

OFPC RESPONSES TO THE 5 COMMENTS SUBMITTED

Response 1. Training information is currently provided to County Fire Coordinators, upon request. Further, the interior firefighter roster information collected by OFPC will be made available, consistent with the Freedom of Information Law, Public Officers Law Article 6.

Response 2. The law and the regulations clearly define the eligibility requirements for receipt of the benefit, and neither requires that the firefighter be an interior firefighter as of January 1, 2019.

Response 3.1 The requirement for fit tests and the physical examination/ questionnaire has been in place for the last twenty (20) years (OSHA 29 CFR 1910.134). OFPC is aware that many fire departments did not require physical examinations upon a firefighter's entry into the fire service. The regulations allow documentation establishing successful completion of the physical examination prior to commencement of duties as an interior firefighter as sufficient to comport with the intent of the law.

Response 3.2 The law requires that a firefighter have proof of a physical examination, prior to performing duties as an interior firefighter, that failed to reveal cancer. The physical examination questionnaire required by 29 CFR 1910.134 is an objective means to ascertain this eligibility requirement.

Response 3.3 See Response 3.1 and 3.2 above. Currently there is no alternative to the questionnaire that is permitted. If the physical and fit tests are conducted after January 1, 2019 then the firefighter would not qualify for the benefit until 5 annual fit tests have been successfully completed, notwithstanding other eligibility requirements, established by this regulation.

Response 3.4 The law requires that the physical examination "failed to reveal any evidence of cancers...". The regulation requires successful completion of a physical examination prior to the commencement of duties as an interior firefighter, which failed to reveal evidence of cancer.

Response 3.5 The Law places the obligation on the fire district, department or company to provide and maintain the coverage for its eligible firefighters. The certification of eligibility form is required to be submitted by the head of the fire district, department or company as it is that entity that will possess the required information related to the eligible interior firefighter. OFPC finds that there is no need for further definition or clarification.

Response 3.6 The regulation provides, rather than requires, that the benefit provider has the right to make an autopsy in the case of a death. However, the benefit provider may accept the board-certified physician certification that the firefighter's death was from complications associated with cancer. The covered cancers are clearly defined in both the law and the regulations.

Response 3.7 The first reporting year will be eleven months. The December 1st date was chosen to enable OFPC to have time to collect the information and prepare its annual report to the Governor and Legislature by the January 1st deadline.

Response 3.8 The reporting forms will not require the disclosure of any personal information pertaining to individual firefighters.

Response 3.9 The regulations require the head of the department or company to sign the annual claims report because that entity will have access to information on the firefighter(s) and claim(s) filed

Response 3.10 See Response 3.4 above. The law and regulations require that the required physical examination prior to the commencement of duties as an interior firefighter failed to reveal any evidence of cancers

Response 3.11 See Response 3.4 and 3.10 above.

Response 3.12 The law and regulations require the physical examination and five years of interior firefighting service as necessary elements of the benefit eligibility. Eligibility extends for 60 months after the firefighter is no longer an active volunteer firefighter.

Response 4. The law requires five (5) years of fit tests and successful completion of a physical examination documentation as the only acceptable proof to satisfy the requirement of the eligibility. In the absence of such records, no substitute documentation is acceptable. The law requires the physical examination upon entry to the fire services and the regulations allow documentation establishing successful completion of the physical examination prior to commencement of duties as an interior firefighter as sufficient to comport with the intent of the law.

Response 5. The law is also clear that a paid firefighter is ineligible for the benefits if they are already provided paid firefighter benefits under Article 10 of the General Municipal Law. If they are no longer receiving such benefits, then they would be eligible for the benefit under the Volunteer Firefighter Cancer Disability Benefits Act, subject to the monthly benefit offset limitations contained in the law.

Final Assessment- No Change to Draft in Final Regulations

After having assessed and considered all of the above comments received, OFPC has determined that the regulations as proposed are reasonable and necessary to implement the provisions of the law as they provide the process by which a firefighter or beneficiary can file a claim for benefits, a process to appeal from a denial of benefits and establish the proof required to qualify for the benefits. Based upon the foregoing, the proposed regulations are adopted without change.

2018 NY REG TEXT 495278 (NS), 2018 NY REG TEXT 495278 (NS)