benefits must complete Part A of the Certification of Traumatic Injury Protection Form and sign the form.

(ii) If a member is unable to do so, anyone acting on the member's behalf may request a Certification of Traumatic Injury Protection Form from the uniformed service. However, the Certification of Traumatic Injury Protection Form must be signed by the member, the member's guardian, or the member's attorney-in-fact.

(iii) If a member suffered a scheduled loss as a direct result of the traumatic injury, survived seven full days from the date of the traumatic event, and then died before the maximum benefit for which the service member qualifies is paid the beneficiary or beneficiaries of the member's Servicemembers' Group Life Insurance policy should complete a Certification of Traumatic Injury Protection Form.

(2) If a member seeks traumatic injury protection benefits for a scheduled loss occurring after submission of a completed Certification of Traumatic Injury Protection Form for a different scheduled loss, the member must submit a completed Certification of Traumatic Injury Protection Form for the new scheduled loss and for each scheduled loss that occurs thereafter. For example, if a member seeks traumatic injury protection benefits for a scheduled loss due to coma from traumatic injury and/or the inability to carry out activities of daily living due to traumatic brain injury (§ 9.20(e)(7)(xxxvii)), or the inability to carry out activities of daily living due to loss directly resulting from a traumatic injury other than an injury to the brain (§ 9.20(e)(7)(xliv)), a completed Certification of Traumatic Injury Protection Form must be submitted for each increment of time for which TSGLI is payable. Also, for example, if a service member suffers a scheduled loss due to a coma, a completed Certification of Traumatic Injury Protection Form should be filed after the 15th consecutive day that the member is in the coma, for which $25,000 is payable. If the member remains in a coma for another 15 days, another completed Certification of Traumatic Injury Protection Form should be submitted and another $25,000 will be paid.

(h) *How does a member or beneficiary appeal an adverse eligibility determination?* (1) Notice of a decision regarding a member's eligibility for traumatic injury protection benefits will include an explanation of the procedure for obtaining review of the decision. An appeal of an eligibility determination, such as whether the loss occurred within 365 days of the traumatic injury, whether the injury was self-inflicted or whether a loss of hearing was total and permanent, must be in writing. An appeal must be submitted by a member or a member's legal representative or by the beneficiary or the beneficiary's legal representative, within one year of the date of a denial of eligibility, to the office of the uniformed service identified in the decision regarding the member's eligibility for the benefit.

(2) An appeal regarding whether a member was insured under Servicemembers' Group Life Insurance when the traumatic injury was sustained must be in writing. An appeal must be submitted by a member or a member's legal representative or by the beneficiary or the beneficiary's legal representative within one year of the date of a denial of eligibility to the Office of Servicemembers' Group Life Insurance.

(3) Nothing in this section precludes a member from pursuing legal remedies under 38 U.S.C. 1975 and 38 CFR 9.13.

(i) *Who will be paid the traumatic injury protection benefit?* The injured member who suffered a scheduled loss will be paid the traumatic injury protection benefit in accordance with title 38 U.S.C. 1980A except under the following circumstances:

(1) If a member is legally incapacitated, the member's guardian or attorney-in-fact will be paid the benefit on behalf of the member.

(2) If a member dies before payment is made, the beneficiary or beneficiaries who will be paid the benefit will be determined in accordance with 38 U.S.C. 1970(a).

(Authority: 38 U.S.C. 501(a) and 1980A)

[FR Doc. 05–24390 Filed 12–20–05; 10:53 am]

BILLING CODE 8320–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 83

RIN 0920–AA13

Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under the Energy Employees Occupational Illness Compensation Program Act of 2000; Amendments; Interim Final Rule With Request for Comments

AGENCY: Department of Health and Human Services.

ACTION: Interim final rule with request for comments.

SUMMARY: The Department of Health and Human Services (''HHS'') is amending its procedures to consider designating classes of employees to be added to the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000 (''EEOICPA''), 42 U.S.C. 7384–7385. HHS must change these procedures to implement amendments to EEOICPA enacted on October 28, 2004, as part of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108–375 (codified as amended in scattered sections of 42 U.S.C.).

DATES: *Effective Date:* This interim final rule is effective December 22, 2005.

Comments: The Department invites written comments on the interim final rule from interested parties. Comments on the rule must be received by February 21, 2006.

