

(f) The reviewing official may seek additional information from any party in the manner and to the extent the reviewing official deems appropriate.

(g) The reviewing official shall review the record and issue a written report and recommendation to the Director within 30 calendar days of the last date fixed under paragraph (e) for submission of materials.

(h) The Director thereafter shall determine whether the United States Trustee's decision is supported by the record and the action is an appropriate exercise of the United States Trustee's discretion, and shall issue a written decision adopting, modifying or rejecting the reviewing official's recommendation within 20 calendar days of the date of the reviewing official's report and recommendation. The Director's decision shall constitute final agency action.

(i) This section does not apply to any decision to increase the size of the chapter 7 panel or to appoint additional standing trustees in the district or region.

(j) A trustee who files a request for review shall bear his or her own costs and expenses, including counsel fees.

Dated: May 20, 1997.

Joseph Patchan,

Director, Executive Office for United States Trustees.

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DEPARTMENT OF JUSTICE

Civil Division

28 CFR Part 79

RIN 1105-AA49

[A.G. Order No. 2084-97]

Radiation Exposure Compensation Act: Evidentiary Requirements; Definitions and Number of Claims Filed

AGENCY: Civil Division, Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice ("the Department") proposes to amend its existing regulations implementing the Radiation Exposure Compensation Act ("RECA" or "Act"). The proposed rule would: Allow claimants to submit affidavits or declarations in support of a claim under certain circumstances; allow the use of high resolution computed tomography reports and pathology reports of tissue biopsies as additional means by which claimants can present evidence of a compensable non-malignant respiratory disease; amend the definitions of "smoker" and

"non-smoker;" include *in situ* lung cancers under the definition of primary cancers of the lung; and allow claimants who have filed claims prior to the implementation of these proposed regulations and have been denied compensation to file another three times.

DATES: Written comments must be submitted on or before July 22, 1997.

ADDRESSES: Please submit written comments to Gerard W. Fischer, Assistant Director, U.S. Department of Justice, Civil Division, P.O. Box 146, Ben Franklin Station, Washington, D.C. 20044-0146.

FOR FURTHER INFORMATION CONTACT:

Gerard W. Fischer (Assistant Director), (202) 616-4090 and Lori Beg (Attorney), (202) 616-4377.

SUPPLEMENTARY INFORMATION: At the recommendation of the President's Advisory Committee on Human Radiation Experiments, the Administration empaneled the Radiation Exposure Compensation Act Committee (the "Radiation Committee") to re-evaluate the provisions in the Radiation Exposure Compensation Act, 42 U.S.C. § 2210 note (1994), and the Department's implementing regulations relating to uranium miners. In July 1996, after extensive investigation, the Radiation Committee submitted a Final Report detailing its findings and recommendations. In addition to recommending changes to the eligibility criteria in the Act, the Radiation Committee recommended that the Department modify some of the regulations governing proof of medical, smoking, and exposure criteria. Based upon this report and the Department's own evaluation of the regulations, this rule is proposed.

This proposed rule would expand the set of circumstances in which claimants are allowed to submit affidavits or declarations in support of a claim. Sworn statements are presently permitted to establish identity of family members, prior receipt of other compensation, coffee consumption and employment information. As modified by this rule, claimants will now be allowed to submit sworn statements to establish smoking and alcohol consumption histories where no other records exist. This action is needed because relevant records are not available to some claimants due to the passage of time. Therefore, this modification represents only a minor expansion of an existing regulation.

The rule would also allow the use of high resolution computed tomography ("HRCT") reports and pathology reports of tissue biopsies as additional means by which claimants can present

evidence of a compensable non-malignant respiratory disease. HRCT is increasingly being used by physicians to diagnose pneumoconioses because it is often a more sensitive diagnostic tool than standard chest x-rays. Accepting HRCT findings will assist many claimants who cannot prove they have developed a compensable non-malignant respiratory disease through standard chest x-rays. Additionally, pathology reports of tissue biopsies are considered a highly reliable basis for diagnosis of disease by the medical community.

