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**Cause
for Alarm**



Flaws in firefighters' last line of defense

U.S. waited 5 years to heed expert's warning on 'man down' alarms

FIRST OF TWO PARTS

By Bill Dedman

Investigative reporter

An MSNBC Special Report

updated 10:15 p.m. ET, Wed., Feb. 28, 2007

Worn by a million firefighters in the U.S., the PASS device is a motion sensor that makes an awful racket if a firefighter stops moving for 30 seconds while battling a blaze. It flashes its lights and lets loose a series of ear-splitting beeps — an urgent call to help a fallen comrade.

It's a call that hasn't always been heard. Tests by federal and independent labs show that some PASS alarms can fail to perform as intended if they get too hot or wet — a serious problem for people who rush into burning buildings with water hoses. And federal investigative reports reviewed by MSNBC.com show that 15 firefighters have died since 1998 in fires where a PASS, or Personal Alert Safety System, either didn't sound or was so quiet that rescuers weren't given a chance to find the firefighter quickly.

Documents made public under the Freedom of Information Act reveal that nine of those deaths came after the federal government blocked an investigation by its own expert into possible failures of PASS alarms and other firefighting equipment. A manager for the Centers for Disease Control and Prevention, the federal agency that is charged by Congress with investigating firefighter deaths, ordered an agency fire safety engineer on Feb. 14, 2000, to "minimize your fact gathering during investigations" and to restrict his investigations to issues relevant "for the prevention of future similar events."

On the same day that the CDC manager instructed the agency's fire safety engineer to scale back his investigation, Houston firefighter Kim Smith had become lost in a pre-dawn fire in a McDonald's restaurant.

Hearing no beeps from her PASS alarm, and seeing no flashing lights, her comrades searched for two hours before finding her body.

'If a firefighter dies, it's a good funeral'

Nine more times, the rituals of a firefighter's funeral — a fire truck bearing the flag-draped casket; the bagpipers playing "Will Ye No Come Back Again?" — were re-enacted before the CDC took action, calling finally in April 2005 for higher standards for testing PASS alarms.

"Fire departments give good funerals," said Richard M. Duffy, the health and safety chief for the International Association of Fire Fighters.

"We never did investigations to the extent that they were needed ... but we did some very, very good funerals. If a cop dies, it's a crime scene. If a firefighter dies, it's a good funeral."

After the CDC's warning, tests quickly demonstrated that temperatures commonly encountered by firefighters could hurt the performance of at least some PASS alarms.

Tests in a convection oven at the National Institute of Standards and Technology found a problem with the two models it tested: The volume of the beeping diminished substantially at temperatures as low as 300 degrees Fahrenheit — the sort of temperatures that firefighters encounter in a room next to a fire. Researchers said they believe that all of the half-dozen or so brands of PASS alarms on the market would be similarly affected.

In addition, some PASS devices made by at least three manufacturers have had problems over the past decade with water leaking into the electronics or battery compartments, causing them to either beep continually or stop working altogether, according to interviews and documents reviewed by MSNBC.com.

Later this week, [a tougher new standard](#) for testing PASS devices in heat and water will be issued by the

National Fire Protection Association. But manufacturers say it will be months before an improved device is on the market. And even when new models are available, there is no plan for recalling the old ones, so fire departments may have to bear the cost of replacing them.

Meanwhile, the approximately 1 million professional and volunteer firefighters across the nation will rely on the older PASS alarms as their last line of defense.

Precise role in fatalities is unclear

No one can say for sure that a PASS device caused any of the 15 deaths in which the alarms weren't heard. And it's impossible to say that any firefighter would necessarily have survived if the PASS alarm had been seen and heard.

Firefighting is dangerous even when done right. But firefighter fatalities usually involve a series of mistakes: inadequate staffing or training; firefighters working alone instead of in pairs; an incident commander's mistake in evaluating the risk. The PASS device is intended to give firefighters who are injured, trapped or just lost in the smoke a chance to survive such miscues.

It is required to shriek for an hour at 95 decibels so it can be heard over the roar of the fire and the cacophony of chain saws cutting, exhaust fans blowing, glass breaking and water flowing.

"It sends a chill up your spine," Kenneth R. Willette, the fire chief in Concord, Mass., said of the alarm's piercing cry. "You know that means someone is in trouble. So until you can locate that person, your heart is racing and all you can think about is finding that person."

The first generation of PASS alarms, which were introduced in the early 1980s, had a human problem: Annoyed when the device started beeping when they stood still on a break, many firefighters would just not turn them on.

So the National Fire Protection Association set a standard requiring that the device be armed automatically when a firefighter turns on the air supply. These so-called "integrated PASS devices" are built into the self-contained breathing apparatus. When the firefighter is motionless — usually for 30 seconds — they first sound a gentle beep, the pre-alarm signal, then ramp up to the full alarm. That's why, at a fire, bystanders will often see firefighters wagging their hips. They're not dancing. They're telling the PASS, "I'm still alive."

In exchange for that annoyance, firefighters rely on the devices to work when they need them. And they usually do. Manufacturers say that hundreds of firefighters have been saved by PASS devices.

Devices silent, or just too quiet

The stories of the 15 who were not saved are contained in reports by the CDC's Fire Fighter Fatality Investigation and Prevention Program. Each firefighter was wearing an automatic PASS alarm. In 12 of the 15 cases, nothing was heard; in three cases, the sound was muffled by the firefighter lying on the device and could be heard only when rescuers found the victim and rolled him over, according to the CDC's reports.

In November 2000 in Pensacola, Fla., firefighter Maurice Bartholomew got lost trying to leave a house fire. Firefighters searched for an hour before finding him in a kitchen at the back of the house. His PASS alarm wasn't heard or seen at all.

In March 2002 in Jefferson City, Tenn., volunteer firefighter Shane Murray was trapped in a house fire. He was found after 18 minutes just 5 feet from the door. His PASS device was beeping, but not loud enough to be heard while he was lying on it.

And in May 2002 in St. Louis, firefighter Rob Morrison's PASS alarm was not heard or seen for 20 minutes while he was injured inside a refrigeration company fire. Firefighter Derek Martin went looking for Morrison at the wrong end of the building and got lost. Both men died.

"I just can't believe that this was happening a number of times and no one was told about it," said Morrison's widow, Laura. "I mean, Rob didn't know. None of the firemen knew."

Eric R. Schmidt didn't know for sure that PASS devices were malfunctioning, but he suspected that there was a recurring problem with the alarms.

Engineer's warning ignored

Schmidt went to work for the CDC in 1999 as the first fire protection engineer in the firefighter fatality program in Morgantown, W.Va. In 1998, Congress gave the CDC the responsibility for investigating firefighter deaths and searching for lessons that could prevent additional fatalities. The CDC's National Institute for Occupational Safety and Health, or NIOSH, was given responsibility for the program.

Documents provided by the CDC show that Schmidt was investigating a December 1999 fire in Keokuk, Iowa, where three firefighters died along with the three children they had been trying to save. The firefighters had been wearing two PASS devices apiece — one that is armed only if a firefighter turns it on, and the integrated alarm that is switched on automatically. Schmidt thought it was strange that none of the dozen other firefighters on the scene recalled hearing the alarms, so he wanted to collect the tape recordings from the dispatch center to see if the sounds could be heard there.

"I'm saying, the math here is astonishing," Schmidt told MSNBC.com, describing his conversation with his supervisors at the CDC. "The chance of having a dozen deaf firefighters is astronomical."

Schmidt also knew that in New York City in 1998, no one had heard the PASS alarms of two firefighters who died in a high-rise apartment fire. A third firefighter died in the same fire, but his PASS sounded. That information was in the CDC unit's investigative report on that fire, issued in August 1999.

"I can't tell you I understood what the failure pattern was," Schmidt said. "All I could tell you is, something is not adding up. This needs more attention. Let's go back and listen to the tapes. They said, 'We don't want to listen to the tapes.'"

On that Valentine's Day morning in 2000, the head of the firefighter program, Dawn Castillo, gave Schmidt a memo labeled "performance guidelines."

First, she reminded Schmidt that he was still on probation as a new employee, and would need to improve his performance to keep his job.

Then she urged him to stop wasting his time asking for evidence such as dispatch tapes.

She criticized his "persistence in gathering complete autopsy reports"; just getting the cause of death by phone was sufficient, she said.

And she told Schmidt he didn't need to gather details such as the measurements of a fire hose that had burned through, or information on firefighters' protective jackets, which he thought had been recalled by the manufacturer.

'Minimize your fact gathering'

Castillo offered four reasons for Schmidt to scale back his investigations:

- "The collection of detailed information not of likely use in an investigation is an inefficient use of your time."
- It's "a burden on those who help us in gathering the facts of the case."
- It's "a potential liability to the program if those who spend their time helping us to understand the case are upset by the absence of information that they helped provide in the summary report."gu
- Any information that is gathered could be requested from the CDC by others. The agency does not identify individuals in its reports.

"You need to minimize your fact gathering during investigations," Castillo wrote, "to those pieces of information which are needed to summarize the chain of events or that have direct implications for prevention recommendations."

The memo was hand-delivered just as fire departments around the country were lowering their flags to half

← Dec. 22, 1999 →

What happened:

Firefighters Dave McNally, Jason Bitting and Nathan Tuck died when a flashover trapped them as they were trying to save three children.

The role of PASS devices:

"The victims' SCBAs were examined by the NIOSH investigators and were deemed to be unfit for testing. Extreme heat and direct flame impingement may have affected the operation of the integrated PASS devices."

Sources: U.S. Fire Administration and CDC



Cause
for Alarm



staff.

Earlier that morning, in southwest Houston, 30-year-old Kim Smith had been about to end her 24-hour shift. She planned to spend the rest of Valentine's Day with her fiancé.

But at 4:33, a fire alarm awakened the crew in Fire Station 76: There was a fire at a McDonald's.

She was one of the first firefighters to rush into the restaurant. Attached to her air supply was a PASS device made by Scott Health & Safety, the U.S. market leader in self-contained breathing apparatus.

She and firefighter Lewis Mayo, 44, took a hose line into the kitchen for a "fast attack" on the fire. She'd done this many times, and had won regional competitions for her firefighting skills and endurance.

Inside the McDonald's, the heat became intense and 30-foot flames were shooting out of the roof. At 4:52 a.m., the chief ordered everyone to evacuate, but Smith and Mayo didn't emerge from the inferno. They had been buried by a ceiling collapse.

A PASS device was heard. It was Mayo's, and he was found alive, though he later died at the hospital.

But Smith's PASS was never heard, the CDC found. It took two hours to find her body in the debris, just 6 feet from the door. Police discovered later that burglars had set the fire.

Fired for 'marginal' performance

Four months after the double-fatality fire in Houston, Schmidt was fired by Castillo in June 2000 for "marginal" performance. Castillo wrote in his termination letter that he was not a good team player, was inefficient, and spent time gathering information "of questionable utility and necessity." She cited especially the delay waiting for the dispatch tapes in the Iowa fire. The program didn't replace him, and hasn't had a fire engineer since, she told MSNBC.com.

But Schmidt didn't drop the equipment issues. He wasn't just an engineer, but also a former fire captain in Prince George's County, Md., with 20 years of experience in the fire service. On Oct. 2, 2000, he wrote to Dr. Linda Rosenstock, the director of the CDC's NIOSH agency.

Schmidt asked Rosenstock to look into the issues of firefighter equipment so more firefighters wouldn't die. He highlighted three instances where he was told not to investigate: the fire hose that failed; the firefighter coats that may have been recalled; and the PASS devices, which he called "another issue that warrants further investigation."

"This is but only one example," he wrote of Castillo's performance guidelines, "where the managers of this program in Morgantown repeatedly instruct staff to omit critical facts because of 'potential liability to the program.' These managers have shown little, if any regard, for the fact that fire fighters will continue to actually suffer injuries and death in part because NIOSH fails to document critical aspects of these incidents."

Rosenstock is no longer at the CDC. She was in her last month in government when Schmidt's letter arrived. Now the dean of the UCLA School of Public Health, she declined to be interviewed by MSNBC.com, but sent word through a spokeswoman that she doesn't remember Schmidt's letter.