ADDRESSES: Address written comments on the interim final rule to the National Institute for Occupational Safety and Health (''NIOSH'') Docket Officer electronically by e-mail to *NIOCINDOCKET@cdc.gov.* See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing. Alternatively, submit printed comments to NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS–C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll free number). Information requests can also be submitted by e-mail to *OCAS@cdc.gov.*

SUPPLEMENTARY INFORMATION:

I. Comments Invited

Interested persons or organizations are invited to participate in this rulemaking by submitting written views, arguments, recommendations, and data. Comments are invited on any topic related to the changes in the Special Exposure Cohort (''the Cohort'') rule (42 CFR part 83) effectuated by this rulemaking. Comments concerning any other provisions of the Cohort rule, unchanged and unaffected by this rulemaking, will not be considered.

Comments should identify the author(s), return address, and phone number, in case clarification is needed. Comments can be submitted by e-mail to: *NIOCINDOCKET@cdc.gov.* Comments submitted by e-mail may be provided as e-mail text or as a Word or

Word Perfect file attachment. Printed comments can also be submitted to the address above. All communications received on or before the closing date for comments will be fully considered by the Secretary. An electronic docket containing all comments submitted will be available over the Internet on the Web page of the National Institute for Occupational Safety and Health (''NIOSH''), Office of Compensation Analysis and Support at *http://www.cdc.gov/niosh/ocas,* and comments will be available in writing by request.

II. Purpose of Rulemaking

On October 28, 2004, the President signed the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108–375 (codified as amended in scattered sections of 42 U.S.C.). Division C, Subtitle E, of this Act includes amendments to the Energy Employees Occupational Illness Compensation Program Act (''EEOICPA'') 42 U.S.C. 7384–7385. Several of these amendments, under section 3166 (b), establish new statutory requirements under 42 U.S.C. 7384q and 7384*l*(14)(C)(ii), relevant to the Department of Health and Human Services (''HHS'') procedures established under 42 CFR part 83: ''Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000.'' These new requirements include the following: (1) Following the receipt by NIOSH of a petition for designation as members of the Cohort, NIOSH must submit ''a recommendation'' on that petition, including all documentation, to the Advisory Board on Radiation and Worker Health (''the Board'') within 180 days; (2) following the receipt by the Secretary of HHS (''the Secretary'') of a recommendation by the Board that the Secretary determine in the affirmative that a class meets the statutory criteria for addition to the Cohort, the Secretary must submit to Congress a determination as to whether or not the class meets these statutory criteria within 30 days; (3) if the Secretary does not submit this determination to Congress within 30 days, then it shall be deemed that the Secretary has submitted a report to Congress on the 31st day that designates, as an addition to the Cohort, the class recommended by the Board for addition to the Cohort and that provides the criteria used to support the designation; and (4) the period for Congress to review a report submitted by the Secretary to designate a class as an addition to the Cohort is reduced from 180 days to 30 days.

To implement these new requirements, HHS must amend 42 CFR part 83. As discussed below, some of the changes to the HHS rule are necessary legally for compliance with the new requirements and other changes are necessary to make implementation of the requirements feasible.

III. Summary of the Rule Changes

HHS has made changes to four sections of the Cohort rule to implement the new statutory requirements summarized above. These changes are described below in relation to the relevant statutory requirement.

A. 180-Day Deadline for NIOSH Recommendations

HHS has amended §§ 83.5 and 83.11 of the rule to enable NIOSH to meet the statutory requirement that NIOSH submit to the Board ''a recommendation'' on a petition within 180 days of its receipt (see 42 U.S.C. 7384q(c)(1)). The change to § 83.5 provides a definition of a petition, which was previously undefined in the rule, to specify that only submissions by qualified petitioners that meet the informational and procedural requirements of a petition under the rule will be considered to be ''petitions'' and hence will be covered by the 180-day deadline. This provision is necessary to clarify that the submission of a petition by an unqualified petitioner or the submission of an incomplete petition does not initiate the 180-day requirement. NIOSH experience with petitions demonstrates that it may take months to assist and consult with petitioners to help make incompletely submitted petitions as complete and accurate as possible. Starting the 180-day requirement after such preparatory work of the petitioners will help support the completion of the NIOSH evaluation of the petition within 180-day deadline. NIOSH will provide written notification to the submitter indicating the official date the submission qualified as a petition, thus starting the 180-day deadline for providing a recommendation to the Board.

