TO: NIOSH DOCKET OFFICE
NIOSH DOCKET OFFICE
ROBERT A. TAFT LABORATORIES
M/S C34
4676 COLUMBIA PARKWAY
CINCINNATI, OHIO 45226

FROM: FERNALD ATOMIC TRADES & LABOR COUNCIL
7400 WILLEY RD.
HAMILTON, OHIO 45013
OR
FAT & LC
P.O. BOX 126
ROSS, OH. 45061

Received 8/26/02
KED
forwarded cc: Dave Sundelin
Fernald Atomic Trades & Labor Council

Comments on HHS's Proposed Rule "Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under the Energy Employees Occupational Illness Compensation Program Act of 2000 "42 CFR part 83"

We fully endorse & support GAP's point-by-point comments on the HHS's proposed rule. See Attachment

In addition we have some particular additional comments.

- To qualify for the Special Exposure Cohort by petition appears to be more stringent than the original identified cohorts — we find the equality in the process not to be equitable,

- NIOSH should consider both previous and subsequent doses for individual members of the "class" to determine if they qualify for the S.E.C.
• We believe the IREP model is not totally applicable to DOE contractor workers. We urge NIOSH to continue to review IREP in light of other epidemiological studies.

• The definition of "endangered health" is illogical and does not consider the possibility that there will not be any dose data at all — there is nothing implied in the definition that would consider the possibility of the complete absence of dose data.

• We believe that the informational burden on petitioners is too high. Petitioners, particularly, survivors will not have the access and knowledge to accumulate the documentation necessary.

Respectfully Submitted,

Gene Branham
President, FATLAC

Robert G. Tabor
Labor/Management Liaison, FATLAC

Author of Comments
In summary of Proposed Rule: Procedures for

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**August 20, 2002**

**1.** Recommendation: Purpose of Proposed Procedures

2. **Sec. 1.C.**  Background: Purpose of Proposed Procedures

3. **Sec. II.**  Summary of Proposed Rule: Procedures for

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*NOSHA should establish, through rule or

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*NOSHA should establish, through rule or

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* These underlined terms are ambiguous.

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*These underlined terms are ambiguous.

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In summary of Proposed Rule: Procedures for

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Alternate choices available to HHS

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result in a negative public reaction. There are

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polices, if the emergency public announcement and

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work in progress as a final rule is bad

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an issue issued to the Emergency Public Announcement

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which would allow decisions on petitions

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Rule, HHS should issue an interim final

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 petiions to the Emergency Public Announcement

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(3) defining classes and (4) determining and

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Blue for the determination of "dangerous".

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such as: (1) establishing a goal above; (2) using

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in cases of non-occupational or non-

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To provide a "final rule" with a "final rule" with

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If anything, NOSHA cannot resolve many of the

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There are many areas in the proposed rule that

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Opinion: "….the petition are minimal"
The NIOSH Level of Evidence (e.g., "A," "B," "C") should be determined by assessing the adequacy of the information available. The best available evidence on the relationship between exposure to a substance and a health outcome should be used to make a determination. The level of evidence should be based on the strength of the scientific evidence, the consistency of the results across studies, and the quality of the research design. The level of evidence should also take into account the potential for confounding and bias. The NIOSH Level of Evidence can be used to guide the development of workplace health and safety guidelines and regulations.
unmonitored dose.
unreliable and miss significant amounts of
reconstructions, which are inaccurate.

Way this is worded, NIOSH can “complete” dose
that it can “complete a dose reconstruction,” the radiation protection, etc.
does, complicating data, missing records,
does, complicating data, missing records.
NIOSH can assert, without defining its terms.
“It is not acceptable to deny SEC petitions if
accuracy the radiation does the class received, “proper monitoring procedures, unmonitored
of reliable monitoring technology, falling to use
level, solubility, lack of a biological model, lack
uncertainty in the various source terms, energy
claimant is inconsistent with the EEOCPA
recognition. A checklists should include
complete a dose reconstruction for the
information prevents it from completing a dose
when NIOSH will establish that insufficient
when NIOSH will establish that insufficient-
the criteria—adapts a checklists and/or matrices,
the NIOSH rule of policy manual should define
Proposed section 83.2(a), as proposed, sets forth a

83.2(a) employees to be added to the cohort upon
Rule. SEC claimant can petition on behalf of a class of

members of the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000, 42 CFR part 83.

