rules relating to the adjudication of alleged periods of wage-loss of covered Part E employees. It also includes provisions on the use by OWCP of Social Security Administration earnings information and certain

medical evidence to establish compensable wage-loss.

(j) *Subpart J.* The rules relating to the adjudication of alleged permanent impairment due to the exposure of covered Part E employees to toxic substances. It includes provisions relating to the medical evaluation of ratable impairments, the rating of progressive conditions, and qualifications of physicians.

DEFINITIONS

§ 30.5 What are the definitions used in this part?

(a) *Act* or *EEOICPA* means the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (42 U.S.C. 7384 *et seq.*).

(b) *Atomic weapon* means any device utilizing atomic energy, exclusive of the means for transporting or propelling the device (where such means is a separable and divisible part of the device), the principle purpose of which is for use as, or for development of, a weapon, a weapon prototype, or a weapon test device.

(c) *Atomic weapons employee* means:

(1) An individual employed by an atomic weapons employer during a period when the employer was processing or producing, for the use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling; or

(2)(i) An individual employed at a facility that the National Institute for Occupational Safety and Health (NIOSH) reported had a potential for significant residual contamination outside of the period described in paragraph (c)(1) of this section;

(ii) By the atomic weapons employer that owned the facility referred to in paragraph (c)(2)(i) of this section, or a subsequent owner or operator of such facility; and

(iii) During a period reported by NIOSH, in its report dated October 2003 and titled "Report on Residual Radioactive and Beryllium Contamination at Atomic Weapons Employer Facilities and Beryllium Vendor Facilities," or any update to that report, to have a potential for significant residual radioactive contamination.

(d) *Atomic weapons employer* means any entity, other than the United States, that:

(1) Processed or produced, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling; and

(2) Is designated by the Secretary of Energy as an atomic weapons employer for purposes of the compensation program.

(e) *Atomic weapons employer facility* means any facility, owned by an atomic weapons employer, that:

(1) Is or was used to process or produce, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining or milling; and

(2) Is designated as such in the list periodically published in the FEDERAL REGISTER by DOE.

(f) *Attorney General* means the Attorney General of the United States or the United States Department of Justice (DOJ).

(g) *Benefit or Compensation* means the money the Department pays to or on behalf of either a covered Part B employee under Part B, or a covered Part E employee under Part E, from the Energy Employees Occupational Illness Compensation Fund. However, the term "compensation" used in section 7385f(b) of EEOICPA (restricting entitlement to only one payment of compensation under Part B) means only the payments specified in section 7384s(a)(1) and in section 7384u(a). Except as used in section 7385f(b), these two terms also include any other amounts paid out of the Fund for such things as medical treatment, monitoring, examinations, services, appliances and supplies as well as for transportation and expenses incident to the securing of such medical treatment, monitoring, examinations, services, appliances, and supplies.

(h) *Beryllium sensitization or sensitivity* means that the individual has an abnormal beryllium lymphocyte proliferation test (LPT) performed on either blood or lung lavage cells.

(i) *Beryllium vendor* means the specific corporations and named predecessor corporations listed in section

7384l(6) of the Act and any of the facilities designated as such in the list periodically published in the FEDERAL REGISTER by DOE.

(j) *Chronic silicosis* means a non-malignant lung disease if:

(1) The initial occupational exposure to silica dust preceded the onset of silicosis by at least 10 years; and

(2) A written diagnosis of silicosis is made by a medical doctor and is accompanied by:

(i) A chest radiograph, interpreted by an individual certified by NIOSH as a B reader, classifying the existence of pneumoconioses of category 1/0 or higher; or

(ii) Results from a computer assisted tomograph or other imaging technique that are consistent with silicosis; or

(iii) Lung biopsy findings consistent with silicosis.

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

(l) *Claimant* means the individual who is alleged to satisfy the criteria for compensation under the Act.

(m) *Compensation fund or fund* means the fund established on the books of the Treasury for payment of benefits and compensation under the Act.

(n) *Contemporaneous record* means any document created at or around the time of the event that is recorded in the document.

(o) *Covered beryllium illness* means any of the following:

(1) Beryllium sensitivity as established by an abnormal LPT performed on either blood or lung lavage cells.

