

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 Brothers

Toledo, Ohio



I. Determination

I, Kathleen Sebelius, Secretary of the Department of Health and Human Services (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.

[Signature on File]

September 30, 2013

Kathleen Sebelius

Date

II. Employee Class Definition

All Atomic Weapons Employees and Department of Energy employees, contractors and subcontractors who worked at the Baker Brothers site in Toledo, Ohio, during the applicable covered residual radiation and remediation period from January 1, 1945, through December 31, 1996.

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 (the 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 Centers for Disease Control and Prevention's 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. NIOSH determined that it has access to sufficient site-specific information to reconstruct radiation doses incurred by the class of employees covered by this report with sufficient accuracy.

In a letter received by the Secretary on September 3, 2013, 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 employees at the Baker Brothers site in Toledo, Ohio, 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.

- Principal sources of internal and external radiation exposures for members of the class included contamination from uranium machining fires during clean-up operations.
- NIOSH has access to sufficient information to reconstruct internal dose due to exposures to uranium contamination at the Baker Brothers site during the period from January 1, 1945, through December 31, 1996.
- NIOSH has sufficient data to bound potential external exposures to uranium for workers at the Baker Brothers site during the period from January 1, 1945, through December 31, 1996.
- NIOSH determines that there are methods available in existing procedures, supplemented by site-specific, breathing zone air data and bioassay data from the remediation period to complete dose reconstructions for exposures that occurred during the residual radiation and remediation periods from January 1, 1945, through December 31, 1996
- NIOSH also finds it is not necessary to reconstruct occupational medical dose for this period, as x-rays during this period were conducted offsite.
- In sum, NIOSH determined that it has access to sufficient site-specific information to either (1) estimate the maximum internal and external radiation dose for every type of cancer for which radiation doses are reconstructed that could have been incurred under plausible circumstances by any workers at Baker Brothers for the time period from January 1, 1945, through December 31, 1996; or (2) estimate the internal and external radiation doses to workers at the Baker Brothers site for the time period from January 1, 1945, through December 31, 1996, more precisely than a maximum dose estimate.
- The Board concurred with NIOSH's determination that that dose reconstruction is feasible for the class of Baker Brothers workers covered by Petition 00204 for the period from January 1, 1945, through December 31, 1996, 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 employees at the Baker Brothers site in Toledo, Ohio, 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 (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 would transmit a new report to Congress providing the designation and the criteria and findings on which the decision was based.