Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 852

RIN 1901–AA90

Guidelines for Physicians Panel Determinations on Worker Requests for Assistance in Filing for State Workers' Compensation Benefits

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) is proposing procedures to implement Subtitle D of the Energy Employees Occupational Illness Compensation Program Act of 2000 under which a DOE contractor employee or the employee's estate can seek assistance from the DOE Program Office in filing a claim with the appropriate State workers' compensation system based on an illness or death caused by exposure to a toxic substance during the course of employment at a DOE facility. These procedures deal with how: An individual may submit an application to the Program Office for review and assistance; the Program Office determines whether to submit an application to a physicians panel; physicians panels determine whether the illness or death of a DOE contract employee arose out of and in the course of employment by a DOE contractor and through exposure to a toxic substance at a DOE facility; the Program Office accepts or rejects a determination by a physicians panel; and appeals may be undertaken.

DATES: Submit written comments on or before October 9, 2001 to the address listed under the **ADDRESSES** section. You may present oral views, data, and arguments at the public hearing, which will be held in Washington, DC, at the address listed under the **ADDRESSES** section beginning at 9 a.m. eastern daylight time on September 24, 2001. DOE must receive requests to speak at the public hearing and a copy of your statements no later than 4 p.m., September 14, 2001. For more information concerning public participation in this rulemaking proceeding, see section IV of this notice of proposed rulemaking.

ADDRESSES: Send three (3) copies of written comments and your prepared statements for the public hearing to Ms. Loretta Young, Office of Advocacy, EH–8, U.S. Department of Energy, 1000 Independence Avenue, Washington, DC 20585, Attention: Physicians Panel Rule.

A public hearing will be held at the following address: U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Room 1E–245, Washington, DC.

You may read and copy written comments received by DOE, the public hearing transcript, and any other docket material at the DOE Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E–190, Washington, DC 20585 between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. For more information concerning public participation in this rulemaking proceeding, see section IV of this notice of proposed rulemaking.

FOR FURTHER INFORMATION CONTACT: Ms. Loretta Young, telephone: 202–586–2819; fax: 202–586–6010; e-mail: *loretta.young@eh.doe.gov;* address: Office of Advocacy, EH–8, U.S. Department of Energy, 1000 Independence Avenue, Washington, DC 20585.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Energy Employees Occupational Illness Compensation Program Act of 2000 (''Act'') (Pub. L. No. 106–398, 42 U.S.C. 7384, *et seq*) establishes a program for compensating covered workers made ill during nuclear weapons production for DOE. Covered workers with certain illnesses, including chronic beryllium disease, radiation-induced cancers, and silicosis, may be eligible for specified benefits under the program. Executive Order 13179 (65 FR 77487, December 7, 2000) assigns the Department of Labor primary responsibility for this program.

While not eligible for Federal compensation under EEOICPA, workers with other illnesses that may be related to workplace toxic exposures may qualify and apply for compensation through their respective State workers' compensation systems. Subtitle D of the Act authorizes the Secretary of Energy to enter into an agreement with each State to provide assistance to a DOE contractor employee in filing a claim under that State's workers' compensation system. After DOE enters into such an agreement with a State, an applicant can submit an application to the Program Office in DOE for assistance in filing a claim with that State's workers' compensation system. If the application comes within the terms and conditions of the relevant State Agreement and contains reasonable evidence that the illness or death of a covered employee may be related to employment at a DOE facility, then DOE must submit the application to a physicians panel established under the Act to determine the validity of the applicant's claim. Under the Act, DOE specifies the number of physicians panels required, the number of physicians per panel, and each panel's jurisdiction, while the Secretary of Health and Human Services appoints the members of the physicians panels. Section 3661(d) of Subtitle D of the Act provides that a physicians panel must make its determination ''under guidelines established by the Secretary [of Energy], by regulation.'' If a physicians panel makes a positive determination and the Program Office accepts it, then the Program Office must assist the applicant in filing a claim with the relevant State's workers' compensation system. In addition, DOE may not contest the claim or any award

made regarding the claim and, to the extent permitted by law, may direct a DOE contractor not to contest the claim or award. Furthermore, any costs of contesting the claim or award is not an allowable cost under a DOE contract.

The proposed procedures are consistent with existing DOE Notice 350.6 that sets forth Departmental policy to pay all valid State workers' compensation claims. DOE Notice 350.6 provides for the expeditious validation of claims that meet the criteria for compensation under a State workers' compensation system. The proposed procedures would achieve the same result.

The linkage to the criteria for compensation under a State workers' compensation system is consistent with the structure of the Act. Specifically, Subtitle D of the Act authorizes DOE to assist a worker in filing a claim under the appropriate State workers' compensation system. DOE does not interpret Subtitle D as calling for federalizing the operation of State workers compensation standards. Rather, Subtitle D is intended to ensure that DOE will assist and not hinder the processing of valid claims under a State workers' compensation system.

II. Discussion of Proposed Rule

A. What Is the Purpose of This Proposed Rule?

The proposed rule establishes procedures for implementing Subtitle D of the Act. Proposed section 852.1(a) provides that these regulations address how (1) an individual may submit an application to the Program Office for review and assistance, (2) the Program Office determines whether to submit an application to a physician panel, (3) physicians panels determine whether the illness or death of a DOE contract employee arose out of and in the course of employment by a DOE contractor and through exposure to a toxic substance at a DOE facility, (4) the Program Office accepts or rejects a determination by a physicians panel, and (5) appeals may be undertaken.

B. What Is the Scope of This Proposed Rule?

Proposed section 852.1(b) makes clear that the procedures only cover applications that meet three conditions. First, the application must be based on the illness or death of a DOE contractor employee. Second, the illness or death must be caused by exposure to a toxic substance. And third, the exposure must have occurred during the course of employment at a DOE facility.

Consistent with the statutory emphasis on State Agreements as a precondition for action under Subtitle D of the Act, proposed section 852.1(c) provides that all actions under the procedures must be pursuant to a relevant State Agreement and consistent with its terms and conditions.

C. What Definitions Are Used in This Proposed Rule?

This proposed rule contains definitions of ''Act'', ''Applicant'', ''DOE'', ''DOE Contractor Employee'', ''DOE Facility'', ''Program Office'', ''Physicians Panel'', ''State Agreement'', and ''Toxic Substance''.

