

In section 83.7(c) of the proposal, HHS has allowed for a worker or survivor to authorize any individual or entity, such as a worker advocacy group, to petition on behalf of a class. HHS has not specifically added the management staff of DOE field offices and sites. Employees of DOE sites and field offices with work experience at DOE sites are generally included among those eligible to submit petitions under section 83.7(a) (if they would themselves be included among the proposed class of employees) and (c) (if, in the proper discharge of their official duties, they are petitioning on behalf of other employees who would be included in the proposed class).

One individual raised concerns about one of the introductory sections of the rule (section 83.2), as it was initially proposed. The commenter believed it could be interpreted to require employees or survivors to submit a claim for compensation to DOL as a prerequisite to petitioning for addition to the Cohort.

The text of concern, which was explanatory and not procedural, has been deleted from the rule to streamline the rule as much as possible. Employees and their survivors are not required to submit a claim as a prerequisite to petitioning for a class. On the other hand, HHS and DOL encourage any employee who has incurred a cancer and hence is eligible to submit a claim to do so immediately. Medical benefits for a cancer claim awarded under EEOICPA are established based on the date on which the claim is submitted to DOL. Any medical costs for the cancer incurred before the date the claim is submitted would not be covered. For this reason, employees with cancer should submit claims to DOL without delay.

N. Petition Informational Requirements

Labor organizations and the two advocacy groups submitted a variety of comments concerning the informational requirements of a petition, and recommended not requiring the use of a form for petitioning. In general, these comments argued for less burden on petitioners.

Under section 83.9, HHS has reduced the informational requirements substantially to comprise a minimal basis for justifying a petition. HHS has eliminated the requirement that petitioners have sought records from DOE or AWEs to demonstrate a basis for concern about the feasibility of estimating radiation doses for the class. HHS recognizes that such efforts could be of little practical value to the evaluation of a petition. HHS has also

eliminated the requirement that petitioners demonstrate a basis for suspecting the health of the class may have been endangered, since the basis for establishing health endangerment under the proposal (a finding that doses cannot be estimated with sufficient accuracy and a determination as to whether this finding applies to radiation exposure during a discrete exposure incident or during routine operations) does not require information available to the petitioners.

The procedures continue to require petitioners to justify their concern that it may not be feasible to estimate the radiation dose incurred by employees of the class with sufficient accuracy. HHS has attempted to specify clear and minimal requirements for this justification. The procedures also may require petitioners to substantiate the occurrence of discrete exposure incidents potentially involving high level exposures, when such an incident comprises the basis of the petition and if NIOSH is otherwise unable to verify the occurrence of incident through other sources. The evidence that may be required in these cases, however, is similar to informational requirements that were included in the initial proposed rule.

Finally, HHS has made optional the use of a petition form for the submission of petitions, although its use should assist, rather than burden, petitioners.

O. Technical Assistance for Petitioners

One labor organization and the two advocacy groups recommended HHS sponsor technical assistance or training for petitioners to address informational requirements. The commenters suggested some petitioners are unlikely to have sufficient expertise to address these requirements without assistance.

Although NIOSH will provide guidance to petitioners, HHS does not intend to sponsor independent technical experts to assist petitioners in developing the basis for a petition. The purpose of a petition, as discussed in the rule, is to identify classes of employees that should be considered for addition to the Cohort. In other words, it is to bring to the attention of the Board, NIOSH, and HHS, classes of employees who were exposed to radiation at a DOE or AWE facility but for whom there are reasonable grounds to suspect radiation doses cannot be estimated with sufficient accuracy. If a petitioner lacks reasonable grounds for identifying such a class, as defined in the rule, they should not file a petition. In addition, in cases where members of the class submit claims and NIOSH determines that it cannot complete dose

reconstructions for them, this finding can serve as the basis for a Cohort petition.

P. Basis for Petitioning

One labor organization recommended that petitioners should be permitted to petition on the basis of qualitative or quantitative information, and any such information as the Board deems appropriate. The commenter further recommended that the petitioner should not be required to prove that doses cannot be estimated or that health was endangered.

In this rule, HHS has identified minimal requirements for a petition. A petition that does not meet these minimal requirements would not present a substantial likelihood of identifying a class that should be added to the Cohort, according to the statutory requirements for making such additions.

Meeting these petition requirements does not prove, however, that the statutory requirements will be met; the petitioner is not proving that it is not feasible to estimate doses with sufficient accuracy and that doses may have endangered the health of members of the class. These statutory requirements will be determined in the course of evaluating the petition.

The Board has had the opportunity to recommend alternatives to the petition requirements in the initial proposal. The Board's recommendations on requirements for petitions are reflected in the current proposal without exception, as discussed in Section IV below. The Board will have the opportunity again to recommend requirements during the public comment period on this second notice. HHS will consider any such alternatives for use in the final rule. In addition, section 83.11(c) of the current proposal would allow the Board to advise NIOSH concerning a petition after NIOSH has preliminarily found the petition does not meet the requirements specified in the rule.

Q. Deciding Whether To Petition

Several individuals sought guidance concerning how one should decide whether or not to petition to be added to the Cohort. One commenter noted that he had a claim awaiting dose reconstruction and wanted to know whether he should petition immediately or await the outcome of the dose reconstruction. Another commenter noted more generally that an employee may want to consider whether he has a better chance of being compensated as a member of the Cohort or through dose reconstruction. The commenter recommended that HHS provide in the