

DEPARTMENT OF JUSTICE**28 CFR Part 79****[CIV100F; AG Order No. 2604–2002]****RIN 1105–AA75****Claims Under the Radiation Exposure Compensation Act Amendments of 2000; Technical Amendments****AGENCY:** Civil Division, Department of Justice.**ACTION:** Final rule.

SUMMARY: The Department of Justice (“the Department”) revises its existing regulations to implement the Radiation Exposure Compensation Act (“the Act,” or “RECA”), to reflect amendments to the Act made in the Radiation Exposure Compensation Act Amendments of 2000 (“2000 Amendments”), enacted on July 10, 2000. This is the first of two related rulemakings and is a final rule, technical in nature, providing conforming amendments consistent with the new law. These revisions reflect only those changes specifically set forth in the statute, and other technical amendments. The second related rulemaking is a proposed rule published elsewhere in this issue of the *Federal Register*. The final regulations: expand the list of radiogenic and chronic diseases that are compensable for “downwinder” and “onsite participant” claimants; eliminate smoking distinctions for all claimants; amend the list of geographical areas to provide additional radiation-affected areas for “downwinder” claimants; modify the burden of proof for purposes of claims processing; allow claimants who have previously been denied compensation to file up to three times; and make other technical revisions consistent with the amended Act.

DATES: Effective date: September 6, 2002. This final rule will apply to all claims pending with the Radiation Exposure Compensation Act Program (“Program”) as of this date.

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SUPPLEMENTARY INFORMATION:**Background**

On July 10, 2000, the Radiation Exposure Compensation Act Amendments of 2000 were enacted, providing expanded coverage to individuals who developed one of the diseases specified in the Act following exposure to radiation related to the Federal Government’s atmospheric nuclear weapons program or as a result

of employment in the uranium production industry. This rule implements the Act’s technical revisions, providing conforming amendments that incorporate the legislative language contained in the amended Act.

Discussion of Final Changes

This rule implements the Act by expanding the list of compensable “downwinder” and “onsite participant” diseases to include cancers of the lung, male breast, salivary gland, urinary bladder, brain, colon, and ovary. This rule eliminates regulatory distinctions based upon many of the risk factors associated with several of the original diseases, such as “age at time of initial exposure” and lifestyle restrictions, such as alcohol consumption and smoking.

The rule amends the list of “downwinder” geographical areas, designated as “affected areas” for purposes of establishing eligibility, to correlate with the areas specified in the Amended Act, including the addition of two additional counties in the State of Utah (Wayne and San Juan) and five additional counties in the State of Arizona (Coconino, Yavapai, Navajo, Apache, and Gila).

The rule modifies the burden of proof in conformance with the Act’s provisions, ensuring that in determining whether each claim filed satisfies the requirements of the Act, all reasonable doubt shall be resolved in favor of the claimant.

Finally, the rule allows claimants who have previously been denied compensation to file up to three more times. This action would allow denied claimants to take advantage of changes in the law that liberalize the eligibility requirements. The Department anticipates that much of the information in refiled claims will have been previously verified. Presently, the regulations permit three attempts at establishing eligibility, so this provision simply continues that process.

Subparts E, F, and G are being reserved for provisions included in a proposed rulemaking that address claims by uranium mine workers, uranium mill workers, and uranium and uranium-vanadium ore transporters, respectively. The proposed rule published elsewhere in this issue of the *Federal Register*. Similarly, § 79.74 of subpart H is reserved for a provision addressing representatives and fees that is part of the proposed rulemaking.

A Proposed Rulemaking Related to This Final Rulemaking

Elsewhere in this issue of the *Federal Register*, the Department is publishing a related, proposed rule, *Claims Under the Radiation Exposure Compensation Act Amendments of 2000; Expansion of Coverage for Uranium Mill Workers and Ore Transporters; Expansion of Coverage of Uranium Miners; Representation and Fees* (CIV 101). That proposed rule primarily addresses compensation for two new claimant categories: uranium mill workers and individuals employed in the transport of uranium ore or vanadium-uranium ore. It also addresses the expanded population of uranium mine workers made eligible for compensation by lowering the radiation exposure threshold for miners, enlarging the number of covered uranium mining states, and including “aboveground” miners within the scope of the Act.

Administrative Procedure Act

This rule merely conforms Department regulations to the 2000 Amendments, and makes other technical amendments. It does not expand upon the provisions of the statute. The statutory changes implemented by this rule provide expanded coverage, modify the burden of proof in favor of the claimant, and allow claimants who previously have been denied compensation to file additional times so that they may take advantage of the liberalized eligibility requirements. For the foregoing reasons, the Department finds that it would be unnecessary and contrary to the public interest to provide for notice and public comment on this rule. Accordingly, the Department finds that good cause exists for exempting this rule from the provisions of the Administrative Procedure Act (5 U.S.C. 553(b)) requiring notice of proposed rulemaking and the opportunity for public comment.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities for the following reason: The claimant population benefitted by these regulations includes individuals who developed a specified illness following exposure to radiation related to the Federal Government’s atmospheric nuclear weapons program or as a result of employment in the uranium

production industry. The regulations set forth eligibility criteria that claimants must satisfy in order to receive compensation. They have no impact on small business competitiveness.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review" section 1(b), Principles of Regulation. The compensation payments provided for by the Radiation Exposure Compensation Act and the 2000 Amendments and implemented by this rule will exceed \$100,000,000 a year for several years. Because of the aggregate size of these payments to eligible individuals, the Office of Management and Budget has determined that this rule is "economically significant" as defined by section 3(f)(1) of Executive Order 12866. Accordingly, this rule has been reviewed by OMB.

This rule will not adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. Rather, the RECA system is an administrative compensation program that serves to provide payments to individuals who meet the eligibility requirements of the Act and implementing regulations. Accordingly, qualifying individuals receive monetary compensation for certain diseases they developed following exposure to radiation under the conditions set forth in the rule.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not

significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

The compensation payments provided for by the Radiation Exposure Compensation Act and the 2000 Amendments and implemented by this rule will exceed \$100,000,000 a year for several years. Because of the aggregate size of these payments to eligible individuals, the Office of Management and Budget has determined that this rule is a "major rule" as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804.

However, this rule will not result in a major increase in costs or prices or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. Rather, the RECA system is an administrative compensation program that serves to provide payments to individuals who meet the eligibility requirements of the Act and implementing regulations. Accordingly, qualifying individuals receive monetary compensation for certain diseases they developed following exposure to radiation under the conditions set forth in the rule.

Further, this rule merely conforms Department regulations to the RECA Amendments of 2000. Also, the statutory changes implemented by this rule provide expanded coverage, modify the burden of proof in favor of the claimant, and allow claimants who have previously been denied compensation to file additional times so that they can take advantage of the liberalized eligibility requirements. For the foregoing reasons, the Department finds that it would be unnecessary and contrary to the public interest for the effectiveness of this rule to be deferred for the time specified by 5 U.S.C. 801. Accordingly, the Department invokes the exception allowed by 5 U.S.C. 808 and determines that this rule should take effect on September 6, 2002, as set forth above in the **DATES** section.

Paperwork Reduction Act

Information collection associated with this regulation has been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1995. The OMB

control number for this collection is 1105-0052.

List of Subjects in 28 CFR Part 79

Administrative practice and procedure, Authority delegations (Government agencies), Cancer, Claims, Radiation Exposure Compensation Act, Radioactive materials, Reporting and recordkeeping requirements, Uranium mining, Uranium.

Accordingly, part 79 of chapter I of Title 28 of the Code of Federal Regulations is amended as follows:

1. By revising the authority citation to read as follows:

Authority: Secs. 6(a), 6(i) and 6(j), Pub. L. 101-426, 104 Stat. 920, as amended by secs. 3(c)-(h), Pub. L. 106-245, 114 Stat. 501 (42 U.S.C. 2210 note).

2. By revising subparts A through D to read as set forth below;

3. By removing and reserving subparts E and F (§§ 79.40—79.55);

4. By adding and reserving subpart G; and

5. By adding subpart H to read as set forth below.

(Note: Appendices A through C remain unchanged.)

The revised and added text reads as follows:

PART 79—CLAIMS UNDER THE RADIATION EXPOSURE COMPENSATION ACT

Subpart A—General

Sec.

79.1 Purpose.

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79.3 Compensable claim categories under the Act.

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Subpart B—Eligibility Criteria for Claims Relating to Leukemia

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- 79.24 Proof of initial or first exposure after age 20 for claims under § 79.22(b)(1).
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 79.26 Proof of medical condition.
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 79.33 Proof of participation onsite during a period of atmospheric nuclear testing.
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Subpart E—[Reserved]

Subpart F—[Reserved]

Subpart G—[Reserved]

Subpart H—Procedures

- 79.70 Attorney General's delegation of authority.
 79.71 Filing of claims.
 79.72 Review and resolution of claims.
 79.73 Appeals procedures.
 79.74 [Reserved]
 79.75 Procedures for payment of claims.

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Subpart A—General

§ 79.1 Purpose.

The purpose of these regulations is to implement the Radiation Exposure Compensation Act ("Act"), as amended by the Radiation Exposure Compensation Act Amendments of 2000, which authorizes the Attorney General of the United States to establish procedures for making certain payments to qualifying individuals who contracted one of the diseases listed in the Act. The amount of each payment and a general statement of the qualifications are indicated in § 79.3(a). The procedures established in these regulations are designed to utilize existing records so that claims can be resolved in a reliable, objective, and non-adversarial manner, quickly and with little administrative cost to the United States or to the person filing the claim.

§ 79.2 General definitions.

(a) *Act* means the Radiation Exposure Compensation Act of 1990, Public Law 101-426, as amended by section 3139 of Public Law 101-510 and by the Radiation Exposure Compensation Act Amendments of 2000, Public Law 106-245 (see 42 U.S.C. 2210 note).

(b) *Child* means a recognized natural child of the claimant, a stepchild who lived with the claimant in a regular parent-child relationship, or an adopted child of the claimant.

(c) *Claim* means a petition for compensation under the Act filed with the Radiation Exposure Compensation Program by a claimant or by his or her eligible surviving beneficiary or beneficiaries.

(d) *Claimant* means the individual, living or deceased, who is alleged to satisfy the criteria for compensation set forth either in section 4 or in section 5 of the Act.

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

(f) *Eligible surviving beneficiary* means a spouse, child, parent, grandchild or grandparent who is entitled under section 6(c)(4) (A) or (B) of the Act to file a claim or receive a payment on behalf of a deceased claimant.

(g) *Grandchild* means a child of a child of the claimant.

(h) *Grandparent* means a parent of a parent of the claimant.

(i) *Immediate family member* of a person means a spouse or child if the person is an adult, but if the person is a minor, immediate family member means either parent.

(j) *Indian tribe* means any Indian tribe, band, nation, pueblo, or other organized group or community that is recognized as eligible for special programs and services provided by the United States to Indian tribes.

(k) *Medical document, documentation, or record* means any contemporaneous record of any physician, hospital, clinic, or other certified or licensed health care provider, or any other records routinely and reasonably relied on by physicians in making a diagnosis.

(l) *Onset or incidence* of a specified compensable disease means the date a physician first diagnosed the disease.

(m) *Parent* means the natural or adoptive father or mother of the claimant.

(n) *Program or Radiation Exposure Compensation Program* means the component of the Constitutional and Specialized Tort Litigation Section of the Torts Branch of the Civil Division of the United States Department of Justice designated by the Attorney General to execute the powers, duties, and responsibilities assigned to the Attorney General pursuant to pertinent provisions of the Act.

(o) *Spouse* means a wife or husband who was married to the claimant for a

period of at least one (1) year immediately before the death of the claimant.

(p) *Trust Fund* or *Fund* means the Radiation Exposure Compensation Trust Fund in the Department of the Treasury, administered by the Secretary of the Treasury pursuant to section 3 of the Act.

§ 79.3 Compensable claim categories under the Act.

