

# Regulatory Analysis Form

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(1) Agency

Department of General Services

2007 OCT -1 PM 2:09

INDEPENDENT REGULATORY  
REVIEW COMMISSION

(2) I.D. Number (Governor's Office Use)

008-012

IRRC Number: 2643

(3) Short Title

4 Pa. Code Ch. 89 Subchapter A. Death Benefits for Survivors of Emergency and Law Enforcement Personnel

(4) PA Code Cite

4 Pa. Code Ch. 89 Subchapter A.

(5) Agency Contacts & Telephone Numbers

Primary Contact: Mary Benefield Seiverling (717) 772-2749

Secondary Contact: Gary F. Ankabrandt (717) 783-1982

(6) Type of Rulemaking (check one)

- Proposed Rulemaking  
 Final Order Adopting Regulation  
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No  
 Yes: By the Attorney General  
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

Chapter 89 is updated to reflect statutory amendments to Emergency and Law Enforcement Personnel Death Benefits Act, a self-executing act of the General Assembly, 53 P.S. §§ 891-892.1. The statutory changes increased and indexed the death benefit, enlarged eligible beneficiaries to include parents, expanded the scope of emergency and law enforcement personnel covered by the act, changed the description of deaths for which the benefit is payable from "killed in the performance" of duties to "dies as a result of the performance" of duties and deemed certain acts to be within the performance of duties. The regulation deletes inaccurate language based upon earlier versions of the act, adds new language interpreting the amendments to the act and clarifies the procedures for obtaining the death benefit.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The Department's authority is The Administrative Code of 1929, sections 506 & 402.2 (71 P.S. §§ 186 and 631.1); 4 Pa. Code § 1.191 (relating to implementation of the act of June 24, 1976 (P.L. 424, No. 101)) and the Emergency and Law Enforcement Personnel Death Benefits Act, 53 P.S. §§ 891-892.1.

## Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The Department's regulations no longer accurately reflect the law. The amendments are necessary to conform the regulations to the General Assembly's amendments to the Emergency and Law Enforcement Personnel Death Benefits Act, 53 P.S. §§ 891-892.1. The amendments will facilitate the claim process.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

There are regulations in place. Non-amendment of the regulations would allow the inaccurate regulations to remain in place.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Claimants under the Emergency and Law Enforcement Personnel Death Benefits Act will benefit from removal of inaccurate language in the regulation and insertion of language, which is consistent with the current statute. From July 1, 2003 to June 1, 2007, death benefits have been paid on behalf of 42 emergency and law enforcement officers. The amendments also define and describe the process for obtaining the death benefit with more detail and clarity. Commonwealth agencies and political subdivisions of the Commonwealth that report deaths of law enforcement or emergency actors and submit claims for death benefits to the Department will benefit from updated accurate regulations detailing and clarifying the contents of the forms to be submitted and the submission process.

### Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No one will be adversely affected.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Claimants under the Emergency and Law Enforcement Personnel Death Benefits Act and Commonwealth agencies and political subdivisions of the Commonwealth that report deaths of law enforcement or emergency actors and submit claims for death benefits to the Department. From July 1, 2003 to June 1, 2007, death benefits have been paid on behalf of 42 emergency and law enforcement officers.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

Not applicable.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

None.

**Regulatory Analysis Form**

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

None.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

None.

## Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
<b>Total Savings</b>						
<b>COSTS:</b>						
Regulated Community						
Local Government						
State Government						
<b>Total Costs</b>						
<b>REVENUE LOSSES:</b>						
Regulated Community						
Local Government						
State Government						
<b>Total Revenue Losses</b>						

(20a) Explain how the cost estimates listed above were derived.

Not applicable.

### Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY (2006-2007)
Death Benefits: Law Enforcement & Corrections Officers	\$662,036	\$300,000	\$200,000	\$206,800
Death Benefits: Firefighters & Ambulance Workers	\$824,072	\$1,200,000	\$300,000	\$413,600

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

The program benefit dollars are mandated by statute. Although the regulations now state a benefit amount less than the statute, the Department must pay the current statutory benefit. Amending the regulations to conform to the statute will have no impact on the costs of the program.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Not applicable.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

Not applicable.

## Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

Not applicable.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Not applicable.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

None other than the regulations being amended.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No.

## Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

Yes, the paperwork requirements in the regulation are being changed to conform to the paperwork requirements now in place. The obsolete forms are being deleted from the regulations and replaced by the forms presently in use and accessible on the Department's website.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Not applicable.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulations will be effective upon publication in the Pennsylvania Bulletin.

(31) Provide the schedule for continual review of the regulation.

The regulations will be reviewed whenever the Emergency and Law Enforcement Personnel Death Benefits Act is amended.



CDL-1

FACE SHEET FOR FILING DOCUMENTS WITH THE LEGISLATIVE REFERENCE BUREAU (Pursuant to Commonwealth Documents Law)

2007 OCT -1 PM 2:09 INDEPENDENT REGULATORY REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General. By: (Deputy Attorney General) Date of Approval. Check if applicable Copy not approved Objections attached.

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by: DEPARTMENT OF GENERAL SERVICES (Agency) LEGAL COUNSEL: DOCUMENT/FISCAL NOTE NO. 008-012 DATE OF ADOPTION: BY: TITLE: SECRETARY OF GENERAL SERVICES (Executive Officer, Chairman or Secretary) James P. Creedon

Copy below is hereby approved as to form and legality. Executive or Independent Agencies. BY: Andrew C. Clark SEP 21 2007 Date of Approval (Deputy General Counsel) (Chief Counsel, Independent Agency) (Strike inapplicable title) Check if applicable. No Attorney General approval or objection within 30 days after submission.

NOTICE OF PROPOSED FINAL OMITTED REGULATIONS WITHOUT PUBLICATION AS PROPOSED DEPARTMENT OF GENERAL SERVICES BUREAU OF RISK AND INSURANCE MANAGEMENT

[4 PA. CODE CHAPTER 89]

Subchapter A. Death Benefits for Survivors of Emergency and Law Enforcement Personnel

## **STATUTORY AUTHORITY**

The Department of General Services (Department), acting under sections 506 and 402.2 of The Administrative Code of 1929 (71 P.S. §§ 186 and 631.1) and 4 Pa. Code § 1.191 (relating to implementation of the act of June 24, 1976 (P.L. 424, No. 101)), amends 4 Pa. Code Chapter 89 Subchapter A (relating to death benefits for survivors of emergency and law enforcement personnel) to read as set forth in Annex A. The changes are necessary to conform to legislative amendments to the act of June 24, 1976 (P.L. 424, No. 101) (53 P.S. §§ 891-892.1), known as the Emergency and Law Enforcement Personnel Death Benefits Act.

## **OMISSION OF PROPOSED RULEMAKING**

Public notice of intention to amend the regulations under the procedures in sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) known as the Commonwealth Documents Law (CDL) has been omitted as authorized under section 204(1) of the CDL (45 P.S. §1204(1)) because the changes in the regulations relate to amendments to the Emergency and Law Enforcement Personnel Death Benefits Act, a self-executing act of the General Assembly. As a result of these legislative amendments the Department's regulations are no longer consistent with the statute and must be amended.

## **PURPOSE**

The purpose of this final-omitted rulemaking is to update 4 Pa. Code Chapter 89 Subchapter A as required by the amendments to the act and to provide accurate and

clear guidance to eligible beneficiaries and political subdivisions to facilitate the claims process.

## **BACKGROUND**

In response to the act of June 24, 1976 (P.L. 424, No. 101), the Department promulgated the regulations in subchapter A of chapter 89 (4 Pa. Code §§ 89.1-89.11). 7 Pa. B. 3406 (Nov. 25, 1977). The definitions in the regulations at 4 Pa. Code § 89.1 were amended in 1980. 10 Pa. B. 2039 (May 24, 1980).

