

(c) In considering the petition, the Board may obtain and consider 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 relevant criteria under § 83.13(c) and findings 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(s) of a petition?

(a) The Director of NIOSH will propose a decision to add or deny adding any class or classes of employees to the Cohort, including an iteration of the relevant criteria, as specified under § 83.13(c), and a summary of the information and findings on which the proposed decision is based. This proposed decision will take into consideration the evaluations of NIOSH and the report and recommendations of the Board, and may also take into consideration information presented or submitted to the Board and the deliberations of the Board. In the case of a petition that NIOSH has determined encompasses more than one class of employees, the Director of NIOSH will issue a separate proposed decision for each separate class of employees.

(b) The Secretary will make the final decision to add or deny adding a class to the Cohort, including the definition

of the class, after considering information and recommendations provided to the Secretary by the Director of NIOSH and the Board. HHS will transmit a report of the decision to the petitioner(s), including an iteration of the relevant criteria, as specified under § 83.13(c), and a summary of the information and findings on which the decision is based. HHS will also publish a notice summarizing the decision in the FEDERAL REGISTER.

(c) If, under § 83.15(e), the Board recommends that the Secretary designate a class covered by the petition as an addition to the Cohort, and if, under paragraph (b) of § 83.16, the Secretary decides to deny adding the class, as defined by the Board, to the Cohort, then the Secretary will submit to Congress a determination that the statutory criteria specified under 42 U.S.C. 7384q(b)(1) and (2) have not been met for adding the class to the Cohort. The Secretary will submit this determination to Congress within 30 calendar days following receipt by the Secretary of the recommendation of the Board.

[70 FR 75953, Dec. 22, 2005]

§ 83.17 How will the Secretary report a final decision to add a class of employees to the Cohort and any action of Congress concerning the effect of the final decision?

(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 findings upon which the designation was based.⁴

(b) If, under § 83.15(e), the Board recommends that the Secretary designate a class covered by the petition as an addition to the Cohort, and if, under paragraph (b) of § 83.16, the Secretary decides to add a class to the Cohort that is inclusive of the class as defined by the Board, then the Secretary will transmit to Congress the report specified in paragraph (a) of this section within 30 calendar days following receipt by the Secretary of the recommendation of the Board.

⁴ See 42 U.S.C. 7384l(14)(C)(ii).

(c) A designation of the Secretary will take effect 30 calendar days after the date on which the report of the Secretary under paragraph (a) of this section is submitted to Congress, or is deemed to have been submitted to Congress,⁵ unless Congress takes an action that reverses or expedites the designation.

(d) After either the expiration of the congressional review period or notification of final congressional action, whichever comes first, the Secretary will transmit to DOL and to the petitioner(s) 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.

(e) The report specified under paragraph (d) of this section will be published on the Internet at <http://www.cdc.gov/niosh/ocas> and in the FEDERAL REGISTER.

[69 FR 30780, May 28, 2004, as amended at 70 FR 75953, Dec. 22, 2005]

§ 83.18 How can petitioners obtain an administrative review of a final decision by the Secretary?

(a) HHS will allow petitioners to contest only a final decision to deny adding a class to the Cohort or a health endangerment determination under § 83.13(c)(3)(ii). Such challenges must be submitted in writing within 30 calendar days and must include evidence that the final decision relies on a record of either substantial factual errors or substantial errors in the implementation of the procedures of this part. Challenges may not introduce new information or documentation concerning the petition or the NIOSH or Board evaluation(s) that was not submitted or presented by the petitioner(s) or others to NIOSH or to the

Board prior to the Board's issuing its recommendations under § 83.15.

(b) A panel of three HHS personnel, independent of NIOSH and appointed by the Secretary, will conduct an administrative review based on a challenge submitted under paragraph (a) of this section and provide recommendations of the panel to the Secretary concerning the merits of the challenge and the resolution of issues contested by the challenge. Reviews by the panel will consider, in addition to the views and information submitted by the petitioner(s) in the challenge, the NIOSH evaluation report(s), the report containing the recommendations of the Board issued under § 83.15, and recommendations of the Director of NIOSH to the Secretary. The reviews may also consider information presented or submitted to the Board and the deliberations of the Board prior to the issuance of the recommendations of the Board under § 83.15. The panel shall consider whether HHS substantially complied with the procedures of this part, the factual accuracy of the information supporting the final decision, and the principal findings and recommendations of NIOSH and those of the Board issued under § 83.15.

(c) The Secretary will decide whether or not to revise a final decision contested by the petitioner(s) under this section after considering information and recommendations provided to the Secretary by the Director of NIOSH, the Board, and from the HHS administrative review conducted under paragraph (b) of this section. HHS will transmit a report of the decision to the petitioner(s).

(d) If the Secretary decides under paragraph (c) of this section to change a designation under § 83.17(a) of this part or a determination under § 83.16(c) of this part, the Secretary will transmit to Congress a report providing such change to the designation or determination, including an iteration of the relevant criteria, as specified under § 83.13(c), and a summary of the information and findings on which the decision is based. HHS will also publish a notice summarizing the decision in the FEDERAL REGISTER.

⁵Under 42 U.S.C. 7384q(c)(2)(C), if the Secretary does not submit within 30 days the determination required under paragraph (a) of § 83.17 of this part, then on the following day, "it shall be deemed" that the Secretary submitted the report specified under paragraph (b) of § 83.17 of this part.