

to obligate program funds under its subgrant award.

PART 32—PUBLIC SAFETY OFFICERS’ DEATH, DISABILITY, AND EDUCATIONAL ASSISTANCE BENEFIT CLAIMS

Sec.

Subpart A—General Provisions

- 32.2 Computation of time; filing.
- 32.3 Definitions.
- 32.4 Terms; construction, severability; effect.
- 32.5 Evidence.
- 32.6 Payment and repayment.
- 32.7 Fees for representative services.
- 32.8 Exhaustion of administrative remedies.

Subpart B—Death Benefit Claims

- 32.11 Scope of subpart.
- 32.12 Time for filing claim.
- 32.13 Definitions.
- 32.14 PSOB Office determination.
- 32.15 Prerequisite certification.
- 32.16 Payment.
- 32.17 Request for Hearing Officer determination.

Subpart C—Disability Benefit Claims

- 32.21 Scope of subpart.
- 32.22 Time for filing claim.
- 32.23 Definitions.
- 32.24 PSOB Office determination.
- 32.25 Prerequisite certification.
- 32.26 [Reserved]
- 32.27 Motion for reconsideration of negative disability finding.
- 32.28 Reconsideration of negative disability finding.
- 32.29 Request for Hearing Officer determination.

Subpart D—Educational Assistance Benefit Claims

- 32.31 Scope of subpart.
- 32.32 Time for filing claim.
- 32.33 Definitions.
- 32.34 PSOB Office determination.
- 32.35 Disqualification.
- 32.36 Payment and repayment.
- 32.37 Request for Hearing Officer determination.

Subpart E—Hearing Officer Determinations

- 32.41 Scope of subpart.
- 32.42 Time for filing request for determination.

- 32.43 Appointment and assignment of Hearing Officers.
- 32.44 Hearing Officer determination.
- 32.45 Hearings.
- 32.46 Director appeal.

Subpart F—Director Appeals and Reviews

- 32.51 Scope of subpart.
- 32.52 Time for filing Director appeal.
- 32.53 Review.
- 32.54 Director determination.
- 32.55 Judicial appeal.

AUTHORITY: 34 U.S.C. ch. 101, subch. XI; 34 U.S.C. 10110, 10221(a), 10225, 10226, 10251(a), 10261(a)(4) & (b), 10272, 110286, 10287, 10288; Pub. L. 90 351, title IX, sec. 1601, 82 Stat. 239; Pub. L. 94 430, secs. 4 through 6, 90 Stat. 1348; Pub. L. 106–113, div. B, sec. 1000(a)(1) [title I, sec. 108(a)], 113 Stat. 1535, 1501A–20, as amended by Pub. L. 107–56, title VI, sec. 614, 115 Stat. 370, and codified (as amended) as a statutory note to 34 U.S.C. 10110; Pub. L. 106–553, sec. 1(a)(2) [title I, sec. 108], 114 Stat. 2762, 2762A–6; Pub. L. 107 37, secs. 1 and 2, 115 Stat. 219.

SOURCE: 71 FR 46037, Aug. 10, 2006, unless otherwise noted.

§ 32.0 Scope of part.

This part implements the Act, which, as a general matter, authorizes the payment of three different legal gratuities:

- (a) Death benefits;
- (b) Disability benefits; and
- (c) Educational assistance benefits.

[73 FR 76528, Dec. 17, 2008]

Subpart A—General Provisions

§ 32.1 Scope of subpart.

This subpart contains provisions generally applicable to this part.

§ 32.2 Computation of time; filing.

(a) In computing any period of time prescribed or allowed, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a federal legal holiday, or, when the act to be done is a filing with the PSOB Office, a day on which weather or other conditions have caused that Office to be closed or inaccessible, in which event the period runs until the end of the next day that is not one of the aforescribed days.

Department of Justice

§ 32.3

(b) Except as provided in paragraph (g) of this section, a filing is deemed filed with the PSOB Office, a Hearing Officer, the Director, or any other OJP office, -officer, -employee, or -agent, only on the day that it actually is received at the office of the same. When a filing is prescribed to be filed with more than one of the foregoing, it shall be deemed filed as of the day the last such one so receives it.

(c) Except as provided in paragraph (g) of this section, notice is served by the PSOB Office upon an individual on the day that it is—

(1) Mailed, by U.S. mail, addressed to the individual (or to his representative) at his (or his representative's) last address known to such Office; or

(2) Delivered to a courier or other delivery service, addressed to the individual (or to his representative) at his (or his representative's) last address known to such Office.

(d) In the event of withdrawal or abandonment of a filing, the time periods prescribed for the filing thereof shall not be tolled, unless, for good cause shown, the Director grants a waiver.

(e) No claim may be filed (or approved) under the Act, at 34 U.S.C. 10281(a) or (b), with respect to an injury, if a claim under the Act, at 34 U.S.C. 10286 or Public Law 107-37, has been approved, with respect to the same injury.

(f) No claim may be filed (or approved) under the Act, at 34 U.S.C. 10286 or Public Law 107-37, with respect to an injury, if a claim under the Act, at 34 U.S.C. 10281(a) or (b), has been approved, with respect to the same injury.

(g) The Director may prescribe that—

(1) Any filing be filed using electronic means, in which case it shall be deemed filed when it is submitted electronically; and

(2) Any notice, within the meaning of paragraph (c) of this section, be served by the PSOB Office upon an individual by electronic means (such as by telefacsimile or electronic mail addressed to the individual (or to his representative) at his (or his representative's) last address known to such Office), in

which case it shall be deemed served on the day that such notice is sent.

[71 FR 46037, Aug. 10, 2006, as amended at 83 FR 22378, May 15, 2018]

§ 32.3 Definitions.

Act means the Public Safety Officers' Benefits Act of 1976 (generally codified at 34 U.S.C. 10281, *et seq.*; part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968) (including (uncodified) sections 4 through 6 thereof (payment in advance of appropriations, rule of construction and severability, and effective date and applicability)), as applicable (cf. § 32.4(d)) according to its effective date and those of its various amendments (*e.g.*, Sep. 29, 1976 (deaths of State and local law enforcement officers and firefighters); Oct. 3, 1996 (educational assistance (federal law enforcement officer disabled)); Nov. 14, 1998 (educational assistance (officer (other than federal law enforcement officer) disabled)); Oct. 30, 2000 (disaster relief workers); Sep. 11, 2001 (chaplains and insurance beneficiaries); Dec. 15, 2003 (certain heart attacks and strokes); Apr. 5, 2006 (designated beneficiaries); June 1, 2009 (certain members of rescue squads or ambulance crews); Jan. 2, 2013 (designated beneficiaries; vascular ruptures); and June 2, 2017 (certain administrative changes)); and also includes Public Law 107-37 and section 611 of the USA PATRIOT Act (both of which relate to payment of benefits, described under subpart 1 of such part L, in connection, respectively, with the terrorist attacks of Sept. 11, 2001, or with such terrorist attacks as may occur after Oct. 26, 2001), as well as the proviso under the Public Safety Officers Benefits heading in title II of division B of section 6 of Public Law 110-161.

Adopted child—An individual is an adopted child of a public safety officer only if—

(1) The individual is legally adopted by the officer; or

(2) As of the injury date, and not being a stepchild, the individual was—

(i) Known by the officer not to be his biological first-generation offspring; and

(ii) After the officer obtained such knowledge, in a parent-child relationship with him.

Authorized commuting means travel (not being described in the Act, at 34 U.S.C. 10282, and not being a frolic or detour) by a public safety officer to and from work (at a situs (for the performance of line of duty activity or action) authorized or required by his public safety agency)—

(1) In the course of actually responding (as authorized)—

(i) Directly to a fire, rescue, or police emergency; or

(ii) To a particular and extraordinary request (by such public safety agency) for that specific officer to perform public safety activity (including emergency response activity the agency is authorized to perform), within his line of duty; or

(2) Under circumstances not described in paragraph (1) of this definition—

(i) While using a vehicle provided by such agency, pursuant to a requirement or authorization by such agency that he use the same for travel to and from work; or

(ii) While using a vehicle not provided by such agency, pursuant to a requirement by such agency that he use the same for work.

Biological means genetic, but does not include circumstances where the genetic donation (under the laws of the jurisdiction where the offspring is conceived) does not (as of the time of such conception) legally confer parental rights and obligations.

BJA means the Bureau of Justice Assistance, OJP.

Candidate-officer means an individual who is officially enrolled or -admitted, as a cadet or trainee, in candidate-officer training.

Candidate-officer training means a formal and officially recognized program of instruction or of training (*e.g.*, a police or fire academy) that is specifically intended to result, directly or immediately upon completion, in—

(1) Commissioning of such individual as a law enforcement officer;

(2) Conferral upon such individual of official authority to engage in fire suppression (as an officer or employee of a public fire department or as an officially recognized or -designated member of a legally organized volunteer fire department); or

(3) The granting to such individual of official authorization or -license to engage in rescue activity, or in the provision of emergency medical services, as a member of a rescue squad or ambulance crew that is (or is part of) the agency or entity sponsoring the individual's enrollment or admission

Cause—A death, injury, or disability is caused by intentional misconduct if—

(1) The misconduct is a substantial factor in bringing it about; and

(2) It is a reasonably foreseeable result of the misconduct.

Certification means a formal assertion of a fact (or facts), in a writing that is—

(1) Expressly intended to be relied upon by the PSOB determining official in connection with the determination of a claim specifically identified therein;

(2) Expressly directed to the PSOB determining official;

(3) Legally subject to the provisions of 18 U.S.C. 1001 (false statements) and 1621 (perjury), and 28 U.S.C. 1746 (declarations under penalty of perjury), and expressly declares the same to be so;

(4) Executed by a natural person with knowledge of the fact (or facts) asserted and with legal authority to execute the writing (such as to make the assertion legally that of the certifying party), and expressly declares the same (as to knowledge and authority) to be so;

(5) In such form as the Director may prescribe from time to time;

(6) True, complete, and accurate (or, at a minimum, not known or believed by the PSOB determining official to contain any material falsehood, incompleteness, or inaccuracy); and

(7) Unambiguous, precise, and unequivocal, in the judgment of the PSOB determining official, as to any fact asserted, any matter otherwise certified, acknowledged, indicated, or declared, and any provision of this definition.

Certification described in the Act, at 34 U.S.C. 10286 or Public Law 107-37 means a certification, acknowledging all the matter specified in § 32.5(f)(1) and (2)—

(1) In which the fact (or facts) asserted is the matter specified in § 32.5(f)(3);

Department of Justice

§ 32.3

(2) That expressly indicates that all of the terms used in making the assertion described in paragraph (1) of this definition (or used in connection with such assertion) are within the meaning of the Act, at 34 U.S.C. 10286 or Public Law 107-37, and of this part; and

(3) That otherwise satisfies the provisions of the Act, at 34 U.S.C. 10286 or Public Law 107-37, and of this part.

Chaplain means a clergyman, or other individual trained in pastoral counseling, who meets the definition provided in the Act, at 34 U.S.C. 10284(2).

Child of a public safety officer means an individual—

(1) Who meets the definition provided in the Act, at 34 U.S.C. 10284(3); and

(i) Meets the definition provided in the Act, at 42 U.S.C. 3796b(3), in any claim—

(A) Arising from the public safety officer's death, in which the death was simultaneous (or practically simultaneous) with the injury; or

(B) Filed after the public safety officer's death, in which the claimant is the officer's—

(1) Biological child, born after the injury date;

(2) Adopted child, adopted by him after the injury date; or

(3) Stepchild, pursuant to a marriage entered into by him after the injury date; or

(ii) In any claim not described in paragraph (1)(i) of this definition—

(A) Meets (as of the injury date) the definition provided in the Act, at 42 U.S.C. 3796b(3), *mutatis mutandis* (i.e., with "deceased" and "death" being substituted, respectively, by "deceased or disabled" and "injury"); or

(B) Having been born after the injury date, is described in paragraph (1)(i)(B)(1), (2), or (3) of this definition; and

(2) With respect to whom the public safety officer's parental rights have not been terminated, as of the injury date.

Claim means a request (in such form, and containing such information, as the Director may require from time to time) for payment of benefits under this part, where the individual seeking payment has affirmatively requested that the PSOB Office proceed to deter-

mination on the basis of the supporting evidence filed by or on behalf of the individual (and any associated legal arguments so filed) at or before the time of that affirmative request: *Provided*, That nothing in this definition shall be understood to preclude any PSOB determining official from (at any time) obtaining or considering other evidence in connection with a determination of the claim.

Claimant means an individual who has filed a claim on his own behalf or on whose behalf a claim has been filed.

Commonly accepted means generally agreed upon within the medical profession.

Convincing evidence means clear and convincing evidence.

Crime means an act or omission punishable as a criminal misdemeanor or felony.

Criminal laws means that body of law that declares what acts or omissions are crimes and prescribes the punishment that may be imposed for the same.

Department or agency—An entity is a department or agency within the meaning of the Act, at 34 U.S.C. 10284(8), and this part, only if the entity is—

(1) A court;

(2) An agency described in the Act, at 34 U.S.C. 10284(9)(B) or (C); or

(3) Otherwise a public entity—

(i) That is legally an express part of the internal organizational structure of the relevant government;

(ii) That has no legal existence independent of such government; and

(iii) Whose obligations, acts, omissions, officers, and employees are legally those of such government.

Determination means the approval or denial of a claim (including an affirmation or reversal pursuant to a motion for reconsideration under § 32.27).

Director means the Director of BJA.

Direct and proximate cause—Except as may be provided in the Act, at 34 U.S.C. 10281(k), something directly and proximately causes a wound, condition, or cardiac-event, if it is a substantial factor in bringing the wound, condition, or cardiac-event about.