(2) Established chronic beryllium disease (see §30.207(c)).

(3) Any injury, illness, impairment, or disability sustained as a consequence of a covered beryllium illness referred to in paragraphs (o)(1) or (2) of this section.

(p) *Covered Part E employee* means, under Part E of the Act, a Department of Energy contractor employee or a RECA section 5 uranium worker who has been determined by OWCP to have contracted a covered illness (see paragraph (r) of this section) through exposure at a Department of Energy facility or a RECA section 5 facility, as appropriate.

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(q) *Covered Part B employee* means, under Part B of the Act, a covered beryllium employee (see § 30.205), a covered employee with cancer (see § 30.210(a)), a covered employee with chronic silicosis (see § 30.220), or a covered uranium employee (see paragraph (s) of this section).

(r) *Covered illness* means, under Part E of the Act relating to exposures at a DOE facility or a RECA section 5 facility, an illness or death resulting from exposure to a toxic substance.

(s) *Covered uranium employee* means, under Part B of the Act, an individual who has been determined by DOJ to be entitled to an award under section 5 of RECA, whether or not the individual was the employee or the deceased employee's survivor.

(t) *Current or former employee as defined in 5 U.S.C. 8101(1)* as used in § 30.205(a)(1) means an individual who fits within one of the following listed groups:

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

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

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

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

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

(u) *Department* means the United States Department of Labor (DOL).

(v) *Department of Energy or DOE* includes the predecessor agencies of the DOE, including the Manhattan Engineering District.

(w) *Department of Energy contractor employee* means any of the following:

(1) An individual who is or was in residence at a DOE facility as a researcher for one or more periods aggregating at least 24 months.

(2) An individual who is or was employed at a DOE facility by:

(i) An entity that contracted with the DOE to provide management and operating, management and integration, or environmental remediation at the facility; or

(ii) A contractor or subcontractor that provided services, including construction and maintenance, at the facility.

(x)(1) *Department of Energy facility* means, as determined by the Director of OWCP, any building, structure, or premise, including the grounds upon which such building, structure, or premise is located:

(i) In which operations are, or have been, conducted by, or on behalf of, the DOE (except for buildings, structures, premises, grounds, or operations covered by E.O. 12344, dated February 1, 1982, pertaining to the Naval Nuclear Propulsion Program); and

(ii) With regard to which the DOE has or had:

(A) A proprietary interest; or

(B) Entered into a contract with an entity to provide management and operation, management and integration, environmental remediation services, construction, or maintenance services.

(2) DOL has adopted the determinations of the Department of Energy regarding Department of Energy facilities that were contained in the list of facilities published in the FEDERAL REGISTER on August 23, 2004 (69 FR 51825). DOL will periodically update this list as it deems appropriate in its sole discretion by publishing a revised list of Department of Energy facilities in the FEDERAL REGISTER.

(y) *Disability* means, for purposes of determining entitlement to payment of Part B benefits under section 7384s(a)(1) of the Act, having been determined by OWCP to have or have had established chronic beryllium disease, cancer, or chronic silicosis.

(z) *Eligible surviving beneficiary* means any individual who is entitled under sections 7384s(e), 7384u(e), or 7385s-3(c) and (d) of the Act to receive a payment on behalf of a deceased covered Part B

employee or a deceased covered Part E employee.

(aa) *Employee* means either a current or former employee.

(bb) *Occupational illness* means, under Part B of the Act, a covered beryllium illness, cancer sustained in the performance of duty as defined in §30.210(a), specified cancer, chronic silicosis, or an illness for which DOJ has awarded compensation under section 5 of RECA.

(cc) *OWCP* means the Office of Workers' Compensation Programs, United States Department of Labor. One of the four divisions of OWCP is the Division of Energy Employees Occupational Illness Compensation.

(dd) *Physician* 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.