D. What Is the Act?

The Act is the Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. 7384 *et seq.*

E. Who Is an Applicant?

An applicant is a DOE contractor employee or the employee's estate seeking assistance from the Program Office in filing a claim with the relevant State workers' compensation system.

F. Who Is a DOE Contractor Employee?

Proposed section 852.2 defines a DOE contractor employee to be a ''Department of Energy contractor employee'' as defined by section 3621(11) of the Act. The statutory definition focuses on employment by a DOE contractor at a DOE facility and establishes one of the subsets of employees eligible for the DOL program. Thus, the term ''DOE contractor employee'' does not include all those employees eligible for the DOL program. For example, it does not include atomic weapon employees who were not employed by a DOE contractor at a DOE facility. In addition, it does not include Federal employees.

G. What Is a DOE Facility?

Proposed section 852.2 defines ''DOE facility'' to be a ''Department of Energy facility'' as defined by section 3621(12) of the Act. DOE has published a list of facilities it considers to be Department of Energy facilities for purposes of the Act. (66 FR 4003, January 17, 2001; revised 66 FR 31218, June 11, 2001). DOE took a broad view of what constitutes a Department of Energy facility in compiling this list and solicits comments as to whether this broad view is appropriate for implementing Subtitle D of the Act.

H. What Is the Program Office?

The Program Office is the DOE Office of Worker Advocacy or any other DOE office subsequently designated by the Secretary of Energy. The Program Office exercises most of the functions of the Secretary of Energy under Subtitle D of the Act.

I. What Is a Physicians Panel?

Physicians panels are appointed by the Secretary of Health and Human Services in response to requests by DOE pursuant to Subtitle D of the Act. Physicians panels provide DOE with impartial and independent determinations as to whether the illness or death of a DOE contractor worker arose out of and in the course of employment by a DOE contractor and exposure to a toxic substance at a DOE facility. Physicians panels may be asked to review new applications that have not undergone prior physicians panel review, or to re-examine applications that have already undergone physicians panel review.

J. What Is a State Agreement?

Proposed section 852.2 defines ''State Agreement'' as an agreement negotiated between DOE and a State that sets forth the terms and conditions for dealing with an application for assistance under Subtitle D of the Act in filing a claim with the State's workers' compensation system. The existence of a State Agreement with a particular State is a condition precedent for any action by the Program Office on an application for assistance in filing a claim with that State's workers compensation system. Once in effect, a State Agreement sets the parameters within which the Program Office can take action with respect to an application.

K. What Provisions Does a State Agreement Contain?

Proposed section 852.6 provides for three standard provisions in State Agreements which are subject to negotiation. First, a State will identify the applicable criteria used to determine the validity of a workers' compensation claim under State law and describe how those criteria are applied in a State worker's compensation proceeding. Second, only those applications that satisfy the identified applicable criteria law will be submitted to a physicians panel. And third, the Program Office will provide assistance to only those applications that meet the identified applicable criteria.

The standard provisions indicate that DOE will rely on State standards for screening applications prior to submission to physicians panels for a causation determination. DOE has considered prescribing Federal standards without regard to State law,

and proposes not to do so for a variety of reasons. First, the text of the Act does not require DOE to prescribe such standards. Second, in the absence of statutory text and legislative history to the contrary, DOE construes the purpose of the Act to be provision of DOE assistance to contractor employees or their estates to enable them to qualify for compensation under State law. Third, there is nothing in the text of the Act or its legislative history indicating that Congress intended to bypass State law or to provide for affirmative physician panel determinations that may not have any operative impact because of State law. Although the Act provides for DOE to deny reimbursement of contractor litigation expenses in defense of claims for which there are affirmative physician panel determinations, that provision would have no impact in circumstances where the contractor's defense is in the hands of an insurance company. DOE invites comments on its proposal to rely on State standards to screen applications for assistance. DOE also solicits comments as to what other provisions should be included in State Agreements. For example, should a State Agreement contain a provision under which the State would consider the opinion of a physicians panel on medical issues and, if appropriate, delay State proceedings in order to obtain such an opinion?

L. What Is a Toxic Substance?

Proposed section 852.2 defines ''toxic substance'' as any material that has the potential to cause illness or death because of its radioactive, chemical, or biological nature. This is a relatively broad definition of the term, which could be interpreted to encompass not only toxic chemicals, but also infectious agents and external radiation sources. However, this definition does not include all workplace conditions that might cause illness or death. For example, workplace noise is not considered a toxic substance and thus hearing loss resulting from exposure to workplace noise could not provide a basis for an application for assistance under Subtitle D of the Act. An example of a narrower definition of ''toxic substance'' would be, ''any chemical or compound capable of causing illness as a result of exposure.'' DOE solicits comments on its definition, including whether ''toxic substance'' should be defined more precisely.

M. How Does an Individual Obtain and Submit an Application for Review and Assistance?

Proposed section 852.3 defines how an individual obtains and submits an application for review and assistance. An application can be obtained in person from the Program Office, from any Resource Center, and from any DOE-sponsored Former Worker Program. There are currently approximately one dozen Former Worker Programs throughout the U.S. The Former Worker Programs currently offer screening examinations for the detection of occupational illnesses for individuals formerly employed at some but not all DOE facilities. An application can also be obtained by mail or telephone request to the Program Office, or, in a printable format, from the Program Office's web site.

Proposed section 852.3 also describes how an application is submitted. An application can be submitted in person to the Program Office, to any Resource Center, or to any DOE-sponsored Former Worker Program, where staff will be available to answer questions and assist the individual in filling out the application. An application can also be submitted by mail to the Program Office.

