

109TH CONGRESS
1ST SESSION

S. 585

To better provide for compensation for certain persons injured in the course
of employment at the Rocky Flats site in Colorado.

IN THE SENATE OF THE UNITED STATES

MARCH 9, 2005

Mr. SALAZAR introduced the following bill; which was read twice and referred
to the Committee on Health, Education, Labor, and Pensions

A BILL

To better provide for compensation for certain persons in-
jured in the course of employment at the Rocky Flats
site in Colorado.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Rocky Flats Special
5 Exposure Cohort Act”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—The Congress finds the following:

8 (1) The Energy Employees Occupational Illness
9 Compensation Program Act of 2000 (42 U.S.C.
10 7384 et seq.) (hereinafter in this section referred to

1 as the “Act”) was enacted to ensure fairness and eq-
2 uity for the civilian men and women who, during the
3 past 50 years, performed duties uniquely related to
4 the nuclear weapons production and testing pro-
5 grams of the Department of Energy and its prede-
6 cessor agencies by establishing a program that would
7 provide efficient, uniform, and adequate compensa-
8 tion for beryllium-related health conditions and radi-
9 ation-related health conditions.

10 (2) The Act provides a process for consideration
11 of claims for compensation by individuals who were
12 employed at relevant times at various locations, but
13 also included provisions designating employees at
14 certain other locations as members of a special expo-
15 sure cohort whose claims are subject to a less-de-
16 tailed administrative process.

17 (3) The Act also authorizes the President, upon
18 recommendation of the Advisory Board on Radiation
19 and Worker Health, to designate additional classes
20 of employees at Department of Energy facilities as
21 members of the special exposure cohort if the Presi-
22 dent determines that—

23 (A) it is not feasible to estimate with suffi-
24 cient accuracy the radiation dose that the class
25 received; and

1 (B) there is a reasonable likelihood that
2 the radiation dose may have endangered the
3 health of members of the class.

4 (4) It has become evident that it is not feasible
5 to estimate with sufficient accuracy the radiation
6 dose received by employees at the Department of
7 Energy facility in Colorado known as the Rocky
8 Flats site for the following reasons:

9 (A) Many worker exposures were
10 unmonitored over the lifetime of the plant at
11 the Rocky Flats site. Even in 2004, a former
12 worker from the 1950s was monitored under
13 the former radiation worker program of the De-
14 partment of Energy and found to have a signifi-
15 cant internal deposition that had been unde-
16 tected and unrecorded for more than 50 years.

17 (B) No lung counter for detecting and
18 measuring plutonium and americium in the
19 lungs existed at Rocky Flats until the late
20 1960s. Without this equipment, the very insol-
21 uble oxide forms of plutonium cannot be de-
22 tected, and a large number of workers had in-
23 halation exposures that went undetected and
24 unmeasured.

1 (C) Exposure to neutron radiation was not
2 monitored until the late 1950s, and most of
3 those measurements through 1970 have been
4 found to be in error. In some areas of the plant
5 the neutron doses were as much as 2 to 10
6 times as great as the gamma doses received by
7 workers, but only gamma doses were recorded.
8 The old neutron films are being re-read, but
9 those doses have not yet been added to the
10 workers' records or been used in the dose recon-
11 structions for Rocky Flats workers carried out
12 by the National Institute for Occupational Safe-
13 ty and Health.

14 (D) Radiation exposures for many workers
15 were not measured or were missing and, as a
16 result, the records are incomplete or estimated
17 doses were assigned. There are many inaccura-
18 cies in the exposure records that the Institute
19 is using to determine whether Rocky Flats
20 workers qualify for compensation under the
21 Act.

22 (E) The model that has been used for dose
23 reconstruction by the Institute in determining
24 whether Rocky Flats workers qualify for com-
25 pensation under the Act may be in error. The

1 default values used for particle size and solu-
2 bility of the internally deposited plutonium in
3 workers are subject to reasonable scientific de-
4 bate. Use of erroneous values could substan-
5 tially underestimate the actual internal doses
6 for claimants.

7 (5) Some Rocky Flats workers, despite having
8 worked with tons of plutonium and having known
9 exposures leading to serious health effects, have
10 been denied compensation under the Act as a result
11 of potentially flawed calculations based on records
12 that are incomplete or in error as well as the use of
13 potentially flawed models.

14 (6) Achieving the purposes of the Act with re-
15 spect to workers at Rocky Flats is more likely to be
16 achieved if claims by those workers are subject to
17 the administrative procedures applicable to members
18 of the special exposure cohort.

19 (b) PURPOSE.—The purpose of this Act is to revise
20 the Energy Employees Occupational Illness Compensation
21 Program Act so as to include certain past and present
22 Rocky Flats workers as members of the special exposure
23 cohort.

1 **SEC. 3. DEFINITION OF MEMBER OF SPECIAL EXPOSURE**
2 **COHORT.**

3 (a) IN GENERAL.—Section 3621(14) of the Energy
4 Employees Occupational Illness Compensation Program
5 Act of 2000 (42 U.S.C. 7384l(14)) is amended by adding
6 at the end of paragraph (14) the following:

7 “(D) The employee was so employed as a
8 Department of Energy employee or a Depart-
9 ment of Energy contractor employee for a num-
10 ber of work days aggregating at least 250 work
11 days before January 1, 2006, at the Rocky
12 Flats site in Colorado.”.

13 (b) REAPPLICATION.—A claim that an individual
14 qualifies, by reason of subparagraph (D) of section
15 3621(14) of that Act (as added by subsection (a)), for
16 compensation or benefits under that Act shall be consid-
17 ered for compensation or benefits, notwithstanding any de-
18 nial of any other claim for compensation with respect to
19 that individual.

○