

## Department of Justice

## § 79.53

### § 79.52 Criteria for eligibility for claims by uranium millers.

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 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.

### § 79.53 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) 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 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

**§ 79.54**

**28 CFR Ch. I (7-1-10 Edition)**

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 primary lung cancer.**

(a) In determining whether a claimant developed primary 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 primary lung cancer must be supported by medical documentation. To prove that a claimant developed primary lung cancer, the claimant or beneficiary may submit any form of medical documentation specified in paragraph (e) 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 (includ-

ing 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 primary lung cancer.)

(c) If a claimant was diagnosed as having primary lung cancer in 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 primary 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