

HHS Determination Concerning a Petition to Add Members to the
Special Exposure Cohort
under the
Energy Employees Occupational Illness Compensation Program Act of 2000

Determination Concerning a Petition for Employees from
Brookhaven National Laboratory
Upton, New York



I. Determination

I, Kathleen Sebelius, Secretary of the Department of Health and Human Services, have determined that the employees defined in Section II of this report do not meet the statutory criteria for addition to the Special Exposure Cohort (SEC), as authorized under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. § 7384q.

[Signature on File]
Kathleen Sebelius

June 7, 2013
Date

II. Employee Class Definition

All employees of the Department of Energy, its predecessor agencies, and its contractors and subcontractors who worked at Brookhaven National Laboratory in Upton, New York, from January 1, 1994, to December 31, 2007.

III. Decision Criteria and Recommendations

Pursuant to 42 U.S.C. § 7384q, to designate a class for addition to the SEC, the Secretary must determine, upon recommendation of the Advisory Board on Radiation and Worker Health (Board), that:

- (1) it is not feasible to estimate with sufficient accuracy the radiation dose that the class received; and
- (2) there is a reasonable likelihood that such radiation dose may have endangered the health of members of the class.

The SEC final rule states in 42 C.F.R. § 83.13(c)(1) that it is feasible in two situations to estimate the radiation dose that the class received with sufficient accuracy. First, the rule states that radiation doses may be estimated with sufficient accuracy if the National Institute for Occupational Safety and Health (NIOSH) has established that it has access to sufficient information to estimate the maximum radiation dose for every type of cancer for which radiation doses are reconstructed that could have been incurred under plausible circumstances by any member of the class. Alternatively, radiation doses may be estimated with sufficient accuracy if NIOSH has established that it has access to sufficient information to estimate the radiation doses of members of the class more precisely than a maximum dose estimate. NIOSH determined that it has access to sufficient site-specific information to reconstruct radiation doses incurred by the class of employees covered by this report with sufficient accuracy.

In a letter received by the Secretary on May 8, 2013, the Board, pursuant to 42 U.S.C. § 7384q, agreed with the following NIOSH findings, effectively advising the Secretary that radiation dose can be reconstructed with sufficient accuracy for employees at Brookhaven National Laboratory (BNL) in Upton, New York, in accordance with provisions of EEOICPA and the SEC final rule.

IV. Determination Findings

Feasibility of Estimating Radiation Doses with Sufficient Accuracy

The Secretary established the feasibility determination for the class of employees covered by this report based upon the findings summarized below.

- Principal sources of internal and external radiation exposures for members of the proposed class included exposures to a wide array of radionuclides, which could have occurred during the performance of reactor or accelerator operations, or the performance of research and development activities at the site.
- NIOSH has access to bioassay results or sufficient area monitoring to support personnel internal exposure assessments associated with all radionuclides at BNL from January 1, 1994, through December 31, 2007.
- NIOSH finds that it is feasible to estimate, with sufficient accuracy, the total internal dose for workers at BNL during the period from January 1, 1994, through December 31, 2007.
- NIOSH has access to sufficient personnel monitoring and workplace monitoring data to bound potential external exposures for workers at BNL during the period from January 1, 1947, through December 31, 2007. NIOSH also finds it is feasible to reconstruct occupational medical dose for this period. Consequently, NIOSH finds that it is feasible to estimate, with sufficient accuracy, the total external dose and occupational medical dose for the class of employees covered by this evaluation.
- In sum, NIOSH determined that it has access to sufficient site-specific information to either (1) estimate the maximum internal and external radiation dose for every type of cancer for which radiation doses are reconstructed that could have been incurred under plausible circumstances by any workers at BNL for the time period from January 1, 1994, through December 31, 2007; or (2) estimate the internal and external radiation doses to workers at BNL for the time period from January 1, 1994, through December 31, 2007, more precisely than a maximum dose estimate.
- The Board concurred with NIOSH's determination that that dose reconstruction is feasible for the class of BNL workers covered by Petition 00113 for the period from January 1, 1994, to December 31, 2007, and therefore should not be added to the SEC.

Health Endangerment

Because the Secretary established that it is feasible to estimate with sufficient accuracy the radiation doses encountered by employees at the BNL in Upton, New York, as specified in this class, a determination of health endangerment is not required.

V. Effect of the Determination

Members of the class of employees covered by this determination and their survivors continue to be eligible to submit claims for compensation under EEOICPA. As required for cancer claims covering other DOE and Atomic Weapons Employer employees (or Atomic Weapons Employees) not included in the SEC, qualified cancer claims under Part B of EEOICPA for members of this class will be adjudicated by the Department of Labor, in part on the basis of radiation dose reconstructions which will be conducted by NIOSH.

VI. Administrative Review of Determination

The determination provided in this report may be subject to an administrative review within HHS, pursuant to 42 C.F.R. § 83.18(a). On the basis of such a review, if the Secretary decides to designate the class of employees covered by this determination, in part or in whole, as an addition to the SEC, the Secretary would transmit a new report to Congress providing the designation and the criteria and findings on which the decision was based.