

analysis of additional information, separately evaluate the possibility that there might be additional groups of employees whose circumstances are similar and would hence constitute a broader class of employees at the facility that should be added to the Cohort, under the procedures specified in section 83.13. This system should effectively ensure that classes of employees including a cancer claimant for whom NIOSH could not complete a dose reconstruction are considered for addition to the Cohort as quickly as possible.

HHS has not adopted the recommendation to apply regulatory time limits to the evaluation of petitions, the tolling of which would, without other consideration, result in the addition of such petitioning classes to the Cohort. Such a policy would conflict with the requirements under EEOICPA that Cohort additions be limited to classes of employees for whom it is not feasible to estimate radiation doses with sufficient accuracy and whose health may have been endangered by radiation doses. It could also broadly undermine the intent under EEOICPA to adjudicate cancer claims, whenever feasible, consistently with the requirements cited above: on the basis of whether it is "at least as likely as not" that such cancers were caused by radiation doses incurred in the performance of duty for nuclear weapons programs.

The establishment of regulatory time limits for petitions would be imprudent as well, since HHS cannot control the scope or volume of petitions it receives. A single petition could cover thousands of employees involved in hundreds of different occupations and activities over many years of operations at a facility. HHS could also receive hundreds of petitions simultaneously. In either of these circumstances, the resources of HHS and the Board to evaluate the petitions within a fixed deadline could readily be overwhelmed. HHS would then be required by regulation to add these classes of employees to the Cohort automatically.

HHS also received recommendations from individuals, employees, survivors, and a labor organization, to achieve timeliness by streamlining processes as much as possible, and in particular, again, for claimants for whom NIOSH has already established the infeasibility of completing their dose reconstruction.

As discussed above, HHS has added special procedures to streamline the petition decision process for claimants. In addition, based on a recommendation by the Board, HHS has eliminated a requirement that the Board review

NIOSH decisions to deny evaluations of petitions that do not meet minimal petition requirements. Under section 83.11 of the rule, the Board now has the option, rather than the duty, to advise NIOSH concerning such decisions.

One labor organization recommended against the use of notices in the **Federal Register** to notify the public about relevant actions with respect to a petition. The commenter expressed concern that such notices would prolong the time required to consider petitions. An advocacy group, however, specifically commended the use of such notices and recommended another opportunity within the procedures to provide such notice.

The notices proposed have been retained. These notices can be issued by HHS without delaying the evaluation of petitions. The notices serve the intended purpose of officially informing the public of HHS actions of consequence. They also serve as a basis for further disseminating this information through the NIOSH and other federal agency communications, public media, and other information outlets serving interested parties.

One labor organization recommended that the Board meet frequently to minimize delays with respect to its role in advising the Secretary on Cohort decisions.

HHS intends to convene the Board as frequently as necessary and possible for this purpose.

E. Defining a "Class" and Its Membership

Several individual commenters questioned the meaning of a "class" of employees. Relevant to this, one commenter wanted to know what would happen if a class included some members for whom dose reconstruction is feasible and others for whom it is not feasible. Another commenter wanted to know whether a petition could cover all the employees of an entire facility, as a single class. Finally, the two advocacy groups recommended the definition of a class allow for the possibility that a class of employees was employed at multiple facilities. Such classes might include certain crews of construction or maintenance workers that might have been assigned to work at several facilities.

The concept of a class is defined generically in section 83.5 of the rule. To summarize, a class is a group of employees whose members must have two factors in common: they must have worked at the same facility; and the availability of records and information must be comparable with respect to the feasibility of estimating their radiation

doses with sufficient accuracy. Petitioners will be encouraged to define a class as specifically as possible and appropriate with respect to other parameters, such as dates of employment, occupations, specific locations of work, specific operations of concern, etc.

One result of the process of evaluating a petition will be to establish the final definition of the class, which may differ from the class definition as it was proposed initially by the petitioner(s). The class might be redefined because the proposed definition mixed employees whose doses can be estimated with others whose doses cannot be estimated, as commented above. Classes will be very specifically defined, as described under provisions of section 83.13, with respect to a variety of employment parameters, such as dates of employment or job titles, to precisely identify the group of employees included in the decision by the Secretary to add or denying adding the class to the Cohort.

It is allowable under section 83.9 of this proposed rule to submit a petition defining the class as all the employees at the facility or any subset thereof, insofar as the petition provides adequate justification for being broadly inclusive. This section of the rule is intended, however, to require as much specificity as is consistent with the justification. It is in the interest of the petitioners to specify the class as narrowly as warranted. In general, the broader the petitioner(s) defines the class, the more time will be required to evaluate the petition, since HHS will have to determine whether the proposed class includes heterogeneous groups of employees with respect to the requirements of this rule. For example, if a petition defines a class as all employees who worked in a certain building without specifying the relevant time period or relevant occupations, HHS would have to determine whether all occupations were potentially exposed to radiation doses that cannot be estimated. It is possible that monitoring or records might be deficient only for employees working during a certain period of time, or for certain occupations employed in the building.

By defining the class more broadly than warranted, the petitioner(s) also risks HHS's determining against the petition in its entirety, despite the possibility that some subgroups covered by the class definition might qualify. HHS will be diligent in evaluating major subgroups of employees that HHS discerns under a broad class definition, but the more broadly the class is