Direct and proximate result of an injury—Except as may be provided in the Act, at 34 U.S.C. 10281(k), a death or

disability results directly and proximately from an injury if the injury is a substantial factor in bringing it about.

Disaster relief activity means activity or an action encompassed within the duties described in the Act, at 34 U.S.C. 10284(9)(B) or (C).

Disaster relief worker means any individual who meets the definition provided in the Act, at 34 U.S.C. 10284(9)(B) or (C).

Disturbance includes any significant and negative alteration, any significant negative deviation from the objectively normal, or any significant deterioration.

Divorce means a legally-valid (for civil purposes) dissolution of the bond of wedlock (i.e., the bond of marriage), except that, otherwise, and notwithstanding any other provision of law, a spouse (or purported spouse) of an individual shall be considered to be divorced from that individual within the meaning of this definition if, subsequent to his marriage (or purported marriage) to that individual (and while that individual is living), the spouse (or purported spouse)—

- (1) Holds himself out as being divorced from, or not being married to, the individual;
- (2) Holds himself out as being married to another individual; or
- (3) Was a party to a ceremony purported by the parties thereto to be a marriage between the spouse (or purported spouse) and another individual.

Drugs or other substances means—

(1) Controlled substances within the meaning of the drug control and enforcement laws, at 21 U.S.C. 802(6), including any active metabolite (i.e., any metabolite whose introduction into (or presence otherwise in) the human body, ordinarily or objectively can result in a disturbance of mental or physical faculties) of any such controlled substance; or

(2) Any physical matter (other than alcohol, or anything described in paragraph (1) of this definition) whose introduction into (or presence otherwise in) the human body, ordinarily or objectively can result in a disturbance of mental or physical faculties.

Educational/academic institution means an institution whose primary

purpose is educational or academic learning.

Eligible payee means—

(1) An individual (other than the officer) described in the Act, at 34 U.S.C. 10281(a), with respect to a claim under subpart B of this part; or

(2) An individual described in the Act, at 34 U.S.C. 10281(b), with respect to a claim under subpart C of this part.

Emergency medical services means—

(1) First-response emergency medical care (other than in a permanent medical-care facility); or

(2) Transportation of persons in medical distress (or under emergency conditions) to medical-care facilities.

Emergency response activity means response to a fire-, rescue-, or police emergency.

Employed by a public agency—A public safety officer is employed, within the meaning of the Act, at 34 U.S.C. 10286 or Public Law 107-37, by a public agency, when he—

(1) Is employed by the agency in a civilian capacity; and

(2) Is—

(i) Serving the agency in an official capacity (with respect to officers described in the Act, at 34 U.S.C. 10284(9)(A));

(ii) Performing official duties as described in the Act, at 34 U.S.C. 10284(9)(B) or (C) (with respect to disaster relief workers).

(iii) Engaging in activity (or in the provision of services) described in the Act, at 34 U.S.C. 10284(9)(D), under the authority (or by the license) of a public agency (with respect to rescue squad or ambulance crew members).

Employee does not include—

(1) Any independent contractor; or

(2) Any individual who is not eligible to receive death or disability benefits from the purported employer on the same basis as a regular employee of such employer would.

Employment in a civilian capacity refers to status as a civilian, rather than to the performance of civilian functions.

Filing means any claim, request, motion, election, petition, or appeal, and any item or matter (e.g., evidence, certifications, authorizations, waivers, legal arguments, or lists) that is, or may be, filed with the PSOB Office.

Department of Justice

§ 32.3

Fire protection means—

- (1) Suppression of fire;
- (2) Hazardous-material response; or
- (3) Emergency medical services or rescue activity of the kind performed by firefighters.

Fire-, rescue-, or police emergency includes disaster-relief emergency.

Firefighter means an individual who—

- (1) Is trained (or is receiving candidate-officer training) in—
 - (i) Suppression of fire; or
 - (ii) Hazardous-material response; and
- (2) Has the legal authority or responsibility to engage in the suppression of fire, as—

(i) An employee (or candidate-officer) of the public agency he serves, which legally recognizes him to have such (or, at a minimum, does not deny (or has not denied) him to have such); or

(ii) An individual otherwise included within the definition provided in the Act, at 34 U.S.C. 10284(4).

Foundational evidence as to status and injury means supporting evidence (filed by a claimant at or before the time his claim is filed) that constitutes the basis for his belief or assertion that—

(1) The individual upon whose injury the claim is predicated—

(i) Was a public safety officer as of the injury date; and

(ii) As the direct and proximate result of a personal injury sustained in the line of duty, either—

(A) Died (with respect to a claim under subpart B of this part); or

(B) Became permanently and totally disabled (with respect to a claim under subpart C of this part); and

(2) With respect to a claim under subpart B of this part, the claimant is an eligible payee.

Functionally within or -part of—No individual shall be understood to be functionally within or -part of a public agency solely by virtue of an independent contractor relationship.

Gross negligence means great, heedless, wanton, indifferent, or reckless departure from ordinary care, prudence, diligence, or safe practice (which departure is without reasonable excuse and is objectively unjustified)—

(1) In the presence of serious risks that are known or obvious;

(2) Under circumstances where it is highly likely that serious harm will follow; or

(3) In situations where a high degree of danger is apparent.

Hazardous-material response means emergency response to the threatened or actual release of hazardous materials, where life, property, or the environment is at significant risk.

Heart attack means—

(1) A myocardial infarction; or

(2) A cardiac-event (i.e., cessation, interruption, arrest, or other similar disturbance of heart function), not included in paragraph (1) of this definition, that is—

(i) Acute; and

(ii) Directly and proximately caused by a pathology (or pathological condition) of the heart or of the coronary arteries.

Illegitimate child—An individual is an illegitimate child of a public safety officer only if he is a natural child of the officer, and the officer is not married to the other biological parent at (or at any time after) the time of his conception.

Incapable of self-support because of physical or mental disability—An individual is incapable of self-support because of physical or mental disability if he is under a disability within the meaning of the Social Security Act, at 42 U.S.C. 423(d)(1)(A), applicable *mutatis mutandis*.

Independent contractor includes any volunteer, servant, employee, contractor, or agent, of an independent contractor.

Injury means a traumatic physical wound (or a traumatized physical condition of the body) directly and proximately caused by external force (such as bullets, explosives, sharp instruments, blunt objects, or physical blows), chemicals, electricity, climatic conditions, infectious disease, radiation, virus, or bacteria, and includes (with respect to a WTC responder) a WTC-related health condition, but does not include—

(1) Any occupational disease; or

(2) Any condition of the body caused or occasioned by stress or strain.

Injury date—Except with respect to claims under the Act, at 34 U.S.C.

§ 32.3

28 CFR Ch. I (7-1-18 Edition)

10281(k) (where, for purposes of determining beneficiaries under the Act, at 34 U.S.C. 10281(a), it generally means the time of the engagement or participation referred to in the Act, at 34 U.S.C. 10281(k)(1)), injury date means the time of the line of duty injury that—

(1) Directly and proximately results in the public safety officer's death, with respect to a claim under—

- (i) Subpart B of this part; or
- (ii) Subpart D of this part, by virtue of his death; or

(2) Directly (or directly and proximately) results in the public safety officer's total and permanent disability, with respect to a claim under—

- (i) Subpart C of this part; or
- (ii) Subpart D of this part, by virtue of his disability.

Instrumentality means entity, and does not include any individual, except that, subject to §32.5(m), no entity shall be considered an instrumentality within the meaning of the Act, at 34 U.S.C. 10284(8), or this part, unless, as of the injury date,

(1) The entity—

(i) Is legally established, -recognized, or -organized, such that it has legal existence; and

(ii) Is so organized and controlled, and its affairs so conducted, that it operates and acts solely and exclusively as a functional part of the relevant government, which legally recognizes it as such (or, at a minimum, does not deny (or has not denied) it to be such); and

(2) The entity's—

(i) Functions and duties are solely and exclusively of a public character;

(ii) Services are provided generally to the public as such government would provide if acting directly through its public employees (*i.e.*, they are provided without regard to any particular relationship (such as a subscription) a member of the public may have with such entity); and

(iii) Acts and omissions are, and are recognized by such government as (or, at a minimum, not denied by such government to be), legally—

(A) Those of such government, for purposes of sovereign immunity; or

(B) The responsibility of such government, for purposes of tort liability.

Intention—A death, injury, or disability is brought about by a public safety officer's intention if—

(1) An intentional action or activity of his is a substantial factor in bringing it about; and

(2) It is a reasonably foreseeable result of the intentional action or activity.

Intention-notice filer means an individual—

(1) Who believes that he may be an eligible payee;

(2) Who has filed a notice of intention to file a claim; and

(3) Who has no claim pending.

Intentional action or activity means activity or action (other than line of duty activity or action), including behavior, that is—

(1) A result of conscious volition, or otherwise voluntary;

(2) Not a result of legal insanity or of impulse that is legally and objectively uncontrollable; and

(3) Not performed under legal duress or legal coercion of the will.

Intentional misconduct—A public safety officer's action or activity is intentional misconduct if—

(1) As of the date it is performed,

(i) Such action or activity—

(A) Is in violation of, or otherwise prohibited by, any statute, rule, regulation, condition of employment or service, official mutual-aid agreement, or other law; or

(B) Is contrary to the ordinary, usual, or customary practice of similarly-situated officers within his public safety agency; and

(ii) He knows, or reasonably should know, that it is so in violation, prohibited, or contrary; and

(2) Such action or activity—

(i) Is intentional; and

(ii) Is—

(A) Performed without reasonable excuse; and

(B) Objectively unjustified.

Involvement—An individual is involved in crime and juvenile delinquency control or reduction, or enforcement of the criminal laws (including juvenile delinquency), only if he is an officer (including a candidate-officer) of a public agency and, in that capacity, has legal authority or -responsibility to arrest, apprehend, prosecute,

Department of Justice

§ 32.3

adjudicate, correct or detain (in a prison or other detention or confinement facility), or supervise (as a parole or probation officer), persons who are alleged or found to have violated the criminal laws, and is recognized by such agency, or the relevant government (or, at a minimum, not denied by such agency, or the relevant government), to have such authority and responsibility.

Itemized description of representative services provided—A description of representative services provided is itemized only when it includes—

(1) The beginning and end dates of the provision of the services;

(2) An itemization of the services provided and the amount of time spent in providing them; and

(3) An itemization of the expenses incurred in connection with the services provided for which reimbursement is sought.

Kinds of public safety officers—The following are the different kinds of public safety officers:

(1) Law enforcement officers;

(2) Firefighters;

(3) Chaplains;

(4) Members of rescue squads or ambulance crews; and

(5) Disaster relief workers.

Law enforcement means enforcement of the criminal laws, including—

(1) Control or reduction of crime or of juvenile delinquency;

(2) Prosecution or adjudication of individuals who are alleged or found to have violated such laws;

(3) Prison security activity; and

(4) Supervision of individuals on parole or probation for having violated such laws.

Line of duty activity or action—Subject to § 32.5(j) and (k), activity or an action is performed in the line of duty, in the case of a public safety officer who is (as of the injury date)—

(1) A law enforcement officer or a firefighter—

(i) Whose primary function (as applicable) is public safety activity, only if, not being described in the Act, at 34 U.S.C. 10282(a), and not being commuting or a frolic or detour—

(A) It is activity or an action that he is obligated or authorized by statute, rule, regulation, condition of employ-

ment or service, official mutual-aid agreement, or other law, to perform (including any social, ceremonial, or athletic functions (or any official training programs of his public agency) to which he is assigned, or for which he is compensated), under the auspices of the public agency he serves; and

(B) Such agency (or the relevant government) legally recognizes that activity or action to have been so obligated or authorized at the time performed (or, at a minimum, does not deny (or has not denied) it to have been such); or

(ii) Whose primary function is not public safety activity, only if, not being described in the Act, at 34 U.S.C. 10282(a), and not being commuting or a frolic or detour—

(A) It is activity or an action that he is obligated or authorized by statute, rule, regulation, condition of employment or service, official mutual-aid agreement, or other law, to perform (including any social, ceremonial, or athletic functions (or any official training programs of his public agency) to which he is assigned, or for which he is compensated), under the auspices of the public agency he serves;

(B) It is performed (as applicable) in the course of public safety activity (including emergency response activity the agency is authorized to perform), or taking part (as a trainer or trainee) in an official training program of his public agency for such activity, and such agency (or the relevant government) legally recognizes it to have been such at the time performed (or, at a minimum, does not deny (or has not denied) it to have been such); and

(C) Such agency (or the relevant government) legally recognizes (or, at a minimum, does not deny (or has not denied) that activity or action to have been—

(1) Obligated or authorized (as described in paragraph (1)(ii)(A) of this definition) at the time performed; and

(2) Performed as described in paragraph (1)(ii)(B) of this definition;

(2) A disaster relief worker, only if, not being described in the Act, at 34 U.S.C. 10282(a), and not being commuting or a frolic or detour, it is disaster relief activity, and the public agency in which he is an employee (or

§ 32.3

28 CFR Ch. I (7–1–18 Edition)

the relevant government), being described in the Act, at 34 U.S.C. 10284(9)(B) or (C), legally recognizes it to have been such at the time performed (or, at a minimum, does not deny (or has not denied) it to have been such); or

(3) A chaplain, only if, not being described in the Act, at 34 U.S.C. 10282(a), and not being commuting or a frolic or detour—

(i) It is activity or an action that he is obligated or authorized by statute, rule, regulation, condition of employment or service, official mutual-aid agreement, or other law, to perform, under the auspices of the public agency he serves, and such agency (or the relevant government) legally recognizes it to have been such at the time performed (or, at a minimum, does not deny (or has not denied) it to have been such); and

(ii) It is performed in the course of responding to a fire-, rescue-, or police emergency, and such agency (or the relevant government) legally recognizes it to have been such at the time performed (or, at a minimum, does not deny (or has not denied) it to have been such).