(a) In order to receive a compensation payment, each claimant or eligible surviving beneficiary must establish that the claimant meets each and every criterion of eligibility for at least one of the following compensable categories designated in the Act:

(1) *Claims of leukemia*. (i) For persons exposed to fallout from the atmospheric detonation of nuclear devices at the Nevada Test Site due to their physical presence in an affected area during a designated time period, the amount of compensation is \$50,000.

(ii) For persons exposed to fallout from the atmospheric detonation of nuclear devices due to their participation onsite in a test involving the atmospheric detonation of a nuclear device, the amount of compensation is \$75,000. The regulations governing these claims are set forth in subpart B of this part.

(2) *Claims Related to the Nevada Test Site Fallout*. For persons exposed to fallout from the atmospheric detonation of nuclear devices at the Nevada Test Site due to their physical presence in an affected area during a designated time period, the amount of compensation is \$50,000. The regulations governing these claims are set forth in subpart C of this part.

(3) *Claims of Onsite Participants*. For persons who contracted certain specified diseases after onsite participation in the atmospheric detonation of a nuclear device, the amount of compensation is \$75,000. The regulations governing these claims are set forth in subpart D of this part.

(4) *Miners' Claims*. For persons who contracted lung cancer or certain nonmalignant respiratory diseases after being employed in uranium mines located in a specified state during the designated time period who were exposed to a specified minimum level of radiation during the course of their employment, the amount of compensation is \$100,000. The regulations governing these claims are set forth in subpart E of this part.

(5) *Millers' Claims*. For persons who contracted lung cancer, certain nonmalignant respiratory diseases, renal cancer, or chronic renal disease

(including nephritis and kidney tubal tissue injury) following employment for at least one year (12 consecutive or cumulative months) in a uranium mill in a specified state during the designated time period, the amount of compensation is \$100,000. The regulations governing these claims are set forth in subpart F of this part.

(6) *Ore Transporters' Claims.* For persons who contracted lung cancer, certain nonmalignant respiratory diseases, renal cancer, or chronic renal disease (including nephritis and kidney tubal tissue injury) following employment for at least one year (12 consecutive or cumulative months) as a transporter of uranium ore or vanadium-uranium ore from a uranium mine or uranium mill located in a specified state during the designated time period, the amount of compensation is \$100,000. The regulations governing these claims are set forth in subpart G of this part.

(b) Any claim that does not meet all the criteria for at least one of these categories, as set forth in these regulations, must be denied.

(c) All claims for compensation under the Act must comply with the claims procedures and requirements set forth in subpart H of this part before any payment can be made from the Fund.

§ 79.4 Determination of claims and affidavits.

(a) The claimant or eligible surviving beneficiary or beneficiaries bears the burden of providing evidence of the existence of each element necessary to establish eligibility under any compensable claim category set forth in § 79.3(a).

(b) In the event that reasonable doubt exists with regard to whether a claim meets the requirements of the Act, that doubt shall be resolved in favor of the claimant or eligible surviving beneficiary.

(c) Written affidavits or declarations, subject to penalty for perjury, will be accepted only for the following purposes:

(1) To establish eligibility of family members as set forth in § 79.71(e), (f), (g), (h), or (i);

(2) To establish other compensation received as set forth in § 79.75(c) or (d);

(3) To establish employment in a uranium mill or as an ore transporter in the manner set forth in §§ 79.53(d) and 79.63(d), respectively; and

(4) To substantiate the claimant's uranium mining employment history for purposes of determining working level months of radiation exposure, in the manner set forth in § 79.43(d), provided the affidavit or declaration:

(i) Is provided in addition to any other material that may be used to substantiate the claimant's employment history as set forth in § 79.43;

(ii) Is made subject to penalty for perjury;

(iii) Attests to the employment history of the claimant; and

(iv) As made by a person other than the individual filing the claim.

§ 79.5 Requirements for medical documentation, contemporaneous records, and other records or documents.

(a) All medical documentation, contemporaneous records, and other records or documents submitted by a claimant or eligible surviving beneficiary to prove any criterion provided for in these regulations must be originals, or certified copies of the originals, unless it is impossible to obtain an original or certified copy of the original. If it is impossible for a claimant to provide an original or certified copy of an original, the claimant or eligible surviving beneficiary must provide a written statement with the uncertified copy setting forth the reason why it is impossible.

(b) All documents submitted by a claimant or eligible surviving beneficiary must bear sufficient indicia of authenticity or a sufficient guarantee of trustworthiness. The Program shall not accept as proof of any criterion of eligibility any document that does not bear sufficient indicia of authenticity, or is in such a physical condition, or contains such information, that otherwise indicates the record or document is not reliable or trustworthy. When a record or document is not accepted by the Program under this section, the claimant or eligible surviving beneficiary shall be notified and afforded the opportunity to submit additional documentation in accordance with § 79.72(b) or (c).

(c) To establish eligibility the claimant or eligible surviving beneficiary may be required to provide additional records to the extent they exist. Nothing in the regulations in this section shall be construed to limit the Assistant Director's ability to require additional documentation.

Subpart B—Eligibility Criteria for Claims Relating to Leukemia

§ 79.10 Scope of subpart.

The regulations in this subpart describe the criteria for eligibility for compensation under section 4(a)(1) of the Act and the evidence that will be accepted as proof of the various criteria. Section 4(a)(1) of the Act provides for a

payment of \$50,000 to individuals exposed to fallout from the detonation of atmospheric nuclear devices at the Nevada Test Site due to their physical presence in an affected area during a designated time period, and \$75,000 to individuals who participated onsite in a test involving the atmospheric detonation of a nuclear device and who later developed leukemia.

§ 79.11 Definitions.

(a) *Affected area* means one of the following geographical areas, as they were recognized by the state in which they are located, as of July 10, 2000:

(1) In the State of Utah, the counties of Beaver, Garfield, Iron, Kane, Millard, Piute, San Juan, Sevier, Washington, and Wayne;

(2) In the State of Nevada, the counties of Eureka, Lander, Lincoln, Nye, White Pine, and that portion of Clark County that consists of townships 13 through 16 at ranges 63 through 71;

(3) In the State of Arizona, the counties of Coconino, Yavapai, Navajo, Apache, and Gila.

(b) *Atmospheric detonation of a nuclear device* means only a test conducted by the United States prior to January 1, 1963, as listed in § 79.31(f).

(c) *Designated time period* means the period beginning on January 21, 1951, and ending on October 31, 1958, or the period beginning on June 30, 1962, and ending on July 31, 1962, whichever is applicable.

(d) *First exposure or initial exposure* means the date on which the claimant was first physically present in the affected area during the designated time period, or the date on which the claimant first participated onsite in an atmospheric nuclear test, whichever is applicable.

(e) *Leukemia* means any medically recognized form of acute or chronic leukemia other than chronic lymphocytic leukemia.

(f) *Onsite* means physical presence above or within the official boundaries of any of the following locations:

(1) The Nevada Test Site (NTS), Nevada;

(2) The Pacific Test Sites (Bikini Atoll, Eniwetok Atoll, Johnston Island, Christmas Island, the test site for the shot during Operation Wigwam, the test site for Shot Yucca during Operation Hardtack I, and the test sites for Shot Frigate Bird and Shot Swordfish during Operation Dominic I) and the official zone around each site from which non-test affiliated ships were excluded for security and safety purposes;

(3) The Trinity Test Site (TTS), New Mexico;

(4) The South Atlantic Test Site for Operation Argus and the official zone

around the site from which non-test affiliated ships were excluded for security and safety purposes;

(5) Any designated location within a Naval Shipyard, Air Force Base, or other official government installation where ships, aircraft, or other equipment used in an atmospheric nuclear detonation were decontaminated; or

(6) Any designated location used for the purpose of monitoring fallout from an atmospheric nuclear test conducted at the Nevada Test Site.

(g) *Participant* means an individual

(1) Who was:

(i) A member of the armed forces;

(ii) A civilian employee or contract employee of the Manhattan Engineer District, the Armed Forces Special Weapons Project, the Defense Atomic Support Agency, the Defense Nuclear Agency, or the Department of Defense or its components or agencies or predecessor components or agencies;

(iii) An employee or contract employee of the Atomic Energy Commission, the Energy Research and Development Administration, or the Department of Energy;

(iv) A member of the Federal Civil Defense Administration or the Office of Civil and Defense Mobilization; or

(v) A member of the United States Public Health Service; and

(2) Who:

(i) Performed duties within the identified operational area around each atmospheric nuclear test;

(ii) Participated in the decontamination of any ships, planes, or equipment used during the atmospheric nuclear test;

(iii) Performed duties as a cloud tracker or cloud sampler;

(iv) Served as a member of the garrison or maintenance forces on the atoll of Enewetak between June 21, 1951, and July 1, 1952; between August 7, 1956, and August 7, 1957; or between November 1, 1958, and April 30, 1959; or

(v) Performed duties as a member of a mobile radiological safety team monitoring the pattern of fallout from an atmospheric nuclear test.

(h) *Period of atmospheric nuclear testing* means any of the periods associated with each test operation specified in § 79.31(f), plus an additional six-month period thereafter.

(i) *Physically present* (or *physical presence*) means present (or presence) for a substantial period of each day.

§ 79.12 Criteria for eligibility.

To establish eligibility for compensation under this subpart, a claimant or eligible surviving beneficiary must establish each of the following:

(a)(1) That the claimant was physically present at any place within the affected area for a period of at least one year (12 consecutive or cumulative months) during the period beginning on January 21, 1951, and ending on October 31, 1958;

(2) That the claimant was physically present at any place within the affected area for the entire, continuous period beginning on June 30, 1962, and ending on July 31, 1962; or

(3) That the claimant was present onsite at any time during a period of atmospheric nuclear testing and was a participant during that period in the atmospheric detonation of a nuclear device;

(b) That after such period of physical presence or onsite participation the claimant contracted leukemia;

(c) That the claimant's initial exposure occurred prior to age 21; and

(d) The onset of the leukemia occurred more than two years after the date of the claimant's first exposure to fallout.

§ 79.13 Proof of physical presence for the requisite period and proof of participation onsite during a period of atmospheric nuclear testing.

(a) Proof of physical presence may be made by the submission of any trustworthy contemporaneous records that, on their face or in conjunction with other such records, establish that the claimant was present in the affected area for the requisite period during the designated time period. Examples of such records include:

(1) Records of the federal government (including verified information submitted for a security clearance), any tribal government, or any state, county, city or local governmental office, agency, department, board or other entity, or other public office or agency;

(2) Records of any accredited public or private educational institution;

(3) Records of any private utility licensed or otherwise approved by any governmental entity, including any such utility providing telephone services;

(4) Records of any public or private library;

(5) Records of any state or local historical society;

(6) Records of any religious organization that has tax-exempt status under section 501(c)(3) of the United States Internal Revenue Code;

(7) Records of any regularly conducted business activity or entity;

(8) Records of any recognized civic or fraternal association or organization; and

(9) Medical records created during the designated time period.

(b) Proof of physical presence by contemporaneous records may also be made by submission of original postcards and envelopes from letters (not copies) addressed to the claimant or an immediate family member during the designated time period that bear a postmark and a cancelled stamp(s).

(c) The Program will presume that an individual who resided or was employed on a full-time basis within the affected area was physically present during the time period of residence or full-time employment.

(d) For purposes of establishing eligibility under § 79.12(a)(1), the Program will presume that proof of a claimant's residence at one or more addresses or proof of full-time employment at one location within the affected area on any two dates less than three years apart during the period beginning on January 21, 1951, and ending on October 31, 1958, establishes the claimant's presence within the affected area for the period between the two dates reflected in the documentation submitted as proof of presence.

(e) For purposes of establishing eligibility under § 79.12(a)(1), the Program will presume that proof of residence at one or more addresses or proof of full-time employment at one location within the affected area on two dates, one of which is before January 21, 1951, and another of which is within the specified time period, establishes the claimant's presence in the affected area between January 21, 1951, and the date within the specified time period, provided the dates are not more than three years apart.

