

U.S. Department of Health and Human Services 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 Certain Employees from
Westinghouse Electric Corporation
Bloomfield, New Jersey



I. Determination

I, Sylvia M. Burwell, Secretary of Health and Human Services (Secretary) (HHS), 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.

December 21, 2016
Date

[Signature on File]
Sylvia M. Burwell

II. Employee Class Definition

All Atomic Weapons Employees who worked in any area at the Westinghouse Electric Corporation in Bloomfield, New Jersey, during the time periods from January 1, 1950, through January 31, 1958; June 1, 1958, through May 31, 1959; and July 1, 1959, through April 30, 2000.

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.

In a letter received by the Secretary on October 24, 2016, the Board, pursuant to 42 U.S.C. § 7384q, agreed with the following NIOSH findings, effectively advising the Secretary that radiation doses can be reconstructed with sufficient accuracy for certain employees at the Westinghouse Electric Corporation (WEC) 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:

- WEC has three distinct residual contamination periods, with each period starting at the end of the WEC operational periods. The first residual period began on January 1, 1950, and ended on January 31, 1958; the second residual period began on June 1, 1958, and ended on May 31, 1959; and the third residual period began on July 1, 1959, and ended on April 30, 2000. NIOSH determined that April 30, 2000, was the last date for applicable EEOICPA program exposures at WEC.
- The principal sources of internal and external radiation doses at WEC during the three residual contamination periods were inhalation and ingestion of uranium and thorium dust.
- NIOSH obtained site-specific, air monitoring data that allow it to reconstruct internal radiation doses from residual contamination by using existing dose reconstruction methods documented in the relevant NIOSH technical basis documents.
- NIOSH proposed to reconstruct external radiation doses by using the air monitoring data, and applying methodologies described in the relevant NIOSH technical basis documents, and the Environmental Protection Agency's Federal Guidance Report No. 12, *External Exposure to Radionuclides in Air, Water, and Soil*, for the residual contamination periods.
- Because there was no work for the Atomic Energy Commission during the residual contamination periods, any medical screenings of workers, and the resulting radiation doses received by those workers, during the residual contamination periods would not be covered occupational exposures. Therefore, NIOSH concluded that it is not applicable to reconstruct occupational medical dose for WEC workers during the residual contamination periods.
- In Sum, NIOSH determined that it has access to sufficient information to either: (1) estimate the maximum radiation dose, for every type of cancer for which radiation doses are reconstructed, that could have been incurred in plausible circumstances; or (2) estimate radiation doses more precisely than an estimate of maximum dose for workers at WEC for the time periods from January 1, 1950, through January 31, 1958; June 1, 1958, through May 31, 1959; and July 1, 1959, through April 30, 2000. Therefore, it is feasible to reconstruct radiation doses with sufficient accuracy during the residual contamination periods.
- The Board concurred with NIOSH's determination that dose reconstruction is feasible for the evaluated class of WEC workers during the periods from January 1, 1950, through January 31, 1958; June 1, 1958, through May 31, 1959; and July 1, 1959, through April 30, 2000, and therefore the class 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 WEC employees 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 Department of Energy 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 will transmit a new report to Congress providing the designation and the criteria and findings on which the decision was based.