Subpart A—General Provisions

§ 652.2 Definitions.

* * * * *

Technical service provider means an individual, entity, Indian Tribe, or public agency either:

* * * * *

Signed this 4th day of August 2010, in Washington, DC.

Teressa Davis,

Rulemaking Manager, Natural Resources Conservation Service.

[FR Doc. 2010–19623 Filed 8–9–10; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF JUSTICE

28 CFR Part 79

[CIV Docket No. 111; AG Order No. 3185–2010]

RIN 1105–AB33

Radiation Exposure Compensation Act: Allowance for Costs and Expenses

AGENCY: Civil Division, Department of Justice.

ACTION: Final rule.

SUMMARY: By this rule the Department of Justice ("the Department") amends its existing regulations implementing the Radiation Exposure Compensation Act ("RECA" or "the Act") to conform to the decision of the Tenth Circuit in the case of *Hackwell* v. *United States,* 491 F.3d 1229, 1241 (10th Cir. 2007). The Tenth Circuit held that the plain meaning of "services rendered" in section 9(a) of the Act revealed Congress' unambiguous intent to exclude "costs incurred" from the attorney fee limitation. Consequently, the court invalidated 28 CFR 79.74(b) as "contrary to the RECA's plain language." Accordingly, the Department is amending its regulation at § 79.74(b) to strike the language "including costs incurred" from the agency's limitation on payments to attorneys representing claimants under RECA.

DATES: This rule is effective on: September 9, 2010. This final rule will apply to all claims pending with the Radiation Exposure Compensation Act Program ("the Program") as of this date.

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

Background

On October 5, 1990, Congress passed the Radiation Exposure Compensation Act. The Act offers an apology and monetary compensation to individuals (or their survivors) who have contracted certain cancers and other serious diseases following exposure to radiation released during above-ground atmospheric nuclear weapons tests or following their employment in the uranium production industry during specified periods. On July 10, 2000, the RECA Amendments of 2000 ("the 2000 Amendments") were enacted, providing expanded coverage to individuals who developed one of the compensable diseases in the Act, adding two new claimant categories (uranium millers and ore transporters), and lowering the amount of attorney's fees from 10% of the lump sum compensation award to 2% of the award in connection with the filing of an initial claim.

On April 22, 2004, the Department promulgated revised regulations implementing the 2000 Amendments (codified as amended at 42 U.S.C. 2210 note (2006)). Among other changes, the 2000 Amendments revised section 9 of the Act to limit attorneys representing claimants before the program from receiving, "for services rendered in connection with the claim," more than 2 percent of the final award for the filing of an initial claim, and more than 10 percent of the final award with respect to any claim filed prior to July 10, 2000, or resubmission of a denied claim. The Department implemented this statutory provision at 28 CFR 79.74(b). Specifically, the Department interpreted "services rendered" to include "costs incurred" within the statutory percentage limit on the amount an attorney may receive from a successful claim.

The Hackwell Litigation

On April 21, 2004, plaintiff Kim Hackwell alleged that her co-plaintiff, a law firm, had refused to represent her because of § 79.74(b) of the Department's regulation. The plaintiffs challenged the regulation as contrary to section 9(a) of the RECA statute limiting attorney compensation for "services rendered." In addition, plaintiffs argued the regulation was an invalid preemption of state law, and a violation of the Fifth and Tenth Amendments. The district court dismissed the suit for failure to state a claim, holding that the regulation was a "reasonable interpretation" of the statute and that the Department "did not exceed its statutory authority in implementing Congress's compensation limitation." *Hackwell* v. *United States,* No. 04–cv–00827–EWN (D. Colo. Sept. 28, 2005).

On appeal, the Tenth Circuit held that the plain meaning of "services rendered" in section 9(a) of the Act revealed Congress's unambiguous intent to exclude "costs incurred" from the attorney fee limitation. Consequently, the court invalidated § 79.74(b) as "contrary to the RECA's plain language." *Hackwell* v. *United States,* 491 F.3d 1229, 1241 (10th Cir. 2007). The case was remanded to the district court for further proceedings. In its July 23, 2008 remand decision, the district court enjoined the Department from enforcing § 79.74(b) and directed that attorneys may recover expenses and costs from their clients even in regard to claims under the Act that are unsuccessful. *Hackwell* v. *United States,* No. 04–cv–00827–EWN, 2008 WL 2900933, at *9 (D. Colo. July 23, 2008).

