

§ 83.17

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.

(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 peti-

⁴See 42 U.S.C. 7384l(14)(C)(ii).

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.

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tioner(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.

(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.

[70 FR 75953, Dec. 22, 2005]

§83.19 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 esti-

mate the radiation doses incurred by individual members of the class through dose reconstructions conducted under the requirements of 42 CFR part 82.

(b) Before canceling 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(c)(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 his final decision that added the class to the Cohort, based upon a review by the Board of the NIOSH analysis under paragraph (b)(2) of this section and any other relevant information considered by the Board;

(4) An opportunity for members of the class to contest a proposed decision 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.

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

**PART 84—APPROVAL OF
RESPIRATORY PROTECTIVE DEVICES**

Subpart A—General Provisions

Sec.
84.1 Purpose.