(4) A member of a rescue squad or ambulance crew, only if, not being described in the Act, at 34 U.S.C. 10282(a), and not being commuting or a frolic or detour, it is performed in the course of rescue activity (or of the provision of emergency medical services) that he is authorized or licensed, by law and by his public safety agency, to engage in (or provide) as described in the Act, at 34 U.S.C. 10284(9)(D), and such agency (and the relevant government) legally recognizes it to have been such at the time performed (or, at a minimum, does not deny (or has not denied) it to have been such).

Line of duty injury—An injury is sustained in the line of duty only if—

(1) It is sustained in the course of—

(i) Performance of line of duty activity or a line of duty action; or

(ii) Authorized commuting; or

(2) In connection with any claim in which the injury is not sustained as described in paragraph (1) of this definition:

(i) The injured party's status as a public safety officer was a substantial contributing factor in the injury; and

(ii) Where the injury is brought about by the hostile action of an individual—

(A) The individual knew of the injured party's status as a public safety officer; and

(B) Nothing else motivated the individual's taking of his hostile action to so great a degree as either of the following did:

(1) The injured party's status as a public safety officer; or

(2) Retaliation for line of duty activity or a line of duty action performed by a public safety officer (including the injured party).

Mental faculties means brain function.

Natural child—An individual is a natural child of a public safety officer only if he is a biological child of the officer, and the officer is alive at the time of his birth.

Notice of intention to file a claim—Nothing shall be understood to be a notice of intention to file a claim unless it names the individual upon whose injury such a claim would be predicated and otherwise is in such form, and contains such other information, as the Director may require from time to time therefor.

Occupational disease means a disease (including an ailment or condition of the body) that routinely constitutes a special hazard in, or is commonly regarded as a concomitant of, an individual's occupation.

Official capacity—Subject to § 32.5(1), an individual serves a public agency in an official capacity only if—

(1) He is officially authorized, -recognized, or -designated (by such agency) as functionally within or -part of it; and

(2) His acts and omissions, while so serving, are legally those of such agency, which legally recognizes them as such (or, at a minimum, does not deny (or has not denied) them to be such).

Official duties means duties that are officially authorized, -recognized, or -designated by an employing entity, such that the performance of those duties is legally the action of such entity, which legally recognizes it as such (or, at a minimum, does not deny (or has not denied) it to be such).

Department of Justice

§ 32.3

Official training program of a public safety officer's public safety agency means a program—

(1) That is officially sponsored, -conducted, or -authorized by his public safety agency; and

(2) Whose purpose is to train public safety officers of his kind in (or to improve their skills in), specific activity or actions encompassed within their respective lines of duty.

Officially recognized or designated employee member of a rescue squad or ambulance crew means an employee member of a rescue squad or ambulance crew (described in the Act, at 34 U.S.C. 10284(7)) who is officially recognized (or officially designated) as such an employee member, by such squad or crew.

Officially recognized or designated member of a department or agency means a member of a department or agency, or of an instrumentality, of a government described in the Act, at 34 U.S.C. 10284(8), who is officially recognized (or officially designated) as such a member by the same.

Officially recognized or designated public employee of a department or agency means a public employee of a department or agency who is officially recognized (or officially designated) as a public safety officer, by the same.

Officially recognized or designated volunteer member of a rescue squad or ambulance crew means a volunteer member of a rescue squad or ambulance crew (described in the Act, at 34 U.S.C. 10284(7)) who is officially recognized (or officially designated) as such a volunteer member, by such squad or crew.

OJP means the Office of Justice Programs, U.S. Department of Justice.

Parent means a father or a mother.

Parent-child relationship means a relationship between a public safety officer and another individual, in which the officer has the role of parent (other than biological or legally-adoptive), as shown by convincing evidence.

Performance of duties in a grossly negligent manner at the time of death or catastrophic injury means gross negligence, as of or near the injury date, in the course of authorized commuting or performance of line of duty activity or a line of duty action, where such negligence is a substantial contributing

factor in bringing such death or injury about.

Posthumous child—An individual is a posthumous child of a public safety officer only if he is a biological child of the officer, and the officer is—

(1) Alive at the time of his conception; and

(2) Deceased at or before the time of his birth.

Prison security activity means correctional or detention activity (in a prison or other detention or confinement facility) of individuals who are alleged or found to have violated the criminal laws.

PSOB determining official means, as applicable, any of the following:

- (1) The PSOB Office;
- (2) The Hearing Officer; or
- (3) The Director.

PSOB Office means the unit of BJA that directly administers the Public Safety Officers' Benefits program.

Public employee means—

(1) An employee of a government described in the Act, at 34 U.S.C. 10284(8), (or of a department or agency thereof) and whose acts and omissions while so employed are legally those of such government, which legally recognizes them as such (or, at a minimum, does not deny (or has not denied) them to be such); or

(2) An employee of an instrumentality of a government described in the Act, at 34 U.S.C. 10284(8), who is eligible to receive disability benefits (or whose survivors are eligible to receive death benefits) from such government on the same basis as an employee of that government (within the meaning of paragraph (1) of this definition), or his survivors, would.

Public employee of a department or agency means a public employee whose public agency employer is the department or agency.

Public safety activity means any of the following:

- (1) Law enforcement;
- (2) Fire protection;
- (3) Rescue activity; or
- (4) The provision of emergency medical services.

Public safety agency means—

- (1) A public agency—

§ 32.3

28 CFR Ch. I (7-1-18 Edition)

(i) That an individual described in the Act, at 34 U.S.C. 10284(9)(A), serves in an official capacity; or

(ii) For which an employee described in the Act, at 34 U.S.C. 10284(9)(B) or (C) performs official duties; or

(2) An agency or entity under whose authority (or by whose license) a member of a rescue squad or ambulance crew engages in activity (or in the provision of services) described in the Act, at 34 U.S.C. 10284(9)(D).

Qualified beneficiary—An individual is a qualified beneficiary under the Act, at 34 U.S.C. 10286 or Public Law 107-37, only if he is an eligible payee—

(1) Who qualifies as a beneficiary pursuant to a final agency determination that—

(i) The requirements of the Act, at 34 U.S.C. 10281(a) or (b) (excluding the limitations relating to appropriations), as applicable, have been met; and

(ii) The provisions of this part, as applicable, relating to payees otherwise have been met; and

(2) Whose actions were not a substantial contributing factor to the death of the public safety officer (with respect to a claim under subpart B of this part).

Representative services include expenses incurred in connection with such services.

Rescue activity means search or rescue assistance in locating or extracting from danger persons lost, missing, or in imminent danger of serious bodily harm.

Rescue squad or ambulance crew means a squad or crew whose members (including candidate-officers) are rescue workers, ambulance drivers, paramedics, health-care responders, emergency medical technicians, or other similar workers, who—

(1) Are trained (or are receiving candidate-officer training) in rescue activity or the provision of emergency medical services; and

(2) As such members, have the legal authority and -responsibility to—

(i) Engage in rescue activity; or

(ii) Provide emergency medical services.

September 11, 2001, attacks means September 11, 2001, terrorist attacks, as defined (as of January 17, 2017) at 42 CFR 88.1.

Spouse means an individual with whom another individual lawfully entered into marriage under the law of the jurisdiction in which it was entered into, and includes a spouse living apart from the other individual, other than pursuant to divorce, except that—

(1) In connection with a claim, the term does not include anyone upon whose injury the claim is predicated; and

(2) Notwithstanding any other provision of law—

(i) For an individual purporting to be a spouse on the basis of a common-law marriage (or a putative marriage), or on any other basis, to be considered a spouse within the meaning of this definition, it is necessary (but not sufficient) for the jurisdiction of domicile of the parties to recognize such individual as the lawful spouse of the other individual; and

(ii) In deciding who may be the spouse of a public safety officer—

(A) The relevant jurisdiction of domicile is the officer's (as of the injury date); and

(B) With respect to a claim under subpart B of this part, the relevant date is that of the officer's death.

Stepchild—An individual is a stepchild of a public safety officer only if the individual is the legally-adoptive or biological first-generation offspring of a public safety officer's current, deceased, or former spouse, which offspring (not having been legally adopted by the officer)—

(1) Was conceived before the marriage of the officer and the spouse; and

(2) As of the injury date—

(i) Was known by the officer not to be his biological first-generation offspring; and

(ii) After the officer obtained such knowledge—

(A) Received over half of his support from the officer;

(B) Had as his principal place of abode the home of the officer and was a member of the officer's household; or

(C) Was in a parent-child relationship with the officer.

Stress or strain includes physical stress or strain, mental stress or strain, post-traumatic stress disorder, and depression.

Department of Justice

§ 32.3

Stroke means cerebrovascular accident.

Student means an individual who meets the definition provided in the Act, at 34 U.S.C. 10284(3)(ii), with respect to an educational/academic institution.

Substantial contributing factor—A factor substantially contributes to a death, injury, disability, heart attack, stroke, or vascular rupture, if the factor—

- (1) Contributed to the death, injury, or disability to a significant degree; or
- (2) Is a substantial factor in bringing the death, injury, or disability about.

Substantial factor—A factor substantially brings about a death, injury, disability, wound, condition, cardiac-event, heart attack, or stroke if—

- (1) The factor alone was sufficient to have caused the death, injury, disability, wound, condition, cardiac-event, heart attack, or stroke; or
- (2) No other factor (or combination of factors) contributed to the death, injury, disability, wound, condition, cardiac-event, heart attack, or stroke to so great a degree as it did.

Suppression of fire means extinguishment, physical prevention, or containment of fire, including on-site hazard evaluation.

Supporting-evidence collection period means the period—

- (1) That begins upon the filing of a notice of intention to file a claim, and ends upon the earlier of—
 - (i) One year thereafter (unless, for good cause shown, the Director extends the period); or
 - (ii) The date on which such claim is filed; and
- (2) During which an intention-notice filer may collect and assemble supporting evidence for his intended claim.

Terrorist attack—An event or act is a terrorist attack within the meaning of the Act, at 34 U.S.C. 10286(a), only if the Attorney General determines that—

- (1) There is a reasonable indication that the event or act was (or would be or would have been, with respect to *a priori* prevention or investigation efforts) an act of domestic or international terrorism within the meaning

of the criminal terrorism laws, at 18 U.S.C. 2331; and

(2) The event or act (or the circumstances of death or injury) was of such extraordinary or cataclysmic character as to make particularized factual findings impossible, impractical, unnecessary, or unduly burdensome.

Voluntary intoxication at the time of fatal or catastrophic injury means the following, as shown by any commonly-accepted tissue, -fluid, or -breath test or by other competent evidence:

- (1) With respect to alcohol,
 - (i) In any claim arising from a public safety officer's death in which the death was simultaneous (or practically simultaneous) with the injury, it means intoxication as defined in the Act, at 34 U.S.C. 10284(5), unless convincing evidence demonstrates that the officer did not introduce the alcohol into his body intentionally; and
 - (ii) In any claim not described in paragraph (1)(i) of this definition, unless convincing evidence demonstrates that the officer did not introduce the alcohol into his body intentionally, it means intoxication—

(A) As defined in the Act, at 34 U.S.C. 10284(5), *mutatis mutandis* (i.e., with "post-mortem" (each place it occurs) and "death" being substituted, respectively, by "post-injury" and "injury"); and

(B) As of the injury date; and

(2) With respect to drugs or other substances, it means intoxication as defined in the Act, at 34 U.S.C. 10284(5), as evidenced by the presence (as of the injury date) in the body of the public safety officer—

(i) Of any of the following, unless convincing evidence demonstrates that the introduction of the controlled substance into the body was not a culpable act of the officer's under the criminal laws:

(A) Any controlled substance included on Schedule I of the drug control and enforcement laws (see 21 U.S.C. 812(a));

(B) Any controlled substance included on Schedule II, III, IV, or V of the drug control and enforcement laws (see 21 U.S.C. 812(a)) and with respect to which there is no therapeutic range or maximum recommended dosage;

§ 32.4

28 CFR Ch. I (7–1–18 Edition)

(C) Any controlled substance included on Schedule II, III, IV, or V of the drug control and enforcement laws (see 21 U.S.C. 812(a)) and with respect to which there is a therapeutic range or maximum recommended dosage, at levels above or in excess of such range or dosage; or

(D) Any active metabolite of any controlled substance within the meaning of the drug control and enforcement laws, at 21 U.S.C. 802(6), which metabolite is not itself such a controlled substance;

(ii) Of any drug or other substance (other than one present as described in paragraph (2)(i) of this definition), unless convincing evidence demonstrates that—

(A) The introduction of the drug or other substance into the body was not a culpable act of the officer's under the criminal laws; and

(B) The officer was not acting in an intoxicated manner immediately prior to the injury date.

WTC-related health condition means—

(1) A WTC-related physical health condition determined by the September 11th Victim Compensation Fund, for the specific WTC responder, to meet the definition at section 104.2(i) of this title (as in effect on January 17, 2017);

(2) A WTC-related health condition (other than a mental health condition) that the WTC Health Program has certified, for the specific WTC responder, under (as applicable) 42 U.S.C. 300mm–22(b)(1)(B)(ii) or 42 U.S.C. 300mm–22(b)(2)(A)(ii); or

(3) An illness or health condition, as defined in (and determined pursuant to) 42 U.S.C. 300mm–22(a)(1)(A)(i), that is a WTC-related physical health condition, as defined at section 104.2(i) of this title (as in effect on January 17, 2017).