The changes to § 83.11 support the distinction between an incomplete or non-qualifying submission and a petition, which is subject to the 180-day deadline. They include the substitution of the term ''submission'' for ''petition'' where appropriate.

HHS has also amended paragraph (c) of § 83.11 to reduce, from 30 to 7 calendar days, the time during which a petitioner can request a review of a proposed finding by NIOSH that the petition fails to meet the specified requirements. Seven days is sufficient time for the petitioner to make such a request and the 21 days potentially saved by such a change are necessary to support the completion of the NIOSH evaluation of the petition within 180 days, should the review determine that the petition satisfies the requirements of a petition. Consistent with this change, HHS has also amended paragraph (e) of § 83.11 to reduce, from 31 to 8 calendar days, the time at which a proposed finding by NIOSH under paragraph (b) becomes final if no review is conducted.

B. 30-Day Deadline for Determinations by HHS

HHS has amended §§ 83.16 and 83.17 and added a new § 83.18 of the rule to enable HHS to meet the statutory requirement that the Secretary submit to Congress determinations as to whether or not a class meets the statutory criteria for addition to the Cohort within 30 days of the Secretary receiving a recommendation by the Board to make an affirmative determination in this regard (see 42 U.S.C. 7384q(c)(2)(A)–(B)). The changes to § 83.16 remove the opportunity for petitioners to seek an administrative review of proposed decisions by the Director of NIOSH. This change is being made because it would not be possible for the Director of NIOSH to issue a proposed decision, for petitioners to seek and HHS to provide an administrative review of the proposed decision, and for the Secretary to issue a final decision, all within the 30-day congressional report deadline.

HHS has added provisions under a new § 83.18 (the existing § 83.18 is redesignated as § 83.19) to provide petitioners with the opportunity to seek administrative reviews of final decisions by the Secretary, since petitioners will no longer have the opportunity to seek administrative reviews of proposed decisions. This new administrative review opportunity is essentially identical to that provided previously under § 83.16 for proposed decisions.

Under § 83.16(c) and § 83.17(b), HHS has provided for the Secretary to submit to Congress within 30 days the determinations required under the statutory 30-day deadline.

C. Computation of Time Periods

HHS has added a new paragraph (c) ''Computation of Time Periods'' under § 83.5 to specify how HHS and NIOSH will count the time periods for the various deadlines included in the rule.

IV. Regulatory Procedures

HHS follows the Administrative Procedure Act (''PA'') rulemaking procedures specified in 5 U.S.C. 553 for the development of its regulations. In most circumstances, the APA requires a public notice and comment period and consideration of the submitted comments prior to promulgation of a final rule having the effect of law. However, the APA provides for exceptions to its notice-and-comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. In the case of this interim final rule, HHS has determined that under 5 U.S.C. 553(b)(B), good cause exists for waiving the notice and comment procedures. For these same reasons, HHS has also determined that good cause exists under 5 U.S.C. 553(d)(3) for these interim rules to become effective immediately.

A number of courts have considered the circumstances under which an agency can conclude that good cause exists for issuing regulations without prior notice and comment. In *American Transfer & Storage Co., et al.* v. *Interstate Commerce Commission,* 719 F.2d 1283, 1295 (5th Cir. 1983), the Fifth Circuit described the impracticability test as requiring ''analysis in practical terms of the particular statutory-agency setting and the reasons why agency action could not await notice and comment.'' Similarly, the Seventh Circuit noted that the ''legislative history of the impracticability standard reveals that Congress intended this exemption to operate when the regular course of rulemaking procedure would interfere with the agency's ability to perform its functions with the time constraints imposed by Congress.'' *United States Steel Corporation* v. *United States Environmental Protection Agency,* 605 F.2d 283, 287 (7th Cir. 1979).

Precisely such an ''analysis in practical terms'' demonstrates that in this case, HHS cannot await the process of notice and comment to implement the changes to 42 CFR part 83 set forth here on an interim final basis. As discussed above, the amendments to EEOICPA addressed by this rulemaking directly conflict, legally and practically, with the existing provisions of the existing provisions of the HHS rule. The potential consequences of these conflicts are that HHS would have to violate the legal requirements of its rule to uphold the statutory requirements of the EEOICPA amendments.