Proposed section 852.4 describes the information and materials that the individual must submit as a part of the application for physicians panel review. First, the individual must sign a request for review by a physicians panel of the individual's application for assistance. Additional information requirements flow out of Subtitle D of the Act, which requires that, in order to qualify for physicians panel review, the applicant must submit reasonable evidence that (a) the application was filed by or on behalf of a DOE contractor employee or employees estate; and (b) the illness or death of the employee may have been related to employment at a DOE facility. In order to assure that the Program Office has sufficient information to determine whether an individual meets these eligibility criteria, and in order to provide a physicians panel with sufficient information to make a causation determination on an application, the applicant is also required in proposed section 852.4, to provide (a) a signed medical release, authorizing non-DOE sources of medical information to provide the Program Office with medical records documenting the individual's diagnosis or providing an opinion as to the relationship between the applicant's medical condition and exposure to a toxic substance while employed at a DOE facility; (b) a signed release permitting the Program Office to obtain any records under the control of DOE and relevant to the individual's eligibility for the program or relevant to the physicians panel's adjudication of the application, including employment, exposure and medical records; (c) an employment history, filled out by the individual; and (d) any other information or materials deemed by the Program Office to be relevant to a determination of the individual's eligibility for the review and assistance program, or relevant to adjudication of the application by a physicians panel. As the program is implemented, the Program Office may find that it needs additional information or materials for the processing of an application for review and assistance.

N. How Does the Program Office Decide What Applications To Submit to a Physicians Panel?

Proposed section 852.5 establishes a screening mechanism by which the Program Office determines whether to submit an application to a physicians panel. Specifically, an application must contain adequate information to permit the Program Office to make a reasonable initial determination that the following three conditions are met. First, the application was filed by or on behalf of a DOE contractor employee or employee's estate. Second, the illness or death of the DOE contractor employee may have been related to employment at a DOE facility. And third, the conditions in the relevant State Agreement are or can be satisfied. DOE solicits comment on whether the proposed conditions are appropriate and what, if any, additional conditions should be used.

Proposed section 852.5 provides that the Program Office will screen applications prior to sending them to a physicians panel for a causation determination. Among other things, under the proposed rule, the Program Office may decide not to forward an application to a physicians panel at this stage because the Program Office determines that the application would not satisfy the conditions in the relevant State Agreement, including the applicable criteria used to determine the validity of a workers' compensation claim under State law. Potential criteria would include: (1) Whether the disease or condition is covered under the State workers' compensation system, (2) whether there is a prescribed time period for bringing a claim, and (3) what level and type of evidence is required to support a claim. DOE solicits comment on whether the suggested criteria are appropriate and what, if any, alternative or additional criteria should be used. In addition, DOE specifically solicits comments on whether State claims' timeliness requirements should be excluded from the screening criteria developed under this part.

DOE also seeks comment on a more limited alternative screening mechanism. This alternative would provide for the negotiation of agreements with the States to identify particular criteria that are relevant to the question, under state law, whether a particular disease caused by a toxic substance arises out of employment at a DOE facility. Under this alternative screening mechanism, the Program Office would take into consideration the relevant State criteria in determining whether an application alleges an illness or death that may have been related to employment at a DOE facility and should be submitted to a physicians panel to determine whether the medical evidence supports the applicable criteria. The Program Office would refer to a physicians panel any application that alleges the appropriate criteria, along with specific questions that the panel should address, based on criteria identified in the relevant State Agreement, in order to determine whether the condition in question arises out of employment and exposure to toxic substances. DOE invites comments on this alternative screening mechanism that would limit the use of state criteria to those related to the question of whether a disease arose from exposure to a toxic substance during employment at a DOE facility and that would not use other State criteria related to the broader question of whether an application presents a valid claim for compensation under the State's workers' compensation system. In particular, comments should address what type of criteria might be identified in a State Agreement under this alternative screening mechanism. Potential criteria might include: (1) Whether the disease originated from a hazard to which workers would have been equally exposed outside of the employment, (2) whether there is a causal connection between the work conditions and the disease, (3) whether the disease is peculiar to the occupation in which the employee is or was engaged, (4) whether the disease was contracted after a period of exposure to the toxic substance specified under state law, or (5) the level of medical probability that the disease was the material and direct result of the conditions under which the work.

DOE is considering an additional alternative that would provide for this screening determination to be made by State officials on a reimbursable basis. This would take advantage of the in-house expertise of the State workers' compensation offices. DOE invites affected States and interested members of the public to comment on this alternative screening mechanism. Under this alternative, DOE would contract with States to do the initial screening prior to submission of applications to the physician panels. States most likely have an existing structure within their workers' compensation office that could make these determinations. The determinations would not be compensation determinations, but rather a basic threshold test for eligibility based on pre-established determination criteria. Such criteria could include eligibility under that State's workers compensation laws; evidence that the application was filed on behalf of a DOE contractor employee or employee's estate; and evidence that the illness or death of the DOE contractor employee may have been related to employment at a DOE facility. If the State determines that an individual meets that test, the Program Office would then submit the necessary information to a physicians panel. DOE solicits comment on this alternative. DOE is specifically interested in receiving comment regarding the burden this would place on States and whether utilizing State expertise to make these determinations (rather than the Program Office) would justify this burden.

As a general matter, DOE requests comments as to: (1) whether the use of a screening mechanism is consistent with the statutory framework; and (2) whether the use of applicable State criteria or uniform Federal criteria better achieves the statutory objectives.

O. What Guidelines Does a Physicians Panel Use To Determine Whether an Illness Arose Out of and in the Course of Employment by a DOE Contractor and Exposure To a Toxic Substance at a DOE Facility?

Proposed section 852.7 provides that a physicians panel determines whether the illness or death arose out of and in the course of employment by a DOE contractor and exposure to a toxic substance at a DOE facility on the basis of whether there is sufficient information to support two findings. First, the physician panel must find there is an adequate factual basis for a prima facie case that exposure to a toxic substance at a DOE facility during the course of employment by a DOE contractor caused the illness or death. Second, taking into account all the information, the physicians panel must make a reasonable finding that it is more likely than not that exposure to a toxic substance at a DOE facility during the course of employment by a DOE contractor caused the illness or death. This two-pronged test focuses on both adequacy of information and likelihood of causation.

Proposed section 852.7 sets the burden of proof as ''more likely than not.'' DOE considered and decided not to propose the ''as likely as not'' standard used in subtitles of the Act other than Subtitle D. In DOE's view, the ''more likely than not'' standard better reflects the proof of causation required by the statute's physicians panel provisions. DOE solicits comments on what is the appropriate burden of proof for assistance under the DOE program.

