

section 3621(14)(C)(ii) of EEOICPA (42 U.S.C. 7384(14)(C)(ii)). Under section 3621(14)(C)(ii), however, Congress can reduce this review period to expedite the addition of a class to the Cohort. This is acknowledged under section 83.17 of this rule.

*V. Non-regulatory Comment: Dose Reconstructions for Cohort Members With Non-Specified Cancers*

HHS received several comments on matters extraneous to the rule, but relevant to the Cohort.

The two advocacy groups and a labor organization questioned how NIOSH would handle cancer claims for individuals in the Cohort who have a cancer that is not one of the specified cancers.

DOL refers claims for individuals in the Cohort who have a cancer that is not one of the specified cancers to NIOSH for dose reconstruction. NIOSH will conduct these dose reconstructions if sufficient information is available. The situation becomes complicated, however, if the individual may have incurred radiation doses that NIOSH cannot estimate, because the necessary information is not available. This will be true for classes of employees added to the Cohort by the Secretary.

NIOSH will develop dose reconstruction procedures with the advice of the Board to address these circumstances. The procedures will have to resolve the issue of whether or not to assign a radiation dose covering a potential exposure that cannot be estimated with sufficient accuracy, and if so, how to determine the characteristics and quantity of dose to be assigned. This issue is further discussed under section IV in response to a recommendation by the Board.

*W. Non-Regulatory Comment: Giving Claimants the Benefit of the Doubt in Dose Reconstructions*

One labor organization commented that NIOSH dose reconstructions should give the benefit of the doubt to the claimants when making assumptions concerning potentially unknown factors, such as the solubility of a radioactive material.

NIOSH gives the benefit of the doubt to claimants when making assumptions concerning unknown factors, except when the claim involves recorded doses sufficiently high to qualify for compensation without full development of the dose estimate. The NIOSH implementation guides for dose reconstructions, which are available from NIOSH, consistently illustrate this policy.

*X. Non-Regulatory Comment: Basis for Including Employees of the Gaseous Diffusion Plants in the Cohort*

Several individuals questioned the basis for the decision by Congress to include employees of the gaseous diffusion plants in the Cohort. The commenters believe the potential for health endangering radiation exposure was as great or greater at other DOE facilities. For this reason, the commenters indicated that Congress should have included other DOE facilities in the Cohort.

This is a matter that was decided by Congress and is beyond the control of HHS. Therefore, HHS has not responded to the comment.

*Y. Non-Regulatory Comment: Basis for Limiting Cohort Provisions to the 22 Specified Cancers*

Several individuals questioned the decision by Congress to limit the diseases covered by EEOICPA for the compensation of employees as members of the Cohort to 22 specified cancers. Commenters questioned why other cancers are not included, as well as other illnesses such as acute health effects from high levels of radiation and diseases related to exposure to asbestos and heavy metals.

This is a matter that was decided by Congress and is beyond the control of HHS. Therefore, HHS has not responded to the comment.

HHS notes that Congress also established Part D of EEOICPA to assist DOE contractor employees in seeking compensation through the appropriate state workers' compensation systems for occupational illnesses related to toxic exposures at DOE facilities.

*Z. Non-Regulatory Comment: Recommendations for Adding Specific Classes to the Cohort*

A labor organization, an advocacy group, and several individuals recommended the addition of specific employee classes to the Cohort.

This rule must be promulgated through the issuance of a final rule before petitions can be evaluated. NIOSH will notify individuals and organizations who have indicated an interest in petitioning at that time.

**IV. Recommendations of the Advisory Board on Radiation and Worker Health**

HHS requested the Board to consider issues related to making additions to the Cohort. As discussed above, the Board has an integral role in the evaluation of petitions to add classes of employees to the Cohort.

The Board reviewed issues related to the Cohort during its public meeting on

May 2–3, and reviewed the initial notice of proposed rulemaking during its public meetings on July 1–2, August 14–15, and August 22, 2002. In preparation for the July meeting, the Board members individually reviewed the initial notice of proposed rulemaking, which was published on June 25, 2002. The members also considered public comments on these rules provided during public meetings of the Board and at four regional meetings held in July and August 2002. In addition, NIOSH staff members gave formal presentations on the proposed rule and related issues during the Board meetings. The transcripts and minutes of these meetings are included in the NIOSH docket for this rule and are available to the public.

All of the Board members participated in the review of these guidelines and the members present at the August 22 meeting concurred in establishing the Board findings and recommendations. The Board provided recommendations on general issues related to the rule, as well as recommendations for text and other changes to specific sections of the rule. The recommendations, which are available to the public from the NIOSH Docket, are summarized below, together with responses by HHS to the recommendations.

*A. Dose Reconstruction for Members of the Cohort*

Claims for cancers that are not included among the specified cancers cannot be compensated under provisions of EEOICPA covering members of the Cohort. These claims will require a NIOSH dose reconstruction and a probability of causation determination by DOL, despite the fact that the employee is a member of the Cohort. The Board recommended that NIOSH review the proposed rule to ensure it does not preclude appropriate handling of these dose reconstructions. Relatedly, the Board also recommended that NIOSH develop procedures [for dose reconstructions] for claims for which the employee's dose history is partially but not completely covered in the employment parameters that define a Cohort class.

As discussed in response to similar public comments, this proposed rule would not affect claims that require dose reconstructions. The determination by the Secretary to add a class of employees to the Cohort does, however, have implications for the conduct of dose reconstructions for these members of the Cohort. When HHS adds members to the Cohort, HHS will have determined that radiation doses for