



DEPARTMENT OF JUSTICE

28 CFR Part 79

[CIV Docket No.159]

Radiation Exposure Compensation Act: Procedures for Claims Submitted at the Statutory Filing Deadline

AGENCY: Civil Division, Department of Justice.

ACTION: Notification of procedures.

SUMMARY: The Department of Justice ("the Department") is publishing this document to inform the public of the Department's procedures for filing claims under the Radiation Exposure Compensation Act ("RECA") at the statutory filing deadline. RECA requires that claims shall be barred unless filed within 22 years after the date of enactment of the Radiation Exposure Compensation Act Amendments of 2000. The Department is publishing this document to articulate its policy that RECA claims that bear a date of July 11, 2022 on the postmark or stamp by another commercial carrier shall be deemed timely filed upon receipt by the Radiation Exposure Compensation Program. The Department will return untimely claims and will not accept electronic submissions. Consistent with the statutory requirement that the Department make a determination within 12 months of filing for timely filed claims, documentation to establish the eligibility of any potential beneficiary of an awarded claim must be provided by July 12, 2023, or the award shall be deemed rejected.

DATES: This document is effective on [insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Gerard W. Fischer (Assistant Director), 202-616-4090, Constitutional and Specialized Tort Litigation Section, Torts Branch, Civil Division, Department of Justice, Washington, D.C. 20530.

SUPPLEMENTARY INFORMATION:

Background

Codified at 42 U.S.C. 2210 note, the Radiation Exposure Compensation Act (“RECA”) 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. This unique program was designed by Congress as an alternative to litigation in that the statutory criteria do not require claimants to establish causation. Rather, if the claimant can satisfy the requirements outlined in the statute, which include demonstrating that he or she contracted a compensable disease after working or residing in a designated location for a specific period of time, he or she qualifies for compensation.

Congress charged the Attorney General with authority to establish filing procedures and responsibility for adjudicating claims under the Act. The Attorney General delegated this function to the Constitutional and Specialized Tort Litigation Section of the Torts Branch of the Civil Division of the United States Department of Justice.

Statutory Deadline for RECA Claims

RECA was enacted on October 15, 1990, by Public Law No. 101-426. The statute of limitations under Public Law No. 101-426 set a 20 year period from the date of its enactment for parties to file claims with the Department of Justice. On July 10, 2000, the RECA Amendments of 2000 were enacted as Public Law No. 106-245. The RECA Amendments of 2000 provided expanded coverage and extended the filing period for claims 22 years from its date of enactment.

As codified at 42 U.S.C. 2210 note (2018), the deadline for claims under RECA is as follows:

Under section 8, Limitations on Claims:

- In general—A claim to which this Act applies shall be barred unless the claim is filed within 22 years after the date of the enactment of the

Radiation Exposure Compensation Act Amendments of 2000 [July 10, 2000].

- Resubmittal of claims—After the date of the enactment of the Radiation Exposure Compensation Act Amendments of 2000 [July 10, 2000], any claimant who has been denied compensation under this Act may resubmit a claim for consideration by the Attorney General in accordance with this Act not more than three times. Any resubmittal made before the date of the enactment of the Radiation Exposure Compensation Act Amendments of 2000 shall not be applied to the limitation under the preceding sentence.

RECA delegates authority to the Department to establish procedures whereby individuals may submit claims for payments under the Act. 42 U.S.C. 2210 note (2018), Sec. 6(a). For timely filed claims, RECA requires the Department to complete the determination on each claim filed not later than twelve months after the claim is filed. 42 U.S.C. 2210 note (2018), sec. 6(d)(1).

On March 23, 2004, the Department published a final rulemaking to implement the RECA Amendments of 2000. *See* 69 FR 13628; 28 CFR part 79. The regulation at § 79.71(a) sets forth procedures for filing of claims, and requires them to be submitted in writing on a standard claim form and mailed with supporting documentation to the Radiation Exposure Compensation Program, P.O. Box 146, Ben Franklin Station, Washington DC 20044-0146. The regulation at § 79.71(b) sets forth that “[t]he Assistant Director will file a claim after receipt of the standard form with supporting documentation and examination for substantial compliance with this part.” The final rulemaking did not address filing procedures on the statutory deadline for filing claims.

Statement of Policy

As the deadline for filing claims approaches, several stakeholders have requested clarification with respect to the date of the last day for filing claims and the procedures for

determining when a claim is filed. RECA does not set forth a method for calculating time. In addition, the apparent statutory filing deadline, July 10, 2022, is a Sunday. Finally, the Department's implementing regulations do not clearly state filing procedures on the last day.

The Department is publishing this document to articulate its policy that RECA claims that bear a date of July 11, 2022 on the postmark or stamp by another commercial carrier shall be deemed timely filed upon receipt by the Radiation Exposure Compensation Program.

A Monday, July 11, 2022 deadline is consistent with methods for computing time set forth at Federal Rule of Civil Procedure 6(a), and with standard agency practice in the event a deadline falls on a weekend or holiday establishing the next business day as the deadline for submissions. The postmark requirement is consistent with the Department's existing procedures for submitting claims at § 79.71(a) and (b), requiring a claim to be submitted in writing on a standard claim form and mailed to the address of the Radiation Exposure Compensation Program. In addition, this policy allows claimants to affirmatively establish the timely filing of their claim by obtaining a postmark or other mailing date stamp consistent with the filing deadline.

The regulation at § 79.71(a) requires that claims be mailed to the Department. Accordingly, the Department will not accept electronically submitted claims.

Claims bearing a date on and after July 12, 2022, as indicated by the postmark or stamp by another commercial carrier, shall be returned to the submitting party due to untimely filing. Claims returned due to untimely filing will include a letter from the Radiation Exposure Compensation Program indicating the Department is barred by statute from reviewing the claim or awarding compensation.

This policy applies to all claims received at the filing deadline, including the resubmission of a previously denied claim under Sec. 8(b) of RECA. Resubmissions of previously denied claims bearing a postmark or stamp by another commercial carrier dated July 12, 2022 or later shall be returned due to untimely filing.

For timely filed claims in which a share of the compensation award is held in trust pending documentation to establish the eligibility of a potential beneficiary, such shares of compensation shall be deemed rejected consistent with 28 CFR 79.75(b) if sufficient documentation to establish the eligibility of the potential beneficiary is not received within the 12 month determination period provided by the Act, or by July 12, 2023, whichever date falls earlier.

This document is intended to inform the public of the Department's policy regarding procedures for filing claims at the statutory deadline. The Department will post this document to its RECA website at www.justice.gov/civil/common/reca, and continue to announce this policy at outreach events and in communications with claimants, counsel, and support groups.

Date: December 1, 2020.

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