

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

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### **Authority**

The provisions of this Chapter 89 issued under AC § 2404.1 of The Administrative Code of 1929 (71 P. S. § 634.1); and Administrative Agency Law (71 P. S. §§ 1710.1—1710.51) (Repealed), unless otherwise noted.

### **Subchapter A. DEATH BENEFITS FOR SURVIVORS OF FIREMEN AND LAW ENFORCEMENT OFFICERS**

#### **GENERAL**

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**Authority**

The provisions of this Subchapter A amended under sections 506 and 2402.2 of The Administrative Code of 1929 (71 P. S. §§ 186 and 631.1), unless otherwise noted.

**Source**

The provisions of this Subchapter A adopted November 25, 1977, 7 Pa.B. 3406, unless otherwise noted.

**Notes of Decisions**

Where county questioned whether park policeman died in the performance of duties, the proper forum for determination is with the Department of General Services and in action for mandamus the Court of Common Pleas should order the county to submit the certification to the Department of General Services. *Lang v. County of Delaware*, 490 A.2d 20 (Pa. Cmwlth. 1985).

**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—892.1), 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 this Commonwealth.

(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.

*Bureau*—The Bureau of Risk and Insurance Management of the Department.

*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 one 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.

*Department*—The Department of General Services of the Commonwealth.

*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.

*Firefighter*—An individual, who is trained in fire suppression and has the legal authority and responsibility to engage in fire suppression, as an employee of the Commonwealth or a political subdivision 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).

*Law enforcement officer*—A peace officer as defined in 18 Pa.C.S. § 501 (relating to definitions), a public servant concerned in the official detention as defined in 18 Pa.C.S. § 5121 (relating to escape), an officer or employee of a State correctional institution, guards or employees of county jails and prisons, or other law enforcement officers of the Commonwealth or any political subdivision thereof.

*Minor children*—Surviving biological or adopted children of a public safety officer, who, at the time of the death of the public safety officer are under 21 years of age.

*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 State duty for emergency).

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

*Political subdivision*—Any county, city, borough, incorporated town, township, school, vocational school district, or county institution district within this Commonwealth.

*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.

*Secretary*—The Secretary of the Department.

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

**Source**

The provisions of this § 89.1 amended May 23, 1980, effective May 24, 1980, 10 Pa.B. 2039; amended November 16, 2007, effective November 17, 2007, 37 Pa.B. 6106. Immediately preceding text appears at serial pages (235106) to (235107).

**Notes of Decisions**

The definition of “killed” contained in this section, particularly that clause which excludes stress and strain and diseases which arise merely out of the general performance of duty, is invalid in light of section 3 of the act of October 16, 1981 (P. L. 295, No. 102) which provides that the payment of survivor’s benefits shall be made in the event of the death of any firefighter occurring as the direct result of injuries sustained in the performance of his or her duties, regardless of the date when such injuries occurred. *Seybold v. Department of General Services*, 461 A.2d 353 (Pa. Cmwlth. 1983); appeal after remand 528 A.2d 999 (Pa. Cmwlth. 1986); appeal denied 529 A.2d 1084 (Pa. 1987).

Although county park policeman with limited authority was not a “policeman” for collective bargaining purposes under section 1 of the act of June 24, 1968 (P. L. 237, No. 111) (43 P. S. § 217.1), he was a “law enforcement officer” as defined in 18 Pa.C.S. § 501, the definition which was incorporated into the act of June 26, 1976 (P. L. 424, No. 101) (53 P. S. §§ 891—892). *Lang v. County of Delaware*, 490 A.2d 20 (Pa. Cmwlth. 1985).

**§ 89.2. Eligibility.**

(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 State 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 postemergency or nonemergency 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 one of the following:

(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.

**Source**

The provisions of this § 89.2 amended November 16, 2007, effective November 17, 2007, 37 Pa.B. 6106. Immediately preceding text appears at serial page (235107).

**§ 89.3. Jurisdiction.**

The benefits provided under the act shall be payable whether or not the public safety officer died within the corporate boundaries of the employing municipality or, in the case of the Commonwealth employee, within this Commonwealth, as long as the individual died as a result of the performance of duties.

**Source**

The provisions of this § 89.3 amended November 16, 2007, effective November 17, 2007, 37 Pa.B. 6106. Immediately preceding text appears at serial page (235107).

**§ 89.4. Amount of payments.**

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.

