

additional information not addressed in the petition or the initial NIOSH evaluation report.

(d) NIOSH may decide to further evaluate a petition, upon the request of the Board. If NIOSH conducts further evaluation, it will report new findings to the Board and the petitioner(s).

(e) Upon the completion of NIOSH evaluations and deliberations of the Board concerning a petition, the Board will develop and transmit to the Secretary a report containing its recommendations. The Board's report will include the following:

(1) The identification and inclusion of the relevant petition(s);

(2) The definition of the class of employees covered by the recommendation;

(3) A recommendation as to whether or not the Secretary should designate the class as an addition to the Cohort;

(4) The criteria and information upon which the recommendation is based, including NIOSH evaluation reports, information provided by the petitioners, any other information considered by the Board, and the deliberations of the Board.

§ 83.16 How will the Secretary decide the outcome of a petition?

(a) The Secretary will propose, and transmit to all affected petitioners, a decision to add or deny adding classes of employees to the Cohort. This decision will take into consideration the evaluations of NIOSH and the recommendations of the Board, and may also take into consideration information presented to the Board and its deliberations.

(b) HHS will provide the petitioner(s) 30 calendar days to contest the proposed decision of the Secretary. If the petitioner(s) submits to HHS a challenge that includes substantial evidence that the proposed decision relies on a record of either factual or procedural errors in the implementation of these procedures, then HHS will consider the evidence submitted by the petitioner(s) prior to issuing a final decision. Challenges to decisions of the Secretary under these procedures must be submitted in writing, with accompanying documentation

supporting the assertions of the challenge.

(c) HHS will issue a final decision on the designation and definition of the class, and transmit a report of the decision and the criteria and information upon which the decision is based to the petitioner(s). HHS will also publish notice of the decision in the **Federal Register**, including a definition of the class and a summary of the criteria and information upon which the decision is based.

§ 83.17 What is the role of Congress in acting upon the final decision of the Secretary to add a class of employees to the Cohort?

(a) If the Secretary designates a class of employees to be added to the Cohort, the Secretary will transmit to Congress a report providing the designation, the definition of the class of employees covered by the designation, and the criteria and information upon which the designation was based.²

(b) A designation of the Secretary will take effect 180 calendar days after the date on which the report of the Secretary is submitted to Congress, unless Congress takes an action that reverses or expedites the designation.

(c) Within five work days of either expiration of the congressional review period or final congressional action, whichever comes first, the Secretary will transmit to DOL a report providing the definition of the class and one of the following outcomes:

(1) The addition of the class to the Cohort; or

(2) The result of any action by Congress to reverse or expedite the decision of the Secretary to add the class to the Cohort.

(d) The report specified under paragraph (c) of this section will be published on the Internet at www.cdc.gov/niosh/ocas and in the **Federal Register**.

§ 83.18 How can the Secretary cancel or modify a final decision to add a class of employees to the Cohort?

(a) The Secretary can cancel a final decision to add a class to the Cohort, or can modify a final decision to reduce the scope of a class added by the

Secretary, if HHS obtains records relevant to radiation exposures of members of the class that enable NIOSH to estimate the radiation doses incurred by individual members of the class through dose reconstructions conducted under the requirements of 42 CFR part 82.

(b) Before cancelling a final decision to add a class or modifying a final decision to reduce the scope of a class, the Secretary intends to follow evaluation procedures that are substantially similar to those described in this part for adding a class of employees to the Cohort. The procedures will include the following:

(1) Publication of a notice in the **Federal Register** informing the public of the intent of the Secretary to review the final decision on the basis of new information and describing procedures for this review;

(2) An analysis by NIOSH of the utility of the new information for conducting dose reconstructions under 42 CFR part 82; the analysis will be performed consistently with the requirements for analysis of a petition by NIOSH under §§ 83.13(b)(1) and (2), and 83.13(c)(2) and (3);

(3) A recommendation by the Board to the Secretary as to whether or not the Secretary should cancel or modify its final decision that added the class to the Cohort, based upon a review by the Board of the NIOSH analysis and any other relevant information considered by the Board;

(4) An opportunity for members of the class to contest a proposed decision by the Secretary to cancel or modify the prior final decision that added the class to the Cohort, including a reasonable and timely effort by the Secretary to notify members of the class of this opportunity; and

(5) Publication in the **Federal Register** of a final decision to cancel or modify the prior final decision that added the class to the Cohort.

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Tommy G. Thompson,
Secretary, Department of Health and Human Services.

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² See 42 U.S.C. 7384(14)(C)(ii).