The rule would also allow the use of high resolution computed tomography ("HRCT") reports and pathology reports of tissue biopsies as additional means by which claimants can present evidence of a compensable non-malignant respiratory disease. HRCT is increasingly being used by physicians to diagnose pneumoconioses because it is often a more sensitive diagnostic tool than standard chest x-rays. Accepting HRCT findings will assist many claimants who cannot prove they have developed a compensable non-malignant respiratory disease through standard chest x-rays. Additionally, pathology reports of tissue biopsies are considered a highly reliable basis for diagnosis of disease by the medical community.

The rule would amend the definitions of "heavy smoker" and "smoker" to exclude, and the definition of "non-smoker" to include, claimants who stopped smoking for at least fifteen years prior to the date of diagnoses of specific diseases. It is now accepted by experts in the medical community that smoking cessation leads to a significant reduction in relative risk of developing certain cancers. Another proposed change would include *in situ* long cancers under the definition of primary cancers of the lung, based upon expert opinion from the National Cancer Institute.

Finally, the rule would allow claimants who have filed claims prior to the implementation of these proposed regulations and have been denied compensation to file another three times. This action would allow denied claimants to take advantage of changes in the regulations that liberalize documentation requirements. The Department anticipates that much of the information in refiled claims will have been previously verified. Accordingly, the internal administrative processing costs of refiled cases will be minimal. Presently, the regulations permit three attempts at establishing eligibility, so

this proposal simply continues that process.

Although the practical effect of the proposed rule will likely be to increase the number of claimants eligible for compensation, the extent of that increase is not entirely clear. Presently, RECA has been appropriated \$30 million for FY 1997. In addition, because the proposed rule expands the type of evidence that will be considered, it is not anticipated that the proposed rule will generate any significant controversy.

In accordance with 5 U.S.C. 605(b), the Attorney General has reviewed this regulation and certifies that this rule affects only individuals filing claims under RECA. Therefore, this rule does not have a significant economic impact on a substantial number of small entities. This rule, however, is a significant regulatory action under Executive Order 12866 and, accordingly, has been reviewed by the Office of Management and Budget. The rule is not a major rule as defined by 5 U.S.C. 804(2) nor is it a rule having federalism implications warranting assessment in accordance with section 6 of Executive Order 12612. In addition, this rule is in full compliance with the Paperwork Reduction Act.

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, Underground mining, Uranium.

Accordingly, part 79 of chapter I of title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 79—CLAIMS UNDER THE RADIATION EXPOSURE COMPENSATION ACT

1. The authority citation for part 79 continues to read as follows:

Authority: Secs. 6 (b) and (j), Pub. L. 101-426, 104 Stat. 920 (42 U.S.C. 2210 note).

2. Section 79.4(c) is amended by redesignating paragraphs (c)(3) and (c)(4) as paragraphs (c)(4) and (c)(5), adding a new paragraph (c)(3) and revising paragraphs (c)(1) and (c)(2) and new paragraphs (c)(4) and (c)(5) as follows:

§ 79.4 Burden of proof, production of documents, presumptions, and affidavits.

* * * * *

(c) * * *

(1) Eligibility of family members as set forth in § 79.51 (e), (f), (g), (h) or (i);

(2) Other compensation received as set forth in § 79.55 (c) or (d);

(3) Smoking and/or drinking history and/or age at diagnosis as set forth in § 79.27(d) and § 79.37(d);

(4) The amount of coffee consumed as set forth in § 79.27(d); or

(5) Mining information as set forth in § 79.33(b)(2).

3. Section 79.5 is amended by adding paragraph (c) to read as follows:

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

* * * * *

(c) To establish eligibility the claimant or eligible surviving beneficiary may be required to provide, where appropriate, additional contemporaneous records to the extent they exist or an authorization to release additional contemporaneous records or a statement by the custodian(s) of the records certifying that the requested record(s) no longer exist. Nothing in these regulations shall be construed to limit the Assistant Director's ability to require additional documentation.

4. In § 79.21, paragraph (d) is amended by adding one new sentence after the second sentence to read as follows:

§ 79.21 Definitions.

* * * * *

(d) * * * The term excludes an individual who smoked more than 20 pack years, but who can establish in accordance with § 79.27 that he or she stopped smoking at least fifteen (15) years prior to the diagnosis of primary cancer of the esophagus, pharynx, or pancreas, and did not resume smoking at any time thereafter.