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

(ff) *Specified cancer* (as defined in section 4(b)(2) of RECA and in EEOICPA) means:

(1) Leukemia (other than chronic lymphocytic leukemia) provided that the onset of the disease was at least 2 years after first exposure;

(2) Lung cancer (other than in situ lung cancer that is discovered during or after a post-mortem exam);

(3) Bone cancer;

(4) Renal cancers; or

(5) The following diseases, provided onset was at least 5 years after first exposure:

(i) Multiple myeloma;

(ii) Lymphomas (other than Hodgkin's disease); and

(iii) Primary cancer of the:

(A) Thyroid;

(B) Male or female breast;

(C) Esophagus;

(D) Stomach;

(E) Pharynx;

(F) Small intestine;

(G) Pancreas;

(H) Bile ducts;

(I) Gall bladder;

(J) Salivary gland;

(K) Urinary bladder;

(L) Brain;

(M) Colon;

(N) Ovary; or

(O) Liver (except if cirrhosis or hepatitis B is indicated).

(6) The specified diseases designated in this section mean the physiological condition or conditions that are recognized by the National Cancer Institute under those names or nomenclature, or under any previously accepted or commonly used names or nomenclature.

(gg) *Survivor* means:

(1) For claims under Part B of the Act, and subject to paragraph (gg)(3) of this section, a surviving spouse, child, parent, grandchild and grandparent of a deceased covered Part B employee.

(2) For claims under Part E of the Act, and subject to paragraph (gg)(3) of this section, a surviving spouse and child of a deceased covered Part E employee.

(3) Those individuals listed in paragraphs (gg)(1) and (gg)(2) of this section do not include any individuals not living as of the time OWCP makes a lump-sum payment or payments to an eligible surviving beneficiary or beneficiaries.

(hh) *Time of injury* means:

(1) In regard to a claim arising out of exposure to beryllium or silica, the last date on which a covered Part B employee was exposed to such substance in the performance of duty in accordance with sections 7384n(a) or 7384r(c) of the Act; or

(2) In regard to a claim arising out of exposure to radiation under Part B, the last date on which a covered Part B employee was exposed to radiation in the performance of duty in accordance with section 7384n(b) of the Act or, in the case of a member of the Special Exposure Cohort, the last date on which the member of the Special Exposure Cohort was employed at the Department of Energy facility or the atomic weapons employer facility at which the member was exposed to radiation; or

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(3) In regard to a claim arising out of exposure to a toxic substance, the last date on which a covered Part E employee was employed at the Department of Energy facility or RECA section 5 facility, as appropriate, at which the exposure took place.

(ii) *Toxic substance* means any material that has the potential to cause illness or death because of its radioactive, chemical, or biological nature.

(jj) *Workday* means a single workshift whether or not it occurred on more than one calendar day.

INFORMATION IN PROGRAM RECORDS

§ 30.10 Are all OWCP records relating to claims filed under EEOICPA considered confidential?

All OWCP records relating to claims for benefits under EEOICPA are considered confidential and may not be released, inspected, copied or otherwise disclosed except as provided in the Freedom of Information Act and the Privacy Act of 1974.

§ 30.11 Who maintains custody and control of claim records?

All OWCP records relating to claims for benefits filed under the Act are covered by the Privacy Act system of records entitled DOL/ESA-49 (Office of Workers' Compensation Programs, Energy Employees Occupational Illness Compensation Program Act File). This system of records is maintained by and under the control of OWCP, and, as such, all records covered by DOL/ESA-49 are official records of OWCP. The protection, release, inspection and copying of records covered by DOL/ESA-49 shall be accomplished in accordance with the rules, guidelines and provisions of this part, as well as those contained in 29 CFR parts 70 and 71, and with the notice of the system of records and routine uses published in the FEDERAL REGISTER. All questions relating to access, disclosure, and/or amendment of claims records maintained by OWCP are to be resolved in accordance with this section.

§ 30.12 What process is used by a person who wants to obtain copies of or amend EEOICPA claim records?

(a) A claimant seeking copies of his or her official EEOICPA file should ad-

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dress a request to the District Director of the OWCP district office having custody of the file.

(b) Any request to amend a record covered by DOL/ESA-49 should be directed to the district office having custody of the official file.

(c) Any administrative appeal taken from a denial issued by OWCP under this section shall be filed with the Solicitor of Labor in accordance with 29 CFR 71.7 and 71.9.

RIGHTS AND PENALTIES

§ 30.15 May EEOICPA benefits be assigned, transferred or garnished?