WTC responder means an individual who—

(1) Meets the definition at 42 U.S.C. 300mm–21(a)(1)(A) and has been identified as enrolled in the WTC Health Program, under 42 CFR 88.3 (as in effect on January 17, 2017);

(2) Meets the definition at 42 U.S.C. 300mm–21(a)(1)(B) and has received an affirmative decision from the WTC

Health Program under 42 CFR 88.6(d)(1) (as in effect on January 17, 2017);

(3) Meets the definition at 42 U.S.C. 300mm–31(a)(1) and—

(i) Has been identified as certified-eligible under 42 CFR 88.7 (as in effect on January 17, 2017); or

(ii) Has received the status of a certified-eligible survivor from the WTC Health Program under 42 CFR 88.12 (as in effect on January 17, 2017);

(4) Has been determined by the September 11th Victim Compensation Fund to be an eligible claimant under section 104.2(b)(1) of this title (as in effect on January 17, 2017); or

(5) Subject to 42 U.S.C. 300mm–21(a)(5), meets the definition at 42 U.S.C. 300mm–21(a)(1).

[71 FR 46037, Aug. 10, 2006, as amended at 73 FR 76528, Dec. 17, 2008; 78 FR 29234, May 20, 2013; 79 FR 35492, June 23, 2014; 83 FR 22378, May 15, 2018]

§ 32.4 Terms; construction, severability; effect.

(a) In determining the meaning of any provision of this part, unless the context should indicate otherwise, the first three provisions of 1 U.S.C. 1 (rules of construction) shall apply.

(b) If benefits are denied to any individual pursuant to the Act, at 34 U.S.C. 10282(a)(4), or otherwise because his actions were a substantial contributing factor to the death of the public safety officer, such individual shall be presumed irrebuttably, for all purposes, not to have survived the officer.

(c) Any provision of this part held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable herefrom and shall not affect the remainder hereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

(d) Unless the same should expressly provide otherwise (e.g., by use of the word “hereafter” in an appropriations proviso), any amendment to the Act (or any statutory enactment otherwise directly referent or -applicable to the

Department of Justice

§ 32.5

program that is the subject of this part), shall apply only with respect to injuries (or, in connection with claims under the Act, at 34 U.S.C. 10281(k), shall apply only with respect to heart attacks, strokes, or vascular ruptures referred to in the Act, at 34 U.S.C. 10281(k)(2)) occurring on or after the date it takes effect.

(e) Unless expressly provided otherwise, any reference in this part to any provision of law not in this part shall be understood to constitute a general reference under the doctrine of incorporation by reference, and thus to include any subsequent amendments to the provision.

[73 FR 76531, Dec. 17, 2008, as amended at 83 FR 22382, May 15, 2018]

§ 32.5 Evidence.

(a) Except as otherwise may be expressly provided in the Act or this part, a claimant has the burden of persuasion as to all material issues of fact, and by the standard of proof of “more likely than not.”

(b) Except as otherwise may be expressly provided in the Act or this part, the PSOB determining official may, at his discretion, consider (but shall not be bound by) the factual findings of a public agency (or public safety agency).

(c) Rules 301 (presumptions), 401 (relevant evidence), 402 (admissibility), 602 to 604 (witnesses), 701 to 704 (testimony), 901 to 903 (authentication), and 1001 to 1007 (contents of writings, records, and photographs) of the Federal Rules of Evidence shall apply, *mutatis mutandis*, to all filings, hearings, and other proceedings or matters. No extrinsic evidence of authenticity as a condition precedent to admissibility shall be required with respect to any document purporting to bear the signature of an expert engaged by the BJA.

(d) In determining a claim, the PSOB determining official may, at his discretion, draw an adverse inference if, without reasonable justification or excuse—

(1) A claimant fails or refuses to file with the PSOB Office—

(i) Such material- or relevant evidence or -information within his possession, control, or ken as may reason-

ably be requested from time to time by such official; or

(ii) Such authorizations or waivers as may reasonably be requested from time to time by such official to enable him (or to assist in enabling him) to obtain access to material- or relevant evidence or -information of a medical, personnel, financial, or other confidential nature;

(2) A claimant under subpart C of this part fails or refuses to appear in person—

(i) At his hearing under subpart E of this part (if there be such a hearing); or

(ii) Before such official (or otherwise permit such official personally to observe his condition), at a time and location reasonably convenient to both, as may reasonably be requested by such official; or

(3) A claimant under subpart B or C of this part fails or refuses to apply for (or to pursue to completion), in timely fashion, the benefits, if any, described in § 32.15(a)(1)(i) or § 32.25(a)(1)(i), respectively.

(e) In determining a claim, the PSOB determining official may, at his discretion, draw an inference of voluntary intoxication at the time of death or catastrophic injury if, without reasonable justification or excuse, appropriate toxicologic analysis (including autopsy, in the event of death) is not performed, and/or the results thereof are not filed with the PSOB Office, where there is credible evidence suggesting that intoxication may have been a factor in the death or injury, or that the public safety officer—

(1) As of or near the injury date, was—

(i) A consumer of alcohol—

(A) In amounts likely to produce a blood-alcohol level of .10 per centum or greater in individuals similar to the officer in weight and sex; or

(B) In any amount, after ever having been treated at an inpatient facility for alcoholism;

(ii) A consumer of controlled substances included on Schedule I of the drug control and enforcement laws (see 21 U.S.C. 812(a)); or

(iii) An abuser of controlled substances included on Schedule II, III, IV, or V of the drug control and enforcement laws (see 21 U.S.C. 812(a)); or

§ 32.5

28 CFR Ch. I (7-1-18 Edition)

(2) Immediately prior to the injury date, was under the influence of alcohol or drugs or other substances or otherwise acting in an intoxicated manner.

(f) In determining a claim under the Act, at 34 U.S.C. 10286 or Public Law 107-37, the certification described therein shall constitute *prima facie* evidence—

(1) Of the public agency's acknowledgment that the public safety officer, as of the injury date, was—

(i) A public safety officer of the kind described in the certification;

(ii) Employed by the agency and performing official functions for, or on behalf of, the agency; and

(iii) One of the following:

(A) With respect to a law enforcement officer, an officer of the agency;

(B) With respect to a firefighter,

(1) An officially recognized or designated member of the agency (if it is a legally organized volunteer fire department); or

(2) An employee of the agency;

(C) With respect to a chaplain,

(1) An officially recognized or designated member of the agency (if it is a legally organized police or volunteer fire department); or

(2) An officially recognized or designated public employee of the agency (if it is a legally organized police or fire department);

(D) With respect to a member of a rescue squad or ambulance crew, an officially recognized or designated employee member or volunteer member of a rescue squad or ambulance crew that is (or is a component of) the agency; or

(E) With respect to a disaster relief worker, an employee of the agency (if it is described in the Act, at 34 U.S.C. 10284(9)(B) or (C));

(2) Of the public agency's acknowledgment that there are no eligible payees other than those identified in the certification; and

(3) That the public safety officer—

(i) Sustained a line of duty injury in connection with public safety activity (or, otherwise, with efforts described in the Act, at 34 U.S.C. 10286 or Public Law 107-37) related to a terrorist attack (under the former statute) or to the terrorist attacks of September 11, 2001 (under the latter statute); and

(ii) As a direct and proximate result of such injury, was (as applicable)—

(A) Killed (with respect to a claim under subpart B of this part); or

(B) Totally and permanently disabled (with respect to a claim under subpart C of this part).

(g) In determining a claim, the PSOB determining official shall have, in addition to the hearing-examiner powers specified at 34 U.S.C. 10225 (hearings, subpoenas, oaths, witnesses, evidence), and to the authorities specified at 34 U.S.C. 10226(b)-(d) (experts, consultants, government resources) and in the Act and this part, the authority otherwise and in any reasonable manner to conduct his own inquiries, as appropriate.

(h) Acceptance of payment (by a payee (or on his behalf)) shall constitute *prima facie* evidence that the payee (or the pay agent)—

(1) Endorses as his own (to the best of his knowledge and belief) the statements and representations made, and the evidence and information provided, pursuant to the claim; and

(2) Is aware (in connection with the claim) of no—

(i) Fraud;

(ii) Concealment or withholding of evidence or information;

(iii) False, incomplete, or inaccurate statements or representations;

(iv) Mistake, wrongdoing, or deception; or

(v) Violation of 18 U.S.C. 287 (false, fictitious, or fraudulent claims), 1001 (false statements), or 1621 (perjury), or 34 U.S.C. 10272 (falsification or concealment of facts).

(i) A public safety officer's response to an emergency call from his public safety agency for him to perform public safety activity (including emergency response activity the agency is authorized to perform) shall constitute *prima facie* evidence of such response's non-routine character.

(j) Public safety activity that is performed by a law enforcement officer or a firefighter shall be presumed to satisfy the requirements of paragraph (1)(i)(A) or (1)(ii)(A) (as the case may be) of the definition of *Line of duty activity or action* in §32.3 if the public safety activity—

Department of Justice

§ 32.6

(1) Was not forbidden (at the time performed) by any applicable statute, rule, regulation, condition of employment or service, official mutual-aid agreement, or other law; and

(2) Occurred—

(i) Within a jurisdiction where he is authorized to act, in the ordinary course, in an official capacity as such a law enforcement officer or firefighter; or

(ii) Within a jurisdiction (not described in the immediately-preceding paragraph) that, at the time the public safety activity was performed, had a statute, rule, regulation, official mutual-aid agreement, or other law, in effect that authorized law enforcement officers or firefighters from outside such jurisdiction to perform, within the jurisdiction, the activity that occurred.

(k) Absent evidence that the public safety activity was forbidden as described in paragraph (j)(1) of this section, the requirements of such paragraph (j) shall be presumed to be satisfied in any case in which full line-of-duty death or disability benefits (as the case may be) have been paid—

(1) By (or on behalf of) any jurisdiction described in paragraph (j)(2) of this section;

(2) With respect to a law enforcement officer or firefighter; and

(3) Upon an administrative or judicial determination in the ordinary course (other than pursuant to a settlement or quasi-settlement) that such law enforcement officer or firefighter sustained an injury in the line of duty that caused his death or disability.

(l) In the event that the presumption established by paragraph (j) of this section should arise pursuant to paragraph (j)(2)(ii) thereof, the law enforcement officer or firefighter shall be presumed to have been serving the jurisdiction described in such paragraph (j)(2)(ii) in an official capacity at the time he performed the public safety activity.

(m) A volunteer fire department that is legally licensed or-authorized to engage in fire suppression shall be presumed to satisfy the requirements of

paragraphs (1)(ii) and (2)(iii) of the definition of *Instrumentality*.

[73 FR 76531, Dec. 17, 2008, as amended at 83 FR 22383, May 15, 2018]

§ 32.6 Payment and repayment.

(a) No payment shall be made to (or on behalf of) more than one individual, on the basis of being a particular public safety officer's spouse. If more than one should qualify, payment shall be made to the one with whom the officer considered himself, as of the injury date, to have the closest relationship, except that the individual (if any) who was a member of the officer's household (as of such date) shall be presumed rebuttably to be such one, unless legal proceedings (by the officer against such member, or vice versa) shall have been pending then in any court.

(b) No payment shall be made, save pursuant to a claim, filed by (or on behalf of) the payee, that (except as provided in the Act, at 34 U.S.C. 10281(c)) has been approved in a final agency determination.

(c) Any amounts that would be paid but for the provisions of paragraph (b) of this section shall be retained by the United States and not paid.

(d) With respect to the amount paid to a payee (or on his behalf) pursuant to a claim, the payee shall repay the following, unless, for good cause shown, the Director grants a full or partial waiver pursuant to the Act, at 34 U.S.C. 10281(m):

(1) The entire amount, if approval of the claim was based, in whole or in material part, on the payee's (or any other person's or entity's) fraud, concealment or withholding of evidence or information, false, incomplete, or inaccurate statements or representations, mistake, wrongdoing, or deception; or

(2) The entire amount subject to divestment, if the payee's entitlement to such payment is divested, in whole or in part, such as by the subsequent discovery of individuals entitled to make equal or superior claims.

(e) At the discretion of the Director, repayment of amounts owing or collectible under the Act or this part may, as applicable, be executed through setoffs against future payments on financial claims under subpart D of this part.

§ 32.7

28 CFR Ch. I (7–1–18 Edition)

(f)(1) If the actual net payment of the Victim Compensation Fund after subtraction of any offset required by law (compensation) made under the September 11th Victim Compensation Fund of 2001 (49 U.S.C. 40101 note) has been paid with respect to an injury, the total amount payable under subpart B or C of this part, with respect to the same injury, shall be reduced by the amount of such payment of compensation.

(2) Nothing in paragraph (f)(1) of this section, or in the Act, at 34 U.S.C. 10281(f)(3), shall be understood to preclude payment under this part before the final payment of compensation under such Fund.

(3) Nothing in the Act, at 34 U.S.C. 10281(f)(3), shall be understood to require reduction of any amount payable under subpart D of this part.

[73 FR 76532, Dec. 17, 2008, as amended at 83 FR 22383, May 15, 2018]

§ 32.7 Fees for representative services.

