

## Department of Energy

## § 852.9

(b) The employer has 15 working days from receipt of this notification to submit to the Program Office any information deemed by the employer to be relevant to either the Program Office's determination of whether to refer an application to a Physician Panel, or to adjudication of the application by a Physician Panel.

(c) The employer must sign an affidavit attesting to the authenticity and completeness of any information provided to the Program Office under this section, or provide the Program Office with other evidence of authenticity of submitted materials, such as certification of submitted copies of originals.

### **§ 852.6 Which applications are submitted to a Physician Panel?**

(a) The Program Office must submit an application and any information submitted under § 852.5 of this part to a Physician Panel if there is reasonable evidence to make an initial determination that:

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

(2) The illness or death of the DOE contractor employee may have been caused by exposure to a toxic substance; and,

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

(b) The Program Office must promptly notify the applicant in writing of an initial determination under this section.

### **§ 852.7 What provisions are set forth in State Agreements?**

DOE may not execute a State Agreement that does not contain the following provisions:

(a) A statement that an application is submitted to a Physician Panel only if the application satisfies the criteria in § 852.6 of this part:

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

(2) The illness or death of the DOE contractor employee may have been caused by exposure to a toxic substance; and

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

(b) An agreement that a Physician Panel must apply the standards set forth in § 852.8 of this part when making a determination that an illness or death arose from exposure to a toxic substance during the course of employment at a DOE facility;

(c) An agreement that the Program Office must provide assistance to only those applicants with a positive determination from the Physician Panel; and

(d) An agreement that a positive determination by the Physician Panel has no effect on the scope of State workers' compensation proceedings, the conditions for compensation, or the rights and obligations of the participants in the proceeding; provided that consistent with Part D of the Act such a determination will prevent DOE and may prevent a DOE contractor from contesting an applicant's workers' compensation claim.

### **§ 852.8 How does a Physician Panel determine whether an 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?**

A Physician Panel must 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 it is at least as likely as not that exposure to a toxic substance at a DOE facility during the course of employment by a DOE contractor was a significant factor in aggravating, contributing to or causing the illness or death of the worker at issue.

### **§ 852.9 What materials must a Physician Panel review prior to making a determination?**

The Physician Panel must review all records relating to the application that are provided by the Program Office, including but not limited to:

- (a) Medical records;
- (b) Employment records;
- (c) Exposure records;
- (d) Occupational history;
- (e) Workers' compensation records;

## § 852.10

- (f) Medical literature or reports;
- (g) Any other records or evidence pertaining to the applicant's request for assistance;
- (h) A medical examiner's report, coroner's report, or death certificate for any application submitted by an estate or survivor of a deceased worker; and
- (i) Information submitted as a part of such a claim or developed by the Department of Labor (DOL) or by the Department of Health and Human Services (HHS) in the course of processing a claim for the applicant, including, where applicable, estimates of an applicant's cumulative radiation dose and the calculated probability that this dose was responsible for a cancer that is the subject of the claim, for any application submitted by an applicant also applying to DOL for benefits available under the Act.

### **§ 852.10 How may a Physician 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 Physician 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 Physician Panel may request:

- (a) A recorded interview under oath with the applicant, by an individual designated by the Program Office, if the Physician Panel believes only the applicant can provide the necessary information.
- (b) That the applicant provide additional medical information;
- (c) Additional relevant information under the control of DOE or its contractors;
- (d) Consultation with designated specialists in fields relevant to its deliberations;
- (e) Specific articles or reports, or assistance searching the medical or scientific literature; or
- (f) Other needed information or materials.

## 10 CFR Ch. III (1–1–06 Edition)

### **§ 852.11 How is a Physician Panel to carry out its deliberations and arrive at a determination?**

- (a) Each panel member reviews all materials relating to the application.
- (b) If a Physician Panel has more than one physician, all panel members meet in conference, in person, or by teleconference in order to discuss the application and arrive at a determination agreed to by a majority of the members of the Physician Panel.

[67 FR 52853, Aug. 14, 2002, as amended at 69 FR 13712, Mar. 24, 2004]

### **§ 852.12 How must a Physician Panel issue its determination?**

A Physician Panel must submit its determination under § 852.8 and the findings that provide the basis for its determination to the Program Office. The determination and the findings must be in writing and signed by all panel members. The 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, if 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 (b)(4) of this section;
  - (6) A determination concerning any other medical issue identified in the relevant State Agreement; and
  - (7) The basis for the determination under paragraph (b)(6) of this section.
- (c) The Physician Panel must provide the Program Office with:
  - (1) Any evidence to the contrary of the panel's determination, and why the panel finds 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; and,
    - (ii) Information and materials obtained by the panel, including consultations with specialists, scientific