(a) Pursuant to section 7385f(a) of the Act, no claim for EEOICPA benefits may be assigned or transferred.

(b) Provisions of the Social Security Act (42 U.S.C. 659) and regulations issued by the Office of Personnel Management at 5 CFR part 581 permit the garnishment of payments of EEOICPA monetary benefits to collect overdue alimony and child support. A request to garnish a payment for either of these purposes should be submitted to the district office that is handling the EEOICPA claim, and must be accompanied by a copy of the pertinent state agency or court order.

§ 30.16 What penalties may be imposed in connection with a claim under the Act?

(a) Other statutory provisions make it a crime to file a false or fraudulent claim or statement with the federal government in connection with a claim under the Act. Included among these provisions is 18 U.S.C. 1001. Enforcement of criminal provisions that may apply to claims under the Act is within the jurisdiction of the Department of Justice.

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

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

When a beneficiary either pleads guilty to or is found guilty on either federal or state criminal charges of defrauding the federal or a state government in connection with a claim for benefits under the Act or any other federal or state workers' compensation law, the beneficiary forfeits (effective the date either the guilty plea is accepted or a verdict of guilty is returned after trial) any entitlement to any further benefits for any injury, illness or death covered by this part for which the time of injury was on or before the date of such guilty plea or verdict. Any subsequent change in or recurrence of the beneficiary's medical condition does not affect termination of entitlement under this section.

Subpart B—Filing Claims; Evidence and Burden of Proof; Special Procedures for Certain Cancer Claims

FILING CLAIMS FOR BENEFITS UNDER EEOICPA

§ 30.100 In general, how does an employee file an initial claim for benefits?

(a) To claim benefits under EEOICPA, an employee must file a claim in writing. Form EE-1 should be used for this purpose, but any written communication that requests benefits under EEOICPA will be considered a claim. It will, however, be necessary for an employee to submit a Form EE-1 for OWCP to fully develop the claim. Copies of Form EE-1 may be obtained from OWCP or on the Internet at <http://www.dol.gov/esa/regs/compliance/owcp/eoicp/main.htm>. The employee's claim must be filed with OWCP, but another person may do so on the employee's behalf.

(b) The employee may choose, at his or her own option, to file for benefits for only certain conditions that are potentially compensable under the Act (e.g., the employee may not want to claim for an occupational illness or a covered illness for which a payment has been received that would neces-

sitate an offset of EEOICPA benefits under the provisions of § 30.505(b) of these regulations). The employee may withdraw his or her claim by so requesting in writing to OWCP at any time before OWCP determines his or her eligibility for benefits.

(c) Except as provided in paragraph (d) of this section, a claim is considered to be "filed" on the date that the employee mails his or her claim to OWCP, as determined by postmark, or on the date that the claim is received by OWCP, whichever is the earliest determinable date. However, in no event will a claim under Part B of EEOICPA be considered to be "filed" earlier than July 31, 2001, nor will a claim under Part E of EEOICPA be considered to be "filed" earlier than October 30, 2000.

(1) The employee, or the person filing the claim on behalf of the employee, shall affirm that the information provided on the Form EE-1 is true, and must inform OWCP of any subsequent changes to that information.

(2) Except for a covered uranium employee filing a claim under Part B of the Act, the employee is responsible for submitting with his or her claim, or arranging for the submission of, medical evidence to OWCP that establishes that he or she sustained an occupational illness and/or a covered illness. This required medical evidence is described in § 30.114 and does not refer to mere recitations of symptoms the employee experienced that the employee believes indicate that he or she sustained an occupational illness or a covered illness.

(d) For those claims under Part E of EEOICPA that were originally filed with DOE as claims for assistance under former section 7385o of EEOICPA (which was repealed on October 28, 2004), a claim is considered to be "filed" on the date that the employee mailed his or her claim to DOE, as determined by postmark, or on the date that the claim was received by DOE, whichever is the earliest determinable date. However, in no event will a claim referred to in this paragraph be considered to be "filed" earlier than October 30, 2000.

§ 30.101 In general, how is a survivor's claim filed?

(a) A survivor of an employee who sustained an occupational illness or a