HHS Designation of Additional Members of the Special Exposure Cohort

under the

Energy Employees Occupational Illness Compensation Program Act

---

Designating a Class of Employees from

Pacific Proving Grounds
Enewetak Atoll

I. Designation

I, Michael O. Leavitt, Secretary of Health and Human Services ("the Secretary"), designate the class of employees defined in Section II of this report 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.

JUN 2 6 2006

Date

Michael O. Leavitt

II. Employee Class Definition

Department of Energy (DOE) employees or DOE contractor or subcontractor employees who worked at the Pacific Proving Grounds (PPG) from 1946 through 1962 for a number of work days aggregating at least 250 work days, either solely under this employment or in combination with work days within the parameters (excluding aggregate work day requirements) established for other classes of employees included in the SEC, and who were monitored or should have been monitored.

III. Designation Criteria and Recommendations

Pursuant to 42 U.S.C. § 7384q, for the class defined in Section II of this report, the Secretary has determined, and the Advisory Board on Radiation and Worker Health ("the Board") has recommended, 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 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.

The Board, pursuant to 42 U.S.C. § 7384q, advised the Secretary to designate the class as an addition to the SEC in a letter dated May 24, 2006 and received by the Secretary on May 25, 2006.

IV. Designation Findings

Feasibility of Estimating Radiation Doses with Sufficient Accuracy

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

(1) The National Institute for Occupational Safety and Health (NIOSH) finds evidence that sources of internal exposure existed as the result of fallout from nuclear detonations at PPG.

(2) NIOSH lacks access to sufficient bioassay or area monitoring data to estimate doses associated with potential inhalation of radionuclides at PPG.

(3) The class includes personnel that NIOSH has identified to have a plausible scenario for ingestion or inhalation of radiological particles in the air due to the re-suspension of fallout and a lack of internal monitoring data.

(4) In the 2003 National Research Council (NRC) review of the Department of Defense's Defense Threat Reduction Agency's Nuclear Test Personnel Review (NTPR) program, the NRC identified issues that questioned the ability to establish an upper-bound dose reconstruction.

(5) Pursuant to 42 C.F.R. § 83.13(c)(1), NIOSH determined that there is insufficient information either 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, or to estimate the radiation doses of members of the class more precisely than a maximum dose estimate.

(6) NIOSH determined that it is possible to use film badge monitoring data or radiation surveys with field instruments to determine external dose. If no acceptable film badge data are available, maximum credible exposure scenarios could be developed for individuals given the roles, responsibilities, and locations associated with the assigned task units and exposure rate information for various work assignments. Occupational medical exposures may also be estimated.

Health Endangerment

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

(1) Pursuant to 42 C.F.R. § 83.13(c)(3), NIOSH established that there is a reasonable likelihood that such radiation doses may have endangered the health of members of the class. Pursuant to 42 C.F.R. § 83.13(c)(3)(ii), NIOSH specified a minimum duration of employment to satisfy this health endangerment criterion as "having been employed for a number of work days aggregating at least 250 work days within the parameters established for this class or in combination with work days within the parameters (excluding aggregate work day requirements) established for one or more other classes of employees in the Cohort."

(2) NIOSH determined that internal doses may have endangered the health of some members of the class because there was likely to have been some inhalation exposure to plutonium and other alpha-emitting radionuclides and there is a lack of reliable information to establish plausible maximum limits to this exposure.

(3) The evidence indicates that some workers in the class may have accumulated substantial chronic dose as a result of episodic occupational exposure to radionuclides or sources.

(4) NIOSH did not identify any evidence from the petitioners or from other resources that would establish that the class was exposed to radiation during a discrete incident likely to have involved exceptionally high level exposures, such as a nuclear criticality incident, as defined under 42 C.F.R. § 83.13(c)(3)(i).

(5) The Board concurred with the finding of NIOSH that the health of the class may have been endangered and defined the class according to the 250-work day requirement specified under 42 C.F.R. § 83.13(c)(3)(ii). The Board continues to evaluate the potential of discrete incidents that could have involved exceptionally high exposures to radiation and issues related to workers who may not meet the 250-work day requirement described above, and the Board may make additional future recommendations accordingly.

V. Effect and Effective Date of Designation

The Secretary submits this report on designation of one additional class to the SEC for review by Congress, pursuant to 42 U.S.C. §§ 7384*l*(14)(C)(ii) and 7384q(c)(2)(A), as amended by the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Pub. L. No. 108-375 (codified as amended in scattered sections of 42 U.S.C.). Pursuant to 42 U.S.C. § 7384*l*(14)(C)(ii), as amended by the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Pub. L. No. 108-375 (codified as amended in scattered sections of 42 U.S.C.), the designation in this report will become effective 30 days after the date of this report's submission to Congress "unless Congress otherwise provides."

VI. Administrative Review of Designation

The health endangerment determination of the designation 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 expand the class of employees covered by this designation, the Secretary would transmit a supplementary report to Congress providing the expanded employee class definition and the criteria and findings on which the decision was based.