

DEPARTMENT OF JUSTICE**28 CFR Part 79****[CIV101P; AG Order No. 2605-2002]****RIN 1105-AA75****Claims Under the Radiation Exposure Compensation Act Amendments of 2000; Expansion of Coverage to Uranium Millers and Ore Transporters; Expansion of Coverage for Uranium Miners; Representation and Fees****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 ("the Act") 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 second of two related rulemakings and is a proposed rule. The related rulemaking is a final rule published elsewhere in this issue of the **Federal Register**. This proposed rule describes the expanded population of eligible uranium mine workers created by lowering the radiation exposure threshold for miners; identifies the new uranium mining states with respect to which miners may be eligible for compensation; includes provision for compensation to "aboveground" miners; sets forth employment eligibility criteria for the new claimant categories; describes the documentation that would be required to establish proof of employment in a uranium mine or mill or as an ore transporter; describes the medical documentation necessary to establish the existence of renal cancer and chronic renal disease; and revises the provision concerning representation of claimants before the Department of Justice with respect to claims brought under the Act.

DATES: Written comments must be submitted on or before October 7, 2002.

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, DC 20044-0146.

FOR FURTHER INFORMATION CONTACT: Gerard W. Fischer (Assistant Director), (202) 616-4090, and Dianne S. Spellberg (Senior Counsel), (202) 616-4129.

SUPPLEMENTARY INFORMATION: 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 amended 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 proposes amendments to the regulations governing radiation exposure compensation claims, principally in order to implement the 2000 Amendments' expansion of the Act to cover uranium mill workers and individuals employed in the transport of uranium ore or vanadium-uranium ore, and to expand the population of eligible uranium mine workers by lowering the radiation exposure threshold for miners, by enlarging the number of uranium mining states with respect to which miners may be eligible for compensation, and by including "aboveground" miners within the scope of the regulations.

This proposed rule sets forth the criteria that a claimant must establish to be eligible for compensation under certain provisions of the Act. Section 5(a)(1)(A) of the amended Act provides that certain "miners," "millers," and "ore transporters" are eligible for compensation. The terms "miner," "miller," and "ore transporter" are not self-defining. The definitions of those terms in the proposed rule are drafted broadly, reflecting the statutory objective to provide comprehensive compensation to all persons who contracted serious illnesses as a result of employment in uranium mines or uranium mills and as ore transporters. The structure of section 5(a)(1)(A) of the Act, as well as the legislative history, strongly indicate that Congress intended the words "miner" and "miller" to be simple shorthands for anyone who was employed in a uranium mine and a uranium mill, respectively. Accordingly, the proposed rule adopts broad definitions of the words "miner" and "miller." Similarly, the rule defines an "ore transporter" as someone whose employment involved the transportation or hauling of uranium ore or vanadium-uranium ore from a uranium mine or uranium mill, including the transportation or hauling of ore from the ore buying station, "upgrader," "concentrator" facility, or pilot plant areas of a mill by means of truck, rail, or barge.

The rule replaces the radiation exposure thresholds for claimants who were miners with a single minimum exposure level. Specifically, the requirement that a claimant or beneficiary establish exposure to 200 working level months (WLMs) of

radiation if the claimant was a non-smoker and 300 WLMs if the claimant was a smoker and diagnosed with a compensable disease before age 45 (and 500 WLMs if a smoker and diagnosed after age 45) is stricken. Instead, a miner must establish a single exposure level of 40 WLMs of radiation to satisfy that "uranium miner" eligibility criterion.

The list of states in which an individual was employed in a uranium mine for purposes of establishing eligibility has been expanded to include South Dakota, Washington, Idaho, North Dakota, Oregon, and Texas. In addition, the Act provides that other states may be included for coverage if certain specific requirements are satisfied. The definition of "uranium mine" contained in the Act's provisions has been adopted in the rule and, accordingly, the rule expands coverage under the regulations to persons who worked in "aboveground" uranium mines.

In the case of millers and ore transporters—who are covered under the Act by virtue of the 2000 Amendments—the Act does not require specific proof of a certain level of exposure to radiation (as is required for miners), but instead require proof merely that a claimant was employed for at least one year in a uranium mill (as that term is defined in the proposed regulations), or in the transport of uranium ore or vanadium-uranium ore, in those states and during the time period specified in the Act. In addition, the claimant must have contracted a specified illness following such employment. The proposed rule describes the work history documentation required to establish proof of employment as a miller or as an ore transporter. The rule identifies numerous types of records that a claimant may submit to establish employment history. Moreover, the Department has accumulated extensive data to assist in evaluating a claimant's history of employment as a miller or as an ore transporter, including data obtained from a team of medical and scientific experts at the National Institute for Occupational Safety and Health (NIOSH) in Cincinnati, Ohio, who are studying the effects of radiation on mill workers. NIOSH was instrumental in detailing the work records it has accumulated for purposes of its studies and the personnel records that were available from the uranium mill companies. In addition, milling consultants for the Department provided extensive information during the course of a training workshop relative to the history of uranium milling for the period January 1, 1942, through December 31,

1971. The types of information and data collected by the Department include an exhaustive compilation of all uranium mills by state, size of the mills, tons of ore processed, ore types, type of milling circuit(s) at each mill, the number of employees at each mill, wage rate information, the ore suppliers (mines), and, in some instances, the names of the ore transporting companies that delivered the product from mine to mill. In light of the limited information available concerning ore transporting during the relevant period (1942–1971), the Department is particularly interested in receiving comments from individuals who operated ore transporting companies, or who were otherwise employed as ore haulers or transporters.

The proposed rule identifies particular forms of medical documentation that claimants can, and in some cases, must, provide in order to establish the existence of compensable diseases for miners, millers, and ore transporters, and also identifies other categories of health and medical records that the Department ordinarily will consult in determining whether there is sufficient evidence of disease to warrant compensation. In cases of claimants who are deceased and living claimants who were millers or ore transporters and who developed renal cancer or another chronic renal disease, the Act does not require submission of any particular form of written medical documentation. Section 5(b)(5) of the Act, however, requires that living claimants who developed lung cancer or a nonmalignant respiratory disease provide certain forms of written medical documentation, which are specified in the proposed rule. The proposed rule also reflects the requirements in section 5(c) of the Act that the Department treat certain forms of written medical documentation as conclusive evidence that a living claimant developed a nonmalignant respiratory disease or lung cancer. The proposed rule does not independently address the provisions concerning conclusive evidence in section 5(c)(2)(B) of the Act, because that section is substantially identical to section 5(c)(1)(B) and appears to have been included in the 2000 Amendments in error. The Department requests public comments on whether the regulations should accord any additional, independent effect to section 5(c)(2)(B).

The proposed rule provides specific clarification of the showing necessary to establish that a claimant developed renal cancer and chronic renal disease. (The renal cancer and chronic renal disease regulations apply only to millers and to ore transporters. The Act does

not prescribe compensation for miners who contracted renal cancer or chronic renal disease.) The Department consulted with medical experts at the National Cancer Institute and NIOSH in order to identify what a claimant should document in order to establish that the claimant developed these illnesses. An expansive understanding of “renal disease” could imply a broad spectrum of impairment ranging from “acute disease” to “chronic disease.” However, because the revised Act provides compensation only for “chronic” illness, the Department determined that a minimum level of impairment must be demonstrated. Some individuals with diabetes would be able to present medical documentation reflecting an elevated creatinine, which is symptomatic of both chronic renal disease and diabetes, without an actual diagnosis of chronic renal disease. The Department was advised by NIOSH to include certain diagnostic criteria to preclude compensating claimants for a condition not covered by the Act.

Finally, section 79.74 of the proposed rule revises the regulation (currently 28 CFR 79.54) concerning representation of claimants and beneficiaries before the Department. The revised regulation implements the provision contained in section 9 of the amended Act limiting the fees that representatives of claimants and beneficiaries may receive in connection with a claim under the Act. In addition, the proposed rule would require that a claimant’s or beneficiary’s representative before the Radiation Exposure Compensation Program (“Program”) be either an attorney or a representative of a federally recognized Indian tribe. The section heading of section 9 of the amended Act (“Attorney Fees”), as well as certain statements in the legislative history of the 2000 Amendments, *see, e.g.*, H.R. Rep. 106–697, at 12, 16 (2000), suggest a possible congressional assumption that “representatives” of claimants and beneficiaries would be attorneys. Nevertheless, nothing in the Act, in the Administrative Procedure Act, or in any other law either prohibits or requires the Department of Justice to permit non-attorneys to represent claimants and beneficiaries before the Department with respect to radiation exposure compensation claims. *See* 5 U.S.C. 500(d)(1), 555(b). In the absence of such specific statutory direction, Congress has left it within the discretion of the Department to decide whether or not to permit “duly qualified” persons, *see* 5 U.S.C. 555(b), other than attorneys to represent interested parties in

administrative proceedings before the Department. *See Sperry v. Florida*, 373 U.S. 379, 396–98 (1963). The Department has determined generally not to permit non-attorneys to represent claimants and beneficiaries before the Program with respect to radiation exposure compensation claims. The Department is of the view that claimants and beneficiaries would be best served by relying on the expertise and legal training of attorneys in cases where such claimants and beneficiaries determine it would be beneficial to use the services of a representative. Moreover, an attorney representing a claimant or beneficiary before the Department must be a member in good standing of the bar of the highest court of a state, 5 U.S.C. 500(b), which provides assurance that an attorney representative will be subject to oversight and disciplinary rules that will best guarantee faithful, ethical, and adequate representation of claimants and beneficiaries. An attorney representative may hire, and make use of, experts, aids, paralegals, and other persons who are not attorneys. The use of such assistants and experts, however, will not affect the fee limitations specified in the Act and in this proposed rule, which establish an overall limitation on the total amount of fees that a representative, along with his or her assistants and experts, may receive. The proposed rule permits an exception to the attorney requirement for claimant or beneficiary representatives who are representatives of a federally recognized Indian tribe. This exception is included in recognition of the role such tribal representatives traditionally have played in representing claimants; the specialized knowledge and expertise such representatives have developed with respect to the language, culture, and familial relationships of claimants who are tribal members; and Congress’s directive in section 6(d)(5) of the amended Act that “[a]ny procedures under this subsection shall take into consideration and incorporate, to the fullest extent feasible, Native American law, tradition, and custom with respect to the submission and processing of claims by Native Americans.”

A Final Rulemaking Related to This Proposed Rulemaking

Elsewhere in today’s issue of the **Federal Register** the Department is publishing a related, final rule entitled *Claims Under the Radiation Exposure Compensation Act Amendments of 2000; Technical Amendments* (CIV 100). That final rule is technical in nature and provides conforming amendments to

implement the Radiation Exposure Compensation Act Amendments of 2000.

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 is limited to persons 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 individual claimants must satisfy in order to be eligible for compensation. They will 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 Department of Justice has determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and, accordingly, this rule has been reviewed by the Office of Management and Budget.