Castillo told MSNBC.com that the CDC took no action in response to the letter, because Schmidt didn't provide any new information beyond what they had already discussed.

"Although PASS devices were one issue that he addressed in his letter, in passing, that letter did not provide any additional documentation to substantiate his concerns," Castillo said.

She said no additional documentation was requested.

"No, no one acted upon it," she said, "because there was nothing substantive to act upon."

Manager: No valid areas of inquiry blocked

Castillo said she had not blocked any valid areas of inquiry, but didn't want Schmidt to get sidetracked by nonessential issues. To be able to investigate deaths with limited funds, she said, investigators had to limit themselves to the factors that led to deaths, not to follow trails on other safety issues of uncertain value.

In the Iowa fire, she said, the firefighters wouldn't have survived the extreme heat of a flashover, or sudden ignition of a room — even if their fire hose had held, or their coats had not been recalled, or the PASS alarms had been heard.

"We reported that the PASS did not appear to be heard," Castillo said. "Did we follow up and do additional testing? We did not. Do we have the resources to go down every single path? We do not. Do we generally tell people not to follow up on promising leads? Absolutely not."

Citing a [computer simulation](#) of the Iowa fire, Castillo said the temperatures reached 1,100 degrees F, which she said was not survivable and in which no PASS device could be expected to operate. The national standard for PASS devices, however, has since 1998 included a flashover simulation: 1,500 to 2,100 degrees for 10 seconds.

After Schmidt was fired, the CDC released its [investigative report](#) on the Iowa fire in April 2001. One of its recommendations is curious: Instead of recommending that PASS alarms be tested, it stated that firefighters should use PASS alarms. But as another section of the report makes clear, all three firefighters were wearing their automatic alarms, and they were not heard.

Schmidt said he thinks one cause of his disagreements with Castillo was a difference in perspective. He is an engineer and a firefighter. She's an epidemiologist and specialist in child labor, who won her agency's top award in 2004. He said she just didn't respect the value of personal protective equipment, because child workers aren't allowed in jobs where such gear is used. But firefighters can't control their work environment -- they go where they're called. That's why they rely on helmets, hoods, gloves, boots, bunker pants, coats and face masks.

"She would say, 'The room flashed over. How could anybody have survived?'" he said. "I said, 'Well, firefighters have survived flashover. You're going to be in the burn ward for a period of time, but firefighters have survived flashover.'"

Other opportunities missed

As the years passed, the CDC missed other chances to look into PASS alarms.

In May 2001 in Passaic, N.J., firefighter Alberto Tirado was hunting for children in a fire. Rescuers entered the building three times trying to find him, and only when they turned him over could they hear a faint PASS alarm.

Back at the CDC lab, Tirado's PASS device wouldn't sound its alarm, but the technician who ran the test didn't pursue the matter, because the agency does not certify the alarms.

Nor did he send it to the Safety Equipment Institute, which does certify that the devices meet the standards set by the fire prevention association.

"The PASS device did not function," the technician wrote in the final report. "I made no attempt to determine why the device failed to activate. Because NIOSH does not test or certify PASS devices, no further testing or evaluations were conducted on the PASS unit."

One reason the CDC didn't focus on PASS alarms, Castillo told MSNBC.com, is that its mission is to focus on the factors that get firefighters into trouble — more than the factors that might help get them out of trouble. She called the PASS devices "tertiary," or of third rank or importance.

"When we are doing our investigation, we are focusing on those things that we feel — that we find, through our investigation process, have the greatest role in resulting in that firefighter's death," Castillo said. "The PASS device is a last resort."



Cause for Alarm

The Personal Alert Safety System, or PASS, is designed to be the last line of defense for a firefighter. But an MSNBC.com investigation reveals that the Centers for Disease Control, the agency charged with investigating firefighter deaths, ignored warnings in 2000 from a fire safety engineer who said the devices apparently had failed in two recent fires.

It took five more years for the agency to discover that the PASS alarms can fail if they get too hot or wet. By then, 15 firefighters had died and their alarms either didn't go off or emitted a sound so low that searching firefighters couldn't hear it, a review of CDC investigation reports shows.

- **Learn more about the firefighters and the warnings in the sections below:**



VIDEO



TIMELINE



GALLERY



360° FIREFIGHTER

Schmidt argues that it's impossible to determine what's important without investigating. In agreeing to discuss his personnel file, he said, he doesn't want all the focus to be on PASS devices.

"My point for doing all this is, I want to make sure there's a process in place to identify sentinel events, so investigators don't have to fight tooth and nail to identify something, which may be a hunch.

"In 2000, when I wrote my letter, it was something that was odd, that I was trying to tell them. They said, 'Don't worry about that.'

"If you're doing a scientific investigation," Schmidt said, "you have to write down these hunches, because if you get them two or three times, you've got a problem. ... Within 90 days of documenting a sentinel event, put something out to the fire service."

2003 death triggers a warning

It wasn't until after a 2003 death, Castillo said, that the CDC concluded that PASS devices had a problem.

Even then the CDC took more than a year to issue a warning to the fire prevention association.

In the Inwood section of New York City on Dec. 16, 2003, firefighter Thomas Brick was lost in a fire in a mattress warehouse. It took 30 minutes to find him. When he was turned over, his PASS alarm emitted a very low sound of the sort associated with an electrical short.

Brick had been in the first class of recruits after the terror attacks of Sept. 11, 2001.

Brick's death, Castillo told MSNBC.com, "was the first in which our investigators had direct evidence that typical exposure to heat at the scene of a fire might adversely affect a PASS device."

Although the CDC team made its visit to the fire scene on Jan. 26, 2004 — 41 days after Brick's death — the agency waited another 450 days — until April 20, 2005 — to ask the National Fire Protection Association to consider toughening the tests for PASS alarms.

In that period, two more firefighters died in fires where rescuers couldn't find them:

Firefighter Steve Fierro died in Carthage, Mo., on Feb. 18, 2004. Unaware that Fierro was near the front of the building, the rescue team was searching at the rear. It took about 43 minutes to find him.

Firefighter Nito Guajardo died in Baytown, Texas, on Dec. 20, 2004. He was found after a 15-minute search, about 15 feet from the door.

"It was gut wrenching," said Schmidt, the former CDC engineer. "I mean it was very difficult to hear that additional firefighters were dying."

To try to figure out what was going wrong, the National Institute of Standards and Technology in Gaithersburg, Md., put two models of PASS alarms into its oven.

When heated first to room temperature, about 73 degrees F, both PASS devices beeped at about 86 decibels, roughly as loud as a Mack truck driving past at a distance of just 3 feet.

But when heated to 392 degrees, the PASS devices sounded at only 72 decibels, only as loud as a busy restaurant. (The decibel scale is logarithmic, so a drop of 14 decibels represents a substantial decrease in volume.)

"One of the tricky things is, the volume decreases, but when it cools down, it comes back," said Nelson Bryner, leader of the firefighting technology group that oversaw the tests.

"If a firefighter goes down, the noise generator may not have worked. But once the fire is out, now it's working. One is led to believe that the PASS worked the whole time."

The scientists won't reveal which companies made the two PASS devices that were tested, but in fire protection association committee meetings, manufacturers agreed that all the PASS devices now on the market use essentially the same technology to sense motion and sound the alarm.

But heat is only part of the problem.

The hair dryer treatment

Under the national standard since 1998, PASS devices must be able to withstand immersion in water for two hours, and even work after a dunk for 5 minutes with the battery compartment left open.

Since 2000, however, Dallas firefighters have been using hair dryers to dry out the battery and electronics compartments of their PASS devices, according to the department's safety officer. The water causes the devices to beep constantly, and firefighters fear that it might cause them not to sound at all when needed, a Dallas fire chief said.

"I'm embarrassed to say that's how we were addressing the problem, but the hair dryers worked," said the safety officer for Dallas Fire-Rescue, Battalion Chief Ray Reed.

He said the city is pressing the issue with the manufacturer, Scott Health & Safety, which is a division of Tyco International Ltd.

If he didn't serve on a national committee for the fire protection association, Reed said, he wouldn't have known that other departments were having similar issues.

A spokeswoman for Scott said the company is working closely with Dallas to resolve the problem, but wouldn't give any details.

A second manufacturer, Mine Safety Appliances, sent out a user advisory in November 2001 describing a problem that caused about 2 percent of its PASS devices to beep continuously. Some of those incidents were caused by water, the company said. The advisory attributed the problem to screws that have become loosened over time, and said it could be fixed by using different screws and adding waterproof glue.

Company remained mum on water leaks

No such alert was sent out by a third manufacturer, Survivair Respirators, although executives have testified that from 5 percent to 20 percent of its PASS alarms suffered from water leaks.

That information emerged in response to a lawsuit filed by the families of St. Louis firefighters Rob Morrison and Derek Martin, who died in the refrigeration company fire in 2002.

Morrison's PASS alarm was not heard, and he was found only when a searcher stepped on him.

Martin's PASS alarm did work, but he became lost while searching for Morrison. Both firefighters were alive when they were found, but died within a day.

In the two-week trial of the Morrison family's lawsuit in September, attorneys for Survivair disputed the claim that his PASS failed. The company argued that there were three innocent possibilities: Morrison had been moving the entire time he was lost, or for some reason he might have reset his PASS — in effect turning off the alarm — or it could have sounded but not been heard.

None of the firefighters hunting for Morrison testified that they heard his PASS alarm during the 20 minutes he was lost.

Executives of Survivair of Santa Ana, Calif., a company founded by Jacques Cousteau that is a division of the French company Bacou-Dalloz, testified that the problem of "leakers" was identified in 1997 or 1998, before its PASS device moved from preproduction to its first sale. Changes to address the problem continued at least until 2003, or a year after the St. Louis fire.



PASS device

Designed to emit a pulsing, 95-decibel alarm if a firefighter battling a blaze does not move for 30 seconds or so to enable other firefighters to rescue their fallen comrade in limited-visibility environments.



Cause for Alarm



Complaints poured in from dozens of fire departments, the executives testified. About 300 out of 1,500 PASS devices sold to the Los Angeles Fire Department were returned to the company, determined to be leaking and replaced, testified James Beckstead, the company's Western regional sales manager.

There was conflicting testimony from Survivair on the effect of the water leaks. Senior executives said that the device was designed with a fail-safe feature that would cause it to sound constantly if water got inside, making firefighters aware of the malfunction. But two company engineers testified that sometimes the devices wouldn't sound an alarm at all if water got into the electronics.

'We don't deem it a safety issue'

"No sound, no lights ... nothing," testified Duane Decker, the former Survivair mechanical engineer in charge of fixing the leaks. "It was determined that if water got in, sometimes they would not work."

Decker described making a series of changes: the cover was redesigned, to reduce the number of places where water could enter; a sealant was added to the cover gasket during assembly; then designers tried only the sealant with no gasket; as well as extending the coating on the circuit board to provide more protection. The company also began dunking every PASS device in water, not just a sample of them as before. But it did not call back the ones in the field for a dunking.

The St. Louis Fire Department, which bought its Survivair PASS devices in 1999, received no warning of the problem.

From the testimony of James Beckstead, the Western regional sales manager:

Q. You've said there was no recall. You've also said that there was no calling the PASS devices in for testing that were out there in the field. Was there any kind of a warning sent, a warning letter or call made, to fire departments that had the devices that were not water tested — about, "Hey," along the lines, "we've found a leakage problem, and be on the lookout," or anything like that?

A. Not that I recall.

Q. Any particular reason why not?

A. The only reason we would not do that is we don't deem it a safety issue.

Q. This is a life-saving device, isn't it?

A. It's a component of a life-saving device.

Executive: 'The word was out there'

Survivair's senior executive, Jack Bell, testified there was no need for a warning, because firefighters knew about the water problem: "The word was out there, whether we formally told everyone — rumors or some way."

The lawyers disagreed on whether the CDC tested Morrison's PASS device, and what that test showed. The company said that the CDC tested Morrison's PASS device more than 100 times, and it worked perfectly. The CDC report on Morrison's and Martin's death says that both PASS devices worked in a simple test, but that they were not subjected to more rigorous tests to determine if they met the national standard — again, because the CDC does not certify that equipment. Even in the simple test, the lawyer for the Morrison family argued, the video shows 3 minutes when the device failed to alarm.

