

§ 83.2 How will DOL use the designations established under the procedures in this part?

DOL will adjudicate compensation claims for members of classes of employees added to the Cohort according to the same general procedures that apply to the statutorily defined classes of employees in the Cohort. Specifically, DOL will determine whether the claim is for a qualified member of the Cohort with a specified cancer, pursuant to the procedures set forth in 20 CFR part 30.

Subpart B—Definitions

§ 83.5 Definitions of terms used in the procedures in this part.

(a) *Advisory Board on Radiation and Worker Health* (“the Board”) is a federal advisory committee established under EEOICPA and appointed by the President to advise HHS in implementing its responsibilities under EEOICPA.

(b) *Atomic Weapons Employer* (“AWE”) is a statutory term of EEOICPA which means any entity, other than the United States, that:

(1) Processed or produced, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling; and,

(2) Is designated by the Secretary of Energy as an atomic weapons employer for purposes of EEOICPA.

(c) *Computation of Time Periods*: In this Rule, all prescribed or allowed time periods will be counted as calendar days from the business day of receipt by the submitter(s), the petitioner(s), NIOSH, or HHS. Receipt by NIOSH, the submitter(s) or petitioner(s) will be either the business day of actual receipt or three (3) business days after initial proof of mailing, whichever time period is shorter. Business days are defined as Monday through Friday, 8 a.m. to 4:30 p.m. est and “legal holiday” will be used as defined by the FED. R. CIV. P. 6(a).

(d) *Class of employees* means, for the purposes of this part, a group of employees who work or worked at the same DOE facility or AWE facility, and for whom the availability of information and recorded data on radiation exposures is comparable with respect to

the informational needs of dose reconstructions conducted under 42 CFR part 82.

(e) *HHS* is the U.S. Department of Health and Human Services.

(f) *DOE* is the U.S. Department of Energy, which includes predecessor agencies of DOE, including the Manhattan Engineering District.

(g) *DOL* is the U.S. Department of Labor.

(h) *Employee*, for the purposes of these procedures, means a person who is or was, for the purposes of EEOICPA, an employee of DOE, a DOE contractor or subcontractor, or an Atomic Weapons Employer.

(i) *NIOSH* is the National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

(j) *OCAS* is the Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

(k) *Petition* means a submission under § 83.8 of this part that meets all the requirements of §§ 83.7–83.9 of this part and has incorporated any revisions made by the petitioner under §§ 83.7–83.9 or § 83.11 of this part.

(l) *Petitioner* means an individual or organization that submits a petition on behalf of a class of employees and qualifies as a petitioner under § 83.7. A single petition shall only include up to three petitioners.

(m) *Radiation* means ionizing radiation, including alpha particles, beta particles, gamma rays, x rays, neutrons, protons and other particles capable of producing ions in the body. For the purposes of the proposed procedures, radiation does not include sources of non-ionizing radiation such as radio-frequency radiation, microwaves, visible light, and infrared or ultraviolet light radiation.

(n) *Secretary* is the Secretary of Health and Human Services.

(o) *Specified cancer*, as is defined in Section 3621(17) of EEOICPA (42 U.S.C. 7384(17)) and the DOL regulation implementing EEOICPA (20 CFR 30.5(dd)), means:

(1) Leukemia (other than chronic lymphocytic leukemia) provided that onset of the disease was at least two years after initial occupational exposure;

(2) Lung cancer (other than in situ lung cancer that is discovered during or after a post-mortem exam);

(3) Bone cancer;

(4) Renal cancers;

(5) The following diseases, provided onset was at least 5 years after first exposure:

(i) Multiple myeloma;

(ii) Lymphomas (other than Hodgkin's disease);

(iii) Primary cancer of the:

(A) Thyroid;

(B) Male or female breast;

(C) Esophagus;

(D) Stomach;

(E) Pharynx;

(F) Small intestine;

(G) Pancreas;

(H) Bile ducts;

(I) Gall bladder;

(J) Salivary gland;

(K) Urinary bladder;

(L) Brain;

(M) Colon;

(N) Ovary;

(O) Liver (except if cirrhosis or hepatitis B is indicated).

(6) The specified diseases designated in this section mean the physiological condition or conditions that are recognized by the National Cancer Institute under those names or nomenclature, or under any previously accepted or commonly used names or nomenclature.

(p) Survivor means a surviving spouse, child, parent, grandchild and grandparent of a deceased covered employee as defined in EEOICPA.

[69 FR 30780, May 28, 2004, as amended at 70 FR 75952, Dec. 22, 2005]

Subpart C—Procedures for Adding Classes of Employees to the Cohort

§ 83.6 Overview of the procedures in this part.

The procedures in this part specify who may petition to add a class of employees to the Cohort, the requirements for such a petition, how a petition will be selected for evaluation by NIOSH and for the advice of the Board,

and the process NIOSH, the Board, and the Secretary will use to consider a petition, leading to the Secretary's final determination to accept or deny adding a class to the Cohort. The rule provides for petitions in two distinct circumstances. One circumstance is when NIOSH has attempted to conduct a dose reconstruction for a cancer claimant, under 42 CFR part 82, and finds that the dose reconstruction cannot be completed, because there is insufficient information to estimate the radiation doses of the claimant with sufficient accuracy. The second circumstance includes all other possibilities. For example, a petition may be submitted representing a class of employees whose members have yet to file claims under EEOICPA, or even have yet to be diagnosed with cancer. As required by EEOICPA (42 U.S.C. 7384l(14)(c)(ii)), the procedures in this part include formal notice to Congress of any decision by the Secretary to add a class to the Cohort, and the opportunity for Congress to expedite or change the outcome of the decision within 180 days.

§ 83.7 Who can submit a petition on behalf of a class of employees?

A petitioner or petitioners for a petition must be one or more, up to a maximum of three, of the following:

(a) One or more DOE, DOE contractor or subcontractor, or AWE employees, who would be included in the proposed class of employees, or their survivors; or

(b) One or more labor organizations representing or formerly having represented DOE, DOE contractor or subcontractor, or AWE employees, who would be included in the proposed class of employees; or

(c) One or more individuals or entities authorized in writing by one or more DOE, DOE contractor or subcontractor, or AWE employees, who would be included in the proposed class of employees, or their survivors.

§ 83.8 How is a petition submitted?

The petitioner(s) must send a petition in writing to NIOSH. A petition must provide identifying and contact information on the petitioner(s) and information to justify the petition, as