

2018 NY REG TEXT 495278 (NS)
New York Regulation Text - Netscan
9 NYCRR 210.1, 2, 3, 4, 5, 6, 7, 8
Notices of Adoption
October 17, 2018
Effective: October 17, 2018
Executive Department

New York State Volunteer Firefighter Enhanced Cancer Disability Benefits Program
Establish claims process for eligible volunteer firefighters with certain cancers to receive disability and death benefits.

9 NYCRR 210.1	9 NYCRR 210.1
9 NYCRR 210.2	9 NYCRR 210.2
9 NYCRR 210.3	9 NYCRR 210.3
9 NYCRR 210.4	9 NYCRR 210.4
9 NYCRR 210.5	9 NYCRR 210.5
9 NYCRR 210.6	9 NYCRR 210.6
9 NYCRR 210.7	9 NYCRR 210.7
9 NYCRR 210.8	9 NYCRR 210.8

Division of Homeland Security and Emergency Services

NOTICE OF ADOPTION

New York State Volunteer Firefighter Enhanced Cancer Disability Benefits Program

I.D. No. HES-25-18-00001-A

Filing No. 948

Filing Date: 2018-10-02

Effective Date: 2018-10-17

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Addition of Part 210 to Title 9 NYCRR.

Statutory authority: General Municipal Law, section 205-cc

Subject: Volunteer Firefighter Enhanced Cancer Disability Benefits Program.

Purpose: Establish claims process for eligible volunteer firefighters with certain cancers to receive disability and death benefits.

Text or summary was published in the June 20, 2018 issue of the Register, I.D. No. HES-25-18-00001-EP.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Kenneth Bruno, Deputy Counsel, Division of Homeland Security and Emergency Services, 1220 Washington

Avenue, Building 7A, Albany, New York 12226, (518) 474-6746, email:
Kenneth.Bruno@DHSES.NY.GOV

Additional matter required by statute: Incorporation By Reference Certification.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

This assessment responds to the comments received on the draft regulations for Part 210 of Title 9 of the New York Codes, Rules and Regulations (NYCRR) which were published in the State Register on June 20, 2018.

On May 20, 2018, the Division of Homeland Security and Emergency Services adopted and released for public comment draft regulations relating to the New York State Volunteer Firefighter Enhanced Cancer Disability Benefits Act pursuant to Chapter 334 of the Laws of 2017. No public hearings were conducted related to the regulations. The Public Comment period ended on August 18, 2018.

In total the Division received 5 comments on the regulations via email and U.S. Mail.

The Division processed every comment and all comments received equal consideration.

The comments received were from a NYS county fire coordinator, a former NYS firefighter of 52 years, a fire district located in the Capitol District area and two New York statewide fire associations.

This Assessment of Public Comment (APC) presents and responds to all of the comments on the proposed regulations.

Comment 1. "With regard to the subject NYS Volunteer Firefighter Enhanced Cancer Disability Benefits Program, Section 210.8(b) & (c) (Annual Reports), I offer the following view and comment:

The annual roster of interior firefighters to be reported to the OFPC should be copied to the office of County Fire Coordinators annually and (b), and "the information related to interior firefighters and applicable training available to be made to fire districts, departments, or companies upon request" (c) should also be made available to the county fire coordinator.

The Coordinators are a routine point of contact and information for local AHJs and others and are integral both to the assessment of local firefighting resources and in determination of training needs in concert with OFPC and its respective officers. These proposed regulations will provide a valuable data component in validating and strengthening the mutual aid and related training programs that the Coordinators are charged with, and have responsibilities for, under NYS County Law, Article 5, Section 225-a.

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.

Comment 2. "As mentioned in my telephone conversation with you on 08/01/18 with regard to coverage of Volunteer Fire Department members not mandating a 01/01/19 status as an Interior Firefighter.