DOE considered and rejected proposing guidelines under which a physicians panel must determine whether an illness arose out of and in the course of employment by a DOE contractor and exposure to a toxic substance at a DOE facility by using the applicable criteria under State law in the manner used to determine the validity of a workers' compensation claim under State law. DOE decided it is more appropriate to take State criteria into account during the initial screening process. DOE does believe it is appropriate to have a physicians panel examine one or more of the medical criteria identified in a State Agreement if it is not possible during the initial screening to determine whether a particular criterion is satisfied. DOE solicits comments on the extent, if any, to which physicians panels should be expected to examine criteria used in State workers' compensation proceedings.

P. What Materials Should a Physicians Panel Review Prior to Making a Determination?

Proposed section 852.8 provides that each physicians panel member will receive from the Program Office a complete set of materials related to the applicant's diagnosis, medical history, work history, and history of exposures so that the panel will have an adequate body of information for making a determination. The panel must review all materials it receives from the Program Office.

Q. How May a Physicians Panel Obtain Additional Information or a Consultation That It Needs To Make a Determination?

A physicians panel may, on occasion, need additional information or consultations to make its determination. For expediency, documentation of evidence, maintenance of confidentiality, and records control, proposed section 852.9 requires the panel to make all requests for additional information through the Program Office.

The panel may request an interview with the applicant, if the panel believes that only the applicant can supply the necessary information. Based upon the experiences of similar physicians panels, including the Expert Panel of the Fernald II Settlement Fund, it is anticipated that such a request will be unusual, but may be necessary in rare cases in order to obtain essential information. The panel can also request that the applicant provide additional medical information. The physicians panel may request consultation with specialists in fields relevant to its deliberations, if needed, as provided for in section 3661(d)(4) of the Act, or refer to relevant medical and scientific literature. The Program Office will maintain a roster of available specialists for this purpose.

Subtitle D neither specifically authorizes nor specifically bars DOE from paying for the development of medical evidence (e.g. medical examinations) to support an individual's application for assistance under Subpart D. Although today's proposed regulations do not provide for DOE to pay for the development of the applicant's medical documentation, DOE considered proposing regulations to permit such activities. DOE elected not to make such a proposal because of doubts about statutory authorization and whether this approach is appropriate. DOE invites comment on this choice and the desirability of including regulations permitting such activities in the notice of final rulemaking.

R. How Is a Physicians Panel To Carry out Its Deliberations and Arrive at a Determination?

After each member of a physicians panel reviews the information, the panel members discuss an application and arrive at a determination by unanimous agreement of its members. Because it is anticipated that physicians panels will be spread out geographically, proposed section 852.10 permits teleconferencing. This system has worked well for prior physicians panels, such as the Expert Panel of the Fernald II Settlement Fund.

S. How Must a Physicians Panel Issue Its Determination?

In order to ensure that a physicians panel has made its determination based upon the relevant evidence and that it has provided the basis for its determination, proposed section 852.11 requires the panel to identify the materials it has reviewed in making its determination, and express the determination and its basis in a series of findings that logically links the evidence reviewed to the conclusions drawn. The panel must also cite, for the Program Office's consideration, any evidence to the contrary of the panel's determination, and explain why the panel finds this evidence to be not persuasive.

DOE anticipates that some covered workers who have applied for benefits under the DOL program will also apply for assistance from the Program Office in filing a claim with a State workers' compensation system. However, filing a claim under the DOL program is not a requirement for the DOE program. In addition, receiving benefits under the DOL program does not automatically entitle an applicant to receive assistance from the Program Office or a positive determination from a physicians panel. For example, under the DOL program a member of a Special Exposure Cohort who has a specified cancer could establish entitlement to benefits for a specified cancer in the absence of clear evidence that the disease is the result of exposure to a toxic substance. A physicians panel, however, can make a positive determination only if sufficient evidence is provided. Factual findings made by DOL, including findings based on dose reconstructions performed by HHS regarding the likelihood that cancer was caused by occupational exposure to radiation, while relevant to a panel's assessment, are not binding on a physicians panel. A physicians panel is free to make different causation determinations, or to base those determinations on different factual premises. A physicians panel would be expected to explain the extent to which it based its determination on the findings of any agency in its report to the Program Office.

T. When Must a Physicians Panel Issue Its Determination?

Proposed section 852.12 requires a physicians panel to submit its determination within 30 working days of receiving the application materials, unless granted an extension by the Program Office.

U. What Precautions Must Each Physicians Panel Member and Each Specialist Take in Order To Keep an Applicant's Personal and Medical Information Confidential?

Because records for review by the physicians panels and by medical specialists consulted at the request of these panels contain confidential, personal, and medical information, this section is included to provide safeguards that physicians panels and specialists must follow to preserve the confidentiality of this information. Physicians panel members and specialists are required to comply with all provisions of the Privacy Act of 1974 applicable to Worker Advocacy records. Safeguards specified include maintaining paper records in locked cabinets and desks, and not including personally identifiable information in published or unpublished reports, studies, or surveys.

V. What Actions Must a Physicians Panel Member Take if That Member Has a Potential Conflict of Interest in Relation To a Specific Application?

In order to ensure objectivity and fairness, proposed section 852.14 requires each panel member to report any real or perceived conflict of interest with regard to a particular application to the Program Office, and to cease reviewing the application pending instruction by the Program Office. The Program Office will then take appropriate actions to remedy the situation, generally referring the application to a different physicians panel. At least two physicians panels are designated to review applications submitted by employees of each DOE facility. The Program Office may also employ other remedies, such as substituting an alternate panel member for the panel member with the conflict of interest. The Program Office has alternate panel members available for this purpose if needed.

W. When May the Program Office Ask a Physicians Panel To Re-Examine an Application That Has Undergone Prior Physicians Panel Review?

Proposed section 852.15 provides that the Program Office may refer a case back to the original panel or to a different panel, after the original panel has made a determination, in the following circumstances: if the Program Office obtains additional information whose consideration could result in a different determination, including information provided by the applicant, for quality assurance purposes, or if an additional review is otherwise necessary for the fair determination of the application. The Program Office may refer an application to a different panel, but not the original panel, if the office has concerns that the available evidence does not support the original panel's determination, as one possible remedy for a conflict of interest involving a panel member, as described in section 852.14, or to ensure consistency between panels in their decision making.

