

(4) The presence or absence of an extraordinary nuclear occurrence determination does not concomitantly determine whether or not a particular claimant will recover on his claim. In effect, it is intended primarily to determine whether certain potential obstacles to recovery are to be removed from the route the claimant would ordinarily follow to seek compensation for his injury or damage. If there has not been an extraordinary nuclear occurrence determination, the claimant must proceed (in the absence of settlement) with a tort action subject to whatever issues must be met, and whatever defenses are available to the defendant, under the law applicable in the relevant jurisdiction. If there has been an extraordinary nuclear occurrence determination, the claimant must still proceed (in the absence of settlement) with a tort action, but the claimant's burden is substantially eased by the elimination of certain issues which may be involved and certain defenses which may be available to the defendant. In either case the defendant may defend with respect to such of the following matters as are in issue in any given claim: the nature of the claimant's alleged damages, the causal relationship between the event and the alleged damages, and the amount of the alleged damages.

§ 840.2 Procedures.

(a) DOE may initiate, on its own motion, the making of a determination as to whether or not there has been an extraordinary nuclear occurrence. In the event DOE does not so initiate the making of a determination, any affected person, or any person with whom an indemnity agreement is executed may petition DOE for a determination of whether or not there has been an extraordinary nuclear occurrence. If DOE does not have, or does not expect to have, within 7 days after it has received notification of an alleged event, enough information available to make a determination that there has been an extraordinary nuclear occurrence, DOE will publish a notice in the FEDERAL REGISTER setting forth the date and place of the alleged event and requesting any persons

having knowledge thereof to submit their information to DOE.

(b) When a procedure is initiated under paragraph (a) of this section, the principal staff which will begin immediately to assemble the relevant information and prepare a report on which the DOE can make its determination will consist of the Directors or their designees of the following Divisions or Offices: Office of Nuclear Safety, Office of Operational Safety, Office of Health and Environmental Research, the General Counsel or his designee, and a representative of the program division whose facility or device may be involved.

§ 840.3 Determination of extraordinary nuclear occurrence.

If the DOE determines that both of the criteria set forth in § 840.4 and § 840.5 have been met, it will make the determination that there has been an extraordinary nuclear occurrence. If the DOE publishes a notice in the FEDERAL REGISTER in accordance with § 840.2(a) and does not make a determination within 90 days thereafter that there has been an extraordinary nuclear occurrence, the alleged event will be deemed not to be an extraordinary nuclear occurrence. The time for the making of a determination may be extended by DOE by notice published in the FEDERAL REGISTER.

§ 840.4 Criterion I—Substantial discharge of radioactive material or substantial radiation levels offsite.

DOE will determine that there has been a substantial discharge or dispersal of radioactive material offsite, or that there have been substantial levels of radiation offsite, when as a result of an event comprised of one or more related happenings, radioactive material is released from its intended place of confinement or radiation levels occur offsite and either of the following findings are also made:

(a) DOE finds that one or more persons offsite were, could have been, or might be exposed to radiation or to radioactive material, resulting in a dose or in a projected dose in excess of one of the levels in the following table: