

**§ 79.72**

**28 CFR Ch. I (7-1-03 Edition)**

those individuals eligible to receive compensation by virtue of survivorship, the Assistant Director shall, to the maximum extent practicable, take into consideration and give effect to established law, tradition, and custom of the particular affected Indian tribe.

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

- (1) An injury specified in the Act;
- (2) Residency in the affected area;
- (3) Onsite participation in a nuclear test;
- (4) Exposure to 40 WLMs of radiation while employed in a uranium mine or mines during the designated time period;
- (5) Employment for one year (12 consecutive or cumulative months) as a miller or ore transporter; or
- (6) The identity of the claimant and/or the eligible surviving beneficiary.

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

**§ 79.72 Review and resolution of claims.**

(a) *Initial review.* The Assistant Director shall conduct an initial review of each claim that has been filed to determine whether:

- (1) The person submitting the claim represents that he or she is an eligible surviving beneficiary, in those cases where the claimant is deceased;
- (2) The medical condition identified in the claim is a disease specified in the Act for which the claimant or eligible surviving beneficiary could recover compensation;

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

(4) For claims submitted under subparts B and D of this part, the place

and period of onsite participation set forth in the claim falls within the places and times set forth in § 79.11 and § 79.31; and

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

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

records. If the claimant or eligible beneficiary fails, within 60 days or the greater period approved by the Assistant Director, to provide sufficient medical documentation or a valid release when requested by the Assistant Director, then the Assistant Director shall, without further review, issue a Decision denying the claim.

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

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

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

#### § 79.73 Appeals procedures.

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

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

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