The proposed regulations follow the law carefully and I have no recommendations for changes. I would, however, find a way to verify that the "rumored" requirement be debunked. It might be as simple as stating that in the draft of the regulations."

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.

Comment 3. The comments and questions which follow were developed after a review of the Part 201 of Title 9 of the New York State Codes, Rules and Regulations:

1. Section 210.3(a)(3) requires "Successful completion of a firefighter physical examination prior to commencement of duties as an interior firefighter, which failed to reveal evidence of cancer..."

Many of the District firefighters who otherwise meet the definition for eligibility for the benefit joined, and were designated as interior firefighters, prior to the requirement of having a physical examination. A strict interpretation of this section of regulation would seem to make these firefighters ineligible for this benefit, even if they meet all of the other requirements of this section. The Board suggests that this be changed to require successful completion of a firefighter physical examination in conjunction with the required five annual fit tests that failed to reveal evidence of cancer.

Similar concerns regarding this language may be found in Section 210.4(c)(6), Section 210.6(d)(4). It is felt that this language, especially in Section 210.6(d)(4) could have a negative impact on many firefighters who joined the department, and became interior firefighters, before physical examinations were commonplace."

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.

2. The requirement within Section 210.3(a)(3) that physical examination failed to reveal evidence of cancer is problematic.

Many of the types of cancer covered by the Enhanced Cancer Disability Benefits would only be uncovered through advanced testing techniques not considered part of the initial or annual firefighter physical examination, such as colonoscopies, and would not be found through the normal questions posed by our District's physicians, who are in fact qualified to conduct OSHA approved fit testing and related commercial physicals. Will this type of screening be sufficient to "reveal evidence of cancer"?

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.

3. Section 210.2(j) states that the physical examination "shall include the completion of the mandatory OSHA Respiratory Medical Evaluation Questionnaire contained in 29 CFR 1910.134, Appendix C".

Are alternatives to this questionnaire permitted to be used: if the alternative contains all the information of the questionnaire identified at a minimum?

Are benefits not available to the firefighter if the specified questionnaire is not used (small fire companies may use physicians that are unaware of the OSHA questionnaire)?

If changes are made to begin use of the OSHA questionnaire, or an alternative, after the January 1, 2019 implementation date, does that delay the availability of benefits until 5 annual physicals, and fit tests, have been completed using this questionnaire?

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.

4. Section 210.2(j) defines "Physical Examination", but makes no mention of "revealing evidence of cancer", as required in Section 210.3(a)(3).

It is quite possible firefighters have had a physical examination with no information collected to determine whether there is evidence of cancer. It is unclear whether this would disqualify them for coverage under this benefit.

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.

5. Section 210.4(c), concerning Documentation, requires "This form must be signed by the head of the department or company, ..."

- There is no definition of "head of the department or company".

- The District recommends that the form be signed by the head of the Authority Having Jurisdiction (AHJ). The AHJ is responsible for setting or approving the standards that interior firefighters in the organization(s) must meet to be an interior firefighter within their jurisdiction, designating or approving the interior firefighters for their organization(s) in their jurisdiction, and obtaining and maintaining the disability insurance coverage for the eligible firefighters within their jurisdiction. Further, the AHJ is required to maintain the medical records of the firefighters in their jurisdiction in a safe and secure place, to protect the firefighters Protected Health Information (PHI) under the Health Insurance Portability and Accountability Act (HIPAA).

If the item above is approved, the "head" of the AHJ would still need to be defined.

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.

6. Section 210.6(a)(2) states "The benefit provider shall have the right and opportunity to examine the person of the eligible volunteer firefighter when and as often as the benefit provider may reasonably require during the pendency of claim and also the right and opportunity to make an autopsy in case of death where it is not prohibited by law."

While the Board understands that such examinations are a normal part of the disability claims process, it is felt limitations or some appeal process to the number and frequency of such examinations should exist to allow the firefighter to focus on their recovery from the disease.

