

they meet the legal requirements (*e.g.*, filing deadlines).

The first category, "smallpox vaccine recipients," includes certain persons who volunteer for, and are selected to be members of, a smallpox emergency response plan, are vaccinated with a smallpox vaccine under such a plan, and sustain covered injuries. The second category, vaccinia contacts, includes certain persons who have covered injuries as the direct result of exposure to vaccinia through contact with certain persons who received the smallpox vaccine or with the contacts of such recipients. In addition, if a person in either category dies, his or her survivors or his or her estate may be eligible for selected benefits under this program in certain circumstances.

The benefits available under the program include compensation for medical care, lost employment income, and survivor death benefits. To be considered for program benefits, requesters (*i.e.*, smallpox vaccine recipients, vaccinia contacts, survivors, or the representatives of the estates of deceased smallpox vaccine recipients or vaccinia contacts), or persons filing on their behalf as their representatives, must file a Request Form and the documentation required under this regulation to show that they are eligible.

As mandated under the SEPPA, the Secretary is herein, at 42 CFR part 102, establishing the procedures and requirements governing the program. At this time, the Secretary is seeking public comments on these procedures and requirements.

Summary of the Regulation

Summary of Available Benefits and Secondary Nature of Benefits (§ 102.2, § 102.84)

The benefits available under this program are medical benefits, benefits for lost employment income, and survivor death benefits.

As explained in § 102.2(b), the SEPPA establishes that the government is a secondary payor for most benefits available under the program. Thus, benefits paid under this program are generally secondary to any obligation of any third-party payor, described in § 102.3(aa), to pay for or provide such benefits. Requesters generally must provide the names of all other third-party payors that have already provided benefits, that are expected to do so in the future, or that may have a duty to do so. These payors include, but are not limited to: insurance companies, workers' compensation programs, the Federal Employees' Compensation Act (FECA) Program, or the Public Safety

Officers' Benefit (PSOB) Program, a program within the United States Department of Justice that provides payments to public safety officers and their survivors, including death payments for officers killed in the line of duty. If such a third-party payor has paid for or provided the type of benefits requested under this program, the Secretary will only pay such benefits in an amount necessary to supplement the payments already provided. For example, if a requester were otherwise entitled to \$10,000 in medical benefits from this program and the requester's health insurance company (a third-party payor) has paid \$5,000 for the covered medical benefits and services, the program would pay the requester \$5,000 (the amount the requester is entitled to under this program, reduced by the amount the requester is entitled to from third-party payors). As explained later in the preamble, upon payment of benefits under the Smallpox Vaccine Injury Compensation Program, the Secretary will be subrogated to the rights of the requester and may assert a claim against any third-party payor with a legal or contractual obligation to pay for, or provide, such benefits.

Description of Eligible Requesters (§ 102.10(a))

(1) *Smallpox vaccine recipients*, as defined in § 102.3(y).

A person who has received a smallpox vaccine is only considered a "smallpox vaccine recipient," for purposes of this program, if he or she meets the criteria described in this regulation. Specifically, he or she must have been in a covered occupation (including health care workers, law enforcement officers, public safety personnel, and supporting personnel), received a smallpox vaccine as a participant in an approved smallpox emergency response plan, and sustained a covered injury, described later in this preamble. The exact requirements for smallpox vaccine recipients are set forth in § 102.3(x). For example, this regulation provides that, in order to be eligible, a smallpox vaccine recipient must have received the smallpox vaccine between January 24, 2003, and January 23, 2004, unless the period is extended by the Secretary. In order to be covered by the program, a smallpox vaccine recipient must also have volunteered for and been selected to be a member of a smallpox emergency response plan before the time that the Secretary publicly announces that an active case of smallpox has been identified anywhere in the world. For this reason, persons who become members of smallpox emergency

response plans in order to respond to a case of smallpox that has already occurred will not be considered "smallpox vaccine recipients." Likewise, persons who receive the smallpox vaccine as members of the military or members of the public who receive the smallpox vaccine voluntarily, and not as part of an approved smallpox emergency response plan, are not entitled to benefits under the program.

(2) *Vaccinia contact*, as defined in § 102.3(bb).

The SEPPA imposes specific restrictions as to which persons who have contracted vaccinia from another person may be eligible for benefits under this program. The specific requirements pertaining to vaccinia contacts are set forth in § 102.3(bb). As explained in that section, vaccinia contacts are only eligible for benefits under this program if they can show that they contracted vaccinia as a result of contact with a person who either meets the definition of a smallpox vaccine recipient (except that the vaccine recipient does not need to sustain a covered injury) or who was accidentally inoculated by such a person. For this reason, if the source of a contact's exposure to vaccinia is a person who received a smallpox vaccine other than under an approved smallpox emergency response plan, the contact would not fall within the regulation's definition of a "vaccinia contact" and would not be eligible for benefits under the program. For example, the contacts of members of the military and State Department personnel who receive the smallpox vaccine for their employment, but not as part of an approved smallpox emergency response plan, would not be entitled to benefits under this program. Likewise, the contacts of members of the general public who receive the smallpox vaccine voluntarily, and not as part of an approved smallpox emergency response plan, would not be covered under this program. In addition, vaccinia contacts must have contracted vaccinia during the effective period of the Declaration (between January 24, 2003, and January 23, 2004, unless extended by the Secretary), or within 30 days after the end of such period, and must have sustained a covered injury.

(3) *Certain survivors of deceased smallpox vaccine recipients or vaccinia contacts*, as defined in § 102.3(z).

Categories of eligible survivors and the priority of such survivors to receive benefits from the program are discussed in the section of this preamble concerning death benefits (the only type of benefit survivors are eligible to receive).