(a) A person seeking to receive any amount from (or with respect to) a claimant for representative services provided in connection with any matter under this part may petition the PSOB Office for authorization under this section. Such petition shall include—

(1) An itemized description of the services;

(2) The total amount sought to be received, from any source, as consideration for the services;

(3) An itemized description of any representative or other services provided to (or on behalf of) the claimant in connection with other claims or causes of action, unrelated to the Act, before any public agency or non-public entity (including any insurer), arising from the public safety officer's death, disability, or injury;

(4) The total amount requested, charged, received, or sought to be received, from any source, as consideration for the services described in paragraph (a)(3) of this section;

(5) A statement of whether the petitioner has legal training or is licensed to practice law, and a description of any special qualifications possessed by the petitioner (other than legal training or a license to practice law) that

increased the value of his services to (or on behalf of) the claimant;

(6) A certification that the claimant was provided, simultaneously with the filing of the petition, with—

(i) A copy of the petition; and

(ii) A letter advising the claimant that he could file his comments on the petition, if any, with the PSOB Office, within thirty-three days of the date of that letter; and

(7) A copy of the letter described in paragraph (a)(6)(ii) of this section.

(b) Unless, for good cause shown, the Director extends the time for filing, no petition under paragraph (a) of this section shall be considered if the petition is filed with the PSOB Office later than one year after the date of the final agency determination of the claim.

(c) Unless the petition is approved pursuant to paragraph (h)(1) of this section (without regard to the exception thereto), consideration of a petition under paragraph (a) of this section shall be subject to paragraph (d) of this section and shall be based on the following factors:

(1) The nature of the services provided by the petitioner;

(2) The complexity of the claim;

(3) The level of skill and competence required to provide the petitioner's services;

(4) The amount of time spent on the claim by the petitioner;

(5) The results achieved as a function of the petitioner's services;

(6) The level of administrative or judicial review to which the claim was pursued and the point at which the petitioner entered the proceedings;

(7) The ordinary, usual, or customary fee charged by other persons (and by the petitioner) for services of a similar nature; and

(8) The amount authorized by the PSOB Office in similar cases.

(d) Unless the petition is approved pursuant to paragraph (h)(1) of this section (without regard to the exception thereto), no amount in a petition under paragraph (a) of this section shall be approved for—

(1) Any stipulated-, percentage-, or contingency fee;

(2) Services at a rate in excess of that specified in 5 U.S.C. 504(b)(1)(A)(ii) (Equal Access to Justice Act); or

(3) Services provided in connection with—

(i) Obtaining or providing evidence or information previously obtained by the PSOB determining official;

(ii) Preparing the petition; or

(iii) Explaining or delivering an approved claim to the claimant.

(e) Upon a petitioner's failure (without reasonable justification or excuse) to pursue in timely fashion his filed petition under paragraph (a) of this section, the Director may, at his discretion, deem the same to be abandoned, as though never filed. Not less than thirty-three days prior thereto, the PSOB Office shall serve the petitioner and the claimant with notice of the Director's intention to exercise such discretion.

(f) Upon its approving (in whole or in part), or denying, a petition under paragraph (a) of this section, the PSOB Office shall serve notice of the same upon the claimant and the petitioner. Such notice shall specify the amount, if any, the petitioner is authorized to charge the claimant and the basis of the approval or denial.

(g) No agreement for representative services in connection with a claim shall be valid if the agreement provides for any consideration other than under this section. A person's receipt of consideration for such services other than under this section may, among other things, be the subject of referral by BJA to appropriate professional, administrative, disciplinary, or other legal authorities.

(h)(1) Except as provided in paragraph (h)(2) of this section, the PSOB Office shall approve any petition under paragraph (a) of this section for authorization to receive an amount that is not greater than the following, for representative services provided by an individual who was duly licensed to practice law in the jurisdiction in any State:

(i) In connection with a claim that is approved under subpart B or C, an amount equal to three percent of the benefit paid to (or with respect to) the claimant on whose behalf the representative services were provided;

(ii) In connection with a claim approved under subpart E that is subsequently approved under subpart F, an amount equal to six percent of the benefit paid to (or with respect to) the claimant on whose behalf the representative services were provided; and

(iii) In connection with a claim denied under subpart E that is subsequently approved under subpart F, an amount equal to nine percent of the benefit paid to (or with respect to) the claimant on whose behalf the representative services were provided.

(2) In the event that it decides that the amount set forth in paragraph (h)(1) of this section would be excessive (or otherwise inappropriate) for the representative services that form the substance of a particular petition under paragraph (a) of this section, the PSOB Office shall consider the petition pursuant to paragraph (c) of this section.

[71 FR 46037, Aug. 10, 2006, as amended at 83 FR 22383, May 15, 2018]

§ 32.8 Exhaustion of administrative remedies.

No determination or negative disability finding that, at the time made, may be subject to a request for a Hearing Officer determination, a motion for reconsideration, or a Director appeal, shall be considered a final agency determination for purposes of judicial review, unless all administrative remedies have been exhausted.

Subpart B—Death Benefit Claims

§ 32.11 Scope of subpart.

Consistent with § 32.1, this subpart contains provisions applicable to claims made under the Act—

(a) At 34 U.S.C. 10281(a); or

(b) At 34 U.S.C. 10286 or Public Law 107-37, with respect to a public safety officer's death.

[71 FR 46037, Aug. 10, 2006, as amended at 83 FR 22383, May 15, 2018]

§ 32.12 Time for filing claim.

(a) Unless, for good cause shown, the Director extends the time for filing, no claim shall be considered if it is filed with the PSOB Office after whichever of the following is latest:

§ 32.13

28 CFR Ch. I (7-1-18 Edition)

(1) Three years after the public safety officer's death; or

(2) One year after the later of—

(i) A final determination of entitlement to receive, or of denial of, the benefits, if any, described in § 32.15(a)(1)(i); or

(ii) The receipt of the certification described in § 32.15(a)(1)(ii); or

(3) The end of the supporting-evidence collection period.

(b) Unless, for good cause shown, the Director extends the time for filing, no individual may file a notice of intention to file a claim after the later of—

(1) The period described in paragraph (a)(1) of this section; or

(2) The period described in paragraph (a)(2) of this section.

(c) In the event that a claim is filed that fails to identify and provide foundational evidence as to status and injury, the Director shall deny the claim for lack of that foundational evidence. Not less than thirty-three days prior to such denial, the PSOB Office shall serve the claimant with notice of the date on which the Director will deny for that lack of evidence. Upon the claimant's request, filed prior to the date specified for the denial, the Director shall, in lieu of the denial—

(1) Allow the claimant to withdraw his claim; and

(2) Deem (as of the date of the request to withdraw) the claimant to have filed a notice of intention to file a claim, if a notice of intention otherwise filed by the claimant on that date would be timely under paragraph (b) of this section.

(d) Notwithstanding paragraph (a) of this section, unless, for good cause shown, the Director extends the time for filing, no claim based on an injury sustained by a WTC responder and resulting from the September 11, 2001, attacks shall be considered if it is filed with the PSOB Office after the latest of—

(1) The time provided in paragraph (a) of this section;

(2) Two years after the earlier of—

(i) The date on which the WTC-related physical health condition, if any, is determined by the September 11th Victim Compensation Fund, for the WTC responder, to meet the definition

at section 104.2(i) of this title (as in effect on January 17, 2017); or

(ii) The date on which the WTC-related health condition, if any, is certified, for the WTC responder, under (as applicable) 42 U.S.C. 300mm-22(b)(1)(B)(ii) or 42 U.S.C. 300mm-22(b)(2)(A)(ii); or

(3) June 14, 2020.

[83 FR 22384, May 15, 2018]

EFFECTIVE DATE NOTE: At 83 FR 22384, May 15, 2018, § 32.12 was amended by revising paragraph (d), effective June 14 2020. For the convenience of the user, the revised text is set forth as follows:

§ 32.12 Time for filing claim.

* * * * *

(d) Notwithstanding paragraph (a) of this section, unless, for good cause shown, the Director extends the time for filing, no claim based on an injury sustained by a WTC responder and resulting from the September 11, 2001, attacks shall be considered if it is filed with the PSOB Office after the later of—

(1) The time provided in paragraph (a) of this section; or

(2) Two years after the earlier of—

(i) The date on which the WTC-related physical health condition, if any, is determined by the September 11th Victim Compensation Fund, for the WTC responder, to meet the definition at section 104.2(i) of this title (as in effect on January 17, 2017); or

(ii) The date on which the WTC-related health condition, if any, is certified, for the WTC responder, under (as applicable) 42 U.S.C. 300mm-22(b)(1)(B)(ii) or 42 U.S.C. 300mm-22(b)(2)(A)(ii).

§ 32.13 Definitions.

Adoptive parent of a public safety officer means any individual who (not being a step-parent), as of the injury date, was the legally-adoptive parent of the public safety officer, or otherwise was in a child-parent relationship with him.

Beneficiary of a life insurance policy of a public safety officer—An individual (living or deceased on the date of death of the public safety officer) is designated as beneficiary of a life insurance policy of such officer as of such date, only if the designation is, as of such date, legal and valid (as a designation of beneficiary of a life insurance policy) and unrevoked (by such officer or by operation of law) or otherwise untermiated, except that—

(1) Any designation of an individual (including any designation of the biological or adoptive offspring of such individual) made in contemplation of such individual's marriage (or purported marriage) to such officer shall be considered to be revoked by such officer as of such date of death if the marriage (or purported marriage) did not take place, unless preponderant evidence demonstrates that—

(i) It did not take place for reasons other than personal differences between the officer and the individual; or

(ii) No such revocation was intended by the officer; and

(2) Any designation of a spouse (or purported spouse) made in contemplation of or during such spouse's (or purported spouse's) marriage (or purported marriage) to such officer (including any designation of the biological or adoptive offspring of such spouse (or purported spouse)) shall be considered to be revoked by such officer as of such date of death if the spouse (or purported spouse) is divorced from such officer after the date of designation and before such date of death, unless preponderant evidence demonstrates that no such revocation was intended by the officer.

Beneficiary under the Act, at 34 U.S.C. 10281(a)(4)(A)—An individual (living or deceased on the date of death of the public safety officer) is designated, by such officer (and as of such date), as beneficiary under the Act, at 34 U.S.C. 10281(a)(4)(A), only if the designation is, as of such date, legal and valid and unrevoked (by such officer or by operation of law) or otherwise untruncated, except that—

(1) Any designation of an individual (including any designation of the biological or adoptive offspring of such individual) made in contemplation of such individual's marriage (or purported marriage) to such officer shall be considered to be revoked by such officer as of such date of death if the marriage (or purported marriage) did not take place, unless preponderant evidence demonstrates that—

(i) It did not take place for reasons other than personal differences between the officer and the individual; or

(ii) No such revocation was intended by the officer; and

(2) Any designation of a spouse (or purported spouse) made in contemplation of or during such spouse's (or purported spouse's) marriage (or purported marriage) to such officer (including any designation of the biological or adoptive offspring of such spouse (or purported spouse)) shall be considered to be revoked by such officer as of such date of death if the spouse (or purported spouse) is divorced from such officer subsequent to the date of designation and before such date of death, unless preponderant evidence demonstrates that no such revocation was intended by the officer.

Cardiovascular disease includes heart attack and stroke.

Child-parent relationship means a relationship between a public safety officer and another individual, in which the individual (other than the officer's biological or legally-adoptive parent) has the role of parent, as shown by convincing evidence.

Competent medical evidence means evidence that indicates a fact to a degree of medical probability.

Designation on file—A designation of beneficiary under the Act, at 34 U.S.C. 10281(a)(4)(A), is on file with a public safety agency, -organization, or -unit, only if it is deposited with the same by the public safety officer making the designation, for it to maintain with its personnel or similar records pertaining to him.

Direct and proximate result of a heart attack or stroke—A death results directly and proximately from a heart attack or stroke if the heart attack or stroke is a substantial factor in bringing it about.

Engagement in a situation involving law enforcement, fire suppression, rescue, hazardous material response, emergency medical services, prison security, disaster relief, or other emergency response activity—A public safety officer is so engaged only when, within his line of duty—

(1) He is in the course of actually—

(i) Engaging in law enforcement;

(ii) Suppressing fire;

(iii) Responding to a hazardous-material emergency;

(iv) Performing rescue activity;

(v) Providing emergency medical services;

(vi) Performing disaster relief activity; or

(vii) Otherwise engaging in emergency response activity; and

(2) His public safety agency (or the relevant government) legally recognizes him to have been in such course at the time of such engagement (or, at a minimum, does not deny (or has not denied) him so to have been).

Event includes occurrence, but does not include any engagement or participation described in the Act, at 34 U.S.C. 10281(k)(1).

Execution of a designation of beneficiary under the Act, at 34 U.S.C. 10281(a)(4)(A) means the legal and valid execution, by the public safety officer, of a writing that, designating a beneficiary, expressly, specifically, or unmistakably refers to—

(1) The Act (or the program it creates); or

(2) All the death benefits with respect to which such officer lawfully could designate a beneficiary (if there be no writing that satisfies paragraph (1) of this definition).

Execution of a life insurance policy means, with respect to a life insurance policy, the legal and valid execution, by the individual whose life is insured thereunder, of—

(1) The approved application for coverage;

(2) A designation of beneficiary; or

(3) A designation of the mode of benefit.

Life insurance policy on file—A life insurance policy is on file with a public safety agency, -organization, or -unit, only if—

(1) It is issued through (or on behalf of) the same; or

(2) The original (or a copy) of one of the following is deposited with the same by the public safety officer whose life is insured under the policy, for it to maintain with its personnel or similar records pertaining to him:

(i) The policy (itself);

(ii) The declarations page or -statement from the policy's issuer;

(iii) A certificate of insurance (for group policies);

(iv) Any instrument whose execution constitutes the execution of a life insurance policy; or

(v) The substantial equivalent of any of the foregoing.

Medical probability—A fact is indicated to a degree of medical probability, when, pursuant to a medical assessment, the fact is indicated by a preponderance of such evidence as may be available.