The General Assembly amended the Emergency and Law Enforcement Personnel Death Benefits Act by the act of Oct. 16, 1981 (P.L. 295, No. 102); the act of Dec. 27, 1994 (P.L. 1373, No. 161); the act of April 2, 2002 (P.L. 213, No. 20); the act of Oct. 6, 2005 (P.L. 319, No. 59); the act of July 7, 2006 (P.L. \_\_\_\_, No. 89) and the act of July 2, 2007 (P.L. \_\_\_\_, No. 21).

## **OVERVIEW OF CHANGES TO REGULATIONS**

The amendments make the regulations consistent with the Emergency and Law Enforcement Personnel Death Benefits Act and provide accurate and clear guidance to eligible beneficiaries and political subdivisions to facilitate the claims process.

The Emergency and Law Enforcement Personnel Death Benefits Act provides for: (1) payment of a death benefit to (2) identified survivors of (3) certain emergency and law enforcement personnel, who die (4) in the performance of duties.

### *Death Benefit*

The published regulations state that the death benefit is \$25,000, §§ 89.4 and 89.6 (a). The benefit was increased to \$50,000 in 1994, and to \$100,000 in 2005. The benefit is adjusted annually for inflation using the Consumer Price Index. The death benefit for fiscal year 2006-2007 is \$103,400. "Benefit" will now be defined (at § 89.1) by reference to the Emergency and Law Enforcement Personnel Death Benefits Act. The Department will provide notice of its computation of the benefit on its website (§ 89.4). By these changes, the regulations will remain accurate despite the annual change in the amount of the benefit.

### *Identified Survivors*

New sections 89.6 (d) and 89.7 (c) (4) were necessary to reflect that act 102 of 1981 added parents to the list of eligible beneficiaries. Definitions of "beneficiary" and "parent" are added to § 89.1. The definitions of "minor children" and "spouse" are amended to conform to other changes in the regulations and for editorial reasons.

### *Emergency and Law Enforcement Personnel*

The General Assembly has expanded the personnel covered by the Emergency and Law Enforcement Personnel Death Benefits Act. At § 89.1, definitions were added for "ambulance service or rescue squad member," "emergency medical service," "National Guard member" and the definition of "firemen" was amended so that it is gender-neutral and more descriptive. As a result of Act 21 of 2007, definitions were added defining "certified hazmat response team member," "hazmat act" and "public safety answering point." The addition of a definition of "public safety officer," which includes all emergency and law enforcement personnel covered by the act, will enable the application of the regulations to others if the General Assembly continues to expand the list of those covered by the act. Throughout the regulations, references to "law enforcement officer or firemen" are replaced by a reference to "public safety officer."

### *Performance of Duties*

Statutory amendments redefined the circumstances upon which a death benefit is payable, necessitating that § 89.2 (relating to eligibility) be completely rewritten. Originally, the benefit was payable if the person was "killed in the performance of his duties." The statute now provides for the payment of the benefit when a person "dies as a result of the performance of their duties." Additionally, the General Assembly has "deemed" certain acts to be within the "performance of duties" and has created presumptions that a death resulted from the "performance of duties" in identified circumstances. The new § 89.2 accurately describes the circumstances identified by the General Assembly upon which eligibility for the benefit may be based and eliminates

the need for a definition of "performance of duties." Accordingly, the definitions of "killed" and "performance of duties" have been removed.

### *Clarity and Guidance*

Section 89.5 (relating to reimbursement of political subdivisions) has been rewritten to reflect statutory amendments clarifying the payment process and to make the section consistent with other changes to the regulations. Section 89.7 (relating to claims for death benefits) was amended to conform to the other changes in the regulation and to provide detailed guidance on the documentation required in support of a claim. Editorial changes were made to § 89.9 (relating to appeals) and § 89.10 (relating to effective date) has been deleted as obsolete. Section 89.11 (relating to forms) has also been deleted because the obsolete forms now contained in the regulation have been replaced by online forms.