Specifically, under the new 30-day statutory deadline for producing HHS determinations on petitions that the Board recommends receive affirmative determinations (42 U.S.C. 7384q(c)(2)(A)), HHS would not be able to produce a proposed decision, provide petitioners with the opportunity to contest the proposed decision, and provide an administrative review of such a challenge prior to issuing a final decision with respect to the determination, as previously provided for under § 83.16(a)–(c) of the rule. Similarly, the reduction in the statutorily-set congressional review period for designations by the Secretary of additions to the Cohort, from 180 days to 30 days (42 U.S.C. 7384l(14)(C)(ii)), conflicts with § 83.17(b) of the rule, which mandates a period of 180 days before a designation by the Secretary would become effective.

If HHS were to issue a notice of proposed rulemaking proposing changes to the Cohort procedures, HHS would have to violate either the new statutory requirements or its Cohort regulations for each Cohort petition that is considered, until a final regulation could be issued. Hence, HHS believes good cause exists to waive the notice and comment procedures under the APA for the promulgation of this interim final rule.

Although HHS is adopting this rule on an interim final basis, it requests public comment on this rule. After full consideration of public comments, HHS will publish a final rule with any necessary changes. HHS expects to issue a final rule within six months of the publication of this interim final rule.

V. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the agency must determine whether a regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the executive order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the executive order.

This rule is being treated as a ''significant regulatory action'' within the meaning of the executive order because it meets the criterion of Section 3(f)(4) in that it raises novel or legal policy issues arising out of the legal mandate established by EEOICPA. It amends current procedures by which the Secretary considers petitions to add classes of employees to the Cohort to comport with new statutory deadlines (see 42 U.S.C. 7384q(c)(2)(A) and 42 U.S.C. 7384l(14)(C)(ii)). The amendment also includes the provision of the opportunity for certain affected parties to obtain administrative reviews of final agency actions, versus proposed agency actions. The revisions do not, however, affect the financial cost to the Federal Government of responding to these petitions nor the scientific and policy bases for making decisions on such petitions.

The rule carefully explains the manner in which the procedures are consistent with the mandates of 42 U.S.C. 7384q and 7384l(14)(C)(ii) and implements the detailed requirements of these sections. The rule does not interfere with State, local, and tribal governments in the exercise of their governmental functions.

The rule is not considered economically significant, as defined in § 3(f)(1) of the Executive Order 12866. As discussed above, it does not affect the financial cost to the Federal Government of responding to these petitions nor the scientific and policy bases for making decisions on such petitions. Furthermore, it has a subordinate role in the adjudication of claims under EEOICPA, serving as one element of an adjudication process administered by the Department of Labor (''OL'') under 20 CFR parts 1 and 30. DOL has determined that its rule fulfills the requirements of Executive Order 12866 and provides estimates of the aggregate cost of benefits and administrative expenses of implementing EEOICPA under its rule (see 70 FR 33590, June 8, 2005). OMB has reviewed this rule for consistency with the President's priorities and the principles set forth in Executive Order 12866.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et. seq.,* requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations. HHS certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. The rule affects only HHS, DOL, the Department of Energy, and certain individuals covered by EEOICPA. Therefore, a regulatory flexibility analysis as provided for under RFA is not required.

C. What Are the Paperwork and Other Information Collection Requirements (Subject to the Paperwork Reduction Act) Imposed Under This Rule?

The Paperwork Reduction Act (''PRA'') 44 U.S.C. 3501 *et. seq.,* requires an agency to invite public comment on and to obtain OMB approval of any regulation that requires ten or more people to report information to the agency or to keep certain records. This rule, which makes limited changes to 42 CFR part 83, does not contain any information collection requirements. Thus, HHS has determined that the PRA does not apply to this rule.

D. Small Business Regulatory Enforcement Fairness Act

As required by Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et. seq.*), HHS will report to Congress promulgation of this rule prior to its taking effect. The report will state that HHS has concluded that this rule is not a ''major rule'' because it is not likely to result in an annual effect on the economy of $100 million or more. However, this rule has a subordinate role in the adjudication of claims under EEOICPA, serving as one element of an adjudication process administered by DOL under 20 CFR parts 1 and 30. DOL has determined that its rule is a ''major rule'' because it will likely result in an annual effect on the economy of $100 million or more.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et. seq.*) directs agencies to assess the effects of federal regulatory actions on State, local, and tribal governments, and the private sector ''other than to the extent that such regulations incorporate requirements specifically set forth in law.'' For purposes of the Unfunded Mandates Reform Act, this rule does not include any federal mandate that may result in increased annual expenditures in excess of $100 million by State, local or tribal governments in the aggregate, or by the private sector.