The Board is also concerned about the "right and opportunity" afforded the benefit provider to make an autopsy of a firefighter. There may be religious, or other objections to having an autopsy required. Further, Section 210.5(b)(4) provides that "... a death benefit is payable "upon acceptable proof by a board-certified physician that the firefighter's death resulted from

complications associated with cancer." It seems that if a board-certified physician provides such proof, it would be sufficient to substantiate the claim, and negate the need for an autopsy, unless requested by the firefighter's beneficiary(ies).

The language in Section 210.5(b)(4) is" ... complications from cancer."

This does not reference the covered cancers identified in Section 210.2(d), and should be clarified to do so if that is the intent.

It is not clear how the benefit provider would use information from an autopsy or examination of a firefighter diagnosed with an eligible cancer. From the Board's review of Section 210.6 it does not appear that these "rights and opportunities" are relevant to consideration of approval or denial of a claim.

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.

7. Section 210.8 requires an annual report to the Office of Fire Prevention and Control, by "no later than December 1, 2019, and annually thereafter".

- The disability coverage goes into effect January 1, 2019. However, Section 210.2(k) defines the "Reporting Year" to be December 1st through November 30th. Does this mean that the first reporting year will only contain eleven (11) months of information?

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.

8. Section 210.8 further states that the annual report is to collect information on "the claims and benefits payments for the reporting year using forms prescribed by the office of fire prevention and control".

- As identified in # 5 above, the first reporting period appears to be less than one year. The Board is unsure if this is an issue, but wants to point out this inconsistency.

- The Board assumes that such reporting forms will not require the reporting of a firefighters PHI. If such information is required, the reporting entity would need to obtain, and maintain, authorizations from firefighters, or their beneficiaries, to release such information. Further, guidance would need to be provided to ensure this information is protected at all times, from collection, through transmission and in the Office of Fire Prevention and Control files.

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

9. Section 210.8(a)(l) requires that the Annual Claims Report"... must be signed by the head of the department or company, ...".

In most cases, the AHJ will be the entity that has secured, or selfinsured, the insurance coverage for this benefit, and therefore would either maintain the records on any claims if selfinsured or would get an annual statement from the insurance carrier for such coverage as well as having received information when a determination on a claim is made. The Board recommends that the Annual Claims Report be signed by the head of the AHJ, after having been properly defined as previously stated in # 4 above.

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

10. The regulations are not clear as to whether the evidence of cancer must be revealed as part of the firefighter physical examination to be eligible for benefits. If the cancer was not revealed during the firefighter physical, either upon joining or annually thereafter, but was diagnosed by the firefighter's personal physician at some other time, would the firefighter be eligible for benefits?

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

11. The emergency / proposed rulemaking does not define pre-existing conditions, and how cancer diagnosed prior to January 1, 2019 may, or may not be covered. Several scenarios are envisioned that need clarification within the regulations:

- The rulemaking does not define whether an otherwise eligible firefighter who may have had a covered cancer prior to the enactment of the statute authorizing the disability coverage, which was in remission as of January 1, 2019, and then re-occurred at some date in the future would be eligible for coverage upon the re-occurrence of the cancer.

- The regulations also do not address whether coverage is available should firefighter have a diagnosis for one type of covered cancer prior to January 1, 2019 and is diagnosed with a second form of covered cancer after January 1, 2019. For example, if the firefighter was diagnosed with melanoma prior to January 1, 2019, and then found to have cancer affecting the digestive system after the enactment date, would the firefighter be eligible for benefits under the benefits?

The Board feels this situation must be addressed in the final rulemaking.

Response 3.11 See Response 3.4 and 3.10 above.