And when an independent lab dunked Morrison's PASS device in water during testing to determine if it met the national standard, and then opened it in front of lawyers and a video camera, water spilled out of the electronics compartment.

"There isn't strong enough language to condemn how they handled this," the lawyer for the Morrison family, Daniel Finney Jr., of St. Louis, told MSNBC.com. "They were selling their products as lifesaving devices when

they knew they were fatally flawed. They were selling them as a firefighter's lifeline, and they knew they could very well fail him in that situation, and they didn't tell anyone. It would be like selling parachutes when you know that they don't open one out of five times, and not telling anyone."

The company's vice president and general manager, Jack Bell, sent a statement to MSNBC.com in response to Finney's statement: "Survivair completely and unequivocally denies his false, factually unsupported and reckless charges. The evidence supporting Survivair's position in this litigation is compelling. ... Survivair's equipment was not at fault."

A secret 11th-hour settlement

The jury never reached a conclusion. It was deliberating when Survivair and the Morrison family agreed to a settlement. The company admitted no fault and did not agree to make any changes or send out a warning, but it did pay an undisclosed amount to the Morrison family. A separate lawsuit by Derek Martin's family is headed to trial in April.

Meanwhile, St. Louis firefighters are still wearing the same model PASS device that Morrison wore.

Armed with the oven tests, and with testimony from the widows of Martin and Morrison, the National Fire Protection Association approved a tougher standard for PASS alarms in December. The standard, which is scheduled to be published on the association's Web site on Friday, requires a series of tests showing the PASS alarm can withstand being heated, dunked in water, and tumbled in a dryer, according to a summary provided by the association.

The maximum temperatures the devices are required to withstand in the new test are no higher than in the old test: 500 degrees Fahrenheit for five minutes, then 1,500 to 2,100 degrees for 10 seconds in the flashover test. But it does require that the PASS device produce a sound after some of the torture tests; the old standard just required it not to melt or catch on fire.

The new standard also adds a "muffle test." The alarm will have to be more powerful so it can be heard if a firefighter falls on it.

Some manufacturers told the association that the new heat standard can't be met.

But the largest manufacturer of PASS alarms, Scott, says it will have a device to meet the new standard by this summer, when old inventory can no longer be sold.

Who will pay for replacements?

As for the more than one million U.S. firefighters with the old devices, their fire departments may have to pay for new ones, which cost about \$200 apiece. It's not clear that any agency has authority to order a recall of the old ones:

- The U.S. Consumer Product Safety Commission says it doesn't have a role, because a firefighter's equipment isn't considered a consumer product.
- The National Fire Protection Association says that its standards are voluntary, that responsibility to enforce those standards rests with the Safety Equipment Institute, or SEI, another nonprofit, which certifies devices as meeting the standard.
- And SEI says that only the manufacturers can decide whether or not to recall the old devices.

"From what I understand, the manufacturer is the only one who can pull the trigger on a recall," said Stephen R. Sanders, the institute's technical director. "We can influence whether or not a manufacturer does a recall. But they might look at us and say, 'You're crazy.'"

The institute raised concerns several times about Survivair PASS alarms failing its random tests, but accepted the company's assurances that it was an isolated problem, or had been fixed, documents introduced in the Morrison trial show.

For Rob Morrison's widow, who comes from a firefighting family in St. Louis, the lack of accountability is

baffling.

"I just couldn't figure that out," Laura Morrison said, "when firemen are giving their lives everyday to help the community and save people — and companies knew about this and never told anybody what the problem was, and let them, still today, go into a burning building not knowing if their PASS device is going to work or not."

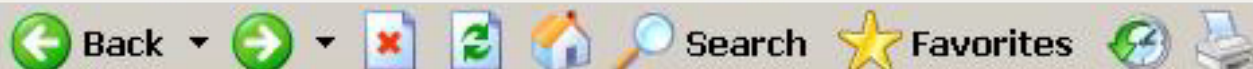
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CDC fields the 'No Go Team'

Agency that examines firefighter deaths typically arrives 33 days later

SECOND OF TWO PARTS

By Bill Dedman

Investigative reporter

An MSNBC Special Report

updated 3:03 p.m. ET, Fri., Feb. 9, 2007

The CDC didn't ask for the job of investigating firefighter fatalities. That job was handed to it, after a union boss got a seat next to President Clinton on Air Force One. They were talking blue windbreakers.

After a plane or train crash, the National Transportation Safety Board dispatches its experts within two hours. The investigators in their familiar jackets take charge of the scene, secure evidence, follow leads.

The NTSB calls it the "Go Team."

That's what Harold A. Schaitberger had in mind. Now the general president of the International Association of Fire Fighters, he got an hour in the air with Clinton in the mid-1990s. The union boss told the president how the number of firefighting deaths, which had been declining sharply, was stalled at about 100 a year.

It might not have hurt their case that the firefighters had endorsed Clinton in 1992 and 1996. The president put \$2.5 million in his budget for fiscal 1998 to study firefighter deaths. Congress gave the job to the Centers for Disease Control.

"We wanted to model it after the NTSB process," said Richard M. Duffy, the union's health and safety chief. "The public expects it. They expect to see those blue windbreakers every time there is such an incident.... And I think we're getting to the point that firefighters expect that, too."

After a decade and more than 300 investigations, how is the CDC doing?

Call it the "No Go Team."

An investigation by MSNBC.com shows that the CDC routinely takes as long as a month — and sometimes as long as nine months — to visit the scene of firefighter deaths. The CDC also:

- Doesn't investigate a death at all if the fire department or fire union raises an objection.
- Has cut back in the past three years on the number of investigations.
- Destroys information that could help identify patterns of hazards with firefighting equipment, training and tactics.

"Frankly I think the American firefighter deserves better," said Eric Schmidt, a former fire captain who was the CDC's first and only fire protection engineer before he was fired in 2000.

MSNBC.com reported Monday how documents show that Schmidt's managers in the CDC's firefighter fatality program squelched his attempt to investigate PASS devices, the "man down alarms" that are intended to help comrades rescue an injured or immobilized firefighter. Schmidt had noticed that, in two fires in which firefighters died, the alarms weren't heard. When he kept investigating equipment problems, he was fired. Before the CDC issued a warning and recommended that the standards for PASS alarms be raised in 2005, 15 firefighters died in fires and their PASS alarm either didn't sound or wasn't loud enough to be heard, so rescuers had less chance to find them quickly.

Today, we look more broadly at the quality of CDC's investigations of firefighter deaths.

Equipment so good, it's dangerous

Firefighting has gotten deadlier over the past decade, and one of the surprising reasons may be improved protective equipment.

With better gear, firefighters no longer surround and drown a fire — they go in. Instead of rubber coats, they have fire-resistant Kevlar. A generation ago, firefighters felt the heat and knew it was time to back out. Now, by the time they feel the heat, it may be too late to leave.

"Better protective equipment was never intended for people to get in deeper or stay in longer," said Bruce Teele, the National Fire Protection Association's leading expert on firefighter equipment.

"Try telling that to a firefighter," countered Duffy, the union official.

Firefighters go where they're needed, sometimes ignoring the dangers even when no one is inside a burning building to be saved.

About 100 firefighters each year die on the job in the U.S. The number had been declining until the early 1990s, when it flattened out. It has stayed at 100 (not counting the 343 firefighters who died on Sept. 11, 2001), which means that the death rate per fire has climbed sharply, because fire safety efforts and smoke detectors have substantially reduced the number of fires. The number of structure fires fell by about one-eighth just in the past decade.

Last year was typical, with 104 firefighters dying in the line of duty, according to the memorial list kept by the U.S. Fire Administration.

The lack of progress in reducing fatalities is why Congress gave money to the CDC in 1998 to study firefighter deaths and make recommendations on how to avoid them. The CDC's occupational safety division was chosen because it had the experience and authority to investigate in workplaces.

Heart attacks on the job and vehicle accidents on the way to the fires account for about half of the firefighter deaths. The other half occur while fighting fires.

Why deaths per fire are increasing

Why are those deaths increasing? Studies have identified several reasons:

- Modern synthetic fabrics and furniture burn hotter than older furnishings. Americans have more electronic gear and other possessions in their homes, additional fuel for a fire.
- Lightweight wooden trusses in modern roofs collapse more easily than older beams, trapping more firefighters.
- Fire crews have been reduced and fire stations closed to hold down local tax bills. That means response times are up, and fires are burning longer before fewer firefighters arrive to attack them.
- A final irony: With fewer fires, there's less practice for firefighters and fire chiefs, so bad decisions may be more likely.

Before the CDC got involved, only a small number of fatalities were investigated, first by the National Fire Protection Association, and then by the U.S. Fire Administration. The Fire Administration reports were more thoroughly documented than the reports now done by CDC; they included timelines; dispatch communications; a description of the firefighters' protective equipment; and a description of changes made by the fire department after the fatalities. And they were more frank in describing errors in judgment by firefighters and incident commanders. Sometimes those investigative reports angered the fire union; sometimes they angered the fire departments; sometimes both.

When the CDC got the task, it assigned it to a small group in the National Institute for Occupational Safety and Health, or NIOSH, in Morgantown, W.Va., which had previously been investigating farm accidents, construction accidents — even deaths by industrial robots. Now it added the Fire Fighter Fatality Investigation and Prevention Program.

The firefighter fatality program isn't a regulatory program — it doesn't enforce federal safety standards like

OSHA does. Instead, it is supposed to make recommendations based on good science.

MSNBC.com found that the CDC delays sending investigators to the scene of firefighter fatalities. Although its investigation manual calls for a site visit within three weeks, the typical or median delay is actually 33 days, according to investigative reports studied by MSNBC.com. The longest delay was 266 days, or just about nine months.

The program does not have a 24-hour telephone line so that it can be notified of fatalities. "We do have a voice mail," said program manager Dawn Castillo. "If the call comes in on the weekends, we check it on Monday."

A month or more after a fatal fire, witness recollections are no longer fresh. It's often too late to secure the evidence or take measurements at the fire scene. So the CDC's investigators are left to work largely with secondhand information gathered by the fire department, the union, the state fire marshal.

In St. Louis, after two firefighters died on May 3, 2002, the CDC team traveled from Morgantown on June 24, a delay of 52 days.

"The building had already been torn down" by that time, said Laura Morrison, whose husband, Rob, was one of two firefighters who died that night. Other firefighters who were hunting for him said they never heard Rob Morrison's PASS alarm.

"When they came to investigate, I was really excited about that," Laura Morrison said, because it was "the federal government and they were going to give me the answers I needed. And this was like 40 days later after the fire.

"But I thought they would really investigate, talk to firemen ... find out exactly what happened to him, why firemen didn't hear his PASS device.

"When I got the report ... it said nothing about anything except certain things about what other firemen did or didn't do. It didn't go to the reason why Rob died."

Even in Worcester, Mass., where six firefighters died on Dec. 3, 1999, the CDC managers didn't want to send anyone immediately to investigate, said Schmidt, the former CDC fire prevention engineer. He said he called a CDC manager at home.

"And his comment to me was, 'Well, that's not what we do. We'll get up there in a couple of weeks,'" Schmidt said. "But the next day, I see that they'd all left to go up there."

Castillo confirmed that the CDC went to Worcester immediately, only because the firefighter union called. Duffy, the union official, says he had the home number of Linda Rosenstock, the director of NIOSH.

"We called and said, 'You guys have to be here,'" he said. "... I believed it was important for them to be there. There's a brand new branch to investigate firefighter fatalities, and we have six firefighters down."

The CDC sent three people to Worcester the next day. Castillo, the manager of the program, said she wasn't sure whom Duffy called but confirmed his basic account. Rosenstock, who has since left the CDC, declined a request for an interview.

Then the CDC went right back to taking a month or longer to visit fire scenes, according to the CDC records reviewed by MSNBC.com.

Castillo said that a delay in visiting the scenes of deadly fires doesn't mean the agency isn't investigating. Members of her unit quickly begin making phone calls to line up the visit and gather information, she said. And she said taking time is more respectful to the family and the fire department, to allow time for funerals before investigators arrive.

