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

Wah Chang Facility
Albany, Oregon

I.   Determination

I, Kathleen Sebelius, Secretary of Health and Human Services (Secretary), 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.

_____June 3, 2011_____   _[Signature on file]_____

Date   Kathleen Sebelius

II.   Employee Class Definition

All Atomic Weapons Employees who worked in any building at the
Wah Chang facility in Albany, Oregon for the entire residual
contamination period from January 1, 1973 through October 31, 2009.

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 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 March 30, 2011, 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 certain Wah Chang employees in accordance with provisions of EEOICPA and the SEC final rule.

IV.   Determination Findings

<u>Feasibility of Estimating Radiation Doses with Sufficient Accuracy</u>

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

- NIOSH determined that workers during the residual period may have received internal and external exposure to residual uranium contamination from the operational period.

- NIOSH found that source term data are sufficient to support assessing internal uranium exposures for Wah Chang facility workers during the residual contamination period.

- Although NIOSH identified issues impacting its ability to bound internal doses for the evaluated class during the operational period from January 1, 1971 through December 31, 1972, NIOSH determined that sufficient information and data exist to support bounding personnel internal doses for the entire residual contamination period from January 1, 1973 through October 31, 2009.

- NIOSH determined that source term data, coupled with the available NIOSH dose reconstruction methods, are sufficient to support assessing external uranium exposures for Wah Chang facility workers during the residual contamination period.

- Although NIOSH identified issues impacting its ability to bound external doses for the evaluated class during the operational period from January 1, 1971 through December 31, 1972, NIOSH does believe that sufficient information and data exist to support bounding personnel external doses for the entire residual contamination period from January 1, 1973 through October 31, 2009.

- NIOSH determined that the reconstruction of internal and external doses is feasible for the residual contamination period from January 1, 1973 through October 31, 2009.

- NIOSH determined that it has access to sufficient Wah Chang facility 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 member of the evaluated class; or (2) estimate the internal and external radiation doses to members of the evaluated class more precisely than a maximum dose estimate.

- The Board concurred with the NIOSH findings.

<u>Health Endangerment</u>

Because the Secretary established that it is feasible to estimate with sufficient accuracy the radiation doses encountered by Wah Chang facility 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 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.