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DEPARTMENT OF JUSTICE

28 CFR Part 32

[Docket No.: OJP (BJA) 1646]

RIN 1121-AA80

Public Safety Officers' Benefits Program

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Justice Programs (OJP) of the U.S. Department of Justice proposes this rule to amend the regulation that implements the Public Safety Officers' Benefits (PSOB) Act and associated statutes. Generally speaking, these laws provide financial support to certain public safety officers, or their survivors and families, when such officers die, or become permanently and totally disabled, as a result of line-of-duty injuries, or when they die of heart attacks or strokes sustained within statutorily-specified timeframes of engaging or participating in certain line-of-duty activity. The proposed rule would amend the implementing regulation in order to change the definition of "Spouse."

DATES: Written comments must be postmarked and electronic comments must be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal Docket

Management System (FDMS) will accept comments until Midnight Eastern Time at the end of that day.

ADDRESSES: Please address all comments regarding this rule by U.S. mail, to: Hope Janke, Bureau of Justice Assistance (BJA), Office of Justice Programs, 810 7th Street, NW, Washington, DC 20531; or by telefacsimile to (202) 354-4135. To ensure proper handling, please reference OJP Docket No. 1646 on your correspondence. Comments may also be sent electronically through <http://regulations.gov> using the electronic comment form provided on that site. An electronic copy of this document is also available at the <http://regulations.gov> website. OJP will accept attachments to electronic comments in Microsoft Word, WordPerfect, or Adobe PDF formats only. The public's opportunity to comment through <http://regulations.gov> terminates at midnight Eastern Time on the day that the comment period closes. All comments received via U.S. mail, or an express mail carrier, must be postmarked on or before the day that the comment period closes.

FOR FURTHER INFORMATION CONTACT: Hope Janke, BJA, OJP, at (202) 514-6278, or toll-free at 1 (888) 744-6513.

SUPPLEMENTARY INFORMATION:

I. Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at <http://www.regulations.gov>. Information made available for public inspection includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you wish to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not wish it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also locate all the personal identifying information that you do not want posted online in the first paragraph of your comment and identify what information you want the agency to redact. Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online.

If you wish to submit confidential business information as part of your comment but do not wish it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, the agency may choose not to post that comment (or to only partially post that comment) on <http://www.regulations.gov>. Confidential business information identified and located as set forth above will not be placed in the public docket file, nor will it be posted online.

If you wish to inspect the agency's public docket file in person by appointment, please see the "For Further Information Contact" paragraph.

II. Background

The Public Safety Officers' Benefits (PSOB) Program (established pursuant to the Public Safety Officers' Benefits Act of 1976 proper and certain associated statutes, enacted in 2001) is administered by the Office of Justice Programs of the

U.S. Department of Justice. The PSOB Program provides a one-time financial payment to the statutorily-eligible survivors (including "spouse[s]") of public safety officers who die as the direct and proximate result of (actual or presumed) traumatic personal injuries sustained in the line of duty, as well as educational assistance for their "spouse[s]" and certain of their children. Alternatively, the PSOB Program provides a one-time financial payment to public safety officers themselves who are permanently and totally disabled as the direct and proximate result of personal injuries sustained in the line of duty, as well as educational assistance for their "spouse[s]" and certain of their children.

Following the recent Supreme Court decision in *United States v. Windsor*, 570 U.S. ____ (2013), OJP is proposing this rule to amend the regulatory definition of "spouse" under the program, at 28 CFR 32.3. The proposed rule would recognize, as a matter of federal law, a person who lawfully enters into a marriage in one jurisdiction as a "spouse" for purposes of the program, even when living in another jurisdiction, and without regard to what the law of that other jurisdiction may provide. Consonant with prior program regulations, however, an exception to this general rule would apply where there is credible evidence that more than one person may be the public safety officer's spouse. In such cases, the PSOB Program would look to the jurisdiction with the most significant interest in the marital status of the officer.