Most recently executed designation of beneficiary under the Act, at 34 U.S.C. 10281(a)(4)(A) means the most recently executed such designation that, as of the date of death of the public safety officer, designates a beneficiary.

Most recently executed life insurance policy of a public safety officer means the most recently executed policy insuring the life of a public safety officer that, being legal and valid (as a life insurance policy) upon its execution, as of the date of death of such officer—

(1) Designates a beneficiary; and

(2) Remains legally unrevoked (by such officer or by operation of law) or otherwise untermiated.

Nonroutine strenuous physical activity means line of duty activity that—

(1) Is not excluded by the Act, at 34 U.S.C. 10281(l);

(2) Is not performed as a matter of routine; and

(3) Entails an unusually-high level of physical exertion.

Nonroutine stressful or strenuous physical activity means nonroutine stressful physical activity or nonroutine strenuous physical activity.

Nonroutine stressful physical activity means line of duty activity that—

(1) Is not excluded by the Act, at 34 U.S.C. 10281(l);

(2) Is not performed as a matter of routine;

(3) Entails non-negligible physical exertion; and

(4) Occurs—

(i) With respect to a situation in which a public safety officer is engaged, under circumstances that objectively and reasonably—

(A) Pose (or appear 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

(B) Provoke, cause, or occasion an unusually-high level of alarm, fear, or anxiety; or

(ii) With respect to a training exercise in which a public safety officer participates, under circumstances that objectively and reasonably—

(A) Simulate in realistic fashion situations that pose significant dangers, threats, or hazards; and

(B) Provoke, cause, or occasion an unusually-high level of alarm, fear, or anxiety.

Parent of a public safety officer means a public safety officer's surviving—

(1) Biological or adoptive parent whose parental rights have not been terminated, as of the injury date; or

(2) Step-parent.

Participation in a training exercise—A public safety officer participates (as a trainer or trainee) in a training exercise only when actually taking formal part in a structured activity that itself is—

(1) Within an official training (or -fitness) program of his public safety agency; and

(2) Mandatory, rated (i.e., officially tested, -graded, -judged, -timed, etc.), or directly supervised, -proctored, or -monitored.

Public safety organization or unit means—

(1) The component of a public agency, in which component—

(i) An individual described in the Act, at 34 U.S.C. 10284(9)(A), serves in an official capacity; or

(ii) An employee described in the Act, at 34 U.S.C. 10284(9)(B) or (C) performs official duties; or

(2) The component of an agency or entity, under the authority (or by the license) of which component a member of a rescue squad or ambulance crew engages in activity (or in the provision of services) described in the Act, at 34 U.S.C. 10284(9)(D).

Routine—Neither of the following shall be dispositive in determining whether an activity or action shall be understood to have been performed as a matter of routine:

(1) Being generally described by the public safety agency as routine or ordinary; or

(2) The frequency with which it may be performed.

Something other than the mere presence of cardiovascular disease risk factors means—

(1) Ingestion of controlled substances included on Schedule I of the drug control and enforcement laws (see 21 U.S.C. 812(a)); or

(2) Abuse of controlled substances included on Schedule II, III, IV, or V of the drug control and enforcement laws (see 21 U.S.C. 812(a)).

Step-parent of a public safety officer means a current or former spouse of the legally-adoptive or biological parent (living or deceased) of a public safety officer conceived (or legally adopted) by that parent before the marriage of the spouse and the parent, which spouse (not being a legally-adoptive parent of the officer), as of the injury date,

(1) Received over half of his support from the officer;

(2) Had as his principal place of abode the home of the officer and was a member of the officer's household; or

(3) Was in a child-parent relationship with the officer.

Unrelated — A public safety officer's heart attack, stroke, or vascular rupture is unrelated to the officer's engagement in a situation or participation in a training exercise, when an independent event or occurrence is a substantial contributing factor in bringing the officer's heart attack, stroke, or vascular rupture about.

[61 FR 50213, Sept. 24, 1996, as amended at 73 FR 76832, Dec. 17, 2008; 83 FR 22384, May 15, 2018]

§ 32.14 PSOB Office determination.

(a) Upon its approving or denying a claim, the PSOB Office shall serve notice of the same upon the claimant (and upon any other claimant who may have filed a claim with respect to the same public safety officer). Such notice shall—

(1) Specify the factual findings and legal conclusions that support it; and

(2) In the event of a denial, provide information as to requesting a Hearing Officer determination.

(b) Upon a claimant's failure (without reasonable justification or excuse) to pursue in timely fashion the determination, by the PSOB Office, of his filed claim, the Director may, at his discretion, deem the same to be abandoned, as though never filed. Not less than thirty-three days prior thereto,

§ 32.15

28 CFR Ch. I (7–1–18 Edition)

the PSOB Office shall serve the claimant with notice of the Director's intention to exercise such discretion.

[73 FR 76534, Dec. 17, 2008, as amended at 83 FR 22385, May 15, 2018]

§ 32.15 Prerequisite certification.

(a) Except as provided in the Act, at 34 U.S.C. 10286 or Public Law 107–37, and unless, for good cause shown, the Director grants a waiver, no claim shall be approved unless the following (which shall be necessary, but not sufficient, for such approval) are filed with the PSOB Office:

(1) Subject to paragraphs (b) and (d) of this section, a certification from the public safety officer's public safety agency (as of the injury date) that he died as a direct and proximate result of a line of duty injury, and either—

(i) That his survivors (listed by name, address, relationship to him, and amount received) have received (or legally are entitled to receive) the maximum death benefits legally payable by the agency with respect to deaths of public safety officers of his kind, rank, and tenure; or

(ii) Subject to paragraph (c) of this section, that the agency is not legally authorized to pay—

(A) Any benefits described in paragraph (a)(1)(i) of this section, to any person; or

(B) Any benefits described in paragraph (a)(1)(i) of this section, to public safety officers of the kind, rank, and tenure described in such paragraph;

(2) A copy of any findings or rulings made by any public agency (or public safety agency) that relate to the officer's death; and

(3) A certification from the claimant listing every individual known to him who is or might be the officer's child, spouse, or parent.

(b) The provisions of paragraphs (a)(1) and (d) of this section shall also apply with respect to every public agency (or public safety agency) that legally is authorized to pay death benefits with respect to the agency described in such paragraph (a)(1).

(c) No certification described in paragraph (a)(1)(ii) of this section shall be deemed complete for purposes of this section unless it—

(1) Lists every public agency (other than BJA), and every public safety agency, that legally is authorized to pay death benefits with respect to the certifying agency; or

(2) States that no public agency (other than BJA), or public safety agency, legally is authorized to pay death benefits with respect to the certifying agency.

(d) Subject to paragraphs (b) and (c) of this section, if the Director finds that the conditions specified in the Act, at 34 U.S.C. 10281(k), are satisfied with respect to a particular public safety officer's death, and that no circumstance specified in the Act, at 34 U.S.C. 10282(a)(1), (2), or (3), applies with respect thereto—

(1) The certification as to death, described in paragraph (a)(1) of this section, shall not be required; and

(2) The certification as to benefits, described in paragraph (a)(1)(ii) of this section, shall be deemed complete for purposes of this section if it—

(i) Describes the public agency's (or public safety agency's) understanding of the circumstances (including such causes of which it may be aware) of the officer's death; and

(ii) States that, in connection with deaths occurring under the circumstances described in paragraph (d)(2)(i) of this section, the public agency (or public safety agency's) is not legally authorized to pay any benefits described in paragraph (a)(1)(i) of this section.

[73 FR 76534, Dec. 17, 2008, as amended at 83 FR 22385, May 15, 2018]

§ 32.16 Payment.

(a) No payment shall be made to (or on behalf of) more than one individual, on the basis of being a public safety officer's parent as his mother, or on that basis as his father. If more than one parent qualifies as the officer's mother, or as his father, payment shall be made to the one with whom the officer considered himself, as of the injury date, to have the closest relationship, except that any biological or legally adoptive parent whose parental rights have not been terminated as of the injury date shall be presumed rebuttably to be such one.

Department of Justice

§ 32.22

(b) Any amount payable with respect to a minor or incompetent shall be paid to his legal guardian, to be expended solely for the benefit of such minor or incompetent.

[73 FR 76535, Dec. 17, 2008, as amended at 83 FR 22385, May 15, 2018]

§ 32.17 Request for Hearing Officer determination.

In order to exhaust his administrative remedies, a claimant seeking relief from the denial of his claim shall request a Hearing Officer determination under subpart E of this part. Consistent with § 32.8, any denial that is not the subject of such a request shall constitute the final agency determination.

Subpart C—Disability Benefit Claims

§ 32.21 Scope of subpart.

Consistent with § 32.1, this subpart contains provisions applicable to claims made under the Act—

(a) At 34 U.S.C. 10281(b); or

(b) At 34 U.S.C. 10286 or Public Law 107-37, with respect to a public safety officer's disability.

[71 FR 46037, Aug. 10, 2016, as amended at 83 FR 22385, May 15, 2018]

§ 32.22 Time for filing claim.

(a) Unless, for good cause shown, the Director extends the time for filing, no claim shall be considered if it is filed with the PSOB Office after the later of—

(1) Three years after the injury date; or

(2) One year after the later of—

(i) A final determination of entitlement to receive, or of denial of, the benefits, if any, described in § 32.25(a)(1)(i); or

(ii) The receipt of the certification described in § 32.25(a)(1)(ii); or

(3) The end of the supporting-evidence collection period.

(b) Unless, for good cause shown, the Director extends the time for filing, no individual may file a notice of intention to file a claim after the later of—

(1) The period described in paragraph (a)(1) of this section; or

(2) The period described in paragraph (a)(2) of this section.

(c) In the event that a claim is filed that fails to identify and provide foundational evidence as to status and injury, the Director shall deny the claim for lack of that foundational evidence. Not less than thirty-three days prior to such denial, the PSOB Office shall serve the claimant with notice of the date on which the Director will deny for that lack of evidence. Upon the claimant's request, filed prior to the date specified for the denial, the Director shall, in lieu of the denial—

(1) Allow the claimant to withdraw his claim; and

(2) Deem (as of the date of the request to withdraw) the claimant to have filed a notice of intention to file a claim, if a notice of intention otherwise filed by the claimant on that date would be timely under paragraph (b) of this section.

(d) Notwithstanding paragraph (a) of this section, unless, for good cause shown, the Director extends the time for filing, no claim based on an injury sustained by a WTC responder and resulting from the September 11, 2001, attacks shall be considered if it is filed with the PSOB Office after the latest of—

(1) The time provided in paragraph (a) of this section;

(2) Two years after the earlier of—

(i) The date on which the WTC-related physical health condition, if any, is determined by the September 11th Victim Compensation Fund, for the WTC responder, to meet the definition at section 104.2(i) of this title (as in effect on January 17, 2017); or

(ii) The date on which the WTC-related health condition, if any, is certified, for the WTC responder, under (as applicable) 42 U.S.C. 300mm-22(b)(1)(B)(ii) or 42 U.S.C. 300mm-22(b)(2)(A)(ii); or

(3) June 14, 2020.

[83 FR 22386, May 15, 2018]

EFFECTIVE DATE NOTE: At 83 FR 22386, May 15, 2018, § 32.22 was amended by revising paragraph (d), effective June 14, 2020. For the convenience of the user, the revised text is set forth as follows:

§ 32.23

§ 32.22 Time for filing claim.

* * * * *

(d) Notwithstanding paragraph (a) of this section, unless, for good cause shown, the Director extends the time for filing, no claim based on an injury sustained by a WTC responder and resulting from the September 11, 2001, attacks shall be considered if it is filed with the PSOB Office after the later of—

(1) The time provided in paragraph (a) of this section; or

(2) Two years after the earlier of—

(i) The date on which the WTC-related physical health condition, if any, is determined by the September 11th Victim Compensation Fund, for the WTC responder, to meet the definition at section 104.2(i) of this title (as in effect on January 17, 2017); or

(ii) The date on which the WTC-related health condition, if any, is certified, for the WTC responder, under (as applicable) 42 U.S.C. 300mm-22(b)(1)(B)(ii) or 42 U.S.C. 300mm-22(b)(2)(A)(ii).

§ 32.23 Definitions.

Direct result of an injury—A disability results directly from an injury if the injury is a substantial factor in bringing the disability about.

Gainful work means full-or part-time activity that actually is compensated or commonly is compensated.

Medical certainty—A fact exists to a degree of medical certainty, when, pursuant to a medical assessment, the fact is demonstrated by convincing evidence.

Permanently disabled—An individual is permanently disabled only if there is a degree of medical certainty (given the current state of medicine in the United States) that his disabled condition—

(1) Will progressively deteriorate or remain constant, over his expected lifetime; or

(2) Otherwise has reached maximum medical improvement.

Product of an injury—Permanent and total disability is produced by a catastrophic injury suffered as a direct and proximate result of a personal injury if the disability is a direct result of the personal injury.

Residual functional capacity means that which an individual still is capable of doing, as shown by medical (and, as appropriate, vocational) assessment, despite a disability.

Totally disabled—An individual is totally disabled only if there is a degree of medical certainty (given the current state of medicine in the United States) that his residual functional capacity is such that he cannot perform any gainful work.

§ 32.24 PSOB Office determination.

(a) Upon its approving or denying a claim, the PSOB Office shall serve notice of the same upon the claimant (and upon any other claimant who may have filed a claim with respect to the same public safety officer). Such notice shall—

(1) Specify the factual findings and legal conclusions that support it; and

(2) In the event of a denial, provide information as to—

(i) Requesting a Hearing Officer determination; or

(ii) As applicable, moving to reconsider a negative disability finding.