Eric R. Schmidt

Former fire safety engineer,
Centers for Disease Control



On being told not to investigate PASS
devices

Laura Morrison

Widow of Rob Morrison,
St. Louis firefighter



Cause for Alarm



Monday-Friday, 9-5

Although firefighters can and do die at any time of any day of the week, the CDC doesn't do much investigating on nights or weekends. The firefighter program reports indicate that while 43 firefighters died on weekends from 1998 through 2006, the CDC unit started only six site visits on Saturday or Sunday.

The CDC manual also urges investigators to limit their work days in the field to an eight-hour day.

By contrast, the NTSB manual encourages the investigators to leave within two hours and to work the case vigorously, with meetings from 7:30 a.m. to as late as necessary.

Fewer cases

At its measured pace, the CDC doesn't investigate every firefighter death. And last summer, it proposed reducing the number of cases that it does examine.

But without notice, it already had done so.

MSNBC.com combed through the Fire Administration's list of line-of-duty deaths from 1998 through 2006, to eliminate heart attacks and vehicle accidents and to make sure that every remaining death was one that the CDC would hear about. Then it compared that list against the CDC unit's investigations database and fatality reports, and asked the agency to update the database with any investigations in progress.

The results:

- From 1998 through 2003, the CDC investigated 89 percent of the fire scene fatalities, or 73 out of 82.
- From 2004 through 2006, the CDC investigated only 70 percent of the deaths, or 23 out of 33.

The firefighters union contends that Congress wanted every death investigated.

"Our belief is the congressional intent was that they go to every one, but Congress didn't give them the money," Duffy said.

NTSB comparison called invalid

Castillo said CDC has neither the money nor the mission to look into every death. "We did not get specific guidance, nor do we have the resources, to investigate every single firefighter death," she said. She said the CDC's \$2.5 million budget for firefighter investigations is dwarfed by the \$75 million that Congress gives to the NTSB each year.

Besides, the CDC has said, the conclusions of its investigations have become repetitive. Last summer, when it proposed scaling back, the agency stated that investigators "are finding similar contributory factors, and consequently repeating prevention recommendations made in previous investigations."

The CDC sought public comment last summer on a proposed change: investigating fewer specific incidents, freeing it to focus more time on databases and topical reports, such as firefighters who die of heart attacks, vehicle accidents, training accidents, and risk-vs.-reward decisions when fighting fires.

After encountering strong opposition at a public meeting to the idea of fewer investigations, the CDC abandoned the idea, Castillo told MSNBC.com. She said that the agency now plans to keep the investigations at the current level.

At that public meeting, a prominent fire chief and author of a text on firefighting encouraged the CDC to take a more scientific approach. Edward Hartin, a battalion chief in Gresham, Ore., said the investigations have been of substantial benefit to firefighters, but "there are some gaps in the information provided by these reports." He said he would like to see more information about the environment that the firefighters were working in — the building, the fire, the smoke, the heat — so better lessons could be learned about whether the firefighters made good decisions.

Only with cooperation

Unlike the NTSB, the CDC says it goes only where it's invited.

If the fire department or the union objects to having the deaths studied, the CDC backs off.

"There are times," Castillo said, "that we go out to do an investigation, we do not get cooperation. When that happens, we do not do the investigation. We have never pushed to do an investigation in that situation. ... The NTSB has specific authority to secure a site, to subpoena witnesses. ... We don't have that. We are relying on cooperation with the fire department. We have found it to be pretty successful. It's not a common event that they refuse cooperation.

"We were provided with funding for the firefighter initiative. We were not provided with statutory authority like other agencies such as the National Transportation Safety Board," Castillo said. "For example, we don't have statutory authority to enter and inspect a site, to obtain records, to perform tests, or order or obtain an autopsy for the purposes of investigation. What we do is we work with the fire department. ... We can only go when we have the cooperation from the parties that are involved."

At first, Castillo told MSNBC.com that the CDC doesn't have the right of entry to a death scene and hasn't sought it. Then she said she wasn't sure and would have to ask the CDC lawyers. In any case, she said, if the CDC has that right, it wouldn't use it very often.

"From our perspective and the feedback we are receiving from the majority of our stakeholders, our sense is that we are doing a good job, that the fire service is finding our investigations valuable for them," Castillo said. "Even if we have the authority, the agency as a whole uses it very judiciously."

Some deaths go unexamined

The CDC doesn't say which firefighter deaths it takes a pass on.

So MSNBC.com compiled its own list and found 19 firefighters from January 1999 through November 2006 whose deaths fighting fires were not investigated.

Duffy, the union safety chief, said the CDC should list every fatality on its [Web site](#) and say which ones it's not investigating.

That would be a major shift for the CDC, which doesn't identify the community or the firefighters in its reports. Confidentiality is a valued tradition in medical research, so it lists the deaths only by state and date.

But firefighter deaths are highly public events, so when the CDC reports six career firefighters were killed in a cold-storage and warehouse building fire in Massachusetts, every member of the fire service and many other citizens know that is code for "Worcester."

Shredding files

When the CDC finally acted in 2005 on the problem of PASS devices, the "man-down" alarms, it sent its public investigative reports to the National Fire Protection Association, urging it to consider raising standards.

Although the CDC told the association of five firefighter deaths that occurred where PASS alarms weren't heard, MSNBC.com found 15 in its review of the agency's reports.

The CDC didn't identify the manufacturers, say when the alarms were made, or how they were maintained.

The CDC didn't say, because it didn't know.

The CDC investigators don't collect the same information in every fire about firefighter equipment or clothing. Castillo said it is left to individual investigators to judge which information to collect on each case.

And once the information is collected, the CDC often destroys it.

Castillo confirmed that the program keeps only the information in the reports it issues on firefighter deaths

and the information in the CDC's investigations database. But MSNBC.com found that neither of those repositories has information on the make or model of PASS devices, or boots, hose lines, fire engines or any other gear that firefighters rely on — except for air supplies, for which the CDC is the certifying agency.

For PASS devices, Castillo said, "at the time that we did the investigation, we knew who made them. We do not have a record of those manufacturers. The issues that we helped uncover are not specific to an individual manufacturer; they speak to the standard the manufacturer was tested against, across a variety."

But how would CDC know if a problem was limited to a specific make or model or year if it doesn't keep that information?

"When they publish a report, they shred all the backup information," said Schmidt, the former CDC fire protection engineer. "They keep no files. You can't go back and look at past incidents. If we get a FOIA (Freedom of Information Act request), all we want to be able to do is to put the report in an envelope."

"... A comment that I heard from one of the managers at the time was, 'We don't want any widows' attorneys coming and looking at our information to build a case.' I was really offended by that. If there's some firefighter's widow, they deserve to hear the truth."

Castillo didn't deny that managers had said that, or something similar, but she said that concern about protecting fire departments or manufacturers from lawsuits is "not driving our investigations."

Autopsy? No thanks

In "performance guidelines" given to Schmidt in 2000, Castillo urged him to "minimize your fact gathering during investigations" and to focus only on the information necessary to explain the events that led to a death.

She scolded Schmidt for "your persistence in gathering complete autopsy reports, rather than simply getting information from the report on the cause of death." She pointed out that a manager of the program was more skilled and was able to make a phone call to get the cause of death without getting the report.

Fire departments have been told repeatedly to request an autopsy in every firefighter death, so lessons might emerge that could improve safety. That's been the advice from the International Association of Fire Chiefs, the National Fire Protection Association, the U.S. Fire Administration — and the CDC itself.

Schmidt said he had wanted autopsies so he could see, for example, whether the victim's hands were burned, which would indicate that the firefighter took his gloves off. An autopsy also could show whether the firefighter was hampered by an underlying medical condition.

Castillo said it's still optional for her investigators to gather autopsy records, because they might not always be useful. In writing to Schmidt, she tied the limitation to privacy concerns: "Given limits on NIOSH's ability to protect information that is provided to us during the course of investigations, efforts are made to minimize information in our files with direct identifiers of individuals."

Neglected database

The CDC has boasted on its Web site about its investigations database, which Congress required it to set up. The CDC called it "a valuable tool to identify trends and analyze risk factors among line-of-duty injury deaths."

But MSNBC.com found that the database was riddled with errors that contradicted the official reports on incidents, and that it had been updated infrequently in recent years. The fire that killed Rob Morrison and fellow firefighter Derek Martin in St. Louis isn't in the database.

When the CDC was asked to cite any instances when the database had been used to identify trends or analyze risk factors, the agency removed any mention of the database from its Web site.

"We have recognized," Castillo said, "that the database has not lived up to its potential, and we are in the process of doing a critical evaluation of it."

Eric R. Schmidt

Former fire safety engineer,
Centers for Disease Control



Laura Morrison

Widow of Rob Morrison,
St. Louis firefighter



On the pattern of deaths where PASS alarms
weren't heard

Cause for Alarm



In its present form, the database has no place to record the training that incident commanders have undergone, and no place to record information on equipment — aside from the air supplies, which the CDC certifies as meeting the national standard.

"If you were a reporter and you were doing a story on an airplane crash," Schmidt said, "you could call up the FAA (Federal Aviation Administration) or the NTSB and say, how many times has this engine been involved, and someone would say, 'We've had four previous crashes.' If you would do the same thing, can you tell me how many PASS devices had failed, they couldn't do that."

Collecting the facts

Since Schmidt was fired in 2000, the CDC program has not hired another fire safety engineer. It has safety and occupational health specialists performing the firefighter investigations. Several do have experience and training as firefighters.

Schmidt said the underlying problem is that in 1998, Congress handed the CDC a role it hadn't asked for and may not have been trained for.

"They would spend a lot of time talking to the firefighters ... and then they would write the report," he said. "... They would come back to the office, and say, 'Which firefighter do you think was the most credible one there?' — and benchmark everything against what that firefighter said.

"... So I would try — and this is where we were having a lot of disagreement — let's take a look at that hose, let's measure the burn mark on it, so it will tell us what position the hose was in, and that would tell us how far the firefighter got into the room. They would say, they told you. But how do you know they're right?"

Schmidt said that when he wanted to point out how inadequate a fire department's training budget was, "I had to literally argue my point, go into the office of the deputy director. They would say, 'You can't talk about it, because you'll be upsetting the local community. It's a local decision.'

"That was troubling and perplexing, and to have managers say, don't follow up on that, don't look at the equipment, don't look at fire hoses that have failed, don't listen to the audiotapes — it creates a situation where the investigators don't know what to say or write because they don't understand what the managers are looking for. Because on one hand you have a procedure, and on one hand you have what the managers are telling you to say and not to say."

Castillo said her guidance to Schmidt to "minimize" investigations was directed particularly at an inefficient employee and does not reflect her general orders for the staff.

Castillo told MSNBC.com the CDC doesn't need another fire protection engineer.

"This is not an expertise that we have a need for consistently," she said. "When we don't think we have the expertise that's needed, we consult with external experts as warranted."

Both union and management want more

Last summer the a leader of the International Association of Fire Chiefs, I. David Daniels, asked the CDC to do more: investigate more of the firefighter deaths each year, especially deaths from trauma at fires; and add more information to the investigative reports, particularly on the culture in the fire department on risks vs. rewards.

The firefighters have a similar wish list. The firefighters union has long had issues with the way deaths are investigated. Now it has more friends in high places in the new Democratic-led Congress.

Duffy said the union will push this year for lawmakers to give the CDC additional funding to investigate every firefighter death; give notice if it decides not to investigate a death; institute a follow-up program to determine if fire departments implement safety recommendations; identify departments and individuals in its reports, and pay more attention to the forensic aspects of fire-scene investigations — "evidence gathering, mapping where the evidence is, chain of custody, examination or testing of the tools."

But Castillo said the feedback she has heard leads her to believe that members of the fire service are pleased with the way the CDC is investigating firefighter deaths now.

"We have a tremendous amount of pride about the firefighter program," she said. "We think this is a flagship program and that we have made important contributions to firefighter safety."

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Unexamined firefighter deaths

CDC program did not report on their deaths and isn't investigating

MSNBC

updated 2:25 p.m. ET, Tues., Feb. 13, 2007

Here are the 19 firefighters who died fighting fires that were not investigated by the Centers for Disease Control's Fire Fighter Fatality Investigation and Prevention Program.