The Department issued a Notice of Allowance for Costs and Expenses in the **Federal Register** on October 23, 2008, to announce its policy consistent with the decision in *Hackwell. See* Notice of Allowance for Costs and Expenses, 73 FR 63196 (Oct. 23, 2008). Accordingly, the Department no longer enforces its regulatory provision, 28 CFR 79.74(b), prohibiting attorneys from receiving reimbursement for expenses and costs from their clients in connection with claims filed under the Act, in addition to the statutory attorney's fee. Moreover, attorneys may collect expenses and costs regardless of whether a claim is approved or denied.

Discussion of Changes Made by This Rule

This rule finalizes the Department's announced intentions to revise the regulation published in its Notice of Allowance. Also, this rule conforms the Department's regulation at § 79.74(b) with the Tenth Circuit's decision in *Hackwell* and the policy statement promulgated in the Department's October 23, 2008 Notice. Further, this rule strikes the language "including costs incurred" found in 28 CFR 79.74(b)(1), (2) and (3), and affirmatively excludes costs from the limitation on attorney reimbursement for "services rendered." Finally, the rule permits attorneys to recover costs and expenses regardless of whether the claim is approved or denied.

Administrative Procedure Act

This rule merely conforms Department regulations to the opinion of the Tenth Circuit and does not expand upon that opinion or the provisions of the Act. In addition, this rule complies with the injunction imposed by the District of Colorado and codifies the Department's intention to permit attorneys to receive reimbursement for expenses and costs

from their clients in connection with claims filed under the Act, in addition to the statutory attorney's fee. For the foregoing reasons, the Department finds that it would be unnecessary and contrary to the public interest to provide for notice and comment on this rule. Accordingly, the Department finds that good cause exists for exempting this rule from the provisions of the Administrative Procedure Act requiring notice of proposed rulemaking (5 U.S.C. 553(b)) and the opportunity for public comment (5 U.S.C. 553(d)).

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 reasons: The rule affects claimants or beneficiaries in their individual capacity only. It does not affect small entities as that term is defined under 5 U.S.C. 601(6).

Further, although the vast majority of claimants successfully file claims under the Act without the assistance of counsel, in the small number of claims where claimants desire the services of an attorney, this regulation will allow attorneys to recover expenses, which was previously prohibited.

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. Permitting attorneys representing claimants under RECA to recoup costs and expenses in addition to the statutory fee limitation will not lead to an annual effect of greater than $100,000,000 or have an adverse material effect on the economy or public welfare. Neither does this rule present any conflict with other federal law or regulation. This rule does not materially alter the budgetary impact of RECA entitlements because awards under RECA are set by statute and the Department of Justice does not anticipate a significant fluctuation in claim intake as a result of the revision. Moreover, the rule does not materially alter the rights and obligations of recipients of a RECA award because claimants retain the option to proceed with their RECA claim *pro se.* Finally, this action brings Department regulations into compliance with the Tenth Circuit's decision in *Hackwell* and does not raise novel legal issues arising out of legal mandates.

Accordingly, the Department has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review and therefore this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the 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 regulation 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

This rule is not a "major rule" as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804 (2006). This rule will not result in an annual effect on the economy of $100,000,000 or more, 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. Moreover, this rule will not result in a significant increase in costs or prices for consumers, individual industries, government agencies or geographic regions because potential consumers of legal counsel for RECA claims retain the right to file *pro se.* In addition, to the extent the rule enables attorneys representing claimants or beneficiaries to provide more effective counsel, the rule may reduce costs or prices for consumers by enabling claimants to submit successful claims more efficiently on first filing.

Paperwork Reduction Act

No additional information collection is associated with this regulatory revision.

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, Underground mining, Uranium mining, Uranium.

■ Accordingly, for the reasons set forth in the preamble, 28 CFR part 79 is amended as follows:

■ 1. The authority citation for part 79 continues to read as follows:

Authority: Secs. 6(a), 6(i) and 6(j), Pub. L. 101–426, 104 Stat. 920, as amended by secs. 3(c)–(h), Pub. L. 106–245, 114 Stat. 501 and sec. 11007, Pub. L. 107–273, 116 Stat. 1758 (42 U.S.C. 2210 note; 5 U.S.C. 500(b)).

■ 2. In section 79.74, revise paragraph (b) to read as follows:

§ 79.74 Representatives and attorney's fees.

(a) * * *

(b) *Fees.* (1) Notwithstanding any contract, the attorney of a claimant or beneficiary, along with any assistants or experts retained by the attorney on behalf of the claimant or beneficiary, may not receive from a claimant or beneficiary any fee for services rendered in connection with an unsuccessful claim. The attorney of a claimant or beneficiary may recover costs incurred in connection with an unsuccessful claim.