### **AFFECTED INDIVIDUALS AND ORGANIZATIONS**

This regulation will affect the process followed by survivors of emergency or law enforcement actors to secure the benefit established by the Emergency and Law Enforcement Personnel Death Benefits Act. These claimants will benefit from removal of inaccurate language in the regulation and insertion of language, which is consistent with the current statute. The amendments also define and describe the process for obtaining the death benefit with more detail and clarity.

Commonwealth agencies and political subdivisions of the Commonwealth that report deaths of law enforcement or emergency actors and submit claims for death benefits to the Department will benefit from updated accurate regulations detailing and clarifying the contents of the forms to be submitted and the submission process.

No private businesses are directly affected by this regulation.

### **COMPLIANCE WITH EXECUTIVE ORDER 1996-1**

The Department reviewed this rulemaking and considered its purpose and likely impact upon the public and the regulated population under the directives of Executive Order 1996-1, Regulatory Review and Promulgation. The final omitted regulations serve the public interest as described in this preamble and otherwise comply with Executive Order 1996-1.

### **FISCAL IMPACT**

There will be no fiscal impact.

### **PAPERWORK REQUIREMENTS**

The final-omitted regulation will impose no new paperwork requirements.

### **REGULATORY REVIEW**

Under § 5.1 (c) of the Regulatory Review Act (71 P.S. §745.5a (c)), on October 1, 2007, the Department submitted a copy of the final-omitted regulations to

the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate and House Committees on State Government. On the same day, the final-omitted regulations were submitted to the Office of the Attorney General for review and approval under the Commonwealth Attorneys Act (71 P.S. §§732-101—732-506).

In addition to submitting the final-omit rulemaking, the Department provided the IRRC and the Committees with a copy of a Regulatory Analysis Form prepared by the Department. A copy of this form is available to the public upon request.

The Attorney General approved the final-omitted regulations on \_\_\_\_\_, 2007. Under section 5(c) of the Regulatory Review Act, the rulemaking was deemed approved by the House and Senate Committees on \_\_\_\_\_, 2007. At a hearing on \_\_\_\_\_, 2007, IRRC approved the rulemaking.

### **ADDITIONAL INFORMATION**

Individuals interested in further information may contact Mary Benefield Seiverling, Assistant Chief Counsel, Department of General Services, 603 North Office Building, Harrisburg, Pennsylvania, 17125 at (717) 772-2749.

### **FINDINGS**

The Department finds that:

1. Public notice under the procedures in sections 201 and 202 of CDL of the Department's intention to amend the regulations adopted by this order has been omitted as authorized under section 204(1) of the CDL (45 P.S. §1204(1)) because the changes in the regulations relate to amendments



**Annex A**

**Title 4. ADMINISTRATION**

**Part III. DEPARTMENT OF GENERAL SERVICES**

**CHAPTER 89. BUREAU OF RISK AND INSURANCE MANAGEMENT**

**Subchapter A. DEATH BENEFITS FOR SURVIVORS OF [FIREMEN AND] LAW  
ENFORCEMENT AND EMERGENCY PERSONNEL**

**GENERAL**

## GENERAL

### § 89.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Act*—The act of June 24, 1976 (P.L. 424, No. 101), (53 P. S. §§ 891-[892]) 892.1), known as the Emergency and Law Enforcement Personnel Death Benefits Act.

*Ambulance service or rescue squad member*—

- (i) An officially recognized or designated member of an ambulance service or rescue squad, who is an employee of the Commonwealth or a political subdivision or a member of a legally recognized volunteer ambulance service or rescue squad in Pennsylvania.
- (ii) The term includes rescue workers, ambulance drivers, paramedics, health-care responders, emergency medical technicians, or other similar workers, who are trained in rescue activity or the provision of emergency medical services and have legal authority and responsibility to engage in rescue activity or provide emergency medical services.