X. Must the Program Office Accept the Determination of a Physicians Panel?

Proposed section 852.16 requires the Program Office, except as provided in section 852.15, to accept the determination by a physicians panel unless there is significant evidence to the contrary.

Y. Is There an Appeals Process?

Proposed section 852.17 provides that an applicant may request the Office of Hearings and Appeals to review: (1) A decision by the Program Office not to submit an application to a physicians panel, (2) a negative determination by a physicians panel that is accepted by the Program Office, or (3) a decision by the Program Office not to accept a positive determination by a physicians panel if the Program Office does not return the application to a physicians panel for further consideration. Proposed section 852.17 is clear that an applicant must request review by the Office of Hearings and Appeals in order to exhaust administrative remedies. An applicant must file a notice of appeal with the Office of Hearings and Appeals on or before 60 days from the date of a letter from the Program Office notifying the applicant of a determination appealable under this section. The Office of Hearings and Appeals will consider appeals in accordance with its procedures set forth in 10 CFR part 1003. A decision by the Office of Hearings and Appeals shall constitute final agency action.

Z. What Is the Effect of the Acceptance by the Program Office of a Positive Determination by a Physicians Panel?

In the event the Program Office accepts a positive determination by a physicians panel, the Program Office must assist the applicant in filing a claim with the relevant State's workers' compensation system and cannot contest the claim or any award made regarding the claim. In addition, the Program Office may, to the extent permitted by law, direct a DOE contractor not to contest the claim or award. Furthermore, any costs of contesting the claim or award is not an allowable cost under a DOE contract.

AA. How Much Will This Program Cost?

DOE estimates that the worker assistance program will result in costs of $127,122,251 over the next ten years. This total cost estimate includes benefit costs for State workers' benefits paid to ill workers or their families, and operational costs for the operation of the Advocacy Office, Resource Centers, physicians panels and advisory committee. Of this total, $92,645,500 is attributed to administering the program. The administrative cost estimates are distributed among DOE Resource Center costs of $16,500,000, records search costs estimated at $45,895,500, physicians panel costs of $19,500,000, casework and hotline costs of $9,950,000 and Federal Advisory Committee costs of $800,000. DOE estimates that more than $45,000,000 of the $45,895,000 estimated costs for records searches will be in support of the DOL portion of the program, based on DOL estimates of the number of claimants. The highest annual administrative costs are anticipated in fiscal year 2003, and are estimated to be approximately $19,000,000.

DOE estimates the total benefit costs over the next ten years to be $34,476,751. The highest anticipated annual costs would be in fiscal year 2003, and are estimated at $29,695,098. Costs are expected to decrease each year thereafter throughout the estimation period. The total benefit costs will be distributed across a number of claimant and benefit types, including medical care, wage replacement, and permanent partial disability (PPD). The highest total costs for benefits are anticipated in fiscal year 2003, and are estimated to be just above $10,000,000. Medical cost estimates are based on Workers Compensation for Radiation Induced Illness: A Re-Examination of Past Practices and Options for Change by N. A. Ashford et al, January 1996, with costs escalated to1999 dollars. These cost estimates, as well as estimates of the number of claimants, are taken from DOE and DOL estimates for a prior legislative proposal covering some of the same workers and conditions covered by the Subtitle D worker assistance program. PPD benefits vary by State, worker attributes like age and employability, and worker wage. These estimates reflect a range of costs for disability payments.

DOE contractors will see increased costs in the form of insurance payments or premiums and increased contributions to State workers' compensation funds in some cases. Ultimately, DOE bears the cost of the additional workers' compensation claims, as DOE contractors pass on these costs.

III. Regulatory Review and Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined to be ''a significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This proposed rule would provide guidelines for the operation and determinations of physicians panels established to provide expert opinion to DOE on the cause of a worker's illness or death. It would not impose costs or burdens on any small business or other small entity. DOE, therefore, certifies that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

C. Review Under the Paperwork Reduction Act

The proposed rule provides that an individual may submit an application for review and assistance to the Program Office that contains information relating to the individual's employment by a DOE contractor, the nature of the illness or death, and the relationship between the illness or death and the individual's employment at a DOE facility. The application is required for DOE to determine whether reasonable evidence exists for submitting the individual's application to a physician panel.

DOE is submitting to the Office of Management and Budget (OMB), simultaneously with the publication of this proposed rule, this collection of information for review and approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection has been reviewed and assigned a control number by OMB. Interested persons may obtain a copy of the Paperwork Reduction Act Submission from the contact person named in this notice.

Interested persons are invited to submit comments to OMB addressed to: Department of Energy Desk Officer, Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW., Washington, DC 20503. Persons submitting comments to OMB also are requested to send a copy to the DOE contact person at the address given in the **ADDRESSES** section of this notice.

OMB is particularly interested in comments on: (1) The necessity for the proposed collection of information, including whether the information will have practical utility; (2) the accuracy of DOE's estimates of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

DOE assumes that most applications for assistance under this part will be made in the first and second years after the worker assistance process is established. It is not possible to give precise estimates of the number of applications that will be filed. However, DOE previously has estimated the number of workers potentially eligible for State compensation at 1,200. For purposes of the Paperwork Reduction Act Submission, DOE is multiplying 1,200 by 5 to reach an estimate of the total number of applications that may be filed. DOE further assumes that one hour will be required to complete an application. Using these assumptions, DOE estimates the total annual paperwork burden to be approximately 6,000 hours.

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this proposed rule deals only with physicians panel procedures, and, therefore, is covered under the Categorical Exclusion for rulemakings that are strictly procedural in paragraph A6 of Appendix A to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on Agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have ''federalism implications.'' Policies that have federalism implications are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.'' On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's proposed rule and has determined that it does not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. The scope of this proposed rule is limited to defining how a physicians panel established under the Act will determine whether the illness or death that is the subject of an application for assistance in filing a claim under a State's workers' compensation system arose out of and in the course of employment by the Department of Energy and exposure to a toxic substance at a Department of Energy Facility. Referral of an application to a physicians panel can occur only by agreement with the applicable State, and the proposed rule would require the application of that State's statutory workers' compensation criteria, if provided for in the agreement. Thus, this proposed rule would not preempt State workers' compensation law. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Federal Agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear, legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear, legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal Agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any 1 year. The Act also requires a Federal Agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed ''significant intergovernmental mandate,'' and it requires an Agency to develop a plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirement that might significantly or uniquely affect small governments. The proposed rule published today does not contain any Federal mandate, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal Agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. This rulemaking would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has not prepared a Family Policymaking Assessment.

I. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and

Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA, as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits energy supply, distribution, and use.

Today's proposed rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

IV. Opportunity for Public Comment

A. Written Comments

Interested persons are invited to participate in this proceeding by submitting data, views, or comments with respect to this proposed rule. To help the Department review the submitted comments, commenters are requested to reference the paragraph(s) (e.g., 852.2(a)) to which they refer when possible.

Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. All comments received will be available for public inspection as part of the administrative record on file for this rulemaking in the Department of Energy Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–3142, between the hours of 9 a.m.and 4 p.m., Monday through Friday, except Federal holidays. All written comments received by the date indicated in the **DATES** section of this notice of proposed rulemaking and all other relevant information in the record will be carefully assessed and fully considered prior to the publication of the final rule. Pursuant to the provisions of 10 CFR 1004.11, anyone submitting information or data that he or she considers to be confidential and exempt from public disclosure by law should submit one complete copy of the document, as well as two copies, if possible, from which the information has been deleted. The Department will make its own determination as to the confidentiality of the information and treat it accordingly.

B. Public Hearing

1. Procedure for Submitting Requests to Speak

You will find the time and place of the public hearing listed at the beginning of this notice. We invite any person who has an interest in today's notice, or who is a representative of a group or class of persons that has an interest in these issues, to request an opportunity to make an oral presentation. If you would like to speak at this hearing, contact Ms. Loretta Young, telephone: 202–586–2819; fax: 202–586–6010; e-mail: *loretta.young@eh.doe.gov;* address: Office of Advocacy, EH–8, U.S. Department of Energy, 1000 Independence Avenue, Washington, DC 20585, no later than 10 days in advance of the hearing.

The person making the request should briefly describe the nature of the interest in the rulemaking, and provide a telephone number for contact. We request each person selected to be heard to submit an advance copy of his or her statement at least 10 days prior to the date of this hearing. Also, each presenter is to bring three copies of the prepared oral statement to the hearing. At our discretion, we may permit any person who cannot do this to participate if that person has made alternative arrangements with Ms. Young in advance.

2. Conduct of Hearing

DOE will designate a DOE official to preside at the public hearing. The public hearing will not be a judicial or evidentiary-type hearing, but DOE will conduct it in accordance with 5 U.S.C. 553 and section 501 of the Department of Energy Organization Act (42 U.S.C. 7191). Each oral presentation is limited to 10 minutes. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal or clarifying statement. The statements will be given in the order in which the initial statements were made and will be subject to time limitations. Only those conducting the hearing may ask questions. The hearing will last as long as there are persons who have requested an opportunity to speak.

DOE will prepare a transcript of the hearing. DOE will retain the transcript and other records of this rulemaking and make them available for inspection in DOE's Freedom of Information Reading Room, as provided at the beginning of this notice. Any person may purchase a copy of the transcript from the transcribing reporter.

The presiding official will announce any further procedural rules needed for the proper conduct of the hearing.

List of Subjects in 10 CFR Part 852

Administrative practice and procedure, Government contracts, Hazardous substances, Workers' Compensation.

Issued in Washington, DC, on August 31, 2001.

Francis Blake,

Deputy Secretary of Energy.

For the reasons stated in the preamble, DOE hereby proposes to amend chapter III of title 10 of the Code of Federal Regulations by adding part 852 to read as follows:

PART 852—GUIDELINES FOR PHYSICIAN PANEL DETERMINATIONS ON WORKER REQUESTS FOR ASSISTANCE IN FILING FOR STATE WORKERS' COMPENSATION BENEFITS

Sec.

Authority: 42 U.S.C. 7384, *et seq.*; 42 U.S.C. 2201 and 7101, *et seq.*; 50 U.S.C. 2401 *et seq.*

§ 852.1 What is the purpose and scope of this part?

(a) This part implements Subtitle D of the Act by establishing the procedures under which:

(1) An individual may submit an application to the Program Office for review and assistance;

(2) The Program Office determines whether to submit an application to a physician panel;

(3) Physicians panels determine whether the illness or death of a DOE contractor employee arose out of and in the course of employment by a DOE contractor and through exposure to a toxic substance at a DOE facility;

(4) The Program Office accepts or rejects a determination by a physicians panel; and

(5) Appeals may be undertaken.

(b) This part covers applications based on the illness or death of a DOE contractor employee caused by exposure to a toxic substance during the course of employment at a DOE facility.

(c) All actions under this part must be pursuant to the relevant State Agreement and consistent with its terms and conditions.

§ 852.2 What are the definitions of terms used in this part?

Act means the Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. 7384 *et seq.*

Applicant means a DOE contractor employee or the employee's estate seeking assistance from the Program Office in filing a claim with the relevant State workers' compensation system.

DOE means the U.S. Department of Energy.

DOE contractor employee means a ''Department of Energy contractor employee'' as defined by section 3621(11) of the Act.

DOE facility means a facility designated by DOE as a ''Department of Energy facility'' as defined by section 3621(12) of the Act.

Physicians panel means a group of physicians appointed by the Secretary of Health and Human Services pursuant to Subtitle D of the Act to evaluate potential claims of DOE contractor employees under the appropriate State workers' compensation system.

Program Office means the Office of Worker Advocacy within DOE's Office of Environment, Safety and Health, or any other DOE office subsequently assigned to perform the functions of the Secretary of Energy under Subtitle D of the Act.

State Agreement means an agreement negotiated between DOE and a State that sets forth the terms and conditions for dealing with an application for assistance under Subpart D of the Act in filing a claim with the State's workers' compensation system.

Toxic substance means any material that has the potential to cause illness or death because of its radioactive, chemical, or biological nature.

§ 852.3 How does an individual submit an application for review and assistance?

