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**From:** Denise Brock [dbrock@alwayson-line.net]  
**Sent:** Tuesday, May 06, 2003 9:54 AM  
**To:** NIOCINDOCKET@cdc.gov  
**Subject:** Comments On "Proposed Rule"

04/30/03

Comments of the United Nuclear Weapons Workers of the Saint Louis Region (UNWW STL) regarding the HHS Notice of Proposed Rulemaking 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) Federal Register Vol.68, No. 45, pp.11294-11310 (March 7, 2003)

The United Nuclear Weapons Workers of the Saint Louis Region is a non-profit unincorporated organization assisting workers, former workers, and claimants under the EEOICPA. We have a newly formed advisory board and several committees. The intent of this organization is to research and disseminate information to the public, including those in the media and press as well as potential claimants. As a representative for the claimants from Mallinckrodt, I asked if NIOSH would come to St. Louis for a public hearing and to explain this "proposed rule." I am sorry that wasn't able to happen.

The United Nuclear Weapons Workers can be reached at: C/O, Denise Brock, 156 Janet, Moscow Mills, Mo. 63362, 636-366-4428, or [DBrock@alwayson-line.net](mailto:DBrock@alwayson-line.net) as well as <http://www.unww.info>.

UNWW STL respectfully requests that NIOSH not finalize the Special Exposure Cohort Rule, or render any final determinations related to petitions, until it makes some important conforming amendments to the dose reconstruction rule at 42 CFR Part 82.

#### Section 83.5- Definitions

There are two (2) sets of comments on the "definitions" section of the rule:

In reference to the term "facility," There is no definition of "facility" in this Rule. It could be viewed as narrowly as NIOSH stating that only 1 particular plant would be considered a "facility", ie: Plant 4 would be considered a facility, or perhaps Plant 6 but not Plants 4,5 or 7. On the other hand it could be viewed as broad as stating that it could be the whole plant. How do you define facility?

#### **Section 83.5 should define the scope of a "facility" within Section 3626.**

Employees from two categories of facilities covered under EEOICPA can file petitions" an Atomic Weapons Employer Facilities (as defined in EEOICPA 3621 (5) and a Department of Energy Facility ( as defined in EEOICPA 3621 (12)

The definition of "facility" in this rule should include all buildings, structures, premises and production processes that are or were located at an Atomic Weapons Employer facility or a Department of Energy facility.

The reason for making the definition of a facility a broad and inclusive as possible is that it will reduce the number of classes to be established for a given group of workers. It makes more sense to group classes based on exposure histories within a DOE site or an AWE site. Common exposure histories can crossover from building to building and process to process. The law doesn't call for "facility cohorts," rather it calls for "exposure cohorts." A narrowly defined facility(e.g. a production line) would frustrate the establishment of exposure cohorts, or result in the unnecessary proliferation of exposure cohorts. Instead, the classes should be defined by whether there was insufficient data to estimate doses for employees who meet the employment duration threshold.

#### **Section 83.5 (c) Class of Employees/ Facility VS Facilities**

In 83.5 (c), the proposed rule defines a "class of employees" as "a group of employees who work or worked at the same DOE or AWE "facility" and for whom the availability of information and recorded data is comparable with

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respect to the informational needs of dose reconstructions conducted under 42 CFR Part 82" (Emphasis Added)

This should be modified so that employees who work or worked at one or more DOE and/or AWE facility may be included in a "class of employees" if they are similarly situated with respect employment (time and place) and insufficient radiation monitoring (e.g. Mallinckrodt Chemical Works, Destrehan Street, downtown, Weldon Spring Mallinckrodt and Mallinckrodt Hematite Plant) Many workers went from one site to the next. Radiation technicians, "burn and turn" workers, and construction are a few groups that could fall into a class of employees who were employed at multiple facilities. NIOSH has an unquestionable legal right to interpret the term "facility" to allow more than one facility in defining a class of employees, pursuant to 3626, Section 3626, states in part:

*"...the members of a class of employees at a Department of Energy facility, or at an atomic weapons employer facility, may be treated as members of the Special Exposure Cohort for purposes of the compensation program...."* (emphasis added)

In reviewing the *Rules of Statutory Construction*, "The singular includes the plural, and the plural, the singular..." And to remember, this is to be an "Exposure Cohort" not a "Facility Cohort."

DOL allows the use of multiple facilities for members of the SEC's in its EEOICPA regulations at 20 CFR 30.214. DOL's rules allow members of the class to accumulate of days of employment at multiple gaseous diffusion plants in up to 3 different states to meet the 250 workday threshold for members of that SEC. There is no logical reason for NIOSH to impose a cramped reading of the law. There are even iron workers who worked at one site or another in one state for a few months, then were "boomed out" to another state to work at another site, all the while accumulating their 250 workday threshold.

### **Section 83.13(b) "Sufficient Accuracy"**

"Radiation doses can be estimated with sufficient accuracy if NIOSH has established that it has access to sufficient information to estimate the maximum radiation dose that could have been incurred in plausible circumstances by any member of the class" (or called, "worst case" dose estimate or "capping the dose")

What does all of that mean? What does "plausible circumstances" entail? And what constitutes a "worst case" dose? How much data do you need? I've also noticed that you haven't defined your methods. How are you going to know that you are going to do "worst case" estimates? And is the "worst case" going to be a point estimate or distribution? I'm assuming that would make a huge difference when ran through an IREP Model. It seems that NIOSH is using ambiguous terms such as "plausilble" and "worst case" and just muddying up an already vague rule.