It is not clear whether this proposed rule should be considered "economically significant." The uncertainty arises from the inability to quantify with precision the number of miners, millers and ore transporters that contracted one of the occupational illnesses compensable under the Act and the attendant economic impact of their receipt of benefits. In the event that the measure of these benefits exceeds \$100 million, then this proposed rule will be "economically significant." To date, after nearly 24 months of operation under the new law, less than \$20 million has been approved for newly eligible miners, millers, and ore transporters. It is difficult at this time to ascertain whether the cumulative economic impact of claims brought by such persons will eventually reach the \$100 million threshold amount. Accordingly, the Department requests public comment on the issue of whether this rule should be considered "economically significant."

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 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

Because of the uncertainty of the eventual cumulative impact of the new provisions reflected in this rule, the Department is uncertain whether this rule meets the standard for a major rule. At present, the Department is of the opinion that this is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804, and that it will not result in an annual effect on the economy of \$100,000,000 or more, a major increase in costs or prices, or 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.

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 milling, Uranium, Uranium ore hauling.

Accordingly, the Department of Justice proposes to amend part 79 of chapter I of Title 28 of the Code of Federal Regulations as follows:

PART 79—CLAIMS UNDER THE RADIATION EXPOSURE COMPENSATION ACT

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

Authority: Secs. 6(a), 6(i) and 6(j), Pub. L. 101-426, 104 Stat. 920, as amended by sections 3(c)-(h), Pub. L. 106-245, 114 Stat. 501 (42 U.S.C. 2210 note; 5 U.S.C. 500(b)).

2. Subparts E, F, and G and § 79.74 of subpart H are added, to read as follows:

Subpart E—Uranium Miners

Sec.

- 79.40 Scope of subpart.
- 79.41 Definitions.
- 79.42 Criteria for eligibility.
- 79.43 Proof of employment as a miner.
- 79.44 Proof of working level month exposure to radiation.
- 79.45 Proof of lung cancer.
- 79.46 Proof of nonmalignant respiratory disease.

Subpart F—Uranium Millers

- 79.50 Scope of subpart.
- 79.51 Definitions.
- 79.52 Criteria for eligibility.
- 79.53 Proof of employment as a miller.
- 79.54 Proof of lung cancer.
- 79.55 Proof of nonmalignant respiratory disease.
- 79.56 Proof of renal cancer.
- 79.57 Proof of chronic renal disease.

Subpart G—Ore Transporters

- 79.60 Scope of subpart.
- 79.61 Definitions.
- 79.62 Criteria for eligibility.
- 79.63 Proof of employment as an ore transporter.
- 79.64 Proof of lung cancer.
- 79.65 Proof of nonmalignant respiratory disease.
- 79.66 Proof of renal cancer.
- 79.67 Proof of chronic renal disease.

Subpart E—Uranium Miners

§ 79.40 Scope of subpart.

The regulations in this subpart define the eligibility criteria for compensation under section 5 of the Act pertaining to miners, i.e., uranium mine workers, and the nature of the evidence that will be accepted as proof of the various criteria. Section 5 of the Act provides for a payment of \$100,000 to miners who contracted lung cancer or one of a limited number of nonmalignant respiratory diseases following exposure to a defined minimum level of radiation

during employment in an aboveground or underground uranium mine or uranium mines in specified states during the period beginning January 1, 1942, and ending December 31, 1971.

§ 79.41 Definitions.

(a) *Cor pulmonale* means heart disease, including hypertrophy of the right ventricle, due to pulmonary hypertension secondary to fibrosis of the lung.

(b) *Designated time period* means the period beginning on January 1, 1942, and ending on December 31, 1971.

(c) *Fibrosis of the lung or pulmonary fibrosis* for purposes of the Act and these regulations means chronic inflammation and scarring of the pulmonary interstitium and alveoli with collagen deposition and progressive thickening causing pulmonary impairment.

(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. The term includes in situ lung cancers.

(e) *Miner or uranium mine worker* means a person who operated or otherwise worked in a uranium mine.

(f) *National Institute for Occupational Safety and Health (NIOSH) certified "B" reader* means a physician who is certified as such by NIOSH. A list of certified "B" readers is available from the Radiation Exposure Compensation Program upon request.

(g) *Nonmalignant respiratory disease* means fibrosis of the lung, pulmonary fibrosis, cor pulmonale related to fibrosis of the lung, silicosis, or pneumoconiosis.

(h) *Pneumoconiosis* means a chronic lung disease resulting from inhalation and deposition in the lung of particulate matter, and the tissue reaction to the presence of the particulate matter.

(i) *Readily available documentation* means documents in the possession, custody, or control of the claimant or an immediate family member.

(j) *Silicosis* means a pneumoconiosis due to the inhalation of the dust of stone, sand, flint, or other materials containing silicon dioxide, characterized by the formation of pulmonary fibrotic changes.

(k) *Specified state* means Colorado, New Mexico, Arizona, Wyoming, South Dakota, Washington, Utah, Idaho, North Dakota, Oregon, or Texas. Additional states may be included, provided:

(1) An Atomic Energy Commission uranium mine was operated in such state at any time during the period beginning on January 1, 1942, and ending on December 31, 1971;

(2) The state submits an application to the Assistant Director (specified in 28 CFR 79.70(a)) to include such state; and

(3) The Assistant Director makes a determination to include such state.

(l) *Uranium mine* means any underground excavation, including "dog holes" and open-pit, strip, rim, surface, or other aboveground mines where uranium ore or vanadium-uranium ore was mined or otherwise extracted.

(m) *Working level* means the concentration of the short half-life daughters of radon that will release (1.3×10^5) million electron volts of alpha energy per liter of air.

(n) *Working level month of radiation* means radiation exposure at the level of one working level every work day for a month, or an equivalent cumulative exposure over a greater or lesser amount of time.

(o) *Written diagnosis by a physician* means a written determination of the nature of a disease made from a study of the signs and symptoms of a disease that is based on a physical examination of the patient, medical imaging or a chemical, microscopic, microbiologic, immunologic or pathologic study of physiologic and functional tests, secretions, discharges, blood, or tissue. For purposes of satisfying the requirement of a "written diagnosis by a physician" for living claimants specified in §§ 79.45 and 79.46, a physician submitting a written diagnosis of a nonmalignant respiratory disease or lung cancer must be employed by the Indian Health Service or the Department of Veterans Affairs or be certified by a state medical board, and must have a documented, ongoing physician-patient relationship with the claimant. An "ongoing physician-patient relationship" can include referrals made to specialists from a primary care provider (and accepted by the primary care provider) for purposes of diagnosis or treatment.

§ 79.42 Criteria for eligibility.

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

(a) The claimant was employed as a miner in a specified state;

(b) The claimant was so employed at any time during the period beginning on January 1, 1942, and ending on December 31, 1971;

(c) The claimant was exposed during the course of his or her mining employment to 40 or more working level months of radiation; and

(d) The claimant contracted lung cancer or a nonmalignant respiratory disease following such exposure.

§ 79.43 Proof of employment as a miner.

(a) The Department will accept, as proof of employment for a designated time period, information contained in any of the following records:

(1) Records created by or gathered by the Public Health Service (PHS) in the course of any health studies of uranium workers during or including the period 1942–1990;

(2) Records of a uranium worker census performed by the PHS at various times during the period 1942–1990;

(3) Records of the Atomic Energy Commission (AEC), or any of its successor agencies; and

(4) Records of federally supported, health-related studies of uranium workers, including:

(i) Studies conducted by Geno Saccamanno, M.D., St. Mary's Hospital, Grand Junction, Colorado; and

(ii) Studies conducted by Jonathan Samet, M.D., University of New Mexico School of Medicine.

(b) The Program will presume that the employment history for the time period indicated in records listed in paragraph (a) of this section is correct. If the claimant or eligible surviving beneficiary wishes to contest the accuracy of such records, then the claimant or eligible surviving beneficiary may provide one or more of the records identified in paragraph (c) of this section, and the Assistant Director will determine whether the employment history indicated in the records listed in paragraph (a) is correct.

(c) If the sources in paragraph (a) of this section do not contain information regarding the claimant's uranium mine employment history, do not contain sufficient information to establish exposure to at least 40 working level months of radiation, or if a claimant or eligible surviving beneficiary wishes to contest the accuracy of such records, then the claimant or eligible surviving beneficiary may submit records from any of the following sources, and the Assistant Director shall consider such records (in addition to any sources listed in paragraph (a) of this section) in order to determine whether the claimant has established the requisite employment history:

(1) Governmental records of any of the specified states, including records of state regulatory agencies, containing information on uranium mine workers and uranium mines;

(2) Records of any business entity that owned or operated a uranium mine, or its successor-in-interest;

(3) Records of the Social Security Administration reflecting the identity of the employer, the years and quarters of employment, and the wages received during each quarter;

(4) Federal or state income tax records that contain relevant statements regarding the claimant's employer and wages;

(5) Records containing factual findings by any governmental judicial body, state worker's compensation board, or any governmental administrative body adjudicating the claimant's rights to any type of benefits (which will be accepted only to prove the fact of and duration of employment in a uranium mine);

(6) Statements in medical records created during the period 1942–1971 indicating or identifying the claimant's employer and occupation;

(7) Records of an academic or scholarly study, not conducted in anticipation of or in connection with any litigation, and completed prior to 1990; and

(8) Any other contemporaneous record that indicates or identifies the claimant's occupation or employer.

(d) To the extent that the documents submitted from the sources identified in this section do not so indicate, the claimant or eligible surviving beneficiary must set forth under oath on the standard claim form the following information, if known:

(1) The names of the mine employers for which the claimant worked during the time period identified in the documents;

(2) The names and locations of any mines in which the claimant worked;

(3) The actual time period the claimant worked in each mine;

(4) The claimant's occupation in each mine; and

(5) Whether the mining employment was conducted aboveground or underground.

(e) If the claimant or eligible surviving beneficiary cannot provide the name or location of any uranium mine at which the claimant was employed as required under paragraph (d)(2) of this section, then the Program shall, if possible, determine such information from records reflecting the types of mines operated or owned by the entity for which the claimant worked.

(f) If the information provided under paragraphs (a) and (c) of this section is inadequate to determine the time period during which the claimant was employed in each uranium mine, then the Program will, where possible, calculate such employment periods in the following manner, for purposes of

calculating working level months of exposure:

(1) If records of the Social Security Administration exist that indicate the claimant's work history, the Program will estimate the period of employment by dividing the gross quarterly income by the average pay rate per hour for the claimant's occupation;

(2) If such Social Security Administration records do not exist, but other records exist that indicate that the claimant was employed in a uranium mine on the date recorded in the record, but do not indicate the period of employment, then the Program will apply the following presumptions:

(i) If the records indicate that the claimant worked at the same mine or for the same uranium mining company on two different dates at least three months apart but less than 12 months apart, then the Program will presume that the claimant was employed at the mine or for the mining company for the entire 12-month period beginning on the earlier date.

(ii) If the records indicate that the claimant worked at the same mine or for the same uranium mining company on two different dates at least one month apart but less than three months apart, then the Program will presume that the claimant was employed at the mine or for the mining company for the entire six-month period beginning on the earlier date.

(iii) If the records indicate that the claimant worked at any mine or for a uranium mining company on any date within the designated time period, but the presumptions listed above are not applicable, then the Program will presume that the claimant was employed at the mine or for the mining company for a six-month period, consisting of three months before and three months after the date indicated.