August 20, 2002
For emery Lange associate (e.g., lung; life with pyrophoric
shorter duration (e.g., lung; life with pyrophoric
endangerment of acute or chronic injury will have
endangerment of acute or chronic injury will have
radio-sensitizing capacity to meet the
radio-sensitizing capacity to meet the
whether someone was endangered?
whether someone was endangered?
there is a good enough dose for deciding
there is a good enough dose for deciding
likelihood of causation, now it is possible that
likelihood of causation, now it is possible that
dose that exceeds the threshold for the most
dose that exceeds the threshold for the most
cannot be estimated. NIOSH should assign a
cannot be estimated. NIOSH should assign a
moderate potential risk of exposure to
moderate potential risk of exposure to
83.5(d) Section 8
83.5(d) Section 8
Health For purposes of these procedures mean if the radiation dose is assessed to be an
health For purposes of these procedures mean if the radiation dose is assessed to be an
radiation dose. "Reasonable likelihood" defined in Section 8.3.(f)
radiation dose. "Reasonable likelihood" defined in Section 8.3.(f)
conclude that it is not "feasible" to estimate that
conclude that it is not "feasible" to estimate that
could use the 180-day limit as criteria to
could use the 180-day limit as criteria to
cable to complete dose recognition. NIOSH
cable to complete dose recognition. NIOSH
days to complete dose recognition, NIOSH
days to complete dose recognition, NIOSH
NIOSH's criteria for responding to a demand for
NIOSH's criteria for responding to a demand for
data, difficulty in gathering data, cost to employers
data, difficulty in gathering data, cost to employers
NIOSH rule should set forth a checklist of items
NIOSH rule should set forth a checklist of items
explanation and definition, "endangered the health" is warranted in
explanation and definition, "endangered the health" is warranted in
endangerment to "sufficient accuracy," equal importance to "sufficient accuracy," equal importance to "sufficient accuracy,
emphasized added). The term "feasible" is of
emphasized added). The term "feasible" is of
NIOSH, define as dose that the class received. The
NIOSH, define as dose that the class received. The
NIOSH rule does not explain how NIOSH will
NIOSH rule does not explain how NIOSH will
members of the special exposure cohort under the Emergency Employees Occupational Illness Compensation Program established by C.F.R. Part 83,
members of the special exposure cohort under the Emergency Employees Occupational Illness Compensation Program established by C.F.R. Part 83,
buildings with radiation-related jobs);
exposure of patients receiving treatment for
persons and those with little personal for
who had very short careers (people defray
include all workers and eliminate those
endangered least was rational enough to
Congress wanted to assure that the
not tell NIOSH to use)
determination specific as the GBBPs. Congress did
guidance through its two examples (examples) is legislate history.
without an invention created in this rule with no
claimants should be included in an ESB. This is
any standby provision for determining whether

determined that NIOSH-Reps are not significant in
a legal matter, NIOSH-Reps are not significant in
an example

NIOSH Responds that Congress did not direct
NIOSH Reips that Congress did not direct
NIOSH Reips that Congress did not direct
NIOSH Reips that Congress did not direct
the

and those cancers such as leukemia which workers may have been undergoned. As

endangered, when cancers such as leukemia which workers may have been undergoned, As

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This section states that "petitioners must be one of the following: (a) A DOE contractor or subcontractor, or (b) A labor organization." The preamble states that other potential representatives were excluded because "HHS found the reasonable organization groups of workers who are not labor unions of employees who would be included in the proposed class of employees. The reasonable organizations such as Los Alamos DOE representatives or contractors or subcontractor, or AWE employees representing or formerly represent officers or employees, and are often comped of non-union employees who were not able to submit petitions because they are not labor unions or professional organizations, including Los Alamos and Oak Ridge Plutonium." The rule should be expanded to include other organizations presenting written arguments on behalf of workers, and have potential classes of workers. Also, the rule should provide that attorneys working on behalf of an individual employee may submit a petition on their behalf.

Workers advocacy organizations, if formally authorized in writing by a member or members of potential classes, should be able to submit petitions and are often comprised of non-union employees who were not able to submit petitions because they are not labor unions. The rule requires individual potential representatives of these inputs will not be available for entire classes of workers. Section 83.12(b)(5) states that "a threshold threshold is the most radiosensitive location. Why not use leukemia as the most radiosensitive location? Why not use leukemia as the most radiosensitive location? Why not use leukemia as the most radiosensitive location? Why not use leukemia as the most radiosensitive location? Why not use leukemia as the most radiosensitive location? Why not use leukemia as the most radiosensitive location? Why not use leukemia as the most radiosensitive location? Why not use leukemia as the most radiosensitive location?