(f) For purposes of establishing eligibility under § 79.12(a)(1), the Program will presume that proof of residence at one or more addresses or proof of full-time employment at one location within the affected area on two dates, one of which is after October 31, 1958, and another which is within the specified time period, establishes the claimant's presence in the affected area between the date within the specified time period and October 31, 1958, provided the dates are not more than three years apart.

(g) For purposes of establishing eligibility under § 79.12(a)(2), the Program will presume that proof of residence or proof of full-time employment within the affected area at least one day during the period beginning June 30, 1962, and ending July 31, 1962, and proof of residence or proof of full-time employment at the same address within six months before June 30, 1962, and six months after July 31, 1962, establishes the claimant's

physical presence for the necessary one-month-and-one-day period.

(h) For purposes of establishing eligibility under § 79.12(a)(2), the Program will presume that proof of residence or full-time employment at the same address or location on two separate dates at least 14 days apart within the time period beginning June 30, 1962, and ending July 31, 1962, establishes the claimant's physical presence for the necessary one-month-and-one-day period.

(i) For purposes of establishing eligibility under § 79.12(a)(3), the claimant must establish, in accordance with § 79.33, that he or she participated onsite in the atmospheric detonation of a nuclear device.

§ 79.14 Proof of initial exposure prior to age 21.

(a) Proof of the claimant's date of birth must be established by the submission of any of the following:

- (1) Birth certificate;
- (2) Baptismal certificate;
- (3) Tribal records; or
- (4) Hospital records of birth.

(b) Absent any indication to the contrary, the Program will assume that the earliest date within the designated time period indicated on any records accepted by the Program as proof of the claimant's physical presence in the affected area or participation during a period of atmospheric nuclear testing was also the date of initial exposure.

§ 79.15 Proof of onset of leukemia more than two years after first exposure.

The Program will presume that the date of onset was the date of diagnosis as indicated in the medical documentation accepted by the Program as proof of the claimant's leukemia. The date of onset must be more than two years after the date of first exposure as determined under § 79.14(b).

§ 79.16 Proof of medical condition.

(a) Medical documentation is required in all cases to prove that the claimant suffered from or suffers from leukemia. Proof that the claimant contracted leukemia must be made either by using the procedure outlined in paragraph (b) of this section or submitting the documentation required in paragraph (c) of this section.

(b) If a claimant was diagnosed as having leukemia in one of the States of Arizona, Colorado, Nevada, New Mexico, Utah or Wyoming, the claimant or eligible surviving beneficiary need not submit any medical documentation of disease at the time the claim is filed (although medical documentation may subsequently be required). Instead, the

claimant or eligible surviving beneficiary must submit with the claim an Authorization To Release Medical and Other Information, valid in the state of diagnosis, that authorizes the Program to contact the appropriate state cancer or tumor registry. The Program will accept as proof of medical condition verification from the state cancer or tumor registry that it possesses medical records or abstracts of medical records of the claimant that contain a verified diagnosis of one type of leukemia. If the designated state does not possess medical records or abstracts of medical records that contain a verified diagnosis of leukemia, the Radiation Exposure Compensation Program will notify the claimant or eligible surviving beneficiary and afford that individual the opportunity to submit the medical documentation required in paragraph (c) of this section, in accordance with the provisions of § 79.72(b).

(c)(1) Proof that the claimant contracted leukemia may be made by the submission of one or more of the following contemporaneous medical records provided that the specified document contains an explicit statement of diagnosis or such other information or data from which appropriate authorities at the National Cancer Institute can make a diagnosis of leukemia to a reasonable degree of medical certainty:

- (i) Bone marrow biopsy or aspirate report;
- (ii) Peripheral white blood cell differential count report;
- (iii) Autopsy report;
- (iv) Hospital discharge summary;
- (v) Physician summary;
- (vi) History and physical report; or
- (vii) Death certificate, provided that it is signed by a physician at the time of death.

(2) If the medical record submitted does not contain sufficient information or data to make such a diagnosis, the Program will notify the claimant or eligible surviving beneficiary and afford that individual the opportunity to submit additional medical records identified in this paragraph, in accordance with the provisions of § 79.72(b). Any such additional medical documentation submitted must also contain sufficient information from which appropriate authorities at the National Cancer Institute can determine the type of leukemia contracted by the claimant.

Subpart C—Eligibility Criteria for Claims Relating to Certain Specified Diseases in an Affected Area

§ 79.20 Scope of subpart.

The regulations in this subpart describe the criteria for eligibility for compensation under sections 4(a)(2) (A) and (B) of the Act and the evidence that will be accepted as proof of the various criteria. Sections 4(a)(2) (A) and (B) of the Act provide for a payment of \$50,000 to individuals who were exposed to fallout from the atmospheric detonation of nuclear devices at the Nevada Test Site due to their physical presence in an affected area during a designated time period and who later developed one or more specified compensable diseases.

§ 79.21 Definitions.

(a) The definitions listed in § 79.11 (a) through (e) and (i) apply to this subpart.

(b) *Indication of disease* means any medically significant information that suggests the presence of a disease, whether or not the presence of the disease is later confirmed.

(c) *Leukemia, lung cancer, in situ lung cancer, multiple myeloma, lymphomas, Hodgkin's disease, primary cancer of the thyroid, primary cancer of the male breast, primary cancer of the female breast, primary cancer of the esophagus, primary cancer of the stomach, primary cancer of the pharynx, primary cancer of the small intestine, primary cancer of the pancreas, primary cancer of the bile ducts, primary cancer of the gallbladder, primary cancer of the salivary gland, primary cancer of the urinary bladder, primary cancer of the brain, primary cancer of the colon, primary cancer of the ovary, and primary cancer of the liver* mean the physiological 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.

(d) *Lung cancer* means any physiological condition of the lung, trachea, or bronchus that is recognized under that name or nomenclature by the National Cancer Institute.

(e) *Specified compensable diseases* means leukemia (other than chronic lymphocytic leukemia), provided that initial exposure occurred after the age of 20 and that the onset of the disease was at least two years after first exposure, lung cancer (other than in situ lung cancer that is discovered during or after a postmortem exam), and the following diseases, provided onset was at least five years after first exposure: multiple myeloma; lymphomas (other than

Hodgkin's disease); and primary cancer of the thyroid, male or female breast, esophagus, stomach, pharynx, small intestine, pancreas, bile ducts, gallbladder, salivary gland, urinary bladder, brain, colon, ovary, or liver (except if cirrhosis or hepatitis B is indicated).

§ 79.22 Criteria for eligibility.

To establish eligibility for compensation under this subpart, a claimant or eligible surviving beneficiary must establish each of the following:

(a)(1) That the claimant was physically present at any place within the affected area for a period of at least two years (24 consecutive or cumulative months) during the period beginning on January 21, 1951, and ending on October 31, 1958; or

(2) That the claimant was physically present at any place within the affected area for the entire, continuous period beginning on June 30, 1962, and ending on July 31, 1962; and

(b) That after such period of physical presence the claimant contracted one of the following specified compensable diseases:

(1) Leukemia (other than chronic lymphocytic leukemia), provided that:

(i) The claimant's initial exposure occurred after the age of 20; and

(ii) The onset of the disease was at least two years after first exposure;

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

(3) Multiple myeloma, provided onset was at least five years after first exposure;

(4) Lymphomas, other than Hodgkin's disease, provided onset was at least five years after first exposure;

(5) Primary cancer of the thyroid, provided onset was at least five years after first exposure;

(6) Primary cancer of the male or female breast, provided onset was at least five years after first exposure;

(7) Primary cancer of the esophagus, provided onset was at least five years after first exposure;

(8) Primary cancer of the stomach, provided onset was at least five years after first exposure;

(9) Primary cancer of the pharynx, provided onset was at least five years after first exposure;

(10) Primary cancer of the small intestine, provided onset was at least five years after first exposure;

(11) Primary cancer of the pancreas, provided onset was at least five years after first exposure;

(12) Primary cancer of the bile ducts, provided onset was at least five years after first exposure;

(13) Primary cancer of the gallbladder, provided onset was at least five years after first exposure;

(14) Primary cancer of the salivary gland, provided onset was at least five years after first exposure;

(15) Primary cancer of the urinary bladder, provided onset was at least five years after first exposure;

(16) Primary cancer of the brain, provided onset was at least five years after first exposure;

(17) Primary cancer of the colon, provided onset was at least five years after first exposure;

(18) Primary cancer of the ovary, provided onset was at least five years after first exposure; or

(19) Primary cancer of the liver, provided,

(i) Onset was at least five years after first exposure;

(ii) There is no indication of the presence of hepatitis B; and

(iii) There is no indication of the presence of cirrhosis.

§ 79.23 Proof of physical presence for the requisite period.

(a) Proof of physical presence for the requisite period may be made in accordance with the provisions of § 79.13 (a) and (b). An individual who resided or was employed on a full-time basis within the affected area is presumed to have been physically present during the time period of residence or full-time employment.

(b) For purposes of establishing eligibility under § 79.22(a)(1), the Program will presume that proof of residence at one or more addresses or proof of full-time employment at one location within the affected area on any two dates less than three years apart, during the period beginning on January 21, 1951, and ending on October 31, 1958, establishes the claimant's presence within the affected area for the period between the two dates reflected in the documentation submitted as proof of presence.

(c) For purposes of establishing eligibility under § 79.22(a)(1), the Program will presume that proof of residence at one or more addresses or proof of full-time employment at one location within the affected area on two dates, one of which is before January 21, 1951, and another of which is within the specified time period, establishes the claimant's presence in the affected area between January 21, 1951, and the date within the specified time period, provided the dates are not more than three years apart.

(d) For purposes of establishing eligibility under § 79.22(a)(1), the Program will presume that proof of

residence at one or more addresses or proof of full-time employment at one location within the affected area on two dates, one of which is after October 31, 1958, and another of which is within the specified time period, establishes the claimant's presence in the affected area between the date within the specified time period and October 31, 1958, provided the dates are not more than three years apart.

(e) For purposes of establishing eligibility under § 79.22(a)(2), the Program will apply the presumptions contained in § 79.13(g) and (h).

§ 79.24 Proof of initial or first exposure after age 20 for claims under § 79.22(b)(1).

(a) Proof of the claimant's date of birth must be established in accordance with the provisions of § 79.14(a).

(b) Absent any indication to the contrary, the Program will presume that the earliest date within the designated time period indicated on any records accepted by the Program as proof of the claimant's physical presence in the affected area was the date of initial or first exposure.

§ 79.25 Proof of onset of leukemia at least two years after first exposure, and proof of onset of a specified compensable disease more than five years after first exposure.

The date of onset will be the date of diagnosis as indicated in the medical documentation accepted by the Radiation Exposure Compensation Program as proof of the claimant's specified compensable disease. The date of onset must be at least five years after the date of first exposure as determined under § 79.24(b). In the case of leukemia, the date of onset must be at least two years after the date of first exposure.

§ 79.26 Proof of medical condition.

(a) Medical documentation is required in all cases to prove that the claimant suffered from or suffers from any specified compensable disease. Proof that the claimant contracted a specified compensable disease must be made either by using the procedure outlined in paragraph (b) of this section or by submitting the documentation required in paragraph (c) of this section. (For claims relating to primary cancer of the liver, the claimant or eligible surviving beneficiary must also submit the additional medical documentation prescribed in § 79.27.)

(b) If a claimant was diagnosed as having one of the specified compensable diseases in any of the States of Arizona, Colorado, Nevada, New Mexico, Utah or Wyoming, the claimant or eligible surviving beneficiary need not submit any medical documentation of disease

at the time the claim is filed (although medical documentation subsequently may be required). Instead, the claimant or eligible surviving beneficiary may submit with the claim an Authorization to Release Medical and Other Information, valid in the state of diagnosis, that authorizes the Program to contact the appropriate state cancer or tumor registry. The Program will accept as proof of medical condition verification from the state cancer or tumor registry that it possesses medical records or abstracts of medical records of the claimant that contain a verified diagnosis of one of the specified compensable diseases. If the designated state does not possess medical records or abstracts of medical records that contain a verified diagnosis of one of the specified compensable diseases, the Program will notify the claimant or eligible surviving beneficiary and afford that individual the opportunity to submit the written medical documentation required in paragraph (c) of this section, in accordance with the provisions of § 79.72(b).

