

§ 79.62

(2) The state submits an application to the Assistant Director (specified in § 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, where uranium ore or vanadium-uranium ore was mined or otherwise extracted.

(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 § 79.65, a physician submitting a written diagnosis of a nonmalignant respiratory disease must be employed by the Indian Health Service or the Department of Veterans Affairs or be board certified, 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 for purposes of diagnosis or treatment. “Board certification” requires, in addition to physician licensing, the successful completion of a residency training program and passage of a Board exam in a relevant field or specialty. Relevant specialties include: family practice, internal medicine, pathology, preventive medicine, radiology, sur-

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gery, and thoracic surgery (and including subspecialties such as cardiovascular disease, medical oncology, pulmonary disease) as listed by the American Board of Medical Specialties.

§ 79.62 Criteria for eligibility for claims by ore transporters.

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 primary lung cancer, a nonmalignant respiratory disease, primary renal cancer, or chronic renal disease (including nephritis and kidney tubal tissue injury) following at least one year of 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) of this section 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 each mine or mill from which uranium or uranium-vanadium ore was transported;

(3) The county and state in which each 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 primary lung cancer.

(a) In determining whether a claimant developed primary 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 primary lung cancer must be supported by medical documentation. To prove that a claimant developed primary lung cancer, the claimant or beneficiary may