

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
Baker-Perkins Company
Saginaw, Michigan



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.

Date

Kathleen Sebelius

II. Employee Class Definition

All AWE employees who performed Atomic Energy Commission work at Baker Perkins Company, in Saginaw Michigan, from May 14, 1956 through May 18, 1956.

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 August 31, 2009, 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 Baker-Perkins Company employees in accordance with provisions of EEOICPA and the SEC final rule.

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 based upon the findings summarized below.

- NIOSH found that the available monitoring records, process descriptions, and source-term data are adequate to complete dose reconstruction with sufficient accuracy for the evaluated class of employees.
- NIOSH determined that actual air sample data, which includes breathing zone data collected during the test operations with the Ko-Kneaders, can be used to bound internal dose from uranium.
- NIOSH determined that it has access to sufficient information to bound external dose for all members of the evaluated class.
- Although no medical records have been identified specific to the Baker-Perkins Company, the dose associated with medical X-ray exams, required as a condition of employment, can be assessed, and therefore NIOSH determined that it can bound occupational medical dose for the evaluated class.
- NIOSH determined that it has access to sufficient Baker-Perkins Company information to either (1) estimate the maximum 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 external radiation doses to members of the evaluated class more precisely than a maximum dose estimate.

In its letter to the Secretary, the Board concurred with these NIOSH findings.

Health Endangerment

Because the Secretary established that it is feasible to estimate with sufficient accuracy the radiation doses encountered by Baker-Perkins Company 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 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 Designation

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.