MSNBC.com compiled the list by starting with the U.S. Fire Administration memorial database, comparing that with the CDC's list of fatality reports. The list was double-checked with the CDC to make sure no death currently under investigation is listed.

The list covers January 1999 through November 2006:

1. Feb. 15, 1999, Assistant Chief Brian William Collins, volunteer, River Oaks (Texas) Fire Department. Church fire.
2. Feb. 15, 1999, firefighter Garry Charles Sanders, volunteer, Sansom Park (Texas) Fire Department. Church fire.
3. Feb. 15, 1999, Capt. Phillip Wayne Snell-Dean, volunteer, River Oaks (Texas) Fire Department. Church fire.
4. May 3, 1999, firefighter Eric Noel Casiano, professional, Philadelphia Fire Department, fell or jumped. Back injury in fall at house fire.
5. June 3, 1999, Capt. Vincent G. Fowler, professional, New York City Fire Department. Ran out of air in basement at house fire.
6. Sept. 24, 2000, firefighter/secretary Kevin Scott Harshbarger, volunteer, Scenic Loop (Texas) Volunteer Fire Department. Fell through hole in roof while ventilating.
7. Jan. 1, 2001, firefighter James Thomas Heenan, volunteer, Verga (N.J.) Fire Company #1, fell through to basement.
8. May 22, 2001, firefighter Lawrence James Webb, professional, Newark (N.J.) Fire Department. Did not evacuate.
9. Nov. 4, 2002, firefighter Edmund E. Malinski, volunteer, Northern Wayne (Pa.) Fire Department, exposure. Collapsed in fire; PASS device was off.
10. Feb. 15, 2004, Capt./EMT Robert Heminger, volunteer, Wood River (Neb.) Volunteer Fire and Rescue Department. Roof collapse.
11. Feb. 15, 2004, Capt. Kenny Woitalewicz, volunteer, Wood River (Neb.) Volunteer Fire and Rescue Department. Roof collapse.
12. Aug. 20, 2004, firefighter Rey Rubio, professional, Philadelphia Fire Department. Criminal case — marijuana growing operation. Was investigated by the CDC, but the report was not finished because of delays when CDC yielded to request by law enforcement to wait. CDC doesn't plan to finish it.
13. Aug. 20, 2004, Capt. John Taylor, professional, Philadelphia Fire Department. Criminal case — marijuana growing operation. Was investigated by the CDC, but the report was not finished because of delays when CDC yielded to request by law enforcement to wait. CDC doesn't plan to finish the report.

14. Sept. 3, 2004, Deputy Chief James D'Heron, professional, New Brunswick (N.J.) Fire Department. Explosion, trapped.

15. Nov. 30, 2004, firefighter Jackson "Jack" Gerhart, Chambersburg (Pa.) Fire Department, volunteer, fall. Fell while stretching a supply line.

16. Mar. 8, 2006, inmate firefighter Michael Lynn Davenport, volunteer, Mississippi State Penitentiary Fire Department. Disoriented, overcome by smoke.

17. Apr. 11, 2006, firefighter Kevin A. Apuzzio, volunteer, East Franklin (N.J.) Volunteer Fire Department. Trapped in basement.

18. Sept. 9, 2006, Acting Capt. Vincent R. Neglia, North Hudson (N.J.) Regional Fire & Rescue Department, career. Trapped by flames.

19. Nov. 1, 2006, firefighter Gregory A. Cloud, volunteer, Kent (Ind.) Volunteer Fire Department. Separated and overcome by smoke.

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Kerry calls for probe of firefighter unit

Senator responds to MSNBC.com report on problems with PASS devices

By Bill Dedman
Investigative reporter

MSNBC

updated 7:17 p.m. ET, Wed., Feb. 7, 2007

BOSTON - Sen. John Kerry on Monday asked the U.S. Department of Health and Human Services to investigate "deeply troubling" information in an MSNBC.com special report indicating that the federal unit charged with probing firefighter deaths ignored a warning in 2000 that personal alarms used at fire scenes might be failing.

"It is completely unacceptable that our first responders don't have the proper safety equipment, and if these allegations prove true, it's unfathomable that the CDC would cover up something so detrimental to our firefighters' safety," Kerry told MSNBC.com. "I have asked the Department of Health and Human Services to launch a full investigation into these allegations. Nearly 1 million brave men and women risk their lives every day; we owe it to them and to the families of the deceased firefighters to get answers and hold the negligent parties accountable."

Within hours of the story's publication, Kerry's office issued a press release stating that the Massachusetts Democrat had written to HHS Inspector General Daniel Levinson requesting the investigation of the unit of the Centers for Disease Control and Prevention charged with investigating firefighters' deaths.

Donald White, a spokesman for the inspector general's office at HHS, said the office would review Kerry's request over the next several weeks, after which "it will get assigned to the proper component within the office ... for further investigation as warranted."

Kerry's letter cited MSNBC.com's special report indicating that the CDC's firefighter fatality unit had ignored a warning from its own fire safety engineer in 2000 that the alarms, known as PASS devices, appeared to have failed in two separate incidents in which firefighters died.

The MSNBC.com investigation, based on federal investigative reports, documents made public under the Freedom of Information Act and extensive interviews, revealed that 15 firefighters have died since 1998 in fires where a PASS, or Personal Alert Safety System, either didn't sound or was so quiet that rescuers weren't given a chance to find the firefighter quickly. Nine of those deaths came after the federal government blocked the investigation by its own expert into possible failures of PASS alarms and other firefighting equipment, the documents show.

The report cited a letter from a manager for the Centers for Disease Control ordering the fire safety engineer to "minimize your fact gathering during investigations" and to refrain from "the collection of detailed information not of likely use in an investigation."

No one can say for sure that a PASS device caused any of the 15 deaths in which the alarms weren't heard. And it's impossible to say that any firefighter would necessarily have survived if the PASS alarm had been seen and heard.

Five years later after the engineer's warning, in March 2005, the CDC's firefighter fatality program recommended that "manufacturers, researchers and standard-setting bodies should investigate the performance of PASS alarms/devices under extreme conditions," and the following month called for higher standards for the devices.

Kerry, the 2004 Democratic presidential candidate who narrowly missed defeating President Bush's bid for a second term, has enjoyed strong support from firefighters during his 20 years in the Senate and won the International Association of Fire Fighters' endorsement during his White House bid.

He said on Jan. 24 that he would not join the crowded Democratic field for the 2008 race for the White House,

and would instead seek re-election to his Senate seat next year.

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Fire chiefs urge action on firefighter deaths

Group joins union, family in reacting to MSNBC report on investigations

By Bill Dedman
Investigative reporter

MSNBC

updated 3:03 p.m. ET, Fri., Feb. 9, 2007

America's fire chiefs joined with the firefighters union on Wednesday in calling for more vigorous investigations of firefighter fatalities.

Responding to a [special report on MSNBC.com](#) this week, a leader of the International Association of Fire Chiefs said the federal government should no longer delay sending its investigators to every firefighter fatality, and should improve the depth of its inquiries. In addition, the family of one firefighter who died, as well as a leading advocate of firefighter safety, said they want to see more done to look into firefighter fatalities.

MSNBC.com reported [Monday](#) and [Tuesday](#) that the Centers for Disease Control and Prevention, which Congress tasked with investigating firefighter deaths, blocked its expert's inquiries into potential problems with firefighter equipment; usually takes more than a month to send investigators to the scene of a fatality; doesn't investigate if the fire union or fire department refuses to cooperate; has cut back in the past three years on the share of firefighter deaths it looks into; and destroys information that could help identify patterns of problems with safety equipment, training or tactics.

"The investigation needs to be done as soon as possible after the fatality," said Steve Westermann, vice president of the fire chiefs association and the chief of Central Jackson County Fire Protection District in Blue Springs, Mo.

"We want to find out as accurately as possible what caused each firefighter's death. IAFC believes that every fatality should be investigated," Westermann said, speaking for the organization.

"You should have cooperation, but you need to be able to go in whether you get that cooperation or not. And once the investigation is done, if there's someone at fault, then we need to take more action, whether it's on equipment or policies or the condition or actions of the firefighters."

The family of one fallen firefighter also raised its voice in support of more thorough investigations.

Thomas Brick died in 2003 at a fire in New York City, and his PASS alarm, which was supposed to help other firefighters find him, was not heard. As MSNBC.com reported, a CDC engineer had tried to look into possible problems with PASS alarms and other equipment in 2000, but was blocked by a CDC manager, who told him to "minimize your fact gathering."

Although the CDC firefighter fatality team, part of the CDC's National Institute for Occupational Safety and Health, made its visit to the fire scene on Jan. 26, 2004 — 41 days after Brick's death — the agency waited another 450 days — until April 20, 2005 — to ask the National Fire Protection Association to consider toughening the tests for PASS alarms. In that period, two more firefighters died in fires where rescuers didn't hear their PASS alarms and couldn't find them.

Fallen firefighter's brother speaks out

Brick's brother, Christopher, [wrote Wednesday](#) to his U.S. senators, Charles E. Schumer and Hillary Clinton, asking for action.

"It seems that the CDC, rather than proactively seeking evidence of its own when alerted to problems with the PASS alarm device, waited for that evidence to come in the form of additional firefighter deaths," Christopher Brick told MSNBC.com.

"My brother's in particular seems to have furnished them with precisely the evidence they should have looked for years earlier. Yet instead, they willfully ignored a critical defect that has continued to endanger countless numbers of firefighters' lives each day.

"This type of passive approach to firefighter safety strikes me as alarmingly negligent and inhumanly indifferent to the costs that firefighters pay when their safety equipment fails," Brick said. "The administrators responsible should be held accountable, and their agency reformed — if not divested of its responsibilities altogether — to ensure that such neglect does not result in future injuries or fatalities to those who sacrifice so much for all of us."

A leading voice on firefighter safety, Billy Goldfeder, wrote a [commentary](#) Wednesday on the Web site Firehouse.com. He runs the widely read Web site on safety issues, [FirefighterCloseCalls.com](#), and has served as a consultant to the CDC, providing technical review of several of its investigative reports.

"As far as I am concerned," he wrote, "the NIOSH fire program is not what it could be. They need some SERIOUS funding and some SERIOUS authority so they can do what is needed."

He said fire chiefs and firefighters should work together to determine "what is needed, determine what it will cost and get every one of us to help lobby for it and get it funded so that in the future, the resources exist so that NIOSH can get moved to a much higher level of authority.

"Additionally, more disclosure of all the details and facts (as allowed by law) could make the reports even more effective in making change," wrote Goldfeder, who is deputy chief of the Loveland-Symmes Fire Department in Ohio.

'Rumors will be overrun by fact'

"Maybe when they find 'something wrong' with a product, for example, that 'possibility' (with facts based upon why there is a concern) can be posted and we can be notified to at least take a look at it," Goldfeder wrote. "Maybe it is a problem, maybe it isn't, but it needs to come out so we can at least check it out in our own firehouses. If it is a problem, it will matter to us. If it isn't, a 2nd notification can be issued stating why it is no longer a problem and rumors will be overrun by fact."

The National Fire Protection Association, which sets standards for fire equipment, also urged more action, and greater funding for the investigations. "NFPA feels that documenting every firefighter fatality will help develop better practices and protect firefighters," said spokeswoman Lorraine Carli. "In order for that to happen, NIOSH has to be given the resources to do it and there has to be a commitment on the local level for it to occur."

A CDC spokesman said Wednesday that the agency is open to all comments on the program, its mission and how it has been carried out.

"We've all been trying to find ways that we can keep firefighters from dying on the job," said the CDC spokesman, Fred Blosser. "When these guys die, it's not an abstract thing. It's devastating. We know that. We've worked closely with the union and the fire chiefs and other organizations, and as I hope they know, we've always valued their advice and guidance on the program. Clearly, if what you're hearing from these groups are things that we hadn't heard, yeah, we'll engage that."

About 100 firefighters a year die in the line of duty. Heart attacks on the job and vehicle accidents on the way to the fires account for about half. The other half occur while fighting fires. In 1998, Congress gave the CDC the role of investigating fatalities, so lessons could be learned to prevent them.

