

provided that the application is supported by new information.

§ 88.14 Appeal of enrollment or disenrollment decision.

(a) *Right to appeal.* An applicant denied WTC Health Program enrollment, a disenrolled WTC Health Program member, or the applicant's or member's designated representative (appointed pursuant to § 88.2(a)) may appeal the enrollment denial or disenrollment decision.

(b) *Appeal request.* (1) A letter requesting an appeal must be postmarked within 120 calendar days of the date of the letter from the Administrator notifying the denied applicant or disenrolled WTC Health Program member of the adverse decision. Electronic versions of a signed letter will be accepted if transmitted within 120 calendar days of the date of the Administrator's notification letter.

(2) A valid request for an appeal must:

- (i) Be made in writing and signed;
- (ii) Identify the denied applicant or disenrolled WTC Health Program member and designated representative (if applicable);
- (iii) Describe the decision being appealed and state the reasons why the denied applicant, disenrolled WTC Health Program member, or designated representative believes the enrollment denial or disenrollment was incorrect and should be reversed. The appeal request may include relevant new information not previously considered by the WTC Health Program; and
- (iv) Be sent to the WTC Health Program at the address specified in the notice of denial or disenrollment.

(3) Where the denial or disenrollment is based on information from the terrorist watch list, the appeal will be forwarded to the appropriate Federal agency.

(c) *Appeal process.* Upon receipt of a valid appeal, the Administrator will appoint a Federal Official independent of the WTC Health Program to review the case. The Federal Official will review all available records relevant to the WTC Health Program's decision not to enroll the applicant or to disenroll the WTC Health Program member and assess whether the appeal

should be granted. In conducting the review, the Federal Official's consideration will include the following: Whether the WTC Health Program substantially complied with all relevant WTC Health Program policies and procedures; whether the information supporting the WTC Health Program's decision was factually accurate; and whether the WTC Health Program's decision was reasonable as applied to the facts of the case.

(1) The Federal Official may consider additional relevant new information submitted by the denied applicant, disenrolled WTC Health Program member, or designated representative.

(2) The Federal Official will provide his or her recommendation regarding the disposition of the appeal, including his or her findings and any supporting materials, to the Administrator.

(d) *Final decision and notification.* The Administrator will review the Federal Official's recommendation and any relevant information and make a final decision on the appeal. The Administrator will notify the denied applicant or disenrolled WTC Health Program member and/or designated representative of the following in writing:

- (1) The recommendation and findings made by the Federal Official as a result of the review;
- (2) The Administrator's final decision on the appeal;
- (3) An explanation of the reason(s) for the Administrator's final decision on the appeal; and
- (4) Any administrative actions taken by the WTC Health Program in response to the Administrator's final decision.

§ 88.15 List of WTC-Related Health Conditions.

WTC-related health conditions include the following disorders and conditions:

- (a) Aerodigestive disorders:
 - (1) Interstitial lung diseases.
 - (2) Chronic respiratory disorder—fumes/vapors.
 - (3) Asthma.
 - (4) Reactive airways dysfunction syndrome (RADS).
 - (5) WTC-exacerbated and new-onset chronic obstructive pulmonary disease (COPD).

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- (6) Chronic cough syndrome.
- (7) Upper airway hyperreactivity.
- (8) Chronic rhinosinusitis.
- (9) Chronic nasopharyngitis.
- (10) Chronic laryngitis.
- (11) Gastroesophageal reflux disorder (GERD).
- (12) Sleep apnea exacerbated by or related to a condition described in preceding paragraphs (a)(1) through (11) of this section.
 - (b) Mental health conditions:
 - (1) Posttraumatic stress disorder (PTSD).
 - (2) Major depressive disorder.
 - (3) Panic disorder.
 - (4) Generalized anxiety disorder.
 - (5) Anxiety disorder (not otherwise specified).
 - (6) Depression (not otherwise specified).
 - (7) Acute stress disorder.
 - (8) Dysthymic disorder.
 - (9) Adjustment disorder.
 - (10) Substance abuse.
 - (c) Musculoskeletal disorders:
 - (1) WTC-related musculoskeletal disorder is a chronic or recurrent disorder of the musculoskeletal system caused by heavy lifting or repetitive strain on the joints or musculoskeletal system occurring during rescue or recovery efforts in the New York City disaster area in the aftermath of the September 11, 2001, terrorist attacks. For a WTC responder who received any treatment for a WTC-related musculoskeletal disorder on or before September 11, 2003, such a health condition includes:
 - (i) Low back pain.
 - (ii) Carpal tunnel syndrome (CTS).
 - (iii) Other musculoskeletal disorders.
 - (2) [Reserved].
 - (d) Cancers:
 - (1) Malignant neoplasms of the lip; tongue; salivary gland; floor of mouth; gum and other mouth; tonsil; oropharynx; hypopharynx; and other oral cavity and pharynx.
 - (2) Malignant neoplasm of the nasopharynx.
 - (3) Malignant neoplasms of the nose; nasal cavity; middle ear; and accessory sinuses.
 - (4) Malignant neoplasm of the larynx.
 - (5) Malignant neoplasm of the esophagus.
 - (6) Malignant neoplasm of the stomach.