The Board recommends that the regulations provide further clarification on eligibility of firefighters who may no longer be interior firefighters (i.e.; they have not received clearance as an interior firefighter as part of an annual firefighter physical and they are not designated as an interior firefighter by the AHJ), but remain an active volunteer firefighter as defined by Part 210.2(b). In most fire companies there is a significant cohort of firefighters that have many years of interior firefighting experience, with documented fit testing meeting the five-year standard, but who no longer serve as an interior firefighter, although remain active firefighters. These may include individuals that may be solely apparatus drivers, exterior firefighters or fire police, all vital functions in the volunteer fire service. In discussion among the members of the Board regarding the proposed rulemaking, there was a great deal of disagreement about whether these individuals were eligible for coverage. If such disagreement exists, it should be corrected in the final rulemaking.

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.

Comment 4. The Executive Board of the Directors of the Association (intentionally redacted) has requested that I submit comments in its behalf with regard to the above purposed rulemaking by your agency.

The following is the identifying information for the proposed rulemaking published on June 20, 2018 on which the Association would like to comment:

DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES;

EMERGENCY PROPOSED RULE MAKING

NO HEARING(S) SCHEDULED

NEW YORK STATE VOLUNTEER FIREFIGHTER ENHANCED CANCER DISABILITY
BENEFITS PROGRAM

I.D. NO. HES-25-18-00001-EP

FILING NO. 511

FILING DATE: 2018-05-30

EFFECTIVE DATE: 2018-05-30

PURSUANT TO THE PROVISIONS OF THE STATE ADMINISTRATIVE PROCEDURE
ACT, NOTICE IS HEREBY GIVEN OF THE FOLLOWING ACTION:

PROPOSED ACTION: ADDITION OF PART 210 TO TITLE 9 NYCRR.

STATUTORY AUTHORITY: GENERAL MUNICIPAL LAW, SECTION 205-CC

The regulations drafted by the Office of Fire Prevention and Control ["OFPC"] provide for procedures to be implemented in order to give effect to the Volunteer Firefighter Enhanced Cancer Disability Benefit Insurance Program provided for under General Municipal Law § 205-cc. The statute provides a method for determining the eligibility for benefits for active volunteer firefighters who were assigned duties as interior structural firefighters and faithfully performed those duties for at least five years.

The statute and the proposed regulations both utilize the result of an entry level physical examination conducted on the firefighter prior to such service which did not reveal a cancer and proof of the firefighter completing five annual mask fit tests.

The statute and regulations anticipate that all volunteer fire departments and fire companies or the jurisdiction having authority would have performed the entry level physical examinations and the mask fit tests and have in their position records as proof of same.

What procedure should be followed if the volunteer fire departments and fire companies and the jurisdiction having authority either failed to conduct the exam or fit tests on a particular firefighter or are unable to local records related to the examination and fit tests?

No one is questioning that each volunteer fire department and fire company should conduct entry level and periodic physical examinations of candidates to become or continue to serve as interior structural firefighters and that annual mask fit tests should be conducted, but if there is a past defect in procedure or currently missing records, the present officials that must sign the certification provided for under the proposed 9 NYCRR 210.4 are placed in a very difficult position.

We would ask that officials be permitted to sign a certification in which they rely upon other records in the absence of the record of the entry level physical examination and/or the records of annual mask fit tests in order to submit the required certification that the volunteer firefighter did in fact provide "five or more years of faithful and actual service in the protection of life and property from fire in the interior of buildings." An entry level physical examination report may not be available, but a more recent periodic physical examination report that did not detect cancer may be available. Fit testing records may not be available, but attendance records may be available which establish interior firefighting service. We are asking that officials that must file the certification be given more discretion so that deserving firefighters are not denied benefits.

