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NIOSH Docket Office
Robert A. Taft Laboratories
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4676 Columbia Parkway
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Subject: **COMMENTS ON PROPOSED AMENDMENTS TO 42 CFR
PART 83, SPECIAL EXPOSURE COHORT RULE**

I submit the following comments on the proposed changes to the Special Exposure Cohort Regulations at 42 CFR Part 83, which were included in the Interim Final Rule (IFR) published on December 22, 2005. I am the President of the Village Image News, an independent environmental news service, and I have video recorded many of the ABRWH meetings related to the successful Mallinckrodt-Destrehan SEC petition. My viewpoint is that of a taxpayer and a citizen who strives to maintain thoughtful awareness of both environmental and social justice topics that have momentous, and sometimes grave, affects upon members of the St. Louis region. Village Image News maintains a belief that what concerns people the most locally, also concerns people globally. Therefore, Village Image News is especially interested in preserving both governmental and private accountability and responsibility with the general aim of meeting basic human needs first, among ordinary citizens, everywhere.

As stated in the ABRWH comments to 42CFR 83 submitted March 14, 2006:

“The purpose of this rulemaking is to harmonize the HHS rule with the new time limits included in the Conference Report for the FY 05 Defense Authorization Act (P.L. 108-375) which were set forth to ensure that evaluations of Special Exposure Cohort petitions are completed in a timely fashion by NIOSH and the Advisory Board, and that Special Exposure Cohort determinations will be decided by the Secretary of HHS within 30 days of receipt of a recommendation from the Advisory Board.

“The amendments to the Energy Employees Occupational Illness Compensation Act enacted as part of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 05 P.L. 108-375 state:

“DEADLINES—(1) Not later than 180 days after the date on which the President receives a petition for designation as members of the Special Exposure Cohort, the Director of the National Institute for Occupational Safety and Health shall submit to the Advisory Board on Radiation and Worker Health a recommendation on that petition, including all supporting documentation.

“The Conference Report States:

To ensure that applications to be a SEC member are processed promptly, new timelines have been included. Within 180 days of receipt of a petition for designation as members of a SEC, the Director of NIOSH must submit to the Advisory Board a recommendation on that petition, including all supporting documentation. During the 180 day period when NIOSH is preparing the petition for review by the Advisory Board, NIOSH should identify all deficiencies in the petition within the first 30 days. When the President receives an affirmative recommendation from the Advisory Board to designate a class to the SEC, the President shall have a period of 30 days in which to accept or reject the recommendation and notify Congress. If the President does not send a determination notice within 30 days, and if there is an affirmative Board recommendation, the class recommended to be a SEC will automatically become a SEC, subject to a 30 day notification period in Congress.”

As a member of Village Image News, I have 5 comments regarding the proposed new SEC rules:

1. The proposed amendments prevent NIOSH, the Director of NIOSH, the President of the United States, victims of nuclear abuses and accidents, as well as taxpayers, from needing to accept responsibility for the real personal, social and environmental costs of nuclear power and nuclear warfare. As it is, whole classes of petitioners are lumped into cohorts of possible radiation exposure without conspicuously or accurately and thoroughly assessing what actually happened to workers and the areas where they worked. Learning is abbreviated and appropriate adaptation lags.
2. Responsible leadership could already have seen that endangered and injured workers receive appropriate compensation promptly, as mandated by Congress. The proposed rules now provide the possibility that, by Presidential veto, all existing and future pledges for compensation could be summarily denied.
3. Ostensibly, the proposed amendments to 42CFR, Part 83, address Congressionally mandated acceleration of the SEC process. Another dimension of the SEC process that came to light by a “passback memo” based on an unreleased Office of Management and Budget (OMB) report is containment of rising costs in the EEOICPA program that the Department of Labor purportedly has attributed to the recent granting of SEC petitions.

I was promised, by Chairman Ziemer of the Advisory Board assisted by Stuart Hinnefeld of NIOSH, during the April 26, 2005, St. Louis meeting to be given a comprehensive cost breakdown of EEOICPA costs by NIOSH, Sanford Cohen & Associates (Board auditing subcontractor), ORAU, DOL and DOE. To date these promised cost data have not been delivered.

I contend that, rather than being caused by successful SEC petitions that actually *decrease overall program costs by eliminating the need for dose reconstructions*, the rising costs of EEOICPA are due more to cost overruns by the NIOSH and ORAU dose reconstruction (DR) teams that remain on the bloated payroll while doing their essential job very inefficiently. Many claims have languished for years at NIOSH awaiting DR due to lack of sufficient radiation

monitoring data on workers. Rather than facilitating getting this backlog reduced, or proactively promoting submission of SEC petitions, NIOSH has allowed this costly practice to go largely unaddressed. This added cost containment factor, including the addition of a 30 day period during which the President can veto recommended SEC petitions, potentially will negate any time savings the amended 42CFR 83 SEC rules are intended to accomplish.

4. The injuries suffered, by nearly every single petitioning worker and his or her family, have been extensive, long term, costly, and painful. To subject otherwise valid petitions to rejection by the President of the United States without any requirement for a definite, careful and accurate justification or rationale appears cruel enough to constitute tyranny.

5. Abridging the time to accept or reject cases that are normally complex due to an absence of accurate, tangible data, perpetuates the federal government's and industry's advantage in being able to overlook and systematically ignore the considerable harm to workers that has historically resulted from lawless and poorly documented radiation exposure.

Respectfully submitted,

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