* * * * *

5. Section 79.27 is amended by revising the heading, redesignating paragraph (c) as new paragraph (e), adding new paragraphs (c) and (d), and revising paragraphs (a) and (b), to read as follows:

§ 79.27 Proof of no heavy smoking, no heavy drinking, no heavy coffee drinking and no indication of the presence of hepatitis B and cirrhosis.

(a)(1) If the claimant or eligible surviving beneficiary is claiming eligibility under this Subpart for primary cancer of the esophagus, pharynx, pancreas or 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 (6) months before and six (6) months after the date of

diagnosis of primary cancer of the esophagus, pharynx, pancreas or 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 above records no longer exist, 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 reflects that the claimant was a heavy smoker or a heavy drinker or indicates the presence of hepatitis B and/or cirrhosis, the Radiation Exposure Compensation Unit 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 § 79.52(b) to establish that the claimant was not a heavy smoker or heavy drinker or that there was no indication of hepatitis B and/or cirrhosis.

(c) The Unit may also require that the claimant or eligible surviving beneficiary provide additional medical records or other contemporaneous records and/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 and/or cirrhosis and the claimant's history of smoking and alcohol-consumption.

(d) If the custodian(s) of the records listed in paragraph (a) of this section and records requested in accordance with paragraph (c) of this section certifies that a claimant's records no longer exist, and if the state cancer or tumor registries do not contain information concerning the claimant's history of smoking or alcohol-consumption, the Assistant Director may require that the claimant or eligible surviving beneficiary submit an affidavit (or declaration) made under penalty of perjury detailing the histories or lack thereof and the basis for such knowledge (if the eligible surviving beneficiary). This affidavit (or declaration) will be considered by the Assistant Director in making a determination concerning the claimant's history of smoking and alcohol-consumption.

* * * * *

6. Section 79.31 is amended by revising paragraphs (e) and (f) and the second sentence of paragraph (h), and adding paragraphs (s) and (t) to read as follows:

§ 79.31 Definitions

* * * * *

(e) *Non-smoker* means an individual who never smoked tobacco cigarette products or smoked less than the amount defined in paragraph (f) of this section and includes an individual who smoked at least one (1) pack year but whose acceptable documentation as set forth in § 79.37 establishes that he or she stopped smoking at least fifteen (15) years prior to the diagnosis of primary cancer of the lung and did not resume smoking at any time thereafter.

(f) *Smoker* means an individual who has smoked at least one (1) pack year of cigarette products, and who is not deemed a non-smoker by virtue of paragraph (e) of this section.

* * * * *

(h) * * * The term includes cancers *in situ*.

* * * * *

(s) *High resolution computed tomography (HRCT)* means a computed tomograph (CT) of the chest that utilizes thin collimation, image reconstruction with a high-spatial frequency algorithm, increased kVp or mA technique, and the use of a large matrix size.

(t) *HRCT Reader* means a physician who is board-certified in radiology and who devotes at least thirty (30) percent of his or her practice to thoracic radiology or is a member of the Society of Thoracic Radiology. An affidavit (or declaration) made under penalty of perjury must be submitted by the HRCT reader to establish the above qualifications.

8. Section 79.36, is amended by revising the first sentence of paragraph (a), revising paragraph (d)(1)(ii), and adding new paragraph (e) to read as follows:

§ 79.36 Proof of non-malignant respiratory disease.

(a) Written medical documentation is required in all cases to prove that the claimant developed a non-malignant respiratory disease. * * *

* * * * *

(d) * * *

(1) * * *

(i) * * *

(ii) If the claimant is alive, (A) One of the following:

(1) *Chest x-rays and two "B" reader interpretations.* A chest x-ray administered in accordance with standard techniques on full size film at quality 1 or 2, and interpretative reports

of the x-ray by two certified "B" readers classifying the existence of fibrosis of category 1/0 or higher according to the ILO 1980, or subsequent revisions;

(2) *High resolution computed tomography scans and interpretation.*

An HRCT scan administered in accordance with Tables 5a and 5b in Appendix D of this part, and an interpretative reading by one HRCT reader showing:

(i) Honeycombing, bilaterally at two or more levels; or

(ii) Any two of the findings listed below, visible bilaterally at two or more HRCT levels in a non-dependent lung:

(A) Intralobular interstitial thickening;

(B) Irregular interlobular septal thickening;

(C) Parenchymal bands unassociated with pleural thickening;

