



THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

NOV 15 2005

The Honorable Richard B. Cheney
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

I am pleased to transmit to Congress the enclosed report on the status of petitions for designating classes of employees as members of the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), as required by the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375). Your continued support in this critical area of occupational safety and health is greatly appreciated.

Sincerely,

A handwritten signature in black ink that reads "Michael O. Leavitt".

Michael O. Leavitt

Enclosure



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The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515

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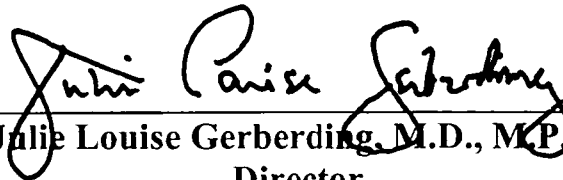
Michael O. Leavitt

Enclosure

REPORT TO CONGRESS

**Status of Petitions for Designating Classes of Employees as
Members of the Special Cohort**

Centers for Disease Control and Prevention

A handwritten signature in black ink, reading "Julie Louise Gerberding". The signature is written in a cursive style with a large initial "J".

Julie Louise Gerberding, M.D., M.P.H.

Director

Centers for Disease Control and Prevention

September 2005

Executive Summary

This report responds to Section 3167(b) of 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.), which required the National Institute for Occupational Safety and Health (NIOSH) to report on the status of petitions for designating classes of employees as members of the Special Exposure Cohort ("the Cohort") under the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. § 7384-7385) that were filed not later than October 1, 2004. The report includes a summary of the procedures for designating classes of employees as members of the Cohort, information on the current status of each petition, an estimate of the time needed to complete the consideration of each petition, and a discussion of actions or circumstances that could preclude the Advisory Board on Radiation and Worker Health ("the Board") from acting upon a petition before the end of fiscal year 2005 (September 30, 2005).

Eleven petitions were filed with NIOSH on or before October 1, 2004. Five of these petitions (representing two sites) qualified for evaluation. NIOSH evaluated the qualified petitions and submitted reports to the Board at February, April, July, and August Board meetings. The Board completed actions on all the petitions on September 15, 2005. According to the procedures established by regulation for adding classes to the Cohort, both the Board and NIOSH are to make recommendations to the Secretary of the Department of Health and Human Services (HHS), who then makes a final decision. If HHS decides to designate the addition of a class to the Cohort, HHS must submit a report to Congress. The designation takes effect 30 days after the designation report is submitted to Congress, unless Congress advises otherwise.

I. Introduction

The Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. § 7384-7385, authorized a compensation program to provide a lump sum payment of \$150,000 and prospective medical benefits to qualified covered employees suffering from designated illnesses incurred as a result of their exposure to radiation, beryllium, or silica while in the performance of duty for the Department of Energy (DOE) and certain of its vendors, contractors, and subcontractors. This legislation also provided for payment of compensation for certain qualified survivors of these covered employees. The Department of Labor (DOL) has primary responsibility for administering this compensation program, assisted by the Department of Health and Human Services (HHS), DOE, and the Department of Justice. DOL began accepting claims for compensation under EEOICPA in July 2001.

EEOICPA required the establishment of a radiation dose reconstruction program to estimate the radiation doses of most cancer claimants. These dose estimates are used by DOL to determine if the employee's cancer was at least as likely as not related to performance of his or her duty at a DOE facility or an Atomic Weapons Employer (AWE) facility. Within HHS, the Centers for Disease Control and Prevention's National Institute for Occupational Safety and Health (NIOSH) conducts the radiation dose reconstructions for cancer claims for which EEOICPA requires dose reconstructions. NIOSH develops these dose reconstructions based on information obtained from DOE, DOL, EEOICPA claimants, and other sources. Once completed, NIOSH transmits the dose reconstruction to DOL for use in making a final decision on the claim.

EEOICPA defined a category of employees as the Special Exposure Cohort ("the Cohort"), under 42 U.S.C. § 7384l(14). As defined by Congress, the classes of employees that comprise this initial Cohort include DOE employees, DOE contractor or subcontractor employees who were (1) employed an aggregate of at least 250 work days before February 1, 1992, at a gaseous diffusion plant in Paducah, Kentucky, Portsmouth, Ohio, or Oak Ridge, Tennessee, and who were monitored using dosimeter badges or worked in a job that had exposures comparable to a job that is or was monitored using dosimeter badges; or (2) employees of DOE or DOE contractors or subcontractors employed before January 1, 1974, on Amchitka Island, Alaska and exposed to ionizing radiation in the performance of duty related to the Long Shot, Milrow, or Cannikin underground nuclear tests. Employees included in the Cohort who incur a specified cancer¹ qualify for compensation without the requirement that DOL evaluate the probability that the cancer was related to radiation doses received during the performance of duty for nuclear weapons programs of DOE, as is required for other cancer claims covered by EEOICPA.

