

detonation of nuclear devices at the Nevada Test Site due to their physical presence in an affected area during a designated time period. The amount of compensation is \$50,000. The regulations governing these claims are set forth in subpart C of this part.

(3) Claims relating to lung cancer or certain nonmalignant respiratory diseases by persons employed in uranium mines in Arizona, Colorado, New Mexico, Utah or Wyoming during a designated time period, and who were exposed to specified minimum levels of radiation during the course of their employment. The amount of compensation is \$100,000. The regulations governing these claims are set forth in subpart D of this part.

(4) Claims relating to certain specified diseases by persons who were on-site participants in the atmospheric detonation of a nuclear device. The amount of compensation is \$75,000. The regulations governing these claims are set forth in subpart E of this part.

(b) Any claim that does not meet all the criteria for at least one of these categories, as set forth in these regulations, must be denied.

(c) All claims for compensation under the Act must comply with the claims procedures and requirements set forth in subpart F of this part before any payment can be made from the Fund.

**§ 79.4 Burden of proof, production of documents, presumptions, and affidavits.**

(a) Except where otherwise noted, the claimant or eligible surviving beneficiary bears the burden of proving by a preponderance of the evidence the existence of each and every criterion necessary to establish eligibility under any compensable claim category set forth in § 79.3(a). Proof by a preponderance of the evidence means that it is more likely than not that the proposition to be proved is true. Subject to the exceptions expressly provided in the regulations, the claimant or eligible surviving beneficiary also bears the burden of providing to the Radiation Exposure Compensation Unit all written medical documentation, contemporaneous records, or other records and documents necessary to establish any

and all criteria for compensation set forth in these regulations.

(b) A claimant or eligible surviving beneficiary will not be entitled to any presumption otherwise provided for in these regulations where reliable, material evidence exists which tends to disprove the existence of the fact that is the subject of the presumption. When such evidence exists, the claimant or eligible surviving beneficiary shall be notified and afforded the opportunity to submit additional written medical documentation or records in accordance with § 79.52 (b) or (c).

(c) Subject to the exceptions below, no written affidavits or declarations, by the claimant, eligible surviving beneficiary, or any other person, will be accepted as proof of any criterion for eligibility or relied on in determining whether a claim meets the requirements of the Act for compensation. Written affidavits or declarations, subject to penalty for perjury, will be accepted only to prove:

(1) Eligibility of family members under § 79.51 (e), (f), (g), (h) or (i);

(2) Other compensation received under § 79.55 (c) or (d);

(3) The amount of coffee consumed as set forth under § 79.27(c); or

(4) Mining information under § 79.33(b)(2).

**§ 79.5 Requirements for written medical documentation, contemporaneous records, and other records or documents.**

(a) All written medical documentation, contemporaneous records, and other records or documents submitted by claimant or eligible surviving beneficiary to prove any criteria provided for in these regulations must be originals, or certified copies of the originals, unless it is impossible to obtain an original or certified copy of the original. If it is impossible for a claimant to provide an original or certified copy of an original, the claimant or eligible surviving beneficiary must provide a written unsworn statement with the uncertified copy setting forth the reason why it is impossible.

(b) All documents submitted by a claimant or his/her eligible surviving beneficiary must bear sufficient indicia of authenticity or otherwise provide

some guarantee of trustworthiness. The Unit shall not accept as proof of any criteria of eligibility any record or document that does not bear sufficient indicia of authenticity, or is in such a physical condition, or contains such information, that otherwise indicates the record or document is not reliable or trustworthy. When a record or document is not accepted by the Unit under this section, the claimant or eligible surviving beneficiary shall be notified and afforded the opportunity to submit additional written medical documentation or records in accordance with § 79.52 (b) or (c).

### Subpart B—Eligibility Criteria for Claims Relating to Childhood Leukemia

#### § 79.10 Scope of subpart.

The regulations in this subpart describe the criteria for eligibility for compensation under section 4(a)(1) of the Act, and the type and extent of evidence that will be accepted as proof of the various criteria. Section 4(a)(1) of the Act provides for a payment of \$50,000 to individuals presumably exposed to fallout from the detonation of atmospheric nuclear devices at the Nevada Test Site due to their physical presence in an affected area during a designated time period, and later developed leukemia (other than chronic lymphocytic leukemia).

#### § 79.11 Definitions.

(a) *Affected area* means the following geographical descriptions, as they were recognized by the state in which they are located, as of October 15, 1990:

(1) In the State of Utah, the counties of Beaver, Garfield, Iron, Kane, Millard, Piute, Sevier and Washington;

(2) In the State of Nevada, the counties of Eureka, Lander, Lincoln, Nye, White Pine, and that portion of Clark County that consists of townships 13 through 16 at ranges 63 through 71;

(3) In the State of Arizona, that portion of the State that is north of the Grand Canyon and west of the Colorado River.

(b) *Physically present* means the physical presence of a person at any place within the affected area for a substan-

tial period of each day of the time period claimed.

(c) *Designated time period* means the period beginning on January 21, 1951 and ending on October 31, 1958, or the period beginning on June 30, 1962 and ending on July 31, 1962, whichever is appropriate.

(d) *First exposure* or *initial exposure* means the date on which the claimant was first physically present in the affected area during the designated time period.

(e) *Onset* or *incidence* of a specified compensable disease means the date the disease was first diagnosed by a physician. However, in the case of leukemia, the date of onset will be presumed to be the date of first diagnosis by a physician unless otherwise established by appropriate authorities at the National Cancer Institute using such written medical documentation as may be prescribed by the Unit as appropriate for an individual case.

(f) *Leukemia* means any medically-recognized form of acute or chronic leukemia, other than chronic lymphocytic leukemia.

#### § 79.12 Criteria for eligibility.

To establish eligibility for compensation under this subpart, a claimant or eligible surviving beneficiary must show by a preponderance of the evidence that each of the following criteria are satisfied:

(a) The claimant was physically present in the affected area for either

(1) A period of at least one year during the period beginning on January 21, 1951 and ending on October 31, 1958, or

(2) The entire period beginning on June 30, 1962 and ending on July 31, 1962;

(b) After such period of physical presence the claimant contacted leukemia;

(c) The claimant's initial exposure occurred prior to age 21; and

(d) The onset of the leukemia occurred between two (2) and thirty (30) years after the date of first exposure.

#### § 79.13 Proof of physical presence.

(a) For purposes of establishing eligibility under § 79.12(a)(1), the claimant must have been physically present in the affected area for a total of one year, consecutively or cumulatively,