(g) In determining whether a claimant satisfies the employment and exposure criteria of the Act, the Assistant Director shall resolve all reasonable doubt in favor of the claimant. If the Assistant Director concludes that the claimant has not satisfied the employment or exposure requirements of the Act, the claimant or eligible surviving beneficiary will be notified and afforded the opportunity, in accordance with the provisions of § 79.72(c), to submit additional records to establish that the statutory criteria are satisfied.

§ 79.44 Proof of working level month exposure to radiation.

(a) If one or more of the sources in § 79.43(a) contain a calculated total of working level months (WLMs) of radiation for the claimant equal to or

greater than 40 WLMs, then the Program will presume that total to be correct, absent evidence to the contrary, in which case the claimant or eligible surviving beneficiary need not submit additional records.

(b) If the sources in § 79.43(a) do not contain a calculated total of WLMs of radiation for the claimant, or contain a calculated total that is less than 40 WLMs, a claimant or eligible surviving beneficiary may submit the following records reflecting a calculated number of WLMs of radiation for periods of employment established under § 79.43(c):

(1) Certified copies of records of regulatory agencies of the specified states, provided that the records indicate the mines at which the claimant was employed, the time period of the claimant's employment in each mine, the exposure level in each mine during the claimant's employment, and the calculations on which the claimant's WLMs are based, unless the calculation is apparent;

(2) Certified copies of records of the owner or operator of a uranium mine in the specified states, provided that the records indicate the mines at which the claimant was employed, the time period of the claimant's employment in each mine, the exposure level in each mine during the claimant's employment, and the calculations on which the claimant's WLMs are based, unless the calculation is apparent.

(c) If the number of WLMs established under paragraphs (a) and (b) of this section is equal to or greater than 40 WLMs of radiation, the claimant or eligible surviving beneficiary need not submit additional records. When the sources referred to in paragraphs (a) and (b) of this section do not establish a calculated number of at least 40 WLMs, the Program will, where possible, calculate additional WLMs in the manner set forth in paragraphs (d) through (g) of this section for the periods of employment for which the sources in paragraphs (a) and (b) do not establish calculated totals. When calculating an exposure level for a particular period of a claimant's employment history, the Program will apply aboveground exposure levels with respect to those periods in which the claimant worked principally aboveground and will apply underground exposure levels with respect to those periods in which the claimant worked principally underground.

(d) To the extent the sources referred to in paragraphs (a) and (b) of this section do not contain a calculated number of WLMs, but do contain annual

exposure levels measured in Working Levels (WLs) for mines in which the claimant was employed, the Program will calculate the claimant's exposure to radiation measured in WLMs in the manner set forth in paragraph (h) of this section.

(e) For periods of employment in a uranium mine that a claimant establishes under § 79.43(c) as to which paragraph (d) of this section is not applicable, the Program will, where possible, use any or all of the following sources in computing the annual exposure level measured in WLs in each mine for the period of the claimant's employment, in the manner set forth in paragraph (g) of this section:

(1) Records of the AEC, or its successor agencies;

(2) Records of the PHS, including radiation-level measurements taken in the course of health studies conducted of uranium miners during or including the period 1942–1971;

(3) Records of the United States Bureau of Mines;

(4) Records of regulatory agencies of the specified states; or

(5) Records of the business entity that was the owner or operator of the mine.

(f) For periods of employment in unidentified or misidentified uranium mines that a claimant establishes under § 79.43(c)–(f), the Program will determine annual exposure levels measured in WLs in the unidentified or misidentified mines by calculating an average of the annual exposure levels measured in WLs in all the uranium mines owned or operated by the entities for which the claimant worked during the appropriate time periods and in the identified states.

(g) With respect to periods of employment in a uranium mine that a claimant establishes under § 79.43(c) as to which paragraph (d) of this section is not applicable, and periods of employment in unidentified or misidentified uranium mines that a claimant establishes under § 79.43(c)–(f), the Program will use the following methodology to calculate the annual exposure level measured in WLs for each mine:

(1) If one or more radiation measurements are available for a mine in a given year, such values will be averaged to generate the WLs for the mine for that year.

(2) If radiation measurements exist for the mine, but not for the year in which the claimant was employed in the mine, the WLs for the mine for that year will be estimated if possible as follows:

(i) If annual average measurements exist within four years of the year in which the claimant was employed in

the mine, the measurements for the two years closest will be averaged, and that value will be assigned to the year the claimant was employed in the mine;

(ii) If one or more annual average measurements exist for a mine, but are not more than five years from the year the claimant was employed, the annual average closest in time will be assigned either forward or backward in time for two years.

(3) If the methods described in paragraphs (g)(1) and (2) of this section interpolate or project the annual exposure level measured in WLs for a mine in a year in which the claimant was employed in the mine, the Program will use an estimated average for mines of the same or similar type, ventilation, and ore composition in the same geographical area for that year. An estimated area average will be calculated as follows:

(i) If actual measurements from three or more mines of the same or similar type, ventilation, and ore composition are available from mines in the same locality as the mine in which the claimant was employed, the average of the measurements for the mines within that locality will be used.

(ii) If there are insufficient actual measurements from mines in the same locality to use the method in paragraph (g)(3)(A) of this section, an average of exposure levels in mines in the same mining district will be used.

(iii) If there is no average of exposure levels from mines in the same mining district, the average of exposure levels in mines in the same state will be used.

(iv) If there are insufficient actual measurements from mines in the same state, the estimated average for the State of Colorado for the relevant year will be used.

(4) With respect to a year between 1942 and 1949, if the claimant was employed in a mine for which no exposure levels are available for that year, then the Program will estimate the annual exposure levels measured in WLs by averaging the two earliest exposure levels recorded from that mine after the year 1941. If there are not two exposure levels recorded from that mine, the Program will estimate the WLs by averaging the two earliest exposure levels after the year 1941 from the mines identified according to the methods set forth in paragraphs (g)(3)(i)–(iv).

(h) The Program will calculate a claimant's total exposure to radiation expressed in WLMs, for purposes of establishing eligibility under § 79.42(c), by adding together the WLMs for each period of employment that the claimant has established. For those periods of a

claimant's employment for which the Program has obtained or calculated WLs pursuant to paragraphs (d)–(g) of this section, the Program shall determine WLMs by multiplying the WL by the pertinent time period, measured in months, yielding a claimant's exposure to radiation expressed in WLMs.

§ 79.45 Proof of lung cancer.

(a) In determining whether a claimant developed lung cancer following pertinent employment as a miner, the Assistant Director shall resolve all reasonable doubt in favor of the claimant. A conclusion that a claimant developed lung cancer must be supported by medical documentation. In cases where the claimant is deceased, the claimant's beneficiary may submit any form of medical documentation specified in paragraph (e) of this section. A living claimant also may submit any form of medical documentation. However, a living claimant must at a minimum submit the medical documentation required in paragraph (e)(2) of this section. In all cases, the Program will review submitted medical documentation, and will, in addition and where appropriate, review any pertinent records discovered within the sources identified in paragraphs (b), (c), and (d) of this section.

(b) Where appropriate, the Radiation Exposure Compensation Program will search the records of the PHS (including NIOSH), created or gathered during the course of any health study of uranium workers conducted or being conducted by these agencies, to determine whether those records contain proof of the claimant's medical condition. (In cases where the claimant is deceased, the Program will accept as proof of medical condition the verification of the PHS or NIOSH that it possesses medical records or abstracts of medical records of the claimant that contain a verified diagnosis of lung cancer.)

(c) If a claimant was diagnosed as having lung cancer in the State of Arizona, Colorado, Nevada, New Mexico, Utah, or Wyoming, and the claimant or eligible surviving beneficiary submits with the claim an Authorization To Release Medical or Other Information, valid in the state of diagnosis, that authorizes the Radiation Exposure Compensation Program to contact the appropriate state cancer or tumor registry, the Program will, where appropriate, request the relevant information from that registry and will review records that it obtains from the registry. (In cases where the claimant is deceased, 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 lung cancer.)

(d) If medical records regarding the claimant were gathered during the course of any federally supported, health-related study of uranium workers, and the claimant or eligible surviving beneficiary submits with the claim an Authorization To Release Medical or Other Information that authorizes the Program to contact the custodian of the records of the study to determine if proof of the claimant's medical condition is contained in the records of the study, the Program will, where appropriate, request such records from that custodian and will review records that it obtains from the custodian. (In cases where the claimant is deceased, the Program will accept as proof of the claimant's medical condition such medical records or abstracts of medical records containing a verified diagnosis of lung cancer.)

(e)(1) A claimant or beneficiary may submit any of the following forms of medical documentation in support of a claim that the claimant contracted lung cancer. Such documentation will be most useful where it contains an explicit statement of diagnosis or such other information or data from which the appropriate authorities at the National Cancer Institute can make a diagnosis to a reasonable degree of medical certainty:

(i) Pathology report of tissue biopsy, 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) Bronchoscopy report;

(iv) One of the following summary

medical reports:

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

(C) Operative report;

(D) Radiation therapy summary

report;

(E) Oncology summary or consultation report;

(v) Reports of radiographic studies, including:

(A) X-rays of the chest;

(B) Chest tomograms;

(C) Computer-assisted tomography (CT);

(D) Magnetic resonance imaging (MRI);

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

(vii) Any of the forms of documentation enumerated in paragraph (e)(2) of this section.

(2) Notwithstanding any other documentation provided, a living claimant must at a minimum provide the following medical documentation:

(i) Either:

(A) 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 of this part; or

(B) A written diagnosis by a physician in accordance with § 79.41(o); and

(ii) One of the following:

(A) A chest x-ray on full-size film administered in accordance with standard techniques accompanied by:

(1) Interpretive reports of the x-ray by two NIOSH certified "B" readers, rating the film at quality 1 or 2 and classifying the existence of disease of category 1/0 or higher according to a 1980 report of the International Labor Office (known as the "ILO") or subsequent revisions; or

(2) Medical documentation interpreting the chest x-ray from a physician employed by the Indian Health Service or the Department of Veterans Affairs who has a documented, ongoing physician-patient relationship with the claimant (which may include referrals to physicians employed by the Indian Health Service or the Department of Veterans Affairs for the purposes of diagnosis or treatment);

(B) High resolution computed tomography scans (commonly known as "HRCT scans"), including computer-assisted tomography scans (commonly known as "CAT scans"), magnetic resonance imaging scans (commonly known as "MRI scans"), and positron emission tomography scans (commonly known as "PET scans"), and interpretive reports of such scans;

(C) Pathology reports of tissue biopsies; or

(D) Pulmonary function tests indicating restrictive lung function and 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 less than or equal to 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.

(f) The Assistant Director shall treat any documentation described in paragraph (e)(2)(i)(B) or paragraph (e)(2)(ii)(A) of this section as conclusive evidence of the claimant's lung cancer; provided, however, that the Program may subject such documentation to a fair and random audit procedure to guarantee its authenticity and reliability for purposes of treating it as conclusive evidence; and provided further that, in order to be treated as conclusive evidence, a written diagnosis described in paragraph (e)(2)(i)(B) must be by a physician who is employed by the Indian Health Service or the Department of Veterans Affairs or who is certified by a state medical board, and who must have a documented, ongoing physician-patient relationship with the claimant. Notwithstanding the conclusive effect given to certain evidence, nothing in this paragraph shall be construed as relieving a living claimant of the obligation to provide the Program with the forms of documentation required under paragraph (e)(2).