EEOICPA authorized the President to designate additional classes of employees to be included in the Cohort, while providing Congress with the opportunity to act on these

¹ Specified cancers are a limited group of cancers that EEOICPA specifies are compensable under provisions governing compensation for members of the Cohort. Although the list of specified cancers is determined by statute, the list can also be found at 42 C.F.R. § 83.5

decisions. On December 7, 2000, the President issued Executive Order 13179, which delegated his authority in this matter to the Secretary of HHS ("the Secretary"). On May 28, 2004, HHS issued a final rule to establish the procedures by which the Secretary will determine whether to add new classes of employees from DOE and AWE facilities to the Cohort (42 C.F.R. pt. 83).

Section 3167 of 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.) provides as follows:

Sec. 3167. EMERGENCY SPECIAL EXPOSURE COHORT MEETING AND REPORT

(a) MEETING OF ADVISORY BOARD. --

(1) For purposes of carrying out section 3626 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384q), the President shall require the Advisory Board on Radiation and Worker Health to convene a meeting of the Board at which the Board considers each petition for designation as members of the Special Exposure Cohort –

(A) that was filed not later than October 1, 2004; and

(B) the evaluation of which (by the Director of the National Institute of (sic) Occupational Safety and Health) was completed more than 10 days before a previously scheduled meeting of the Board.

(2) Effective March 1, 2005, this subsection shall have no further force or effect.

(b) REPORT TO CONGRESS. – Not later than March 15, 2005, the President shall submit to Congress a report on the status of the petitions referred to in subsection (a). The report shall include, for each petition, the estimated time to complete the consideration of that petition and any anticipated actions or circumstances that could preclude the Board from acting upon that petition before the end of fiscal year 2005.

This report summarizes the procedures for designating classes of employees as members of the Cohort under EEOICPA, provides status information on the petitions filed not later than October 1, 2004, estimates the time required to complete the consideration of each petition, and discusses actions or circumstances that could preclude Advisory Board on Radiation and Worker Health ("the Board") action on each petition before September 30, 2005.

II. Summary of Procedures for Designating Classes of Employees as Members of the Cohort under EEOICPA

Statutory Requirements

The Board shall provide advice to the President (delegated by Executive Order 13179 to the Secretary) concerning the designation of additional classes as members of the Cohort. The Board's advice is to be based on "exposure assessments by radiation health

professionals, information provided by the Department of Energy, and such other information as the Advisory Board considers appropriate” (42 U.S.C. § 7384q(a)(2). Section 7384q(a)(3) specifies that HHS obtain the advice of the Board “after consideration of petitions by classes of employees ... for such advice.” Section 7384q(b) mandates two broad criteria to govern HHS decisions, which are to be made after receiving the advice of the Board. Members of a class of employees at a DOE facility or AWE facility may be treated as members of the Cohort for purposes of the compensation program if HHS “determines 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.”

Finally, 42 U.S.C. § 7384l(14)(C)(ii) requires the Secretary to submit a report to Congress for each class of employees the Secretary designates to be added to the Cohort. The report must define the class of employees covered by the designation and specify the criteria used to make the designation. This section, 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.), requires that the designation take effect 30 days after the date upon which HHS submits the report to Congress “unless Congress otherwise provides.”

Procedures under 42 C.F.R. pt. 83

As indicated above, HHS promulgated a final rule on May 28, 2004, to explain the procedures the Secretary will follow in making a determination of whether or not to add a class to the SEC, 42 C.F.R. pt. 83, Procedures for Designating Classes as Members of the SEC Under EEOICPA; Final Rule. The procedures are briefly summarized below:

1. Petitioner(s) file a petition, providing information as specified in the petition instructions about the petitioner(s) and the basis of the petition.
2. NIOSH determines if the submission qualifies as a petition, providing assistance to the petitioner(s) to address the requirements. Petitions are closed only after comprehensive consultation with petitioners.
3. NIOSH evaluates a qualified petition by collecting information on the types and levels of radiation exposure that potential members of the class may have incurred from a variety of sources.
4. NIOSH submits a report of evaluation findings to the Board and the petitioner(s).
5. The Board considers all information received, including comments by the public, and makes a recommendation to the Secretary.
6. The NIOSH Director proposes a decision to the Secretary.
7. The Secretary makes a final decision to add or to deny adding a class to the Cohort and reports to Congress as necessary.
8. A designation by the Secretary adding a class to the Cohort will take effect 30 calendar days after the report is submitted to Congress, unless Congress otherwise

provides. After either expiration of the Congressional review period or action by Congress, the Secretary transmits to DOL and the petitioner(s) a report that defines the class and either the addition of that class to the Cohort or the result of any action by Congress on the Secretary's decision. This report is published on the internet and in the Federal Register.

III. Status of petitions filed not later than October 1, 2004

Eleven petitions were filed on or before October 1, 2004. The status of each of these petitions is shown in the following table.