(a) An individual obtains an application for review and assistance—

(1) In person from the Program Office, from any Resource Center or from any DOE-sponsored Former Worker Program;

(2) By mail or telephone request to the Program Office; or

(3) In printable format, from the Program Office's web site.

(b) An individual submits an application for review and assistance—

(1) In person to the Program Office, to any Resource Center or to any DOE-sponsored Former Worker Program.

(2) By mail to the Program Office.

§ 852.4 What information and materials must an individual submit as a part of the application for review and assistance?

As a part of the application for review and assistance, an individual must submit, in writing:

(a) A signed request for a review of the application by a medical panel;

(b) A signed medical release, whereby the individual permits health care providers and health care facilities to release to the Program Office any medical records providing documentation of the individual's diagnosis or an opinion as to the relationship between the applicant's medical condition and exposure to a toxic substance while employed at a DOE facility;

(c) A signed release permitting the Program Office to obtain any records under the control of DOE and relevant to the individual's eligibility for the review and assistance program, or relevant to the adjudication of the application by a physicians panel, including employment, exposure and medical records;

(d) An employment history; and

(e) Any other information or materials deemed by the Program Office to be relevant to a determination of the individual's eligibility for the review and assistance program, or relevant to adjudication of the application by a physicians panel.

§ 852.5 What applications are submitted to a physician panel?

(a) The Program Office will submit an application to a physicians panel if the application contains adequate information to make a reasonable initial determination that:

(1) The application was filed by or on behalf of a DOE contractor employee or employee's estate;

(2) The illness or death of the DOE contractor employee may have been related to employment at a DOE facility; and

(3) The conditions in the relevant State Agreement are or can be satisfied.

(b) The Program Office shall notify the applicant promptly in writing of a negative determination under this section.

§ 852.6 What conditions will be set forth in State Agreements?

Subject to negotiations between DOE and a State, a State Agreement must contain provisions that:

(a) A State will identify the applicable criteria used to determine the validity of a workers' compensation claim under State law and describe how those criteria are applied in a State workers' compensation proceeding;

(b) Only those applications that can satisfy the identified applicable criteria will be submitted to a Physicians Panel; and

(c) The Program Office will provide assistance to only those applications that satisfy the identified applicable criteria.

§ 852.7 How does a physicians panel determine whether an illness arose out of and in the course of employment by a DOE contractor and exposure to a toxic substance at a DOE facility?

A panel shall determine whether the illness or death arose out of and in the course of employment by a DOE contractor and exposure to a toxic substance at a DOE facility on the basis of whether there is sufficient information to support:

(a) A prima facie case that exposure to a toxic substance at a DOE facility during the course of employment by a DOE contractor caused the illness or death; and

(b) A reasonable finding that it is more likely than not that exposure to a toxic substance at a DOE facility during the course of employment by a DOE contractor caused the illness or death.

§ 852.8 What materials should a physicians panel review prior to making a determination?

The physicians panel should review all records relating to the application that are provided by the Program Office. Such records may include:

(a) Medical records;

(b) Employment records;

(c) Exposure records;

(d) Job history obtained by interview with the applicant;

(e) Medical Examiner's report or Coroner's report and death certificate;

(f) Workers' compensation records;

(g) Medical literature or reports;

(h) Information (e.g., dose reconstruction data) included as part of a claim under the Act filed with the Department of Labor; and

(i) Any other records or evidence pertaining to the applicant's request for assistance.

§ 852.9 How may a physicians panel obtain additional information or a consultation that it needs to make a determination?

If, after reviewing all materials provided by the Program Office, a physicians panel finds that it needs additional information or consultation with a specialist in order to make a determination, it must request this information or consultation through the Program Office. A physicians panel may request:

(a) A recorded interview under oath with the applicant by an individual designated by the Program Office if the physicians panel believes only the applicant can provide the necessary information.

(b) That the applicant provide additional medical information.

(c) Consultation with designated specialists in fields relevant to its deliberations.

(d)Specific articles or reports, or assistance searching the medical or scientific literature.

(e) Other needed information or materials.

§ 852.10 How is a physicians panel to carry out its deliberations and arrive at a determination?

(a) Each panel member reviews all materials relating to the application.

(b) All panel members meet in conference, in person, or by teleconference in order to discuss the application and arrive at a common determination.

§ 852.11 How must a physicians panel issue its determination?

A physicians panel must submit its determination and the findings that provide the basis for its determination to the Program Office. The determination of whether the illness or death that is the subject of the application arose out of and in the course of employment by DOE and exposure to a toxic substance at a DOE facility, and the findings must be in writing and signed by all panel members. These findings must include:

(a) Each illness or cause of death that is the subject of the application.

(b) For each illness or cause of death listed under paragraph (a) of this section:

(1) Diagnosis.

(2) Approximate date of onset.

(3) Date of death, where applicable.

(4) Whether the illness or death arose out of and in the course of employment by a DOE contractor and exposure to a toxic substance at a DOE facility.

(5) The basis for the determination under paragraph (a)(4) of this section.

(c) The physicians panel must provide the program office with:

(1) Any evidence to the contrary of the panel's determination, and why the panel finds that this evidence is not persuasive.

(2) A listing of information and materials reviewed by the panel in making its determination, including:

(i) Information and materials provided by the Program Office.

(ii) Information and materials obtained by the panel, including consultations with specialists, scientific articles, and the record of an interview with an applicant.

(3) Any other information the panel concludes that the Program Office should have in order to understand the panel's deliberations and determination.

(4) If explicitly requested by DOE with respect to a specific criteria identified in the relevant State Agreement, a finding as to whether the specified criteria is satisfied, to the extent such a finding is within the expertise of the physicians panel.

§ 852.12 When must a physicians panel issue its determination?

A physicians panel must submit its determination and findings to the Program Office within 30 working days of the time that panel members have received the application for review from the Program Office; provided that, the Office may grant an extension of the time period if requested by the physicians panel.

§ 852.13 What precautions must each physicians panel member and each specialist take in order to keep an applicant's personal and medical information confidential?

