

Secretary may make an interim payment of benefits even before a final eligibility or benefits determination is made. The Secretary expects such instances to be rare, and the requester in such circumstances must agree to repay the Secretary for any benefits later determined to be improper.

The Tax Consequences of Receiving Benefits From the Program

The Secretary has asked the Internal Revenue Service (IRS) to provide prompt guidance on the tax consequences of receiving benefits under SEPPA. The IRS intends to publish guidance before the end of the year that will give requesters who receive benefits under the program the information they would need to meet any Federal tax responsibilities. The IRS has committed to working with the Secretary to ensure that requesters have ready access to the tax information and assistance with any additional questions they may have.

The Secretary's Right To Recover Benefits Paid Under the Program From Third-Party Payors (§ 102.84)

As described elsewhere in this preamble, the payment of benefits under this program is generally secondary to benefits available from other third-party payors. The category of third-party payors that have primary responsibility to pay for or provide such benefits is different for each type of benefit available under this program. Such third-party payors are discussed in the sections of the preamble concerning the different types of benefits. As described in § 102.84, after the Secretary pays benefits under this program, he will be subrogated to the rights of the requester, meaning that the Secretary may assert a claim against any third-party payor with a legal or contractual obligation to pay for, or provide, such benefits. The Secretary may recover from such a third-party payor the amount of benefits the third-party payor has or had an obligation to pay for or provide. For example, if the Secretary pays a requester \$10,000 in benefits for lost employment income under this program and a State workers' compensation program later determines that it is obliged to pay the requester \$5,000 in workers' compensation benefits, the Secretary may pursue a claim against the State for the \$5,000 (because the Secretary, as the secondary payor, would only be obligated to pay the requester \$5,000 in benefits for lost employment income). Any benefits paid under this program are not subject to any lien by any primary third-party payor.

The Reconsideration Process (§ 102.90)

Every individual who has filed a Request Package and has received a determination by the Secretary either denying eligibility for benefits or denying a category or amount of benefits requested, has a right to seek reconsideration of the Secretary's determination(s). Although such initial determinations are characterized as Secretarial determinations, this decision-making authority will be delegated to the Smallpox Vaccine Injury Compensation Program Office. The requester or his or her representative must send a letter seeking reconsideration to the Associate Administrator, Special Programs Bureau, Health Resources and Services Administration, at the address provided in § 102.90(b). The letter must be received by the Department within 60 calendar days of the date of the Department's determination letter. The letter should state the reasons why the Secretary should reconsider his decision. No new documentation can be included with this letter.

The Associate Administrator, Special Programs Bureau, will convene a panel to review all cases seeking reconsideration. The panel will consist of qualified individuals who are independent of the Smallpox Vaccine Injury Compensation Program Office. The panel will review the Request Package that was before the Secretary at the time of the determination (and will not consider any new documentation submitted by the requester).

After reviewing the case, the panel will make a recommendation to the Associate Administrator, Special Programs Bureau, who will then make a final determination as to whether or not the requester is eligible for benefits or as to the type and/or amount of benefits that may be paid. The Associate Administrator will inform the requester or his or her representative in writing of the determination(s) and of the reasons. This decision will be considered the Secretary's final action on the issue for which reconsideration was sought. Requesters may not seek review of such a decision.

If the Associate Administrator's final decision is that a requester who was determined to be ineligible for benefits is, in fact, eligible, then the Secretary will make a determination as to the type and amount of benefits to be paid. The requester then has a right to seek reconsideration of the Secretary's determination on that issue.

Secretary's Review Authority and No Further Review of Determinations Made Under This Regulation (§ 102.91, § 102.92)

As described in § 102.91, the SEPPA authorizes the Secretary to review at any time, and at his own motion or on application, any determination made concerning eligibility, entitlement to benefits, and the calculation and payment of benefits under the Program and authorizes the Secretary to affirm, vacate, or modify such determination in any manner the Secretary deems appropriate.

As explained in § 102.92, once the Secretary has made a final decision as to eligibility or type or amount of benefits and the requester has exercised his or her right to reconsideration, section 262(f)(2) of the Public Health Service Act does not allow any further review of that decision by any court or administrative body (unless the President specifically directs further administrative review). Given this broad statutory prohibition against further review, no determination made under this part (including, but not limited to, eligibility determinations, benefits calculations, payment decisions, and reconsideration decisions) will be subject to any review by Federal or State courts.

Justification for Omitting Notice of Proposed Rulemaking and for Waiver of Delayed Effective Date

Through the enactment by the SEPPA of part C, Title II of the Public Health Service Act (PHS Act), the Secretary was authorized to establish and administer the Smallpox Vaccine Injury Compensation Program. Congress authorized the Secretary to issue regulations implementing the SEPPA as the Secretary deems reasonable and necessary, and provided that the initial implementing regulations could be published by interim final rule. In accordance with that statutory authority, the Secretary is herein establishing the procedures and requirements to govern the program.

In addition, the Secretary has determined, under 5 U.S.C. 553(b), that it is contrary to the public interest to follow proposed rulemaking procedures (*i.e.*, issuing a proposed rule, with an accompanying solicitation of public comments) before issuance of these regulations, because such a process might delay the continuing implementation of the President's plan to protect the population of the United States against the threat of a smallpox attack. A significant element of this plan, which is also an important priority