To say that I am a bit perplexed, is an understatement. I would be curious to know how one would do a "worst case" for an isotope. How do you know how many there were if you aren't sure of everything that existed at a particular site. Or if you don't know all of the isotopes that existed or if they concentrated in the process, how are you going to avoid underestimating?

I have heard on numerous occasions that NIOSH has little to no individual dose data on Mallinckrodt workers. And truthfully, even if individual records were available, it still would not be for everything that these workers were exposed to. The Downtown Plant was refining Belgian Congo Ore, we don't know where it concentrated. Those workers were exposed to not just U238 and all daughters, U235 and daughters, Actinium 227, protactinium 231, thorium, 3 types of radon, 3 types of radium, ect. These workers were not told, nor were they monitored for all of their exposures. I cannot understand how you can keep from underestimating. DOE has stated that they are tracing the "footprints of this Belgian Congo Pitchblende because everywhere it ended up, there is and has been remediation problems. There is indication that Mallinckrodt and SLAPS (St. Louis Airport) shipped alot of material to Mound. Actually over 5000 barrels of sludge. This waste contained actinium 227, protactinium 231, thorium 230, etc.

The Weldon Spring Site was working with transuranics, plutonium, neptunium, technetium 99, etc., again, they weren't told, nor were they monitored, same thing for the Hematite Plant. Workers from all three of these plants were aggressively overexposed, not told, not monitored. Many of these workers held multiple job titles, had multiple exposures. So where does the "worst case" fit? Wasn't not knowing all of the hazards, not having individual monitoring data, not knowing where things concentrated, not being monitored for all exposures, the reason why Paducah, Portsmouth, Oakridge, and Amchitka Island became the original Special Exposure Cohorts?

Because dose reconstruction couldn't be done with "sufficient accuracy?"

How does NIOSH know whether or not it can "cap the dose" for workers that were between multiple buildings, such as electricians, maintenance workers, security guards, fire department, pipefitters, or even people holding multiple job titles or working at more than one plant? What methods will be used to do this? And to say that this will be done on a case by case basis is not adequate. Where is the consistency?

### **Section 83.12(b) Limiting the List of 22 Specified Cancers**

This is clearly outside of Congressional intent. The law states a "fixed list" of radiation-related cancers. "Fixed List." NIOSH cannot state positively that there is a zero probability that any other organs would not have been irradiated. How do they know where it concentrated? Obviously, Congress placed Amchitka and the GDPs in the SEC, giving them the benefit of the doubt. Mallinckrodt workers have like circumstances. To state that one could specifically know which organ was targeted and not even know what all these workers were exposed to or the processes that were adhered to is beyond ridiculous. Workers were put in harms way through no fault of their own, and lied to. I'd be quite curious to see how this would've been handled if it were just a company killing workers. And what does "significantly" mean? I would think that this would leave completely open to speculation, what risk level is actually indicated.

Things like radioactive hydrogen (tritium) and noble gases (like krypton and xenon) decay into biologically harmful radioactive strontium and cesium. Every radioisotope decays at its own rate. NIOSH even concedes that some amount of radiation that is ingested will find its way to every organ in some quantity. (March 7, 2003 hearing transcript) Thus, every organ will incur some unquantified risk, from radiation doses that NIOSH concedes cannot even be capped. HPS asserts that 10 rem is the level at which they believe no adverse health effects will occur. Meanwhile, the NIOSH-IREP model already compensates certain cancers below 5 rem exposure. (e.g., leukemia) If the HPS recommended threshold is adopted, NIOSH will be presented with highly visible inconsistencies in its application of the NIOSH-IREP model on the one hand, and risk estimations used to include or exclude certain cancers from SECs on the other hand. Limiting the list of specified cancers is unworkable and at odds with NIOSH's previous findings that where a dose cannot be capped, health endangerment cannot be determined.

It appears that HPS relies upon the Hormesis theory, which is not supported by BEIR V, nor is it consistent with the assumptions used in the NIOSH-IREP model. And a quote " I don't think the present controversy is over whether or not there is a safe level. I think all agree that we have no reason to assume that any level of radiation is utterly safe." Arthur C. Upton, MD, 1979, former director, National Cancer Institute.

In closing, this "proposed rule" is full of loop holes that will leave many already injured workers and/claimants falling through the cracks. It is adding insult on top of injury and making an already difficult situation, impossible. It is nightmarish for a lay person to read through much less a 70 to 80 year old claimant to petition for. It is ambiguous, confusing, unequitable, and full of terms that are vague and misleading. Congressional intent was clear. This just seems like another attempt to undo a justice that could've helped workers that were doing their patriotic duty while being poisoned and lied to. It is mind boggling to me, that if the only two things that were originally needed to become an SEC were: 1) The workers must have been endangered and 2) NIOSH cannot dose reconstruct with sufficient accuracy; How in the world did this become multiple pages of word play. Wouldn't it have been much simpler, more cost effective, and less time consuming for NIOSH to state that they can dose reconstruct anybody, anytime, anyplace, and that the only way to become part of an SEC would be to try and have it legislated in? Because, in all actuality, if this rule goes through like this, that will be the only way anyone can become part of a SEC.