

HHS Determination Concerning a Petition to Add Members to the
Special Exposure Cohort
under the
Energy Employees Occupational Illness Compensation Program Act

Determination Concerning a Petition for Employees from

National Bureau of Standards
Van Ness Street
Washington, DC



I. Determination

I. Michael O. Leavitt, the Secretary of Health and Human Services ("the Secretary"), have determined that the class of employees defined in Section II of this report do not meet the statutory criteria for addition to the Special Exposure Cohort (SEC), as required under the Energy Employees Occupational Illness Compensation Program Act of 2000 ("EEOICPA"), 42 U.S.C. § 7384q.

Date:

DEC - 8 2005

[Signature on File]

Michael O. Leavitt

II. Employee Class Definition

Physicists who worked in Building #2 at the National Bureau of Standards (NBS), Van Ness Street, Washington, DC, from 1943 through 1952

III. Decision Criteria and Recommendations

Under 42 U.S.C. § 7384/(14), a member of the Special Exposure Cohort is a "Department of Energy employee, Department of Energy contractor employee, or atomic weapons employee" who meet certain specified requirements. The statute defines "atomic weapons employer" (AWE) as any entity other than the United States that: processed or produced, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling; and is designated by the Secretary of Energy as an atomic weapons employer for purposes of the compensation program.

On November 30, 2005, the Department of Energy (DOE) published a *Federal Register* Notice, Energy Employees Occupational Illness Compensation Program Act of 2000; Revision to List of Covered Facilities, 70 Fed. Reg. 71,815 (Nov. 30, 2005) that de-listed NBS as an AWE facility. The Secretary of Energy is granted authority to designate the covered facilities of EEOICPA under E.O. 13179, 65 Fed. Reg. 77487 (Dec. 11, 2000), pursuant to the requirements listed in 42 U.S.C. § 7384/(4). Based on the DOE determination that NBS is not a covered facility under EEOICPA, the statute mandates that the employees at the NBS facility do not meet the statutory requirements for addition to the SEC as required by 42 U.S.C. § 7384q.

This determination is made notwithstanding the recommendation of the Advisory Board on Radiation Worker Health ("the Board") to add certain employees of NBS to the SEC, a decision made at the October 2005 Board meeting, prior to the delisting of NBS as an AWE.

IV. Effect of the Determination

Pursuant to the determination by the Secretary of Energy under E.O. 13179 to de-list NBS as an AWE, the employees who worked solely at NBS do not meet the statutory requirements for covered employees of EEOICPA and thus do not meet the statutory requirements for the SEC as required by 42 U.S.C. § 7384q.

The determination provided in this report may be subject to an administrative review within HHS, pursuant to 42 C.F.R. § 83.16(b).

V. 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. § 83.16(b). On the basis of such a review, if the Secretary decides to designate the class of employees covered by this determination, in part or whole, as an addition to the SEC, the Secretary would transmit a new report to Congress providing the designation and the criterion and findings on which the decision was based.