We are requesting consideration of the following amendments

9 NYCRR 210.3

Eligibility

(a) A volunteer firefighter must meet the following criteria to be eligible for enhanced cancer disability benefits:

(1) Five or more years of faithful and actual firefighting service as an interior firefighter;

- (2) Has submitted proof of five years of interior structural firefighting service by providing verification that he or she has passed at least five annual fit tests or in the absence of records of fit tests, proof of such service through the review of attendance records at emergency responses, training activities and drills at which interior firefighting service would have been undertaken;
 - (3) Successful completion of a physical examination prior to the commencement of duties as an interior firefighter, which failed to reveal evidence of cancer or in the absence of a record of such entry level exam, a record of a subsequent periodic physical examination which resulted in qualifying the firefighter to perform interior structural firefighting which failed to reveal evidence of cancer; and
 - (4) Diagnosis of cancer.
- (b) A volunteer firefighter shall remain eligible for enhanced cancer disability benefits specified in General Municipal Law section 205-cc(2)(a), (b), and (d) for 60 months after the formal cessation of the volunteer firefighter's status as an active volunteer firefighter.

9 NYCRR 210.4

Documentation

- (a) Fire districts, departments and companies shall provide information on the enhanced cancer disability benefit to all its members and make available such information upon request.
- (b) Upon request, the fire district, department or company shall provide a claim form and instructions to its member or their beneficiary(ies) detailing how to file a claim for enhanced cancer benefits with the benefits provider.
- (c) As part of any claim submitted and filed with the benefit provider, fire districts, departments and companies shall provide a certification of eligibility for enhanced cancer disability benefits using a form prescribed by the office of fire prevention and control. This form must be signed by the head of the department or company, sworn to under penalty of perjury as true, correct and complete, notarized and contain, at a minimum, the following information:
 - (1) The full legal name of the eligible volunteer firefighter;
 - (2) The full legal name of the fire district, department or company;
 - (3) The dates the eligible volunteer firefighter was an active volunteer firefighter of the fire district, department or company;
 - (4) The number of years of firefighting service as an interior firefighter;
 - (5) A statement that the eligible volunteer firefighter performed interior structural firefighting duties inside a building; and
 - (6) A statement that the eligible volunteer firefighter successfully completed a physical examination, prior to the commencement of duties as an interior firefighter or during the years during which he or she was performing such duties, which failed to reveal any evidence of cancer;

We believe that these amendments will assist volunteer firefighters with valid claims to avoid being denied benefits because of prior procedural omissions or faulty record keeping and provide for greater flexibility will regard to processing claims.

No fire district, fire department or fire company official should be placed in a position where he or she cannot in good faith sign the certification because of such defects in prior procedures or records. We appreciate the work which your agency has done on these regulations and would respectfully request consideration of our suggestions.

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.

Comment 5. In general, the (INTENTIONALLY REDACTED) believes that the proposed regulations conform with the law and provide significant and adequate guidance for compliance. We would however agree with comments submitted by the (Intentionally Redacted) that there needs to be some clarification regarding the entry level physical. We have participated in several workshops over the last several weeks regarding implementation of the program and the question of what do you do if there was no physical required upon entry or none was offered? Also, how do you handle the issue if there are no records available of physicals that took place a number of years ago.

As noted in comments submitted by (Intentionally Redacted):

The statute and the proposed regulations both utilize the result of an entry level physical examination conducted on the firefighter prior to such service which did not reveal a cancer and proof of the firefighter completing five annual mask fit tests. The statute and regulations anticipate that all volunteer fire departments and fire companies or the jurisdiction having authority would have performed the entry level physical examinations and the mask fit tests and have in their position records as proof of same.

What procedure should be followed if the volunteer fire departments and fire companies and the jurisdiction having authority either failed to conduct the exam or fit tests on a particular firefighter or are unable to locate records related to the examination and fit tests?

No one is questioning that each volunteer fire department and fire company should conduct entry level and periodic physical examinations of candidates to become or continue to serve as interior structural firefighters and that annual mask fit tests should be conducted, but if there is a past defect in procedure or currently missing records, the present officials that must sign the certification provided for under the proposed 9 NYCRR 210.4 are placed in a very difficult position.

We would ask that officials be permitted to sign a certification in which they rely upon other records in the absence of the record of the entry level physical examination and/or the records of annual mask fit tests in order to submit the required certification that the volunteer firefighter did in fact provide "five or more years of faithful and actual service in the protection of life and property from fire in the interior of buildings."