§ 79.46 Proof of nonmalignant respiratory disease.

(a) In determining whether a claimant developed a nonmalignant respiratory disease following pertinent employment as a miner, the Assistant Director shall resolve all reasonable doubt in favor of the claimant. A conclusion that a claimant developed a nonmalignant respiratory disease must be supported by medical documentation. In cases where the claimant is deceased, the claimant's beneficiary may submit any form of medical documentation specified in paragraph (d)(1) of this section, and for proof of cor pulmonale must also submit one or more forms of documentation specified in paragraph (d)(2). A living claimant also may submit any form of medical documentation. However, a living claimant must at a minimum submit the medical documentation required in paragraph (d)(3) of this section, and for proof of cor pulmonale must also submit one or more forms of documentation specified in paragraph (d)(2). In all cases, the Program will review submitted medical documentation, and will, in addition and where appropriate, review any pertinent records discovered within the sources referred to in paragraphs (b) and (c) of this section. With respect to a deceased claimant, the Program will treat as equivalent to a diagnosis of pulmonary fibrosis any diagnosis of "restrictive lung disease" made by a physician employed by the Indian Health Service.

(b) Where appropriate, the Radiation Exposure Compensation Program will search the records of the PHS (including NIOSH), created or gathered during the course of any health study of uranium workers conducted or being conducted by these agencies, to determine whether those records contain proof of the claimant's medical condition. (In cases where the claimant is deceased, the Program will accept as proof of medical condition the verification of the PHS or NIOSH that it possesses medical records or abstracts of medical records of the claimant that contain a verified diagnosis of a nonmalignant respiratory disease.)

(c) If medical records regarding the claimant were gathered during the course of any federally supported, health-related study of uranium workers and the claimant or eligible surviving beneficiary submits with the claim an Authorization To Release Medical or Other Information that authorizes the Program to contact the custodian of the records of the study to determine if proof of the claimant's medical condition is contained in the records of the study, the Program will, where appropriate, request such records from that custodian and will review records that it obtains from the custodian. (In cases where the claimant is deceased, the Program will accept as proof of the claimant's medical condition such medical records or abstracts of medical records containing a verified diagnosis of a nonmalignant respiratory disease.)

(d)(1) A claimant or beneficiary may submit any of the following forms of medical documentation in support of a claim that the claimant contracted a nonmalignant respiratory disease, including pulmonary fibrosis, fibrosis of the lung, cor pulmonale, silicosis, and pneumoconiosis. Such documentation will be most useful where it contains an explicit statement of diagnosis or such other information or data from which the appropriate authorities at the National Cancer Institute can make a diagnosis to a reasonable degree of medical certainty:

- (i) Pathology report of tissue biopsy;
- (ii) Autopsy report;
- (iii) If an x-ray exists, the x-ray and interpretive reports of the x-ray by two NIOSH certified "B" readers classifying the existence of disease of category 1/0 or higher according to a 1980 report of the International Labor Office (known as the "ILO"), or subsequent revisions;
- (iv) If no x-rays exist, an x-ray report;
- (v) Physician summary report;
- (vi) Hospital discharge summary report;
- (vii) Hospital admitting report;

(viii) Death certificate, provided that it is signed by a physician at the time of death; or

(ix) Any form of documentation enumerated in paragraphs (d)(2) and (d)(3) of this section.

(2) In order to demonstrate that the claimant developed cor pulmonale related to fibrosis of the lung, the claimant or beneficiary must, at a minimum, submit one or more of the following medical records:

- (i) Right heart catheterization;
- (ii) Cardiology summary or consultation report;
- (iii) Electrocardiogram;
- (iv) Echocardiogram;
- (v) Physician summary report;
- (vi) Hospital discharge report;
- (vii) Autopsy report;
- (viii) Report of physical examination;
- (ix) Death certificate, provided that it is signed by a physician at the time of death.

(3) Notwithstanding any other documentation provided, a living claimant must at a minimum provide the following medical documentation:

(i) Either:
(A) 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 of this part; or

(B) A written diagnosis by a physician in accordance with § 79.41(o); and
(ii) One of the following:

(A) A chest x-ray on full-size film administered in accordance with standard techniques accompanied by:

(1) Interpretive reports of the x-ray by two NIOSH certified "B" readers, rating the film at quality 1 or 2 and classifying the existence of disease of category 1/0 or higher according to a 1980 report of the International Labor Office (known as the "ILO"), or subsequent revisions; or

(2) Medical documentation interpreting the chest x-ray from a physician employed by the Indian Health Service or the Department of Veterans Affairs who has a documented, ongoing physician-patient relationship with the claimant (which may include referrals to physicians employed by the Indian Health Service or the Department of Veterans Affairs for the purposes of diagnosis or treatment);

(B) High-resolution computed tomography scans (commonly known as "HRCT scans"), including computer-assisted tomography scans (commonly known as "CAT scans"), magnetic resonance imaging scans (commonly known as "MRI scans"), and positron emission tomography scans (commonly known as "PET scans"), and interpretive reports of such scans;

(C) Pathology reports of tissue biopsies; or

(D) Pulmonary function tests indicating restrictive lung function and 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 less than or equal to 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.

(e) The Assistant Director shall treat any documentation described in paragraph (d)(3)(i)(B) or paragraph (d)(3)(ii)(A) as conclusive evidence of the claimant's nonmalignant respiratory disease; provided, however, that the Program may subject such documentation to a fair and random audit to guarantee its authenticity and reliability for purposes of treating it as conclusive evidence; and provided further that, in order to be treated as conclusive evidence, a written diagnosis described in paragraph (d)(3)(i)(B) must be by a physician who is employed by the Indian Health Service or the Department of Veterans Affairs or who is certified by a state medical board, and who must have a documented, ongoing physician-patient relationship with the claimant. Notwithstanding the conclusive effect given to certain evidence, nothing in this paragraph shall be construed as relieving a living claimant of the obligation to provide the Program with the forms of documentation required under paragraph (d)(3).

Subpart F—Uranium Millers

§ 79.50 Scope of subpart.

The regulations in this subpart define the eligibility criteria for compensation under section 5 of the Act pertaining to millers, i.e., uranium mill workers, and the nature of evidence that will be accepted as proof that a claimant satisfies such criteria. Section 5 of the Act provides for a payment of \$100,000 to "millers" who contracted lung cancer, one of a limited number of nonmalignant respiratory diseases, renal cancer, or chronic renal disease, following employment for at least one year as a uranium mill worker in specified states during the period beginning January 1, 1942, and ending December 31, 1971.

§ 79.51 Definitions.

(a) *Chronic nephritis* means an inflammatory process of the kidneys resulting in chronic renal disease.

(b) *Chronic renal disease* means the chronic, progressive, and irreversible destruction of the nephrons. It is exhibited by renal atrophy and diminution of renal function.

(c) *Cor pulmonale* means heart disease, including hypertrophy of the right ventricle, due to pulmonary hypertension secondary to fibrosis of the lung.

(d) *Designated time period* means the period beginning on January 1, 1942, and ending on December 31, 1971.

(e) *Employment for at least one year* means employment for a total of at least one year (12 consecutive or cumulative months).

(f) *Fibrosis of the lung or pulmonary fibrosis* means chronic inflammation and scarring of the pulmonary interstitium and alveoli with collagen deposition and progressive thickening causing pulmonary impairment.

(g) *Kidney tubal tissue injury* means structural damage to the kidney tissues or tubules that results in chronic renal disease.

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

(i) *Miller or uranium mill worker* means a person who operated or otherwise worked in a uranium mill.

(j) *National Institute for Occupational Safety and Health (NIOSH) certified "B" reader* means a physician who is certified as such by NIOSH. A list of certified "B" readers is available from the Radiation Exposure Compensation Program upon request.

(k) *Nonmalignant respiratory disease* means fibrosis of the lung, pulmonary fibrosis, cor pulmonale related to fibrosis of the lung, silicosis, and pneumoconiosis.

(l) *Pneumoconiosis* means a chronic lung disease resulting from inhalation and deposition in the lung of particulate matter, and the tissue reaction to the presence of the particulate matter.

(m) *Readily available documentation* means documents in the possession, custody, or control of the claimant or an immediate family member.

(n) *Renal cancer* means any physiological condition of the kidneys that is recognized under that name or nomenclature by the National Cancer Institute.

(o) *Silicosis* means a pneumoconiosis due to the inhalation of the dust of stone, sand, flint, or other materials

containing silicon dioxide, characterized by the formation of pulmonary fibrotic changes.

(p) *Specified state* means Colorado, New Mexico, Arizona, Wyoming, South Dakota, Washington, Utah, Idaho, North Dakota, Oregon, or Texas. Additional states may be included, provided:

(1) An Atomic Energy Commission uranium mine was operated in such state at any time during the period beginning on January 1, 1942, and ending on December 31, 1971;

(2) The state submits an application to the Assistant Director (specified in 28 CFR 79.70(a)) to include such state; and

(3) The Assistant Director makes a determination to include such state.

(q) *Uranium mill* means any milling operation involving the processing of uranium ore or vanadium-uranium ore, including carbonate plants and acid leach plants. The term applies to ore-buying stations where ore was weighed and sampled prior to delivery to a mill for processing; "upgrader" or "concentrator" facilities located at the mill or at a remote location where uranium or vanadium-uranium ore was processed prior to delivery to a mill; and pilot plants where uranium ore or vanadium-uranium ore was processed.

(r) *Uranium mine* means any underground excavation, including "dog holes," as well as open-pit, strip, rim, surface, or other aboveground mines the primary or significant purpose of which was the extraction of uranium ore or vanadium-uranium ore.

(s) *Written diagnosis by a physician* means a written determination of the nature of a disease made from a study of the signs and symptoms of a disease that is based on a physical examination of the patient, medical imaging or a chemical, microscopic, microbiologic, immunologic, or pathologic study of physiologic and functional tests, secretions, discharges, blood, or tissue. For purposes of satisfying the requirement of a "written diagnosis by a physician" for living claimants specified in §§ 79.54 and 79.55, a physician submitting a written diagnosis of a nonmalignant respiratory disease or lung cancer must be employed by the Indian Health Service or the Department of Veterans Affairs or be certified by a state medical board, and must have a documented, ongoing physician-patient relationship with the claimant. An "ongoing physician-patient relationship" can include referrals made to specialists from a primary care provider (and accepted by the primary care provider) for purposes of diagnosis or treatment.

§ 79.52 Criteria for eligibility.

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

(a) The claimant was employed as a miller in a specified state;

(b) The claimant was so employed for at least one year (12 consecutive or cumulative months) during the period beginning on January 1, 1942, and ending on December 31, 1971; and

(c) The claimant contracted lung cancer, a nonmalignant respiratory disease, renal cancer, or chronic renal disease (including nephritis and kidney tubal tissue injury) following such employment.