**Source**

The provisions of this § 89.4 amended November 16, 2007, effective November 17, 2007, 37 Pa.B. 6106. Immediately preceding text appears at serial page (235107).

**§ 89.5. Payment of benefit by the Commonwealth.**

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.

**Source**

The provisions of this § 89.5 amended November 16, 2007, effective November 17, 2007, 37 Pa.B. 6106. Immediately preceding text appears at serial pages (235107) to (235108).

**§ 89.6. Beneficiary eligibility.**

(a) *Order of priority.* The benefits will be paid by the Commonwealth or the political subdivision to the eligible beneficiary in the following order of precedence:

- (1) To the surviving spouse.
- (2) If there is no surviving spouse, to the minor child or children in equal shares, with payments, when appropriate, being made to the legal guardian or trustee.
- (3) If there is no surviving spouse or minor child, to the parent or parents.

(b) *Determination of relationship of spouse.* Marriage should be established by one or more of the following types of evidence in the order of preference shown:

- (1) A copy of the public record of marriage, certified or attested, an abstract of the public record, containing sufficient data to identify the parties, the date and place of the marriage, and the number of prior marriages by either party shown on the official record, issued by the officer having custody of the record, or a certified copy of the religious record of marriage.
- (2) The affidavit of the clergyman or magistrate who officiated.
- (3) The original certificate of marriage accompanied by proof of its genuineness and the authority of the person to perform the marriage.
- (4) The affidavits or sworn statements of two or more eyewitnesses to the ceremony.
- (5) If a common law marriage is claimed, the affidavits or certified statements of the spouse setting forth all of the facts and circumstances concerning the alleged marriage, such as the agreement between the parties at the begin-

ning of their cohabitation, the period of cohabitation, places and dates of residences, and whether children were born as a result of the relationship. This evidence should be supplemented by affidavits or certified statements from two or more persons who know as the result of personal observation the reputed relationship which existed between the parties to the alleged marriage including the period of cohabitation, places of residences, whether the parties held themselves out as husband and wife, and whether they were generally accepted as such in the communities in which they lived.

(6) Other evidence which would reasonably support a belief that a valid marriage actually existed.

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

(c) *Determination of relationship of child.* Generally, an individual is considered the child of a public safety officer if the birth certificate shows the 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 that the public safety officer has been identified as the parent of the child by a judicial decree ordering the public safety officer to contribute to the support of the child or for other purposes.

(2) A certified copy of the public record of birth or a religious record showing that the public safety officer provided information naming the public safety officer as the parent of the child.

(3) Information obtained from a public agency or public records, such as school or welfare agencies, which shows that with the public safety officer's knowledge, the public safety officer was named as the parent of the child.

(4) 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.

#### Source

The provisions of this § 89.6 amended November 16, 2007, effective November 17, 2007, 37 Pa.B. 6106. Immediately preceding text appears at serial pages (235108) to (235109).

#### Cross References

This section cited in 4 Pa. Code § 89.7 (relating to claims for death benefits).

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

(a) Claims for death benefits must be on the forms provided by the Bureau. 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, shall be forwarded to the Bureau of Risk and Insurance Management, Department of General Services, Post Office Box 1365, Harrisburg, Pennsylvania 17105-1365.

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

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

(1) Certified copy of the death certificate.

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

(3) If payment is to be made to or on behalf of minor children, evidence shown in § 89.6(c) and, if children are under 18 years of age, guardianship papers or court order to make payment.

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

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

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

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

(2) A notarized statement from the supervisor or officer in charge describing in detail the duties being performed by 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.

#### **Source**

The provisions of this § 89.7 amended November 16, 2007, effective November 17, 2007, 37 Pa. Code 6106. Immediately preceding text appears at serial pages (235109) to (235110).

### **§ 89.8. Claims evaluation.**

All claims will be evaluated by the Bureau to determine sufficiency of information and verification of data. No payments from the General Fund will be made until the requisites of eligibility have been established by the Bureau. The Bureau will notify the political subdivision or Commonwealth agency and the claimant of its findings.

### **§ 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 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) within 30 days after notification of the decision.

#### **Source**

The provisions of this § 89.9 amended November 16, 2007, effective November 17, 2007, 37 Pa.B. 6106. Immediately preceding text appears at serial page (235110).

**Cross References**

This section cited in 4 Pa. Code § 89.21 (relating to scope).

