February 12, 2014

NIOSH Docket Office
Robert A. Taft Laboratories
4676 Columbia Parkway, MS C-34
Cincinnati, OH 45226

Re: Comment on the NIOSH Draft Carcinogen Policy;

CDC-2013-0023; Docket Number NIOSH 240-A

Dear Sir or Madam:

On behalf of our 1.6 million members, the American Federation of State, County and Municipal Employees (AFSCME) appreciates the opportunity to provide comments on the Draft Current Intelligence Bulletin "Update of NIOSH Carcinogen Classification and Target Risk Level Policy for Chemical Hazards in the Workplace".

AFSCME supports updating NIOSH's carcinogen policy. NIOSH's views and policy are an important resource in our efforts to protect workers from exposure to harmful agents. An updated policy must reflect current scientific evidence and technologies as necessary to protect workers from carcinogens at the same level as the general public.

Below is our response to specific questions posed by NIOSH in the November 15, 2013 Federal Register notice:

(*1) Are the proposed carcinogen policies consistent with the current scientific knowledge of toxicology, risk assessment, industrial hygiene, and occupational cancer? If not, provide specific information and references that should be considered.*

AFSCME agrees that relying on carcinogen classifications of National Toxicology Program (NTP), the Environmental Protection Agency (EPA), and the International Agency for Research on Cancer (IARC) is consistent with current scientific knowledge. However, in accordance with occupational safety and health principles, the policy should place more emphasis on substitution. In addition, choosing 1/1000 or any other risk level is a policy decision, not a scientific one.

(2) Is there additional scientific information related to the issues of the proposed NIOSH carcinogen policies that should be considered for inclusion? If so, provide information and specify references for consideration. Is there any discussion in the document that should be omitted?

It is AFSCME's position that information on elimination, substitution and closed systems should be added to the document. The substitution of safer materials or the use of completely enclosed systems is preferable to compliance with exposure limits. There are no "safe" levels of exposure to any carcinogen.

AFSCME recommends that NIOSH include in every criteria document and every NIOSH Pocket Guide an entry for a carcinogen that reads: "This substance is a carcinogen. It is recommended that a safer substitute be used instead. If a safer substitute is not feasible, it is recommended that the substance be present in the workplace only in a closed system. The recommended exposure limits (REL) for this substance is to be used as a guideline to manage risk only in cases in which elimination, substitution and closed systems are not feasible."

(3) Is the proposed carcinogen classification policy explained in a clear and transparent manner? Is the basis for the proposed policy adequately explained? If not, specify (section, page, and line number) where clarification is needed.

AFSCME agrees that the proposed carcinogen classification policy and its basis are adequately explained in a clear and transparent manner. AFSCME also supports NIOSH's proposal to rely on the carcinogen classifications of the National Toxicology Program (NTP), the Environmental Protection Agency (EPA), and the International Agency for Research on Cancer (IARC).

(4) Are there issues relevant to the classification of occupational carcinogens that have not been adequately addressed in this proposed policy? If so, provide information and specify references for consideration.

AFSCME believes that NIOSH has adequately addressed issues relevant to the classification of occupational carcinogens in its proposed policy. We believe that most chemicals designated as carcinogens by NTP, IARC and EPA will also impact on the workplace. We agree with NIOSH's proposal to implement its efforts based on the assumption that all chemicals listed by these agencies will also need to be listed as occupational carcinogens by NIOSH.

(5) *NIOSH adapted the OSHA Hazard Communication Table Relating Approximate Equivalences among IARC, NTP RoC, and GHS Carcinogenicity Classifications (Appendix F, Part D, OSHA Globally Harmonized System for Hazard Communication) to provide a simple, systematic method of determining GHS cancer hazard categories. However, NIOSH has further considered the GHS carcinogen categories 1B and 2 because NTP classification reasonably anticipated to be a human carcinogen and IARC classification 2B have criteria that overlap the two GHS categories. NIOSH has reviewed the criteria for GHS classification and has determined that chemicals classified by NTP as reasonably anticipated and chemicals classified as IARC 2B "that have sufficient evidence from animal data" meet the criteria for GHS Carcinogen Category 1B. Chemicals classified by NTP as reasonably anticipated and chemicals classified by IARC as 2B "that have limited evidence from animal data" meet the criteria for GHS Carcinogen Category 2. NIOSH is requesting comments on the validity of the NIOSH Correspondence table (Table 2) and its usefulness as a guide to determine GHS hazard categories.*

