

U.S. Department of Health and Human Services
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
Bliss & Laughlin Steel
Buffalo, New York



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, 2018
Date

[Signature on File]
Sylvia M. Burwell

II. Employee Class Definition

All Atomic Weapons Employees who worked in any area at Bliss and Laughlin Steel in Buffalo, New York, from January 1, 1999, through December 31, 1999.

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 October 24, 2016, 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 Bliss & Laughlin Steel (B&L) employees 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.

- NIOSH determined that the principal source of internal radiological exposure to B&L workers during the residual contamination period was from inhalation and ingestion of dust residues remaining from 1951-1952 Atomic Weapons Employer uranium operations.
- NIOSH has determined that it is feasible to reconstruct internal doses from resuspended residual Atomic Energy Commission (AEC)-related uranium using the techniques described in Battelle TBD-6000 and the surface contamination levels that were measured in 1992. Therefore, it is feasible to reconstruct internal radiation doses during the period from January 1, 1999, through December 31, 1999.
- NIOSH determined that the principal sources of external radiation dose during the residual contamination period were beta and gamma exposures from uranium isotopes and their short-lived progeny that contaminated the surfaces of the Special Finishing Area.
- NIOSH has determined that it is feasible to reconstruct external radiation doses from beta and photon doses by applying the factors in Battelle TBD-6000 that convert a measured surface contamination level to dose.
- NIOSH finds that it is not applicable to reconstruct occupational medical dose for B&L workers during the period under evaluation. Because there was no AEC work during the residual contamination period, any medical screening during that time would not be a covered occupational exposure.
- NIOSH has determined that it is feasible to reconstruct external radiation doses during the period from January 1, 1999, through December 31, 1999.
- NIOSH determined that it has access to sufficient information to either (1) estimate the maximum external and internal radiation doses for every type of cancer for which radiation doses are reconstructed that could have been incurred under plausible circumstances by any B&L workers from January 1, 1999, through December 31, 1999; or (2) estimate the external and internal radiation doses to B&L workers during the time period from January 1, 1999, through December 31, 1999, more precisely than a maximum dose estimate.
- The Board concurred with NIOSH's determination that dose reconstruction is feasible for the class of B&L workers covered by Petition 00230 for the period from January 1, 1999, through December 31, 1999, and therefore 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 B&L 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 U.S. 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 is based.