



JAN 23 2020

The Honorable Ed Perlmutter
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Perlmutter:

Thank you for your letter to Deputy Secretary Eric Hargan related to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and a class of employees from the Rocky Flats Plant in Golden, Colorado, for the time period from January 1, 1984, through December 31, 2005 (petition SEC-00192). You have requested review of the decision made in September 2019 by the Secretary of Health and Human Services (HHS) to uphold the 2017 decision of the Acting Secretary of HHS at that time, and current Deputy Secretary, denying Special Exposure Cohort (SEC) status to this class of employees. Deputy Secretary Hargan has asked that I respond on his behalf.

In 2017, petitioners Charles Saunders and Terrie Barrie filed a challenge to the 2017 determination not to add this class of Rocky Flats Plant workers to the SEC. Accordingly, a panel was appointed in April 2018 to conduct an administrative review and provide recommendations concerning the merits of the challenge and the resolution of the issues contested by the challenge. The September 2019 decision was based on the recommendations made by this panel in April 2019.

As you know, the EEOICPA established a compensation program for workers who may have developed certain cancers associated with duties performed working on nuclear-weapons programs administered by the Department of Energy and its predecessor agencies. Unlike individual workers who file claims under EEOICPA, workers who are members of the SEC and who incur a specified cancer qualify for compensation from the Department of Labor (DOL) without the completion of a radiation dose reconstruction by the National Institute for Occupational Safety and Health (NIOSH) or determination of the probability of causation by DOL. Regulations that implement EEOICPA provide that the Secretary of HHS may consider petitions for a class of employees to be added to the SEC, and petitioners may obtain an administrative review of a final decision by the Secretary to deny adding a class to the SEC.

The Rocky Flats Plant administrative review was conducted in strict accordance with the EEOICPA SEC administrative review regulations at 42 CFR § 83.18, by a panel of three distinguished HHS scientists with collective expertise in radiation medicine, occupational radiation protection, radiation exposure, radiation biology, radiation normal tissue injuries, radiation dose assessment and dose reconstruction, and radiation risk analysis. The scientists were neither affiliated with NIOSH nor with the Centers for Disease Control and Prevention (CDC) (the parent agency of NIOSH). The EEOICPA SEC regulations specify the information that a review panel must and may consider during an administrative review. Given the numerous issues raised in the Rocky Flats appeal, the review panel carefully reviewed the documents in the extensive administrative record provided by NIOSH, including those for which the regulation permits, but does not require, panel review. After lengthy deliberations and a very thorough review of the administrative record in this case, the panel concluded that 1) HHS substantially complied with the regulatory procedures set out in 42 CFR part 83; (2) the original determination

contained no evidence of factual error and was supported by factually-accurate information; and (3) there were no errors of fact or in the methods of evaluation, or omission in the principal findings and recommendations of NIOSH and the Board. The panel therefore recommended no change to the determination to deny adding the Rocky Flats Plant workers to the SEC.

After review of the administrative review panel's thorough report, HHS Secretary Alex Azar decided not to revise the original denial of SEC status for the Rocky Flats Plant workers, and we would not anticipate a different outcome with further review.

For these reasons, we are taking no further action on your request. An identical letter is also being sent to Senator Michael F. Bennet.

Sincerely yours,



Brett P. Giroir, M.D.
ADM, USPHS
Assistant Secretary for Health