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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC-2018-0094; NIOSH-321]

Implementation of Section 2695 (42 U.S.C. 300ff-131) Public Law 111-87: Infectious Diseases and Circumstances Relevant to Notification Requirements: Definition of Emergency Response Employee

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Notice and request for comment.

SUMMARY: The Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS), is adding a definition of the term “emergency response employees” to the definitions section of the document entitled “Implementation of Section 2695 (42 U.S.C. 300ff-131) Public Law 111-87: Infectious Diseases and Circumstances Relevant to Notification Requirements,” which contains a list of potentially life-threatening infectious diseases to which emergency response employees may be exposed and companion guidelines published by the National Institute for Occupational Safety and Health (NIOSH), pursuant to the Ryan White HIV/AIDS Treatment Extension Act of 2009.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: *Written comments:* You may submit comments by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments to the docket.
- Mail: NIOSH Docket Office, Robert A. Taft Laboratories, MS-C34, 1090 Tusculum Avenue, Cincinnati, OH 45226.

Instructions: All submissions received must include the agency name (Centers for Disease Control and Prevention, HHS) and docket number (CDC-2018-0094; NIOSH-321) for this action. All relevant comments, including any personal information provided, will be posted without change to <http://www.regulations.gov>. For detailed instructions on submitting public comments, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Rachel Weiss, Office of the Director, NIOSH; 1090 Tusculum Avenue, MS:C-48, Cincinnati, OH 45226; telephone (855) 818-1629 (this is a toll-free number); email NIOSHregs@cdc.gov.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested parties may participate in this activity by submitting written views, opinions, recommendations, and data. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you do not wish to be disclosed. Although your name, contact information, or other information that identifies you in the body of your comments will be on public display, NIOSH will review all submissions and may choose (but is not required) to redact or withhold submissions containing private or proprietary information such as Social Security numbers, medical information, and/or inappropriate language. You may submit comments on any topic related to this action. All public comments will be posted in the docket for this action at <https://www.regulations.gov>.

II. Statutory Authority

The Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990 (Pub. L. 101-381) was reauthorized in 1996, 2000, 2006, and 2009. The most recent reauthorization, the Ryan White HIV/AIDS Treatment Extension Act of 2009 (Pub. L. 111-87), amended the Public Health Service Act (PHS Act, 42 U.S.C. 201–300ii) and requires the HHS Secretary to establish the following: a list of potentially life-threatening infectious diseases, including emerging infectious diseases, to which emergency response employees (ERE) may be exposed in responding to emergencies; guidelines describing

circumstances in which EREs may be exposed to these diseases, taking into account the conditions under which emergency response is provided; and guidelines describing the manner in which medical facilities should make determinations about exposures.

In a **Federal Register** notice published on July 14, 2010, the HHS Secretary delegated this responsibility to the CDC Director.¹ The CDC Director further assigned the responsibility to the NIOSH Director and formally re-delegated the authority to develop the list and guidelines to NIOSH on August 27, 2018.²

III. Background

On November 2, 2011, CDC published a notice in the **Federal Register** entitled *Implementation of Section 2695 (42 U.S.C. 300ff-131) Public Law 111-87: Infectious Diseases and Circumstances Relevant to Notification Requirements*.³ The notice included “a list of potentially life-threatening infectious diseases, including emerging infectious diseases, to which EREs may be exposed in responding to emergencies . . .; guidelines describing circumstances in which employees may be exposed to these diseases; and guidelines describing the manner in which medical facilities should make determinations about exposures.” The list and guidelines published in that notice did not include a definition for “emergency response employee.”

Upon reconsideration following additional requests to clarify the meaning of “emergency response employee,” NIOSH is adding a definition of the term “emergency response employee” to the definitions section of the list and guidelines. “Emergency

¹ 75 FR 40842.

² 83 FR 50379 (October 4, 2018).

³ 76 FR 67736.

response employee” means:

firefighters, law enforcement officers, paramedics, emergency medical technicians, funeral service practitioners, and other individuals (including employees of legally organized and recognized volunteer organizations, without regard to whether such employees receive nominal compensation) who, in the course of professional duties, respond to emergencies in the geographic area involved.

The definition effectively identifies those employees who may be exposed to a potentially life-threatening infectious disease while attending to, treating, assisting or transporting a victim of an emergency taken to a medical facility as a result of the emergency (*see* 42 U.S.C. 300ff-133(a)). The definition’s reference to “other individuals” provides NIOSH with discretion in determining whether additional categories of EREs may be included in the future. By including this definition, all interested parties, including those responsible for reporting when an ERE has been exposed to a potentially life-threatening infectious disease, ERE employers, medical facilities, state public health officers, the EREs themselves, and the public will know which individuals and entities fall within the scope of the notification procedures and guidelines.

This definition was originally included in the Ryan White CARE Act of 1990 and amended by the Ryan White CARE Act Amendments of 1996 (Pub. L. 104-146), and, therefore, codified in the PHS Act. The notification provisions, including the definition of “emergency response employee,” were then removed from the Ryan White HIV/AIDS Treatment Modernization Act of 2006 and the PHS Act.⁴ The term “emergency response employee,” however, continued to be used in a different part of the statutes pertaining to

⁴ The notification provisions now included in Part G were formerly found in Part E, which was deleted because the intent of the 2006 reauthorization was, in part, to eliminate programs “which had never been funded or re-examined in the last two reauthorizations.” Congress then “deleted definitions which were no longer relevant (e.g., designated officer of emergency response employees, emergency, emergency response employee, employer of emergency response employees, and exposed),” which were located in Part D of the original statute. *See* H.R. REP. NO. 109-695, at 12 (2006).

responsibilities assigned to the Health Resources and Services Administration (HRSA).⁵

When Congress reinstated the notification provisions in Part G of the Ryan White HIV/AIDS Treatment Extension Act of 2009, a definition of ERE was not included.

NIOSH has interpreted the legislative history and the development of the Ryan White CARE Act of 1990 and subsequent reauthorizations to indicate that Congress's failure to restore the original definition of ERE was unintentional and merely an oversight. Including the original statutory definition in the NIOSH list and guidelines would allow the notification provisions to be implemented as Congress originally intended.

Including the definition of "emergency response employee" in the definitions section of the list and guidelines is within NIOSH's authority, pursuant to the August 27, 2018 re-delegation for the sec. 2695 duties. Implicit in this directive is the need to identify the types of EREs who transport or serve victims of emergencies taken to medical facilities, in order to improve the notification system allowing EREs to receive timely diagnosis and post-exposure medical treatment for infectious disease exposures. NIOSH therefore has the authority to include the definition of "emergency response employees" in the list and guidelines.

After consideration of public comment submitted to the docket for this action, NIOSH will update the guidelines and list with the ERE definition and re-publish them on the NIOSH Ryan White HIV/AIDS Treatment Extension Act of 2009 topic page, at <https://www.cdc.gov/niosh/topics/ryanwhite/>.

⁵ 42 U.S.C. 300ff-62.

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Control and Prevention.*

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