In general, we support the criteria proposed by NIOSH for the equivalences among the IARC, NTP, and GHS carcinogenicity classifications. However, as NIOSH itself has noted, there are instances

where there is overlap or inconsistency within the classifications. We agree that it is appropriate to further scrutinize the NTP classification "reasonably anticipated" and the IARC 2B category because those classifications include substances that should belong in GHS Category 1B. Many substances that have been reviewed by NTP and IARC and found to have sufficient animal evidence of carcinogenicity should be classified in GHS Category 1B rather than Category 2. NIOSH will need to further scrutinize individual substances where there is not agreement or where in the NTP and IARC reviews are dated.

(6) Is the proposed target risk level policy explained in a clear and transparent manner? Is the basis for the proposed policy adequately explained? If not, specify (section, page, and line number) where clarification is needed.

The proposed target risk level policy and its basis are adequately explained. AFSCME does not agree with a 1 in 1,000 working lifetime risk.

We understand the history of NIOSH's basis for the proposed policy. The 1 in a 1,000 lifetime risk represents an interpretation by the Solicitor of Labor's (SOL) office of a non-binding footnote to the Benzene case.[1] While OSHA must respond to the SOL, NIOSH is under no such obligation. NIOSH is a scientific organization, does not issue binding regulations, and is not covered by the Benzene case.

The mission of NIOSH is to generate new knowledge in the field of occupational safety and health and to transfer that knowledge into practice for the betterment of workers. To adopt 1 in 1,000 working lifetime risk as the target level for a recommended exposure limit (REL) would be contrary to NIOSH's mission. If followed, the recommendation could result in 1000 fatal cancer cases per million workers exposed. People have the same right to protection at work that they do in other activities. There can be no justification for setting exposure limits for workers that provide less protection than for the general population, for which de minimis risk is considered to be 1 in 1 million lifetime risk.

If NIOSH determines that it is necessary to establish a target risk level, AFSCME would encourage NIOSH to use EPA's de minimis risk level of 10^{-6} . In principle, workers have the same human right to protection from carcinogenic exposures as other members of our society.

(7) An analytical feasibility (AF) notation will be used to identify those RELs that are established to reflect the limitations of the sampling and analytical method (i.e., AF) and not the target risk level of 1 in 1,000. Is this notation adequately explained?

It is AFSCME's position that all RELs should be health-based. Workers read the term "Recommended Exposure Limit" and assume it to mean "safe". Since some currently published RELs are based on analytic feasibility, AFSCME supports labeling them as such in order to alert users that the REL is not health-based target risk level, but instead reflects the limitations of the sampling and analytical method. By definition, an analytic feasibility REL is set at a level at which NIOSH has determined there is still significant risk. AFSCME opposes the establishment of any new analytic feasibility RELs and urges NIOSH to replace all existing analytic feasibility RELs with health-based RELs. We do not believe that setting RELs according to analytic feasibility is consistent with NIOSH's mission. In addition, analytic feasibility RELs can become outdated quickly as technology improves.

[1] Industrial Union Department, AFL-CIO v. American Petroleum Institute, et al. (1980) 448 U.S. 607.

(8) Is the proposed analytical feasibility and technical achievability policy explained in a clear and transparent manner? Is the basis for the proposed policy adequately explained? If not, specify (section, page, and line number) where clarification is needed.

AFSCME is pleased that NIOSH will no longer specifically consider engineering achievability for each chemical-specific REL. As stated above, we believe that RELs should be health based. A health based REL may drive new engineering solutions or substitution.

In summary, AFSCME believes workers should be given the same level of protections from carcinogens as the general public, and that any NIOSH policy concerning carcinogens must reflect this policy. AFSCME also believes that the safest exposure to a carcinogen is no exposure, and that NIOSH's carcinogen policy should promote the use of safer alternatives.

AFSCME appreciates the complexity and difficult nature of the questions. Thank you for the opportunity to comment on NIOSH's Draft Current Intelligence Bulletin "Update of NIOSH Carcinogen Classification and Target Risk Level Policy for Chemical Hazards in the Workplace".

Sincerely,

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