Petition #	Date Received	Site	Status
00006 ²	6/15/04	Iowa Army Ammunition Plant (IAAP)	A Secretarial designation of the class of employees who worked March 1949-1974 at IAAP's Line 1 became effective on June 19, 2005. (The Board and NIOSH determined that a class would not be added for the Line 1 employees who worked June 1947-May 1948, due to a lack of radioactive materials.) On August 25, 2005, the Secretary transmitted to Congress a designation of the class of employees who worked at IAAP from May 1948 to March 1949 as radiographers; this designation became effective on September 24, 2005.
00007	6/22/04	IAAP	Combined with 00006
00008	7/2/04	Los Alamos National Laboratory	Closed (petition withdrawn by petitioner)
00009	7/6/04	Hanford	Closed (petition requirements not met)
00010	7/15/04	Paducah Gaseous Diffusion Plant	Closed (petition requirements not met)
00011	7/12/04	Multiple sites	Closed (petitioner did not complete the submission)

² Prior to the issuance of the final rule that established guidelines for designating classes of employees as members of the Cohort under EEOICPA (42 C.F.R. pt. 83) on May 28, 2004, NIOSH received some materials from claimants and other individuals that NIOSH determined may have been submitted with an intent to request the addition of individuals or classes of employees to the Cohort. After publication of the rule, NIOSH contacted each of these individuals, provided information on the petitioning process, and requested that they notify NIOSH if they considered the document they had submitted to be a petition that NIOSH should review. Petition numbers 00001-00005 were assigned to these pre-rule submissions. A new petition number was assigned if those individuals requested that NIOSH proceed with an evaluation of the documents they had submitted (or if they resubmitted their petition).

00012	7/21/04	Mallinckrodt Chemical Company	<p>A Secretarial designation of the class of employees who worked 1942 – 1948 became effective on May 12, 2005.</p> <p>On October 7, 2005, the Secretary transmitted to Congress a designation of the class of employees who worked May, 1948 – March, 1949. This designation will become effective on November 7, 2005</p>
00013	7/30/04	Oak Ridge Gaseous Diffusion Plant (K-25)	Closed (class already included in the Cohort)
00014	8/12/04	IAAP	Combined with 00006
00015	8/20/04	IAAP	Combined with 00006
00016	9/2/04	K-25	Closed (class already included in the Cohort)

IV. Estimated time to complete the consideration of petitions filed not later than October 1, 2004

The Board has submitted recommendations to the Secretary concerning certain employees of two petitions. NIOSH submitted evaluation reports for the five qualified petitions to the Board, and the Board considered the petitions, the NIOSH evaluation reports including supplements, and views and input from the petitioners. Actions taken by the Board on the petitions representing these two sites are summarized below:

Board Actions – IAAP (SEC Petitions 00006, 00007, 00014, and 00015)

[Initial proposed class definition: Locations – Line 1 (which includes Yard C, Yard G, Yard L, Firing Site Area, Burning Field “B”, and Storage Sites for Pits and Weapons including Buildings 73 and 77); Job Titles and/or Job Duties – All Technicians (Laboratory, Health Physics, Chemical, X-ray, etc.), Production Personnel (hourly and salaried), Engineers, Inspectors, Safety Personnel, Physical Security Personnel, and Maintenance Persons. Period of employment – 1947-1974.]

June 1947 to May 1948 – On May 17, 2005, the Board recommended to the Secretary that this class not be designated as an addition to the Cohort because no radioactive materials were present at the facility during this period. The Secretary concurred with the Board’s recommendation on May 20, 2005.

May 1948 to March 1949 – On July 26, 2005, the Board recommended that the Secretary should designate the class as an addition to the Cohort; on August 25, 2005, the Secretary designated the class as an addition to the Cohort in a report to Congress. The Designation became effective on September 24, 2005.

March 1949 to 1974 – On May 17, 2005, the Board recommended that the Secretary should designate the class as an addition to the Cohort; on May 20, 2005, the Secretary designated the class as an addition to the Cohort in a report to Congress. The Designation became effective on June 19, 2005.

Board Actions – Mallinckrodt Chemical Company (SEC Petition 00012)

[Initial proposed class definition: Locations – All locations in the Destrehan Street Plant, St. Louis, Missouri; Job Titles and/or Job Duties – All employees that conducted Atomic Energy Commission (AEC) work at the Destrehan Street Plant. Period of employment – 1942-1957.]

1942 to 1948 – On March 11, 2005, the Board recommended that the Secretary should designate the class as an addition to the Cohort; on April 11, 2005, the Secretary designated the class as an addition to the Cohort in a report to Congress. This designation became effective on May 12, 2005.

1949 to 1957 – On September 15, 2005, the Board recommended that the Secretary should designate the class as an addition to the Cohort. Upon receipt of the recommendation, the Secretary will have 30 days to make a decision on whether to add the class.

V. Actions or circumstances that could preclude Board action before the end of Fiscal Year 2005

The Board completed all action on September 15, 2005.

VI. Conclusion

Eleven petitions were filed with NIOSH on or before October 1, 2004. Five of these petitions (representing two sites) qualified for evaluation. NIOSH evaluated the qualified petitions and submitted reports to the Board at February, April, July, and August Board meetings. The Board completed actions on all the petitions on September 15, 2005.