

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 83

RIN 0920-AA07

Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under the Energy Employees Occupational Illness Compensation Program Act of 2000; Notice of Proposed Rulemaking

AGENCY: Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document describes how the Department of Health and Human Services ("HHS") proposes to consider designating classes of employees to be added to the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000 ("EEOICPA"). Under EEOICPA, and Executive Order 13179, the Secretary of HHS is authorized to make such designations, which take effect 180 days after Congress is notified unless Congress provides otherwise. An individual member (or the survivors of a member) of a class of employees added to the Special Exposure Cohort would be entitled to compensation if the Department of Labor ("DOL") finds that employee incurred a specified cancer and the claim meets other requirements established under EEOICPA. HHS previously published a proposal for these procedures on June 25, 2002 (67 FR 42962). Public comment on the original proposal has led HHS to make substantial changes to the procedures that require issuance of this second notice of proposed rulemaking.

DATES: HHS invites comments on this notice of proposed rulemaking from interested parties. Comments must be received by April 7, 2003.

ADDRESSES: Address written comments on the notice of proposed rulemaking to the NIOSH Docket Officer electronically by e-mail to

NIOCIDOCKET@CDC.GOV. See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing. Alternatively, submit printed comments to NIOSH Docket Office, Robert A. Taft Laboratories, MS-C34, 4676 Columbia Parkway, Cincinnati, OH 45226.

FOR FURTHER INFORMATION CONTACT:

Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS-R45, Cincinnati, OH

45226, Telephone (513) 841-4498 (this is not a toll-free number). Information requests can also be submitted by e-mail to OCAS@CDC.GOV

SUPPLEMENTARY INFORMATION:

I. Comments Invited

Interested persons or organizations are invited to participate in this rulemaking by submitting written views, arguments, recommendations, and data. Comments are invited on any topic related to this proposal.

Comments should identify the author(s), return address, and phone number, in case clarification is needed. Comments can be submitted by e-mail to: NIOCIDOCKET@CDC.GOV. If submitting comments by e-mail, they may be provided as e-mail text or as a Word or Word Perfect file attachment. Printed comments can also be submitted to the address above. All communications received on or before the closing date for comments will be fully considered by the Secretary. An electronic docket containing all comments submitted will be available over the Internet on the National Institute for Occupational Safety and Health ("NIOSH"), Office of Compensation Analysis and Support Web page at www.cdc.gov/niosh/ocas, or comments will be available in writing by request.

II. Background

A. Statutory Authority

The Energy Employees Occupational Illness Compensation Program Act, 42 U.S.C. 7384-7385 [1994, supp. 2001], EEOICPA, established a compensation program to provide a lump sum payment of \$150,000 and prospective medical benefits as compensation to covered employees suffering from designated illnesses incurred as a result of their exposure to radiation, beryllium, or silica while in the performance of duty for the Department of Energy ("DOE") and certain of its vendors, contractors and subcontractors. This legislation also provided for payment of compensation for certain survivors of these covered employees.

EEOICPA instructed the President to designate one or more Federal Agencies to carry out the compensation program. Pursuant to this statutory provision, the President issued Executive Order 13179 ("Providing Compensation to America's Nuclear Weapons Workers"), which assigned primary responsibility for administering the compensation program to the Department of Labor ("DOL"). 65 FR 77487 (December 7, 2000). DOL published a final rule governing DOL's administration of

EEOICPA on December 26, 2002 (67 FR 78874).

The executive order directed the HHS to perform several technical and policymaking roles in support of the DOL program:

(1) HHS is to develop procedures for considering petitions to be added to the Special Exposure Cohort established under EEOICPA by classes of employees at DOE and Atomic Weapons Employer ("AWE") facilities. HHS is also to apply these procedures in response to such petitions. Covered employees included in the Special Exposure Cohort who have a specified cancer, and eligible survivors of these employees, qualify for compensation under EEOICPA. The procedures HHS is proposing to use for considering Special Exposure Cohort petitions were initially proposed as a notice of proposed rulemaking on June 25, 2002 (67 FR 42962) under 42 CFR Part 83 and are the subject of this second notice of proposed rulemaking.

(2) HHS is to develop guidelines by regulation to be used by DOL to assess the likelihood that an employee with cancer developed that cancer as a result of exposure to radiation in performing his or her duty at a DOE or AWE facility. HHS published a final rule establishing these "Probability of Causation" guidelines on May 2, 2002 (67 FR 22296) under 42 CFR Part 81.

(3) HHS is also to develop methods by regulation to estimate radiation doses ("dose reconstruction") for certain individuals with cancer applying for benefits under the DOL program. HHS published a final rule promulgating these methods under 42 CFR Part 82 on May 2, 2002 (67 FR 22314). HHS is applying these methods to conduct the program of dose reconstruction required by EEOICPA.

(4) Finally, HHS is to provide the Advisory Board on Radiation and Worker Health with administrative and other necessary support services. The Board, a federal advisory committee whose members are appointed by the President, is advising HHS in implementing its roles under EEOICPA described here.

42 U.S.C. 7384p requires HHS to implement its responsibilities with the assistance of the National Institute for Occupational Safety and Health (NIOSH), an Institute of the Centers for Disease Control and Prevention, HHS.

B. What Is the Special Exposure Cohort?

The Special Exposure Cohort ("the Cohort") is a category of employees defined under 42 U.S.C. 7384l(14). In this definition, Congress specified which employees comprise the Cohort initially, including employees of DOE,