**§ 89.10. [Reserved].****Source**

The provisions of this § 89.10 reserved November 16, 2007, effective November 17, 2007, 37 Pa.B. 6106. Immediately preceding text appears at serial page (235110).

**§ 89.11. [Reserved].****Source**

The provisions of this § 89.11 reserved November 16, 2007, effective November 17, 2007, 37 Pa.B. 6106. Immediately preceding text appears at serial pages (235110) to (235114).

**PROCEDURE FOR DEPARTMENTAL HEARINGS****Source**

The provisions of these §§ 89.21—89.35 adopted November 24, 1978, 8 Pa.B. 3335, unless otherwise noted.

**§ 89.21. Scope.**

There is hereby constituted in the Department a procedure for Departmental hearing of appeals from decisions by the Bureau as to claims for death benefits made pursuant to the act, timely filed within 30 days of notice of the decision of the Bureau, as provided in § 89.9 (relating to appeals). Notices of decisions by the Bureau in cases involving claimants whose decedent was an employe of a subdivision will be sent to both the claimant and the subdivision. In cases where the decedent of the claimant was a subdivision employe, appeals shall be filed by each unless the subdivision has previously paid the claim, in which event only the subdivision shall appeal. Notices of decisions will be dispatched certified mail and will be deemed to have been served on the date received. If the appeal is filed on behalf of a claimant by a person other than the claimant, it shall be accompanied by a letter of attorney setting forth the appellant's power to act on the claimant's behalf.

**§ 89.22. Hearing examiner.**

(a) Upon receipt of an appeal within the Department, it will be transmitted forthwith to a Hearing Examiner, designated by the Secretary. The Hearing Examiner need not be a person learned in the law but will be represented by a Department attorney who has not been involved in the determination of the claim by the Bureau.

(b) Subsection (a) supplements 1 Pa. Code §§ 35.185—35.188 (relating to presiding officers).

**§ 89.23. Notice.**

- (a) Within 14 days of receipt of an appeal, the Hearing Examiner will set a date for a hearing of which at least 14 days written notice will be given to the claimant or subdivision, or both, by certified mail, and to the Bureau.
- (b) The notice to the claimant or subdivision, or both, will set forth, inter alia, the claimant's and subdivision's right to introduce at the hearing all relevant witness, documentary, and other evidence of reasonable probative value.
- (c) The provisions of subsection (a) supersede the provisions of 1 Pa. Code § 35.105 (relating to notice of nonrulemaking proceedings).
- (d) The provisions of subsection (b) supersede the provisions of 1 Pa. Code § 35.106 (relating to contents of notice of nonrulemaking proceedings).

**§ 89.24. Record.**

- (a) The Hearing Examiner will engage a competent stenographer to record the proceedings manually so that a full and complete written record will be kept of all proceedings before the Hearing Examiner.
- (b) The provisions of subsection (a) supersede the provisions of 1 Pa. Code §§ 35.131 and 35.132 (relating to transcript).

**§ 89.25. Location.**

All hearings will be held at the Headquarters of the Department in Harrisburg.

**§ 89.26. Representation.**

- (a) The claimant or subdivision, or both, may appear in propria persona or be represented by counsel. The Bureau will be represented by counsel regularly representing or especially designated to represent the Bureau.
- (b) Subsection (a) supplements 1 Pa. Code §§ 31.21—31.23 (relating to representation before agency); subsection (a) supersedes 1 Pa. Code § 31.24 (relating to notice of appearance).

**§ 89.27. Order of presentation.**

- (a) The claimant or subdivision, or both, shall present evidence first. The Bureau will present evidence second.
- (b) Subsection (a) supersedes 1 Pa. Code § 35.125 (relating to order of procedure).

**§ 89.28. Presentation.**

- (a) Examination and cross-examination of witnesses will be permitted.
- (b) Subsection (a) supersedes 1 Pa. Code § 35.126 (relating to presentation by the parties).

**§ 89.29. Evidence.**

- (a) Technical rules of evidence will not be applied, but basic and fundamental rules of law such as the hearsay rule, must be adhered to so as to produce a proper record of the proceedings.
- (b) Subsection (a) supersedes 1 Pa. Code §§ 35.161—35.169 (relating to evidence).

**§ 89.30. Motions.**

- (a) No motions in the nature of summary judgment will be entertained; but the claimant or subdivision, or both, shall have the opportunity to make a brief closing statement summarizing the facts and applicable law, and the Bureau will have the same opportunity.
- (b) Subsection (a) supersedes 1 Pa. Code §§ 35.177—35.180 (relating to motions).