(b) Upon a claimant's failure (without reasonable justification or excuse) to pursue in timely fashion the determination of his filed claim, the Director may, at his discretion, deem the same to be abandoned, as though never filed. Not less than thirty-three days prior thereto, the PSOB Office shall serve the claimant with notice of the Director's intention to exercise such discretion.

[71 FR 46037, Aug. 10, 2018, as amended at 83 FR 22386, May 15, 2018]

§ 32.25 Prerequisite certification.

(a) Except as provided in the Act, at 34 U.S.C. 10286 or Public Law 107-37, and unless, for good cause shown, the Director grants a waiver, no claim shall be approved unless the following (which shall be necessary, but not sufficient, for such approval) are filed with the PSOB Office:

(1) Subject to paragraph (b) of this section, a certification from the public safety officer's public safety agency (as of the injury date) that he was permanently and totally disabled as a direct result of a line of duty injury, and either—

(i) That he has received (or legally is entitled to receive) the maximum disability benefits (including workers' compensation) legally payable by the agency with respect to disabled public

Department of Justice

§ 32.28

safety officers of his kind, rank, and tenure; or

(ii) Subject to paragraph (c) of this section, that the agency is not legally authorized to pay—

(A) Any benefits described in paragraph (a)(1)(i) of this section, to any person; or

(B) Any benefits described in paragraph (a)(1)(i) of this section, to public safety officers of the kind, rank, and tenure described in such paragraph; and

(2) A copy of—

(i) Each State, local, and federal income tax return filed by or on behalf of the public safety officer from the year before the injury date to the date of determination by the PSOB determining official; and

(ii) Any rulings or findings made by any public agency (or public safety agency) that relate to the claimed disability.

(b) The provisions of paragraph (a)(1) of this section shall also apply with respect to every public agency (or public safety agency) that legally is authorized to pay disability benefits with respect to the agency described in that paragraph.

(c) No certification described in paragraph (a)(1)(ii) of this section shall be deemed complete unless it—

(1) Lists every public agency (other than BJA), and every public safety agency, that legally is authorized to pay disability benefits with respect to the certifying agency; or

(2) States that no public agency (other than BJA), or public safety agency, legally is authorized to pay disability benefits with respect to the certifying agency.

[71 FR 46037, Aug. 10, 2018, as amended at 83 FR 22386, May 15, 2018]

§ 32.26 [Reserved]

§ 32.27 Motion for reconsideration of negative disability finding.

A claimant whose claim is denied in whole or in part on the ground that he has not shown that his claimed disability is total and permanent may move for reconsideration, under § 32.28, of the specific finding as to the total and permanent character of the claimed disability (in lieu of his re-

questing a Hearing Officer determination with respect to the same).

§ 32.28 Reconsideration of negative disability finding.

(a) Unless, for good cause shown, the Director extends the time for filing, no negative disability finding described in § 32.27 shall be reconsidered if the motion under that section is filed with the PSOB Office later than thirty-three days after the service of notice of the denial.

(b) Notwithstanding any other provision of this section, no negative disability finding described in § 32.27 shall be reconsidered—

(1) If or after such reconsideration is rendered moot (*e.g.*, by the final denial of the claim on other grounds, without possibility of further administrative or judicial recourse); or

(2) If a request for a Hearing Officer determination has been filed in timely fashion with respect to such finding.

(c) Unless, for good cause shown, the Director grants a waiver, upon the making of a motion under § 32.27, reconsideration of the negative disability finding described in that section shall be stayed for three years. Upon the conclusion of the stay, the claimant shall have not more than six years to file evidence with the PSOB Office in support of his claimed disability.

(d) Upon a claimant's failure (without reasonable justification or excuse) to file in timely fashion evidence pursuant to paragraph (c) of this section, the Director may, at his discretion, deem the motion for reconsideration to be abandoned, as though never filed. Not less than thirty-three days prior thereto, the PSOB Office shall serve the claimant with notice of the Director's intention to exercise such discretion.

(e) No negative disability finding described in § 32.27 shall be reversed unless a copy (which shall be necessary, but not sufficient, for such reversal) of each federal, State, and local income tax return filed by or on behalf of the claimant from the year before the date of the motion for reconsideration under that section to the date of reversal is filed with the PSOB Office.

(f) Upon its affirming or reversing a negative disability finding described in

§ 32.29

§ 32.27, the PSOB Office shall serve notice of the same upon the claimant. In the event of an affirmance, such notice shall—

(1) Specify the factual findings and legal conclusions that support it; and

(2) Provide information as to requesting a Hearing Officer determination of the disability finding.

§ 32.29 Request for Hearing Officer determination.

(a) In order to exhaust his administrative remedies, a claimant seeking relief from the denial of his claim shall request a Hearing Officer determination under subpart E of this part—

(1) Of—

(i) His entire claim, if he has not moved for reconsideration of a negative disability finding under § 32.27; or

(ii) Consistent with § 32.42(c), the grounds (if any) of the denial that are not the subject of such motion, if he has moved for reconsideration of a negative disability finding under § 32.27; and

(2) Of a negative disability finding that is affirmed pursuant to his motion for reconsideration under § 32.27.

(b) Consistent with § 32.8, the following shall constitute the final agency determination:

(1) Any denial not described in § 32.27 that is not the subject of a request for a Hearing Officer determination under paragraph (a)(1)(i) of this section;

(2) Any denial described in § 32.27 that is not the subject of a request for a Hearing Officer determination under paragraph (a)(1)(ii) of this section, unless the negative disability finding is the subject of a motion for reconsideration; and

(3) Any affirmance that is not the subject of a request for a Hearing Officer determination under paragraph (a)(2) of this section.

[73 FR 76535, Dec. 17, 2008]

Subpart D—Educational Assistance Benefit Claims

§ 32.31 Scope of subpart.

Consistent with § 32.1, this subpart contains provisions applicable to claims (*i.e.*, threshold claims and finan-

28 CFR Ch. I (7–1–18 Edition)

cial claims) made under the Act, at 34 U.S.C. 10302.

[71 FR 46037, Aug. 10, 2006, as amended at 83 FR 22386, May 15, 2018]

§ 32.32 Time for filing claim.

(a) Subject to the Act, at 34 U.S.C. 10302(c), and to paragraph (b) of this section, a claim may be filed with the PSOB Office at any time after the injury date.

(b) Unless, for good cause shown, the Director grants a waiver, no financial claim may be filed with the PSOB Office, with respect to a grading period that commences more than six months after the date of filing.

(c) A claimant may file with his claim such supporting documentary, electronic, video, or other non-physical evidence and legal arguments as he may wish to provide.

[73 FR 76535, Dec. 17, 2008, as amended at 83 FR 22386, May 15, 2018]

§ 32.33 Definitions.

Application means claim (*i.e.*, a threshold claim or a financial claim).

Assistance means financial assistance.

Child of an eligible public safety officer means the child of a public safety officer, which officer is an eligible public safety officer.

Educational assistance benefits means benefits specifically to assist in paying educational expenses.

Educational expenses means such of the following as may be in furtherance of the educational, professional, or vocational objective of the program of education that forms the basis of a financial claim:

(1) Tuition and fees, as described in 20 U.S.C. 10871(1) (higher education assistance);

(2) Reasonable expenses for—

(i) Room and board (if incurred for attendance on at least a half-time basis);

(ii) Books;

(iii) Computer equipment;

(iv) Supplies;

(v) Transportation; and

(3) For attendance on at least a three-quarter-time basis, a standard allowance for miscellaneous personal expenses that is the greater of—

Department of Justice

§ 32.35

(i) The allowance for such expenses, as established by the eligible educational institution for purposes of financial aid; or

(ii) \$200.00 per month.

Eligible educational expenses means a claimant's educational expenses, reduced by the amount of educational assistance benefits from non-governmental organizations that the claimant has received or will receive.

Eligible public safety officer means a public safety officer—

(1) With respect to whose death, benefits under subpart B of this part properly—

(i) Have been paid; or

(ii) Would have been paid but for operation of the Act, at 34 U.S.C. 10281(f); or

(2) With respect to whose disability, benefits under subpart C of this part properly—

(i) Have been paid; or

(ii) Would have been paid, but for operation of—

(A) Paragraph (b) of § 32.6; or

(B) The Act, at 34 U.S.C. 10281(f).

Financial assistance means financial assistance, as described in the Act, at 34 U.S.C. 10302.

Financial claim means a request for financial assistance, with respect to attendance at a program of education, for a particular grading period.

Financial need—An individual is in financial need for a particular grading period to the extent that the amount of his eligible educational expenses for that period exceed the sum of—

(1) The amount of his educational assistance benefits as described in the Act, at 34 U.S.C. 10302(a)(3); and

(2) His expected family contribution calculated pursuant to 20 U.S.C. 1087nn (higher education assistance).

Funds means financial assistance.

Grading period means the period of attendance (*e.g.*, a semester, a trimester, a quarter) in a program of education, after (or with respect to) which period grades are assigned, units of credit are awarded, or courses are considered completed, as determined by the eligible educational institution.

Prospective financial claim means a financial claim with respect to a grading period that ends after the claim is filed.

Retroactive financial claim means a financial claim with respect to a grading period that ends before the claim is filed.

Spouse of an eligible public safety officer at the time of the officer's death or on the date of a totally and permanently disabling injury means the spouse of a public safety officer (which officer is an eligible public safety officer) as of—

(1) The date of the officer's death (with respect to a claim by virtue of such death); or

(2) The injury date (with respect to a claim by virtue of the officer's disability).

Threshold claim means a request for determination of general eligibility to receive financial assistance.

[71 FR 46037, Aug. 10, 2006, as amended at 83 FR 22386, May 15, 2018]

§ 32.34 PSOB Office determination.

(a) In the event of the PSOB Office's denying a claim, the notice it serves upon the claimant shall—

(1) Specify the factual findings and legal conclusions that support the denial; and

(2) Provide information as to requesting a Hearing Officer determination.

(b) No financial claim shall be approved, unless the claimant's threshold claim has been approved.

(c) Upon a claimant's failure (without reasonable justification or excuse) to pursue in timely fashion the determination of his filed claim, the Director may, at his discretion, deem the same to be abandoned, as though never filed. Not less than thirty-three days prior thereto, the PSOB Office shall serve the claimant with notice of the Director's intention to exercise such discretion.

[71 FR 46037, Aug. 10, 2006, as amended at 83 FR 22387, May 15, 2018]

§ 32.35 Disqualification.

No claim shall be approved if the claimant is—

(a) In default on any student loan obtained under 20 U.S.C. 1091 (higher education assistance), unless, for good cause shown, the Director grants a waiver; or

§ 32.36

28 CFR Ch. I (7–1–18 Edition)

(b) Subject to a denial of federal benefits under 21 U.S.C. 862 (drug traffickers and possessors).

§ 32.36 Payment and repayment.

(a) The computation described in the Act, at 34 U.S.C. 10302(a)(2), shall be based on a certification from the eligible educational institution as to the claimant's full-, three-quarter-, half-, or less-than-half-time student status, according to such institution's own academic standards and practices.

(b) No payment shall be made with respect to any grading period that ended before the injury date.

(c) With respect to any financial claim, no amount shall be payable that exceeds the amount of the eligible educational expenses that form the basis of the claim.

(d) In the event that appropriations for a fiscal year are insufficient for full payment of all approved or anticipated financial claims, the following payments shall be made—

(1) The amounts payable on approved prospective financial claims from claimants in financial need, to the extent of such need (if sufficient funds be available therefor), in the order the claims are approved;

(2) All other amounts payable on approved prospective financial claims (in the order the claims are approved), if sufficient funds be available therefor—

(i) After payment of all amounts payable pursuant to paragraph (d)(1) of this section; and

(ii) After making allowance for anticipated amounts payable in the fiscal year pursuant to paragraph (d)(1) of this section; and

(3) The amounts payable on approved retroactive financial claims (in the order the claims are approved), if sufficient funds be available therefor—

(i) After payment of all amounts payable pursuant to paragraphs (d)(1) and (2) of this section; and

(ii) After making allowance for anticipated amounts payable in the fiscal year, pursuant to paragraphs (d)(1) and (2) of this section.

(e) In the event that, at the conclusion of a fiscal year, any amounts remain payable on an approved financial claim, such amounts shall remain pay-

able thereafter until paid (when appropriations be sufficient therefor).

(f) In the event that any amounts remain payable on an approved prospective financial claim after the end of the grading period that forms its basis, such claim shall be deemed an approved retroactive financial claim for purposes of paragraph (d) of this section.

(g) No payment shall be made to (or on behalf of) any individual, on the basis of being a particular living public safety officer's spouse, unless the individual is the officer's spouse on the date of payment.

(h) Unless, for good cause shown, the Director grants a full or partial waiver, a payee shall repay the amount paid to him (or on his behalf) pursuant to a prospective financial claim if, during the grading period that forms its basis—

(1) He fails to maintain satisfactory progress under 20 U.S.C. 1091(c) (higher education assistance);

(2) He fails to maintain the enrollment status described in his claim; or

(3) By his acts or omissions, he is or becomes ineligible for financial assistance.

[71 FR 46037, Aug. 10, 2006, as amended at 83 FR 22387, May 15, 2018]

§ 32.37 Request for Hearing Officer determination.

In order to exhaust his administrative remedies, a claimant seeking relief from the denial of his claim shall request a Hearing Officer determination under subpart E of this part. Consistent with § 32.8, any denial that is not the subject of such a request shall constitute the final agency determination.

Subpart E—Hearing Officer Determinations

§ 32.41 Scope of subpart.

Consistent with § 32.1, this subpart contains provisions applicable to requests for Hearing Officer determination of claims denied under subpart B, C (including affirmances of negative disability findings described in § 32.27),

Department of Justice

§ 32.44

or D of this part, and of claims remanded (or matters referred) under § 32.54(c).