As provided in 42 U.S.C. 3796c-2, any final rule promulgated pursuant to the proposed rule would "apply to any matter pending on, or filed or accruing after, the effective date" of that final rule.

III. Regulatory Requirements

Executive Order 12866 and 13563—Regulatory Planning and Review

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review," section 1(b), Principles of Regulation, and in accordance with Executive Order 13563, "Improving Regulation and Regulatory Review," section 1(b), General Principles of Regulation. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The costs of implementing this proposed rule would be minimal, as it would impose no costs on state, local, or tribal governments, or on the private sector.

The Office of Justice Programs has determined that this proposed rule is not a "significant regulatory action" under section 3(f) of the Executive Order, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132—Federalism

This proposed rule would not have substantial direct effects on the States, on the relationship between the federal government and the States, or on distribution of power and responsibilities among the various levels of government. The PSOB program statutes provide benefits to individuals and do not impose any special or unique requirements on States or localities. Therefore, in accordance with Executive Order

No. 13132, it is determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

This proposed rule meets the applicable standards set forth in sections 3(a) & (b)(2) of Executive Order No. 12988. Pursuant to section 3(b)(1)(I) of the Executive Order, nothing in this proposed rule or any previous rule (or in any administrative policy, directive, ruling, notice, guideline, guidance, or writing) directly relating to the Program that is the subject of this rule is intended to create any legal or procedural rights enforceable against the United States, except as the same may be contained within part 32 of title 28 of the Code of Federal Regulations.

Regulatory Flexibility Act

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons: this proposed rule addresses federal agency procedures; furthermore, this proposed rule would make amendments to clarify existing regulations and agency practice concerning public safety officers' death, disability, and education benefits and would do nothing to increase the financial burden on any small entities. Therefore, an analysis of the impact of this proposed rule on such entities is not required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act of 1995

This proposed rule would not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Unfunded Mandates Reform Act of 1995

This proposed rule would not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. The PSOB program is a federal benefits program that provides benefits directly to qualifying individuals. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 28 CFR Part 32

Administrative practice and procedure, Claims, Disability benefits, Education, Emergency medical services, Firefighters, Law enforcement officers, Reporting and recordkeeping requirements, Rescue squad.

Accordingly, for the reasons set forth in the preamble, part 32 of chapter I of Title 28 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 32—PUBLIC SAFETY OFFICERS' DEATH, DISABILITY, AND
EDUCATIONAL ASSISTANCE BENEFITS CLAIMS**

1. The authority citation for 28 CFR Part 32 continues to read as follows:

Authority: 42 U.S.C. ch. 46, subch. XII; 42 U.S.C. 3782(a), 3787, 3788, 3791(a), 3793(a)(4) & (b), 3795a, 3796c-1, 3796c-2; sec. 1601, title XI, Public Law 90-351, 82 Stat. 239; secs. 4 through 6, Public Law 94-430, 90 Stat. 1348; secs. 1 and 2, Public Law 107-37, 115 Stat. 219.

2. Section 32.3 is amended by revising the definition of "Spouse" to read as follows:

§32.3 Definitions.

* * * * *

Spouse means someone with whom an individual entered into marriage lawfully under the law of the jurisdiction in which it was entered into and from whom the individual is not divorced, and includes a spouse living apart from the individual, other than pursuant to divorce, except that, notwithstanding any other provision of law, to determine whether an individual is a spouse of a public safety officer within the meaning of this definition when more than one individual is purported to be such a spouse, the PSOB Program will apply the law of the jurisdiction that it determines has the most significant interest in the marital status of the public safety officer:

- (1) On the date of the officer's death, with respect to a claim under subpart B of this part or by virtue of such death; or
- (2) As of the injury date, with respect to a claim not under subpart B of this part or by virtue of the officer's death.

* * * * *

February 21, 2014

Date

Karol V. Mason,
Assistant Attorney General.

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