United States Senate
WASHINGTON, DC 20510

February 22, 2006

The Honorable Michael O. Leavitt
Secretary
United States Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

RE: RIN 0920-AA13. Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under the Energy Employees Occupational Illness Compensation Program Act of 2000; Amendments; Interim Final Rule With Request for Comments.

Dear Secretary Leavitt:

On December 22, 2005, the Department of Health and Human Services (HHS) published "Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under the Energy Employees Occupational Illness Compensation Program Act of 2000; Amendments; Interim Final Rule With Request for Comments" (Interim Final Rule). These regulations are important as they implement *The Energy Employees Occupational Illness Compensation Program Act of 2000* and its 2004 amendments (42 U.S.C. 7384 et seq.) (EEOICPA).

United States citizens have served their country working in facilities producing and testing nuclear weapons and engaging in other atomic energy defense activities that served as a deterrent during the Cold War. Many of these workers were exposed to cancer-causing levels of radiation and placed in harm's way by the Department of Energy (DOE) and its contractors and vendors without the knowledge and consent of the workers, without adequate radiation monitoring, and without necessary protections from internal or external occupational radiation exposures.

EEOICPA was enacted to ensure fairness and equity for the men and women who performed duties uniquely related to the nuclear weapons production and testing programs of the DOE, its predecessor agencies, and contractors by establishing a program that would provide timely, uniform, and adequate compensation for radiation-related cancers. EEOICPA has an expedited process for groups of workers whose radiation dose cannot be estimated with sufficient accuracy or whose dose cannot be estimated in a timely manner. These workers are placed into a Special Exposure Cohort (SEC).

Unfortunately, HHS' Interim Final Rule will make it harder for our atomic energy

veterans to receive compensation in a timely manner, if at all, in direct contradiction to the purpose and language of EEOICPA. This Interim Final Rule delays and obstructs compensation by redefining well-accepted terms, ignoring congressionally-imposed timelines, and creating unreasonably short response periods for workers.

Specifically, HHS' Interim Final Rule defines the term "petition," which was previously undefined, in such a way as to evade Congress' intent in establishing timelines for SEC activities. In 2004, Congress required that NIOSH issue a recommendation on whether or not a petition for an SEC should be granted within 180 days after the date on which the President receives the petition. The Conference Report on the amendments (H. Rep.108-767) provided additional guidance regarding what must take place within the 180 day time period. Congress stated explicitly that the deficiencies in the petition were to be identified within the first 30 days of the 180-day period.

HHS' Interim Final Rule undermines this requirement by defining the term "petition" such that a petition is no longer a "petition" until it "qualifies," until all the deficiencies in the petition are identified and resolved. Only when a petition is qualified would HHS begin the 180-day clock. Notably, the Interim Final Rule sets no time limits on how long it will take to "qualify" a petition. Although the Preamble to the Interim Final Rule says that it can take "months," qualifying a petition is a simple matter.

This Rule is clearly at odds with the Conference Report, which directs NIOSH to resolve both petition qualification and evaluation within the 180-day time frame, and does not authorize NIOSH to qualify petitions outside of the 180-day time period. This definition is clearly designed to delay the start of the 180-day time limit and elude congressional direction instead of following the requirement to start the clock upon "receipt" of the petition.

Conversely, the Interim Final Rule unfairly reduces the time for a petitioner to file an appeal regarding the "qualification" of an SEC petition to 7 days from the 30 days now contained in 42 CFR Part 83.11(c). Seven days is far too short of a time period to file an appeal. If workers are away visiting relatives or in the hospital for a week or so, which are not unusual, then they loose their right to appeal. This is unreasonable and unnecessary. I strongly urge you to reestablish the 30-day time period for petitioners to file an appeal from the receipt of a letter disqualifying a petition, and extend all related deadlines should an appeal be granted.

EEOICPA's sole purpose is to guarantee that DOE employees, contractors, subcontractors, and vendors receive fair and timely compensation for the cancer and other devastating diseases they contract because of their service in our nation's nuclear weapons testing and production facilities. It is remarkable that more than five years after enactment of EEOICPA, while our atomic energy veterans continue to wait for the compensation that they deserve, HHS is trying to subvert deadlines Congress put in place to ensure that SEC petitions are processed in a timely manner.

HHS should stop pursuing its current path of delay and obfuscation in the implementation

of EEOICPA and ensure that our Cold War veterans get the compensation they deserve today. They have already waited too long.

If you have any questions, please contact Sandra Schubert on my staff at 202.224.3542. Thank you for your expeditious attention to this matter.

Sincerely,

HARRY REID
United States Senator

cc: Elaine Chao, Secretary, United States Department of Labor
Samuel Bodman, Secretary, United States Department of Energy
NIOSH Docket Office, NIOCINDOCKET@cdc.gov