



# The Washington Report

**The Newsletter of the National Association of Police Organizations**

*Representing America's Finest*

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**August 31, 2016**

## **NAPO Attends PSOB Stakeholder Meeting: Program Updates and New Proposed Regulations**

On August 22<sup>nd</sup>, NAPO participated in the PSOB stakeholder committee meeting which focused on the two new proposed rules that were recently issued by PSOB Office. The first rule that came out on July 15<sup>th</sup> formalizes and puts into regulations the PSOB Office's process for determining 9/11-related health claims and makes changes to how the Office determines Hometown Heroes (heart attack, stroke and vascular rupture) cases. The second rule, published on August 22<sup>nd</sup>, makes numerous changes to the Program, many of which NAPO has spent years fighting to get implemented.

The first rule states that the PSOB Office will work collaboratively with the World Trade Center Health Program (WTCHP) and the Victims Compensation Fund (VCF), enacted by the James Zadroga 9/11 Health and Compensation Act of 2010, to determine PSOB 9/11 exposure claims based on the WTCHP medical certifications and VCF determinations. By relying on the determinations of the WTCHP and the VCF, the PSOB Office states that it will be able to process a significant number of 9/11 related claims. As of the meeting, the Office has approved 37 claims since implementing this policy at the beginning of April.

Further, for those 9/11-related claims that do not have a WTCHP or VCF certification, the PSOB Office is adopting the methodology established by the WTCHP and the VCF to determine claims, including recognizing the List of WTC-related health conditions. NAPO appreciates that the PSOB Office is finally acting on these claims using accepted and respected methodology; however, we have some concerns with aspects of the rule. Particularly, we are concerned with how it will interact with the PSOB rule that all cases have to be filed within three years of the death or injury date unless "good cause" is shown. With this year being the 15<sup>th</sup> anniversary of the 9/11 attacks, we are concerned that many 9/11-related claims will not be considered due to the amount of time that has passed. NAPO will be submitting comments on the proposed rule and we will be insisting that the PSOB have a grace period for "old cases" to be filed.

As for how the PSOB Office is determining Hometown Heroes claims, the proposed rule simplifies how the PSOB Office will establish whether the officer's heart attack, stroke or vascular rupture was a direct result of his or her engagement or participation in non-routine stressful or strenuous physical line-of-duty activity.

The second rule will make many changes to the program, including a significant change that will move it closer to being a presumptive benefit program. Amongst other things, it will change from "clear and convincing" to "more likely than not" the standard of proof required to establish (1) an officer was injured because of his or her status as a public safety officer, (2) total and permanent disability, and (3) parent-child relationship for purposes of the education benefit. It will expand the definitions of "line of duty activity or action" and "official capacity" to include a public safety officer's actions to save human life in certain limited circumstances but without

regard to jurisdiction. Also, it will revise the definition of “totally disabled” and related provisions to address circumstances when a claimant performs work that is compensated but not substantial.

NAPO is still considering the rule and will be submitting comments on the proposed program changes. After years of frustration with the PSOB Program, we are glad to see that the program’s leadership have been listening to us and have addressed many of our long-held concerns in this second proposed rule. We consider these changes a big victory for NAPO and rank-and-file officers across the nation.

In addition to reviewing the proposed rules, the PSOB Office announced the latest numbers of backlogged cases. As of August 1<sup>st</sup>, there are 772 active death and disability cases (603 death and 169 disability), 124 cases at the hearing officer appeals level, and 43 cases being appealed to the director of the Bureau for Justice Assistance, for a total of 939 cases. The PSOB Office intends to post this data on the website monthly.

These numbers are only down slightly from the 1,049 cases backlogged in November 2015. NAPO is hopeful that the changes being proposed in the two new rules, as well as our proposed changes in the PSOB Improvement Act, will help the PSOB Office continue to chip away and eventually eliminate the case backlog.

There will be another stakeholder committee meeting mid-September for stakeholders to walk through their comments and concerns with the two proposed rules. NAPO will share our comments on the two proposed rules with our members. If you have any questions about either proposed rule or the PSOB program in general, please contact Andy Edmiston at [aedmiston@napo.org](mailto:aedmiston@napo.org).

## **NAPO on the Hill: Meetings with Senate Armed Services Committee on 1033 Program**

On August 24th, NAPO met with staff of Senate Armed Services Committee Chairman John McCain (R-AZ) to discuss our asks pertaining to the Department of Defense 1033 Program in the Fiscal 2017 National Defense Authorization Act (NDAA). The House and Senate have each passed their own versions of the Act and have been negotiating a compromise bill throughout the summer.