(D) Subpleural lines or subpleural nodules (1 to 5 mm in diameter);

(E) Architectural distortion;

(F) Pulmonary nodules (1 to 10 mm. in diameter); or

(G) Cicatricial emphysema; or

(3) *Pathology reports of tissue biopsies.* A pathology report of a tissue biopsy, but only if performed for medically-justified reasons; and

(B) One or more of the following:

(1) *Pulmonary function tests.*

Pulmonary function tests consisting of three tracings recording the results of the forced expiratory volume in one second (FEV1) and the forced vital capacity (FVC) administered and reported in accordance with the Standardization of Spirometry—1987 Update by the American Thoracic Society, and reflecting values for FEV1 or FVC that are equal to or less than 80% of the predicted value for an individual of the claimant's age, sex, and height, as set forth in the Tables in Appendix A; or

(2) *Arterial blood-gas studies.* An arterial blood-gas study administered at rest in a sitting position, or an exercise arterial blood-gas test, reflecting values equal to or less than the values set forth in the Tables in Appendix B.

* * * * *

(e) The Radiation Exposure Compensation Unit may seek qualified medical review of HRCT, "B" reader interpretations, and pathology reports of tissue biopsies submitted by a claimant or eligible surviving beneficiary or obtain additional HRCT and "B" reader interpretations or pathology reports of tissue biopsies at any time to ensure that appropriate weight is given to this evidence and to guarantee uniformity and reliability. This review may include obtaining additional HRCT and chest x-ray interpretations and additional pathology reports of tissue biopsies.

9. Section 79.37 is amended by revising the section heading, revising paragraphs (a) and (b), and adding new paragraphs (c) and (d) to read as follows:

§ 79.37 Proof of non-smoker and diagnosis prior to age 45.

(a) (1) In order to prove a history of non-smoking for purposes of § 79.32(c)(1), and/or diagnosis of a compensable disease prior to age 45 for purposes of § 79.32(c)(2)(i), the claimant or eligible surviving beneficiary must submit all medical records listed below from any hospital, medical facility, or health care provider that were created within the period six (6) months before and six (6) months after the date of diagnosis of primary lung cancer or a compensable nonmalignant respiratory disease:

(i) All history and physical examination reports;

(ii) All operative and consultation reports;

(iii) All pathology reports;

(iv) All physician, hospital and health care facility admission and discharge summaries.

(2) In the event that any of the above records no longer exist, the claims or eligible surviving beneficiary must submit a certified statement by the custodian(s) of those records to that effect.

(b) If, after a review of the records listed in paragraph (a) above, and/or the information possessed by the PHS, NIOSH, state cancer or tumor registries, state authorities, or the custodian of a federally supported health-related study, the Assistant Director finds that the claimant was a smoker, and/or that the claimant was diagnosed with a compensable disease after age 45, the Unit will notify the claimant or eligible surviving beneficiary and afford that individual the opportunity to submit other written medical documentation in accordance with § 79.52(b) to establish that the claimant was a non-smoker and/or was diagnosed with a compensable disease prior to age 45.

(c) The Unit may also require that the claimant or eligible surviving beneficiary provide additional medical records or other contemporaneous records and/or an authorization to release such additional medical and contemporaneous records as may be needed to make a determination regarding the claimant's smoking history and/or age at diagnosis with a compensable disease.

(d) If the custodian(s) of the records listed in paragraph (a) of this section and the records requested in accordance with paragraph (c) of this section certifies that a claimant's records no

longer exist, and information possessed by the PHS, NIOSH, state cancer or tumor registries, state authorities, or the custodian of a federally supported health-related study do not contain information pertaining to the claimant's smoking history, the Assistant Director may require that the claimant or eligible surviving beneficiary submit an affidavit (or declaration) made under penalty of perjury detailing the claimant's smoking history or lack thereof and, if the affiant is the eligible surviving beneficiary, the basis for such knowledge. This affidavit (or declaration) will be considered by the Assistant Director in making a determination concerning the claimant's history of smoking.

10. In § 79.51, paragraph (j) is amended by revising paragraphs (j)(3) and (j)(4), adding paragraph (j)(5) and adding a sentence at the end of the concluding text to read as follows:

§ 79.51 Filing of claims.