Beneficiary – The surviving spouse, minor children, or parents of a public safety officer.

Benefit – The payment made to the beneficiary as authorized by the act.

\* \* \* \* \*

Certified hazmat response team member – A person who is a part of a group of individuals that meets the following requirements:

- (i) Is certified and organized by a Commonwealth agency, a local agency or a regional hazardous material organization.
- (ii) Is certified, trained and equipped in accordance with the Hazmat Act for the primary purpose of either of the following reasons:

(A) To provide emergency response services to mitigate actual or potential immediate threats to public health and the environment in response to the release or threat of a release of a hazardous material.

(B) To perform stabilization actions needed to remove threats to public health and the environment from hazardous material releases.

\* \* \* \* \*

Emergency medical service--Provision of first-response emergency medical care (other than in a permanent medical care facility) or transportation of

persons, in medical distress or under emergency conditions, to medical care facilities.

[*Firemen*] *Firefighter*—[Including all paid fire service personnel employed by] An individual, who is trained in fire suppression and has the legal authority and responsibility to engage in fire suppression, as an employe of the Commonwealth or a political subdivision [to engage in the suppression of fires and members of volunteer fire companies acting in the performance of their duties as fire fighters] or as an individual serving as an officially recognized or designated member of a legally organized volunteer fire department in this Commonwealth.

*Hazmat Act*—The Hazardous Material and Emergency Response Act (35 P.S. §§ 6022.101-6022.307.

[*Killed*—Death as the direct and proximate result of a wound or other condition of the body caused by external force, including injuries by bullets; explosives; sharp instruments; blunt objects or other physical blows; chemicals; electricity; climatic conditions, including gasses, heat, and lack of air; infectious diseases; radiation; and bacteria; but excluding stress and strain and diseases which arise merely out of the general performance of duty.]

\* \* \* \* \*

*Minor children* - [Any legitimate, illegitimate, or adopted children]

Surviving biological or adopted children of a public safety officer, who at the time

of the death of the [fireman or law enforcement] public safety officer are under the age of 21 years.

National Guard member—A member of the Pennsylvania National Guard in an official state duty status authorized under 51 Pa.C.S. § 508 (relating to active duty for emergency).

Parent—A surviving biological or adoptive parent of a public safety officer an ambulance service whose parental rights had not been terminated at the time of their child's death.

[Performance of duties—Any actions which a fireman or law enforcement officer is obligation or authorized by rule, regulation, condition or employment or service, or law to perform, including those ceremonial functions to which we is assigned or for which he is compensated by the Commonwealth or the political subdivision he serves.]

\* \* \* \* \*

Public safety answering point—A facility approved by the Pennsylvania Emergency Management Agency under the Public Safety Emergency Telephone Act (35 P.S. §§ 7011-7021.13) as the first point at which calls for emergency assistance from individuals are answered, operated 24 hours a day.

Public safety officers -- Emergency or law enforcement personnel identified in the act including firefighters, ambulance service or rescue squad

members, certified hazmat response team members, law enforcement officers and National Guard members.

\* \* \* \* \*

*Spouse*—The husband or wife of the deceased [fireman or law enforcement officer and including a spouse living apart from the fireman of law enforcement officer] public safety officer at the time of death, including a spouse living apart from the individual, other than pursuant to divorce.

**§ 89.2. Eligibility.**

[To be eligible for payment to the surviving spouse or, if there is no surviving spouse, to the minor children, the fireman or law enforcement officer must have been killed in the performance of duties.]

(a) General. Upon the death of a public safety officer who meets the requirements of the act, surviving beneficiaries are eligible for payment of a benefit if the public safety officer dies as a result of the public safety officer's performance of duties.