The CDC has said that it doesn't have the budget to investigate every death. This year it has \$2.5 million for its [Fire Fighter Fatality Investigation and Prevention Program](#).

The firefighters union, which persuaded President Clinton to create the program, agrees that more money is needed.

"Our position is clear. We think all firefighter deaths should be investigated," said Bill Glanz, a spokesman for

the International Association of Fire Fighters. "Our overarching concern in all this is that NIOSH is not properly funded to do the job of investigating and preventing workplace injuries, diseases and deaths for all workers, not just for firefighters. NIOSH can't possibly meet all the demands expected of it at its current level of funding."

Sen. John Kerry, D-Mass., [reacted to the report](#) on Monday, asking the inspector general of the U.S. Department of Human Services, which includes the CDC, to investigate the firefighter fatality program.

"It is completely unacceptable," Kerry told MSNBC.com, "that our first responders don't have the proper safety equipment, and if these allegations prove true, it's unfathomable that the CDC would cover up something so detrimental to our firefighters' safety. Nearly 1 million brave men and women risk their lives every day. We owe it to them and to the families of the deceased firefighters to get answers and hold the negligent parties accountable."

HHS said it will evaluate the senator's request before assigning it "for further investigation as warranted."

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Shift urged in firefighter investigations

Fallen firefighters foundation asks Congress to shift death investigations

By Bill Dedman
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MSNBC

updated 4:19 p.m. ET, Wed., Feb. 14, 2007

A foundation representing firefighters who die in the line of duty is calling for Congress to strip the Centers for Disease Control of its role investigating firefighter deaths. But the firefighters union, which helped give that job to the CDC in the first place, says the investigations need more funding and authority, not different leadership.

The groups were reacting to an [MSNBC.com investigation](#) describing how the CDC blocked inquiries by its own safety engineer into potential problems with firefighter equipment; usually takes more than a month to send investigators to the scene of a fatality; doesn't investigate if the fire union or a fire department refuses to cooperate; has cut back in the past three years on the percentage of firefighter deaths it looks into; and destroys information that could help identify patterns of problems with safety equipment, training or tactics.

"There is no excuse for delaying or failing to investigate a line-of-duty death," said Hal Bruno, chairman of the [National Fallen Firefighters Foundation](#), a nonprofit group set up by Congress to remember firefighters who die in the line of duty.

Bruno, a former ABC newsman and a volunteer firefighter for 40 years, said Congress should return the role of investigating firefighter fatalities to the U.S. Fire Administration, an agency in the Department of Homeland Security.

"It should be the responsibility of the United States Fire Administration, which should be given the funds, the resources and the personnel that are needed to carry out this critical mission," Bruno said.

Congress gave the job to the CDC in 1998, but the CDC has said that the firefighter program's \$2.5 million budget isn't enough to investigate every death. The CDC's [Fire Fighter Fatality Investigation and Prevention Program](#) is part of the National Institute for Occupational Safety and Health.

Bruno said that money may be an issue, but the main problem is the CDC unit's lack of a sense of urgency.

"The results of every investigation should be made public as fast as possible so that the lessons learned can be used to save lives," Bruno said. "If there is a problem with any piece of equipment used by a firefighter — whether it's a vehicle, a tool or a protective device — that equipment must be tested to determine how the problem can be corrected. Again, this must be done with a sense of urgency and the entire fire service must quickly be made aware of any danger to firefighters. This is the way it was done in the past; this is how it should be done now and in the future.

'New lessons should be learned'

"Whenever a firefighter dies in the line of duty, these things must happen simultaneously," Bruno said. "The fire-rescue service must honor the memory of their fallen comrade and do all that we can to support their family in a time of need. At the same time, there must be an immediate, thorough and impartial investigation to determine what went wrong — what new lessons should be learned, what old lessons need to be re-emphasized — so that steps can be taken to prevent it from happening again."

By urging that the investigative role be taken from the CDC, the firefighters foundation goes further than two other groups — the International Association of Fire Chiefs and the International Association of Fire Fighters — both of which said last week that the federal investigators should no longer delay responding to fatalities, and that Congress should allocate more money to improve the depth of the investigations. The National Fire Protection Association, which sets standards for fire equipment, also urged quicker action and more funding.

The firefighters union, which helped get the CDC's program funded by President Bill Clinton in 1998, said

Tuesday that moving the job to the U.S. Fire Administration wouldn't help.

"The USFA did the investigations before, and they didn't do any better job," said spokesman Jeff Zack. "The problem was, and continues to be, a lack of funding."

He said the CDC needs more authority to take over an accident scene — but not before it has the money to do that job well.

As for a CDC manager's direction to her investigator to "minimize your fact gathering" in regard to equipment problems, Zack said that neither more money nor more authority would cure that problem.

'Insufficient will'

"There has been insufficient will to literally point fingers when problems are found," Zack said. He said that reluctance to place blame extends up and down the fire service, whether a firefighter's death involves failures by the fire department, the firefighter or a manufacturer of safety equipment.

A spokesman for the CDC said it welcomes the conversation, but didn't address the question of shifting the role to another agency.

"We all share the same goal here. We want to protect firefighters and keep firefighters from dying," said the CDC's Fred Blosser. "We always want to hear from the fire service partners, and if they have recommendations it's always useful to talk with them. If they think there should be changes, we want to talk with them and understand where they're coming from, to see what the consensus is."

About 100 firefighters a year die in the line of duty in the U.S. Heart attacks on the job and vehicle accidents on the way to the fires account for about half. The other half are traumatic deaths while fighting fires.

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Faster response to firefighter deaths is urged

Inspector general responds to MSNBC.com investigation of CDC team

By Bill Dedman

Investigative reporter

MSNBC

updated 3:44 p.m. ET, Fri., Sept. 7, 2007

Federal investigators should respond quickly when a firefighter is killed on the job, should spread the word promptly about equipment safety issues and may need increased legal authority to compel fire departments and unions to cooperate with investigations, according to a report this week by a federal inspector general.

The report was prompted by [an MSNBC.com investigation](#), which revealed in February that 15 firefighters have died since 1998 in fires where a motion sensor called a PASS alarm, or Personal Alert Safety System, either didn't sound or was so quiet that rescuers couldn't find a downed firefighter quickly. Nine of those deaths came after managers at the Centers for Disease Control blocked an investigation by their own fire safety engineer into possible failures of firefighting equipment. Documents showed that the engineer was told by his manager in 2000 to "minimize your fact gathering during investigations."

The inspector general did not contradict any of MSNBC.com's findings: The CDC usually takes more than a month to send investigators to the scene of a fatality; doesn't investigate if the firefighters union or fire department refuses to cooperate; has cut back on the number of firefighter deaths it looks into, and destroys information that could help identify patterns of problems with safety equipment, training or tactics.

These problems are caused by a lack of resources and oversight, not by any wrongdoing or desire to cover up problems, said the inspector general of the U.S. Department of Health and Human Services, Daniel R. Levinson.

(Update: The International Association of Fire Chiefs has released its own recommendations for improving the CDC's investigations. See details [here](#).)

The inspector general's report was requested by U.S. Sen. John Kerry, who said he will seek greater funding for the fire safety program — and stronger congressional oversight.

"I thank the inspector general for conducting a thorough investigation," the Massachusetts Democrat told MSNBC.com. "The IG found not a lack of willpower, but a lack of resources. It's obvious that Congress needs to provide more funding to investigate firefighter deaths and clearly define what it expects from the CDC."

"I intend to work with my colleagues over the coming months to improve oversight of the CDC's investigative process so that the grieving families of fallen firefighters can have no doubt that the government is doing everything it can to give them closure, and to learn from tragedy so we can prevent other families from suffering the same loss in the future."

Firefighter deaths on the job continue to occur about 100 times per year in the U.S., about half from trauma and half from heart attacks and other causes. They have been investigated since 1998 by a team in Morgantown, W.Va., working for the National Institute for Occupational Safety and Health, which is part of the CDC, a unit of Health and Human Services.

The inspector general identified four "opportunities for improvement" in the Fire Fighter Fatality Investigation Program:

- The CDC should have specific guidelines for performance. The inspector general reported that the CDC has "limited resources and lacks specific directions regarding how the program must be administered. As such, there are no standards to hold the organization accountable for how the funds are used or with which to measure the success of the program."
- The CDC should investigate more quickly. MSNBC.com found by studying the CDC's database of cases that

the CDC routinely takes a month — and sometimes as long as nine months — to visit the scene. The inspector general said the CDC "should explore possible ways to initiate investigations closer to the date of the actual fatality. By delaying the investigation, memories of those at the scene may not be as fresh or complete, and in some investigations, the fire site itself has been altered or destroyed by the time NIOSH investigators arrive."

- The CDC should consider seeking increased authority from Congress. The inspector general said individuals are not required to cooperate or to be interviewed by the CDC, causing the CDC to seek "an atmosphere of collegiality," not naming names of individuals or manufacturers in its reports.
- The CDC should publicize its recommendations more quickly, particularly "when there are potential equipment safety concerns."

CDC spokesman Fred Blosser said Thursday that the agency welcomes the inspector general's report. "We will review the findings and recommendations closely, and will respond appropriately," he said. "One hallmark of the program has been the engagement of our partners and stakeholders to seek data and feedback to guide future direction of the program. We all take seriously our shared mission of preventing fatalities and injuries among firefighters."

The problem with PASS devices finally came to public attention in 2005, when the CDC took action, five years after the engineer had been told to minimize his investigation. The CDC called in March 2005 for testing of the alarms, citing five firefighter deaths from 2001 through 2004 in which PASS devices did not sound or were too quiet to be heard.

By looking at the agency's own reports, MSNBC.com found 10 other deaths in six fires from 1998 through 2002, all with PASS devices not heard.

The inspector general's report does not address the question of why the CDC did not raise questions sooner about the PASS alarms, except to note that in some cases the PASS alarms appeared to be too damaged by fire to be tested. It says the CDC "included examinations of PASS devices in its investigations, sent those devices for testing when warranted, and when evidence was sufficient, called attention to potential problems with PASS devices."

When PASS alarms were tested in 2005 in a lab at the National Institute of Standards and Technologies, a problem was found immediately: The volume of the alarm diminished substantially at temperatures as low as 300 degrees Fahrenheit — the sort of heat that firefighters routinely encounter before entering a room with a fire. The heat problem is believed to affect all models. In addition, some manufacturers have had problems with water seeping into the devices. Tougher tests for heat and water are called for in new standards from the National Fire Protection Association, issued this February.

Responding to Kerry's original request, the inspector general focused on the CDC's instructions to fire safety engineer Eric R. Schmidt to "minimize your fact gathering" in investigating the 1999 deaths of three firefighters in Iowa.

The inspector general confirmed that Schmidt received this instruction, but concluded that it merely reflected "a difference of opinion" between Schmidt and his supervisor, Dawn Castillo, over the investigative model to follow. CDC uses a public health approach, focusing more on research questions, not a traditional investigative approach that law enforcement might use, the inspector general explained.

The inspector general's report quotes unnamed CDC managers as saying that Schmidt never raised the issue of PASS devices while he worked there. He disagrees.

His personnel file, provided to MSNBC.com by the CDC, shows that Schmidt was chastised by Castillo in a "performance guidance" memo on Feb. 14, 2000, for taking too long to write the report on the Iowa fire.

Castillo cited as a negative his "persistence in gathering complete autopsy reports," his desire to measure the burned area of a fire hose, and a delay in waiting for the tape recordings of dispatch communications. PASS devices are not mentioned, but Schmidt told MSNBC.com that one reason he told his managers he wanted to listen to the dispatch tapes was to determine whether the PASS alarms could be heard.

Schmidt was fired by Castillo in June 2000, at the end of his probationary period, for "marginal" performance.

Castillo wrote in [Schmidt's termination letter](#) that he had not corrected the issues raised in her earlier memo, was not a good team player, and spent time gathering information "of questionable utility and necessity."

The inspector general said that he concluded that "Mr. Schmidt's termination was not related to his desire to investigate PASS devices."

Schmidt said on Thursday that he had raised the issue of PASS devices several times, as well as other equipment issues, and that his firing didn't result from a mere difference of opinion.

