

specificity and clarity regarding the scope of a license, and regarding licensing requirements and criteria.

FOR FURTHER INFORMATION CONTACT: J. Randall Repcheck, Commercial Space Transportation, AST-200, (202) 366-2258 or Laura Montgomery, Office of the Chief Counsel, AGC-200, (202) 366-9305.

Correction

In proposed FR Doc. 97-6607, on page 13234 in the **Federal Register** issue of March 19, 1997, make the following corrections:

1. On page 13234 in the third column, under the heading: E. Paperwork Reduction Act, in the first paragraph, line 7, change the word "approval" to "review." and remove the words "under OMB No. 2105-0515, Title: Commercial Space Transportation Licensing Regulations."

2. On the same page, in the same column, under the same heading, in the second paragraph, in lines 29 and 30, concurrently "518 hours" should read "518 hours×4=2,072 hours" and "421 hours" should read "421 hours×2=842 hours for a total of 2,914 hours".

3. On the same page, in the same column, under the same heading, in the third paragraph, line 12, the docket number "49815" should be changed to "28851".

Issued in Washington, DC on May 15, 1997.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

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DEPARTMENT OF JUSTICE

28 CFR Part 58

RIN 1105-AA54

Procedures for Suspension and Removal of Panel Trustees and Standing Trustees

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The United States Trustee Program ("Program") is formalizing procedures by which a chapter 7 panel trustee and a standing chapter 12 or chapter 13 trustee can seek review within the agency of a decision by the United States Trustee to suspend or terminate the assignment of cases to the trustee. The procedures are a mandatory prerequisite for the trustee to seek judicial review. The proposed rule specifies the manner in which the

United States Trustee shall notify a trustee of the decision to suspend or terminate the assignment of cases. It also establishes the procedure by which a trustee may request further review and decision by the Director.

DATES: Written comments must be submitted on or before July 22, 1997.

ADDRESSES: Please submit written comments to the Office of the General Counsel, Executive Office for United States Trustees, 901 E Street, N.W., Room 740, Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: Martha L. Davis, General Counsel, or P. Matthew Sutko, Attorney, (202) 307-1399. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The United States Trustee Program was first enacted on a pilot basis by the Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (1978), which instituted massive reform in the Federal bankruptcy system. The United States Trustee Program is a component of the Department of Justice charged with the responsibility of supervising the administration of bankruptcy cases and trustees. The success of the pilot program led Congress to expand the Program nationwide in 1986 as a permanent program in the Department of Justice. Bankruptcy Judges, United States Trustees, and Family Farmers Act of 1986, Pub. L. No. 99-554, 100 Stat. 3088 (1986).

The Program consists of an Executive Office for United States Trustees, which is headed by the Director, and 21 United States Trustees. Among the administrative functions assumed by the Program is the responsibility to appoint and supervise trustees who administer cases under chapters 7, 12, and 13 of the Bankruptcy Code. 28 U.S.C. §§ 509, 510 and 586. The United States Trustee Program has enacted standards that set minimum qualifications for appointment. 28 CFR part 58.

A trustee's performance is monitored by the United States Trustee Program on an ongoing basis. When appropriate, the United States Trustee will stop assigning cases to a trustee. In some instances, this is temporary, as in the case of a suspension; in others it is permanent. This occurs most often when a trustee engages in improper conduct or fails to perform adequately. It also occurs when the caseload within a district declines or when the United States Trustee determines that cases could be more efficiently administered by other trustees or by fewer trustees. Trustees are rarely, if ever, surprised by such a decision. Trustees receive regular reviews and are in regular contact with Program employees regarding problems

or other issues arising out of their administration of cases. In addition, the Program has long had a policy of allowing trustees an opportunity to ask the Director of the Executive Office of United States Trustees to determine the propriety of a suspension or termination.

This rule will formalize those procedures. Under the rule, a trustee will receive written notice from a United States Trustee when a suspension or termination occurs; it shall set forth reasons why that action is occurring and will refer to or be accompanied by copies of relevant documentation. The United States Trustee's decision will be final and unreviewable unless the trustee asks the Director to review the suspension or termination. If the trustee seeks such a review, the trustee will be able to provide written submissions to a reviewing official within the organization, who will be a person who was not involved in the United States Trustee's decision. After the reviewing official makes a report and recommendation, the Director will determine whether the United States Trustee's decision is supported by the record and the action is an appropriate exercise of the United States Trustee's discretion. The Director's decision will constitute final agency action. If a trustee is dissatisfied with the final agency action, the trustee may then seek judicial review under the relevant provisions of the Administrative Procedure Act in a United States district court. Judicial review may be sought only after the trustee exhausts these remedies.