(2) Notwithstanding any contract and except as provided in paragraph (b)(3) of this section, the attorney of a claimant or beneficiary, along with any assistants or experts retained by the attorney on behalf of the claimant or beneficiary, may receive from a claimant or beneficiary no more than 2% of the total award for all services rendered in connection with a successful claim, exclusive of costs.

(3)(i) If an attorney entered into a contract with the claimant or beneficiary for services before July 10, 2000, with respect to a particular claim, then that attorney may receive up to 10% of the total award for services rendered in connection with a successful claim, exclusive of costs.

(ii) If an attorney resubmits a previously denied claim, then that attorney may receive up to 10% of the total award to the claimant or beneficiary for services rendered in connection with that subsequently successful claim, exclusive of costs.

Resubmission of a previously denied claim includes only those claims that were previously denied and refiled under the Act.

(4) Any violation of paragraph (b) of this section shall result in a fine of not more than $5,000.

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Dated: August 2, 2010.

Eric H. Holder, Jr.,

Attorney General.

[FR Doc. 2010–19633 Filed 8–9–10; 8:45 am]

BILLING CODE 4410–12–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–0659]

Drawbridge Operation Regulations; Pequonnock River, Bridgeport, CT, Maintenance

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Metro North (Peck) Bridge across the Pequonnock River, mile 0.3, at Bridgeport, Connecticut. The deviation allows the bridge to remain in the closed position to facilitate scheduled maintenance for three months.

DATES: This deviation is effective from August 7, 2010 through November 7, 2010.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–0659 and are available online at *www.regulations.gov*, inserting USCG–2010–0659 in the "Keyword" and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, telephone (212) 668–7165, e-mail *judy.k.leung-yee@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Metro North (Peck) Bridge, across the Pequonnock River at mile 0.3, at Bridgeport, Connecticut, has a vertical clearance in the closed position of 26 feet at mean high water and 32 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.219(c).

The owner of the bridge, Metro North Railroad, requested a temporary deviation from the regulations to facilitate scheduled bridge maintenance, mitre rail rehabilitation, at the bridge.

Under this temporary deviation the Metro North (Peck) Bridge may remain in the closed position from August 7, 2010 through November 7, 2010. Vessels that can pass under the bridge in the closed position may do so at all times.

The Metro North (Peck) Bridge received no requests to open in both 2008 and 2009. Waterway users were advised of the requested bridge closure and offered no objection.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: July 30, 2010.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2010–19631 Filed 8–9–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 215, 217, and 243

[DFARS Case 2008–D034]

RIN 0750–AG27

Defense Federal Acquisition Regulation Supplement; Management of Unpriced Change Orders

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Department of Defense (DoD) is adopting as final a proposed rule amending the DFARS to make requirements for DoD management and oversight of unpriced change orders consistent with those that apply to other undefinitized contract actions. This final rule adds new policy to address section 812 of the National Defense Authorization Act for Fiscal Year 2010.

DATES: *Effective Date:* August 10, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, Defense Acquisition Regulations System, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060, Telephone 703–602–1302; facsimile 703–602–0350. Please cite DFARS Case 2008–D034.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed rule addressed DFARS subpart 217.74, which prescribes policies and procedures for the management and oversight of undefinitized contract actions (UCAs). In the current DFARS, unpriced change orders that are issued in accordance with FAR part 43 and DFARS part 243 are excluded from the scope of subpart 217.74. A rule was proposed because of the need for full accountability and enhanced oversight of unpriced contractual actions, including unpriced change orders.

The proposed rule was published in the **Federal Register** at 74 FR 37669 on July 29, 2009. Two respondents submitted comments in response to the proposed rule. One respondent deemed this "a new rule that is very much needed," while the other respondent requested that the proposed rule be withdrawn. To enhance transparency and accountability, DoD has determined to proceed with this rule. The comments submitted by the respondents are addressed in the following paragraphs.

Comment: Make a separate limitation on obligations applicable to small businesses.

One respondent addressed the percentage limitation on obligations prior to definitization, which the proposed rule, at DFARS 243.204–70–4(a), set at 50 percent. There is an exception in the proposed rule allowing an increase from 50 percent to 75 percent when a contractor submits a qualifying proposal before 50 percent of the not-to-exceed price has been obligated by the Government. The respondent recommended that the latter percentage be increased from 75 percent to 95 percent for small, small disadvantaged, and HUBZone businesses. In support of its position, the respondent cited frequent instances where it believed that a particular agency had requested multiple audits as a delaying tactic to avoid definitization. When definitization is delayed, the contractor can perform up to half of the work that has been required unilaterally by the Government without being