

have been incurred by any member of the class.

(iv) If NIOSH determines that it is not feasible to estimate radiation doses with sufficient accuracy, NIOSH will also determine whether such finding is limited to radiation doses incurred at certain tissue-specific cancer sites, and hence limited to specific types of cancers (whether or not such cancer(s) is a specified cancer under § 83.5(k)).

(2) *How should the class be defined, consistent with the findings of the analysis discussed under paragraph (b)(1) of this section?* NIOSH will define the following characteristics of a class, taking into account the class definition proposed by the petition and modified as necessary to reflect the results of the evaluation under paragraph (b)(1) of this section:

(i) Any of the following employment parameters, as necessary to identify members included in the class: facility, job titles, duties, and/or specific work locations within the facility or site, the relevant time period, and any additional identifying characteristics of employment;

(ii) If applicable, the identification of an exposure incident, when unmonitored radiation exposure during such an incident comprises the basis of the petition or the class definition;

(iii) If applicable, the identification of a set of one or more types of cancers to which NIOSH's finding that it was not feasible to estimate radiation doses with sufficient accuracy is limited.

(3) If it is not feasible to estimate with sufficient accuracy radiation doses for members of the class, as provided under paragraph (b)(1) of this section, then NIOSH must also make the following determination as required by statute [see 42 U.S.C. 7384q(b)(2)]: Is there a "reasonable likelihood that such radiation dose may have endangered the health of members of the class?"

(i) For classes of employees that may have been exposed to radiation during discrete incidents likely to have involved exceptionally high level exposures, such as nuclear criticality incidents or other events involving similarly high levels of exposures resulting from the failure of radiation protection controls, NIOSH will assume for the purposes of this section that any duration of unprotected exposure could cause a specified cancer, and hence may have endangered the health of members of the class. Presence with potential exposure during the discrete incident, rather than a quantified duration of potential exposure, will satisfy the health endangerment criterion.

(ii) For health endangerment not established on the basis of a discrete

incident, as described under paragraph (b)(3)(i) of this section, NIOSH will specify a minimum duration of employment to satisfy the health endangerment criterion as having been employed for a number of work days aggregating at least 250 work days within the employment parameters established for the class.

(c) NIOSH will submit a report of its evaluation findings to the Board and to the petitioner(s). The report will include the following elements:

(1) An identification of the relevant petitions;

(2) A proposed definition of the class or classes of employees to which the evaluation applies, and a summary of the basis for this definition, including, as necessary:

(i) Any justification that may be needed for the inclusion of groups of employees who were not specified in the original petition(s);

(ii) The identification of any groups of employees who were identified in the original petition(s) who should constitute a separate class of employees; or

(iii) The merging of multiple petitions that represent a single class of employees.

(3) The proposed class definition will address the following employment parameters:

(i) The DOE facility or the AWE facility that employed the class;

(ii) The job titles and/or job duties and/or work locations of class members;

(iii) The period of employment within which a class member must have been employed at the facility under the job titles and/or performing the job duties and/or working in the locations specified in this class definition;

(iv) If applicable, identification of an exposure incident, when potential radiation exposure during such an incident comprises the basis of the class definition;

(v) If necessary, any other parameters that serve to define the membership of the class; and

(vi) For a class for which it is not feasible to estimate radiation doses with sufficient accuracy, a minimum duration of employment within the employment parameters of the class for inclusion in the class, as defined under § 83.13(b)(3).

(4) The proposed class definition may also specify that members of the class are limited to employees who incur a cancer from a set of one or more types of cancers specified by NIOSH. This provision applies to classes of employees for which the finding that it is not feasible to estimate radiation doses with sufficient accuracy is limited

to certain tissue-specific cancer sites, relevant to individuals with specific types of cancers.

(5) a summary of the findings concerning the adequacy of existing records and information for reconstructing doses for individual members of the class under the methods of 42 CFR part 82; and a description of the evaluation methods and information upon which these findings are based.

(6) for a class for which it is not feasible to estimate radiation doses with sufficient accuracy, a summary of the basis for establishing the duration of employment requirement with respect to health endangerment.

§ 83.14 How will NIOSH evaluate a petition by a claimant whose dose reconstruction NIOSH could not complete under 42 CFR part 82?

(a) NIOSH may establish two classes for evaluation, to permit the timely adjudication of the existing cancer claim:

(1) A class of employees defined using the research and analyses already completed in attempting the dose reconstruction for the employee identified in the claimant's petition; and

(2) A class of co-workers similar to the class defined under paragraph (a)(1) of this section, to be defined by NIOSH on the basis of further research and analyses, using the procedures outlined under § 83.13.

(b) NIOSH will determine the health endangerment criteria for adding the class under paragraph (a)(1) of this section to the Cohort, using the procedures outlined under § 83.13. NIOSH will report to the Board the results of this determination, together with its finding under 42 CFR part 82 that there was insufficient information to complete the dose reconstruction.

(c) NIOSH will evaluate the petition as it may concern a class of co-workers, as described under paragraph (a)(2) of this section, according to the procedures under § 83.13.

§ 83.15 How will the Board consider and advise the Secretary on a petition?

(a) NIOSH will publish a notice in the **Federal Register** providing notice of a Board meeting at which a petition will be considered, and summarizing the petition to be considered by the Board at the meeting and the findings of NIOSH from evaluating the petition.

(b) The Board will consider the petition and the NIOSH evaluation report at the meeting, to which the petitioner(s) will be invited to present views and information on the petition and the NIOSH evaluation findings.

(c) In considering the petition, the Board may obtain and consider