

## Department of Justice

## § 79.71

verified diagnosis of primary 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 primary 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;or
- (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.

(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.

- (1) Pathology report of tissue biopsy;
- (2) If laboratory or radiographic tests exist:
  - (i) Abnormal plasma creatinine values;
  - (ii) Abnormal glomerular filtration rate (by either measured creatinine or

iothalamate clearance or calculated by MDRD equation); and

(iii) Renal tubular dysfunction as evidenced by:

- (A) Glycosuria in the absence of diabetes mellitus;
- (B) Proteinuria less than one gram daily without other known etiology; or
- (C) Hyperphosphaturia, aminoaciduria, B-2 microglobulinuria or alkaline phosphaturia or other marker of proximal tubular injury; or
- (iv) Radiographic evidence of 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

### § 79.70 Attorney General's delegation of authority.

(a) An Assistant Director within the Constitutional and Specialized Torts Staff, Torts Branch, Civil Division, shall be assigned to manage the Radiation Exposure Compensation Program and issue a decision on each claim filed under the Act, and otherwise act on behalf of the Attorney General in all other matters relating to the administration of the Program, except for rule-making authority. The Assistant Director may delegate any of his or her responsibilities under the regulations in this part to an attorney working under the supervision of the Assistant Director.

(b) The Assistant Attorney General, Civil Division, shall designate an Appeals Officer to act on appeals from the Assistant Director's decisions.

### § 79.71 Filing of claims.

(a) All claims for compensation under the Act must be in writing and submitted on a standard claim form designated by the Assistant Director for the filing of compensation claims. Except as specifically provided in this part, the claimant or eligible surviving beneficiary must furnish the medical documentation required by this part with his or her standard form. Except

as specifically provided in this part, the claimant or eligible surviving beneficiary must also provide with the standard form any records establishing the claimant's physical presence in an affected area, onsite participation, employment in a uranium mine or mill, or employment as an ore transporter, in accordance with this part. The standard claim form must be completed, signed under oath either by a person eligible to file a claim under the Act or by that person's legal guardian, and mailed with supporting documentation to the following address: Radiation Exposure Compensation Program, U.S. Department of Justice, P.O. Box 146, Ben Franklin Station, Washington, DC 20044-0146. Copies of the standard form, as well as the regulations, guidelines, and other information, may be obtained by requesting the document or publications from the Assistant Director at that address or by accessing the Program's Web site at <http://www.usdoj.gov/civil/reca>.

(b) The Assistant Director will file a claim after receipt of the standard form with supporting documentation and examination for substantial compliance with this part. The date of filing shall be recorded by a stamp on the face of the standard form. The Assistant Director shall file only claims that substantially comply with paragraph (a) of this section. If a claim substantially fails to comply with paragraph (a), the Assistant Director shall promptly return the claim unfilled to the sender with a statement identifying the reason(s) why the claim does not comply with this part. The sender may return the claim to the Assistant Director after correcting the deficiencies. For those cases that are filed, the Assistant Director shall promptly acknowledge receipt of the claim with a letter identifying the number assigned to the claim, the date the claim was filed, and the period within which the Assistant Director must act on the claim.

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

- (1) The claimant;
- (2) If the claimant is deceased, the spouse of the claimant, provided that

he or she was married to the claimant for at least one year immediately prior to the claimant's death;

(3) If there is no surviving spouse or if the spouse is ineligible because he or she was not married to the claimant for at least one year immediately prior to the claimant's death, a child of the claimant;

(4) If there is no eligible surviving spouse and no child, a parent of the claimant;

(5) If there is no eligible surviving spouse and no child or parent, a grandchild of the claimant; or

(6) If there is no eligible surviving spouse and no child, parent or grandchild, a grandparent of the claimant.

(7) Only the beneficiaries listed in this paragraph (c) are eligible to file a claim on behalf of the claimant.

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

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

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

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

(iii) One of the following documents to establish a marriage to the claimant:

(A) The public record of marriage;

(B) A certificate of marriage;

(C) The religious record of marriage;

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

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

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

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

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

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

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

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

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

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

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

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

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

(vii) One of the following:

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

judicial decree identifying the claimant as the child's parent;

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

(C) In the case of a stepchild, evidence of birth to the spouse of the claimant as outlined in paragraph (f)(1)(vii) of this section, and records reflecting that the stepchild lived with the claimant in a regular parent-child relationship.

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

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

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

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

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

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

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

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

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

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

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death of the last spouse of the claimant;

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

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

(viii) One of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ix) One of the following:

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

(B) In the case of an adopted grandchild, a combination of judicial records and birth certificates showing that the claimant was the grandchild's grandparent; or

(C) In the case of a stepgrandchild, evidence of birth to the spouse of the child of the claimant, as outlined in this paragraph (h)(1), and records reflecting that the stepchild lived with a child of the claimant in a regular parent-child relationship; or evidence of birth to the spouse of the stepchild of the claimant or the stepchild of the claimant, as outlined in this paragraph (h)(1), and records reflecting that the stepchild of the claimant lived with the claimant in a regular parent-child relationship.

(2) If the grandchild is a member of an Indian Tribe, he or she need not provide any of the documents listed in paragraph (h)(1) of this section at the time the claim is filed (although these records may later be required), but should instead furnish a signed release

of private information that the Assistant Director will use to obtain a statement of verification of all of the information listed in paragraph (h)(1) directly from the tribal records custodian. In identifying those individuals eligible to receive compensation by virtue of survivorship, the Assistant Director shall, to the maximum extent practicable, take into consideration and give effect to established law, tradition, and custom of the particular affected Indian Tribe.

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

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

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

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

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

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

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

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

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

(ix) An affidavit stating the following:

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

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

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

(D) That the claimant had no grandchildren, or, if the claimant did have grandchildren, the name of each grandchild, the date and place of birth of

each grandchild, and the date and place of death of each grandchild; and

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

(x) One of the following:

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

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

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

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

(1) An injury specified in the Act;

(2) Residency in the affected area;

(3) Onsite participation in a nuclear test;

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

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

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(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 three 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, as relevant, the period and place of physical presence set forth in the claim falls within the designated time period and affected areas identified in § 79.11;

(4) For claims submitted under subparts B and D of this part, as relevant, 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 and 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 §§ 79.41, 79.51, and 79.61. 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 this part 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 this part. 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 this part. If the Assistant Director determines that the documentation does not satisfy the criteria for eligibility established by the Act and this part, 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 this part. 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 this part, 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 this part. If the Assistant Director determines that the records do not satisfy the criteria for eligibility established by the Act and this part, the Assistant Director shall so advise