* * * * *

(j) * * *
(3) Onsite participation in a nuclear test,

(4) Exposure to a defined minimum level or radiation in a uranium mine or mines during a designated time period, or

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

* * * Claims filed prior to the date of implementation of these amending regulations will not be included in determining the number of claims filed.

11. In § 79.55, paragraphs (d)(1)(i) and (d)(1)(ii) are revised to read as follows:

§ 79.55 Procedures for payment of claims.

* * * * *

(d) * * *

(1) * * *

(i) Any disability payments or compensation benefits paid to the claimant and his/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.

* * * * *

11. Appendix D to Part 79 is added to read as follows:

Appendix D to Part 79—HRCT Technique

Table A: Summary of HRCT Technique; Essential Scanner Settings

1. Collimation: Thinnest available collimation (1–1.5 mm).
2. Reconstruction algorithm: High-spatial frequency or "sharp" algorithm
3. Scan time: 1–2 seconds
4. kVp; mA; mAs: Routine settings for chest CT

5. Matrix size: Largest available (512×512).
6. Window level: –600 to –700 HU Window width: 1000 HU to 1500 HU
7. Photography: 12 on 1.
8. Field of view: As small as possible to incorporate both lungs (30–40 cm.)

Table B: Scanning Protocol and Procedure; HRCT Technique: Scan Protocol for Suspected Silicosis or Fibrotic Lung disease

Chest radiograph normal or minimally abnormal:
Full inspiration with prone and supine scans using 2-cm spacing from lung apices to bases.

Dated: May 16, 1997.

Janet Reno,

Attorney General.

[FR Doc. 97–13542 Filed 5–22–97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[UT15–1–6775, UT12–2–6728, UT16–1–6776; FRL–5829–6]

Proposed Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Salt Lake and Davis Counties Ozone Redesignation to Attainment, Designation of Areas for Air Quality Planning Purposes, Proposed Approval of Related Elements, Proposed Approval of Partial NO_x RACT Exemption, and Proposed Approval of Weber County I/M Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On February 19, 1997, the Governor of Utah submitted revisions to the Utah State Implementation Plan (SIP) that included a maintenance plan. He also submitted a request to redesignate the Salt Lake and Davis Counties (SLDC) moderate nonattainment area to attainment for the current 0.12 parts per million (ppm) ozone National Ambient Air Quality Standard (NAAQS). Included with this submittal were improved motor vehicle inspection and maintenance provisions for Salt Lake and Davis Counties. This February 19, 1997, submittal provided revised and updated emission inventory figures, revised contingency measure triggering mechanisms, updated air quality monitoring data, and other minor revisions to the maintenance plan. In this action, EPA is proposing to approve the SLDC redesignation request, maintenance plan, and other related SIP elements including the 1990 base year emissions inventory,

Reasonably Available Control Technology (RACT) for Volatile Organic Compounds (VOC), NO_x RACT for Kennecott's Utah Power Plant and for the Pacificorp Gadsby Power Plant, and the Basic Inspection and Maintenance (I/M) and Improved I/M provisions for Salt Lake and Davis Counties. EPA is also proposing to approve a partial Nitrogen Oxides (NO_x) RACT exemption request and to give limited approval to the State's generic VOC RACT and generic NO_x RACT rules. Finally, EPA is proposing to approve the I/M provisions for Weber County, which are unrelated to the redesignation request for Salt Lake and Davis Counties.

DATES: To be considered, comments must be received by June 23, 1997.

ADDRESSES: Written comments on this action should be addressed to: Richard R. Long, Director, Air Program (8P2–A), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday at the following office: United States Environmental Protection Agency, Region 8, Air Program, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Program (8P2–A), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466 Telephone number: (303) 312–6479

SUPPLEMENTARY INFORMATION:

Background

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). Under section 107(d)(1)(C) of the CAA, EPA designated the SLDC area as nonattainment for ozone because the area had been designated as nonattainment before November 15, 1990. The SLDC area was classified as a moderate nonattainment area (see section 181 of the CAA for further information regarding classifications and attainment dates for ozone nonattainment areas).

Under the Clean Air Act (CAA), designations can be changed if sufficient data are available to warrant such changes and if certain other requirements are met. See CAA section 107(d)(3)(D). Section 107(d)(3)(E) of the CAA provides that the Administrator may not promulgate a redesignation of