§ 79.53 Proof of employment as a miller.

(a) The Department will accept, as proof of employment for the time period indicated, information contained in any of the following records:

(1) Records created by or gathered by the Public Health Service (PHS) in the course of any health studies of uranium workers during or including the period 1942–1990;

(2) Records of a uranium worker census performed by the PHS at various times during the period 1942–1990;

(3) Records of the Atomic Energy Commission (AEC), or any of its successor agencies; and

(4) Records of federally supported, health-related studies of uranium workers.

(b) The Program will presume that the employment history for the time period indicated in records listed in paragraph (a) is correct. If the claimant or eligible surviving beneficiary wishes to contest the accuracy of such records, then the claimant or eligible surviving beneficiary may provide one or more of the records identified in paragraph (c) of this section, and the Assistant Director will determine whether the employment history indicated in the records listed in paragraph (a) is correct.

(c) If the sources in paragraph (a) of this section do not contain information regarding the claimant's uranium mill employment history, do not contain sufficient information to establish employment for at least one year in a uranium mill during the specified time period to qualify under § 79.52(b), or if a claimant or eligible surviving beneficiary wishes to contest the accuracy of such records, then the claimant or eligible surviving beneficiary may submit records from any of the following sources, which the Assistant Director shall consider (in addition to any sources listed in paragraph (a) of this section) in order to

determine whether the claimant has established the requisite employment history:

(1) Records of any of the specified states, including records of state regulatory agencies, containing information on uranium mill workers and uranium mills;

(2) Records of any business entity that owned or operated a uranium mill, or its successor-in-interest;

(3) Records of the Social Security Administration reflecting the identity of the employer, the years and quarters of employment, and the wages received during each quarter;

(4) Federal or state income tax records that contain relevant statements regarding the claimant's employer and wages;

(5) Records containing factual findings by any governmental judicial body, state worker's compensation board, or any governmental administrative body adjudicating the claimant's rights to any type of benefits (which will be accepted only to prove the fact of and duration of employment in a uranium mill);

(6) Statements in medical records created during the period 1942–1971 indicating or identifying the claimant's employer and occupation;

(7) Records of an academic or scholarly study, not conducted in anticipation of or in connection with any litigation, and completed prior to 1990; or

(8) Any other contemporaneous record that indicates or identifies the claimant's occupation or employer.

(d) To the extent that the documents submitted from the sources identified in this section do not so indicate, the claimant or eligible surviving beneficiary must set forth under oath on the standard claim form the following information, if known:

(1) The names of the mill employers for which the claimant worked during the time period identified in the documents;

(2) The names and locations of any mills in which the claimant worked;

(3) The actual time period the claimant worked in each mill; and

(4) The claimant's occupation in each mill.

(e) The Program may, for the purpose of verifying information submitted pursuant to this section, require the claimant or any eligible surviving beneficiary to provide an authorization to release any record identified in this section, in accordance with the provisions of § 79.72(c).

(f) In determining whether a claimant satisfies the employment criteria of the Act, the Assistant Director shall resolve

all reasonable doubt in favor of the claimant. If the Assistant Director concludes that the claimant has not satisfied the employment requirements of the Act, the claimant or eligible surviving beneficiary will be notified and afforded the opportunity, in accordance with the provisions of § 79.72(c), to submit additional records to establish that the statutory employment criteria are satisfied.

§ 79.54 Proof of lung cancer.

(a) In determining whether a claimant developed lung cancer following pertinent employment as a miller, the Assistant Director shall resolve all reasonable doubt in favor of the claimant. A conclusion that a claimant developed lung cancer must be supported by medical documentation. In cases where the claimant is deceased, the claimant's beneficiary may submit any form of medical documentation specified in paragraph (e) of this section. A living claimant also may submit any form of medical documentation. However, a living claimant must at a minimum submit the medical documentation required in paragraph (e)(2) of this section. In all cases, the Program will review submitted medical documentation, and will, in addition and where appropriate, review any pertinent records discovered within the sources identified in paragraphs (b), (c) and (d) of this section.

(b) Where appropriate, the Radiation Exposure Compensation Program will search the records of the PHS (including NIOSH), created or gathered during the course of any health study of uranium workers conducted or being conducted by these agencies, to determine whether those records contain proof of the claimant's medical condition. (In cases where the claimant is deceased, the Program will accept as proof of medical condition the verification of the PHS or NIOSH that it possesses medical records or abstracts of medical records of the claimant that contain a verified diagnosis of lung cancer.)

(c) If a claimant was diagnosed as having lung cancer in the State of Arizona, Colorado, Nevada, New Mexico, Utah, or Wyoming, and the claimant or eligible surviving beneficiary submits with the claim an Authorization To Release Medical or Other Information, valid in the state of diagnosis, that authorizes the Radiation Exposure Compensation Program to contact the appropriate state cancer or tumor registry, the Program will, where appropriate, request the relevant information from that registry and will review records that it obtains from the

registry. (In cases where the claimant is deceased, 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 lung cancer.)

(d) If medical records regarding the claimant were gathered during the course of any federally supported, health-related study of uranium workers, and the claimant or eligible surviving beneficiary submits with the claim an Authorization To Release Medical or Other Information that authorizes the Program to contact the custodian of the records of the study to determine if proof of the claimant's medical condition is contained in the records of the study, the Program will, where appropriate, request such records from that custodian and will review records that it obtains from the custodian. (In cases where the claimant is deceased, the Program will accept as proof of the claimant's medical condition such medical records or abstracts of medical records containing a verified diagnosis of lung cancer.)

(e)(1) A claimant or beneficiary may submit any of the following forms of medical documentation in support of a claim that the claimant contracted lung cancer. Such documentation will be most useful where it contains an explicit statement of diagnosis or such other information or data from which the appropriate authorities at the National Cancer Institute can make a diagnosis to a reasonable degree of medical certainty:

(i) Pathology report of tissue biopsy, 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) Bronchoscopy report;

(iv) One of the following summary medical reports:

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

(C) Operative report;

(D) Radiation therapy summary report;

(E) Oncology summary or consultation report;

(v) Reports of radiographic studies, including:

- (A) X-rays of the chest;
- (B) Chest tomograms;
- (C) Computer-assisted tomography (CT);
- (D) Magnetic resonance imaging (MRI);
- (vi) Death certificate, provided that it is signed by a physician at the time of death; or
- (vii) Any type of documentation enumerated in paragraph (e)(2) of this section.

(2) Notwithstanding any other documentation provided, a living claimant must at a minimum provide the following medical documentation:

(i) Either:

(A) 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 of this part; or

(B) A written diagnosis by a physician in accordance with § 79.51(s); and

(ii) One of the following:

(A) A chest x-ray on full-size film administered in accordance with standard techniques accompanied by:

(1) Interpretive reports of the x-ray by two NIOSH certified "B" readers, rating the film at quality 1 or 2 and classifying the existence of disease of category 1/0 or higher according to a 1980 report of the International Labor Office (known as the "ILO") or subsequent revisions; or

(2) Medical documentation interpreting the chest x-ray from a physician employed by the Indian Health Service or the Department of Veterans Affairs who has a documented, ongoing physician-patient relationship with the claimant (which may include referrals to physicians employed by the Indian Health Service or the Department of Veterans Affairs for the purposes of diagnosis or treatment);

(B) High-resolution computed tomography scans (commonly known as "HRCT scans"), including computer assisted tomography scans (commonly known as "CAT scans"), magnetic resonance imaging scans (commonly known as "MRI scans"), and positron emission tomography scans (commonly known as "PET scans"), and interpretive reports of such scans;

(C) Pathology reports of tissue biopsies; or

(D) Pulmonary function tests indicating restrictive lung function and 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 less than or equal to 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.

(f) The Assistant Director shall treat any documentation described in paragraph (e)(2)(i)(B) or paragraph (e)(2)(ii)(A) as conclusive evidence of the claimant's lung cancer; provided, however, that the Program may subject such documentation to a fair and random audit procedure to guarantee its authenticity and reliability for purposes of treating it as conclusive evidence; and provided further that, in order to be treated as conclusive evidence, a written diagnosis described in paragraph (e)(2)(i)(B) must be by a physician who is employed by the Indian Health Service or the Department of Veterans Affairs or who is certified by a state medical board, and who must have a documented, ongoing physician-patient relationship with the claimant. Notwithstanding the conclusive effect given to certain evidence, nothing in this paragraph shall be construed as relieving a living claimant of the obligation to provide the Program with the forms of documentation required under paragraph (e)(2).

§ 79.55 Proof of nonmalignant respiratory disease.

(a) In determining whether a claimant developed a nonmalignant respiratory disease following pertinent employment as a miner, the Assistant Director shall resolve all reasonable doubt in favor of the claimant. A conclusion that a claimant developed a nonmalignant respiratory disease must be supported by medical documentation. In cases where the claimant is deceased, the claimant's beneficiary may submit any form of medical documentation specified in paragraph (d)(1) of this section, and for proof of cor pulmonale must also submit one or more forms of documentation specified in paragraph (d)(2). A living claimant also may submit any form of medical documentation. However, a living claimant must at a minimum submit the medical documentation required in paragraph (d)(3) of this section, and for proof of cor pulmonale must also submit one or more forms of documentation specified in paragraph (d)(2). In all cases, the Program will review submitted medical documentation, and will, in addition and where appropriate, review any pertinent records discovered within the sources referred to in paragraphs (b) and (c) of this section. With respect to a deceased claimant, the Program will treat as equivalent to a diagnosis of pulmonary fibrosis any

diagnosis of "restrictive lung disease" made by a physician employed by the Indian Health Service.

(b) Where appropriate, the Radiation Exposure Compensation Program will search the records of the PHS (including NIOSH), created or gathered during the course of any health study of uranium workers conducted or being conducted by these agencies, to determine whether those records contain proof of the claimant's medical condition. (In cases where the claimant is deceased, the Program will accept as proof of medical condition the verification of the PHS or NIOSH that it possesses medical records or abstracts of medical records of the claimant that contain a verified diagnosis of a nonmalignant respiratory disease.)

(c) If medical records regarding the claimant were gathered during the course of any federally supported, health-related study of uranium workers, and the claimant or eligible surviving beneficiary submits with the claim an Authorization To Release Medical or Other Information that authorizes the Program to contact the custodian of the records of the study to determine if proof of the claimant's medical condition is contained in the records of the study, the Program will, where appropriate, request such records from that custodian and will review records that it obtains from the custodian. (In cases where the claimant is deceased, the Program will accept as proof of the claimant's medical condition such medical records or abstracts of medical records containing a verified diagnosis of a nonmalignant respiratory disease.)