**§ 89.31. Investigation.**

- (a) The Hearing Examiner will have all necessary investigatory powers to obtain information relevant to the inquiry and may compel attendance of witnesses and production of documents by issuance of subpoenas.
- (b) Subsection (a) supplements 1 Pa. Code §§ 35.142 and 35.145—35.152 (relating to subpoenas and depositions).

**§ 89.32. Briefs and oral argument.**

- (a) The parties shall have the opportunity to submit written briefs if they desire to do so, and such written briefs shall be filed within 20 days after the date of the hearing or any continuance thereof. Upon application by either the claimant or subdivision, or both, or the Bureau, within the 20-day period, the Hearing Examiner may, in his discretion, if substantial issues exist which would warrant oral argument, direct that such oral argument be heard and will fix a date therefor with adequate written notice to the parties.
- (b) Subsection (a) supersedes 1 Pa. Code §§ 35.191—35.193 and 35.221 (relating to briefs; and briefs and oral argument in absence of proposed report).

**§ 89.33. Decisions.**

- (a) Promptly after submission of briefs and oral argument, if such argument is heard, and upon filing of the hearing transcript and careful review thereof by the Hearing Examiner, the Hearing Examiner will prepare a written adjudication which will contain findings of fact supported by substantial evidence and the reasons for the adjudication, with legal conclusions as appropriate. A copy of the adjudication, signed by the Hearing Examiner and the Secretary, will be served upon the claimant and subdivision, where a subdivision is involved, or counsel by certified mail, and a copy will be furnished the Bureau. The Hearing Exam-

iner will have the power to reopen the hearing for additional evidence or to entertain supplemental briefs or additional argument if, in his discretion, such is warranted.

(b) Subsection (a) supersedes 1 Pa. Code §§ 35.225, 35.226 and 35.232 (relating to interlocutory orders; final orders; and reopening by presiding officer).

#### **§ 89.34. Judicial review.**

Appeal for judicial review from a final adjudication of the Department shall be to Commonwealth Court as provided in 2 Pa.C.S. §§ 701—704 (relating to judicial review of Commonwealth agency action), and procedure therefor shall be as provided in Pa.R.A.P. Ch. 15 (relating to judicial review of governmental determinations).

#### **§ 89.35. Due process.**

The Departmental hearing procedure provided for in this chapter will be conducted in all respects so as to accord with the requirements of due process of law.

### **Subchapter B. ESTABLISHMENT OF COMMONWEALTH AS OBLIGATED GOVERNMENT FOR COMMONWEALTH VEHICLE LIABILITY INSURANCE PURPOSES**

Sec.

- 89.101. Scope of subchapter.
- 89.102. Purpose and effect of subchapter.
- 89.103. Effective date.

#### **Source**

The provisions of this Subchapter B adopted February 23, 1979, 9 Pa.B. 611, unless otherwise noted.

#### **§ 89.101. Scope of subchapter.**

This subchapter is intended to be applied to the coverage of Commonwealth and other motor vehicles as defined in section 2404 of The Administrative Code of 1929 (71 P. S. § 634) for liability insurance purposes as provided by such section.

#### **§ 89.102. Purpose and effect of subchapter.**

The purpose and effect of this subchapter is to establish the Commonwealth as an “obligated government” as defined by section 104(c) of the Pennsylvania No-Fault Motor Vehicle Insurance Act (40 P. S. § 1009.104(c)) (Repealed) so as to obligate the Commonwealth to pay basic restoration benefits but not additional restoration benefits in accordance with such act in order to comply with the

requirement of section 2404 of The Administrative Code of 1929 (71 P. S. § 634) that liability insurance be maintained in effect as to vehicles referred to in such section.

**§ 89.103. Effective date.**

The effective date of this subchapter is March 1, 1979.

**APPENDIX A**

(*Editor's Note:* 1 Pa. Code § 3.13(b) (relating to contents of *Bulletin*) gives the Legislative Reference Bureau discretion to exclude from publication in the *Pennsylvania Bulletin* classes of documents which are voluminous and applicable only to Commonwealth property or contracts or agency organization, management or personnel. Section 3.13(c) requires the Bureau to publish and codify a summary table of documents filed under § 3.13(b).)

- (1) Administrative Circular No. 92-37, Dated October 16, 1992. ADA Related Work Requests.

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