ATTACHMENT G

ANWAG
Alliance of Nuclear Worker Advocacy Groups

May 18, 2016

VIA FEDERAL E-RULEMAKING PORTAL

Leroy A. Richardson,
Information Collection Review Office
Centers for Disease Control and Prevention
1600 Clifton Road NE
MS–D74
Atlanta, Georgia 30329

Re: Center for Disease Control, National Institute for Occupational Safety and Health, Division of Compensation and Analysis Support, Docket No. CDC–2016–0033

Dear Mr. Richardson:

The Alliance of Nuclear Worker Advocacy Groups (ANWAG) appreciates the opportunity to comment on an extension of the information collection request entitled ''Energy Employees Occupational Illness Compensation Program Act (EEOICPA) Special Exposure Cohort (SEC) Petitions''. EEOICPA authorizes the Department of Health and Human Services (HHS) to designate such classes of employees for addition to the Cohort when the National Institute for Occupational Safety and Health (NIOSH) lacks sufficient information to estimate with sufficient accuracy the radiation doses of the employees Program Act.

ANWAG is an association of advocates for workers who sustained certain illnesses due to their exposure to radiation, beryllium silica, or other toxic substances while in the performance of duty to the Department of Energy (DOE) and its vendors. Purposefully kept unaware of the dangerous levels of radiation they were exposed to, these workers later found themselves suffering from painful and debilitating cancers and other diseases. Despite their sacrifices and service to our

country in building the nation's nuclear defense, their claims for compensation and assistance were rejected by the government until the passage of EEOICPA in 2000.

We are pleased that HHS does not intend to revise the forms used to petition that a site should be included in the Special Exposure Cohort. And while these forms are straight-forward, we also appreciate that a petitioner is not required to use the forms to file the petition. This allows petitioners, who may not have on-line access to the forms or are unsure on how to complete the forms, to be able to request consideration be given to their facility to be included in the SEC.

ANWAG, however, objects to HHS's assertion regarding the time it takes for a petitioner to prepare and submit a challenge the Secretary's denial of a site to be included in the SEC. According to this Federal Register Notice, it is estimated that the burden on a petitioner is approximately only ***45 minutes***. This is not only a gross under-estimate of the time required to file the appeal, but is naïve and disingenuous.

As you know, §83.18 of the regulations require adversely-affected petitioners submit evidence, "…that the final decision relies on a record of either substantial factual errors or substantial errors in the implementation of the procedures of this part."

Providing this evidence entails combing through transcripts of the Advisory Board on Radiation and Worker Health's (Board)'s full meeting transcripts, the Board's Work Group meetings transcripts, the white papers prepared by NIOSH and the white papers prepared by the Board's technical contractor, Sanford Cohen and Associates.

ANWAG estimates that it would take a petitioner no less than ***45 hours*** to research the above reports, identify the errors and compose a well-documented and persuasive appeal. It is likely that even our estimate of ***45 hours*** is seriously flawed considering the scope of the work involved.

We offer the SEC petitioners' for General Steel Industries experience as an example.

The General Steel Industries (GSI) AWE site SEC-00105 was recommended by the Board to be denied by a close 9 to 8 vote by the Board on 12/11/12. The petitioners filled a request for administrative review. The application was 185 pages long and contained 10 carefully selected exhibits. The petitioners identified 44 specific errors of commission and omission that NIOSH had made in adjudicating SEC-105. The petitioners elaborated on the details of each of these errors. In addition, they included a CD-ROM which contained the entire TBD-6000 work group meeting agendas and transcripts. The appeal also referenced more than 50 technical white papers I had authored regarding the GSI site. The entire application was posted to NIOSH Docket 140 on the DCAS website: URL: www.cdc.gov/niosh/ocas.

The digital files had to be turned into hard copy in a commercial facility that was 40 miles from where one petitioner lived. That one way drive alone takes 45 minutes. The AR also involved time consuming details such as emailing the signature pages to each other before the final printing.

In contrast, NIOSH was allotted from March 6, 2013 until January 14, 2014, or 10 ***months***, to prepare and submit the package it prepared for the HHS three member independent panel of reviewers. The entire DCAS Division of NIOSH thus took 10 months versus the one month period the GSI SEC-105 petitioners were held to very strictly to prepare the GSI SEC-105 administrative review. The GSI petitioners have yet to receive a decision on the appeal 39 months after it was filed.

The appeal written by the Hooker Electrochemical petitioner is another example. This petitioner provided an eight page request for review and another 20 page addendum. This petitioner, too, spent hours upon hours researching the various transcripts and other documents to identify the errors. Secretary agreed, in part, with the petitioner's arguments and reversed the decision to deny the inclusion of Hooker Electrochemical in the SEC.

We would appreciate NIOSH sharing the reasoning behind the **45 *minute*** burden.

In light of the extensive research needed to file an effective challenge to a denial of the SEC status, ANWAG recommends that NIOSH revise the estimates for the burden hours.

Additionally, we recommend that HHS issue a proposed rule change to the regulations governing SEC petitions to increase the time to file the challenge to be no less than 60 calendar days after the Secretary has made a final decision denying inclusion in the SEC. We also recommend that NIOSH review the entire SEC appeal process and make it more transparent. As it stands now, neither the SEC petitioners nor the public are permitted to know the names or positions of the three reviewers, the dates of the meetings or the number of meetings the reviewers held, or the topics of the review sessions. Apparently no meeting agendas or transcripts are kept and, therefore, the details of the discussions are not made public.

ANWAG appreciates the opportunity to submit these comments on the information collection for SEC petitions.

Sincerely,

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