(d)(1) A claimant or beneficiary may submit any of the following forms of medical documentation in support of a claim that the claimant contracted a nonmalignant respiratory disease, including pulmonary fibrosis, fibrosis of the lung, cor pulmonale, silicosis, and pneumoconiosis. Such documentation will be most useful where it contains an explicit statement of diagnosis or such other information or data from which the appropriate authorities at the National Cancer Institute can make a diagnosis to a reasonable degree of medical certainty:

(i) Pathology report of tissue biopsy;

(ii) Autopsy report;

(iii) If an x-ray exists, the x-ray and interpretive reports of the x-ray by two NIOSH certified "B" readers classifying the existence of disease of category 1/0 or higher according to a 1980 report of the International Labor Office (known as the "ILO"), or subsequent revisions;

(iv) If no x-rays exist, an x-ray report;

(v) Physician summary report;

(vi) Hospital discharge summary report;
 (vii) Hospital admitting report;
 (viii) Death certificate, provided that it is signed by a physician at the time of death; or
 (ix) Any of the types of documentation enumerated in paragraphs (d)(2) and (d)(3) of this section.

(2) In order to demonstrate that the claimant developed cor pulmonale related to fibrosis of the lung, the claimant or beneficiary must, at a minimum, submit one or more of the following medical records:

(i) Right heart catheterization;
 (ii) Cardiology summary or consultation report;
 (iii) Electrocardiogram;
 (iv) Echocardiogram;
 (v) Physician summary report;
 (vi) Hospital discharge report;
 (vii) Autopsy report;
 (viii) Report of physical examination;
 (ix) Death certificate, provided that it is signed by a physician at the time of death.

(3) Notwithstanding any other documentation provided, a living claimant must at a minimum provide the following medical documentation:

(i) Either:

(A) 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 of this part; or

(B) A written diagnosis by a physician in accordance with § 79.51(s); and

(ii) One of the following:

(A) A chest x-ray on full-size film administered in accordance with standard techniques accompanied by:

(1) Interpretive reports of the x-ray by two NIOSH certified "B" readers, rating the film at quality 1 or 2 and classifying the existence of disease of category 1/0 or higher according to a 1980 report of the International Labor Office (known as the "ILO") or subsequent revisions; or

(2) Medical documentation interpreting the chest x-ray from a physician employed by the Indian Health Service or the Department of Veterans Affairs who has a documented, ongoing physician-patient relationship with the claimant (which may include referrals to physicians employed by the Indian Health Service or the Department of Veterans Affairs for the purposes of diagnosis or treatment);

(B) High-resolution computed tomography scans (commonly known as "HRCT scans"), including computer-assisted tomography scans (commonly known as "CAT scans"), magnetic resonance imaging scans (commonly

known as "MRI scans"), and positron emission tomography scans (commonly known as "PET scans"), and interpretive reports of such scans;

(C) Pathology reports of tissue biopsies; or

(D) Pulmonary function tests indicating restrictive lung function and 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 less than or equal to 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.

(e) The Assistant Director shall treat any documentation described in paragraph (d)(3)(i)(B) or paragraph (d)(3)(ii)(A) of this section as conclusive evidence of the claimant's nonmalignant respiratory disease; provided, however, that the Program may subject such documentation to a fair and random audit to guarantee its authenticity and reliability for purposes of treating it as conclusive evidence; and provided further that, in order to be treated as conclusive evidence, a written diagnosis described in paragraph (d)(3)(i)(B) must be by a physician who is employed by the Indian Health Service or the Department of Veterans Affairs or who is certified by a state medical board, and who must have a documented, ongoing physician-patient relationship with the claimant. Notwithstanding the conclusive effect given to certain evidence, nothing in this paragraph shall be construed as relieving a living claimant of the obligation to provide the Program with the forms of documentation required under paragraph (d)(3).

§ 79.56 Proof of renal cancer.

(a) In determining whether a claimant developed renal cancer following pertinent employment as a miller, the Assistant Director shall resolve all reasonable doubt in favor of the claimant. A conclusion that a claimant developed renal cancer must be supported by medical documentation. In all cases, the Program will review submitted medical documentation, and will, in addition and where appropriate, review any pertinent records discovered within the sources referred to in paragraphs (b) and (c) of this section.

(b) Where appropriate, the Radiation Exposure Compensation Program will search the records of the PHS (including NIOSH), created or gathered during the

course of any health study of uranium workers conducted or being conducted by these agencies, to determine whether those records contain proof of the claimant's medical condition. The Program will accept as proof of medical condition the verification of the PHS or NIOSH that it possesses medical records or abstracts of medical records of the claimant that contain a verified diagnosis of renal cancer.

(c) If a claimant was diagnosed as having renal cancer in the State of Arizona, Colorado, Nevada, New Mexico, Utah, or Wyoming, and the claimant or eligible surviving beneficiary submits with the claim an Authorization To Release Medical or Other Information, valid in the state of diagnosis, that authorizes the Radiation Exposure Compensation Program to contact the appropriate state cancer or tumor registry, the Program will, where appropriate, request the relevant information from that registry and will review records that it obtains from the 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 renal cancer.

(d) If medical records regarding the claimant were gathered during the course of any federally supported, health-related study of uranium workers, and the claimant or eligible surviving beneficiary submits with the claim an Authorization To Release Medical or Other Information that authorizes the Program to contact the custodian of the records of the study to determine if proof of the claimant's medical condition is contained in the records of the study, the Program will, where appropriate, request such records from that custodian and will review records that it obtains from the custodian. The Program will accept as proof of the claimant's medical condition such medical records or abstracts of medical records containing a verified diagnosis of renal cancer.

(e) A claimant or beneficiary may submit any of the following forms of medical documentation in support of a claim that the claimant contracted renal cancer. Such documentation will be most useful where it contains an explicit statement of diagnosis or such other information or data from which the appropriate authorities at the National Cancer Institute can make a diagnosis to a reasonable degree of medical certainty:

(1) Pathology report of tissue biopsy or resection;
 (2) Autopsy report;

(3) One of the following summary medical reports:

- (i) Physician summary report;
- (ii) Hospital discharge summary report;
- (iii) Operative report;
- (iv) Radiotherapy summary report;
- (v) Medical oncology summary or consultation report;

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

- (i) Computerized tomography (CT) scan;
- (ii) Magnetic resonance imaging (MRI); or

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

§ 79.57 Proof of chronic renal disease.

(a) In determining whether a claimant developed chronic renal disease following pertinent employment as a miner, the Assistant Director shall resolve all reasonable doubt in favor of the claimant. A conclusion that a claimant developed chronic renal disease must be supported by medical documentation. The Assistant Director shall not conclude that a claimant developed chronic renal disease if there is evidence of any of the following:

- (1) Volume depletion as a cause of elevated creatinine;
- (2) Urinary obstruction as a cause of elevated creatinine;
- (3) Diabetes mellitus; or
- (4) Diabetic nephropathy (by pathology report of tissue biopsy or autopsy, or heavy proteinuria in diabetic patient).

(b) A claimant or beneficiary may submit any of the following forms of medical documentation in support of a claim that the claimant contracted chronic renal disease. Such documentation will be most useful where it contains an explicit statement of diagnosis or such other information or data from which the appropriate authorities at the National Cancer Institute can make a diagnosis to a reasonable degree of medical certainty.

- (1) Pathology report of tissue biopsy;
- (2) If blood or renal function tests exist:

- (i) Plasma creatinine values greater than age and gender adjusted normal values; and
- (ii) Glomerular filtration tests (using either creatinine or iothalamate clearance) with values less than age and gender adjusted normal values; and
- (iii) Bilateral small kidneys by ultrasound, CT scan, or MRI scan with parenchymal changes consistent with chronic renal disease;
- (3) Autopsy report;
- (4) Physician summary report;

(5) Hospital discharge summary report;

- (6) Hospital admitting report; or
- (7) Death certificate, provided that it is signed by a physician at the time of death.

Subpart G—Ore Transporters

§ 79.60 Scope of subpart.

The regulations in this subpart define the eligibility criteria for compensation under section 5 of the Act pertaining to uranium or vanadium-uranium ore transporters and the nature of evidence that will be accepted as proof that a claimant satisfies such criteria. Section 5 of the Act provides for a payment of \$100,000 to persons who contracted lung cancer, one of a limited number of nonmalignant respiratory diseases, renal cancer, or chronic renal disease, following employment for at least one year as a transporter of uranium ore or vanadium-uranium ore from a uranium mine or uranium mill located in a specified state during the period beginning January 1, 1942, and ending December 31, 1971.

§ 79.61 Definitions.

(a) *Chronic nephritis* means an inflammatory process of the kidneys resulting in chronic renal disease.

(b) *Chronic renal disease* means the chronic, progressive, and irreversible destruction of the nephrons. It is exhibited by renal atrophy and diminution of renal function.

(c) *Cor pulmonale* means heart disease, including hypertrophy of the right ventricle, due to pulmonary hypertension secondary to fibrosis of the lung.

(d) *Designated time period* means the period beginning on January 1, 1942, and ending on December 31, 1971.

(e) *Employment as an ore transporter* means employment involving the transporting or hauling of uranium ore or vanadium-uranium ore from a uranium mine or uranium mill, including the transportation or hauling of ore from an ore buying station, "upgrader," "concentrator" facility, or pilot plant area of a mill by means of truck, rail or barge.

(f) *Employment for at least one year* means employment for a total of at least one year (12 consecutive or cumulative months).

(g) *Fibrosis of the lung or pulmonary fibrosis* means chronic inflammation and scarring of the pulmonary interstitium and alveoli with collagen deposition and progressive thickening causing pulmonary impairment.

(h) *Kidney tubal tissue injury* means structural damage to the kidney tissues

or tubules that results in chronic renal disease.

(i) *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. The term includes in situ lung cancers.

(j) *National Institute for Occupational Safety and Health (NIOSH) certified "B" reader* means a physician who is certified as such by NIOSH. A list of certified "B" readers is available from the Radiation Exposure Compensation Program upon request.

(k) *Nonmalignant respiratory disease* means fibrosis of the lung, pulmonary fibrosis, cor pulmonale related to fibrosis of the lung, silicosis, and pneumoconiosis.

(l) *Pneumoconiosis* means a chronic lung disease resulting from inhalation and deposition in the lung of particulate matter, and the tissue reaction to the presence of the particulate matter.

(m) *Readily available documentation* means documents in the possession, custody, or control of the claimant or an immediate family member.

(n) *Renal cancer* means any physiological condition of the kidneys that is recognized under that name or nomenclature by the National Cancer Institute.

(o) *Silicosis* means a pneumoconiosis due to the inhalation of the dust of stone, sand, flint or other materials containing silicon dioxide, characterized by the formation of pulmonary fibrotic changes.

(p) *Specified state* means Colorado, New Mexico, Arizona, Wyoming, South Dakota, Washington, Utah, Idaho, North Dakota, Oregon, or Texas. Additional states may be included, provided:

- (1) An Atomic Energy Commission uranium mine was operated in such state at any time during the period beginning on January 1, 1942, and ending on December 31, 1971;

(2) The state submits an application to the Assistant Director (specified in 28 CFR 79.70(a)) to include such state; and

(3) The Assistant Director makes a determination to include such state.

(q) *Uranium mill* means any milling operation involving the processing of uranium ore or vanadium-uranium ore, including carbonate plants and acid leach plants. The term applies to ore-buying stations where ore was weighed and sampled prior to delivery to a mill for processing; "upgrader" or "concentrator" facilities located at the mill or at a remote location where uranium or vanadium-uranium ore was processed prior to delivery to a mill; and pilot plants where uranium ore or vanadium-uranium ore was processed.