(c) Proof that the claimant contracted a specified compensable disease may be made by the submission of one or more of the contemporaneous medical records listed in this paragraph, provided that the specified document contains an explicit statement of diagnosis and such other information or data from which the appropriate authorities with the National Cancer Institute can make a diagnosis to a reasonable degree of medical certainty. If the medical record submitted does not contain sufficient information or data to make such a diagnosis, the Program will notify the claimant or eligible surviving beneficiary and afford that individual the opportunity to submit additional medical records identified in this paragraph, in accordance with the provisions of § 79.72(b). The medical documentation submitted under this section to establish that the claimant contracted leukemia or a lymphoma must also contain sufficient information from which the appropriate authorities with the National Cancer Institute can determine the type of leukemia or lymphoma contracted by the claimant. Proof of leukemia shall be made by submitting one or more of the documents listed in § 79.16(c).

(1) *Multiple myeloma.*

(i) Pathology report of tissue biopsy;
(ii) Autopsy report;
(iii) Report of serum electrophoresis;
(iv) One of the following summary medical reports:
(A) Physician summary report;
(B) Hospital discharge summary report;

(C) Hematology summary or consultation report;
(D) Medical oncology summary or consultation report;
(E) X-ray report; or
(v) Death certificate, provided that it is signed by a physician at the time of death.

(2) *Lymphomas.*

(i) Pathology report of tissue biopsy;
(ii) Autopsy report;
(iii) One of the following summary medical reports:
(A) Physician summary report;
(B) Hospital discharge summary report;
(C) Hematology consultation or summary report;
(D) Medical oncology consultation or summary report; or
(iv) Death certificate, provided that it is signed by a physician at the time of death.
(3) *Primary cancer of the thyroid.*
(i) Pathology report of tissue biopsy or fine needle aspirate;
(ii) Autopsy report;
(iii) One of the following summary medical reports:
(A) Physician summary report;
(B) Hospital discharge summary;
(C) Operative summary report;
(D) Medical oncology summary or consultation report; or
(iv) Death certificate, provided that it is signed by a physician at the time of death.

(4) *Primary cancer of the male or female breast.*

(i) Pathology report of tissue biopsy or surgical resection;
(ii) Autopsy report;
(iii) One of the following summary medical reports:
(A) Physician summary report;
(B) Hospital discharge summary;
(C) Operative report;
(D) Medical oncology summary or consultation report;
(E) Radiotherapy summary or consultation report;
(iv) Report of mammogram;
(v) Report of bone scan; or
(vi) Death certificate, provided that it is signed by a physician at the time of death.

(5) *Primary cancer of the esophagus.*

(i) Pathology report of tissue biopsy or surgical resection;
(ii) Autopsy report;
(iii) Endoscopy report;
(iv) One of the following summary medical reports:
(A) Physician summary report;
(B) Hospital discharge summary report;
(C) Operative report;
(D) Radiotherapy report;
(E) Medical oncology consultation or summary report;

(v) One of the following radiological studies:

(A) Esophagram;
(B) Barium swallow;
(C) Upper gastrointestinal (GI) series;
(D) Computerized tomography (CT)

scan;

(E) Magnetic resonance imaging (MRI); or

(vi) Death certificate, provided that it is signed by a physician at the time of death.

(6) *Primary cancer of the stomach.*

(i) Pathology report of tissue biopsy or surgical resection;
(ii) Autopsy report;
(iii) Endoscopy or gastroscopy report;
(iv) One of the following summary medical reports:
(A) Physician summary report;
(B) Hospital discharge summary report;

(C) Operative report;

(D) Radiotherapy report;

(E) Medical oncology summary report;

(v) One of the following radiological studies:

(A) Barium swallow;
(B) Upper gastrointestinal (GI) series;
(C) Computerized tomography (CT)

series;

(D) Magnetic resonance imaging (MRI); or

(vi) Death certificate, provided that it is signed by a physician at the time of death.

(7) *Primary cancer of the pharynx.*

(i) Pathology report of tissue biopsy or surgical resection;
(ii) Autopsy report;
(iii) Endoscopy report;
(iv) One of the following summary medical reports:
(A) Physician summary;
(B) Hospital discharge summary;
(C) Report of otolaryngology examination;

(D) Radiotherapy summary report;

(E) Medical oncology summary report;

(F) Operative report;

(v) Report of one of the following radiological studies:

(A) Laryngograms;
(B) Tomograms of soft tissue and lateral radiographs;
(C) Computerized tomography (CT) scan;

(D) Magnetic resonance imaging (MRI); or

(vi) Death certificate, provided that it is signed by a physician at the time of death.

(8) *Primary cancer of the small intestine.*

(i) Pathology report of tissue biopsy;
(ii) Autopsy report;
(iii) Endoscopy report, provided that the examination covered the duodenum and parts of the jejunum;

(iv) Colonoscopy report, provided that the examination covered the distal ileum;

(v) One of the following summary medical reports:

- (A) Physician summary report;
- (B) Hospital discharge summary;
- (C) Report of gastroenterology examination;

(D) Operative report;

(E) Radiotherapy summary report;

(F) Medical oncology summary or consultation report;

(vi) Report of one of the following radiologic studies:

- (A) Upper gastrointestinal (GI) series with small bowel follow-through;
- (B) Angiography;
- (C) Computerized tomography (CT) scan;

(D) Magnetic resonance imaging (MRI); or

(vii) Death certificate, provided that it is signed by a physician at the time of death.

(9) *Primary cancer of the pancreas.*

(i) Pathology report of tissue biopsy or fine needle aspirate;

(ii) Autopsy report;

(iii) One of the following summary medical reports:

- (A) Physician summary report;
- (B) Hospital discharge summary report;

(C) Radiotherapy summary report;

(D) Medical oncology summary report;

(iv) Report of one of the following radiographic studies:

- (A) Endoscopic retrograde cholangiopancreatography (ERCP);
- (B) Upper gastrointestinal (GI) series;
- (C) Arteriography of the pancreas;
- (D) Ultrasonography;
- (E) Computerized tomography (CT) scan;

(F) Magnetic resonance imaging (MRI); or

(v) Death certificate, provided that it is signed by a physician at the time of death.

(10) *Primary cancer of the bile ducts.*

(i) Pathology of tissue biopsy or surgical resection;

(ii) Autopsy report;

(iii) One of the following summary medical reports:

- (A) Physician summary report;
- (B) Hospital discharge summary report;

(C) Operative report;

(D) Gastroenterology consultation report;

(E) Medical oncology summary or consultation report;

(iv) Report of one of the following radiographic studies:

- (A) Ultrasonography;
- (B) Endoscopic retrograde cholangiography;

(C) Percutaneous cholangiography;

(D) Computerized tomography (CT) scan;

(v) Death certificate, provided that it is signed by a physician at the time of death.

(11) *Primary cancer of the gallbladder.*

(i) Pathology report of tissue from surgical resection;

(ii) Autopsy report;

(iii) Report of one of the following radiological studies:

(A) Computerized tomography (CT) scan;

(B) Magnetic resonance imaging (MRI);

(C) Ultrasonography (ultrasound);

(iv) One of the following summary medical reports:

- (A) Physician summary report;
- (B) Hospital discharge summary report;

(C) Operative report;

(D) Radiotherapy report;

(E) Medical oncology summary or report; or

(v) Death certificate, provided that it is signed by a physician at the time of death.

(12) *Primary cancer of the liver.*

(i) Pathology report of tissue biopsy or surgical resection;

(ii) Autopsy report;

(iii) One of the following summary medical reports:

- (A) Physician summary report;
- (B) Hospital discharge summary report;

(C) Medical oncology summary report;

(D) Operative report;

(E) Gastroenterology report;

(iv) Report of one of the following radiological studies:

(A) Computerized tomography (CT) scan;

(B) Magnetic resonance imaging (MRI); or

(v) Death certificate, provided that it is signed by a physician at the time of death.

(13) *Cancer of the lung.*

(i) Pathology report of tissue biopsy or resection, including, but not limited to specimens obtained by any of the following methods:

- (A) Surgical resection;
- (B) Endoscopic endobronchial or transbronchial biopsy;

(C) Bronchial brushings and washings;

(D) Pleural fluid cytology;

(E) Fine needle aspirate;

(F) Pleural biopsy;

(G) Sputum cytology;

(ii) Autopsy report;

(iii) Report of bronchoscopy, with or without biopsy;

(iv) One of the following summary medical reports:

(A) Physician summary report;

(B) Hospital discharge summary report;

(C) Radiotherapy summary report;

(D) Medical oncology summary report;

(E) Operative report;

(v) Report of one of the following radiology examinations:

(A) Computerized tomography (CT) scan;

(B) Magnetic resonance imaging (MRI);

(C) X-rays of the chest;

(D) Chest tomograms; or

(vi) Death certificate, provided that it is signed by a physician at the time of death.

(14) *Primary cancer of the salivary gland.*

(i) Pathology report of tissue biopsy or resection;

(ii) Autopsy report;

(iii) Report of otolaryngology or oral maxillofacial examination;

(iv) One of the following summary medical reports:

- (A) Physician summary report;
- (B) Hospital discharge summary report;

(C) Radiotherapy summary report;

(D) Medical oncology summary report;

(E) Operative report;

(v) Report of one of the following radiology examinations:

(A) Computerized tomography (CT) scan;

(B) Magnetic resonance imaging (MRI); or

(vi) Death certificate, provided that it is signed by a physician at the time of death.

(15) *Primary cancer of the urinary bladder.*

(i) Pathology report of tissue biopsy or resection;

(ii) Autopsy report;

(iii) Report of cytology, with or without biopsy;

(iv) One of the following summary medical reports:

- (A) Physician summary report;
- (B) Hospital discharge summary report;

(C) Radiotherapy summary report;

(D) Medical oncology summary report;

(E) Operative report;

(v) Report of one of the following radiology examinations:

(A) Computerized tomography (CT) scan;

(B) Magnetic resonance imaging (MRI); or

(vi) Death certificate, provided that it is signed by a physician at the time of death.

(16) *Primary cancer of the brain.*

(i) Pathology report of tissue biopsy or resection;

(ii) Autopsy report;

(iii) One of the following summary medical reports:

(A) Physician summary report;

(B) Hospital discharge summary report;

(C) Radiotherapy summary report;

(D) Medical oncology summary report;

(E) Operative report;

(iv) Report of one of the following radiology examinations:

(A) Computerized tomography (CT) scan;

(B) Magnetic resonance imaging (MRI);

(C) CT or MRI with enhancement; or

(v) Death certificate, provided that it is signed by a physician at the time of death.

(17) *Primary cancer of the colon.*

(i) Pathology report of tissue biopsy;

(ii) Autopsy report;

(iii) Endoscopy report, provided the examination covered the duodenum and parts of the jejunum;

(iv) Colonoscopy report, provided that the examination covered the distal ileum;

(v) One of the following summary medical reports:

(A) Physician summary report;

(B) Hospital discharge summary;

(C) Report of gastroenterology examination;

(D) Operative report;

(E) Radiotherapy summary report;

(F) Medical oncology summary or consultation report;

(vi) Report of one of the following radiologic studies:

(A) Upper gastrointestinal (GI) series with small bowel follow-through;

(B) Angiography;

(C) Computerized tomography (CT) scan;

(D) Magnetic resonance imaging (MRI); or

(vii) Death certificate, provided that it is signed by a physician at the time of death.

(18) *Primary cancer of the ovary.*

(i) Pathology report of tissue biopsy or resection;

(ii) Autopsy report;

(iii) One of the following summary medical reports:

(A) Physician summary report;

(B) Hospital discharge summary report;

(C) Radiotherapy summary report;

(D) Medical oncology summary report;

(E) Operative report; or

(iv) Death certificate, provided that it is signed by a physician at the time of death.

