

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
Feed Materials Production Center (FMPC)
Fernald, Ohio



I. Determination

I, Alex M. Azar II, 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.

June 21, 2018

[Signature on File]

Date

Alex M. Azar II, Secretary

II. Employee Class Definition

(1) All employees of the Department of Energy (DOE), its predecessor agencies, and their contractors and subcontractors who worked in any area of the Feed Materials Production Center at Fernald, Ohio, from January 1, 1984, through December 31, 1989; and (2) all employees of the DOE, its predecessor agencies, National Lead of Ohio, or NLO, Inc., in any area of the Feed Materials Production Center from January 1, 1979, through December 31, 1983.

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 dated October 25, 2017, 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 Feed Materials Production Center (FMPC) 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:

- The principle sources of internal radiation exposure for assessed members of the evaluated class included exposures to uranium, radon, thorium, and thoron. The modes of exposure were through ingestion and inhalation.
- NIOSH has determined that it has sufficient site information and air sampling and bioassay data to allow it to conclude that it is feasible to estimate internal exposures to uranium, radon, thorium, and thoron with sufficient accuracy for the evaluated class of FMPC employees who worked at the site from January 1, 1984, through December 31, 1989, and for all DOE, National Lead of Ohio, and NLO employees from January 1, 1979, through December 31, 1983.
- The sources of external radiation doses were evaluated in the SEC-00046 FMPC evaluation report. SEC-00046 concluded that all external doses, including occupational medical doses, could be estimated with sufficient accuracy for FMPC workers over the entire evaluated time period from January 1, 1951, through December 31, 1989.
- NIOSH has established that it has access to sufficient information to: (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 by any member of the class; or (2) estimate radiation doses more precisely than an estimate of maximum dose for all covered FMPC employees from January 1, 1984, through December 31, 1989, and for all DOE, National Lead of Ohio, and NLO employees from January 1, 1979, through December 31, 1983. Information in available resources is sufficient to estimate the maximum internal and external potential exposure to members of the evaluated class under plausible circumstances during the specified periods.
- The Board concurred with NIOSH's determination that dose reconstruction is feasible for the evaluated class of FMPC employees who worked at the site from January 1, 1984, through December 31, 1989, and for all DOE, National Lead of Ohio, and NLO employees from January 1, 1979, through December 31, 1983, 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 FMPC 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.