(b) Performance of duties. Performance of duties includes:

(1) Actions which the public safety officer is obligated or authorized by rule, regulation, condition of employment or service, or law to perform.

(2) Participation in a physical training exercise that is a formal part of an official training program whose purpose is to train, prepare or improve the public safety officer in particular activity or actions encompassed within the public safety officer's duties.

(3) Ceremonial functions.

(4) Actions which the act deems to be within the public safety officer's duties.

**(c) Requirements of the act. At the time of performance of duties:**

(1) A member of the National Guard shall be in an official state duty status authorized under 51 Pa.C.S. § 508 (relating to active duty for emergency).

(2) A certified hazmat response team member shall be dispatched by a public safety answering point to perform services or take actions within the group's primary purpose and may not be any of the following:

(i) Certified and organized by a transporter, a manufacturer, supplier or user of hazardous materials or a private contractor.

(ii) A for-profit team acting as an agent on behalf of the spiller or responsible party.

(iii) A for-profit team responsible for post-emergency or non-emergency response.

(d) Statutory presumption.

(1) A public safety officer is presumed to have died as a result of the performance of duties, if the individual suffers:

(i) A fatal heart attack or stroke while on duty.

(ii) A fatal heart attack or stroke suffered not later than 24 hours after participating in a physical training exercise.

(iii) A fatal heart attack or stroke suffered not later than 24 hours after responding to an emergency.

(2) The statutory presumption is overcome when evidence proves to a reasonable degree of medical certainty that circumstances



other than the performance of duties were a substantial factor in causing the fatal heart attack or stroke.

**§ 89.3. Jurisdiction.**

The benefits provided under the Act shall be payable whether or not the [law enforcement officer or fireman was killed] the public safety officer died within the corporate boundaries of the employing municipality or, in the case of the Commonwealth employe, within this Commonwealth, as long as [he was killed in] the individual died as a result of the performance of duties.

**§ 89.4. Amount of payments.**

[Payments under the provisions of the act shall be \$25,000.] The Department will annually calculate and post the amount of the benefit on its website and will retain the amount on the website for 5 years.

§ 89.5. [Reimbursement of political subdivisions; source of funds] Payment of benefit by the Commonwealth.

[Where the payment of the death benefit is made by a political subdivision, the political subdivision shall apply to the State Treasurer, through the Bureau, on the prescribed forms, as set forth in § 89.11 (relating to forms), for reimbursement. All payments whether by the Commonwealth or for political subdivision reimbursement will be from the General Fund.] Upon approval of a claim for death benefits, the Commonwealth will pay the benefit, as follows:

(1) To the eligible beneficiary of a public safety officer employed by the Commonwealth.

(2) To the political subdivision for the purpose of distribution by the entity to the eligible beneficiary on whose behalf the certifying official filed the report of death for any public safety officer not employed by the Commonwealth.

**§ 89.6. Beneficiary eligibility.**

(a) Order of priority. [When it has been determined that a fireman or law enforcement officer has been killed in the performance of duties, the \$25,000 benefit shall be paid in the following order of precedence:] The benefits will be paid by the Commonwealth or the political subdivision to the eligible beneficiary in the following order of precedence:

\* \* \* \* \*

(3) If there is no surviving spouse or minor [children, no benefit is payable] child, to the parent or parents.

\* \* \* \* \*

(7) A copy of separation agreement, where applicable.

(c) *Determination of relationship of child.* Generally, an individual is considered the child of a [fireman or a law enforcement officer] public safety officer if the birth certificate shows the [fireman or law enforcement officer] public safety officer as the parent. If the birth certificate does not show the relationship, proof may consist of one or more of the following:

- (1) [evidence] Evidence that the [fireman or law enforcement officer] public safety officer has been identified as the parent of the child by a judicial decree ordering [him] the public safety officer to contribute to the support of the child or for other purposes[; ] .
- (2) [a] A certified copy of the public record of birth or a religious record showing that the [fireman or law enforcement officer] [was the informant and was named as the parent of the child] public safety officer provided information naming the public safety officer as the parent of the child[;].
- (3) [information] Information obtained from a public agency or public records, such as school or welfare agencies, which shows that [to his knowledge the fireman or law enforcement officer] with the public safety officer's knowledge, the public safety officer was named as the parent of the child [;] .

