

a covered injury, as described in § 102.33.

(b) The benefits paid under the Program, with the exception of death benefits paid under § 102.82(c), are secondary to any obligation of any third-party payor to pay for such benefits. Death benefits paid under § 102.82(c) are secondary to death and disability benefits under the PSOB Program. The benefits paid under the Program usually will only be paid after the requester has pursued all other available coverage from all third-party payors with an obligation to pay for or provide such benefits (e.g., medical insurance for medical items, workers' compensation program(s) for lost employment income). However, as provided in § 102.84, the Secretary has the discretion to pay benefits under this Program before a potential third-party payor makes a determination on the availability of similar benefits and has the right to later pursue a claim against any third-party payor with a legal or contractual obligation to pay for, or provide, such benefits.

§ 102.3 Definitions.

This section defines certain words and phrases found throughout this part. Words and phrases that are used only in limited situations are defined in specific sections of this part.

(a) *Accidental vaccinia inoculation* means the transfer of vaccinia virus from an existing vaccination site (the skin surface where the vaccinia virus entered the body through vaccination) or inoculation site (the skin or mucous membrane surface where the vaccinia virus entered the body through means other than vaccination) on a person to a second person, resulting in a contact case.

(b) *Act* means the Smallpox Emergency Personnel Protection Act of 2003, Pub. L. 108–20, 117 Stat. 638.

(c) *Approval* means a decision by the Secretary that the requester will be paid benefits under the Program.

(d) *Benefits* means benefits and/or compensation.

(e) *Contact case* means a case in which a person developed an initial vaccinia lesion or vaccinia infection through an exposure other than being vaccinated him/herself.

(f) *Covered countermeasure* means smallpox (vaccinia) vaccines, cidofovir and its derivatives, or Vaccinia Immune Globulin, when used to prevent or treat the smallpox disease or control or treat the adverse effects of vaccinia vaccination or inoculation or of the administration of another countermeasure.

(g) *Covered injury* means an injury determined by the Secretary, in accordance with subpart C of this part, to be:

(1) An injury meeting the requirements of the Table, which is presumed to be the direct result of the administration of a smallpox vaccine or accidental vaccinia inoculation; or

(2) More likely than not, the direct result of:

(A) The administration of a covered countermeasure (including the smallpox vaccine) during the effective period of the Declaration, in the case of a smallpox vaccine recipient; or

(B) Vaccinia contracted through accidental vaccinia inoculation (and not the result of receiving a smallpox vaccine) during the effective period of the Declaration (or within 30 days after the end of such period), in the case of a vaccinia contact.

(h) *Declaration* means the Declaration Regarding Administration of Smallpox Countermeasures issued by the Secretary on January 24, 2003, and published in the **Federal Register** on January 28, 2003 (68 FR 4212).

(i) *Dependent* means a person who would be considered a dependent by the Internal Revenue Service.

(j) *Disapproval* means a decision by the Secretary that the requester will not be paid benefits under the Program.

(k) *Effective period of the Declaration* means the time span specified in the Declaration (January 24, 2003 until and including January 23, 2004), unless extended by the Secretary.

(l) *FECA Program* means the workers' compensation benefits program for civilian officers and employees of the Federal Government established under the Federal Employees' Compensation Act (5 U.S.C. 8101 *et seq.*), as amended, and implemented by the United States Department of Labor in regulations codified at 20 CFR Part 10, as amended.

(m) *Health care practitioner* means a health care provider licensed by a State and authorized to diagnose and prescribe medications and other treatments or authorized to provide primary or specialty care.

(n) *Injury* means an injury (including death), disability, illness, or condition.

(o) *Legally incompetent* means a person who is considered to lack legal capacity under applicable State law.

(p) *Program* means the Smallpox Vaccine Injury Compensation Program.

(q) *Public Safety Officers' Benefits Program (PSOB Program)* means the Program established under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 *et seq.*), as amended, and implemented by the United States

Department of Justice in regulations codified at 28 CFR Part 32, as amended.

(r) *Requester* means a smallpox vaccine recipient, vaccinia contact, survivor, or representative of the estate of a deceased smallpox vaccine recipient or vaccinia contact (on behalf of the estate) who files a Request Package, or on whose behalf a Request Package is filed, under this part.

(s) *Request Form* means the form designated by the Secretary as the request form for purposes of this part.

(t) *Request Package* means the Request Form, all documentation submitted by or on behalf of the requester, and all documentation obtained by the Secretary as authorized by or on behalf of the requester for determinations of eligibility and benefits under this part.

(u) *Secretary* means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

(v) *Smallpox emergency response plan* means a State, local, or Department of Health and Human Services plan, approved by the Secretary, detailing actions to be taken in preparation for a possible smallpox-related emergency during the period prior to the identification of an active case of smallpox either within or outside the United States.

(w) *Smallpox (Vaccinia) Vaccine Injury Table or Table of Injuries* means the table of injuries included at § 102.21, including the definitions and requirements set forth at § 102.21(b).

(x) *Smallpox vaccine recipient* means a person:

(1) Who has been a health care worker, law enforcement officer, firefighter, security personnel, emergency medical personnel, other public safety personnel, or support personnel for such occupational specialties who has volunteered and been selected to be a member of a smallpox emergency response plan prior to the time at which the Secretary publicly announces that an active case of smallpox has been identified within or outside of the United States;

(2) Who is or will be functioning in a role identified in a smallpox emergency response plan;

(3) To whom a smallpox vaccine is administered pursuant to a smallpox emergency response plan during the effective period of the Declaration; and

(4) Who sustained a covered injury.

(y) *State* means any State of the United States of America, the District of Columbia, United States territories,