"The inspector general doesn't mention that our written procedures said that we should document the personal protective equipment," Schmidt said. "When your supervisor gives you written direction not to follow the procedures, it puts investigators in a Catch-22. If you keep doing it, it's insubordination. If you don't document it, then they say, 'He didn't tell us about it.'"

The inspector general acknowledges, in a footnote, that Schmidt raised the PASS issue later, in [a letter to the director of NIOSH](#) in October 2002 after he was fired. Schmidt's letter said, "This is but only one example where the managers of this program in Morgantown repeatedly instruct staff to omit critical facts because of 'potential liability to the program.' These managers have shown little, if any regard, for the fact that fire fighters will continue to actually suffer injuries and death in part because NIOSH fails to document critical aspects of these incidents."

Castillo told MSNBC.com in February that CDC managers didn't follow up on Schmidt's letter "because there was nothing substantive to act upon."

Schmidt said the inspector general's report "is further proof that the program shouldn't be run by the CDC. We did nothing wrong, they're saying, but they're saying we've learned from our mistakes. Maybe we need to find another model."

He was the agency's first fire safety engineer, and it hasn't employed another. Castillo remains in charge of the firefighter program. Two managers under her have left the agency since the MSNBC.com report in February; one retired and the other moved to another government job, the CDC said.

Newer models of PASS alarms able to withstand higher temperatures are now coming on the market, although most of the nation's firefighters continue to rely on the older models to bring help if they are trapped or knocked unconscious in a fire.

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Officers denied on-duty death benefits

Despite passage of 2003 law, no claims for medical deaths have been paid

By Bill Dedman
Investigative reporter

MSNBC

updated 12:54 p.m. ET, Tues., March. 27, 2007

BOSTON — More than three years after President Bush signed a law granting federal benefits to families of firefighters, police officers and EMTs who die of heart attacks and strokes on the job, not a dollar has been paid. The U.S. Justice Department has denied all 34 claims that have been decided, and has yet to act on more than 200 others, MSNBC.com has learned.

In the Hometown Heroes Act of 2003, Congress said that heart attacks and strokes on the job should be presumed to be line-of-duty deaths, making survivors eligible for federal benefits.

"I think the Department of Justice has intentionally misinterpreted the intent of Congress and the president," the sponsor of the legislation, Rep. Bob Etheridge, D-N.C., told MSNBC.com on Wednesday.

The Department of Justice confirmed on Wednesday afternoon that no claims have yet been paid, while 34 have been denied and about 206 are pending. A spokeswoman said the delays are caused by the complexity of the cases, not by any disagreement with the intent of the law.

The denials come to light as a [new study demonstrates that firefighters are at much higher risk of heart attacks](#) when fighting fires or responding to alarms. In the study to be published Thursday in the New England Journal of Medicine, researchers from the Harvard School of Public Health found that firefighters face up to 100 times their normal risk of heart attack while working at a fire.

About 11 of the 34 Hometown Heroes claims denied so far were filed by the families of law enforcement officers, according to the Fraternal Order of Police, which also got its numbers this week from the Justice Department.

Most of the remaining denied claims have been filed by families of firefighters. The Justice Department didn't say whether any claims by families of emergency medical workers have been denied.

'Nonroutine strenuous activity'

At least some of the denials were based on Justice Department judgment that some of the duties the firefighters were performing at the time of their deaths do not meet the law's requirement of "nonroutine strenuous activity."

In Kansas, 44-year-old volunteer firefighter Cordell "Cory" French died of a heart attack on Aug. 28, 2004, in the small town of Towanda, east of Wichita. His wife, Kelly, said he had been carrying hoses during a training exercise in the high school parking lot that morning, then collapsed at home that afternoon. She said the Justice Department told her last week that her claim was denied, because his work was "non-strenuous activity."

"He contributed many, many, many hours as a volunteer to that department," Kelly French said. "He was awarded firefighter of the year many times. That day he went to work as a volunteer. He loved it. He was an extremely healthy man. If he was in training, and working with the hoses, that is a strenuous duty."

In New York, the claim by the family of one volunteer firefighter was denied because he had responded to a call but hadn't actually fought the fire, and his duties were therefore "nonstrenuous," said Dave Finger, director of government relations for the National Volunteer Fire Council. He said his account was based on an e-mail from the firefighter's family.

Medical reviews cause delays

Other claims are being held up as the Justice Department searches the medical records for pre-existing medical conditions. The law says that the presumption in favor of the claims can be overturned by "competent medical evidence," but didn't specify what that meant. Families of some firefighters say they have been required to provide 10 years of medical records.

The Justice Department spokeswoman said that only 20 cases have so far begun the medical review process, while about 180 or so haven't reached that stage. The department rewrote the rules for the entire benefit program for public safety officers, postponing any action until September 2006, and delays since then have been caused by the complexity of the cases, she said.

"With few exceptions, PSOB (Public Safety Officer Benefits) death claims involve diverse facts and documents; complex legal issues; beneficiary uncertainties; and frequent outreach to claimants and agencies," said the spokeswoman, Sandra Gunn. "Additionally, if a claim fails to meet the Hometown Heroes Act criteria, it gets processed under the criteria applicable to all other PSOB claims; thus, processing can be extensive and time-consuming, because different tracks must be followed in many cases."

With heart attacks recognized as the leading cause of on-the-job deaths of firefighters, the Hometown Heroes Act easily passed the Congress with support of both parties. President Bush signed the law in a ceremony on Dec. 15, 2003, and both he and Vice President Dick Cheney have used their support for the law as a sure-fire applause line in speeches before fire and police organizations.

But those organizations said this week that the Bush administration's Justice Department has turned the intent of Congress on its head, seeking any reason to deny the claims instead of giving them the positive presumption that the legislation intended. Justice took nearly three years to write rules for the program, and began deciding claims only in recent weeks.

"The Justice Department has been beyond difficult from day one," Harold A. Schaitberger, the general president of the International Association of Fire Fighters, told MSNBC.com. "They've made it pretty clear they don't like the law. I don't think this is about regulatory issue, medical issues, issues of potential fraud. They've done everything in their power to disregard the law, they have stonewalled it. I think it's showing a complete disrespect for the memories of firefighters and law enforcement officers who have laid it on the line for their communities."

'Some sort of political payback'

Schaitberger said it was his view that the administration was holding up the payments as "some sort of political payback" for the union supporting Al Gore in 2000 and John Kerry in 2004.

The Public Safety Officers Benefits' Program became law in 1976, providing death and disability payments primarily to police officers killed in the line of duty. Congress added coverage for firefighters in 1984 and for emergency medical personnel in 1986. In 2002, after the Sept. 11 terrorist attacks, police and fire chaplains were added.

The Hometown Heroes Act of 2003 extended the same benefits to victims of heart attacks and strokes on the job. The death benefit, which is adjusted each October for inflation, is now \$295,194. To qualify, the victim had to have been involved in "nonroutine stressful or strenuous work" in law enforcement, fire protection, prison security or disaster relief, among other duties. And the heart attack or stroke had to occur within 24 hours of such activity. Contractors, such as those widely used by the Forest Service to fight wildland fires, are not eligible for the benefits.

Etheridge, the legislation's sponsor, said the goal of the bill was fairness. "If you go in a building and a beam falls on your head, or if you go in a building and come out and have a heart attack and die, either way you're dead," he said. "... If a soldier dies in battle, we don't check to see what condition that soldier was in when they lost their life."

Widow's claim hinges on judgment calls

The intent of the Congress is being tested by cases such as that of Fire Chief Gary Tilton, from Katy, Texas, just west of Houston.

On Oct. 20, 2004, Tilton was at a church supper when he was called to a traffic accident at a major

intersection. He stood directing traffic and other operations for nearly an hour. Witnesses said the chief, age 58 and overweight, "appeared pale, was breathing a little hard, and sweating," but felt well enough to go home. Three hours later his wife found him collapsed in the shower after suffering a heart attack. He died that night.

The Tilton family's claim is still pending with the Justice Department, but his case demonstrates two judgment calls that the government, so far, has not made in favor of any claimants.

First, was the chief's work "nonroutine stressful or strenuous" activity? The law didn't define that phrase, though the Congress made a point of saying that it didn't include "actions of a clerical, administrative or nonmanual nature." So if the chief had keeled over while pushing papers at the office, he would not have been covered.

The Justice Department rules for the program say that the phrase requires "non-negligible physical exertion" and requires the officer to be involved in a situation that would:

- pose, or appears to pose, "significant dangers, threats or hazards (or reasonably foreseeable risks thereof), not faced by similarly situated members of the public in the ordinary course; and
- "provoke, cause, or occasion an unusually-high level of alarm, fear, or anxiety.

Justice will have to decide: Does directing traffic at a major intersection in the Texas heat qualify?

The Harvard study of 449 heart attack deaths among firefighters nationwide found that 32 percent died when they were involved in fire suppression or other activity at a fire. But less stressful duties were associated with higher-than-expected risk of heart attack as well: 13 percent occurred while responding to an alarm; 17 percent in returning from an alarm; 13 percent in physical training; 9 percent in emergency medical services and other nonfire emergencies; and 15 percent in a fire-station or while performing nonemergency duties.

The second issue open to debate, in Tilton's case, is whether he was at high risk of a heart attack because of pre-existing medical conditions.

Defining 'competent medical evidence'

Congress said that the presumption of a line-of-duty death could be overturned "by competent medical evidence to the contrary," but didn't explain what that meant.

The Justice Department has interpreted this phrase to mean that claims should be denied if there is evidence of a non-duty-related medical factor or event that would have independently caused the stroke or heart attack. That evidence has to rise to "a degree of medical probability" that the other factor was "a substantial factor" in causing the heart attack or stroke, under the Justice Department's interpretation.

The first draft of the regulations from the Bush administration in September 2005 would have used criteria from the Framingham heart study and known risk factors from the American Heart Association and the American Stroke Association to determine whether the officer was already at risk. Because such risk factors include not just medical conditions -- including high blood pressure, high cholesterol and obesity -- but being male, older than 40 and nonwhite, the firefighters union and others argued that use of the criteria would have made it practically impossible for anyone to collect benefits for heart attacks or strokes.

The union lobbied hard for changes, and the Justice Department removed the specific criteria from the final rules issued in August 2006. The union declared a victory.

But the new rules left a void: They don't say what the Department of Justice will use to determine the medical probability.

The suspicions of firefighter advocates were raised when the Justice Department began asking claimants to provide 10 years of medical records.

A history of risk factors

Chief Tilton's records show a history of risk factors for heart problems. At age 58, he was 5 feet 9 inches tall and weighed 343 pounds at his last checkup. He had been diagnosed with high blood pressure, high cholesterol (both of which were well controlled by prescription medication), severe sleep apnea and had a family history of heart problems, according to the report on his death by the Centers for Disease Control, which investigates many firefighter fatalities.

Chest discomfort in 2001 had caused him to have a stress test, which he passed with "no chest pain or shortness of breath with good exercise tolerance." His fire department required no periodic medical evaluations or physical agility tests "for budgetary reasons," the CDC found.

On top of that, he had recently survived cancer. Two months before he died, he underwent surgery for colon cancer, and was undergoing chemotherapy at the time of his attack.

"Before you say, 'Oh my, no wonder he had a heart attack,' I will tell you that he was doing great with the chemo," his wife, Jo Ann Tilton, told MSNBC.com this week. "His blood work was all normal (which is not always the case with chemo). I have a detailed deposition from our doctor describing my husband's health. Several times the doctor has stated that the chemo did not contribute to his attack," she said.

"This is one of the things that makes this ordeal so hard: It is considered a line of duty death, but there are people out there who would say that he would have had a heart attack no matter what the circumstances. I have come to grips with those folks by knowing that my husband lived as a hero and he is being honored for that life.

"Yes, he may have had a heart attack one day, but I am convinced that it would not have necessarily been that day."

Postscript: U.S. Sen. John Kerry, D-Mass., responded to this article by sending a letter to the Department of Justice's inspector general, requesting an investigation into the slow pace of decisions under the Hometown Heroes Act.