F. Executive Order 12988 (Civil Justice)

This rule has been drafted and reviewed in accordance with Executive Order 12988 on Civil Justice Reform and will not unduly burden the federal court system. HHS adverse decisions may be reviewed in United States District Courts pursuant to the APA. HHS has attempted to minimize that burden by providing petitioners an opportunity to seek administrative review of adverse decisions. HHS has provided a clear legal standard it will apply in considering petitions. This rule has been reviewed carefully to eliminate drafting errors and ambiguities.

G. Executive Order 13132 (Federalism)

HHS has reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The rule does not ''have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.''

H. Executive Order 13045 (Protection of Children From Environmental, Health Risks and Safety Risks)

In accordance with Executive Order 13045, HHS has evaluated the environmental health and safety effects of this rule on children. HHS has determined that the rule would have no effect on children.

I. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

In accordance with Executive Order 13211, HHS has evaluated the effects of this rule on energy supply, distribution or use, and has determined that the rule will not have a significant adverse effect on them.

J. Effective Date

The Secretary has determined, pursuant to 5 U.S.C. 553(d)(3), that there is good cause for this rule to be effective immediately to eliminate legal inconsistencies between new statutory requirements under 42 U.S.C. 7384l and 7384q and regulatory requirements under 42 CFR part 83 and to make the implementation of the new statutory requirements feasible.

List of Subjects in 42 CFR Part 83

Government employees, Occupational safety and health, Nuclear materials, Radiation protection, Radioactive materials, Workers' compensation.

Text of the Rule

■ For the reasons discussed in the preamble, HHS amends 42 CFR part 83 to read as follows:

PART 83—[AMENDED]

■ 1–2. The authority citation for part 83 continues to read as follows:

Authority: 42 U.S.C. 7384q; E.O. 13179, 65 FR 77487, 3 CFR, 2000 Comp., p. 321.

Subpart B—Definitions

■ 3. Amend § 83.5 by redesignating paragraphs (j) through (n) as (l) through (p), respectively and by redesignating paragraphs (c) through (i) as (d) through (j), respectively, and by adding new paragraphs (c) and (k) to read as follows:

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

* * * * *

(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).

* * * * *

(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.

* * * * *

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

■ 4. Revise § 83.11 to read as follows:

§ 83.11 What happens to petition submissions that do not satisfy all relevant requirements under §§ 83.7 through 83.9?

(a) NIOSH will notify the petitioner(s) of any requirement that is not met by the submission, assist the petitioner(s) with guidance in developing relevant information, and provide 30 calendar days for the petitioner(s) to revise the submission accordingly.

(b) After 30 calendar days from the date of notification under paragraph (a) of this section, NIOSH will notify any petitioner(s) whose submission remains unsatisfactory of the proposed finding of NIOSH that the submission fails to meet the specified requirements and the basis for this finding.

(c) A petitioner may request in writing a review of a proposed finding within 7 calendar days of notification under paragraph (b) of this section. Petitioners must specify why the proposed finding should be reversed, based on the petition requirements and on the information that the petitioners had already submitted. The request may not include any new information or documentation that was not included in the completed submission. If the petitioner obtains new information within this 7 day period, the petitioner should provide it to NIOSH. NIOSH will consider this new information as a revision of the submission under paragraph (a) of this section.

(d) Three HHS personnel, appointed by the Director of NIOSH, who were not involved in developing the proposed finding will complete reviews within 30 work days of the request for such a review. The Director of NIOSH will consider the results of the review and then make a final decision as to whether the submission satisfies the requirements for a petition.

(e) Proposed findings established by NIOSH under paragraph (b) of this section will become final decisions in 8 calendar days if not reviewed under paragraph (d) of this section.

(f) Based on new information, NIOSH may, at its discretion, reconsider a decision that a submission does not satisfy the requirements for a petition.

■ 5. Revise § 83.16 to read as follows:

§ 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.