(4) [a] A certified copy of the decree of adoption or a revised birth certificate to establish the fact of adoption.

(d) Determination of relationship of parent or parents. Generally, an individual is considered the parent of a public safety officer if the birth certificate identifies the individual as the parent of the public safety officer. If the birth certificate does not show the relationship, proof may consist of one of the following:

(1) A certified copy of the public record of birth or a religious record showing that the individual was named as the parent of the public safety officer.

(2) A certified copy of the decree of adoption or a revised birth certificate to establish the fact of adoption.

#### **§ 89.7. Claims for death benefits.**

(a) All claims for death benefits shall be on the forms provided by the Bureau [as set forth in § 89.11 (relating to forms)]. The Department will make these forms available on its website and, upon request, by electronic mail, facsimile transmission or regular mail. The forms, completed in all applicable particulars, [must] shall be forwarded to the Bureau of Risk and Insurance Management, Department of General Services, [Room 502, North Office Building] P.O. Box 1365, Harrisburg, Pennsylvania [17125] 17105-1365.

(b) The [claim] Claim for Death Benefits may be [executed] completed by a claimant, a political subdivision, or a Commonwealth agency but [must] shall be signed by the claimant or authorized representative and must be notarized.

(c) The following documents [must] shall be attached to the Claim for Death Benefits:

\* \* \* \* \*

(2) If payment is to be made to the spouse, evidence shown in § 89.6 (b) (relating to beneficiary eligibility).

\* \* \* \* \*

(4) If payment is to be made to the parent or parents, evidence shown in §89.6 (d).

(d) The Report of Death [must] shall be executed by a political subdivision or Commonwealth agency and [must] shall be notarized.

(e) The following documents [must] shall be attached to the Report of Death:

(1) [Copy of Workmen's] A copy of the Workers' Compensation form filed as a result of the death of the public safety officer.

- (2) [Notarized] A notarized statement from the supervisor or officer in charge describing in detail the duties being performed by the [law enforcement officer or fireman at the time and the circumstances under which he was killed] the public safety officer prior to or at the death and the circumstances under which the death occurred.
- (3) Other information which will assist in determining eligibility [.] to include:
- (i) An autopsy report or a statement by the political subdivision or Commonwealth agency or coroner explaining that no autopsy was performed.
  - (ii) Investigation, incident and accident reports.
  - (iii) A determination of death by another state or Federal agency such as workers' compensation or Social Security.
  - (iv) An attending physician's narrative report containing the conclusion that the public safety officer died as a result of the performance of duties and stating the basis for the conclusion.
- (4) Additional documentation for heart attacks and strokes to include:
- (i) A detailed statement listing the actions of the public safety officer in the performance of duties during the 24-

hour period prior to the onset of the heart attack or stroke.

(ii) Medical records related to the health of the public safety officer, including hospital admission/discharge reports, physician reports, physical examination results, and health risk and wellness evaluations covering the past 3 years.

(5) Additional documentation for death of a volunteer:

(i) A certified copy of documents, which establish that the volunteer ambulance service, volunteer fire company or volunteer rescue company is a nonprofit chartered corporation, association or organization located in this Commonwealth meeting the applicable definition established by the Volunteer Fire Company and Volunteer Ambulance Service Grant Act (35 P.S. §§ 6942.101-6942.903).

(ii) A notarized statement of the political subdivision or Commonwealth agency that the volunteer was an officially recognized or designated member of the volunteer ambulance service, volunteer fire company or volunteer rescue company at the time of the volunteer's death.