When published in final form, this rule will facilitate the Program's fulfillment of its statutory duty to appoint trustees and supervise their administration of bankruptcy cases. Although trustees have no constitutional or statutory right to continue receiving bankruptcy cases in the future, *see Joelson v. United States*, 86 F.3d 1413 (6th Cir. 1996) (holding that trustees have no statutory or constitutionally protected interest in their positions as trustees); *Richman v. Straley*, 48 F.3d 1139, 1143 (10th Cir. 1995) (trustees have no constitutional right to continue acting as trustees); *Shaltry v. United States*, 182 B.R. 836, 842 (D. Ariz.) (same), *aff'd*, 1995 WL 866862 (9th Cir. 1995), the proposed rule will ensure that trustees are apprised of the bases for suspension or termination of case assignments and will provide trustees with a mechanism to obtain further agency review of the appropriateness of the suspension or termination.

Executive Order 12866

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), The Principles of Regulation. The Director has determined that this rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and accordingly the rule has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Director, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule and by approving it certifies that this rule will not have a significant impact on a substantial number of small entities. This rule only affects individuals who serve as panel and standing trustees, which is fewer than 1,500 individuals.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act (44 U.S.C. §§ 3501, *et seq.*).

Unfunded Mandates Reform Act of 1995

This proposed rule 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 defined by § 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; 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.

List of Subjects in 28 CFR Part 58

Bankruptcy, Trusts and trustees.

For the reasons set forth in the preamble, the Department of Justice proposed to amend 28 CFR part 58 as follows:

PART 58—REGULATIONS RELATING TO THE BANKRUPTCY REFORM ACTS OF 1978 AND 1994

1. The authority citation for Part 58 is revised to read as follows:

Authority: 28 U.S.C. §§ 509, 510, 586, 5 U.S.C. § 301.

2. New section 58.6 is added to read as follows:

§ 58.6 Procedures for suspension and removal of Panel Trustees and Standing Trustees.

(a) A United States Trustee shall notify a panel trustee or a standing trustee in writing of any decision to suspend or terminate the assignment of cases to the trustee including, where applicable, any decision not to renew the trustee's term appointment. The notice shall state the reason(s) for the decision and should refer to, or be accompanied by copies of, pertinent materials upon which the United States Trustee has relied and any prior communications in which the United States Trustee has advised the trustee of the potential action. The reasons may include, but are in no way limited to:

(1) Failure to safeguard or to account for estate funds and assets;

(2) Failure to perform duties in a timely and consistently satisfactory manner;

(3) Failure to comply with the provisions of the Code, the Bankruptcy Rules, and local rules of court;

(4) Failure to cooperate and to comply with instructions and policies of the court, the bankruptcy clerk or the United States Trustee;

(5) Substandard performance of general duties and case management in comparison to other members of the chapter 7 panel or other standing trustees;

(6) Failure to display proper temperament in dealing with judges, clerks, attorneys, creditors, debtors, the United States Trustee and the general public;

(7) Failure to adequately supervise professionals or employees;

(8) Failure to file timely, accurate reports, including interim reports, final reports, and final accounts;

(9) Failure to meet the eligibility requirements of 11 U.S.C. 321 or the qualifications set forth in 28 CFR 58.3 and 58.4 and in 11 U.S.C. § 322;

(10) Failure to attend in person or appropriately conduct the 11 U.S.C. § 341(a) meeting of creditors;

(11) Action by or pending before a court or state licensing agency which calls the trustee's competence, financial responsibility or trustworthiness into question;

(12) Inability to accept assigned cases due to conflicts of interest or to the trustee's unwillingness or incapacity to serve;

(13) Change in the composition of the chapter 7 panel pursuant to a system established by the United States Trustee under 28 CFR 58.1;

(14) A determination by the United States Trustee that the interests of effective case administration warrant a reduction in the number of panel trustees or standing trustees. The notice shall advise the trustee that the decision is final and unreviewable unless the trustee files a timely, written request for administrative review with the Director, Executive Office for United States Trustees, no later than 20 calendar days from the date of the United States Trustee's notice.

(b) The United States Trustee's decision shall be effective on the date specified by the United States Trustee. If the trustee files a request for administrative review, the trustee may seek a stay of the decision from the United States Trustee. If the United States Trustee declines to stay the decision, the trustee may seek a stay from the Director.

(c) The trustee's written request for administrative review ("request for review") by the Director shall describe fully why the trustee disagrees with the United States Trustee's decision, and shall be accompanied by all material that the trustee wants the Director to consider in reviewing the decision.

(d) Upon receiving a timely request for review, the Director shall appoint a reviewing official. The reviewing official shall be a person in the United States Trustee's Program who was not involved in the United States Trustee's decision nor located within the region of the United States Trustee who has made the decision.

(e) The reviewing official shall transmit a copy of the trustee's request for review and the accompanying materials to the appropriate United States Trustee. The United States Trustee shall have 20 calendar days from the date of the transmittal to respond to the matters raised in the trustee's request for review and to provide any additional materials that the United States Trustee wants the reviewing official to consider, with a copy transmitted to the trustee. The trustee shall have 10 calendar days from the date of the United States Trustee's response to reply, with a copy to the United States Trustee. The reviewing official has discretion to extend the United States Trustee's or the trustee's time for response to a date certain.