§ 79.27 Indication of the presence of hepatitis B or cirrhosis.

(a)(1) If the claimant or eligible surviving beneficiary is claiming eligibility under this subpart for primary cancer of the liver, the claimant or eligible surviving beneficiary must submit, in addition to proof of the disease, all medical records listed below from any hospital, medical facility, or health care provider that were created within the period six months before and six months after the date of diagnosis of primary cancer of the liver:

- (i) All history and physical examination reports;
- (ii) All operative and consultation reports;
- (iii) All pathology reports; and
- (iv) All physician, hospital, and health care facility admission and discharge summaries.

(2) In the event that any of the records in paragraph (a)(1) of this section no longer exists, the claimant or eligible surviving beneficiary must submit a certified statement by the custodian(s) of those records to that effect.

(b) If the medical records listed in paragraph (a) of this section, or information possessed by the state cancer or tumor registries, indicates the presence of hepatitis B or cirrhosis, the Radiation Exposure Compensation Program will notify the claimant or eligible surviving beneficiary and afford that individual the opportunity to submit other written medical documentation or contemporaneous records in accordance with § 79.72(b) to establish that in fact there was no hepatitis B or cirrhosis.

(c) The Program may also require that the claimant or eligible surviving beneficiary provide additional medical records or other contemporaneous records, or an authorization to release such additional medical and contemporaneous records, as may be needed to make a determination regarding the indication of the presence of hepatitis B or cirrhosis.

Subpart D—Eligibility Criteria for Claims by Onsite Participants

§ 79.30 Scope of subpart.

The regulations in this subpart describe the criteria for eligibility for compensation under section 4(a)(2)(C) of the Act, and the evidence that will be accepted as proof of the various criteria. Section 4(a)(2)(C) of the Act provides for a payment of \$75,000 to individuals who participated onsite in the atmospheric detonation of a nuclear device and later developed a specified compensable disease.

§ 79.31 Definitions.

(a) The definitions listed in § 79.11(b), (e), (f), (g), and (h), and in § 79.21, apply to this subpart.

(b) *Atmospheric detonation of a nuclear device* means only a test conducted by the United States prior to January 1, 1963, as listed in paragraph (d) of this section.

(c) *First exposure or initial exposure* means the date on which the claimant first participated onsite in an atmospheric nuclear test.

(d) *Period of atmospheric nuclear testing* means one of the periods listed in this paragraph that are associated with each test operation, plus an additional six-month period thereafter:

(1) For Operation Trinity, the period July 16, 1945, through August 6, 1945:

| Event name | Date | Location |
|---------------|----------|--------------------|
| Trinity | 07/16/45 | Trinity Test Site. |

(2) For Operation Crossroads, the period June 28, 1946, through August 31, 1946, for all activities other than the decontamination of ships involved in Operation Crossroads; the period of atmospheric nuclear testing for the decontamination of ships involved in Operation Crossroads shall run from June 28, 1946, through November 30, 1946:

| Event name | Date | Location |
|-------------|----------|----------|
| Able | 07/01/46 | Bikini. |
| Baker | 07/25/46 | Bikini. |

(3) For Operation Sandstone, the period April 13, 1948, through May 20, 1948:

| Event name | Date | Location |
|-------------|----------|-----------|
| X-ray | 04/15/48 | Enewetak. |
| Yoke | 05/01/48 | Enewetak. |
| Zebra | 05/15/48 | Enewetak. |

(4) For Operation Ranger, the period January 27, 1951, through February 7, 1951:

| Event name | Date | Location |
|---------------|----------|---------------------------|
| Able | 01/27/51 | Nevada Test Site ("NTS"). |
| Baker | 01/28/51 | NTS. |
| Easy | 02/01/51 | NTS. |
| Baker-2 | 02/02/51 | NTS. |
| Fox | 02/06/51 | NTS. |

(5) For Operation Greenhouse, the period April 5, 1951, through June 20, 1951, for all activities other than service as a member of the garrison or maintenance forces on the atoll of Enewetak between June 21, 1951, and July 1, 1952; the period of atmospheric

nuclear testing for service as a member of the garrison or maintenance forces on the atoll of Enewetak shall run from April 5, 1951, through July 1, 1952:

| Event name | Date | Location |
|--------------|----------|-----------|
| Dog | 04/08/51 | Enewetak. |
| Easy | 04/21/51 | Enewetak. |
| George | 05/09/51 | Enewetak. |
| Item | 05/25/51 | Enewetak. |

(6) For Operation Buster-Jangle, the period October 22, 1951, through December 20, 1951:

| Event name | Date | Location |
|---------------|----------|----------|
| Able | 10/22/51 | NTS. |
| Baker | 10/28/51 | NTS. |
| Charlie | 10/30/51 | NTS. |
| Dog | 11/01/51 | NTS. |
| Sugar | 11/19/51 | NTS. |
| Uncle | 11/29/51 | NTS. |

(7) For Operation Tumbler-Snapper, the period April 1, 1952, through June 20, 1952:

| Event name | Date | Location |
|---------------|----------|----------|
| Able | 04/01/52 | NTS. |
| Baker | 04/15/52 | NTS. |
| Charlie | 04/22/52 | NTS. |
| Dog | 05/01/52 | NTS. |
| Easy | 05/07/52 | NTS. |
| Fox | 05/25/52 | NTS. |
| George | 06/01/52 | NTS. |

(8) For Operation Ivy, the period October 29, 1952, through December 31, 1952:

| Event name | Date | Location |
|------------|----------|-----------|
| Mike | 11/01/52 | Enewetak. |
| King | 11/16/52 | Enewetak. |

(9) For Operation Upshot-Knothole, the period March 17, 1953, through June 20, 1953:

| Event name | Date | Location |
|--------------|----------|----------|
| Annie | 03/17/53 | NTS. |
| Nancy | 03/24/53 | NTS. |
| Ruth | 03/31/53 | NTS. |
| Dixie | 04/06/53 | NTS. |
| Ray | 04/11/53 | NTS. |
| Badger | 04/18/53 | NTS. |
| Simon | 04/25/53 | NTS. |
| Encore | 05/08/53 | NTS. |
| Harry | 05/19/53 | NTS. |
| Grable | 05/25/53 | NTS. |
| Climax | 06/04/53 | NTS. |

(10) For Operation Castle, the period February 27, 1954, through May 31, 1954:

| Event name | Date | Location |
|-------------|----------|----------|
| Bravo | 03/01/54 | Bikini. |

| Event name | Date | Location |
|--------------|----------|-----------|
| Romeo | 03/27/54 | Bikini. |
| Koon | 04/07/54 | Bikini. |
| Union | 04/26/54 | Bikini. |
| Yankee | 05/05/54 | Bikini. |
| Nectar | 05/14/54 | Enewetak. |

(11) For Operation Teapot, the period February 18, 1955, through June 10, 1955:

| Event name | Date | Location |
|----------------|----------|----------|
| Wasp | 02/18/55 | NTS. |
| Moth | 02/22/55 | NTS. |
| Tesla | 03/01/55 | NTS. |
| Turk | 03/07/55 | NTS. |
| Hornet | 03/12/55 | NTS. |
| Bee | 03/22/55 | NTS. |
| Ess | 03/23/55 | NTS. |
| Apple-1 | 03/29/55 | NTS. |
| Wasp Prime | 03/29/55 | NTS. |
| Ha | 04/06/55 | NTS. |
| Post | 04/09/55 | NTS. |
| Met | 04/15/55 | NTS. |
| Apple-2 | 05/05/55 | NTS. |
| Zucchini | 05/15/55 | NTS. |

(12) For Operation Wigwam, the period May 14, 1955, through May 15, 1955:

| Event name | Date | Location |
|--------------|----------|----------|
| Wigwam | 05/14/55 | Pacific. |

(13) For Operation Redwing, the period May 2, 1956, through August 6, 1956, for all activities other than service as a member of the garrison or maintenance forces on the atoll of Enewetak from August 7, 1956, through August 7, 1957; the period of atmospheric nuclear testing for service as a member of the garrison or maintenance forces on the atoll of Enewetak shall run from May 2, 1956, through August 7, 1957:

| Event name | Date | Location |
|-----------------|----------|-----------|
| Lacrosse | 05/05/56 | Enewetak. |
| Cherokee | 05/21/56 | Bikini. |
| Zuni | 05/28/56 | Bikini. |
| Yuma | 05/28/56 | Enewetak. |
| Erie | 05/31/56 | Enewetak. |
| Seminole | 06/06/56 | Enewetak. |
| Flathead | 06/12/56 | Bikini. |
| Blackfoot | 06/12/56 | Enewetak. |
| Kickapoo | 06/14/56 | Enewetak. |
| Osage | 06/16/56 | Enewetak. |
| Inca | 06/22/56 | Enewetak. |
| Dakota | 06/26/56 | Bikini. |
| Mohawk | 07/03/56 | Enewetak. |
| Apache | 07/09/56 | Enewetak. |
| Navajo | 07/11/56 | Bikini. |
| Tewa | 07/21/56 | Bikini. |
| Huron | 07/22/56 | Enewetak. |

(14) For Operation Plumbbob, the period May 28, 1957, through October 22, 1957:

| Event name | Date | Location |
|-----------------|----------|----------|
| Boltzmann | 05/28/57 | NTS. |
| Franklin | 06/02/57 | NTS. |
| Lassen | 06/05/57 | NTS. |
| Wilson | 06/18/57 | NTS. |
| Priscilla | 06/24/57 | NTS. |
| Hood | 07/05/57 | NTS. |
| Diablo | 07/15/57 | NTS. |
| John | 07/19/57 | NTS. |
| Kepler | 07/24/57 | NTS. |
| Owens | 07/25/57 | NTS. |
| Stokes | 08/07/57 | NTS. |
| Shasta | 08/18/57 | NTS. |
| Doppler | 08/23/57 | NTS. |
| Franklin Prime. | 08/30/57 | NTS. |
| Smoky | 08/31/57 | NTS. |
| Galileo | 09/02/57 | NTS. |
| Wheeler | 09/06/57 | NTS. |
| Laplace | 09/08/57 | NTS. |
| Fizeau | 09/14/57 | NTS. |
| Newton | 09/16/57 | NTS. |
| Whitney | 09/23/57 | NTS. |
| Charleston | 09/28/57 | NTS. |
| Morgan | 10/07/57 | NTS. |

(15) For Operation Hardtack I, the period April 26, 1958, through October 31, 1958, for all activities other than service as a member of the garrison or maintenance forces on the atoll of Enewetak from November 1, 1958, through April 30, 1959; the period of atmospheric nuclear testing for service as a member of the garrison of maintenance forces on the atoll of Enewetak shall run from April 26, 1958, through April 30, 1959:

| Event name | Date | Location |
|-----------------|----------|---------------|
| Yucca | 04/28/58 | Pacific. |
| Cactus | 05/06/58 | Enewetak. |
| Fir | 05/12/58 | Bikini. |
| Butternut | 05/12/58 | Enewetak. |
| Koa | 05/13/58 | Enewetak. |
| Wahoo | 05/16/58 | Enewetak. |
| Holly | 05/21/58 | Enewetak. |
| Nutmeg | 05/22/58 | Bikini. |
| Yellowwood .. | 05/26/58 | Enewetak. |
| Magnolia | 05/27/58 | Enewetak. |
| Tobacco | 05/30/58 | Enewetak. |
| Sycamore | 05/31/58 | Bikini. |
| Rose | 06/03/58 | Enewetak. |
| Umbrella | 06/09/58 | Enewetak. |
| Maple | 06/11/58 | Bikini. |
| Aspen | 06/15/58 | Bikini. |
| Walnut | 06/15/58 | Enewetak. |
| Linden | 06/18/58 | Enewetak. |
| Redwood | 06/28/58 | Bikini. |
| Elder | 06/28/58 | Enewetak. |
| Oak | 06/29/58 | Enewetak. |
| Hickory | 06/29/58 | Bikini. |
| Sequoia | 07/02/58 | Enewetak. |
| Cedar | 07/03/58 | Bikini. |
| Dogwood | 07/06/58 | Enewetak. |
| Poplar | 07/12/58 | Bikini. |
| Scaevola | 07/14/58 | Enewetak. |
| Pisonia | 07/18/58 | Enewetak. |
| Juniper | 07/22/58 | Bikini. |
| Olive | 07/23/58 | Enewetak. |
| Pine | 07/27/58 | Enewetak. |
| Teak | 07/31/58 | Johnston Isl. |
| Qunice | 08/06/58 | Enewetak. |

| Event name | Date | Location |
|--------------|----------|---------------|
| Orange | 08/11/58 | Johnston Isl. |
| Fig | 08/18/58 | Enewetak. |