(iii) A complete description of deceased volunteer's membership information.

- (f) It is recommended that political subdivisions submit claims for determination of eligibility prior to payment [to a spouse or minor children].

\* \* \* \* \*

**§ 89.9. Appeals.**

Appeals by a claimant or political subdivision from the decision of the Bureau shall be filed with the Department under the terms of [the] 2 Pa.C.S. §§ 501-508 and 701-704 (relating to Administrative Agency Law) [(71 P. S. §§ 1710.1—1710.51) (Repealed)] within 30 days after notification of the decision.

**§ 89.10. [Effective date.] (Reserved).**

[The act applies only to deaths occurring from injuries sustained in the performance of duties on or after January 1, 1976.]

**§ 89.11. [Forms.] (Reserved).**

Editor's Note: As part of this final-omit regulation, the Department deletes the existing text of this section which appears at 4 Pa.Code pages 89-6—89-10, serial pages (235110)-(235114).





**COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF GENERAL COUNSEL  
DEPARTMENT OF GENERAL SERVICES**

Office of Chief Counsel  
603 North Office Building  
Harrisburg, Pennsylvania 17125  
PHONE: (717) 787-5599  
FAX: (717) 787-9138

October 1, 2007


Mr. Kim Kauffman  
Independent Regulatory Review Commission  
333 Market Street  
14<sup>th</sup> Floor  
Harrisburg, PA 17120-3008

**Re: FINAL OMITTED REGULATION  
Department of General Services  
Death Benefits for Survivors of Emergency and Law Enforcement Personnel  
4 Pa. Code Chapter 89  
Document 008-012**

Dear Mr. Kauffman:

Enclosed is a copy of the Face Sheet, Preamble, Annex A and the Regulatory Analysis Form for the above referenced regulation which is being submitted for your review pursuant to section 5(f) of the Regulatory Review Act, 71 P.S. § 745.5 (f). Notice of proposed rulemaking has been omitted pursuant to section 204(1) of the Commonwealth Documents Law, 45 P.S. §1204 (1) because the changes in the regulations relate to legislative amendments to the Emergency and Law Enforcement Personnel Death Benefits Act, 53 P.S. §§ 891-892.1, a self-executing act of the General Assembly. As a result of these legislative amendments, the Department of General Services' regulations are no longer consistent with the statute and must be amended.

The amendments make the regulations consistent with the Emergency and Law Enforcement Personnel Death Benefits Act and provide accurate and clear guidance to eligible beneficiaries and political subdivisions to facilitate the claims process. The Office of General Counsel approved these regulations on September 21, 2007. Copies of these regulations have been submitted this day to the House and Senate State Government Committees and the Office of Attorney General. The Department of General Services will provide the Commission with any assistance required to facilitate a thorough review of this proposal.

Sincerely,  
  
Mary Benefield Seiverling  
Assistant Chief Counsel

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

I.D. NUMBER: 8-12

SUBJECT: DEATH BENEFITS FOR SURVIVORS OF EMERGENCY AND  
LAW ENFORCEMENT PERSONNEL

AGENCY: DEPARTMENT OF GENERAL SERVICES

**TYPE OF REGULATION**

Proposed Regulation

Final Regulation

X Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

a. With Revisions                      b. Without Revisions

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
10/1	<i>M. Spyranski</i>	HOUSE COMMITTEE ON STATE GOVERNMENT
10/1	<i>B.G. Joseph</i>	MAJORITY CHAIRMAN <u>B. JOSEPH</u>
		SENATE COMMITTEE ON STATE GOVERNMENT
10/1/07	<i>Andy Piccola</i>	MAJORITY CHAIRMAN <u>J. PICCOLA</u>
10/1/07	<i>J. Lander</i>	
10/1/07	<i>Kathy Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
	<i>Cecilia...</i>	ATTORNEY GENERAL (for Final Omitted only)
	10/01/07	
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)