(f) The reviewing official may seek additional information from any party in the manner and to the extent the reviewing official deems appropriate.

(g) The reviewing official shall review the record and issue a written report and recommendation to the Director within 30 calendar days of the last date fixed under paragraph (e) for submission of materials.

(h) The Director thereafter shall determine whether the United States Trustee's decision is supported by the record and the action is an appropriate exercise of the United States Trustee's discretion, and shall issue a written decision adopting, modifying or rejecting the reviewing official's recommendation within 20 calendar days of the date of the reviewing official's report and recommendation. The Director's decision shall constitute final agency action.

(i) This section does not apply to any decision to increase the size of the chapter 7 panel or to appoint additional standing trustees in the district or region.

(j) A trustee who files a request for review shall bear his or her own costs and expenses, including counsel fees.

Dated: May 20, 1997.

Joseph Patchan,

Director, Executive Office for United States Trustees.

[FR Doc. 97-13614 Filed 5-22-97; 8:45 am]

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DEPARTMENT OF JUSTICE

Civil Division

28 CFR Part 79

RIN 1105-AA49

[A.G. Order No. 2084-97]

Radiation Exposure Compensation Act: Evidentiary Requirements; Definitions and Number of Claims Filed

AGENCY: Civil Division, Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice ("the Department") proposes to amend its existing regulations implementing the Radiation Exposure Compensation Act ("RECA" or "Act"). The proposed rule would: Allow claimants to submit affidavits or declarations in support of a claim under certain circumstances; allow the use of high resolution computed tomography reports and pathology reports of tissue biopsies as additional means by which claimants can present evidence of a compensable non-malignant respiratory disease; amend the definitions of "smoker" and

"non-smoker;" include *in situ* lung cancers under the definition of primary cancers of the lung; and allow claimants who have filed claims prior to the implementation of these proposed regulations and have been denied compensation to file another three times.

DATES: Written comments must be submitted on or before July 22, 1997.

ADDRESSES: Please submit written comments to Gerard W. Fischer, Assistant Director, U.S. Department of Justice, Civil Division, P.O. Box 146, Ben Franklin Station, Washington, D.C. 20044-0146.

FOR FURTHER INFORMATION CONTACT:

Gerard W. Fischer (Assistant Director), (202) 616-4090 and Lori Beg (Attorney), (202) 616-4377.

SUPPLEMENTARY INFORMATION: At the recommendation of the President's Advisory Committee on Human Radiation Experiments, the Administration empaneled the Radiation Exposure Compensation Act Committee (the "Radiation Committee") to re-evaluate the provisions in the Radiation Exposure Compensation Act, 42 U.S.C. § 2210 note (1994), and the Department's implementing regulations relating to uranium miners. In July 1996, after extensive investigation, the Radiation Committee submitted a Final Report detailing its findings and recommendations. In addition to recommending changes to the eligibility criteria in the Act, the Radiation Committee recommended that the Department modify some of the regulations governing proof of medical, smoking, and exposure criteria. Based upon this report and the Department's own evaluation of the regulations, this rule is proposed.

This proposed rule would expand the set of circumstances in which claimants are allowed to submit affidavits or declarations in support of a claim. Sworn statements are presently permitted to establish identity of family members, prior receipt of other compensation, coffee consumption and employment information. As modified by this rule, claimants will now be allowed to submit sworn statements to establish smoking and alcohol consumption histories where no other records exist. This action is needed because relevant records are not available to some claimants due to the passage of time. Therefore, this modification represents only a minor expansion of an existing regulation.

The rule would also allow the use of high resolution computed tomography ("HRCT") reports and pathology reports of tissue biopsies as additional means by which claimants can present

evidence of a compensable non-malignant respiratory disease. HRCT is increasingly being used by physicians to diagnose pneumoconioses because it is often a more sensitive diagnostic tool than standard chest x-rays. Accepting HRCT findings will assist many claimants who cannot prove they have developed a compensable non-malignant respiratory disease through standard chest x-rays. Additionally, pathology reports of tissue biopsies are considered a highly reliable basis for diagnosis of disease by the medical community.

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The rule would amend the definitions of "heavy smoker" and "smoker" to exclude, and the definition of "non-smoker" to include, claimants who stopped smoking for at least fifteen years prior to the date of diagnoses of specific diseases. It is now accepted by experts in the medical community that smoking cessation leads to a significant reduction in relative risk of developing certain cancers. Another proposed change would include *in situ* long cancers under the definition of primary cancers of the lung, based upon expert opinion from the National Cancer Institute.

Finally, the rule would allow claimants who have filed claims prior to the implementation of these proposed regulations and have been denied compensation to file another three times. This action would allow denied claimants to take advantage of changes in the regulations that liberalize documentation requirements. The Department anticipates that much of the information in refiled claims will have been previously verified. Accordingly, the internal administrative processing costs of refiled cases will be minimal. Presently, the regulations permit three attempts at establishing eligibility, so