NAPO, together with other national law enforcement organizations, is urging negotiators to lay the ground work for rescinding the Executive Order. During consideration of the bill in the Senate, Senator James Inhofe offered an amendment, which NAPO endorsed, that would have rescinded Executive Order 13688 and return control of the 1033 Program to the Secretary of Defense and Congress. Despite Senator Inhofe’s extraordinary efforts, which we greatly appreciate, this amendment was rejected by a tie vote. Because this amendment failed, we are unable to revoke the Executive Order in the NDAA, but we can make certain there is support for law enforcement’s access to surplus military equipment.

Chairman McCain’s staff indicated that protecting law enforcement’s access to this lifesaving equipment is a priority for him in negotiations. He also stated he supports the NAPO-endorsed provision included in the House version of the National Defense Authorization Act (NDAA) – that would restore state and local law enforcement’s access to such equipment for border protection.

It was a very productive meeting and NAPO will continue meeting with leadership and members of the House and Senate Armed Services Committees throughout the rest of the negotiation process to make certain that the officers we represent regain access to the lifesaving gear they need to defend themselves and the civilians they are sworn to protect. Please see the [joint law enforcement letter](#) to the leadership of the House and Senate Armed Services Committees.

# **DOT and FAA Finalize Rules for Small Unmanned Aircraft Systems**

At the end of June, the Department of Transportation's Federal Aviation Administration (FAA) finalized the first operational rules for routine commercial use of small unmanned aircraft systems (UAS or "drones"). The new rule, which takes effect at the end of the month, offers safety regulations for unmanned aircraft drones weighing less than 55 pounds that are conducting non-hobbyist operations.

The rule's provisions are designed to minimize risks to other aircraft and people and property on the ground. The regulations require pilots to keep an unmanned aircraft within visual line of sight. Drones are allowed to be operated during daylight and twilight if the drone has anti-collision lights. The new regulations also address height and speed restrictions and other operational limits, such as prohibiting flights over unprotected people on the ground who are not directly participating in the drone operation.

The FAA is proposing a process to waive some restrictions if an operator proves the proposed flight will be conducted safely under a waiver and these waivers will be available for online purchase in the next few months.

Further, under the rule, the person actually flying a drone must be at least 16 years old and have a remote pilot certificate with a small UAS rating, or be directly supervised by someone with such a certificate. To qualify for a remote pilot certificate, an individual must either pass an initial aeronautical knowledge test at an FAA-approved knowledge testing center or have an existing non-student Part 61 pilot certificate. If qualifying with a non-student Part 61 pilot certificate, the pilot must have completed a flight review within the past two years and must take a UAS online training course provided by the FAA. The TSA will conduct a security background check of all remote pilot applications prior to issuance of a certificate.

A summary of the final rule can be found [here](#).

## **Congress Returns to Work September 6<sup>th</sup>**

Congress will return to work on September 6<sup>th</sup> after 7 weeks of in-district work and will have four weeks to get things done before lawmakers adjourn yet again at the beginning of October for some final pre-election campaigning. Congress' main focus in September will be passing a stop-gap spending measure to ensure that the federal government does not shut down at the end of the fiscal year on September 30<sup>th</sup>.

While the House and Senate have each passed their versions of many of the spending bills, Congress has not passed one fiscal 2017 appropriations bill. The biggest decision will be whether to fund the federal government and all of its programs through December 11<sup>th</sup> and then pass an omnibus spending measure like they did last year, or pass a longer-term stop-gap bill that leaves it to the new Congress and Administration to finalize fiscal 2017 spending levels. A stop-gap measure is also called a continuing resolution because it just continues the funding levels from the previous fiscal year into the new year with very little changes.

While funding for NAPO's priority grant programs has remained steady of the past couple of fiscal years and will thus will not be greatly affected by either decision, we prefer an omnibus spending measure as it will give state and local law enforcement the greatest chance of rescinding the President's Executive Order restricting access to surplus military equipment.

In addition to appropriations, NAPO will focus much of our efforts in September on moving our remaining priorities, including our work to rescind the President's Executive Order and pass the PSOB Improvements Act and the Children of Fallen Heroes Scholarship Act. We will keep our members updated on the progress of our work. If you have any questions, please contact Andy Edmiston at [aedmiston@napo.org](mailto:aedmiston@napo.org).