(16) For Operation Argus, the period August 25, 1958, through September 10, 1958:

| Event name | Date | Location |
|-----------------|----------|-----------------|
| Argus I | 08/27/58 | South Atlantic. |
| Argus II | 08/30/58 | South Atlantic. |
| Argus III | 09/06/58 | South Atlantic. |

(17) For Operation Hardtack II, the period September 19, 1958, through October 31, 1958:

| Event name | Date | Location |
|------------------|----------|----------|
| Eddy | 09/19/58 | NTS. |
| Mora | 09/29/58 | NTS. |
| Quay | 10/10/58 | NTS. |
| Lea | 10/13/58 | NTS. |
| Hamilton | 10/15/58 | NTS. |
| Dona Ana | 10/16/58 | NTS. |
| Rio Arriba | 10/18/58 | NTS. |
| Socorro | 10/22/58 | NTS. |
| Wrangell | 10/22/58 | NTS. |
| Rushmore | 10/22/58 | NTS. |
| Sanford | 10/26/58 | NTS. |
| De Baca | 10/26/58 | NTS. |
| Humboldt | 10/29/58 | NTS. |
| Mazama | 10/29/58 | NTS. |
| Santa Fe | 10/30/58 | NTS. |

(18) For Operation Dominic I, the period April 23, 1962, through December 31, 1962:

| Event name | Date | Location |
|-----------------|----------|----------------|
| Adobe | 04/25/62 | Christmas Isl. |
| Aztec | 04/27/62 | Christmas Isl. |
| Arkansas | 05/02/62 | Christmas Isl. |
| Questa | 05/04/62 | Christmas Isl. |
| Frigate Bird .. | 05/06/62 | Pacific. |
| Yukon | 05/08/62 | Christmas Isl. |
| Mesilla | 05/09/62 | Christmas Isl. |
| Muskegon | 05/11/62 | Christmas Isl. |
| Swordfish | 05/11/62 | Pacific. |
| Encino | 05/12/62 | Christmas Isl. |
| Swanee | 05/14/62 | Christmas Isl. |
| Chetco | 05/19/62 | Christmas Isl. |
| Tanana | 05/25/62 | Christmas Isl. |
| Nambe | 05/27/62 | Christmas Isl. |
| Alma | 06/08/62 | Christmas Isl. |
| Truckee | 06/09/62 | Christmas Isl. |
| Yeso | 06/10/62 | Christmas Isl. |
| Harlem | 06/12/62 | Christmas Isl. |
| Rinconada | 06/15/62 | Christmas Isl. |
| Dulce | 06/17/62 | Christmas Isl. |
| Petit | 06/19/62 | Christmas Isl. |
| Otowi | 06/22/62 | Christmas Isl. |
| Bighorn | 06/27/62 | Christmas Isl. |
| Bluestone | 06/30/62 | Christmas Isl. |
| Starfish | 07/08/62 | Johnston Isl. |
| Sunset | 07/10/62 | Christmas Isl. |
| Pamlico | 07/11/62 | Christmas Isl. |
| Androscoggin .. | 10/02/62 | Johnston Isl. |
| Bumping | 10/06/62 | Johnston Isl. |
| Chama | 10/18/62 | Johnston Isl. |
| Checkmate | 10/19/62 | Johnston Isl. |
| Bluegill | 10/25/62 | Johnston Isl. |

| Event name | Date | Location |
|-----------------|----------|---------------|
| Calamity | 10/27/62 | Johnston Isl. |
| Housatonic ... | 10/30/62 | Johnston Isl. |
| Kingfish | 11/01/62 | Johnston Isl. |
| Tightrope | 11/03/62 | Johnston Isl. |

(19) For Operation Dominic II, the period July 7, 1962, through August 15, 1962:

| Event name | Date | Location |
|------------------|----------|----------|
| Little Feller II | 07/07/62 | NTS. |
| Johnnie Boy ... | 07/11/62 | NTS. |
| Small Boy | 07/14/62 | NTS. |
| Little Feller I | 07/17/62 | NTS. |

(20) For Operation Plowshare, the period July 6, 1962, through July 7, 1962, covering Project Sedan.

§ 79.32 Criteria for eligibility.

To establish eligibility for compensation under this subpart, a claimant or eligible surviving beneficiary must establish each of the following:

(a) That the claimant was present onsite at any time during a period of atmospheric nuclear testing;

(b) That the claimant was a participant during that period in the atmospheric detonation of a nuclear device; and

(c) That after such participation, the claimant contracted a specified compensable disease as set forth in § 79.22(b).

§ 79.33 Proof of participation onsite during a period of atmospheric nuclear testing.

(a) *Claimants associated with the Department of Defense (DoD) Components or DoD contractors.* (1) A claimant or eligible surviving beneficiary who alleges that the claimant was present onsite during a period of atmospheric nuclear testing as a member of the armed forces or an employee or contractor employee of the DoD, or any of its components or agencies, must submit the following information on the claim form:

- (i) The claimant's name;
- (ii) The claimant's military service number;
- (iii) The claimant's social security number;
- (iv) The site at which the claimant participated in an atmospheric nuclear test;
- (v) The name or number of the claimant's military organization or unit assignment at the time of his or her onsite participation;
- (vi) The dates of the claimant's assignment onsite; and
- (vii) As full and complete a description as possible of the claimant's

official duties, responsibilities, and activities while participating onsite.

(2) A claimant or eligible surviving beneficiary under this section need not submit any additional documentation of onsite participation during an atmospheric nuclear test at the time the claim is filed; however, additional documentation may be required as set forth in paragraph (a)(3) of this section.

(3) Upon receipt under this subpart of a claim that contains the information set forth in paragraph (a)(1) of this section, the Radiation Exposure Compensation Program will forward the information to the DoD and request that the DoD conduct a search of its records for the purpose of gathering facts relating to the claimant's presence onsite and participation in an atmospheric nuclear test. If the facts gathered by the DoD are insufficient to establish the eligibility criteria in § 79.32 of these regulations, the claimant or eligible surviving beneficiary will be notified and afforded the opportunity to submit military, government, or business records in accordance with the procedure set forth in § 79.72(c).

(b) *Claimants Associated with the Atomic Energy Commission (AEC) or the Department of Energy (DOE), or Who Were Members of the Federal Civil Defense Administration or the Office of Civil and Defense Mobilization.* (1) A claimant or eligible surviving beneficiary who alleges that the claimant was present onsite during an atmospheric nuclear test as an employee of the AEC, the DOE or any of their components, agencies or offices, or as an employee of a contractor of the AEC, or DOE, or as a member of the Federal Civil Defense or the Office of Civil and Defense Mobilization, must submit the following information on the claim form:

- (i) The claimant's name;
 - (ii) The claimant's social security number;
 - (iii) The site at which the claimant participated in an atmospheric nuclear test;
 - (iv) The name or other identifying information associated with the claimant's organization, unit, assignment, or employer at the time of the claimant's participation onsite;
 - (v) The dates of the claimant's assignment onsite; and
 - (vi) As full and complete a description as possible of the claimant's official duties, responsibilities, and activities while participating onsite.
- (2) A claimant or eligible surviving beneficiary under this section need not at the time the claim is filed submit any additional documentation demonstrating the claimant's presence

onsite during an atmospheric nuclear test; however, additional documentation may be thereafter be required as set forth in paragraph (b)(3) of this section.

(3) Upon receipt under this subpart of a claim that contains the information set forth in paragraph (b)(1) of this section, the Radiation Exposure Compensation Program will forward the information to the Nevada Field Office of the Department of Energy (DOE/NV) and request that the DOE conduct a search of its records for the purpose of gathering facts relating to the claimant's presence onsite and participation in an atmospheric nuclear test. If the facts gathered by the DOE/NV are insufficient to establish the eligibility criteria in § 79.32 of these regulations, the claimant or eligible surviving beneficiary will be notified and afforded the opportunity to submit military, government, or business records in accordance with the procedure set forth in § 79.72(c).

§ 79.34 Proof of medical condition.

Proof of medical condition under this subpart will be made in the same manner, and according to the same procedures and limitations, as are set forth in § 79.16 and § 79.26.

§ 79.35 Proof of onset of leukemia at least two years after first exposure, and proof of onset of a specified compensable disease more than five years after first exposure.

Absent any indication to the contrary, the earliest date of onsite participation indicated on any records accepted by the Radiation Exposure Compensation Program as proof of the claimant's onsite participation will be presumed to be the date of first or initial exposure. The date of onset will be the date of diagnosis as indicated on the medical documentation accepted by the Radiation Exposure Compensation Program as proof of the specified compensable disease. Proof of the onset of leukemia shall be established in accordance with § 79.15.

§ 79.36 Indication of the presence of hepatitis B or cirrhosis.

Possible indication of hepatitis B or cirrhosis will be determined in accordance with the provisions of § 79.27.

Subparts E–G [Reserved]

Subpart H—Procedures

§ 79.70 Attorney General's delegation of authority.

(a) An Assistant Director within the Constitutional and Specialized Tort Staff, Torts Branch, Civil Division, shall be assigned to manage the Radiation

Exposure Compensation Program and issue a decision on each claim filed under the Act, and otherwise act on behalf of the Attorney General in all other matters relating to the administration of the Program, except for rulemaking authority. The Assistant Director may delegate any of his or her responsibilities under these regulations to an attorney working under the supervision of the Assistant Director.

(b) The Assistant Attorney General, Civil Division, or the official designated by him to act on his behalf (the Appeals Officer), shall act on appeals from the Assistant Director's decisions.

§ 79.71 Filing of claims.

(a) All claims for compensation under the Act must be in writing and submitted on a standard form designated by the Assistant Director for the filing of compensation claims. Except as specifically provided in these regulations, the claimant or eligible surviving beneficiary must furnish the medical documentation required by these regulations with his or her standard form. Except as specifically provided in these regulations, the claimant or eligible surviving beneficiary must also provide with the standard form any records establishing his or her physical presence in an affected area, onsite participation, employment in a uranium mine or mill, or employment as an ore transporter, in accordance with these regulations. The standard form must be completed, signed under oath either by a person eligible to file a claim under the Act or by that person's legal guardian, and mailed with supporting documentation to the following address: Radiation Exposure Compensation Program, U.S. Department of Justice, P.O. Box 146, Ben Franklin Station, Washington, DC 20044–0146. Copies of the standard form, as well as the regulations, guidelines, and other information, may be obtained by requesting the document or publications from the Assistant Director at the address indicated above or by accessing the Program's website at www.usdoj.gov/reca.

(b) The Assistant Director will file a claim after receipt of the standard form with supporting documentation and examination for substantial compliance with these regulations. The date of filing shall be recorded by a stamp on the face of the standard form. The Assistant Director shall file only claims that substantially comply with § 79.71(a) of these regulations. If a claim substantially fails to comply with the aforementioned section, the Assistant Director shall promptly return the claim unfilled to the sender with a statement

identifying the reason(s) why the claim does not comply with the regulations. The sender may return the claim to the Assistant Director after correcting the deficiencies. For those cases that are filed, the Assistant Director shall promptly acknowledge receipt of the claim with a letter identifying the number assigned to the claim, the date the claim was filed, and the period within which the Assistant Director must act on the claim.