(r) *Uranium mine* means any underground excavation, including "dog holes," as well as open-pit, strip, rim, surface, or other aboveground mines the primary or significant purpose of which was the extraction of uranium ore or vanadium-uranium ore.

(s) *Written diagnosis by a physician* means a written determination of the nature of a disease made from a study of the signs and symptoms of a disease that is based on a physical examination of the patient, medical imaging or a chemical, microscopic, microbiologic, immunologic, or pathologic study of physiologic and functional tests, secretions, discharges, blood, or tissue. For purposes of satisfying the requirement of a "written diagnosis by a physician" for living claimants specified in §§ 79.64 and 79.65, a physician submitting a written diagnosis of a nonmalignant respiratory disease or lung cancer must be employed by the Indian Health Service or the Department of Veterans Affairs or be certified by a state medical board, and must have a documented, ongoing physician-patient relationship with the claimant. An "ongoing physician-patient relationship" can include referrals made to specialists from a primary care provider (and accepted by the primary care provider) for purposes of diagnosis or treatment.

§ 79.62 Criteria for eligibility.

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

- (a) The claimant was employed as an ore transporter in a specified state;
- (b) The claimant was so employed for at least one year (12 consecutive or cumulative months) during the period beginning on January 1, 1942, and ending on December 31, 1971; and
- (c) The claimant contracted lung cancer, a nonmalignant respiratory disease, renal cancer, or chronic renal disease (including nephritis and kidney tubal tissue injury) following such employment.

§ 79.63 Proof of employment as an ore transporter.

(a) The Department will accept, as proof of employment for the time period indicated, information contained in any of the following records:

- (1) Records created by or gathered by the Public Health Service (PHS) in the course of any health studies of uranium workers during or including the period 1942–1990;

(2) Records of a uranium worker census performed by the PHS at various times during the period 1942–1990;

(3) Records of the Atomic Energy Commission (AEC), or any of its successor agencies; and

(4) Records of federally supported, health-related studies of uranium workers.

(b) The employment history for the time period indicated in such records will be presumed to be correct. If the claimant or eligible surviving beneficiary wishes to contest the accuracy of such records, then the claimant or eligible surviving beneficiary may provide one or more of the records identified in paragraph (c) of this section, and the Assistant Director will determine whether the employment history indicated in the records listed in paragraph (a) is correct.

(c) If the sources in paragraph (a) of this section do not contain information regarding the claimant's ore transporting employment history, do not contain sufficient information to establish employment for at least one year as an ore transporter during the specified time period to qualify under § 79.62(b), or if a claimant or eligible surviving beneficiary wishes to contest the accuracy of such records, then the claimant or eligible surviving beneficiary may submit records from any of the following sources, which the Assistant Director shall consider (in addition to any sources listed in paragraph (a) of this section) in order to determine whether the claimant has established the requisite employment history:

- (1) Records of any of the specified states, including records of state regulatory agencies, containing information on uranium ore transporters and ore-transporting companies;
- (2) Records of any business entity that owned or operated an ore-transporting company, or its successor-in-interest;
- (3) Records of the Social Security Administration reflecting the identity of the employer, the years and quarters of employment, and the wages received during each quarter;
- (4) Federal or state income tax records that contain relevant statements regarding the claimant's employer and wages;
- (5) Records containing factual findings by any governmental judicial body, state worker's compensation board, or any governmental administrative body adjudicating the claimant's rights to any type of benefits (which will be accepted only to prove the fact of and duration of employment as an ore transporter);

(6) Statements in medical records created during the period 1942–1971 indicating or identifying the claimant's employer and occupation;

(7) Records of an academic or scholarly study, not conducted in anticipation of or in connection with any litigation, and completed prior to 1990; or

(8) Any other contemporaneous record that indicates or identifies the claimant's occupation or employer.

(d) To the extent that the documents submitted from the sources identified in this section do not so indicate, the claimant or eligible surviving beneficiary must set forth under oath on the standard claim form the following information, if known:

- (1) The name or other identifying symbol of each employer for which the claimant worked during the time period identified in the documents;
- (2) The name of the mine or mill from which uranium or uranium-vanadium ore was transported;
- (3) The county and state in which the mine or mill was located;
- (4) The actual time period the claimant worked as an ore transporter; and
- (5) The method of transportation used to transport the ore.

(e) The Program may, for the purpose of verifying information submitted pursuant to this section, require the claimant or any eligible surviving beneficiary to provide an authorization to release any record identified in this section, in accordance with the provisions of § 79.72(c).

(f) In determining whether a claimant satisfies the employment criteria of the Act, the Assistant Director shall resolve all reasonable doubt in favor of the claimant. If the Assistant Director concludes that the claimant has not satisfied the employment requirements of the Act, the claimant or eligible surviving beneficiary will be notified and afforded the opportunity, in accordance with the provisions of § 79.72(c), to submit additional records to establish that the statutory employment criteria are satisfied.

§ 79.64 Proof of lung cancer.

(a) In determining whether a claimant developed lung cancer following pertinent employment as an ore transporter, the Assistant Director shall resolve all reasonable doubt in favor of the claimant. A conclusion that a claimant developed lung cancer must be supported by medical documentation. In cases where the claimant is deceased, the claimant's beneficiary may submit any form of medical documentation specified in paragraph (e) of this

section. A living claimant also may submit any form of medical documentation. However, a living claimant must at a minimum submit the medical documentation required in paragraph (e)(2) of this section. In all cases, the Program will review submitted medical documentation, and will, in addition and where appropriate, review any pertinent records discovered within the sources identified in paragraphs (b), (c), and (d) of this section.

(b) Where appropriate, the Radiation Exposure Compensation Program will search the records of the PHS (including NIOSH), created or gathered during the course of any health study of uranium workers conducted or being conducted by these agencies, to determine whether those records contain proof of the claimant's medical condition. (In cases where the claimant is deceased, the Program will accept as proof of medical condition the verification of the PHS or NIOSH that it possesses medical records or abstracts of medical records of the claimant that contain a verified diagnosis of lung cancer.)

(c) If a claimant was diagnosed as having lung cancer in the State of Arizona, Colorado, Nevada, New Mexico, Utah or Wyoming, and the claimant or eligible surviving beneficiary submits with the claim an Authorization To Release Medical or Other Information, valid in the state of diagnosis, that authorizes the Radiation Exposure Compensation Program to contact the appropriate state cancer or tumor registry, the Program will, where appropriate, request the relevant information from that registry and will review records that it obtains from the registry. (In cases where the claimant is deceased, 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 lung cancer.)

(d) If medical records regarding the claimant were gathered during the course of any federally supported, health-related study of uranium workers, and the claimant or eligible surviving beneficiary submits with the claim an Authorization To Release Medical or Other Information that authorizes the Program to contact the custodian of the records of the study to determine if proof of the claimant's medical condition is contained in the records of the study, the Program will, where appropriate, request such records from that custodian and will review records that it obtains from the custodian. (In cases where the claimant

is deceased, the Program will accept as proof of the claimant's medical condition such medical records or abstracts of medical records containing a verified diagnosis of lung cancer.)

(e)(1) A claimant or beneficiary may submit any of the following forms of medical documentation in support of a claim that the claimant contracted lung cancer. Such documentation will be most useful where it contains an explicit statement of diagnosis or such other information or data from which the appropriate authorities at the National Cancer Institute can make a diagnosis to a reasonable degree of medical certainty:

(i) Pathology report of tissue biopsy, 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) Bronchoscopy report;
- (iv) One of the following summary

medical reports:

- (A) Physician summary report;
- (B) Hospital discharge summary report;
- (C) Operative report;
- (D) Radiation therapy summary report;
- (E) Oncology summary or consultation report;
- (v) Reports of radiographic studies, including:
 - (A) X-rays of the chest;
 - (B) Chest tomograms;
 - (C) Computer-assisted tomography (CT);
 - (D) Magnetic resonance imaging (MRI);
- (vi) Death certificate, provided that it is signed by a physician at the time of death; or
- (vii) Any of the forms of documentation enumerated in paragraph (e)(2) of this section.

(2) Notwithstanding any other documentation provided, a living claimant must at a minimum provide the following medical documentation:

- (i) Either:
 - (A) 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 of this part; or
 - (B) A written diagnosis by a physician in accordance with § 79.61(s); and

(ii) One of the following:

(A) A chest x-ray on full-size film administered in accordance with standard techniques accompanied by:

(1) Interpretive reports of the x-ray by two NIOSH certified "B" readers, rating the film at quality 1 or 2 and classifying the existence of disease of category 1/0 or higher according to a 1980 report of the International Labor Office (known as the "ILO") or subsequent revisions; or

(2) Medical documentation interpreting the chest x-ray from a physician employed by the Indian Health Service or the Department of Veterans Affairs who has a documented, ongoing physician-patient relationship with the claimant (which may include referrals to physicians employed by the Indian Health Service or the Department of Veterans Affairs for the purposes of diagnosis or treatment);

(B) High resolution computed tomography scans (commonly known as "HRCT scans"), including computer-assisted tomography scans (commonly known as "CAT scans"), magnetic resonance imaging scans (commonly known as "MRI scans"), and positron emission tomography scans (commonly known as "PET scans"), and interpretive reports of such scans;

(C) Pathology reports of tissue biopsies; or

(D) Pulmonary function tests indicating restrictive lung function and 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 less than or equal to 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.

(f) The Assistant Director shall treat any documentation described in paragraph (e)(2)(i)(B) or paragraph (e)(2)(ii)(A) of this section as conclusive evidence of the claimant's lung cancer; provided, however, that the Program may subject such documentation to a fair and random audit procedure to guarantee its authenticity and reliability for purposes of treating it as conclusive evidence; and provided further that, in order to be treated as conclusive evidence, a written diagnosis described in paragraph (e)(2)(i)(B) must be by a physician who is employed by the Indian Health Service or the Department of Veterans Affairs or who is certified by a state medical board, and who must have a documented, ongoing physician-patient relationship with the claimant.

Notwithstanding the conclusive effect given to certain evidence, nothing in this paragraph shall be construed as relieving a living claimant of the obligation to provide the Program with the forms of documentation required under paragraph (e)(2).

§ 79.65 Proof of nonmalignant respiratory disease.

(a) In determining whether a claimant developed a nonmalignant respiratory disease following pertinent employment as an ore transporter, the Assistant Director shall resolve all reasonable doubt in favor of the claimant. A conclusion that a claimant developed a nonmalignant respiratory disease must be supported by medical documentation. In cases where the claimant is deceased, the claimant's beneficiary may submit any form of medical documentation specified in paragraph (d)(1) of this section, and for proof of cor pulmonale must also submit one or more forms of documentation specified in paragraph (d)(2). A living claimant also may submit any form of medical documentation. However, a living claimant must at a minimum submit the medical documentation required in paragraph (d)(3) of this section, and for proof of cor pulmonale must also submit one or more forms of documentation specified in paragraph (d)(2). In all cases, the Program will review submitted medical documentation, and will, in addition and where appropriate, review any pertinent records discovered within the sources referred to in paragraphs (b) and (c) of this section. With respect to a deceased claimant, the Program will treat as equivalent to a diagnosis of pulmonary fibrosis any diagnosis of "restrictive lung disease" made by a physician employed by the Indian Health Service.