- (7) Malignant neoplasms of the colon and rectum.
 - (8) Malignant neoplasms of the liver and intrahepatic bile duct.
 - (9) Malignant neoplasms of the retroperitoneum and peritoneum; omentum; and mesentery.
 - (10) Malignant neoplasms of the trachea; bronchus and lung; heart, mediastinum and pleura; and other ill-defined sites in the respiratory system and intrathoracic organs.
 - (11) Mesothelioma.
 - (12) Malignant neoplasms of the peripheral nerves and autonomic nervous system; and other connective and soft tissue.
 - (13) Malignant neoplasms of the skin (melanoma and non-melanoma), including scrotal cancer.
 - (14) Malignant neoplasm of the female breast.
 - (15) Malignant neoplasm of the ovary.
 - (16) Malignant neoplasm of the prostate.
 - (17) Malignant neoplasm of the urinary bladder.
 - (18) Malignant neoplasm of the kidney.
 - (19) Malignant neoplasms of the renal pelvis; ureter; and other urinary organs.
 - (20) Malignant neoplasms of the eye and orbit.
 - (21) Malignant neoplasm of the thyroid.
 - (22) Malignant neoplasms of the blood and lymphoid tissues (including, but not limited to, lymphoma, leukemia, and myeloma).
 - (23) *Childhood cancers*: any type of cancer diagnosed in a person less than 20 years of age.
 - (24) *Rare cancers*: any type of cancer¹ that occurs in less than 15 cases per 100,000 persons per year in the United States.
 - (e) Acute traumatic injuries:
 - (1) WTC-related acute traumatic injury is physical damage to the body caused by and occurring immediately
- ¹Based on 2005–2009 average annual data age-adjusted to the 2000 U.S. population. See Glenn Copeland, Andrew Lake, Rick Firth, *et al.* (eds), *Cancer in North America: 2005–2009. Volume One: Combined Cancer Incidence for the United States, Canada and North America*, Springfield, IL: North American Association of Central Cancer Registries, Inc., June 2012.

after a one-time exposure to energy, such as heat, electricity, or impact from a crash or fall, resulting from a specific event or incident. For a WTC responder or screening-eligible or certified-eligible survivors who received any medical treatment for a WTC-related acute traumatic injury on or before September 11, 2003, such a health condition includes:

- (i) Eye injury.
 - (ii) Burn.
 - (iii) Head trauma.
 - (iv) Fracture.
 - (v) Tendon tear.
 - (vi) Complex sprain.
 - (vii) Other similar acute traumatic injuries.
- (2) [Reserved]

§ 88.16 Addition of health conditions to the List of WTC-Related Health Conditions.

(a) Any interested party may submit a request to the Administrator of the WTC Health Program to add a condition to the List of WTC-Related Health Conditions in § 88.15. The Administrator will evaluate the submission to decide whether it is a valid petition.

(1) Each valid petition must include the following:

- (i) An explicit statement of an intent to petition the Administrator to add a health condition to the List of WTC-Related Health Conditions;
- (ii) Name, contact information, and signature of the interested party petitioning for the addition;
- (iii) Name and/or description of the condition(s) to be added;
- (iv) Reasons for adding the condition(s), including the medical basis for the association between the September 11, 2001, terrorist attacks and the condition(s) to be added.

(2) Not later than 90 calendar days after the receipt of a valid petition, the Administrator will take one of the following actions:

- (i) Request a recommendation of the WTC Health Program Scientific/Technical Advisory Committee;
- (ii) Publish in the FEDERAL REGISTER a proposed rule to add such health condition;
- (iii) Publish in the FEDERAL REGISTER the Administrator's decision not

to publish a proposed rule and the basis for that decision; or

(iv) Publish in the FEDERAL REGISTER a decision that insufficient evidence exists to take action under paragraph (a)(2)(i) through (iii) of this section.

(3) The 90-day time period will not include any days during which the Administrator is consulting with the interested party to clarify the submission.

(4) The Administrator may consider more than one petition simultaneously when the petitions propose the addition of the same health condition. Scientific/Technical Advisory Committee recommendations and FEDERAL REGISTER notices initiated by the Administrator pursuant to paragraph (a)(2) of this section may respond to more than one petition.

(5) The Administrator will be required to consider a submission for a health condition previously reviewed by the Administrator and found not to qualify for addition to the List of WTC-Related Health Conditions as a valid new petition only if the submission presents a new medical basis (*i.e.*, a basis not previously reviewed) for the association between the September 11, 2001, terrorist attacks and the condition to be added. A submission that provides no new medical basis and is received after the publication of a response in the FEDERAL REGISTER to a petition requesting the addition of the same health condition will not be considered a valid petition and will not be answered in a FEDERAL REGISTER notice pursuant to paragraph (a)(2), above. The interested party will be informed of the WTC Health Program's decision in writing.

(b) The Administrator may propose to add a condition to the List of WTC-Related Health Conditions in § 88.15 of this part by publishing a proposed rule in the FEDERAL REGISTER and providing interested parties a period of 30 calendar days to submit written comments. The Administrator may extend the comment period for good cause.

(1) If the Administrator requests a recommendation from the WTC Health Program Scientific/Technical Advisory Committee, the Advisory Committee will submit its recommendation to the