(c) The following persons or their legal guardians are eligible to file claims for compensation under the Act in the order listed below:

- (1) The claimant;
- (2) If the claimant is deceased, the spouse of the claimant;
- (3) If there is no surviving spouse, a child of the claimant;
- (4) If there is no surviving spouse or child, a parent of the claimant;
- (5) If there is no surviving spouse, child or parent, a grandchild of the claimant; or
- (6) If there is no surviving spouse, child, parent or grandchild, a grandparent of the claimant.

(7) Only the above-mentioned beneficiaries are eligible to file a claim on behalf of the claimant.

(d) The identity of the claimant must be established by submitting a birth certificate or one of the documents identified in § 79.14(a) of these regulations when the person has no birth certificate. Additionally, documentation demonstrating any and all name changes must be provided.

(e) (1) The spouse of a claimant must establish his or her eligibility to file a claim by furnishing:

- (i) His or her birth certificate and, if applicable, documentation demonstrating any and all name changes;
- (ii) The birth and death certificates of the claimant;
- (iii) One of the following documents to establish a marriage to the claimant:
 - (A) The public record of marriage;
 - (B) A certificate of marriage;
 - (C) The religious record of marriage;

or

(D) A judicial or other governmental determination that a valid marriage existed, such as the final opinion or order of a probate court or a determination of the Social Security Administration that the claimant is the spouse of the decedent;

(iv) A death certificate or divorce decree for each spouse of the claimant (if applicable); and

(v) An affidavit (or declaration under oath on the standard claim form) stating that the spouse was married to the claimant for at least one year

immediately prior to the claimant's death.

(2) If the spouse is a member of an Indian Tribe, he or she need not provide any of the documents listed in paragraph (e)(1) of this section at the time the claim is filed (although these records may later be required), but should instead furnish a signed release of private information that the Assistant Director will use to obtain a statement of verification of all of the information listed above directly from the tribal records custodian. In identifying those individuals eligible to receive compensation by virtue of marriage, relationship, or survivorship, the Assistant Director shall, to the maximum extent practicable, take into consideration and give effect to established law, tradition, and custom of the particular affected Indian tribe.

(f)(1) A child of a claimant must establish his or her eligibility to file a claim by furnishing:

(i) His or her birth certificate and, if applicable, documentation demonstrating any and all name changes;

(ii) The birth and death certificates of the claimant;

(iii) One of the documents listed in paragraph (e)(3) of this section to establish each marriage to the claimant (if applicable);

(iv) A death certificate or divorce decree for each spouse of the claimant (if applicable);

(v) A death certificate for each of the other children of the claimant (if applicable);

(vi) An affidavit (or declaration under oath on the standard claim form) stating the following:

(A) That the claimant was never married, or, if the claimant was ever married, the name of each spouse, the date each marriage began and ended, and the date and place of divorce or death of the last spouse of the claimant; and

(B) That the claimant had no other children, or, if the claimant did have other children, the name of each child, the date and place of birth of each child, and the date and place of death or current address of each child; and

(vii) One of the following:

(A) In the case of a natural child, a birth certificate showing that the claimant was the child's parent, or a judicial decree identifying the claimant as the child's parent;

(B) In the case of an adopted child, the judicial decree of adoption; or

(C) In the case of a stepchild, evidence of birth to the spouse of the claimant as outlined above, and records reflecting that the stepchild lived with the

claimant in a regular parent-child relationship.

(2) If the child is a member of an Indian Tribe, he or she need not provide any of the documents listed above in paragraph (f)(1) of this section at the time the claim is filed (although these records may later be required), but should instead furnish a signed release of private information that the Assistant Director will use to obtain a statement of verification of all of the information listed above directly from the tribal records custodian. In identifying those individuals eligible to receive compensation by virtue of survivorship, the Assistant Director shall, to the maximum extent practicable, take into consideration and give effect to established law, tradition, and custom of the particular affected Indian tribe.

(g)(1) A parent of a claimant must establish his or her eligibility to file a claim by furnishing:

(i) His or her birth certificate and, if applicable, documentation demonstrating any and all name changes;

(ii) The birth and death certificates of the claimant;

(iii) One of the documents listed in paragraph (e)(3) of this section to establish each marriage to the claimant (if applicable);

(iv) A death certificate or divorce decree for each spouse of the claimant (if applicable);

(v) A death certificate for each child of the claimant (if applicable);

(vi) A death certificate for the other parent(s) (if applicable);

(vii) An affidavit (or declaration under oath on the standard claim form) stating the following:

(A) That the claimant was never married, or, if the claimant was ever married, the name of each spouse, the date each marriage began and ended, and the date and place of divorce or death of the last spouse of the claimant;

(B) That the claimant had no children, or, if the claimant did have children, the name of each child, the date and place of birth of each child, and the date and place of death of each child; and

(C) The name and address, or date and place of death, of the other parent(s) of the claimant; and

(viii) One of the following:

(A) In the case of a natural parent, a birth certificate showing that the claimant was the parent's child, or a judicial decree identifying the claimant as the parent's child; or

(B) In the case of an adoptive parent, the judicial decree of adoption.

(2) If the parent is a member of an Indian Tribe, he or she need not provide any of the documents listed in

paragraph (g)(1) of this section at the time the claim is filed (although these records may later be required), but should instead furnish a signed release of private information that the Assistant Director will use to obtain a statement of verification of all of the information listed above directly from the tribal records custodian. In identifying those individuals eligible to receive compensation by virtue of survivorship, the Assistant Director shall, to the maximum extent practicable, take into consideration and give effect to established law, tradition, and custom of the particular affected Indian tribe.

(h)(1) A grandchild of a claimant must establish his or her eligibility to file a claim by furnishing:

(i) His or her birth certificate and, if applicable, documentation demonstrating any and all name changes;

(ii) The birth and death certificates of the claimant;

(iii) One of the documents listed in paragraph (e)(1)(iii) of this section to establish each marriage to the claimant (if applicable);

(iv) A death certificate or divorce decree for each spouse of the claimant (if applicable);

(v) A death certificate for each child of the claimant;

(vi) A death certificate for each parent of the claimant;

(vii) A death certificate for each of the other grandchildren of the claimant (if applicable);

(viii) An affidavit (or declaration under oath on the standard claim form) stating the following:

(A) That the claimant was never married, or, if the claimant was ever married, the name of each spouse, the date each marriage began and ended, and the date and place of divorce or death of the last spouse of the claimant;

(B) The name of each child, the date and place of birth of each child, and the date and place of death of each child;

(C) The names of each parent of the claimant together with the dates and places of death of each parent; and

(D) That the claimant had no other grandchildren, or, if the claimant did have other grandchildren, the name of each grandchild, the date and place of birth of each grandchild, and the date and place of death or current address of each child; and

(ix) One of the following:

(A) In the case of a natural grandchild, a combination of birth certificates showing that the claimant was the grandchild's grandparent;

(B) In the case of an adopted grandchild, a combination of judicial records and birth certificates showing

that the claimant was the grandchild's grandparent; or

(C) In the case of a stepgrandchild, evidence of birth to the spouse of the child of the claimant, as outlined above, and records reflecting that the stepchild lived with a child of the claimant in a regular parent-child relationship.

(2) If the grandchild is a member of an Indian Tribe, he or she need not provide any of the documents listed above in paragraph (h)(1) of this section at the time the claim is filed (although these records may later be required), but should instead furnish a signed release of private information that the Assistant Director will use to obtain a statement of verification of all of the information listed above directly from the tribal records custodian. In identifying those individuals eligible to receive compensation by virtue of survivorship, the Assistant Director shall, to the maximum extent practicable, take into consideration and give effect to established law, tradition, and custom of the particular affected Indian tribe.

(i)(1) A grandparent of the claimant must establish his or her eligibility to file a claim by furnishing:

(i) His or her birth certificate and, if applicable, documentation demonstrating any and all name changes;

(ii) The birth and death certificates of the claimant;

(iii) One of the documents listed in paragraph (e)(3) of this section to establish each marriage to the claimant (if applicable);

(iv) A death certificate or divorce decree for each spouse of the claimant (if applicable);

(v) A death certificate for each child of the claimant (if applicable);

(vi) A death certificate for each parent of the claimant;

(vii) A death certificate for each grandchild of the claimant (if applicable);

(viii) A death certificate for each of the other grandparents of the claimant (if applicable);

(ix) An affidavit stating the following:

(A) That the claimant was never married, or if the claimant was ever married, the name of each spouse, the date each marriage began and ended, and the date and place of divorce or death of the last spouse of the claimant;

(B) That the claimant had no children, or, if the claimant did have children, the name of each child, the date and place of birth of each child, and the date and place of death of each child;

(C) The names of each parent of the claimant together with the dates and places of death of each parent;

(D) That the claimant had no grandchildren, or, if the claimant did

have grandchildren, the name of each grandchild, the date and place of birth of each grandchild, and the date and place of death of each grandchild; and

(E) The names of all other grandparents of the claimant together with the dates and places of birth of each grandparent, and the dates and places of death of each other grandparent or the current address of each other grandparent; and

(x) One of the following:

(A) In the case of a natural grandparent, a combination of birth certificates showing that the claimant was the grandparent's grandchild;

(B) In the case of an adoptive grandparent, a combination of judicial records showing that the claimant was the grandparent's grandchild.

(2) If the grandparent is a member of an Indian Tribe, he or she need not provide any of the documents listed above in paragraph (i)(1) of this section at the time the claim is filed (although these records may later be required), but should instead furnish a signed release of private information that the Assistant Director will use to obtain a statement of verification of all of the information listed above directly from the tribal records custodian. In identifying those individuals eligible to receive compensation by virtue of survivorship, the Assistant Director shall, to the maximum extent practicable, take into consideration and give effect to established law, tradition, and custom of the particular affected Indian tribe.

(j) A claim that was filed and denied may be filed again in those cases where the claimant or eligible surviving beneficiary obtains documentation that he or she did not possess when the claim was filed previously and that redresses the deficiency for which the claim was denied, including, where applicable, documentation addressing:

(1) An injury specified in the Act;

(2) Residency in the affected area;

(3) Onsite participation in a nuclear test;

(4) Exposure to 40 WLMs of radiation while employed in a uranium mine or mines during the designated time period;

(5) Employment for one year (12 consecutive or cumulative months) as a miller or ore transporter; or

(6) The identity of the claimant and/or the eligible surviving beneficiary.

(k) A claimant or eligible surviving beneficiary may not refile a claim more than two times. Claims filed prior to July 10, 2000, will not be included in determining the number of claims filed.

§ 79.72 Review and resolution of claims.

(a) *Initial review.* The Assistant Director shall conduct an initial review

of each claim that has been filed to determine whether:

(1) The person submitting the claim represents that he or she is an eligible surviving beneficiary, in those cases where the claimant is deceased;

(2) The medical condition identified in the claim is a disease specified in the Act for which the claimant or eligible surviving beneficiary could recover compensation;

(3) For claims submitted under subparts B and C of this part, the period or place of physical presence set forth in the claim falls within the designated time period or affected areas identified in § 79.11;

(4) For claims submitted under subparts B and D of this part, the place and period of onsite participation set forth in the claim falls within the places and times set forth in § 79.11 and § 79.31; and

(5) For claims submitted under subparts E, F, and G of this part, the period or place of uranium mining, mill working or ore transporting set forth in the claim falls within the designated time period and specified states identified in §§ 79.42, 79.52, and 79.62. If the Assistant Director determines from the initial review that any one of the applicable criteria is not met, or that any other criterion of the regulations is not met, the Assistant Director shall so advise the claimant or eligible surviving beneficiary in writing, setting forth the reasons for the determination, and allow the claimant or eligible surviving beneficiary 60 days from the date of such notification to correct any deficiency in the claim. If the claimant or eligible surviving beneficiary fails adequately to correct the deficiencies within the 60-day period, the Assistant Director shall, without further review, issue a Decision denying the claim.