"It's wrong to think that the families of first responders who die in the line of duty would be abandoned by their government," Kerry said in a written statement on Mar. 22. "Endless excuses, constant delay, promising one thing then doing another — these are unacceptable examples of a government in Washington that doesn't have the right priorities. Congress didn't pass the Hometown Heroes Act so the Administration could pass the buck. The Department of Justice must change its policy and change it now."

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Still waiting — one widow's story

Wife of Texas fire chief describes efforts to get promised federal benefits

By Jo Ann Tilton

Special to msnbc.com

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Jo Ann Tilton is the widow of Katy, Texas, Fire Chief Gary Tilton, who died of a heart attack on Oct. 20, 2004, after directing traffic at the scene of a traffic accident. This is her account of her efforts to qualify for line-of-duty benefits promised under the Hometown Heroes Act of 2003.

My husband was Chief Gary Tilton and he died of a heart attack shortly after returning home from the scene of a traffic accident in October of 2004. We filed the claim for the Public Safety Officers benefits in January of 2005. To this date, I am still waiting for the claim to be processed.

Let me give you a little background. Approximately one half of the 100 firefighters who die in the line of duty each year die from a cardiac event. Because of this fact, the Hometown Heroes Act was passed and signed into law in December of 2003. The regulations were finally written and put into effect on September 11, 2006. Silly me, I thought the Department of Justice would then begin to process the claims. But, I was wrong. Well, maybe not totally wrong. They will tell you that they did begin the claim process at that point. But what they really began was a long road of delays and excuses. When this claim was filed I was told that it would take up to a year to process. I never dreamed that over two years after the claim was filed I would still be waiting for the claim to be processed. My claim has not been denied. I have not even gotten that far!!

My husband was a firefighter for 31 years and at the time of his death he was living his dream of being the chief of the Katy, Texas, Fire Department. The day of his death was a normal day spent at the fire station. That evening he was called out of church to a car accident at a very bad intersection in our area. While working the scene of the accident he began to have discomfort and had to sit down. He came home shortly after that. He was hot, sweaty, and tired. I really didn't think much about it. After all, that is the way he looked many times after being on a scene of a fire or accident. He went in to take a shower and collapsed in the shower and died. In an instant, my life was changed.

Support from firefighter family

There are no words to describe the support I have felt from the firefighter family. The National Fallen Firefighter Foundation is an unbelievable organization which is always there for us survivors. My husband used to talk about how he could go into any fire station across America and feel at home. I am so honored and proud that I can say that I understand what he meant. I know I could go anywhere and the firefighters would be there for me.

I wish I could say the same for my government. Somehow I just feel certain that those senators and representatives who sponsored the Hometown Heroes Act would proudly list this bill as one of their accomplishments. They would be more than happy to boast how they had given the firefighter families needed benefits. I doubt seriously that they would go on to tell how not one claim has been processed under this law and, to date, no firefighter family has received a penny of benefits under this law!

I can tell you the facts of my husband's death. I can tell you the facts about filing this claim. What I cannot tell you, because there is no way to truly convey my feelings, is the emotional pain that I go through in dealing with this situation. It is such an emotional drain just to pick up that phone to call that my calls have been limited. I have to be in the right frame of mind before I can even think about calling. Then when I do call, I really hope that no one answers and I can just leave a message. Every phone call is a very painful reminder that my husband is no longer here. Because I was told in the beginning that this claim would probably take a year, I did not begin keeping notes of my conversations with the Dept. of Justice until March of 2006.

On March 21, 2006, I made my first call to inquire about the status of my husband's claim. At that time I was told that the final regulations had not been written, but they hoped to have them by late Spring or early Summer.

Questions, but no answers

My next call was on 6-21-06 when I was told that claims were still not being processed and they were looking at August as the target date for the regulations to be written.

On 8-9-06 I was told that claims are still not being processed and they did not know when the regulations would be written.

On 10-2-06 I left a message requesting the status of the claim.

On 10-6-06 I was left a message telling me they had contacted Katy Fire Dept requesting information.

On 10-10-06 I left a message requesting status of the claim.

On 10-11-06 I received a call from the DOJ explaining the information they needed from the fire dept. along with 10 years of medical records.

On 10-23-06 I Fed Exed the fire dept. information along with about 20 years of medical records to the DOJ.

On 11-10-06 I left a message requesting status of the claim.

On 11-17-06 I received a call from the DOJ. The claim specialist stated that she had received the packet of information from me but that my husband's claim had not been sent for medical review.

Awaiting medical review

Later that day I called back and left a message asking when my husband's claim would be sent for medical review. I never received a call back for that message.

On 1-11-07 I left a message requesting status of the claim.

I left messages on 1-23-07, 1-29-07, and 1-30-07 requesting status of the claim.

I received a call back on 1-30-07 stating that the Department of Justice had just completed writing "procedures" for processing these claims. I was told that my husband's claim should be summarized by that Friday, February 2, 2007.

My last call to the DOJ was on 3-6-07. At that time I was told that there are several levels of review. I was told that the summary has been written and the claim is being reviewed by "us" (DOJ?). Next it will go to the physician's group. Once they review it, it will come back to "us" to be reviewed again! When I asked what happened after that she said that she doesn't know because no claim has gotten that far!!

As painful as it is, I will not give up the fight. I cannot imagine how many survivors just give up because they don't know how to fight or they simply don't have the emotional stamina to stick with it. This is a prime example of promises not kept. I am sure our lawmakers would not feel that way because they would quickly tell you how they passed the Hometown Heroes Act. But after the law is passed, no one follows through and sees that the benefits are paid.

I am only one of hundreds waiting for these claims to be processed. My husband has been honored as a hero across this nation. I can only hope that one day I will see the Department of Justice give him the honor that he deserves.

10 years of medical records

The DOJ asked for 10 years of medical records. They wanted any medical records for the 10 years prior to the death. I provided about 20 years. I had it ready to go because I had gotten it when I had to fight the state of Texas for my benefits. I won that case and Texas does not have a presumption like the Hometown Heroes Act does.

My husband was 58 at the time of his death. He had been treated for heart problems (rapid heart beat) within

the year before he died. He had been treated for high blood pressure in the past and his medical records said he had taken medication for high cholesterol although I was never aware of a problem. He was not taking either of those medications at the time of his death. And, yes, he was overweight. Yes, he was at risk for a heart attack.

Would he have had a heart attack on October 20, 2004 if he had not been in the Texas humidity directing traffic (moving the arms to direct traffic causes an aerobic type stress on the heart)? Would he have an attack at that time if he had not have had the adrenaline rush that comes with any fire call? No one knows the answer to that question, but our doctor will tell you the answer is probably not. There were no indications that he was having any type of problem that day. Now, when you ask about my husband's general health, I have to tell you that he had had surgery two months prior to his death for colon cancer. He was undergoing chemo at the time of his death. Before you say, "Oh my, no wonder he had a heart attack", I will tell you that he was doing great with the chemo. His blood work was all normal (which is not always the case with chemo). I have a detailed deposition from our doctor describing my husband's health. Several times the doctor has stated that the chemo did not contribute to his attack. He was a high risk individual because of his weight.

This is one of the things that makes this ordeal so hard. It is considered a line of duty death, but there are people out there who would say that he would have had a heart attack no matter what the circumstances. I have come to grips with those folks by knowing that my husband lived as a hero and he is being honored for that life. Yes, he may have had a heart attack one day, but I am convinced that it would not have necessarily been that day.

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Firefighting raises heart attack risk

Harvard study finds deaths increase even during less-demanding duties

By Bill Dedman
Investigative reporter

MSNBC

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BOSTON — Firefighters face a much higher risk of death from heart attack when battling a blaze — up to 100 times the normal rate — and are more likely to be struck even when they're doing less-strenuous tasks, according to a Harvard study to be published Thursday.

Heart attacks — not burns or smoke — have long been known to be the most frequent cause of firefighter deaths on the job. But the Harvard study, published in the New England Journal of Medicine, establishes the strongest link yet between coronary disease and firefighting duties by examining what firefighters were doing when they were stricken.

Looking at firefighter heart attack deaths nationwide over a decade, the researchers found that the risk of heart attack is highest when firefighters are working at a fire scene — with increased odds ranging from 10 to 100 times the normal risk of heart attack. Although firefighters spend only 1 to 5 percent of their time putting out fires, 32 percent of firefighter deaths from heart attacks occur at fire scenes, the study found.

But the chances of a heart attack also are significantly increased when firefighters are responding to an alarm, returning from an alarm, or engaging in physical training, according to the researchers from the Harvard School of Public Health, who studied 449 deaths. (See sidebar: [Justice Department denies benefits claims for heart attacks.](#))

The study does not identify the specific causes of these job-related attacks or whether firefighters have an overall greater risk of dying from heart problems than the rest of the population, but does note the unique hazards of the profession. Not only do firefighters deal with extreme heat and exertion, they also are exposed to toxic substances and psychological stress.

Stress, conditioning seen as factors

The authors hypothesize that the risk of dying from heart disease may increase during fire suppression because of the effects of strenuous exertion on firefighters who have underlying coronary heart disease. Also, many firefighters are overweight and lack adequate physical fitness, which may be contributing risk factors, they said.

"We hope that our study will reinforce efforts in the firefighting community to improve their health and wellness programs," said Stefanos Kales, the study's lead author and assistant professor in the Department of Environmental Health at the Harvard School of Public Health.

A 2005 study by the National Fire Protection Association showed that more than 70 percent of fire departments lacked fitness and health programs. Kales' team has published previous research documenting a high prevalence of obesity among firefighters. The majority of the nation's firefighters — about 75 percent — are volunteers.

Kales also said that the researchers are hopeful that "these striking results will make physicians who care for firefighters ... more cognizant of the demanding nature of this occupation and get them to be more aggressive with regard to cardiovascular risk reduction."

Earlier studies looked at heart disease rates to see whether firefighters have a greater lifetime risk of heart death than the general population. But because roughly one-third of firefighters and one-third of the general population in developed countries die of cardiovascular disease, those studies were inconclusive.

Deaths correlated with duties

The Harvard researchers took a different tack: Looking at how much time firefighters spend on various duties.

If heart attacks were caused by pre-existing conditions — not by on-the-job activities — then deaths during any firefighting duty would be proportional to the amount of time spent on that duty. But the researchers found more-than-expected deaths during firefighting as well as the other activities.

The team, led by Kales and David Christiani, a professor of occupational medicine and epidemiology in the Departments of Environmental Health and Epidemiology at Harvard, studied all on-duty firefighter deaths from 1994 through 2004, using a memorial database maintained by the U.S. Fire Administration. The researchers excluded deaths resulting from the terrorist attacks of Sept. 11, 2001, as well as those caused by medical conditions other than coronary heart disease. That left them with 449 deaths.

The researchers also estimated the average proportion of time firefighters spend on specific job duties using data from several sources, including 17 large metropolitan fire departments. That is the least-precise information in the study, the researchers said, leading to the wide range of estimates for the increased risk for each activity. Still, even using the most conservative figures, the researchers said, the increased risk is "remarkably high."

Heart attacks fell more firefighters

About 100 firefighters die on the job each year, and heart attacks cause about 45 percent of these deaths, a much higher percentage than for other public safety occupations — 22 percent of the on-the-job deaths among police officers, and 11 percent for emergency medical workers. Overall, heart attacks account for 15 percent of all deaths that occur on the job.

The Harvard study was supported by grants from the National Institute for Occupational Safety and Health and the Massachusetts Public Employees Retirement Administration Commission.

The fire service has begun several campaigns to raise awareness among fire chiefs and firefighters to health issues, including the Heart-Healthy Firefighter Program set up by the National Volunteer Fire Council, and a joint Wellness-Fitness Task Force created by the firefighters union and chiefs association. The National Fallen Firefighters Foundation, which previously focused on the needs of surviving families, also is now involved in prevention.

"From medical evaluations to fitness programs to diet, we are in the process of slowly impacting the incident and fatality numbers," said Deputy Chief Billy Goldfeder of Loveland-Symmes, Ohio, who is vice chairman of the safety, health and survival section of the International Association of Fire Chiefs.

"Firefighters generally love what we do — the longer we can live healthy, the longer we can continue to do the job we love."

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