In order to maintain the confidentiality of an applicant's personal and medical information, each physicians panel member and each specialist consulted at the request of a physicians panel must take the following precautions:

(a) After receiving applicant records from the Program Office, maintain the confidentiality of these records, keep them in a secure, locked location, and, upon completion of panel deliberations, follow the instructions of the Program Office with regard to the disposal or temporary retention of these records;

(b) Conduct all case reviews and conferences in private, in such a fashion as to prevent the disclosure of personal applicant information to any individual who has not been authorized to access this information;

(c) Release no information to a third party, unless authorized to do so in writing by the applicant; and

(d) Adhere to the provisions of the Privacy Act of 1974 regarding Worker Advocacy Records.

§ 852.14 What actions must a physicians panel member take if that member has a potential conflict of interest in relation to a specific application?

(a) If a panel member has a past or present relationship with an applicant, an applicant's employer, or an interested third party that may affect the panel member's ability to objectively review the application, or that may create the appearance of a conflict of interest, then that panel member must immediately:

(1) Cease review of the application; and

(2) Notify the Program Office and await further instruction from the Office.

(b) The Program Office must then take such action as is necessary to assure an objective review of the application.

§ 852.15 When may the Program Office ask a physicians panel to re-examine an application that has undergone prior physicians panel review?

(a) Under the following circumstances, the Program Office may direct the original physicians panel or a different physicians panel to re-examine an application that has undergone prior physicians panel review:

(1) If the Program Office obtains new information whose consideration could result in a different determination.

(2) For quality assurance purposes.

(3) In any other situation in which the Program Office concludes that there is good cause for re-examination of an application, except as specified in paragraph (b) of this section.

(b) Under the following circumstances, the Program Office may direct a different physicians panel, but

not the original physicians panel, to re-examine an application that has undergone prior physicians panel review:

(1) The Program Office concludes that there is doubt whether the available evidence supports the original panel's determination;

(2) The Program Office becomes aware of a real or potential conflict of interest of a member of the original panel in relation to the application under review; or

(3) In order to ensure consistency among panels.

§ 852.16 Must the Program Office accept the determination of a physicians panel?

(a) Except as provided in § 852.15 of this part, the Program Office must accept the determination by a physicians panel unless there is significant evidence to the contrary.

(b) The Program Office must promptly notify an applicant of its acceptance or rejection of a determination by a physicians panel.

§ 852.17 Is there an appeals process?

(a) In order to exhaust administrative remedies, an applicant must request the Office of Hearings and Appeals to review:

(1) A decision by the Program Office not to submit an application to a physicians panel;

(2) A negative determination by a physicians panel that is accepted by the Program Office; or

(3) A decision by the Program Office not to accept a positive determination by a physicians panel and not to return the application to a physicians panel for further consideration.

(b) An applicant must file a notice of appeal with the Office of Hearings and Appeals on or before 60 days from the date of a letter from the Program Office notifying the applicant of a determination appealable under this section.

(c) An appeal under this section is subject to the procedures of the Office of Hearings and Appeals in 10 CFR part 1003.

(d) A decision by the Office of Hearings and Appeals shall constitute final agency action.

§ 852.18 What is the effect of the acceptance by the Program Office of a positive determination by a physicians panel?

In the event the Program Office accepts a positive determination by a physicians panel:

(a) The Program Office must:

(1) Assist the applicant in filing a claim with the relevant State's workers' compensation system; and

(2) Not contest the claim or any award made regarding the claim;

(b) The Program Office may, to the extent permitted by law, direct a DOE contractor not to contest the claim or award; and

(c) Any costs of contesting the claim or award shall not be an allowable cost under a DOE contract.

[FR Doc. 01–22472 Filed 9–6–01; 8:45 am]

BILLING CODE 6450–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1254

RIN 3095–AB01

Research Room Procedures

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: NARA proposes to amend its regulations on use of NARA research rooms to add a policy on use of public access personal computers (workstations) in the research rooms. These NARA-provided workstations will provide researcher access to the Internet. We are also clarifying that, in research rooms where the plastic researcher identification card is also used with the facility's security system, we will issue a plastic card to researchers who have a paper card from another NARA facility. This proposed rule will affect researchers who use NARA research facilities nationwide.

DATES: Comments are due by November 6, 2001.

ADDRESSES: Comments must be sent to Regulation Comments Desk (NPOL), Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. They may be faxed to 301–713–7270. You may also comment via the Internet to *comments@NARA.GOV*. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: 3095–AB01'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact the Regulation Comment desk at 301–713–7360, ext. 226.

FOR FURTHER INFORMATION CONTACT: Nancy Allard at telephone number 301–713–7360, ext. 226, or fax number 301–713–7270.

SUPPLEMENTARY INFORMATION:

Public Access Personal Computer Workstations in the Research Rooms § 1254

Before September 30, 2001, NARA will have installed personal computer workstations with Internet access in research and/or consultation rooms in all NARA archival facilities, including regional archives and Presidential libraries, for the exclusive use of researchers. There will be at least one workstation at each facility. Space constraints in many of the facilities limit the number of workstations that can be provided.

These computers will provide Internet access for research purposes, such as access to NARA's Archival Information Locator (NAIL), and NAIL's successor, the Archival Research Catalog (ARC). Computers designated for public use provide Internet access only. At least one of the public Internet access workstations in each facility complies with the Workforce Investment Act of 1998, ensuring comparable accessibility to individuals with disabilities.

Use of the workstations will be on a first-come, first-served basis. A 30-minute time limit may be imposed on the use of the equipment when others are waiting to use a workstation. This policy is compatible with our policy for limiting the length of time microform readers and self-service copiers may be used when others are waiting.

Because of the possibility of introducing a virus to NARA's computer network, researchers may not load files or software on these computers. For the same reason, researchers may not use personally owned diskettes to download information. Researchers may download information to diskettes furnished by NARA and print information to an on-site printer. Based on the experience of several NARA facilities that already have Internet capability in the research room, we expect low to moderate use of the NARA-provided diskettes and printers. Therefore, we do not intend to charge for these services.

Validity of Paper Researcher Identification Cards at all NARA Facilities

Currently NARA researcher identification cards issued at one NARA facility are valid at all NARA facilities. At our College Park facility, a plastic researcher identification card that works with our security system is issued. We intend to expand use of the plastic card to the National Archives Building in downtown Washington, DC, and possibly to other NARA facilities in the future. We are modifying the existing