(b) *Review of medical documentation.* The Assistant Director will examine the medical documentation submitted in support of the claim and determine whether it satisfies the criteria for eligibility established by the Act and these regulations. The Assistant Director may, for the purpose of verifying eligibility, require the claimant or eligible surviving beneficiary to provide an authorization to release any medical record identified in these regulations. If the Assistant Director determines that the documentation does not satisfy the criteria for eligibility established by the Act and these regulations, the Assistant Director shall so advise the claimant or eligible surviving beneficiary in writing, setting forth the reason(s) for the determination, and shall allow the claimant or eligible beneficiary 60 days from the date of notification, or such

greater period as the Assistant Director permits, to furnish additional medical documentation that meets the requirements of the Act and the regulations. Where appropriate, the Assistant Director may require the claimant or eligible surviving beneficiary to provide an authorization to release additional records. If the claimant or eligible beneficiary fails, within 60 days or the greater period approved by the Assistant Director, to provide sufficient medical documentation or a valid release when requested by the Assistant Director, then the Assistant Director shall, without further review, issue a Decision denying the claim.

(c) *Review of the records.* The Assistant Director will examine the other records submitted in support of the claim to prove those matters set forth in all other sections of the Act and the regulations, and will determine whether such records satisfy all other criteria for eligibility. For the purposes of verifying such eligibility, the Assistant Director may require the claimant or eligible surviving beneficiary to provide an authorization to release any record identified in these regulations. If the Assistant Director determines that the records do not satisfy the criteria for eligibility established by the Act and the regulations, the Assistant Director shall so advise the claimant or eligible surviving beneficiary in writing, setting forth the reasons for the determination, and shall provide the claimant or eligible surviving beneficiary 60 days from the date of notification, or such greater period as the Assistant Director permits, to furnish additional records to satisfy the requirements of the Act and the regulations. Where appropriate, the Assistant Director may require the claimant or eligible surviving beneficiary to provide an authorization to release additional records as an alternative to, or in addition to, the claimant or eligible beneficiary furnishing such additional records. If the claimant or eligible beneficiary fails, within sixty days or the greater period approved by the Assistant Director, to provide sufficient records or a valid release when requested by the Assistant Director, then the Assistant Director shall, without further review, issue a Decision denying the claim.

(d) *Decision.* The Assistant Director shall review each claim and issue a written Decision on each claim within twelve months of the date the claim was filed. The Assistant Director may request from any claimant, or from any individual or entity on behalf of the claimant, any relevant additional

information or documentation necessary to complete the determination of eligibility under paragraphs (a), (b), or (c) of this section. The period beginning on the date on which the Assistant Director makes a request for such additional information or documentation and ending on the date on which the claimant or individual or entity acting on behalf of the claimant submits that information or documentation (or informs the Assistant Director that it is not possible to provide that information or that the claimant or individual or entity will not provide that information) shall not apply to the twelve-month period. Any Decision denying a claim shall set forth reason(s) for the denial, shall indicate that the Decision of the Assistant Director may be appealed to the Assistant Attorney General, Civil Division, in writing within 60 days of the date of the Decision, or such greater period as may be permitted by the Assistant Attorney General, and shall identify the address to which the appeal should be sent.

§ 79.73 Appeals procedures.

(a) An appeal must be in writing and must be received by the Radiation Exposure Compensation Program within sixty days of the date of the Decision denying the claim, unless a greater period has been permitted. Appeals must be sent to the following address: Radiation Exposure Compensation Program, Appeal of Decision, U.S. Department of Justice, P.O. Box 146, Ben Franklin Station, Washington, DC 20044-0146.

(b) The claimant or eligible surviving beneficiary must set forth in the appeal the reason(s) why he or she believes that the Decision of the Assistant Director is incorrect.

(c) Upon receipt of an appeal, the Radiation Exposure Compensation Program shall forward the appeal, the Decision, the claim, and all supporting documentation, to the Assistant Attorney General, or to the Appeals Officer if one is designated, for action on the appeal. If the appeal is not received within the 60-day period, or such greater period as may be permitted, the appeal may be denied without further review.

(d) The Assistant Attorney General or Appeals Officer shall review any appeal and other information forwarded by the Program. Within 90 days after the receipt of an appeal, the Assistant Attorney General or Appeals Officer shall issue a Memorandum either affirming or reversing the Assistant Director's Decision or, when appropriate, remanding the claim to the Assistant Director for further action. The

Memorandum shall include a statement of the reason(s) for such reversal, affirmance, or remand. The Memorandum and all papers relating to the claim shall be returned to the Radiation Exposure Compensation Program, which shall promptly inform the claimant or eligible surviving beneficiary of the action of the Assistant Attorney General or Appeals Officer. A Memorandum affirming or reversing the Assistant Director's Decision shall be deemed to be the final action of the Department of Justice on the claim.

(e) Before seeking judicial review of a decision denying a claim under the Act, an individual must first seek review by the designated Appeals Officer. Once the appeals procedures are completed, an individual whose claim for compensation under the Act is affirmed on appeal may seek judicial review in a district court of the United States.

§ 79.74 [Reserved]

§ 79.75 Procedures for payment of claims.

(a) Payment shall be made to the claimant or to the legal guardian of the claimant, unless the claimant is deceased at the time of the payment. In cases involving a claimant who is deceased, payment shall be made to an eligible surviving beneficiary or to the legal guardian acting on behalf of the eligible surviving beneficiary, in accordance with the terms and conditions specified in the Act. Once the Program has received the claimant's or eligible surviving beneficiary's election to accept the payment, the Assistant Director shall ensure that the claim is paid within six weeks. All time frames for processing claims under the Act are suspended during periods where the radiation Trust Fund is not funded.

(b) In cases involving the approval of a claim, the Assistant Director shall take all necessary and appropriate steps to determine the correct amount of any offset to be made to the amount awarded under the Act and to verify the identity of the claimant or the existence of eligible surviving beneficiaries who are entitled by the Act to receive the payment the claimant would have received. The Assistant Director may conduct any investigation, and may require any claimant or eligible surviving beneficiary to provide or execute any affidavit, record, or document or authorize the release of any information the Assistant Director deems necessary to ensure that the compensation payment is made in the correct amount and to the correct person(s). If the claimant or eligible surviving beneficiary fails or refuses to execute an affidavit or release of

information, or to provide a record or document requested, or fails to provide access to information, such failure or refusal may be deemed to be a rejection of the payment, unless the claimant or eligible surviving beneficiary does not have and cannot obtain the legal authority to provide, release or authorize access to the required information, records or documents.

(c) Prior to authorizing payment, the Assistant Director shall require the claimant or each eligible surviving beneficiary to execute and provide an affidavit (or declaration under oath on the standard claim form) setting forth the amount of any payment made pursuant to a final award or settlement on a claim (other than a claim for worker's compensation), against any person, that is based on injuries incurred by the claimant on account of:

(1) Exposure to radiation from atmospheric nuclear testing while present in an affected area (as defined in § 79.11(a) of these regulations) at any time during the periods described in § 79.11(c) of these regulations; or

(2) Exposure to radiation during employment in a uranium mine, during employment as a uranium mill worker or during employment as an ore transporter at any time during the period described in section 5 of the Act. For purposes of this paragraph, a "claim" includes, but is not limited to, any request or demand for money made or sought in a civil action or made or sought in anticipation of the filing of a civil action, but shall not include requests or demands made pursuant to a life insurance or health insurance contract. If any such award or settlement payment was made, the Assistant Director shall subtract the sum of such award or settlement payments from the payment to be made under the Act.

(d) In the case of a claim filed under section 4(a)(1)(A)(i)(III) or section 4(a)(2)(C) of the Act, the Assistant Director shall require the claimant or each eligible surviving beneficiary to execute and provide an affidavit (or declaration under oath on the standard claim form) setting forth the amount of any payment made pursuant to a final award or settlement on a claim (other than a claim for worker's compensation) against any person or any payment made by the Department of Veterans Affairs, that is based on injuries incurred by the claimant on account of exposure to radiation as a result of onsite participation in a test involving the atmospheric detonation of a nuclear device. For purposes of this paragraph, a "claim" includes, but is not limited to, any request or demand for money made

or sought in a civil action or made or sought in anticipation of a civil action, but shall not include requests or demands made pursuant to a life- or health-insurance contract.

(1) Payments by the Department of Veterans Affairs shall include:

(i) Any disability payments or compensation benefits paid to the claimant and his or her dependents while the claimant is alive; and

(ii) Any Dependency and Indemnity Compensation payments made to survivors due to death related to the illness for which the claim under the Act is submitted.

(2) Payments by the Department of Veterans Affairs shall not include:

(i) Active duty pay, retired pay, retainer pay, or payments under the Survivor Benefits Plan;

(ii) Death gratuities;

(iii) SGLI, VGLI, or mortgage, life or health insurance payments;

(iv) Burial benefits or reimbursement for burial expenses;

(v) Loans or loan guarantees;

(vi) Education benefits and payments;

(vii) Vocational rehabilitation benefits and payments;

(viii) Medical, hospital and dental benefits; or

(ix) Commissary and PX privileges.

(e) If any such award, settlement, or payment was made as described in paragraphs (c) or (d) of this section, the Assistant Director shall calculate the actuarial present value of such payment(s), and subtract the actuarial present value from the payment to be made under the Act. The actuarial present value shall be calculated using the worksheet attached as appendix C of this part in the following manner:

(1) Step 1. Enter the sum of the past payments received in each year in the appropriate rows in column (2). Additional rows will be added as needed to calculate present value of payments received in the years prior to 1960 and after 1990.

(2) Step 2. Enter the present CPI-U (to be obtained monthly from the Bureau of Labor Statistics, Department of Labor) in column (3).

(3) Step 3. Enter the CPI (Major Expenditure Classes—All Items) for each year in which payments were received in the appropriate row in column (4). (These measures are provided for 1960 through 1990. The measures for subsequent years will be obtained from the Bureau of Labor Statistics.)

(4) Step 4. For each row, multiply the amount in column (2) by the corresponding inflator (column (3) divided by column (4)) and enter the product in column (5).

(5) Step 5. Add the products in column (5) and enter the sum on the line labeled "Total of column (5) equals actuarial present value of past payments."

(6) Step 6. Subtract the total in Step 5 from the statutory payment of \$75,000 and enter the remainder on the line labeled "Net Claim Owed To Claimant."

(f) When the Assistant Director has verified the identity of the claimant or each eligible surviving beneficiary who is entitled to the compensation payment or to a share of the compensation payment, and has determined the correct amount of the payment or the share of the payment, he or she shall notify the claimant or each eligible surviving beneficiary, or his or her legal guardian, and require such person(s) to sign an Acceptance of Payment Form. Such form shall be signed and returned within 60 days of the date of the form or such greater period as may be allowed by the Assistant Director. Failure to return the signed form within the required time may be deemed to be a rejection of the payment. Signing and returning the form within the required time shall constitute acceptance of the payment, unless the individual who has signed the form dies prior to receiving the actual payment, in which case the person who possesses the payment shall return it to the Assistant Director for redetermination of the correct disbursement of the payment.

(g) Rejected compensation payments or shares of compensation payments shall not be distributed to other eligible surviving beneficiaries, but shall be returned to the Trust Fund for use in paying other claims.

(h) Upon receipt of the Acceptance of Payment Form, the Assistant Director or the Constitutional and Specialized Tort Staff Director or Deputy Director, or their designee, shall authorize the appropriate authorities to issue a check to the claimant or to each eligible surviving beneficiary who has accepted payment out of the funds appropriated for this purpose.

(i) *Multiple payments.* (1) No claimant may receive payment under more than one subpart of these regulations for illnesses that he or she contracted. In addition to one payment for his or her illnesses, he or she may also receive one payment for each claimant for whom he or she qualifies as an eligible surviving beneficiary.

(2) An eligible surviving beneficiary who is not also a claimant may receive one payment for each claimant for whom he or she qualifies as an eligible surviving beneficiary.

Dated: July 24, 2002.

John Ashcroft,

Attorney General.

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