The NIOSH study is relying on the use of the NIOSH-REP model to calculate the SEC test for many doses estimates.

The NIOSH study is relying on the use of the NIOSH-REP model to calculate the SEC test for many doses estimates.
individual members of the class.

In cases where it is not possible to
offer a complete response due to
the nature of the request, a partial
response will be provided. The

The requirements of section 83.9(b)(1) and (2)

Section 83.9(d) also applies to all individuals of groups
who do not qualify for protection under section
83.9(a).


August 20, 2002.
production workers located between Y-12, K-25, and X-10. Although DOE and its contractors are free to
require NIOSH to provide this service, no other regulations currently mandate that NIOSH do so.

83 FR 2.2

This knowledge base is required to establish a consensus among the parties. The lack of
NIOSH's involvement is a serious concern for radiation protection professionals who can
assist in the development of a consensus-based understanding of health physics and radiation
protection.

83 FR 2.3

Petitioners will have a very difficult time meeting NIOSH's requirements for technical assistance
without a more comprehensive understanding of occupational radiation exposure.

83 FR 2.4


August 20, 2002
EPA\textsuperscript{1} of 13

\begin{itemize}
\item \textbf{gained in part}.
\item Class definition even though the petition was
\item not produce the Board's review, because
\item outcome. A positive decision by NIOSH should conclude
\item submitted to AFWHM regardless of the
\item All petitions evaluated by NIOSH should be
\item on Radiation and Worker Health (AFWHM) will
\item 83.13
\item This section describes how the Advisory Board
\item produce multiple primary cancers? models with different target organs that could
\item How will NIOSH account for different biomarker
\item there are multiple potential radiation types?
\item solubility information? What will it do when
\item source term information for a class of
\item will provide benefit of the doubt to the claimant,
\item What will NIOSH do when there is no credible
\item NIOSH must specify the degree to which it
\item NIOSH\textsuperscript{#5} views its ability to spell out the degree to which it
\item contamination #5.
\item potential dose? See comments to formulate a
\item there is not enough information to formulate a
\item NIOSH's rule or procedures manual needs to
\item NIOSH\textsuperscript{#5} views its ability to spell out the degree to which it
\item the type of radiation exposure.
\item cancer of cancer that could have resulted from
\item similarly derived for the most radiogenic species
\item calculation of 50\% of the upper 95\% percent
\item NIOSH\textsuperscript{#6} will produce a probability of
\item the minimum level of radiation dose which
\item reasonable likelihood that a potential radiation
\item demarcation NIOSH will determine if there is a
\item radiation dose may have caused a specific cancer (i.e.
\item there is a reasonable likelihood that such
\item NIOSH evaluates a petition to determine is
\item Section 83.12
\item (q)
\end{itemize}


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Commits of the Government Accountability Project on the Department of Health and Human Services Proposed Rule, Procedures for Designating Classes of Employees as
Inclusion in a SEC.

SEC exposures, some would qualify for "endangered", when combined with non-
proposed, direct exposures to meet the threshold for a proposed SEC would not have enough
consideration and if the threshold for the constraining considerations are not
proposed directly to the SEC. Further, NIOSH should regulate
processes, methods, and procedures inside to the SEC.

Ending

The risk estimate for 1967-1981, this may require an
excessive overestimate of the potential impact. For the
end of the SEC, the potential impact can be estimated (6.9).

NIOSH for non-SEC, the potential impact can be
considered for non-SEC. NIOSH will need to assess a
result.

When the question of non-SEC is considered, if the
end of the SEC, the potential impact can be
considered for non-SEC. NIOSH will need to assess a
result.

When the question of non-SEC is considered, if the
end of the SEC, the potential impact can be
considered for non-SEC. NIOSH will need to assess a
result.

When the question of non-SEC is considered, if the
end of the SEC, the potential impact can be
considered for non-SEC. NIOSH will need to assess a
result.
Rule: 22

Secretary can cancel or modify a final decision if claims have been paid by DOL for members of a class, Secretary must notify public via Federal Register.

Rule: 23.15

Secretary of HHS after Congressional Review.

Rule: 23.14

Secretary of HHS after Congressional Review.

Rule: 83.13

Secretary of HHS after Congressional Review.

Section 83.16

Rule: 23

Secretary of HHS after Congressional Review.

Section 83.15

Rule: 23

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Section 83.14

Rule: 23

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Section 83.13

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Section 12

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Section 11

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Section 6

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Section 5

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Section 4

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Section 3

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Section 2

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Section 1

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Section -2

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Section -3

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Rule: 23

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