(b) Where appropriate, the Radiation Exposure Compensation Program will search the records of the PHS (including NIOSH), created or gathered during the course of any health study of uranium workers conducted or being conducted by these agencies, to determine whether those records contain proof of the claimant's medical condition. (In cases where the claimant is deceased, the Program will accept as proof of medical condition the verification of the PHS or NIOSH that it possesses medical records or abstracts of medical records of the claimant that contain a verified diagnosis of a nonmalignant respiratory disease.)

(c) If medical records regarding the claimant were gathered during the course of any federally supported, health-related study of uranium

workers, and the claimant or eligible surviving beneficiary submits with the claim an Authorization To Release Medical or Other Information that authorizes the Program to contact the custodian of the records of the study to determine if proof of the claimant's medical condition is contained in the records of the study, the Program will, where appropriate, request such records from that custodian and will review records that it obtains from the custodian. (In cases where the claimant is deceased, the Program will accept as proof of the claimant's medical condition such medical records or abstracts of medical records containing a verified diagnosis of a nonmalignant respiratory disease.)

(d)(1) A claimant or beneficiary may submit any of the following forms of medical documentation in support of a claim that the claimant contracted a nonmalignant respiratory disease, including pulmonary fibrosis, fibrosis of the lung, cor pulmonale, silicosis and pneumoconiosis. Such documentation will be most useful where it contains an explicit statement of diagnosis or such other information or data from which the appropriate authorities at the National Cancer Institute can make a diagnosis to a reasonable degree of medical certainty.

- (i) Pathology report of tissue biopsy;
- (ii) Autopsy report;
- (iii) If an x-ray exists, the x-ray and interpretive reports of the x-ray by two NIOSH certified "B" readers classifying the existence of disease of category 1/0 or higher according to a 1980 report of the International Labor Office (known as the "ILO"), or subsequent revisions;
- (iv) If no x-rays exist, an x-ray report;
- (v) Physician summary report;
- (vi) Hospital discharge summary report;
- (vii) Hospital admitting report;
- (viii) Death certificate, provided that it is signed by a physician at the time of death; or
- (ix) Any form of documentation enumerated in paragraphs (d)(2) and (d)(3) of this section.

(2) In order to demonstrate that the claimant developed cor pulmonale related to fibrosis of the lung, the claimant or beneficiary must, at a minimum, submit one or more of the following medical records:

- (i) Right heart catheterization;
- (ii) Cardiology summary or consultation report;
- (iii) Electrocardiogram;
- (iv) Echocardiogram;
- (v) Physician summary report;
- (vi) Hospital discharge report;
- (vii) Autopsy report;
- (viii) Report of physical examination;

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

(3) Notwithstanding any other documentation provided, a living claimant must at a minimum provide the following medical documentation:

(i) Either:
(A) 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 of this part; or

(B) A written diagnosis by a physician in accordance with § 79.61(s); and

(ii) One of the following:

(A) A chest x-ray on full-size film administered in accordance with standard techniques accompanied by:

(1) Interpretive reports of the x-ray by two NIOSH certified "B" readers, rating the film at quality 1 or 2 and classifying the existence of disease of category 1/0 or higher according to a 1980 report of the International Labor Office (known as the "ILO"), or subsequent revisions; or

(2) Medical documentation interpreting the chest x-ray from a physician employed by the Indian Health Service or the Department of Veterans Affairs who has a documented, ongoing physician-patient relationship with the claimant (which may include referrals to physicians employed by the Indian Health Service or the Department of Veterans Affairs for the purposes of diagnosis or treatment);

(B) High-resolution computed tomography scans (commonly known as "HRCT scans"), including computer-assisted tomography scans (commonly known as "CAT scans"), magnetic resonance imaging scans (commonly known as "MRI scans"), and positron emission tomography scans (commonly known as "PET scans"), and interpretive reports of such scans;

(C) Pathology reports of tissue biopsies; or

(D) Pulmonary function tests indicating restrictive lung function and 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 less than or equal to 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.

(e) The Assistant Director shall treat any documentation described in paragraph (d)(3)(i)(B) or paragraph (d)(3)(ii)(A) as conclusive evidence of

the claimant's nonmalignant respiratory disease; provided, however, that the Program may subject such documentation to a fair and random audit to guarantee its authenticity and reliability for purposes of treating it as conclusive evidence; and provided further that, in order to be treated as conclusive evidence, a written diagnosis described in paragraph (d)(3)(i)(B) must be by a physician who is employed by the Indian Health Service or the Department of Veterans Affairs or who is certified by a state medical board, and who must have a documented, ongoing physician-patient relationship with the claimant. Notwithstanding the conclusive effect given to certain evidence, nothing in this paragraph shall be construed as relieving a living claimant of the obligation to provide the Program with the forms of documentation required under paragraph (d)(3).

§ 79.66 Proof of renal cancer.

(a) In determining whether a claimant developed renal cancer following pertinent employment as an ore transporter, the Assistant Director shall resolve all reasonable doubt in favor of the claimant. A conclusion that a claimant developed renal cancer must be supported by medical documentation. In all cases, the Program will review submitted medical documentation, and, in addition and where appropriate, will review any pertinent records discovered within the sources referred to in paragraphs (b) and (c) of this section.

(b) Where appropriate, the Radiation Exposure Compensation Program will search the records of the PHS (including NIOSH), created or gathered during the course of any health study of uranium workers conducted or being conducted by these agencies, to determine whether those records contain proof of the claimant's medical condition. The Program will accept as proof of medical condition the verification of the PHS or NIOSH that it possesses medical records or abstracts of medical records of the claimant that contain a verified diagnosis of renal cancer.

(c) If a claimant was diagnosed as having renal cancer in the State of Arizona, Colorado, Nevada, New Mexico, Utah or Wyoming, and the claimant or eligible surviving beneficiary submits with the claim an Authorization To Release Medical or Other Information, valid in the state of diagnosis, that authorizes the Radiation Exposure Compensation Program to contact the appropriate state cancer or tumor registry, the Program will, where appropriate, request the relevant

information from that registry and will review records that it obtains from the 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 renal cancer.

(d) If medical records regarding the claimant were gathered during the course of any federally supported, health-related study of uranium workers, and the claimant or eligible surviving beneficiary submits with the claim an Authorization To Release Medical or Other Information that authorizes the Program to contact the custodian of the records of the study to determine if proof of the claimant's medical condition is contained in the records of the study, the Program will, where appropriate, request such records from that custodian and will review records that it obtains from the custodian. The Program will accept as proof of the claimant's medical condition such medical records or abstracts of medical records containing a verified diagnosis of renal cancer.

(e) A claimant or beneficiary may submit any of the following forms of medical documentation in support of a claim that the claimant contracted renal cancer. Such documentation will be most useful where it contains an explicit statement of diagnosis or such other information or data from which the appropriate authorities at the National Cancer Institute can make a diagnosis to a reasonable degree of medical certainty:

- (1) Pathology report of tissue biopsy or resection;
- (2) Autopsy report;
- (3) One of the following summary medical reports:
 - (i) Physician summary report;
 - (ii) Hospital discharge summary report;
 - (iii) Operative report;
 - (iv) Radiotherapy summary report;
 - (v) Medical oncology summary or consultation report;
- (4) Report of one of the following radiology examinations:

- (i) Computerized tomography (CT) scan;
- (ii) Magnetic resonance imaging (MRI); or
- (5) Death certificate, provided that it is signed by a physician at the time of death.

§ 79.67 Proof of chronic renal disease.

(a) In determining whether a claimant developed chronic renal disease following pertinent employment as an ore transporter, the Assistant Director

shall resolve all reasonable doubt in favor of the claimant. A conclusion that a claimant developed chronic renal disease must be supported by medical documentation. The Assistant Director shall not conclude that a claimant developed chronic renal disease if there is evidence of any of the following:

- (1) Volume depletion as a cause of elevated creatinine;
- (2) Urinary obstruction as a cause of elevated creatinine;
- (3) Diabetes mellitus; or
- (4) Diabetic nephropathy (by pathology report of tissue biopsy or autopsy, or heavy proteinuria in diabetic patient).

(b) A claimant or beneficiary may submit any of the following forms of medical documentation in support of a claim that the claimant contracted chronic renal disease. Such documentation will be most useful where it contains an explicit statement of diagnosis or such other information or data from which the appropriate authorities at the National Cancer Institute can make a diagnosis to a reasonable degree of medical certainty.

- (1) Pathology report of tissue biopsy;
- (2) If blood or renal function tests exist:

(i) Plasma creatinine values greater than age and gender adjusted normal values; and

(ii) Glomerular filtration tests (using either creatinine or iothalamate clearance) with values less than age and gender adjusted normal values; and

(iii) Bilateral small kidneys by ultrasound, CT scan, or MRI scan with parenchymal changes consistent with chronic renal disease;

- (3) Autopsy report;
- (4) Physician summary report;
- (5) Hospital discharge summary report;

(6) Hospital admitting report; or

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

Subpart H—Procedures

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§ 79.74 Representatives and fees.

(a) *Representation.* In submitting and presenting a claim to the Program, a claimant or beneficiary may, but need not, be represented by an attorney or by a representative of an Indian tribe. To the extent that resources are available, the Assistant Director will provide assistance to all persons who file claims for compensation.

(b) *Fees.* (1) Notwithstanding any contract, the representative of a claimant or beneficiary, along with any

assistants or experts retained on behalf of the claimant or beneficiary, may not receive from a claimant or beneficiary any fee for services rendered, and costs incurred, in connection with an unsuccessful claim, and, except as provided in paragraph (b)(2) of this section, may receive from a claimant or beneficiary no more than two percent of the total award for all services rendered, and costs incurred, in connection with a successful claim.

(2)(i) If a representative before July 10, 2000, entered into a contract with the claimant or beneficiary for services with respect to a particular claim, then that representative may receive up to ten percent of the total award for services rendered in connection with that claim.

(ii) If a representative resubmits a previously denied claim, then that representative may receive up to ten percent of the total award to the claimant or beneficiary for services rendered in connection with that claim. Resubmitted claims include claims that were previously denied and refiled under the Act, claims administratively appealed to the designated Appeals Officer, and actions for review filed in United States District Court.

(3) Any violation of this subsection shall result in a fine of not more than \$5,000.

(c) *Attorney qualifications.* An attorney may not represent a claimant or beneficiary unless the attorney is a member in good standing of the bar of

the highest court of a state. If a claimant or beneficiary is represented by an attorney, then the attorney must submit the following documents to the Program along with the claim:

(1) A statement of the attorney's membership in good standing of the bar of the highest court of a state; and

(2) A signed representation agreement, retainer agreement, fee agreement, or contract, documenting the attorney's authorization to represent the claimant or beneficiary.

Dated: July 24, 2002.

John Ashcroft,

Attorney General.

[FR Doc. 02-19222 Filed 8-6-02; 8:45 am]

BILLING CODE 4410-12-P