An entry level physical examination report may not be available, but a more recent periodic physical examination report that did not detect cancer may be available. Fit testing records may not be available, but attendance records may be available which establish interior firefighting service. We are asking that officials that must file the certification be given more discretion so that deserving firefighters are not denied benefits. In addition to the comments submitted by (intentionally redacted) we would also ask that a new paragraph (c) be added to 9 NYCRR 210.3 to allow for the certification of eligibility if records are not available.

We are requesting consideration of the following amendments

9 NYCRR 210.3

Eligibility

(a) A volunteer firefighter must meet the following criteria to be eligible for enhanced cancer disability benefits:

(1) Five or more years of faithful and actual firefighting service as an interior firefighter; and

(2) Has submitted proof of five years of interior structural firefighting service by providing verification that he or she has passed at least five annual fit tests or in the absence of records of fit tests, proof of such service through the review of attendance records at emergency responses, training activities and drills at which interior firefighting service would have been undertaken; and

(3) Successful completion of a physical examination prior to the commencement of duties as an interior firefighter, which failed to reveal evidence of cancer or in the absence of a record of such entry level exam, a record of a subsequent periodic physical examination which resulted in qualifying the firefighter to perform interior structural firefighting which failed to reveal evidence of cancer; and

(4) Diagnosis of cancer.

(b) A volunteer firefighter shall remain eligible for enhanced cancer disability benefits specified in General Municipal Law section 205-cc(2)(a), (b), and (d) for 60 months after the formal cessation of the volunteer firefighter's status as an active volunteer firefighter.

(c) In the absence of contemporaneously prepared documentation evidencing the proof required under subdivision (a) of this section, a certification signed by the Chief of the department or the chief administrative officer of the authority having jurisdiction attesting to the firefighter's compliance with the eligibility requirements set forth in subdivision (a) paragraphs (1), (2), and (3) shall be deemed to be sufficient proof of eligibility.

9 NYCRR 210.4

Documentation

(a) Fire districts, departments and companies shall provide information on the enhanced cancer disability benefit to all its members and make available such information upon request.

(b) Upon request, the fire district, department or company shall provide a claim form and instructions to its member or their beneficiary(ies) detailing how to file a claim for enhanced cancer benefits with the benefits provider.

(c) As part of any claim submitted and filed with the benefit provider, fire districts, departments and companies shall provide a certification of eligibility for enhanced cancer disability benefits using a form prescribed by the office of fire prevention and control. This form must be signed by the head of the department or company, sworn to under penalty of perjury as true, correct and complete, notarized and contain, at a minimum, the following information:

(1) The full legal name of the eligible volunteer firefighter;

(2) The full legal name of the fire district, department or company;

(3) The dates the eligible volunteer firefighter was an active volunteer firefighter of the fire district, department or company;

(4) The number of years of firefighting service as an interior firefighter;

(5) A statement that the eligible volunteer firefighter performed interior structural firefighting duties inside a building; and

(6) A statement that the eligible volunteer firefighter successfully completed a physical examination, prior to the commencement of duties as an interior firefighter or during the years during which he was performing such duties, which failed to reveal any evidence of cancer.

We believe that these amendments will assist volunteer firefighters with valid claims to avoid being denied benefits because of prior procedural omissions or faulty record keeping and provide for greater flexibility will regard to processing claims.

No fire district, fire department or fire company official should be placed in a position where he or she cannot in good faith sign the certification because of such defects in prior procedures or record keeping.

Finally, we believe that there needs to be some clarification of eligibility for a career firefighter who is also a volunteer. The issue is ensuring that the career FF becomes eligible for the Enhanced Volunteer Firefighter Disability Benefit as long as they are not collecting or are no longer collect as a career firefighter, providing they meet all of the other eligibility requirements.

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.

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)