[73 FR 76535, Dec. 17, 2008]

§ 32.42 Time for filing request for determination.

(a) Subject to paragraph (c) of this section, and unless, for good cause shown, the Director extends the time for filing, no claim shall be determined if the request therefor is filed with the PSOB Office later than thirty-three days after the service of notice of—

(1) The denial (under subpart B, C (except as may be provided in paragraph (a)(2) of this section), or D of this part) of a claim; or

(2) The affirmance (under subpart C of this part) of a negative disability finding described in § 32.27.

(b) A claimant may file with his request for a Hearing Officer determination such supporting documentary, electronic, video, or other non-physical evidence and legal arguments as he may wish to provide.

(c) The timely filing of a motion for reconsideration under § 32.28(a) shall be deemed to constitute a timely filing, under paragraph (a) of this section, of a request for determination with respect to any grounds described in § 32.29(a)(1)(ii) that may be applicable.

[73 FR 76535, Dec. 17, 2008]

§ 32.43 Appointment and assignment of Hearing Officers.

(a) Pursuant to 34 U.S.C. 10225 (employment and authority of hearing officers), Hearing Officers may be appointed from time to time by the Director, to remain on the roster of such Officers at his pleasure.

(b) Upon the filing of a request for a Hearing Officer determination (or upon remand or referral), the PSOB Office shall assign the claim to a Hearing Officer on the roster; the PSOB Office may assign a particular claim to a specific Hearing Officer if it judges, in its discretion, that his experience or expertise suit him especially for it.

(c) Upon its making the assignment described in paragraph (b) of this section, the PSOB Office shall serve notice of the same upon the claimant, with an indication that any evidence or legal

argument he wishes to provide is to be filed simultaneously with the PSOB Office and the Hearing Officer.

(d) With respect to an assignment described in paragraph (b) of this section, the Hearing Officer's consideration shall be—

(1) *De novo* (unless the Director should expressly prescribe otherwise, with respect to a particular remand or referral), rather than in review of the findings, determinations, affirmances, reversals, assignments, authorizations, decisions, judgments, rulings, or other actions of the PSOB Office; and

(2) Consistent with subpart B, C, or D of this part, as applicable.

[73 FR 76535, Dec. 17, 2008, as amended at 78 FR 29234, May 20, 2013; 83 FR 22387, May 15, 2018]

§ 32.44 Hearing Officer determination.

(a) Upon his determining a claim, the Hearing Officer shall file a notice of the same simultaneously with the Director (for his review under subpart F of this part in the event of approval) and the PSOB Office, which notice shall specify the factual findings and legal conclusions that support it.

(b) Upon a Hearing Officer's approving or denying a claim, the PSOB Office shall serve notice of the same simultaneously upon the claimant (and upon any other claimant who may have filed a claim with respect to the same public safety officer). Such notice shall—

(1) Specify the Hearing Officer's factual findings and legal conclusions that support it; and

(2) In the event of a denial, provide information as to Director appeals.

(c) Upon a claimant's failure (without reasonable justification or excuse) to pursue in timely fashion the determination of his claim pursuant to his filed request therefor, the Director may, at his discretion, deem the request to be abandoned, as though never filed. Not less than thirty-three days prior thereto, the PSOB Office shall serve the claimant with notice of the Director's intention to exercise such discretion.

[71 FR 46037, Aug. 10, 2006, as amended at 78 FR 29234, May 20, 2013; 83 FR 22387, May 15, 2018]

§ 32.45

§ 32.45 Hearings.

(a) Except with respect to a remand or referral, at the election of a claimant under subpart B or C of this part, the Hearing Officer shall hold a hearing, at a location agreeable to the claimant and the Officer (or, otherwise, at a location ruled by the Hearing Officer to be suitable), for the sole purposes of obtaining, consistent with § 32.5(c),

(1) Evidence from the claimant and his fact or expert witnesses; and

(2) Such other evidence as the Hearing Officer, at his discretion, may rule to be necessary or useful.

(b) Unless, for good cause shown, the Director extends the time for filing, no election under paragraph (a) of this section shall be honored if it is filed with the PSOB Office later than ninety days after service of the notice described in § 32.43(c).

(c) Not less than seven days prior to any hearing, the claimant shall file simultaneously with the PSOB Office and the Hearing Officer a list of all expected fact or expert witnesses and a brief summary of the evidence each witness is expected to provide.

(d) At any hearing, the Hearing Officer—

(1) May exclude any evidence whose probative value is substantially outweighed by considerations of undue delay, waste of time, or needless presentation of cumulative evidence

(2) Shall exclude witnesses (other than the claimant, or any person whose presence is shown by the claimant to be essential to the presentation of his claim), so that they cannot hear the testimony of other witnesses; and

(3) Shall (unless the Director should direct or allow otherwise) be the only individual (other than the claimant's representative, if any) who may examine the claimant.

(e) Each hearing shall be recorded, and the original of the complete record or transcript thereof shall be made a part of the claim file.

(f) Unless, for good cause shown, the Director grants a waiver, a claimant's failure to appear at a hearing (in person or through a representative) shall constitute a withdrawal of his election under paragraph (a) of this section.

28 CFR Ch. I (7–1–18 Edition)

(g) Upon a claimant's failure to pursue in timely fashion his filed election under paragraph (a) of this section, the Director may, at his discretion, deem the same to be abandoned. Not less than thirty-three days prior thereto, the PSOB Office shall serve the claimant with notice of the Director's intention to exercise such discretion.

[73 FR 76536, Dec. 17, 2008, as amended at 83 FR 22387, May 15, 2018]

§ 32.46 Director appeal.

(a) In order to exhaust his administrative remedies, a claimant seeking relief from the denial of his claim shall appeal to the Director under subpart F of this part.

(b) Consistent with § 32.8, any claim denial that is not appealed to the Director under paragraph (a) of this section shall constitute the final agency determination, unless the denial is reviewed otherwise under subpart F of this part.

Subpart F—Director Appeals and Reviews

§ 32.51 Scope of subpart.

Consistent with § 32.1, this subpart contains provisions applicable to Director appeals and reviews of claim approvals and denials made under subpart E of this part, and reviews of claim approvals under the Act, at 34 U.S.C. 10286 or Public Law 107–37.

[71 FR 46037, Aug. 10, 2006, as amended at 83 FR 22387, May 15, 2018]

§ 32.52 Time for filing Director appeal.

(a) Unless, for good cause shown, the Director extends the time for filing, no Director appeal shall be considered if it is filed with the PSOB Office later than thirty-three days after the service of notice of the denial (under subpart E of this part) of a claim.

(b) A claimant may file with his Director appeal such supporting documentary, electronic, video, or other non-physical evidence and legal arguments as he may wish to provide.

[73 FR 76536, Dec. 17, 2008, as amended at 83 FR 22387, May 15, 2018]

§ 32.53 Review.

(a) Upon the filing of the approval (under subpart E of this part) of a claim, the Director shall review the same.

(b) The Director may review—

(1) Any claim denial made under subpart E of this part; and

(2) Any claim approval made under the Act, at 34 U.S.C. 10286 or Public Law 107-37.

(c) Unless the Director judges that it would be unnecessary, the PSOB Office shall serve notice upon the claimant (and upon any other claimant who may have filed a claim with respect to the same public safety officer) of the initiation of a review under paragraph (a) or (b) of this section. Unless the Director judges that it would be unnecessary, such notice shall—

(1) Indicate the principal factual findings or legal conclusions at issue; and

(2) Offer a reasonable opportunity for filing of evidence or legal arguments.

(d) The Director may reconsider a claim under subparts B or C of this part that has been denied in a final agency determination if—

(1) The public safety officer was a WTC responder;

(2) The claim was based on the allegation that—

(i) The WTC responder sustained an injury that was the direct and proximate cause of his death or of his permanent and total disability; and

(ii) The WTC responder's injury was sustained in the course of performance of line of duty activity or a line of duty action that exposed him to airborne toxins, other hazards, or other adverse conditions resulting from the September 11, 2001, attacks;

(3) The sole ground of the denial was that the claim did not establish that—

(i) The WTC responder sustained an injury in the course of performance of line of duty activity or a line of duty action; or

(ii) The injury allegedly sustained by the WTC responder was the direct and proximate cause of his death or permanent and total disability;

(4) The alleged injury on which the claim was based is a WTC-related health condition; and

(5) The claimant files with the PSOB Office a motion for such reconsideration before the later of—

(i) Two years after the earlier of—

(A) The date on which the WTC-related physical health condition, if any, is determined by the September 11th Victim Compensation Fund, for the WTC responder, to meet the definition at section 104.2(i) of this title (as in effect on January 17, 2017); or

(B) The date on which the WTC-related health condition, if any, is certified, for the WTC responder, under (as applicable) 42 U.S.C. 300mm-22(b)(1)(B)(ii) or 42 U.S.C. 300mm-22(b)(2)(A)(ii); or

(ii) June 14, 2020.

[71 FR 46037, Aug. 10, 2006, as amended at 83 FR 22387, May 15, 2018]

EFFECTIVE DATE NOTE: At 83 FR 22387, May 15, 2018, §32.53 was amended by revising paragraph (d)(5), effective June 14, 2020. For the convenience of the user, the revised text is set forth as follows:

§ 32.53 Review.

* * * * *

(d) * * *

(5) The claimant files with the PSOB Office a motion for such reconsideration before the earlier of two year—

(i) The date on which the WTC-related physical health condition, if any, is determined by the September 11th Victim Compensation Fund, for the WTC responder, to meet the definition at section 104.2(i) of this title (as in effect on January 17, 2017); or

(ii) The date on which the WTC-related health condition, if any, is certified, for the WTC responder, (as applicable) 42 U.S.C. 300mm-22(b)(1)(B)(ii) or 42 U.S.C. 300mm-22(b)(2)(A)(ii).

§ 32.54 Director determination.

(a) Upon the Director's approving or denying a claim, the PSOB Office shall serve notice of the same simultaneously upon the claimant (and upon any other claimant who may have filed a claim with respect to the same public safety officer), and upon any Hearing Officer who made a determination with respect to the claim. Such notice shall—

(1) Specify the factual findings and legal conclusions that support it; and

(2) In the event of a denial, provide information as to judicial appeals.

§ 32.55

(b) Upon a claimant's failure (without reasonable justification or excuse) to pursue in timely fashion the determination of his claim pursuant to his filed Director appeal, the Director may, at his discretion, deem the same to be abandoned, as though never filed. Not less than thirty-three days prior thereto, the PSOB Office shall serve the claimant with notice of the Director's intention to exercise such discretion.

(c) With respect to any claim before him, the Director, as appropriate, may (among other things)—

(1) Remand the same to the PSOB Office, or to a Hearing Officer;

(2) Vacate any related determination under this part; or

(3) Refer any related matters to a Hearing Officer (as a special master), to recommend factual findings and dispositions in connection therewith.

[73 FR 76536, Dec. 17, 2008, as amended at 83 FR 22387, May 15, 2018]

§ 32.55 Judicial appeal.

Consistent with § 32.8, no administrative action other than an approval or denial described in § 32.54(a) shall constitute a final agency determination for purposes of the Act, at 34 U.S.C. 10287.

[83 FR 22387, May 15, 2018]

PART 33—BUREAU OF JUSTICE ASSISTANCE GRANT PROGRAMS

Subpart A—Criminal Justice Block Grants

GENERAL PROVISIONS

Sec.

- 33.1 General.
- 33.2 Statutory authority.
- 33.3 OMB approval of information collection requirements.

ELIGIBLE APPLICANTS

- 33.10 State government.
- 33.11 Units of local government.
- 33.12 Establishment of State Office.

ALLOCATION OF FUNDS

- 33.20 Fund availability.
- 33.21 Match.
- 33.22 Title to personal property.
- 33.23 Limitations on fund use.

PURPOSES OF BLOCK GRANT FUNDS

- 33.30 Program criteria.

28 CFR Ch. I (7–1–18 Edition)

- 33.31 Eligible purposes and programs.
- 33.32 Certified programs.

APPLICATION REQUIREMENTS

- 33.40 General.
- 33.41 Application content.

ADDITIONAL REQUIREMENTS

- 33.50 General financial requirements.
- 33.51 Audit.
- 33.52 Civil rights.
- 33.53 Participation by faith-based organizations.

SUBMISSION AND REVIEW OF APPLICATIONS

- 33.60 General.
- 33.61 Review of State applications.

REPORTS

- 33.70 Annual performance report.
- 33.71 Initial project report.

SUSPENSION OF FUNDING

- 33.80 Suspension of funding.

Subpart B—Bulletproof Vest Partnership Grant Program Applying for the Program

- 33.100 Definitions.
- 33.101 Standards and requirements.
- 33.102 Preferences.
- 33.103 How to apply.

AUTHORITY: 42 U.S.C. 3701 through 3797y-4; 5 U.S.C. 301.

SOURCE: 50 FR 22990, May 30, 1985, unless otherwise noted.

Subpart A—Criminal Justice Block Grants

GENERAL PROVISIONS

§ 33.1 General.

This subpart defines eligibility criteria and sets forth requirements for application for and administration of block grants by state and local governments.

[50 FR 22990, May 30, 1985, as amended at 63 FR 50761, Sept. 23, 1998]

§ 33.2 Statutory authority.

The statutory authority for the regulations is the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, *et. seq.*, as amended (Pub. L. 90-351, as amended by Pub. L. 93-83, Pub. L. 93-415, Pub. L. 94-430, Pub. L. 94-503, Pub. L. 95-115, Pub. L. 96-157, and Pub. L. 98-473) (hereinafter referred to as the