■ 6. Amend § 83.17 by redesignating paragraphs (b), (c), and (d), as (c), (d), and (e), respectively, and by adding new paragraph (b), and revising newly redesignated paragraphs (c) and (e) to read as follows:

§ 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?

* * * * *

(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.

(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.

* * * * *

(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**.

§ 83.18 [Redesignated as § 83.19]

■ 7. Redesignate § 83.18 as § 83.19.

■ 8. Add a new § 83.18 to read as follows:

§ 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.

[5] Under 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.

(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**.

(e) A new designation of the Secretary under this section will take effect 30 calendar days after the date on which the report of the Secretary under paragraph (d) of this section is submitted to Congress, unless Congress takes an action that reverses or expedites the designation. Such new designations and related congressional actions will be further reported by the Secretary pursuant to paragraphs (d) and (e) of § 83.17.

Dated: September 13, 2005.

Michael O. Leavitt,

Secretary, Department of Health and Human Services.

[FR Doc. 05–24358 Filed 12–21–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

RIN 1004–AD80

Onshore Oil and Gas Operations; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correcting amendment.

SUMMARY: This document contains a correcting amendment to a final rule reorganizing regulations of the Bureau of Land Management (BLM) relating to onshore oil and gas operations, which was published in the **Federal Register** of Friday, February 20, 1987 (52 FR 5384). The amendment corrects an error in a cross-reference.

DATES: Effective date December 22, 2005.

FOR FURTHER INFORMATION CONTACT: Ted Hudson, 202–452–5042. Individuals who use a telecommunications device for the deaf (TDD) may contact him individually through the Federal Information Relay Service at 1–800–877–8339, 24 hours a day, seven days a week.

SUPPLEMENTARY INFORMATION:

Background

The regulations that are the subject of this correcting amendment have been in effect for more than 20 years. They pertain specifically to onshore oil and gas operations programs, and particularly to the penalty provision for knowingly submitting false, misleading, or inaccurate reports or other information required by the regulations, taking oil or gas from a Federal or Indian lease without authority, or receiving such oil or gas knowing or having reason to know it was stolen or unlawfully diverted or removed from a Federal or Indian lease site.

Need for Correction

When a final rule redesignated and revised the pertinent sections in 1987, at 52 FR 5394, it created an error in a cross-reference. This error is misleading and needs clarification. The provision assigns a criminal penalty for an act for which a civil penalty is prescribed in another section, referring to that other section by number. However, the section and paragraph number stated, section 3163.4–1(b)(6), does not exist in the current regulations, having been redesignated as section 3163.2(f) in the 1987 rule. The 1987 rule failed to adjust the cross-reference, which now needs to be corrected to eliminate confusion.

List of Subjects in 43 CFR Part 3160

Government contracts; Indians—lands; Mineral royalties; Oil and gas exploration; Penalties, Public lands—mineral resources; Surety bonds.

■ Accordingly, 43 CFR part 3160 is corrected by making the following amendment:

PART 3160—ONSHORE OIL AND GAS OPERATIONS

■ 1. The authority citation for part 3160 continues to read as follows:

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; and 43 U.S.C. 1732(b), 1733, and 1740.

Subpart 3163—Noncompliance, Assessments, and Penalties

■ 2. Revise section 3163.3 to read as follows:

§ 3163.3 Criminal penalties.

Any person who commits an act for which a civil penalty is provided in § 3163.2(f) shall, upon conviction, be punished by a fine of not more than $50,000, or by imprisonment for not more than 2 years, or both.

Dated: December 7, 2005.

Chad Calvert,

Acting Assistant Secretary of the Interior.

[FR Doc. 05–24371 Filed 12–21–05; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 4

[USCG–2001–8773]

RIN 1625–AA27 (Formerly RIN 2115–AG07)

Marine Casualties and Investigations; Chemical Testing Following Serious Marine Incidents

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: This final rule revises Coast Guard requirements for alcohol testing after a serious marine incident to ensure that mariners or their employees involved in a serious marine incident are tested for alcohol use within 2 hours of the occurrence of the incident as required under the Coast Guard Authorization Act of 1998. This final rule also requires that most commercial vessels have alcohol testing devices on board, and authorizes the use of saliva as an acceptable specimen for alcohol testing. This rule also makes some minor procedural changes, including a 32-hour time limit for collecting specimens for drug testing following a serious marine incident.

DATES: This final rule is effective June 20, 2006.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2001–8773 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except