

defined, the less likely HHS is to identify all possible subgroups.

HHS has not revised the definition of class to allow for a class of employees defined as having been employed at multiple facilities, as proposed by commenters. The statutory language used by Congress in the section of EEOICPA describing the procedure for designating additional members of the Cohort (42 U.S.C. 7384q) does not allow HHS to define a class as a group of employees from multiple facilities. Congress refers to "facility" in the singular form in each place it is used in this section ("class of employees at *any* Department of Energy *facility* who likely were exposed to radiation at *that facility*" in 42 U.S.C. 7384q(a)(1); "*a* Department of Energy facility or at an atomic weapons employer *facility*" in 42 U.S.C. 7384q(b); (emphasis added in both sections)). This limitation would not, however, prevent a petitioner(s) from submitting petitions separately for employees at each facility at which the class was employed, defining separate, facility-specific classes.

F. Modifications and Cancellations of Cohort Additions

Two labor organizations, the two advocacy groups, and several individuals commented on the provisions under section 83.18 of the current proposal allowing the Secretary to cancel or modify a class once it is established. The commenters recommended such a decision by the Secretary should only apply prospectively, for the adjudication of future claims. In other words, they recommended such a decision should not affect claimants who have already been compensated as a member of the Cohort, by potentially requiring the cessation of medical benefits or the return of the lump sum cash benefit.

DOL will determine the relevance of such decisions by HHS with respect to claims that DOL has already decided and claimants who have already received compensation.

G. Submission of Petitions to the Board

The two advocacy groups and one labor organization recommended that all petitions evaluated by NIOSH be submitted to the Board as well. This comment appears to refer to the Board's recommendation that it not have a role in deciding whether or not a petition meets the minimal requirements to be evaluated by NIOSH, the Board, and HHS (see Board recommendations in the following section). The Board considered its role to be limited to the evaluation of qualified petitions and recommended that NIOSH or HHS have

the exclusive administrative role to ensure that petitions meet basic requirements.

HHS has revised the rule consistently with the view of the Board. Under section 83.12, the Board will receive all petitions that NIOSH ultimately finds meet the requirements for evaluation. Under section 83.10, however, the Board will not review petitions that NIOSH finds do not meet the requirements for evaluation. It should be noted that before making such a final decision, NIOSH will first provide petitioners with guidance and time to remedy petitions that initially do not meet the requirements. In light of this provision, HHS seeks comment on whether HHS should provide an option for petitioners to seek an administrative review of adverse final decisions.

H. Petitions by Claimants

Several individuals recommended against requiring claimants to petition when NIOSH has found that it cannot complete their dose reconstructions. They suggested NIOSH should initiate action to evaluate such classes automatically, upon establishing such a finding.

HHS interprets EEOICPA as requiring the submission of a petition to initiate consideration for adding a class of employees to the Cohort. However, as specified under the dose reconstruction rule (42 CFR part 82.12), NIOSH will encourage claimants in these circumstances to file a petition. In addition, HHS has designed the requirements and procedures to minimize the burden on these claimants as petitioners. As provided under section 83.9, the claimant is required only to authorize a petition. No other documentation or information is required.

I. Use of Information by the Board for Evaluating a Petition

Two labor organizations commented that the statute allows the Board to provide advice concerning a petition using information other than exposure assessments by radiation health professionals and information from DOE. This provision of EEOICPA is specifically quoted under the "statutory requirements. . ." sections of this and the previous notices (see section II.D above).

The initial proposal did not limit the information the Board could obtain and consider. However, in response to the comment, under section 83.15 of the current proposal, HHS has specifically authorized the Board to obtain and consider such information as it considers appropriate.

J. Use of Federal Register Notices by HHS in the Petition Process

Two advocacy groups recommended that HHS issue a **Federal Register** notice, in addition to those already proposed, to inform the public that HHS has sent a report to Congress designating a class for addition to the Cohort, for review by Congress.

HHS omitted such a notice from the original proposal out of concern that notifying the public of affirmative decisions prior to their review by Congress might be confusing, particularly if Congress were to reverse such a decision. It is probably more important, however, that interested parties are informed to ensure they have the opportunity to make their views known to Congress. Hence, HHS agrees with the recommendation and has added such a notice.

K. Publicizing HHS Decisions

One labor organization recommended that HHS use other announcement procedures, in addition to publication in the **Federal Register**, to notify classes of their addition to the Cohort or of modifications of an added class.

HHS intends to work with DOE, DOL, AWEs, public media, labor organizations, and others to publicize decisions. Such activities, however, do not require specification in the rule.

L. Transmission of Designations of New Classes to DOL

Two advocacy groups and one labor organization recommended that HHS transmit designations adding classes to the Cohort to DOL on the first business day following expiration of the 180 day congressional review period.

HHS has committed in the current proposal to transmit designations within five days of either expiration of the congressional review period or final congressional action, whichever occurs first. The five day period is a maximum, not a minimum, and allows for the potential for delay in communications between Congress and HHS and for administrative processes within HHS.

M. Eligible Petitioners

The initial proposal defined eligible petitioners to include employees, survivors, and labor organizations. One individual recommended adding to the list of eligible petitioners the [management] staff of DOE field offices and sites, on the basis that they may have expertise on employee classes with radiation exposure for whom dose reconstructions may not be feasible. The two advocacy groups recommended that non-union worker advocacy groups be added to the list.